# 1NC

### 1

#### Interpretation --- the Aff must use Congress ---

#### “Resolved” requires legislative action

Words and Phrases 64 (Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

**“Should” means expansion must have certain effect**

Words & Phrases 6 (Permanent Edition 39, p. 369)

C.D.Cal. 2005. “Should,” as used in the Social Security Administration’s ruling stating that an ALJ should call on the services of a medical advisor when onset must be inferred, means “must.”—Herrera v. Barnhart, 379 F.Supp.2d 1103.—Social S 142.5.

#### Court action isn’t certain

Hanson 6 (Jon D., Professor of Law – Harvard Law School, “The Drifters”, Boston Review, January / February, http://bostonreview.net/BR31.1/hansonbenforado.php)

It would be a mistake to believe that the only situation that influences justices comes from within the Supreme Court building or individual judges’ limited spheres of interaction. The mechanisms designed to keep the judiciary independent of the other branches of government are necessarily incomplete, and there is good evidence that judges frequently interpret laws in ways that align with the particular policy desires of sitting members of Congress and the current president. This is not surprising given the forces that Congress and the president can bring to bear on the judiciary—including limiting or even stripping jurisdiction in certain areas, altering the size of federal courts, and instituting impeachment hearings. Just as important is the fact that the court cannot implement its orders without the acquiescence and assistance of other government actors. In addition, lower-court judges may be constrained by pressures not to be overruled by higher courts or the need to stake out particular positions in order to improve their chances of promotion within the judiciary.

#### Voting issue ---

#### 1. Limits --- the explode the topic by making action by any branch, agency, or sub-agency topical --- each case becomes 100s of variations --- makes research impossible

#### 2. Ground --- congress guarantees core da ground which outweighs because the aff always has some stable ground

### 2

#### The 1AC’s to stave off the extinction of the human race casts aside the question of humanity’s right to live—paradoxically makes death more likely—the alternative is to embrace the incoherence of the human race

---humans face extinction DUE TO concept of race/conceptualizing “humanity” AS a race

---race is writing territory onto social bodies (bodies here as groups of bodies)

---most racial determined: white Man

---problem with racism is that it DOESN’T DISCRIMINATE ENOUGH

---metalepsis definition: when a phrase from a figure of speech is used in an entirely new context

Colebrook 12. Claire Colebrook, Edwin Erle Sparks Professor of English at Pennsylvania State University, “Face Race,” Deleuze and Racism, online/google books

The human race is facing extinction. One might even say that there is a race towards extinction, precisely because humanity has constituted itself as a race. The idea of a single species, seemingly different but ulti­mately grounded on a humanity of right and reason, has enabled human exceptionalism, and this (in turn) has precluded any questioning of humanity's right to life. In actuality, humanity is not a race; it becomes a racial unity only via the virtual, or what Deleuze and Guattari describe as a process of territorialisation, deferritorialisarion and reterritori- alisation. In the beginning is what Deleuze and Guattari refer to as the 'intense germinal influx', through which individuated bodies (both organic and social) emerge. Race or racism is not the result of discrimination; on the contrary, it is only by repressing the highly complex differentials that compose any being that something like the notion of 'a' race can occur. This is why Deleuze and Guattari argue for a highly intimate relation between sex and race: all life is sexual, for living bodies are composed of relations among differential powers that produce new events: encoun­ters of potentialities that intertwine to form stabilities. Race and racism occur through such intersections of desire, whereby bodies assemble to form territories. All bodies and identities are the result of territorialisa- rion, so that race (or kinds) unfolds from sex, at the same rime that sexes (male or female) unfold from encounters of generic differences. All couplings are of mixed race.

It is through the formation of a relatively stable set of relations that bodies are affected in common. A body becomes an individual through gathering or assembling (enabling the formation of a territory). A social body, tribe or collective begins with the formation of a common space or territory but is deterrirorialised when the group is individuated by an external body - when a chieftain appears as the law or eminent indi­vidual whose divine power comes from Lon high'. This marks the socius as this or that specified group. Race occurs through reterritorialisation, when the social body is not organised from without (or via some transcendent, external term) but appears to be the expression of the ground; the people are an expression of a common ground or Volk. The most racially determined group of all is that of 'man', for no other body affirms its unity with such shrill insistence. 'Humanity' presents itself as a natural unified species, with man as biological ground from which racism might then be seen as a differentiation.

The problem with racism is not that it discriminates, nor that it takes one natural humanity and then perverts it into separate groups. On the contrary, racism does not discriminate enough; it does not recognise that 'humanity,' 'Caucasian' and 'Asian’ are insufficiently distinguished. Humanity is a virtuality or majority of a monstrous and racial sort. One body - the white man of reason - is taken as the figure for life in general. A production of desire - the image of 'man' that was the effect of history and social groupings - is now seen as the ground of desire. Ultimately, a metalepsis takes place: despite seeming differences, it is imagined that, deep down, we are all the same. And because of this monstrous pro­duction of 'man in general', who is then placed before difference as the unified human ground from which different races appear, a trajectory of extinction appears to be relentless. Man's self-evident unity, along with the belief in a historical unfolding that occurs as a greater and greater recognition of identity (the supposed overcoming of tribalism towards the recognition of one giant body of human reason), precludes any question of humanity's composition, its emergence from difference and distinction and the further possibility of its un-becoming.

Humanity has been fabricated as the proper ground of all life - so much so that threats to all life on earth are being dealt with today by focusing on how man may adapt, mitigate and survive. Humanity has become so enamoured of the image it has painted of its illusory beautiful life that it has not only come close to vanquishing all other life forms, and has not only imagined itself as a single and self-evidenrlv valuable being with a right to life, it can also only a imagine a future of living on rather than face the threat of living otherwise. Part of the problem of humanity as a race lies in the ambivalent status of art, for art is the figure that separates white man par excellence; humanity has no essence other than that of free self-creation, and so all seemingly different peoples or others must come to recognise their differences as merely cultural, as the effect of one great history of self-distinction. On the other hand, if art were to be placed outside the human, as the persistence of sensations and matters that cannot be reduced to human intentionality, then 'we' might begin to discern the pulsation of differences in a time other than that of self-defining humanity.

Far from extinction or human annihilation being solely a twenty-first- century event (although it is that too), art is tied essentially to the non­existence of man. Art has often quite explicitly considered the relation between humanity and extinction. For it is the nature of the art object to exist beyond its animating intention, both intimating a people not yet present (Deleuze and Guattari 1994: 180), and yet also often pre­supposing a unified humanity or common 'lived'. Wordsworth - yes, Wordsworth! - was at once aware that the sense of a poem or work could not be reduced to its material support, for humanity is always more than any of the signs it uses to preserve its existence:

Oh! why hath not the Mind Some element to stamp her image oil In nature somewhat nearer to her own? Why, gifted with such powers to send abroad Her spirit, must it lodge in shrines so frail? (1850, The Prelude V 45-9: 109)

If the archive were to be destroyed, would anything of 'man' remain? Art gives man the ability to imagine himself as eternally present, beyond any particular epoch or text, and yet also places this eternity in the fragile tomb of a material object: 'Even if the material lasts only for a few seconds it will give sensation the power to exist and be preserved in itself in the eternity that coexists with this short duration' (Deleuze and Guattari 1994: 166). 'Man' as a race (as a unified body imagining himself as a natural kind) is essentially tied to extinction: for man is at once an ex post facto or metaleptic positing of that which must have been there all along, awaiting eternal expression, at the same time that 'man' is also that being who hastens extinction in general by imagining himself as a single tradition solely worthy of eternal life. This unified humanity that has become intoxicated with its sense of self-positing privilege can only exist through the delirium of Race, through the imagi­nation of itself as a unified and eternal natural body:

All delirium is racial, which does not necessarily mean racist. It is not a matter of the regions of the body without organs 'representing' races and cultures. The full body does not represent anything at all. On rhe con­trary, the races and cultures designate regions on this body - that is, zones of intensities, fields of potentials. Phenomena of individualization and sexualization are produced within these fields. We pass from one field to another by crossing thresholds: we never stop migrating, we become other individuals as well as other sexes, and departing becomes as easy as being born or dying. Along the way we struggle against other races, we destroy civilizations, in the manner of the great migrants in whose wake nothing is left standing once they have passed through. (Deleuze and Guattari 2004a: 94)

### 3

#### McCutcheon will win in a slim 5-4 ruling – Justice Roberts is key

Reilly and Blumenthal 13 (Ryan J., D.C.-based reporter who covers the Justice Department and the Supreme Court for The Huffington Post, and Paul, reporter for the Huffington Post covering money and influence in politics, “McCutcheon v. FEC: Supreme Court Skeptical Of Campaign Contribution Limits,” Huffington Post, 2013, <http://www.huffingtonpost.com/2013/10/08/mccutcheon-v-fec_n_4059180.html2>)

A slim majority of Supreme Court justices seemed skeptical Tuesday that the federal government may cap the total amount of money that individual donors can give to political candidates running for federal office, in a case that could have a massive impact on the campaign finance system.

In McCutcheon v. Federal Election Commission, the high court is set to decide whether the limits on aggregate federal campaign contributions -- the overall cap currently stands at $123,200 per donor for the 2014 election cycle -- are unconstitutional because they place a burden on the free speech rights of donors.

Shaun McCutcheon, the man bringing the case, only seeks to give the maximum individual donation to more candidates. But Senate Minority Leader Mitch McConnell (R-Ky.) is trying to use the case as a vehicle to persuade the Supreme Court to dismantle contribution limits altogether.

Court observers were keeping a close eye on Chief Justice John Roberts, who most campaign finance reform advocates see as the only hope of upholding the aggregate contribution limits. Roberts joined the majority in a 2006 decision holding that contribution limits were constitutional.

Speaking of the aggregate limits on Tuesday, Roberts said, "It seems to me to be a very direct restriction" on donations that, individually, Congress has decided do not pose a corruption threat.

Solicitor General Donald Verrilli Jr., representing the FEC, based his argument to uphold the limits on the possibility that a candidate could solicit a check up to $3.5 million for a joint fundraising committee. This solicitation, Verrilli argued, would violate the ban on the solicitation of extremely large contributions that the court upheld in the 2003 McConnell v. FEC case.

Roberts responded, "I appreciate the argument about the $3.5 million check," but he wondered if there was a way to balance the corruption concern around this solicitation with what Roberts saw as the First Amendment burdens of the aggregate limits.

"I suppose you could calculate and set an aggregate limit that is higher," Verrilli answered.

Justice Anthony Kennedy is usually seen as the high court's swing vote between the conservative and liberal blocs, but he wrote the controversial 2010 Citizens United opinion that paved the way for so-called super PACs to dominate election spending. He was not seen as likely to unite with the liberal-leaning justices in the McCutcheon case.

#### Ruling on war powers directly trades off and hurts the Court’s perceived legitimacy – that results in deference on individual rights

Devins and Fitts 97 (Neal, Ernest W. Goodrich Professor of Law and Lecturer in Government – College of William and Mary, and Michael A., Robert G. Fuller, Jr. Professor of Law – University of Pennsylvania, “The Triumph of Timing: Raines v. Byrd and the Modern Supreme Court's Attempt to Control Constitutional Confrontations,” Georgetown Law Journal, November, 86 Geo. L.J. 351, Lexis)

In contrast, the Supreme Court has good reason to steer clear of these cases. Concerns of interbranch harmony matter more to a Court whose influence and reputation do not hinge on the resolution of separation of powers and administrative law disputes. For example**,** to maximize its power to speak the last word on individual rights disputes**,** the Court may find it advantageous to trade off to the elected branches the power to sort out foreign affairs, war powers, and other structural matters. n67 Beyond the Court's particularized interest in individual [\*364] rights, the Supreme Court is far more likely than lower courts to take social and political forces into account. Acknowledging that it can neither appropriate funds nor command the military, the Court recognizes that its power lies "in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary." n68 As psychologists Tom Tyler and Gregory Mitchell observed, the Court seems to believe that "public acceptance of the Court's role as interpreter of the Constitution -- that is, the public belief in the Court's institutional legitimacy -- enhances public acceptance of controversial Court decisions." n69 Throwing itself into the middle of disputes between disappointed lawmakers and either the Congress or the White House opens the Court up to political retaliation and, as such, is a gambit the Court is disinclined to take. n70 The Court in Raines was well aware of these high stakes, acknowledging the "risk[s]" to its "public esteem" by "improperly and unnecessarily" participating in political battles over the separation of powers. n71

#### That flips Roberts’ decision

Stothers 10-21 (Patrick Stothers-Kwak, Blake, Cassels & Graydon LLP, “Citizens United Did Not Equate Money with Speech—But McCutcheon Will,” 2013, <http://www.thecourt.ca/2013/10/21/citizens-united-did-not-equate-money-with-speech-but-mccutcheon-will/>)

Most debates regarding freedom of expression ultimately boil down to a conflict between free speech utilitarianism—wherein speech is only valuable insofar as it can produce useful social outcomes—and free speech absolutism, which views with extreme skepticism any government attempt to differentiate between useful and non-useful types of speech. The recent line of First Amendment cases has very much skewed towards the latter, and should it continue along this trajectory, Mr. McCutcheon will most likely succeed in his claim. However, Citizens United precipitated a considerable political backlash, and the present case could paint the Court in an even more partisan light—it doesn’t help that the Republican Senate Minority Leader is an amicus curiae. By joining the four liberal justices to uphold key provisions of the Patient Protection and Affordable Care Act in National Federation of Independent Businesses v Sebelius, 567 US (2012), Roberts proved that he has some regard for the institutional integrity of the Supreme Court and deference to the political process. It will be interesting to see whether he reprises this role as institutional peacekeeper in McCutcheon.

#### McCutcheon’s key to accountability to political parties – that checks ideological extremists like the Tea Party

Sides 10-16 (John, Associate Professor of Political Science – George Washington University, “Why striking down campaign contribution limits might make politics better,” Washington Post, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2013/10/16/why-striking-down-campaign-contribution-limits-might-make-politics-better/>)

Finally, I want to say more about why striking down aggregate contribution limits might actually attenuate ideological extremism (assuming I’m mostly wrong on my first point that people will not try to circumvent contribution limits!). The current campaign finance system – with its emphasis on interest group spending — favors highly ideological factions that have the means and motive to run independent campaigns. Rules that channel more money through party organizations and candidates might dampen the power of groups like the Tea Party. Against this claim, Bob suggests that political parties ran ads in 2012 that were just as “aggressive” and negative as interest groups. Research by the Wesleyan Media Project indicates that this is not true. But this finding is not relevant to my argument.

My point about moderation is not about the tone or content of political ads, but is tied to the nomination process where party factions fight their ideological battles. A generation ago, such battles were waged internally in the proverbial smoke-filled rooms. Today they might be hashed out in the open through primary elections. The advantage goes to the interest group that can raise a lot of money and mobilize its partisan faction of voters. Ideological moderation seems more plausible when political resources are controlled primarily by party leaders whose chief incentive is to win elections rather than take positions.

Like Bob, I support reasonable contribution limits, but I do not think the retention of aggregate limits on party committees and candidates improves the current campaign finance system. I certainly do not think, as Bob suggests, that a favorable ruling for McCutcheon will encourage “more money from fewer sources to flow more freely.” That dynamic was partially spurred by Citizens United. If anything removing the aggregate limits could make the system more accountable by channeling funds to political committees that are transparent, particularly party and candidate committees, which must face the voters at the ballot box.

#### The impact is US/Russia relations

Sokov 13 (Nicholas – Senior Fellow at the Vienna Center for Disarmament and Non-Proliferation (VCDNP), “US-Russian Relations: Beyond the Reset”, 1/29, <http://www.europeanleadershipnetwork.org/us-russian-relations-beyond-the-reset_459.html>)

Looking into the future, most observers of US-Russian relations tend to concentrate on arms control and disarmament – a new treaty to replace New START, missile defense, tactical nuclear weapons and other similar issues. Others pay attention to the human and political rights issues, including first of all the conservative wave that is sweeping through Russia. It is quite sad that nuclear disarmament and political rights dominate the agenda. This only shows that the relationship lacks depth. More than twenty years after the end of the Cold War, trade and investment remain at an extremely low level. They cannot serve as a stabilizer of the relationship (in sharp contrast to Russia’s relations with Europe) and their absence allows other, more volatile and more adversarial issues to top the agenda. Two features are likely to dominate the future of the US-Russian relationship and both will have a negative effect: domestic politics and the political transition in the Middle East and Northern Africa which is commonly known as the “Arab Spring.” Contrary to common opinion, there are very few truly difficult issues on the bilateral agenda that cannot be resolved through negotiation. The increasingly conflictual nature of the relationship results from domestic politics in both countries rather than from strategic, economic, or political differences. A good illustration is the well-known controversy over missile defense. Any decent diplomat could find a solution in a matter of months. Russian concerns concentrate on the fourth – and the last – phase of the American plan (known as the Phased Adaptive Approach), which foresees deployment of systems theoretically capable of intercepting strategic missiles. The solution proposed by Russian military leaders is to limit the capability of the fourth-phase system (for example, through limits on the number of interceptors and the areas of their deployment) so that it does not undermine the existing US-Russian strategic balance while preserving the ability of the American system to intercept a small number of long-range missiles, i.e., to limit the system to its officially proclaimed purpose. In the end, this is about the predictability of the American missile defense capability. The prospect of reaching agreement, however, is barred by the Republican Party, especially its Tea Party wing, which regards any limits whatsoever as anathema. Missile defense is an article of faith. This is not about plans or capabilities: this is about a deeply ideological commitment to unrestricted unilateralism. The increasingly tough and vocal (even shrill) Russian rhetoric also stems from domestic politics. Implementation of phase four of PAA is supposed to begin in the end of this decade and it may be another five to seven years, if not longer, until it begins to affect Russian strategic capability. There is plenty of time to negotiate. However, the rhetoric of the Russian government suggests that the threat is imminent. It is safe to assume that is simply the familiar “rally-around-the-flag” tactic of consolidating the public around the government.

