# 1AC

### 1AC – Advantage 1

#### North Korean collapse’s inevitable and will require US COIN intervention

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More likely is a North Korean collapse. Bennett has argued that “There is a reasonable probability that North Korean totalitarianism will end in the foreseeable future.” Columnist Steven Metz recently [contended](http://www.worldpoliticsreview.com/articles/13450/strategic-horizons-when-north-korea-collapses-u-s-must-be-ready) [5]: “The question is not whether the Kim dynasty will fail but when.” Three years ago analyst John Guardiano said the North would “[inevitably](http://spectator.org/articles/38529/more-guns-less-butter) [6]” implode.¶ Of course, the Kim dynasty has outlived the Soviet Union by more than two decades. The DPRK may continue to surprise the West with its resilience.¶ Nevertheless, the system is under increasing stress. Metz observed: “The execution could be a sign that the cohesion of the North Korean elite is crumbling. If so, it is the beginning of the end for the parasitic Kim dynasty.” [Jang’s elimination suggests weakness](http://nationalinterest.org/commentary/the-fall-jang-song-taek-9539) [7], not strength. Jang’s relatives are being imprisoned at home and recalled from abroad; his wife, Kim’s aunt by blood, has disappeared from public view.¶ Any future political battle could turn even more violent. A breakdown of one-man rule in what Bennett called a “failing state” risks a political free-for-all. The North has never tried power-sharing, or any kind of collective leadership. Concluded Bennett: “The division of the North into factions would likely precipitate civil war, as at least some of the factions will seek primacy and eventual control of all of North Korea.” Moreover, the regime or even one faction could strike outward to rally internal support.¶ Metz posited “widespread, protracted internal conflict that could make even the Syrian civil war pale by comparison.” The resulting hardship could exceed that resulting from the 1990s famine, which killed a half million or more North Koreans. We should not expect a peaceful, German-style resolution.¶ Although most people presume reunification would follow a North Korean collapse, Bennett warned that “China could take political control of much of the North, likely in cooperation with one or more North Korean factions. A failure to achieve Korean unification in these circumstances could doom Korea to division for at least many more decades.”¶ What should Washington do? Guardiano advocated unilateral American intervention: “sooner or later, the U.S. military is going to have to deal with North Korea. And, when we do, we likely will have to occupy and rebuild the country just as we have done in Iraq and are now doing in Afghanistan.”¶ Seoul might not approve of the Pentagon turning the North into an American colony. More likely, the South would lead any Western military effort. Argued Bennett, the ROK could “decide to intervene in such a crisis with U.S. assistance and seek Korean unification.”¶ However, the PRC also would be tempted to act militarily—to prevent mass refugee flows into China’s border provinces, safeguard Chinese economic interests, and ensure friendly political control in Pyongyang. Beijing’s incentive to act would be even stronger if U.S. forces entered as well.¶ Military intervention would be no cakewalk. The Kim dynasty has taught the population that Americans and their South Korean puppets are the enemy; North Koreans might offer little warmer welcome to the PRC. The DPRK military or individual units could fight conventionally or resort to guerrilla combat. Worse would be a clash between allied and Chinese forces. Worried Bennett: “The forces of both sides would have significant incentives to advance rapidly into the North, leading to a risk of accidental combat between them. In the zeal of the moment, the inevitable accidents could escalate into major combat between the ROK and U.S. forces and the Chinese forces.”¶ In short, a North Korean implosion could be an explosion as well, with catastrophic consequences radiating outward across the region. Concerned governments should begin pondering likely contingencies.

#### That will require capture and detention missions --- secures WMD following government collapse

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In the event of a North Korean government collapse, the elimination of WMD would be not only one of the most important missions, but probably the most challenging. Most of North Korea’s critical WMD facilities are located north of Pyongyang: reaching these facilities would take a great deal of time, because stability forces would first need to secure the lines of communication and move northward through the mountainous northern region with its extremely poor road networks. As difficult to accept as it may be, foreign leaders may have to wait weeks or even months before stabilization forces could secure and inspect most North Korean WMD facilities. The good news, however, is that Korea is a peninsula: countries could attempt to contain weapons, fissile material, and WMD personnel by sealing off North Korea’s coastline and its borders (another important reason to perform a border control operation).¶ A mission to eliminate North Korea’s WMD would have four key components, which would need to be conducted simultaneously. The first task would [End Page 101] be to contain the problem, which would require control of North Korean ports, naval/coast guard interception of vessels leaving North Korean waters, aerial reconnaissance of air traffic and air interception of aircraft leaving North Korea, and cooperative efforts with North Korea’s neighbors—China, Russia, and South Korea—to prevent overland escape of weapons, fissile material, and personnel. These operations would need to continue until all North Korean WMD facilities and potential dispersal sites had been searched and secured.¶ A second component of the mission would be to conduct surveillance and intercept targets of opportunity. Reconnaissance assets and special forces would be sent ahead of “friendly” forces to observe suspected WMD facilities in northern North Korea. If these forces detected suspicious activities suggesting that WMD matériel or weapons were being looted or stolen, assault teams could be dispatched to stop those activities and contain the materials being moved. These teams could be inserted through the secured ports or from ships on the North Korean coast, including army, Marine, and special forces.¶ A third component of the mission would be to secure the highest priority WMD targets. This mission would be conducted in tandem with the principal stability operation moving northward tier-by-tier through North Korea. Units would seize, secure, and search suspected WMD sites within the “active” tier and then proceed into the next tier.¶ The fourth component of the mission would involve a sequenced, methodical sweep through North Korea to secure and inspect all possible WMD facilities, including potentially thousands of underground facilities.55 This effort would consolidate WMD at central storage sites, where specialized personnel would be called in to evaluate them, a process usually referred to as “exploitation.”56 International scientists and weapons inspectors, including personnel from organizations such as the International Atomic Energy Agency, would be part of this group. They would want to study North Korea’s technology and determine which countries or groups provided technical assistance. They would also want to gather vital scientific documentation and construct a personnel chart—a “deck of cards” of the key players in North Korea’s WMD program,57 who would need to be located and prevented from leaving the country. Once the examination of these materials was complete, Koreans [End Page 102] would need to make decisions about the elimination of the confiscated materials. During this entire process, new intelligence about previously unknown sites would be gathered from captured records and personnel, and shared with WMD elimination teams and forces involved in conventional disarmament efforts.¶ Mission Requirements¶ Naval and air forces would mainly resource the first component of this mission, in addition to the border control personnel described earlier. The second and fourth components would be performed as part of the stability operation or conventional disarmament operation. Thus we assume that the third component (seizure of high-priority facilities) is the key component for estimating necessary forces for the WMD elimination mission.¶ Securing each of North Korea’s high-priority WMD facilities would be akin to launching a “raid”: a forced-entry operation into a facility, which usually involves surprising and overcoming local defenders. Raids against installations with light to modest defenses typically involve 100–200 Special Forces soldiers; increasing the size beyond these numbers vastly increases the complexity. The raid of Osama bin Laden’s compound in Abbottabad, Pakistan, was performed by 79 U.S. commandoes in four helicopters.58 The Israeli raid in 1976 to free hostages held at Entebbe Airport involved between 100 and 200 commandoes in the ground task force. The United States sent 56 special operations soldiers to storm the Son Tay prisoner of war camp in North Vietnam in 1970.59 For the failed U.S. operation in 1980 to liberate U.S. hostages held in Iran, the United States deployed an assault force of 132 men. In Somalia, the U.S. raid to capture warlord Mohamed Farrah Aideed and other clan leaders involved 160 soldiers, including Army Rangers and Delta Force operators.60 With the exception of the Entebbe mission, all of the raids described above relied primarily on helicopter-borne forces.¶ Using these historical cases, we estimate that securing and searching a major WMD facility would require roughly 200 soldiers, or about two companies. This estimate is based on our assumption that the operation would face a low level of resistance from North Korean forces. Without North Korean military [End Page 103] passivity, a battalion or a brigade (700–3,500 personnel) would likely be required. North Korea’s WMD sites are among the country’s most sensitive and valuable assets; many of them are large facilities and would be heavily guarded.

#### BUT, the US must tread carefully --- perceived illegitimate practices will destroy the COIN operation’s legitimacy and bolster the insurgency

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The United States is another highly interested actor that could become involved, by virtue of its alliance ties, interests, and capabilities. It is a longtime ally of South Korea, and its forces have trained for six decades to fight military operations alongside South Koreans on the peninsula. Beyond this, the United States is a regional hegemon with a declared commitment to maintaining stability in the Asia-Pacific region. Advocates of continuing a U.S. strategy of primacy or hegemony would argue that a close relationship with a unified Korea would help to subvert Chinese influence on the peninsula, and that active U.S. participation during a Korean transition would further this goal.79¶ Moreover, given its “global war on terror,” the United States could choose to intervene out of particular concern for the “loose nukes” problem. The U.S. military has unique WMD elimination units trained and equipped for locating nuclear weapons within facilities and engaging in “sensitive site exploitation”—the collection of intelligence about the nature and quantity of WMD at a particular site. American intervention is already suggested by U.S. [End Page 112] planning with South Korea, and by the conduct of joint exercises aimed at preparing for emergencies associated with North Korean collapse, in particular, locating, securing, and eliminating North Korea WMD.80¶ American participation is not assured, nor is it likely to be extensive. Hundreds of thousands of U.S. troops are tied up in or rotating to Afghanistan and Iraq, and in 2011 President Barack Obama’s administration initiated another military commitment in Libya. In 2008 Secretary of Defense Robert Gates commented, “The way that things have evolved in Korea, if there ever should be a conflict, the main American contribution is not ground forces.”81 Furthermore, the United States is facing a massive debt burden, and its people may be wary of embarking on another costly foreign adventure.¶ Substantial U.S. participation could also undermine the success of a stability operation in North Korea. Deep-seated anti-American sentiment exists not only in North Korea—whose people have been raised on a diet of anti-American vitriol—but also among many people in the South. Many Koreans in both North and South blame their division on the United States.82 Coming on the heels of the U.S. invasions of Afghanistan and Iraq, the image of American troops swarming all over North Korea may create the perception among some Koreans that the United States is essentially absorbing Korea into its “empire” with Seoul’s blessing. A large U.S. troop contingent may therefore wrest legitimacy from the stability force and accord it instead to any insurgents. As Daniel Byman writes, “Since the best cause for insurgents to harness is nationalism, direct and open U.S. support can undercut the legitimacy of a government.”83 Furthermore, large numbers of U.S. troops on China’s border would deeply antagonize Beijing. China’s willingness to cooperate in a Korean settlement may depend in large part on U.S. behavior during Korea’s transition. U.S. restraint and multilateral cooperation would help to reassure the Chinese that the United States was not attempting to dominate the peninsula, which may mollify Beijing’s attitude toward a future strategic relationship between the United States and unified Korea.84 [End Page 113]

#### Restricting overbroad detention guidelines is vital to effective COIN operations --- prevents false identification and civilian backlash

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3.1. Detention, Interrogation, and Torture: Short-term Security or Legitimacy? ¶ An incumbent is faced with extremely difficult choices during a counterinsurgency. While external threats are relatively easy to isolate and deal with directly, an insurgent group is an amorphous and inherently clandestine organization. Engaging a successful insurgent movement primarily through military force may be analogized to punching water—while there may be significant impact at given points, the bulk of the insurgent forces will seek to flow away from the engagement, disperse and strike other areas.62 Because of this elusive nature inherent to insurgencies, it becomes crucial for the incumbent to gain intelligence about the insurgency. This will generally involve the detention and interrogation of suspected insurgents. ¶ The detention policies applied to suspected insurgents have become a point of significant controversy in the United States, especially as a result of the prisoner abuses perpetrated at the Iraqi prison Abu Ghraib63 and the legal questions regarding detainee treatment and due process at Guantanamo Bay.64 Indeed, the detainee abuse present at Guantanamo and Abu Ghraib has led to a significant loss of trust and faith—both at home65 and, crucially, abroad66—in the capacity of the American government to act in an honest fashion. 67 Indeed, one commentator has dubbed it ―the U.S. military‘s most serious setback since 9/11.‖68 ¶ The tendency for incumbents to react harshly towards captured insurgents (or suspected insurgents) is perhaps most graphically seen in the memoirs of General Paul Aussaresses. Aussaresses served as the primary counterinsurgency implementation officer for General Massu, the prefect of the city of Algiers during the Battle of Algiers (Jan–March 1957), 69 and was most directly responsible for French action against the FLN insurgency there.70 Aussaresses‘s extremely candid memoir provides a great deal of insight into the position of a determined incumbent willing to target a civilian population. A conversation he had with a superior officer, Colonel de Cockborne, places the issue of insurgent treatment in the starkest light possible: ¶ ―“And how do you handle the suspects afterwards?” asked the colonel. ¶ ―“You mean once they‘ve talked?”¶ ―“That‘s right.”¶ ―“If they‘re connected to the crimes perpetrated by the terrorists, I shoot them.‖ ¶ ―“But you do understand that the bulk of the FLN is involved in terrorism!” answered de Cockborne. ¶ ―“Yes, I know that.”¶ ―Wouldn‘t it be better to hand them over to the judicial system rather than execute them? We can‘t just go around knocking off every member of an organization! It‘s crazy!‖ ¶ ―But, Colonel, that‘s what the highest governmental authorities have decided. The courts don‘t want to handle the FLN precisely because there are too many of them, because we wouldn‘t know where to put them, and because we can‘t just send hundreds of people to the guillotine. The justice system is set up to handle a peacetime situation in metropolitan France. This is Algeria, where a war is about to start. . . . One thing is very clear: our mission demands results, requiring torture and summary executions, and as far as I can see it‘s only beginning.‖71 ¶ While public opinion was certainly a factor to the French counterinsurgents in Algeria, as witnessed by Aussaresses‘s comment (quoted above) that ―we can‘t just send hundreds of people to the guillotine,‖ this did not deter the French government from sanctioning the extralegal execution of captured FLN members.72 Aussaresses mentions a magistrate reporting directly to the Minister of Justice who all but instructed Aussaresses to kill FLN leader Larbi Ben M‘Hidi: ¶ ―That‘s exactly what I mean. If you didn‘t search him [the captured Ben M‘Hidi], you didn‘t find his cyanide capsule.‖ ¶ ―What are you talking about?‖ ¶ ―Well,‖ said Bérard, pronouncing each word carefully, I won‘t be teaching you anything you don‘t already know. All the top leaders [of the FLN] have a cyanide capsule. It‘s a well-known fact.‖ ¶ What Bérard wanted to say, since he represented the judiciary, was extremely clear to me . . . . 73 ¶ The Algerian case is an example of counterinsurgency practice supplanting the rule of law. As Aussaresses‘s quotes indicate, the French authorities, both civil and military, considered the French judicial system inadequate for dealing with FLN members. ¶ It is a blunt reality that any counterinsurgency must and will engage in both detention and interrogation of suspected insurgents. Some commentators, like Aussaresses, suggest that torture is another one of the blunt realities presented in such a situation, commenting that ―once a country demands that its army fight an enemy who is using terror to compel an indifferent population to join its ranks and provoke a repression that will in turn outrage international public opinion, it becomes impossible for that army to avoid using extreme measures.‖74 Others take the approach of Alistair Horne, who notes that along with the corrosive moral effects associated with torture,75 the long-term costs from torture to French strategic goals in Algeria were tremendous: the anger from French torture neutralized any moderate Algerian Muslims (described as the ―interlocuteurs valables‖ by Horne) who might have been able to achieve peace earlier, and also weakened domestic public opinion in France to a degree that continued efforts in Algeria were unsustainable.76 ¶ Neither Horne nor Aussaresses addresses directly, or in any great detail, the effect of torture policies on the rule of law in particular. Given Aussaresses‘s distaste for the capabilities of the judicial system (―Even if the law had been enforced in all its harshness, few persons would have been executed . . . .‖77 ―[T]o hand the attorney over to the judicial system . . . meant, in effect, granting him impunity . . . .‖78), this is understandable. However, Horne does include a response from a French paratrooper commander that highlights why the decision to torture is so pernicious to establishing the rule of law, stating ―the army had come to regard a prisoner as no longer an Arab peasant‘ but simply a source of intelligence.‘‖79 The prisoners were no longer individuals entitled to the protection of the law, but simply intelligence resources. ¶ This trend towards dehumanization becomes even more pernicious when one considers that false identification of insurgents is a relatively common phenomenon. As Kalyvas & Kocher point out, during an insurgency ―[s]tates (as well as challengers) rely on individual informants who have incentives to denounce their personal or local enemies.‖80 Even without personal incentives like those mentioned by Kalyvas & Kocher (informants extorting women for sexual favors and threatening to term them Viet Cong members, or naming a loan holder a Viet Cong member in order to avoid paying a debt81), the counterinsurgent is likely to provide incentives for naming insurgency members. For a current example, the BBC reported in 2006 that most detainees at Guantánamo Bay were not brought in by American forces, but instead by bounty hunters, and only eight percent (42 of the then 517 detainees at Guantánamo) were confirmed al Qaeda fighters.82 ¶ If taken to its extremes, the depersonalization of the populace can ultimately result in Hama-like policies. The Guatemalan counterinsurgency campaign—the period between 1980 and 1983 dubbed ‗la violencia‘—contained an estimated 422 massacres committed by the belligerent parties.83 Of the 422 massacres, which resulted in approximately 14,000 deaths, it is estimated that the Guatemalan government committed ninety percent of the killings. 84 ¶ One of the difficulties with reforming detention practices is the potential for conflict between detention goals. It may seem like aggressive detention policies are most likely to be effective at curtailing an insurgency by removing the insurgents from the population quickly. However, this can easily backfire if the incumbent is not careful and discriminating in detention policies. Over-broad detention of the populace can easily cause the population to begin supporting the insurgency.85

#### Uncontained collapse of North Korea causes WMD use, chemical, biological, and nuclear proliferation, and nuclear terrorism

