## 1AC

### 1AC – No DA’s

#### Contention 1- No Da’s

#### DOD complies with NEPA

**Baldwin 12** (Charlotte Fay Baldwin, US Department of the Army Fort Hood, Texas, “The National Environmental Policy Act (NEPA) Process with Military Projects By October 2012,” <http://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/6030/C.%20Baldwin_Capstone%20Paper%20Oct%20%209%202012_FINAL.pdf?sequence=1>)

The Department of Defense (DoD) follows the rigorous requirements outlined in NEPA, the National Historic Preservation Act of 1966 (NHPA), and all other statutes that involve protecting the environment and vital land resources under DoD stewardship. The DoD has a long and successful program to comply with NEPA. DoD’s policy is in DoD Instruction 4715.9, Environmental Planning and Analysis. Each of the military Departments and Defense Agencies are required to demonstrate how they will comply with NEPA prior to selection of each military construction project using Recovery Act funds. In addition, the Department is tracking compliance with NEPA for every project and reporting its status, as required, to the Council on Environmental Quality. The Department is using the full range of actions available under NEPA.8 To adhere and comply with NEPA, the Department of the Army engaged in three major efforts that benefited from the NEPA analysis process: Army Transformation, the Installation Sustainability Program and the Sustainable Range Program. All contributed to the long-term reduction of environmental impacts associated with Army programs and projects. The Army Transformation process is extensive, including the expansion and upgrading of installation training ranges, or the development of new ranges. As training requirements become more collaborative and sophisticated, training ranges may require different land areas, airspace, and support facilities. As this complex Army Transformation process proceeds, **NEPA planning** is **increasingly integrated into Army policies**. The planning process associated with the Army’s Installation Sustainability Program to address installation encroachment issues integrates the NEPA analysis process and is similar to CEQ’s cumulative effects analysis process. The installation and community jointly identify affected resources within the region in both processes. Once the resources have been identified and evaluated a **collaborative management plan** is developed that will provide solutions for all stakeholders. The Army’s Sustainable Range Program incorporates the same principles of these processes into its planning procedures. Site selection and range design for training facilities begin with a design “charrette” to insure stakeholder collaboration. This effort ensures a design that will satisfy training requirements and environmental issues.9 The Army NEPA implementation regulation provides the following **broad policy** statement**s**10: “NEPA establishes broad federal policies and goals for the protection of the environment and provides a flexible framework for balancing the need for environmental quality with other essential societal functions, including national defense. The Army is expected to manage those aspects of the environment affected by Army activities; **comprehensively integrating** environmental policy objectives into planning and decision-making. Meaningful integration of environmental considerations is accomplished by efficiently and effectively informing Army planners and decision makers. The Army will use the flexibility of NEPA to ensure implementation in the most cost-efficient and effective manner. The depth of analyses and length of documents will be proportionate to the nature and scope of the action, the complexity and level of anticipated effects on important environmental resources, and the capacity of Army decisions to influence those effects in a productive, meaningful way from the standpoint of environmental quality. The Army will actively incorporate environmental considerations into informed decisionmaking, in a manner consistent with NEPA. Communication, cooperation, and, as appropriate, collaboration between government and extra-government entities is an integral part of the NEPA process. Army proponents, participants, reviewers, and approvers will balance environmental concerns with mission requirements, technical requirements, economic feasibility, and long-term sustainability of Army operations. While carrying out its mission, the Army will also encourage the wise stewardship of natural and cultural resources for future generations. Decision makers will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish and wildlife, and other natural resources under their stewardship, and, as appropriate, in the context of regional ecosystems.”

#### Court controversies now

Ziskind 13

[Jeremy, Master's Degree in Public Policy (MPP) from the UCLA School of Public Affairs, ProCon.Org, Controversial Issues Fill US Supreme Court Docket, 10/10/13, <http://www.procon.org/headline.php?headlineID=005182>]

The new US Supreme Court term, which began on Oct(ober). 7, 2013, is expected to decide many controversial issues including cases on abortion, gay marriage, Obamacare, affirmative action, public prayer, free speech, religious liberty, property rights, and campaign finance reform. Justices began hearing oral arguments on Oct. 8 with an examination of campaign finance laws in McCutcheon v. Federal Election Commission. The case will determine the constitutionality of aggregate caps on direct contributions from individuals to candidates and political parties in federal campaigns. The plaintiffs, an Alabama citizen and the Republican National Committee, argue that two-year contribution limits to candidates ($46,200) and groups ($70,800) violate freedom of speech protections. Two cases will touch on abortion. McCullen v. Coakley challenges a Massachusetts law that restricts protests near reproductive health care facilities. Another, Cline v. Oklahoma Coalition for Reproductive Justice, questions whether or not states may limit the use of abortion-inducing drugs. The case could potentially modify the Supreme Court's 1973 ruling in Roe v. Wade prohibiting laws that place an "undue burden" on access to abortion. Justices are also expected to decide whether to hear cases challenging an Obamacare requirement that employers provide insurance coverage for contraception. Some corporations have stated that the requirement violates their right to religious freedom, and cite the Supreme Court's decision in Citizens United v. Federal Election Commission as the basis for a corporation's right to free speech. On the topic of affirmative action, the court will hear Schuette v. Coalition to Defend Affirmative Action. The case asks whether voters in the state of Michigan were allowed to pass a law in 2006 banning the use of race as a criteria for college admissions. The court will potentially take up cases on cell phones and privacy rights. The cases, US v. Wurie and Riley v. California, question whether or not police must obtain a warrant to search data on the cell phone of a person under arrest.

#### Political question doctrine is dead

Stras 08

[David, associate justice of the Minnesota Supreme Court , The Decline of the Political Question Doctrine, 12/29/08, <http://balkin.blogspot.com/2008/12/decline-of-political-question-doctrine.html>]

Not surprisingly, the Court has limited the application of the political question doctrine to thorny areas that are at the intersection of law and public policy, such as Congress's ability to regulate its own internal processes and matters of foreign affairs. With respect to the latter category, the Court has long declined to interfere with sensitive questions of foreign policy, holding at various points in history that such questions of when a war begins and ends and whether to recognize a foreign government and grant diplomatic immunity to its officials are all nonjusticiable political questions. In fact, some scholars have recognized that the area of foreign affairs was the last bastion where the political question doctrine had "real bite." The question I pose is what is left of the political question doctrine after Boumediene v. Bush? The answer, I believe, is not very much. As an initial matter, a majority of the Court has only employed the political question doctrine twice since 1964 (the year Baker v. Carr was decided) to dismiss a case, though various Justices have endorsed its use in a variety of contexts (e.g., treaty interpretation, political gerrymandering cases, etc.). Second, in Boumediene, the Court quickly dismissed the Government's argument that questions of sovereignty are matters for the political branches to conclusively decide. As the Court stated, "our cases do not hold it is improper for us to inquire into the objective degree of control the Nation asserts over foreign territory . . . . When we have stated that sovereignty is a political question, we have referred not to sovereignty in the general, colloquial sense, meaning the exercise of dominion or power, but sovereignty in the narrow, legal sense of the term, meaning a claim of right." The Court went on to conclude essentially that questions of de jure sovereignty (or a claim of right) are matters for the political branches to decide, but that questions of de facto sovereignty (or practical control over a territory) can be examined by the judicial branch. Given that de jure sovereignty is the clearer purely legal question and that one of the lynchpins of the political question doctrine is the presence or absence of judicially manageable standards, I find the Court's abbreviated discussion of the political question doctrine quite significant, even astonishing. Questions of de facto sovereignty tend to be difficult to determine because of competing indicia of control and, as a result, judicially manageable standards seem to be fairly elusive. (However, I would freely admit that the United States' near-total control of Guantanamo Bay made the question of de facto sovereignty by the United States in Boumediene pretty clear.) I also find the Court's discussion of the political question doctrine to be in stark contrast to its prior case law, which is quite deferential to the political branches on foreign policy questions. For instance, in Chicago & Southern Air Lines, Inc. v. Waterman Steamship Corp., 383 U.S. 103 (1948), the Court held that it could not review decisions of the President to grant or deny certificates of necessity to air carriers wishing to establish air travel routes to foreign countries. As the Court stated: [t]he very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the Government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of the kind for which the Judiciary has neither aptitude, facilities, nor responsibility, and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry. In the past, the Court has held that questions relating to sovereignty, such as whether to recognize a foreign government and grant diplomatic immunity to government officials, were among the "delicate" and "complex" matters that were better left to the "political departments." And as the Court freely concedes in Boumediene, it would have at least deferred to the Executive Branch if the outcome of the case depended on which country possessed de jure sovereignty over Guantanamo Bay. I am surprised, therefore, that not a single Justice on the Court would have dismissed this case on political question grounds, at least as the majority framed the case. (Perhaps the majority opinion could have taken sovereignty off the table by expanding its discussion of extraterritorial application of the Constitution and further distinguishing Eisentrager.)

### 1AC – Exchanges

#### Contention 2 is Judicial Exchanges

#### US judicial exchanges with China are healthy and increasing, providing a key forum for precedential replication

Arie 13 (Mira Gur-Arie is director of the International Judicial Relations Office of the Federal Judicial Center, the education and research agency for the U.S. federal courts, “Judges Coming Together: International Exchanges and U.S. Judiciary,” 4-1-13, <http://iipdigital.usembassy.gov/st/english/publication/2013/02/20130215142641.html#axzz2aUE6tKZy>)

The United States courts have experienced the impact of globalization in many ways. With increasing frequency, litigation involves evidence located abroad, foreign law, and international treaties, putting judges in contact with legal issues from around the world. This has, in turn, inspired in U.S. judges a growing interest in the legal world outside their jurisdiction, with many American judges hosting visits from foreign jurists and participating in conferences and technical assistance projects abroad. These international exchanges are much valued and mutually rewarding, enabling judges to exchange insights about the challenges and rewards of a judge’s role in preserving the rule of law. The U.S. judiciary has much to share, with its long history of independence, its developed jurisprudence, and its rich experience with administering a large and diverse court system. Each year the United States hosts well over 2,000 judges and lawyers from abroad. In 2012, the Supreme Court of the United States received more than 800 visitors representing over 95 countries. Among these were justices from the supreme courts of Morocco, Kosovo, and the Philippines. Judicial delegations from other countries do not visit only Washington. Federal courts all over the United States host visiting judges, providing an opportunity to observe trials, learn about courtroom technology and speak with their U.S. counterparts about the role of a judge in the United States. More than 150 judges and court officials visited the Massachusetts District Court in 2012, including judges from Romania, Brazil, and China; California's Northern District Court in San Francisco also hosts judges and court officials from other countries, with more than 15 delegations visiting the court each year; six judges from Jordan were among the visitors to Utah's District Court in 2012. In some cases judges from other countries participate in extended professional exchanges as interns or "guest research judges." The Massachusetts court has hosted judges from South Korea, China, and Turkey for such longer visits; these programs enable the visiting judges to acquire a more in-depth understanding of U.S. judicial practice, observe different phases of court proceedings, and learn about the legal research and judgment drafting process. Despite the diversity of the countries represented, the questions that emerge during these exchanges resonate with a single theme: How can judges and judicial systems work more effectively? Visiting judges want to know about judicial administration, strategies U.S. judges have employed to manage their caseloads efficiently, developing training for judges and court personnel, and the U.S. experience with implementing and enforcing a judicial code of conduct. During visits, foreign judges observe a broad range of proceedings: case conferences, criminal case arraignments and bail hearings, trials, oral arguments, and bankruptcy proceedings. Perhaps most importantly, visiting judges have the opportunity to speak one-on-one with U.S. judges. This judge-to-judge sharing of experience provides visitor and host alike useful insights about judging. Common Bonds Certainly, both visitor and host are impressed with their shared sense of role and mission, despite differences in their countries’ legal traditions, mechanisms of adjudication, and resources. Throughout the world, it is the judge’s responsibility to maintain the dignity of court proceedings and ensure that the rights of litigants are respected. Judges often discover that the great burden of this responsibility, and the often solitary avocation of judging, is a cross-cultural phenomenon — a realization that enables an ease of communication with their colleagues from other countries. This openness enables these conversations to lead to candid exchanges about the benefits and disadvantages of different judicial systems. Judges visiting the United States are keen to learn about the many unique features of the U.S. courts. Judges from countries without jury systems have the opportunity to observe jury selection and the trial process; they immediately note the difference between reality and Hollywood’s depictions, and they often admire the relationship of mutual respect that develops between the jurors and the judge. Similarly, U.S. judges, deeply acculturated to the common law tradition, are often surprised to learn about the duties and powers of an investigative judge in civil law countries. They are also intrigued with the very different orientation of court proceedings that rely more on paper submissions by attorneys than the taking of oral testimony in court. Such conversation and debate among jurists may best be initiated by a discussion of vocabulary, as many of the terms of art that define legal systems (trial, appeal, plea bargain) may have different meanings. Visitors to the U.S. courts often comment on the deep-rooted tradition of judicial independence in the United States and the many practical and physical advantages this confers on a judge’s work. One significant advantage enjoyed by federal judges in the United States is their life tenure — a tenure protected from political caprice and unrest. The U.S. courts are also well resourced, with a number of new courthouses, extensive automation, and administrative agencies and staff that greatly facilitate a judge’s work.

#### Judicial exchanges quickly transmit innovations in environmental law, the plan is replicated and applied

Markowitz 12 (Kenneth J. Markowitz is the President and founder of Earthpace LLC and Managing Director of the INECE Secretariat, Senior Counsel to the United States Environmental Protection Agency, Region III (1989-1994). Ken earned a B.B.A. in finance from Emory University's Goizueta Business School and a J.D. from the Washington College of Law (WCL) at American University, and Jo J. A. Gerardu graduated as a chemical engineer at the Eindhoven University, and worked for the Ministry of Transport as Head of the Department for Road Building Materials, Quality Control and Asphalt from 1970 to 1984, “The Importance of the Judiciary in Environmental Compliance and Enforcement,” Winter, 2012 Pace Environmental Law Review 29 Pace Envtl. L. Rev. 538)

A judiciary well informed of the rapidly expanding boundaries of environmental law and law in the field of sustainable development, and sensitive to their role and responsibilities in promoting the rule of law in regard to environmentally friendly development, would play a critical role in the vindication of the public interest in a healthy and secure environment through the interpretation, enhancement and enforcement of environmental law. n9 However, staying abreast of the complex and rapidly changing environmental issues can be difficult for individual judges. Further confounding the work of judicial bodies, most environmental harms involve complex science and - especially those brought about by climate change - do not conform to jurisdictional boundaries. This requires judicial bodies to coordinate and collaborate in ways to which judges may be unaccustomed or uncomfortable. n10 As stated in the United Nations Environment Programme (UNEP) GEO-4 Report, the environmental "issues [brought about by climate change] transcend borders. Protecting the global environment is largely beyond the capacity of individual countries. Only concerted and coordinated international action will be sufficient. The world needs a more coherent system of international environmental governance." n11 [\*545] In 2002, the participants of the Global Judges Symposium on Sustainable Development and the Role of Law in Johannesburg, South Africa, organized by INECE and UNEP, concluded that: The deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to the lack of effective implementation, development and enforcement of environmental law.' ... There is an urgent need to strengthen the capacity of judges, prosecutors, legislators and all persons who play a critical role at national level in the process of implementation, development and enforcement of environmental law ... . n12 Recognizing the importance of the judiciary, INECE works with judicial bodies around the world to help develop a global judiciary, which is well-informed of the rapidly expanding boundaries of environmental law and law in the field of sustainable development, and sensitive to their role and responsibilities in promoting the rule of law in regard to an environmentally friendly and secure environment through the interpretation, enhancement, and enforcement of environmental law. INECE also supports jurists in making administrative procedure changes to better support environmental enforcement. INECE will continue to reinforce and advance this message in the Rio + 20 process this summer and beyond. B. Environmental Courts and Tribunals One significant development in recent decades is the emergence of "green courts" - environmental courts and tribunals that specialize in the adjudication of environmental disputes. They allow governments to address environmental and closely related socio-economic issues that require significant specialized knowledge. Qualifications for serving as part of an environmental court and tribunal frequently require training in environmental science and other technical fields. They exist not [\*546] only for the prosecution of environmental crimes, but civil cases as well, and often must balance environmental and economic considerations. In all countries where environmental courts and tribunals are present, their availability is highly dependent on the threshold issue of standing. Local or national laws determine the types of claims that an environmental court and tribunal is authorized to hear and dictate the eligibility criteria for access to these decision-making bodies. A study by the Access Initiative has identified over 350 environmental courts and tribunals in forty-one countries and on every continent, including 117 created in the Philippines in 2008. n13 They take many forms and either consists of formal elements of the judicial branch of governments (courts) or bodies that are not part of the judicial branch, but have authority to issue binding decisions in environmental disputes (tribunals). n14 The Access Initiative study concluded that there is no optimal "one-size-fits-all" model for environmental courts and tribunals but that the most effective form for each country should be driven by factors that include the type of laws, legal institutions, cultural, and socio-economic conditions prevalent in each national jurisdiction. n15 The diversity of environmental courts and tribunals is best illustrated by several examples. The Land and Environment Court in the state of New South Wales, Australia, is a stand-alone court that is part of the judicial branch of government. It has comprehensive authority to address issues that integrate environmental and land-planning concerns and is empowered to issue civil, administrative, and criminal rulings. n16 The court makes extensive use of internally selected independent experts who have scientific or technical credentials. n17 [\*547] In contrast, Brazil's state and federal environmental courts do not have authority to integrate land use planning issues into their decisions on criminal cases (although they have civil and administrative jurisdiction). n18 However, Brazilian judges have significant leeway to fashion creative remedies in environmental cases and are recognized for being relatively insulated from political pressures. n19 A unique fixture in environmental cases in Brazil is the office of public environmental prosecutors (Ministerio Publico), which is largely independent of the three branches of government and has substantial powers to autonomously and aggressively pursue environmental actions, work closely with NGOs, or respond to a claim filed by the public. n20 Some environmental courts and tribunals have only recently been implemented. In India, the National Green Tribunal Act of 2010 authorized the development of institutional capacity for domestic environmental governance, including the implementation of a national green tribunal that is staffed by judicial and expert members for issuing rulings on environmental controversies. n21 The Tribunal, which became operational in summer of 2011, is expected to play a dominant role in leading the development of environmental compliance and enforcement mechanisms, but is likely to require significant capacity enhancements before it can make inroads in improving compliance with India's environmental laws. Efforts to build a green court are advanced in Kenya and in several Asian countries as well. Despite the advantages that environmental courts and tribunals offer over non-specialized civil and criminal courts, their availability only represents a first step towards preventing and providing effective redress for environmental harms. The [\*548] means for enforcement must be available in order to give effect to the decision of an environmental court or tribunal. This may prove difficult in practice where there is insufficient capacity on the part of government agencies, in terms of training, experience, level of staffing, or political will to implement the actions necessary to accomplish this. In many countries, judges and prosecutors will require additional training and resources in order to consistently fashion decisions that can be enforced. The engagement of senior judges, prosecutors, and attorney generals in international networks has proven to be one highly effective tool for enhancing their abilities to shape the ultimate outcome in environmental disputes. IV. THE ROLE OF INTERNATIONAL NETWORKS IN FACILITATING COOPERATION AMONG THE JUDICIARY Cooperation among governmental officials dedicated to strengthening environmental governance has numerous benefits for achieving common goals. Cooperation, whether through formal structures or through informal networks, can help resolve and prevent trans-boundary environmental problems, create efficiencies in the development of tools and programs, and help create a level playing field for regulated industries. n22 In the example of INECE, its work over the past twenty years in fostering collaboration among officials has resulted in informal relationships that have provided a number of advantages. These include the ability to address trans-boundary environmental crime, n23 the increased recognition of the relationship between environmental enforcement and sustainable [\*549] development, n24 and the collaborative development of new tools for strengthening institutions to assure compliance. n25 These same principles apply to collaboration among members of the judiciary, whether at a national or international level, which can aid in the transmission of advances in environmental sciences and provide a forum for members of the judiciary to exchange information on environmental law relevant to their decision making. As the United Nations Environment Programme recognizes, "because environmental violations very often have transboundary aspects, however, judicial proceedings addressing such violations will also have international aspects and will benefit from cooperation between the relevant judges." n26 Global judicial networking can promote the exchange of ideas between court systems, enable informal peer-level oversight, and encourage and empower members of the judiciary who are engaged in environmental decision-making. Anne-Marie [\*550] Slaughter describes the benefits of both horizontal communication (between courts of the same status) and vertical communication (between national and supranational courts), noting that: ... horizontal judicial communication can play a further role in promoting the acceptance and effectiveness of international obligations. In a situation in which a number of states are contemplating acceptance of a particular international legal obligation, references to the activity of fellow courts in other states can act as both a security blanket and a stick. n27 In the two decades since the Rio Earth Summit, members of the judiciary, including judges, prosecutors, attorney generals, and other legal professionals have been central participants in the use of international networks to share knowledge, build consensus on best practices, and develop a basis for broader cooperation in dealing with environmental cases that transcend international boundaries. Moving into the future, INECE and its global networks will continue to play a role in helping to formulate a more systematic approach in addressing the role of the judiciary in promoting environmental compliance and enforcement. INECE through its networks can promote and expand the basis for standing for civil society groups and assist in promoting judicial awareness of the need for strong enforcement of environmental cases. A meeting of the Presidents of Supreme Courts and Chief Justices, convened at the 2002 Johannesburg Summit, provided the impetus for one of the first international networks of judges dedicated to addressing environmental issues. In order to implement the resolutions adopted at that meeting, UNEP organized a series of regional conferences. An important outcome of this process involved a decision by European judges creating a permanent network in February 2004: the European Union Forum of Judges for the Environment. The Forum's mission is to promote better enforcement of national, European, and international environmental law through programs aimed at [\*551] strengthening judges' knowledge of environmental law, encouraging the exchange of judicial decisions, and collaborating to develop effective training in environmental law. The European Union Forum of Judges for the Environment has also taken a leading role in spreading the benefits of networking beyond Western Europe, pioneering initiatives in South Eastern Europe and Central Asia. Although regional networks have established new channels for effective regional cooperation, many of today's environmental challenges are global in scale. On June 20, 2011, the Global Network of Environmental Prosecutors, launched (by a diverse group of prosecutors) in response to the conclusion that internationally organized crime calls for an internationally organized prosecution. n28 This new network is an outcome of a joint work program carried out by INECE and the IUCN. It also builds on the experience of existing networks, such as the Latin American Environmental Prosecutors Network and the European Network of Prosecutors. The network will contribute towards compliance with international and national laws aimed at protecting flora and fauna, marine and terrestrial ecosystems, and habitats. V. FURTHER STEPS Initial groundwork has been laid for a new era of international cooperation between members of the judiciary. The 2011 INECE Conference at Whistler resulted in a call to action to facilitate continued collaboration among key participants, including judges, prosecutors, civil society, and the private sector to work toward strengthening mechanisms for environmental compliance and enforcement. n29 Some of these action items include promoting the importance of green courts in enforcing environmental law, jointly developing methods to stimulate effective cross-border information sharing mechanisms for [\*552] detecting and deterring illegal operations, and better integrating and expanding the role of academia into this work. n30 In June of 2012, the United Nations Conference on Sustainable Development (Rio+20) will offer members of the judiciary from around the world an opportunity to take international judicial cooperation on the environment further. In preparation for Rio+20, UNEP commenced a set of programs designed to strengthen that outcome. These include engaging senior members of the judiciary from around the world in identifying a common vision for using legal systems, the judiciary, and governance to promote sustainable development. n31 In a background document submitted in support of UNEP's effort, Gregory Rose highlighted that: The judiciary has, in recent years, enhanced enforcement efforts by governments to implement environmental laws. It plays a crucial role by interpreting legislation relating to environmental issues, integrating emerging principles of law within the holistic paradigms of sustainable development, providing a coherent and comprehensive strategy for integrating diverse sectoral laws into a cross-sectoral approach and for ensuring effective implementation of legislation. n32 After an initial high-level planning session in Stockholm in July, UNEP held its first preparatory meeting in Kuala Lumpur, Malaysia, on October 12 and 13, 2011. The meeting resulted in the "Kuala Lumpur Statement," n33 which provides a bold list of objectives that must be attained in order to put sustainable development goals into effect. Highlighting the need for representatives of the legal community to "take a more active role [\*553] to further their contribution" n34 toward reaching those goals, the statement's key objectives include strengthening recognition of the connection between social justice and environment, integrating non-governmental sectors (business and environmental NGOs), and taking steps to enhance public participation and access to justice. n35 A second preparatory meeting will take place in Buenos Aires, Argentina, in April of 2012. On the eve of Rio+20, UNEP will convene the World Congress on Justice, Governance and Law for Environmental Sustainability from June 1-3, 2012, in order to build international consensus among key participants which will include attorneys-general, chief prosecutors, auditors-general (cour des comptes), chief justices and senior judges. The World Congress will seek to establish a roadmap for concrete future actions that will be necessary to support the pursuit of sustainable development and to secure commitment for implementing them. VI. CONCLUSIONS Strengthening environmental compliance and enforcement requires the unwavering commitment of individuals and institutions everywhere. Of the many actors in the environmental compliance chain, the judiciary alone has a fundamental contribution to make in upholding the rule of law and ensuring that national and international laws are interpreted and applied fairly, efficiently, and effectively. Perhaps the most profound aspect of judicial leadership in strengthening institutions for environmental compliance enforcement is the judiciary's ability to influence public perception and discourse concerning environmental and social concerns. Courts have a powerful transformative effect on society. Scott Fulton and Justice Antonio Benjamin, prominent environmental judges from separate continents and cultures, [\*554] recently jointly commented that, "what judges treat as important, a society comes to judge as important." n36 Improved global collaboration between judges and prosecutors across an increasingly broad array of formal and informal networking channels has greatly increased opportunities for successful implementation of compliance and enforcement measures. Yet the success of global environmental governance depends on more than an environmentally trained and motivated judiciary. The same level of ambition that has been collectively voiced by senior judges in preparation for Rio+20 must be harnessed to translate generalized goals into concrete institutional changes, laws, and accountability mechanisms in nations around the world.

