# ASU CR Cards Round 3 Districts

## 1NC

### 1

#### Text: The United States federal government should grant a newly established National Security Court exclusive jurisdiction over the legal status of individuals indefinitely detained under the War Powers authority of the President of the United States.

#### The court preserves national security while sending an international signal

Sulmasy 6 (Commander and associate professor of law at the U.S. Coast Guard Academy,

[Glenn, “THE LEGAL LANDSCAPE AFTER HAMDAN:¶ THE CREATION OF HOMELAND SECURITY¶ COURTS”, NEW ENG. J.INT'L & COMP.L., Vol. 13, RSR]

Article I judges with law of armed conflict expertise would proceed¶ over the trials. Theses judges will be appointed by the President and¶ possess the educational background necessary to determine the lawfulness¶ of intelligence gathering, terrorist surveillance, and other necessary areas in¶ the field of terrorism and homeland security. Several scholars, advocating¶ against judicial intervention in the war, correctly note that those who are¶ making such decisions now are not necessarily versed in this unique area of¶ the law.43 Whether you agree or disagree, the nature of this war seems to¶ necessitate judicial intervention more than has been custom or standard in¶ previous U.S. military wars and operations. As it stands now, the system¶ allows for judges who have no background in warfare or national security¶ to intervene, hear, and decide cases with little or no understanding of the¶ issues because they are beyond the scope of their expertise.4 The threat¶ we face demands these procedures as a minimum requirement.¶ Prosecutors, assigned by the Department of Justice (hereinafter¶ referred to as "DOJ") would represent the government and exercise¶ prosecutorial discretion on whether or not to proceed in cases. Oversight¶ would be conducted by the Chief, Criminal Division of DOJ. 45 The powers¶ of these prosecutors, as in other nations, would be great, but they would¶ still operate under the ethical rules standard for all U.S. government¶ attorneys.¶ Judge advocates (military lawyers) would serve as government¶ provided defense counsel. This group would be similar to what has been¶ provided for the detainees in the military commissions. The judge¶ advocates would be made available by the Department of Homeland Security46 and the Department of Defense. Initially, a pool of ten judge¶ advocates would serve on defense teams. If desired, the accused may¶ employ, at his expense, civilian counsel as long as they have requisite¶ classified document clearance(s). This would ensure alleged international¶ terrorists with a defense capable of handling their cases. Further, this¶ would help satisfy some international concern about lack of representation.¶ As a result of the sensitive nature of intelligence gathering and¶ methods employed as well as ensuring such hearings do not become¶ propaganda tools for the enemy,47 the trials would be closed to the public.¶ Reasons for closed trials include disallowing access to the media, an action¶ that was not taken in the trials of the perpetrators of the World Trade¶ Center bombings in 1993 and the recent Moussaoui case.48 However,¶ representatives from several appointed NGO's and the United Nations¶ would be permitted to attend as "observers" to ensure fairness of the trial¶ and to witness the procedural protections expected of a nation dedicated to¶ upholding the rule of law.¶ The trials would be held on military bases located within the¶ continental United States. This would keep the detainees held in a location¶ that is secure, like GITMO, but with less controversy. This would, in part,¶ also remove some of the international concerns about the detention centers¶ located in GITMO. Under this proposal, our own armed forces, alleged¶ and convicted criminals, are held at the same location as the terrorist. Fort¶ Leavenworth in Kansas, or even Fort Belvoir in Washington D.C., would¶ be appropriate locations to detain, try, and imprison persons accused of¶ engaging in international terror. Since Eisentrager has been essentially¶ overruled by recent cases, 49 the extraterritoriality needs are no longer¶ applicable and, in essence, are moot.50¶ As noted previously, military brigs are the most appropriate place to detain accused terrorists because it is both a secure place and it affords the¶ same protection against abuse given to those in the U.S. service members¶ who are tried, convicted, and sentenced under the UCMJ by courts-martial.¶ Having the detainees alongside members of the U.S. military would go a¶ long way toward reducing international concerns of torture and unfair¶ tribunals. In addition, it seems as though keeping the detainees within our¶ nation would provide an additional appearance of process and certainly¶ remove the taint of being held in the base at GITMO. Remaining¶ consistent with the theme of the homeland security courts being a hybrid,¶ any appeals would go through the Courts of Appeals of the Armed Forces¶ (CAAF)." This limited right of appeal would ensure the cases were heard¶ by an outside panel of judges versed in military law, the laws of war, and¶ have some background in the procedural nuances of national security law.¶ Appellate counsel would be provided by Air Force, Coast Guard, Navy-¶ Marine Corps, and the Army.¶ Under this system, the death penalty would still be an authorized¶ punishment. This penalty would only be authorized in those cases deemed¶ egregious enough and ones that severely impact the homeland security of¶ the United States. Certain aggravating factors would have to be developed¶ and codified to distinguish between what cases are appropriate for a life¶ sentence or those better suited as capital cases. Recognizing that this¶ would still cause concern among our European and other international¶ colleagues, this proposal certainly requires further elaboration prior to¶ implementation.

#### Comparatively better for terrorism – civilian trials make effective CT impossible.

Harvey, et al, ‘9

[Albert (Chair¶ Standing Committee on¶ Law and National Security¶ American Bar Association); Suzanne Spalding (Advisory Committee Chair¶ Standing Committee on¶ Law and National Security¶ American Bar Association); Richard Friedman (President and Chair¶ National Strategy Forum); M.E. Spike Bowman (Distinguished Fellow¶ University of Virginia School of Law); Deborah Pearlstein (Visiting Scholar¶ Program in Law and Public Affairs¶ Princeton University); Peter Raven-Hansen (Professor of Law¶ George Washington University Law ¶ School); and Harvey Rishikof (Professor of Law and National Security ¶ Studies¶ National War College), “Trying Terrorists ¶ in Article III Courts ¶ Challenges and Lessons Learned”, American Bar Association Standing Committee on ¶ Law and National Security, National Strategy Forum, McCormick Foundation, RSR]

First, the disclosure of evidence in some terrorism trials may force a ¶ decision about whether to expose important intelligence gathering priorities, ¶ methods, and sources. This exposure may lead to conflicting interests between ¶ U.S. intelligence and law enforcement agencies; the risk of conflict is no less ¶ substantial when using sensitive evidence as opposed to classified evidence.17 In ¶ addition, it is not always clear at the outset which intelligence information will be ¶ valuable in the future, meaning that intelligence agencies are resistant to disclosing any intelligence information unless its secrecy can be adequately safeguarded and its use will result in meaningful benefits to the government.¶ Second, the use of classified and sensitive evidence obtained from the ¶ intelligence arm of a foreign government can pose an obstacle to future cooperation between the United States and the foreign government. Intelligence information is often shared between governments with the express understanding that ¶ such cooperation will remain secret. In terrorism trials, the prosecution may face ¶ the dilemma of either (i) turning over the evidence of foreign cooperation and ¶ thereby undermining the trust of the foreign government, (ii) proceeding with ¶ litigation on a more restricted set of evidence, or, in some rare cases, (iii) withdrawing some charges against the defendant.¶ Third, where a secret informant only cooperates with U.S. intelligence ¶ under assurances that she will never be identified or have to testify in an American courtroom, prosecutors and intelligence officials may be faced with losing a ¶ valuable intelligence source for the purpose of prosecuting a single (or a small ¶ group of) terrorist suspect(s). The higher value the informant, the less likely ¶ the intelligence service will agree to such disclosure, meaning that the prosecution may be forced to proceed on significantly less evidence. This problem also ¶ arises where the source is a foreign intelligence agent barred from testifying in an ¶ American courtroom by her own government. A few discussants argued, however, that these were merely practical barriers for the prosecution that can be, and ¶ in past cases have been, overcome, for example, by renegotiating with an intelligence source or engaging in diplomacy with a foreign government on a case-bycase basis. Some discussants urged that criminal prosecutors often handle issues ¶ pertaining to reluctant and secret witnesses, meaning that prosecutors can continue to do so in terrorism trials. However, other discussants disagreed, asserting that the national security, intelligence, and foreign relations implications of ¶ handling secret witnesses in terrorism trials are different and more complex than ¶ secrecy considerations typically at issue in traditional criminal trials. Fourth, there was general consensus that the government increases its ¶ discovery burden in terrorism cases when it seeks the death penalty. Thus, a ¶ majority of the discussants agreed that the prosecution would mitigate some of ¶ the practical and foreign affairs challenges by not seeking the death penalty in ¶ some terrorism cases. Moreover, some discussants intimated that many foreign ¶ governments might categorically refuse to cooperate with U.S. intelligence and ¶ law enforcement if the government could use the information as evidence in a ¶ future capital case. As a result, some workshop participants agreed that removing ¶ the death penalty as a potential punishment for terrorists would greatly benefit the prosecution as well as U.S. intelligence and foreign relations. However, at ¶ least one discussant noted that public and political pressures may not permit the ¶ government to categorically remove the death penalty as a punishment for terrorists. Ultimately, there was no agreement about whether the United States should ¶ remove the death penalty as a punishment in terrorism cases as a matter of policy, ¶ merely recognition that seeking the death penalty can intensify some of the discovery and foreign affairs challenges facing the government.

### 2

#### The plan’s restrictions on the military cause global mission failure.

Ford, 10– Fred K., U.S. Army Judge Advocate General Corps (“Keeping Boumediene off the Battlefield: Examining Potential Implications of the Boumediene v. Bush Decision to the Conduct of United States Military Operations,” Pace Law Review, vol 30, is 2, Winter 2010, http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1037&context=plr)

III. Boumediene in Bagram and on the Battlefield **Boumediene, and the potential extension of its holding, impacts U.S. detention operations not only at Guantanamo Bay but also at** Bagram and other **current or future detention facilities.** As a preliminary matter, the natural question in light of Boumediene is how necessary or beneficial is Guantanamo Bay? If the DoD initially established Guantanamo Bay for its foreign location—more convenient for U.S.-based intelligence and interrogation personnel—then, in light of Boumediene, the base is no longer “foreign.” The purported freedom from domestic legal requirements initially presumed at Guantanamo no longer exists. As the current administration seeks to close Guantanamo48—whether due to legal, political, or policy reasons—it is clear that Boumediene has done away with at least one benefit of housing detainees at Guantanamo. Could Boumediene impact current detention activities in Bagram? If Boumediene reaches that facility, the Eisentrager Court’s worst fears would be realized.49 Military interrogations might require court approval, or worse, the presence of a detainee’s counsel. Moving a detainee may likewise require approval from the court. Conditions of confinement might be reviewable by a court. Military prison guards may be liable to their enemy captives in constitutional tort. The implications, again, are vast. In addition to detention operations in a theater of war, Boumediene may directly impact actual day-to-day combat operations. Justice Scalia warned that Boumediene **could** “**cause more Americans to be killed**.”50 Practically speaking, he was **referring to a situation where a court releases a terrorist who returns to fight against Americans**. Additionally, **battlefield impact and risk to service members for other reasons is not improbable.** As a preliminary matter, the issue arises in determining when habeas rights attach. Habeas would attach on the battlefield only if the United States exercises functional control over a combatant—that is, if it exercises the functional equivalent of legal sovereignty over the detainee. In a country like Afghanistan, or even Iraq, there is no question that functioning governments active in inter- and intra-state affairs are operating, and the nations maintain their sovereignty. But does (or would) the United States operate in a pocket or umbrella of sovereignty in either nation for purposes of Boumediene? Liberal stationing agreements, UNSCRs, or other documents authorizing or defining the scope and breadth of authority for U.S. forces in a country could be read to grant Boumediene-like autonomy. During the heightened occupation of Iraq, and the initial invasion of Afghanistan, a stronger argument could have been made that habeas in fact attached to in-country detentions. And, in a certain area of occupation, such as post-war Germany, or immediately following invasive hostilities, the case is again much closer. If **a U.S. soldier** operates in a pocket of sovereignty, habeas rights **may** attach to any enemy he seizes or captures on the battlefield. Those rights would remain during temporary detention, transfer, and long-term detention. In this (hopefully unlikely) situation, U.S. combat troops would **have to be trained in the latest version of habeas law for the battlefield.** They would need to know not only the operational requirements and details of the military operation—for example, seizing terrain or raiding a compound—but also the legal niceties associated with capturing an enemy who has constitutional rights and seizing the evidence that might be necessary to keep that enemy in detention and off of future battlefields. **At** the **very least**, these **new requirements would be a distraction to an undertaking where focus and attention to detail are vital, a distraction that could be deadly.** Essentially, troops on patrol would be carrying the full panoply of rights and privileges afforded under the U.S. Constitution in their assault packs. Every enemy encountered would be entitled to rummage through the pack to choose the U.S. domestic law—the legal weapon51—to use against the soldier. In effect, **the military operation would be converted into a pseudo-law enforcement search and seizure operation.** U.S. combat troops would be no different than police officers on patrol in any town or city in the United States. **The military would cease to exist as we know it** and would become nothing more than a deployable F.B.I. As indicated above, **evidence experts and/or law enforcement experts may be integrated into the operation**. These **individuals** are likely **not familiar with military operations** and have not trained with the unit to which they would be assigned. **The potential for** confusion, hesitation, mistaken identity, and **uncertainty is great.** **Each creates a recipe for fratricide, enemy advantage, or worse**—**mission failure and defeat.**