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Figure 6.1 identifies some of the challenges that could complicate these consequences. First and foremost, North Korea has a very large active duty military (perhaps as many as 1.2 million men1 ) and a very large number of weapons. It is a military that is poised for mobilization as soon as a major crisis develops (with reportedly 7.7 million reserve personnel2). A government collapse would lead to at least some mobilization, yielding perhaps several million North Korean personnel in arms. The North Korean military also possesses WMD, which could give it the ability to damage its opponents substantially. Today, many in the North Korean military—perhaps most—would be unfriendly toward unification, fearing ROK and U.S. control of North Korea, in large part as the result of North Korean indoctrination. The regime has used this indoctrination to influence both North Korean career military personnel and conscripts to have significant loyalty toward the North Korean regime and to fear a serious decline in their quality of life in a ROK-led unification. As a result, after a collapse and subsequent unification, many North Korean military personnel could be led into criminal activity and/or insurgency against the unified Korean government. In addition, the North Korean military could become involved in civil war because of factional rivalry. If it does, such contests would be a fight for survival that would compel the factions to very escalatory action if they feared they might lose. All this would be fueled by the humanitarian disaster that would accompany a North Korean government collapse.¶ After a North Korean government collapse, the North Korean military would almost certainly break into factions focused on regain ing control of North Korea and their own survival. Some soldiers (per haps many) would desert to escape military life and return to their families. Over time, a civil war or regular opposition to intervening ROK and U.S. (and Chinese) forces could give way to insurgency and criminal behavior, as suggested in Figure 6.2. The large size of the North Korean military and the vast stocks of weapons would allow at least some people and weapons to be turned to these purposes. Should hunger and instability grow, many of the military, and especially the special forces, would be likely to join criminal groups. The failure of North Korean control mechanisms, including the security services, would contribute to this migration.¶ Instability in North Korea would grow as insurgency and criminal activity grow. And in turn, insurgency and criminal activity would grow as instability grew. In the end, stability in the former North Korea is critical to a successful unification; thus, the ROK would need to deal with these threats and suppress them as best possible.¶ Finally, weapons will also be a complication after a North Korean government failure, especially WMD. Figure 6.3 shows some of the challenges of trying to achieve ROK and U.S. control of these weapons. North Korea has a bountiful supply of weapons of many types, including potentially enough weapons to arm a significant fraction of its active duty and reserve forces. As noted in Chapter One, it also appears to have a significant quantity of WMD, amounting to perhaps 2,500 to 5,000 tons of chemical weapons,3 and the nuclear materials for at least five to ten nuclear weapons, although some evidence suggests that imports and uranium enrichment could make the numbers as high as 20 or so.4 The ROK MND has stated that the “North is also suspected of being able to independently cultivate and produce such biological weapons as anthrax, smallpox, and cholera.”5 But the exact quantities of any of the North Korean weapons are unknown, which would com plicate any effort to collect and eliminate them. North Korea also has a large number of underground facilities (UGFs), reportedly more than 10,000,6 in which many of these weapons are stored. Among these UGFs and other potential storage locations, it appears that the ROK and United States do not know where many of the weapons are stored, making it difficult to prioritize sites to be visited for weapon collection and elimination or even to know where to check for weapons. ROK and U.S. forces are likely insufficient to guard the large number of weapon storage and related facilities simultaneously, so a consolidation effort would be required. ¶ Other challenges are associated with who controls the weapons, especially the WMD. After a North Korean government collapse, the military or other elites that control weapons will likely try to disperse many weapons and related production capabilities to retain control of them and to reduce the chances of the weapons being destroyed by ROK and U.S. attack.7 Thus, even if the ROK and the United States thought they knew where the WMD was located before the North Korean government collapses, they may still need to search most UGFs and pursue WMD in other locations after the collapse. The North Korean military would use its various weapons, likely including WMD, if it were ordered to invade the ROK (especially if the regime is trying to prevent a collapse via a diversionary war). Alternatively, after a collapse, these weapons could well be used in a North Korean civil war or in support of an insurgency or criminal activity. Any groups gaining control of these weapons might well sell them to third parties to gain cash for food and survival. If WMD is sold, there is a serious potential that it will eventually make its way to rogue states or terrorist groups through established international black market connections. Terrorist groups would have strong interest in using WMD against the United States, and deterring them from doing so would be very difficult.

#### Extinction

Hayes 10 Peter Hayes, \*Executive Director of the Nautilus Institute for Security and Sustainable Development, AND, Michael Hamel-Green, \*\* Executive Dean of the Faculty of Arts, Education and Human Development act Victoria University (1/5/10, Executive Dean at Victoria, “The Path Not Taken, the Way Still Open: Denuclearizing the Korean Peninsula and Northeast Asia,” http://www.nautilus.org/fora/security/10001HayesHamalGreen.pdf

At worst, **there is the possibility of nuclear attack, whether by intention, miscalculation, or merely accident, leading to the resumption of Korean War hostilities.** On the Korean Peninsula itself, key population centres are well within short or medium range missiles. The whole of Japan is likely to come within North Korean missile range. Pyongyang has a population of over 2 million, Seoul (close to the North Korean border) 11 million, and Tokyo over 20 million. **Even a limited nuclear exchange would result in a holocaust of unprecedented proportions.**¶But the catastrophe within the region would not be the only outcome. New research indicates that **even a limited nuclear war in the region would rearrange our global climate** far more quickly than global warming. Westberg draws attention to new studies modelling the effects of even a limited nuclear exchange involving approximately 100 Hiroshima-sized 15 kt bombs2 (by comparison it should be noted that the United States currently deploys warheads in the range 100 to 477 kt, that is, individual warheads equivalent in yield to a range of 6 to 32 Hiroshimas).The studies indicate that the soot from the fires produced would lead to a decrease in global temperature by 1.25 degrees Celsius for a period of 6-8 years.3 In Westberg’s view: That is not global winter, but the nuclear darkness will cause a deeper drop in temperature than at any time during the last 1000 years. The temperature over the continents would decrease substantially more than the global average. A decrease in rainfall over the continents would also follow…The period of nuclear darkness will cause much greater decrease in grain production than 5% and it will continue for many years...hundreds of millions of people will die from hunger…To make matters even worse, such amounts of smoke injected into the stratosphere would cause a huge reduction in the Earth’s protective ozone.4 These, of course, are not the only consequences. Reactors might also be targeted, causing further mayhem and downwind radiation effects, superimposed on a smoking, radiating ruin left by nuclear next-use. Millions of refugees would flee the affected regions. The direct impacts, and the follow-on impacts on the global economy via ecological and food insecurity, could make the present global financial crisis pale by comparison. How the great powers, especially the nuclear weapons states respond to such a crisis, and in particular, whether nuclear weapons are used in response to nuclear first-use, could make or break the global non proliferation and disarmament regimes. There could be many unanticipated impacts on regional and global security relationships5, with subsequent nuclear breakout and geopolitical turbulence, including possible loss-of-control over fissile material or warheads in the chaos of nuclear war, and aftermath chain-reaction affects involving other potential proliferant states. The Korean nuclear proliferation issue is not just a regional threat but a global one that warrants priority consideration from the international community.

#### North Korean collapse causes flood of refugees to China --- wrecks CCP stability

CSM 13, “5 reasons why China won't help the US on North Korea”, 4-25, http://www.csmonitor.com/World/Asia-Pacific/2013/0425/5-reasons-why-China-won-t-help-the-US-on-North-Korea/Refugees-are-expensive-and-threaten-China-s-stability

A [North Korea](http://www.csmonitor.com/tags/topic/North+Korea) in transition – whether finally opening up or in collapse, or both – could see mass movements of people.¶ If Koreans move out of the North they will likely go across the border to [China](http://www.csmonitor.com/tags/topic/China), rather than risk the heavily mined demilitarized zone separating North and [South Korea](http://www.csmonitor.com/tags/topic/South+Korea). China has a bit of a window into what that could look like: A flight-to-China scenario actually did happen in the famine years of the 1990s, when, despite the most dire of warnings and penalty of torture or death, tens of thousands of North Koreans escaped to China to avoid starvation.¶ While there is no similar mass hunger today, China is worried about the lack of control it might have should a war or a crisis force possibly hundreds of thousands of ordinary Koreans across the [Yellow River](http://www.csmonitor.com/tags/topic/Yellow+River) and into its provinces.¶ The prospect of so many refugees flooding into China would not only be expensive and potentially flare ethnic tensions in the region, it could violate one of China’s prime directives: stability.

#### Destroys Chinese political and economic stability

Heesun Wee 14, CNBC, “Emerging Crisis? China’s North Korea Dilemma”, http://www.theblaze.com/stories/2014/01/29/emerging-crisis-chinas-north-korea-dilemma/

Chinese leadership, above all else, wants stability in the region. Beyond triggering a refugee crisis, a sudden North Korea collapse would overwhelm the local economies. And that would be unwelcome for China, which already is reaching a key inflection point.¶ After decades of double-digit, export-fueled growth, signs point to a slower, more balanced expansion for the mainland. A survey last week suggested China’s manufacturing activity dipped in January for the first time in six months. That helped spook the global markets last week, and sparked investor worries about the emerging economies, including China.

#### Chinese lash-out goes nuclear

The Epoch Times 4, Renxing San, 8/4, http://english.epochtimes.com/news/5-8-4/30931.html

Since the Party’s life is “above all else,” it would not be surprising if the CCP resorts to the use of biological, chemical, and nuclear weapons in its attempt to extend its life. The CCP, which disregards human life, would not hesitate to kill two hundred million Americans, along with seven or eight hundred million Chinese, to achieve its ends. These speeches let the public see the CCP for what it really is. With evil filling its every cell the CCP intends to wage a war against humankind in its desperate attempt to cling to life. That is the main theme of the speeches. This theme is murderous and utterly evil. In China we have seen beggars who coerced people to give them money by threatening to stab themselves with knives or pierce their throats with long nails. But we have never, until now, seen such a gangster who would use biological, chemical, and nuclear weapons to threaten the world, that all will die together with him. This bloody confession has confirmed the CCP’s nature: that of a monstrous murderer who has killed 80 million Chinese people and who now plans to hold one billion people hostage and gamble with their lives.

#### And --- causes US-China conflict escalation

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In the event of government collapse in North Korea, the cessation of government-provided food and services, as well as rising internal violence, may encourage many North Koreans to flee to neighboring countries.38 These countries would consider using military forces to secure their borders.¶ North Korea’s population is concentrated around Pyongyang and along each coast. Some refugees could head for South Korea (approximately 150 kilometers from Pyongyang). The terrain in that direction is not as difficult as the rough mountain terrain that lies northward, but the mountains on the eastern half of the peninsula still pose significant barriers. Other refugees, particularly among the more than 11 million people who live above the peninsula’s “narrow neck” could head north. North Korea shares a 19-kilometer border with Russia at its far northeastern corner, along the Tumen River; otherwise, most of its northern border is shared with China. The Chinese province of Jilin contains the Yanbian Korean Autonomous Prefecture, which has a population of more than 500,000 ethnic Koreans (40 percent of its population). During the 1995–97 famine in North Korea, an estimated 400,000 North Koreans crossed into China in search of food. The United States and the UN estimate that 30,000–50,000 North Korean refugees live in China.39 Importantly, these North Koreans sought refuge despite the risk of imprisonment, torture, or execution if caught and sent home.40 In the absence of such deterrents, the flow of refugees would likely be much higher.41¶ A refugee crisis on the Korean Peninsula could create significant regional instability and possibly require countries to provide food, security, housing, and other care to fleeing refugees. The Chinese fear that North Korean soldiers might cross into China, bringing their weapons with them and engaging in banditry and other violent activity.42 As noted, refugee activity on the border [End Page 97] could spur China to send the PLA into North Korea to stabilize the area. If the United States and South Korea also sent forces into North Korea to help with the refugee problem, then the intermingling of Chinese, Korean, and American soldiers could lead to confusion, skirmishes, and escalation.

#### Full-scale nuclear exchange --- no checks

Avery Goldstein 13, the David M. Knott Professor of Global Politics and IR and Director of the Center for the Study of Contemporary China @ the University of Pennsylvania, “China’s Real and Present Danger,” September/October, Foreign Affairs, http://www.foreignaffairs.com/articles/139651/avery-goldstein/chinas-real-and-present-danger?cid=soc-twitter-in-essays-chinas\_clear\_and\_present\_danger-100713

Much of the debate about China’s rise in recent years has focused on the potential dangers China could pose as an eventual peer competitor to the United States bent on challenging the existing international order. But another issue is far more pressing. For at least the next decade, while China remains relatively weak compared to the United States, there is a real danger that Beijing and Washington will find themselves in a crisis that could quickly escalate to military conflict. Unlike a long-term great-power strategic rivalry that might or might not develop down the road, the danger of a crisis involving the two nuclear-armed countries is a tangible, near-term concern -- and the events of the past few years suggest the risk might be increasing.¶ Since the end of the Cold War, Beijing and Washington have managed to avoid perilous showdowns on several occasions: in 1995–96, when the United States responded to Chinese missile tests intended to warn Taiwanese voters about the danger of pushing for independence; in 1999, when U.S. warplanes accidentally bombed the Chinese embassy in Belgrade during the NATO air assault on Serbia; and in 2001, when a U.S. spy plane collided with a Chinese fighter jet, leading to the death of the Chinese pilot and Beijing’s detention of the U.S. plane and crew. But the lack of serious escalation during those episodes should not breed complacency. None of them met the definition of a genuine crisis: a confrontation that threatens vital interests on both sides and thus sharply increases the risk of war. If Beijing and Washington were to find themselves in that sort of showdown in the near future, they would both have strong incentives to resort to force. Moreover, the temptations and pressures to escalate would likely be highest in the early stages of the face-off, making it harder for diplomacy to prevent war.¶ THIN RED LINES¶ It might seem that the prospects for a crisis of this sort in U.S.-Chinese relations have diminished in recent years as tensions over Taiwan have cooled, defusing the powder keg that has driven much Chinese and U.S. military planning in East Asia since the mid-1990s. But other potential flash points have emerged. As China and its neighbors squabble over islands and maritime rights in the East China and South China seas, the United States has reiterated its treaty commitments to defend two of the countries that are contesting China’s claims (Japan and the Philippines) and has nurtured increasingly close ties with a third (Vietnam). Moreover, the Obama administration’s “pivot,” or “rebalancing,” to Asia, a diplomatic turn matched by planned military redeployments, has signaled that Washington is prepared to get involved in the event of a regional conflict.¶ China might be less cautious about triggering a crisis -- and less cautious about firing the first shot if a crisis ensued. ¶ Also, the United States insists that international law affords it freedom of navigation in international waters and airspace, defined as lying beyond a country’s 12-mile territorial limit. China, by contrast, asserts that other countries’ military vessels and aircraft are not free to enter its roughly 200-mile-wide “exclusive economic zone” without express permission -- a prohibition that, given Beijing’s territorial claims, could place much of the South China Sea and the airspace above it off-limits to U.S. military ships and planes. Disputes over freedom of navigation have already caused confrontations between China and the United States, and they remain a possible trigger for a serious crisis.¶ It is true that China and the United States are not currently adversaries -- certainly not in the way that the Soviet Union and the United States were during the Cold War. But the risk of a U.S.-Chinese crisis might actually be greater than it would be if Beijing and Washington were locked in a zero-sum, life-and-death struggle. As armed adversaries on hair-trigger alert, the Soviet Union and the United States understood that their fundamentally opposed interests might bring about a war. After going through several nerve-racking confrontations over Berlin and Cuba, they gained an understanding of each other’s vital interests -- not to be challenged without risking a crisis -- and developed mechanisms to avoid escalation. China and the United States have yet to reach a similar shared understanding about vital interests or to develop reliable means for crisis management.¶ Neither China nor the United States has clearly defined its vital interests across broad areas of the western Pacific. In recent years, China has issued various unofficial statements about its “core interests” that have sometimes gone beyond simply ensuring the territorial and political integrity of the mainland and its claim to sovereignty over Taiwan. Beijing has suggested, for example, that it might consider the disputed areas of the East China and South China seas to be core interests.¶ Washington has also been vague about what it sees as its vital interests in the region. The United States hedges on the question of whether Taiwan falls under a U.S. security umbrella. And the United States’ stance on the maritime disputes involving China and its neighbors is somewhat confusing: Washington has remained neutral on the rival sovereignty claims and insisted that the disputes be resolved peacefully but has also reaffirmed its commitment to stand by its allies in the event that a conflict erupts. Such Chinese and U.S. ambiguity about the “redlines” that cannot be crossed without risking conflict increases the chances that either side could take steps that it believes are safe but that turn out to be unexpectedly provocative.¶ MORE DANGEROUS THAN THE COLD WAR?¶ Uncertainty about what could lead either Beijing or Washington to risk war makes a crisis far more likely, since neither side knows when, where, or just how hard it can push without the other side pushing back. This situation bears some resemblance to that of the early Cold War, when it took a number of serious crises for the two sides to feel each other out and learn the rules of the road. But today’s environment might be even more dangerous.¶ The balance of nuclear and conventional military power between China and the United States, for example, is much more lopsided than the one that existed between the Soviet Union and the United States. Should Beijing and Washington find themselves in a conflict, the huge U.S. advantage in conventional forces would increase the temptation for Washington to threaten to or actually use force. Recognizing the temptation facing Washington, Beijing might in turn feel pressure to use its conventional forces before they are destroyed. Although China could not reverse the military imbalance, it might believe that quickly imposing high costs on the United States would be the best way to get it to back off.¶ The fact that both sides have nuclear arsenals would help keep the situation in check, because both sides would want to avoid actions that would invite nuclear retaliation. Indeed, if only nuclear considerations mattered, U.S.-Chinese crises would be very stable and not worth worrying about too much. But the two sides’ conventional forces complicate matters and undermine the stability provided by nuclear deterrence. During a crisis, either side might believe that using its conventional forces would confer bargaining leverage, manipulating the other side’s fear of escalation through what the economist Thomas Schelling calls a “competition in risk-taking.” In a crisis, China or the United States might believe that it valued what was at stake more than the other and would therefore be willing to tolerate a higher level of risk. But because using conventional forces would be only the first step in an unpredictable process subject to misperception, missteps, and miscalculation, there is no guarantee that brinkmanship would end before it led to an unanticipated nuclear catastrophe.¶ China, moreover, apparently believes that nuclear deterrence opens the door to the safe use of conventional force. Since both countries would fear a potential nuclear exchange, the Chinese seem to think that neither they nor the Americans would allow a military conflict to escalate too far. Soviet leaders, by contrast, indicated that they would use whatever military means were necessary if war came -- which is one reason why war never came. In addition, China’s official “no first use” nuclear policy, which guides the Chinese military’s preparation and training for conflict, might reinforce Beijing’s confidence that limited war with the United States would not mean courting nuclear escalation. As a result of its beliefs, Beijing might be less cautious about taking steps that would risk triggering a crisis. And if a crisis ensued, China might also be less cautious about firing the first shot.¶ Such beliefs are particularly worrisome given recent developments in technology that have dramatically improved the precision and effectiveness of conventional military capabilities. Their lethality might confer a dramatic advantage to the side that attacks first, something that was generally not true of conventional military operations in the main European theater of U.S.-Soviet confrontation. Moreover, because the sophisticated computer and satellite systems that guide contemporary weapons are highly vulnerable to conventional military strikes or cyberattacks, today’s more precise weapons might be effective only if they are used before an adversary has struck or adopted countermeasures. If peacetime restraint were to give way to a search for advantage in a crisis, neither China nor the United States could be confident about the durability of the systems managing its advanced conventional weapons.¶ Chinese analysts seem to overestimate how easy it is to send signals through military actions and underestimate the risks of miscommunication. ¶ Under such circumstances, both Beijing and Washington would have incentives to initiate an attack. China would feel particularly strong pressure, since its advanced conventional weapons are more fully dependent on vulnerable computer networks, fixed radar sites, and satellites. The effectiveness of U.S. advanced forces is less dependent on these most vulnerable systems. The advantage held by the United States, however, might increase its temptation to strike first, especially against China’s satellites, since it would be able to cope with Chinese retaliation in kind.¶ COMMUNICATION BREAKDOWN¶ A U.S.-Chinese crisis might also be more dangerous than Cold War showdowns because of the unreliability of the existing channels of communication between Beijing and Washington. After the Cuban missile crisis, the Soviet Union and the United States recognized the importance of direct communication between their top leaders and set up the Moscow–Washington hot line. In 1998, China and the United States also set up a hot line for direct communication between their presidents. But despite the hot line’s availability, the White House was not able to contact China’s top leaders in a timely fashion following the 1999 Belgrade embassy bombing or the 2001 spy-plane incident. China’s failure to use the hot line as intended might have reflected the reluctance of its leaders to respond until they had reached an internal consensus or until they had consulted widely with their military. The delay might also have reflected China’s difficulties in coordinating policy, since China lacks a dependable counterpart to the U.S. National Security Council. Whatever the reason, experience suggests that frustrating delays in direct communication are likely during what would be the crucial early moments of an unfolding U.S.-Chinese crisis.¶ Instead, communication between the two countries might initially be limited to either public statements or tacit signals sent through actions. But public statements are aimed at multiple audiences, and nationalist passions in either China or the United States, as well as pressure from allies, might force either side to take a more aggressive public stance than it actually felt was warranted. Absent direct and confidential communication, the two countries might be unable to discuss politically sensitive proposals. They might also be unable to share information that could help head off a disastrous escalation, such as classified details about military capabilities or military maneuvers already under way.¶ Communicating through actions is also problematic, with many possibilities for distortion in sending messages and for misinterpretation in receiving them. Chinese analysts seem to overestimate how easy it is to send signals through military actions and underestimate the risks of escalation resulting from miscommunication. For example, the analysts Andrew Erickson and David Yang have drawn attention to Chinese military writings that propose using China’s antiship ballistic missile system, designed for targeting U.S. aircraft carriers, to convey Beijing’s resolve during a crisis. Some Chinese military thinkers have suggested that China could send a signal by firing warning shots intended to land near a moving U.S. aircraft carrier or even by carefully aiming strikes at the command tower of the U.S. carrier while sparing the rest of the vessel. But as the political scientist Owen Coté has noted, even a very accurate antiship ballistic missile system will inevitably have some margin of error. Consequently, even the smallest salvo of this kind would entail a risk of inadvertent serious damage and thus unintended escalation.¶ A final important factor that could make a U.S.-Chinese crisis more dangerous than those during the Cold War is geography. The focus of Cold War confrontations was primarily on land, especially in central Europe, whereas a future confrontation between China and the United States would almost certainly begin at sea. This difference would shape a U.S.-Chinese crisis in a number of ways, especially by requiring both sides to make some fateful choices early on. China’s small fleet of nuclear-armed ballistic missile submarines (SSBNs) and its much larger fleet of conventionally armed attack submarines are most secure when they remain in the shallow waters near the Chinese mainland, where poor acoustics compromise the effectiveness of U.S. undersea antisubmarine operations. Their proximity to Chinese land-based aircraft and air defenses also limits Washington’s ability to rely on its airpower and surface ships to counter them. For China’s submarine forces to play a role in a showdown with the United States, however, they would have to move out of those safer waters.¶ The prospect of China’s submarines breaking out would dramatically increase the instability of a crisis. Although U.S. antisubmarine warfare technology would be more effective against China’s submarines operating in less noisy open waters (where the United States also enjoys air superiority), it would not be perfect: some U.S. naval assets that came within range of surviving Chinese submarines would be at risk. Early in a crisis, therefore, the United States would be tempted to minimize this risk by sinking Chinese attack submarines as they tried to leave their home waters. Especially because there are only a few narrow routes through which Chinese submarines can reach deeper waters, the United States would be tempted to strike early rather than accept an increased risk to U.S. naval forces. Regardless of the U.S. decision, any Chinese attack submarines that managed to reach distant deeper waters would face a “use them or lose them” dilemma, thanks to their greater vulnerability to U.S. antisubmarine forces -- one more potential trigger for escalation.¶ China’s nuclear-armed SSBNs present other risks. Under its no-first-use policy, China has clearly stated that any attack on its strategic nuclear forces would justify nuclear retaliation, making a U.S. strike against its SSBNs seem unlikely. Early in a crisis, therefore, Beijing would probably believe that it could safely deploy its SSBNs to distant, deeper waters, where they would be best positioned to execute their launch orders. Such a deep-water deployment, however, would introduce new dangers. One is the possibility that U.S. naval forces might mistake a Chinese SSBN for a conventional attack submarine and fire on it, inviting Chinese nuclear retaliation. Another is the danger that a Chinese SSBN could escalate the conflict without explicit orders from Beijing, owing to the limited communication such submarines maintain with the mainland in order to avoid detection.