#### Application of NEPA’s precedent is key to prevent Chinese military pollution

Nevitt 13

[Mark. He’s a badass and an American Patriot. Don’t take our word for it though, he is a Lieutenant Commander (LCDR), United States Navy. LCDR Mark P. Nevitt is an active duty Navy judge advocate. He obtained his LL.M. with distinction at the Georgetown University Law Center (GULC), his J.D. from Georgetown Law and his B.S.E. from the Wharton School at the University of Pennsylvania, where he was commissioned as a naval officer via the NROTC program. A former naval flight officer who has flown combat mission from aircraft carriers, LCDR Nevitt is currently assigned as the Region Environmental Counsel (REC) for the Mid-Atlantic Region in Norfolk, VA, DEFENDING THE ENVIRONMENT: A MISSION

FOR THE WORLD’S MILITARIES, March 12, 2013, pp. 42-53]

The starting point for a discussion of how environmental laws apply to the Chinese military must start with China’s unique structure. The PLA consists of five military subgroups and is under the authority of the powerful Central Military Commission. Under China’s Constitution, most recently amended in 1982, the CMC of the People's Republic of China directs the armed forces of the country. Further, the CMC is composed of the Chairman, the Vice-Chairmen, and Members. The Chairman of the CMC has overall responsibility for the commission and the term of office of the CMC is the same as that of the National People's Congress. The Ministry of National Defense reports to the State Council, but does not exercise any independent control over the PLA. In theory, the National People’s Congress (NPC) exercises considerable control over the CMC, including electing the Chairman. But the reality is different. While the 1982 Chinese Constitution gives the National People’s Congress a prominent role, one commentator has noted that “it is little more than a rubber stamp for party decisions.” The CMC exercises de facto, authoritative policy-making and operational control over the military through the General Political Department of the People's Liberation Army (PLA). The head of the CMC is also the President of China, currently Hu Jintao. It is common for the President of China to continue to serve as head of the CMC for several years after stepping down as President. For example, President Jiang Zemin served as the head of the CMC for two years following his Presidency and it is anticipated that Hu Jintao will serve as the CMC head when Xi Jinping becomes China’s President. This further cements the centralization of power within select Communist Party officials that appear to have minimal practical accountability outside the party apparatus. 2. Chinese Environmental Law Against this backdrop, environmental legislative development in China has proceeded slowly, with the Environmental Protection Law (EPL) of the People’s Republic of China first issued in 1979 and subsequently amended and implemented in 1989. The EPL addresses natural resource protection through the “rational use of natural environment, prevention and elimination of environmental pollution and damage to ecosystems, in order to create a clean and favorable living and working environment, protect the health of the people and promote economic development.” The Chinese Constitution discusses the environment in Article 26: “[t]he State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards. The State organizes and encourages afforestation and the protection of forests.” In all, there are nine major environmental laws and regulations adopted by the NPC Standing Committee and ten laws dealing with the protection of specific resources. Many of the Chinese environmental laws have approximate U.S. counterparts. For example, the “Law of the People's Republic of China on the Prevention and Control of Environmental Pollution by Solid Waste” roughly approximates RCRA and the “Law on Prevention and Control of Water Pollution” roughly approximates the Clean Water Act. These major Chinese environmental laws and regulations – with few exceptions - leave out any reference to the military or governmental agencies. Article 1 of the EPL states that it’s “formulated for the purpose of protecting and improving people's environment and the ecological environment, preventing and controlling pollution and other public hazards, safeguarding human health and facilitating the development of socialist modernization.” The EPL applies “to the territory of the People’s Republic of China and other sea areas under the jurisdiction of the People's Republic of China.” Article 6 contains a provision that could potentially provide for citizen-suit actions by Chinese citizens. It states, “All units and individuals shall have the obligation to protect the environment and shall have the right to report on or file charges against units or individuals that cause pollution or damage to the environment.” It is unlikely that this will occur in practice, however, as China lacks an accompanying citizen-suit statute or APA-stylized remedy. Article 7 of the EPL effectively allows the armed forces and other administrations to self-regulate (“conduct supervision and management”) via their internal environmental protection departments without a clear independent accountability. It states: The state administrative department of marine affairs, the harbor superintendence administration, the fisheries administration and fishing harbor superintendence agencies, the environmental protection department of the armed forces and the administrative departments of public security, transportation, railways and civil aviation at various levels shall, in accordance with the provisions of relevant laws, conduct supervision and management of the prevention and control of environmental pollution. There are legal liability provisions within the EPL to include criminal prosecution, yet, as discussed below, environmental enforcement has been lax and continues to undermine the overall environmental regime. For the first time in twenty years, the EPL is currently being rewritten. Yet, it appears that the new EPL lacks provisions allowing for lawsuits to protect the environmental public health and safety and does not address the military. Additionally, the Chinese Water Pollution Control Law states, “in the event of a large number of interested parties harmed by water pollution, the interested parties may select a representative to participate in the joint action.” Yet it remains highly unlikely that independent citizen groups (referred to as Civil Society Organization, or “CSOs,” in China) could successfully bring a lawsuit to enforce these provisions. The “Law of the People's Republic of China on the Environmental Impact Assessment” was adopted October 28, 2002, and imposes NEPA-like requirements to provide environmental impact assessments in the promotion of sustainable development. The jurisdiction includes the “territory of the People’s Republic of China or within other seas subject to the jurisdiction of the People's Republic of China.” Military construction projects are specifically mentioned in Art. 201: The measures for conducting environmental impact appraisals to the construction projects of military facilities shall be formulated by the Central Military Committee according to the present Law. This rather general provision reinforces the central role of the CMC in environmental management of the PLA without outside judicial or citizen accountability. China has also adopted a Marine Pollution Law, which, as written, appears to apply broadly to activities that would encompass the Chinese navy as it specifically applies to the internal sea, territorial seas, contiguous zone, continental shelves and other sea areas under the jurisdiction of the PRC. It states, “[a]ll units and individuals engaged in navigation, exploration . . . and other operations in the sea areas under the jurisdiction of the PRC, or engaged in operations in the coastal areas that have impact on the marine environment shall comply with the law.” Yet because Chinese military environmental stewardship is effectively self-governed by its own “environmental protection department,” **Chinese laws lack the ability to provide for third-party oversight of its military activities.** 3. Implementation and Enforcement The likelihood of citizen suits to enforce environmental regulations would not appear to be high if sought to be applied to the Chinese military. No citizen suits under Chinese environmental law have even been attempted against until fairly recently when a CSO named the “All-China Environmental Federation” sued a port container firm for violation of the “laws related to environmental impact assessment, and the prevention and control of air, water and noise pollution for alleged environmental violations.” Not surprisingly, there have been no citizen suit actions against any Chinese military activities. As discussed above, China has passed several environmental laws in the last thirty years, but they have been largely marked by ineffective implementation and enforcement. In China the low status of law as a means of achieving societal goals, the lack of capacity within the country’s bureaucracies and legal institutions, and its delegation of responsibility for environmental protection to local or administrative authorities has made effective overall environmental implementation difficult. To further highlight this, in the 2010 Yale/Columbia Environmental Performance Index ranks countries on environmental and public health performance indicators and serves as a gauge for how countries are matching up to their stated environmental goals. China ranked 116 out of 132 tracked countries. Further, China does not have a cooperative federalism model such as the one seen in the United States, for example, whereby states exercise considerable authority over their environmental enforcement and administration to include military activities in their state. At first blush, it appears that China has a broad environmental legal regime that could apply to military activities. The “People's Liberation Army Environmental Protection Ordinance of China,” issued by the CMC, states in its purpose statement: In order to regulate the environmental protection work of the armed forces, protect and improve the army management and use of the living environment of the region, the ecological environment, safeguarding human health, according to the relevant provisions of the Environmental Protection Law of the People's Republic of China and other environmental protection laws, the enactment of this Ordinance. Yet, it is unclear how the military practically applies the EPL and other Chinese national environmental law to the armed forces. Since 1979, China’s National People’s Congress and Standing Committee have passed 29 pieces of environmental legislation, nearly 10 percent of the total legislation passed in China. Yet despite these legislative gains, there appear to be enormous gaps in environmental law in China and its enforcement. Criminal enforcement is especially difficult because “as long as no major pollution of the environment, no major loss of property and no major injuries result, then there is no crime.” Penalties and enforcement practices are not a sufficient deterrent in itself. This can be attributed, in part to an overall lax enforcement of China environmental laws. Further, in enforcing environmental regulations, the judiciary has shown a reluctance to take on “sensitive or special cases, meaning they can refuse to let someone bring an action and leave them with no other options to pursue.” These generic problems of environmental enforcement are compounded when applied to the Chinese military, which essentially has the status of an independent entity that is accountable only to the CMC. It is not expressly subject to the environmental regulations adopted and amended by the NPC Standing Committee and PLA operates, essentially, as an independent entity that is outside the jurisdiction of Chinese environmental regulations. China has adopted a more sustainable model of environmental regulation, however, and there appear to have been some efforts underway within the CMC to address environmental stewardship in the PLA as a result. For example, the PLA has its own internal environmental regulations, such as the “People's Liberation Army Environmental Protection Ordinance.” Its purpose is to “regulate the environmental protection work of the armed forces, protect and improve the army management and use of the living environment of the region, the ecological environment.” It contains numerous noble environmental goals (e.g. “[e]nvironmental protection work of the armed forces should be integrated into the army building and development plans”). Similar to the nine core environmental laws, it is unclear what legal effect these military guidelines have—they appear to be more of guiding documents without judicially enforceable standards. One report has noted a total of 835 Chinese “National Resources and Environmental Management” (NREM) policies, but only ten that apply to Chinese military installations without any history of outside judicial enforcement. China lacks any provision akin to the APA within U.S. law that allows citizens to bring legal challenges to “agency action” by China or Chinese officials. Absent such administrative protections, **it is unlikely that the military will be fully accountable to any outside group or citizen group for violating its environmental laws.**

#### The plan is a key model for checks on China’s military – prevents destruction and unrest

Nevitt 13

[Mark. He’s a badass and an American Patriot. Don’t take our word for it though; he is a Lieutenant Commander (LCDR), United States Navy. LCDR Mark P. Nevitt is an active duty Navy judge advocate. He obtained his LL.M. with distinction at the Georgetown University Law Center (GULC), his J.D. from Georgetown Law and his B.S.E. from the Wharton School at the University of Pennsylvania, where he was commissioned as a naval officer via the NROTC program. A former naval flight officer who has flown combat mission from aircraft carriers, LCDR Nevitt is currently assigned as the Region Environmental Counsel (REC) for the Mid-Atlantic Region in Norfolk, VA, DEFENDING THE ENVIRONMENT: A MISSION

FOR THE WORLD’S MILITARIES, March 12, 2013, pp. 42-53]

In many developing countries, the military is viewed as a necessary support for the state, and civilian authorities are often reluctant to impose restrictions on military activities. Yet in the long-term, this can be dangerous, and can lead to conflict and unrest. History is beset with numerous military-led coups due to the disproportionate power relationship that exists between the military and its civilian political leaders. Other nations of the world can learn from the American experience—in particular, from the robust judicial enforcement of U.S. environmental laws against the military. For example, while the Chinese military is theoretically accountable to the EPL and other core laws, enforcement appears weak as applied to the military making the PLA effectively outside the umbrella of broader national environmental regulation. Th**ere does not appear to be a practical judicial enforcement mechanism for citizens** or citizen groups to bring lawsuits against a polluting military sector. As the Chinese economy and military sector grow, it is concerning that there is limited accountability while its military activities grow and continue to have a greater impact on the environment. Indeed, Chinese military environmental regulations appear to be entirely self-governing, begging two questions: (1) what practical environmental standards apply to the Chinese military?, and (2) what routes exist for the Chinese populace to hold its military accountable for environmental regulations? Unfortunately, Chinese environmental law today as practically applied to its military appears to share some similarities with the Soviet Union during the Cold War. As discussed above, under “[t]he People’s Liberation Army Environmental Protection Ordnance,” the Chinese military “is accountable to the relevant provisions of the Environmental Protection Law,” but it is unclear how this accountability is implemented in practice given the apparent absence of citizen suits or judicial enforcement from Chinese law. The Soviet Union military was, essentially, exempt from its environmental laws throughout the Cold War. Perhaps not surprisingly, the Soviet military’s legacy of environmental stewardship was poor and this was further exacerbated by a secrecy-driven culture.

#### Chinese military exemptions gut overall environment enforcement

Tang 98 (Shui-Yan Tang, University of Southern California, Vandana Prakash, University of Southern California, Ching-Ping Tang, “Local Enforcement of Pollution Control in Developing Countries: A Comparison of Guangzhou, Delhi, and Taipei,” *Journal of Public Policy*, Vol. 18, No. 3, Sep. - Dec., 1998, pp. 265-282)

The extent to which an environmental agency can effectively enforce environmental regulations frequently depends on the informal power relations among government officials and units. A major obstacle for effective enforcement of environmental regulations, for example, comes from the military and its service units and enterprises. Chan et al. (1993), for example, mentioned the difficulty the Guangzhou Municipal Environmental Protection Bureau encountered when it tried to undertake a site inspection of the Retired Air Force Personnel Recre- ation Club. The EIA system is dominated entirely by government agencies, without any forum and provision for public participation or consultation. All decisions in the process are made solely by bureau officials; no insti- tutional channels exist for the general public and those who are affec- ted by the proposed project to express their opinions and to raise objec- tions. Although laws in China provide for penalties or imprisonment for various environmental crimes, legal channels are seldom used for resolving environmental conflicts. Furthermore, no viable means exist for citizens to challenge government agencies' EIA decisions through legal channels.

#### NEPA provisions are uniquely key

Goldman 5 (Patti, Managing Attorney for Earthjustice's Seattle office, “Environmental Law in China,” 10-22-5, <http://earthjustice.org/features/dispatches-from-china>)

Sun Youhai, the Director of the Environmental and Resource Committee of the People's Congress provided an overview of the development of China's environmental law, moving from an early period of little regulation to framework laws and then progressive amendments and enactment of new laws to cover various modes of pollution and natural resource issues. He candidly identified the key weaknesses in the current scheme as: (1) lack of enforcement because local governments are so closely tied to and economically dependent (through their tax revenues) on the polluting industries; and (2) the lack of specific standards and implementing systems in the current laws. However, he expressed optimism that China could attain a stronger legal environmental protection regime due to greater public attention to the environment, a growing focus on public participation in environmental decisionmaking, and current government policies that favor building a harmonious society that integrates economic development, sustainability, human health and environmental protection. What was striking to this American observer was the strength of the pro-environment rhetoric coming from a Chinese official. Sun Youhai admitted that economic development is a strong force that often trumps environmental protection, but he then identified the need to have mechanisms in place to curb that impulse. He also gave credence to embodying into Chinese law such concepts as the precautionary principle, corporate social responsibility, and the polluter pays principle. And he touted the benefits of public participation as anti-environmental forces in the United States are poised to weaken the U.S. National Environmental Policy Act. The afternoon turned to China's 2003 Environmental Impact Assessment law with Wang Canfa, Professor at China University of Politics and Law and founder and director of the Center for Legal Assistance to Pollution Victims. He walked through the law's provisions with criticisms that echo those experienced under the U.S. National Environmental Policy Act. For example, a power plant divided its project into two components, neither of which warranted a full environmental impact assessment alone when such an assessment would be required by the project as a whole. He also lamented the fact that an environmental impact assessment does not compel the government to make the most environmentally sound decision and recounted an example where the government's analysis of an appeal supported canceling construction of a high-voltage electric line but it allowed the project to proceed in the end. While many of the issues resemble those still experienced in the U.S., China's law suffers from its early stage where implementation mechanisms are still not fully developed. When the law was adopted, a provision that would have allowed citizens to enforce the law's mandates was rejected. As a result, advocates like Professor Wang are struggling to create effective mechanisms for administrative and judicial review. The law's principal enforcement mechanism is currently in the hands of the government, which recently responded to criticism of its lack of enforcement by ordering approximately 30 projects to stop because they had proceeded without an environmental impact assessment. While the stop work orders may seem bold on the surface, they merely delayed most of the projects by a few weeks while additional paperwork was filed. The decision to proceed with the projects received little or no scrutiny in light of the tardy assessments.

**Chinese pollution causes CCP instability**

**Nankivell 06**

[Nathan, Senior Research for the Canadian Department of National Defense, “China's Pollution Poses Security Threat in Asia,” 1/9/06, Japan Focus, News Analysis, <http://news.pacificnews.org/news/view_article.html?article_id=fd2421fbe9b4fe1ac727e145f8719b4e>]

As pollution and environmental degradation in China worsens, the Communist government has been unable or unwilling to prescribe measures needed to address the problem. This inability carries grave consequences for China and Asia, threatening stability not only in China but throughout the region. There is little disagreement that China’s environment is a mounting problem for Beijing. China produces as many sulfur emissions as Tokyo and Los Angeles combined; China is home to 16 of the world’s 20 most polluted cities; water pollution reduces crop returns; air pollution is blamed for the premature death of some 400,000 Chinese annually; and solid waste production is expected to more than double over the next decade, pushing China ahead of the U.S. In spite of greater awareness, pollution and environmental degradation are likely to worsen. Chinese consumers are expected to purchase hundreds of millions of automobiles. Despite pledges to put the environment first, national planners still aim to double per capita GDP by 2010. Cities will grow, leading to the creation of slums and stressing urban sanitation and delivery systems The nation lacks a powerful national body able to coordinate, monitor, and enforce environmental legislation: the State Environmental Protection Agency (SEPA) is under-staffed, has few resources, and must compete with other bureaucracies for attention. To address the problems, it will take an aggressive effort by the central government to eliminate corruption, establish the rule of law and transparency, incentives and investment. As it stands, decision-making falls to local officials who are more concerned with economic growth than the environment. The deficiency of capital and the lack of will to promote massive spending on environmental repair make it difficult to be optimistic. Estimates on the final cost of environmental repair range into the tens of billions of dollars. As the impact of pollution on human health becomes more obvious and widespread, it is leading to greater political mobilization and social unrest of affected citizens. There were more than 74,000 incidents of protest and unrest recorded in China in 2004, up from 58,000 the year before. Pollution issues unite communities. The effects, though not equally felt by each person within a community, affect rich and poor, farmers and businessmen, families and individuals alike. As local communities respond to pollution issues through united opposition, it is leaving Beijing with no easy target upon which to blame unrest, and no simple option for how to quell whole communities with a common grievance. Moreover, protests serve as a venue for the politically disaffected unhappy with the current state of governance and may be open to other forms of political rule. For the Communist Chinese Party (CCP), social unrest has the potential to challenge the CCP’s total political control, thus potentially destabilizing a state with a huge military arsenal and a history of violent, internal conflict that cannot be downplayed or ignored. A further key challenge is trying to contain protests once they begin. The steady introduction of new media like cell phones, email, and text messaging prevent China’s authorities from silencing and hiding unrest. Domestic and international observers will be aware of unrest, making it far more difficult for local authorities to employ state-sanctioned force. While many would treat political change in China, especially the implosion of the Party, as a welcome development, it must be noted that any slippage of the Party’s dominance would most likely be accompanied by a period of transitional violence. Though most violence would be directed toward dissident Chinese, regional security would be affected through immigration, impediments to trade, and an increased military presence along the Chinese border. While unrest presents the most obvious example of a security threat related to pollution, several other key concerns are worth noting. The cost of environmental destruction could, for example, begin to reverse the blistering rate of economic growth in China that is the foundation of CCP legitimacy. Estimates maintain that 7 percent annual growth is required to preserve social stability. Yet the costs of pollution are already taxing the economy between 8 and 12 percent of GDP per year. As environmental problems mount, this percentage will increase, reducing annual growth. As a result, the CCP could be challenged to legitimize its continued control.

**Extinction**

**Yee and Storey 02**

[Herbert Yee, Professor of Politics and IR, Hong Kong Baptist University --AND-- Ian Storey, Lecturer in Defence Studies at Deakin, 02

“The China Threat: Perceptions, Myths and Reality,” p5]

The fourth factor contributing to the perception of a China threat is the fear of political and economic collapse in the PRC, resulting in territorial fragmentation, civil war and waves of refugees pouring into neighbouring countries. Naturally, any or all of these scenarios would have a profoundly negative impact on regional stability. Today the Chinese leadership faces a raft of internal problems, including the increasing political demands of its citizens, a growing population, a shortage of natural resources and a deterioration in the natural environment caused by rapid industrialisation and pollution. These problems are putting a strain on the central government's ability to govern effectively. Political disintegration or a Chinese civil war might result in millions of Chinese refugees seeking asylum in neighbouring countries. Such an unprecedented exodus of refugees from a collapsed PRC would no doubt put a severe strain on the limited resources of China's neighbours. A fragmented China could also result in another nightmare scenario - nuclear weapons falling into the hands of irresponsible local provincial leaders or warlords.2 From this perspective, a disintegrating China would also pose a threat to its neighbours and the world.

**Even if the CCP doesn’t collapse – the party will lash out over the Senkakus**

**Tessman 09** (Brock F. Tessman, Assistant Professor of International Affairs in the School of Public and International Affairs at the University of Georgia, Faculty Associate at both the Center for International Trade and Security and the Globis Center at the University of Georgia, Asian Security 5.3 The Evolution of Chinese Foreign Policy: New Incentives with Slowing Growth, p. InformaWorld)

While a stable, fully democratized China may be less likely to adopt a confrontational foreign policy agenda, today's PRC is, at best, in the very early stages of liberalization. For many pessimists, it is precisely the process of democratization that will **lead to conflict** between China and the rest of the system. The problem, according to Edward Mansfield and Jack Snyder, is an imbalance between challenges posed by political participation of the masses and the inadequacy of democratic institutions that govern that participation.23 Under pressure to garner votes, leaders (and rival political elite) have incentives to use nationalist rhetoric and militaristic means to cultivate mass appeal or to distract the public from unpopular developments at home. The opportunities for China are abundant: **confronting Japan** on its war record in China; pressuring Taiwan when it comes to reincorporation to the PRC; making bold claims to control of undersea oil and natural gas resources in the China Sea; challenging American influence in regions like Latin America; **fostering a crisis** with one of its smaller neighbors (as it has done in the past) like Vietnam; or citing the US financial system as the culprit behind the economic slowdown hitting Chinese factories. From an American perspective, the start-and-stop process of democratization might actually highlight the sheer size of the social, cultural, and political gulf between the PRC and the United States. If a crisis were to develop between the PRC and one of its democratic neighbors, the visibility of China's democratic shortcomings might actually lead the American public to push Washington hard when it comes to countering Chinese policies. In summary, the existing literature on political liberalization suggests that the transition from autocracy to democracy can actually be a rocky one.