#### The perception of collapsing capability ensures deterrence failure and war

Spencer 2k[Jack Spencer – Senior Research Fellow for The Heritage Foundation, September 15, 2000, “The Facts About Military Readiness”, <http://www.heritage.org/research/reports/2000/09/bg1394-the-facts-about-military-readiness>]

U.S. military readiness cannot be gauged by comparing America's armed forces with other nations' militaries. Instead, the capability of U.S. forces to support America's national security requirements should be the measure of U.S. military readiness. Such a standard is necessary because America may confront threats from many different nations at once.¶ America's national security requirements dictate that the armed forces must be prepared to defeat groups of adversaries in a given war. America, as the sole remaining superpower, has many enemies. Because attacking America or its interests alone would surely end in defeat for a single nation, these enemies are likely to form alliances. Therefore, basing readiness on American military superiority over any single nation has little saliency.¶ The evidence indicates that the U.S. armed forces are not ready to support America's national security requirements. Moreover, regarding the broader capability to defeat groups of enemies, military readiness has been declining. The National Security Strategy, the U.S. official statement of national security objectives,3 concludes that the United States "must have the capability to deter and, if deterrence fails, defeat large-scale, cross-border aggression in two distant theaters in overlapping time frames."4According to some of the military's highest-ranking officials, however, the United States cannot achieve this goal. Commandant of the Marine Corps General James Jones, former Chief of Naval Operations Admiral Jay Johnson, and Air Force Chief of Staff General Michael Ryan have all expressed serious concerns about their respective services' ability to carry out a two major theater war strategy.5 Recently retired Generals Anthony Zinni of the U.S. Marine Corps and George Joulwan of the U.S. Army have even questioned America's ability to conduct one major theater war the size of the 1991 Gulf War.6¶ Military readiness is vital because declines in America's military readiness signal to the rest of the world that the United States is not prepared to defend its interests. Therefore, potentially hostile nations will be more likely to lash out against American allies and interests, inevitably leading to U.S. involvement in combat. A high state of military readiness is more likely to deter potentially hostile nations from acting aggressively in regions of vital national interest, thereby preserving peace.

#### These conflicts escalate and go nuclear without US military superiority to cap escalation

Bosco, 06 (David, senior editor at Foreign Policy magazine, Los Angeles Times, “Could This Be the Start of World War III?”, 7/23, <http://www.latimes.com/news/opinion/commentary/la-op-bosco23jul23,0,7807202.story?coll=la-opinion-center>)

IT WAS LATE JUNE in Sarajevo when Gavrilo Princip shot Archduke Franz Ferdinand and his wife. After emptying his revolver, the young Serb nationalist jumped into the shallow river that runs through the city and was quickly seized. But the events he set in motion could not be so easily restrained. Two months later, Europe was at war. The understanding that **small but violent acts can spark global conflagration** is etched into the world's consciousness. The reverberations from Princip's shots in the summer of 1914 ultimately took the lives of more than 10 million people, shattered four empires and dragged more than two dozen countries into war. This hot summer, as the world watches the violence in the Middle East, the awareness of peace's fragility is particularly acute. The bloodshed in Lebanon appears to be part of a broader upsurge in unrest. Iraq is suffering through one of its bloodiest months since the U.S.-led invasion in 2003. Taliban militants are burning schools and attacking villages in southern Afghanistan as the United States and NATO struggle to defend that country's fragile government. Nuclear-armed India is still cleaning up the wreckage from a large terrorist attack in which it suspects militants from rival Pakistan. The world is awash in weapons, North **Korea and Iran are developing nuclear** capabilities, and **long-range missile technology is spreading like a virus**. Some see the start of a global conflict. "**We're in the early stages of** what I would describe as **the Third World War**," former House Speaker Newt Gingrich said last week. Certain religious websites are abuzz with talk of Armageddon. There may be as much hyperbole as prophecy in the forecasts for world war. But it's not hard to conjure ways that today's hot spots could ignite. Consider the following scenarios: • Targeting Iran: As Israeli troops seek out and destroy Hezbollah forces in southern Lebanon, intelligence officials spot a shipment of longer-range Iranian missiles heading for Lebanon. The Israeli government decides to strike the convoy and Iranian nuclear facilities simultaneously. After Iran has recovered from the shock, Revolutionary Guards surging across the border into Iraq, bent on striking Israel's American allies. Governments in Syria, Jordan, Egypt and Saudi Arabia face violent street protests demanding retribution against Israel — and they eventually yield, triggering a major regional war. • Missiles away: With the world's eyes on the Middle East, North Korea's Kim Jong Il decides to continue the fireworks show he began earlier this month. But this time his brinksmanship pushes events over the brink. A missile designed to fall into the sea near Japan goes astray and hits Tokyo, killing a dozen civilians. Incensed, the United States, Japan's treaty ally, bombs North Korean missile and nuclear sites. North Korean artillery batteries fire on Seoul, and South Korean and U.S. troops respond. Meanwhile, Chinese troops cross the border from the north to stem the flow of desperate refugees just as U.S. troops advance from the south. Suddenly, the world's superpower and the newest great power are nose to nose. • Loose nukes: Al Qaeda has had Pakistani President Pervez Musharraf in its sights for years, and the organization finally gets its man. Pakistan descends into chaos as militants roam the streets and the army struggles to restore order. India decides to exploit the vacuum and punish the Kashmir-based militants it blames for the recent Mumbai railway bombings. Meanwhile, U.S. special operations forces sent to secure Pakistani nuclear facilities face off against an angry mob. • The empire strikes back: Pressure for democratic reform erupts in autocratic Belarus. As protesters mass outside the parliament in Minsk, president Alexander Lukashenko requests Russian support. After protesters are beaten and killed, they appeal for help, and neighboring Poland — a NATO member with bitter memories of Soviet repression — launches a humanitarian mission to shelter the regime's opponents. Polish and Russian troops clash, and a confrontation with NATO looms. As in the run-up to other wars, **there is today more than enough tinder** lying around **to spark** a **great power conflict.** **The critical question is how effective the major powers have become at managing** regional **conflicts and** preventing them fromescalating. After two world wars and the decades-long Cold War, what has the world learned about managing conflict? The end of the Cold War had the salutary effect of dialing down many regional conflicts. In the 1960s and 1970s, every crisis in the Middle East had the potential to draw in the superpowers in defense of their respective client states. The rest of the world was also part of the Cold War chessboard. Compare the almost invisible U.N. peacekeeping mission in Congo today to the deeply controversial mission there in the early 1960s. (The Soviets were convinced that the U.N. mission was supporting a U.S. puppet, and Russian diplomats stormed out of several Security Council meetings in protest.) From Angola to Afghanistan, nearly every Cold War conflict was a proxy war. Now, many local crises can be handed off to the humanitarians or simply ignored. But the end of the bipolar world has a downside. In the old days, the two competing superpowers sometimes reined in bellicose client states out of fear that regional conflicts would escalate. Which of the major powers today can claim to have such influence over Tehran or Pyongyang? Today's world has one great advantage: None of the leading powers appears determined to reorder international affairs as Germany was before both world wars and as Japan was in the years before World War II. True, China is a rapidly rising power — an often destabilizing phenomenon in international relations — but it appears inclined to focus on economic growth rather than military conquest (with the possible exception of Taiwan). Russia is resentful about its fall from superpower status, but it also seems reconciled to U.S. military dominance and more interested in tapping its massive oil and gas reserves than in rebuilding its decrepit military. Indeed, U.S. military superiority seems to be a key to global stability. Some theories of international relations predict that other major powers will eventually band together to challenge American might, but it's hard to find much evidence of such behavior. The United States, after all, invaded Iraq without U.N. approval and yet there was not even a hint that France, Russia or China would respond militarily.

### 3

#### Presidential war powers authority captures the legal system—statutory and judicial restrictions on the president only serve to legitimate state monopolies on violence which make the worst atrocities possible.

Morrissey 2011 [John, Department of Geography at the National University of Ireland, “Liberal Lawfare and Biopolitics: US Juridical Warfare in the War on Terror,” *Geopolitics* 16:280-305]

Nearly two centuries ago, Prussian military strategist, Carl von Clausewitz, observed how war is merely a “continuation of political commerce” by “other means”.70 Today, the lawfare of the US military is a continuation of war by legal means. Indeed, for US Deputy Judge Advocate General, Major General Charles Dunlap, it “has become a key aspect of modern war”.71 For Dunlap and his colleagues in the JAG corps, the law is a “force multiplier”, as Harvard legal scholar, David Kennedy, explains: it “structures logistics, command, and control”; it “legitimates, and facilitates” violence; it “privileges killing”; it identifies legal “openings that can be made to seem persuasive”, promissory, necessary and indeed therapeutic; and, of course, it is “a communication tool” too because defining the battlefield is not only a matter of “privileging killing”, it is also a “rhetorical claim”.72 Viewed in this way, the law can be seen to in fact “contribute to the proliferation of violence rather than to its containment”, as Eyal Weizman has instructively shown in the case of recent Israeli lawfare in Gaza.73 In the US wars in Iraq, Afghanistan and broader war on terror, the Department of Defense has actively sought to legalise its use of biopolitical violence against all those deemed a threat. Harvey Rishikof, the former Chair of the Department of National Security Strategy at the National War College in Washington, recently underlined ‘juridical warfare’ (his preferred designation over ‘lawfare’) as a pivotal “legal instrument” for insurgents in the asymmetric war on terror.74 For Rishikof and his contemporaries, juridical warfare is always understood to mean the legal strategies of the weak ‘against’ the United States; it is never acknowledged as a legal strategy ‘of’ the United States. However, juridical warfare has been a proactive component of US military strategy overseas for some time, and since the September 11 attacks in New York and Washington in 2001, a renewed focus on juridical warfare has occurred, with the JAG Corps playing a central role in reforming, prioritising and mobilising the law as an active player in the war on terror.75 Deputy Judge Advocate General, Major General Charles Dunlap, recently outlined some of the key concerns facing his corps and the broader US military; foremost of which is the imposing of unnecessary legal restraints on forward-deployed military personnel.76 For Dunlap, imposing legal restraints on the battlefield as a “matter of policy” merely “play[s] into the hands of those who would use [international law] to wage lawfare against us”.77 Dunlap’s counter-strategy is simply “adhering to the rule of law”, which “understands that sometimes the legitimate pursuit of military objectives will foreseeably – and inevitably – cause the death of noncombatants”; indeed, he implores that “this tenet of international law be thoroughly understood”.78 But ‘the’ rule of international law that Dunlap has in mind is merely a selective and suitably enabling set of malleable legal conventions that legitimate the unleashing of military violence.79 As David Kennedy illuminates so brilliantly in Of War and Law: We need to remember what it means to say that compliance with international law “legitimates.” It means, of course, that killing, maiming, humiliating, wounding people is legally privileged, authorized, permitted, and justified.80 The recent ‘special issue on juridical warfare’ in the US military’s flagship journal, Joint Force Quarterly, brought together a range of leading judge advocates, specialists in military law, and former legal counsels to the Chairman of the Joint Chiefs of Staff. All contributions addressed the question of “which international conventions govern the confinement and interrogation of terrorists and how”.81 The use of the term ‘terrorists’ instead of suspects sets the tone for the ensuing debate: in an impatient defence of ‘detention’, Colonel James Terry bemoans the “limitations inherent in the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006” (which he underlines only address detainees at the US Naval Base at Guantanamo) and asserts that “requirements inherent in the war on terror will likely warrant expansion of habeas corpus limitations”;82 considering ‘rendition’, Colonel Kevin Cieply asks the shocking question “is rendition simply recourse to the beast at a necessary time”;83 Colonel Peter Cullen argues for the necessity of the “role of targeted killing in the campaign against terror”;84 Commander Brian Hoyt contends that it is “time to reexamine U.S. policy on the [international criminal] court, and it should be done through a strategic lens”;85 while Colonel James Terry furnishes an additional concluding essay with the stunningly instructive title ‘The International Criminal Court: A Concept Whose Time Has Not Come’.86 These rather chilling commentaries attest to one central concern of the JAG Corps and the broader military-political executive at the Pentagon: that enemies must not be allowed to exploit “real, perceived, or even orchestrated incidents of law-of-war violations being employed as an unconventional means of confronting American military power”.87 And such thinking is entirely consistent with the defining National Defense Strategy of the Bush administration, which signalled the means to win the war on terror as follows: “We will defeat adversaries at the time, place, and in the manner of our choosing”.88 If US warfare in the war on terror is evidently underscored by a ‘manner of our choosing’ preference – both at the Pentagon and in the battlefield – this in turn prompts an especially proactive ‘juridical warfare’ that must be simultaneously pursued to legally capacitate, regulate and maximise any, and all, military operations. The 2005 National Defense Strategy underlined the challenge thus: Many of the current legal arrangements that govern overseas posture date from an earlier era. Today, challenges are more diverse and complex, our prospective contingencies are more widely dispersed, and our international partners are more numerous. International agreements relevant to our posture must reflect these circumstances and support greater operational flexibility.89 It went on to underline its consequent key juridical tactic and what I argue is a critical weapon in the US military-legal arsenal in the war on terror: the securing of ‘Status of Forces Agreements’ – to “provide legal protections” against “transfers of U.S. personnel to the International Criminal Court”.90

