# 1AC

**1AC Plan**

**The United States federal judiciary should order the release of individuals in military detention who have won their habeas corpus hearing.**

**1AC Legal Legitimacy**

**Contention one is Legal Legitimacy:**

**Lack of a credible remedy renders habeas useless**

**Milko 12** [Winter, 2012, Jennifer L. Milko, “Separation of Powers and Guantanamo Detainees: Defining the Proper Roles of the Executive and Judiciary in Habeas Cases and the Need for Supreme Guidance”, 50 Duq. L. Rev. 173]

A. Arguments for a Remedy **By urging deference to the Executive Branch**, **the D.C. Circuit Court** of Appeals **has scolded the district courts that have second-guessed the political branches' determinations about release** and suitable transfers. **Those in favor of judicial power** have **argued** **that the denial of the right to review** the Executive's decisions **is allowing too much deference to that branch and** severely **limiting the remedies that courts have had the power to issue in the past.** Though the petitioners have made several arguments for relief, **the main arguments for judicial power stem from the idea that the court of appeals has been improperly applying** Supreme Court **precedent**. Petitioners have argued that **the D.C. Court of Appeals expanded the scope of Munaf too broadly** as the Supreme Court noted that the decision was limited to the facts of that case. n118 In Munaf, **the Court was primarily concerned about allowing the Iraqi government to have the power to punish people** who had committed crimes in that territory when fashioning its holding, and the petitioners in that case had the opportunity of notice because they were told about their transfer and were able to petition the court to try and prevent it. n119 Petitioners have argued that **those facts are entirely different than cases such as Mohammed and Khadr were there was concern of torture in foreign nations but no need to allow those nations to have the ability to prosecute the detainees for crimes**, **there was potential for torture at the hands of non-government entities**, **and no notice of transfer was permitted**. n120 [\*190] Additionally, Petitioners have argued that **the use of Munaf has impermissibly limited Boumediene by preventing courts from fashioning equitable relief for habeas petitions**. n121 **There has been concern that the ability to use the writ of habeas will be essentially eliminated if there is no chance for a petitioner to challenge the** Executive Branch's **determinations regarding safe transfers**. The Boumediene Court spent considerable time discussing the history of the writ n122 and noted that the tribunals implemented in that case to determine enemy combatant status were not a sufficient replacement for the writ of habeas because they lacked, in part, the authority to issue an order of release. n123 Here, **the D.C. Circuit Court of Appeals has effectively prevented the other courts from determining if there is a right not to be transferred**, **which has been argued to be an inadequate statement of the right of habeas**. n124 Similarly, it has been argued that **by accepting the Executive Branch's assurances of its efforts to release the detainees**, **the courts are not properly using the power of habeas corpus that has been granted to them** by the Constitution. n125 By refusing to question these assertions, **the courts would be unable to offer a remedy to the petitioners who have the privilege of habeas corpus**. n126 The Petitioners also argued a due process right to challenge transfers as the detainees have a right to a meaningful hearing to at least have the opportunity to challenge the Government's conclusions regarding safety. n127 **By refusing to second-guess the Executive, the judiciary may be losing an important check on the former's power because there is no guarantee that the Executive is ensuring safety or making the best effort to protect the unlawfully kept detainees.** **Without allowing courts to have the power to enjoin a transfer in order to examine these concerns**, **there is the potential that the detainee could be harmed at the hands of foreign terrorists.** **Without the ability to challenge the Executive Branch through the judicial tool of habeas corpus, there has been genuine concern that the courts are losing too much power and that their authority** [\*191] **is being improperly limited, as they are not utilizing their constitutional power properly.**

**Only the plan’s judicial clarification solves and maintains legitimacy**

**Knowles 9** [Spring, 2009, Robert Knowles is a Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

The Bush Administration's detainee policy made clear that - due to America's power - the content of enforceable international law applicable to the detainees would largely depend on interpretation by the U.S. government. Under the classic realist paradigm, international law is less susceptible to judicial comprehension because it cannot be taken at face value; its actual, enforceable meaning depends on ever-shifting political dynamics and complex relationships among great powers. But **in a hegemonic system, while enforceable international legal norms may still be political, their content is heavily influenced by the politics of one nation** - the United States. n412 **As an institution of that same government, the courts are well-positioned to understand and interpret international law that has been incorporated into U.S. law.** Because the courts have the capacity to track international legal norms, **there was no longer a justification for exceptional deference to the Administration's interpretation of the Geneva Conventions as applied to the detainees.** Professors Posner and Sunstein have argued for exceptional deference on the ground that, unless the executive is the voice of the nation in foreign affairs, other nations will not know whom to hold accountable for foreign policy decisions. n413 But the Guantanamo litigation demonstrated that American hegemony has altered this classic assumption as well. **The** [\*154] **transparent and accessible nature of the U.S. government made it possible for other nations to be informed about the detainee policy and, conceivably, to have a role in changing it.** The Kuwaiti government hired American attorneys to represent their citizens held at Guantanamo. n414 **In the enemy combatant litigation, the government was forced to better articulate its detainee policies, justify the detention of each detainee, and permit attorney visits with the detainees**. n415 Other nations learned about the treatment of their citizens through the information obtained by attorneys. n416 Although the political climate in the U.S. did not enable other nations to have an effect on detainee policy directly - and Congress, in fact, acted twice to limit detainees' access to the courts n417 - this was an exceptional situation. Foreign governments routinely lobby Congress for favorable foreign affairs legislation, and are more successful with less politically-charged issues. n418 Even "rogue states" such as Myanmar have their lobbyists in Washington. n419 In addition, **foreign governments facing unfavorable court decisions can and do appeal or seek reversal through political channels.** n420 **The accessibility and openness of the U.S. government is not a scandal or weakness; instead, it strengthens American hegemony by giving other nations a voice in policy, drawing them into deeper relationships that serve America's strategic interests.** n421 In the Guantanamo litigation, **the courts served as an important accountability mechanism when the political branches were relatively unaccountable to the interests of other nations. The hegemonic model** also **reduces the need for executive branch flexibility, and the institutional competence terrain shifts toward the courts**. **The stability of the current U.S.-led international system depends on the ability of the U.S. to govern effectively. Effective governance depends on**, among other things, **predictability**. n422 G. John **Ikenberry analogizes America's hegemonic position to that of a "giant corporation" seeking foreign investors:** "**The rule of law and the institutions of policy making in a democracy are the political equivalent of corporate transparency and [\*155] accountability**." n423 **Stable interpretation of the law bolsters the stability of the system because other nations will know that they can rely on those interpretations and that there will be at least some degree of enforcement by the United States**. At the same time, **the separation of powers serves the global-governance function by reducing the ability of the executive branch to make "abrupt or aggressive moves toward other states**." n424 **The Bush Administration's detainee policy**, for all of its virtues and faults, **was an exceedingly aggressive departure from existing norms, and was therefore bound to generate intense controversy**. It was formulated quickly, by a small group of policy-makers and legal advisors without consulting Congress and over the objections of even some within the executive branch. n425 **Although the Administration invoked the law of armed conflict to justify its detention of enemy combatants, it did not seem to recognize limits imposed by that law**. n426 Most significantly, it designed the detention scheme around interrogation rather than incapacitation and excluded the detainees from all legal protections of the Geneva Conventions. n427 It declared all detainees at Guantanamo to be "enemy combatants" without establishing a regularized process for making an individual determination for each detainee. n428 And when it established the military commissions, also without consulting Congress, the Administration denied defendants important procedural protections. n429 In an anarchic world characterized by great power conflict, **one could make the argument that the executive branch requires maximum flexibility to defeat the enemy, who may not adhere to international law.** Indeed, **the precedents relied on most heavily by the Administration in the enemy combatant cases date from the 1930s and 1940s - a period when the international system was radically unstable**, and the United States was one of several great powers vying for advantage. n430 But during that time, the executive branch faced much more exogenous pressure from other great powers to comply with international law in the treatment of captured enemies. If the United States strayed too far from established norms, it would risk retaliation upon its own soldiers or other consequences from [\*156] powerful rivals. Today, there are no such constraints: enemies such as al Qaeda are not great powers and are not likely to obey international law anyway. Instead, **the danger is that American rule-breaking will set a pattern of rule-breaking for the world, leading to instability. n431 America's military predominance enables it to set the rules of the game. When the U.S. breaks its own rules, it loses legitimacy.** The Supreme Court's response to the detainee policy enabled the U.S. government as a whole to hew more closely to established procedures and norms, and to regularize the process for departing from them. After Hamdi, n432 the Department of Defense established a process, the CSRTs, for making an individual determination about the enemy combatant status of all detainees at Guantanamo. After the Court recognized habeas jurisdiction at Guantanamo, Congress passed the DTA, n433 establishing direct judicial review of CSRT determinations in lieu of habeas. Similarly, after the Court declared the military commissions unlawful in Hamdan, n434 this forced the Administration to seek congressional approval for commissions that restored some of the rights afforded at courts martial. n435 In Boumediene, the Court rejected the executive branch's foreign policy arguments, and bucked Congress as well, to restore the norm of habeas review. n436 **Throughout this enemy combatant litigation, it has been the courts' relative insulation from politics that has enabled them to take the long view**. In contrast, **the President's** (and Congress's) **responsiveness to political concerns in the wake of 9/11 has encouraged them to depart from established norms for the nation's perceived short-term advantage,** even at the expense of the nation's long-term interests. n437 As Derek Jinks and Neal Katyal have observed, "**treaties are part of [a] system of time-tested standards, and this feature makes the wisdom of their judicial interpretation manifest.**" n438 At the same time, **the enemy combatant cases make allowances for the executive branch's superior speed**. **The care that the Court took to limit the issues it decided in each case gave the executive branch plenty of time to [\*157] arrive at an effective detainee policy.** n439 Hamdi, Rasul, and Boumediene recognized that the availability of habeas would depend on the distance from the battlefield and the length of detention. n440 **The enemy combatant litigation** also **underscores the extent to which the classic realist assumptions about courts' legitimacy in foreign affairs have been turned on their head.** In an anarchic world, legitimacy derives largely from brute force. The courts have no armies at their disposal and look weak when they issue decisions that cannot be enforced. n441 But **in a hegemonic system, where governance depends on voluntary acquiescence, the courts have a greater role to play.** Rather than hobbling the exercise of foreign policy, **the courts are a key form of "soft power."** n442 As Justice Kennedy's majority opinion observed in Boumediene, **courts can bestow external legitimacy on the acts of the political branches**. n443 **Acts having a basis in law are almost universally regarded as more legitimate than merely political acts.** **Most foreign policy experts believe that the Bush Administration's detention scheme "hurt America's image and standing in the world."** n444 The restoration of habeas corpus in Boumediene may help begin to counteract this loss of prestige. Finally, the enemy combatant cases are striking in that they embrace a role for representation-reinforcement in the international realm. n445 **Although defenders of special deference acknowledge that courts' strengths lie in protecting the rights of minorities, it has been very difficult for courts to protect these rights in the face of exigencies asserted by the executive branch** in foreign affairs matters. This is especially difficult when the minorities are alleged enemy aliens being held outside the sovereign territory of the United States in wartime. In the infamous Korematsu decision, another World War II-era case, the Court bowed to the President's factual assessment of the emergency justifying detention of U.S. citizens of Japanese ancestry living in the United States. n446 **In Boumediene, the Court [\*158] pointedly declined to defer to the executive branch's factual assessments of military necessity**. n447 **The court may have recognized that a more aggressive role in protecting the rights of non-citizens was required by American hegemony.** In fact, **the arguments for deference with respect to the rights of non-citizens are even weaker because aliens lack a political constituency in the United States**. n448 **This outward-looking form of representation-reinforcement serves important functions. It strengthens the legitimacy of U.S. hegemony by establishing equality as a benchmark and reinforces the sense that our constitutional values reflect universal human rights.** n449

**Unless the judiciary initiates remedial power the Court will be reduced to irrelevance**

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**In Boumediene, the Court split over whether the petitioners had access**, through the DTA**, to an adequate substitute to the habeas remedy.** But **nine justices agreed about what habeas is: a remedial mechanism by which the Judiciary compels release.** The Court acknowledged the importance of the writ as a “vital instrument for the protection of individual liberty.” Id. at 2246 (collecting cases). **Because release is what the “instrument” achieves, the absence of an express release remedy** in the DTA **troubled the Court**, id. at 2271**, which saw in that absence one of the “constitutional infirmities” of the DTA regime**, id. at 2272. **The Chief Justice differed sharply with the majority— but not on the question of whether habeas requires release**. His opinion (joined by all of the dissenting justices) argued that the MCA’s jurisdictional strip did not violate the Suspension Clause, in part, because the DTA did afford a release remedy. 128 S. Ct. at 2291- 92. The majority concluded that **a “habeas court must have the power to order the conditional22 release of an individual unlawfully detained,**” **Boumediene**, 128 S. Ct. at 2266, while the Chief Justice **wrote similarly that “the writ requires most fundamentally an Article III court be able to hear the prisoner’s claims and**, when necessary, **order release,”** id. at 2283 (emphasis added). Thus **four dissenting justices**, like five in the majority, **agreed that release is fundamental to habeas and that the power to order it is of the essence of judicial power. This conclusion had been well established before**. See, e.g., In re Medley, 134 U.S. 160, 173 (1890) (“under the writ of habeas corpus we cannot do anything else than discharge the prisoner from wrongful confinement”); Ex Parte Watkins, 28 U.S. (3 Pet.) at 202 (Marshall, C.J.); Ex Parte Bollman, 8 U.S. (4 Cranch) 75, 136 (1807) (a habeas court that finds imprisonment unlawful “can only direct [the prisoner] to be discharged”); THE FEDERALIST NO. 84 at 629 (Alexander Hamilton) (John C. Hamilton ed. 1869) (habeas is “a remedy for [the] fatal evil” of “arbitrary imprisonments”).23 The government has never explained how it could be otherwise. **A habeas writ that did not conclusively end unlawful Executive imprisonment would protect neither the separation of powers**, **because it would not judicially check the Executive**; **nor the prisoner, who would obtain nothing from judicial review; nor the Judiciary, whose function would be** (and, since Boumediene, largely has been) **reduced to cheerleading, if not outright irrelevance**. **The** **writ and the constitutional plan require more of the Judiciary than to accept assurances from Executive jailers.** See Harris v. Nelson, 394 U.S. 286, 292 (1969) (no higher duty of a court than “the careful processing and adjudication of petitions for writs of habeas corpus”; **writ must “be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected”**); Bowen v. Johnston, 306 U.S. 19, 26 (1939) (habeas corpus the “precious safeguard of personal liberty”; “no higher duty than to maintain it unimpaired”).

**Otherwise global instability is inevitable – court re-affirmation of habeas stops global war**

**Knowles 9** [Spring, 2009, Robert Knowles is a Acting Assistant Professor, New York University School of Law, “American Hegemony and the Foreign Affairs Constitution”, ARIZONA STATE LAW JOURNAL, 41 Ariz. St. L.J. 87]