#### Global nuclear war

Allison 11 (Graham, Director – Belfer Center for Science and International Affairs at Harvard’s Kennedy School, and Former Assistant Secretary of Defense, and Robert D. Blackwill, Senior Fellow – Council on Foreign Relations, “10 Reasons Why Russia Still Matters”, Politico, 2011, <http://dyn.politico.com/printstory.cfm?uuid=161EF282-72F9-4D48-8B9C-C5B3396CA0E6>)

That central point is that Russia matters a great deal to a U.S. government seeking to defend and advance its national interests. Prime Minister Vladimir Putin’s decision to return next year as president makes it all the more critical for Washington to manage its relationship with Russia through coherent, realistic policies. No one denies that Russia is a dangerous, difficult, often disappointing state to do business with. We should not overlook its many human rights and legal failures. Nonetheless, Russia is a player whose choices affect our vital interests in nuclear security and energy. It is key to supplying 100,000 U.S. troops fighting in Afghanistan and preventing Iran from acquiring nuclear weapons. Ten realities require U.S. policymakers to advance our nation’s interests by engaging and working with Moscow. First, Russia remains the only nation that can erase the United States from the map in 30 minutes. As every president since John F. Kennedy has recognized, Russia’s cooperation is critical to averting nuclear war. Second, Russia is our most consequential partner in preventing nuclear terrorism. Through a combination of more than $11 billion in U.S. aid, provided through the Nunn-Lugar Cooperative Threat Reduction program, and impressive Russian professionalism, two decades after the collapse of the “evil empire,” not one nuclear weapon has been found loose. Third, Russia plays an essential role in preventing the proliferation of nuclear weapons and missile-delivery systems. As Washington seeks to stop Iran’s drive toward nuclear weapons, Russian choices to sell or withhold sensitive technologies are the difference between failure and the possibility of success. Fourth, Russian support in sharing intelligence and cooperating in operations remains essential to the U.S. war to destroy Al Qaeda and combat other transnational terrorist groups. Fifth, Russia provides a vital supply line to 100,000 U.S. troops fighting in Afghanistan. As U.S. relations with Pakistan have deteriorated, the Russian lifeline has grown ever more important and now accounts for half all daily deliveries. Sixth, Russia is the world’s largest oil producer and second largest gas producer. Over the past decade, Russia has added more oil and gas exports to world energy markets than any other nation. Most major energy transport routes from Eurasia start in Russia or cross its nine time zones. As citizens of a country that imports two of every three of the 20 million barrels of oil that fuel U.S. cars daily, Americans feel Russia’s impact at our gas pumps. Seventh, Moscow is an important player in today’s international system. It is no accident that Russia is one of the five veto-wielding, permanent members of the U.N. Security Council, as well as a member of the G-8 and G-20. A Moscow more closely aligned with U.S. goals would be significant in the balance of power to shape an environment in which China can emerge as a global power without overturning the existing order. Eighth, Russia is the largest country on Earth by land area, abutting China on the East, Poland in the West and the United States across the Arctic. This territory provides transit corridors for supplies to global markets whose stability is vital to the U.S. economy. Ninth, Russia’s brainpower is reflected in the fact that it has won more Nobel Prizes for science than all of Asia, places first in most math competitions and dominates the world chess masters list. The only way U.S. astronauts can now travel to and from the International Space Station is to hitch a ride on Russian rockets. The co-founder of the most advanced digital company in the world, Google, is Russian-born Sergei Brin. Tenth, Russia’s potential as a spoiler is difficult to exaggerate. Consider what a Russian president intent on frustrating U.S. international objectives could do — from stopping the supply flow to Afghanistan to selling S-300 air defense missiles to Tehran to joining China in preventing U.N. Security Council resolutions.

### 4

#### The plan undermines Congressional treaty power

**Neuman 4** (Gerald, Professor of Jurisprudence – Columbia University, “The United States Constitution and International Law: The Uses of International Law in Constitutional Interpretation”, American Journal of International Law, January, 98 A.J.I.L. 82, Lexis)

Normative reasoning borrowed from international human rights sources will not necessarily prevail in the process of constitutional interpretation. Other normative considerations omitted there may be relevant, and consensual and institutional factors may also come into play. The Court may conclude that the normatively compelling interpretation of a right cannot be adopted at the constitutional level but, rather, should await political implementation. I emphasize again that the international human rights regime does not call for implementation at the constitutional level, only compliance. Thus, the Supreme Court has reason to examine international human rights norms and decisions interpreting them for the normative and functional insights that they may provide on analogous issues of constitutional right. They certainly cannot control constitutional interpretation, but they may inform it. The use of human rights treaties as an aid in construing constitutional rights might seem superficially in tension with the Supreme Court's reassurance in Reid v. Covert that the treaty power cannot be employed to violate constitutional rights. [31](http://www.lexis.com/research/retrieve?_m=f16f520b5403eb66bcb05e1ed38a5d91&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=93cd957f1bb60830f2ba00799f92b2ea" \l "n31" \t "_self) That appearance should dissolve on closer examination. The treaty makers cannot override constitutional norms, and they cannot order the Supreme Court to alter its interpretation of a constitutional provision. [32](http://www.lexis.com/research/retrieve?_m=f16f520b5403eb66bcb05e1ed38a5d91&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=93cd957f1bb60830f2ba00799f92b2ea" \l "n32" \t "_self) But treaties, like legislation, can contribute to a shift in the factual, institutional, and normative environment within which the Court carries on its task of constitutional interpretation. The resulting doctrinal evolution is unavoidable in any candid account of U.S. constitutional history. Nothing in Reid v. Covert and its progeny precludes this indirect influence of treaty making on constitutional law. Treaties and the case law arising under them thus become data available for the Court's consideration in elaborating the contemporary meaning of constitutional norms. The political branches can neither require the Court to follow international or foreign law in interpreting the Constitution nor prohibit the Court from considering international or foreign law. Under current circumstances, the Supreme Court correctly does not engage in the practice, pursued by some other constitutional courts, of construing constitutional rights for the purpose of judicially implementing the positive international obligations of the nation under human rights treaties. The positive effect of treaty norms differs from the moral or functional insight that they may provide. Human rights treaties do not require implementation at the constitutional level, and in the U.S. legal system Congress retains ultimate control over the means of implementing--or breaching--a treaty. Entrenching positive human rights standards as  [\*89]  constitutional interpretation, for the purpose of ensuring compliance with the treaty as such, would deprive the political branches of their authority to choose methods of treaty implementation, and would not be consistent with current constitutional understandings. [33](http://www.lexis.com/research/retrieve?_m=f16f520b5403eb66bcb05e1ed38a5d91&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=93cd957f1bb60830f2ba00799f92b2ea" \l "n33" \t "_self)

#### This destroys hegemony

**Wilkinson 4** (J. Harvie, Circuit Judge – 4th Circuit, “Debate: The Use of International Law in Judicial Decisions”, Harvard Journal of Law & Public Policy, 27 Harv. J.L. & Pub. Pol'y 423, Spring, Lexis)

So of course international law should play a part in American judicial reasoning. It would be odd if it did not. In some areas, foreign and international law is made relevant by our Constitution, by statute or treaty, by the well-developed principles of common law, by overwhelming considerations of comity, or simply by private commercial agreement of the parties. But when judges, on their own motion and without any direction by Congress or the Constitution decide to make such precedents relevant, we are dealing with an entirely different question. So judges must not wade, sua sponte, into international law's deep blue sea. Rather, we ought to ask: How does American law make foreign or international standards relevant? Why should we ask this threshold question? Because it is important that the United States speak with one, not multiple, voices in foreign affairs. The Constitution is explicit on this: Article I, Section 10 says that "no State shall enter into any Treaty [or] Alliance" with a foreign power. [9](http://www.lexis.com/research/retrieve?_m=a3d8896cd2161a2cf9385040a5c0b9ca&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=7dae3857642b24f67dfc475df78d9d93" \l "n9" \t "_self) The Constitution leaves the conduct of foreign and military affairs largely to the political branches -- not the courts. The diplomatic credibility of the United States would plummet if the actions and pronouncements of the executive and legislative branches in foreign and military matters were later repudiated and contradicted by judicial decree.

#### Global nuclear war

**Kagan 7** (Robert, Senior Associate – Carnegie Endowment for International Peace, “End of Dreams, Return of History: International Rivalry and American Leadership”, Policy Review, August/September, http://www.hoover.org/publications/policyreview/8552512.html#n10)

The jostling for status and influence among these ambitious nations and would-be nations is a second defining feature of the new post-Cold War international system. Nationalism in all its forms is back, if it ever went away, and so is international competition for power, influence, honor, and status. American predominance prevents these rivalries from intensifying —  its regional as well as its global predominance. Were the United States to diminish its influence in the regions where it is currently the strongest power, the other nations would settle disputes as great and lesser powers have done in the past: sometimes through diplomacy and accommodation but often through confrontation and wars of varying scope, intensity, and destructiveness. One novel aspect of such a multipolar world is that most of these powers would possess nuclear weapons. That could make wars between them less likely, or it could simply make them more catastrophic. It is easy but also dangerous to underestimate the role the United States plays in providing a measure of stability in the world even as it also disrupts stability. For instance, the United States is the dominant naval power everywhere, such that other nations cannot compete with it even in their home waters. They either happily or grudgingly allow the United States Navy to be the guarantor of international waterways and trade routes, of international access to markets and raw materials such as oil. Even when the United States engages in a war, it is able to play its role as guardian of the waterways. In a more genuinely multipolar world, however, it would not. Nations would compete for naval dominance at least in their own regions and possibly beyond. Conflict between nations would involve struggles on the oceans as well as on land. Armed embargos, of the kind used in World War i and other major conflicts, would disrupt trade flows in a way that is now impossible. Such order as exists in the world rests not only on the goodwill of peoples but also on American power. Such order as exists in the world rests not merely on the goodwill of peoples but on a foundation provided by American power. Even the European Union, that great geopolitical miracle, owes its founding to American power, for without it the European nations after World War II would never have felt secure enough to reintegrate Germany. Most Europeans recoil at the thought, but even today Europe ’s stability depends on the guarantee, however distant and one hopes unnecessary, that the United States could step in to check any dangerous development on the continent. In a genuinely multipolar world, that would not be possible without renewing the danger of world war. People who believe greater equality among nations would be preferable to the present American predominance often succumb to a basic logical fallacy. They believe the order the world enjoys today exists independently of American power. They imagine that in a world where American power was diminished, the aspects of international order that they like would remain in place. But that ’s not the way it works. International order does not rest on ideas and institutions. It is shaped by configurations of power. The international order we know today reflects the distribution of power in the world since World War ii, and especially since the end of the Cold War. A different configuration of power, a multipolar world in which the poles were Russia, China, the United States, India, and Europe, would produce its own kind of order, with different rules and norms reflecting the interests of the powerful states that would have a hand in shaping it. Would that international order be an improvement? Perhaps for Beijing and Moscow it would. But it is doubtful that it would suit the tastes of enlightenment liberals in the United States and Europe. The current order, of course, is not only far from perfect but also offers no guarantee against major conflict among the world ’s great powers. Even under the umbrella of unipolarity, regional conflicts involving the large powers may erupt. War could erupt between China and Taiwan and draw in both the United States and Japan. War could erupt between Russia and Georgia, forcing the United States and its European allies to decide whether to intervene or suffer the consequences of a Russian victory. Conflict between India and Pakistan remains possible, as does conflict between Iran and Israel or other Middle Easternstates. These, too, could draw in other great powers, including the United States. Such conflicts may be unavoidable no matter what policies the United States pursues. But they are more likely to erupt if the United States weakens or withdraws from its positions of regional dominance. This is especially true in East Asia, where most nations agree that a reliable American power has a stabilizing and pacific effect on the region. That is certainly the view of most of China ’s neighbors. But even China, which seeks gradually to supplant the United States as the dominant power in the region, faces the dilemma that an American withdrawal could unleash an ambitious, independent, nationalist Japan. Conflicts are more likely to erupt if the United States withdraws from its positions of regional dominance. In Europe, too, the departure of the United States from the scene — even if it remained the world’s most powerful nation — could be destabilizing. It could tempt Russia to an even more overbearing and potentially forceful approach to unruly nations on its periphery. Although some realist theorists seem to imagine that the disappearance of the Soviet Union put an end to the possibility of confrontation between Russia and the West, and therefore  to the need for a permanent American role in Europe, history suggests that conflicts in Europe involving Russia are possible even without Soviet communism. If the United States withdrew from Europe — if it adopted what some call a strategy of “offshore balancing” — this could in time increase the likelihood of conflict involving Russia and its near neighbors, which could in turn draw the United States back in under unfavorable circumstances.

#### And causes a Congressional backlash --- turns all their impacts

**Kuhner 3** (Timothy, Professor of Law – Duke University, “Human Rights Treaties in U.S. Law: The Status Quo, Its Underlying Bases, and Pathways for Change”, Duke Journal of Comparative & International Law, Spring, 13 Duke J. Comp. & Int'l L. 419, Lexis)

The basic spectrum of possible approaches to reservations contrary to the object and purpose of the treaty could thus be summarized as follows: (1) the "gotcha" approach, whereby invalid reservations are stripped and the state is held to the treaty's full terms; [232](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7" \l "n232" \t "_self) (2) the "one-size fits all" approach, whereby each treaty would be accompanied by a "guide to reservations practice" stipulating acceptable reservations practice; [233](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7" \l "n233" \t "_self) (3) the "custom tailoring" approach, whereby reservations objected to by States Parties are respected and the relevant articles simply cease to operate vis-a-vis the reserving and objecting states; [234](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7" \l "n234" \t "_self) and (4) the "boot" approach, whereby a party's membership in a treaty is revoked. The "gotcha" approach contradicts the principles of treaty law as understood by the United States. The Supreme Court in Foster and Percheman, affirmed that the mutual intent of the parties determines whether a given provision of a treaty is self-executing. [235](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n235) Similarly, such an approach is at odds with one of the two most basic principles of treaty law - consent to be bound. [236](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n236) If clearly expressed, the negotiated conditions that define the voluntary obligations a country assumes, are understood to be a precondition to the continued existence of said obligations. Since the U.S.' intent is clearly expressed and on the record (a precondition to ratification), a reviewing court would not have to examine the treaty's text. Other states could not have intended the treaty to be self-executing as it applies to the United States if they were apprised of the clear impossibility of the  [\*467]  same. [237](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n237) Advocates of the "gotcha" approach must bear in mind the unintended consequences of enforcing upon a state obligations to which it did not consent, or could not reasonably be construed as having consented. For example, the United States might cease to advocate for human rights treaties and fail to join future treaties. This latter implication, however, seems increasingly irrelevant as U.S. "exceptionalism" grows. [238](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n238) Nevertheless, even strong human rights proponents, such as Professor Louis Henkin, maintain that in a multilateral treaty, a reservation or understanding embodies the intent of the party and this intent is used to interpret what obligations that party undertook. [239](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n239) The "gotcha" approach seeks to steamroll over the disjuncture between the Senate power as understood by the Senate and, presumably, the Supreme Court, and the official interpretation of applicable rights and duties under international law. The approach is only useful, insofar as its execution constitutes judicial notice of a problem in need of resolution and reminds the political branches that the Constitution  [\*468]  makes international law "our law." [240](http://www.lexis.com/research/retrieve?_m=9dee30cc06608ca63ebc628a7bfc67ec&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLzVzb-zSkAB&_md5=f452983775a488e2d0ab8a782db5e5b7#n240)

### 5

#### The United States Federal Judiciary should issue a writ of mandamus that orders the Executive and Legislative Branches of the United States to align executive war powers authority in the areas of indefinite detention with treaties ratified by the United States.

#### It competes and solves the whole case – making treaties self-executing mandates specific enforcements mechanisms and violates SOP – issuing writs of mandamus leave questions of enforcement to the political branches

Carter 10 (William M., Professor of Law – Temple University Beasley School of Law, “Treaties as Law and the Rule of Law: the Judicial Power to Compel Domestic Treaty Implementation,” Maryland Law Review, 69(2), <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3421&context=mlr>)

The preceding analysis illuminates several principles. First, a non-self-executing treaty does not itself provide an individual with a private cause of action to seek a remedy for violations of the treaty's substantive provisions. Second, the most natural reading of the Supremacy Clause's text and history is that *even a non-self-executing* treaty, upon ratification, becomes part of the domestic law of the United States. The question then becomes, what does it mean for a ratified, non-self-executing treaty to be "supreme Law" domestically?

This Article contends that the Supremacy Clause makes such treaties binding domestic law. If the treaty imposes a duty of domestic implementation, compliance with that duty may be secured by the issuance of a writ of mandamus. Before beginning that inquiry, however, it is useful to consider the broader separation of powers concerns that even such a limited judicial role in domestic treaty enforcement might entail.

Scholars and courts have offered various rationales for die position thai, despite die Supremacy Clause, ratified treaties are not domestic law unless they are implemented by a subsequent act of Congress.71 This Article addresses only the objections based upon structural principles of federal lawmaking and based upon separation of powers.

The first argument concerns die process of federal lawmaking. The President's ratification of a treaty with die Senate's consent dif-fers from the bicameralism and presentment process for federal legislation because treaty ratification does not involve the House of Representatives.72 Some argue that while the Constitution may allow international obligations to be created by only the President and the Senate, such obligations should not become domestic law unless the full Congress participates.'3 Under this view, requiring implementing legislation to make a ratified treaty domestic law cures diis "democracy gap"'1 because die House must participate in order to pass implementing legislation. Commentators contend that indirecdy inserting die House in die treaty process in diis manner is necessary in order to ensure "that the treaty power [retains] majoritarian roots."75

This structural argument falls short. As Professor Henkin has accurately noted, "The question is not how many or which branches are involved [in creating a treaty versus a federal statute]; rather, the [relevant] issue is the constitutional status of the two instruments."7" The Constitution provides two different processes for creating supreme domestic law." Federal .statutes require bicameralism and presentment; treaties, under the text of the Supremacy Clause and die Treaty Clause, do not. The Framers presumably would have worded the Supremacy Clause or die Treaty Clause differently had diey intended die House's participation to be a prerequisite to treaties enjoying the status of domestic law.78 Moreover, even commentators who oppose judicial enforcement of treaties in private causes of action seem to agree that even non-self-executing treaties are domestic law in the sense that they have preemptive effect over contrary stale laws.79 As a structural matter, il is difficult to see why it is constitutionally permissible to exclude the House when creating federal law in the form of a treaty preempting state law, but not otherwise.80

The more substantial objections to the view that treaties become domestic law upon ratification relate to separation of powers principles. This Article readily acknowledges that even a limited judicial role in domestic treaty enforcement may raise separation of powers concerns. Opposition to domestic judicial enforcement of treaty obligations often rests upon the argument that the Constitution delegates the foreign affairs power to the political branches, as well as die corol-lary proposition thai the judiciary has no constitutional role in foreign affairs.81 Under this view, judicial enforcement of treaty obligations violates separation of powers principles. If the political branches want the judiciary to have a role in treaty enforcement, they can enact implementing legislation providing for a domestic cause of action. When the political branches have chosen not to do so, the argument goes, the judiciary should stand aside.