#### The alternative is to reject their understanding of the law as an independent neutral entity with the power to restrict practices apart from practices. Instead, we should conceive of the law and practice as co-constitutive—this opens up the space to change the relationship between lived decisionmaking and the autocracy of bureaucratic legal determinations.

Krassman 2012 [Susan, Professor at the Institute for Criminological Research at the University of Hamburg. “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” *Leiden Journal of International Law* 25.03]

Foucault did not elaborate on a comprehensive theory of law – a fact that critics have attributed to his allegedly underestimating law's political and social relevance. Some statements by Foucault may have provoked this interpretation, among them his assertion that law historically ‘recedes’ with,46 or is being ‘colonized’ by,47 forms of knowledge that are addressed at governing people and populations. It is, though, precisely this analytical perspective that allows us to capture the mutually productive relationship between targeted killing and the law. In contrast to a widely shared critique, then, Foucault did not read law merely as a negative instrument of constraint. He referred, instead, to a particular mode of juridical power that operates in terms of repressive effects.48 Moreover, rather than losing significance coextensively with the ancient sovereign power, law enters new alliances, particularly with certain knowledge practices and attendant expertise.49 This linkage proves to be relevant in the present context, considering not only the interchange between the legal and political discourse on targeted killing, but notably the relationship between law and security. According to Foucault, social phenomena cannot be isolated from and are only decipherable within the practices, procedures, and forms of knowledge that allow them to surface as such.50 In this sense, ‘all phenomena are singular, every historical or social fact is a singularity’.51 Hence, they need to be studied within their historically and locally specific contexts, so as to account for both the subject's singularity and the conditions of its emergence. It is against this background that a crucial question to be posed is how targeted killing could emerge on the political stage as a subject of legal debate. Furthermore, this analytical perspective on power and knowledge intrinsically being interlinked highlights that our access to reality always entails a productive moment. Modes of thinking, or what Foucault calls rationalities, render reality conceivable and thus manageable.52 They implicate certain ways of seeing things, and they induce truth effects whilst translating into practices and technologies of government. These do not merely address and describe their subject; they constitute or produce it.53 Law is to be approached accordingly.54 It cannot be extracted from the forms of knowledge that enact it, and it is in this sense that law is only conceivable as practice. Even if we only think of the law in ideal terms, as being designated to contain governmental interference, for example, or to provide citizens’ rights, it is already a practice and a form of enacting the law. To enforce the law is always a form of enactment, since it involves a productive moment of bringing certain forms of knowledge into play and of rendering legal norms meaningful in the first place. Law is susceptible to certain forms of knowledge and rationalities in a way that these constitute it and shape legal claims. Rather than on the application of norms, legal reasoning is on the production of norms. Legality, within this account of law, then, is not only due to a normative authority that, based in our political culture, is external to law, nor is it something that is just inherent in law, epitomized by the principles that constitute law's ‘inner morality’.55 Rather, the enforcement of law and its attendant reasoning produce their own – legal – truth effects. Independently of the purported intentions of the interlocutors, the juridical discourse on targeted killing leads to, in the first instance, conceiving of and receiving the subject in legal terms. When targeted killing surfaced on the political stage, appropriate laws appeared to be already at hand. ‘There are more than enough rules for governing drone warfare’, reads the conclusion of a legal reasoning on targeted killing.56 Yet, accommodating the practice in legal terms means that international law itself is undergoing a transformation. The notion of dispositifs is useful in analysing such processes of transformation. It enables us to grasp the minute displacements of established legal concepts that,57 while undergoing a transformation, at the same time prove to be faithful to their previous readings. The displacement of some core features of the traditional conception of the modern state reframes the reading of existing law. Hence, to give just one example for such a rereading of international law: legal scholars raised the argument that neither the characterization of an international armed conflict holds – ‘since al Qaeda is not a state and has no government and is therefore incapable of fighting as a party to an inter-state conflict’58 – nor that of an internal conflict. Instead, the notion of dealing with a non-international conflict,59 which, in view of its global nature, purportedly ‘closely resembles’ an international armed conflict, serves to provide ‘a fuller and more comprehensive set of rules’.60 Established norms and rules of international law are preserved formally, but filled with a radically different meaning so as to eventually integrate the figure of a terrorist network into its conventional understanding. Legal requirements are thus meant to hold for a drone programme that is accomplished both by military agencies in war zones and by military and intelligence agencies targeting terror suspects beyond these zones,61 since the addressed is no longer a state, but a terrorist network. However, to conceive of law as a practice does not imply that law would be susceptible to any form of knowledge. Not only is its reading itself based on a genealogy of practices established over a longer period.62 Most notably, the respective forms of knowledge are also embedded in varying procedures and strategic configurations. If law is subject to an endless deference of meaning,63 this is not the case in the sense of arbitrary but historically contingent practices, but in the sense of historically contingent practices. Knowledge, then, is not merely an interpretive scheme of law. Rather than merely on meaning, focus is on practices that, while materializing and producing attendant truth effects, shape the distinctions we make between legal and illegal measures. What is more, as regards anticipatory techniques to prevent future harm, this perspective allows for our scrutinizing the division made between what is presumably known and what is yet to be known, and between what is presumably unknown and has yet to be rendered intelligible. This prospect, as will be seen in the following, is crucial for a rereading of existing law. It was the identification of a new order of threat since the terror attacks of 9/11 that brought about a turning point in the reading of international law. The identification of threats in general provides a space for transforming the unknowable into new forms of knowledge. The indeterminateness itself of legal norms proves to be a tool for introducing a new reading of law.

### Solvency

#### The U.S. will still functionally detain through rendition – Takes out every advantage

OSJI 13 (Open Society Justice Initiative, “Globalizing Torture: CIA Secret Detention and Extraordinary Rendition”, February 2013, <http://www.opensocietyfoundations.org/reports/globalizing-torture-cia-secret-detention-and-extraordinary-rendition>)

Following the terrorist attacks of September 11, 2001, the U.S. Central Intelligence Agency (CIA) commenced a secret detention program under which suspected terrorists were held in CIA prisons, also known as “black sites,” outside the United States, where they were subjected to “enhanced interrogation techniques” that involved torture and other abuse. At about the same time, the CIA gained expansive authority to engage in “extraordinary rendition,” defined here as the transfer— without legal process—of a detainee to the custody of a foreign government for purposes of detention and interrogation. 2 Both the secret detention program and the extraordinary rendition program were highly classified, conducted outside the United States, and designed to place detainee interrogations beyond the reach of the law. Torture was a hallmark of both. The two programs entailed the abduction and disappearance of detainees and their extra-legal transfer on secret flights to undisclosed locations around the world, followed by their incommunicado detention, interrogation, torture, and abuse. The administration of President George W. Bush embraced the “dark side,” a new paradigm for countering terrorism with little regard for the constraints of domestic and international law. Today, more than a decade after September 11, there is no doubt that highranking Bush administration officials bear responsibility for authorizing human rights violations associated with secret detention and extraordinary rendition, and the impunity that they have enjoyed to date remains a matter of significant concern. But responsibility for these violations does not end with the United States. Secret detention and extraordinary rendition operations, designed to be conducted outside the United States under cover of secrecy, could not have been implemented without the active participation of foreign governments. These governments too must be held accountable. However, to date, the full scale and scope of foreign government participation—as well as the number of victims—remains unknown, largely because of the extreme secrecy maintained by the United States and its partner governments. The U.S. government has refused to publicly and meaningfully acknowledge its involvement in any particular case of extraordinary rendition or disclose the locations of secret overseas CIA detention facilities. While President Bush acknowledged that the CIA had secretly detained about 100 prisoners, the U.S. government has only identified 16 “high value detainees” as individuals who were secretly held in CIA detention prior to being transferred to U.S. Defense Department custody in Guantánamo Bay. The United States also has refused to disclose the identities of the foreign governments that participated in secret detention or extraordinary rendition, and few of these governments have admitted to their roles. This report provides for the first time the number of known victims of secret detention and extraordinary rendition operations and the number of governments that were complicit. Based on credible public sources and information provided by reputable human rights organizations, this report is the most comprehensive catalogue of the treatment of 136 individuals reportedly subjected to these operations. There may be many more such individuals, but the total number will remain unknown until the United States and its partners make this information publicly available. The report also shows that as many as 54 foreign governments reportedly participated in these operations in various ways, including by hosting CIA prisons on their territories; detaining, interrogating, torturing, and abusing individuals; assisting in the capture and transport of detainees; permitting the use of domestic airspace and airports for secret flights transporting detainees; providing intelligence leading to the secret detention and extraordinary rendition of individuals; and interrogating individuals who were secretly being held in the custody of other governments. Foreign governments also failed to protect detainees from secret detention and extraordinary rendition on their territories and to conduct effective investigations into agencies and officials who participated in these operations. The 54 governments identified in this report span the continents of Africa, Asia, Australia, Europe, and North America, and include: Afghanistan 3 , Albania, Algeria, Australia, Austria, Azerbaijan, Belgium, Bosnia-Herzegovina, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Djibouti, Egypt, Ethiopia, Finland, Gambia, Georgia, Germany, Greece, Hong Kong, 4 Iceland, Indonesia, Iran, Ireland, Italy, Jordan, Kenya, Libya, Lithuania, Macedonia, Malawi, Malaysia, Mauritania, Morocco, Pakistan, Poland, Portugal, Romania, Saudi Arabia, Somalia, South Africa, Spain, Sri Lanka, Sweden, Syria, Thailand, Turkey, United Arab Emirates, United Kingdom, Uzbekistan, Yemen, and Zimbabwe. 5 By engaging in torture and other abuses associated with secret detention and extraordinary rendition, the U.S. government violated domestic and international law, thereby diminishing its moral standing and eroding support for its counterterrorism efforts worldwide as these abuses came to light. By enlisting the participation of dozens of foreign governments in these violations, the United States further undermined longstanding human rights protections enshrined in international law—including, in particular, the norm against torture. As this report shows, responsibility for this damage does not lie solely with the United States, but also with the numerous foreign governments without whose participation secret detention and extraordinary rendition operations could not have been carried out. By participating in these operations, these governments too violated domestic and international laws and further undermined the norm against torture. Torture is not only illegal and immoral, but also ineffective for producing reliable intelligence. Indeed, numerous professional U.S. interrogators have confirmed that torture does not produce reliable intelligence, and that rapport-building techniques are far more effective at eliciting such intelligence. A telling example of the disastrous consequences of extraordinary rendition operations can be seen in the case of Ibn al-Sheikh al-Libi, documented in this report. After being extraordinarily rendered by the United States to Egypt in 2002, al-Libi, under threat of torture at the hands of Egyptian officials, fabricated information relating to Iraq’s provision of chemical and biological weapons training to Al Qaeda. In 2003, then Secretary of State Colin Powell relied on this fabricated information in his speech to the United Nations that made the case for war against Iraq. In December 2012, the U.S. Senate Select Committee on Intelligence voted to approve a comprehensive report on CIA detention and interrogation. Although the report is classified, and was not publicly available at the time of this writing, the committee chairman, Senator Dianne Feinstein, stated that she and a majority of the committee believed that the creation of long-term, clandestine black sites and the use of so-called enhanced interrogation techniques were “terrible mistakes.” She added that the report would “settle the debate once and for all over whether our nation should ever employ coercive interrogation techniques such as those detailed in the report.” Despite the scale of torture and other human rights violations associated with secret detention and extraordinary rendition operations, the United States and most of its partner governments have failed to conduct effective investigations into secret detention and extraordinary rendition. The U.S. Justice Department’s investigation into detainee abuse was limited to ill-treatment that went beyond what its Office of Legal Counsel had previously authorized, and concluded without bringing any criminal charges, despite ample evidence of CIA torture and abuse. Italy is the only country where a court has criminally convicted officials for their involvement in extraordinary rendition operations. Canada is the only country to issue an apology to an extraordinary rendition victim, Maher Arar, who was extraordinarily rendered to, and tortured in, Syria. Only three countries in addition to Canada—Sweden, Australia, and the United Kingdom—have issued compensation to extraordinary rendition victims, the latter two in the context of confidential settlements that sought to avoid litigation relating to the associated human rights violations. Moreover, it appears that the Obama administration did not end extraordinary rendition, choosing to rely on anti-torture diplomatic assurances from recipient countries and post-transfer monitoring of detainee treatment. As demonstrated in the cases of Maher Arar, who was tortured in Syria, and Ahmed Agiza and Muhammed al-Zery, who were tortured in Egypt, diplomatic assurances and posttransfer monitoring are not effective safeguards against torture. Soon after taking office in 2009, President Obama did issue an executive order that disavowed torture, ordered the closure of secret CIA detention facilities, and established an interagency task force to review interrogation and transfer policies and issue recommendations on “the practices of transferring individuals to other nations.” But the executive order did not repudiate extraordinary rendition, and was crafted to preserve the CIA’s authority to detain terrorist suspects on a shortterm transitory basis prior to rendering them to another country for interrogation or trial. Moreover, the interagency task force report, which was issued in 2009, continues to be withheld from the public. The administration also continues to withhold documents relating to CIA Office of Inspector General investigations into extraordinary rendition and secret detention. In addition, recent reports of secret detention by or with the involvement of the CIA or other U.S. agencies remain a source of significant concern. These include reports of a secret prison in Somalia run with CIA involvement, secret Defense Department detention facilities in Afghanistan where detainees were abused, and the twomonth long secret detention of a terrorist suspect aboard a U.S. Navy ship. Despite the efforts of the United States and its partner governments to withhold the truth about past and ongoing abuses, information relating to these abuses will continue to find its way into the public domain. At the same time, while U.S. courts have closed their doors to victims of secret detention and extraordinary rendition operations, legal challenges to foreign government participation in these operations are being heard in courts around the world. Maher Arar’s U.S. lawsuit was dismissed on grounds that judicial intervention was inappropriate in a case that raised sensitive national security and foreign policy questions. Similarly, U.S. courts dismissed on state secrets grounds Khaled El-Masri’s lawsuit challenging his abduction, torture, and secret detention by the CIA. In contrast, the European Court of Human Rights recently held that Macedonia’s participation in that operation violated El-Masri’s rights under the European Convention on Human Rights, and that his ill-treatment by the CIA amounted to torture. In addition, Italy’s highest court recently upheld the convictions of U.S. and Italian officials for their role in the extraordinary rendition of Abu Omar to Egypt. Moreover, at the time of this writing, other legal challenges to secret detention and extraordinary rendition are pending before the European Court of Human Rights against Poland, Lithuania, Romania, and Italy; against Djibouti before the African Commission on Human and Peoples’ Rights; and against domestic authorities or officials in Egypt, Hong Kong, Italy, and the United Kingdom. In the face of this trend, the time has come for the United States and its partner governments to own up to their responsibility for secret detention and extraordinary rendition operations. If they do not seize this opportunity, chances are that the truth will emerge by other means to embarrass them. The taint of torture associated with secret detention and extraordinary rendition operations will continue to cling to the United States and its partner governments as long as they fail to air the truth and hold their officials accountable. The impunity currently enjoyed by responsible parties also paves the way for future abuses in counterterrorism operations. There can be no doubt that in today’s world, intergovernmental cooperation is necessary for combating terrorism. But such cooperation must be effected in a manner that is consistent with the rule of law. As recognized in the Global CounterTerrorism Strategy adopted by the United Nations General Assembly in 2006, “effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.” Consistent with this principle, it is incumbent on the United States and its partner governments to repudiate secret detention and extraordinary rendition, secure accountability for human rights violations associated with these operations, and ensure that future counterterrorism operations do not violate human rights standards.