### 1AC – Advantage 2

#### US will continue to conduct capture operations in Afghanistan well after 2014 withdrawal

NYT 2/4 – New York Times, US Plans to Shift to Elite Units as it Winds Down In Afghanistan, 2014, THom Shanker and Eric Schmitt, www.nytimes.com/2012/02/05/world/asia/us-plans-a-shift-to-elite-forces-in-afghanistan.html?pagewanted=all&\_r=0

The United States’ plan to wind down its combat role in Afghanistan a year earlier than expected relies on shifting responsibility to Special Operations forces that hunt insurgent leaders and train local troops, according to senior Pentagon officials and military officers. These forces could remain in the country well after the NATO mission ends in late 2014.

U.S. to End Combat Role in Afghanistan as Early as Next Year, Panetta Says (February 2, 2012)

The plan, if approved by President Obama, would amount to the most significant evolution in the military campaign since Mr. Obama sent in 32,000 more troops to wage an intensive and costly counterinsurgency effort.

Under the emerging plan, American conventional forces, focused on policing large parts of Afghanistan, will be the first to leave, while thousands of American Special Operations forces remain, making up an increasing percentage of the troops on the ground; their number may even grow.

The evolving strategy is far different from the withdrawal plan for Iraq, where almost all American forces, conventional or otherwise, have left. Iraq has devolved into sectarian violence ever since the withdrawal in December, which threatens to undo the political and security gains there.

Pentagon officials and military planners say the new plan for Afghanistan is not a direct response to the deteriorating conditions in Iraq. Even so, the shift could give Mr. Obama a political shield against attacks from his Republican rivals in the presidential race who have already begun criticizing him for moving too swiftly to extract troops from Afghanistan.

Unlike in Iraq, where domestic political pressure gave Prime Minister Nuri Kamal al-Maliki reason to resist a continued American military presence into 2012, in Afghanistan, President Hamid Karzai and his senior aides have expressed an initial willingness to continue a partnership with the United States that includes counterterrorism missions and training.

Senior American officials have also expressed a desire to keep some training and counterterrorism troops in Afghanistan past 2014. The transition plan for the next three years in Afghanistan could be a model for such a continued military relationship.

The new focus builds on a desire to use the nation’s most elite troops to counter any residual terrorist threat over the coming months as well as to devote the military’s best trainers to the difficult task of preparing Afghan security forces to take over responsibilities in their country.

The plan would put a particularly heavy focus on Army Special Forces, also known as the Green Berets. They would be in charge of training a variety of Afghan security forces. At the same time, the elite commando teams within Special Operations forces would continue their raids to hunt down, capture or kill insurgent commanders and terrorist leaders and keep pressure on cells of fighters to prevent them from mounting attacks.

#### They’ll be detained at Bagram and follow US law, even post-transfer of authority to the Afghanis

OSF 12, Open Society Foundations, “Remaking Bagram”, Regional Policy Initiative , September 6, 2012, <http://www.opensocietyfoundations.org/sites/default/files/BagramReportEnglish.pdf>

**DPIF = Parwan Detention Facility**

U.S. officials told Open Society Foundations researchers that “The March 9, 2012 Detentions MOU ¶ does not limit the authority of US forces to capture and detain the enemy. The U.S. still retains the ¶ authority to capture--and detain unprivileged enemy belligerents who have been captured--in ¶ accordance with the Law of Armed Conflict.”21 The official indicated that such individuals could be ¶ transferred to U.S. custody at the DFIP post-September 9: “If we decided to put them in Parwan ¶ then they would be part of the population that would be transferred as part of the MoU.”22 ¶ Even assuming that the Afghan government is prepare to allow the United States to retain a portion ¶ of the DFIP, the length of time U.S. forces may hold any Afghan detainee remains in dispute at the ¶ time of writing. “After the signing of the [Detentions] MoU the time limit to hold detainee is 72 ¶ hours and should be respected,”23 according to Presidential spokesperson Faizi. The Afghan position ¶ seems to be that the United States can only hold detainees for as long as it takes them to transfer to ¶ Afghan authorities, which does not require a “holding” or detention facility in the DFIP.24 National¶ Security Advisor Dr. Spanta spelled this out, “there will be no detention by the U.S. authorities in ¶ Bagram or elsewhere for a few days or weeks. The agreement is only that if there are some technical ¶ problems, they can take two to three days to transfer, to Kabul for instance, but principally they have ¶ to hand them over. There is a big difference in perception between them and us on this issue. …I ¶ have discussed this with Karzai yesterday there is no tolerance with him on this issue.” 25 ¶ Presidential spokesman Faizi stated that this limitation on the United States - to only have temporary ¶ detention power on the battlefield - is also reflected in the Special Operations MoU, which requires ¶ U.S. special forces operations to be approved by and coordinated with Afghan forces. “According to ¶ the [Special Operations] MoU there should be no unilateral military operations; if an Afghan citizen ¶ arrested in any unilateral Afghan or joint operation with international forces they will be transferred ¶ to the Afghan authorities…if the U.S. wants to investigate them they can do so while they are in ¶ Afghan custody.”26 ¶ National Security Advisor Dr. Rangin Dadfar Spanta told Open Society Foundations researchers that ¶ “we cannot allow our allies and friends to have a detention center in Afghanistan, this is illegal… ¶ through night raids and special operations they cannot and should not take new detainees, they must ¶ hand over at that place [of capture] to Afghans.”27 ¶ A related problem, which for Afghan officials appears to have undercut the spirit of the Detentions ¶ MoU, is that since March 9th the United States has continued to capture and detain individuals, and ¶ send them to the U.S. side of the DFIP. The Open Society Foundations has been told that the ¶ United States has added approximately 600 additional detainees to the DFIP since March 9, 2012.28¶ General Farouq Barekzai, Afghan commander of the DFIP, acknowledged that the Detentions MoU ¶ only applies to the 3,100 detainees held at Bagram as of March 9, 2012—and that the transfer of ¶ additional detainees “needs another, separate agreement.”29 Article 11 of the Detentions MoU ¶ explicitly leaves open the possibility that individuals captured after September 9, 2012, will be ¶ transferred into the Afghan internment regime.30 ¶ According to National Security Adviser Dr. Spanta, the fact that the United States has continued to ¶ transfer captured individuals to the U.S. side of the DFIP since March 9, 2012. “is not in accordance ¶ with our agreement.” 31¶ U.S. officials acknowledged that there is currently no clear agreement between the U.S. and Afghan ¶ governments over how post-March 9 cases will be handled, or a set timetable for completing these ¶ additional transfers. U.S. officials at Task Force 435, which oversees U.S. detention operations in ¶ Afghanistan, have told Open Society Foundations researchers that the United States intends to ¶ process these detainees under the same process established by the Detentions MoU: “The process ¶ for transferring detainees who were detained after the signing of the March 9 detention operations ¶ MoU will eventually proceed in similar fashion to those detainees who were detained before the ¶ MoU.”32 According to the U.S. State Department, “it is our intention that any Afghan nationals ¶ detained on or after 9 March 2012 will go into the same transfer processes that were established for ¶ pre-9 March 2012 detainees, and will be steadily transferred to GIRoA (the Afghan government).” ¶ But given that Afghan government officials are so categorical about the end of U.S. detention power ¶ in the DFIP after September 9, 2012, the fate of these detainees is unclear.

#### Lack of legal limits on US detention authority creates public fears of spillover to all future detentions in Afghanistan

OSF 12, Open Society Foundations, “Remaking Bagram”, Regional Policy Initiative , September 6, 2012, http://www.opensocietyfoundations.org/sites/default/files/BagramReportEnglish.pdf

The likelihood that the Afghan internment regime will persist well after September 9, 2012, seems ¶ much greater should the United States continue its detention operations at the U.S. side of the DFIP, ¶ as discussed above. The United States may insist that an internment regime remain in place on the ¶ Afghan side to receive U.S. detainee transfers given the lack of admissible evidence against many ¶ high value detainees due to be transferred to Afghan custody. As discussed in section VI, the Afghan ¶ review boards that determine whether detainees may be interned can consider certain classified ¶ intelligence that is inadmissible in Afghan courts. Indeed, Open Society Foundations researchers ¶ learned that disagreements over the legality and future of Afghan internment led to a temporary ¶ suspension of U.S. detainee transfers, lifted only days before the scheduled handover.52 ¶ Even more troubling is that there is nothing in the transition procedure that explicitly limits ¶ internment to individuals who have been held by the U.S. at the DFIP or even those initially ¶ captured by the U.S. or international forces. On the face of it, there is nothing that prevents the ¶ Afghan government from using the transition procedure to not only to intern post-handover, but to ¶ subject anyone it deems to meet the detention criteria to internment anywhere in the country. ¶ Indeed, National Security Advisor Dr. Rangin Dadfar Spanta told Open Society Foundations ¶ researchers that the Afghan government will expand the use of internment beyond the DFIP ¶ transition, and could subject individuals captured in Afghan operations to internment. “For example, ¶ if we arrest the shadow governor of the Taliban for Logar on the streets of Kabul, according to our ¶ legal system we may have to release him because we have no proof that he’s involved in killing ¶ people. An Afghan judge will ask was he armed, did he attack someone, but even if we have voice ¶ recordings [intelligence intercepts] it is not valid [as evidence in Afghan courts]. But we know he is ¶ the shadow governor and commander of dozens of terrorists… How can we keep him legally and ¶ respect his rights? That’s what AP II provides, it provides him protections and commits Afghanistan ¶ to protecting his human rights, but at the same time it allows us to keep him [in internment].” ¶ The lack of clear, well-defined legal limits to the internment regime—and the prospect that it will be ¶ used to intern individuals captured post-handover or in future Afghan operations is deeply ¶ concerning. As Rohullah Qarizada, head of the Afghan Independent Bar Association stated, “There ¶ is nothing written [in the Procedure or MoU] limiting this only to the 3,100 detainees at Bagram or ¶ limiting it to the transfer. That’s why we’re worried that if the Afghan government or the U.S. ¶ decided, they could still put people into administrative detention after the handover deadline, and ¶ they will say that there’s nothing in the agreement that prevents this.”53

Ambiguity about “substantial support” specifically spurs public fears of arbitrary detainment

OSF 12, Open Society Foundations, “Remaking Bagram”, Regional Policy Initiative , September 6, 2012, http://www.opensocietyfoundations.org/sites/default/files/BagramReportEnglish.pdf

There is significant ambiguity in the detention criteria, particularly with respect to the meaning of ¶ “member of” and “substantially support.” Lack of guidance on how to interpret this is problematic, ¶ particularly where evidence is often scant (see section VI for discussion regarding sufficiency of ¶ evidence in detainees’ case files). There may be significant divergence or arbitrariness over what ¶ conduct meets the criteria for internment, and how such interpretations ultimately relate to ¶ determinations regarding the threat individuals posed, and the necessity of subjecting such ¶ individuals to preventative as opposed to criminal detention. ¶ More troubling is how such vague criteria might facilitate the misuse or abuse of the internment ¶ regime. ¶ Several leading Afghan lawyers voiced serious concerns regarding the wide, undefined scope of the ¶ internment power that the procedure apparently establishes. “This is the real issue,” cautioned Abdul ¶ Qawi Afzali, deputy director of LAOA. “If this allows the government going forward to grab ¶ someone, to put them in prison under administrative detention, it could be for whatever arbitrary reason, how they look, or how they smell. This is the fear.”