**American unipolarity has created a challenge for realists**. **Unipolarity was thought to be inherently unstable** because other nations, seeking to protect their own security, form alliances to counter-balance the leading state. n322 But **no nation or group of nations has yet attempted to challenge America's military predominance**. n323 Although some realists predict that [\*140] counter-balancing will occur or is already in some ways occurring, n324 William Wohlforth has offered a compelling explanation for why true counter-balancing, in the traditional realist sense, will probably not happen for decades. n325 American unipolarity is unprecedented. n326 First, **the United States is geographically isolated from other potential rivals**, who are located near one another in Eurasia. n327 **This mutes the security threat that the U.S. seems to pose while increasing the threats that potential rivals seem to pose to one another**. n328 Second, **the U.S. far exceeds the capabilities of all other states in every aspect of power** - military, economic, technological, and in terms of what is known as "soft power." **This advantage "is larger now than any analogous gap in the history of the modern state system."** n329 Third, **unipolarity is entrenched as the status quo** for the first time since the seventeenth century, **multiplying free rider problems for potential rivals and rendering less relevant all modern previous experience with balancing**. n330 Finally, **the potential rivals' possession of nuclear weapons makes the concentration of power in the United States appear less threatening**. A war between great powers in today's world is very unlikely. n331 **These factors make the current system much more stable, peaceful and durable** than the past multi-polar and bipolar systems in which the United States operated for all of its history until 1991. **The lack of balancing means that the U**nited **S**tates, **and by extension the executive branch, faces** much **weaker external constraints on its exercise of power** than in the past. n332 Therefore, **the internal processes of the U.S. matter now more than any other nations' have in history**. n333 And **it is these internal processes**, as much as external developments, **that will determine the durability of American unipolarity**. As one realist scholar has argued, **the U.S. can best ensure the [\*141] stability of this unipolar order by ensuring that its predominance appears legitimate**. n334 **Hegemonic orders take on hierarchical characteristics**, with the preeminent power having denser political ties with other nations than in a unipolar order. n335 **Stability in hegemonic orders is maintained in part through security guarantees and trade relationships that result in economic specialization** among nations. n336 For example, if Nation X's security is supplied by Hegemon Y, Nation X can de-emphasize military power and focus on economic power. In a hegemonic system, **the preeminent state has "the power to shape the rules of international politics according to its own interests."** n337 **The hegemon**, in return, **provides public goods for the system as a whole**. n338 **The hegemon possesses** not only superior command of military and economic resources but "**soft" power, the ability to guide other states' preferences and interests.** n339 **The durability and stability of hegemonic orders depends on other states' acceptance of the hegemon's role. The hegemon's leadership must be seen as legitimate**. n340 [\*142] **The U**nited **S**tates **qualifies as a global hegemon**. In many ways, **the U.S. acts as a world government**. n341 **It provides public goods for the world**, such as security guarantees, the protection of sea lanes, and support for open markets. n342 After World War II, the U.S. forged a system of military alliances and transnational economic and political institutions - such as the United Nations, NATO, the International Monetary Fund, and the World Bank - that remain in place today. The U.S. provides security for allies such as Japan and Germany by maintaining a strong military presence in Asia and Europe. n343 Because of its overwhelming military might, the U.S. possesses what amounts to a "quasi-monopoly" on the use of force. n344 This prevents other nations from launching wars that would tend to be truly destabilizing. Similarly, **the United States provides a public good through its efforts to combat terrorism** and confront - even through regime change - rogue states. n345 **The U**nited **S**tates also **provides a public good through its** **promulgation and enforcement of international norms. It exercises a dominant influence on the definition of international law because it is the largest "consumer" of such law and the only nation capable of enforcing it on a global scale.** n346 The U.S. was the primary driver behind the establishment of the United Nations system and the development of contemporary treaties and institutional regimes to effectuate those treaties in both public and private international law. n347 Moreover, **controlling international norms are** [\*143] sometimes **embodied in the U.S. Constitution and domestic law rather than in treaties or customary international law.** For example, **whether terrorist threats will be countered effectively depends "in large part on U.S. law regarding armed conflict, from rules that define the circumstances under which the President can use force to those that define the proper treatment of enemy combatants.**" n348 **These public goods provided by the United States stabilize the system by legitimizing it and decreasing resistance to it.** **The transnational** political and economic **institutions created by the U**nited **S**tates **provide other countries with informal access to policymaking and tend to reduce resistance to American hegemony, encouraging others to "bandwagon"** with the U.S. rather than seek to create alternative centers of power. n349 American hegemony also coincided with the rise of globalization - the increasing integration and standardization of markets and cultures - which tends to stabilize the global system and reduce conflict. n350 **The legitimacy of American hegemony is strengthened and sustained by the democratic and accessible nature of the U.S. government**. **The American constitutional separation of powers is an international public good.** **The risk that it will hinder the ability of the U.S. to act swiftly, coherently or decisively** in foreign affairs **is counter-balanced by the benefits it provides in permitting foreigners multiple points of access to the government**. n351 Foreign nations and citizens lobby Congress and executive branch agencies in the State, Treasury, Defense, and Commerce Departments, where foreign policy is made. n352 They use the media to broadcast their point of view in an effort to influence the opinion of decision-makers. n353 Because the United States is a nation of immigrants, many American citizens have a specific interest in the fates of particular countries and form "ethnic lobbies" for the purpose of affecting foreign policy. n354 **The courts,** too, **are accessible to foreign nations and non-citizens. The Alien Tort Statute is emerging as an** [\*144] **important vehicle for adjudicating tort claims among non-citizens in U.S. courts.** n355 Empires are more complex than unipolar or hegemonic systems. **Empires consist of a "rimless-hub-and-spoke structure,**" with an imperial core - the preeminent state - ruling the periphery through intermediaries. n356 The core institutionalizes its control through distinct, asymmetrical bargains (heterogeneous contracting) with each part of the periphery. n357 Ties among peripheries (the spokes) are thin, creating firewalls against the spread of resistance to imperial rule from one part of the empire to the other. n358 **The success of imperial governance depends on the lack of a "rim**." n359 **Stability in imperial orders is maintained through "divide and rule," preventing the formation of countervailing alliances in the periphery** by exploiting differences among potential challengers. n360 Divide-and-rule strategies include using resources from one part of the empire against challengers in another part and multi-vocal communication - legitimating imperial rule by signaling "different identities ... to different audiences." n361 Although the U.S. has often been labeled an empire, the term applies only in limited respects and in certain situations. Many foreign relations scholars question the comparison. n362 However, the U.S. does exercise informal imperial rule when it has routine and consistent influence over the foreign policies of other nations, who risk losing "crucial military, economic, or political support" if they refuse to comply. n363 The "Status of Force Agreements" ("SOFAs") that govern legal rights and responsibilities of U.S. military personnel and others on U.S. bases throughout the world are typically one-sided. n364 And the U.S. occupations in Iraq and Afghanistan had a strong imperial dynamic because those regimes depended on American support. n365 [\*145] But **the management of empire is increasingly difficult in the era of globalization**. Heterogeneous contracting and divide-and-rule strategies tend to fail when peripheries can communicate with one another. The U.S. is less able control "the flow of information ... about its bargains and activities around the world." n366 In late 2008, negotiations on the Status of Force Agreement between the U.S. and Iraq were the subject of intense media scrutiny and became an issue in the presidential campaign. n367 Another classic imperial tactic - the use of brutal, overwhelming force to eliminate resistance to imperial rule - is also unlikely to be effective today. **The success of counterinsurgency operations depends on winning a battle of ideas**, **and collateral damage is used by violent extremists, through the Internet and satellite media, to "create widespread sympathy for their cause."** n368 **The abuses at Abu Ghraib, once public, harmed America's "brand" and diminished support for U.S. policy abroad. n369 Imperial rule, like hegemony, depends on maintaining legitimacy.** B. Constructing a Hegemonic Model International relations scholars are still struggling to define the current era. The U.S.-led international order is unipolar, hegemonic, and, in some instances, imperial. In any event, this order diverges from traditional realist assumptions in important respects. It is unipolar, but stable. It is more hierarchical. **The U.S. is not the same as other states**; **it performs unique functions in the world and has a government open and accessible to foreigners.** And the stability and legitimacy of the system depends more on successful functioning of the U.S. government as a whole than it does on balancing alliances crafted by elite statesmen practicing realpolitik. "**World power politics are shaped primarily not by the structure created by interstate anarchy but by the foreign policy developed in Washington**." n370 **These differences require a new model for assessing the institutional competences of the executive and judicial branches in foreign affairs.** [\*146] One approach would be to adapt an institutional competence model using insights from a major alternative theory of international relations - liberalism. Liberal IR theory generally holds that internal characteristics of states - in particular, the form of government - dictate states' behavior, and that democracies do not go to war against one another. n371 Liberalists also regard economic interdependence and international institutions as important for maintaining peace and stability in the world. n372 Dean Anne-Marie Slaughter has proposed a binary model that distinguishes between liberal, democratic states and non-democratic states. n373 Because domestic and foreign issues are "most convergent" among liberal democracies, Slaughter reasons, the courts should decide issues concerning the scope of the political branches' powers. n374 With respect to non-liberal states, the position of the U.S. is more "realist," and courts should deploy a high level of deference. n375 One strength of this binary approach is that it would tend to reduce the uncertainty in foreign affairs adjudication. Professor Nzelibe has observed that it would put courts in the difficult position of determining which countries are liberal democracies. n376 But even if courts are capable of making these determinations, they would still face the same dilemmas adjudicating controversies regarding non-liberal states. Where is the appropriate boundary between foreign affairs and domestic matters? How much discretion should be afforded the executive when individual rights and accountability values are at stake? To resolve these dilemmas, an institutional competence model should be applicable to foreign affairs adjudication across the board. In constructing a new realist model, it is worth recalling that the functional justifications for special deference are aimed at addressing problems of a particular sort of role effectiveness - which allocation of power among the branches will best achieve general governmental effectiveness in foreign affairs. In the twenty-first century, **America's global role has changed, and the best means of achieving effectiveness in foreign affairs have changed as well**. **The international realm remains highly political** - if not as much as in the past - but **it is American politics that matters most.** If the U.S. is truly an empire - [\*147] and in some respects it is - the problems of imperial management will be far different from the problems of managing relations with one other great power or many great powers. Similarly, **the management of hegemony or unipolarity requires a different set of competences.** Although American predominance is recognized as a salient fact, there is no consensus among realists about the precise nature of the current international order. n377 The hegemonic model I offer here adopts common insights from the three IR frameworks - unipolar, hegemonic, and imperial - described above. First, the "hybrid" hegemonic model assumes that the goal of U.S. foreign affairs should be the preservation of American hegemony, which is more stable, more peaceful, and better for America's security and prosperity, than the alternatives. **If the United States were to withdraw from its global leadership role, no other nation would be capable of taking its place. n378 The result would be radical instability and a greater risk of major war**. n379 In addition, the United States would no longer benefit from the public goods it had formerly produced; as the largest consumer, it would suffer the most. Second, the hegemonic model assumes that **American hegemony is unusually stable and durable**. n380 As noted above, **other nations have many incentives to continue to tolerate the current order**. n381 And although other nations or groups of nations - China, the European Union, and India are often mentioned - may eventually overtake the United States in certain areas, such as manufacturing, **the U.S. will remain dominant in most measures of capability for decades.** According to 2007 estimates, the U.S. economy was projected to be twice the size of China's in 2025. n382 **The U.S. accounted for half of the world's military spending in 2007 and holds enormous advantages in defense technology that far outstrip would-be competitors. n383 Predictions of American decline are not new, and they have thus far proved premature.** n384 [\*148] Third, **the hegemonic model assumes that preservation of American hegemony depends not just on power, but legitimacy**. n385 All three IR frameworks for describing predominant states - although unipolarity less than hegemony or empire - suggest that **legitimacy is crucial to the stability and durability of the system.** **Although empires and predominant states in unipolar systems can conceivably maintain their position through the use of force, this is much more likely to exhaust the resources of the predominant state and to lead to counter-balancing or the loss of control.** n386 **Legitimacy as a method of maintaining predominance is far more efficient.** The hegemonic model generally values courts' institutional competences more than the anarchic realist model. **The courts' strengths in offering a stable interpretation of the law, relative insulation from political pressure, and power to bestow legitimacy are important for realizing the functional constitutional goal of effective U.S. foreign policy**. This means that courts' treatment of deference in foreign affairs will, in most respects, resemble its treatment of domestic affairs. Given the amorphous quality of foreign affairs deference, this "domestication" reduces uncertainty. **The increasing boundary problems caused by the proliferation of treaties and the infiltration of domestic law by foreign affairs issues are lessened by reducing the deference gap**. And **the dilemma caused by the need to weigh different functional considerations** - liberty, accountability, and effectiveness - **against one another is made less intractable because it becomes part of the same project that the courts constantly grapple with in adjudicating domestic disputes.**

**Specifically, it stops cascading ethnic conflicts which culminate in nuclear war**

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Ironically, **at the same time that the demands of exclusive cultural groups for state sovereignty and "national self-determination" escalate around the globe, support for the international legal norms of established state sovereignty and non-intervention has also disappeared**. Together, **these** two **trends are dangerously explosive. We are likely to see more oppression of minorities in ethnically defined states**, more **slaughter of** innocent **civilians** caught in cultural conflicts, the **continued** **violent breakup of sovereign countries**, and **more invasions and occupation of disputed territory, as powerful countries--nursing other resentments and fears against one another**--seize the opportunity to **take sides. It will** thus **not be long until nuclear powers end up confronting one another. The** absurd **trigger for** this **conflict will be** the **nationalist demands of ethnic and sectarian political entrepreneurs**--who are often just thugs in disguise. Note the timing of the U.S. announcement of a missile defense pact with Poland, as Russian tanks rolled through Georgia to halt Georgia's military incursion into Ossetian territory. **Unless we act quickly to reach wider international agreement on global solutions to violent cultural disputes, more exclusive territorial claims of small and distinct cultural groups and violent responses to those claims will suck nuclear powers into deadly international conflict**. The crisis in **Georgia is not** an **isolated** one. **Across the globe we hear** the **battle cry of Kosovars, Tibetans, South Ossetians, Abkhazians, Kurds, Kashmiris and** so many **others**: “Give us a state of our own.” With few exceptions, that battle cry long ago slashed the world up into separate homogeneous ethnic and religious states, dislocating millions of people, sparking mass atrocities and forced expulsions, and igniting bouts of ethnic cleansing and genocide. In the remaining multi-ethnic societies of the 21st century, that battle cry threatens again; and with the non-intervention norm in tatters, the consequences will be disastrous. Because the earth does not hold enough land for each and every ethnic or religious group to own the piece that it thinks it deserves, secessionist attempts and communal conflicts over territory will escalate. The morally indignant will respond to this escalation with calls for humanitarian military missions to free one group from the oppression of another and support its "right" to exclusive territory. Those missions will be mired in the deadly consequences of communal conflict for long periods of time. Small secessionist groups will seek the "protection" of neighboring states, who are often only too eager to challenge their rivals. Tossing aside international law and claiming that they are on the side of the angels, powerful countries will continue to see disputed terrain as a strategic outpost for themselves, and they will help one ethnic or religious group oust the other. Cynically citing the international legal principle of non-intervention in the territory of a sovereign state, Russia opposed the U.S. when NATO bombed Serbia on behalf of ethnic Albanians there and again when it recognized Kosovo’s independence. But Russia--long before it granted diplomatic recognition of their independence--assisted South Ossetia and Abkhazia in their bid for secession from Georgia, with the knowledge that these groups could not exist on their own and would seek Russian protection--even annexation. And in that process, many innocent Georgians suffered--just as innocent Serbs suffered in Kosovo--people who just happened to be of the "wrong" ethnicity and living in the "wrong" place. **That suffering is rarely reported**. In 1993, in a war that was barely recognized and in a gruesome ethnic cleansing that boggles the imagination, 240,000 Georgians were expelled from Abkhazia. 100,000 Serbs were forced to leave Kosovo after 1999--another unrecognized ethnic clensing. Today, the homes and churches of the remaining Serbs living there are being destroyed by the Kosovars, who want the land for themselves alone. Gangs of Ossetian militias regularly destroy the homes of Georgians who have lived in the region for decades. In March we saw angry Tibetans, led by Buddhist monks, destroying the homes and shops of Chinese people living in Lhasa. Instead of supporting the human rights of all who live in multi-ethnic states and seeking to bring about sustainable harmony and justice, we have reached for a tempting but poisonous antidote to cultural conflict: the separation of ethnic and religious groups into new independent nation states. And though separation is sometimes warranted to halt communal violence, it creates new problems, does not solve the old ones, and chips away at the value of human equality. The **secession that separation entails leads to more bloodshed, more refugees, and more entrenched ethnic and religious hatred, more "humanitarian" intervention, more drawn-out military conflicts, more dangerous confrontations between powerful, nuclear-armed countries**. The same scenario will be acted out when we piously support dominant states who claim sovereignty over disputed territory and repress the secessionists. Repression leads to more violence as those who are oppressed are swayed to join the separatist cause. Instead of supporting ethnonationalist separatism in the guise of the right of “national self-determination” or opposing the intervention of others only when it suits our strategic interests, we need to take a consistent stand in support of human rights and equal treatment of all cultural groups within multiethnic societies. Of course this means both opposing oppression on the part of powerful states and opposing violent responses to that oppression. We can pressure China to halt abuses of Tibetans without abetting Tibetan secessionists; we can oppose Russia’s invasion of Georgia and its support for Ossetian secession without condoning Georgia’s military incursions into Ossetian territory. We must revive and strengthen the principle of non-intervention and at the same time, provide even stronger support for human rights in contested territory. **Only** the **revitalization and enforcement of international legal norms can halt the coming spiral of violent global confrontation triggered by ethnic and sectarian conflicts**.

**1AC Judicial Review**

**Contention two is Judicial Review:**

**Kiyemba undid Boumediene – rectifying this is a crucial test to maintain the court’s leadership as a model to be emulated**

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**The precedent of this Court has** a **significant impact on rule of law in foreign states. Foreign governments, in particular foreign judiciaries, notice and follow the example set by the U.S.** in **upholding** the **rule of law**. As foreign governments and judiciaries grapple with new and challenging issues associated with upholding the rule of law during times of conflict, **U.S. leadership on the primacy of law during the war on terror is particularly important.** Recent decisions of this Court have reaffirmed the primacy of rule of law in the U.S. during the war on terror. As relates to the present case, a number of this Court’s decisions, **most notably Boumediene v. Bush**, 128 S.Ct. 2229 (2008), have **established clear precedent that Guantanamo detainees have a right to petition for habeas corpus relief. Despite a clear holding from this Court in Boumediene, the Court of Appeals sought in Kiyemba v. Obama to narrow Boumediene to such a degree as to render this Court’s ruling hollow**. 555 F.3d 1022 (D.C. Cir. 2009). **The** present **case is** thus **a test of both the substance of the right granted in Boumediene and the role of this Court in ensuring faithful implementation of its prior decisions**. Although this Court’s rulings only have the force of law in the U.S., **foreign governments will take note of the decision in the present case and use the precedent set by this Court to guide their actions in times of conflict. PILPG has advised over two dozen foreign states on peace negotiations and post-conflict constitution drafting, as well as all of the international war crimes tribunals**. Through providing pro bono legal assistance to foreign governments and judiciaries, PILPG has **observed the** important **role** this **Court and U.S. precedent serve in promoting rule of law in foreign states. In Uganda, for example, the precedent established by this Court in Hamdan v. Rumsfeld**, 548 U.S. 557 (2006), and Boumediene, **influenced judges and legislators to incorporate the principles of judicial review and enforceability in their domestic war crimes bill. In Nepal, this Court has served as a model for the nascent judiciary. In Somaliland, the government relied heavily on U.S. terrorism legislation when drafting terrorism legislation for the region. And in the South Sudan peace process, the Sudan People’s Liberation Movement/Army (SPLM/A), the leading political party in the Government of Southern Sudan, relied on U.S. precedent to argue for the primacy of law and the importance of enforceability of previous adjudicative decisions** in the5 Abyei Arbitration, one of the most important and contentious issues in the ongoing implementation of the peace agreement. **Foreign judges** also **follow the work of this Court closely**. In a number of the judicial training programs PILPG has conducted, foreign judges have asked PILPG detailed questions about the role of this Court in upholding rule of law during the war on terror. A review of foreign precedent confirms how closely foreign judges follow this Court. **In numerous foreign states, and in the international war crimes tribunals, judges regularly cite the precedent of this Court to establish their own legitimacy, to shore up judicial authority against overreaching by powerful executives, and to develop a strong rule of law within their own legal systems. Given** the **significant influence of this Court** on foreign governments and judiciaries, **a decision in Kiyemba implementing Boumediene will reaffirm this Court’s leadership in upholding the rule of law and promote respect for rule of law in foreign states during times of conflict**.6 ARGUMENT I. **KIYEMBA v. OBAMA IS A TEST OF SUPREME COURT LEADERSHIP IN UPHOLDING RULE OF LAW IN TIMES OF CONFLICT**. **The precedent set by the Supreme Court in the present case will have a significant impact on the development of rule of law in foreign states.** **Foreign judicial, executive, and parliamentary bodies closely follow the work of this Court, and this Court’s previous decisions related to the war on terror have shaped how foreign states uphold the rule of law in times of conflict**. **Foreign governments and judiciaries will review this Court’s decision in the present case in light of those previous decisions**. **A decision in the present case implementing previous decisions of this Court granting habeas rights to Guantanamo detainees is an opportunity for this Court to reaffirm to foreign governments that the U.S. is a leader and role model in upholding the rule of law during times of conflict**. Recent Supreme Court precedent established a clear role for the primacy of law in the U.S. war on terror. In particular, this Court’s landmark decision in **Boumediene highlighted the critical role of the judiciary in a system dedicated to the rule of law, as well as the “indispensable” role of habeas corpus** as a “time tested” safeguard of liberty. Boumediene v. Bush, 128 S.Ct. 2229, 2247, 2259 (2008). **Around the globe, courts and governments took note of this Court’s stirring words**: “Security subsists, too, in fidelity to freedom’s first principles. **Chief among these are freedom from arbitrary and unlawful restraint and the personal liberty7 that is secured by adherence to the separation of powers. It is from these principles that the judicial authority to consider petitions for habeas corpus relief derives.”** Id. at 2277. In contrast to the maxim silent enim leges inter arma (in times of conflict the law must be silent), this Court affirmed in Boumediene that “[t]he laws and Constitution are designed to survive, and remain in force, in extraordinary times. Liberty and security can be reconciled, and in our system they are reconciled within the framework of the law.” Id. Boumediene held that the detainees in the military prison at Guantanamo Bay are “entitled to the privilege of habeas corpus to challenge the legality of their detentions.” Id. at 2262. Inherent in that privilege is the right to a remedy if the detention is found to be unlawful. In the present case, the Petitioners, who had been found not to be enemy combatants, sought to exercise their privilege of habeas corpus. The Executive Branch conceded that there was no legal basis to continue to detain the Petitioners, that years of diligent effort to resettle them elsewhere had failed, and that there was no foreseeable path of release. The District Court implemented Boumediene, ordering that the Petitioners be brought to the courtroom to impose conditions of release. In re Guantanamo Bay Detainee Litigation, 581 F. Supp. 2d 33, 42-43 (D.C. Cir. 2008). The Court of Appeals reversed, with the majority concluding that the judiciary had no “power to require anything more” than the Executive’s representations that it was continuing efforts to find a foreign country willing to admit Petitioners. Kiyemba v. Obama, 555 F.3d 1022, 1029 (D.C. Cir. 2009). **The Court of Appeals’ decision effectively narrowed Boumediene to such a degree that it rendered the ruling hollow**. Circuit Judge Rogers recognized this in her dissent, opining that the majority’s analysis “was not faithful to Boumediene.” Id. at 1032 (Roberts, J., dissenting). **Given the Court of Appeals’ attempt to narrow Boumediene, Kiyemba v. Obama is a test of this Court’s role in upholding the primacy of law in times of conflict**. **A decision in favor of the Petitioners in Kiyemba will reaffirm this Court’s leadership in upholding the rule of law and promote respect for rule of law in foreign states during times of conflict**. II. PILPG’S EXPERIENCE ADVISING FOREIGN GOVERNMENTS AND JUDICIARIES ILLUSTRATES THE IMPORTANCE OF SUPREME COURT PRECEDENT IN PROMOTING RULE OF LAW IN FOREIGN STATES DURING TIMES OF CONFLICT. **During PILPG’s work providing pro bono legal assistance to foreign governments and judiciaries on the rule of law in conflict and post-conflict settings, clients frequently request guidance on U.S. laws and the role of the judiciary in the U.S. system of governance**. In recent years, **as states have watched the U.S. tackle the legal issues surrounding the war on terror, foreign governments and judiciaries have expressed keen interest in, and have demonstrated reliance on, the legal mechanisms the U.S. has adopted to address the challenges presented in this new form of conflict**. The U.S. Government, under the guidance of this Court, has set a strong example for upholding the rule of law during times of conflict, and foreign governments have followed this lead.