#### The president won’t comply with the plan.

Druck 2012 (Judah A. Druck, B.A., Brandeis University, 2010; J.D. Candidate, Cornell Law School, 2013, “DRONING ON: THE WAR POWERS RESOLUTION AND THE NUMBING EFFECT OF TECHNOLOGY-DRIVEN WARFARE,” Cornell Law Review, Vol. 98:209, http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf)

By now, the general pattern concerning presidential treatment of¶ the WPR should be clear: when faced with a situation in which the¶ WPR should, by its own terms, come into play, presidents circumvent¶ its application by proffering questionable legal analyses. Yet, as was¶ frequently the case following the aforementioned presidential actions,¶ those looking to the courts for support were disappointed to learn¶ that the judiciary would be of little help. Indeed, congressional and¶ private litigants have similarly been unsuccessful in their efforts to¶ check potentially illegal presidential action.52¶ The suits arising out of possible WPR violations are well-documented53 and therefore only require a brief review. Generally, when¶ faced with a question concerning the legality of presidential military¶ action, courts have punted the issue using a number of procedural¶ tools to avoid ruling on the merits. For example, when twenty-nine¶ representatives filed suit after President Reagan’s possible WPR violation in El Salvador, the U.S. District Court for the District of Columbia¶ dismissed the suit on political question grounds.54 Similar suits were¶ dismissed for issues involving standing,55 mootness,56 ripeness,57 or¶ nonjusticiability because Congress could better handle fact-finding.58¶ Despite the varying grounds for dismissing WPR suits, a general theme¶ has emerged: absent action taken by Congress itself, the judiciary cannot be counted on to step in to check the President.¶ To be sure, the judiciary’s unwillingness to review cases arising¶ from WPR disputes arguably carries some merit. Two examples illus- trate this point. First, although a serviceperson ordered into combat¶ might have standing to sue, congressional standing is less clear.59 Indeed, debates rage throughout war powers literature concerning¶ whether congressional suits should even be heard on their merits.60¶ And though some courts have held that a member of Congress can¶ have standing when a President acts unilaterally, holding that such¶ unauthorized actions amount to “disenfranchisement,”61 subsequent¶ decisions and commentators have thrown the entire realm of legislative standing into doubt.62 Though the merits of this debate are beyond the scope of this Note, it is sufficient to emphasize that a¶ member of Congress arguably suffers an injury when a President violates the WPR because the presidential action prevents the congressperson from being able to vote (namely, on whether to authorize¶ hostilities),63 thereby amounting to disenfranchisement by¶ “preclu[ding] . . . a specific vote . . . by a presidential violation of¶ law . . . .”64 As such, under the right circumstances, perhaps the standing doctrine should not be as problematic as history seems to indicate¶ when a congressperson attempting to have a say on military action¶ brings a WPR suit.¶ Secondly, and perhaps more importantly, it is arguably unclear¶ what, if any, remedy is available to potential litigants. Unlike a private¶ lawsuit, where a court can impose a simple fine or jail sentence, suits¶ against the executive branch carry a myriad of practical issues. For¶ example, if the remedy is an injunction, issues concerning enforcement arise: Who enforces it and how?65 Or, if a court makes a declaratory judgment stating that the President has acted illegally, it might¶ invite open defiance, thereby creating unprecedented strife among¶ branches. Yet, a number of possible remedies are indeed available.¶ For one, courts could simply start the WPR clock, requiring a Presi- dent to either seek congressional approval or cease all actions within¶ the time remaining (depending on whether the court starts the clock¶ from the beginning or applies it retroactively).66 In doing so, a court¶ would trigger the WPR in the same way that Congress would have had¶ it acted alone. On a similar note, a court could declare the relevant¶ military conflict illegal under the WPR, thereby inviting Congress to¶ begin impeachment proceedings.67 Although both cases require¶ some level of congressional involvement, a court could at least begin¶ the process of providing a suitable remedy. Thus, the more questionable issues of standing and remedies should not (under the right circumstances) prevent a WPR suit from moving forward.

#### Civilian courts fail—laundry list of reasons

Sulmasy 9 (Glenn Sulmasy Chairman, Department of Humanities, Professor of Law US Coast Guard Academy “The Need for a National Security Court System” Journal of Civil Rights and Economic Development, Issue 4, Vol. 23, Article 5 Spring 2009)

There are some, many of whom are here today at St. John's Law School¶ for this symposium, who advocate the use of the current civilian court¶ system to try these suspects.13 The civilian court system as established in¶ Article III of the Constitution, however, is not the appropriate system to¶ adjudicate these hybrid cases. There are numerous substantive and¶ procedural problems with trying terror suspects in Article III courts.¶ Constitutional Criminal Procedure¶ Applications of the Fourth and Fifth Amendments to the War on al¶ Qaeda are prime examples of reasons why this construct is as unworkable¶ as the military commissions have been (albeit for very different reasons).¶ Combat officers in Afghanistan and Iraq are not police officers - nor¶ should they ever be required to function in this capacity. They are there¶ overseas to fight and win wars. It is unreasonable to expect soldiers to¶ issue Miranda warnings to detainees, or require them to obtain search¶ warrants before searches or seizing evidence. Simply, such law¶ enforcement requirements are not issues on the mind of soldiers fighting¶ stateless enemies in Iraq and Afghanistan who have evidence that could be¶ used for prosecutions later. Although these concerns would be unthinkable¶ seven years ago, since the Court's Boumedienel4 decision, it is debatable¶ whether other Constitutional rights would be afforded to these suspects.¶ American soldiers should be concerned with combating the enemy, not¶ with providing Miranda statements upon the initiation of battle, or storming¶ an al Qaeda safe house and the subsequent detention of suspected terrorists.¶ Such notions are ludicrous.¶ Juries¶ Furthermore, consider the jury issues associated with trying the alleged¶ international terrorists in our Article III courts. Imagine the attempts made¶ to empanel an unbiased jury for any of these cases. A "jury of your peers"¶ in accordance with U.S. jurisprudence for trying Khalid Sheik-Mohamed¶ would be impossible within the continental United States. Additionally,¶ any juries would require lifetime protective details.¶ Judges¶ Also, it appears ill advised to use traditional Article III judges to make¶ determinations on such matters of nuanced and niche areas of the law, such¶ as the law of armed conflict, intelligence law, human rights law, etc. In¶ other areas of so called "niche law" - immigration, bankruptcy - we have¶ created separate court systems with specialized judges presiding. The¶ reality is that not all U.S. district court judges have the experience in the¶ law of war, intelligence law, international law, human rights, etc., that¶ would be required to properly conduct a trial for an alleged enemy of the United States (and part of an ongoing armed conflict). If we are serious¶ about using a civilian system to try the detainees, we need judges that are¶ versed in these areas of the law to preside.¶ Protective Details¶ Also, like the jury issues, the impractical reality of protecting judges has¶ emerged. The issues of judge protection may sound mundane right now,¶ but they are considerable in terms of cost and time, becoming more¶ important within the realistic framework of 21 t century jurisprudence.¶ Few would contend with the fact that judges trying these suspects would be¶ targets for future terrorist attacks. Using the existing district courts across¶ the country would require the adoption of new security procedures, massive¶ structural overhauls, additional security personnel, and the expenditure of¶ large amounts of money that the federal government does not have.¶ Civilian Prisons¶ Not only would the trial of these suspects in district courts present major¶ problems, the actual physical detention of these suspects using domestic¶ prisons is also highly problematic. It seems unlikely that many members of¶ Congress would actually volunteer to have these detainees moved from¶ Guantanamo Bay to their legislative districts. In fact, in July of 2007, the¶ Senate voted 94 to 3 to not move the detainees into the United States. 15