At the broadest level, describing all judicial involvement in treaty interpretation or enforcement as raising "separation of powers" concerns is imprecise. There are myriad situations in which international law interacts with our domestic legal system, only some of which actually raise real separation of powers concerns: "First, international law could be used to override domestic law or policy formulated by the elected branches .... Second, international law might be used to evaluate the legitimacy of actions undertaken by other nations .... Third, international law can be used to supplement existing [domestic] law."82

Different domestic uses of international law raise different separation of powers concerns, which may earn' more or less weight depending on the circumstances. Indeed, some uses of international law may not raise separation of powers problems at all. The ongoing debate regarding the use of international law as persuasive audiority to interpret the Eighth Amendment,83 for example, revolves around notions of domestic sovereignty and "American exceptionalism," not separation of powers.8'

Furthermore, this Article recognizes that Congress and die President have constitutional mechanisms—such as laler-m-time legislation diat supersedes the treaty,85 jurisdiction-stripping legislation, or reservations to the treaty—that diey can use to limit domestic treaty enforcement.86 Requiring actual legislation limiting the domestic applicability of a treaty is preferable to the sub silenlio attempt to accomplish the same result by adopting a treaty requiring domestic implementation but then refusing to implement it.87 If Congress were to ratify' a treaty and then pass legislation stripping the courts of jurisdiction over the treaty, die process would then at least be subject to pul>-Hc scrutiny and debate.

Moreover, diis separation of powers argument is generally couched in terms of avoiding lawsuits by private individuals seeking to determine the meaning of a treaty's substantive obligations. The concern is that we should have a single, consistent foreign policy determined by the President and Congress instead of multiple foreign policies determined ad hoc by individual litigants and federal judges.88 Under the approach that this Article advocates, however, the judicial role would be limited to enforcing the government's duty to make a treaty domestically effective. A mandamus action would not involve an adjudication of the treaty's substantive obligations or an inquiry into whether they have been breached. Rather, the Issue would be whether the treaty's terms impose a duty of domestic implementation. If so, the judicial task would be to issue injunctive relief requiring the political branches to comply with that duty by adequate and effective means of their own choosing.

### warming

#### Reject their authors on Ozone and the Montreal Protocol – their evidence is based on total perversion of science – vote neg on ZERO risk of their scenario

Dr. Happer 2k7

(Will, the Cyrus Fogg Brackett Professor of Physics at Princeton Universityformer Director of Energy Research at the Department of Energy from 1990 to 1993, has published over 200 scientific papers, and is a fellow of the American Physical Society, The American Association for the Advancement of Science, and the National Academy of Sciences, “pg online @ http://appliedclimate.wordpress.com/2010/08/19/the-ozone-hole-should-we-be-alarmed/ //um-ef)

The Montreal Protocol to ban freons was the warm-up exercise for the IPCC. Many current IPCC players gained fame then by stampeding the US Congress into supporting the Montreal Protocol. They learned to use dramatized, phony scientific claims like “ozone holes over Kennebunkport” (President Bush Sr’s seaside residence in New England). The ozone crusade also had business opportunities for firms like Dupont to market proprietary “ozone-friendly” refrigerants at much better prices than the conventional (and more easily used) freons that had long-since lost patent protection and were not a cheap commodity with little profit potential. I was the Director of Energy Research at the US Department of Energy at the time, and I knew very well that the data to support the treaty was not there. Ever since Dobson’s first expeditions to Antarctica in the early 1900’s, we had known that ozone levels were always low over the Antarctic, but we had no real idea of what the natural fluctuations were. As far as we know, there has always been an ozone hole over Antarctica, with a size that varies from year to year. The size of the hole has hardly changed since 1990, as you can see from NASA’s site. I don’t know what the current status is, but two or three years ago, some researchers at the Jet Propulsion Laboratory of the California Institute of Technology remeasured the rate of ozone destruction by the key chlorine oxide, and they found a number about 6 times smaller than the one promoted during the freon-ban crusade. Even the establishment value was really not big enough to cause substantial ozone depletion. The ozone hole over Antarctica involves high-altitude “ice” particulates, made from a witch’s brew of water, nitric acid, chlorine etc. It is not clear if freon has made any difference to this. The behavior of these ice crystals may be more determined by the stratospheric temperature and the amount of water vapor in the stratosphere, all changing with time at the poles. At any rate, stratospheric freon and its breakdown products are steadily diminishing, but little is happening to the ozone hole. As Director of Energy Research, I argued strongly for better measurements to be sure we understood the science well enough to support the Montreal Protocol. I did manage to get a new network of UVB sensors deployed to measure year-to-year changes of ground-level UVB. The existing network was an embarrassment to the alarmists since it showed stable to decreasing UVB levels. I thought that this might be analogous to the urban heat island problems that so vex ground-based temperature measurements. Suburbs had grown up around the old network, so there was the possibility that air pollution was increasingly attenuating UVB. The new DOE network had real rural sites, as far as possible from urban smog. These activities really infuriated Al Gore, who had me fired as soon as possible after becoming Vice President. The Montreal Protocol may not have been necessary to save the ozone, but it had limited economic damage. It has caused much more damage in the way it has corrupted science. It showed how quickly a scientist or activist can gain fame and fortune by purporting to save planet earth. We have the same situation with CO2 now, but CO2 is completely natural, unlike freons. Planet earth is quite happy to have lots more CO2 than current values, as the geological record clearly shows. If the jihad against CO2 succeeds, there will be enormous economic damage, and even worse consequences for human liberty at the hands of the successful jihadists.

#### Montreal has already crushed CFCs – ozone resilient

Brian J. Gareau 1-29-2013 Brian J. Gareau is an Assistant Professor of Sociology and International Studies at Boston College. This piece is a much condensed and modified version of the introductory chapter in Gareau’s new book, From Precaution to Profit: Contemporary Challenges to Environmental Protection in the Montreal Protocol(2013, Yale University Press). “Whatever Happened to Ozone Layer Politics?” http://www.e-ir.info/2013/01/29/whatever-happened-to-ozone-layer-politics/

Since the Montreal Protocol first entered into force in 1989, CFC levels in the atmosphere have declined. Scientific research predicts that, without the Montreal Protocol, by 2050 even the middle latitudes of the Northern Hemisphere would have lost half of their ozone layer, and the Southern Hemisphere would have lost 70 percent. As Jonathan Shanklin of the British Antarctic Survey put it, the Montreal Protocol “is working. We can quite clearly see that the amount of ozone-destroying substances in the atmosphere is declining.”[4] Because of the high level of compliance and cooperation among countries, it is no exaggeration to state that the Montreal Protocol is the most successful global environmental treaty ever created.

#### But attempts to expand the treaty are screwed

Brian J. Gareau 1-29-2013 Brian J. Gareau is an Assistant Professor of Sociology and International Studies at Boston College. This piece is a much condensed and modified version of the introductory chapter in Gareau’s new book, From Precaution to Profit: Contemporary Challenges to Environmental Protection in the Montreal Protocol(2013, Yale University Press). “Whatever Happened to Ozone Layer Politics?” http://www.e-ir.info/2013/01/29/whatever-happened-to-ozone-layer-politics/

However, if we look at the Montreal Protocol in its more recent past, we can see that it has suffered significantly from major setbacks that more closely resemble the ruinous state of global climate change politics than the flourishing early days of ozone politics. Comparisons could even be made between the Climate Gate scandal, where climatologists were accused by climate skeptics of “acting political” by manipulating climate data, and the Montreal Protocol, where ozone scientists were also accused of “acting political” and manipulating MeBr data by the US government. Urgency regarding global environmental challenges like global climate change has only grown over the years. This even applies to the ozone situation today. In 2011 the BBC reported on how “ozone depletion is often viewed as an environmental problem that has been solved,” but much uncertainty remains with regards to ozone layer recovery, especially since climate change science is so complicated and interconnected with the ozone layer.[5] “The ozone layer remains vulnerable to large depletions because total stratospheric chlorine levels are still high, in spite of the regulation of ozone-depleting substances by the Montreal Protocol” warns Paul Newman, an atmospheric scientist at NASA’s Goddard Space Flight Center.[6] Today, interest groups attempting to hold back global and regional environmental governance appear to be up against a growing wall of scientific evidence that humans are having serious negative effects on the global environment. Ironically, at such a moment of heightened environmental awareness, the Montreal Protocol entered its own moment of uncertainty.

#### Methyl Bromide disagreement makes US leadership on Montreal expansion impossible – and extra-treaty solutions solve

Brian J. Gareau 1-29-2013 Brian J. Gareau is an Assistant Professor of Sociology and International Studies at Boston College. This piece is a much condensed and modified version of the introductory chapter in Gareau’s new book, From Precaution to Profit: Contemporary Challenges to Environmental Protection in the Montreal Protocol(2013, Yale University Press). “Whatever Happened to Ozone Layer Politics?” http://www.e-ir.info/2013/01/29/whatever-happened-to-ozone-layer-politics/

Famous for the CFC phase-out, more recently the Montreal Protocol almost completely stalled in its efforts to phase out methyl bromide (MeBr). MeBr is extremel y toxic, comparable with arsenic and DDT, is readily absorbed through the lungs, damages the central nervous system, causes birth defects, can kill in relatively small doses, and depletes the ozone layer. The US EPA classifies MeBr as a “Category I acute toxin,” the most lethal category of chemical substances. Since 2003, MeBr became the center of a great controversy in the Montreal Protocol. This neurotoxin is used primarily as a pre-plant fumigant in strawberry production, and for quarantine pre-shipment. According to the watchdog organization, the Environmental Working Group, a 1997 report released by the California Department of Pesticide Regulation revealed that millions of pounds of MeBr were being used near schools and daycare centers, and that MeBr drift levels from fields to such public spaces greatly exceeded the DPR’s safety standards. In 2003 the US warned the global community that its leadership role in the treaty could become compromised if it were not allowed to use MeBr in strawberry production beyond the phase-out year of 2005. This threat marked a new chapter for the Protocol and indeed for global environmental governance in general. At the center of the controversy was debate around MeBr “critical use exemptions” (CUEs). Briefly, the US claimed that alternatives to MeBr in strawberry production would have negative economic effects on strawberry growers, and thus such MeBr use would be exempt from the phase-out, while the majority of the global scientific community argued that the alternatives were feasible both technically and economically. MeBr has generated a great deal of controversy and debate between powerful nations, less-development nations, the agro-chemical industry, ozone scientific experts and facets of civil society. Opposition from US and international civil society groups regarding the US’s CUE request has been largely ignored by the US government. US-based environmental watchdogs such as the Natural Resources Defense Council (NRDC), the Environmental Investigation Agency (EIA), and Greenpeace all voiced strong disapproval of the continued use of MeBr with little visible impact at Montreal Protocol meetings. Additionally, points made by global scientific experts on MeBr and the efficacy of MeBr alternatives have been subject to much condemnation by the US and allied delegations, and by interest groups participating in Protocol meetings. Instead, the US has reduced MeBr use on its own terms – slowly – replacing it with other chemicals with their own (albeit locally-contained) risks.

#### No extinction—reject 1% hyperbole

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

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

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

**No impact – radiation increase is trivial**

**Singer, 95** (S. Fred, Ph.D., president science and environment policy project, November 1, Washington Times, http://209.85.141.104/search?q=cache:YItL5uwXgYQJ:www.sepp.org/key%2520issues/ozone/oznobel.html+Time+and+again,+journalists+have+run+with+a+story+that+amounts+to+little+more+than+%22science+by+press+release.%22&hl=en&ct=clnk&cd=1&gl=us)

Time and again, journalists have run with a story that amounts to little more than "science by press release." They have succumbed to tales of blind sheep and rabbits, plankton death, and the disappearance of frogs--all blamed on ozone depletion. Yet a little common sense could help to stem the tide of scare stories, punitive regulations, and politically motivated Nobel prizes. From the very outset it has been clear that the feared global ozone depletion would lead to a trivial increase of ultraviolet radiation at the Earth's surface, equivalent to moving just 60 miles closer to the equator, the distance from Washington to Richmond. This equivalence has been openly acknowledged by ozone scientists in press conferences and Congressional hearings. It puts the lie to fears of cataract epidemics, immune system failures, and various ecological disasters. The problem now is that the action of the Swedish Academy is being viewed as a scientific endorsement, not only of ozone depletion but of all of the horror stories put out by activist groups. Awarding the Nobel prize with the science still unsettled only says that facts are irrelevant, that data don't matter. What does seem to matter, at least to the Academy, is "salvation."

**Warming tipping** points **inevitable – too late**

**NPR 9** (1/26, Global Warming Is Irreversible, Study Says, All Things Considered, http://www.npr.org/templates/story/story.php?storyId=99888903)

Climate change is essentially irreversible, according to a sobering new scientific study. As carbon dioxide emissions continue to rise, the world will experience more and more long-term environmental disruption. The damage will persist even when, and if, emissions are brought under control, says study author Susan Solomon, who is among the world's top climate scientists. "We're used to thinking about pollution problems as things that we can fix," Solomon says. "Smog, we just cut back and everything will be better later. Or haze, you know, it'll go away pretty quickly." That's the case for some of the gases that contribute to climate change, such as methane and nitrous oxide. But as Solomon and colleagues suggest in a new study published in the Proceedings of the National Academy of Sciences, it is not true for the most abundant greenhouse gas: carbon dioxide. **Turning off the carbon dioxide emissions won't stop global warming**. "People have imagined that if we stopped emitting carbon dioxide that the climate would go back to normal in 100 years or 200 years. What we're showing here is that's not right. It's essentially an irreversible change that will last for more than a thousand years," Solomon says. This is because the oceans are currently soaking up a lot of the planet's excess heat — and a lot of the carbon dioxide put into the air. The carbon dioxide and heat will eventually start coming out of the ocean. And that will take place for many hundreds of years. Solomon is a scientist with the National Oceanic and Atmospheric Administration. Her new study looked at the consequences of this long-term effect in terms of sea level rise and drought.

### treaties

#### Your author goes neg – arms control doesn’t work without enforcement – and most treaties don’t institute provisions – the plan CANT implement these mechanisms

Muller 2K

(Dr. Harold Muller is the Director of the Peace Research Institute-Frankfurt and Professor of International Relations at Goethe University Compliance Politics: A Critical Analysis of Multilateral Arms Control Treaty Enforcement http://cns.miis.edu/npr/pdfs/72muell.pdf //um-ef)

Treaties are rarely if ever self-implementing. They rely on the active participation of the parties. Compliance policy, in its first and most important meaning, relates to the acts faithful parties conduct in order to discharge their agreed obligations. Part of this involves providing adequate information and engaging in sufficient com- munication about these acts to enhance the level of mu- tual confidence and thereby add to the motivation to continue with compliant behavior. There are, however, two more problematic situations where compliance policy assumes a more crucial and “other-related” mean- ing. First, there are situations in which a party’s behav- ior is ambiguous and there is the possibility or suspicion that it violates some treaty stipulations. In these situa- tions, clarification and eventually remedial action are called for. Then there are clear and evident breaches of treaty undertakings, which require even more urgent and decisive corrections to avoid harm to the established norm and the interests of other parties. Compliance policy as exerted by a collective of states parties, and each treaty member individually, is more problematic, difficult, and risky in these latter two situ- ations. Several conditions must be fulfilled for success to be likely. The three conditions are: • treaty community coherence, • leadership, and • great power cooperation. Unless these conditions are met, compliance policy will have to travel down a very bumpy road.

#### No global political will

Fred Tanner 9-30-2K; Fred Tanner is Deputy Director of the Geneva Centre for Security Policy.

“Conflict prevention and conflict resolution: limits of multilateralism” 30-09-2000 Article, International Review of the Red Cross, No. 839 http://www.icrc.org/eng/resources/documents/misc/57jqq2.htm

4. There is no consensus on the utility of early warning in conflict prevention. Some analysts argue today that failed opportunities for conflict prevention have occurred not because of insufficient time to respond, but because of a lack of political will to react to the warning. The Carnegie Commission on Preventing Deadly Conflict made one of the first efforts to link early warning with receptivity of warning and early response. But, as the 1999 Rwanda Report pointed out, early warning makes sense only if the warning signals are correctly analysed and transferred to the relevant decision-making authority. In this context, the capacity to gather and analyse information for the UN has fallen prey to “downsizing efforts”. In 1992, the UN did away with the Office for Research and Collection of Information (OCRI) and transferred some of its functions to the Department of Political Affairs and, as a consequence, the 1995 Report of the Commission on Global Governance proposed that the UN develop a new system to collect information on trends and situations that may lead to violent conflict or humanitarian tragedies. [7 ]

#### Complexity makes intenational conflict prevention too difficult

Fred Tanner 9-30-2K; Fred Tanner is Deputy Director of the Geneva Centre for Security Policy.

“Conflict prevention and conflict resolution: limits of multilateralism” 30-09-2000 Article, International Review of the Red Cross, No. 839 http://www.icrc.org/eng/resources/documents/misc/57jqq2.htm

1. There are no simple explanations for causes of conflict and the way they fuel an escalation of violence. To understand the dynamics of internal conflicts a multitude of specific indicators need to be taken into account, such as poverty and high population growth, resource scarcity, discrimination and disempowerment of minorities and other groups in society, military threats and sources of insecurity. A certain mix of these variables can, but must not necessarily, lead to societal stress, violence and war.

#### Treaties can’t solve – haven’t worked in decades

CFR 6-25-2013; The Global Nuclear Nonproliferation Regime http://www.cfr.org/arms-control-disarmament-and-nonproliferation/global-nuclear-nonproliferation-regime/p18984#p2

International instruments for combating nuclear proliferation were largely successful before 1991, but are proving unable to meet today's challenges. Although three states (India, Israel, and Pakistan) are known or believed to have acquired nuclear weapons during the Cold War, for five decades following the development of nuclear technology, only nine states have developed—and since 1945 none has used—nuclear weapons. However, arguably not a single known or suspected case of proliferation since the early 1990s—Pakistan, Iraq, Iran, North Korea, Libya, or Syria— was deterred or reversed by the multilateral institutions created for this purpose. The continued advancement of Iran's nuclear program—despite the implementation of crosscutting economic sanctions and near universal global condemnation—has elicited serious concerns from states including Israel, the United States, and Saudi Arabia. Additionally, recent nonproliferation success stories, such as Libya's abandoning its nuclear program in 2003 and the accession of all of the Soviet successor states except Russia to the Nuclear Nonproliferation Treaty (NPT) as nonnuclear weapon states, have been the result of direct government-to-government negotiations and pressure rather than action by global bodies.