#### That radicalizes detainees and the public --- fuels the insurgency

Candace Rondeaux 12, Fellow at the Center on National Security at Fordham Law School & former senior analyst for the International Crisis Group in Kabul, “Obama's Bagram Problem”, Foreign Affairs, January 27, http://www.foreignaffairs.com/articles/137059/candace-rondeaux/obamas-bagram-problem

Throughout the many twists and turns of the U.S. intervention in Afghanistan over the last decade, one issue has remained a constant problem for Washington: the status of Afghan detainees in U.S. custody. The question of who has control over those held in Afghan prisons came to the forefront of the debate over the war again last month, when Afghan President Hamid Karzai demanded that the United States immediately transfer control of the U.S.-run prison at the Bagram Air Base to Afghan authorities. Karzai’s move underscored the challenge the United States faces as it tries to extricate itself from Afghanistan: the closer the 2014 exit date becomes, the bolder Karzai is likelier to be in asserting Afghanistan’s sovereignty and his own viability as a political leader in the face of a potential Taliban resurgence.¶ The prison at the massive U.S. military base at Bagram, in the northern province of Parwan, has long been dogged by questions about its legitimacy and its strategic utility. For years, under the George W. Bush administration, it operated as one of the central nodes in the U.S. intelligence community’s global network of secret sites; access to detainees was severely restricted for both the Afghan government and the International Committee of the Red Cross.¶ Upon taking office in January 2009, U.S. President Barack Obama signed an order that called for the closure of the detention facility at Guantánamo Bay, Cuba, and the CIA’s global network of black sites, the first of several signals that Obama was determined to reverse Bush’s detention policies. In August 2009, General Stanley McChrystal, then commander of NATO and U.S. forces in Afghanistan, dubbed Bagram a “strategic liability,” arguing that extrajudicial detentions at Bagram had eroded Afghan public support for the presence of foreign troops. In McChrystal’s view, Washington could no longer ignore the question of what to do with prisoners at Bagram.¶ Bagram also threatened to imperil the delicate alliance between the United States and other NATO member states that have soldiers in Afghanistan, some of which had long been wary of Washington’s prosecution of a seemingly limitless war on terror that fell well outside the rules of engagement called for by the Geneva Conventions. As a consequence, in the fall of 2009, the Obama administration revamped its detention policy, assigning oversight of the prison to an interagency military-civilian body known as Task Force 435.¶ U.S. officials signed a memorandum of agreement with their counterparts in Kabul that would transfer responsibility for the detention facility at Bagram from the Americans to the Afghans in July 2010 and create a parallel Afghan-run Justice Center in Parwan, which handles the cases of transferred detainees; since then, citing security challenges and slow progress in training Afghan prosecutors and judges, Washington has twice postponed handing over control. Last August, U.S. military officials said that the Afghan legal system was too dysfunctional to take control of the facility before 2014. Western and Afghan critics alike have complained that the Afghan penal system -- poorly funded, corrupt to the core, and prone to torture -- cannot handle the sensitive cases of high-risk detainees captured by U.S. forces on the battlefield. Given the widespread and well-documented reports of torture and abuse in Afghan prisons and the decrepit state of the Afghan court system, these are valid concerns. After all, arbitrary and indefinite detention can drive prisoners to violence and radicalization -- and that is just as true for detainees held in Afghan custody as it is for those held by the U.S. military at Bagram.¶ But for Karzai, responsibility over the country’s prisons is not a question of human rights and due process: he is more interested in how he can leverage control of Bagram to regain his footing in his fraught relationship with Washington. Karzai and those close to him are frustrated by both their increasing marginalization in U.S.-led talks with the Taliban and their weak bargaining position on the proposed U.S.-Afghan strategic partnership deal. They see Bagram as an important bargaining chip, one that can put the Afghan government back at the center of negotiations with the Taliban. Control over Taliban prisoners held in Bagram would provide Karzai with the power to give or withhold access to insurgent figures who might be pivotal to the negotiation process, allowing Karzai to play spoiler if he so wishes. And, if Karzai controlled Bagram, the Taliban would have an incentive to reach out more directly and publicly to the Afghan government, a step the Taliban has so far publicly shunned.¶ The question of who controls Bagram also provides the Afghan political opposition with a stick to beat Karzai with, as efforts to transfer U.S. control of the facility into Afghan hands inevitably falter. Although the Afghan opposition has proved weak and fragmented, it has gained considerable mileage from complaining about Karzai’s policy failures -- his consistent failure to gain any traction with Washington on control of Bagram among them. Protecting himself from the criticisms of the opposition gives Karzai yet another motive to insist on control of the prison.¶ As part of its new detainee policy, the Obama administration launched a process in which a review board of three military officers hears evidence to determine whether a Bagram detainee is a supporter or member of the Taliban, al Qaeda, or another insurgent group. Detainees are allowed to attend unclassified portions of their hearings. They are also assigned personal representatives, U.S. military officials who are responsible for assisting detainees with presenting their cases.¶ When I visited Bagram last November, Colonel Peter Masciola, head of the legal operations directorate there, described this to me as a “meaningful opportunity to counter claims in an administrative procedure.” The hearings, however, fall far short of international legal standards. Detainees are still barred from reviewing classified evidence or from listening to classified testimony in their cases, which largely consists of hearsay evidence of the detainee’s alleged terrorist connections. Personal representatives assigned to detainees are allowed to see the classified evidence but not share it, and since these representatives are not lawyers, there is no way for detainees to challenge their inability to review classified evidence. This is a clear violation of international law on fair trial standards. But by providing a hearing that mimics a regular court procedure, the White House has been able to airbrush these concerns out of the picture.¶ In the classification-obsessed culture of the U.S. military, the simplest details about a detainee’s capture are often classified. Since the U.S. military also limits the information it shares with the Afghan government, Afghan judges and prosecutors are also barred from reviewing all the evidence in cases that are transferred to them under the Bagram transition agreement.¶ Task Force 435 has generally solved this problem by either delaying the transfer of detainee cases or, sometimes, by handing over virtually empty case files to Afghan authorities. As a result, Afghan judges have thrown out dozens of cases because of a lack of evidence. This was one of the chief findings of a presidentially appointed Afghan constitutional commission that recently visited the Afghan-run side of the facility. The Afghan government commission acknowledged that some detainees transferred from U.S. to Afghan control had been abused by Afghan authorities, but ultimately concluded that deficiencies in the Afghan system represented the lesser of two evils when stacked against the arbitrary nature of the U.S. detention regime. Although the commission report was flimsy and (rather ironically) focused on the many flaws in the Afghan government’s handling of detainees transferred from U.S. custody, it also concluded that Afghan prosecutors should toss out cases against detainees who are transferred without case files and release them immediately.¶ U.S. officials working in Task Force 435 have acknowledged the problem and say they have tried to remedy the situation by issuing directives aimed at clarifying the classification process, but claim they cannot do much more than that. Meanwhile, there is a serious backlog of cases at Bagram, resulting in a population spike that saw the number of detainees held at the facility increase from around 1,700 last March to around 3,000 last November.

#### Ensures Taliban resurgence

Yalda Hakim 14 is a presenter and correspondent with BBC World News and won the United Nations Media Peace Prize for Best Australian Television News coverage in 2009, “Afghanistan’s Guantanamo: Prison or “Taliban-making factory”?”, First Post, 2-28, http://www.firstpost.com/world/afghanistans-guantanamo-prison-or-taliban-making-factory-1412257.html

On Thursday 13th February, the gates of Afghanistan’s maximum security prison, Bagram, swung open and 65 detainees walked free, despite ongoing protest from the United States. The US says the men are dangerous terrorists. But Afghan authorities say they’re innocent and have been illegally locked up by foreign soldiers.¶ The move was a major blow to already strained relations between Kabul and Washington, and very clearly showed how much President Karzai had broken ties with his supposed ‘allies’, after more than 12 years. Bagram detention facility is a place where ‘high value targets’ caught on the battlefield are held. Some have called it Afghanistan’s Guantanamo Bay. While 65 have been released, there are currently more than 1,300 inmates at the prison. The facility was originally built and run by the Americans, but was handed over to Afghan control last year. The US still controls the wings with foreign born inmates. The extensive perimeter security, including vehicle X-ray machines, sniffer dogs and machine gun nests are also under American control. After two years of negotiating, I was finally given unprecedented access at a critical turning point in the prison's history and Afghanistan's future. The day I arrived at the prison, the Afghan Review Board (ARB), the committee responsible for the prisoner issue, had announced that it would be releasing the 65 detainees. The ARB said these men could not be prosecuted because of a lack of evidence. The NATO-led international peacekeeping force (ISAF) quickly came out and condemned the decision, saying the detainees had "blood on their hands". Sixteen-year-old Mohibullah was part of the group waiting to be released. He told me he was a simple shepherd from Helmand Province. The US military told me he was a Taliban coordinator who conducted bomb attacks. They said he was caught with a firearm, insurgent propaganda on his mobile phone and tested positive for four types of explosives. Whatever the truth, after a year in Bagram Prison, his views on the United States had crystallised. He told me: “I hate them, because I am here for no reason. Of course I hate them. I want to ask them: what is my crime? If they told me clearly what evidence they had against me I wouldn’t mind if they kept me in prison for ten years. But no one is asking about us. I have spent a year far from my mother and father. Why? What is the reason, I ask.” Cell after cell contained men proclaiming their innocence; telling me they were farmers who got caught up in American raids on their villages. I was taken into one cell where a group of about 20 men had gathered to express their grievances. One man told me he had been held for four and a half years without trial. The man would not tell me what evidence they had against him. He is not among those not scheduled for release. He went on to say that after he was captured, he was tortured by the Americans at a place known as the ‘black prison’. “They drowned me a few times. There was an audio box, they would put me in it and turn on the voice and deprive me of sleep for hours. They would electrocute me. I am sorry to say that I have been raped. We don’t like to admit to this because we are ashamed,” he said. When we asked about the so called ‘black prison,’ the US military told me there was no such place and this man ‘may have been coached’. When I pressed them to tell me by whom, they said they "would rather not say". During the two days I was there, I came across families who were visiting their detained relatives. Many had made the long journey from the south of the country, travelling on buses for days to get here. They were allowed about 30 minutes together, often separated by toughened glass. Each of the family members had numbered placards round their necks. I met the distressed mother of one prisoner who told me, “I feel very bad, because of all the worrying about him, we all are suffering from psychological problems now. Is this life? His father, brother and sisters come to see him and we all leave crying. It is very difficult to see our son like this.There are lots of others like my son here. For God sake, they should think about them. We had only one court hearing in a year and a half!” It is difficult to know whether these men are innocent or not. The Americans have accused the Afghan authorities of ignoring crucial forensic evidence. Senator John McCain told me: “Many of these people were caught red handed. The tests on their fingers, of explosives on their hands. I mean it’s not as if this was questionable. These are the hardcore of literally maybe over 1,000 that we have already released.” In an unattributed briefing, the US military provided us with a detailed document on some of the detainees who were scheduled for release. We were told many of these men were Taliban insurgents involved in making and detonating improvised explosive devices (IEDs). One of the examples the Americans gave was that DNA had been found on gaffer tape and wrapped around wires of IED fragments. "I want the Afghan people to understand clearly that from the American perspective, this is an outrage against the Afghan people, against the Afghan legal system and against the coalition as a whole," Senator Lindsay Graham told me. The Afghans have rebutted these claims, saying their American counterparts have not provided them with sufficient intelligence and many of the names of sources had been redacted. The lack of trust between the supposed allies is clear. Afghan President Hamid Karzai told me Bagram is a "Taliban-making factory" where innocent people are indiscriminately mixing with extremists and being indoctrinated. “People who have come out of the prison have told me: this is a prison where they take innocent Afghans and turn them against their own country and government,” said Karzai. Now that some of these prisoners have been released - some to the most troubled regions where the Taliban hold sway - the question is, will American fears be realised?

#### Now’s key --- increased instability will cause full-scale civil war and great power intervention

Ali Imran 3-2, Washington-based journalist, Pakistan Times, “The high cost of Afghan uncertainty”, http://www.pakistantoday.com.pk/2014/03/02/comment/the-high-cost-of-afghan-uncertainty/

Afghanistan is yet again on the edge of uncertainty and its future fragile as ever.¶ President Barack Obama has ordered contingency planning for pullout of all American forces by the end of the year after months of frustrations over delay in conclusion of bilateral security agreement. In Central and South Asia, nervous neighbours have stepped up diplomatic efforts – though disparately – to deal with the post-2014 Afghan situation amidst an echoing sense of déjà vu.¶ Voicing Beijing’s concerns over possible Afghanistan collapse, Chinese Foreign Minister Wang Yi visited Kabul last week and prescribed a broad-based political reconciliation as the way forward. Finance Minister Ishaq Dar visited Kabul over the weekend and committed $ 500 million for development of the strife-stricken country.¶ India and Iran have also been engaging Kabul. New Delhi has indicated shifting gear from its soft power aid for Afghanistan to hard power involvement with military supplies. Tehran has pledged its support for Kabul but also warned the Afghans against signing the BSA with Washington.¶ Nearly 13 years after the 9/11-sparked war, the stakes for Central and South Asia with regard to regional integration through Afghanistan are far higher. A troubled Afghanistan will blunt the potential for multi-billion dollars trade, energy and economic interconnectedness through projects like TAPI gas line and CASA-1000 electricity transmission projects. Pakistan’s exports to Afghanistan, which have grown to 2.3 billion annually, could also be at stake.¶ More vexingly, the Afghan instability will send terrorism jitters across the regions, provoking external interference. The return of Afghan civil war will test a whole lot of bilateral relations in the region and might draw the edgy countries into a proxy-led or even direct broader conflict.¶

#### Causes nuclear war

Cronin 13 (Audrey Kurth Cronin is Professor of Public Policy at George Mason University and author of How Terrorism Ends and Great Power Politics and the Struggle over Austria. Thinking Long on Afghanistan: Could it be Neutralized? Center for Strategic and International Studies The Washington Quarterly • 36:1 pp. 55\_72 <http://dx.doi.org/10.1080/0163660X.2013.751650>)

With ISAF withdrawal inevitable, a sea change is already underway: the question is whether the United States will be ahead of the curve or behind it. Under current circumstances, key actions within Afghanistan by any one state are perceived to have a deleterious effect on the interests of other competing states, so the only feasible solution is to discourage all of them from interfering in a neutralized state. As the United States draws down over the next two years, yielding to regional anarchy would be irresponsible. Allowing neighbors to rely on bilateral measures, jockey for relative position, and pursue conflicting national interests without regard for dangerous regional dynamics will result in a repeat of the pattern that has played out in Afghanistan for the past thirty years\_/except this time the outcome could be not just terrorism but nuclear war.

#### **Taliban resurgence causes global nuclear terrorism, Pakistan takeover, and Central Asian instability**

Lisa Curtis 13, Senior Research Fellow, Heritage Foundation, “Nato's total withdrawal from Afghanistan could rock Asia stability”, 11-18 http://www.heritage.org/research/commentary/2013/11/natos-total-withdrawal-from-afghanistan-could-rock-asia-stability

If the Taliban were able to re-assert power in Afghanistan, it would embolden militants in Pakistan and increase the risk of extremists gaining access to Islamabad’s nuclear weapons. ¶ An absence of international troops in Afghanistan post-2014 would also leave the door open for the Islamic Movement of Uzbekistan to gain a foothold in northern Afghanistan, from where it could launch operations into Central Asia. ¶ ‘We cannot risk allowing the Taliban to retake control of Afghanistan,’ said Ileana Ros-Lehtinen, chair of the US’s House Subcommittee on the Middle East and North Africa, at a congressional hearing in October 2013. ‘This could also lead to al-Qaeda regrouping and stepping up terrorist activities using its safe havens in Pakistan as a staging post, posing a real danger to our national security interests and those of our allies in the region.’ ¶ The threat is most acute for Pakistan, a nuclear-armed nation of 180 million, where there is real concern over nuclear weapons falling into the hands of extremists.

### 1AC – Advantage 3

#### The erosion of legal foundations is disrupting detention operations now

Robert Chesney 13, Charles I. Francis Professor in Law, University of Texas School of Law, “Beyond the Battlefield, Beyond Al Qaeda: The Destabilizing Legal Architecture of Counterterrorism”, November, Michigan Law Review, 112 Mich. L. Rev. 163, Lexis

III. Disruptive Strategic Change¶ These stabilizing factors will not last. A set of long-term trends involving changes to the strategic posture of both al Qaeda and the United States will profoundly disrupt them. Indeed, that process is already well underway. Bit by bit, this erosion is unsettling the legal foundation for the U.S. government's use of both military detention and lethal force.¶ A. Strategic Change and the Evolution of al Qaeda¶ Who is the enemy against which the United States is fighting in the second post-9/11 decade? That fundamental question has grown ever more difficult over time, and the problem is accelerating.¶ There may have been a time when it would suffice to refer simply to al Qaeda and the Afghan Taliban in answer to this question. But this is no longer an adequate response for two reasons. First, in Afghanistan, U.S. forces have been engaged in combat for years with a large number of armed groups that cannot properly be considered part of either al Qaeda or the Afghan Taliban. Second, al Qaeda itself has undergone an extraordinary process of diffusion and fragmentation. One upshot is that, in a number of regions around the world, there are armed groups claiming some degree of [\*186] association with what remains of al Qaeda's senior leadership. Sometimes this is a matter of an al Qaeda cell growing independent, and sometimes it is a matter of an originally distinct entity drawing close to al Qaeda's orbit. The important point, at any rate, is that it is difficult to say which, if any, of these groups are best understood as part of al Qaeda, which of these groups are not part of al Qaeda yet nonetheless constitute enemies of the United States, and which of these groups are neither. Warsame's fact pattern is a case in point. Unfortunately, such scenarios do not fit comfortably within the existing domestic legal architecture embodied in the AUMF, the NDAA FY12, and the case law generated by military detainees.¶ 1. Proliferation and Fragmentation¶ The proliferation of enemies is most apparent in Afghanistan and Pakistan (although it is not limited to that region, as I will explain below). The point as to proliferation in the Afghanistan-Pakistan region is not simply that the organizational boundaries of the Afghan Taliban can be hard to describe. Even if we treat the Afghan Taliban as a unified whole (i.e., lump together all commanders loyal to some degree to Mullah Mohamed Omar's Quetta Shura), the fact remains that there have long been many other armed groups in the field in Afghanistan that cannot fairly be described as a formal part of either the Afghan Taliban or al Qaeda, including the Haqqani Network and the HIG. n87 Each of these armed groups routinely uses force against U.S. and allied forces in Afghanistan (and some but not all direct force against Pakistani forces as well), and U.S. forces routinely target and detain their leaders and members in turn. n88 Because these groups cooperate extensively, it can be exceedingly difficult to parse the organizational boundaries [\*187] between them. As an anonymous American military officer put the point in late 2010, "This is actually a syndicate of related and associated militant groups and networks... . Trying to parse them, as if they have firewalls in between them, is really kind of silly. They cooperate with each other. They franchise work with each other." n89 Other officials added that "the loose federation was not managed by a traditional military command-and-control system, but was more akin to a social network of relationships that rose and faded as the groups decided on ways to attack Afghan, Pakistani, American and NATO interests." n90 Organizational ambiguity from this perspective is not so much a problem of inadequate intelligence (though that certainly could be an issue) as it is simply an organic and irreducible feature of the socio-political landscape within which these groups and networks operate.¶ Having said all that, the blurred organizational boundaries in the Afghanistan-Pakistan theater are not the biggest reason why the two-party, al Qaeda-Taliban conception of the enemy is problematic. The bigger problem is the fragmentation and diffusion of al Qaeda itself: it has evolved over the past decade in a manner that makes it far more difficult to speak coherently about its organizational boundaries, and the trend appears to be accelerating. n91

#### Judicial rulings have a created a detention black hole now---more uncertainty to come absent legislation

Walter E. Kuhn 11, Minority Chief Counsel, United States Senate Judiciary Committee, Subcommittee on the Constitution, Civil Rights and Human Rights. J.D. Duke University School of Law, “ARTICLE: THE TERRORIST DETENTION REVIEW REFORM ACT: DETENTION POLICY AND POLITICAL REALITY”, 35 Seton Hall Legis. J. 221, Lexis

Rather than answer these questions through a comprehensive plan, the administration decided to allow litigation to drive the policy process, deciding issues on an ad hoc basis. Surely, one of the reasons for this course was President Obama's desire to avoid alienating his supporters by validating President Bush's detention theory. The few decisions President Obama made in this area, such as negotiating and embracing the MCA09, nibbled around the edges of President Bush's military detention and trial policy, but certainly did not reject it wholesale. n16¶ The current political environment creates incentives for both Congress and the President to abdicate their responsibility for legislating detention policy to the judiciary. As a result of Boumediene, federal courts are more involved in military detention than ever, and [\*226] they are doing their best to fashion reasonable detention rules in the absence of guidance by either the Supreme Court or the political branches of government. n17 Federal judges, though, do not have expertise in military or intelligence matters, and they do not answer to the electorate. American citizens and soldiers deserve greater input from the political branches. n18 Policymaking by the judiciary in this area leads to inconsistent, ad hoc decisions that are opaque to the average voter. While Candidate Obama argued that detention policy was a "legal black hole" under President Bush, n19 the issue has become a political black hole under President Obama.