**This short-circuits the barriers to conflict and escalates**

**Lee 13** (Soon Ho Lee, PhD candidate at the Department of Politics and International Studies, The University of Hull, “Japans’ Dilemma: Maritime Disputes in East Asia,” East Asia Forum, March 2, 2013, <http://www.eastasiaforum.org/2013/03/02/japans-dilemma-maritime-disputes-in-east-asia/#more-33971>)

Moreover, Japan’s maritime disputes with East Asian countries, especially with China over the Senkaku/Diaoyu islands, could severely affect the Japanese economy because of aggravated anti-Japanese sentiment and the potential for bilateral trade reprisals. The Senkaku/Diaoyu territorial dispute may also **ignite Chinese nationalism,** which may then become a heavy burden on China’s Communist Party. In such circumstances, **this** dispute **could escalate into armed conflict.** What, then, is the best policy option for Japan? Japan needs to carefully consider creating multilateral diplomatic channels. During the Cold War, Japan favoured bilateral talks, with the United States usually acting as an arbitrator. At that stage, bilateral talks were the logical choice, since the capitalist bloc countries could not neglect Japan’s clout — Japan possessed impressive negotiation skills and had valuable international connections, especially in maritime matters. Now, Japan is not as dominant as it used to be, and the United States is not willing to actively engage in Japan’s disputes, as this could increase anti-American sentiment in East Asia. In this context, if Japan tries to solve the problem with bilateral confrontations, their actions would receive international attention and would be more susceptible to domestic pressure, which would inevitably aggravate existing tensions.

**Leads to great power nuclear war**

**Blaxland 13** (John Blaxland, Senior Fellow at the Strategic and Defence Studies Centre, the Australian National University, and Rikki Kersten, Professor of modern Japanese political history in the School of International, Political and Strategic Studies at the College of Asia and the Pacific, the Australian National University, 2/13/13, “Escalating territorial tension in East Asia echoes Europe’s descent into world war,” <http://www.eastasiaforum.org/2013/02/13/escalating-territorial-tension-in-east-asia-echoes-europes-descent-into-world-war/>)

A century on, many of the same observations can be made in East Asia. China’s rise is coupled with a disturbing surge in jingoism across East and Southeast Asia. China resents the territorial resolution of World War II, in which the United States handed responsibility for the Senkaku/Diaoyu islands to Japan while large chunks of the South China Sea were claimed and occupied by countries that emerged in Southeast Asia’s post-colonial order. **Oil and gas reserves are attractive reasons for China to assert itself,** but challenging the US place in East Asian waters is the main objective. China resents American ‘re-balancing ‘as an attempt at ‘containment’, even though US dependence on Chinese trade and finance makes that notion implausible. China is pushing the boundaries of the accepted post-Second World War order championed by the United States and embodied by the UN. China’s rapid rise and long-held grievances mean its powerbrokers are reluctant to use institutions like the ICJ. But China’s assertiveness is driving regional states closer into the arms of the United States. Intimidation and assertive maritime acts have been carried out, ostensibly by elements not linked to China’s armed forces. China’s white-painted Chinese Maritime Services and Fisheries Law Enforcement Command vessels operating in the South China Sea and around the Senkaku/Diaoyu islands have evoked strong reactions. But Japan’s recent allegation that China used active radars is a significant escalation. Assuming it happened, this latest move could trigger a stronger reaction from Japan. China looks increasingly as if it is not prepared to abide by UN-related conventions. International law has been established mostly by powers China sees as having exploited it during its ‘century of humiliation’. Yet arguably, it is in the defence of these international institutions that the peaceful rise of China is most likely to be assured. China’s refusal to submit to such mechanisms as the ICJ increases the prospect of conflict. For the moment, Japan’s conservative prime minister will need to exercise great skill and restraint in managing domestic fear and resentment over China’s assertiveness and the military’s hair-trigger defence powers. A near-term escalation cannot be ruled out. After all, Japan recognises that China is not yet ready to inflict a major military defeat on Japan without resorting to nuclear weapons and without triggering a damaging response from the United States. And Japan does not want to enter into such a conflict without strong US support, at least akin to the discreet support given to Britain in the Falklands War in 1982. Consequently, Japan may see an escalation sooner rather than later as being in its interests, particularly if China appears the aggressor.

#### Diplomacy and econ don’t’ check

**Auslin**, 1/28/**2013** (Michael – scholar at the American Enterprise Institute, The Sino-Japanese Standoff, National Review, p. http://www.nationalreview.com/articles/338852/sinondashjapanese-standoff-michael-auslin?pg=2)

This Sino–Japanese standoff also is a problem for the United States, which has a defense treaty with Tokyo and is pledged to come to the aid of Japanese forces under attack. There are also mechanisms for U.S.–Japanese consultations during a crisis, and if Tokyo requests such military talks, Washington would be forced into a difficult spot, since Beijing would undoubtedly perceive the holding of such talks as a serious provocation. The Obama administration has so far taken pains to stay neutral in the dispute; despite its rhetoric of “pivoting” to the Pacific, it has urged both sides to resolve the issue peacefully. Washington also has avoided any stance on the sovereignty of the Senkakus, supporting instead the status quo of Japanese administration of the islands. That may no longer suffice for Japan, however, since its government saw China’s taking to the air over the Senkakus as a significant escalation and proof that Beijing is in no mind to back down from its claims. One does not have to be an alarmist to see real dangers in play here. As Barbara Tuchman showed in her classic The Guns of August, events have a way of taking on a life of their own (and one doesn’t need a Schlieffen Plan to feel trapped into acting). The enmity between Japan and China is deep and pervasive; there is little good will to try and avert conflict. Indeed, the people of both countries have abysmally low perceptions of the other. Since they are the two most advanced militaries in Asia, any tension-driven military jockeying between them is inherently destabilizing to the entire region. Perhaps of even greater concern, neither government has shied away from its hardline tactics over the Senkakus, despite the fact that trade between the two has dropped nearly 4 percent since the crisis began in September. Most worrying, if the two sides don’t agree to return to the status quo ante, there are only one or two more rungs on the ladder of military escalation before someone has to back down or decide to initiate hostilities when challenged. Whoever does back down will lose an enormous amount of credibility in Asia, and the possibility of major domestic demonstrations in response. The prospect of an armed clash between Asia’s two largest countries is one that should bring both sides to their senses, but instead the two seem to be maneuvering themselves into a corner from which it will be difficult to escape. One trigger-happy or nervous pilot, and Asia could face its gravest crisis perhaps since World War II.

### 1AC – New

#### Contention 3 is the Law

**The Court has endefd broad deference to the executive but maintains environmental deference through a “national security” exemption to NEPA during wartime – court action key to reverse it**

**Donovan 11** (Emily Donovan, J.D., 2010, Albany Law School, Albany, New York, “Deferring to the Assertion of National Security: The Creation of a National Security Exemption Under the National Environmental Policy Act of 1969,” Winter 2011, West Northwest Journal of Environmental Law and Policy, 17 Hastings W.-N.W. J. Env. L. & Pol'y 3)

Furthermore, it is the **Court's responsibility** to ensure that the Executive is abiding by such laws, rather than creating its own. To do so, the Court must review the actions of agencies when challenged rather than simply **defer** to the judgments of such agencies, even in times of war. If the Court fails to do so, there is no check on the Executive's power; the Executive is free to disregard the limits that Congress has placed on it. n137 In **Hamdan** v. Rumsfeld, the U.S. Supreme Court properly refused to allow the Executive to ignore the limits on its power. n138 The Court held that "whether or not the President has independent power, absent congressional authorization, ... he **may not disregard limitations** that Congress has, in proper exercise of its own war powers, placed on his powers." n139 The Executive cannot use war as a justification for any and all action it desires to take. The Executive has certain powers while Congress has certain others, with a strict separation between the powers of each, as ""the power to make the necessary laws is in Congress; the power to execute in the President... . But neither can the President, in war more than in peace, intrude upon the proper authority of Congress, nor Congress upon the proper authority of the President.'" n140 Each branch of government must stay within the bounds of its power and must not usurp the powers of the other branches. If the Executive is allowed to do whatever it pleases in times of war, the notion of separation of powers, upon which this nation was founded, is destroyed. n141 In Hamdan, the Court would not allow this. At issue was the Executive's use of a military commission to try Hamdan, a Yemeni national captured by [\*25] militia forces in Afghanistan and then turned over to the U.S., for then-unspecified crimes, later designated as conspiracy "to commit ... offenses triable by military commission." n142 The Court found that no congressional act authorized the Executive to convene a military commission to try Hamdan, and "absent a more specific congressional authorization, the task of this Court is ... to decide whether Hamdan's military commission is so justified." n143 If the Executive's power to take action is not specifically authorized by Congress, the Court has a duty to examine the action to see if it is justified. **If the Court** instead simply **defers**, it allows the Executive **too much authority**, authority in excess of what was intended for it. In the absence of congressional authorization, the Executive must show that the act is necessary in order for the Court to permit it; the Executive failed to do so in Hamdan. n144 Because there was no congressional authorization for the Executive's action establishing a military commission and because the Executive failed to show necessity, the Court would not permit the action. The Court refused to simply defer to the Executive's judgment merely because it was during a **time of war**. Instead, the Court conducted the proper analysis and concluded that the Executive was overstepping its bounds; the fact that it was a time of war did not authorize the Executive to exceed its authority. n145 The U.S. Supreme Court also **refused to defer** to the Executive in Hamdi v. Rumsfeld, where it made clear its role in reviewing challenges. n146 The Court declared that it will give weight to the Executive's judgments during times of war, stating that "we accord the greatest respect and consideration to the judgments of military authorities in matters relating to the actual prosecution of a war ... ." n147 However, it explained that this does not mean that it will simply defer to the Executive. n148 Instead, it will review the Executive's actions. As the Court noted, "it does not infringe on the core role of the military for the courts to exercise their own time-honored and [\*26] constitutionally mandated roles of reviewing and resolving claims like those presented here." n149 The Court reviewed the Executive's decision to detain Hamdi, an American citizen classified as an "enemy combatant," indefinitely during the war with Afghanistan, without allowing him to challenge the basis for his detention. n150 The Court stated that "the threats to military operations posed by a basic system of independent review are not so weighty as to trump a **citizen's core rights to challenge** meaningfully the Government's case and to be heard by an impartial adjudicator." n151 In other words, the Court held that it would not refrain from reviewing the Executive's action merely because the Executive claimed that doing so would be a threat to its military operations; the threat to such operations does not trump a citizen's right to review. The Court stressed the importance of the doctrine of separation of powers and declared that "we have long since made clear that a state of war is **not a blank check** for the President when it comes to the rights of the Nation's citizens." n152 A state of war does not mean that the Executive can do whatever it pleases. And if it tries to do so, judicial review is the mechanism to stop it as "the Great Writ of habeas corpus allows the Judicial Branch to play a necessary role in maintaining this delicate balance of governance, serving as an important judicial check on the Executive's discretion in the realm of detentions." n153 If the Court defers to the Executive's decisions rather than engaging in the appropriate review, it allows the Executive's power to go unchecked, permitting the Executive to take actions that are not authorized by the Legislature. It is up to the Court to ensure that the Executive Branch is not creating its own laws, but rather is abiding by the laws as created by the Legislative Branch. IV. Congress Did Not Intend to Add a National Security Exemption to NEPA The Legislative Branch did not include a national security exemption under NEPA. n154 It did, on the other hand, create exemptions for national security under other environmental laws, including the Clean Air Act, n155 the [\*27] Clean Water Act, n156 the Coastal Zone Management Act ("CZMA"), n157 the Endangered Species Act, n158 and the Marine Mammal Protection Act ("MMPA"). n159 Therefore, if Congress intended a national security exemption to NEPA, it would have included it in the statute as it did with all of the other environmental statutes. Because the scope of NEPA is broad, it may overlap with these other statutes at times, as it did in Winter, where the MMPA and the CZMA were also at issue. However, when an agency is granted a national security exemption under a different statute that explicitly allows for it, as was the Navy in Winter, its duties under NEPA should not be affected. An agency that is exempted, for example, from a rule that says it cannot take a marine mammal (MMPA), does not necessarily have to be exempted from a rule that says it must prepare an EIS before engaging in an activity that will result in the taking of a marine mammal (NEPA). It is one thing to be allowed to take a marine mammal and another to have to consider the environmental impacts of taking the mammal before doing so. In fact, this is **the essence of NEPA**: agencies must consider the environmental impacts of their actions **before engaging in them**, allowing them to discover and take steps to lessen the impacts if they so choose, but will not be required to effect any substantive result. Therefore, the grant of an exemption to a substantive statute, like the MMPA, should not affect an agency's duty to comply with the procedural statute, NEPA. The goal is that, after considering the impacts of the proposed action under NEPA, the agency will either decide not to take the action or to implement mitigation measures to lessen the environmental impacts of the action, even though it is permitted to take the action under the national security exemption to the substantive statute. Because Congress did not include a national security exemption under NEPA, the agencies of the Executive Branch must abide by it, even in times of war, and the courts cannot take it upon themselves to except these agencies from doing so. n160 Instead, the courts must give effect to what Congress enacted. As the Maryland Court of Appeals stated, "we are obliged to ascertain and carry out the legislative intent; to consider the language of the enactment in its natural and ordinary signification; to not insert or omit words to make a statute express an intention not evidenced in [\*28] its original form." n161 Courts cannot substitute their own opinions of what the law should be for what the law says; they must apply the law as it is stated. And, as stated, NEPA does not include a national security exemption. If Congress does intend a national security exemption to exist in NEPA, it must write this into the statute, but until then it is not within the Court's authority to create such an exemption. n162 V. Conclusion By deferring to the agencies of the Executive Branch in determining whether to grant injunctive relief in NEPA noncompliance cases, the Court ignores its duty to act as a check on the Executive's power and instead grants the Executive an exemption from NEPA. When injunctive relief is requested, the **Court is required to give due weight** to each competing harm and grant relief to the party toward whom equity tips. This means that, in NEPA noncompliance cases where national security is asserted as a defense, courts must balance the harm to the environment against the harm to national security. When courts ignore their duty to conduct this balancing and instead defer to the assertion of national security, they create a national security exemption to NEPA, one which the legislature did not include or intend. The agencies of the Executive Branch serve an important role and the preservation of national security is of extreme importance, but environmental impacts from the actions of these agencies can be just as significant; the effects of agency action on our health and safety can be just as damning as the absence of action on the preservation of national security. **Courts must not**, without first examining the environmental effects, deny **injunctive relief** any time an agency claims that an injunction will prevent it from protecting **national security**. When an agency's proposed action is in the interest of national security and compliance with NEPA would truly cause a delay that would impede the agency's ability to protect and preserve national security, an exception to NEPA compliance may be justified. But a court cannot decide if this is true without first weighing the competing harms. Courts must explore the truth of the national security [\*29] assertion to ensure that it is not being used merely as a pretext to avoid complying with NEPA. NEPA serves as an important check on agency action. It forces agencies to consider the consequences of and alternatives to their actions, in turn leading to substantive changes in decision-making. NEPA's EIS requirements also serve to **inform the public** and to **create records** which courts can review in determining challenges for noncompliance. While the agencies of the Executive Branch may play a crucial role in the protection and preservation of our national security, this should not give them a free pass to escape NEPA compliance; it is important for them to consider the environmental impacts of their proposed actions. The Legislature did not intend to exempt agencies in the business of protecting national security from NEPA. If it did, it would have written a national security exemption into the statute, just as it wrote one into other major environmental statutes. If a national security exemption to NEPA is the Legislature's intent, the Legislature should write it into the statute. But unless and until Congress writes a national security exemption into NEPA, courts have a duty to conduct the **appropriate balancing** in determining whether to grant **injunctive relief** in NEPA **noncompliance cases** rather than merely giving it lip service in order to refrain from creating an exemption which Congress did not intend.

**National security** **exemptions to NEPA guts enforcement and signals the court apathy - the impact is pollution and biodiversity**

**Krueger 9** (William, J.D., University of North Carolina School of Law, Legal Aid of North Carolina, Department of Environment & Natural Resources, North Carolina Journal Of Law &Technology Volume 10,Issue 2: Spring 2009 “In The Navy: The Future Strength Of Preliminary Injunctions Under NEPA In Light Of NRDC v. Winter”)

Since the 1970s, many laws have been passed with the overarching goal of protecting the environment.2 Without **proper enforcement** of environmental protection laws, the environment will likely suffer from increased **pollution** levels and less **biological diversity**. Therefore, it is critical to ensure that these laws are enforced. A person or agency with proper standing can bring a citizen suit to enforce environmental protection laws against alleged perpetrators.3 To ensure that the perpetrator does not continue to harm the environment while the action is pending in court, the plaintiff will often seek a preliminary injunction4 to force the perpetrator to stop or alter his environmentally detrimental practices.5 Without the **preliminary injunction**, enforcement of environmental statutes would be much more difficult. On November 12, 2008, the Supreme Court handed down its decision in Winter v. Natural Resources Defense Council. 6 The Court’s primary concern in this case was whether a preliminary injunction which forbade the Navy’s use of mid-frequency active (“MFA”) sonar7 during certain portions of its submarine training exercises off the coast of southern California was properly issued.8 The injunction was sought by the National Resources Defense Council (NRDC),9 a handful of other environmental interest groups, and several concerned citizens. The injunction was granted by the United States District Court for the Central District of California on January 3, 2008,10 and upheld by the Court of Appeals for the Ninth Circuit on February 29, 2008.11 The district court granted the injunction because the Navy failed to comply with the requirements of the National Environmental Policy Act (NEPA).12 Specifically, the Navy failed to prepare an adequate Environmental Assessment (EA)13 or a subsequent Environmental Impact Statement (EIS),14 both of which must be prepared for proposed “major Federal actions significantly affecting the human environment.”15 The injunction imposed several restrictions on the Navy’s ability to use its MFA sonar in training exercises.16 The Navy eventually appealed to the Supreme Court, which published three very divided opinions.17 The Roberts majority opined that the environmentalists’ interests were “plainly outweighed by the Navy’s need to conduct realistic training exercises.”18 The majority focused on two primary factors before holding that the district court had abused its discretion by granting a preliminary injunction.19 First, the Court challenged the level of probability that the district court assigned to the likelihood of the plaintiffs’ success at trial.20 Second, the Court felt that neither the district court nor the Ninth Circuit adequately considered the balance of equities between the plaintiffs and the Navy.21 For these two reasons, the Court held that the district court abused its discretion by imposing the injunctive measures challenged here by the Navy.22 Therefore, the Court vacated the portion of the district court’s injunction that the Navy challenged.23 There were two other opinions which differed from the majority. Justice Bryer, concurring in part and dissenting in part, believed that the proper solution was an injunction restricting the Navy’s use of MFA. However, the injunction should not be as stringent as the district court’s original injunction.24 On the other hand, Justice Ginsburg, who dissented, would have affirmed the lower courts’ decisions and upheld the district court’s injunction.25 Her dissent focused on the “central question” of “whether the Navy must prepare an [EIS].”26 Justice Ginsburg believed that by attempting to circumvent the NEPA process, the Navy’s actions in this case **“undermined NEPA”** by appealing to the Council on Environmental Quality (CEQ), a division of **the White House**.27 The outcome of this case is both unfortunate and improper. Its result is a signal that **the Court** is likely to continue to give **extraordinary deference** to the military in **environmental cases** which may involve matters of national security, without any attempt to look into the circumstances of the military’s assertions of national security interests. This case also shows how easy it has become for agencies, particularly military branches, to avoid adhering to laws like NEPA. Courts should be more willing to grant preliminary injunctions when it comes to NEPA enforcement actions, lest agencies be allowed to do as they will without any regard to the **rule of law.** Without more **stringent NEPA enforcement** by the courts, the Act’s purposes of “sensitiz[ing] … federal agencies to the environment” and “foster[ing] precious **resource preservation**” will be thwarted.28

**Biodiversity decline causes extinction**

**Mmom 8** (Dr. Prince Chinedu, University of Port Harcourt (Nigeria), “Rapid Decline in Biodiversity: A Threat to Survival of Humankind”, Earthwork Times, 12-8, http://www.environmental-expert.com/resultEachArticle.aspx?ci d=0&codi=51543)

From the foregoing, it becomes obvious that the **survival** of Humankind **depends on** the continuous existence and conservation of **biodiversity**. In other words, a threat to biodiversity is a serious threat to the survival of Human Race. To this end, biological diversity must be treated more seriously as a **global resource**, to be indexed, used, and above all, preserved. Three circumstances conspire to give this matter an unprecedented urgency. First, exploding human populations are degrading the environment at an accelerating rate, especially in tropical countries. Second, science is discovering new uses for biological diversity in ways that can relieve both human suffering and environmental destruction. Third, much of the diversity is being irreversibly lost through extinction caused by the destruction of natural habitats due to development pressure and oil spillage, especially in the Niger Delta. In fact, Loss of biodiversity is significant in several respects. First, breaking of **critical links** in the biological chain can disrupt the functioning of an **entire ecosystem** and its **biogeochemical cycles**. This disruption may have significant effects on larger scale processes. Second, loss of species can have impacts on the organism pool from which medicines and pharmaceuticals can be derived. Third, loss of species can result in loss of genetic material, which is needed to replenish the genetic diversity of domesticated plants that are the **basis of world agriculture** (Convention on Biological Diversity). Overall, we are locked into a race. We must hurry to acquire the knowledge on which a wise policy of conservation and development can be based for centuries to come.