#### Delays and security issues kill due process and any perception IL.

Amos N. Guiora 9, Professor of Law at the S.J. Quinney College of Law, University of Utah, served in the Judge Advocate General's Corps of the Israel Defense Forces where he held senior command positions related to the legal and policy aspects of operational counterterrorism, “Creating a Domestic Terror Court”, PDF

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

### Terror

#### Britain and Germany cooperate highly with us now – NSA leaks prove.

NYT 2013 (July 9, “For Western Allies, a Long History of Swapping Intelligence” <http://www.nytimes.com/2013/07/10/world/europe/for-western-allies-a-long-history-of-swapping-intelligence.html?pagewanted=all&_r=1&&pagewanted=print>)

When Edward J. Snowden disclosed the extent of the United States data mining operations in Germany, monitoring as many as 60 million of the country’s telephone and Internet connections in one day and bugging its embassy, politicians here, like others in Europe, were by turns appalled and indignant. But like the French before them, this week they found themselves backpedaling. In an interview released this week Mr. Snowden said that Germany’s intelligence services are “in bed” with the National Security Agency, “the same as with most other Western countries.” The assertion has added to fresh scrutiny in the European news media of Berlin and other European governments that may have benefited from the enormous American snooping program known as Prism, or conducted wide-ranging surveillance operations of their own. The outrage of European leaders notwithstanding, intelligence experts and historians say the most recent disclosures reflect the complicated nature of the relationship between the intelligence services of the United States and its allies, which have long quietly swapped information on each others’ citizens. “The other services don’t ask us where our information is from and we don’t ask them,” Mr. Snowden said in the interview, conducted by the documentary filmmaker Laura Poitras and Jacob Appelbaum, a computer security researcher, and published this week in the German magazine Der Spiegel. “This way they can protect their political leaders from backlash, if it should become public how massively the private spheres of people around the globe are being violated.” Britain, which has the closest intelligence relationship with the United States of any European country, has been implicated in several of the data operations described by Mr. Snowden, including claims that Britain’s agencies had access to the Prism computer network, which monitors data from a range of American Internet companies. Such sharing would have allowed British intelligence agencies to sidestep British legal restrictions on electronic snooping. Prime Minister David Cameron has insisted that its intelligence services operate within the law. Another allegation, reported by The Guardian newspaper, is that the Government Communications Headquarters, the British surveillance center, tapped fiber-optic cables carrying international telephone and Internet traffic, then shared the information with the N.S.A. This program, known as Tempora, involved attaching intercept probes to trans-Atlantic cables when they land on British shores from North America, the report said. President François Hollande of France was among the first European leaders to express outrage at the revelations of American spying, and especially at accusations that the Americans had spied on French diplomatic posts in Washington and New York. There is no evidence to date that French intelligence services were granted access to information from the N.S.A., Le Monde reported last week, however, that France’s external intelligence agency maintains a broad telecommunications data collection system of its own, amassing metadata on most, if not all, telephone calls, e-mails and Internet activity coming in and out of France. Mr. Hollande and other officials have been notably less vocal regarding the claims advanced by Le Monde, which authorities in France have neither confirmed nor denied. Given their bad experiences with domestic spying, first under the Nazis and then the former the East German secret police, Germans are touchy when it comes to issues of personal privacy and protection of their personal data. Guarantees ensuring the privacy of mail and all forms of long-distance communications are enshrined in Article 10 of their Constitution. When the extent of the American spying in Germany came to light the chancellor’s spokesman, Steffen Seibert, decried such behavior as “unacceptable,” insisting that, “We are no longer in the cold war.” But experts say ties between the intelligence services remain rooted in agreements stemming from that era, when West Germany depended on the United States to protect it from the former Soviet Union and its allies in the East. “Of course the German government is very deeply entwined with the American intelligence services,” said Josef Foschepoth, a German historian from Freiburg University. Mr. Foschepoth spent several years combing through Germany’s federal archives, including formerly classified documents from the 1950s and 1960s, in an effort to uncover the roots of the trans-Atlantic cooperation. In 1965, Germany’s foreign intelligence service, known by the initials BND, was created. Three years later, the West Germans signed a cooperation agreement effectively binding the Germans to an intensive exchange of information that continues up to the present day, despite changes to the agreements. The attacks on Sept. 11, 2001, in the United States saw a fresh commitment by the Germans to cooperate with the Americans in the global war against terror. Using technology developed by the Americans and used by the N.S.A., the BND monitors networks from the Middle East, filtering the information before sending it to Washington, said Erich Schmidt-Eenboom, an expert on secret services who runs the Research Institute for Peace Politics in Bavaria. In exchange, Washington shares intelligence with Germany that authorities here say has been essential to preventing terror attacks similar to those in Madrid or London. It is a matter of pride among German authorities that they have been able to swoop in and detain suspects, preventing several plots from being carried out. By focusing the current public debate in Germany on the issue of personal data, experts say Chancellor Angela Merkel is able to steer clear of the stickier questions about Germany’s own surveillance programs and a long history of intelligence sharing with the United States, which still makes many Germans deeply uncomfortable, more than two decades after the end of the cold war. “Every postwar German government, at some point, has been confronted with this problem,” Mr. Foschepoth said of the surveillance scandal. “The way that the chancellor is handling it shows that she knows very well, she is very well informed and she wants the issue to fade away.”

#### Intel sharing is sustainable

NYT 13, 1/30, “Drone Strike Prompts Suit, Raising Fears for U.S. Allies”

The issue is more complex than drone-strike foes suggest, the current and former officials said, and is based on decades of cooperation rather than a shadowy pact for the United States to do the world’s dirty work. The arrangements for intensive intelligence **sharing** by Western allies go back to World War II, said Richard Aldrich, professor of international security at the University of Warwick, when the United States, Canada, Britain, Australia and New Zealand agreed to continue to collaborate. “There’s a very high volume of intelligence shared, some of which is collected automatically, so it’s impossible to track what every piece is potentially used for,” said Mr. Aldrich, who is also the author of a history of the Government Communications Headquarters, the British signal-intelligence agency. Britain’s history and expertise in South Asia means that the intelligence it gathers in Pakistan, Afghanistan and the tribal areas in between is in high demand, Mr. Aldrich said. The arrangement has been focused recently by a chill in relations between the United States and Pakistan, and by the shared war in Afghanistan.Other nations, too, intercept communications in the region that are shared broadly with the United States, he said. In Afghanistan, for example, German and Dutch forces run aggressive electronic interception operations, he said, because their rules on collaborating with local interpreters are less stringent than those of the United States. A spokesman for the coalition forces in Afghanistan, Lt. Col. Lester Carroll, declined to give details about intelligence sharing, saying agreements were classified. But he confirmed that American military forces “do share information with other U.S. government organizations on a need-to-know basis.” Few argue against the notion that European nations, many of which have been attacked by terrorists, have benefited from the drone killing, however controversial, of many of the most hardened Islamic extremist leaders.

#### Empirics prove you’re worse for terrorism.

McCarthy and Velshi, ‘9

[Andrew (Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies) and Alykhan (staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force), “We Need a National Security Court”, Submission for AEI, 2009, RSR]

First, while the actual size and expanse of ¶ the al Qaeda network is the subject of dispute,7¶ it is obvious that in the eight years between the WTC bombing and 9/11, the international ranks of militant Islam swelled, ¶ and its operatives successfully attacked U.S. interests numerous times, with steadily ¶ increasing audacity and effectiveness. Cumulatively, in an age when weapons of mass ¶ destruction have become more accessible than ever before, militant Islam may actually ¶ pose an existential threat to the United States. At a minimum, it constitutes a formidable ¶ strategic threat. And in any event, this threat is manifestly more menacing than such ¶ quotidian blights as drug trafficking and racketeering, which a strong society can afford ¶ to manage without forcibly eradicating. Simply stated, international terrorism is not the ¶ type of national challenge the criminal justice system is designed to address. ¶ Yet, during the eight-year period under consideration, the virtually exclusive U.S. ¶ response was criminal prosecution. This proved dismally inadequate, particularly from ¶ the perspective of American national security. The period resulted in less than ten major ¶ terrorism prosecutions. Even with the highest conceivable conviction rate of 100 percent, ¶ less than three dozen terrorists were neutralized – at a cost that was staggering and that ¶ continues to be paid, as several of these cases remain in appellate or habeas litigation.8¶ Stopping less than three dozen terrorists is a patently insufficient bottom line in ¶ dealing with a global threat of such proportions. Nonetheless, equally alarming from the ¶ standpoint of what may reasonably be expected from criminal prosecutions, the system ¶ could not have tolerated many more terrorism cases.

### Leadership

#### Multiple alt causes

McGill, School of Graduate and Continuing Studies in Diplomacy – Norwich U, and Gray, Campbell University, ‘12

(Anna-Katherine and David, “Challenges to International Counterterrorism Intelligence Sharing,” Global Security Studies, Summer, Volume 3, Issue 3)

Indeed, in the aftermath of 9/11 the US saw not only its NATO counterparts rise to action but also a new enthusiasm from its traditional bilateral relationships in improving counterterrorism coordination and more specifically intelligence sharing. Still, the rallying of support for the US following the attacks is not enough to overcome longstanding political and institutional hurdles to counterterrorism intelligence sharing. Although the US shares many political and cultural values with its traditional allies, their views diverge on issues like the invasion of Iraq, personal data protection, and the treatment or punishment of terrorists. The Invasion of Iraq The invasion of Iraq provides a perfect example of how the national interests of one nation can threaten the interests of its allies and more specifically, how policies in one arena can affect cooperation in another. According to US Senator Byrd, a major critic of the Bush administration, the invasion of Iraq “split traditional alliances, possibly crippling, for all time, international order-keeping entities like the United Nations and NATO” (qtd in Gardner 16). The central concerns arising from the 2003 Iraq invasion were the use of “preemptive” or “preventative” (depending on who you ask) strikes, unilateral action, and ultimately questionable motives. Consequently, bilateral cooperation from Germany, France, and NATO ally Turkey has taken a major hit. France argued against military intervention in favor of enforced inspections and diplomacy. Furthermore, it refuted that the US invasion of Iraq did not constitute collective security and therefore was not an obligation of NATO’s article V. Hall Gardner explains that while France has always been a reluctant ally, Germany and Turkey “represented the most loyal NATO allies during the Cold War” (3). As a result of the Iraq invasion, however, these two nations “bitterly questioned US policies and actions for very different reasons” (Gardner 3). For Germany, the use of preventative military strikes set a dangerous precedent for state behavior. They feared that should this become the norm, “it would undermine international law and concepts of national sovereignty dating back to Westphalia” (Gardner 3). Turkey, on the other hand, feared that the US invasion of Iraq would run directly counter to its national interests in regards to the Kurds of northern Iraq. While these countries have remained committed to the counterterrorism effort, the public row over the Iraq invasion shaped global public opinion of the US led war on terrorism and likely lessened domestic support for aiding the Americans in future CT endeavors. The fallout from US actions and its greater presence in the Middle East has arguably made it a larger target to terrorist organization which portray the US as a global crusader. By default, those who supported and contributed to the invasion of Iraq are also greater targets of transnational terrorist networks like al Qaeda. Additionally, the use of ultimately false intelligence on Iraqi position of WMD to justify the invasion heightened criticism of the US intelligence community and thus hurt their reputation in producing credible intelligence analysis. Personal data protection Personal data is critical to counterterrorism efforts because it “often provide[s] the only evidence of connections between members of terrorist groups and the types of activities that they are conducting” (Bensehal 48). However, Europe has shown resistance to freely sharing this type of information with its American counterparts since many of the US’s European allies have much more stringent views on the protection of personal data. In the EU, there are safeguards at the national and regional level that regulate the storage and sharing of personal data information. These laws are a product of Europe’s historical experience with fascism and thus its sensitivity to the abuse of such information as travel records or communications (Bensahel, 48). In “The Counterterror Coalitions: Europe, NATO, and the European Union” Nora Bensahel explains “by contrast, the United States protects personal information through legal precedents and procedures rather than [unified] legislation” which the Europeans find insufficient (48). The EU’s concerns over the US’s protection of personal data caused them to withhold information from the US and created a substantial challenge to their combined counterterrorism efforts. Following 9/11 the heightened political will to overcome such issues enabled the US and the EU to compromise on this issue but there are lingering limits to EU willingness to share personal data with the US. In the wake of the attacks, the US and Europol signed an agreement to permit the sharing of personal data. Although it increased operational effectiveness and intelligence sharing this agreement is limited to law enforcement operations which excludes personal data found in commercial activities. Furthermore, provisions in the agreement state that “personal information can be used only for the specific investigation for which it was requested” (Bensahel, 48). If the suspect is being investigated for murder and is discovered to have ties to a smuggling ring the US must submit a separate request to use the murder information in the case regarding the smuggling activities. The Rights of the Accused The US and the EU have also had substantial disagreements on the treatment and punishment of accused terrorists. This tension hinges on such issues as the use of the death penalty and “extraordinary rendition”. Fortunately, the death penalty issue was resolved with the passage of an multilateral treaty on extradition however the US has not fully recovered from the backlash of criticism and mistrust from its practice of “extraordinary rendition”. Prior to a May 2002 summit, the US and EU were at a disagreement over the death penalty. The EU’s aversion to capital punishment led it to not only hesitate from sharing information but deny requests for extradition unless the US would guarantee that the individual in question would not face the death penalty. The 2002 summit did however bring both the US and EU to at least agree in principle to a treaty on extradition and Mutual Legal Assistance Treaty (MLAT) and both parties ratified the treaties in 2003. The extradition treaty allowed for a blanket policy for European nations to “grant extradition on the condition that the death penalty will not be imposed” and the MLAT provided enhanced capability to gather and exchange information (Bensahel 49). The CIA’s use of “extraordinary rendition”, the practice of transporting a suspect to a third country for interrogation, has also stoked the ire of many traditional allies. Critics charge that this tactic quite simply allows the CIA to sidestep international laws and obligations by conducting interrogations in nations with poor human-rights records. In 2003, an Italian magistrate formally indicted 13 CIA agents for allegedly kidnapping an Italian resident and transporting him to a third country for interrogation. Ultimately 22 CIA agents and one US military officer were convicted in absentia of crimes connected to the abduction (Stewart, 1). The case not only heightened criticism of the US in Italy but challenged U.S. strategic communications aimed at reducing anti-Americanism worldwide (Reveron 462). According to Julianne Smith, director of the Europe program at the Center for Strategic and International Studies (CSIS), “[extraordinary rendition] makes it extremely difficult [for European governments] to stand shoulder-to-shoulder with the U.S.” (Heller 1).