#### Law of war detention’s good --- the aff’s vital to prevent a complete hollowing out of the program

Benjamin Wittes 11, Senior Fellow in Governance Studies at the Brookings Institution, where he is the Research Director in Public Law, and Co-Director of the Harvard Law School - Brookings Project on Law and Security, "Detention and Denial: The Case For Candor After Guantanamo", p. 130-132

The third task—establishing the ground rules for future law of-war detentions—ought to spark no special controversy. After all, almost everyone agrees that some detention is appropriate in at least some counterterrorism operations, if only in those that most resemble conventional military operations on an obvious battlefield in a zone of acknowledged military hostilities. As I have explained, both U.S. and international laws governing such detentions are woefully underdeveloped. The Geneva Conventions require only that the detaining party convene a “competent tribunal” if there is doubt about a captive’s entitlement to treatment as a prisoner of war—or, presumably, about his identification as a combatant. The scope of the government’s detention authority and the contours of the review mechanisms remain, years into the conflict, utterly undefined—or, rather, defined only in administrative procedures and regulations.¶ This arrangement offers flexibility, and that is nothing to sneeze at. Detention in Afghanistan, after all, differs from detention in Iraq. Detention when one has competent, reliable proxies differs from detention when one does not. Detention review mechanisms adequate for holding people for short periods of time may be wildly insufficient for holding people long term. Conversely, review mechanisms that give adequate attention to evidence to justify long-term detentions can encumber forces too much to use for en masse short-term detentions. One does not want a one-size-fits-all detention model for the military. The value of vagueness is that it permits agility. And whatever regime Congress might put inplace will need to permit considerable agility too.¶ But vagueness has its own problems, a lack of legitimacy chief among them. When the government detains people for long periods of time without clear and specific legislative authorization to do so, it invites public anxiety, both domestic and international. Yes, it can rely on broad language like that in the AUMF and the Geneva Conventions, and in the short term nobody will make too much of a fuss. Over the long term, however, it inevitably will face questions about the ongoing relevance of those instruments to its activity. The authorization’s language, as the conflict progresses and evolves, will inevitably cover detainees less obviously than it did at the outset, and the question of how long it authorizes detention will inevitably grow more acute.¶ That the AUMF says not a word about detention and the Geneva Conventions—so rich in their elaboration of the rights of POWs—say so little about the treatment of unprivileged belligerents forces the government to rely on the drafters’ silence as permission to do things that they plainly did not imagine. The drafters of the Third Geneva Convention did not think about a global war against a nonstate actor who knows no rules and dons no uniform, and the Congress that hastily wrote the AUMF wasn’t thinking about how much detention, and of whom, it wanted to permit. So they did not forbid—and that constitutes a permission of sorts, to be sure. But the longer a detention goes on, the louder the unsaid words seem to speak. And eventually, they truly undermine the legitimacy of the project. That is a big part of what happened at Guantánamo, where even the most unambiguously lawful detentions became disreputable. The many calls for the facility’s closure were not just calls to free those wrongly detained; they were calls to abandon the project itself. Detention, in short, is not a matter of use it or lose it; it is a matter of defend it or lose it. If Congress will not stand clearly behind the propriety of long-term military detentions in some circumstances, those detentions will at some point suffer a major legitimacy crisis.

#### Judicial review of war powers spills over to erode the States Secrets Privilege

Shayana Kadidal 7, Center for Constitutional Rights, New York City; J.D., Yale 1994, “DOES CONGRESS HAVE THE POWER TO LIMIT THE PRESIDENT'S CONDUCT OF DETENTIONS, INTERROGATIONS AND SURVEILLANCE IN THE CONTEXT OF WAR?”, 2007, 11 N.Y. City L. Rev. 23, lexis

As to the AUMF, this meta-defense runs as follows: In both our case and the ACLU's similar case, the government claims that it could explain how the program fits into what Congress authorized in the AUMF--namely, the “use [of] all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist \*58 attacks that occurred on September 11, 2001”127 and those who harbored them--but to do so it would have to explain to the court how the Program works, particularly who it was targeting and what kinds of communications it was intercepting. The sensitivity of that information about how the Program works in practice means that it cannot do that, even ex parte in camera. Thus, the government argues, the State Secrets Privilege forecloses the ability to litigate these questions.128¶ As to the FISA-is-unconstitutional defense, the meta-defense argues that for the government to explain to the court how the Program fits into the core of the President's inherent power to defend the nation--that (limited) core aspect of the war power that is so fundamentally executive as to be immune to regulation from Congress--would require disclosing state secrets to the court. Since FISA might be unconstitutional to the extent that it restricts such a hypothetical core, unregulable part of the executive war power, the court cannot rely on FISA in enjoining the President from carrying out such surveillance:

#### Only congressional action on detention solves

Amanda Frost 7, “The State Secrets Privilege and Separation of Powers”, 75 Fordham L. Rev. 1931 (2007), http://ir.lawnet.fordham.edu/flr/vol75/iss4/2

Congress has been criticized for failing to enact legislation that would¶ clarify the legality of executive action in the war on terror, and for leaving¶ these hard questions for the courts to struggle with alone."13 For example,¶ the Senate Judiciary Committee was accused of ducking responsibility for¶ its proposal to send questions about the constitutionality of the warrantless¶ surveillance program to the Foreign Intelligence Surveillance Court, 114 and¶ Congress failed to pass any legislation in response to that controversial¶ executive practice. During three years of contentious litigation over the¶ legality of detentions at Guantanamo Bay, Congress remained silent while¶ the executive branch, detainees, and courts struggled with the question¶ whether the detentions were permitted by the Authorized Use of Military¶ Force Act, which was passed shortly after September 11, 2001. After¶ judicial prodding, 115 Congress did enact legislation expressly addressing the¶ treatment of Guantanamo Bay detainees, first in the Detainee Treatment Act¶ of 2005 and then in the Military Commissions Act of 2006, but it has left¶ most aspects of the executive's war on terror untouched. In short,¶ Congress's supervision of the executive branch's conduct in the war on¶ terror has been far from comprehensive, and has often relied on judicial¶ review as the backstop for aggressive assertions of executive power." 6¶ Congress's deliberate use of the courts as a check on abuse of executive¶ power should be a factor in the court's analysis of the state secrets privilege.¶ Courts should always be cautious when faced with executive assertion of¶ the privilege, but they should be especially reluctant to dismiss entire¶ categories of challenges to executive actions that Congress intended them to¶ hear. By declining to hear these cases, courts are not just diminishing their¶ own role in the constitutional structure, they are eliminating a¶ constitutionally prescribed method through which Congress can curb the¶ executive.¶ Of course, Congress could check the executive almost entirely on its¶ own, without judicial assistance. Congress can hold hearings at which it¶ closely questions executive officers about their actions and demands an¶ accounting of executive conduct. Congress can enact laws prohibiting¶ some types of executive action, although it may have to do so over an¶ executive veto. In the most extreme circumstances, Congress can seek to¶ impeach the President for acting extra-constitutionally. These alternative¶ methods of checking the executive are not without costs for Congress,¶ however. They set up an unmediated showdown between these two¶ powerful branches of government, and lead to the kind of infighting and¶ partisan wrangling that has been demonstrated to alienate the public.¶ Perhaps for these reasons, Congress has been slow to enact legislation to¶ address the war on terror despite repeated calls for it to do so. Instead,¶ Congress has turned to the courts, heightening the judicial obligation to¶ entertain legal challenges to executive conduct.¶ 111. PUTTING THEORY INTO PRACTICE: SUGGESTED JUDICIAL RESPONSES¶ TO THE EXECUTIVE'S ASSERTION OF THE STATE SECRETS PRIVILEGE¶ Part II sought to establish a few basic propositions. First, that the¶ executive's invocation of the state secrets privilege as grounds for¶ dismissing certain categories of cases is akin to claiming that courts lack¶ jurisdiction to hear these cases. Second, by doing so, the executive¶ diminishes not just judicial power, but congressional power as well,¶ because Congress normally controls federal jurisdiction. And third,¶ Congress's grant of federal jurisdiction over claims challenging the legality¶ of executive action has added significance as a congressional-judicial¶ collaboration intended to prevent the executive from overreaching. This¶ part discusses how these conclusions should shape judicial analysis of the¶ executive's efforts to obtain blanket dismissals on state secrets grounds.¶ A. Courts Should be Especially Reluctant to Dismiss When the Executive Is¶ Seeking to Prevent Judicial Review ofAll Constitutional Challenges to¶ Specific Executive Programs¶ Courts should be particularly hesitant to forgo jurisdiction when the¶ executive is seeking an across-the-board dismissal of all cases challenging¶ particular executive branch programs, because such claims implicate¶ Congress's constitutional authority, as well as the courts'. Congress has¶ delegated part of its executive oversight function to the judiciary, and thus¶ courts should not be as quick to leave the field as they might be were that¶ checking function not at issue. In short, judges should adopt a more holistic¶ view in such cases by taking into account the effect that blanket dismissals¶ will have on the relationship between the three branches of government.¶

#### State secrets privilege is modeled globally

Sudha Setty 9, Associate Professor of Law, Western New England College School of Law. J.D. Columbia Law School, “Litigating Secrets: Comparative Perspectives on the State Secrets Privilege”, 75 Brooklyn L. Rev. 201, http://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1016&context=facschol

Invocations of the state secrets privilege have occurred ¶ in every administration since Reynolds was decided and, given ¶ the current national security landscape, litigation which ¶ involves sensitive government information is likely to continue ¶ for the foreseeable future. ¶ The extensive and expansive use of the state secrets ¶ privilege by the Bush administration illustrates the need for ¶ process changes to be implemented in order to deal with the ¶ most extraordinary situations, when national security concerns ¶ are heightened and the temptation to abuse power and ¶ maximize secrecy is at its highest. The Bush administration set ¶ a precedent that allows President Obama and any future ¶ president to continue on a path of exerting a tremendous ¶ amount of political power with very little oversight.343 ¶ The February 2009 decision of the Obama ¶ administration to embrace the Bush administration’s ¶ expansive view of the state secrets privilege underscores the ¶ need for reform as a part of a long term commitment to the rule ¶ of law even in the national security arena. The administration’s ¶ pressure on the British government reflects the transnational ¶ impact of U.S. policies: the broad U.S. interpretation of the ¶ privilege almost trumped the domestic analysis of the privilege ¶ by U.K. courts. The long-term effects of such pressure are yet ¶ to be seen, but the decisions in the Mohamed case reflect the ¶ possibility that the U.S. application of the privilege could be ¶ exported more widely under threat to other countries of ¶ national security repercussions from the United States.

#### India models the US doctrine in War on Terror cases --- key to investments in aggressive counterterror strategies

Sudha Setty 12, Professor of Law, Western New England University School of Law. J.D. Columbia Law School, “Judicial Formalism and the State Secrets Privilege”, 38 Wm. Mitchell L. Rev. 1629 (2012)

Historically, Indian courts have granted the utmost deference ¶ to the executive branch as to when national security policy should ¶ be disclosed.90¶ When cases raise issues of individual rights being ¶ compromised by government secrecy, courts undertake a balancing ¶ test to determine whether the public interest or individual rights at ¶ stake should override executive secrecy; however, government ¶ claims regarding the necessity of secrecy, as in the U.S. state secrets ¶ privilege cases in the post-9/11 context, consistently prevail.91¶ Deference to executive branch decision-making is deeply ¶ rooted in national-security-related cases92¶ and is consistent with ¶ India’s history of granting the executive branch sole power to ¶ determine whether to disclose information in any number of ¶ contexts, including enforcement of its Official Secrets Act, a legacy ¶ of British colonial rule in India.93¶ Courts consistently discuss the ¶ need for government accountability and transparency, but ¶ ultimately revert to a formalist analysis that defers to an executive ¶ branch claim for nondisclosure in the name of public interest. ¶ The case of Dinesh Trivedi v. Union of India94¶ exemplifies the ¶ type of reasoning that the Indian Supreme Court often relies upon ¶ to uphold government secrecy claims. In Trivedi, the Indian ¶ Supreme Court considered whether to order the publication of ¶ background documents underlying a commissioned report on ¶ government corruption, which the government had withheld based ¶ on a claim of needed secrecy. Members of Parliament, including ¶ petitioner Dinesh Trivedi, alleged that the Home Minister refused ¶ disclosure to avoid government embarrassment.95¶ In response, the ¶ Home Secretary submitted an affidavit affirming the accuracy of a ¶ publicly distributed summary report, but claiming that additional ¶ documents could not be disclosed as a matter of public interest.96¶ The Indian Supreme Court’s response is emblematic of the ¶ reflexively deferential and overly formalistic reasoning in matters of ¶ national security and government secrecy. The Indian Supreme ¶ Court begins with familiar language about the necessity of ¶ transparency to curb government abuse and uphold the rule of law, ¶ noting that, “Sunlight is the best disinfectant. But it is equally ¶ important to be alive to the dangers that lie ahead.”97¶ The Indian ¶ Supreme Court accepts with little question the government’s ¶ assertion that publication of the report may be injurious to the ¶ public interest and goes further to hypothesize that the public ¶ furor toward individuals named in the report—should it be ¶ published in full—could lead to harassment and violence. Based ¶ on its own speculative concerns that appear grounded in historical ¶ deference to executive decision-making, the court held that ¶ publication of the full report and its underlying documents was ¶ unwarranted.98 ¶ This pattern of acknowledging the policy and rights concerns ¶ underlying a case, but ultimately siding with the government’s ¶ position with little investigation into the veracity of the ¶ government’s claims, has played out in other secrecy-related cases.99¶ In doing so, the Indian Supreme Court has opined that its ¶ deference to government secrecy claims is bolstered by its ¶ consistency with English cases on public interest immunity.100¶ In one case, this deference manifested itself in the Indian Supreme ¶ Court declining review of documents over which the government ¶ claimed secrecy even after the government had proffered ¶ submission for in camera review.101¶ The level of deference offered ¶ by the Indian Supreme Court is higher than that of any of the ¶ other nations surveyed here, but is arguably more consistent with ¶ the recent state secrets cases in the United States than that of the ¶ English courts in the Mohamed litigation.102¶ The failure of the Indian Supreme Court to engage in a more ¶ meaningful analysis of rights claims in the secrecy and security ¶ contexts is unsurprising. In crafting counterterrorism legislation, ¶ Parliament has responded to public pressure and arguable ¶ constitutional priorities103¶ in prioritizing robust security measures ¶ over protection of individual rights.104¶ The Indian Supreme Court, ¶ consistent with its security-related jurisprudence, has little appetite ¶ for putting itself in a countermajoritarian role and instead has ¶ consistently reverted to a formalistic analysis that offers a rhetorical ¶ nod to the rule of law and individual rights, but no substantive ¶ relief to those who seek to chip away at government secrecy.105

#### Strong Indian focus on counter-terrorism policy directly trades off with investments in Cold Start against Pakistan --- government decisions are key

Shashank Joshi 10, RUSI Research Fellow & Harvard PhD in Government, “India and the Four Day War”, 7 April, https://www.rusi.org/analysis/commentary/ref:C4BBC50E1BAF9C/#.UzSLpq1dWd8