#### Species snowball occurs

Jayawardena 9 (Asitha, London South Bank University, “We Are a Threat to All Life on Earth”, Indicator, 7-17, http://www.indicator.org.uk/?p=55)

Sloep and Van Dam-Mieras (1995) explain in detail why the natural environment is so important for life on Earth. It is from the environment that the living organisms of all species import the energy and raw material required for growth, development and reproduction. In almost all ecosystems plants, the most important primary producers, carry out photosynethesis, capturing sunlight and storing it as chemical energy. They absorb nutrients from their environment. When herbivores (i.e. plant-eating animals or organisms) eat these plants possessing chemical energy, matter and energy are transferred ‘one-level up.’ The same happens when predators (i.e. animals of a higher level) eat these herbivores or when predators of even higher levels eat these predators. Therefore, in ecosystems, food webs transfer energy and matter and various organisms play different roles in sustaining these transfers. Such transfers are possible due to the remarkable similarity in all organisms’ composition and major metabolic pathways. In fact all organisms except plants can potentially use each other as energy and nutrient sources; plants, however, depend on sunlight for energy. Sloep and Van Dam-Mieras (1995) further reveal two key principles governing the biosphere with respect to the transfer of energy and matter in ecosystems. Firstly, the energy flow in ecosystems from photosynthetic plants (generally speaking, autotrophs) to non-photosynthetic organisms (generally speaking, heterotrophs) is essentially linear. In each step part of energy is lost to the ecosystem as non-usable heat, limiting the number of transformation steps and thereby the number of levels in a food web. Secondly, unlike the energy flow, the matter flow in ecosystems is cyclic. For photosynthesis plants need carbon dioxide as well as minerals and sunlight. For the regeneration of carbon dioxide plants, the primary producers, depend on heterotrophs, who exhale carbon dioxide when breathing. Like carbon, many other elements such as nitrogen and sulphur flow in cyclic manner in ecosystems. However, it is photosynthesis, and in the final analysis, solar energy that powers the mineral cycles. Ecosystems are under threat and so are we Although it seems that a continued energy supply from the sun together with the cyclical flow of matter can maintain the biosphere machinery running forever, we should not take things for granted, warn Sloep and Van Dam-Mieras (1995). And they explain why. Since the beginning of life on Earth some 3.5 billion years ago, organisms have evolved and continue to do so today in response to environmental changes. However, the overall picture of materials (re)cycling and linear energy transfer has always remained unchanged. We could therefore safely assume that this slowly evolving system will continue to exist for aeons to come if large scale infringements are not forced upon it, conclude Sloep and Van Dam-Mieras (1995). However, according to them, the present day infringements are large enough to upset the world’s ecosystems and, worse still, human activity is mainly responsible for these infringements. The rapidity of the human-induced changes is particularly undesirable. For example, the development of modern technology has taken place in a very short period of time when compared with evolutionary time scales – within decades or centuries rather than thousands or millions of years. Their observations and concerns are shared by a number of other scholars. Roling (2009) warns that human activity is capable of making the collapse of web of life on which both humans and non-human life forms depend for their existence. For Laszlo (1989: 34), in Maiteny and Parker (2002), modern human is ‘a serious threat to the future of humankind’. As Raven (2002) observes, many life-support systems are deteriorating rapidly and visibly. Elaborating on human-induced large scale infringements, Sloep and Van Dam-Mieras (1995) warn that they can significantly alter the current patterns of energy transfer and materials recycling, posing grave problems to the entire biosphere. And climate change is just one of them! Turning to a key source of this crisis, Sloep and Van Dam-Mieras (1995: 37) emphasise that, although we humans can mentally afford to step outside the biosphere, we are ‘animals among animals, organisms among organisms.’ Their perception on the place of humans in nature is resonated by several other scholars. For example, Maiteny (1999) stresses that we humans are part and parcel of the ecosphere. Hartmann (2001) observes that the modern stories (myths, beliefs and paradigms) that humans are not an integral part of nature but are separate from it are speeding our own demise. Funtowicz and Ravetz (2002), in Weaver and Jansen (2004: 7), criticise modern science’s model of human-nature relationship based on conquest and control of nature, and highlight a more desirable alternative of ‘respecting ecological limits, …. expecting surprises and adapting to these.’

#### Pollution causes extinction

**Driesen 3** (David, Associate Professor – Syracuse Univeristy Law, 10 Buff. Envt'l. L.J. 25, Fall/Spring, Lexis)

Air pollution can make life unsustainable by harming the ecosystem upon which all life depends and harming the health of both future and present generations. The Rio Declaration articulates six key principles that are relevant to air pollution. These principles can also be understood as goals, because they describe a state of affairs that is worth achieving. Agenda 21, in turn, states a program of action for realizing those goals. Between them, they aid understanding of sustainable development's meaning for air quality. The first principle is that "human beings. . . are entitled to a healthy and productive life in harmony with nature", because they are "at the center of concerns for sustainable development." 3 While the Rio Declaration refers to human health, its reference to life "in harmony with nature" also reflects a concern about the natural environment. 4 Since air pollution damages both human health and the environment, air quality implicates both of these concerns. 5

#### Biodefense contractors use the national security exemption in NEPA to overlook safety concerns – results in pathogen spread and accidental release

Taylor 12 (David Chase Taylor, Degrees from San Diego State University, PhD Student at the University of Lugano, Switzerland, *The Bio-Terror Bible*, Part 3, p. 25)

Southern Research Institute, the military biodefense contractor recently in the news for sending live anthrax to the Children's Hospital of Oakland (CA), is also in charge of safety and security for a major new $30 million biodefense facility being built at the Department of Energy's Argonne National Laboratory near Chicago. The new Ricketts Regional Biocontainment Laboratory is funded by the National Institute of Allergy and Infectious Disease (NIAID) and is named after Howard T. Ricketts, a celebrated pathologist who acquired typhus in the course of research and died at age 39. It will begin biodefense work with studies of anthrax (Ames strain) and Yersinia pestis, the causative agent of plague. Southern Research Institute, with major labs of its own in Frederick, Maryland and Birmingham, Alabama, has a $75 million annual budget including biodefense contracts from an impressive roster of Pentagon agencies. Its Frederick, Maryland facility is located near the Army's biological weapons research headquarters at Fort Detrick, yet despite its biodefense prominence, Southern Research in Frederick does not maintain an institutional biosafety committee that complies with federal research rules. (And Southern Research in Birmingham has not honored requests for records of its institutional biosafety committee.) "Southern Research's incompetence is plain to see. Its own house is in dangerous disarray and does not comply with federal research rules," said Edward Hammond, Director of the Sunshine Project. "That threat is bad enough; but even after leaking anthrax, the institute is still developing biosafety and operating procedures for new high containment labs." According to a national coalition of biodefense watchdogs, formed in 2002 to monitor the US biodefense program, the Southern Research situation epitomizes their concern that biodefense laboratories are proliferating unsafely and with unsound planning, and that this could result in health, environment, and international security problems. The watchdogs also point to Southern Research's links to classified biodefense research. (Southern Research's facilities and personnel have "secret" clearance.) "Public interest groups seeking information about military biodefense programs are being stonewalled by the Army and other agencies." says Steve Erickson of Citizen's Education Project in Salt Lake City, which monitors the Army's Dugway Proving Ground. "That Southern Research and other secretive military contractors are also insinuating themselves into civilian biodefense programs is cause for concern that we are witnessing a steady erosion of openness and accountability, not only at Pentagon labs; but at academic institutions and in work funded by the National Institutes of Health." Two other Department of Energy (DOE) labs that design and develop the nation's nuclear weapons are also building new biosafety level three biodefense facilities. Both Lawrence Livermore and Los Alamos Labs have been sued by local community groups under the National Environmental Policy Act (NEPA). Inga Olson, Program Director at Tri-Valley CAREs, one of the groups that sued DOE, warns "Biodefense dollars are flowing like champagne at a wedding - into everywhere from nuclear weapons labs to children's hospitals - everyone wants a piece of the action. But a far more sober look is needed at whether the rapid spread of labs, pathogens, and bioweapons knowledge poses a greater threat than the problem we are trying to solve."

#### Lab released bio-agents cause extinction

**Ochs 2** (Richard, Member – Chemical Weapons Working Group, “Biological Weapons Must be Abolished Immediately, 6-9, http://www.freefromterror.net/other\_articles/abolish.html)

Of all the weapons of mass destruction, the genetically engineered biological weapons, many without a known cure or vaccine, are an extreme danger to the continued survival of life on earth. Any perceived military value or deterrence pales in comparison to the great risk these weapons pose just sitting in vials in laboratories. While a "nuclear winter," resulting from a massive exchange of nuclear weapons, could also kill off most of life on earth and severely compromise the health of future generations, they are easier to control. Biological weapons, on the other hand, can get out of control very easily, as the recent anthrax attacks has demonstrated. There is no way to guarantee the security of these doomsday weapons because very tiny amounts can be stolen or accidentally released and then grow or be grown to horrendous proportions. The Black Death of the Middle Ages would be small in comparison to the potential damage bioweapons could cause. Abolition of chemical weapons is less of a priority because, while they can also kill millions of people outright, their persistence in the environment would be less than nuclear or biological agents or more localized. Hence, chemical weapons would have a lesser effect on future generations of innocent people and the natural environment. Like the Holocaust, once a localized chemical extermination is over, it is over. With nuclear and biological weapons, the killing will probably never end. Radioactive elements last tens of thousands of years and will keep causing cancers virtually forever. Potentially worse than that, bio-engineered agents by the hundreds with no known cure could wreck even greater calamity on the human race than could persistent radiation. AIDS and ebola viruses are just a small example of recently emerging plagues with no known cure or vaccine. Can we imagine hundreds of such plagues? **HUMAN EXTINCTION** IS NOW POSSIBLE.

#### Engineered pathogens cause extinction

**Sandberg et al 8**—Research Fellow at the Future of Humanity Institute at Oxford University. PhD in computation neuroscience, Stockholm—AND—Jason G. Matheny—PhD candidate in Health Policy and Management at Johns Hopkins. special consultant to the Center for Biosecurity at the University of Pittsburgh—AND—Milan M. Ćirković—senior research associate at the Astronomical Observatory of Belgrade. Assistant professor of physics at the University of Novi Sad. (Anders, How can we reduce the risk of human extinction?, 9 September 2008, http://www.thebulletin.org/web-edition/features/how-can-we-reduce-the-risk-of-human-extinction)

The risks from anthropogenic hazards appear at present larger than those from natural ones. Although great progress has been made in reducing the number of nuclear weapons in the world, humanity is still threatened by the possibility of a global thermonuclear war and a resulting nuclear winter. We may face even greater risks from emerging technologies. Advances in synthetic biology might make it possible to engineer pathogens capable of extinction-level pandemics. The knowledge, equipment, and materials needed to engineer pathogens are more accessible than those needed to build nuclear weapons. And unlike other weapons, pathogens are self-replicating, allowing a small arsenal to become exponentially destructive. Pathogens have been implicated in the extinctions of many wild species. Although most pandemics "fade out" by reducing the density of susceptible populations, pathogens with wide host ranges in multiple species can reach even isolated individuals. The intentional or unintentional release of engineered pathogens with high transmissibility, latency, and lethality might be capable of causing human extinction. While such an event seems unlikely today, the likelihood may increase as biotechnologies continue to improve at a rate rivaling Moore's Law.

**Court enforcement of the national security exemption guts possibility of preliminary injunctions**

**Wolf 13** (Arthur D., Professor of Law and Director, Institute for Legislative & Governmental Affairs, Western New England University School of Law, “Preliminary Injunction Standards In Massachusetts State And Federal Courts,” Western New England Law Review, 35 W. New Eng. L. Rev. 1)

In Winter v. Natural Resources Defense Council, Inc., the Court finally focused on the criteria for the grant or denial of preliminary injunctions. n153 There, the Natural Resources Defense Council sued to enjoin the United States Navy from using "mid-frequency active sonar" in the waters off Southern California. n154 It alleged that such sonar caused serious harm to some species of marine mammals. n155 Using a "sliding scale" approach it had used for many years, the Ninth Circuit Court of Appeals affirmed the grant of preliminary relief, ruling that the plaintiff had made a strong showing on the likelihood of prevailing on the merits and a "possibility" of irreparable harm. n156 [\*24] The Supreme Court reversed the ruling of the Court of Appeals. n157 First, it noted that a temporary injunction is "an extraordinary remedy never awarded as of right." n158 Second, the Court added that a trial court should grant preliminary relief only upon a "clear showing" that the moving party is entitled to it. n159 Third, the Court identified the four factors the trial court must consider in evaluating requests for temporary injunctions. n160 It ruled that the moving party "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." n161 Although the Court cited prior decisions n162 for this four-factor test, in fact it had never expressly and clearly so ruled in unmistakable language prior to its decision in Winter. At least the lower federal courts did not think so. n163 The Court then addressed the question whether it should affirm the issuance of the preliminary injunction. First, it noted that the appellate court had incorrectly required only a showing of "possible" irreparable injury, which the Court noted is "too lenient." n164 The correct standard is "likelihood" of irreparable injury. It then ruled that the plaintiff had not demonstrated the public interest would not be adversely affected. n165 In fact, the Court observed, the national defense would be seriously impaired, and courts should **defer to the military's** assessment of the dangers to the public interest if the injunction is granted. n166 When the non-moving party defendant is a government, the inquiry into the harm to that party and the harm to the public interest is the same inquiry because the government represents the public interest. n167 Finally, the Court declined to rule on the likelihood of success factor as [\*25] unnecessary because the plaintiff had failed to satisfy the other factors. Whether the Court will apply this four-factor analysis, including the **public interest criterion**, when **none of the parties** to the **litigation** is a **governmental entity** remains to be seen, although the **lower federal courts** have done so in the wake of Winter. n168 The Winter decision has already impacted the standards for granting preliminary injunctions applied in the lower federal courts, unlike prior Supreme Court decisions which seemed to have had little effect on the development of the standards for temporary relief. For example, the Ninth Circuit Court of Appeals began applying Winter immediately, notwithstanding its prior criteria. "To the extent that our cases have suggested a lesser standard, they are no longer controlling, or even viable." n169 Prior to Winter, the Ninth Circuit allowed the grant of a preliminary injunction if the plaintiff demonstrated either: (1) [A] likelihood of success on the merits and the possibility of irreparable injury; or (2) that serious questions going to the merits were raised and the balance of hardships tips sharply in its favor. These two alternatives represent extremes of a single continuum, rather than two separate tests. Thus, the greater the relative hardship to the party seeking the preliminary injunction, the less probability of success must be shown. n170 Winter **dramatically altered** these **previous standards** in the Ninth Circuit and elsewhere. n171 Its full impact on the standards for granting or denying preliminary injunctions is not yet fully known, but the handwriting is clearly on the wall. Finally, the Supreme Court in Winter suggested that a moving party may have to make a **heightened showing** if that party is seeking an [\*26] affirmative (or mandatory) preliminary injunction as compared to a prohibitory injunction. n172 Federal courts of appeals have read the decision in that fashion. n173 In 2000, the Second Circuit Court of Appeals had ruled that the test is "more vigorous" for an affirmative injunction, requiring the moving party to demonstrate "a clear and substantial" likelihood of succeeding on the merits. n174 Although the First Circuit has not yet, in the wake of Winter, addressed the question whether heightened standards apply to affirmative preliminary injunctions, it has ruled that temporary mandatory relief may be necessary to protect the status quo and prevent irreparable injury until a trial on the merits. n175 The affirmative injunction is usually in the form of "thou shalt," while the prohibitory injunction takes the form of "thou shalt not." The line is not always clear between the two forms of injunctions. Through the use of the "double negative" order, a court will sometimes enter an injunction that looks like a prohibitory injunction but in fact is an affirmative (or mandatory) injunction: "The defendant is hereby enjoined from failing or refusing to remove the tool shed that trespasses upon plaintiff's property," or "the defendant is hereby enjoined from failing or refusing to sell its product to the plaintiff on the same terms and conditions as it sells that product to plaintiff's competitors."

#### Providing ex ante injunctive relief based on the *possibility* of irreparable harm prevents catastrophic tech failures

Johnson 8 (Eric E. Johnson, Associate Professor of Law, University of North Dakota School of Law

Affiliate Scholar, Stanford Law School Center for Internet and Society, “Culture and Inscrutable Science: An Analytical Method for Preliminary Injunctions in Extreme Cases,” 10-24-8, <http://prawfsblawg.blogs.com/prawfsblawg/2008/10/culture-and-ins.html>)

It’s one of the most interesting and daunting judicial controversies to come around in a long time: A few very worried individuals claim that a brand new, largest-of-its-kind particle accelerator under Switzerland and France, CERN’s Large Hadron Collider, could create a black hole that is capable of reducing the Earth and everything on it to an infinitesimal lightless speck. So here’s the question of the moment: Is it plausible that a group of extremely smart, highly trained, non-sociopathic scientists and engineers could overlook fatal flaws in a multi-billion-dollar project and thus cause a catastrophe? Previously I blogged about the analytical problems of considering a preliminary injunction against CERN. In this post, I’m going to attempt to provide an analytical solution. Here’s a recap of the dilemma: The science involved in this case is so complex, it would take years of physics training for a judge to make an independent evaluation of the arguments on either side. The old fallback, expert testimony, is problematic here, since all the experts are interested parties, and since our legal tool for sifting out unreliable expert opinion, the Daubert framework, collapses into analytical nonsense when faced with extreme facts such as these. If the judiciary surrenders to these difficulties and refuses to involve itself in the dispute, the judiciary is then rendering consensus judgments within scientific communities effectively injudicable – even where those judgments are disputed, and even where the alleged harm is destruction of the Earth. That seems unacceptable. Yet if the judiciary plows ahead and issues an injunction in such cases – despite not having a principled way of evaluating the merits of the plaintiffs’ arguments – the courts are then transformed into a marionette – manipulable by frivolous objectors into halting any scientific undertaking that is sufficiently complicated so as to be opaque to the layperson. That seems unacceptable as well. Either way, we lose the benefits of fair judicial review. Is there any way out? I believe there is. And the Columbia accident points the way. The Columbia Accident Investigation Board concluded that several aspects of the culture of NASA’s human spaceflight program led to the disaster, including, among other things, political considerations and “stifled professional differences of opinion.” While courts are not well equipped to evaluate theoretical science, they certainly are adequate to the task to investigating social dynamics, psychological factors, political influences, and organizational cultures. In evaluating a preliminary injunction request regarding the Large Hadron Collider, a court should scrutinize the culture of CERN and the particle-physics community, as well the political, social, and psychological context in which their decisions are made. Having done so, the court should then determine, with reference to those gathered facts, whether “serious questions” exist, and, thus, whether the case for a preliminary injunction has been made. An honest appraisal of the situation reveals that there are many apparently plausible reasons why the culture at CERN and within the particle-physics community could lead to flawed risk analysis. I will list several: To begin with, it seems highly plausible that particle physicists might fear serious reprisals and negative repercussions for their careers if they were to speak out about perceived dangers of the LHC. Denial of tenure, unaccepted manuscripts, and ostracism by peers are among the penalties an academic in such a situation might plausibly face. Such an apprehension would appear to be all the more acute because the LHC is the crown jewel of particle-physics experimentation. It dwarfs all predecessors in size and power, and represents a leap forward that could radically advance fundamental theory, possibly answering some of the most basic questions about our universe. To say that the LHC is important to the particle-physics community seems to be an understatement. Further, in mulling over whether to speak out, particle physicists with private doubts might well resign themselves to a fatalistic assessment. They might plausibly figure that they, as individuals, are powerless to overcome the momentum of a multinational multi-billion-dollar project. If that is their appraisal, then such individuals have nothing to gain, but much to lose, by making a public objection. Consider the possible outcomes: If a scientist speaks out and nothing bad happens, the scientist is a laughingstock. If a scientist speaks out and disaster does come to pass, professional vindication will be fleeting and bittersweet. If a scientist keeps mum or even extols the safety of the project, in a disaster scenario, embarrassment will be short-lived. But let's suppose particle physicists with private doubts reach the opposite conclusion about the likely impact of their public dissent. Suppose a private doubter predicts that his or her voice could be the tipping point that leads to widespread public concern and a permanent shutdown of the LHC. In such a case, whether the objecting scientist is right or wrong, he or she can anticipate being blamed for ruining the most exciting opportunity for advancing scientific understanding in this generation. And there’s no hope of vindication in such an event – naysayers cannot be proved right if the experiments are never run. The math-oriented are often fond of using matrices to elucidate decision-making. A physicist creating such a matrix, using the logic detailed above, would be faced with a series of boxes in which all outcomes are quite bad, except one: to be a supporter of the LHC in the event that it turns out to be a benign scientific triumph. Additional pressure on scientists not to question the LHC may also come from the fact that the LHC appears increasingly to be the only game in town for particle physicists wanting to work at the leading edge of discovery. In fact, the world’s largest particle collider currently in operation, Fermilab’s Tevatron outside of Chicago, Illinois, is slated for shutdown in 2010, apparently in large part because the LHC will render it obsolete. Other particle accelerators planned for the future have had their funding suspended or cutoff.1 A psychological or sociological explanation for how particle physicists could reach a consensus on safety, despite the existence of real danger, is the phenomenon William H. Whyte, Jr. called “groupthink.” This process allows individuals to maintain a worry-free outlook that is not justified by the facts. In such a dynamic, the existence of group consensus causes individuals to forego or dismiss their own independent thinking. A circularity develops: Group consensus justifies individual confidence, and individual confidence justifies group consensus. The result is flawed decision-making. Groupthink has been offered as an explanation for both the Challenger and Columbia space-shuttle disasters. Another set of concerns arises from the question of how political realities might have affected the decision-making environment at CERN. As a consortium run by 20 member states, it is plausible that politics plays a significant role in the CERN milieu. Still another point of worry is the independence, or lack thereof, of the safety reviews that have been advanced as evidence that the LHC is safe. While an independent report was completed in 2003, more current documents said to confirm the safety of the LHC, which were issued in response to recent criticism, are the product of CERN itself, and are not independent. Other factors are worthy of investigation as well. It may be, for instance, that the timeline of infrastructure construction and critical theorizing is such that LHC interests were thoroughly vested by the time potentially convincing theoretical work on safety concerns surfaced. That is, the late hour at which objections were made could well have prevented their open-minded consideration, regardless of merit. Some elements of the broad timeline of the LHC endeavor suggests this: The LHC was approved in 1994, and construction began in 1998. Construction was nearing completion in September 2007 when Otto Rössler released a paper explaining his new mathematical work, which, according to Rössler, demonstrates the LHC’s grave danger. Rainer Plaga’s article making a negative assessment of the risk at the LHC was published in August 2008, a month before operational testing began. At the point these papers were advanced, it is plausible that the LHC project had already reached the point where halting it was politically unthinkable. Supporters of the LHC have argued that Dr. Plaga and Dr. Rossler are not career-dedicated particle physicists, and, therefore, their theoretical work should not be taken seriously. As discussed above, it seems plausible that the cultural environment in which particle physicists operate is such that public objection to the LHC is discouraged and stifled to the point where it is non-existent. Given such a state, we would expect public objection to come from outside the particle-physics community. Thus, rather than being a reason for discounting such theoretical work, the outsider nature of such work might be a reason to embrace it. Even putting aside the social and cultural pressure on particle physicists to conform, it is a well-talked about phenomenon, famously advanced by Thomas S. Kuhn, that paradigm-shifting revolutions in scientific thought often come from individuals who are new to a field of study, and thus not entrenched in its conventional modes of thinking. (Jim Chen wrote about the virtues of juniority in the legal academy on MoneyLaw.) Thus we might expect that career particle physicists would be slow to accept paradigm-shifting theoretical work that undermines confidence in the safety of the LHC. As a corollary, the lack of particle-physics bona fides among LHC critics, especially ones who are serious and respected scientists, should not be relied upon as a way to dismiss their concerns. There may be several other sociological, psychological, political, and cultural factors, in addition to those I’ve listed above, that would be relevant. The matter requires some deeper thought. Nonetheless, I believe this list of considerations shows that questions about the reliability of LHC safety assessments are not specious. Let me be clear: I am not accusing CERN or the particle-physics community of incompetence or malfeasance. The above points are not set forth as factual contentions demonstrating the case for a preliminary injunction. Rather, I posit them as realistic possibilities that raise non-trivial questions, the answers to which could seriously undermine the consensus view that the LHC is safe. I should also emphasize that I am not arguing in favor of a preliminary injunction against the LHC. Whether one should be granted is, to me, an open question. What I am arguing is that there is an analytical way for a court to reach a well-reasoned decision in cases such as this, even where the merits of the scientific controversy itself are opaque to judges lacking specialized scientific training, and where expert testimony is of dubious use in adjudicating the matter. In considering a preliminary injunction, the court should investigate the cultural, organizational, political, psychological, and sociological context in which safety determinations were made, and then ask whether the results of that inquiry raise serious questions on the merits. If serious questions are raised, and if the balance of hardships tips strongly in the plaintiffs’ favor (as it clearly does with a black hole destroying the Earth), then an injunction should issue.