#### EU coop high now.

Kristin Archick, European affairs specialist @ CRS, 9-4-2013, “U.S.-EU Cooperation Against Terrorism,” Congressional Research Service, <http://www.fas.org/sgp/crs/row/RS22030.pdf>

As part of the EU’s efforts to combat terrorism since September 11, 2001, the EU made improving law enforcement and intelligence cooperation with the United States a top priority. The previous George W. Bush Administration and many Members of Congress largely welcomed this EU initiative in the hopes that it would help root out terrorist cells in Europe and beyond that could be planning other attacks against the United States or its interests. Such growing U.S.-EU cooperation was in line with the 9/11 Commission’s recommendations that the United States should develop a “comprehensive coalition strategy” against Islamist terrorism, “exchange terrorist information with trusted allies,” and improve border security through better international cooperation. Some measures in the resulting Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) and in the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) mirrored these sentiments and were consistent with U.S.-EU counterterrorism efforts, especially those aimed at improving border controls and transport security. U.S.-EU cooperation against terrorism has led to a new dynamic in U.S.-EU relations by fostering dialogue on law enforcement and homeland security issues previously reserved for bilateral discussions. Despite some frictions, most U.S. policymakers and analysts view the developing partnership in these areas as positive. Like its predecessor, the Obama Administration has supported U.S. cooperation with the EU in the areas of counterterrorism, border controls, and transport security. At the November 2009 U.S.-EU Summit in Washington, DC, the two sides reaffirmed their commitment to work together to combat terrorism and enhance cooperation in the broader JHA field. In June 2010, the United States and the EU adopted a new “Declaration on Counterterrorism” aimed at deepening the already close U.S.-EU counterterrorism relationship and highlighting the commitment of both sides to combat terrorism within the rule of law. In June 2011, President Obama’s National Strategy for Counterterrorism asserted that in addition to working with European allies bilaterally, “the United States will continue to partner with the European Parliament and European Union to maintain and advance CT efforts that provide mutual security and protection to citizens of all nations while also upholding individual rights.”

#### The EU-US alliance is no longer critical to solving the world problems, and it will continue to decline due to leaders views about the alliances importance.

Helgesen 11 [Vidar, Secretary-General of International IDEA, “Reinvigorating the Infrastructure for Democracy Support: Strengthening multilateral mechanisms for coordinating and implementing democracy policy – what role for the EU and US”, 3-3-2011, <http://www.idea.int/resources/analysis/upload/2011-03-03-International-IDEA-NDI-paper-final.pdf>. RSR]

Reviewing the transatlantic relationship and the potential to develop it in the area of democracy policy, it seems that political momentum may be lacking at two levels. Firstly, EU and US leaders may not be convinced themselves of the importance of the transatlantic relationship as central in addressing global challenges. As leaders strive to keep pace with shifts in global power and build new networks, old alliances will be neglected unless they show themselves relevant and up to the challenges presented. Each side must have something to offer the other in terms of relevance and being a credible partner. On the EU side, the lack of institutional coordination and lack of clarity about changes in the foreign policy area resulting from the Lisbon Treaty compound this problem. The EU has faced challenges in showing itself to be a relevant partner for the US in areas of critical American foreign policy interest, such as Afghanistan 7 . In the democracy field, as the focus has shifted from the support of emerging democracy in Central and Eastern Europe, it is also not clear from the state of the transatlantic relationship that the US views the EU as the most relevant of partners. This may again be up for re-assessment, though, given the wave of democratic uprisings in the Arab World and in the event that the EU will be able to shape an effective and unified response to the developments. A key test in this regard is whether the EU will be seen as being driven mainly by concerns about immigration control and whether EU and US policies will be seen as dominated by the spectre of violent Islamism. If, on the contrary, the EU and the US could share a comprehensive and long-term approach respectful of home-grown political dynamics, there could be potential for renewed energy in transatlantic support to democracy.

#### No scenario for nuclear acquisition from Pakistan

Michael Clarke '13, PhD in Asian and International Studies and an Australian Research Council (ARC) Research Fellow at the Griffith Asia Institute, 4/17/13, "Pakistan and Nuclear Terrorism: How Real is the Threat?" Comparative Strategy, Vol. 32 No.2

\*\*C2= command and control system- ensures that the state's nuclear weapons will only be used according to the principles of its nuclear doctrine

This article demonstrates that while nuclear terrorism is indeed possible, there remain significant obstacles for terrorists to overcome in order to acquire sufficient fissile or radiological material from Pakistani sources. It also identifies the potential for terrorists to acquire fissile or radiological material due to problems at each level of Pakistan's nuclear complex. However, the potential for some of these problems to increase the likelihood of nuclear terrorism tends to be overstated. For example, it has been suggested that Pakistan's nuclear first use doctrine combined with a delegative C2 system could open a window of opportunity for terrorists to seize either an intact nuclear weapons or key components of nuclear weapons. This scenario, however, is improbable given that Pakistan appears on balance to have a more assertive C2 system and stores its nuclear weapons unassembled and dispersed across the country. Nonetheless, separate storage and dispersal could create more points of access for terrorists to acquire components of nuclear weapons, such as the AF&F mechanism or fissile cores.¶ In the Pakistani context, although the technical/scientific obstacles to nuclear terrorism detailed in the first section of this chapter remain, there are numerous question marks not only over the state's capacity to manage and secure nuclear material but also over the epistemic side of the equation. [95](http://www.tandfonline.com/doi/full/10.1080/01495933.2013.773700#EN0095) There remain concerns about the potential for individuals employed in Pakistan's nuclear complex, and with specific technical/scientific knowledge regarding nuclear materials, either to leak such information to extremists or to closely collaborate with them. Although Pakistan has put in place a PRP to guard against such an occurrence it remains unclear as to how rigorously it is implemented. The threat stemming from the epistemic side of the equation may also be set to increase given Pakistan's proposed expansion of its nuclear power generation capacity, as such an expansion will require a large cadre of trained and qualified personnel.¶ Thus, much of the speculation and commentary about the potential for nuclear terrorism in Pakistan tends to emphasize scenarios in which hypothetical terrorists are aided and abetted in the acquisition of an intact nuclear weapon or fissile material by individuals employed in the nuclear complex or rogue elements of the military. This focus has tended to result in the downplaying of the real and complex barriers to terrorists acquiring intact weapons and fissile or radiological material.

#### Afghanistan won’t spill-over – no one will be draw-in.

Fettweis 11 [Christopher, Professor Political Science at Tulane, “Dangerous Times: The Futurist Interviews Christopher Fettweis”, World Future Society, 1-12-2011,

<http://www.wfs.org/content/dangerous-times-futurist-interviews-christopher-fettweis>, RSR]

THE FUTURIST: In the next few years, the United States will end its military oversight of Afghanistan and Iraq. We can hope that the two fledgling democracies’ civil governments will prove strong enough to withstand their armed insurgent enemies, but it’s obvious that they might possibly not. In that case, Afghanistan and/or Iraq could fall back into chaos. What can we do in that situation to make sure that a new regional war does not come to pass as a result? CHRISTOPHER FETTWEIS: We can’t determine for sure if Iraq will implode. But the odds of it drawing everybody else in seem low to me. People worry about the Iranians coming into Iraq. But the Iranians are more hated in Iraq than the Americans are. In the nineteenth century, power vacuums used to draw powers in. Nowadays they don't. Countries tend to stay away from them. They don’t want to even send troops into peacekeeping missions. I don’t think invading Iraq has made us safer or less safe. It's just been a mess. Afghanistan is the same thing. I don’t think it matters much to U.S. security either way. They may well end up having their own civil war. But will it spill over into other countries? Probably not.

## 2NC

### NSC CP

#### The national security court would be ethical – would adjucate against torture, mandates trial and respects international norms.

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

DTC = Domestic Terror Court

A consideration of ethicality reveals several ways in which procedural justice can be enhanced by the DTC model. First, the DTC model sets clear ethical limits against “unconstitutional interrogation methods . . . which are illegal, immoral, and do not contribute to ‘ac- tionable intelligence.’” 180 Not only is torture prohibited, but evidence obtained through torture is excluded from trial. 181 I address this apparent tradeoff between effectiveness and fairness later in more detail, by arguing that this evidence is not only of questionable reliability but comes at too high a cost to the United States. By setting moral boundaries, the United States is in a better position to avoid the sorts of prisoner abuse scandals that have occurred at Abu Ghraib and Guantanamo Bay which have significantly undermined U.S. legitimacy. Second, a re-articulation of detention policies under the DTC model will limit procedural burdens on detainees to a greater degree. The DTC model requires that detainees be brought before a judge without unnecessary delay. 182 This should occur within seven days unless exigent circumstances arise. 183 Detentions must be indepen- dently reviewed at periodic intervals to ensure that the process is progressing either toward trial or release. 184 Fairness and efficiency are maximized by a system adapted specifically to detainees, and holding individuals for years without trial would become the rare exception under this model rather than the norm. Third, the DTC model is but one aspect of a broader strategic ob- jective designed to retake the moral high ground in the War on Ter- ror. While the United States has frequently asserted its sovereignty in opposition to international law, 185 it would gain much through international cooperation as opposed to unilateral action. While an extensive discussion of the limits of state sovereignty is beyond the scope of this paper, the United States should consider the legitimacy of international laws and customs even in situations where it has the power to go against global norms. By recognizing these universal principles of procedural fairness, the United States gains legitimacy in the War on Terror.

#### Continual review of decisions ensure that the court is super effective at correcting wrong decisions.

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

DTC = Domestic Terror Court

Under the DTC model, detainee appeals are filed directly to the U.S. Court of Appeals. 159 The DTC model also mirrors certain procedures implemented by Israel and the United Kingdom in which the classified information holding a detainee is subject to periodic review. 160 This policy ensures that correctability cannot be sidestepped by indefinite detention. Thus, the justification for an individual’s detention must be continually evaluated and his or her procedural rights cannot be indefinitely waived.