**Re-affirming habeas shapes global legal development through judicial dialogue – a credible remedy is essential**

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TRANSNATIONAL JUDICIAL DIALOGUE CONFIRMS THIS COURT’S LEADERSHIP IN PROMOTING ADHERENCE TO RULE OF LAW IN TIMES OF CONFLICT. **PILPG’s on-the-ground experience demonstrating the leadership of this Court is confirmed by a study of transnational judicial dialogue**. Over the past halfcentury, **the world’s constitutional courts have been engaged in a rich and growing transnational judicial dialogue on a wide range of constitutional law issues**. See, e.g., Melissa A. Waters, Mediating Norms and Identity: The Role of Transnational Judicial Dialogue in Creating and Enforcing International Law, 93 Geo. L.J. 487 (2005); Anne-Marie Slaughter, Judicial Globalization, 40 Va. J. Int’l L. 1103 (2000). **Courts around the world consider, discuss, and cite foreign judicial decisions** not out of a sense of legal obligation, but **out of a developing sense that foreign decisions are valuable resources in elucidating complex legal issues and suggesting new approaches to common problems.** See Waters, supra, at 493-94. In this transnational judicial dialogue, **the decisions of this Court have exercised a** profound — and **profoundly positive — influence on the work of foreign and international courts**. See generally Constitutionalism and Rights: The Influence of the United States Constitution Abroad (Louis Henkin & Albert J. Rosenthal eds., 1990); Anthony Lester, The Overseas Trade in the American Bill of Rights, 88 Colum. L. Rev. 537 (1988). As Anthony Lester of the British House of Lords has noted, “**there is a vigorous overseas trade in the Bill of Rights, in** international and constitutional **litigation involving norms derived from American constitutional law**. When life or liberty is at stake, **the landmark judgments of the Supreme Court** of the United States, giving fresh meaning to the principles of the Bill of Rights, are **studied with as much attention in New Delhi or Strasbourg as they are in Washington, D.C**.” Id. at 541. This Court’s overseas influence is not limited to the Bill of Rights. **From Australia to India to Israel to the United Kingdom, foreign courts have looked to the seminal decisions of this Court** **as support for their own rulings upholding judicial review, enforcing separation of powers, and providing a judicial check on the political branches**. Indeed, for foreign courts, this Court’s rulings in seminal cases such as Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803),4 Brown v. Board of Education, 347 U.S. 436 (1954),5 United States v. Nixon, 418 U.S. 683 (1974),6 and Roper v. Simmons, 543 U.S. 551 (2005)7 take on a special significance. **Reliance on the moral authority of this Court can provide invaluable support for those foreign courts struggling to establish their own legitimacy, to shore up judicial authority against overreaching by powerful executives, and to develop a strong rule of law within their own national legal systems. This Court’s potential to positively influence the international rule of law is particularly important in the nascent transnational judicial dialogue surrounding the war on terrorism and the primacy of rule of law in times of conflict. As the world’s courts begin to grapple with** the **novel, complex, and delicate legal issues surrounding the modern-day war on terrorism**, **and as states seek to develop judicial mechanisms to address domestic conflicts**, **foreign governments and judiciaries are confronting similar challenges**. In particular, **foreign governments and judiciaries must consider how to accommodate the legitimate needs of the executive branch** in times of war within the framework of the law. Although foreign courts are just beginning to address these issues, **it is already clear that they are looking to the experience of the U.S., and to the precedent of this Court, for guidance on upholding the rule of law in times of conflict.** In recent years, **courts in Israel, the United Kingdom, Canada, and Australia have relied on the precedent of this Court in decisions addressing the rights of detainees.**8 In short, **as a result of this Court’s robust influence on transnational judicial dialogue, its decisions have proved extraordinarily important to the development of the rule of law around the world**. **International courts have** similarly **relied on the precedent of this Court in influential decisions.** For example, in the important and developing area of international criminal law, **the international war crimes tribunals for Yugoslavia and Rwanda both relied heavily on the precedent of this Court** in their early opinions. In the first five years of the Yugoslav Tribunal, the first in the modern iteration of the war crimes tribunals, **the justices cited this Court at least seventeen times in decisions establishing the fundamental legal principles** under which the Tribunal would function.9 **The International Criminal Tribunal for Rwanda** similarly **relied on this Court’s precedent, citing this Court at least twelve times in its first five years.**10 **The precedent of this Court has provided a crucial foundation for international criminal law**. **The reliance on the precedent of this Court speaks to the Court’s international leadership on the promotion of respect for the rule of law** in times of conflict. **By ruling** in favor of the Petitioners, **this Court will reaffirm the precedent established in its prior decisions granting habeas rights to Guantanamo detainees and, in doing so, demonstrate to these foreign courts, and to other courts who will be addressing these issues in the future, that all branches of government must be bound by the rule of law, even in the most challenging of times**. CONCLUSION For the aforementioned reasons, **this Court should reverse the decision of the Court of Appeals**, thereby **reaffirming this Court’s leadership in upholding the rule of law and promoting respect for rule of law in foreign states during times of conflict.**

**A strong judiciary is the key factor**

**Kalb 13** [Summer, 2013; Johanna Kalb is an Associate Professor of Law, Loyola University New Orleans College of Law, “The Judicial Role in New Democracies: A Strategic Account of Comparative Citation”, 38 Yale J. Int'l L. 423]

**The role of the judiciary in transitional regimes has received increasing attention in the last few decades** based largely on two historical developments. First, **constitutionalism and judicial review have become increasingly pervasive attributes** of late twentieth-century political transitions, **which has increased the predominance of the judicial role in most new democratic regimes**. Second, **a growing number of countries that once held democratic elections have regressed into authoritarian or semi-authoritarian rule** n38 or have simply failed to move beyond the thin electoral definition of democracy. n39 In this historical context, scholars have turned their focus to the role that courts can play in helping to consolidate or solidify the post-election transition to a democratic order. A. Diagonal Accountability According to Juan J. Linz and Alfred Stepan, democratic consolidation is complete when a government comes to power that is the direct result of a free and popular vote, when this government de facto has the authority to generate new policies, and [\*431] when the executive, legislative, and judicial power generated by the new democracy does not have to share power with other bodies de jure. n40 As is now widely acknowledged, **the project of democratic consolidation is inhibited by accountability failures in political institutions**. In other words, **democracy stalls** n41 or collapses **because institutional weaknesses undermine the processes by which governmental actors are held responsible for performing their appropriate functions. Courts can aid** in democratic consolidation **by reinforcing constitutional structures of accountability** across a number of different planes. First, **a credible and autonomous judiciary may serve as an important mechanism of horizontal accountability**. "In institutionalized democracies, **accountability runs ... horizontally across a network of relatively autonomous powers** (i.e. other institutions) **that can call into question, and** eventually **punish, improper ways of discharging** the **responsibility** of a given official." n42 **Given the primacy of judicial review** in most new regimes, **courts are well positioned to ensure that other governmental actors are subject to the constraints of the law**. **An effective judiciary may thus be a key institutional actor in preventing the reconsolidation of power** in the executive that has characterized so many nations in transition. n43 **Courts** also **play a role in vertical accountability, which can** be understood to **characterize the relationship between the citizenry and the national government**. In introducing this concept, Guillermo O'Donnell focuses on the methods by which nonstate actors in media and civil society can continue to hold state actors to account through regular election, social mobilization, and media oversight. n44 **An effective judiciary can protect and enable these processes of vertical accountability by ensuring governmental respect for the individual rights that underlie them** - for example, **by ensuring access to the voting booth and protecting freedom of speech and association.** [\*432] While O'Donnell's vertical axis ended with the national government, in the democracies of the last fifty years, the notion of vertical accountability arguably extends further to characterize the relationship between the domestic population, the national government, and the international community, which includes international courts, the governments of other nations, and international NGOs. Most **recent democratic transitions were in fact driven by pressures from both internal and external constituencies**, sometimes in concert. n45 For example, "**few would question the central role played by occupation forces in fostering democratic government** in Germany and Japan after World War II," while "the American security umbrella played a similar facilitating function for democracy in South Korea, and Taiwan." n46 In recent decades, international sanctions have helped to force internal political change (perhaps most notably in South Africa), while "the export of election monitoring technologies such as parallel vote tabulation and exit polls played a crucial role in bringing down Augusto Pinochet in Chile in 1988, unseating Slobodan Milo<hac s>evic in Serbia in 2000, and sparking the Orange Revolution in 2004." n47 In each of these cases, donor funding has helped to generate and preserve a global web of civil society groups, which has helped to inspire and operationalize the indispensable efforts of domestic advocates during transitions. n48 Moreover, even long after the formal democratic transition has occurred, new governments, particularly in the economically underdeveloped countries of the Global South, continue to confront pressures from the international community to maintain systems of democratic governance, to protect and promote human rights, and to facilitate economic integration. Thus, **governmental actions during the transitional period and beyond are under increased levels of scrutiny from both vertical and horizontal audiences**, which can mobilize each other in support of accountability at the national level. **The judiciary can also play a role in mediating these relationships by protecting the domestic rights that enable these transnational connections** - by protecting access to the Internet and to international travel, for example. **The ongoing activity along both of the axes creates the opportunity for the judiciary to engage in what we may describe as "diagonal accountability.**" **n49 In modern [\*433] regimes in transition, the judiciary must be responsive to activities on both the vertical and horizontal axes.** The challenge is in satisfying these different audiences that are sometimes in harmony and sometimes in conflict. **The courts**, given their responsibility for preserving the possible channels of horizontal and vertical accountability, **are uniquely positioned to manage this overlap** and can mobilize one axis "diagonally" in support of promoting accountability along the other. **Courts may draw on international support "vertically" to protect against encroachment from the other branches "horizontally**" - for example, by reaching out to influential international institutions to put pressure on the president to comply with judicial orders limiting executive authority. Alternatively, **courts may be well positioned to safeguard the authority of other domestic institutions along the horizontal axis by acting as a site of resistance against coercive international pressures** - for example, **by striking down as unconstitutional domestically unpopular legislation forced on the elected branches by international actors.**

**Strong democracy maintains global peace – the best research proves**

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**Drawing from** the **empirical literature, this paper identifies** two **underlying pathways through which** state **governance** systems help to **build peace. These are: State capacity. If states lack** the **ability to execute** their **policy goals or to maintain security** and public order **in the face of potentially violent groups, armed conflict is more likely. State capacity refers to two significant aspects: security capacity and social capacity. Security capacity includes** the **ability to control territory and resist armed incursion from other states and nonstate actors. Social capacity includes the ability to provide social services and public goods. Institutional qxuality. Research suggests** that **not all governance systems are equally effective or capable of supporting peace. Governance systems are seen as more credible and legitimate, and are better at supporting peace, when** they are **characterized by inclusiveness, representativeness, transparency, and accountability**. In particular, systems allowing citizens to voice concerns, participate politically, and hold elected leaders accountable are more stable and better able to avoid armed conflict. **Both dimensions**—state capacity and quality—**are crucial to** the **prevention of armed conflict** and are the focus of part one of this paper. Part two of the paper focuses on **democracy as the most common way of structuring state government to allow for inclusive systems while maintaining state capacity. The** two **parts summarize important research findings on** the **features of governance that are most strongly associated with prospects for peace. Our analysis, based on** an **extensive review of empirical literature, seeks to identify** the **specific dimensions of governance** that are **most strongly associated with peace. We show evidence of a direct link between peace and a state’s capacity to both exert control over its territory and provide a full range of social services through effective governance institutions**. We apply a governance framework to examine three major factors associated with the outbreak of war—border disputes, ethnic conflict, and dependence on commodity exports—and emphasize the importance of inclusive and representative governance structures for the prevention of armed conflict.

**The converse is true, backsliding causes great power war**

**Gat 11**, Professor at Tel Aviv University, Ezer Weizman Professor of National Security at Tel Aviv University, Azar 2011, “The Changing Character of War,” in The Changing Character of War, ed. Hew Strachan and Sibylle Scheipers, p. 30-32

Since 1945, **the decline of major great power war has deepened** further. Nuclear weapons have concentrated the minds of all concerned wonderfully, but no less important have been the institutionalization of free trade and the closely related process of rapid and sustained economic growth throughout the capitalist world. The communist bloc did not participate in the system of free trade, but at least initially it too experienced substantial growth, and, unlike Germany and Japan, it was always sufﬁciently large and rich in natural resources to maintain an autarky of sorts. With the Soviet collapse and with the integration of the former communist powers into the global capitalist economy, the prospect of a major war within the developed world seems to have become very remote indeed. This is one of the main sources for the feeling that war has been transformed: its geopolitical centre of gravity has shifted radically. The modernized, economically developed parts of the world constitute a ‘zone of peace’. **War now seems to be conﬁned to the less-developed parts of the globe, the world’s ‘zone of war’,** **where countries that have** so far **failed to embrace modernization and its pacifying spin-off effects continue to be engaged in wars** among themselves, as well as with developed countries.¶ While the trend is very real, **one wonders if the** near **disappearance of armed conﬂict within the developed world is likely to** **remain as stark** **as it has been since the collapse of communism**. **The post-Cold War moment** may turn out to **be** a **ﬂeeting** one. **The probability of major wars within the developed world remains low**—because of the factors already mentioned: increasing wealth, economic openness and interdependence, and nuclear deterrence. **But the deep sense of change** prevailing since 1989 **has been based on the far more radical notion that the triumph of capitalism** also **spelled the irresistible ultimate victory of democracy**; and that in an afﬂuent and democratic world, major conﬂict no longer needs to be feared or seriously prepared for. **This notion**, however, **is** **fast eroding** **with the return of capitalist non-democratic great powers that have been absent from the international system since 1945**. Above all, there is the formerly communist and fast industrializing authoritarian-capitalist **China**, whose massive growth **represents the greatest change in the global balance of power. Russia**, too, **is retreating from its postcommunist liberalism and assuming an increasingly authoritarian character**.¶ **Authoritarian capitalism may be more viable than people tend to assume**. 8 The communist great powers failed even though they were potentially larger than the democracies, because their economic systems failed them. By contrast, the **capitalist authoritarian/totalitarian powers during the ﬁrst half of the twentieth century, Germany and Japan**, particularly the former, **were as efﬁcient economically as**, **and** if anything **more successful militarily than,** **their democratic counterparts**. They were defeated in war mainly because they were too small and ultimately succumbed to the exceptional continental size of the United States (in alliance with the communist Soviet Union during the Second World War). However, the **new non-democratic powers are both** **large and capitalist.** **China** in particular **is the largest player in the international system in terms of population and is showing spectacular economic growth** that within a generation or two is likely to make it a true non-democratic superpower.¶ Although **the return of capitalist non-democratic great powers** does not necessarily imply open conﬂict or war, it **might indicate that the democratic hegemony since the Soviet Union’s collapse could be** **short-lived** **and that** **a universal ‘democratic peace’ may still be far off**. The new capitalist authoritarian powers are deeply integrated into the world economy. They partake of the development-open-trade-capitalist cause of peace, but not of the liberal democratic cause. Thus, it is crucially important that any protectionist turn in the system is avoided so as to prevent a grab for markets and raw materials such as that which followed the disastrous slide into imperial protectionism and conﬂict during the ﬁrst part of the twentieth century. Of course, the openness of the world economy does not depend exclusively on the democracies. In time, China itself might become more protectionist, as it grows wealthier, its labour costs rise, and its current competitive edge diminishes.¶ With the possible exception of the sore Taiwan problem, China is likely to be less restless and revisionist than the territorially conﬁned Germany and Japan were. Russia, which is still reeling from having lost an empire, may be more problematic. However, **as China grows in power, it is likely to become more assertive,** **ﬂex its muscles, and behave like a superpower**, even if it does not become particularly aggressive. The **democratic and non-democratic powers may coexist more or less peacefully**, albeit warily, side by side, armed because of mutual fear and suspicion, as a result of the so-called ‘security dilemma’, and against worst-case scenarios. **But there is** also **the prospect of** **more antagonistic relations**, **accentuated ideological rivalry**, **potential and actual conﬂict,** **intensiﬁed arms races**, and even new cold wars, with spheres of inﬂuence and opposing coalitions. Although great power relations will probably vary from those that prevailed during any of the great twentieth-century conﬂicts, as conditions are never quite the same, they may vary less than seemed likely only a short while ago.

**Specifically, re-affirmation of rule of law principles on detention causes Iraqi modelling – that staves off civil war**

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As the foregoing examples illustrate, **foreign governments rely on the precedent set by the U.S. and this Court when addressing new and complex issues in times of conflict**. **Finding for the Petitioners in the present case will reaffirm this Court’s leadership in promoting respect for rule of law in foreign states during times of conflict.** B. **Foreign Judges Follow U.S. and Supreme Court Leadership in Times of Conflict.** In addition to its work advising foreign governments, **PILPG has been and continues to be involved in a number of judicial training initiatives in foreign states**. **These initiatives aim to foster independent and fair judicial systems in transitional and post-conflict states throughout Central and Eastern Europe, Africa, and the Middle East**. In these trainings, **PILPG frequently relies on the work of this Court to illustrate and promote adherence to the rule of law**. In 2004, for example, **PILPG led a week-long training session for Iraqi judges** in Dubai **on due process and civil liberties protections** to institute in the new post-Saddam legal system. Th**e training was seen as an important step toward the democratization of Iraq**, and something that would hasten the ability of the U.S. to withdraw its troops from Iraq. **On the second day** of the training program, local and **international media published the leaked photos of the abuses at Abu Ghraib.** **The Iraqi judges would not allow the training sessions to continue until PILPG answered to their satisfaction questions about whether the U.S. judicial system could ensure that the perpetrators would be brought to justice**, that the victims would be able to bring suit for their injuries, and that the abuses would be halted. When PILPG returned for another training session several months later, **the Iraqi judges had mixed reactions to the prosecutions of the Abu Ghraib perpetrators**. **Some judges perceived the U.S. Prosecutions of the perpetrators as not aggressive enough, which left the Iraqi judges with the impression that the U.S. was not leading by example**. Although other Iraqi judges appreciated and sought to follow the U.S. example to try those responsible for abuses before an independent tribunal, it was clear that **Abu Ghraib temporarily set back U.S. efforts to establish rule of law in Iraq.** A year later, in 2005, **PILPG conducted training sessions for the Iraqi high tribunal judges who would be presiding over the trial of Saddam Hussein** and other former leaders of the ba’athist regime. Even more than the human rights training of ordinary Iraqi judges discussed above, **the successful operation of the Iraqi high tribunal was seen as critical to suppressing the spread of sectarian violence and heading off a full-scale civil war in Iraq**. The objectives of the tribunal were twofold. First, the tribunal sought to bring those most responsible for the atrocities committed under the Ba’athist regime before an independent panel of judges to be tried under international standards of justice. Second, the tribunal sought to establish a model for upholding and implementing rule of law in Iraq and to demonstrate that the need for rule of law is greatest in response to the gravest atrocities. During the training sessions, **the Iraqi judges requested guidance on controlling disruptive defendants in the courtroom**. Specifically, **the judges asked whether they could bind and gag the defendants in the courtroom as they understood had been done to the defendants in the 1969 “Chicago Seven” trial in the U.S.** **PILPG explained that the U.S. Court of Appeals had ultimately overturned the convictions** in that case, in part because of the mistreatment of the defendants in the courtroom. United States v. Dellinger, 472 F.2d 340 (7th Cir. 1972). **This information persuaded the Iraqi judges to seek less draconian means of control** in the trial of Saddam Hussein, which was televised gavel to gavel in Iraq. See generally Michael Newton and Michael Scharf, Enemy of the State: The Trial and Execution of Saddam Hussein (2008). **Foreign judicial interest in U.S. respect for rule of law during the war on terror is not limited to Iraqi judges**. In 2006, PILPG conducted sessions in a weeklong rule of law training program in Prague for fifty judges from former Soviet Bloc countries in Eastern Europe. At the start of the first session, one of the judges asked “Sobriaetes’ li vi goverit’ o slone v komnate?,” which translates to “Are you going to be addressing the elephant in the room?” Michael P. Scharf, The Elephant in the Room: Torture and the War on Terror, 37 Case W. Res. J. Int’l L. 145, 145 (2006). **The question referred to the so-called “White House Torture Memos,” released just before the training session began**, which asserted that Common Article 3 of the 1949 Geneva Conventions was not applicable to detainees held at Guantanamo Bay and which **provided justification for Military Commissions whose procedures would not meet the Geneva standards**. Id. at 145-46. **The group of judges asked PILPG to explain “how representatives of the U**nited **S**tates **could expect to be taken seriously in speaking about the importance of human rights law when the United States itself has recently done so much that is contrary to that body of law in the context of the so-called ‘Global War on Terror.**’” Id. at 145. PILPG addressed judges’ concerns by explaining that the President’s decision to establish Military Commissions via Executive Order, and whether those Commissions had to comport with the Geneva Conventions, was currently being reviewed by this Court in Hamdan v. Rumsfeld, 548 U.S. 557 (2006), and that the Executive Branch would be bound to follow the holding of this Court. Scharf, supra, at 148. **Foreign judges closely follow the work of this Court and the example set by the U.S. Government in upholding the rule of law during the war on terror**. **As these examples illustrate, when the U.S. upholds the rule of law, foreign judges are more likely to follow.**

**Democratic stability prevents outbreak of Middle Eastern war – the threat is under-estimated**

**Cordesman 13**, Anthony H. Cordesman holds the Arleigh A. Burke Chair in Strategy at CSIS, Iraq: The New Strategic Pivot in the Middle East, http://csis.org/publication/iraq-new-strategic-pivot-middle-east

**It is hard to determine why Iraq receives so little U.S. attention as it drifts towards sectarian conflict, civil war, and alignment with Iran. Tensions** in Iraq **have been rising** for well over a year, and **the UN warned** on June 1, 2013 that “1,045 Iraqis were killed and another 2,397 were wounded in acts of terrorism and acts of violence in May. The number of civilians killed was 963 (including 181 civilian police), and the number of civilians injured was 2,191 (including 359 civilian police). A further 82 members of the Iraqi Security Forces were killed and 206 were injured.”

This **neglect may be a matter of war fatigue**; the result of a conflict the United States “won” at a tactical level but seems to have lost at a strategic level. It may be the result of the fact the civil war in Syria is more intensive, produces more human suffering, and is more open to the media. The end result, however, is that that **the U**nited **S**tates **is just beginning to see how much of a strategic pivot Iraq has become**.

The **strategic map of the region is changing and Iraq’s role** in that change **is critical. It used to be possible to largely separate the Gulf and** the **Levant. One set of tensions focused on the Arab-Israel conflict versus tensions focused on the Gulf. Iraq stood between them. It sometimes became a crisis on its own but always acted as a strategic buffer between two major subregions in the Middle East.**

However, it has become clear over the last year that the upheavals in the Islamic and Arab world have become a clash within a civilization rather than a clash betweencivilizations. The Sunni vs. Alewite civil war in Syria is increasingly interacting with the **Sunni versus Shi’ite tensions in the Gulf that are edging Iraq back towards civil war. They also interact with the Sunni-Shi’ite, Maronite, and other** confessional **struggles in Lebanon**.