#### Try or die - Regulated technologies are beneficial, but failure to provide prior precautionary measures ensures eventual extinction

Wilson 13 (Grant Wilson, Deputy Director, Global Catastrophic Risk Institute. J.D. from Lewis & Clark Law School, “Minimizing Global Catastrophic and Existential Risks from Emerging Technologies through International Law,” Virginia Environmental Law Journal, 31 Va. Envtl. L.J. 307, 2013)

The world is currently undergoing a remarkable revolution in science and technology that will seemingly allow us to engineer synthetic life of any imaginable variety, build swarms of robots so small that they are [\*309] invisible to the human eye, and, perhaps, create an intelligence far superior to the collective brainpower of every human. Much of this "emerging technology" either already exists in rudimentary form or may be developed in the coming decades, n1 including the three technologies covered by this paper: nanotechnology, bioengineering, and artificial intelligence ("AI"). While many scientists point to these developments as a panacea for disease, pollution, and even mortality, n2 these emerging technologies also risk massive human death and environmental harm. Nanotechnology consists of "materials, devices, and systems" created at the scale of one to one hundred nanometers n3 --a nanometer being one billionth of a meter in size (10<-9> m) or approximately one hundred-thousandth the width of a human hair n4 --including nano-sized machines ("nanorobots"). Bioengineering is the "engineering of living organisms" and can also operate on a tremendously small scale. n5 Specific types of bioengineering include genetic engineering, or altering the genetic makeup of an organism's cells, n6 and synthetic biology, in which scientists develop "new biological parts, devices and systems that do not exist in the natural world and also the redesign of existing biological systems to perform specific tasks." n7 Finally, A1, meaning intelligent computers, is a pathway to "the Singularity," the concept that manmade greater-than-human intelligence could improve upon its own design, thus beginning an intelligence feedback mechanism or "explosion" that would culminate in a godlike intelligence with the potential to operate at one million times the speed of the human brain. n8 These and other threats from emerging technologies may pose a "global catastrophic risk" ("GCR"), which is a risk that could cause [\*310] serious global damage to human well-being, or an "existential risk" ("ER"), which is a risk that could cause human extinction or the severe and permanent reduction of the quality of human life on Earth. n9 Currently, the main risks from emerging technologies involve the accidental release or intentional misuse of bioengineered organisms, such as the airborne highly pathogenic avian influenza A ("H5N1") virus, commonly known as "bird flu," that scientists genetically engineered in 2011. However, with emerging technologies developing at a rapid pace, experts predict that perils such as dangerous self-replicating nanotechnology, n10 deadly synthetic viruses available to amateur scientists, and unpredictable super-intelligent AI n11 may materialize in the coming few decades. Society should take great care to prevent a GCR or ER ("GCR/ER") from materializing, yet GCRs/ERs arising out of nanotechnology, bioengineering, and AI are almost entirely unregulated at the international level. n12 One possible way to mitigate the chances of a GCR/ER ever materializing is for the intgernational community to establish an international convention tailored to emerging technologies based on the following three principles: first, that nanotechnology, bioengineering, and AI pose a GCR/ER; second, that existing international regulatory mechanisms either do not include emerging technologies within their scope or else insufficiently mitigate the risks arising from emerging technologies; and third, that a international convention based on the precautionary principle could reduce GCRs/ERs to an acceptable level.

### Plan

#### The United States Federal Judiciary should apply National Environmental Policy Act protocols to the introduction of Armed Forces into Hostilities.

### Solvency/Extra Cards

#### Contention 4 is solvency

#### Adopting court remedies to pollution solves civil instability in China

Van Rooij 10

[Benjamin, Professor of Law at Amsterdam Law School, University of Amsterdam. He holds degrees

in law and sinology, and researches and publishes about issues related to Chinese law and regulation, law and

development, and the politics of law enforcement, The People vs. Pollution: understanding

citizen action against pollution in China, 2010, <http://www.cerium.ca/IMG/pdf/People_vs_pollution_China.pdf>]

Citizen activism against pollution sheds some new light on the study of Chinese civil society. It shows that, apart from ‘embedded activism’ by environmental civic organizations, there is also activism by citizens who try different legal and political pathways to ﬁnd remedies for their grievances. Citizen activism takes less account of political sensitivities as desperate pollution victims try every strategy available to them to get attention for their cause. When initial non-confrontational options such as negotiations with the company and complaints to the EPB fail, citizens resort to provocative and sensitive forms of action such as petitions and protests. This pits them against local and sometimes national governmental interests. Their action is then sometimes labeled turmoil and activists are arrested and prosecuted. In these cases citizens are often not able to get support from civic organizations, especially those that are embedded and extra careful not to upset the sensitivities surrounding their relationship with the state. The result is that in these cases activists operate in isolation, lacking the help of state institutions and often also of NGOs. They have trouble framing their action as rightful, especially if they have to react against violence, sometimes adopting physical force themselves. Isolated activism by citizens and social organizations seems to be an overlooked and perhaps also a newly developing form of social action in China that requires more study, as do the links between embedded organizations such as CLAPV and isolated activists. In addition, further study needs to be carried out on the support of national news media for prosecuted isolated green activists, which seems to be signiﬁcant albeit with little effect. 118 Health played an important role in many activist cases against pollution. In many cases studied health aspects were serious, with cancer villages or townships as the worst examples. Health impacts were a major factor in the long process of developing awareness about the effects of pollution in cases where pollution has been a structural long-term problem rather than incidental, and seems to have inﬂuenced a transformation from awareness to action, especially in cases of collective action such as protests. Health effects are also what drew media attention and support for the often isolated activists against pollution. The importance of health in these cases is not absolute, however, as many citizens have become activists largely for economic reasons, ending their actions once compensation was paid, even though the pollution problem at hand had not been solved. Here the problem seems to be poverty and inequality, perhaps combined with sufﬁcient knowledge and awareness of health effects. Health has also challenged pollution activism, as the complex linkages between pollution and disease have made awareness a slow process and collecting evidence for this relationship, even though not required by law, difﬁcult. Here expert advice on the health effects of pollutants and statistical evidence for abnormal disease occurrences are important. The role of health in the development of grievances and the progress and success of different types of action is an important topic of study for future research. Such research could delve deeper into how citizen perceptions of health and pollution develop into grievances and action. It could also probe how perceptions about the impact of pollution on health and the importance of health inﬂuence environmental institutions and enterprises targeted by citizen action. Such research could inform policy, by showing how concern for health can improve the effectiveness of environmental regulation. In conclusion, it seems that China faces a rocky road in terms of citizen activism against pollution. While embedded organizations and pro-environmental government ofﬁcials have been able to slowly make China’s political agenda greener, there is still much resistance to the implementation of this agenda in everyday practice. Meanwhile pollution continues, and will be difﬁcult to control or decrease given China’s continued economic growth. As long as environmental authorities and local governments remain unresponsive, and as long as courts remain difﬁcult to access and ineffective, pollution victims are likely to continue to choose political action, regardless of the constraints they face.

#### Senkaku’s de-escalation impossible

**Wittmeyer**, 3/19/20**13** (Alicia – assistant editor at Foreign Policy, Why Japan and China could accidentally end up at war, Foreign Policy, p. <http://blog.foreignpolicy.com/posts/2013/03/19/china_japan_accidental_war_islands>)

Great. At a time when Chinese authorities seem to be making efforts to dial down tensions with Japan over disputed islands, could a war between East Asian superpowers be sparked by accident -- by some frigate commander gone rogue? That nuclear war could come about in just such a scenario was, of course, a major concern during the Cold War. But decades of tension, as well as apocalyptic visions of global annihilation as a result of the U.S. and U.S.S.R. locking horns, produced carefully designed systems to minimize the damage any one rogue actor could inflict (only the president can access the nuclear codes), and to minimize misunderstandings from more minor incidents (the Kremlin-White House hotline). But East Asia -- relatively free of military buildup until recently -- doesn't have these same systems in place. A soon-to-be-released report from the International Institute for Strategic Studies highlights the danger that emerges when a region's military systems develop faster than its communication mechanisms, and finds that accidental war in East Asia is a real possibility: Across East Asia, advanced military systems such as anti-ship missiles, new submarines, advanced combat aircraft are proliferating in a region lacking security mechanisms that could defuse crises. Bilateral military-to-military ties are often only embryonic. There is a tangible risk of accidental conflict and escalation, particularly in the absence of a strong tradition of military confidence-building measures." The Senkaku-Diaoyu Islands dispute has been marked by an increasing number of deliberate provocations on both sides: surveillance vessels entering nearby waters, patrol planes making passes by the islands, scrambled fighter jets. These are planned actions, designed to incrementally heighten tensions. But the more fighter jets that get scrambled without good communications systems in place, the higher the chances that these deliberate moves escalate beyond what either Japan or China is anticipating.

## 2AC

### 2AC AT Circumvention

#### Obama and DOD committed to compliance with environmental requirements now – no Link Uniqueness

Dycus 13 (Professor Stephen Dycus, “U.S. military going green,” Vermont Law Top 10: Environmental Law Watch List Top 10, 2013, http://watchlist.vermontlaw.edu/u-s-military-going-green/)

The U.S. military’s recent move to lessen its use of fossil fuels is evidence of a laudable trend that the Obama administration and the Pentagon are taking their environmental responsibility seriously. They are recognizing that a clean, healthy environment is something that we should fight to defend and not destroy in preparing for and waging war. This year, while Congress struggled unsuccessfully to pass legislation on climate change and state and federal government agencies put renewable energy on hold due to the recession, the military took significant steps in pursuing renewable energy and decreasing its energy consumption. The federal government is the largest energy consumer in the United States. Using nearly 300,000 barrels of oil each day, the Defense Department is responsible for 80 percent of the federal government’s energy usage. On October 5, 2009, President Obama signed Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance. In response, the Pentagon set an emission reduction target of 34 percent by 2020, higher than any other federal agency and higher than the 28 percent President Obama has announced as a requirement for the federal government. To achieve the emission reduction target, the military is already taking steps to increase its reliance on renewable energy and to reduce its energy consumption overall. In July, the Pentagon appointed its first director of operational energy plans programs, with a mission to “reduce the amount for energy needed in war zones, and decrease the risk to troops that transport and guard the military’s fuel.” All branches of the military have taken steps toward sustainable development and environmentally friendly practices: the Army has been testing tents that trap warm and cool air and developing diesel-electric trucks; the Marines are using solar-powered water purification systems and spray insulation for tents; the Navy has a comprehensive model for development of biofuels; and the Air Force hopes to have an entire fleet certified to fly on biofuels by 2011. The 3rd Battalion, 5th Marine Regiment’s Company I was the first to take renewable technology into the battle zone. The 150 Marines involved in the mission traveled to Afghanistan with “portable solar panels that fold up into boxes, energy conserving lights, solar tent shields that provide shade and electricity, and solar chargers for computers and communication equipment.” In the past, the large truck convoys that brought fuel to bases in Afghanistan were easy targets for enemy combatants. One Army study found that for every 24 convoys, one soldier or civilian engaged in the transport was killed. If the military is successful in providing its personnel with independently sustainable methods of energy production, the dangerous convoys will no longer be required.

#### Will comply – even if they disagree

Bradley and Morrison 13

[Curtis, William Van Alstyne Professor of Law, Duke Law School. and Trevor, Liviu Librescu Professor of Law, Columbia Law School, Presidential Power, Historical Practice, And Legal Constraint, 2013 Directors of The Columbia Law Review Association, Inc. Columbia Law Review May, 2013, L/N]

Insisting on a sharp distinction between the law governing presidential authority that is subject to judicial review and the law that is not also takes for granted a phenomenon that merits attention - that Presidents follow judicial decisions. n118 That assumption is generally accurate in the United States today. To take one relatively recent example, despite disagreeing with the Supreme Court's determination in Hamdan v. Rumsfeld that Common Article 3 of the Geneva Conventions applies to the war on terror, the Bush Administration quickly accepted it. n119 But the reason why Presidents abide by court decisions has a connection to the broader issue [\*1131] of the constraining effect of law. An executive obligation to comply with judicial decisions is itself part of the practice-based constitutional law of the United States, so presidential compliance with this obligation may demonstrate that such law can in fact constrain the President. This is true, as we explain further in Part III, even if the effect on presidential behavior is motivated by concerns about external political perceptions rather than an internal sense of fidelity to law (or judicial review). n120

## T

### T – Hostilities – 2AC

#### 2. Hostilities a state of confrontation

Hardy 84 (William H, Pacific Law Journal Issue 265, Tug of War: The War Powers Resolution and the Meaning of Hostilities, P 281-282)

The House Foreign Affairs Committee (hereinafter H.F.A.C) has adopted its own deﬁnition of hostilities. The H.F.A.C. Report discusses the background, constitutional context, and intent of the WPR. The section-by-section analysis of the H.F.A.C. Report is the clearest statement of the definition of hostilities to be found: The word hostilities was substituted for the phrase armed conﬂict during the subcommittee drafting process because it was considered to be somewhat broader in scope. In addition to a situation in which ﬁghting actually has begun, hostilities also encompasses a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict. Imminent hostilities denotes a situation in which there is a clear potential either for such a state of confrontation or for actual armed conflict. Hearings were held during the Ford Administration in which Chair- man Zablocki used the definition as a benchmark in questioning legal advisors to the President)” The use of this deﬁnition by Zablocki supports a broad interpretation of hostilities because **as long as a clear and present danger of armed conﬂict exists**, even though no shots have been ﬁred, hostilities are present.United States forces are not required to accompany foreign forces in combat or on operational patrols. The President, however, has persisted in defining hostilities more narrowly than Congress apparently intended. The Ford and Reagan Administrations have both adopted a narrow deﬁnition of hostilities that conﬂicts with the H.F.A.C. deﬁnition.

#### B) Education - Broad definitions are key to topic education

Hardy 84 (William H, Pacific Law Journal Issue 265, Tug of War: The War Powers Resolution and the Meaning of Hostilities, P 277-278)

The determination that “hostilities” is an ambiguous term and therefore, susceptible to different meanings, is supported by selected provisions from congressional hearings. In general, opposition to deﬁning hostilities precisely or too narrowly was evidenced throughout congressional hearing records. The idea of making a “laundry list” or spelling out the circumstances in which the President may involve the military in the absence of a declaration of war was rejected.'°’ Rather than attempting to codify the circumstances that define hostilities, Professor Bickel, a noted constitutional law expert and Professor of Law at Yale University, stated that the preferable mode was a good faith understanding of the term and an assumption that Presidents would act in good faith to discharge their duties.“ Senator Javits, one of the chief sponsors of the WPR, acknowledged that the resolu- tion did not endeavor to spell out a definition of hostilities, but adopted the term as a word of basic understanding)" Members of Congress recognized the peril in trying to be too exact with defini- tions because of the difficulties in achieving a terminology that could anticipate all the emergencies which might arise. By choosing a general approach, rather than trying to be too exact in deﬁnitions, something was “left to judgment, the intelligence, [and] the wisdom” of members of Congress and the President.'" Based on the hearings, some evidence also exists that hostilities was deliberately left undefined and ambiguous so that the meaning of the word could be clariﬁed or gradually spelled out by experience.

## CP

### Distinguish CP – 2AC

#### CP destroys certainty --- causes confusion and years of litigation

Bradford 90 (C. Steven, Assistant Prof Law – U Nebraska College of Law, Fordham Law Review, October, Lexis)

The problem for lower courts is not that the Supreme Court overrules its own precedent; that is inevitable. The problem is the Court's failure [\*70]  to do so candidly and certainly. A court may avoid its own precedent in a number of ways without openly acknowledging it, and a court may openly overrule its own precedent without acknowledging the full extent of the doctrinal shift. Karl Llewellyn's famous list of techniques for dealing with precedent includes at least thirteen ways to avoid a precedent without expressly overruling it. [166](http://www.lexis.com/research/retrieve?_m=1dd885cad25a090194b88df3ca57d854&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAV&_md5=754de819b47ed0291936e334eb270613&focBudTerms=supreme%20court%20w/50%20overturn%20or%20overrule%20w/35%20distinguish%20w/40%20confus%21or%20clari%21%20or%20lower%20court%21&focBudSel=all#n166) A court can distinguish the precedent on its facts, interpret the old rule so that the new case falls outside of the rule, limit or dismiss its broadest statement as dictum, or simply ignore the old rule. Similarly, a court can overtly overrule a prior precedent in ways that less directly attack the quality of the original ruling. [167](http://www.lexis.com/research/retrieve?_m=1dd885cad25a090194b88df3ca57d854&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAV&_md5=754de819b47ed0291936e334eb270613&focBudTerms=supreme%20court%20w/50%20overturn%20or%20overrule%20w/35%20distinguish%20w/40%20confus%21or%20clari%21%20or%20lower%20court%21&focBudSel=all#n167) The court may argue that changed conditions have undermined the basis of the original ruling. [168](http://www.lexis.com/research/retrieve?_m=1dd885cad25a090194b88df3ca57d854&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAV&_md5=754de819b47ed0291936e334eb270613&focBudTerms=supreme%20court%20w/50%20overturn%20or%20overrule%20w/35%20distinguish%20w/40%20confus%21or%20clari%21%20or%20lower%20court%21&focBudSel=all#n168) The court may rely on what Professor Israel calls the "lesson of experience" -- the difficulties experienced in applying the old rule. [169](http://www.lexis.com/research/retrieve?_m=1dd885cad25a090194b88df3ca57d854&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAV&_md5=754de819b47ed0291936e334eb270613&focBudTerms=supreme%20court%20w/50%20overturn%20or%20overrule%20w/35%20distinguish%20w/40%20confus%21or%20clari%21%20or%20lower%20court%21&focBudSel=all#n169) Finally, the court may claim that the precedent overruled is inconsistent with subsequent decisions by the court. [170](http://www.lexis.com/research/retrieve?_m=1dd885cad25a090194b88df3ca57d854&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAV&_md5=754de819b47ed0291936e334eb270613&focBudTerms=supreme%20court%20w/50%20overturn%20or%20overrule%20w/35%20distinguish%20w/40%20confus%21or%20clari%21%20or%20lower%20court%21&focBudSel=all#n170) All of these techniques have costs. Uncertainty results when, as in McMahon, the Supreme Court refuses to openly acknowledge the jurisprudential impact of its decision, generating what one scholar calls "a labyrinth of anomalies." [171](http://www.lexis.com/research/retrieve?_m=1dd885cad25a090194b88df3ca57d854&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAV&_md5=754de819b47ed0291936e334eb270613&focBudTerms=supreme%20court%20w/50%20overturn%20or%20overrule%20w/35%20distinguish%20w/40%20confus%21or%20clari%21%20or%20lower%20court%21&focBudSel=all#n171) As Justice Douglas once wrote, "years of litigation may be needed to rid the law of mischievous decisions which should have fallen with the first of the series to be overruled." [172](http://www.lexis.com/research/retrieve?_m=1dd885cad25a090194b88df3ca57d854&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAV&_md5=754de819b47ed0291936e334eb270613&focBudTerms=supreme%20court%20w/50%20overturn%20or%20overrule%20w/35%20distinguish%20w/40%20confus%21or%20clari%21%20or%20lower%20court%21&focBudSel=all#n172) This gradual process of erosion, not the departure from stare decisis, creates  [\*71]  the problem that courts seek to solve through anticipatory overruling. [173](http://www.lexis.com/research/retrieve?_m=1dd885cad25a090194b88df3ca57d854&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAV&_md5=754de819b47ed0291936e334eb270613&focBudTerms=supreme%20court%20w/50%20overturn%20or%20overrule%20w/35%20distinguish%20w/40%20confus%21or%20clari%21%20or%20lower%20court%21&focBudSel=all#n173) A return to a rigid rule of stare decisis is not needed. Rather, the Supreme Court should openly and candidly acknowledge whether it is rejecting a prior precedent and state plainly the doctrinal changes it is making. [174](http://www.lexis.com/research/retrieve?_m=1dd885cad25a090194b88df3ca57d854&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlb-zSkAV&_md5=754de819b47ed0291936e334eb270613&focBudTerms=supreme%20court%20w/50%20overturn%20or%20overrule%20w/35%20distinguish%20w/40%20confus%21or%20clari%21%20or%20lower%20court%21&focBudSel=all#n174)

#### Distinguishing causes massive lower court confusion

Fischer 5 (Susanna, Assistant Professor – Columbus Law School, 10 Nexus J. Op. 99, Lexis)

The Court had not yet handed down its ruling in Raich at the time this article was written and I find myself in the awkward position of speculating in writing about a ruling that may have been delivered by the time my words are published. At the time that I am writing, it seems quite possible that the Court will dodge the difficult question of whether Wickard's aggregation principle is inconsistent with Lopez/Morrison's non-infinity principle. It could do so by deciding Raich on very narrow grounds. For example, one way to evade the issue would be to distinguish Wickard on its facts, as respondents urged in their merits brief and Justice O'Connor appeared to support during oral argument. [225](http://www.lexis.com/research/retrieve?_m=d44cb6f000833b5e5f07a45b86e27d53&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzz-zSkAb&_md5=871f154e04dcfe6f8eb912d4f9bcd744#n225) Another way would be to distinguish Morrison and Lopez on their facts and find the intrastate activity at issue in Raich to fall "on the constitutional side of the line that separates the Lopez and Morrison case," as the government contended during oral argument and Justice Breyer seemed, at that time, to support. [226](http://www.lexis.com/research/retrieve?_m=d44cb6f000833b5e5f07a45b86e27d53&csvc=bl&cform=bool&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzz-zSkAb&_md5=871f154e04dcfe6f8eb912d4f9bcd744#n226) But for the Court to rule so narrowly would be regrettable, because this would fail to assist lower courts in future cases who find themselves in the impossible situation of attempting to respect the  [\*124]  non-infinity principle and the aggregation principle. It would be more likely to perpetuate the Circuit split than to lead the Circuits toward a uniform approach to aggregation.