# 2NC

## disad

### Heg DA – Impact – 2NC

#### Turns case --- collapses rule of law and global cooperation

**Khalilzad 95** (Zalmay, Former Professor of Political Science at Columbia and Director of Project Air Force at RAND, Current US Ambassador to Iraq, Washington Quarterly, Spring, Lexis)

Under the third option, the United States would seek to retain global leadership and to preclude the rise of a global rival or a return to multipolarity for the indefinite future. On balance, this is the best long-term guiding principle and vision. Such a vision is desirable not as an end in itself, but because a world in which the United States exercises leadership would have tremendous advantages. First, the global environment would be more open and more receptive to American values -- democracy, free markets, and the rule of law. Second, such a world would have a better chance of dealing cooperatively with the world's major problems, such as nuclear proliferation, threats of regional hegemony by renegade states, and low-level conflicts. Finally, U.S. leadership would help preclude the rise of another hostile global rival, enabling the United States and the world to avoid another global cold or hot war and all the attendant dangers, including a global nuclear exchange. U.S. leadership would therefore be more conducive to global stability than a bipolar or a multipolar balance of power system.

**Hegemony key to solve global warming**

**Cascio 08** [Jamais Cascio, 2008, Writers for the Institute for Ethics and Emerging Technologies, *The Big Picture: Climate Chaos*]

The relationship between climate chaos and the rise of the post-hegemonic world is tricky. Climate disruption isn’t causing the decline of US hegemony, nor is it caused by that decline. However, global warming underscores the weakness of the American hegemony, and that the decline of American hegemony weakens the potential for a near-term coordinated response to global warming. Moreover, this decline has the potential to make dealing with climate chaos more difficult. The best example of this situation occurred at the Bali global warming conference in December. The US delegation refused to sign an agreement accepted by essentially the rest of the participants, instead arguing for its own alternative. Kevin Conrad, the delegate from Papua New Guinea, then stepped to the microphone and said this: There’s an old saying: If you are not willing to lead, then get out of the way. I ask the United States: We asked for your leadership; we seek your leadership. But if for some reason you are not willing to lead, leave it to the rest of us; please get out of the way. A weakened American hegemon is one that is most likely to either try a costly attempt to shore up its power, or lash out at rising competitors, distracting national and world leadership at a time when distraction is most problematic. Of all of the risks to our global capacity to deal with global warming, this is the most dangerous.

#### The US won’t give up the crown- we’ll go down fighting triggering all their impacts- hegemony critics agree

David P. Calleo (University Professor at The Johns Hopkins University and Dean Acheson Professor at its Nitze School of Advanced International Studies (SAIS)) 2009 “Follies of Power: America’s Unipolar Fantasy” p. 4-5

It is tempting to believe that America’s recent misadventures will discredit and suppress our hegemonic longings and that, following the presidential election of 2008, a new administration will abandon them. But so long as our identity as a nation is intimately bound up with seeing ourselves as the world’s most powerful country, at the heart of a global system, hegemony is likely to remain the recurring obsession of our official imagination, the id´ee fixe of our foreign policy. America’s hegemonic ambitions have, after all, suffered severe setbacks before. Less than half a century has passed since the “lesson of Vietnam.” But that lesson faded without forcing us to abandon the old fantasies of omnipotence. The fantasies merely went into remission, until the fall of the Soviet Union provided an irresistible occasion for their return. Arguably, in its collapse, the Soviet Union proved to be a greater danger to America’s own equilibrium than in its heyday. Dysfunctional imaginations are scarcely a rarity – among individuals or among nations. “Reality” is never a clear picture that imposes itself from without. Imaginations need to collaborate. They synthesize old and new images, concepts, and ideas and fuse language with emotions – all according to the inner grammar of our minds. These synthetic constructions become our reality, our way of depicting the world in which we live. Inevitably, our imaginations present us with only a partial picture. As Walter Lippmann once put it, our imaginations create a “pseudo-environment between ourselves and the world.”2 Every individual, therefore, has his own particular vision of reality, and every nation tends to arrive at a favored collective view that differs from the favored view of other nations. When powerful and interdependent nations hold visions of the world severely at odds with one another, the world grows dangerous.

#### global wars.

**Khanna 09** – Director of the Global Governance Initiative at the New America Foundation (Parag, The second world: how emerging powers are redefining global competition in the twenty-first century, p. 337-338)

Even this scenario is optimistic, for superpowers are by definition willing to encroach on the turf of others—changing the world map in the process. Much as in geology, such tectonic shifts always result in earthquakes, particularly as rising powers tread on the entrenched position of the reigning hegemon.56 The sole exception was the twentieth century Anglo-American transition in which Great Britain and the United States were allies and shared a common culture—and even that took two world wars to complete.57 As the relative levels of power of the three superpowers draw closer, the temptation of the number-two to preemptively knock out the king on the hill grows, as does the lead power’s incentive to preventatively attack and weaken its ascending rival before being eclipsed.58 David Hume wrote, “It is not a great disproportion between ourselves and others which produces envy, but on the contrary, a proximity.”59 While the density of contacts among the three superpowers makes the creation of a society of states more possible than ever—all the foreign ministers have one anothers’ mobile phone numbers—the deep differences in interests among the three make forging a “culture of peace” more challenging than ever.60 China seas, hyperterrorism with nuclear weapons, an attack in the Gulf of Aden or the Straits of Malacca. The uncertain alignments of lesser but still substantial powers such as Russia, Japan, and India could also cause escalation. Furthermore, America’s foreign lenders could pull the plug to undermine its grand strategy, sparking economic turmoil, political acrimony, and military tension. War brings profit to the military-industrial complex and is always supported by the large patriotic camps on all sides. Yet the notion of a Sino-U.S. rivalry to lead the world is also premature and simplistic, for in the event of their conflict, Europe would be the winner, as capital would flee to its sanctuaries. These great tensions are being played out in the world today, as each superpower strives to attain the most advantageous position for itself, while none are powerful enough to dictate the system by itself. Global stability thus hangs between the bookends Raymond Aron identified as “peace by law” and “peace by empire,” the former toothless and the latter prone to excess.61 Historically, successive iterations of balance of power and collective security doctrines have evolved from justifying war for strategic advantage into building systems to avoid it, with the post-Napoleonic “Concert of Europe” as the first of the modern era.62 Because it followed rules, it was itself something of a societal system.\* Even where these attempts at creating a stable world order have failed—including the League of Nations after World War I—systemic learning takes place in which states (particularly democracies) internalize the lessons of the past into their institutions to prevent history from repeating itself.63 Toynbee too viewed history as progressive rather than purely cyclical, a wheel that not only turns around and around but also moves forward such that Civilization (with a big C) could become civilized.64 But did he “give too much credit to time’s arrows and not enough to time’s cycle”?65 Empires and superpowers usually promise peace but bring wars.66 The time to recognize the current revolutionary situation is now—before the next world war.67

#### Effective presidential treaty power key to solve rogue-prolif and terrorism---but, there’s no risk of their overreach impacts

John Yoo 8, Cal Berkeley law prof, The Powers of War and Peace, 204-5

Events such as the Neutrality Proclamation, the termination of the Mutual Defense Treaty with Taiwan, or even the Reagan-era struggle over the SDI program may seem of limited relevance to today’s challenges of rogue nations, the proliferation of weapons of mass destruction, and terrorism. Recent efforts, however, designed to respond to such problems only highlight again the centrality of treaties to the conduct of foreign affairs. Treaty termination and interpretation has proven central in the debate over how to respond to the proliferation of nuclear weapons and ballistic missiles, and the legal status of al Qaeda and Taliban ﬁghters captured in Afghanistan and throughout the world. On these questions, the Constitution’s ﬂexibility toward the distribution of the foreign affairs power has given the president the tools to promote U.S. foreign policy, but at the same time has ensured that Congress has the ability to block policies with which it disagrees.

#### Extinction

Kroenig 12 – Matthew Kroenig is an Assistant Professor of Government at Georgetown University and a Stanton Nuclear Security Fellow on the Council on Foreign Relations, May 26th, 2012, “The History of Proliferation Optimism: Does It Have A Future?” <http://www.npolicy.org/article.php?aid=1182&tid=30>

What’s Wrong with Proliferation Optimism?

**The proliferation optimist position**, while having a distinguished pedigree, **has several major flaws**. Many of these weaknesses have been chronicled in brilliant detail by Scott Sagan and other contemporary proliferation pessimists.34 Rather than repeat these substantial efforts, I will use this section to offer some original critiques of the recent incarnations of proliferation optimism.¶ First and foremost, proliferation optimists do not appear to understand contemporary deterrence theory. I do not say this lightly in an effort to marginalize or discredit my intellectual opponents. Rather, I make this claim with all due caution and sincerity. A careful review of the contemporary proliferation optimism literature does not reflect an understanding of, or engagement with, the developments in academic deterrence theory over the past few decades in top scholarly journals such as the American Political Science Review and International Organization.35 While early optimists like Viner and Brodie can be excused for not knowing better, the writings of contemporary proliferation optimists **ignore much of the past fifty years of academic research on nuclear deterrence theory.**¶In the 1940s, Viner, Brodie, and others argued that the advent of Mutually Assured Destruction (MAD) rendered war among major powers obsolete, but nuclear deterrence theory soon advanced beyond that simple understanding.36 After all, great power political competition does not end with nuclear weapons. And nuclear-armed states still seek to threaten nuclear-armed adversaries. States cannot credibly threaten to launch a suicidal nuclear war, but they still want to coerce their adversaries. This leads to a credibility problem: “how can states credibly threaten a nuclear-armed opponent? Since the 1960s academic nuclear deterrence theory has been devoted almost exclusively to answering this question.37 And, unfortunately for proliferation optimists, the answers do not give us reasons to be optimistic.¶ Thomas Schelling was the first to devise a rational means by which states can threaten nuclear-armed opponents.38 He argued that leaders cannot credibly threaten to intentionally launch a suicidal nuclear war, but they can make a “threat that leaves something to chance.”39 They can engage in a process, the nuclear crisis, which increases the risk of nuclear war in an attempt to force a less resolved adversary to back down. As states escalate a nuclear crisis there is an increasing probability that the conflict will spiral out of control and result in an inadvertent or accidental nuclear exchange. As long as the benefit of winning the crisis is greater than the incremental increase in the risk of nuclear war, threats to escalate nuclear crises are inherently credible. In these games of nuclear brinkmanship, the state that is willing to run the greatest risk of nuclear war before backing down will win the crisis as long as it does not end in catastrophe. It is for this reason that Thomas Schelling called great power politics in the nuclear era a “competition in risk taking.”¶ 40 This does not mean that states eagerly bid up the risk of nuclear war. Rather, they face gut-wrenching decisions at each stage of the crisis. They can quit the crisis to avoid nuclear war, but only by ceding an important geopolitical issue to an opponent. Or they can the escalate the crisis in an attempt to prevail, but only at the risk of suffering a possible nuclear exchange.¶ Since 1945 there were have been many high stakes nuclear crises (by my count, there have been twenty) in which “rational” states like the United States run a frighteningly-real risk of nuclear war.41 By asking whether states can be deterred or not, therefore, proliferation optimists ask the wrong question. The right question to ask is: what risk of nuclear war is a specific state willing to run against a particular opponent in a given crisis? Optimists are likely correct when they assert that Iran will not intentionally commit national suicide by launching a bolt-from-the-blue nuclear attack on the United States or Israel. This does not mean that Iran will never use nuclear weapons, however. Indeed, it is almost inconceivable to think that a nuclear-armed Iran would not, at some point, find itself in a crisis with another nuclear-armed power. It is also inconceivable that in those circumstances, Iran would not be willing to run any risk of nuclear war in order to achieve its objectives. If a nuclear-armed Iran and the United States or Israel have a geopolitical conflict in the future, over, for example, the internal politics of Syria, an Israeli conflict with Iran’s client Hezbollah, the U.S. presence in the Persian Gulf, passage through the Strait of Hormuz, or some other issue, do we believe that Iran would immediately capitulate? Or is it possible that Iran would push back, possibly even brandishing nuclear weapons in an attempt to coerce its adversaries? If the latter, there is a real risk that proliferation to Iran could result in nuclear war.¶ An optimist might counter that nuclear weapons will never be used, even in a crisis situation, because states have such a strong incentive, namely national survival, to ensure that nuclear weapons are not used. But, this objection ignores the fact that **leaders operate under competing pressures.** Leaders in nuclear-armed states also have very strong incentives to convince their adversaries that nuclear weapons could very well be used. Historically we have seen that leaders take actions in crises, such as **placing nuclear weapons on** high alert **and** delegating **nuclear** launch authority **to low level commanders**, to purposely increase the risk of accidental nuclear war in an attempt to force less-resolved opponents

### 2NC Link Wall

#### Courts are deferring to Congress’ non-self-executing stance on HR treaties now---ruling directly on a treaty sets a precedent that ends Congressional treaty power and causes a flood of litigation

Curtis Bradley 9, Horvitz Professor of Law, Duke Law School, SELF-EXECUTION AND TREATY DUALITY, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5505&context=faculty\_scholarship

Assuming this reluctance to allow treaties to displace Congress’s legislative role is justified, it suggests a greater potential scope for non-self-execution today than might have been true in the past. In the modern era, both statutes and treaties have proliferated, and the content and structure of treaty-making has changed such that treaties are often the vehicle for broad-based legislative efforts. These developments mean, among other things, that statutes and treaties are much more likely to overlap with one another and to express potentially different policy choices. Even when treaties reflect policies similar to those in existing U.S. statutes, treaties (as noted above) tend to use different language than is used in the statutes and thus, if enforced directly, may require significant litigation to work out the implications of this language. (As discussed in Part I, this is one reason the Senate routinely includes non-self-execution declarations with its advice and consent to human rights treaties.)109 One should expect, therefore, that in the modern era courts would become less willing to apply treaties directly as rules of decision, and this is precisely what appears to have happened. As discussed earlier, the lower courts in the post-World War II period have come close to presuming against self-execution, at least for multilateral treaties and other treaties not covered by prior lines of precedent.110

#### Court deference to executive treaty interpretation now---the plan sets a precedent for upcoming rulings that collapse deference---kills credible foreign policy

Curtis Bradley 13, William Van Alstyne Professor of Law, Professor of Public Policy Studies, and Senior Associate Dean for Academic Affairs, “Terrorists, Pirates, and Drug Traffickers: Customary International Law and U.S. Criminal Prosecutions,” Jan. 11, <http://www.lawfareblog.com/2013/01/terrorists-pirates-and-drug-traffickers-customary-international-law-and-u-s-criminal-prosecutions/>

The Supreme Court has stated on a number of occasions that it will give “great weight” to Executive Branch interpretations of treaties (although it admittedly seemed not to apply such deference in its own Hamdan decision in 2006 when interpreting Common Article 3 of the Geneva Conventions). The issue is somewhat more complicated for customary international law, since part of the reason for deference on treaty questions is that the Executive Branch plays a direct role in negotiating U.S. treaties, whereas the Executive Branch’s role in the development of customary international law is more diffuse. In criminal cases, there might also be a separation of powers concern associated with allowing the Executive Branch both to act as the prosecutor and giving it deference on the content of a body of law that affects its prosecutorial authority (although that concern would also apply in some cases involving criminal statutes that implement treaties).

On the other hand, for both treaties and customary international law it may be desirable as a general matter for the United States to be able to speak with a unified voice, since whatever position the U.S. adopts may have reciprocity and other international consequences. (For this reason, the Restatement (Third) of Foreign Relations Law suggests that there should be judicial deference for both treaty and customary international law questions.) It is also generally more difficult for courts to discern the content of customary international law than the content of treaties, which might justify giving greater deference to the Executive Branch with respect to custom, not less. In any event, as courts continue to consider cases in which customary international law is a potential constraint on criminal prosecution, the issue of deference is likely to emerge as a more significant issue.

#### Speed in a crisis is the difference between success and failure

**Berkowitz, 8** - research fellow at the Hoover Institution at Stanford University and a senior analyst at RAND. He is currently a consultant to the Defense Department and the intelligence community (Bruce, STRATEGIC ADVANTAGE: CHALLENGERS, COMPETITORS, AND THREATS TO AMERICA’S FUTURE, p. 181-182)

The problem today is that we are taking too long to respond to threats and changes in the environment. Reading the 9/11 Commission report, for example, one cannot help but be struck by how often delay and slowness led to failure. For example, President Bill Clinton said he requested military options to eliminate bin Laden in late 1999. But General Hugh Shelton, Chairman of the Joint Chiefs of Staff, was reluctant. Secretary of Defense William Cohen thought the President was speaking hypothetically. And the one person who could have given everyone a direct order, Clinton himself, believed raising his temper would not accomplish anything. So the issue dragged on.4 Meanwhile, organizations further down the line also moved sluggishly. One case, now notorious, involved the Predator, a robotic aircraft originally built for battlefield reconnaissance and later modified to carry missiles. The Air Force had flown the Predator in the Balkans since 1996, but it had to be modified to operate over Afghanistan and carry missiles. The Air Force continued the Predator's development and testing throughout the spring and summer of 2000. It took until July 2000 to work out all the details, and two more months to deploy the Predator over Afghanistan. Predator operators thought they spotted bin Laden during tests that began in September 2000. Then a new problem emerged: Officials disagreed over the rules of engagement. Clinton's National Security Adviser, Sandy Burger, wanted greater confidence in bin Laden's location before he would approve a strike and was worried about civilian casualties. Air Force officials were reluctant to carry out what looked like a covert operation. But the Central Intelligence Agency (CIA) was reluctant to get directly involved in a combat operation—or violate the legal ban on assassination. These disagreements dragged into 2001, as the Bush administration took office. Then President Bush put the matter on hold while his National Security Adviser, Condoleezza Rice, directed a new, comprehensive plan to eliminate al-Qaeda. George Tenet, the Director of Central Intelligence, in turn, deferred resolving the legal issues over whether the CIA could take part in an attack until the administration had its new strategy. So it went, until the clock ran out and the terrorists struck. Although the events leading up to September 11 are now familiar, almost everyone seems to miss the core problem from which all others followed: There was always time for another meeting, another study, or another round of coordination. No one, it seems, was worrying about the clock— whether time itself mattered. It is not that every concern raised did not have some legitimate rationale (at least within the legalistic, bureaucratic culture that characterizes the U.S. government). Yet the fact is that while U.S. officials were working out legal issues, al-Qaeda was developing and executing its plan.

### A2: Plan =/= Specific Enforcement

#### Ruling that treaties are self-executing SPECIFIC legislative implementation

Yoo 99 (John C., Professor of Law – University of California at Berkeley School of Law, “Treaties and Public Lawmaking: A Textual and Structural Defense of Non-Self-Execution,” Columbia Law Review, Vol. 99, <http://works.bepress.com/cgi/viewcontent.cgi?article=1025&context=johnyoo>)

Vázquez responds that interpreting the Supremacy Clause to not compel self-execution reads the word “treaties” out of the clause.125 If all treaties required legislative implementation, there would have been no need for “treaties” in Article VI because every treaty would already have been implemented by a statute. This is perhaps the best textualist claim that internationalists can make. It would only apply, however, if I were claiming that all treaties were non-self-executing, regardless of whether they fell within Congress’s Article I powers or not. However, treaties that touch on areas that are regulated by the states do not, by their very definition, infringe on Congress’s legislative powers. While non-self-execution allows us to read the treaty power in harmony with Article I’s vesting of the legislative power in Congress, it is unnecessary when the treaty power involves matters within the jurisdiction of the states.