**The “Kurdish problem**” now **spreads from Syria to Iraq to Turkey to Iran**. The question of Arab identity versus Sunni or Shi’ite sectarian identity divides Iraq from the Arab Gulf states and pushes it towards Iran. **Instead of terrorism we have counterinsurgency, instability, and religious and ethnic conflict.**

**For all the current attention to Syria, Iraq is the larger and more important state**. Iraq **is a nation of 31.9 million** and Syria is a nation of 22.5 million. **Iraq has the larger economy**: Iraq has a GDP of $155.4 billion, and Syria had a GDP of $107.6 billion in 2011, the last year for which there are useful data. Most important, **Iraq is a critical petroleum state** and Syria is a cypher. Iraq has some 143 billion barrels worth of oil reserves (9 percent of world reserves) and Syria has 2.5 billion (0.2 percent). Iraq has 126.7 has trillioncubic meters of gas, and Syria has 10.1. **Iraq has a major impact on the overall security of the Gulf, and some 20 percent of the world oil** and LNG exports **go through the Gulf**.

This does not mean the conflict in Syria is not tragic or that it is not important. But from a practical strategic viewpoint, **Iraq divided Iran from the Arab Gulf states. Iraqi-Iranian tensions acted as a strategic buffer between Iran and the rest of the Middle East for half a century** between the 1950s and 2003. **Today, Iraq has s Shi’ite government with close links to Iran and is a military vacuum. Iraq’s Shi’ite leaders treat its Sunnis and Kurds more as a threat than as countrymen. Its Arab neighbors treat Iraq’s regime more as a threat than an ally, and the growing Sunni-Shi’ite tension in the rest of the region make things steadily worse in Iraq and drive it towards Iran.**

**If Iraq moves towards active civil war**, its **Shi’ites will be driven further towards Iran and Syria. If Assad survives and the Arab Gulf states continue to isolate Iraq**, the largely token U.S. presence in Iraq is likely to become irrelevant and **Iraq is likely to become part of a “Shi’ite” axis going from Lebanon to Iran. If Assad falls, and U.S. and Gulf Arab tensions with Iran continue to rise, Iran seems likely to do everything it can to replace its ties to Syria with influence in Iraq.**

If Iraq moves towards active civil war, its Shi’ites will be driven further towards Iran and Syria. If Assad survives and the Arab Gulf states continue to isolate Iraq, the largely token U.S. presence in Iraq is likely to become irrelevant and Iraq is likely to become part of a “Shi’ite” axis going from Lebanon to Iran. If Assad falls, and U.S. and Gulf Arab tensions with Iran continue to rise, Iran seems likely to do everything it can to replace its ties to Syria with influence in Iraq.

Arab and Turkish pressure on Iraq seems more likely to push Iraq towards Iran than away from it. **If Iraq becomes caught up in sectarian and ethnic civil war, this will push its Shi’ite majority towards Iran, push its Kurds toward separatism, and push the Arab states around Iraq to do even more to support Sunni factions in Lebanon, Syria, and Iraq while suppressing their own Shi’ites**.

The United States has limited cards to play. The U.S.-Iraqi Strategic Framework Agreement exists on paper, but it did not survive the Iraqi political power struggles that came as the United States left. The U.S. military presence has been reduced to a small U.S. office of military cooperation at the U.S. Embassy in Baghdad and it is steadily shrinking. The cumbersome U.S. arms transfer process has already pushed Iraq to buy arms from Russia and other suppliers. The U.S. State Department’s efforts to replace the military police training program collapsed before they really began. The United States is a marginal player in the Iraqi economy and economic development, and its only aid efforts are funded through money from past years. The State Department did not make an aid request for Iraq for FY2014.

However, it is far from clear that Prime Minister Nouri al-Maliki or most of the Shi’ite ruling elite really want alignment with Iran or that anyone in Iraq wants civil war. A revitalized U.S. office of military cooperation and timely U.S. arms transfer might give the United States more leverage, and U.S. efforts to persuade Arab Gulf states that it is far better to try to work with Iraq than isolate it might have a major impact. Limited and well-focused U.S. economic and governance aid might improve leverage in a country that may have major oil export earnings but whose economy needs aid in reform more than money and today has the per capita income of a poverty state, ranking only 162 in the world.

Making Iraq a major strategic focus in dealing with Turkey and our Arab friends and allies might avoid creating a strategic bridge between Iran and the Gulf states. It might limit the growing linkages between the tensions and conflicts in the Gulf and those in the Levant, and help secure Jordan, Lebanon, and Egypt. It would not be a major expense to give the State Department’s country team in Baghdad all of the aid resources it needs to move Iraq towards economic reform and a stable military.

Even limited success in damping down internal conflict in Iraq and helping Iraq keep a distance from Iran might save the United States far more, even in the short run, than substituting strategic neglect for strategic patience. It also might help prevent Iraq from becoming a far worse civil conflict than now exists in Syria, **fueling the religious war** between Sunnis and Shi’ites, **which can turn** a clash withina civilization **into a serious war and spill over into terrorism in the West**.

**Extinction**

**Russell 9** James, Senior Lecturer Department of National Security Affairs, Spring, “Strategic Stability Reconsidered: Prospects for Escalation and Nuclear War in the Middle East” Security Studies Center Proliferation Papers, http://www.analyst-network.com/articles/141/StrategicStabilityReconsideredProspectsforEscalationandNuclearWarintheMiddleEast.pdf

**Strategic stability in the region is thus undermined by various factors**: (1) **asymmetric interests in the bargaining framework that can introduce unpredictable behavior from actors;** (2) **the presence of non-state actors that introduce unpredictability into relationships** between the antagonists; (3) **incompatible assumptions about the structure of the deterrent relationship** that makes the bargaining framework strategically unstable; (4) **perceptions by Israel and the United States that its window of opportunity for military action is closing, which could prompt a preventive attack**; (5) **the prospect that Iran’s response to pre-emptive attacks could involve unconventional weapons, which could prompt escalation** by Israel and/or the United States; (6) **the lack of a communications framework to build trust and cooperation among framework participants.** These systemic weaknesses in the coercive bargaining framework all suggest that **escalation by any the parties could happen either on purpose or as a result of miscalculation or the pressures of wartime circumstance**. Given these factors, **it is disturbingly easy to imagine scenarios under which a conflict could quickly escalate in which the regional antagonists would consider the use of chemical, biological, or nuclear weapons. It would be a mistake to believe the nuclear taboo can somehow magically keep nuclear weapons from being used in the context of an unstable strategic framework. Systemic asymmetries between actors in fact suggest a certain increase in the probability of war – a war in which escalation could happen quickly and from a variety of participants. Once such a war starts, events would likely develop a momentum all their own and decision-making would consequently be shaped in unpredictable ways**. The international community must take this possibility seriously, and muster every tool at its disposal to prevent **such an outcome**, which **would be an unprecedented disaster for the peoples of the region, with substantial risk for the entire world.**

**Checks on escalation are insufficient**

**Singh 11**, Washington Institute director, 9/22, “What has really changed in the Middle East?”, http://shadow.foreignpolicy.com/posts/2011/09/22/what\_has\_really\_changed\_in\_the\_middle\_east

Third, and **most troubling, the Middle East is likely to be a more dangerous and volatile region in the future. For the past several decades, a relatively stable regional order has prevailed**, centered around Arab-Israeli peace treaties and close ties between the United States and the major Arab states and Turkey. **The region was not conflict-free by any means**, and Iran, Iraq, and various transnational groups sought to challenge the status quo, albeit largely unsuccessfully. **Now, however, the United States appears less able or willing to exercise influence in the region, and the leaders and regimes who guarded over the regional order are gone or under pressure. Sensing either the need or opportunity to act autonomously, states like Turkey, Saudi Arabia, and Iran are increasingly bold, and all are well-armed and aspire to regional leadership. Egypt**, once stabilized, **may join this group. While interstate conflict is not inevitable by any means, the risk of it has increased and the potential brakes on it have deteriorated**. Looming over all of this is Iran's quest for a nuclear weapon, which would shift any contest for regional primacy into overdrive.

**The plan is necessary for Nepalese modelling**

**Scharf 9**, Professor Michael P. Scharf, PILPG Managing Director, John Deaver Drinko — Baker & Hostetler Professor of Law and Director of the Frederick K. Cox International Law Center at the Case Western Reserve University School of Law, BRIEF OF THE PUBLIC INTERNATIONAL LAW & POLICY GROUP AS AMICUS CURIAE IN SUPPORT OF PETITIONERS, www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuPILPG.authcheckdam.pdf

II. PILPG’S EXPERIENCE ADVISING FOREIGN GOVERNMENTS AND JUDICIARIES ILLUS- TRATES THE IMPORTANCE OF SUPREME COURT PRECEDENT IN PROMOTING RULE OF LAW IN FOREIGN STATES DURING TIMES OF CONFLICT. During PILPG’s work providing pro bono legal assistance to foreign governments and judiciaries on the rule of law in conflict and post-conflict settings, clients frequently request guidance on U.S. laws and the role of the judiciary in the U.S. system of governance. In recent years, as **states** have **watched the U.S. tackle the legal issues surrounding the war on terror, foreign governments and judiciaries have expressed keen interest in, and have demonstrated reliance on, the legal mechanisms the U.S. has adopted to address the challenges presented in this new form of conflict. The** **U.S.** Government, **under the guidance of this Court, has set a strong example for upholding the rule of law during times of conflict, and foreign governments have followed this lead**. When states follow the example set by the U.S. Government, the U.S. can benefit greatly. The U.S. Government recognizes that foreign states with strong and independent judicial systems and a commitment to the rule of law make the most stable allies and partners. Stable allies and partners in turn create the best environment for U.S. business investments and commerce and provide the most safety for Americans traveling abroad. Through PILPG’s work with foreign governments, PILPG has observed that U.S. rule of law interests are best represented abroad when foreign governments view the U.S. as committed to the primacy of law. A. Foreign Governments Rely on U.S. Precedent to Promote Rule of Law in Times of Conflict. As noted above, PILPG has advised over two dozen states and governments on the negotiation and implementation of peace agreements and the drafting of post-conflict constitutions. PILPG has also advised all the international war crimes tribunals. PILPG frequently serves as pro bono counsel to foreign governments and judiciaries, advising those governments and judiciaries on important legal issues during times of transition. PILPG’s unique relationship with its clients provides the organization’s members with rare insight into the decision-making process of foreign governments and judiciaries and the influence that the U.S. and this Court have on promoting rule of law during times of conflict. The following examples, from Uganda, Nepal, Somaliland, and South Sudan, illustrate some of the ways in which foreign governments and judiciaries rely on the leadership of the U.S. and this Court to promote rule of law in their home states. i. Uganda In Uganda, the precedent established by this Court in Hamdan v. Rumsfeld, 548 U.S. 557 (2006), and Boumediene v. Bush, 128 S.Ct. 2229 (2008), influenced judges and legislators to incorporate the principles of judicial review and enforceability in their domestic war crimes bill. In 2008 members of PILPG began working with the Government of Uganda to establish a War Crimes Chamber within the Ugandan High Court to prosecute members of the Lord’s Resistance Army (LRA). The LRA is an insurgent group operating in Northern Uganda, which, over the past twenty-five years, has kidnapped over sixty thousand young Ugandan girls and boys, and forced them to be sex slaves and child soldiers. PILPG worked closely with the Ugandan government to establish a judicial mechanism to address this violence in accordance with international legal standards. After discussing with PILPG this Court’s holdings in Hamdan and Boumediene, the Ugandan government decided to include a provision in their bill establishing the War Crimes Chamber that provides for appeal to Uganda’s highest court. Following the example of the U.S., the Ugandans felt that it was important that such high profile and controversial cases involving war crimes and terrorism should be subject to the highest level of judicial review in order to promote independence, fairness, and legitimacy. Provided that this Court issues a robust interpretation of Boumediene, the Ugandan precedent is likely to be repeated by other countries, such as Liberia, which are also contemplating the establishment of judicial bodies to prosecute war crimes and terrorism. ii. Nepal **This Court** has also **served as a model for the nascent Nepal judiciary. Nepal’s 2006 Comprehensive Peace Agreement ended a decade-long civil conflict between Maoist insurgents and government forces. The Agreement provided for the election of a Constituent Assembly to serve as an interim government and to draft a new constitution for Nepal.** Elected in May 2008, the Constituent Assembly is currently in the midst of the constitution drafting process. PILPG is advising the Assembly’s drafting committees on a number of issues, among them the structure, composition, and role of the judiciary. **Members of the Assembly** have **repeatedly expressed the view that the judiciary is a crucial component to fully and effectively implementing the constitution and ensuring the balance of power in the new government.** In technical discussions with members of the Committee on the Judicial System, PILPG discussed several aspects of the U.S. judicial model, including: the U.S. federal and state judicial structures; the types of cases the Supreme Court can adjudicate; the powers and functions of the U.S. judicial branch; the devolution of judicial power in the U.S.; the role of the Supreme Court in establishing precedent for all U.S. courts; and the mechanisms used by the Supreme Court to ensure enforcement of its decisions in the lower courts. **Members of the Committee on the Judicial System were particularly interested in how the U.S. federal court system operates at the national level, and how the U.S. model could be applied in Nepal as Nepal moves towards decentralizing its court system. As the Constituent Assembly moves forward with developing constitutional and judicial structures for Nepal, members will continue to look to the functioning of this Court for guidance on the role of a high court in a federal system, particularly how this Court enforces key decisions in the lower courts**.

**That solves corruption**

**Sanghera 11,** Office of the High Commissioner for Human Rights in Nepal, Nepal Bar Association (NBA) Interaction on Independence of Judiciary for Human Rights, http://nepal.ohchr.org/en/resources/Documents/English/statements/HCR/Year2011/May/2011\_05\_26\_Speech\_NBA\_Interaction\_on\_Independence\_of\_Judiciary\_for\_HR\_E.pdf

• **It is crystal clear that judicial Independence is a matter of human rights. Independent judiciary is a must for rule of law and effective protection of fundamental** human **rights** and freedoms of the people. If we take a look at universal bills of human rights, we can see a number of references to independent judiciary. For instance, Article 8 of UDHR provides, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” • This has also been incorporated in ICCPR. Article 2(3) of the ICCPR obliges the State to ensure that the right to a remedy is determined by competent judicial, legal or administrative authorities while the Article 14 (1) of the ICCPR guarantees the right to equality before the courts and tribunals and right to a fair and public hearing by a competent, independent and impartial tribunal. In response to Gonzalez del Rio v. Peru (1992) case, the UN Human Rights Committee labeled this right as “an absolute PAGE: 2 right that may suffer no exception”. UN HRC further recognizes that the independence of judiciary consist of a number of things including "actual independence of the Judiciary from the executive branch and the legislative’. • Independence of judiciary has been recognized as an unchallengeable principle globally. This principle received considerable elaboration in the UN Basic Principles on the Independence of the Judiciary (1985), which urges the States to ensure institutional as well as functional independence of judiciary. In this regard, allow me to remind you what these principles mainly require: constitutional guarantee that the judiciary is independent of the other branches of government; non-interference in internal matters of judicial administration; independence in financial matters and a provision of sufficient funds to perform their functions efficiently; the duty of others to respect judicial independence and observe the judicial decisions; jurisdictional exclusivity over all issues of a judicial nature (ban on exceptional or military courts); finality of decisions, meaning that the decisions of the courts are not subject to any revision outside the judiciary; and right and duty of the Judiciary to ensure fair court proceedings and reasoned decisions. • In terms of functional independence, UN Principles on Independence of Judiciary stand for a transparent and representative system of appointments by an independent body based on professional qualifications and personal integrity; security of tenure and adequate remuneration; effective and independent disciplinary mechanisms; right of judges to join professional associations; independence of judges in the performance of professional duties; a right and a duty to decide cases according to law; promotion of judges on basis of objective factors; and removal only for reasons of ‘incapacity or behaviour that renders them unfit to discharge their duties’. • I am pleased to note that Nepal has a strong constitutional tradition of guaranteeing fundamental rights together with an independent judiciary as an immutable safeguard for such rights. Since the **ongoing Constitution-making process offers an historic opportunity to strengthen the foundation for the Nepalese State firmly grounded on respect for human rights and justice, it is crucial** that **the** Constituent **Assembly** further **strengthen the independence of the judiciary at the highest level in order to enable** PAGE: 3 **Nepali people to receive an appropriate remedy determined by competent and independent judicial institutions. In this regard, it is highly important to ensure an independent check and balance through judiciary against legislative and executive excesses encroaching upon fundamental rights and freedoms**. • Experience from around the world tells us that even the most perfectly drafted Constitution does not, in itself, guarantee the enjoyment of human rights. The **rights** recognized in the Constitution **must be given effect by independent bodies**. In this **regard, strong independent judiciary with sufficient power to hold the Government to account, and** national human rights institutions that can **adjudicate complaints of human rights violations are vital for effective accountability mechanisms**.

**It’s accelerating now and will collapse Nepal**

**Brown 12**, [Seyom Brown](http://www.smu.edu/Dedman/FacultyAndStaff/Directory/BrownSeyom) is a professor of international politics and national security at Southern Methodist University. [Vanda Felbab-Brown](http://www.brookings.edu/experts/felbabbrownv.aspx) is a fellow in foreign policy at the Brookings Institution, **Nepal, On the Brink of Collapse**, http://www.nytimes.com/2012/06/06/opinion/nepal-on-the-brink-of-collapse.html?\_r=3&ref=opinion&

FOR more than two decades, Nepal, a resource-rich, impoverished country wedged between China and India, has teetered between paralysis and upheaval. Its people have witnessed the transition, in 1990, from an authoritarian Hindu kingdom to a constitutional monarchy; the massacre of members of the royal family in 2001 by the heir to the throne; a decade-long civil war between Maoist insurgents and the government that ended in a faltering peace agreement in 2006; and the removal of the monarchy altogether in 2008.

**Since the civil war ended**, after the loss of more than 16,000 lives, **a stalemate** has **ensued as each party caters to caste, class and ethnic divisions instead of national unity**. Many politicians are maneuvering to get their hands on money from foreign aid, tourism and hydropower; even the Maoists have become crony capitalists, reaping large profits for themselves and their ostensibly proletarian party. Meanwhile, the bureaucracy, army and police — historically dominated by privileged social groups that never held them accountable — are becoming even more politicized and corrupt.

Although **Nepal is no stranger to crises, the one currently seizing the country risks turning it into a failed state**. On May 27, the 601-member legislature, which had been directed to write a new constitution for what is now a democratic republic, missed its deadline for the fourth time since it was created in 2008. Hours before the deadline, after the Supreme Court refused to grant another extension, the Maoist prime minister, Babur/am Bhattarai, dissolved the legislature, known as the Constituent Assembly, and scheduled nationwide elections for Nov. 22. Although averting imminent political disaster and violence, the call for elections is unlikely to bring consensus among the self-interested and fractious political leaders, and is quite likely to produce an even more divided legislature.

The **fitful struggle to develop a constitution both epitomizes and exacerbates the country’s ethnic, religious, geographical, caste and class divisions. More than 90 languages are spoken in this country, about the size of Illinois. Buddhists and Muslims are sizable minorities among the largely Hindu population. Lower-caste people and rural residents have been historically marginalized**; the **grievances run deep**. However, instead of unifying the country, constitution-drafting has become a frenzied contest to secure special privileges for one’s own community.

By making promises they can’t fulfill, **politicians are losing control of the very animosities they’ve whipped up**. Political parties have organized paralyzing protests, with barricades and roadblocks, to demand, or oppose, separate ethnic- and caste-based states within a federal system. The **protests** have **shut down commercial activity across a country that can ill afford such losses: with a per-capita gross domestic product of $490, Nepal is one of the poorest countries in the world; unemployment is at 45 percent.**

The parties are using criminal groups to recruit stick-wielding youths to protest. Induced by a fistful of rupees, a rare treat of a meat meal and an illusion of empowerment, these youth have roughed up drivers and set fire to vehicles that attempt to pass the barriers. Some groups have attacked journalists. Reinforced by former fighters, the Maoist party is among the most effective in demonstrating its street might. Fearing a loss of power, the traditional economic and political elite, the Brahmin and Chhetri castes, who dominate the Nepali Congress Party, have begun to emulate the Maoists’ street tactics.

On Monday, in a move symptomatic of the mistrust and cynicism, dozens of political parties, including the Nepali Congress, raised suspicions about the Maoists’ motives in dissolving the Constituent Assembly and called for protests against its dissolution. Few Nepalis expect the present situation to explode into another civil war, but increasingly brazen and regular acts of violence in the capital demonstrate that lawlessness has reached crisis proportions.

**With most institutions malfunctioning and the system of patronage deeply ingrained, bribery and political connections rule the day. Individual acts of courage against corruption are cause for hope, but to fully restore the rule of law, and respect for it, Nepal needs to step up its efforts to improve public integrity**. A prominent anti-corruption agency has been leaderless for over a year as parties bicker over who should lead it.