The Indian military is caught between preparing for conventional war against neighbouring powers, Pakistan and China, and reorganising as an asymmetric deterrent against cross-border terrorism. It seems they are struggling on both counts.¶ South Asia remains one of the last holdouts of symmetric, conventional warfare. Even with nuclear tipped missiles directed across the Indo-Pakistani border, wars between the two enduring rivals have been drawn out affairs. Ten years ago, the Kargil War stretched to twenty weeks. Accordingly, the prospect of a four-day war would pique the interest of any observer. At the beginning of this year, the media in both countries breathlessly reported that the Indian Chief of the Army Staff, General Deepak Kapoor, had boasted that India could win a two-front war against Pakistan and China within 96 hours, prompting Pakistan's foreign ministry to attack his 'hostile intent' and 'hegemonic and jingoistic mindset'.¶ But the most eye-catching claim, that India envisions a four day war, is an almost comic perversion of the reality. India's new offensive doctrine calls for rapid thrusts into Pakistani territory, but these are to begin, rather than end, within four days of the order being given - before diplomatic pressure can enmesh the political leadership and preclude a strike. The irony, overlooked in the public maelstrom, is that these war plans are now a full six years old, and the military remains far from being capable of actually executing an attack in anything like an effective manner.¶ The context¶ In 2002, Pakistan-based terrorists of the Lashkar-e-Taiba group (LeT), historically supported by the Pakistani military establishment, assaulted the Indian parliament. They inflicted grave symbolic and human damage, compounding the military standoff resulting from an earlier attack. India responded with the largest military exercise ever carried out by an Asian country, Operation Parakram, during which half a million troops were mobilised in an attempt to coerce Pakistan into curbing its passive tolerance of, and active support to, terrorism. Ten months later and with nearly 800 Indian soldiers dead (in mine-clearing, accidents, and skirmishes), India called off 'arguably the most ill-conceived manoeuvre in [its] military history', an ignominious end to the polity's most severe challenge since the Kargil War.¶ For a variety of reasons, the Indian political leadership deemed that it could not retaliate with a punitive or deterrent military attack on Pakistani soil. Some contest that it was the very existence of nuclear weapons that stayed India's hand, others that the restraint was a result of commercial and diplomatic pressure from Washington. Regardless, one important factor in the accretion of that pressure was judged to be the delay in mobilisation. India's three inertial 'strike corps' took nearly a month to arrive at the border from Central India by virtue of their enormous size and distance from the prospective theatre (although some contest that their speed was not unimpressive). Furthermore, once arrived the massed forces - trained to dismember Pakistan - seemed unable to offer a finessed response that would be narrow enough to avert nuclear retaliation.¶ Cold Start¶ In April 2004, the Indian military announced a new doctrine, Cold Start, which sought to integrate India's apparently discordant military and political strategies. Characterized as a doctrine of 'blitzkrieg', the strategy had three principal components.¶ First, army units would be reorganised into eight forward deployed and division-sized 'integrated battle groups' (IBGs), replacing the more cumbersome earlier formations held further from the border. Each, encompassing armour, artillery, infantry and air support, would theoretically be able to operate autonomously on the battlefield.¶ Second, India would rely on speed, both in mobilisation and in manoeuvre. To retain 'strategic surprise', the battle groups would punch into Pakistan at different and unpredictable points - to the extent that anyone can be surprised by a division-sized mass of weaponry headed towards an international border - and operate continuously. This would irrevocably commit the civilian leadership to a military solution, surmounting the perceived civilian reticence that has been the bane of a subordinate military. And, in contrast to the previous plan's 'armoured formations slicing towards the Indus', the battle groups would traverse only thirty to forty miles past the border (though this is still much further than has ever been attempted in an Indo-Pakistani war). This restraint would allow the IBGs to target the military, disrupting its command and control networks, but stop well short of locations more likely to trigger nuclear retaliation, such as population centres - 'flexible response' redux.¶ Third, the doctrine would exploit combined arms, relying on the Indian Air Force (IAF) (and, to a lesser extent, naval air power) to support the army by seeking air superiority and engaging in ground attack, the intended result being a massing of firepower rather than forces.¶ The overarching objective would be, as Walter Ladwig has argued in International Security, to 'establish the capacity to launch a retaliatory conventional strike against Pakistan that would inflict significant harm on the Pakistani Army before the international community could intercede, and at the same time, pursue narrow enough aims to deny Islamabad a justification to escalate the clash to the nuclear level'. In other words, the plan stems from , a particular diagnosis of deterrence failure over the last decade: what the political scientist Barry Posen has called 'political-military disintegration', a failure of extant military plans to mesh with political imperatives. Those imperatives are sharpened by India's democratic institutions, with the populace increasingly frustrated at the government's seeming impotence in the aftermath of not one but two attacks of Pakistani provenance. One of India's UN representatives, Arundhati Ghose, suggested that another attack would demand that 'we should go in and bomb the daylights out of them'. Arun Shourie, a prominent MP, demanded 'not an eye for an eye', but 'for an eye, both eyes'. And on a trip to New Delhi in January 2010, US defense secretary Robert Gates acknowledged that 'I think it is not unreasonable to assume Indian patience would be limited were there to be further attacks'.¶ The reality¶ However, it is not clear if military deterrence is a solution. It will not have escaped attention that these battle groups were conspicuously absent when LeT struck again in November 2008, wreaking havoc in Mumbai and unambiguously originating in Pakistan. Sumit Ganguly and Paul Kapur argue that 'although Pakistan is largely to blame for creating and nurturing the jihadis, it is no longer wholly in control of them', so 'they should not be seen simply as tools of Pakistan's policy'. Yet even if Pakistan could be coerced into suppressing terrorism, for a number of reasons India remains profoundly ill equipped for credible deterrence.

#### Cold Start causes deterrence breakdown and accidental and unauthorized escalatory nuclear use --- defense doesn’t apply

Vipin Narang 10 research fellow at Harvard’s Belfer Center for Science and International Affairs and Ph.D. candidate in the Department of Government at Harvard University, Posturing for Peace?, International Security, Vol. 34, No. 3 (Winter 2009/10), pp. 38–78, http://www.mitpressjournals.org/doi/pdfplus/10.1162/isec.2010.34.3.38

At the policy level, this article highlights critical deterrence/management trade-offs generated by the asymmetric escalation posture and identifies a source of deep instability in the India-Pakistan dyad. Although Pakistan’s asymmetric escalation posture may deter conventional attacks, it also enables Pakistan to more aggressively pursue revisionist aims against India with little fear of retaliation, more frequently triggering precisely the crisis scenarios that magnify the risks of intentional or inadvertent use of nuclear weapons. These challenges will only be intensified if India—to redress its current perceived paralysis against persistent Pakistani provocations—progresses toward a Cold Start conventional posture, which might then push the Pakistan Army toward a ready deterrent on effectively hair-trigger alert. Such a combination could spawn intolerable risks of accidental or unauthorized nuclear use. Given the proximity and dynamic instability between India and Pakistan, these two nations and the international community should awaken to the danger that their conventional and nuclear postures are barreling toward increasing instability, especially when coupled with Pakistan’s growing domestic political volatility, which may further amplify its support for subconventional attacks against India. India and Pakistan should take appropriate measures to establish clear lines of communication, signaling procedures, confidencebuilding measures, and technical safeguards to mitigate the risk that small misperceptions and miscalculations could spiral to the intentional or unintentional use of nuclear weapons. Although nuclear weapons on the subcontinent are now an irreversible reality, nuclear posture is a malleable variable. The United States and the international community can take steps to help make Pakistan’s operationalization of its asymmetric escalation posture safer— making the management of the arsenal more secure without sacrificing deterrent power—and lean on both India and Pakistan to walk away from the dynamic instability induced by their choice of conventional and nuclear postures.

#### Extinction

Greg Chaffin 11, Research Assistant at Foreign Policy in Focus, July 8, 2011, “Reorienting U.S. Security Strategy in South Asia,” online: http://www.fpif.org/articles/reorienting\_us\_security\_strategy\_in\_south\_asia

The greatest threat to regional security (although curiously not at the top of most lists of U.S. regional concerns) is the possibility that increased India-Pakistan tension will erupt into all-out war that could quickly escalate into a nuclear exchange. Indeed, in just the past two decades, the two neighbors have come perilously close to war on several occasions. India and Pakistan remain the most likely belligerents in the world to engage in nuclear war. ¶ Due to an Indian preponderance of conventional forces, Pakistan would have a strong incentive to use its nuclear arsenal very early on before a routing of its military installations and weaker conventional forces. In the event of conflict, Pakistan’s only chance of survival would be the early use of its nuclear arsenal to inflict unacceptable damage to Indian military and (much more likely) civilian targets. By raising the stakes to unacceptable levels, Pakistan would hope that India would step away from the brink. However, it is equally likely that India would respond in kind, with escalation ensuing. Neither state possesses tactical nuclear weapons, but both possess scores of city-sized bombs like those used on Hiroshima and Nagasaki. ¶ Furthermore, as more damage was inflicted (or as the result of a decapitating strike), command and control elements would be disabled, leaving individual commanders to respond in an environment increasingly clouded by the fog of war and decreasing the likelihood that either government (what would be left of them) would be able to guarantee that their forces would follow a negotiated settlement or phased reduction in hostilities. As a result any such conflict would likely continue to escalate until one side incurred an unacceptable or wholly debilitating level of injury or exhausted its nuclear arsenal. ¶ A nuclear conflict in the subcontinent would have disastrous effects on the world as a whole. In a January 2010 paper published in Scientific American, climatology professors Alan Robock and Owen Brian Toon forecast the global repercussions of a regional nuclear war. Their results are strikingly similar to those of studies conducted in 1980 that conclude that a nuclear war between the United States and the Soviet Union would result in a catastrophic and prolonged nuclear winter, which could very well place the survival of the human race in jeopardy. In their study, Robock and Toon use computer models to simulate the effect of a nuclear exchange between India and Pakistan in which each were to use roughly half their existing arsenals (50 apiece). Since Indian and Pakistani nuclear devices are strategic rather than tactical, the likely targets would be major population centers. Owing to the population densities of urban centers in both nations, the number of direct casualties could climb as high as 20 million. ¶ The fallout of such an exchange would not merely be limited to the immediate area. First, the detonation of a large number of nuclear devices would propel as much as seven million metric tons of ash, soot, smoke, and debris as high as the lower stratosphere. Owing to their small size (less than a tenth of a micron) and a lack of precipitation at this altitude, ash particles would remain aloft for as long as a decade, during which time the world would remain perpetually overcast. Furthermore, these particles would soak up heat from the sun, generating intense heat in the upper atmosphere that would severely damage the earth’s ozone layer. The inability of sunlight to penetrate through the smoke and dust would lead to global cooling by as much as 2.3 degrees Fahrenheit. This shift in global temperature would lead to more drought, worldwide food shortages, and widespread political upheaval.¶ Although the likelihood of this doomsday scenario remains relatively low, the consequences are dire enough to warrant greater U.S. and international attention. Furthermore, due to the ongoing conflict over Kashmir and the deep animus held between India and Pakistan, it might not take much to set them off. Indeed, following the successful U.S. raid on bin Laden’s compound, several members of India’s security apparatus along with conservative politicians have argued that India should emulate the SEAL Team Six raid and launch their own cross-border incursions to nab or kill anti-Indian terrorists, either preemptively or after the fact. Such provocative action could very well lead to all-out war between the two that could quickly escalate.

and political presence in Afghanistan and diplomatic and military-to-military dialogue with Pakistan well beyond 2014.

### SOLVENCY

#### Narrowing substantial support by changing the NDAA’s language to “harboring” solves

Graham Cronogue 12, Duke University School of Law, J.D; University of North Carolina B.A. 2010, A NEW AUMF: DEFINING COMBATANTS IN THE WAR ON TERROR scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1294&context=djcil

Prominent scholar Benjamin Wittes agrees that an update to the AUMF is becoming increasingly important. He acknowledges that “[w]e have a legal instrument authorizing [a] war that is growing by the day more attenuated in its description of the conflict. Logically, therefore, if we want to both authorize and cabin the war we are fighting, we should update the instrument.”111 ¶ According to Wittes, the amendment expands the AUMF’s authorization outside of the administration’s current interpretation of acceptable force.112 First, the amendment says that the current conflict includes those who are “part of, or substantially supporting” the enemy. Wittes argues that this language suggests “Congress has authorized the use of ‘all necessary and appropriate force’ against mere supporters of our enemies.”113 Under this interpretation of the statute, the amendment might authorize force in response to any sort of “non-trivial support [given] to” the defined combatants.114 This interpretation might actually authorize force against Iran for its continued support of terrorist groups, even though Iran has not directly engaged in hostilities with the United States.115 Although some form of force may become necessary against Iran, especially in light of the recent assassination attempt in Washington D.C.,116 it seems unlikely that Congress would want to delegate to the President the authority to attack another nation merely for its support. Moreover, this proves that the amendment will go far beyond direct participants in the conflict and extend to their supporters all over the world. In fact, the text of the statute authorizes force against nation “A” for supporting hostilities in support of nation “B” because nation “B” substantially supports an “associated force.” The proposal authorizes force against nation “A” even though nation “A” has no contact with al-Qaeda or even an associated force. ¶ In an attempt to fix these problems of over breadth, Wittes proposes that Congress change the “substantially supporting” language to “harbor.”117 He also proposes that we limit authorizations under the “harbor” prong to nations.118 Without this alteration, Wittes argues that Section 1034 of H.R. 1540 might extend the use of force to groups that have only a relative or tenuous connection to al-Qaeda and the Taliban.119 Wittes believes that the term “harbors” would prevent drawing the circle of legitimate targets too broadly.120 Indeed, “harbors” suggests some level of intent or knowledge as well. For instance, in the criminal law context harboring a fugitive requires a “know[ing]” mens rea.121 This heightened requirement would similarly narrow the application of force to those nations who are knowingly supporting enemy combatants by providing them intentionally or unintentionally with a safe haven. ¶ Mr. Wittes suggestions do a fairly good job at restricting the imposition of force to those who are actively engaged in the conflict. The House’s term “substantially supporting” does not contain an explicit mens rea requirement and is probably less demanding than “harboring.” Furthermore, the President might be able to use the “substantially supporting” prong to target individuals or groups who have a very loose connection to the enemy. Finally, it lessens the danger that nation “A” will become an authorized target absent some strong reason. Instead of authorizing force against nation “B” when “B” merely supported the associated force, the President must prove that nation “B” was actually harboring the terrorist group. It is more likely that nation “A” would know about harboring than mere “support,” making nation “A’s” decision to support nation “B” more odious and more worthy of force.

#### Congress must restrain the President’s detention authority by restricting substantial support---prevents overbroad detention