#### There is no way other countries can object – they do it too and concede it’s effective.

Sulmasy, Commander and associate professor of law at the U.S. Coast Guard Academy, ‘6

[Glenn, “THE LEGAL LANDSCAPE AFTER HAMDAN:¶ THE CREATION OF HOMELAND SECURITY¶ COURTS”, NEW ENG. J.INT'L & COMP.L., Vol. 13, RSR]

Homeland security courts offer the U.S. a "way out" of the GITMO¶ problem.36 The existing regime is simply not meeting the needs of the¶ nation or the Coalition as we battle international terror. This hybrid of law¶ and warfare embodied in the GWOT presents new dilemmas and confusion¶ for nations determining which scheme or system to employ. Not only is¶ the war itself novel and indescribable, the al Qaeda jihadist is unique as¶ well - neither warrior nor criminal. They commit, or conspire to commit,¶ acts of international terror and other actions on a massive scale seeking¶ nothing less than the complete destruction of Western civilization. They do¶ not wear uniforms, they do not carry weapons openly, and have no¶ emblems to distinguish themselves as members of an organized army and¶ flout the LOAC as part of their established doctrine. This type of behavior increases the level of threat the jihadist represents and makes classification¶ of them extraordinarily difficult. Policy makers need a "new look" to¶ adjudicate war crimes committed by these illegal combatants that will be¶ supported (at least to some degree) by the international community. A¶ homeland security court system, such as the national security legal¶ apparatus' already employed in France, Great Britain, and Turkey, is a key¶ solution to this dilemma. These other nations recognize the cases against¶ jihadists are not ordinary cases and need to be handled differently than¶ standard criminal prosecutions or military tribunals. Creating a homeland¶ security court system in the U.S. would aid in regaining the eroded national¶ and international support that has occurred over the past few years. It¶ would be a fresh start and one that displays the commitment of the United¶ States to recognizing changes are necessary. This affords an opportunity to¶ provide some appearance of enhanced justice to the detainees, and¶ resilience to an adjudication process that has been unsuccessful.

#### Finally, the evidentiary standards are super sweet.

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

DTC = Domestic Terror Court

To further improve perceptions of U.S. consistency, I suggest: (1) that traditional rules of law may need to be modified, but cannot be abruptly discarded in periods of crisis; (2) a general uniformity among military commissions must exist as required by the U.S. Su- preme Court; and (3) detainees of different nations, ethnicities, and religions must be given equal treatment and equal rights. The DTC model addresses each of these three concerns. First, the DTC model sets a clear standard of consistency in con- trast to current ad hoc policies that have fluctuated in the political winds of this crisis and have been vaguely applied. The DTC model provides clear definitions and specific criteria for determining who is a threat based on information that is “(1) reliable; (2) viable; (3) valid; and (4) corroborated.” 115 When individuals are not on notice about how they will be treated, they respond negatively when the law appears to implicate their conduct without adequate warning. 116 Outside observers such as human rights groups and citizens of other nations will similarly be dissatisfied by a system that generates un- predictable results. Second, the DTC model provides a system of uniformity as re- quired by the U.S. Supreme Court. In Hamdan v. Rumsfeld ,117 the Court proclaimed the need for a uniform system of courts-martial and military commission procedures. 118 As a result, procedural rules must be consistent with the Uniform Code of Military Justice, and rules must be the same between military commissions and courts- martial “insofar as practicable.” 119 The DTC model proposes un- iformity in terms of sentencing as well as procedure. Like the U.S. criminal justice system, the DTC model utilizes maximum and min- imum sentencing terms. 120 Additionally, the DTC model rejects the death penalty in all cases rather than providing exceptions to the citi- zens of certain nations. 121 Third, the DTC model provides the same treatment for citizens and non-citizens. A 2006 poll suggests that even Americans gener- ally do not feel that their fellow citizens deserve preferential treat- ment. 122 Sixty-three percent of respondents indicated that the deten- tion policies should be the same for citizens and non-citizens, while 33% felt that policies should be different. 123 When granting U.S. citizens additional rights that are not applied to individuals of other nations, a tradeoff is clearly being made. One of the fears surround- ing U.S. treatment of foreign detainees is that other nations will reciprocate by treating U.S. prisoners with disrespect.124 The application of standard rights and procedures to similarly situated individuals under the DTC model comports with universal conceptions of fair- ness and also enhances the next procedural justice factor: bias sup- pression.

#### Most qualified experts vote for the hybrid terror court.

Sulmasy, Commander and associate professor of law at the U.S. Coast Guard Academy, ‘9

[Glenn, The National Security Court System: A Natural Evolution of Justice in an Age of Terror, Oxford University Press, 2009, RSR]

Others in academia and within think tanks have now come to agree this is the way to proceed. Professor Harvey Rishikof, Brookings scholar Ben Wittes, Professor Ken Anderson, columnist Stuart Taylor, national security law expert Andy McCarthy, and others have recognized and now advocate for some specialized court. Even here, some differences emerge. To me, the most noteworthy proponent of some type of specialized court is Professor Neal Katyal of Georgetown Law School - the same law professor who represented Hamdan before the Supreme Court in 2006 (and still represented Hamdan in his habeas proceedings and during his military commission). His support for the new system is important to show that someone actually litigating the cases before military commissions has come to realize that neither the existing civilian court system nor the military commissions adequately meet the balance between justice and national security. 33

#### Hybrid terror court solves US moral authority – provides the appearance of enhanced justice.

Sulmasy, Commander and associate professor of law at the U.S. Coast Guard Academy, ‘9

[Glenn, The National Security Court System: A Natural Evolution of Justice in an Age of Terror, Oxford University Press, 2009, RSR]

A specialized terrorist court, such as the national security legal apparatuses already employed in other nations confronting terrorism, is the key to remedying this dilemma. Other nations, such as France, Great Britain, and Turkey, have acknowledged that legal cases against terrorists are extraordinary and need to be handled differently from standard criminal prosecutions or even military tribunals. All struggled with how best to create their distinct systems. If properly constructed, a national security court system in the United States will help this country begin to regain its position of moral authority in world affairs. At the minimum, it will bolster national and international support for the United States that has eroded over the past few years. It would be a fresh start and one that demonstrates the country’s recognition that changes in how we fight our “war on terror” are necessary. This new system would provide the appearance of enhanced justice, as well as real justice, to the detainees and resilience to an adjudication process that has been admittedly unsuccessful.

#### Multiple branch involvement in appointing judges ensures no bias against the defendant.

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

DTC = Domestic Terror Court

Another way to remove bias from a system is to introduce checks and balances to govern the process as proposed by the DTC model. Here, all three branches are involved in the judicial process as the President is given the authority to nominate DTC judges while the Senate retains the power to confirm them. While current U.S. detention procedures were originally enacted by the executive branch with little congressional or judicial oversight, clear rules for each branch of government are laid out by the DTC model. 141 For example, the executive branch is responsible for setting the criteria for a formal vetting process used by judges to determine who should be detained. 142 Transparency combined with this system of checks and balances helps to prevent one branch of government from having too much of a vested interest in a particular outcome and allows the appointment of qualified judges to make unbiased judgments based on evidence and not prejudice. By minimizing bias, a major roadblock to reaching accurate decisions is cleared.

#### Turns solvency of the aff – 9/11 proves terrorist attacks result in an increase of presidential war powers.

Scheppele, John J. O’Brien Professor of Comparative Law and Professor of Sociology, University of Pennsylvania, ‘4

[Kim, “LAW IN A TIME OF EMERGENCY: STATES OF EXCEPTION AND THE TEMPTATIONS OF 9/11”, Journal of Constitutional Law, RSR]

When the two large passenger airplanes crashed into the World Trade ¶ Center on that September morning—as two other planes homed in on their ¶ Washington targets—the U.S. government hesitated for three days, and ¶ then declared that America was more or less at war. The President declared a state of emergency,1¶ while Congress issued a joint declaration authorizing the President to use all “necessary and appropriate force against ¶ those nations, organizations, or persons he determines planned, authorized, ¶ committed, or aided the terrorist attacks that occurred on September 11, ¶ 2001.”2¶ These pronouncements were later followed by a series of policy ¶ decisions3¶ and legal changes4¶ that would enable the United States to conduct both a domestic and a foreign operation to combat international terrorism.

#### Criminal prosecutions increase terrorist recruitment – signals weakness.

McCarthy and Velshi, ‘9

[Andrew (Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies) and Alykhan (staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force), “We Need a National Security Court”, Submission for AEI, 2009, RSR]

The ¶ treatment of a national security problem as a criminal justice issue has consequences that ¶ imperil Americans. To begin with, there are the obvious numerical and motivational ¶ results. As noted above, the justice system is simply incapable, given its finite resources, ¶ of meaningfully countering the threat posed by international terrorism. Of equal salience, ¶ prosecution in the justice system actually increases the threat because of what it conveys ¶ to our enemies. Nothing galvanizes an opposition, nothing spurs its recruiting, like the ¶ combination of successful attacks and a conceit that the adversary will react weakly. ¶ (Hence, bin Laden’s well-known allusion to people’s instinctive attraction to the “strong ¶ horse” rather than the “weak horse,” and his frequent citation to the U.S. military pullout from Lebanon after Hezbollah’s 1983 attack on the marine barracks, and from Somalia ¶ after the 1993 “Black Hawk Down” incident). For militants willing to immolate ¶ themselves in suicide-bombing and hijacking operations, mere prosecution is a ¶ provocatively weak response. Put succinctly, where they are the sole or principal ¶ response to terrorism, trials in the criminal justice system inevitably cause more ¶ terrorism: they leave too many militants in place and they encourage the notion that the ¶ nation may be attacked with relative impunity.

#### Criminal prosecutions increase terrorism – give away precious intelligence.

(Answers CIPA)

McCarthy and Velshi, ‘9

[Andrew (Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies) and Alykhan (staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force), “We Need a National Security Court”, Submission for AEI, 2009, RSR]

Under discovery rules, the government is required to provide to accused persons, ¶ among many other things, any information in its possession that can be deemed “material ¶ to preparing the defense.”11 Moreover, under current construction of the Brady doctrine, ¶ the prosecution must disclose any information that is even arguably material and ¶ exculpatory,12 and, in capital cases, any information that might induce the jury to vote ¶ against a death sentence, whether it is exculpatory or not (imagine, for example, the ¶ government is in possession of reports by vital, deep-cover informants explaining that a ¶ defendant committed a terrorist act but was a hapless pawn in the chain-of-command).13¶ The more broadly indictments are drawn, the more revelation of precious intelligence due ¶ process demands – and, for obvious reasons, terrorism indictments tend to be among the broadest.14 The government must also disclose all prior statements made by witnesses it ¶ calls,15 and, often, statements of even witnesses it does not call.16¶ This is a staggering quantum of information, certain to illuminate not only what ¶ the government knows about terrorist organizations but the intelligence community’s ¶ methods and sources for obtaining that information. When, moreover, there is any dispute ¶ about whether a sensitive piece of information needs to be disclosed, the decision ends up ¶ being made by a judge on the basis of what a fair trial dictates, rather than by the ¶ executive branch on the basis of what public safety demands. ¶ Finally, the dynamic nature of the criminal trial process must be accounted for. ¶ The discovery typically ordered, virtually of necessity, will far exceed what is technically ¶ required by the rules. As already noted, terrorism trials are lengthy and expensive. The ¶ longer they go on, the greater is the public interest in their being concluded with finality. ¶ The Justice Department does not want to risk reversal and retrial, so it tends to bring ¶ close questions of disclosure to the presiding judge for resolution. The judge, in turn, ¶ does not wish to risk reversal and, of course, can never be reversed in our system for ¶ ruling against the government on a discovery issue. Thus, the incentives in the system ¶ press on participants to disclose far more information to defendants than what is ¶ mandated by the (already broad) rules. These incentives, furthermore, become more ¶ powerful as the trials proceed, the government’s proof is admitted, it becomes ¶ increasingly clear that the defendants are probably guilty, and the participants become even less inclined to put a much-deserved conviction at risk due to withheld discovery – ¶ even if making legally unnecessary disclosure runs the risk of edifying our enemies.17¶ It is freely conceded that this trove of government intelligence is routinely ¶ surrendered along with appropriate judicial warnings: defendants may use it only in ¶ preparing for trial, and may not disseminate it for other purposes. To the extent classified ¶ information is implicated, it is also theoretically subject to the constraints of the ¶ Classified Information Procedures Act.18 Nevertheless, and palpably, people who commit ¶ mass murder, who face the death penalty or life imprisonment, and who are devoted ¶ members of a movement whose animating purpose is to damage the United States, are ¶ certain to be relatively unconcerned about violating court orders (or, for that matter, ¶ about being hauled into court at all). Our congenial rules of access to attorneys, ¶ paralegals, investigators and visitors make it a very simple matter for accused terrorists to ¶ transmit what they learn in discovery to their confederates – and we know that they do ¶ so.¶ 19

### Solvency

#### Increased scrutiny over detention has resulted in a shift to drones and renditions.

Goldsmith 9 (Jack, Professor of Law at Harvard and member of the Hoover Institution Task Force on National Security and Law, assistant attorney general in the Bush administration, 5/31/09, “The Shell Game on Detainees and Interrogation,” <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/29/AR2009052902989.html>]

(Also makes the claim that Obama would rather detain in the first place.)