**That goes nuclear**

**Poudel 2** (Keshab, Looming Uncertainty, The National NewsMagazine, 21(34), 3-8,

http://www.nepalnews.com.np/contents/englishweekly/spotlight/2002/mar/mar08/national2.htm)

Following the September 11 terrorist attacks, however, the United States and western European countries have been expressing solidarity with Nepal. The visit of US Secretary of State Colin Powell and expressions of concern from other western powers over the last three months underscore how the dimensions of violence in Nepal has extended beyond its frontiers. After the government imposed the state of emergency and the Maoist launched deadly assaults in Achham and Salyan districts, **western powers have increased their interest in the kingdom**. The growing concern expressed by Washington and European powers is understandable, as **escalating violence and instability in Nepal could heighten the possibility of external intervention. Such intervention from** either of Nepal's two neighbors — **India and China — may trigger a direct conflict between the two. Even an indirect conflict** between the two Asian powers **could prove** to be **more dangerous than** the confrontation between **India and Pakistan**. Foreign-relations experts say the recent visit of British Foreign Office Minister Ben Bradshaw to Nepal and US Ambassador Michael E. Malinowski trip to Achham and Salyan are clear indicators of Nepal's geo-strategical importance. Another senior US diplomat, A. Peter Burleigh, spoke more candidly about US concerns over the possibility of a prolonged confrontation. "[W]hen situations arise that challenge that positive world order, and which can be addressed by a collective response, it is the responsibility and obligation of all of our countries to come together to restore and preserve the peace," said Ambassador Malinowski in an address to a seminar on South Asian Peace Operations. "Here in Nepal, as we all know, there is no peace. But I do believe that there are lessons for both those of us who live in Nepal and for the international community," he said. Nepal's Position in South Asia Nepal has been ensnared in political instability following the restoration of democracy in 1990. After the Maoist insurgency began in 1996, the kingdom's economic, security and political processes have been thrown into a tangle. According to the Central Bureau of Statistics, Nepal has a length of 885-km (east-west) and a non-uniform mean width of 193-km (north-south). The kingdom shares a frontier of more than 1400 km with China in north and more than 1600 km with India in the east, west and south. The Nepal-India border is open and easy to cross. Although the frontier with China is more or less open, it straddles rugged mountain terrain. It is impossible to build border posts along the border with either country. Therefore, **the geographical position of Nepal has been psychologically threatening** to both neighbors. "**China appears very sensitive towards** activities against her in neighboring countries, including **Nepal**. China's security concern is indicated from [the visits of its] defense minister, senior army officials and home ministry officials from time to time," says Hiranya Lal Shrestha, a foreign relations expert in his article "Nepal-India Relations: Security Issue" published in Policy Study Series by the Institute of Foreign Affairs (November 2000). "At the same time, **we** cannot **overlook** the **weaknesses of a landlocked state.** **Indian security perception regards the Himalayas as its sphere of influence**. Since 14.9 percent of Nepal's territory lies to the north of the Himalayas, we may have to be divided into two spheres of influence if the northern neighbour also puts forward similar logic concerning its security perception. Nepal, in brief, does not want to remain under anyone's sphere of influence," says Shrestha. Be it the British Raj or independent India, Chinese influence in Nepal has always been a matter of concern to leaders of the south neighbor. In the book, "Life of Brian Houghton Hodgson, the British Resident at the Court of Nepal", William Wilson Hunter mentions how the British government was worried about Nepal's relations with China in 18th century. "But my situation by no means so agreeable as it might be if these barbarians did but know their own good. Instead of which they are insolent and hostile and play off on us, as far as they can dare, the Chinese etiquette and foreign polity. The Celestial Emperor is their idol, and, by the way, whilst I write, the  [Nepalese] sovereign himself is passing by the Residency in all royal pomp to go three miles in order to receive a letter which has just reached Nepal from Pekin. There they go! Fifty chiefs on horseback, royalty and royalty's advisors and on eight elephants and three thousand troops before and behind the cavalcade! They have reached the spot. The Emperor's letter, enclosed in a cylinder covered with brocade, hangs round the neck of a chief; who mounted on a spare elephant, is placed at the head of the cavalcade, and the cortege," writes Hodgson in a letter. This reflected how assertive and powerful the Chinese were in the internal dimensions of Nepalese politics in the 18th century. After independence, Indian leaders have been equally concerned about security issues, considering Nepal and Tibet to be the soft underbelly of their own country's security. "This is altogether more inexplicable when one examines the rapidity with which Nehru reacted to events in Nepal in the mid-fifties, forcefully intervening there to restore the Nepalese monarchy. **Nepal** and Tibet were both Himalayan kingdoms, both were **of vital strategic importance to India**, and they were both afflicted, almost simultaneously, whether externally or internally, and yet India and its political leadership reacted differently," writes Indian Foreign Minister Jaswant Singh in his book "Defending India". Referring to India's security, Indian Prime Minister Jawahar Lal **Nehru once observed: "Now our interest in the internal conditions of Nepal became still more acute** and personal, if I may say so, **because of** the developments in China and **Tibet**, to be frank. And regardless, of our feelings about Nepal, we were interested in our country's border. We have had from immemorial time a magnificent frontier, that is to say, the Himalayas are concerned, and they lie on the other side of Nepal. Therefore, the principal barrier to India lies on the other side of Nepal. Therefore, the principal barrier to India lies on the other side of Nepal and we are not going to tolerate any person coming over that barrier. Therefore, much as we appreciate the independence of Nepal, we cannot risk our own security by anything going wrong in Nepal." For his part, Li Peng, the chairman of China's National People's Congress, openly expressed China's security concerns in Nepal during the visit of Sher Bahadur Deuba in 1998 as a former prime minister. **South Asia has three nuclear powers, India, China and Pakistan. Two powers, China and India, are competing for the status of regional power. Any form of direct confrontation between China and India in the south of the Himalayas will have far-reaching consequences.**

**Goes nuclear --- it’s on hair-trigger alert**

**Sullivan and Massa 10**, Mr. Sullivan is research fellow and program manager at the American Enterprise Institute's Center for Defense Studies. Mr. Mazza is a senior research associate at AEI, http://online.wsj.com/news/articles/SB10001424052748703384204575509163717438530

India and Pakistan are the two countries **most likely to engage in nuclear** war, or so goes the common wisdom. Yet **if recent events are any indication, the world's most vigorous nuclear competition may well erupt between** Asia's two giants: **India and China**.

Both countries already house significant and growing arsenals. China is estimated to have approximately 450 warheads; India, roughly 100. Though intensifying as of late, Sino-Indian nuclear competition has a long history: India's pursuit of a weapons program in the 1960s was triggered in part by China's initial nuclear tests, and the two have eyed one another's arsenals with mounting concern ever since. The competition intensified in 2007, when China began to upgrade missile facilities near Tibet, placing targets in northern India within range of its forces.

Yet **the stakes have been raised yet again** in recent months. **Indian defense minister** A.K. Antony **announced** last month that **the military will** soon **incorporate** into its arsenal **a new intermediate-range missile**, the Agni-III, which is **capable of reaching all of China's major cities**. Delhi is also reportedly considering redeploying survivable, medium-range Agni-IIs to its northeastern border. And just last month, India shifted a squadron of Su-30MKI fighters to a base just 150 kilometers from the disputed Sino-Indian border. An Indian Air Force official told Defense News these nuclear-armed planes could operate deep within China with midflight refueling.

For its part, **China continues to enhance the quality, quantity and delivery systems of its nuclear forces**. The Pentagon reported last month that the People's Liberation Army has replaced older, vulnerable ballistic missiles deployed in Western China with modern, survivable ones; this transition has taken place over the last four years. China's Hainan Island naval base houses new, nuclear-powered ballistic-missile submarines and affords those boats easy access to the Indian Ocean. China's military is also developing a new, longer range submarine-launched ballistic missile which will

# 2AC

**Case**

**Democracy**

**It’s way worse in autocracies**

**Cortright 13**, David Cortright is the director of Policy Studies at the Kroc Institute for Peace Studies at the University of Notre Dame, Chair of the Board of Directors of the Fourth Freedom Forum, and author of 17 books, Kristen Wall is a Researcher and Analyst at the Kroc Institute, Conor Seyle is Associate Director of One Earth Future, Governance, Democracy, and Peace How State Capacity and Regime Type Influence the Prospects of War and Peace, http://oneearthfuture.org/sites/oneearthfuture.org/files//documents/publications/Cortright-Seyle-Wall-Paper.pdf

Other researchers report similar evidence. Reynal-Querol finds that **more than half of the 68 cases of civil wars observed during the period 1960 to 1994 occurred in countries with high levels of autocracy**. Among states with authoritarian governments, she observes, 11 percent experienced internal armed conflict, compared to only 4 percent among states rated free.121 Daniel **Stockemer examines recent data through 2007 and also finds that partial democracies have a higher rate of minor civil conflict (those with fewer than 1,000 deaths) but that autocracies have higher rates of major civil war** (those with more than 1,000 deaths). **Like other scholars, he finds no evidence in recent decades of a major civil conflict in a mature democratic state.122 These studies show that semi-democracies are indeed conflict-prone but not necessarily more so than autocracies**. If there is a U-shaped relationship, it is one in which autocracies and partial democracies have high rates of internal armed violence, while developed democracies have almost none.

**T**

**The President’s war power authority is his ability to conduct war**

Gerald G. **Howard** - Spring, **2001**, Senior Notes and Comments Editor for the Houston Law Review, COMMENT: COMBAT IN KOSOVO: IGNORING THE WAR POWERS RESOLUTION, 38 Hous. L. Rev. 261, LexisNexis

[\*270] **The issue,** then, **becomes one of defining** and monitoring **the authority of the** political **leader** in a democratic nation. **Black's Law Dictionary defines "war power" as "the constitutional authority** of Congress to declare war and maintain armed forces, and **of the President to conduct war as commander-in-chief."** n45 **The** power and **authority of United States political leaders to conduct war stems from** two documents: **the** United States **Constitution and** the **War Powers Resolution**. n46 One must understand each of these sources of authority to properly assess the legality of the combat operations in Kosovo.

**2AC AT: CLS**

**Extinction first --- it results in no value and forecloses the possibility of change**

**Kateb**, Professor of Politics at Princeton University, ‘**92** (George, The Inner Ocean, pg. 141)

But neither of these responses will do in the nuclear situation. **To affirm existence** as **such is to go beyond good and evil;** it is to will its perpetual prolongation for no particular reason. **To affirm existence is not to praise it or love it or find it good. These responses are no more defensible than** their contraries—no more defensible than **calling exis­tence** absurd, or **meaningless,** or worthless. All such responses are appro­priate only for particulars. **Existence does not have systemic attributes** amenable to univocal judgments. At least some of us cannot accept the validity of revelation, or play on ourselves the trick of regarding existence as if it were the designed work of a personal God, or presume to call it good, and bless it as if it were the existence we would have created if we had the power, and think that it therefore deserves to exist and is justifia­ble just as it is. No: these argumentative moves are bad moves; they are hopeless stratagems. **The hope is** to go beyond the need for reasons, **to go beyond the need for justifying existence, and** in doing so to **strengthen,** not weaken, **one's attachment.** Earthly **existence must be preserved** whatever we are able or unable to say about it. **There is no other** human and natural **existence. The alternative is earthly nothingness. Things are better than nothing; anything is better than nothing.**

**Our demand for habeas stops extermination even if it fails**

**Ahmad 9, Professor of Law**

[2009, Muneer I. Ahmad is a Clinical Professor of Law, Yale Law School, “RESISTING GUANTÁNAMO: RIGHTS AT THE BRINK OF DEHUMANIZATION”, Northwestern University Law Review, Vol. 103, p. 1683, American University, WCL Research Paper No. 08-65] we do not endorse gendered language

Rights as Resistance.—Habeas corpus, whose history has been explored exhaustively by others,297 translates as ―show me the body,‖ and captures the communitarian, corporeal, and testimonial dimensions of not just rights claims, but citizenship. For a judge to order the government to produce a defendant for the purposes of considering the legality of his detention is to recognize the defendant‘s a priori membership in the community. To require that the defendant himself—his corpus—be produced, and not just reasons for his detention proffered, is to acknowledge the physicality and inescapably human experience of an otherwise abstract liberty interest. And to permit the defendant to not only attend his own hearing, but to speak on his own behalf, is to credit his standing as an actor and agent. Taken together, the communitarian, corporeal, and testimonial bespeak a shared concern: human dignity. It is this human dignity, the human as distinguished from the merely biological, with which Arendt was fundamentally concerned. For Arendt, rights are indispensable to humanity, a protective membrane poised between the state and the individual. What she saw, and Giorgio Agamben has recently revived,298 is the idea that a confrontation between the state and the individual unmediated by rights reduces the individual to bare life, or naked life,299 which is life without humanity. It is this unmediated, unmitigated confrontation that both requires and enables the rendering of the human inhuman, animal, and savage.300 It is this rights-free confrontation that permits torture—the hand of the state encumbered by no law other than the laws of physics. And it is this unmediated confrontation that permits the transmogrification of a child into a terrorist. For Arendt, to be a citizen is to be human, and to be anything else is merely, and barely, life. The conception of rights as a bare protection interposed between the individual and state violence is intuitively familiar to the anti-death penalty advocate301 and to criminal defense lawyers generally. But the American legal embodiment of citizenship as rights is Dred Scott.302 While Scott was suing for his freedom from slavery, the case turned upon his citizenship. The Supreme Court found that Scott was not a ―citizen of a State,‖ and therefore, under the jurisdictional limits of Article III of the Constitution, could not bring suit in federal court.303 Thus, the case removed Scott‘s right even to be heard, by removing him from the polity. Like the Guantánamo prisoners, he had no right to have rights, and the negation of his political citizenship condemned him to the unmitigated violence of slavery. The denial of habeas to Omar and the other prisoners similarly placed them outside the communitarian consent that rights require. This expulsion from the polity authorizes the expulsion from humanity that torture represents. Here, we must remember that this expulsion was prefigured by the state iconography that placed the prisoners outside the realm of human understanding, and therefore outside of humanity itself.304 Stripped of the mediation of rights, Guantánamo reveals the essential and inescapable violence of law. Politics may dictate who is entitled to mediation and what form it will take, but all are subject to the force of the state that, fundamentally, animates law. The demand for rights is a plea to blunt state force, and not to fundamentally reorganize the structure of power. With this understanding of rights in mind, I return to the litigation strategy we adopted in Omar‘s case. By invoking rights, we sought recognition of Omar in a polity of significance. In this way, rights hailed Omar into the community, though his admission would depend upon community consent. As Arendt‘s analysis suggests, the demand for recognition is tantamount to a claim to humanity.

To be human, to rise above biological existence and to secure political and social life, requires rights. And yet, once more, this bid was subject to political forces. No amount of rights-claiming could overcome a political will to deny the prisoners‘ humanity. In light of this, our strategy can be understood in a third way: rights as resistance. By this account, the rights claim sought not to escape the violence of the state, but to make that violence more costly to the state. To continue its brutal regime at Guantánamo, the government first would have to do violence to rights; to lay its hands on Omar again, the state would have to crash through his rights claims. Rather than avoid the state‘s confrontation with the individual, this strategy seeks to expose it. The onus then shifts from the prisoner trying to establish the existence of rights to the state establishing their nonexistence, from the individual establishing harm done to the state justifying its own violence. In some respects, this strategy has worked. So long as it could avoid any discussion of Guantánamo, as it long attempted to do, the government could enact violence without political cost. But rights claims force the government into discourse in which the violence of the state is put on display and must be justified. The claim of rights itself may interpose a membrane between the state and the individual even if the right itself ultimately is found not to exist. Thus, our rights-based strategy could be understood as interposing a protective membrane between Omar and the state. In this way, we wanted to mediate, and moderate, the relationship between the state and Omar, with the hope of ultimately transforming the relationship from one of potentate and biological mass to one more recognizable as warden and prisoner. This was a form of resistance to Omar‘s mistreatment, which required the state either to stop its violence or to engage in it in the public forum of the court. This approach had some success, as the worst of the mistreatment of Omar and the other prisoners stopped once the government was forced to grapple with it in the daylight of federal court.305 And yet, Omar‘s other fundamental material conditions—indefinite detention, and trial before a substandard tribunal—remained the same, just as the fundamentals of Guantánamo have remained largely the same for the hundreds of other prisoners. At the end of the day, I believe our approach has not proven more successful because the fundamental question of political citizenship has not been resolved in the prisoners‘ favor, and as I have argued, the success of even first-order rights depends upon a priori political membership. When I have rehearsed these arguments for others, particularly lawyers, the response I have often gotten is that we did the best that we could, and that there was no alternative. To argue the existence of rights, and to do so forcefully, is to fulfill the professional obligation of a lawyer. But this strikes me as too weak a conception of professional obligation. I believe that the rights-based approach has been worthy and necessary, but not merely because it was a form of last-resort lawyering. Rather, the rightsbased lawyering has performed an essential role of mounting resistance to the unbridled exercise of state violence, essential not because there is nothing else to be done, but because of the opportunities and potentialities that resistance creates. This is consistent with what Scott Cummings has termed ―constrained legalism,‖ 306 for it capitalizes on what law can accomplish, even as it recognizes what law cannot.

## 2AC CP

**Release happened so no net ben**

**Goldman 12/31**

[12/31/13, Adam Goldman, “Final three Uighur prisoners moved from U.S. military prison at Guantanamo Bay”, <http://www.washingtonpost.com/world/national-security/final-three-uighur-prisoners-moved-from-us-military-prison-at-guantanamo-bay/2013/12/31/834c1eea-7220-11e3-8def-a33011492df2_story.html>]

**The United States has transferred three Uighur** Muslim **detainees to Slovakia from the military prison at Guantanamo Bay**, Cuba, U.S. officials said Tuesday. **They were the last members of the ethnic minority from China to be held at the military prison.** The trio had languished at Guantanamo for more than a decade since their capture in Pakistan after the Sept. 11, 2001, attacks — despite prior military assessments that they had no ties to al-Qaeda or the Taliban.

**Reliance on good faith assurances destroys the writ --- clear directive is key**

**Firestone 12**, JD @ Temple University James E Beasley School of Law, THE BOUMEDIENE ILLUSION: THE UNSETTLED ROLE OF

HABEAS CORPUS ABROAD IN THE WAR ON TERROR, <http://sites.temple.edu/lawreview/files/2012/03/Firestone.pdf>

Redha Al-Najar eventually became one of the petitioners in Al Maqaleh v. Gates, requesting habeas corpus relief and prevailing at the district court level. The Court of Appeals for the D.C. Circuit reversed, however, ruling that it did not possess jurisdiction to issue the writ on behalf of Al-Najar and his fellow petitioners. This ruling was based on an application of the factors relevant to the extent of the writ announced in Boumediene v. Bush, which held that detainees at Guantanamo Bay could petition for habeas relief under the Suspension Clause of the Constitution. The court of appeals distinguished the Bagram petitioners from the Guantanamo petitioners primarily based on the former’s incarceration in a nation considered to be an active war zone. This was despite the fact that the three petitioners before the court of appeals all claimed to have been captured outside that war zone, in peaceful civilian settings, only to be transported by the United States into Bagram.

**Denial of habeas** jurisdiction under these circumstances **allows the Executive to profit from obstacles arising from its own decision to transport prisoners. The writ of habeas**corpus, however, **is not merely a safeguard for personal liberty and individual rights. It is also an indispensable aspect of the separation of powers at the heart of the American system of government, as well as a guarantor of the legitimate exercise of those powers**. In order **for the writ to** so **function, it must be insulated from the attempts, well-intentioned or otherwise, of the political branches to manipulate it.** The role of habeas corpus in the context of the war on terror involves weighty considerations of separation of powers and national security and has engendered heated debate over the balance to be struck between these competing concerns. This Comment argues that the Supreme Court’s decision in **Boumediene**, although listing factors appropriate for consideration in determining the extent of the writ’s force, **provides inadequate guidance for the application of those factors in future cases**. In particular, **this lack of guidance undermines the writ’s status as a check on executive power in the amorphous, ill-defined war on terror**.

**Carving out an exemption undermines the judiciary:**

1. **Undermines Judicial Review**

**Arnold and Porter 10** [2010, Arnold and Porter is a Preeminent International Law Firm, “Reforming the Immigration System”, new.abanet.org/Immigration/PublicDocuments/aba\_complete\_full\_report.pdf]

Consequently, **there is now a convoluted labyrinth of case law construing the exceptions (and constitutionally required carve-outs to these exceptions) to judicial review** of removal orders. [**Petitioners and the courts of appeals spend valuable time wending their way through this jurisdictional thicket. As a result, judicial resources are not conserved**, and it is questionable whether the objective of executing removal orders with dispatch has been achieved. Instead, **the exceptional scope of the restrictions on judicial review undermines confidence in the entire adjudication system**, **as these restrictions are perceived as a mechanism to insulate dysfunctional administrative processes and questionable exercise of executive discretion.**

1. **Doesn’t restrain executive authority**

**Arnold and Porter 10** [2010, Arnold and Porter is a Preeminent International Law Firm, “Reforming the Immigration System”, new.abanet.org/Immigration/PublicDocuments/aba\_complete\_full\_report.pdf]

**The complex system of "discretionary" carve-outs to judicial review and exceptions** to those carve-outs **based on constitutional or legal questions have muddled the jurisdictional landscape considerably. Not only do courts expend resources in making this determination, they reach differing conclusions as the Executive branch presses to insulate more and more actions under the rubric of discretion.** **The circuits are divided over whether an agency** — as opposed to clear statutory language — **can label certain decisions as discretionary and thus immune from review**. Some courts have relied on the "catch-all" provision of IIRIRA to hold that regulations designating certain decisions as discretionary are sufficient to make the decisions unreviewable.81 Other courts have held that certain decisions labeled "as discretionary based on authority found in an implementing regulation would contradict the plain statutory language of 1252 (a) (2) (B) (ii), which specifies the courts are only stripped of authority to review decisions designated as discretionary by the statute."