#### Takes out solvency

Mark 4 (Arthur B., Fellow – Pacific Legal Foundation, Capital University Law Review, Spring, 32 Cap. U.L. Rev. 671)

Their second explanation attributes lower courts' unwillingness to follow *Lopez, Morrison*, and *Jones* to "an increasingly unmanageable caseload," causing courts to cut corners and put forth low quality work. [477](http://www.lexis.com/research/retrieve?_m=8de0028d467d98b6e1358d873880a2df&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLzVzz-zSkAk&_md5=96de42ca5b3bf20253e8db930e48951e&focBudTerms=limit%21%20w/5%20facts%20w/50%20morrison&focBudSel=all#n477) As evidence, they point to the fact that in many Commerce Clause cases there was no oral argument and courts issued per curium and unpublished opinions, markers found to correlate with shoddy jurisprudence. [478](http://www.lexis.com/research/retrieve?_m=8de0028d467d98b6e1358d873880a2df&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLzVzz-zSkAk&_md5=96de42ca5b3bf20253e8db930e48951e&focBudTerms=limit%21%20w/5%20facts%20w/50%20morrison&focBudSel=all#n478) Yet, Reynolds and Denning acknowledge that upholding federal laws by discounting or misapplying precedent only assures more cases, not less. [479](http://www.lexis.com/research/retrieve?_m=8de0028d467d98b6e1358d873880a2df&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLzVzz-zSkAk&_md5=96de42ca5b3bf20253e8db930e48951e&focBudTerms=limit%21%20w/5%20facts%20w/50%20morrison&focBudSel=all#n479) This begs the question, not addressed, that if large, federal caseloads are a true motivating factor for misapplying the Lopez line of cases, then wouldn't those judges want to *invalidate* the laws, instead of upholding them, thereby reducing the caseload? Perhaps the question of ideology deserves more attention than Reynolds and Denning give it. In any event, as in their 2000 pre-*Morrison*, post-*Lopez* survey, Reynolds and Denning end by noting a need for the Supreme Court to provide a less malleable and more "rule-like" standard for deciding Commerce Clause cases. [480](http://www.lexis.com/research/retrieve?_m=8de0028d467d98b6e1358d873880a2df&docnum=9&_fmtstr=FULL&_startdoc=1&wchp=dGLzVzz-zSkAk&_md5=96de42ca5b3bf20253e8db930e48951e&focBudTerms=limit%21%20w/5%20facts%20w/50%20morrison&focBudSel=all#n480)

### Executive CP w/NEPA – 2AC

#### Counterplan preserves the current precedent – prevents citizen enforcement efforts

Gormley 9 (Neil Gormley, J.D., 2009, Harvard Law School, “Standing in the Way of Cooperation: Citizen Standing and Compliance with Environmental Agreements,” Summer 2010, West Northwest Journal of Environmental Law & Policy, 16 Hastings W.-N.W. J. Env. L. & Pol'y 397)

The Supreme Court's approach to standing, therefore, raises serious questions about the viability of a bedrock of U.S. environmental law - the citizen suit. Cass Sunstein concluded in the wake of Lujan that "it is now [\*405] apparently the law that Article III forbids Congress from granting standing to "citizens' to bring suit." n48 At the very least, as we have seen, these developments in standing doctrine will make the burdens on citizens and environmental groups more onerous. I will argue in Part II that standing doctrine may someday present insuperable obstacles to citizen suit enforcement with respect to international environmental problems that are yet to be comprehensively addressed under U.S. law. The growing doctrinal obstacles to the enforcement of federal environmental law via citizen suit are not, of course, strictly confined to Article III standing. A wide range of justiciability doctrines deter and weaken environmental citizen suits, including the Administrative Procedure Act's bar on "programmatic" challenges to agency action, announced in Lujan v. National Wildlife Federation, n49 and the arcane distinctions in Norton v. SUWA between agency "action" and agency "inaction" for purposes of determining whether the APA permits suit. n50 Perhaps the most prominent of these developments is the Court's 2008 decision in Winter v. NRDC, which raised the bar for even successful environmental plaintiffs to obtain injunctive relief. n51 In Winter, the Court decided that the balance of the equities and the public interest weighed against granting a preliminary injunction to environmental groups seeking to force the Navy to comply with the National Environmental Policy Act. n52 Particularly in the way it characterized the harms to be balanced in that inquiry - considering the risk of a national security incident but holding the environmental plaintiffs to a standard of actual, documented, past harm to wildlife - the Court took an approach to balancing that seemed systematically to disadvantage environmental plaintiffs. Interestingly, there were echoes of the Court's environmental standing jurisprudence in its balancing-of-the-harms analysis in Winter. Though NEPA is a procedural statute, the court did not consider or weigh any procedural harms on the side of the environmental plaintiffs, focusing instead on the types of harms that environmental plaintiffs traditionally have had to rely on to establish standing - individualized scientific, recreational and aesthetic harms. n53 At oral argument, Justice Scalia went so far as to evoke explicitly the requirements of Article III standing in the [\*406] discussion of what harms count for purposes of equitable injunctions. n54 Thus Winter may yet provide a new opening for reinserting common law conceptions of injury into these complex regulatory disputes. n55 Perhaps most significantly, Winter also announced that a district court would abuse its discretion in granting an injunction to the environmental groups even if they ultimately prevailed on the merits. n56 Winter thus appears to represent another significant obstacle in the path of environmental groups trying to force executive compliance with the law. Importantly, however, the decisions in National Wildlife Federation, Norton v. SUWA and Winters are not constitutional. Given sufficient political will, Congress can smooth those obstacles to environmental citizen suits by amending the Administrative Procedure Act and Federal Rule of Civil Procedure 65(a), governing preliminary injunctions. Because the core of Article III standing doctrine is, by contrast, beyond the capacity of Congress to alter by statute, standing decisions are likely to impose the steepest costs in enforcement of environmental law in the future. This cost to effective enforcement should be borne in mind as courts decide whether to embark down any of the several avenues that exist for reconciling Article III standing and environmental citizen suits. First, courts can opt to extend the Massachusetts approach to causation and redressability to all plaintiffs, rather than confining it to states. They also might accommodate citizen suits by indulging in some slight of hand concerning the nature of the injury that is required. Courts have shown themselves willing, in the past, to sidestep standing difficulties by simply redefining the injury. n57 Thus, in Laidlaw, a "reasonable fear" of illness stemming from toxic emissions was enough to confer standing. n58 A generous application of the "reasonable fear" approach could go a long way towards getting [\*407] environmental groups into court. Finally, the most accommodating way forward, by far, would be to recognize the power of Congress to define injuries and articulate chains of causation free from the constraints of the common law. III. The Problem of Compliance The ability of citizens to access courts in order to compel executive compliance with environmental laws may have important repercussions on the international plane, because domestic enforcement bears on one of the most fundamental questions in the design of international environmental agreements - why do states comply with their commitments? International environmental problems require deep cooperation among states. Given the prevalence of physical, economic, and psychological externalities associated with environmentally harmful practices, cooperation is necessary to the realization of the mutual benefits of common solutions. n59 Negotiated agreements, of course, only facilitate cooperation if states comply with them. Furthermore, expectations about compliance will often constrain the depth of the commitments that states are willing to make - that is, the extent to which they are willing to depart from the course that they would have taken in the absence of cooperation. Just as in private contract situations, states need to be able to rely on credible commitments by other states, especially when the contemplated activities are highly reciprocal. A state party may not be willing to embark on a path of costly pollution control, for example, without highly credible commitments from peer states that they will make the same sacrifices. David Victor blames the shallowness of international environmental law generally on the failure of efforts to develop effective compliance mechanisms. n60 The risk of defection in the environmental context is generally quite high. Because of scientific and economic uncertainty, the costs and benefits of cooperation are difficult to predict and assess ex ante. Moreover, this uncertainty is magnified by the long duration of cooperation that is often necessary to deal effectively with serious environmental problems. Similarly, political economy models predict that compliance with environmental commitments will be inconsistent. n61 The costs of [\*408] environmental regulation are typically highly concentrated, so that regulated sectors - industry groups in particular - have strong incentives to oppose compliance over time. The benefits of regulation, by contrast, are typically diffuse. Beneficiaries face higher transaction costs in organizing in favor of compliance, and high levels of political mobilization may be unsustainable over the long term. As Sunstein argues, the fact that environmental commitments are concluded at all often has to do with the "availability heuristic." n62 By this reasoning, environmental regulation has more widespread appeal when environmental harms are more "cognitively available" - when vivid and salient examples are present in the popular consciousness. As the cognitive availability of environmental harms fades, popular support for costly regulatory measures - and thus for compliance with environmental agreements that compel such measures - tends to fade as well. Given these challenges, how can the advocates of international environmental cooperation ensure compliance with negotiated agreements? A wide variety of explanations have been advanced to explain observed compliance. They need not be viewed as mutually exclusive; more likely, each of these mechanisms contributes in some respect to state compliance. The leading explanations include the reputational costs of defection, n63 the perceived fairness and legitimacy of negotiated agreements, n64 social learning, n65 and administrative capacity-building, both bilateral and multilateral. n66 Transnational legal process theorists, such as Harold Koh and Anne Marie Slaughter, predict greater compliance stemming from interactions - direct and indirect - between the legal institutions, broadly understood, of different countries. n67

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#### Specifically, addressing the court generated “National Security” exemption to NEPA is crucial to bio-weapons lab safety

Miles 8 (Loulena Miles, Associate at Adams Broadwell Joseph & Cardozo, Degrees from University of California at Santa Cruz, “Final Site-Wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico: Comment on the SWEIS,” <http://energy.gov/sites/prod/files/EIS-0380-FEIS-03-2-2008.pdf>)

NEPA has the twin aims of obligating a federal agency to consider environmental impacts before undertaking or approving a proposed action, and ensuring that the public is informed. The draft SWEIS is inadequate under the National Environmental Policy Act because it lacks a “hard look” at the impacts of a possible terrorist attack. There is no “national security” exemption from NEPA. Allowing a “security exemption” from NEPA would be inconsistent with one of NEPA’s purposes: to ensure that the public can contribute to the body of information being considered by the agency. The recent Mother’s for Peace decision in the 9th Circuit Court of Appeals held that if the risk of a terrorist attack is signiﬁ cant (which it is at Los Alamos) then NEPA requires taking a “hard look” at the environmental consequences of a terrorist attack. Please revise your draft SWEIS and re-release it so that that public will have an opportunity to comment on this important aspect of the required NEPA analysis. BSL-3 and/or BSL-4 Laboratory Space The Department of Energy is going full speed ahead in building more and more biodefense labs and facilities, including the one being reviewed at the Los Alamos National Lab. All of this work is going forward without a national plan that assesses where these labs should be, what their role is, how many are really needed, methods of oversight, transparency, and reporting requirements. A NEPA document is urgently needed to assess these issues in a forum where the public can comment. We believe Homeland Security should not be locating these advanced biodefense facilities inside nuclear weapons labs because it cloaks this work in a veil of secrecy and creates a “perception problem” whereas other countries could assume we’re conducting offensive research and / or may choose to collocate their advance biodefense research inside their nuclear weapons facilities.

#### Granting injunctive relief in war powers cases halts broad non-compliance with environmental regulations, validates citizen enforcement efforts

**London 09** [Ian K. J.D. Candidate, 2011, Denver University Law Review, Winter v. National Resources Defense Council: Enabling the Military's Ongoing Rollback of Environmental Legislation, 2009, L/N]

Finally, the Winter Court's willingness to defer to the Navy's judgment and to allow the Navy to bypass clear NEPA requirements is part of a broader, more troubling trend. Professor Babcock accuses the Department of Defense ("DOD") of manipulating post-9/11 national security concerns to stage an **offensive against constraining environmental legislation**. n138 Professor Babcock explains this trend in light of the broader post-9/11 erosion of civil liberties exemplified by the USA PATRIOT Act. n139 The USA PATRIOT Act, enacted in the months immediately following 9/11, was intended to enhance the government's power to combat terrorist threats, but had the additional effect of eroding civil liberties. n140 Until recently, the military had to resort to various statutory waiver systems to circumvent environmental legislation. n141 But military efforts to curtail environmental legislation found new traction in the post-9/11 and post-USA PATRIOT Act reality. n142 For example, in the years immediately following the 9/11 terrorist attacks, the DOD convinced Congress to exempt the military from key areas of the Migratory Bird Treaty Act ("MBTA"), the Marine Mammal Protection Act ("MMPA"), and the Endangered Species Act ("ESA"). n143 These exemptions were characterized as essential to national security. n144 **This trend shows no sign of slowing.** n145 In fact, the Navy urged the Court in Winters to view the Navy's MMPA exemption as evidence that other **environmental regimes should necessarily be subordinated** to military [\*212] training. n146 Then-Vice President Dick Cheney referred to the post-9/11 restrictions on civil liberties as "the new normalcy." n147 These assertions suggest an intent to **roll back all constraining environmental legislation**, not just MMPA or NEPA, which should have given the Court pause. With Winter, this troubling trend has spread to NEPA. The Court accepted the Navy's tenuous assertion that the SOCAL training exercises are necessary to ensure military preparedness. n148 Such deference to the Navy's factual determinations, and willingness to create military exemptions to existing environmental regimes, allows the military to dodge its environmental obligations. While deference to the military's professional judgment is to a certain extent desirable, it is possible for courts to defer to an unreasonable extent. When a court unquestioningly accepts one party's characterization of a case, the court simply cannot accurately evaluate the propriety of injunctive relief. In Winter, the Court's complete deference to the Navy's factual determinations unfairly tipped the balance of equities and public policy interests against the plaintiffs. The Court's complete deference to the Navy will likely have an impact **far beyond the parties involved**. First, the Court's decision implies that the military can comply with NEPA's objectives **without having to comply with NEPA procedures**. Second, the Court's decision perpetuates **the military's offensive against "constraining" environmental legislation.** n149 In Winter, the Court **missed out on an opportunity** to **slow this trend, and prevent the military's rollback of environmental legislation**.

#### Legal decision key

Pildes 13 (Rick, udler Family Professor of Constitutional Law and Co-Faculty Director for the Program on Law and Security at NYU School of Law, "Does Judicial Review of National-Security Policies Constrain or Enable the Government?," 8/5, <http://www.lawfareblog.com/2013/08/does-judicial-review-of-national-security-policies-constrain-or-enable-the-government/>)

First, government actors have a need for legal clarity, particularly in national-security areas where the legal questions are novel and the stakes of guessing wrong particularly high. In the absence of more definitive court guidance, government lawyers and policymakers have spent a staggering number of hours trying to anticipate what courts might conclude is the valid scope of the government’s power to detain, or to use military trials, and similar questions. In many contexts, a significant element in what government actors need is simply legal clarity; knowledge of where the lines lie between the permitted and the forbidden can help government actors figure out how best to reach their legitimate goals. Surely there is something not fully functional about a system that requires a decade’s worth of guesswork, and all the resources involved, about exactly where the legal boundaries lie.

## Ptix

### 2ac Won’t Pass

#### Immigration reform won’t pass and capital not key – no chance House takes up immigration, no conservative support for action, crowded legislative calendar, debt battle killed goodwill

Berman 10/25/13 (Russell, The Hill, "GOP comfortable ignoring Obama pleas for vote on immigration bill," http://thehill.com/homenews/house/330527-gop-comfortable-ignoring-obama-pleas-to-move-to-immigration-reform)

For President Obama and advocates hoping for a House vote on immigration reform this year, the reality is simple: Fat chance. ¶ Since the shutdown, Obama has repeatedly sought to turn the nation’s focus to immigration reform and pressure Republicans to take up the Senate’s bill, or something similar.¶ But there are no signs that Republicans are feeling any pressure.¶ Speaker John Boehner (R-Ohio) has repeatedly ruled out taking up the comprehensive Senate bill, and senior Republicans say it is unlikely that the party, bruised from its internal battle over the government shutdown, would pivot quickly to an issue that has long rankled conservatives.¶ Rep. Tom Cole (R-Okla.), a leadership ally, told reporters Wednesday there is virtually no chance the party would take up immigration reform before the next round of budget and debt-ceiling fights are settled. While that could happen by December if a budget conference committee strikes an agreement, that fight is more likely to drag on well into 2014: The next deadline for lifting the debt ceiling, for example, is not until Feb. 7.¶ “I don’t even think we’ll get to that point until we get these other problems solved,” Cole said.¶ He said it was unrealistic to expect the House to be able to tackle what he called the “divisive and difficult issue” of immigration when it can barely handle the most basic task of keeping the government’s lights on.¶ “We’re not sure we can chew gum, let alone walk and chew gum, so let’s just chew gum for a while,” Cole said.¶ In a colloquy on the House floor, Minority Whip Steny Hoyer (D-Md.) asked Majority Leader Eric Cantor (R-Va.) to outline the GOP's agenda between now and the end of 2013.¶ Cantor rattled off a handful of issues — finishing a farm bill, energy legislation, more efforts to go after ObamaCare — but immigration reform was notably absent.¶ When Hoyer asked Cantor directly on the House floor for an update on immigration efforts, the majority leader was similarly vague.¶ “There are plenty of bipartisan efforts underway and in discussion between members on both sides of the aisle to try and address what is broken about our immigration system,” Cantor said. “The committees are still working on this issue, and I expect us to move forward this year in trying to address reform and what is broken about our system.”¶ Immigration reform advocates in both parties have long set the end of the year as a soft deadline for enacting an overhaul because of the assumption that it would be impossible to pass such contentious legislation in an election year.¶ Aides say party leaders have not ruled out bringing up immigration reform in the next two months, but there is no current plan to do so.¶ The legislative calendar is also quite limited; because of holidays and recesses, the House is scheduled to be in session for just five weeks for the remainder of the year. ¶ In recent weeks, however, some advocates have held out hope that the issue would remain viable for the first few months of 2014, before the midterm congressional campaigns heat up.¶ Democrats and immigration reform activists have long vowed to punish Republicans in 2014 if they stymie reform efforts, and the issue is expected to play prominently in districts with a significant percentage of Hispanic voters next year.¶ With the shutdown having sent the GOP’s approval rating plummeting, Democrats have appealed to Republicans to use immigration reform as a chance to demonstrate to voters that the two parties can work together and that Congress can do more than simply careen from crisis to crisis.¶ “Rather than create problems, let’s prove to the American people that Washington can actually solve some problems,” Obama said Thursday in his latest effort to spur the issue on.¶ But Republicans largely dismiss that line of thinking and say the two-week shutdown damaged what little trust between the GOP and Obama there was at the outset.¶ “There is a sincere desire to get it done, but there is also very little goodwill after the president spent the last two months refusing to work with us,” a House GOP leadership aide said. “In that way, his approach in the fiscal fights was very short-sighted: It made his achieving his real priorities much more difficult.”

### Obama Good – 2AC

#### 4. Courts don’t link

Litwick and Schragger 10/8/06(Dahlia and Richard, Legal Affairs Correspondent @ Slate Magazine + Prof of Law @ UVA, Wash Post, lexis)

Criticizing the court for overturning the laws passed by Congress -- as Specter did repeatedly during the confirmation hearings for John G. Roberts Jr. and Samuel A. Alito Jr. -- is fair . But crying "judicial activism" at the same time you rely on the courts for political cover when you're too timid to defy the electorate -- or your president -- is hypocritical . Why should the Supreme Court defer to a Congress that adopts laws it suspects are unconstitutional? And what should we think of those elected officials who would take so cavalier an attitude toward their oath to uphold the Constitution? Members of Congress take the same oath as Supreme Court justices do, after all. And Congress regularly asserts its institutional capacity to interpret the Constitution -- to act on an equal footing with the Supreme Court in deciding the constitutionality of a law. Moreover, the justices are supposed to assume that Congress never intentionally adopts an unconstitutional law, and you need attend oral argument for only a few moments to know how seriously they take that charge. So how is it possible that an oath-bound member of Congress can support a law that he or she believes violates the Constitution? Congress gives in to the temptation of passing bills that are of questionable constitutionality because it's easy and convenient . Political expediency seems to trump constitutional principle. The elected branches need never defy the popular will if the courts are available to do so instead. And those members of Congress who insist that the courts should stay out of Congress's business should recognize Congress for the enabler it has become. It's a two-way street: The courts work with what Congress sends them and sometimes Congress purposely sends them unconstitutional legislation, because it is politically expedient to do so. That's why lawmakers who know that legislation to ban flag burning violates the First Amendment regularly trot it out anyway. It is an easy way to mollify voters, while letting some other branch grapple with what the Constitution requires. As a bonus , lawmakers then can blame the courts for usurping the will of the electorate, turning an ordinary political pander into an Olympic-worthy double-pander. So instead of pointing fingers at the court, let's call the whole relationship what it is: dysfunctional . For all its railing against the court, Congress sometimes relies on it to achieve substantive aims. The court, sheltered from political fallout, can sometimes afford to be brave when Congress cannot . But this suggests that cries of "judicial activism" from the Congress should be suspect. As is the case in any dysfunctional relationship, Congress has a vested interest in being upheld when it wants to be, and struck down when it needs to be bailed out.

#### 5. Plan’s announced 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 United States (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.

#### 7. PC not real

Hirsch 13

[Michael, chief correspondent for the National Journal and former senior editor and columnist at Newsweek, "There's no such thing as political capital.” 2/27/13, <http://news.yahoo.com/no-thing-political-capital-201002390--politics.html>]

On Tuesday, in his State of the Union address, President Obama will do what every president does this time of year. For about 60 minutes, he will lay out a sprawling and ambitious wish list highlighted by gun control and immigration reform, climate change and debt reduction. In response, the pundits will do what they always do this time of year: They will talk about how unrealistic most of the proposals are, discussions often informed by sagacious reckonings of how much “political capital” Obama possesses to push his program through. Most of this talk will have no bearing on what actually happens over the next four years. Consider this: Three months ago, just before the November election, if someone had talked seriously about Obama having enough political capital to oversee passage of both immigration reform and gun-control legislation at the beginning of his second term—even after winning the election by 4 percentage points and 5 million votes (the actual final tally)—this person would have been called crazy and stripped of his pundit’s license. (It doesn’t exist, but it ought to.) In his first term, in a starkly polarized country, the president had been so frustrated by GOP resistance that he finally issued a limited executive order last August permitting immigrants who entered the country illegally as children to work without fear of deportation for at least two years. Obama didn’t dare to even bring up gun control, a Democratic “third rail” that has cost the party elections and that actually might have been even less popular on the right than the president’s health care law. And yet, for reasons that have very little to do with Obama’s personal prestige or popularity—variously put in terms of a “mandate” or “political capital”—chances are fair that both will now happen. What changed? In the case of gun control, of course, it wasn’t the election. It was the horror of the 20 first-graders who were slaughtered in Newtown, Conn., in mid-December. The sickening reality of little girls and boys riddled with bullets from a high-capacity assault weapon seemed to precipitate a sudden tipping point in the national conscience. One thing changed after another. Wayne LaPierre of the National Rifle Association marginalized himself with poorly chosen comments soon after the massacre. The pro-gun lobby, once a phalanx of opposition, began to fissure into reasonables and crazies. Former Rep. Gabrielle Giffords, D-Ariz., who was shot in the head two years ago and is still struggling to speak and walk, started a PAC with her husband to appeal to the moderate middle of gun owners. Then she gave riveting and poignant testimony to the Senate, challenging lawmakers: “Be bold.” As a result, momentum has appeared to build around some kind of a plan to curtail sales of the most dangerous weapons and ammunition and the way people are permitted to buy them. It’s impossible to say now whether such a bill will pass and, if it does, whether it will make anything more than cosmetic changes to gun laws. But one thing is clear: The political tectonics have shifted dramatically in very little time. Whole new possibilities exist now that didn’t a few weeks ago. Meanwhile, the Republican members of the Senate’s so-called Gang of Eight are pushing hard for a new spirit of compromise on immigration reform, a sharp change after an election year in which the GOP standard-bearer declared he would make life so miserable for the 11 million illegal immigrants in the U.S. that they would “self-deport.” But this turnaround has very little to do with Obama’s personal influence—his political mandate, as it were. It has almost entirely to do with just two numbers: 71 and 27. That’s 71 percent for Obama, 27 percent for Mitt Romney, the breakdown of the Hispanic vote in the 2012 presidential election. Obama drove home his advantage by giving a speech on immigration reform on Jan. 29 at a Hispanic-dominated high school in Nevada, a swing state he won by a surprising 8 percentage points in November. But the movement on immigration has mainly come out of the Republican Party’s recent introspection, and the realization by its more thoughtful members, such as Sen. Marco Rubio of Florida and Gov. BobbyJindal of Louisiana, that without such a shift the party may be facing demographic death in a country where the 2010 census showed, for the first time, that white births have fallen into the minority. It’s got nothing to do with Obama’s political capital or, indeed, Obama at all. The point is not that “political capital” is a meaningless term. Often it is a synonym for “mandate” or “momentum” in the aftermath of a decisive election—and just about every politician ever elected has tried to claim more of a mandate than he actually has. Certainly, Obama can say that because he was elected and Romney wasn’t, he has a better claim on the country’s mood and direction. Many pundits still defend political capital as a useful metaphor at least. “It’s an unquantifiable but meaningful concept,” says Norman Ornstein of the American Enterprise Institute. “You can’t really look at a president and say he’s got 37 ounces of political capital. But the fact is, it’s a concept that matters, if you have popularity and some momentum on your side.” The real problem is that the idea of political capital—or mandates, or momentum—is so poorly defined that presidents and pundits often get it wrong. “Presidents usually over-estimate it,” says George Edwards, a presidential scholar at Texas A&M University. “The best kind of political capital—some sense of an electoral mandate to do something—is very rare. It almost never happens. In 1964, maybe. And to some degree in 1980.” For that reason, political capital is a concept that misleads far more than it enlightens. It is distortionary. It conveys the idea that we know more than we really do about the ever-elusive concept of political power, and it discounts the way unforeseen events can suddenly change everything. Instead, it suggests, erroneously, that a political figure has a concrete amount of political capital to invest, just as someone might have real investment capital—that a particular leader can bank his gains, and the size of his account determines what he can do at any given moment in history. Naturally, any president has practical and electoral limits. Does he have a majority in both chambers of Congress and a cohesive coalition behind him? Obama has neither at present. And unless a surge in the economy—at the moment, still stuck—or some other great victory gives him more momentum, it is inevitable that the closer Obama gets to the 2014 election, the less he will be able to get done. Going into the midterms, Republicans will increasingly avoid any concessions that make him (and the Democrats) stronger. But the abrupt emergence of the immigration and gun-control issues illustrates how suddenly shifts in mood can occur and how political interests can align in new ways just as suddenly. Indeed, the pseudo-concept of political capital masks a larger truth about Washington that is kindergarten simple: You just don’t know what you can do until you try. Or as Ornstein himself once wrote years ago, “Winning wins.” In theory, and in practice, depending on Obama’s handling of any particular issue, even in a polarized time, he could still deliver on a lot of his second-term goals, depending on his skill and the breaks. Unforeseen catalysts can appear, like Newtown. Epiphanies can dawn, such as when many Republican Party leaders suddenly woke up in panic to the huge disparity in the Hispanic vote. Some political scientists who study the elusive calculus of how to pass legislation and run successful presidencies say that political capital is, at best, an empty concept, and that almost nothing in the academic literature successfully quantifies or even defines it. “It can refer to a very abstract thing, like a president’s popularity, but there’s no mechanism there. That makes it kind of useless,” says Richard Bensel, a government professor at Cornell University. Even Ornstein concedes that the calculus is far more complex than the term suggests. Winning on one issue often changes the calculation for the next issue; there is never any known amount of capital. “The idea here is, if an issue comes up where the conventional wisdom is that president is not going to get what he wants, and he gets it, then each time that happens, it changes the calculus of the other actors” Ornstein says. “If they think he’s going to win, they may change positions to get on the winning side. It’s a bandwagon effect.”