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On December 31, 2011, President Barack Obama signed the National Defense Authorization Act for Fiscal Year 2012 ("NDAA"). n1 The passage of the NDAA marked the fiftieth consecutive enactment of the National Defense Authorization Act. n2 The 565-page bill authorized over 600 billion dollars of military funding, increased military pay, reduced military health care costs, and included numerous other provisions that supported both the military's personnel and strategic objectives. n3 The NDAA also contained provisions relating to the executive branch's authority to place individuals in military detention. n4¶ The detention provisions affirm the executive's authority to place individuals in military custody without trial or formal charges. The NDAA expressly affirms the executive's authority pursuant to the Authorization for Use of Military Force n5 to detain "covered persons." n6 A "covered person" is defined by the NDAA as:¶ [\*194] ¶ A person who was a part of or substantially supported al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act or has directly supported such hostilities in aid of such enemy forces. n7¶ Through the NDAA, Congress granted the executive a broad detention authority. Congress attempted to limit that authority within the NDAA, stating that it is not "intended to limit or expand the authority of the President or the scope of the Authorization for Use of Military Force," n8 and that it is not intended to "affect existing law or authorities relating to the detention of United States citizens, lawful resident aliens of the United States, or any other persons who are captured or arrested in the United States." n9 However, these restrictions do not, in effect, restrict the executive's authority to detain. The NDAA purports not to limit or expand the executive's detention authority, yet the scope of this authority has not been completely defined. n10 Specifically, the meaning of the term "substantially supported" and what actions constitute "substantial support" have yet to be fully defined within the courts. n11 As a result, Congress has provided the executive with great discretion to decide whom to detain as substantial supporters. Accordingly, because the conflict against al Qaeda [\*195] and the Taliban lacks the characteristics of a traditional conflict that restrict the executive's detention authority, n12 and because the availability of habeas corpus review for detainees fails to restrain the executive's detention authority, n13 the executive will have virtually unchecked military detention authority. Further, the executive has an incentive to over-detain suspected terrorists, n14 and the courts have and will continue to afford great deference to the executive's decisions to detain. n15 Such unchecked authority in the area of military detention is particularly troubling - especially in the current conflict against al Qaeda and the Taliban - because it will most likely lead to erroneous, and potentially indefinite, detentions. n16 Thus, it is imperative that Congress revisit the scope of the executive's detention authority and place adequate restraints on who the executive may lawfully detain. Specifically, Congress should provide a more precise definition of the class of persons that the executive can detain for providing substantial support - and that definition should be consistent with the law of armed conflict and the reasons for detention.¶ Part II of this Note will highlight how the executive has been left with virtually unchecked authority and will explain why Congress needs to revise the executive's detention authority in this particular conflict to avoid substantial deprivations of liberty by emphasizing the untraditional nature of the conflict against al Qaeda and the Taliban and the limited utility of detainee habeas corpus proceedings in the courts. Part III will demonstrate that Congress is the government branch in the best position to place restraint on the executive's detention authority by arguing that the executive has an incentive to expand its detention authority and that the courts have supported and will likely continue to support a broad interpretation of the executive's detention authority. Part IV will suggest that Congress should restrain the executive's authority by providing a more precise definition of what constitutes "substantial support" under the NDAA. Congress can provide the most useful statutory definition of "substantial support" by remaining mindful of the law of armed conflict, the purposes behind preventative detention, and the availability of criminal prosecution for suspected terrorists.¶ [\*196] ¶ II. THE EXECUTIVE HAS VIRTUALLY UNCHECKED DETENTION AUTHORITY, INCREASING THE RISK THAT INDIVIDUALS WILL SUSTAIN SUBSTANTIAL DEPRIVATIONS OF LIBERTY¶ Congress, through the ambiguous language of NDAA, has left the executive with virtually unchecked authority to detain suspected terrorists. The executive's detention authority is virtually unchecked for two primary reasons. First, the current conflict against al Qaeda and the Taliban lacks the traditional characteristics of international armed conflict that serve to constrain the executive's detention authority. Second, the availability of habeas corpus review for detainees in Article III courts fails to check the executive's power and fails to provide adequate safeguards to protect against erroneous detention. Accordingly, the executive possesses virtually unchecked detention authority, resulting in a greater risk that individuals will sustain substantial deprivations of liberty.¶ A. The Current Conflict Lacks the Constraining Characteristics of a Traditional International Armed Conflict¶ In a traditional international armed conflict - a conflict between two state actors - it is well established that members of the enemy forces may be detained until the end of the conflict. n17 However, in a traditional international armed conflict, this authority to detain is constrained. n18 Specifically, the executive's authority to detain in these circumstances is constrained by space, identifiable characteristics or actions of individuals, and time. n19 With clearly imposed restraints, there is less risk that the executive will erroneously detain individuals and less risk that detention will last indefinitely. n20 As a result, in the case of a traditional international armed conflict, it is usually unnecessary for Congress to constrain the executive's authority. However, the current conflict against al Qaeda, the Taliban, and associated forces is not a traditional international armed conflict - it is not a conflict with state actors. n21 Consequently, this conflict [\*197] lacks the characteristics of a traditional international armed conflict that would ordinarily constrain the executive's authority to detain, creating an increased risk that individuals will be erroneously detained. n22¶ In the case of a traditional international armed conflict, there is generally a clear battle zone in which the enemy forces engage in combat. n23 This provides the executive with a clear geographical space in which to capture detainees. Additionally, under the law of armed conflict, during combat military forces are obligated to distinguish themselves from the civilian population. n24 Even if individuals fail to distinguish themselves from the civilian population, they can still be detained if they are actively engaged in combat. n25 This provides the executive with observable attributes that may be used to determine whom to detain - those fighting and those who have distinguished themselves as part of the enemy force. Furthermore, the authority to detain ends when the conflict ends. n26 The end date may not be precisely predictable, but it is certain that the conflict, and ultimately military detention, will eventually end. n27 Because of these restrictions, in a traditional international conflict setting, there is less risk that individuals will be detained erroneously, n28 less risk that the detention will last indefinitely, n29 and consequently, less need to further constrain the executive's detention authority.¶ In contrast, the current conflict against al Qaeda and the Taliban is not a traditional international armed conflict and thus lacks the conflict characteristics that constrain the executive's authority to detain. n30 The [\*198] executive's authority to detain is not bound by any particular geographical space. The current conflict lacks a defined battle zone - terrorist attacks by al Qaeda and the Taliban can occur anywhere and at any time. n31 In fact, terrorist attacks by these groups have occurred both within the United States and abroad, n32 and United States forces have attacked these groups in Somalia, Yemen, Afghanistan, Pakistan, and Iraq. n33 The executive arguably has the authority to detain individuals from potentially anywhere in the world.¶ The executive's authority to detain is also not limited by the observable characteristics or actions of individuals. Neither the Taliban nor al Qaeda is a state actor for the purposes of international armed conflict - both are non-state actors. n34 Therefore, they are not bound to comply with the law of armed conflict. n35 Consequently, they are not obligated to distinguish themselves from the civilian population. n36 Moreover, terrorist attacks are not hand-to-hand battles with clearly observable fighters and non-fighters further complicating the ability of the executive to distinguish those who may be detained from those who are beyond the executive's purview. n37¶ The executive's authority to detain in the current conflict is also not restrained by time. Under current U.S. law, individuals may be lawfully held in military detention until the end of the relevant conflict. n38 In the present conflict, as articulated by the House of Representatives Armed Services Committee Report, the United States is "engaged in an armed conflict with al Qaeda, the Taliban, and associated forces." n39 This means that the executive's detention authority will end when the conflict with those enemies ends. This begs the question - when does a conflict against [\*199] terrorist groups such as al Qaeda and the Taliban end? The United States has and is fighting these enemies in Iraq and Afghanistan, so does the conflict end when U.S. combat in Iraq and Afghanistan ends? Or does it end when al Qaeda, the Taliban, and associated forces have been completely defeated? Both of these potential end points fail to provide a clear indication of when this conflict will end, suggesting that the executive's authority to detain could be indefinite.¶ Unfortunately, the ending of combat in Iraq and Afghanistan fails to provide a clear indication of when the conflict against al Qaeda and the Taliban will end. n40 One could assume that when U.S. combat in Iraq and Afghanistan ends, the conflict with al Qaeda and the Taliban and the basis for justifying military detention would also end. However, in this conflict, there is not a connection between the end of U.S. combat in Iraq and Afghanistan and the end of the conflict with al Qaeda and the Taliban. n41 For example, U.S. combat ended in Iraq in December of 2011. n42 Despite the end of combat in Iraq, al Qaeda violence still remains prevalent within Iraq and officials believe that al Qaeda is rebuilding its training camps and regaining strength within the country. n43 In Afghanistan, the United States plans to end combat by 2014. n44 Because the combat in Afghanistan is still ongoing, one could argue that the conflict with al Qaeda and the Taliban will in fact be over in 2014. However, the U.S. plan to end combat by 2014 is based upon an "arbitrary timetable" and political pressures, not the actual strength of al Qaeda or the Taliban. n45 In fact, even after eleven years of U.S. combat, the Taliban still remains a "robust enemy" and there is a [\*200] concern that the Taliban will regain control of Afghanistan after the exit of U.S. troops. n46 Thus, because this conflict has been defined as a conflict with al Qaeda and the Taliban and because those enemies will not be defeated by the end of U.S. combat in Iraq and Afghanistan, the end of combat in Iraq and Afghanistan fails to provide an endpoint for the current conflict. n47¶ If the end of combat in Iraq and Afghanistan does not indicate the end of the underlying conflict, then the complete defeat of al Qaeda and the Taliban would have to signal when this conflict will end. However, the defeat of al Qaeda and the Taliban also fails to provide a clear endpoint. n48 Al Qaeda and the Taliban are not state actors. n49 This is a conflict against an "ideology" n50 - a conflict against a political and religious movement. n51 No enemy state exists with which to negotiate a cease-fire or peace treaty. n52 Accordingly, there is no enemy state that can bind the members of al Qaeda and the Taliban to cease combat and end the conflict. n53 Thus, the seeming way to end the conflict against al Qaeda and the Taliban would be to completely defeat those terrorist groups. n54 However, assuming it is possible to defeat terrorist groups like al Qaeda and the Taliban, it will be difficult, if not impossible, to determine if the groups have been completely defeated. n55 And, even if the United States did effectively defeat these terrorist groups, that defeat would not preclude new terrorist groups from forming and engaging in combat against the United States. n56 Consequently, the United States could be engaged in conflict with al Qaeda, the Taliban, or associated forces for an indefinite amount of time. n57¶ [\*201] Because this conflict lacks clear endpoints, the decision to end the conflict will rest solely in the discretion of the executive. n58 This unchecked authority is particularly troubling for those detained during the current conflict because the executive has a strong political incentive to continue the conflict against potentially undefeatable terrorist forces. This creates the possibility of an indefinite conflict with indefinite military detention. n59¶ As demonstrated, the current conflict against al Qaeda and the Taliban lacks the characteristics present in a traditional international armed conflict that constrain the executive's authority to detain. Consequently, the current scope of executive authority poses a great risk that individuals will be erroneously detained and that the detention will last indefinitely. n60 With potentially substantial deprivations of liberty at stake, Congress must act to constrain the executive's detention authority.¶ B. The Limited Availability of Habeas Corpus Relief for Detainees in Article III Courts Fails to Restrain the Executive's Detention Authority¶ In 2008, the Supreme Court held that Article III courts have jurisdiction over habeas corpus petitions from non-citizens detained at Guantanamo Bay in Cuba. n61 Justice Kennedy concluded that habeas relief was necessary for detainees to protect personal liberty and to maintain the separation of powers. n62 Thus, habeas relief served two very important functions: it secured the fundamental American value of liberty and created a device for the courts to constrain the broad detention authority of the executive. n63 Courts would be able to use habeas corpus petitions to assure that the executive's detention authority was complying with applicable laws. n64 However, despite Justice Kennedy's attempt to constrain the executive's broad detention authority, the ability of habeas review to constrain the executive's detention authority and to prevent erroneous detentions is questionable at best. n65¶ [\*202] Empirical studies have questioned the effectiveness of habeas litigation to release those who have been erroneously detained. n66 For example, during the year immediately following the Supreme Court's 2008 ruling, one would expect the number of released detainees to increase. However, there was no noticeable increase in detainee releases. n67 Rather, the number of detainees released remained similar to the amount released prior to habeas availability. n68 This suggests that habeas litigation did not contribute to the release of erroneously held detainees. n69 Rather, those who were released through habeas litigation would most likely have been released eventually by the executive without judicial interference. n70 In fact, the majority of detainee releases are executed without judicial order. During the year after the Supreme Court's decision in 2008, over 60 percent of releases were done without judicial order. n71 This evidence suggests that releases due to judicial orders from habeas corpus proceedings may just be substitutes for executive releases. n72¶ Additionally, the procedures and evidentiary rules used by the courts during detainee habeas proceedings are highly deferential to the government and the executive's decision to detain. During detainee habeas proceedings, the government only has to prove that the detainee is being held lawfully by a preponderance of evidence. n73 This evidentiary standard is far less demanding than the "beyond a reasonable doubt" evidentiary standard employed in criminal proceedings. n74 The "preponderance of evidence" standard is also more attainable for the government because the government is permitted to use hearsay evidence during proceedings. n75 Additionally, a court may not evaluate pieces of evidence independently. Rather, a court must evaluate all of the evidence collectively and must determine whether the evidence, as a whole and in context, supports a [\*203] lawful detention. n76 This allows the government to compile numerous pieces of questionable evidence that when looked at individually do not support a lawful detention, but when looked at as a whole support a reasonable inference that the detention is lawful. n77 In addition, the government must only prove that a detainee is being held lawfully at the moment of the habeas proceeding. n78 The government is not required to prove that the government had sufficient evidence to justify the detention at the moment of capture. n79 This means that the government is permitted to gather evidence after capture in order to prove that the detention is lawful. n80¶ Furthermore, even if a detainee is able to succeed at both the trial and appellate level, the release orders issued by the trial courts do not command physical release. n81 Rather, most of the orders "require the government to engage in "all necessary and appropriate diplomatic steps to facilitate' release." n82 This suggests that, even in cases where the detainees are illegally detained, the courts are hesitant to question and restrict the executive's authority. n83¶ Finally, it should be noted that not all detainees are entitled to habeas corpus review in Article III courts. Detainees held at Bagram Air Force Base in Afghanistan are not permitted to challenge their detention in Article III courts. n84 Detainees held at Bagram are only entitled to "rudimentary hearings." n85 At these hearings, three "field grade" military officers - not impartial decision makers - determine if the detention of the detainee is lawful. n86 Also, while at the hearings, detainees are afforded virtually no procedural protections: they have no right to adequate representation, no right to confront witnesses, and evidence used against the detainees is often classified. n87 Consequently, some detainees in Bagram have been "imprisoned for eight years or more without charge or trial, [\*204] based largely on evidence they have never seen and with no meaningful opportunity to defend themselves." n88 Interestingly, the number of detainees held at Bagram increased after the Supreme Court's ruling in 2008. n89 This suggests that the executive has been able to evade serious review by the courts and further exacerbates the risk of erroneous indefinite detention. n90¶ Thus, because of the relatively low evidentiary burden imposed upon the government in habeas corpus proceedings, the discretionary nature of judicial release orders, and the lack of habeas corpus review for all detainees, Article III courts do not provide an effective check on the executive's detention authority. Similarly, the characteristics that are present in a traditional armed conflict that serve to constrain the executive's authority are absent in this present conflict. Consequently, it is imperative for Congress to place adequate checks on the executive's detention authority.

#### Congress is key---legislation is vital to clarity

Colby P. Horowitz 13, J.D. Candidate at Fordham School of Law, Captain in the US Army, "Creating a More Meaningful Detention Statute: Lessons Learned from Hedges v. Obama", fordhamlawreview.org/assets/pdfs/Vol\_81/Horowitz\_April.pdf

In section 1021 of the NDAA, Congress codified and affirmed the executive branch’s detention authority for terrorist suspects. 4 This authority had previously derived from the Authorization for Use of Military Force of 2001 5 (AUMF), which was over ten years old and made no specific mention of detention. Instead of providing clarity, however, the scope of the authority granted by section 1021 is uncertain. On September 12, 2012, Judge Katherine B. Forrest of the Southern District of New York ruled in favor of the writers and activists and permanently enjoined a key portion of section 1021, holding that it violated both the First and Fifth Amendments of the Constitution. 6¶ Congressional legislation is essential to define and limit the executive’s detention authority, but section 1021 of the NDAA has failed to achieve this purpose. This Note examines ambiguities and uncertainties in current detention law and recommends ways to create a more meaningful detention statute. Part I focuses on the AUMF, the four major post-9/11 Supreme Court decisions regarding executive detention, and the 2012 NDAA. Part I also establishes a framework for evaluating the separation of powers between Congress and the President on national security issues using the Supreme Court’s famous decision in Youngstown Sheet & Tube Co. v. Sawyer . 7 Part II examines how the D.C. District and Circuit Courts struggled to define important detention terms during the flood of habeas corpus litigation coming from Guantanamo Bay after 2008. These terms were eventually codified in section 1021 of the NDAA. Part III uses Judge Forrest’s decision in Hedges v. Obama as a vehicle for exploring the issues with section 1021. Finally, Part IV recommends ways to define and clarify key terms and provisions in section 1021. The goal of this part is to create a more meaningful detention statute that provides clear congressional guidance on the scope of detention authority to both the executive and the courts.

Plan

### Plan

#### The United States Congress should limit detention authority granted by Section 1021 of House Resolution 1540 to al Qaeda, the Taliban, and those persons that "harbor" enemy forces.

# 2AC

## Case

### AT: Bagram Done

#### Detainees in legal limbo

Press TV 2-27, “Fate of foreign detainees in Afghanistan in limbo”, http://www.presstv.ir/detail/2014/02/27/352543/us-keeps-its-detainees-in-afghanistan/

Whether the occupation ends in 2014 or continues for decades to come, Afghanistan has made it clear they are no longer comfortable with the US using them as a place to keep foreign detainees.¶ The US has long treated Afghanistan as a win-win on detention, treating it like Guantanamo Bay in that it is outside of the US itself, but also insisting that because it is sovereign Afghan soil, the US courts can’t even have the nominal oversight they’ve had on other detainees’ treatment.¶ What’s a country to do when they need a new legal black hole? One answer would be the naval brig in Charleston, SC according to Sen. Lindsay Graham (R – SC), who says the military could keep them there forever on the grounds that Afghanistan is a war zone and anyone held there must be a prisoner of war.¶ That might be a tough case to make, since the US has sent some of the detainees to Afghanistan specifically to keep them out of the court system, and officials keep arguing the Afghan War is essentially over at any rate. Graham insisted he opposes any trials for any of the detainees unless they are 100% confident of a conviction, and that otherwise they should just extend the detentions.

### Central Asia Impact

#### Central Asia goes global – conceded that link

Chossudovsky 13 Prof Michel Chossudovsky - award-winning author, Professor of Economics (emeritus) at the University of Ottawa, Founder and Director of the Centre for Research on Globalization (CRG) "Dangerous Crossroads. A War on Syria, Prelude to a World War III Scenario?," August 31, 2013, www.globalresearch.ca/dangerous-crossroads-a-war-on-syria-prelude-to-a-world-war-iii-scenario/5347370

Moreover, several other countries including Yemen, Somalia, Egypt, Mali, Niger, among others, are now strung in the midst of US sponsored “civil wars”, invariably leading to economic collapse, political instability and the demise of State institutions. In these countries, US military intervention often takes the form of counter-terrorism operations against Al Qaeda affiliated rebels (who are supported by US intelligence).¶ Public opinion is largely unaware of the grave implications of these war plans which could potentially lead humanity into a World War III scenario.¶ Moreover, an extended regional war in the Middle East and Central Asia will inevitably have repercussions in other regions of the World including South East Asia and the Far East, where the US is threatening North Korea, China as well as Russia as part of its “Pivot to Asia” strategy.

### AT: Circumvention

#### No circumvention---will comply with our statute

Captain Richard K. Sala 13, Captain US Marine Corps, Judge Advocate, JD Vermont Law School, "The Illusory Unitary Executive: A Presidential Penchant for Jackson's Youngstown Concurrence", Vol. 38: 155, 2013, lawreview.vermontlaw.edu/files/2014/01/07-Sala1.pdf

The presidency of “George W. Bush . . . sparked a resurgence in popular interest in presidential power”1 and brought scholarly debate and research regarding the reach of that power to the leading edge of academic discourse. Among the most contentious of these theories is the Unitary Executive Theory. The Unitary Executive Theory postulates that all executive power rests exclusively in the hands of the President. Traditionally, the Unitary Executive Theory advanced the idea that the President was empowered to remove and direct all subordinates in his exercise of executive power. Recently, legal scholars working in the Bush Administration expanded the scope of the Unitary Executive Theory to include emergency powers that stem from the President’s inherent and implied Article II powers in foreign affairs and national security. Throughout the Bush presidency, traditional unitary executive theorists derided this claim to emergency powers as separate from and inconsistent with traditional Unitary Executive Theory. Despite the unfeigned contention between these competing views, the debate has been largely misplaced as neither President Bush nor his successor has acted on this expanded view of the unitary executive. Instead, they have relied on the robust authority granted to them by the United States Congress under Senate Joint Resolution 23, the Authorization for the Use of Military Force in Response to the 9/11 Attacks (AUMF).

## Off-Case

### 2AC T – Subsets

#### “In” means within, not “throughout”

Cullen 52 – Cullen, Court of Appeals of Kentucky, 52, Commissioner, Court of Appeals of Kentucky, November 13, 1952 Riehl et al. V. Kentucky unemployment compensation commission; the judgment is affirmed. Rehearing denied; COMBS, J., and SIMS, C. J., dissenting. <http://ky.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19521113_0040095.KY.htm/qx>

We do not find any ambiguity in KRS 341.070(1). It is our opinion that the key word in the statute is the word 'in,' preceding the words 'each of three calendar quarters', and if the word is accorded its ordinary and common meaning, the statute does not require simultaneous employment. According to Webster's New International Dictionary, the word 'in,' used with relation to a period of time, means 'during the course of.' The same meaning, expressed in another way, would be 'within the limits or duration of.' Employing this meaning, the statute says that an employer is subject to the Act if, during the course of, or within the limits or duration of each of three calendar quarters, he had in covered employment four or more workers, to each of whom the required amount of wages was paid. This clearly means that the employment need not be simultaneous. Obviously, the word 'in' does not mean 'throughout' or 'for the entire period of,' because then there would be no point in adding the requirement of the payment of a minimum of $50 in wages. In these times, no worker employed for a full calendar quarter would be paid less than $50 in wages. The appellant seeks to read into the statute the words 'at the same time,' following the words 'had in covered employment'. There is no justification for this, unless the word 'in' means 'during any one period of time in.' We are not aware of any authority for ascribing such a meaning to the word 'in'.

#### “Area” includes parts

Random House 13 – Random House Dictionary, “area”, http://dictionary.reference.com/browse/area?s=t

ar·e·a [air-ee-uh] Show IPA¶ noun¶ any particular extent of space or surface; part: the dark areas in the painting; the dusty area of the room.

### 2AC T – WPA

#### Plan’s a substantial restriction of authority

Richards 11 – Chet Richards, Ph.D. Mathematics and Colonel in the USAF (Retired), ““Lawfare” – Using The Law To Undermine The Constitution (A Powerful Tool In The Quiet Coup Now In Progress)”, Fabius Maximus, 12-22, http://fabiusmaximus.com/2011/12/22/32514/

“Does the NDAA expand the government’s detention authority?¶ “Nope. Under current law, the Obama administration claims the authority to detain … In light of all this, a law that writes the administration’s successful litigating position into statute cannot reasonably be said to expand the government’s detention authority.¶ “… The NDAA is really a codification in statute of the existing authority the administration claims. It puts Congress’s stamp of approval behind that claim for the first time, and that’s no small thing. But it does not – notwithstanding the widespread belief to the contrary–expand it. Nobody who is not subject to detention today will become so when the NDAA goes into effect.”¶ Not so neutral. A more accurate answer is Yes it expands the government’s authority, in the sense that by this law Congress confirms the authority to detain claimed by the Obama administration. In America the laws are what Congress, the Executive, and the Courts deem them to be. Checks and balances. A President can claim authority, the Courts can agree — but Congress also has a say. When all three branches agree, then the law has changed — no matter what the Constitution says.¶ The NDAA substantially expands the Executive’s authority by endorsing it claims to greater power. Especially significant since, as the author’s note:¶ “As we explain below, the courts have had a decidedly mixed reaction in the pair of cases involving persons captured within the United States, but as for persons captured abroad, they have largely endorsed the government’s position.”¶ Now we get to the core issue.¶ “Does the NDAA authorize the indefinite detention of citizens?¶ “No, though it does not foreclose the possibility either. Congress ultimately included language in the NDAA expressly designed to leave this question untouched – that is, governed by pre-existing law, which as we explain below is unsettled on this question.”¶ Here the authors play let’s pretend we have amnesia, and forget how we got here.¶ Those broad claims by the Bush and Obama administrations were made on the basis of aggressive interpretation of existing laws. Interpretations not mentioned when the laws were debated before enactment. Now Congress makes new laws, ratifying these aggressive interpretations. This law will almost certainly become the basis for still aggressive interpretations, giving the Executive more and broader powers.