**Direct judicial involvement improves decision-making**

**Holmes 9**, Walter E. Meyer Professor of Law, New York University School of Law, “The Brennan Center Jorde Symposium on Constitutional Law: In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, April, California Law Review, 97 Calif. L. Rev. 301, Lexis

**Rules that provide incentives for decision makers to consider counter-evidence** and counterarguments **are liberating rather than constricting. Promoters of** extralegal **executive discretion**, in other words, **have made things easy for themselves by associating rules with rigidity and discretion with flexibility**, **ignoring the equal plausibility of** the **opposite alignment. Adversarial process can increase the flexibility of collective decision making, compensating for** the **psychological and ideological rigidity that individuals regularly display when making decisions behind closed doors** and with the blinds drawn, that is to say, in the kind of unnatural isolation fostered by a near-hysterical fear of spies and leaks. Contrariwise, **assigning all power to an unchecked executive risks exposing the collectivity to** one man's, **or one clique's**, peculiar **cognitive rigidities, emotional hang-ups, and behavioral obstinacies**.¶ Second-order **rules**, governing the way first-order rules as well as policies and ad hoc decisions are made, **can facilitate self-correction**. To return briefly to our medical example above, the second-order rule, "always get a second opinion," suggests that pragmatically designed decision-making procedures can be just as compulsory as first-order rules like "always wash your hands." **Given observable regularities in human decision making, adversarial process can compel policymakers to focus on pitfalls and opportunities of which they had** [\*326] **been only vaguely aware.**

**This is why choices governed by relatively-unchanging second-order rules can** sometimes **be more adaptive and sensitive to context than purely unregulated discretion**.¶ **Hostile to checks and balances and devoted to unmonitored executive discretion**, the **Bush** administration **came to be known less for its flexibility than for its** intransigence and **extreme reluctance to shift gears. Its abhorrence of legislative and judicial oversight seems to have produced not pragmatism but dogmatism**. In retrospect, this is not surprising. **By stonewalling external critics and stifling internal dissenters**, the **Bush** administration **was able to prolong the natural life span of false certainties that are now widely believed, with the benefit of hindsight, to have seriously damaged national security**. n52

## 2AC Drones

**Drone strikes are inevitable—any wind-downs are only rhetoric**

**Mazzetti and Landler 8/2** [08/02/13, Mark Mazzetti and Mark Landler, “Despite Administration Promises, Few Signs of Change in Drone Wars”, http://www.nytimes.com/2013/08/03/us/politics/drone-war-rages-on-even-as-administration-talks-about-ending-it.html?pagewanted=all&\_r=0]

WASHINGTON — There were more drone strikes in Pakistan last month than any month since January. Three missile strikes were carried out in Yemen in the last week alone. And after Secretary of State John Kerry told Pakistanis on Thursday that the United States was winding down the drone wars there, officials back in Washington quickly contradicted him. More than two months after President Obama signaled a sharp shift in America’s targeted-killing operations, there is little public evidence of change in a strategy that has come to define the administration’s approach to combating terrorism. Most elements of the drone program remain in place, including a base in the southern desert of Saudi Arabia that the Central Intelligence Agency continues to use to carry out drone strikes in Yemen. In late May, administration officials said that the bulk of drone operations would shift to the Pentagon from the C.I.A. But the C.I.A. continues to run America’s secret air war in Pakistan, where Mr. Kerry’s comments underscored the administration’s haphazard approach to discussing these issues publicly. During a television interview in Pakistan on Thursday, Mr. Kerry said the United States had a “timeline” to end drone strikes in that country’s western mountains, adding, “We hope it’s going to be very, very soon.” But the Obama administration is expected to carry out drone strikes in Pakistan well into the future. Hours after Mr. Kerry’s interview, the State Department issued a statement saying there was no definite timetable to end the targeted killing program in Pakistan, and a department spokeswoman, Marie Harf, said, “In no way would we ever deprive ourselves of a tool to fight a threat if it arises.” Micah Zenko, a fellow with the Council on Foreign Relations, who closely follows American drone operations, said Mr. Kerry seemed to have been out of sync with the rest of the Obama administration in talking about the drone program. “There’s nothing that indicates this administration is going to unilaterally end drone strikes in Pakistan,” Mr. Zenko said, “or Yemen for that matter.”

**The aff only maintains the effectiveness of Boumediene—that doesn’t result in targeted killings**

**Vladeck 12** [10/01/12, Professor Stephen I. Vladeck of the Washington College of Law at American University, “Detention Policies: What Role for Judicial Review?”, <http://www.abajournal.com/magazine/article/detention_policies_what_role_for_judicial_review/>)]

The short chapter that follows aims to take Judge Brown’s suggestion seriously. As I explain, **although Judge Brown is clearly correct that judicial review has affected the size of the detainee populations** within the territorial United States and at Guantanamo, **it does not even remotely follow that the jurisprudence of the past decade has precipitated a shift away from detention and toward targeted killings.** To the contrary, **the jurisprudence** of Judge Brown’s own court **has simultaneously** (1) **left the government with far greater detention authority than might otherwise be apparent where noncitizens outside the United States are concerned**; **and** (2) for better or worse, **added a semblance of legitimacy to a regime that had previously and repeatedly been decried as lawless**. And **in cases where judicial review prompted the government to release those against whom it had insufficient evidence**, **the effects of such review can** only **be seen as salutary**. Thus, at the end of a decade where not a single U.S. military detainee was freed by order of a federal judge, it is more than a little ironic for Judge Brown to identify “take no prisoners” as Boumediene’s true legacy.

**Long timeframe – their author**

**Zenko 2013** (Micah Zenko is the Douglas Dillon fellow in the Center for Preventive Action (CPA) at the Council on Foreign Relations (CFR). Previously, he worked for five years at the Harvard Kennedy School and in Washington, DC, at the Brookings Institution, Congressional Research Service, and State Department's Office of Policy Planning, Council Special Report No. 65, January 2013, “U.S. Drone Strike Policies”, i.cfr.org/content/publications/attachments/Drones\_CSR65.pdf‎)

**Much like policies governing the use of nuclear weapons, offensive cyber capabilities, and space, developing rules and frameworks for innovative weapons systems, much less reaching a consensus** within the U.S. government, **is a long and arduous process**. In its second term, the Obama administration has a narrow policy window of opportunity to pursue reforms of the targeted killings program. The Obama administration can proactively shape U.S. and international use of armed drones in nonbattlefield settings through transparency, self-restraint, and engagement, or it can continue with its current policies and risk the consequences. To better secure the ability to conduct drone strikes, and potentially influence how others will use armed drones in the future, the United States should undertake the following specific policy recommendations.

## 2AC Politics

**Court shield**

**Stimson 9** [09/25/09, Cully Stimson is a senior legal fellow at the Heritage Foundation and an instructor at the Naval Justice School former American career appointee at the Pentagon. Stimson was the Deputy Assistant Secretary of Defense for Detainee Affairs., “Punting National Security To The Judiciary”, http://blog.heritage.org/2009/09/25/punting-national-security-to-the-judiciary/]

So **what is really going on here?** To those of us who have either served in senior policy posts and dealt with these issues on a daily basis, or followed them closely from the outside, **it is** becoming increasingly **clear that this administration is trying to create the appearance of a tough national-security policy** regarding the detention of terrorists at Guantanamo, **yet allow the courts to make the tough calls on releasing the bad guys. Letting the courts do the dirty work would give the administration plausible cover and distance from the decision-making process**. The numbers speak for themselves. Of the 38 detainees whose cases have been adjudicated through the habeas process in federal court in Washington, 30 have been ordered released by civilian judges. That is close to an 80 percent loss rate for the government, which argued for continued detention. Yet, how many of these decisions has this administration appealed, knowing full well that many of those 30 detainees should not in good conscience be let go? The answer: one. **Letting the courts do it for him gives the president distance from the unsavory release decisions.** It also allows him to state with a straight face, as he did at the Archives speech, “We are not going to release anyone if it would endanger our national security, nor will we release detainees within the United States who endanger the American people**.” No, the president won’t release detainees; he’ll sit back and let the courts to do it for him. And the president won’t seek congressional authorization for prolonged detention of the enemy,** as he promised, **because it will anger his political base on the Left.** The ultra-liberals aren’t about to relinquish their “try them or set them free” mantra, even though such a policy threatens to put terrorists back on the battlefield. Moreover, the president would have to spend political capital to win congressional authorization for a prolonged detention policy. Obviously, **he would rather spend that capital on other policy priorities.** Politically speaking, **it is easier to maintain the status quo and let the detainees seek release from federal judges. The passive approach also helps the administration close Gitmo without taking the heat for actually releasing detainees themselves.**

**It’s released in June**

**Ward 10** (Jake, “Bilski Decision Tomorrow (Thursday, June 17th)? Maybe?”, Anticipate This! (Patent and Trademark Law Blog), 6-17, http://anticipatethis.wordpress.com/2010/06/16/bilski-decision-tomorrow-thursday-june-17th-maybe/)

**In mid-May until the end of June, the Supreme Court of the U**nited **S**tates (**SCOTUS) releases orders and opinions.  SCOTUS has yet to issue a number of decisions this term**, however, **and it is rapidly moving toward summer recess.**  Most notable from a patent law perspective is that the decision in [Bilski v. Kappos](http://anticipatethis.wordpress.com/?s=bilski), which was argued in November 2009, has yet to be decided.

**Not a loss**

**Gerstein 1/28** [,Josh. White House reporter for POLITICO, specializing in legal and national security issues. “State of the Union Guantanamo Bay Prison” January 28, 2014. http://www.politico.com/story/2014/01/state-of-the-union-guantanamo-bay-prison-102765.html

**President Barack Obama used his State of the Union address Tuesday to put new urgency behind his drive to close the Guantanamo Bay prison**, raising the issue before a joint session of Congress for the first time in nearly five years. “With the Afghan war ending, **this needs to be the year Congress lifts the remaining restrictions on detainee transfers and we close the prison at Guantanamo Bay – because we counter terrorism not just through intelligence and military action, but by remaining true to our Constitutional ideals, and setting an example for the rest of the world**,” Obama was to say, according to his prepared remarks. His high-profile mention of the issue was notable not just because he did not bring up the issue during his four previous State of the Union addresses, but because **any discussion of the subject is a reminder of one of the most obvious broken promises of Obama’s early presidency: his vow to close the prison within his first year in office. “Guantanamo will be closed no later than one year from now,”** Obama declared as he signed an executive order in the Oval Office on the subject on the first full day of his presidency. Obama never made that one-year pledge in front of Congress, but did speak in his February 2009 speech there — one not considered a State of the Union — of having ordered the closing of the prison. **The president announced the plan to close the prison in a year confidently and with little controversy, but essentially abandoned it after lawmakers put up resistance to bringing detainees to the U.S and White House aides decided to focus on other priorities like health care reform and the sluggish economy.** During his first term, Obama grudgingly signed a series of bills containing language making it virtually impossible to move detainees from Guantanamo to the U.S. and making it difficult to transfer detainees to other countries without extraordinary confidence they would not later engage in terrorism. This essentially stalled the closure process. However, late last year, Congress passed a defense bill that slightly eased the transfer restrictions. **The effort to shrink Gitmo’s ranks has also gained a small amount of momentum in recent months, with eight prisoners sent home or elsewhere abroad since August.** Obama’s comments Tuesday were in line with those of some legal scholars, who’ve argued that the legal basis for holding the men at Guantanamo will erode or disappear after the U.S. is no longer involved in active combat in Afghanistan —something the president has pledged to bring to an end this year. Courts have upheld the detentions at Guantanamo under the Authorization for Use of Military Force passed by Congress three days after the Sept. 11, 2001, terrorist attacks. That resolution refers to the “nations, organizations, or persons he determines planned, authorized, committed, or aided” those strikes.

**Losers lose is wrong**

**Sargent, 9/10** (Greg, 9/10/2013, Washington Post.com, “No, a loss on Syria would not destroy the Obama presidency,” Factiva))

Get ready for a lot more of this sort of thing, should Congress vote No on Syria strikes:

The fate of President Obama's second term hangs on his Tuesday speech to the nation about Syria.

This is a particularly cartoonish version of what much of the punditry will be like if Obama doesn't get his way from Congress, but make no mistake, the roar of such punditry will be deafening. Jonathan Bernstein offers a much needed corrective:

There's one permutation that absolutely, no question about it, would destroy the rest of Barack Obama's presidency is: a disastrous war. Ask Lyndon Johnson or George W. Bush. Or Harry Truman. Unending, seemingly pointless wars are the one sure way to ruin a presidency.

Now, I'm not saying that's in the cards; in fact, I don't think it is. I'm just saying: that's the kind of thing that really does matter a lot to presidencies. And if you do believe that the administration is going down a path that winds up there, or a path that has a high risk of winding up there, then you should be very worried about the health of this presidency.

If not? None of the other permutations here are anywhere close to that kind of threat to the Obama presidency. **Presidents lose key votes which are then mostly forgotten all the time. They pursue policies which poll badly, but are then mostly forgotten, all the time.**

Look, there is no question that **if Obama loses Syria vote**, the coverage will be absolutely merciless. But let's bring some perspective. The public will probably be relieved, and **eventually all the "Obama is a loser" talk will sink out of the headlines and be replaced by other big stories** with potentially serious ramifications for the country.

It's key to distinguish between two things here. One question is: How would a loss impact the credibility of the President and the United States with regard to upcoming foreign policy crises and confrontations? That's not the same as asking: How would a loss impact Obama's relations with Congress in upcoming domestic battles?

And on that latter score, there's a simple way to think about it: Look at what's ahead on the calendar. The two looming items are **the government shutdown and debt ceiling battles, and when it comes down to it, there's no reason to believe a loss on Syria would substantially alter the dynamics on either. Both are ultimately about whether House Republicans can resolve their own internal differences.**

Will a Syria loss weaken Obama to the point where Republicans would be even more reluctant than they are now to reach a deal to continue funding the government? Maybe, but even if a shutdown did result, would a loss on Syria make it any easier for the GOP to dodge blame for it? It's hard to see how that work in the eyes of the public. Same with the debt limit. **Is the argument really going to be, See, Obama lost on Syria, so we're going to go even further in threatening to unleash economic havoc in order to defund Obamacare and/or force cuts to popular entitlements? There's just no reason why a Congressional vote against Syria strikes would make the "blame game" on these matters any easier for Republicans.**

**Is it possible that a loss on Syria will make Congressional Dems less willing to draw a hard line along with the president in these talks, making a cave to the GOP more likely? I doubt it.** It will still be in the interests of Congressional Dems to stand firm, because the bottom line remains the same: House Republicans face potentially unbridgeable differences over how far to push these confrontations, and a united Dem front exploits those divisions. Syria doesn't change any of that. If a short term deal on funding the government is reached, the prospects for a longer term deal to replace the sequester will be bleak, but they've been bleak for a long time. Syria will fade from public memory, leaving us stuck in the same stalemate -- the same war of attrition -- as before.

What about immigration? The chances of comprehensive reform passing the House have always been slim. Could a Syria loss make House Republicans even less likely to reach a deal? Maybe, but so what? Does anyone really imagine Latinos would see an Obama loss on Syria as a reason to somehow become less inclined to blame the GOP for killing reform? The House GOP's predicament on immigration will be unchanged.

**Whatever happens on Syria, and no matter how much "Obama is weak" punditry that results from it, all of the remaining battles will be just as perilous for the GOP as they appeared before the Syria debate heated up. Folks making the case that a Syria loss throws Obama's second term agenda into serious doubt -- as if Congressional intransigence were not already about as bad as it could possibly get -- need to explain what they really mean when they say that. It's not clear even they know.**

**Obama won’t fight**

**Howell 7** WILLIAM G. HOWELL AND JON C. PEVEHOUSE are Associate Professors at the Harris School of Public Policy at the University of Chicago and the authors of While Dangers Gather: Congressional Checks on Presidential War Powers, “When Congress Stops Wars”, Sept/Oct, <http://home.uchicago.edu/~whowell/papers/WhenCongress.htm>

After all, **when presidents anticipate congressional resistance they will not be able to overcome, they often abandon the sword** as their primary tool of diplomacy. More generally, **when the White House knows** that **Congress will strike down** key provisions of **a policy initiative, it usually backs off.** President **Bush himself** has **relented**, to varying degrees, **during the struggle to create the D**epartment of **H**omeland **S**ecurity **and during conflicts over** the design of **military tribunals and the prosecution of U.S. citizens as enemy combatants**. Indeed, by most accounts, **the administration recently forced the resignation of the chairman of the Joint Chiefs of Staff, General Peter Pace, so as to avoid a clash with Congress** over his reappointment.

**Drone restrictions pound**

Greg **Miller 1-15**-14 – Intelligence Staff writer for the Washington Post, “Lawmakers seek to stymie plan to shift control of drone campaign from CIA to Pentagon”, Washington Post,

http://www.washingtonpost.com/world/national-security/lawmakers-seek-to-stymie-plan-to-shift-control-of-drone-campaign-from-cia-to-pentagon/2014/01/15/c0096b18-7e0e-11e3-9556-4a4bf7bcbd84\_story.html

**Congress has moved to block** President **Obama’s plan to shift control of the** U.S. **drone** **campaign** from the CIA **to** the **Defense** Department, inserting a secret provision in the massive government spending bill introduced this week that would preserve the spy agency’s role in lethal counterterrorism operations, U.S. officials said.¶ **The measure**, included in a classified annex to the $1.1 trillion federal budget plan, **would restrict the** use of **any** **funding to transfer** unmanned aircraft or **the authority to carry out drone strikes** from the CIA **to the Pentagon**, officials said.¶ **The provision represents an unusually direct intervention by lawmakers** into the way covert operations are run, **impeding an administration plan** aimed at returning the CIA’s focus to traditional intelligence gathering and possibly bringing more transparency to drone strikes.

**Obama burned capital on Iran**

**Bowman, 1/23** (Michael, 1/23/2014, Voice of America Press Releases and Documents, “Support Slipping for Iran Sanctions in US Senate,” Factiva))

CAPITOL HILL - **More Democratic senators are quietly signaling their opposition to a bill that spells out new sanctions against Iran** if negotiations to limit the country's nuclear program do not yield a final accord.

The bill retains bipartisan support in both houses of Congress, **but passage is seen as increasingly unlikely in the Democratic-led Senate amid an intense lobbying effort by** the **Obama** administration **to hold off on sanctions** while international negotiations proceed.

Senators Patty Murray and Elizabeth Warren are the latest Democrats to announce their opposition to the Iran sanctions bill currently before Congress.

In a letter to constituents in Washington state, Murray said "the administration should be given time to negotiate a strong verifiable comprehensive agreement" on Iran's nuclear program. At the same time, she pledged to work "to swiftly enact sanctions" if the talks ultimately fail.

Similarly, a spokeswoman for Warren says the Massachusetts senator "does not support imposing additional sanctions through new legislation while diplomatic efforts to achieve a long-term agreement are ongoing."

The sanctions bill has 16 Democratic co-sponsors, near-unanimous support among Republicans, and the backing of politically potent pro-Israeli U.S. lobbying groups. But 11 Senate committee chairs, including Murray, currently oppose the bill.

Among Democrats who signed on to the measure late last year, some have grown less vocal in their defense and promotion of the measure in recent weeks. Senate Majority Leader Harry Reid has neither explicitly promised a vote on the bill, nor ruled it out.

**Congressional expert** William **Galston of the Brookings Institution says pressure from** President Barack **Obama** **appears to be swaying a growing number of Democratic lawmakers**.

"The White House is determined to prevent this from happening," he said. "The administration believes in the marrow of its bones that the executive branch is the lead negotiator in the matter and that it deserves a chance to conduct its own foreign policy."

Iran says any new sanctions would violate last year's interim nuclear accord and spell the end of negotiations.

The White House has promised a presidential veto of any sanctions Congress may pass before negotiations run their course.

Polls show the American people wary of Iran's nuclear intentions but in no way eager for war, giving the administration what Galston calls "cards to play" with Congress while it pursues a high-risk, high reward diplomatic initiative. He adds, however, that bipartisan backing for sanctions will be overwhelming if negotiations with Iran fail.

**Won’t pass ---**

1. **election pressures**

**Delamaide, 2/5** --- political columnist for MarketWatch (2/5/2014, Darrell, MarketWatch, “Election jockeying will stall action on trade, GSEs; Opinion: A do-nothing Congress set to break its own dubious record,” Factiva))

WASHINGTON (MarketWatch) — **This polarized Congress has little capacity for passing legislation in the best of times and now the prospect of campaigning for a crucial midterm election promises to stall progress on any significant action before November.**

The **fast-track trade authority** sought by the White House and supported by many Republicans **is foundering on opposition from** Senate Majority Leader Harry **Reid** of Nevada, **who sees proposed trade pacts** with the Pacific Rim and Europe **as major campaign issues**.

Another election-year casualty is likely to be reform of mortgage giants Fannie Mae and Freddie Mac , which were placed in conservatorship by the Bush administration at the height of the financial crisis and have remained there more or less comfortably since then.