### 1NC Indo-Pak War

#### They're moving towards a resolution

Gidvani 12 -- 2008 graduate of The University of Iowa College of Law and currently practices law in Las Vegas, Nevada (ND, 2/22, "The Peaceful Resolution of Kashmir: A United Nations Led Effort for Successful International Mediation and a Permanent Resolution to the India-Pakistan Conflict," TRANSNATIONAL LAW & CONTEMPORARY PROBLEMS, Vol. 18:721, http://www.muntr.org/v4/wp-content/uploads/2012/02/The\_Peaceful.pdf)

However, the removal of President Musharraf from power in a landslide election on September 6, 2008 marks the beginning of Asif Ali Zardari’s second rise to power and a new era of Pakistani leadership. 166 At the time of this Note’s writing, Zardari has yet to state his official policy toward India and resolving the Kashmir conflict, but Haider Mullick, War on Terror political analyst, is optimistic.167 Mullick argues that the interdependence of the two nations will be enough to continue the march toward a peaceful resolution, replacing Pakistan’s old policy of “flexing military muscle.”168 The current trend and commitment toward a peaceful resolution reasonably indicates that a successful resolution can be reached sooner rather than later.

## Bond

### Iraqi Impact Answers – 2ac

#### US federal model fails in Iraq AND various ethnic groups oppose federalism

Hilterman 12 (Joost, Sean Kane, Raad Alkadiri, Analysts @ International Crisis Group, "Iraq's Federalism Quandary, 2/28, http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-iran-gulf/iraq/op-eds/hiltermann-iraqs-federalism-quandary.aspx)

Asymmetrical federalism is not a novel concept. It has been employed in several countries around the world to recognize diversity and manage internal conflict. The theoretical case for asymmetrical federalism in Iraq should begin with an examination of two main stylized models of federalism: “coming together” and “holding together”.¶ A coming-together model arises when a group of formerly independent or self-governing units join to form a new country. Classic examples include the United States, Australia and the UAE, which formerly consisted of seven independent sheikhdoms. Not surprisingly, those accustomed to ruling themselves are reluctant to abandon power to new national governments. Thus, these coming-together federations are relatively decentralized, with checks on the authority of the central government and the provinces running their own affairs. They also tend to be relatively symmetrical, with all provinces enjoying more or less the same privileges vis-à-vis the center.¶ In contrast, the holding-together model is usually an attempt to maintain the territorial integrity of an existing state. It often occurs in the case of formerly unitary countries that face ethnically or territorially based secessionist threats. In many cases, attempts are made to reconcile these groups through a grant of special autonomy. The result can be an asymmetrical structure, where the potential breakaway province enjoys heightened self-government compared to other territories in the union. While few countries are purely symmetrical, asymmetrical federations are distinguished by the deliberate nature of these special arrangements, which are protected in laws or the constitution. Recently, in the case of Banda Aceh and Indonesia, asymmetrical arrangements helped end a long-running internal conflict. In other countries, such as Spain, these arrangements have been used to forestall wider conflict by granting cultural and administrative autonomy to Basque and Catalan communities.¶ The puzzle of Iraq’s 2005 constitution is that it introduced a coming-together symmetrical model of federalism rather than building on the clear asymmetrical foundation of the Kurdish safe haven established after the 1991 Gulf War. An examination of the recent history of devolution in Iraq suggests that a holding-together asymmetrical model may better promote stability by serving the interests of all parties.¶ The genesis of Iraq’s new federal system lies in the aftermath of the 1991 Gulf War, when exile groups stepped out from the regime’s shadow of fear to plot its demise. They were a motley collection of secularists and Islamists, Arabs and Kurds, all with their own visions of a post-Saddam Iraq.¶ The Kurds had long aimed to build on an autonomy agreement negotiated with the Baathists in the 1970s that was never implemented. Motivated by their desire for a Kurdish state and the fresh horrors of a genocidal Iraqi Army campaign against them in the late 1980s, Kurds in the post-Saddam era pushed for something more extensive: an ethnically based confederation that would afford the Kurds maximum autonomy over their own affairs. The Kurds’ partners in opposition had not given the idea of federalism much thought, but many agreed.¶ A central ally to the Kurds in this quest was a party then known as the Supreme Council for the Islamic Revolution in Iraq (SCIRI). SCIRI was a Shia Islamist party established by the Iranians in 1982 during the Iran-Iraq War that was dedicated to overthrowing Saddam’s regime. It saw decentralization as both the best guarantee against a return to dictatorship and a good way to protect Shia interests in the new state. In 2007, SCIRI renamed itself the Islamic Supreme Council of Iraq (ISCI), deemphasizing its historical ties to Iran’s revolutionary regime.¶ ISCI and the Kurds’ calculations on federalism were not solely about identity. The Kurds saw in federalism the freedom to develop their local oil assets, which would allow them the ability to run their own affairs without being financially dependent on Baghdad. Meanwhile, the Shia region in southern Iraq that ISCI was to propose was not coincidentally home to the majority of Iraq’s vast oil reserves.¶ The United States, following its overthrow of Saddam’s regime in 2003, made no secret of its own preference for a decentralized Iraq, sharing with the opposition the view that this would prevent the return of dictatorship. From the start, the term used was federalism. With their close ties to the Bush administration, the Kurds and certain ISCI leaders returning from exile had a head start that allowed them to leave an outsized imprint on the new state structure. The areas outside the Kurdistan region, which had yet to produce homegrown parties, were not positioned to give strong expression to their populations’ wills.¶ Yet resistance to federalism began almost right away. Iraqi nationalists, many with links to the former regime, championed the state’s paramount unity but struggled to articulate a practical alternative to the previous, now-discredited centralization. They were joined by what remained of Iraq’s secular elite and important parts of the Shia clerical leadership. Moreover, some Shia Islamist political leaders outside ISCI, now well on their way to gaining significant power in Baghdad, sought to protect their new domain and began to suggest that Iraqis were not yet ready for federalism.

### 1NC Afghan Stability

#### -- Afghan collapse won’t spill over

Silverman 9 (Jerry Mary, Ph.D. in International Relations and Project Specialist – Ford Foundatoin, “Sturdy Dominoes”, The National Interest, 11-19, http://www.nationalinterest.org/Article.aspx?id=22512)

Many advocates of continuing or racheting up our presence in Afghanistan are cut from the same domino-theory cloth as those of the Vietnam era. They posit that losing in Afghanistan would almost certainly lead to the further “loss” of the entire South and central Asian region. Although avoiding explicit reference to “falling dominos,” recent examples include S. Frederick Starr (School of Advanced International Studies, Johns Hopkins University); Sir David Richards (the UK’s relatively new Chief of the General Staff); and, in The National Interest, Ahmed Rashid. The fear that Pakistan and central Asian governments are too weak to withstand the Taliban leads logically to the proposition—just as it did forty years ago—that only the United States can defend the region from its own extremist groups and, therefore, that any loss of faith in America will result in a net gain for pan-Islamist movements in a zero-sum global competition for power. Unfortunately, the resurrection of “falling dominos” as a metaphor for predicted consequences of an American military withdrawal reflects a profound inability to re-envision the nature of today’s global political environment and America’s place in it. The current worry is that Pakistan will revive support for the Taliban and return to its historically rooted policy of noninterference in local governance or security arrangements along the frontier. This fear is compounded by a vision of radical Islamists gaining access to Pakistan’s nuclear arsenal. Those concerns are fueled by the judgment that Pakistan’s new democratically elected civilian government is too weak to withstand pressures by its most senior military officers to keep its pro-Afghan Taliban option open. From that perspective, any sign of American “dithering” would reinforce that historically-rooted preference, even as the imperative would remain to separate the Pakistani-Taliban from the Afghan insurgents. Further, any significant increase in terrorist violence, especially within major Pakistani urban centers, would likely lead to the imposition of martial law and return to an authoritarian military regime, weakening American influence even further. At its most extreme, that scenario ends with the most frightening outcome of all—the overthrow of relatively secular senior Pakistani generals by a pro-Islamist and anti-Western group of second-tier officers with access to that country’s nuclear weapons. Beyond Pakistan, advocates of today’s domino theory point to the Taliban’s links to both the Islamic Movement of Uzbekistan and the Islamic Jihad Union, and conclude that a Taliban victory in Afghanistan would encourage similar radical Islamist movements in Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. In the face of a scenario of increasing radicalization along Russia’s relatively new, southern borders, domino theorists argue that a NATO retreat from Afghanistan would spur the projection of its own military and political power into the resulting “vacuum” there. The primary problem with the worst-case scenarios predicted by the domino theorists is that no analyst is really prescient enough to accurately predict how decisions made by the United States today will affect future outcomes in the South and central Asian region. Their forecasts might occur whether or not the United States withdraws or, alternatively, increases its forces in Afghanistan. Worse, it is entirely possible that the most dreaded consequences will occur only as the result of a decision to stay. With the benefit of hindsight, we know that the earlier domino theory falsely represented interstate and domestic political realities throughout most of Southeast Asia in 1975. Although it is true that American influence throughout much of Southeast Asia suffered for a few years following Communist victories in Cambodia, Laos and Vietnam, we now know that while we viewed the Vietnam War as part of a larger conflict, our opponent’s focus was limited to the unification of their own country. Although border disputes erupted between Vietnam and Cambodia, China and the Philippines, actual military conflicts occurred only between the supposedly fraternal Communist governments of Vietnam, China and Cambodia. Neither of the two competing Communist regimes in Cambodia survived. Further, no serious threats to install Communist regimes were initiated outside of Indochina, and, most importantly, the current political situation in Southeast Asia now conforms closely to what Washington had hoped to achieve in the first place. It is, of course, unfortunate that the transition from military conflict in Vietnam to the welcome situation in Southeast Asia today was initially violent, messy, bloody, and fraught with revenge and violations of human rights. But as the perpetrators, magnitude, and victims of violence changed, the level of violence eventually declined.

### Bond Will Lose Now

#### Court won't rule for Bond - won't repeal CWC implementing legislation

Hubbell 10/7/13 (Webb, former Associate Attorney General of the United States, "Shutdown Or Not, SCOTUS Is Back," http://www.talkradionews.com/supreme-court/2013/10/07/shutdown-or-not-scotus-is-back.html#.UmbsO\_msiSo)

Bond v. United States. After discovering that her best friend and husband were having an affair, Carol Anne Bond attempted to poison her friend by spreading chemicals on her mailbox, car door and front door. This resulted in a federal prosecution under the Chemical Weapons Act. Bond now disputes Congress’s power to implement the Chemical Weapons Convention Treaty by creating a law to enforce it. She argues that the federal government lacks a plenary police power and that Congress’s authority to pass treaty-implementing legislation should not be an end run around its enumerated powers. The government argues that the Court has never invalidated the implementation of a treaty and, further, maintains that the Chemical Weapons Act is a valid exercise of Congress’s power to regulate commerce.¶ Early Prediction: Besides putting at question Congress’s power to implement a treaty, this case has added significance in light of what has been happening in Syria these last few months. In this age of letting the federal government do what it wants when it comes to “terrorism,” there is no way the Court will invalidate this law.

### Court Politics DA – 2AC

#### 4. Ideology outweighs on controversies

Feldman 08

[Stephen, Jerry W. Housel/Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science, University of Wyoming, Southern California Interdisciplinary Law Journal, Fall 2008, L/N]

So, did Roberts and Alito lie during their confirmation hearings? n4 Did they duplicitously proclaim dedication to the rule of law while secretly planning to implement their political agendas? While I disagree with the justices' votes in practically every controversial case, Roberts and Alito most likely answered senators' questions sincerely, and the justices have probably applied the rule of law in good faith during their initial terms. But, one might ask, how is this possible when they repeatedly vote for the conservative judicial outcome? Most simply, law and politics are not opposites. Roberts, Alito, and the other justices do not necessarily disregard the law merely because they vote to decide cases con**sistent with their respective political ideologies.** As a general matter, Supreme Court justices can decide legal disputes in accordance with law while simultaneously following their political preferences. [\*18] I elaborate this thesis by critiquing the theories of Judge Richard Posner n5 and Professor Ronald Dworkin, n6 two of the most prominent jurisprudents of this era. Embattled opponents, Posner and Dworkin have, for years, relentlessly attacked each other while developing strikingly different depictions of law and adjudication. n7 Despite their opposition, however, Posner and Dworkin together challenge a primary assumption of traditional jurisprudence - an assumption featured during Roberts's and Alito's Senate confirmation hearings. Most senators, jurists, and legal scholars assume that legal interpretation and judicial decision making can be separated from politics, that a judge or justice who decides according to political ideology skews or corrupts the judicial process. n8 Posner and Dworkin reject this traditional approach, particularly for hard cases at the level of the Supreme Court. Each in his own way asserts and explains the power of politics in adjudication: the justices self-consciously vote and thus decide cases according to their political ideologies. Posner and Dworkin agree that the justices do not, and should not, decide hard cases by applying an ostensibly clear rule of law in a mechanical fashion. The justices must be political in an open and expansive manner. n9 Supreme Court adjudication is, in other words, politics writ large. The conflicts between Posner and Dworkin stem from their distinct views of politics. Posner views politics as a pluralist battle among self-interested individuals and groups. He therefore argues that Supreme Court adjudication, manifesting politics writ large, should (and in fact does) entail a pragmatic focus on consequences. The justices should resolve cases by looking to the future and by aiming to do what is best in both the short and long term. n10 Dworkin, repudiating a pragmatic politics of self-interest, favors instead a politics of principles. Thus, according to Dworkin, the justices should resolve hard cases by applying law as integrity. They should theorize about the political-moral principles that fit the doctrinal history - including [\*19] case precedents and constitutional provisions - and that cast the history in its best moral light. n11 Consequently, although Posner and Dworkin both describe the Supreme Court as a political institution - as engaging in politics writ large - their theories otherwise clash tumultuously. Posner sees an adjudicative politics of interest and unmitigated practicality, while Dworkin sees an adjudicative politics of principles and coherent theory. Unfortunately, both Posner and Dworkin - like Roberts, Alito, and the senators who questioned them - remain stuck within the magnetic field of the traditional law-politics dichotomy. While most jurists, legal scholars, and senators are pulled to the law pole - maintaining that law mandates case results - Posner and Dworkin are pulled to the opposite pole. If politics matter to adjudication, they seem to say, then politics must become the overriding determinant of judicial outcomes. Supreme Court adjudication must be politics writ large. If their view is true, then Supreme Court nominees who declare their fidelity to the rule of law do, in fact, lie: current and future justices decide cases by hewing to their political ideologies, not to legal doctrines and precedents. But in their struggle against the forces of the law-politics dichotomy, Posner and Dworkin overcompensate. They neglect another possibility: namely, that Supreme Court adjudication is politics writ small. As Posner and Dworkin emphasize, the Court is a political institution: the justices' political ideologies always and inevitably influence their votes and decisions. But usually the justices do not self-consciously attempt to impose their politics in an expansive manner. To the contrary, the justices sincerely interpret and apply the law. Yet, because legal interpretation is never mechanical, the justices' political ideologies necessarily shape how they understand the relevant legal texts, whether in constitutional or other cases.

#### 7. Capital resilient

Chemerinsky 99 (Erwin, Professor of Law – USC, South Texas Law Review, Fall, 40 S. Tex. L. Rev. 943, Lexis)

Interestingly, though, the Supreme Court has been immune from that cynicism. At a time when other government institutions are often held in disrepute, the Court's credibility is high. Professors John M. Scheb and Williams Lyons set out to measure and determine this. [2](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n2) They conducted a survey to answer the question: "How do the American people regard the U.S. Supreme Court?" [3](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n3) Their conclusion is important: According to the survey data, Americans render a relatively positive assessment of the U.S. Supreme Court. Not surprisingly, the Court fares considerably better in public opinion than does Congress. The respondents are almost twice as likely to rate the Court's performance as "good' or "excellent'  [\*945]  as they are to give these ratings to Congress. By the same token, they are more than twice as likely to rate Congress' performance as "poor.' [4](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n4) This survey was done in 1994, [5](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n5) before the recent events that likely further damaged Congress' public image. Strikingly, Scheb and Lyons found that the "Court is fairly well-regarded across the lines that usually divide Americans." [6](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n6) For example, there are no significant differences between how Democrats and Republicans rate the Court's performance. In short, the Court is a relatively highly regarded institution, more so certainly than Congress or the presidency. [7](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n7) This is not a new phenomena. Throughout this century, the Court has handed down controversial rulings. Yet the Court has retained its legitimacy and its rulings have not been disregarded. Judge John Gibbons remarked that the "historical record suggests that far from being the fragile popular institution that scholars like Professor Choper... and Alexander Bickel have perceived it to be, judicial review is in fact quite robust." [8](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n8) In fact, even at the times of the most intense criticism of the Supreme Court, the institution has retained its credibility. For example, opposition to the Court was probably at its height in the mid-1930s. In the midst of a depression, the Court was striking down statutes thought to be necessary for economic recovery. In an attempt to change the Court's ideology, President Franklin D. Roosevelt - fresh from a landslide reelection - proposed changing the size of the Court. This "Court packing" plan received little public support. The Senate Judiciary Committee, controlled by Democrats, rejected the proposal and strongly reaffirmed the need for an independent judiciary: Let us now set a salutary precedent that will never be violated. Let us, of the Seventy-fifth Congress,... declare that we would rather have an independent Court, a fearless Court, a Court that will dare to announce its honest opinions in what it believes to be the defense of the liberties of the people, than a Court that, out of fear or sense of obligation to the appointing power, or  [\*946]  factional passion, approves any measure we may enact. [9](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n9) This is a telling quotation and a powerful example because if anything should have undermined the Court's legitimacy, it was an unpopular Court striking down popular laws enacted by a popular administration in a time of crisis. Public opinion surveys reflect that this Committee report reflected general support for the Supreme Court, despite the unpopularity of its rulings. In 1935 and 1936, most respondents, 53% and 59% respectively, did not favor limiting the power of the Supreme Court in declaring laws unconstitutional. [10](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n10) Indeed, the Court's high regard, described by Professors Scheb and Lyons, has been remarkably constant over time. [11](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n11) Professor Roger Handberg studied public attitudes about the Supreme Court over several decades and concluded that public support for the institution has not changed significantly and that the "Court has a basic core of support which seems to endure despite severe shocks." [12](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n12) Professor John Hart Ely noted this and observed: The possibility of judicial emasculation by way of popular reaction against constitutional review by the courts has not in fact materialized in more than a century and a half of American experience. The warnings probably reached their peak during the Warren years; they were not notably heeded; yet nothing resembling destruction materialized. In fact, the Court's power continued to grow and probably never has been greater than it has been over the past two decades. [13](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n13) Why has the Court maintained its legitimacy even when issuing highly controversial rulings? Social science theories of legitimacy offer some explanation. The renowned sociologist Max Weber wrote that there are three major bases for an institution's legitimacy: tradition, rationality and affective ties. [14](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n14) That which historically has existed tends to be accepted as legitimate. Therefore, 200 years of  [\*947]  judicial review grants the Court enormous credibility. Additionally, that which is rational is likely to be regarded as legitimate. The judiciary's method of giving detailed reasons for its conclusions thus helps to provide it credibility. Finally, that which is charismatic, things to which people have strong affective ties, are accorded legitimacy. It has long been demonstrated that people feel great loyalty to the Constitution. The Court's relationship to the document and its role in interpreting it likely also enhances its legitimacy. More specifically, I suggest that the Court's robust public image is a result of its processes and its producing largely acceptable decisions over a long period of time. The Court is rightly perceived as free from direct political pressure and lobbying, bound by the convention of reaching rational decisions that are justified in opinions, and capable of protecting people from arbitrary government. Social scientists have shown that an institution receives legitimacy from following established procedures. The Court's legitimacy, in part, is based on the perception and reality that it does not decide cases based on the personal interests of the Justices or based on external lobbying and pressures. In a recent book highly critical of the Court, Edward Lazarus lambastes the current Justices, yet he never even suggests a single instance of improper influence or conflict of interest. [15](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n15) The Court's credibility is a product of the correct perception that it decides cases based on a formalized procedure: it reads briefs, hears arguments, deliberates, and writes opinions. Indeed, the very process of opinion writing, regardless of their content, is crucial because it makes the Court's decisions seem a product of reason, not simply acts of will. Although the Court's high credibility is a result of this process, I believe that this is necessary for its institutional legitimacy, but not sufficient. The Court also has produced a large body of decisions, that over a long period of time, have generally been accepted by the public. If the Court were to produce a large number of intensely unpopular rulings over a long period of time, its credibility would suffer. In the short-term, its processes ensure its continued legitimacy; in the long-term, overall acceptability of its decisions is sufficient to preserve this credibility. Recognition of the Court's robust legitimacy is important in the on-going debate over judicial review. Many, including those as  [\*948]  prominent as Felix Frankfurter, Alexander Bickel, and Jesse Choper, have proclaimed a need for judicial restraint so as to preserve the Court's fragile institutional legitimacy. [16](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n16) They argue that the Court must depend on voluntary compliance with its rulings from the other branches of government and that this will not occur unless the Court preserves its fragile legitimacy. Justice Frankfurter dissented in Baker v. Carr, the Supreme Court's landmark decision holding that challenges to malapportionment were justiciable, arguing that the Court was putting its fragile legitimacy at risk. [17](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n17) Frankfurter urged restraint, stating: "The Court's authority - possessed of neither the purse nor the sword - ultimately rests on public confidence in its moral sanction." [18](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n18) Choper, for example, concludes from this premise that the Court should not rule on federalism or separation of powers issues so as to not squander its political capital in these areas that he sees as less important than individual rights cases. Bickel argued that the Court should practice the "passive virtues" and use justiciability doctrines to avoid highly controversial matters so as to preserve its political capital. [19](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n19) Other scholars reason from the same assumption. Daniel Conkle, for example, speaks of the "fragile legitimacy that attaches to Supreme Court pronouncements of constitutional law." [20](http://www.lexis.com/research/retrieve?_m=0effd92084fac48f67935d88a05d02d0&docnum=59&_fmtstr=FULL&_startdoc=51&wchp=dGLzVzz-zSkAW&_md5=239ef674acc9939fafe9043b5f3a0a84&focBudTerms=federalism%20or%20state%21%20right%20or%20commerce%20clause%20w/35%20institutional%20capital%20or%20political%20capital&focBudSel=all#n20) I am convinced that these scholars are wrong and that the public image of the Court is not easily tarnished, and preserving it need not be a preoccupation of the Court or constitutional theorists. There is no evidence to support their assertion of fragile public legitimacy and almost 200 years of judicial review refute it.

#### 9. Winners win --- plan boosts capital

Little 00 (Laura, Professor of Law – Temple University, Beasley School of Law, November, 52 Hastings L.J. 47, Lexis)

Other scholars bolster Redish's position by pointing out that judicial review of both federalism and separation of powers questions presents something of a self-fulfilling prophesy. Through review of these sensitive issues of power, the judiciary bolsters its own position or amasses "political capital" and, thereby, legitimates its own power to engage in such review . 237 The judiciary has therefore established  [\*98]  itself as an effective watchdog to ensure that governmental structures are functioning appropriately. n237. Perry, supra note 11, at 57 (Supreme Court has "amassed a great deal of the political capital it now enjoys ... precisely by resolving problems arising under the doctrines of federalism and of the separation-of-powers "); see also Archibald Cox, The Role of the Supreme Court in American Government 30 (1972) (explaining that "history legitimated the power [of judicial review], and then habit took over to guide men's actions so long as the system worked well enough").