### AT: Courts key – 2NC

#### Courts are poorly equipped for foreign policy. Unilateral interpretation hamstrings effective policy.

**Lee 5** (Edward, Not the Winner of the 2010 James Unger Coaching Award, Assistant Professor of Law – Ohio State University Moritz College of Law, “The New Canon: Using or Misusing Foreign Law To Decide Domestic Intellectual Property Claims”, Harvard International Law Journal, Winter, 46 Harv. Int'l L.J. 1, Lexis)

*b. Separation of Powers Considerations in the United States*  
Principles of separation of powers militate against U.S. courts adopting either (i) the active harmonization of domestic law with foreign law or (ii) the use of foreign law as a rule of decision to decide a domestic claim, without clear guidance from Congress.  [\*36]  In the United States, both Congress and the Executive play a "premier role" in our foreign relations and trade. [166](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2fe113f3c144f57faed81d9d82da317c&docnum=50&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=b1d9e5e1353b8e4b551f37ea1388cd8e&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29+w%2F35+first+or+unilateral%21+or+sequenc%21&focBudSel=all" \l "n166" \t "_self) Under Article I of the Constitution, Congress has the power to "regulate Commerce with foreign Nations." [167](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2fe113f3c144f57faed81d9d82da317c&docnum=50&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=b1d9e5e1353b8e4b551f37ea1388cd8e&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29+w%2F35+first+or+unilateral%21+or+sequenc%21&focBudSel=all" \l "n167" \t "_self) Under Article II, the President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." [168](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2fe113f3c144f57faed81d9d82da317c&docnum=50&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=b1d9e5e1353b8e4b551f37ea1388cd8e&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29+w%2F35+first+or+unilateral%21+or+sequenc%21&focBudSel=all#n168) The Supreme Court has long recognized: "In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation." [169](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2fe113f3c144f57faed81d9d82da317c&docnum=50&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=b1d9e5e1353b8e4b551f37ea1388cd8e&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29+w%2F35+first+or+unilateral%21+or+sequenc%21&focBudSel=all" \l "n169" \t "_self) The President "manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with the greatest prospect of success." [170](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2fe113f3c144f57faed81d9d82da317c&docnum=50&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=b1d9e5e1353b8e4b551f37ea1388cd8e&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29+w%2F35+first+or+unilateral%21+or+sequenc%21&focBudSel=all" \l "n170" \t "_self) Nowhere in this constitutional design is the court granted the power to set foreign affairs or trade policy. A court's proper role is to review the constitutionality of a treaty or international agreement, [171](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2fe113f3c144f57faed81d9d82da317c&docnum=50&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=b1d9e5e1353b8e4b551f37ea1388cd8e&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29+w%2F35+first+or+unilateral%21+or+sequenc%21&focBudSel=all" \l "n171" \t "_self) or to interpret an implementing statute, but beyond that, a court's role is extremely limited. Thus, for a U.S. court to pursue active harmonization or to incorporate foreign law in deciding domestic claims may result in the court's unilateral adoption of a policy that neither the Executive nor Congress approved, thus overstepping the court's constitutional bounds. [172](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2fe113f3c144f57faed81d9d82da317c&docnum=50&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=b1d9e5e1353b8e4b551f37ea1388cd8e&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29+w%2F35+first+or+unilateral%21+or+sequenc%21&focBudSel=all" \l "n172" \t "_self) These concerns about the scope of a court's role also implicate notions of sovereignty. If a court adopts a foreign law approach that differs from the view of Congress or the Executive, the court may end up sacrificing important cultural and national values particular to the United States. When a domestic court starts using foreign law as the standard for harmonization or adoption, it runs the risk of giving up part of the nation's self-determination for important economic, social, and cultural issues. [173](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2fe113f3c144f57faed81d9d82da317c&docnum=50&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=b1d9e5e1353b8e4b551f37ea1388cd8e&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29+w%2F35+first+or+unilateral%21+or+sequenc%21&focBudSel=all" \l "n173" \t "_self)  [\*37]  *c. Judicial Competence in Trade-Related Decisions* The two clear statement rules can also be justified on the ground of judicial competence. Courts are poorly equipped to decide whether the United States' interest lies in achieving harmony with another country's IP law, or whether the internal balance struck by a domestic IP statute should be altered by the use of foreign law to decide part of a domestic IP claim. By removing the whole question of harmonization and incorporation of foreign law from the court's analysis, absent a clear expression from Congress, the two clear statement rules leave the thorny questions of trade policy to the executive branch. Courts usually do not have the necessary information, policymaking power, and political backing to make decisions about trade policy. Much depends on the country's trade and negotiating position with other countries, as well as the social, economic, and political dynamics that underlie the IP law. Because courts usually depend on evidence submitted by the parties, they are limited in their ability to gather such information. Even if they could perform factfinding of their own, courts would inevitably have to seek information from the Executive's trade representatives who deal with the foreign countries firsthand. Should a court unilaterally decide an issue under negotiation by trade representatives, the court could undercut the Executive's ability to speak with one voice to foreign nations or to secure favorable trade deals.

#### Unilateral judicial incorporation undermines global dispute resolution

**Young 9** (Ernest, Professor of Law – Duke Law School, “Historical Practice and the Contemporary Debate Over Customary International Law”, Columbia Law Review Sidebar, 109 Colum. L. Rev. Sidebar 31, April, Lexis)

A second set of changes concerns the character of the law of nations itself. That law once primarily governed the relations of states to one another, but it now also concerns the relations of states to their own citizens, [37](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2bc3f1a2b7e8c0267a3cac947bd318a2&docnum=12&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=660900095d9f7b144249059a721afbb5&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29&focBudSel=all" \l "n37" \t "_self) as well as a host of commercial, environmental, and other matters. [38](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2bc3f1a2b7e8c0267a3cac947bd318a2&docnum=12&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=660900095d9f7b144249059a721afbb5&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29&focBudSel=all" \l "n38" \t "_self) These concerns extend well beyond the traditional matters of war and peace upon which Professors Bellia and Clark focus, and it is far from clear that the judicial power that Bellia and Clark recognize to incorporate the law of nations ought to extend to the far broader modern sweep of international law. As Bellia and Clark probably recognize, judicial application of this modern international law often will not protect political branch prerogatives, and it may in fact undermine those prerogatives. Moreover, the modern law of nations is formed in quite different ways than the international law known to the Framers. This is true not only of CIL, which is now more a creature of world opinion than a reflection of nations' actual practice, [39](http://www.lexis.com/research/retrieve?cc=&pushme=1&tmpFBSel=all&totaldocs=&taggedDocs=&toggleValue=&numDocsChked=0&prefFBSel=0&delformat=XCITE&fpDocs=&fpNodeId=&fpCiteReq=&brand=&_m=2bc3f1a2b7e8c0267a3cac947bd318a2&docnum=12&_fmtstr=FULL&_startdoc=1&wchp=dGLbVlz-zSkAA&_md5=660900095d9f7b144249059a721afbb5&focBudTerms=%28judici%21+or+court%29+w%2F50+congress%21+w%2F50+judicial+internationalism+or+%28incorporat%21+w%2F25+international+law+or+foreign+law%29&focBudSel=all" \l "n39" \t "_self) but also of multilateral treatymaking and international norms promulgated by supranational institutions exercising delegated lawmaking power. Parallel changes have affected the enforcement of international law. Breaches of the modern law of nations may be addressed not simply by the aggrieved nation, but by a variety of multilateral institutions, and the range of possible punishments includes trade sanctions and a variety of other measures short of war. Whatever the felt necessity for federal  [\*38]  judicial incorporation of the law of nations when few alternative enforcement mechanisms existed to avoid the use of military force by some other nation, under current circumstances such unilateral judicial action is both less pressing and more likely to complicate the working out of international disputes through other political and legal mechanisms.

#### That independently risks nuclear war

**Lopez 98** (Bernardo V., Business World, 6-18, Lexis)

With the US having less non-proliferation teeth in the India-Pakistan dispute, the chance of a localized nuclear waris enhanced and the US will be helpless to contain the conflict because its hands have been severely soiled by the expose of Operation Tailwind. The same situation is true in the conflicts in North Korea, Middle East, China-Taiwan and, lately, Eritrea-Ethiopia, where the US has been playing a major role as a broker for peace. For a broker for peace must have an untainted image of a true peacemaker.

### AT: I-Law Link Turn

#### Lack of judicial expertise in foreign policy means the plan can’t have a positive effect on leadership

**McGinnis 6** (John, Professor of Law – Northwestern University School of Law, “Foreign to Our Constitution”, Northwestern University Law Review, 100 Nw. U.L. Rev. 303, Lexis)

Another version of this argument is not historical but based on realpolitik. By interpreting our Constitution in closer accordance with foreign or international law, we will curry favor abroad and create a greater spirit of amity toward the United States, and, at the margin, make other nations more amenable to its foreign policy goals. [71](http://www.lexis.com/research/retrieve?_m=6ae6785b65e20b3a335c75ca801231a9&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAA&_md5=f646fa05ebef34b886b7cf487e78d3a0" \l "n71" \t "_self) But the Supreme Court does not have a comparative institutional advantage in determining what will usefully forward United States foreign policy goals. Its own jurisprudence recognizes the superiority of other branches in these matters by deferring to  [\*323]  the political branches in matters of foreign affairs. [72](http://www.lexis.com/research/retrieve?_m=6ae6785b65e20b3a335c75ca801231a9&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAA&_md5=f646fa05ebef34b886b7cf487e78d3a0" \l "n72" \t "_self) If the incongruence of a state or federal law with foreign or international law is undermining our foreign policy, Congress is in a better position to identify and address it. [73](http://www.lexis.com/research/retrieve?_m=6ae6785b65e20b3a335c75ca801231a9&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAA&_md5=f646fa05ebef34b886b7cf487e78d3a0" \l "n73" \t "_self) If it is a problem of federal law, Congress can simply repeal the law. Under current federalism doctrine, Congress has ample tools at its disposal, such as imposing conditions on federal spending to make the states fall behind any foreign policy imperative. [74](http://www.lexis.com/research/retrieve?_m=6ae6785b65e20b3a335c75ca801231a9&csvc=bl&cform=searchForm&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVtb-zSkAA&_md5=f646fa05ebef34b886b7cf487e78d3a0" \l "n74" \t "_self)

### Congressional Backlash – 2NC

#### Court ILAW rulings cause massive Congressional backlash that turns the case

Eric Posner 8, professor at the University of Chicago Law School, Medellin and America's Ability To Comply With International Law, www.slate.com/content/slate/blogs/convictions/2008/03/25/medellin\_and\_america\_s\_ability\_to\_comply\_with\_international\_law.html

There is an academic theory that holds that the type of litigation (sometimes called "transnational legal process") exemplified by the Medellin case would eventually bring the United States into greater and greater compliance with international law. But with the benefit of hindsight, we see that the opposite has been the case. The U.S. government reacted to this litigation by withdrawing from the protocol that gave the ICJ jurisdiction over these cases, and the U.S. Supreme Court has reacted to this litigation by weakening the domestic effect of treaties, expressing discomfort with international adjudication and making clear that the president lacks the power to compel the states to comply with treaties. The United States will violate or withdraw from international law when its national government wants to, and sometimes it will do so even when its national government does not want to.

#### Judicial review of treaties causes the US to comply less with human rights on a scale that qualitatively outweighs their internal link---we control uniqueness because the Court doesn’t restrict political authority now and Court enforcement isn’t key to US treaty compliance

Curtis Bradley 9, Horvitz Professor of Law, Duke Law School, SELF-EXECUTION AND TREATY DUALITY, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5505&context=faculty\_scholarship

The argument for more mandatory judicial review of treaty obligations depends on a separation of powers-oriented, rather than federalism-oriented, construction of the Clause. Critics of non-self-execution argue that treaties were included in the Supremacy Clause to help avert U.S. treaty violations, something that they contend will be more likely to occur without self-execution.47 As an initial matter, it is important to remember that U.S. compliance with its treaty obligations generally does not depend on self- execution. There are many ways for a nation to comply with a treaty without direct judicial application, including preexisting legislation, new legislation, and executive action, and U.S. compliance with most treaties is not in fact accomplished through its courts. As discussed below in Part III, treaties are never self-executing in some countries, and yet those countries generally manage to comply. Critics of political branch flexibility with respect to the issue of self-execution also neglect to consider the ex ante effects of eliminating such flexibility. Among other things, if the political branches could not regulate the domestic effects of treaties, they would likely enter into fewer, and less significant, treaty commitments.48 ¶ [Footnote 48 Starts] ¶ 48 See, e.g., Bradley & Goldsmith, 149 U Pa L Rev at 410-16 (documenting how non-self- execution declarations and other conditions helped break the logjam that had prevented U.S. ratification of human rights treaties) ¶ [Footnote 48 Ends]

#### Executive promotion of I-Law is comparatively better than the courts---the plan/perm cause executive backlash to adoption which turns the case

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Let us now compare the judiciary's record with that of the executive. To keep the discussion short, we will focus on post-World War II activity.

The executive has been the leading promoter of international law. It has negotiated and ratified (sometimes with the Senate's consent, sometimes with Congress's consent, and sometimes without legislative consent) thousands of treaties over the last sixty years, n153 including the fundamental [\*534] building blocks of the modern international legal system, such as the UN Charter, the GATT/WTO, the International Covenant for Civil and Political Rights, and the Genocide Convention. Through the U.S. State Department, the executive issues annual reports criticizing foreign countries for human rights violations, and the U.S. government has frequently, although not with complete consistency, issued objections when foreign countries violate human rights. n154 The executive has also negotiated and signed other important treaties to which the Senate has withheld consent - including the Vienna Convention on the Law of Treaties, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Law of the Sea, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women, among others. n155 The executive has also been instrumental in creating modern international institutions, including the UN Security Council, the GATT/WTO system, the World Bank, and the IMF. n156

Much of what we said might seem too obvious to mention. One can hardly imagine the judiciary deciding on its own that the United States must create or join some new treaty regime. But these obvious points have been overlooked in the debate about the role of the judiciary in foreign affairs. Virtually everything the judiciary does in this area depends on prior executive action. Only the constitutional interpretation cases seem truly judge-initiated, for in these cases, the Court sometimes cites treaties that the United States has not ratified and sometimes cites the laws of foreign nations.

The claim that the judiciary can, and even does, play a primary role in the adoption of international law is puzzling. In almost all cases, the judiciary must follow the executive's lead. This also means that if the judiciary interprets treaties and other sources of international law in an aggressive way - in a way that the executive rejects - the executive may respond by being more cautious about negotiating treaties and adopting international law in the first place. This possible backlash effect has not been documented, but is plausible. As we discuss in the next section, fears of judicial enforcement of certain treaty obligations [\*535] led to an effort by the Senate to ensure that those treaties would not have domestic legal effect.

The plan goes about incorporating ILAW in reverse---picking a controversial area like War Powers to issue rulings in causes massive political backlash---only the CP can smooth the transition

Peter B. Rutledge 8, Columbus School of Law, Catholic University of America, Medellin v. Texas: Presidential Power and International Tribunals, 6 Geo. J.L. & Pub. Pol'y 129

I want to be careful here because I do not want to stretch the European Court of Justice analogy; I'm offering it as a positive issue, not as a normative issue. So here is the point that I'm trying to make about the European Court of Justice: If you go back and look at how the European Court of Justice articulated the Doctrine of Direct Effect, it was very careful on how it did so. This is a point that Joseph Weiler, probably one of the foremost academics on the European Union, has made. n111 And that is that the European Court of Justice did not go out and pick the most controversial, intractable issues among the European states in which to articulate the doctrine; it picked issues on which to articulate the Doctrine of Direct Effect that were relatively non-controversial among the member states of the European community. n112 And, as a result, the mechanism of domestic absorption was relatively uncontroversial. Contrast that with what is going on in Medellin where you have a real divergence between the domestic political views about the death penalty, which, [\*149] if anything, is on the resurgence again in the United States in terms of states reconsidering adopting it, Illinois excepted. n113 And on the other hand, the consensus in the international community, many of whom would view the death penalty as inconsistent with modern-day human rights norms. n114 If you are one who is trying to advocate the integration of the Doctrine of Direct Effect or its analogue in the Medellin case, you have picked a really poor example by which to do so. You have not learned the lesson of Europe. You have picked a situation where the divergence between the international norm and the domestic political consensus is so great that you are bound to promote this firestorm of controversy over whether or not the international judgment is going to be reduced to a domestic judgment. Does that mean that these international judgments do not have any effect whatsoever? No, of course not. We can differentiate as various scholars in this field do between hard law and soft law. n115 They may not be given direct domestic effect in the way that, say, judgments at the European Court of Justice are, n116 but that does not mean that they do not influence the political process potentially in ways that, as I think John [McGinnis] would say, are affected by actors who have a great degree of political accountability. So in the wake of these sorts of Medellin-type decisions, you do not see U.S. courts reducing their judgments to domestic effect but you do, for example, see governors acting to commute various death sentences of individuals, perhaps, in response to some of the pressure that comes from these international tribunals. n117 The interesting thing to watch will not necessarily be how Medellin comes out but instead it will be to see how those who would advocate the integration of international tribunals' decisions into our domestic system strategize and what types of cases they will use to develop the extent to which they rely on "soft law" methods to bridge the dissensus between the domestic political [\*150] norms and the international norms in order to ease the transition as occurred in the EU. Thank you.