Indeed, a bill to wind down the two erstwhile government-sponsored enterprises and replace them with a new federal home-loan insurance agency has failed to gain much traction since it was introduced last June by Sens. Bob Corker, R-Tenn., and Mark Warner, D-Va.

But no one seems really too unhappy with this state of affairs, despite some ritual moaning and groaning about gridlock.

The fact is **there is precious little political consensus on** either of **these issues no matter how much big business wants the trade pacts** and mortgage bankers want the GSE reform.

**In terms of the midterm campaign, Democrats are keen to portray the trade pacts as a giveaway of American jobs**, much as the North American Free Trade Agreement has been.

And no one is in a hurry to jeopardize the fixed-rate 30-year mortgage that has taken on the status of a constitutional right in this country. Fund manager Bruce Berkowitz, for one, has cast his vote for keeping Fannie and Freddie, saying these mortgages would not be possible without them.

Former Treasury Secretary Hank Paulson, currently touring the country to tout the release of a documentary giving his side of the financial crisis, is telling audiences like one in Washington this week that the stalled reform of the mortgage giants is a bigger concern in his view than banks too big to fail.

But of course he would, since the man who placed Fannie and Freddie in conservatorship to begin with — a former chief executive of Goldman Sachs — still blames “flawed government policies” for the financial crisis rather than any wrongdoing by the banks.

In any case, Paulson isn’t commanding a lot of headlines these days and he’s not running for re-election.

He may be right that Fannie and Freddie have remained in government care for too long and can’t stay there forever, but it’s unlikely anything will be done about it this year.

Other prickly issues like immigration reform are also likely to languish as the 113th Congress, which set a record for the fewest pieces of legislation passed last year, seems on course to beat its own record this year.

**Not only are lawmakers keen to avoid controversy in an election year, they want to spend less time in Washington and more time on the campaign trail.**

The House, according to the calendar set by the Republican majority, will be in session 97 days before breaking in early October for the final campaigning ahead of the Nov. 4 election, and 112 days in all. Last year, it was in session for 135 days.

At stake is not only preserving the Republican majority in the House but the GOP’s hope to gain control of the Senate and the Democrats’ determination to prevent that from happening.

With 36 Senate seats up for election and Democrats defending 21 of them, Republicans hope to pick up the six seats that would give them the majority, especially given President Barack Obama’s low favorability ratings.

A lot can happen between now and November. The U.S. economy could continue its resurgence or Federal Reserve action to trim monetary stimulus could lead to contraction. The tailspin of emerging market currencies could be a passing phenomenon or the beginning of a new international crisis. And so on.

**One thing that is not likely to happen**, however, **is the passage in Congress of controversial legislation on trade**, or GSE reform or anything else.

1. **Tea Party, declining Dem support**

**Mauldin & Hughes, 2/6** (William Mauldin and Siobhan Hughes, 2/6/2014, Dow Jones Top North American Equities Stories, “Trade Bill's Path Gets Bumpier,” Factiva))

**Opposition from the Senate's top Democrat** to the White House's trade agenda has **highlighted** a broader reality: **The quest for new overseas deals has a diminishing number of friends in Congress**.

In the 12 years since the legislature last granted a president special trade powers, Capitol Hill has changed significantly. Republicans, especially **many tea-party-backed newcomers, are increasingly leery on the trade front and reluctant to grant** President Barack **Obama** negotiating powers known as **fast track**. **The Senate** also **has lost many of its strongest pro-trade voices**, and another -- Max Baucus (D., Mont.) -- is leaving the Senate.

And within his own party, Mr. Obama may have to rally support without backup either from Senate Majority Leader Harry Reid, who announced his opposition last week, or Rep. Nancy Pelosi, the top Democrat in the House, who has expressed reservations.

Political obstacles in Washington are threatening to derail two sets of trade negotiations -- the near-complete talks with Asian-Pacific nations, including Japan, and early-stage ones with the European Union.

"If the president is going to go after something that's this politically difficult, he's got to use a 2-by-4," said Bill Brock, former U.S. trade representative in the Reagan administration.

Smooth passage of overseas trade negotiations has depended for decades on fast-track powers. The authority allows an administration to submit trade deals to Congress for an up-or-down vote, without amendments, and it can reassure U.S. negotiating partners of broad Washington support.

The previous fast-track bill, in 2002, passed the House by three votes. That authority expired in 2007, but a bill introduced in January would reauthorize fast-track status for global trade negotiations for four years.

Mr. Obama's top trade adviser, Michael Froman, acknowledged the legislative challenges. "When I'm in town and Congress is in town, I'm spending basically every day up there, and have been for months," Mr. Froman said.

In 2002, 27 of 222 House Republicans voted "no" on whether to give President George W. Bush fast-track authority. This time, **some 60 House Republicans might oppose the legislation**, according to estimates from two people following the matter.

Republicans have traditionally backed trade measures, trumpeting what they say are broad benefits to business and the economy, while Democrats have tended to be more cautious, amid warnings from key union backers that expanded trade can mean jobs are shipped overseas.

House Speaker John **Boehner** (R., Ohio) **has asked for the support of at least 50 House Democrats to move a bill to the floor, suggesting he is concerned about broad defections in his party**.

Trade votes are usually easier in the Senate, but Mr. Reid's move to break with Mr. Obama last week showed that more Democrats are cooling to the legislation. Sens. Sherrod Brown of Ohio, Tammy Baldwin of Wisconsin and Sheldon Whitehouse of Rhode Island are among at least seven Senate Democrats who oppose fast-track power and hold seats that once belonged to lawmakers who voted in favor.

"The trade model isn't working," said Rep. Marcy Kaptur (D., Ohio), who confronted Mr. Obama at a Tuesday meeting with House Democrats about the process for approving trade deals. She is urging a "pro-American" trade policy that would make sure "we have more exports going out than imports coming in."

The Democratic skeptics are joined by a growing number of Republicans wary of international entanglements, including newer lawmakers like Sen. Rand Paul of Kentucky.

**The current House attitude toward fast track is similar to when** President Bill **Clinton, in 1998, failed to win renewal in an election year amid opposition** from recently elected Republicans and Democrats not afraid to break with the president.

**Trade conflicts won’t escalate**

**Nye 96** (Joseph, Dean of the Kennedy School of Government – Harvard University, Washington Quarterly, Winter)

**The low likelihood of** direct **great power clashes does not mean that there will be no tensions** between them. Disagreements are likely to continue over regional conflicts, like those that have arisen over how to deal with the conflict in the former Yugoslavia. Efforts to stop the spread of weapons of mass destruction and means of their delivery are another source of friction, as is the case over Russian and Chinese nuclear cooperation with Iran, which the United States steadfastly opposes. The sharing of burdens and responsibilities for maintaining international security and protecting the natural environment are a further subject of debate among the great powers. Furthermore, in contrast to the views of classical Liberals, **increased trade and economic interdependence can increase as well as decrease conflict and competition among trading partners. The main point**, however, **is that** such **disagreements are very unlikely to escalate to military conflicts**.

**DOHA proves**

**Seattle Times 8,** 7-31-2008, lexis

**Economists disagree on the Doha round's potential benefits;** estimates of economic gain that could have been reaped through additional trade range from $4 billion to $100 billion. **Set against the rapid expansion of global trade** to $13.6 trillion last year from $7.6 trillion **five years ago, however, the bottom-line loss from Doha's failure is "not a market issu**e," said Julian Callow, an economist at Barclays Capital in London. **Nor is the world on the edge of the kind of protectionist wave that ended the last period of globalization in the early 20th century and contributed to two world wars, analysts say. Countries are likely to go on negotiating bilateral trade deals with each other**, such as the U.S.-South Korea free-trade deal earlier this year.

**It’s resilient**

**Perroni and Whally 96** (Carlo, University of Warwick and John, University of Western Ontario, American Economic Review, 86(2), May, p. 60)

Furthermore, **trade performance** in the period since the late 1940’s also **clearly stands in sharp contrast to the events of the** 19**30’s. The largest players, the U**nited **S**tates **and** the **EU have consistently displayed a determination to mediate their trade disputes** in the 1980’s, triggered by EU enlargement. **And today’s global economy is much more interdependent than** it was in **the** 19**30’s**. Firms and industries have become more reliant on export markets, and there is more interindustry trade. **There is also the major difference of the presence of the GATT/WTO**, accompanied by bindings on tariffs achieved in eight rounds of negotiations; and, despite its weaknesses, a GATT/WTO dispute-settlement procedure has continued to function.

## Battlefield DA (UMich)

**This is all about extending it to the battlefield --- the plan ma**

**Bagram link’s inevitable**

**WP 12/18** Washington Post, December 18, 2013 "U.S. considers military trial for Russian detainee," www.japantimes.co.jp/news/2013/12/18/world/u-s-considers-military-trial-for-russian-detainee/#.Us3YHmRDu6o

But administration officials said that not every case can be made in federal court and that military tribunals are the proper forum for war crimes. Moreover, they said, **inaction risks the release of dangerous terrorists, especially if no agreement is reached with Afghanistan** over a reduced, long-term U.S. military presence there after next year.¶ **Among the many lessons of the Iraq withdrawal that the administration does not want to repeat was the transfer to Iraqi custody of third-country nationals. Officials frequently cite the case of** Ali Musa **Daqduq, a Lebanese citizen suspected of ties to** the **Hezbollah** militant group and Iran, who was captured in 2007 over his alleged involvement in an attack in southern Iraq that killed a U.S. soldier. Four others were kidnapped and later found dead.¶ **Daqduq**, the last prisoner held by U.S. forces in Iraq, **was turned over to the Iraqi government** just days before the final American withdrawal in December 2011. In May 2012, an Iraqi court **released** him for what it said was lack of evidence.¶ **The Kabul government’s release of many of the 3,000 Afghan prisoners** turned over this year, most of them captured on the battlefield, **has been taken as a warning** **by U.S. officials about the future status of the non-Afghans**still in American custody. Some of them have been held from the early days of the 12-year-old war.¶ Unlike in the case of detainees at Guantanamo, U.S. courts have ruled that these prisoners have no right to lodge habeas corpus challenges to their imprisonment. Military officers conduct twice-yearly reviews of their cases in proceedings at which they have no right to outside legal representation, and none has been granted a civilian or full-fledged military judicial process. Although the International Commission of the Red Cross pays them visits, their names and nationalities are officially secret.¶ Even the number of detainees had been secret until recently. After the prisoner-transfer agreement with Afghanistan in March, President Barack Obama for the first time acknowledged their existence in his biannual letter to Congress, reporting military action under the War Powers Resolution. At that point, they numbered 66. In his most recent report, on Friday, Obama put the number at 53, providing no explanation of what happened to the others.¶ Six were repatriated last month to Pakistan, a fact revealed only because of a court case in which advocates for the men demanded more information. The case was dismissed by the U.S. Court of Appeals for the D.C. Circuit, although documents submitted to the court included a declaration by Paul Lewis, the administration’s newly appointed special envoy for detainee transfers. He said Pakistan agreed to “take responsibility for ensuring, consistent with Pakistan law, that the transferred detainees will not pose a continuing threat to the United States and its allies.”¶ **The bulk of the foreign nationals in U.S. custody in Afghanistan are Pakistani; the others are known to be from Tunisia, Yemen, Uzbekistan and elsewhere.¶ Military prosecutors have examined the evidence against Hamidullan and consider the case among the strongest** that can be brought **against any of the foreigners** held at the Parwan Detention Facility near Bagram.¶ “**He’s** pretty **well-connected in the terrorist world,” said one official with firsthand knowledge of the case. Hamidullan is thought to have links to one or more insurgent groups and ties to Chechnya*,*** a part of the Russian Federation where rebels have fought two unsuccessful wars for independence.

**The plan has no negative effect on the military – Boumediene should have already caused the link**

**ACLU 9** (Brief Amicus Curiae of the American Civil Liberties Union in Support of Petitioners, www.americanbar.org/content/dam/aba/publishing/preview/publiced\_preview\_briefs\_pdfs\_09\_10\_08\_1234\_PetitionerAmCuACLU.authcheckdam.pdf)

The third Boumediene factor, the practical obstacles involved, again weighs more heavily in favor of these Petitioners than it did in Boumediene. **In Boumediene, the Court acknowledged that recognizing habeas jurisdiction in domestic courts for Guantanamo detainees could impose some costs** — both economic and non-economic — **on the military**. But it stressed that Boumediene did not pose the risks that the Eisentrager Court apparently perceived regarding 'judicial interference with the military's efforts to contain 'enemy elements, guerilla fighters, and "were-wolves,"' noting that although the detainees were "deemed enemies of the United States," who might be "dangerous ... if released," they were "contained in a secure prison facility located on an isolated and heavily fortified military base." Id. at 2261 (quoting Eisentrager, 339 U.S. at 784). **In this case, allowing the Petitioners to assert their due process claim would add nothing**, or virtually nothing, **to the economic and procedural burdens that the Government already faces by virtue of the Petitioners' undeniable right to habeas corpus. Nor would it interfere with the military's activities against our enemies, since the United States does not even claim that the Petitioners are enemies — or, for that matter, that the military has any desire to continue to detain them.** Finally, **neither this case nor Boumediene raises the specter of "friction with the host government," because the United States is "answerable to no other sovereign for its acts on the "answerable to no other sovereign for its acts on the base**." Id. at 2261. The Boumediene factors, then, show that **recognizing the Petitioners' due process right to be free from indefinite arbitrary detention raises fewer and less substantial functional concerns (if any) than recognizing the Boumediene petitioners' habeas rights did**. Nor do any other factors from the Court's extraterritoriality cases — such as the possibility of cultural or legal incompatibility between the right recognized and the location of the person asserting that right, see, e.g., Dowries, 182 U.S. at 282 — raise any significant obstacle to recognizing the due process right at issue here. Boumediene s anatysis thus compels the conclusion that the Petitioners are entitled to challenge their ongoing detention under the Due Process Clause.10

**Turn – detention causes false leads – diverts from counter terror**

**O’Neil 11** [Winter, 2011, Robin O'Neil, “THE PRICE OF PURITY: WEAKENING THE EXECUTIVE MODEL OF THE UNITED STATES' COUNTER-TERROR LEGAL SYSTEM”, 47 Hous. L. Rev. 1421]

**While providing for judicial review may not make sense in every anti-terror context**, **absent limitation, the executive may offend the Constitution in any number of ways**, leaving those affected no recourse. n152 Further, **the lack of judicial review compromises counter-terror activities by not requiring the President to provide plausible reasons for and explanations of his actions**; n153 for example, **"by failing to provide even perfunctory individualized hearings** [to detainees at Guantanamo Bay], ... **the U.S. government ... misspent our scarce interrogation capacities on individuals of minimal or no intelligence value**." n154 **Had the President's orders been subject to** [\*1445] **judicial oversight, he would have had to explain how the unilaterally implemented deprivations of due process were narrowly tailored to effect an important purpose**, **prompting a more thorough analysis of what was to be gained by the President's detention policies**. n155 **The weak form of the executive model gives the President limited flexibility in exigent circumstances** to move forward without congressional authorization, while retaining a strong preference for specifically authorized executive action and the judicial recourse it usually provides. n156 The fact that both Congress and the Bush Administration made a concerted effort to cut the courts out of the counter-terrorism legal scheme altogether supports the proposition that **the anti-terrorism legal system developed during the Bush Administration** has **brought the U.S. executive model perilously close to operating in its pure form**, **notwithstanding the broad legislative mandates enacted in support of the President's unilateral activities**. n157 President Obama should heed the Boumediene Court's admonitions regarding the centrality of judicial review to the preservation of American democracy and press Congress to lift what barriers to judicial recourse the MCA continues to impose on War on Terror detainees. n158 In those rare circumstances in which legislative authorization is not practicable, the President should provide for meaningful judicial recourse by his own order. n159

**Boumediene triggered it – your article**

**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 //Red)

**The** Supreme Court of the United States, by its June 2008 holding in **Boumediene** v. Bush,1 granted the right of habeas corpus to the enemy detainees held by the Department of Defense (“DoD”) at Guantanamo Bay, Cuba. This **landmark ruling granted rights** to enemy fighters heretofore foreclosed and **left open** the **potential for further extension** of rights under the laws of the United States **to enemy fighters** detained overseas. In particular, **the Court’s decision has implications in** two general areas: (1) the **application of** the **habeas** right **to** foreign **fighters** detained **in locations other than Guantanamo** Bay; and (2) the application of other constitutional and statutory rights to persons stopped or detained by U.S. military forces during military operations. **While the Court attempted**, through the use of **restrictive language**, to limit application of the Boumediene decision to Guantanamo Bay, **it stopped short of explicitly doing so**. As a result, **leaders** within the DoD **may be forced to consider Boumediene in planning and waging future military operation**s. Organizational change, including adjustments to policy, structure, and tactics, may be required. Additionally, **troops** on the ground **may be forced to operate within the confines of Boumediene,** figuratively **loading their already full combat assault packs with the heavy rocks of constitutional procedures and protections normally reserved for domestic police operations**.

**Link’s empirically denied**

**National Institute of Military Justice**, Amicus Brief, Rasul v. Bush, 2003 U.S. Briefs 334, January 14, 20**04**, p. 12-13.

**The experience of U**nited **S**tates **armed forces** in combat **belies the Government's** expressed **concern that judicial review of the claims of combatants "would interfere with the President's authority** as Commander in Chief." (Opp. at 11) **Courts-martial, prisoner status determinations, and other legal processes have been a regular adjunct of American wartime operations** throughout the **period since Eisentrager. During** the **Vietnam** era, **the U**nited **S**tates **Army held** approximately **25,000 courts-martial in the war theater.** In 1969 alone, 7691 of these were special and general courts-martial, which are trials presided over by a military judge in which the defendant is entitled to a panel equivalent to a jury as provided in the UCMJ. Frederic L. Borch, Judge Advocates In Combat: Army Lawyers in Military Operations from Vietnam to Haiti 29 (2001). Another 1146 special and general courts-martial were held in Vietnam by the Marine Corps in 1969. In addition, still only in 1969, the Army held 66,702 less formal disciplinary proceedings under Article 15 of the UCMJ, 10 U.S.C. § 815. Id. . The United States Military Assistance Command in Vietnam enforced strict requirements for the classification of captured personnel, including providing impartial tribunals to determine eligibility for prisoner of war status. Military Assistance Command Vietnam, Directive No. 381-46, Annex A (Dec. 27, 1967) and Directive No. 20-5 (Sept. 21, 1966 as amended Mar. 15, 1968.) . During the 1991 Persian Gulf War, the status of approximately 1200 detainees was determined by "competent tribunals" established for that purpose. Dep't of Defense, Final Report to Congress: Conduct of the Persian Gulf War 578 (1992); Army Judge Advocate General's School, Operational Law Handbook 22 (O'Brien ed. 2003). . At this very time, **U**nited **S**tates **forces in Iraq, a theater of actual combat, are providing impartial tribunals** compliant with Article 5 of the GPW to adjudicate the status of captured belligerents. Although details are difficult to come by, American commanders of forces in Iraq acknowledge that as many as 100 prisoners there have had their status adjudicated by impartial tribunals under Article 5 of the GPW.

**No impact**

**Fettweis 10** – Professor of national security affairs @ U.S. Naval War College. [Christopher J. Fettweis, “Threat and Anxiety in US Foreign Policy,” Survival, Volume 52,

Issue 2 April 2010, pages 59 – 82//informaworld]

**One potential explanation for the growth of global peace can be dismissed fairly quickly: US actions do not seem to have contributed much. The** **limited evidence suggests that there is little reason to believe in the stabilising power of the US hegemon, and that there is no relation between the relative level of American activism and international stability. During the** 19**90s, the U**nited **S**tates **cut back on its defence spending fairly substantially**. By 1998, the United States was spending $100 billion less on defence in real terms than it had in 1990, a 25% reduction.29 To internationalists, defence hawks and other believers in hegemonic stability, this irresponsible 'peace dividend' endangered both national and global security. 'No serious analyst of American military capabilities', argued neo-conservatives William Kristol and Robert Kagan in 1996, 'doubts that the defense budget has been cut much too far to meet America's responsibilities to itself and to world peace'.30 And yet the verdict from the 1990s is fairly plain**: the world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable US military**, or at least none took any action that would suggest such a belief. **No militaries were enhanced to address power vacuums; no security dilemmas drove insecurity or arms races; no regional balancing occurred once the stabilis-ing presence of the US military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in US military capabilities. Most of all, the U**nited **S**tates **was no less safe. The incidence and magnitude of global conflict declined while the U**nited **S**tates **cut its military spending** under President Bill Clinton, and kept declining as the George W. Bush administration ramped the spending back up. **Complex statistical analysis is unnecessary to reach the conclusion that world peace and US military expenditure are unrelated.**

**Sequestration outweighs**

**Serbu 11/8**, Staff Writer at DOD News, Sequestration’s second year worse than its first, military chiefs warn, <http://www.federalnewsradio.com/?nid=394&sid=3500329&pid=0&page=2>

"**This will inevitably lead to reduced life in our ship and aircraft**," he said. "Ashore, we will conduct only safety essential renovation of facilities, further increasing the large backlog in that area. **We'll be compelled to keep a hiring freeze in place for most** of our **civilian positions**, and **that will further degrade the distribution of skill, experience and the balance in the civilian workforce, which is so critical."**

Greenert says the Navy would also have to cancel several major planned procurements if Congressdoesn't reprogram about $100 million into its acquisition accounts by January.