## Warfighting Things

### Warfighting DA NEW– 2AC

#### No relationship between US capabilities and peace

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 1990s, the United States 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 United States was no less safe. The incidence and magnitude of global conflict declined while the UnitedStatescut 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.

#### Plan returns the US to case law circa 2004 – 5 years of legal application disproves the disad

Schiffer 4 (Lois J., partner at Baach Robinson & Lewis PLLC in Washington, D.C., Assistant Attorney General for the Environment and Natural Resources Division at the U.S. Department of Justice from 1994-2001, adjunct professor of environmental law at Georgetown University Law Center, “The National Environmental Policy Act today, with an emphasis on its application across U.S. Borders,” Duke Environmental Law & Policy Forum, Vol. 14:2, 2004, <http://www.eli.org/pdf/seminars/NEPA/NEPA%20Today.pdf>)

The Bush Administration has made clear its view that NEPA should be limited to impacts within the United States. In Natural Resources Defense Council v. U.S. Department of the Navy, which challenged the Navy’s testing of low-frequency sonar on the basis that the Navy must prepare an EIS to evaluate impacts on marine mammals, the government argued that NEPA did not apply to the sonar program because most of the testing took place outside the territorial waters of the LLS.\*1 The government relied on the presumption against extraterritorial application of federal laws. In a clear and strong decision, the court rejected the claim and held that NEPA applied.45 While the Navy and the NRDC then reached a substantive settlement, congressional legislation that redefined what constitutes "harassment" under the Marine Mammal Protection Act reopened this debate. In Center for Biological Diversity v. National Science Foundation, in which the National Science Foundation's plan to undertake acoustical research in an environmentally sensitive area of the Gulf of California without NEPA compliance was challenged, the United States argued that it need not prepare an environmental review for a project within the Exclusive Economic Zone of Mexico: the court held that the area was the high seas, that NEPA applied, and thus issued a temporary restraining order.1" in Border Power Plant Working Group v. Department of Energy, the federal government argued that the Department of Energy, in permitting transmission lines in the U.S. to connect Mexican power plants to the U.S. grid, need not consider the environmental effects of the power plants.\* The court disagreed and held that NEPA requires assessment of effects in the U.S. resulting from power plants in Mexico. Since that ruling, the Department of Energy has undertaken an environmental analysis of the project and took public comments on the draft EIS through June 2004.'11"

#### 2. Current Court decisions over war powers are already hamstringing warfighting and causing battlefield uncertainty

Chertoff, 11 – Secretary, Department of Homeland Security (2005-2009); Judge, Court of Appeals for the Third Circuit (2003-2005); Assistant Attorney General, Criminal Division, U.S. Department of Justice (2001-2003); U.S. Attorney for the District of New Jersey (1990-1994) (Michael, 2/3. “THE DECLINE OF JUDICIAL DEFERENCE ON NATIONAL SECURITY.” http://www.rutgerslawreview.com/wp-content/uploads/archive/vol63/Issue4/Chertoff\_Speech\_PDF.pdf)

The last outcome which I think is surprising about Boumediene is the discussion of the practical concerns. Again and again what the Court does as it reviews the historical records, which are inclusive, is it comes back and says that it looks like the earlier courts were animated by practical considerations.39 So you would expect there to be a really intense practical discussion of what the impact of granting habeas in these cases has on military operations. Here is the kind of practical discussion you get. In Eisentrager, in which the court said there is no habeas right for German prisoners being held in American military prisons in Germany in 1950, the Court mentions in passing that it was concerned about interfering with military operations.40 Now remember, this is 1950. The war has been over for five years. We have had the Marshall Plan, and yet, five years later, the Supreme Court is still worried about interfering with military operations. What does the Boumediene Court say? They say that it is distinguishable because in Eisentrager the Court had a real concern about the occupation; there were Nazi sympathizers; and there was guerrilla warfare. So understandably, there were practical considerations there. That is not present here because we do not have that issue in Guantánamo.41 Again, let me step back. In 1950, I would seriously doubt, five years after the end of the war, that we were spending a lot of time worrying about Nazi insurgents. But I will tell you that in Guantánamo, not only do they have force protection issues with respect to prisoners, but also they have to worry about the impact of what goes on in terms of how they handle prisoners with respect to active combat operations that are literally going on in two theaters of war overseas. So to argue that the military challenges in 1950 were greater than the military challenges in 2007 is frankly counterfactual. And it suggests to me a real problem with the whole practical analysis. So, where has this left us? It has left us in a puzzling situation. In a decision called Al-Bihani in the D.C. Circuit in 2010, Judge Janice Rogers Brown talked about the consequences—practical consequences—of having habeas review in Guantánamo as it affects the battlefield.42 And what she said is that the process at the tail end is now impacting the front end because when you conduct combat operations, you now have to worry about collecting evidence.43 A somewhat darker analysis has been put forward by Ben Wittes who has recently written a book called Detention and Denial, where he argues that the courts have now created an incentive system to kill rather than capture.44 And much of the law of war over the years was designed to move away from the “give no quarter” theory, where you killed everybody at the battlefield, into the theory of you would rather capture than kill. And his point, and you can agree or disagree with it, is that you have now actually loaded it the other way; you have pushed it in the direction of kill rather than capture.45 We have complete uncertainty now in the standards to be applied in the individual cases. If you read Ben Wittes‟s book Detention and Denial, he will details about ten or twelve district court cases where literally on the same facts you get different answers.46 And it is not that the district judges are not doing their best, but they have no guidance. There is no standard, and no one has offered them a standard. We now have litigation about Bagram Air Force Base in Afghanistan.47 It was absolutely predictable when Boumediene was decided that the next case would be against Bagram Airbase. I do not know how it is going to come out at the end. I think it is still in the district court, but I will tell you, the logic—now they may have stopped the logic of Guantánamo—the logic of Boumediene certainly raises questions about Bagram. How do you wind up having habeas in Bagram? And then what is going to happen when you are in a forward firebase? Are you going to have habeas cases there? No one knows, but the big problem is that the battlefield commanders do not know either; that is a serious operational problem. In many ways, it is absolutely a great example of what the Court in Eisentrager predicted.48 When you go down this path, you are going to actually have real operational problems with warfighting. But of course, we are not in 1950 now; we are actually in active operations. Finally, and I find this really to be the most interesting contemporary question posed by this series of issues, the press reports—and I cannot verify this, I am not confirming it, but I am assuming it to be true—the press reports that President Obama has authorized the killing of Anwar al-Aulaki, the American citizen in Yemen who is, in my mind for quite good reason, believed to be a major recruiter and operation leader for al-Qaeda.49 I want to be clear: I am perfectly okay with that, and I think it is exactly the right decision, so I do not want to be misunderstood. But I will say that if you read the decision and logic of Boumediene that is a very puzzling situation for al-Aulaki. Because if you need court permission to detain somebody, and if you need court permission to wiretap somebody, how can you kill that person without court permission?

#### 3. Plan solves base kickout – turns the DA

Lostumbo et al. 13 (Michael – Director, RAND Center for Asia Pacific Policy, “ Overseas Basing of U.S. Military Forces An Assessment of Relative Costs and Strategic Benefits”, 2013, http://www.rand.org/pubs/research\_reports/RR201.html)

104 Overseas Basing of U.S. Military Forces Access comes through agreements between the United States and the host nation government, but the host nation public can often influence outcomes. 11 While public opinion most directly affects the foreign policy of democratic states, even authoritarian leaders may have to take into account their citizens’ views. 12 Public opposition to an American military presence can constrain U.S. access; affect the costs of access; and, if severe enough, lead to U.S. expulsion. In general, there are many reasons why the population of a host nation might oppose an American military presence. First, foreign bases are often seen as compro - mising a state’s sovereignty. 13 Second, some citizens may object to foreign military bases because of the interruption of their daily lives the bases cause by taking up valu - able land, polluting the environment, generating disruptive noise, and creating safety hazards. 14 Third, people may disagree with the stated mission of U.S. forces or their particular actions. 15 Given these considerations, this section will explore when U.S. bases are at risk and when a host nation is likely to authorize the United States to use its bases for a particular operation.

#### 7. **Rules during crises don’t hurt flexibility**

Holmes 9 -- Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 4/30/2009, "In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror," http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1140&context=californialawreview)

Thus, it also illustrates the truism, profoundly relevant to the war on terror, that limiting options available during emergencies can be good or bad, depending on what emergency responders, who may be tempted by sheer exhaustion to take hazardous shortcuts, will do with the latitudes they seize or receive. Campaigners for executive discretion routinely invoke the imperative need for "**flexibility**" to explain why counterterrorism cannot be successfully conducted within the Constitution and the rule of law. But general rules and situation-specific improvisation, far from being mutually exclusive, are perfectly compatible. 1 8 There is no reason why mechanically following protocols designed to prevent harried nurses from negligently administering the wrong blood type should preclude the same nurses from improvising unique solutions to the unique problems of a particular trauma patient. Drilled-in emergency protocols provide a **psychologically stabilizing floor**, shared by co- workers, on the basis of which **untried solutions can then be improvised**. 9 In other words, there is no reason to assert, at least not as a matter of general validity, that the importance of flexibility excludes reliance on rules during emergencies, including national-security emergencies. The emergency-room example can also deepen our understanding of national-security crises by bringing into focus an important but sometimes neglected distinction between threats that are novel and threats that are urgent. **Dangers may be unprecedented without demanding a split-second response**. Contrariwise, urgent threats that have appeared repeatedly in the past can be managed according to protocols that have become automatic and routine. Emergency-room emergencies are urgent even when they are perfectly familiar. Terrorists with access to weapons of mass destruction ("WMD"), by contrast, present a novel threat that is destined to endure for decades, if not longer. **Such a threat is not an "emergency"** in the sense of a sudden event, such as a house on fire, **requiring genuinely split-second decision making**, with no opportunity for serious consultation or debate. **Managing the risks of nuclear terrorism requires sustained policies, not short-term measures**. This is feasible precisely because, in such an enduring crisis, national-security personnel have **ample time to think and rethink, to plan ahead and revise their plans**. In depicting today's terrorist threat as "an emergency," executive-discretion advocates almost always blur together urgency and novelty. This is a consequential intellectual fallacy. But it also provides an opportunity for critics of executive discretion in times of crisis. If classical emergencies, in the house- on-fire or emergency-room sense, turn out to invite and require rule-governed responses, then the justification for dispensing with rules in the war on terror seems that much more tenuous and open to question. In crises where "time is of the essence" 2 1 and serious consultation is difficult or impossible, it is imperative for emergency responders to follow previously crafted first-order rules (or behavioral commands) to enable prompt remedial action and coordination. In crises that are not sudden and transient but, instead, endure over time and that therefore allow for extensive consultation with knowledgeable parties, it is essential to rely on previously crafted second-order rules (or decision-making procedures) designed to **encourage decision makers to consider the costs and benefits of, and feasible alternatives to, proposed action plans**. In medicine, a typical first-order rule is "always wash your hands before inserting a stent," and a typical second-order rule is "always get a second opinion before undertaking major surgery."

#### 8. Turn – NEPA allows for flexibility and makes our military more effective

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[Stephen, Professor, Vermont Law School, 1996, "National Defense and the Environment"pp 149]

There is serious, continuing debate about whether the domestic environmental laws apply abroad. 89 The Defense Department expressly disavows the applicability of NEPA to military actions outside the nation's borders, especially to armed conflict.90 The Pentagon's "Overseas Environmental Baseline Guidance Document" claims only to have "considered" United States environmental laws and regulations, not to be governed by them, and it does not apply to "deployments for operations," that is, to warfare.91 The environmental laws themselves are silent on the question, and the legislative histories are almost as enigmatic. Aside from the usual presumption that domestic laws are not meant to apply abroad unless Congress expressly states otherwise, there is no compelling evidence that Congress intended to exclude their application to armed conflict. Indeed, these laws should be applied to warfare. As a practical matter, they provide convenient, familiar mechanisms for evaluating and minimizing risks to the environment in time of war just as they do in peacetime. Applied with a practical flexibility, **they need not interfere with military operations**. No one has suggested that the Defense Department ought to have prepared the kind of formal environmental impact statement required by NEPA before deploying troops and equipment in the Persian Gulf, even though Operations Desert Shield and Desert Storm were undeniably "major federal actions affecting the human environment." The political objectives of freeing Kuwait and protecting Saudi Arabia from further Iraqi advances might well have been frustrated by delays inherent in the usual public notice and interagency review process. Very much to its credit, the Pentagon did not ignore the environmental risks altogether. But it failed to undertake, even internally, the kind of systematic, coordinated environmental evaluation that NEPA requires. We cannot expect the environmental laws to apply the same way on the battlefield that they do in planning a highway or operating a sewage disposal plant. A field commander whose forces come under attack cannot stop to prepare an environmental assessment or apply for a Clean Water Act permit before mounting a counteroffensive. Because of the need for speed and secrecy, members of the public cannot expect to receive advance notice or have an opportunity to comment on proposed tactics. Citizen enforcement will be nearly impossible; we will have to rely on the military branches to police their own operations and personnel, aided by oversight from their inspectors general. It may not even be practical for our field commander to fully document his consideration of environmental effects, making accountability more problematic. Yet even in a combat setting, our commander can apply performance standards and follow procedures set out in the domestic environmental laws as closely as circumstances permit. Much that takes place on the battlefield is planned far in advance. Operation plans, rules of engagement, and standardized tactics should be routinely vetted for compliance with domestic environmental law standards, just as they are now reviewed for conformity with the law of war, even though for security reasons neither the planning process nor the plans themselves can be made public. The designs of weapons and other equipment, and protocols for their use on the battlefield, should also conform to requirements of the environmental laws. Just as the law of war proscribes weapons that cause unnecessary suffering, application of the environmental laws ought to prevent the deployment of weapons that cause unnecessary injury to the environment. Thus, the Navy should only deploy ships that have the capacity to treat or store their solid wastes while at sea, instead of dumping them overboard in violation of the Ocean Dumping Act or the Clean Water Act. 92 The Army has decided that if chemical herbicides are used in combat, they "must be employed in accordance with federal laws and regulations which would govern their use within the United States.... Environmental Protection Agency regulations pertaining to dilution, droplet size, protective clothing, etc. are binding on U.S. forces."93 The EPA regulations are promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).94 The military services are beginning to **incorporate environmental compliance into combat training, just as they now train every soldier, sailor, and airman to be familiar with the law of war**. As one high­ranking Air Force officer put it, "we fight the way we are trained." Long before reaching the battlefield, for example, a tank commander needs to learn not to drive through the middle of a wetland if a path across high ground offers the same tactical advantage. The same commander should be instructed to carry along not only a change of oil for his tank's engine, but also a safe receptacle for the old oil, so it will not have to be drained onto the ground, as was done in the Persian Gulf War. Finally, environmental compliance on the battlefield itself **will not necessarily make combat units less effective in carrying out their military missions**. A recent Army­ financed study concluded that successful introduction of pollution prevention initiatives into combat doctrine and planning would actually enhance fighting strength by increasing each unit's self­sufficiency, **reducing disease and nonbattle injury, and reducing the unit's visibility to the enemy**. 95

### **1NC North Korea**

#### No North Korean conflict – ignore alarmism

Bandow 3/26 -- senior fellow at the Cato Institute. A former Special Assistant to President Ronald Reagan, he is the author and editor of several books (Doug, 2013, "North Korea Is Not America’s Problem," http://spectator.org/archives/2013/03/20/north-korea-is-not-americas-pr/print)

The so-called Democratic People’s Republic of Korea is impoverished and decrepit. Its people are starving and risk death to flee their tragic land. The country is virtually friendless and suffers under a bizarre system of monarchical communism. Pyongyang’s armed forces are dwarfed by those of the U.S., the globe’s premier military power. Yet the DPRK has struck fear into the hearts of otherwise sober American policymakers and analysts. The administration announced plans to spend a billion dollars to add 14 interceptors to the missile defense in Alaska to guard against a North Korean attack. Deputy Defense Secretary Ashton Carter rushed to Seoul to consult the South’s government. The Washington Post’s David Ignatius worried: “Counting on North Korean restraint has been a bad bet. It may be wiser to assume the worst and plan accordingly.” The International Crisis Group observed that “North Korea has taken a number of recent steps that raise the risks of miscalculation, inadvertent escalation and deadly conflict on the Korean peninsula.” The Associated Press’s Foster Klug warned: “Recent Korean history reveals a sobering possibility. It may only be a matter of time before North Korea launches a sudden, deadly attack on the South. And, perhaps more unsettling, Seoul has vowed that this time, it will respond with an even stronger blow.” Worse, declared defense analyst Steven Metz: “Today, North Korea is the most dangerous country on earth and the greatest threat to U.S. security.” Indeed, the DPRK foreign ministry might be proved right when it “asserted that a second Korean War is inevitable.” The Heritage Foundation’s Bruce Klingner argued that the U.S. needed “strong military forces to protect” itself from the North and denounced planned military budget cuts as undermining “U.S. military capabilities and credibility.” The ICG urged “U.S. officials, including the president,” to reaffirm “that the U.S. will fulfill its alliance commitments, including robustly against any North Korean military attacks.” In Metz’s view this would be no minor affair. Rather, “The second Korean war would force military mobilization in the United States. This would initially involve the military’s existing reserve component, but it would probably ultimately require a major expansion of the U.S. military and hence a draft. The military’s training infrastructure and the defense industrial base would have to grow.” It’s a frightening picture, and it seems almost as wildly overblown as the DPRK’s rhetoric. After all, though the North’s wild gesticulations are unsettling, this is the seventh time Pyongyang has renounced the 1953 ceasefire reached. War has yet to erupt. While one cannot take anything for granted, there’s no evidence that Kim Jong-un and those around him have turned suicidal after the death of his father. The DPRK’s behavior almost certainly reflects other considerations. Almost alone is Sheila Miyoshi Jager of Oberlin College, who argued that the North’s “apocalyptic threats” are primarily intended for a domestic audience. She added: “it would be a mistake to read into them anything more than the noises of a dying regime that clearly recognizes the writing on the wall.”

### NEPA Readiness DA – 2AC

#### 2. Readiness Low –

#### A) Sequester

Pellerin 13

[Cheryl, American Forces Press Service, Hale: Sequestration Devastates U.S. Military Readiness, 5/10/13, <http://www.defense.gov/news/newsarticle.aspx?id=119998>]

During a Senate hearing yesterday on President Barack Obama’s $9.5 billion military construction budget request for fiscal year 2014, Defense Department Comptroller Robert F. Hale said the severe and abrupt budget cuts imposed by sequestration are devastating the U.S. armed forces. Hale and John Conger, acting deputy undersecretary of defense for installations and environment, testified on military construction and family housing before the Senate Appropriations subcommittee on military construction, veterans affairs and related agencies. The officials described for the panel the impact of sequestration on military construction, facilities sustainment and restoration, and on the services in the current year. “While sequestration and related problems do not affect most military construction projects, they are devastating military readiness,” Hale told the senators, adding, “I just can't believe what we're doing to the military right now.”

#### 3. Training solves the link

Dycus 96

[Stephen, Professor, Vermont Law School, 1996, "National Defense and the Environment"pp 137]

It might seem terribly naive to suggest that in the midst of battle military leaders should have to worry about protecting the natural environment, or be distracted in any way from the immediate task of winning. But because, as we have noted, the environment itself is worth fighting to protect, environmental consequences must be considered in making tactical decisions. Fortunately, much that happens during a war is determined far in advance, from planning and training for combat, to the design of weapons. There is ordinarily plenty of time for reflection and debate about the wartime environmental implications of these preparations. One former infantry officer summed up the responsibility of military leaders this way: [C]ommanders must take strong positive steps to limit environmental damage. They must plan campaigns with the avoidance of damage in mind. For example, they should avoid, if at all possible, especially fragile areas. They should prohibit mass destruction of the land (such as the use of Agent Orange in Vietnam) as a method of warfare. They must make their subordinates aware of the environment, and they must issue orders prohibiting damage. They must continually assess the effects of their campaigns on the environment. Finally, they must insure that positive steps are taken to heal environmental damage in areas that they conquer and occupy. 13

#### Their author concludes aff

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[Donald, Professor of Law, Vermont Law School, A Review of National Defense and the Environment by Stephen Dycus, January, 1997, L/N]

We are in only the eighth year of the post Cold War era. The United States remains as free of military threats to its existence as it has since 1940. We have mobilized a major military force to contain Iraqi dominance in the Middle East. We have used smaller forces in Panama, Haiti, Bosnia, and Somalia for a mixed set of goals, none of which involve the core security of the American nation. Although this military activity is comparable to or exceeds other Cold War periods, America's military posture is different. Two aspects of this change deserve attention. First, the military has lost its national security trump card. The American people and their elected leaders could abide a variety of excesses - budgetary, civil liberties, environmental - to defeat Hitler, the Japanese Empire, and Soviet communism. It would have been implausible to curb General Patton's tanks because of excessive air pollution or to stop General MacArthur's landing at Inchon because of threats to endangered species. Winning the war was foremost. The purpose of the military is to kill people and break things in the national interest. Because the threats today are not comparable, the military begins to look like one more agency contending for resources and privilege. Even use of force decisions are less certain. The missions to Bosnia or Somalia may not be worth American casualties. They may also not be worth an armed force that harasses its female soldiers, excludes gays and lesbians, or refuses to handle its environmental messes. Some generals and admirals have become genuine environmentalists. Others may just be good politicians. Whatever the reason - and even though old habits die hard - the military is recognizing the need to change with society. Second, the military is being forced to recognize that it is increasingly less "of" the American people. The fault is not the military's. Even before the end of three decades of conscription from 1940 to 1973, large segments of America's upper classes had turned away from military service. The percentage of congressional members with any military service declined over the last four Congresses from 50% to 42% to 38% to 33%. n103 Bob Dole could be our last veteran Presidential candidate. Gingrich, Gramm, Clinton, Lott, and Buchanan never served. Neither did Defense Secretary Cohen. Dan Quayle, much maligned in 1988 for his National Guard service, looks like Rambo by comparison. [\*327] The gap in military service extends to other professions. Law teaching provides an example. The AALS Director of Law Teachers in recent years has ceased listing military service as one of the basic biographical elements. Relevant legal experience in the military, however, is still recorded. Of the several hundred professors of environmental law, only a handful showed professional experience with military environmental matters, none while a member of the uniformed services. Professor Dycus's book is a considerable help in bridging the military-environmental gap in the classroom. Nevertheless, it would be useful if a few more professors or environmental scholars understood a military command structure, or the demands of a military training exercise, or the pressures of a real world national security mission. The military of the next decade faces serious responsibilities in this changed world. Korea, the Middle East, and the former Yugoslavia offer the prospect of traditional war. These areas and others also promise work for peacekeepers and nationbuilders. Terrorism and drugs may find the military assisting or supplanting civilian law enforcement at home or abroad. Riot or natural disaster at home may call for the same military support. The military must perform these missions with a sensitivity to other public policy demands - racial and gender equality, community support, and environmental protection. The near certainty is that all of these diverse missions must be done with a smaller and cheaper military than available during the Cold War. Fortunately, the military can call on traditional strengths § Marked 11:47 § to carry out these missions. The people who run the military are experienced and capable planners. They also have a great capacity for training their people - many not the "best and the brightest" - to carry out the mission. These capabilities begin with the civilian leadership. The military can follow orders as well as any part of American society when the orders are given clearly by their civilian superiors. And the compliance with orders extends well beyond narrow, mission-specific direction. The military of the last three decades has confronted such deep cultural issues as racial and sexual equality, physical conditioning, and drug and alcohol use. Results have not been perfect, but few other institutions in our society could claim a better record.