## counterplan

### 2NC Domestic Enforcement

#### Second – mutual interest guarantee domestic enforcement – writs of mandamus are key

Hathaway 12 (Oona A., Gerard C. and Bernice Latrobe Smith Professor of International Law – Yale Law School, “International Law at Home: Enforcing Treaties in U.S. Courts,” Yale Journal of International Law, 37(1), <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4845&context=fss_papers&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3Dmandamus%2Bself-executing%2Bjudicial%2Benforcement%2Btreaty%26btnG%3D%26hl%3Den%26as_sdt%3D0%252C23#search=%22mandamus%20self-executing%20judicial%20enforcement%20treaty%22>)

Our proposals each offer a path toward more effective enforcement of Article II treaties in U.S. courts. They are only valuable, of course, if the United States has an interest in abiding by the international legal commitments it makes.15 We recognize that there is an ongoing debate about this proposition.16 Although proving the proposition that it is in the United State's interest to abide by its international law commitments is not a goal of this Article, we note at least two reasons to believe it is true. First, when treaties provide reciprocal benefits, the United States clearly gains from the enforcement of the agreements by other parties to the treaty. Indeed, for the 4.5 million Americans who live overseas and the 60 million who traveled abroad last year17—not to mention the U.S. businesses whose trillions of dollars in investments are protected by a variety of international treaties—the ability to enforce treaty-based rights abroad is essential.18 But other countries are less likely to observe their treaty obligations if the United States fails to live up to its side of the bargain. A private right of action is often the best way to guarantee this compliance, for the federal judiciary is in a unique position to press the political branches to honor the country’s international commitments, particularly when those commitments benefit individuals.[Footnote 19] Second, regardless of the value one may place on any given international agreement—or the benefit that the United States receives from that particular treaty—the United States has a broader and deeper interest in demonstrating its capacity to abide by the commitments it makes. Until the United States chooses to end an international legal commitment (which it ordinarily can do by simply providing notice to this effect), it is obligated to comply with the agreement as a matter of international law.20 Failure to comply with such obligations makes the United States a law violator potentially subject to sanctions and—likely most harmful of all—an unreliable treaty partner.21 For these reasons, even those who dislike or disapprove of particular international agreements should wish to see the United States live up to the commitments that it has made.

[Continues to Footnote 19]

19. See William M. Carter. Jr.. Treaties as Law and the Rule of Law: The Judicial Power To Compel Domestic Treaty Implementation. 69 MD. L. REV. 344. 359-80 (2010) (contending that federal courts should use their mandamus power to compel the U.S. government to comply with its human rights treaty obligations, even for non-self-executing treaties, because those treaties arc still binding federal law under the Supremacv Clause).

#### Evaluate through the lens of sufficiency – wholesale incorporation isn’t necessary – writs of mandamus are sufficient remedies

Carter 10 (William M., Professor of Law – Temple University Beasley School of Law, “Treaties as Law and the Rule of Law: the Judicial Power to Compel Domestic Treaty Implementation,” Maryland Law Review, 69(2), <http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3421&context=mlr>)

C. The Duty to Implement International Human Rights Treaties

Considering whether a treaty provision imposes a duty that is amenable to mandamus enforcement requires an assessment of what the United Stales agreed to do when it ratified the treaty. If the treaty provision is wholly precatory or discretionary, it will not impose a "duly" for mandamus purposes.137 By contrast, where the duty to implement is clear and mandatory, even if it involves discretion as to means and methods of enforcement, mandamus is an appropriate remedy to compel implementation.158 The discussion that follows makes the following propositions:

(1) the text and history of several major international human rights treaties create a mandator)' duty of domestic implementation;

(2) the Supremacy Clause incorporated these duties into domestic law upon ratification of those treaties;

(3) barring a provision in the treaty itself139 or other federal law-indicating a contrary result, mandamus is an appropriate remedy when government officials have failed to implement such treaties, as it would be if a similar duty existed under a federal statute; and

(4) the selection of means of implementation should be the exclusive province of the President (or his Cabinet officers) and Congress, provided the means selected are directed in good faith toward effective implementation.

The major human rights treaties that the United States has ratified impose a duty of domestic enforcement The discussion regarding this point has, for the sake of simplicity, spoken generally of a duty to "implement the treaty" in domestic law. To be more precise, human rights treaties do not necessarily require that the treaty be implemented by making the treaty itself part of domestic law. Rather, the states parties are required to make effective the rights guaranteed by the treaty in their domestic law. While making the treaty *in toto enforceable* as domestic law would satisfy' the duty of implementation, methods short of such wholesale incorporation may also satisfy that duty.

[NOTE: in toto (in toe-toe) adj. Latin for "completely" or "in total," referring to the entire thing, as in "the goods were destroyed in toto," or "the case was dismissed in toto."]

### 2NC Competition

#### Second – The CP is less change – making treaties self-executing mandates enforcement – that’s distinct from the CP which leaves enforcement questions to the political brances

West 8 (West's Encyclopedia of American Law, edition 2. Copyright 2008)

Self-Executing Treaty

A compact between two nations that is effective immediately without the need for ancillary legislation.

A treaty is ordinarily considered self-executing if it provides adequate rules by which given rights may be enjoyed or imposed duties may be enforced. Conversely it is generally not self-executing when it merely indicates principles without providing rules giving them the force of law.

### 2NC Trade Impact

#### That creates unlimited legislative role for the Courts in treaty enforcement---collapses effective international political responses to environment, terrorism, rogues, and collapses the economy and trade---it also kills the cred of informal treaties which will solve the case in the SQ

John Yoo 8, Cal Berkeley law prof, The Powers of War and Peace, 244-9

Non-self-execution provides a ready means to solve some of the tensions between the treaty and legislative powers. International events now inﬂuence numerous areas of life that were formerly the preserve of regular legislation, while domestic conduct has produced effects on problems of an international scope. Correspondingly, the scope of international agreements has broadened, which has expanded the potential reach of the treaty power. Meanwhile, nationalization of the American economy and society has produced an expansion in the powers of Congress, particularly through its commerce and spending powers. International efforts to regulate areas such as the environment, arms control, the economy, or human rights, therefore, will come into conﬂict with Congress’s constitutional powers, just as treaties threatened to do—albeit in more limited subject-matter areas—during the framing and early National Period. In short, the globalization of affairs produces substantial tension with a constitutional system that maintains a strong distinction between the power to make treaties and the power to legislate. ¶ Non-self-execution provides a means to solve this tension. It prevents international political commitments, entered through treaties, from automatically imposing domestic legal obligations on the government until the political branches have determined the manner in which to implement them. It reserves to the most popular branch of government, Congress, its authority over the domestic regulation of individual citizens and their pri- vate activity, while also creating a presumption that protects the normal regulatory prerogatives of the states under our federal system of govern- ment. It also preserves the discretion of the president and/or Congress¶ 245¶ to choose to disregard international rules without violating the domestic Constitution. ¶ The values served by non-self-execution become clearer when we ex- amine two different sets of issues raised by globalization: the multilater- alization of the use of force and the death penalty. Turning ﬁrst to the use of force, it will be recalled that the U.N. Charter prohibits the use of force unless in self-defense or on authorization by the Security Council. The United States ratiﬁed the U.N. Charter as a treaty at the end ofWorld WarII.Thus,someargue,inratifyingthechartertheUnitedStatesgaveup its right to initiate hostilities unless in conformity with its terms. Because a treaty is part of the “law of the land” under the Supremacy Clause, and hence on a par with the Constitution and other federal law, the president has a constitutional obligation, in seeing that the laws are faithfully exe- cuted, not to order the use of force that would violate the U.N. Charter. If a Congress funds a presidential war at odds with the U.N. Charter, one imagines that Congress is acting unconstitutionally as well. “By adhering to the Charter,” according to Professor Henkin, “the United States has given up the right to go to war at will.”78 ¶ Two disruptions of the constitutional structure ﬂow from this position. First, it renders any presidential use of force that is not taken in self- defense or authorized by the Security Council not only illegal, but un- constitutional. Presidential discretion to use force in foreign affairs, as envisioned by the Framers and established in the constitutional text and structure, is unarguably reduced as a result. Under this approach to trea- ties, the violation of international law by the United States and its allies in Kosovo also amounted to a violation of the Constitution by President Clinton. After all, the United States could not claim seriously—nor did it try—that Serbia was armed with weapons of mass destruction and their delivery systems and that it posed a threat sufﬁcient to trigger the U.S. national right of self-defense. Due to Russia’s veto, the Security Coun- cil never issued a resolution authorizing the use of force. In using force againstKosovo,theUnitedStatesviolatedtheU.N.CharterandPresident Clinton,under a self-execution theory,failed to perform his constitutional duty to enforce the laws of the land. Second,equating treaties with statutes has the effect of transferring the authority to decide whether to use force in international relations to an international organization. Under the Constitution’s original design, the president and Congress decide on war through the interaction of their constitutional powers. Putting to one side the use of force in self-defense, many scholars believe both that the United States cannot wage war with- out Security Council permission, and that if the Security Council autho- rizes war—as it did in the 1991 Persian GulfWar—the United States must use force to meet the goals set out by the Council. In other words, the SecurityCouncilhastheauthorityunderthechartertoimposebothaneg- ative duty (not to attack) and an afﬁrmative duty—to use force to enforce council resolutions. The Constitution’s usual procedure of relying on the president and Congress to make these decisions, under this approach, is effectively within the control of the Security Council. In those cases,how- ever, where the United States can make an actual claim of self-defense, as inAfghanistan and probably Iraq in 2003,the United States—and thus the president and Congress—would still have their usual room for deci- sionmaking. ¶ Of course,the United States has used force many times since the end of WorldWar II,and not all of those cases met the requirements of the U.N. Charter. In fact,in only two instances has the use of force been authorized by the Security Council, in Korea in 1950 and in the Persian Gulf four decades later. During this period,some conﬂicts undoubtedly qualiﬁed as national exercises of the right to self-defense under international law— Afghanistan being the easiest example. Others,however,may not have— such as the uses of force in Kosovo,Bosnia,and Lebanon—although there is usually a healthy debate over each one.79 Non-self-execution explains why these interventions did not violate the Constitution. If we consider treaties to be diplomatic commitments in the realm of international pol- itics, rather than automatic laws enforceable in the United States, then the president has no constitutional obligation to enforce the U.N. Char- ter,nor does Congress have any obligation to fund actions to comply with it. Rather, the political branches can decide whether and how the nation should obey a Security Council resolution,or they can even decide to vio- late the charter, as in Kosovo. Non-self-execution also precludes any real delegation of authority to the United Nations, as the decisions of that in- ternational organization remain—from the perspective of the American constitutional system—only the demands of international politics. Secu- rity Council decisions may bind the United States as a matter of inter-¶ national law, but the president and Congress decide how they are to be implemented, if at all. It should come as no surprise that the federal courts have adopted this approach in cases involving the decisions of the organs of the United Nations. In Diggs v. Richardson (1976), for example, the U.S. Court of Appeals for the District of Columbia Circuit confronted a Security Coun- cil resolution sanctioning South Africa because of its occupation of Na- mibia.80 Plaintiffs sought an injunction,based on the Security Council res- olution, ordering the U.S. government to cease economic relations with SouthAfrica involving goods from Namibia. Dismissing the case,the D.C. Circuit held that the resolution was not self-executing and was not en- forceable federal law. In Committee of United States Citizens Living in Nicaragua v. Reagan (1988), the D.C. Circuit faced a suit demanding that the Reagan administration cease all aid to the contra resistance in Nic- aragua, as the United States had been ordered to do by the International CourtofJustice(ICJ).81TheD.C.Circuitagaindismissedthecase,holding that ICJ decisions are not self-executing,and that any requirement in the UN Charter to obey ICJ decisions was similarly non-self-executing. Recent litigation over the death penalty raises the same tensions and ultimately may require the same solution.Aliens arrested and tried in the United States for capital murder sometimes have not received notiﬁca- tion, at the time of their arrest, that they have the right of access to con- sular representatives from their countries, as guaranteed by the Vienna Convention on Consular Relations. In two cases, one involving a citizen of Paraguay, the other two brothers from Germany, all convicted of mur- der and sentenced to death, the International Court of Justice ordered the United States to “take all measures at its disposal” to stop their exe- cution. In refusing to order a stay of execution in the ﬁrst case,Breard,the Supreme Court suggested that the ICJ order was not self-executing fed- eral law,and found that 1996 changes to the federal death penalty statute had overridden any treaty obligations.82 In the second case, LaGrande, the Court also refused to issue a stay, with the executive branch inform- ing the Court that the ICJ decision was not binding federal law, but was instead a matter of international politics.83 In yet a third case, decided in 2004, the ICJ ordered the United States to stay the execution of ﬁfty-one Mexicans on death row and to provide them a judicial forum for review and reconsideration of their convictions.84¶ According to some scholars, failure to obey the ICJ’s decision consti- tuted a violation of federal law. In regard to the Breard case, Professor Henkin argues that the ICJ order was self-executing federal law.85 Pro- fessor Vázquez similarly argued that if the ICJ order was binding it must alsobeself-executing,aviewsharedbyAnne-MarieSlaughter.Ifthiswere correct, then the Supreme Court violated federal law by refusing to issue a stay of execution,and the president failed to uphold his duty to enforce federal law by not ordering Virginia or Oklahoma to stop the execution. Indeed, this view conceivably would have the president send in federal marshals to stop state prison ofﬁcials from carrying out the sentences, as his authority to execute federal law would preempt the state law imposing the death penalty. It would also expand the powers of the federal govern- ment at the expense of the states,because without the ICJ order there was no basis,under the Bill of Rights or the federal habeas statute,to halt the executions. Presidents are not about to issue unilateral orders to state prisons halt- ing the executions of foreign nationals duly convicted of capital murder. And the Supreme Court has not (at least not yet) issued stays of execu- tions when the only violation of federal law asserted is a failure to notify a defendant of his rights under theVienna Convention. Contrary to lead- ing academic views, however, this does not constitute a violation of the Constitution. Rather, it is a recognition of the manner in which non-self- execution works as a practical matter to allow the political branches of government to decide how to implement our international obligations, with due regard for constitutional principles of the separation of powers and federalism. By treating theVienna Convention and the U.N. Charter provisions concerning the ICJ as nonbinding,the Supreme Court leaves it to the president and Congress to decide whether and how to obey ICJ orders. The president and Congress simply chose not to exercise their powers to enforce these orders. Non-self-execution also preserves the Court’s own authority to interpret, as a ﬁnal matter, all species of federal law, rather than allowing that power to be transferred to the ICJ. Finally, non-self-execution in this context protects the prerogatives of the states, which have the primary responsibility for enforcing criminal laws such as murder. ¶ A presumption that treaties are non-self-executing thus plays two important roles. First, as William Eskridge and Philip Frickey have argued, such presumptions allow the judiciary to avoid difﬁcult constitutional questions and to protect the constitutional structure, without having to block actions by the political branches.86 While protecting the constitutional line between the executive treaty power and legislation, it also leaves to the political branches the ﬂexibility to decide whether and how to implement the nation’s international obligations. Second, a clear statement rule helps contain the potential for unlimited lawmaking at a time when the line between domestic and international affairs is disappearing. Globalization, plus the interaction of several broad doctrines about the unbounded subject matter of treaties, their freedom from the restraints of the separation of powers and federalism, and their alleged interchange- ability with statutes, threatens to give the treaty makers a legislative power with few limits. Non-self-execution ensures that treaties, like the Constitution itself and all other species of federal law, are true to the notion that the national government is one of limited and separated powers.¶ 251¶ This striking divergence between the constitutional text on the one hand, and practice supported by academic opinion on the other, is not just a matter of intellectual curiosity. International agreements today are¶ 252¶ assuming center stage in efforts to regulate areas such as national security, the environment, trade and ﬁnance, and human rights. As interna- tional agreements increasingly assume the function of statutes, the treaty power threatens to supplant the domestic lawmaking process, even in areas within Congress’s Article I, Section 8 competencies. At the same time, interchangeability raises the prospect that statutes could fully re- placetreaties,which raises the problem that Congress could exercise executive powers in areas where treaties have force beyond domestic statutes. While this may not have presented much of a practical problem in an era when the reach of the Commerce Clause was thought to be virtually limit- less,the Supreme Court’s recent federalism decisions make clear that sig- niﬁcant areas still exist where treaties may provide the sole constitutional source for national regulatory power. Interchangeability would permit statutes to evade the restrictions on Congress’s ArticleI, Section8 powers, just as globalization threatens to allow the treaty power to supplant the domestic lawmaking process. ¶ Explaining the constitutionality of the congressional-executive agree- ment is a matter not just of intellectual coherence, but of practical eco- nomic and political importance. Today, about one-quarter of the gross national product arises from international trade, whose rules are set by the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) agreement. If all international agreements must undergo the supermajority treaty process, America’s ability to participate in a new world of international cooperation will be hampered. On the other hand, use of a constitutionally illegitimate method would throw America’s participation in the world trading system into doubt. Not only would constitutional questions undermine the validity of current congressional-executive agreements, they also would raise problems for America’s ability to engage in ever more intensive international co-operation. Uncertainty about the constitutionality of the congressional- executive agreement may undermine novel efforts to craft international solutions in response to the effects of globalization on areas such as ﬁnance and economics, security, the environment, and human rights.

#### Open trade is locked in—no protectionism

**Kim 13**

Soo Yeon Kim, of the National University of Singapore, associate professor of music at Nazareth College of Rochester, New York, Fellow of the Transatlantic Academy, based at the German Marshall Fund of the United States, The Monkey Cage, January 30, 2013, " Protectionism During Recessions: Is This Time Different?", http://themonkeycage.org/blog/2013/01/30/protectionism-during-recessions-is-this-time-different/

There is widespread agreement regarding the critical role of international institutions as “firewalls” against protectionism during this recession. Economic and non-economic international institutions have served as conveyors of information and mechanisms of commitment and socialization. Their informational function enhances the transparency and accountability of states’ trade policies, and they mitigate uncertainty when it is running high. Specialized international institutions devoted to trade, such as the WTO and preferential trade agreements (PTAs), also lock in commitments to liberal trade through legal obligations that make defections costly, thus creating accountability in the actions of its members. Equally important, international institutions are also arenas of socialization that help propagate important norms such as the commitment to the liberal trading system and cooperative economic behavior. In this connection, the degree to which a particular country was embedded in the global network of economic and non-economic international institutions has been found to be strongly correlated with fewer instances of protectionist trade measures.¶ Information provided to date by international institutions, with the exception of the GTA project, largely agree that states have not resorted to large-scale protectionism during this recession, in spite of the fact that the “great trade collapse” at the beginning of the current crisis was steeper and more sudden than that of its Great Depression predecessor. The WTO Secretariat, in addition to its regular individual reports on members’ trade policies under the Trade Policy Review Mechanism (TPRM), has issued more than a dozen reports on member states’ trade policies during the crisis. At the request of the G-20 countries, which pledged not to adopt protectionist trade measures at the onset of the crisis in 2008, the WTO, the OECD, and UNCTAD have produced joint reports on the trade and investment measures of the world’s largest trading states. They, too, find that G-20 countries had largely adhered to their commitment not to raise trade and investment barriers. In the World Bank’s Temporary Trade Barriers (TTB) project, an important and unique data collection that includes information on pre-crisis and crisis trade policy behavior, Bown finds that temporary trade barriers such as safeguards, countervailing and antidumping duties saw only a slight increase of usage by developed countries, in the neighborhood of 4%. In contrast, emerging market economies were the heavy users of TTBs, whose usage rose by almost 40% between 2008 and 2009.¶ As scholarly insights accumulate on the current recession and its impact on protectionism (or lack thereof), two questions emerge for further research. First, to what extent have governments employed policy substitutes that have the same effect as trade protectionism? International institutions may appear to have been successful in preventing protectionism, but governments may well have looked elsewhere to defend national economies. This question can be seen in the broader context of the “open economy trilemma,” in which governments may achieve only two of three macroeconomic policy objectives: stable exchange rates, stable prices, and open trade. Irwin argues that governments that abandoned the gold standard during the Great Depression were less protectionist, and their economies also suffered less from the recession. Existing scholarship also indicates that governments are likely to employ policy substitutes, opting for monetary autonomy when facing trade policy constraints, for example, due to membership in a preferential trade agreement. Moreover, at the time of writing, the International Monetary Fund (IMF) has announced that it has dropped its objections to capital controls, albeit cautiously and only under certain conditions, thus potentially providing another policy alternative for governments to achieve economic stability during this crisis. Future research may further extend the application to policy substitutes that are deployed during economic downturns.¶ Finally, why did firms not push for more protection? Protectionist policies are not adopted by governments in a political vacuum. In order to adopt trade defense measures such as anti-dumping duties, governments first conduct investigations to assess the extent of injury. Such investigations are initiated when firms apply for them through the domestic political process. If indeed governments did not appeal extensively or unusually to protectionist trade policies, the explanation to a significant degree lies in firm behavior. A distinguished body of research exists in this area that is due for a revisit in the age of extensive international supply chains, from Schattschneider’s classic examination of the domestic pressures that led to the Smoot-Hawley Act to Helen Milner’s study of export-dependent firms that resisted protectionism during the crisis of the 1920s and the 1970s. Milner rightly pointed out that “firms are central,” and over the years the export-dependent, multinational firm has evolved in tandem with the increasing complexity of the international supply chain. Today’s firm is not only heavily export-dependent but equally import-dependent in its reliance on intermediate inputs, whether through intra-firm trade or from foreign firms. The extensive international supply chain thus often puts exporting and importing firms on the same side of the political debate, especially when they are members of large multinational firms. Moreover, the study of firm-level behavior must extend beyond the developed world to consider firms in emerging market economies, which have been the heavy users of trade defense measures during the current recession. How the internationalization of production, driven by investment and trade in intermediate goods, restrained multinational firms from pushing for more protection remains an important question for further research.