"We'll lose a Virginia-class submarine, a littoral combat ship and an afloat forward staging base," he said. "The [U.S.S. Gerald R. Ford], we need to finish that carrier, and by spring we stop work on it, which is not very smart, because it's almost done."

It's a similar story in the Air Force, Welsh said.

"While we hope to build a viable plan to slow the growth of personnel costs over time and to reduce infrastructure costs when able, **the only way to pay the full sequestration bill is by reducing force structure, readiness and modernization,"** he said. "Over the next five years, the Air Force could be forced to cut up to 25,000 airmen and up to 550 aircraft, which is about 9 percent of our inventory. To achieve the necessary cost savings in aircraft force structure, we'll be forced to divest entire fleets of aircraft. We can't do it by cutting a few aircraft from each fleet."

Gen. Ray Odierno, the Army Chief of Staff, said in 2013, his service had to defer more than $700 million of equipment maintenance costs into 2014 and 2015. The Army now has 172 aircrafts sitting idle waiting for maintenance, and no clear way to pay for it.

**The Army also was forced to severely curtail soldier training, and Odierno says many of those missed opportunities aren't recoverable.**

"**As we scrambled in 2013 to come up with the dollars to meet our sequestration marks, there's things we did** that, frankly, **mortgaged our future**," he said. "**We stopped training. You can't ever recapture that. So what that does, it delays the build-up of future readiness. So we will have to pay that price somewhere down the road, because we simply cannot ever get that back.**

**We were able to do it for one year, but it comes at a risk — if we have a contingency, will our forces be ready? And that's really an incredible risk that I am definitely not comfortable with. The second piece is we've had to furlough individuals who've worked for this government. And, frankly, they're beginning to lose faith in their government. Those are temporary measures that we do not want to revisit again. We have to have more permanent solutions."**

If sequestration was intended as a mechanism to save the government money, there are abundant examples in which it's had the opposite effect, the military leaders said. DoD will pay cancellation fees from terminated contracts and pay higher unit costs for fewer vehicles, ships and airplanes.

Amos said the Marine Corps has begun to estimate the magnitude of those higher costs.

"Just in Marine aviation alone, it's going to cost me $6.5 billion of inefficiency," he said. "And that's because of multi-year contracts I either can't sign or I've got to cancel, so I have to pay penalties, and buy airplanes on an individual basis. At the end of that, that's four [Joint Strike Fighter] squadrons and two MV-22 Osprey squadrons, simply because of the inefficient way we're going about doing businessin this sequester."

The Air Force's Welsh said he believes DoD could find ways to absorb the entire 10-year, $500 billion tab from sequestration, as long as the reductions can be phased in more gradually.

# 1AR

**Politics**

**--- 1ar AT: PC Solves Reid**

**Obama not pushing Reid on trade**

**Baker & Parker, 2/4** (Peter and Ashley, 2/4/2014, NYTimes.com Feed, “Trade Issue Goes Untouched as Obama and Reid Meet,” Factiva))

WASHINGTON — President **Obama met with** Senator Harry Reid, Democrat of Nevada, at the White House on Monday but **made no effort to change** Mr. **Reid’s mind on the trade initiative** that has divided them, according to Democrats briefed on the session.

**Last week**, the day after Mr. Obama vowed to fight for additional authority to negotiate trade deals with Europe and Asia, Mr. **Reid, the majority leader, effectively slammed the door on the idea and publicly warned the president not to push it**. The White House said Mr. Obama would keep pressing for his initiative because it would bolster the economy and create jobs.

But when Mr. Obama and Mr. Reid sat down on Monday, trade did not come up, according to the Democrats. Instead, the discussion focused on the coming midterm elections, in which Republicans could capture control of the upper chamber if they pick up six seats.

**--- 1ar Not Spending Capital \*\*\***

**Obama doesn’t really support free trade --- looking for way to bail on the issue**

**Mandel, 2/4** (Seth, 2/4/2014, “On Free Trade, Was Obama Looking for a Way Out?” http://www.commentarymagazine.com/2014/02/04/on-free-trade-was-obama-looking-for-a-way-out/))

But it would be a problem on trade, because there the president wanted what’s known as fast-track authority to negotiate a trade deal that Congress could not amend. Democrats are generally opposed to trade despite the broad consensus on its economic benefits, so they wouldn’t easily fork over their authority to the president. **Despite Obama’s plea in the State of the Union for the trade authority**, Harry **Reid immediately confirmed that no, Democrats wouldn’t give Obama free rein on trade. But it’s unclear just how much of a rebuke to the president this really is.**

News reports took the basic outlines of the story at face value: Obama wanted trade deals, Reid said no, so this is a blow to the president’s economic agenda. But it’s not so plain. Yesterday **Politico reported that Reid went to the White House for a long meeting with the president–and trade didn’t even come up**:

The majority leader returned to the Capitol about 75 minutes after a scheduled 2:30 p.m. meeting with the president and told reporters his opposition to fast-tracking trade pacts through Congress was not broached during his huddle with Obama.

“We’re on the same page with everything,” Reid said, rejecting a reporter’s question on whether the Democratic leader is in Obama’s “doghouse” after voicing disapproval of the trade legislation.

Asked whether they discussed trade, Reid curtly replied “no.”

So **just how important does the president consider free trade**–an economic boon but which unions don’t love–**to his agenda if he won’t even broach the subject with Reid?** A clue can probably be found in past coverage of Obama administration trade deals, which tend to embrace the same contradictions.

Take, for example, this October 2011 Washington Post story on the passage of free-trade agreements with Colombia, South Korea, and Panama. The headline is: “Obama gets win as Congress passes free-trade agreements,” and the story tells us that “The South Korea deal has the potential to create as many as 280,000 American jobs” and is “widely hailed as the most consequential trade pact since the North American Free Trade Agreement was ratified in 1994.”

But later on in the story we get some more information about why the deals were signed nearly three years into Obama’s term:

The pacts were first negotiated under President George W. Bush but were updated by Obama to include more guarantees for labor and human rights and environmental protections. The pacts were recently held up in a dispute between Obama and congressional Republicans over renewing the worker assistance program.

During Obama’s bid for the Democratic presidential nomination, he tended to underscore the risks that free trade posed for U.S. workers and the environment rather than potential benefits.

So **Obama really isn’t very high on free trade and campaigned against it**. George W. Bush did the work of putting together the deals and the Democrats stalled it for years, finally conceding when Obama realized he was “facing a tough bid for reelection with unemployment stuck at 9.1 percent.”

**Obama is, in fact, no fan of free trade.** But the benefits are well known across the board. So **a perfect situation for Obama is to have complete authority over the deals** so he can better choose who to protect and which companies and industries to favor without getting a bipartisan deal in Congress that would be more sensible and economically beneficial but less to Obama’s liking.

**This is what he’s asking for now, and what he was denied. He doesn’t seem too upset about it, probably because he isn’t.** It’s possible that the president has decided that now, unlike with numerous controversial bills, he’s just going to let Harry Reid run the show. But that would be a change of pace for a president who thinks Congress is mostly cosmetic, a passé throwback to a time before the Lightbringer arrived.

And it’s unlikely. **If Obama really wanted free trade he would press on, involving Congress grudgingly but elevating free trade over his own absolute power. It’s possible, then, that when Obama doesn’t treat free trade as a priority for him it’s because it isn’t.**

**Obama not spending capital**

**Auslin, 2/4** --- resident scholar at the American Enterprise Institute (2/4/2014, Michael, The Wall Street Journal Asia, “The Slow Death of Obama's Asia Pivot,” Factiva))

The latest bad news for President Obama's Asia policy at first doesn't seem to have much to do with Asia. Senate Majority Leader Harry **Reid** last week **announced he will not allow the Senate to consider Trade Promotion Authority**, or "fast track" legislation.

Fast track would allow the White House to negotiate trade deals that would then be guaranteed an up or down vote in Congress with no scope for amendments. Mr. Reid was motivated as much by domestic political concerns as by anything else in nixing a fast-track bill. But his decision also upends years of work on the Trans-Pacific Partnership multilateral trade deal. Any deal arising from those talks now faces an uncertain future in Washington.

The episode is a revealing commentary why Mr. Obama's pivot to Asia is on the rocks. In short, the problem is that the White House promised too much, assumed its rhetoric alone would sell the deal, and showed little appetite for the politicking required to execute a complex strategic shift.

**Much of the blame for** Mr. **Reid's trade action must be laid at the doorstep of the Oval Office. Both congressional supporters of free trade and business leaders openly bemoan how little time** Mr. **Obama has personally invested in such a crucial matter**.

In other ways, too, **the pivot is falling victim to a combination of distraction and disinterest in Washington**. TPP was supposed to be the economic leg of the rebalance tripod, while an increased military presence and renewed political engagement formed the other two supports. Those other two legs of the tripod aren't particularly sturdy, either.

**Won’t spend capital on trade**

**Hadar, 2/4** (Leon, 2/4/2014, Business Times Singapore, “Obama signals a changed emphasis,” Factiva))

President Obama did note in his speech that 98 per cent of American exporters were small businesses, and that "new trade partnerships with Europe and the Asia-Pacific will help them create more jobs" and called for the two political parties to work together "on tools like bipartisan trade promotion authority" that would allow the White House to conduct trade negotiations without Congressional interference.

But at the same time, President **Obama seemed to be also trying to placate the anti-free trade forces in his own political party by adding that new trade deals would have to "protect our workers" and "protect our environment";** that free trade has to go together with "fair trade"; and that promoting trade was part of the global competition with China and Europe, who "aren't standing on the sidelines".

Or to put it in personal terms, one almost felt that **while** President **Obama's mind attached some significance to the global trade agenda, his heart wasn't really there.**

**That raises doubts about his willingness to invest his political capital in advancing his trade policies.**

**--- 1ar Won’t Pass**

**Won’t pass --- tobacco and secrecy concerns**

**Garrett, 2/6** (Major, 2/6/2014, “The heated politics of free trade,” <http://www.cbsnews.com/news/the-heated-politics-of-free-trade/>))

Pharmacy giant CVS will stop selling cigarettes and other tobacco products. President Obama, a reformed smoker, was so pleased he told the world.

But **staunch Obama allies** like Beau Biden of Delaware—yes, that Biden—as well as Lisa Madigan of Illinois and Eric Schneiderman of New York **are ticked off**. Not **at** CVS, but **Obama**. **The issue is** not tobacco sales, per se, but **free trade**.

And so begins our journey into the complex world of trade-fueled globalization, Obama’s strained alliance with Senate Majority Leader Harry Reid, the tattered remains of Obama’s “Asia Pivot,” and legitimate questions about transparency and sovereignty surrounding “fast-track” trade authority and the Trans-Pacific Partnership.

You can’t explain all of this with a flamboyant move by CVS to stop cigarette sales. But you can get closer than you might think.

First of all, the U.S. cigarette market grows smaller by the day, and tobacco companies see future profits and market share overseas. In that context, the CVS move is not as earth-shattering as the headlines or Obama’s praise suggests. But **the way trade deals influence tobacco sales in this country is a big deal, and that’s why Obama has Biden, Madigan, and Schneiderman on his case.**

The trio joined 39 other states’ attorneys general in a letter to U.S. Trade Representative Michael Froman protesting emerging provisions in the Trans-Pacific trade pact that they fear would exempt U.S. tobacco companies from complying with state tobacco laws and regulations.

From the letter: “Experience has shown that state and local laws and regulations may be challenged by tobacco companies that aggressively assert claims under bilateral and multilateral trade and investment agreements, either directly under investor-state provisions or indirectly by instigating and supporting actions by countries that are parties to such agreements.”

There is history here. A Canadian cigarette maker challenged tobacco laws in 45 states under provisions of the North American Free Trade Agreement. The state laws prevailed, but only after extensive and costly litigation (which drained state coffers). Indonesia successfully appealed to the World Trade Organization to lift the U.S. ban on clove cigarettes.

The letter is as bipartisan as things come these days, signed by 24 Democrats and 18 Republicans. Biden is the vice president’s son, Madigan sat in the same row as Obama in the Illinois Legislature, and Schneiderman was Obama’s State of the Union guest in 2012. This is not an Obamacare redux, but an assertion of state power against a federal government that might sacrifice it on the altar of free trade. **You might think this tobacco issue is the biggest trade disagreement between Obama and party loyalists. Butt, no. Equally important are mounting complaints about the secretive nature of talks on TPP**, a potential free-trade zone uniting the U.S. with Canada, Mexico, Australia, Brunei, Chile, Japan, Malaysia, New Zealand, Peru, Singapore, and Vietnam.

This week, Richard **Trumka, head of the AFL-CIO, complained to Froman that the labor movement was being shut out of negotiations and overwhelmed by industry groups with more access and influence on the trade deal’s fine print**. This is not a new complaint. Progressives and conservatives have expressed deep reservations about the negotiation’s lack of transparency and its wide-ranging implications for intellectual property, copyright, and privacy rights. These grievances were given fresh fuel by WikiLeaks’ disclosures of chapter-by-chapter texts of the emerging trade pact (no text has been officially released). Subsequent analysis suggested the U.S. was trying to pull other nations in its direction and seeking concessions that would require wholesale rewrites of existing laws—all in exchange for access to the lucrative U.S. market.

**Skepticism about the benefits of free trade have been simmering for years, more so on the progressive Left than the tea-party Right, but both wings of their respective parties are agitated and opposed to TPP and the fast-track authority that would force Congress to consider the deal,** upon its completion, **without amendment and with expedited floor procedures**. Part of this is also a backlash against NAFTA’s underwhelming performance.

The Congressional Research Service concluded last year that NAFTA did far less than its enthusiastic backers promised when Congress approved the deal in 1993. That’s what opponents fear with TPP. Twelve U.S. senators wrote Reid announcing they would not support any new fast-track legislation without significant changes improving transparency, oversight, and compensating legislation for workers victimized by global competition.

All of this weighed heavily on Reid, a longtime opponent of free-trade deals. Reid had a choice—keep his long-standing opposition to himself, or offer vague estimates about when a vote on fast-track legislation would occur. That certainly would have been Obama’s preference after he jumped feet-first into the fast-track debate in his State of the Union address. Reid told Obama and the free-traders to take a hike.

But Reid knows the politics of trade have become more complex, with issues of job losses competing with progressive antagonism toward global corporatism and bubbling anxieties about secretive negotiations that echo those about the American surveillance state. Ignoring any of these would cause grassroots political problems for Reid among union members, young voters, and progressive populists. That’s a toxic mix Reid can’t abide. And won’t. **Fast-track’s biggest Democratic booster in the Senate, Max Baucus, is heading to China as U.S. ambassador**—**a farewell that will bring not one tear to Reid’s eye but will intensify his stranglehold on the fast-track schedule**.

**The simplistic take is, Reid is merely waiting for the midterm elections before scheduling a fast-track vote** to lay the groundwork for TPP and, possibly, a less advanced trade deal with Europe called the Transatlantic Trade and Investment Partnership. **Think again.**

The negotiations for the Asia-based TPP recommence in Singapore on Feb. 17. The best lever the U.S. has in reaching a deal is fast-track authority—because it gives other nations a sense of confidence that the deal will hold. That’s now impossible.

**Anyone who thinks free-trade politics for Obama will improve after the midterms should think again.** If Republicans make gains in the House and Senate, yes, there will be more pro-business sympathy. But Democrats, after licking their wounds, will sound a more progressive and populist trumpet.

**Obama’s trade agenda**, therefore, **is going up in smoke.** With or without CVS.

**Impact**

**Trade conflicts won’t escalate**

**Nye 96** (Joseph, Dean of the Kennedy School of Government – Harvard University, Washington Quarterly, Winter)

**The low likelihood of** direct **great power clashes does not mean that there will be no tensions** between them. Disagreements are likely to continue over regional conflicts, like those that have arisen over how to deal with the conflict in the former Yugoslavia. Efforts to stop the spread of weapons of mass destruction and means of their delivery are another source of friction, as is the case over Russian and Chinese nuclear cooperation with Iran, which the United States steadfastly opposes. The sharing of burdens and responsibilities for maintaining international security and protecting the natural environment are a further subject of debate among the great powers. Furthermore, in contrast to the views of classical Liberals, **increased trade and economic interdependence can increase as well as decrease conflict and competition among trading partners. The main point**, however, **is that** such **disagreements are very unlikely to escalate to military conflicts**.

**Drone**

**2AC N/U**

**Obama will expand the use of drones and relax targeting rules in the future---particularly the imminence standard**

Alexei **Offill-Klein 13**, J.D. University of California, Davis, School of Law, Spring 2013, “Note: Targeted Killings: Al-Aulaqi v. Obama and the Misuse of the Political Question Doctrine,” U.C. Davis Journal of International Law & Policy, 19 U.C. Davis J. Int'l L. & Pol'y 207

There are signs the Obama administration intends to expand the drone program even further, and it appears to be relaxing the rules on who may be targeted. n110 For example, the White House recently gave the CIA and the military's Joint Special Operations Command the authority to "strike [\*223] militants in Yemen who may be plotting attacks against the United States, but whose identities might not be completely known, an authority that already exists in Pakistan." n111 In September 2011, John Brennan, the President's chief counterterrorism adviser, observed: "Over time, an increasing number of our international counterterrorism partners have begun to recognize that the traditional conception of what constitutes an "imminent' attack should be broadened in light of the modern-day capabilities, techniques, and technological innovations of terrorist organizations." n112 This statement is further evidence that the Obama administration plans to increase the scope of the drone war to those alleged terrorists who would not previously have been targeted.

**AT: Prolif**

**No follow on b/c aggressive countries that want drones**

**Lerner 2013** - Vice President for Government Relations at the Center for Security Policy (March 25, Ben, “Judging ‘Drones’ From Afar” <http://spectator.org/archives/2013/03/25/judging-drones-from-afar/1>)

**Whatever the potential motivations for trying to codify** international **rules for using UAVs, such a move would be ill advised**. While in theory, every nation that signs onto a treaty governing UAVs will be bound by its requirements, it is unlikely to play out this way in practice. **It strains credulity to assume that China, Russia, Iran, and other non-democratic actors will not selectively apply (at best) such rules to themselves while using them as a cudgel with which to bash their rivals and score political points**. The United States and its democratic allies, meanwhile, are more likely to adhere to the commitments for which they signed up. **The net result:** **we are boxed in as far as our own self-defense,** **while other nations with less regard for the rule of law go use their UAVs to take out whomever, whenever**, contorting said “rules” as they see fit**. One need only look at China’s manipulation of the Law of the Sea Treaty**

**to** justify its vast territorial claims at the expense of its neighbors to see how this often plays out. And who **would enforce the treaty’s rules** — a third party tribunal? Would it be an apparatus of the United Nations, the same U.N. that assures us that it is not coming after the United States or its allies specifically, even as its investigation takes on as its “immediate focus” UAV operations recently conducted by those countries? **The United States already conducts warfare under the norms of centuries of practice of customary international law** in areas such as military necessity and proportionality, as well as the norms to which we committed ourselves when we became party to the 1949 Geneva Conventions and the United Nations Charter. **These same rules can adequately cover the use of UAVs in the international context. But if the United States were to create** or agree to **a separate** international **regime** for UAVs, **we would subject ourselves to new, politicized “rules” that would needlessly hold back countries that already use UAVs responsibly, while empowering those that do not**. America is in the midst of an important conversation about UAVs. President **Obama should state unambiguously that we will not invite others to dictate its outcome**.

**No impact to global drone prolif and it’s impossible to solve**

Alejandro **Sueldo 12**, J.D. candidate and Dean’s Fellow at the University of California, Berkeley, School of Law and a PhD candidate at the Department of War Studies at King’s College London of the University of London, 4/11/12, “The coming drone arms race,” <http://dyn.politico.com/printstory.cfm?uuid=70B6B991-ECA7-4E5F-BE80-FD8F8A1B5E90>

Of particular concern are the legal and policy challenges posed if other states imitate the U.S. targeted killing program. For Washington is setting a precedent whereby states can send drones, often over sovereign borders, to kill foreigners or their own citizens, who are deemed threats.

Other states may also follow Washington’s example and develop their own criteria to define imminent threats and use drones to counter them.

Washington will find it increasingly difficult to protest other nations’ targeted killing programs — particularly when the United States has helped define this lethal practice. U.S. opposition will prove especially difficult when other states justify targeted killings as a matter of domestic affairs.

Should enough states follow the U.S. example, the practice of preemptively targeting and killing suspected threats may develop into customary international law.

Such a norm, however, which requires consistent state practice arising out of a sense of legal obligation, now looks unlikely. While targeted killing policies are arguably executed by states citing a legal obligation to protect themselves from imminent threats, widespread state practice is still uncommon.

But international law does not forbid drones. And given the lack of an international regime to control drones, state and non-state actors are free to determine their future use.

This lack of international consensus about how to control drones stems from a serious contradiction in incentives. Though drones pose grave challenges, they also offer states lethal and non-lethal capabilities that are of great appeal. Because the potential for drone technology is virtually limitless, states are now unwilling to control how drones evolve.