The cat-and-mouse game does not end there. As detentions at Bagram and traditional renditions have come under increasing legal and political scrutiny, the Bush and Obama administrations have relied more on other tactics. They have secured foreign intelligence services to do all the work -- capture, incarceration and interrogation -- for all but the highest-level detainees. And they have increasingly employed targeted killings, a tactic that eliminates the need to interrogate or incarcerate terrorists but at the cost of killing or maiming suspected terrorists and innocent civilians alike without notice or due process.¶ There are at least two problems with this general approach to incapacitating terrorists. First, it is not ideal for security. Sometimes it would be more useful for the United States to capture and interrogate a terrorist (if possible) than to kill him with a Predator drone. Often the United States could get better information if it, rather than another country, detained and interrogated a terrorist suspect. Detentions at Guantanamo are more secure than detentions in Bagram or in third countries.¶ The second problem is that terrorist suspects often end up in less favorable places. Detainees in Bagram have fewer rights than prisoners at Guantanamo, and many in Middle East and South Asian prisons have fewer yet. Likewise, most detainees would rather be in one of these detention facilities than be killed by a Predator drone. We congratulate ourselves when we raise legal standards for detainees, but in many respects all we are really doing is driving the terrorist incapacitation problem out of sight, to a place where terrorist suspects are treated worse.¶ It is tempting to say that we should end this pattern and raise standards everywhere. Perhaps we should extend habeas corpus globally, eliminate targeted killing and cease cooperating with intelligence services from countries that have poor human rights records. This sentiment, however, is unrealistic. The imperative to stop the terrorists is not going away. The government will find and exploit legal loopholes to ensure it can keep up our defenses.¶ This approach to detention policy reflects a sharp disjunction between the public's view of the terrorist threat and the government's. After nearly eight years without a follow-up attack, the public (or at least an influential sliver) is growing doubtful about the threat of terrorism and skeptical about using the lower-than-normal standards of wartime justice.¶ The government, however, sees the terrorist threat every day and is under enormous pressure to keep the country safe. When one of its approaches to terrorist incapacitation becomes too costly legally or politically, it shifts to others that raise fewer legal and political problems. This doesn't increase our safety or help the terrorists. But it does make us feel better about ourselves.

#### Renditions are popular – saves due process hassle.

Gerenson, Staff Writer, ‘13

[Jen, “Barack Obama using same shadowy tactics as prior regimes to pick off suspected terrorists around the world”, 10-11-13, National Post,

<http://news.nationalpost.com/2013/10/11/barack-obama-using-same-shadowy-tactics-as-prior-regimes-to-pick-off-suspected-terrorists-around-the-world/http://news.nationalpost.com/2013/10/11/barack-obama-using-same-shadowy-tactics-as-prior-regimes-to-pick-off-suspected-terrorists-around-the-world/>, RSR]

Rendition was used a few times during the Ronald Reagan and George H.W. Bush administrations, Prof. Boys said. However, it wasn’t until Bill Clinton’s second term rendition became more common — and harsher. “What started to happen under Clinton is that because of developments with terrorism — the attack on the World Trade Centre in 1993, for example — we started to see the administration going after people in third party countries,” he said. “But instead of bringing them back to the U.S. where they would be subject to Miranda rights, for example … we will send him back to Egypt where he’s also wanted or been tried in absentia. Let [president Hosni] Mubarak’s guys deal with them.” Obama doesn’t want to be a foreign policy president Prof. Boys said no one should be naive about what detention is like in Egypt, where most of Mr. Clinton’s renditions wound up. “Let’s not kid ourselves,” he said. But rendition spared the U.S. the hassle of due process: “If you use standard levels of proof and evidence against some of these people, they walk. It’s very difficult to try these people.”

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### Solvency

#### The Padilla case proves our point.

Mukasey 7 (Michael B Mukasey “Jose Padilla Makes Bad Law” WSJ August 22, 2007 http://online.wsj.com/article/SB118773278963904523.html)

The history of Padilla's case helps illustrate in miniature the inadequacy of the current approach to terrorism prosecutions.¶ First, consider the overall record. Despite the growing threat from al Qaeda and its affiliates -- beginning with the 1993 World Trade Center bombing and continuing through later plots including inter alia the conspiracy to blow up airliners over the Pacific in 1994, the attack on the American barracks at Khobar Towers in 1996, the bombing of U.S. embassies in Kenya and Tanzania in 1998, the bombing of the Cole in Aden in 2000, and the attack on Sept. 11, 2001 -- criminal prosecutions have yielded about three dozen convictions, and even those have strained the financial and security resources of the federal courts near to the limit.¶ Second, consider that such prosecutions risk disclosure to our enemies of methods and sources of intelligence that can then be neutralized. Disclosure not only puts our secrets at risk, but also discourages allies abroad from sharing information with us lest it wind up in hostile hands.¶ And third, consider the distortions that arise from applying to national security cases generally the rules that apply to ordinary criminal cases.¶ On one end of the spectrum, the rules that apply to routine criminals who pursue finite goals are skewed, and properly so, to assure that only the highest level of proof will result in a conviction. But those rules do not protect a society that must gather information about, and at least incapacitate, people who have cosmic goals that they are intent on achieving by cataclysmic means.¶ Khalid Sheikh Mohammed, the mastermind of the 9/11 attacks, is said to have told his American captors that he wanted a lawyer and would see them in court. If the Supreme Court rules -- in a case it has agreed to hear relating to Guantanamo detainees -- that foreigners in U.S. custody enjoy the protection of our Constitution regardless of the place or circumstances of their apprehension, this bold joke could become a reality.¶ The director of an organization purporting to protect constitutional rights has announced that his goal is to unleash a flood of lawyers on Guantanamo so as to paralyze interrogation of detainees. Perhaps it bears mention that one unintended outcome of a Supreme Court ruling exercising jurisdiction over Guantanamo detainees may be that, in the future, capture of terrorism suspects will be forgone in favor of killing them. Or they may be put in the custody of other countries like Egypt or Pakistan that are famously not squeamish in their approach to interrogation -- a practice, known as rendition, followed during the Clinton administration.¶ At the other end of the spectrum, if conventional legal rules are adapted to deal with a terrorist threat, whether by relaxed standards for conviction, searches, the admissibility of evidence or otherwise, those adaptations will infect and change the standards in ordinary cases with ordinary defendants in ordinary courts of law.¶ What is to be done? The Military Commissions Act of 2006 and the Detainee Treatment Act of 2005 appear to address principally the detainees at Guantanamo. In any event, the Supreme Court's recently announced determination to review cases involving the Guantanamo detainees may end up making commissions, which the administration delayed in convening, no longer possible.

### Terrorism

#### Intelligence cooperation with Britain is high now – recent statements.

BBC, ‘13

[“US-UK intelligence-sharing indispensable, says Hague”, 6-26-13,

http://www.bbc.co.uk/news/uk-politics-23053691, RSR]

Britain and the US should have "nothing but pride" in their "indispensable intelligence-sharing relationship", the UK foreign secretary has said. William Hague, speaking in Los Angeles, acknowledged recent controversy over intelligence gathering by the UK's GCHQ and the US National Security Agency. But he said the nations operated "under the rule of law" and used information only to protect citizens' freedoms. Mr Hague also praised the transatlantic "special relationship" as "solid". In recent weeks there has been concern about the monitoring activities of GCHQ, the UK's eavesdropping centre. 'Strong legal framework' It accessed information about UK citizens from the US National Security Agency's monitoring programme, Prism, documents leaked by American whistleblower Edward Snowden suggest. He remains wanted for questioning by US authorities, but is currently in the transit area at Moscow airport. GCHQ has insisted it is "scrupulous" in complying with the law. "We should have nothing but pride in the unique and indispensable intelligence-sharing relationship between Britain and the United States," Mr Hague said in his speech at the Ronald Reagan Library. "In recent weeks this has been a subject of some discussion. "Let us be clear about it. In both our countries, intelligence work takes place within a strong legal framework. 'Special relationship' "We operate under the rule of law and are accountable for it. In some countries secret intelligence is used to control their people. In ours, it only exists to protect their freedoms." Mr Hague also sought to portray the UK coalition government's policies as an ideological continuation of those espoused by Prime Minister Margaret Thatcher in the 1980s. He said: "Not all countries are willing to exert themselves to defend the freedoms they enjoy, but in the United Kingdom and United States of America we are. "There is no greater bastion of freedom than the transatlantic alliance, and within it the special relationship, always solid but never slavish." Mr Hague added: "Some say it is not possible to build up our countries' ties in other parts of the world without weakening those between us. But I say these things go together. 'Win over global opinion' "The stronger our relationships are elsewhere in the world, the more we can do to support each other and our allies." On broader policy, Mr Hague said: "We do not need to accept sleepwalking into decline any more than Reagan and Thatcher did before us. "We have centuries of experience in building up democratic institutions, from our courts to our free media, that other countries wish to draw on and adapt, from Burma to North Africa. "We have the soft power and cultural appeal to attract and influence others and win over global opinion." Mr Hague went on: "We have not yet exhausted all the means of building up and extending our influence. It is not so much the relative size of our power that matters in the 21st Century, but the nature of it, and how agile and effective we can be in exerting it."

### Leadership

#### No Pakistani collapse – history proves.

AP 10 [“Pakistan's stability, leadership under spotlight after floods and double dealing accusations, 8-6-10, <http://www.foxnews.com/world/2010/08/06/pakistans-stability-leadership-spotlight-floods-double-dealing-accusations/>, RSR]

Despite the recent headlines, few here see Pakistan in danger of collapse or being overrun by militants — a fear that had been expressed before the army fought back against insurgents advancing from their base in the Swat Valley early last year. From its birth in 1947, Pakistan has been dogged by military coups, corrupt and inefficient leaders, natural disasters, assassinations and civil unrest. Through it all, Pakistan has not prospered — but it survives. "There is plenty to be worried about, but also indications that when push comes to shove the state is able to respond," said Mosharraf Zaidi, an analyst and writer who has advised foreign governments on aid missions to Pakistan. "The military has many weaknesses, but it has done a reasonable job in relief efforts. There have been gaps in the response. But this is a developing a country, right?" The recent flooding came at a sensitive time for Pakistan, with Western doubts over its loyalty heightened by the leaking of U.S. military documents that strengthened suspicions the security establishment was supporting Afghan insurgents while receiving billions in Western aid. With few easy choices, the United States has made it clear it intends to stick with Pakistan. Indeed, it has used the floods to demonstrate its commitment to the country, rushing emergency assistance and dispatching helicopters to ferry the goods.

#### Best prediction model shows no ME war

Fettweis 7 [Asst Prof Poli Sci at Tulane, Asst Prof National Security Affairs at the US Naval War College, Christopher, “On the Consequences of Failure in Iraq,” *Survival*, Vol. 49, Iss. 4, December, p. 83 – 98]

Firstly, and perhaps most obviously, policymakers should keep in mind that *the unprecedented is also unlikely* . Outliers in international behaviour do exist, but in general the past is the best guide to the future. Since the geopolitical catastrophes that pessimists expect will follow US withdrawal are all virtually without precedent, common sense should tell policymakers they are probably also unlikely to occur. Five years ago, US leaders should have realised that their implicit prediction for the aftermath of invasion positive, creative instability in the Middle East that would set off a string of democratic dominoes was without precedent. The policy was based more on the president's unshakeable faith in the redemptive power of democracy than on a coherent understanding of international relations. Like all faith-based policies, success would have required a miracle; in international politics, miracles are unfortunately rare. Faith is once again driving predictions of post-withdrawal Iraq, but this time it is faith in chaos and worst-case scenarios. Secondly, imagined consequences are usually worse than what reality delivers . Human beings tend to focus on the most frightening scenarios at the expense of the most likely, and anticipate outcomes far worse than those that usually occur. This is especially true in the United States, which for a variety of reasons has consistently overestimated the dangers lurking in the international system.3 Pre-war Iraq was no exception; post-war Iraq is not likely to be either.