#### Trade isn’t key to interdependence

**Streeten 2001** (Paul, Professor Emeritus of Economics at Boston University and Founder and Chairman of the journal World Development, Finance and Development, Vol 38, No 2, June)

Trade is, of course, only one, and not the most important, of many manifestations of economic interdependence. Others are the flow of factors of production—capital, technology, enterprise, and various types of labor—across frontiers and the exchange of assets, the acquisition of legal rights, and the international flows of information and knowledge. The global flow of foreign exchange has reached the incredible figure of $2 trillion per day, 98 percent of which is speculative. The multinational corporation has become an important agent of technological innovation and technology transfer. In 1995, the sales of multinationals amounted to $7 trillion, with these companies' sales outside their home countries growing 20-30 percent faster than exports.

# 1NR

### Warming

#### HFC’s are exaggerated – it isn’t enough to just limit those

Climate Wire 6/27/13

(“White House on HFCs could achieve climate results, advocates say ,” pg online @ http://www.eenews.net/stories/1059983569 //um-ef)

And not everybody is bullish on curbing HFCs. Michael Prather, a professor of Earth system science at the University of California, Irvine, said the future estimates for the compound have been exaggerated. "It's absolute hogwash," Prather said. He pointed to Intergovernmental Panel on Climate Change findings that HFC radiative forcing -- the measure of the capability of a gas to warm the Earth -- is currently less than 1 percent of the other major greenhouse gases. Therefore, he said, HFCs are only minimally responsible for the warming of the planet to date. The study released yesterday in Atmospheric Chemistry and Physics relies on a model from a 2009 study by Guus Velders, one of the first to draw attention to the climate warming caused by HFCs and a co-author of the most recent study. In this model, future HFC radiative forcing reaches 30 to 40 percent of the total greenhouse gases. The IPCC's estimate: up to 6 percent.

#### Prefer experts – there never was a problem – your evidence is flawed science

Schiermeier 2k7

(Quirin Schiermeier, “Scientific Consensus on Man-Made Ozone Hole May Be Coming Apart,” pg online @ http://icecap.us/index.php/go/new-and-cool/scientific\_consensus\_on\_man\_made\_ozone\_hole\_may\_be\_coming\_apart/ //um-ef)

As the world marks 20 years since the introduction of the Montreal Protocol to protect the ozone layer, Nature has learned of experimental data that threaten to shatter established theories of ozone chemistry. If the data are right, scientists will have to rethink their understanding of how ozone holes are formed and how that relates to climate change. Markus Rex, an atmosphere scientist at the Alfred Wegener Institute of Polar and Marine Research in Potsdam, Germany, did a double-take when he saw new data for the break-down rate of a crucial molecule, dichlorine peroxide (Cl2O2). The rate of photolysis (light-activated splitting) of this molecule reported by chemists at NASA’s Jet Propulsion Laboratory in Pasadena, California1, was extremely low in the wavelengths available in the stratosphere - almost an order of magnitude lower than the currently accepted rate. “This must have far-reaching consequences,” Rex says. “If the measurements are correct we can basically no longer say we understand how ozone holes come into being.” What effect the results have on projections of the speed or extent of ozone depletion remains unclear. Other groups have yet to confirm the new photolysis rate, but the conundrum is already causing much debate and uncertainty in the ozone research community. “Our understanding of chloride chemistry has really been blown apart,” says John Crowley, an ozone researcher at the Max Planck Institute of Chemistry in Mainz, Germany. “Until recently everything looked like it fitted nicely,” agrees Neil Harris, an atmosphere scientist who heads the European Ozone Research Coordinating Unit at the University of Cambridge, UK. “Now suddenly it’s like a plank has been pulled out of a bridge.” Post is here.

**Canada/Poland Block**

Sophie **Yeo,** **3-25**-14 http://www.rtcc.org/2014/03/25/india-and-brazil-stalling-on-global-climate-treaty-says-uk-envoy/

India and Brazil are not the only disruptions in the global effort to stem global warming, said King. Negotiations within the EU to secure a strong domestic target to reduce greenhouse gas emissions will require careful discussions with Poland, he said, adding his voice to the number of observers who have accused the government in Warsaw of blocking the negotiations. Last week, the EU Council announced that a final decision on the key elements their 2030 package will be taken by October. This is important with regards to the UN’s own deal, as it will form the basis of the EU’s contribution to the treaty. “It is clear that Poland’s position is one that will have to be worked on,” he said, adding that it would take “careful negotiation”. But Canada remained the “outlier” in terms of climate action, he said, listing it as the “only country” which was unwilling to reduce its emissions at all – a position he said that was probably a result of the benefit that its economy stands to gain from the exploitation of highly polluting tar sands. - See more at: http://www.rtcc.org/2014/03/25/india-and-brazil-stalling-on-global-climate-treaty-says-uk-envoy/#sthash.8PUZU6Sk.dpuf

**No Chance of US action- Republicans**

**Reuters 2-27**-14 http://www.reuters.com/article/2014/02/27/global-climate-legislation-idUSL1N0LW24O20140227

Senator Edward Markey, a Massachusetts Democrat who had co-authored a comprehensive climate-change bill when he was a U.S. representative, said the study should encourage the U.S. Congress to enact its own climate legislation. The bill co-authored by Markey had passed the House of Representatives in 2009 but died in the Senate a year later. "We need an international movement to pass climate legislation, and nowhere is that movement needed more than here in the United States," Markey said. Others at the report's launch, including House Democratic leader Nancy Pelosi, said that with the U.S. House now controlled by Republicans and the Senate run by Democrats, efforts at legislation are likely to **be stymied by policy gridlock.** "Action in Congress right now is **unfortunately not in the cards,"** said Todd Stern, the U.S. State Department's special envoy on climate change and lead U.S. climate negotiator.

**Mars proves—solar changes are inevitable and cause more warming**

**National Post, 2007** (Lawrence Solomon, staff writer, February 7, “Look to Mars for the Truth on Globl Warming” http://www.nationalpost.com/story.html?id=edae9952-3c3e-47ba-913f-7359a5c7f723&k=0/)

Climate change is a much, much bigger issue than the public, politicians, and even the most alarmed environmentalists realize. Global warming extends to Mars, where the polar ice cap is shrinking, where deep gullies in the landscape are now laid bare, and where the climate is the warmest it has been in decades or centuries. "One explanation could be that Mars is just coming out of an ice age," NASA scientist William Feldman speculated after the agency's Mars Odyssey completed its first Martian year of data collection. "In some low-latitude areas, the ice has already dissipated." With each passing year more and more evidence arises of the dramatic changes occurring on the only planet on the solar system, apart from Earth, to give up its climate secrets. NASA's findings in space come as no surprise to Dr. Habibullo Abdussamatov at Saint Petersburg's Pulkovo Astronomical Observatory. Pulkovo -- at the pinnacle of Russia's space-oriented scientific establishment -- is one of the world's best equipped observatories and has been since its founding in 1839. Heading Pulkovo's space research laboratory is Dr. Abdussamatov, one of the world's chief critics of the theory that man-made carbon dioxide emissions create a greenhouse effect, leading to global warming. "Mars has global warming, but without a greenhouse and without the participation of Martians," he told me. "These parallel global warmings -- observed simultaneously on Mars and on Earth -- can only be a straightline consequence of the effect of the one same factor: a long-time change in solar irradiance." The sun's increased irradiance over the last century, not C02 emissions, is responsible for the global warming we're seeing, says the celebrated scientist, and this solar irradiance also explains the great volume of C02 emissions. "It is no secret that increased solar irradiance warms Earth's oceans, which then triggers the emission of large amounts of carbon dioxide into the atmosphere. So the common view that man's industrial activity is a deciding factor in global warming has emerged from a misinterpretation of cause and effect relations." Dr. Abdussamatov goes further, debunking the very notion of a greenhouse effect. "Ascribing 'greenhouse' effect properties to the Earth's atmosphere is not scientifically substantiated," he maintains. "Heated greenhouse gases, which become lighter as a result of expansion, ascend to the atmosphere only to give the absorbed heat away."

**International community won’t act – means warming becomes inevitable**

**Mckibben 10** – Foreign Policy writer, author, environmentalist, and activist. In 1988, he wrote The End of Nature, the first book for a common audience about global warming. (Bill, 11-22, “Sipping Margaritas While the Climate Burns” http://www.foreignpolicy.com/articles/2010/11/22/sipping\_margaritas\_while\_the\_climate\_burns?page=0,1) Jacome

In fact, I suspect it will be mostly holding pattern and very little landing in Mexico this December. The fundamental problem that has always dogged these talks -- a rich north that won't give up its fossil-fuel addiction, a poor south that can't give up its hope of fossil-fueled development -- has, if anything, gotten worse, mostly because the north has decided to think of itself as poor, too or at least not able to devote resources to changing our climate course.

It is possible -- indeed it has been possible from the start -- that this essential gulf will prevent action to slow greenhouse gas emissions at the pace that physics and chemistry demand before it's too late to reverse or contain the impacts of climate change. There's really only one way to build a bridge across the divide, and that's with big stacks of money. Theoretically, the rich countries pledged at Copenhagen that they would pony up $30 billion in "fast-start" financing to help poor countries get going on building renewable energy. And at last scrupulous count, according to the World Resources Institute, there's actually $28.34 billion on the table, more than half of it coming from Japan. Unfortunately, much of it isn't "new and additional" -- instead it's repurposed money from other development grants. None of that increases anyone's confidence in the $100 billion a year that U.S. Secretary of State Hillary Clinton projected in Copenhagen would be available by 2020 -- especially because the only news that has emerged this year as to its source is that it won't be coming from "public funds."

#### Warming won’t cause extinction

Barrett, professor of natural resource economics – Columbia University**,** ‘7

(Scott, Why Cooperate? The Incentive to Supply Global Public Goods, introduction)

First, climate change does not threaten the survival of the human species.5 If unchecked, it will cause other species to become extinction (though biodiversity is being depleted now due to other reasons). It will alter critical ecosystems (though this is also happening now, and for reasons unrelated to climate change). It will reduce land area as the seas rise, and in the process displace human populations. “Catastrophic” climate change is possible, but not certain. Moreover, and unlike an asteroid collision, large changes (such as sea level rise of, say, ten meters) will likely take centuries to unfold, giving societies time to adjust. “Abrupt” climate change is also possible, and will occur more rapidly, perhaps over a decade or two. However, abrupt climate change (such as a weakening in the North Atlantic circulation), though potentially very serious, is unlikely to be ruinous. Human-induced climate change is an experiment of planetary proportions, and we cannot be sur of its consequences. Even in a worse case scenario, however, global climate change is not the equivalent of the Earth being hit by mega-asteroid. Indeed, if it were as damaging as this, and if we were sure that it would be this harmful, then our incentive to address this threat would be overwhelming. The challenge would still be more difficult than asteroid defense, but we would have done much more about it by now.

#### **No extinction from climate change**

NIPCC 11 – the Nongovernmental International Panel on Climate Change, an international panel of nongovernment scientists and scholars, March 8, 2011, “Surviving the Unprecedented Climate Change of the IPCC,” online: http://www.nipccreport.org/articles/2011/mar/8mar2011a5.html

In a paper published in Systematics and Biodiversity, Willis et al. (2010) consider the IPCC (2007) "predicted climatic changes for the next century" -- i.e., their contentions that "global temperatures will increase by 2-4°C and possibly beyond, sea levels will rise (~1 m ± 0.5 m), and atmospheric CO2 will increase by up to 1000 ppm" -- noting that it is "widely suggested that the magnitude and rate of these changes will result in many plants and animals going extinct," citing studies that suggest that "within the next century, over 35% of some biota will have gone extinct (Thomas et al., 2004; Solomon et al., 2007) and there will be extensive die-back of the tropical rainforest due to climate change (e.g. Huntingford et al., 2008)."

On the other hand, they indicate that some biologists and climatologists have pointed out that "many of the predicted increases in climate have happened before, in terms of both magnitude and rate of change (e.g. Royer, 2008; Zachos et al., 2008), and yet biotic communities have remained remarkably resilient (Mayle and Power, 2008) and in some cases thrived (Svenning and Condit, 2008)." But they report that those who mention these things are often "placed in the 'climate-change denier' category," although the purpose for pointing out these facts is simply to present "a sound scientific basis for understanding biotic responses to the magnitudes and rates of climate change predicted for the future through using the vast data resource that we can exploit in fossil records."

Going on to do just that, Willis et al. focus on "intervals in time in the fossil record when atmospheric CO2 concentrations increased up to 1200 ppm, temperatures in mid- to high-latitudes increased by greater than 4°C within 60 years, and sea levels rose by up to 3 m higher than present," describing studies of past biotic responses that indicate "the scale and impact of the magnitude and rate of such climate changes on biodiversity." And what emerges from those studies, as they describe it, "is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another." And, most importantly in this regard, they report "there is very little evidence for broad-scale extinctions due to a warming world."

In concluding, the Norwegian, Swedish and UK researchers say that "based on such evidence we urge some caution in assuming broad-scale extinctions of species will occur due solely to climate changes of the magnitude and rate predicted for the next century," reiterating that "the fossil record indicates remarkable biotic resilience to wide amplitude fluctuations in climate."

#### Warming will be slow, there’s no impact, and adaptation solves

William Yeatman 9, Energy Policy Analyst at the Competitive Enterprise Institute, February 3, 2009, “Global Warming 101: Science,” online: <http://www.globalwarming.org/2009/02/03/global-warming-101-science/>

A “planetary emergency—a crisis that threatens the survival of our civilization and the habitability of the Earth”—that is how former Vice President Al Gore describes global warming. Most environmental groups preach the same message. So do many journalists. So do some scientists.

In fact, at the 2008 annual meeting of Nobel Prize winners in Lindau, Germany, half the laureates on the climate change panel disputed the so-called consensus on global warming.

You have probably heard the dire warnings many times. Carbon dioxide (CO2) from mankind’s use of fossil fuels like coal, oil, and natural gas is building up in the atmosphere. Carbon dioxide is a greenhouse gas—it traps heat that would otherwise escape into outer space. Al Gore warns that global warming caused by carbon dioxide emissions could increase sea levels by 20 feet, spin up deadly hurricanes. It could even plunge Europe into an ice age.

Science does not support these and other scary predictions, which Gore and his allies repeatedly tout as a “scientific consensus.” Global warming is real and carbon dioxide emissions are contributing to it, but it is not a crisis. Global warming in the 21 st century is likely to be modest, and the net impacts may well be beneficial in some places. Even in the worst case, humanity will be much better off in 2100 than it is today.

The following is a summary of key points:

Average Annual Heat-Related Mortality: People will not drop like flies from heat waves in a warming world. Heat-related mortality will continue to decline as the world warms.

Far more people die each year from excess cold than from excess heat.

Global warming will not make air pollution worse.

Global warming will not lead to malaria epidemics in Northern Hemisphere countries.

Contrary to Gore, no “strong, new scientific consensus is emerging” that global warming is making hurricanes stronger.

Global Death & Death Rates Due to Extreme Events, 1900-2004: Since the 1920s, death rates related to extreme weather declined by more than 98 percent globally. The impression conveyed by An Inconvenient Truth—that global warming is making the world a more dangerous place—is false.

Gore’s warning that global warming could shut down the Atlantic branch of the oceanic thermohaline circulation (THC) and plunge Europe into an ice age is science fiction.

Gore’s warning that sea levels could rise by 20 feet is science fiction. Sea level rise in the 21 st century is likely to be measured in inches, not in feet.

The world warmed at a rate of 0.17°C per decade since 1978, according to the temperature record compiled by the United Nations Intergovernmental Panel on Climate Change (IPCC). Since most climate models predict that warming will occur at a constant—that is, non-accelerating—rate, it is reasonable to expect that global warming in the 21 st century will be close to the low end of the IPCC’s forecast range, of 1.4°C to 5.8°C.

The actual warming rate may be only half the 0.17°C per decade rate implied in the IPCC temperature record, because the IPCC has not adequately filtered out the warming biases from local factors like urbanization and improper management of monitoring equipment.

A warming near the low end of the IPCC range would produce both benefits—longer growing seasons, more rainfall, fewer cold deaths—and harms—more heat waves, more drought, some acceleration of sea level rise—but nothing resembling catastrophe.

Even in the IPCC high-end warming forecasts, human welfare would improve dramatically over the next 100 years. In the IPCC fossil-fuel-intensive development scenario, per capita GDP in developing countries increases from $875 per year in 1990 to $43,000 per year in 2100—even after taking into account an additional 110 years of global warming. Even in the IPCC worst-case scenario, global warming is not the civilization-ending catastrophe Al Gore purports it to be.

#### It’s too late—newest studies agree—and China will use coal regardless of innovation

**Dye 12** (Lee, “It May Be Too Late to Stop Global Warming,” ABC News, http://abcnews.go.com/Technology/late-stop-global-warming/story?id=17557814#.UI4EpcU8CSo)Red

Here's a dark secret about the earth's changing climate that many scientists believe, but few seem eager to discuss: It's too late to stop global warming. Greenhouse gasses pumped into the planet's atmosphere will continue to grow even if the industrialized nations cut their emissions down to the bone. Furthermore, the severe measures that would have to be taken to make those reductions stand about the same chance as that proverbial snowball in hell. Two scientists who believe we are on the wrong track argue in the current issue of the journal Nature Climate Change that global warming is inevitable and it's time to switch our focus from trying to stop it to figuring out how we are going to deal with its consequences. "At present, governments' attempts to limit greenhouse-gas emissions through carbon cap-and-trade schemes and to promote renewable and sustainable energy sources are probably too late to arrest the inevitable trend of global warming," Jasper Knight of Wits University in Johannesburg, South Africa, and Stephan Harrison of the University of Exeter in England argue in their study. Those efforts, they continue, "have little relationship to the real world." What is clear, they contend, is a profound lack of understanding about how we are going to deal with the loss of huge land areas, including some entire island nations, and massive migrations as humans flee areas no longer suitable for sustaining life, the inundation of coastal properties around the world, and so on ... and on ... and on. That doesn't mean nations should stop trying to reduce their carbon emissions, because any reduction could lessen the consequences. But the cold fact is no matter what Europe and the United States and other "developed" nations do, it's not going to curb global climate change, according to one scientist who was once highly skeptical of the entire issue of global warming. "Call me a converted skeptic," physicist Richard A. Muller says in an op-ed piece published in the New York Times last July. Muller's latest book, "Energy for Future Presidents," attempts to poke holes in nearly everything we've been told about energy and climate change, except the fact that "humans are almost entirely the cause" of global warming. Those of us who live in the "developed" world initiated it. Those who live in the "developing" world will sustain it as they strive for a standard of living equal to ours. "As far as global warming is concerned, the developed world is becoming irrelevant," Muller insists in his book. We could set an example by curbing our emissions, and thus claim in the future that "it wasn't our fault," but about the only thing that could stop it would be a complete economic collapse in China and the rest of the world's developing countries. As they race forward, their industrial growth -- and their greenhouse gas emissions -- will outpace any efforts by the West to reduce their carbon footprints, Muller contends. "China has been installing a new gigawatt of coal power each week," he says in his Times piece, and each plant pumps an additional ton of gases into the atmosphere "every second." "By the time you read this, China's yearly greenhouse gas emissions will be double those of the United States, perhaps higher," he contends. And that's not likely to change. "China is fighting poverty, malnutrition, hunger, poor health, inadequate education and limited opportunity. If you were the president of China, would you endanger progress to avoid a few degrees of temperature change?" he asks. Muller suggests a better course for the West to take than condemning China for trying to be like the rest of us. Instead, we should encourage China to switch from coal to natural gas for its power plants, which would cut those emissions in half. "Coal," he writes, "is the filthiest fuel we have." Meanwhile, the West waits for a silver bullet, possibly a geo-engineering solution that would make global warming go away by reflecting sunlight back into space, or fertilizing the oceans so they could absorb more carbon dioxide, or something we haven't even heard about. Don't expect it anytime soon. It would take a bold, and perhaps foolish, nation to take over the complex systems that control the planet's weather patterns. That's sort of what we did beginning with the Industrial Revolution. Now we have to live with it. So maybe Knight and Harrison are right. It's time to pay more attention to how we are going to handle changes to our planet that seem inevitable. We can fight global warming and try to mitigate the consequences, but it isn't going to go away.

### Treaties

#### More evidence – have to win EVERY country will comply in order to win your impact

Muller 2K

(Dr. Harold Muller is the Director of the Peace Research Institute-Frankfurt and Professor of International Relations at Goethe University Compliance Politics: A Critical Analysis of Multilateral Arms Control Treaty Enforcement http://cns.miis.edu/npr/pdfs/72muell.pdf //um-ef)

In either case, the noncompliance of a treaty party has to be exposed. It is crucial that the agent authorized to take the necessary steps, such as an international orga- nization charged with monitoring compliance with the treaty, has the unequivocal support of the treaty com- munity. The information that must be collected in cases of alleged noncompliance may be extensive. If steps are to be taken to coerce the deviant party into compliance, the perpetrator should have no chance to hide behind the solidarity of other parties; if, however, there are other parties that harbor heavy grievances, insufficient coher- ence will result and “hiding” may well become possible. The information that must be revealed may be less dam- aging to a potentially noncompliant party in the case of ambiguities where the charged party still profits from the benefit of the doubt. It goes without saying, how- ever, that remaining trust evaporates the longer the am- biguity remains unclarified; the point will be reached when the other parties are inclined to assess the situa- tion as a breach of obligations.

#### And, this is inevitable – risk of relations collapse means countries WONT be tough on enforcement – this takes out ALL of your norms arguments

Muller 2K

(Dr. Harold Muller is the Director of the Peace Research Institute-Frankfurt and Professor of International Relations at Goethe University Compliance Politics: A Critical Analysis of Multilateral Arms Control Treaty Enforcement http://cns.miis.edu/npr/pdfs/72muell.pdf //um-ef)

For this reason, there might be a strong inclination not to force compliance issues too much to the forefront, but rather to accept a gradual erosion of treaty norms be- cause confrontation might provide the bigger risk. The Soviet Union never forced the Israeli issue. Nor, for that matter, did it press the Iranian issue in the 1970s, when the Shah, an important US ally and an NPT member (in contrast to Israel), initiated a nuclear energy program that aroused considerable suspicion that a nuclear weapon was Iran’s ultimate objective. The United States, in turn, kept largely silent on Iraq and North Korea, two Soviet clients, until the late 1980s. Only South Africa, a Soviet enemy and a country from which the United States kept its distance, was the target of joint pressure in the late 1970s, even though Pretoria had not even signed the NPT. But the US government prevented this pressure from forcing the Apartheid regime to dismantle its nuclear program because South Africa was seen, despite its repugnant domestic system, to be an anticommunist bulwark in the resource-rich and geostrategically rel- evant southern part of Africa. Thus both cooperation and confrontation remained limited; neither a unilateral nor a multilateral compliance policy could be pushed to the limit

#### International law isn’t key to global cooperation to solve transnational problems

Estreicher, Law Professor at NYU, 3

(Samuel, “Rethinking the Binding Effect of Customary International Law,” Virginia Journal of International Law Association, Fall, 44 Va. J. Int'l L. 5)

As for the subsidiary law that an increasingly interdependent world needs in advance of treaties, traditional CIL could not easily play this role as it was essentially backwards looking. The new, instantaneous customary law tries to play this role, but in a way that hardly comports with legitimacy. Without relying on CIL, states, international organizations, and other actors have ample means of identifying problems requiring interstate cooperation, drafting instruments that might command state support, and marshaling the forces of moral suasion. It is hard to see that the "law" aspiration of CIL offers the prospect of a significant incremental gain. In any event, the ultimate question is whether any such benefit warrants the accompanying costs - to which I now turn.

#### And, International law has ZERO impact on state behavior

Goldsmith, Law Professor at the University of Chicago, 2K

(Jack, “Understanding the Resemblance Between Modern and Traditional Customary International Law,” Virginia Journal of International Law Association, Winter, 40 Va. J. Int'l L. 639)

The significance of this "new" CIL is controversial. Many believe it is incoherent and illegitimate. n6 Others view it as a happy development for international law generally and - because the new CIL primarily concerns human rights - for world justice. n7 In this essay we suggest that both critics and proponents of the new CIL proceed from a faulty premise. The faulty premise is that CIL - either the traditional or the new - influences national behavior. In [\*641] our view, the new CIL is no less coherent or legitimate than the old. But this is not because the new CIL is particularly coherent or legitimate, whatever those terms may mean in this context. It is because the commentators misunderstand how CIL, new or old, operates. CIL, new and old, reflects patterns of international behavior that result from states pursuing their national interests. These interests, along with the relative power of each state and other exogenous features of the international environment, determine which rules of CIL emerge in equilibrium. In both the traditional and new varieties, CIL as an independent normative force has little if any effect on national behavior.

### More Cards

#### Treaties suck – see: Kyoto

Max Paris 1-1-2013; CBC News “Kyoto Treaty Sputters To A Sorry End” http://www.thegwpf.org/kyoto-treaty-sputters/

The controversial and ineffective Kyoto Protocol’s first stage comes to an end today, leaving the world with 58 per cent more greenhouse gases than in 1990, as opposed to the five per cent reduction its signatories sought. From the beginning, the treaty that was adopted in 1997 in Kyoto, Japan, was problematic. Opponents denied the science of climate change and claimed the treaty was a socialist plot. Environmentalists decried the lack of ambition in Kyoto and warned of dire consequences for future generations. But the goal of the treaty was simple. “We hoped that we would be able to reduce greenhouse gases substantially, but that it was a first step,” explained Christine Stewart, the Liberal environment minister who negotiated in Kyoto on Canada’s behalf. The Kyoto Protocol was an initiative that came out of the 1992 Rio Earth Summit. It recognized that climate change was a result of greenhouse gases created by human industrial activity. The idea was that rich nations, which had already benefited from industrialization, would reduce their greenhouse gas emissions in the first part of the treaty and developing nations would join in later. Although the protocol was adopted in 1997, it didn’t to come into force until 2005. In the intervening eight years, countries set reduction targets for themselves and ratified the agreement. “At the time we didn’t realize how complicated it would be to get the Kyoto Protocol ratified and for it to enter into force internationally,” said Steven Guilbeault, co-founder of Equiterre, a Montreal-based environmental charity. Problems from the beginning Right off the bat, there were problems. The U.S., the world’s biggest emitter at the time, signed up but never ratified. And Canada ratified the treaty but with targets that were unachievable in the opinion of many. Bob Mills was a Reform Party MP from Alberta who went to Kyoto with the government. He was in Johannesburg five years later when the country agreed to reduce emissions to six per cent below 1990 levels. “If we ratify this thing we’ll never hit our targets,” Mills warned Liberal Prime Minister Jean Chrétien at the time, because he was worried Canada’s international reputation would take a hit. To his disappointment, Mills was right. As 2005 rolled around, Canada was nowhere near to having a plan and our emissions were rising. When he entered government a year later, the Conservatives started to lay the groundwork for much less ambitious greenhouse gas reductions. “In 2006, it was a pretty tough situation because nothing really had been accomplished. We had these targets in front of us, they were impossible to hit,” he said.

#### Treaties can’t solve – haven’t worked in decades

CFR 6-25-2013; The Global Nuclear Nonproliferation Regime http://www.cfr.org/arms-control-disarmament-and-nonproliferation/global-nuclear-nonproliferation-regime/p18984#p2

International instruments for combating nuclear proliferation were largely successful before 1991, but are proving unable to meet today's challenges. Although three states (India, Israel, and Pakistan) are known or believed to have acquired nuclear weapons during the Cold War, for five decades following the development of nuclear technology, only nine states have developed—and since 1945 none has used—nuclear weapons. However, arguably

not a single known or suspected case of proliferation since the early 1990s—Pakistan, Iraq, Iran, North Korea, Libya, or Syria— was deterred or reversed by the multilateral institutions created for this purpose. The continued advancement of Iran's nuclear program—despite the implementation of crosscutting economic sanctions and near universal global condemnation—has elicited serious concerns from states including Israel, the United States, and Saudi Arabia. Additionally, recent nonproliferation success stories, such as Libya's abandoning its nuclear program in 2003 and the accession of all of the Soviet successor states except Russia to the Nuclear Nonproliferation Treaty (NPT) as nonnuclear weapon states, have been the result of direct government-to-government negotiations and pressure rather than action by global bodies.

# 2NR

### DA

#### litigation that shutters DOD contracting

Isenberg 10 (David, Research Fellow – Independent Institute, “Contractor Legal Immunity and the ‘Political Questions’ Doctrine,” CATO Institute, 1-19, <http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine>)

One can easily see why most defense contractors, including private military and security firms working under U.S. government contract, would like to prevent such suits from proceeding. The sheer number of injuries alone gives them reason to want to avoid possible suits. According to ProPublica as of last September 30 the number of private contractors injured in Iraq and Afghanistan totaled 37,652. Of course, not all those injuries are the result of something done wrong. But even a small fraction of them would entail considerable legal costs for a contractor so it is easy to understand why they would want to preventing such suits from being filed in the first place.

As I am not a lawyer the following is derived from Maj. Carter’s article.

Traditionally, the reason given for this is that such cases may involve “political questions” that the Judicial Branch is ill-equipped to decide. Thus defense contractor advocates claim these actions must be dismissed, else there be grim consequences for Government contingency contracting.

But according to Maj. Carter, “the recent developments in political question doctrine case law are significant to the future of Government contingency contracting. However, they are not catastrophic — although portrayed as such by some defense contractor advocates. There will not be an explosion of contracting costs passed on to the Government. There will not be a mass refusal of defense contractors to accept contingency contracts. There will not be chaos on the battlefield. Such predictions are nothing more than “bellowing bungle.”

Carter wrote:

What is the political question doctrine? According to Chief Justice John Marshall, “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in [the U.S. Supreme Court].” In 2004, the Court held “[s]ometimes .. . the law is that the judicial department has no business entertaining [a] claim of unlawfulness — because the question is entrusted to one of the political branches or involves no judicially enforceable rights. Such questions are said to be ‘nonjusticiable,’ or ‘political questions.’”

What this means is that traditionally courts have deferred to the political branches in matters of foreign policy and military affairs. Policy decisions regarding the employment of U.S. military forces in combat belong to the political branches, not the courts. The Supreme Court has held that, due to their “complex, subtle, and professional” nature, decisions as to the “composition, training, equipping, and control of a military force” are “subject always” to the control of the political branches.

Tort suits that challenge the internal operations of these areas of the military are likely to be dismissed as political questions. Yet, notwithstanding the foregoing prohibitions on judicial conduct, the Supreme Court has cautioned, “it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” As mentioned earlier, vast precedent exists for judicial involvement in foreign and military affairs. Case law establishes that military decisions are reviewable by federal courts. An assertion of military necessity, standing alone, is not a bar to judicial action. Merely because a dispute can be tied in some way to combat activities does not prevent a court from reviewing it. Although an action arises in a contingency environment, if a case is essentially “an ordinary tort suit” it is well within the competence of the courts to entertain. Courts have underscored the point: no litmus test exists that prohibits judicial action merely because an issue involves the military in some fashion.

Where plaintiffs seek only damages and not injunctive relief, such cases are “particularly judicially manageable.” When such a damages-only lawsuit concerns only a defense contractor (as opposed to the Federal Government), courts have held that such actions do not involve “overseeing the conduct of foreign policy or the use and disposition of military power.” Thus, those actions are less likely to raise political questions than suits against the Government, suits seeking injunctive relief, or both.

Given the enormous amount of money involved in Government contingency contracting and the correspondingly large number of contractors and contractor employees performing GWOT (Global War on Terror) contingency contracts, the number of plaintiffs seeking redress for tortious conduct was certain to rise — and it did. Universally, defendant defense contractors invoked the political question doctrine in order to shield themselves from liability in their performance of GWOT contracts, some with more success than others. The first significant case centered around the tragic events at the Abu Ghraib prison in Iraq.

In Ibrahim v. Titan Corp., Iraqi plaintiffs alleged they were tortured, raped, humiliated, beaten, and starved while in U.S. custody. Apparently fearing a dismissal on sovereign immunity grounds if they sued the U.S. Government, the plaintiffs instead chose to name as defendants the contractors who provided interpreters and interrogators for the prison. The defendants filed a motion to dismiss, alleging the matter involved political questions. The court held the case should not be dismissed at such an early stage on political question grounds, especially because the United States was not a party to the case. Ibrahim is significant because it was the first GWOT case to underscore the need for full factual development of a case prior to an assessment of justiciability.

One particularly interesting point in Carter’s article is this:

Judges and scholars openly speculate about the possible consequences of defense contractor tort liability on the federal procurement process. In Boyle, the Supreme Court warned that “[t]he financial burden of judgments against [] contractors would ultimately be passed through, substantially if not totally, to the United States itself, since defense contractors will predictably raise their prices to cover, or to insure against, contingent liability … .”

Since private military contracting advocates claim that their firms are more cost effective than the government one might reasonably believe that they can be so only by preventing tort suits against them. If the cost of such suits were factored in, the presumed cost effectiveness could conceivably be significantly less, or perhaps not exist at all.

Carter asks “is the situation really this dire? Are contractors at a point where, because of increased litigation risks, they will be forced to charge the Government more for their services or elect to not provide services altogether?”

The answers may not be far away. In November 2008, Joshua Eller filed suit in the U.S. District Court for the Southern District of Texas, as a result of injuries he suffered at Balad Air Base, Iraq, while deployed as a contractor employee of KBR from February to November of 2006. The complaint alleges defendants KBR and Halliburton “intentionally and negligently exposed thousands of soldiers, contract employees and other persons to unsafe water, unsafe food, and contamination due to faulty waste disposal systems … .” The complaint also includes allegations of injury from toxic smoke which emanated from an open air burn pit at Balad. The complaint alleges approximately 1,000 other individuals suffered similar injuries and it seeks to combine all of those actions into a single class action lawsuit. More significantly, this action is only one of several suits currently pending that relate to similar KBR activities in Iraq.

The political question doctrine will be a major factor in this coming storm of litigation. With the large number of potential plaintiffs compounded by the seriousness of the conduct and injuries alleged, these suits have the potential to dwarf the damages awards previously sought in earlier GWOT cases. Undoubtedly, KBR will seek to raise the political question doctrine as an absolute bar to these and any similar suits.

Defense contractor advocates warn of “deleterious effects” to the mission and the contractor-military relationship if tort suits against war zone defense contractors are allowed to proceed. They argue such tort claims “frustrate” and “conflict with” the Government’s ability to control contingency operations and would result in compromised logistical support and mission jeopardy. Furthermore, many companies, especially smaller ones, could be deterred from seeking contingency contracts. For those contractors who do elect to proceed, they will seek to insulate themselves from liability by either self-insuring or obtaining insurance coverage, if it is available. The argument continues that such costs will then be passed onto the Government in the form of higher contract prices. But, most alarmingly, some defense contractor advocates claim the impact of such suits “would be far more profound than financial” and defense contractors may, out of a fear of being sued, refuse to follow the military’s instructions altogether.