#### C/I: War powers authority is the President executing warfighting missions---that includes the plan

Fred F. Magnet 87, Fmr. Legal Counsel @ C.I.A, Records of the Central Intelligence Agency, 1894 – 2002, Articles from "Studies in Intelligence", 1955 – 1992, Summer 1987: 10-114-7: Presidential War Powers (A Constitutional Basis for Foreign Intelligence Operations), “Presidential War Powers.” In Extracts from studies in Intelligence: A Commemoration of the Bicentennial of the U.S. Constitution. Washington. D.C Central Intelligence Agency, 1987, http://research.archives.gov/description/7283242

**The President has constitutional authority to order defensive military action in response to aggression without congressional approval**. This theory of **self-defense** has justified many military actions, from the Barbary Coast to the Mexican-American War to the Tonkin Gul£. 29 The Supreme Court has agreed. In The Prize Cases, it found that President Lincoln had the right to blockade southern states without a congressional declaration of war: "If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge without waiting for any special legislative authority. " 30 In a case arising out of the Vietnam war, the defendant claimed that draft law was unconstitutionally applied to him because Congress had not declared war. The court rejected that claim, stating that on the basis of the Commander in Chief power, "Unquestionably the President can start the gun at home or abroad to meet force with force. " 3 1 **When the President acts in defense of the nation, he acts under war powers authority**.¶ 3. Protection of Life and Property¶ The President also has the power to order military intervention in foreign countries to protect American citizens and property without prior congressional approval.32 This theory has been cited to justify about 200 instances of use of force abroad in the last 200 years.33 The theory was given legal sanction in a case arising from the bombardrment of a Nicaraguan court by order of the President in 1854, in retaliation for an attack on an American consul. The court stated that it is the President to whom ".. . citizens abroad must look for protection of person and property. . . . The great object and duty of Government is the protection of the lives, liberty, and property of the people composing it, whether abroad or at home.'3~Other cases have been in accord.35 The President may use force or any other means to protect American citizens in foreign countries under his war powers authority. This extends even to a retaliatory military strike against a country supporting terrorist acts against Americans, which occurred in April1986 when US Navy and Air Force aircraft bombed the modern Barbary Coast nation of Libya. ¶ 4. Collective Security¶ The President may also authorize military operations without prior congressional approval pursuant to collective security agreements such as NA TO or OAS treaties. Unilaterial presidential action under these agreements may be justified as necessary for the protection of national security even though hostilities occur overseas and involve allies.36¶ 5. National Defense Power¶ The President's war powers authority is actually a national defense power that exists at all times, whether or not there is a war declared by Congress, an armed conflict, or any other hostilities or fighting. In a recent case the Supreme Court upheld the revocation of the passport of a former CIA employee (Agee) and rejected his contention that certain statements of Executive Branch policy were entitled to diminished weight because they concerned the powers of the Executive in wartime. The Court stated: "History eloquently attests that grave problems of national security and foreign policy are by no means limited to times of formally declared war. "3; Another court has said that the war power is not confined to actual engagements on fields of battle only but embraces every aspect of national defense and comprehends everything reQuired to wage war successfully.3H A third court stated: "It is-and must be-true that the Executive should be accorded wide and normally unassailable discretion with respect to the conduct of the national defense and the prosecution of national objectives through military means."39¶ Thus, the Executive Branch 's constitutional war powers authority does not spring into existence when Congress declares war, nor is it dependent on there being hostilities. It empowers the President to prepare for war as well as wage it, in the broadest sense. It operates at all times.¶ 6. Role of the Military¶ The fundamental function of the armed forces is to fight or to be ready to fight wars. 40 The Supreme Court has recognized the existence of limited, partial, and undeclared wars:41 Thus, there is a judicially recognized and legitimate activity of the armed services in times of no armed conflict that stems directly from **the war powers authority of the President**. That activity is the preparation for the successful waging of war, which may come in any form or level of conflict. **Any actions of the Executive Branch that** are part of the fundamental functions of the armed services in **ready**ing **for any type of hostility are based on** constitutional war powers authority of the President.

## CP

### Certainty Key (Oversight)

#### Certainty’s key to effective oversight

Morton Rosenberg 9, fellow at the Constitution Project, "When Congress Comes Calling: A Primer on the Principles, Practices, and Pragmatics of Legislative Inquiry," http://www.constitutionproject.org/wp-content/uploads/2012/09/175.pdf

D. How to Conduct Effective Oversight ¶ How is effective oversight accomplished? This handbook is designed to describe the tools of oversight and the applicable legal doctrines. But, first, it is important to set forth a few broad principles: ¶ Oversight Should Be a Leadership Priority: The leadership of the House and Senate must send the message to committee chairs that oversight, and in particular operational oversight, is to be a priority, and that oversight decisions, strategies, and enforcement will be fully supported, no matter who is in the White House. Even— or especially—when the president is of the same party as the one in control of Congress, it is critical to our system of checks and balances that Congress conduct effective oversight. Every standing committee should be encouraged to establish a subcommittee on investigations. Committee chairs should take care in selecting competent, dedicated, and experienced staff who will be familiar with the rules and the oversight powers available to Congress.

### Immediacy Key

#### Now key for AUMF modification

Ankit Panda 3/12, The Diplomat, "Time to Review the AUMF?", 2014, thediplomat.com/2014/03/time-to-review-the-aumf/

The AUMF became a point of controversy among libertarians, non-interventionists, and civil rights groups once it became apparent that it offered a legal smokescreen to pursue extra-judicial assassinations of American citizens affiliated with al-Qaeda, denying them the right to due process. The United States’ widely condemned practice of indefinite detention of “enemy combatants” is also a result of the AUMF.¶ Overall, there seems to be no political consensus about what the AUMF should become. I reckon that Lumpkin’s right that the AUMF needs to be “re-looked” at. The timing is rather impeccable considering that the United States is formally ending its war in Afghanistan this year. President Obama himself noted in a speech at the National Defense University last year that he looks forward “to engaging Congress and the American people in efforts to refine, and ultimately repeal, the AUMF’s mandate.”

### ICJ Slow

#### ICJ is super slow---fiat doesn’t solve

Julian Ku 6, 10-29-2006, “Fixing the ICJ: More Law Clerks is Not the Answer,” Opinio Juris, http://opiniojuris.org/2006/10/29/fixing-the-icj-more-law-clerks-is-not-the-answer/

But in recent years, the so-called active period of the ICJ, the ICJ has pretty much averaged three judgments a year, even without unusually difficult cases like the Bosnia/Serbia case. Let’s face it. The ICJ moves very, very slowly and it can’t all be explained by the lack of law clerks. The ICJ currently has twelve cases on its docket. A number of these cases have been sitting on that docket for years without any action or movement. For instance, the next set of ICJ hearings (Guinea/Congo) will be held about three years after the last written submission (July 2003) and will only discuss preliminary issues. The hearing after that (Nicaragua/Honduras) will be held nearly four years after the parties made their last written submissions (13 August 2003) (see here for the press release). So let’s get this straight. Each ICJ member-judge, who averages by the way about $315,000 in salary per year according to the p. 74 of the ICJ Annual Report plus about $44,000 a year in travel expenses, participates in three hearings a year and participates in the drafting of three judgments per year. This is an average of $100,000 per judge per judgment, or $50,000 per judge per judgment or hearing. I know it is expensive to live in the Hague these days, but unless I am missing something, this is a pretty sweet deal for ICJ members. (Just as a point of comparison, U.S. Supreme Court judges, who decide about 90 cases a year, are paid about $208,100 a year). A number of the ICJ members, like President Higgins or Judge Bruno Simma, are former academics who have cranked out dozens of articles and books much more sophisticated and complex than any ICJ judgment. I have little doubt that Judge Simma could personally draft an ICJ judgment in less than a month. I just can’t believe he and the other ICJ members need more research assistants. More likely, there is something deeply and fundamentally SLOW about the ICJ’s internal deliberative processes. As someone who believes international dispute resolution can serve a useful and important function, this apparent utter lack of urgency among the ICJ’s judges is disappointing. The ICJ may be the “principal judicial organ” of the United Nations, but its continuing lack of efficiency keeps it from doing much to live up to that role.

### ICJ Won’t Rule

#### ICJ will refuse to rule on the plan --- CP can’t fiat out of it

**LS 10**, Legal Sutra, “Advisory Jurisdiction of the International Court of Justice The WHO Case: Implications for Specialised Agencies”, 11-3, http://legalsutra.org/706/advisory-jurisdiction-of-the-international-court-of-justice-the-who-case-implications-for-specialised-agencies/

While the ability of the WHO to request an advisory opinion is unquestionable, it is not absolute with respect to the kinds of questions it may pose.[17] Furthermore, it must also be noted that **the ICJ**, which heard its first dispute in 1947, **retains the discretion to decide whether it will give an advisory opinion**.[18]¶ There are several factors that the ICJ considers while deciding to give an advisory opinion. First, it is necessary to consider the circumstances under which the ICJ will refuse to give an advisory opinion. The **relevant grounds for refusal are: "the 'political' nature of the question posed,... the 'abstract' nature of the question,... [and} the absence of consent on the part of a state immediately concerned."[**lQ)¶ **The ICJ is seldom asked for advisory opinions**[20] and has seldom refused to give an advisory opinion. However, **the Permanent i**nternational **C**ourt of **J**ustice set the precedent for refusing to give an advisory opinion. In the case of Eastern Carelia, **the PCIJ refused to give an advisory opinion due to "non membership in the League of one of the disputants and that disputant's failure to agree to, or be represented in, the proceedings of the Court**."[21]

### ICJ Won’t Be Forceful

**Even if the ICJ rules, it won’t be a forceful or detailed ruling --- can’t cause the plan or the net benefit**

David **Kretzmer 5**, Bruce W. Wayne Professor of International Law at the Hebrew University, “AGORA: ICJ ADVISORY OPINION ON CONSTRUCTION OF A WALL IN THE OCCUPIED PALESTINIAN TERRITORY: THE ADVISORY OPINION: THE LIGHT TREATMENT OF INTERNATIONAL HUMANITARIAN LAW”, 99 A.J.I.L. 88, January, lexis

Ever since the occupation of the West Bank and Gaza began in 1967, the Supreme Court of Israel has entertained petitions challenging actions of the Israeli authorities in those territories. The Court has delivered dozens of judgments in which it addressed questions of international humanitarian law in a situation of belligerent occupation. 1 For a long time the Supreme Court was the sole judicial actor in this sphere. While its judgments were subjected to scrutiny and criticism by academics, 2 no other judicial organs, domestic or international, ruled on the difficult legal issues discussed by the Court. **The request for an advisory opinion provided the** International Court of Justice (**ICJ) with a unique** opportunity to address and clarify some of the issues **that had previously remained in the exclusive domain of the Supreme Court of Israel. Unfortunately, the Court did** not take full advantage of this opportunity. As Judge Rosalyn Higgins noted in her separate opinion, **the Court refrained from engaging in a detailed analysis of the law, thereby failing to follow "the tradition of using advisory opinions as an opportunity to elaborate and develop international law**." 3 **The opinion is especially weak on questions of** international humanitarian law (**IHL), which makes it** extremely difficult to know what the Court actually decided **on these questions**. 4

### UK DA

#### ICJ Judges rule in accordance with their own countries’ interests

Erica Posner, Professor of law at U-Chicago and Miguel de Figueiredo, PhD Candidate at Berkeley, 2005 Journal of Legal Studies 35:2 June <http://www.journals.uchicago.edu.ezp1.harvard.edu/JLS/journal/issues/v34n2/340206/340206.web.pdf>

This paper examines data on the voting patterns of ICJ judges. We test the claim of the critics that the judges vote the interest of the state of which they are a national (their “home state”) rather than enforce international law in a disinterested way. The null hypothesis then is that judges are unbiased. A judge votes in an unbiased way if he or she is influenced only by the relevant legal considerations—such as the proper interpretation of a treaty—and not by legally irrelevant considerations such as whether one party has a military alliance with the judge’s state. The ideal way to determine if a judge is unbiased is just to figure out the proper legal outcome of a dispute and then see if his or her vote matches that outcome, taking into account legitimate differences in the legal cultures in which judges are educated. The problem with this ap- proach, however, is that the proper legal outcome is rarely obvious and, further, judges may make mistakes and vote the wrong way even though they are unbiased. To avoid this problem, we can look at voting patterns alone and see if they are related to legally irrelevant factors. The null hypothesis implies that an unbiased judge from state X is no more likely to vote for state X than is an unbiased judge from state Y. The unbiased judge from state X is also no more likely to vote for state Z, where Z is an ally of X, than an unbiased judge from state Y, where Z is an enemy of Y. We are thus not assuming that unbiased judges always vote the same way—as there can be legitimate, legally relevant grounds for disagreeing on the outcome of a dispute—but only that their disagreements are random (or correlated with relevant legal factors) and not correlated with political factors. The simplest way to test this claim is to examine whether judges vote in favor of their home states when that state appears as a party. Previous studies have found some support for this claim but have also disputed the significance of this finding.4 We use more sophisticated empirical tests, as well as more data, to show that, in fact, judges are significantly biased in favor of their home states when that state appears as a party. Whereas judges vote in favor of a party about 50 percent of the time when they have no relationship with it, that figure rises to 85–90 percent when the party is the judge’s home state. This finding has limited importance, however, because it does not tell us anything about the voting behavior of judges when their home state is not a party. It is possible that only the judges whose home states are parties are biased, in which case their votes cancel out, leaving 13 or so other judges to resolve the case impartially. We hypothesize that even when a judge’s home state is not a party, his or her home state may have an interest in one party prevailing, and that the judge’s vote will reflect his or her state’s interest**.** Previous studies have found no evidence for this hypothesis. The most recent such study concluded, “[T]he record does not reveal significant [voting] alignments, either on a regional, po- litical, or economic basis. There is a high degree of consensus among the judges on most decisions. The most that can be discerned is that some judges vote more frequently together during certain periods than do others, and that in rare instances, notably with the Soviet and Syrian judges, they have always voted the same way. But there have not been persistent voting alignments which have significantly affected the deci- sions of the Court” (Weiss 1987, p. 134). However, this study and the earlier studies all have flaws, chiefly, the failure to rely on statistical techniques that control for relevant factors. THEY CONCLUDE… The bottom line on the regressions is clear. Judges vote in favor of their own countries and in favor of countries that match the economic, political, and (somewhat more weakly) cultural attributes of their own countries. As for regional and military groupings—whether economic or strategic—we are hampered by multicollinearity and lack of variation.3

#### UK supports an expansive definition.

Antonio Coco 13, PhD Candidate at the University of Geneva, November 18, 2013, http://www.ejiltalk.org/crocodile-tears-the-uk-supreme-courts-broad-definition-of-terrorism-in-r-v-mohammed-gul/

On 25 October 2013, in its judgment in the R v Mohammed Gul case, the Supreme Court of the United Kingdom tackled two important issues: the definition of terrorism in times of armed conflict and the relationship between domestic legislation and international rules criminalizing certain behaviours. On both issues, the judgment is rather unsatisfying and may be considered a step back from the stand previously taken by the Court of Appeal in the same case (upon which I commented in the Journal of International Criminal Justice, vol. 11(2), 2013, pp. 425-440, some time ago; see also the excellent post by Kimberley Trapp here on EJIL:Talk!). In particular, the Supreme Court found the terrorism definition in UK law to be both unwise and undesirable but then relied on it to confirm the defendant’s conviction. The defendant, a law student of British nationality, was accused of having disseminated terrorist publications, an offence under Section 2(3) of the UK Terrorism Act 2006. Actually, his conduct consisted in uploading onto the Internet, and particularly on Youtube, videos of attacks against military targets in Chechnya, Iran and Afghanistan. The videos were accompanied by prayers and praises for the attackers. One legal element of the offence is that the publication – in this case the videos – concerns actual terrorist attacks. The bone of contention here, then, is whether attacks against military targets in the context of non-international armed conflicts (NIACs) can be labelled as terrorist attacks. The definition of terrorism in UK legislation is contained in Section 1 of the Terrorism Act 2000. It basically foresees three requirements: (1) an act or threat which involves serious violence or danger to the life of persons, serious damage to property, or serious interference with or disruption of electronic systems; (2) the “purpose of advancing a political, religious, racial or ideological cause”; and (3) the fact that the act or threat is “designed to influence the government or an international governmental organization, or to intimidate the public or a section of the public”. The act or threat need not to be designed to influence a government or an international organization or to intimidate the public when it involves the use of firearms or explosives. This means that any threat or use of firearms or explosives motivated by a political or ideological cause is an act of terrorism, as long as it involves serious danger to persons or serious damage to property and regardless of its purpose. The definition is practically very broad (as recently noted by K.J. Heller). It seems to label as terrorist most acts of warfare in a NIAC, regardless of whether they are lawful or unlawful under International Humanitarian Law (IHL) and whether they are carried out by the armed forces of a State or by a non-State armed group. Indeed, most hostile acts in an armed conflict are likely to cause serious violence to persons or serious damage to property, and all of them are motivated by a political or ideological cause. Arguably, any hostile act in an armed conflict is designed to influence a government or involves the use of firearms or explosives. According to this definition, every person embracing weapons in a NIAC is considered a terrorist. The Prosecution in the Gul case argued that such a wide definition is counterbalanced by the requirement that prosecutions for terrorism are authorized by the Director of Public Prosecution if the activity occurred in the UK, or by the Attorney General if it occurred abroad, thus ensuring that criminal charges are formulated only in the appropriate cases (§ 30). This contention, far from solving the problem, seems to raise even more concerns, as I shall explain below. The defendant contended instead, in my opinion correctly, that international law defines terrorism more narrowly. Leaving to one side that a definition of terrorism in peace-time might have crystallized in customary international law (as affirmed by the Special Tribunal for Lebanon in its 16 February 2011 decision, and agreed by the Court of Appeal of England and Wales at the previous stage of R v Gul), the terrorism label should not be stuck on attacks against military targets in the context of an armed conflict. Indeed, among the international conventions on terrorism binding on the UK, those most relevant to the attacks which Gul uploaded onto the Internet contain an exclusion clause for actions carried out by the parties to an armed conflict, regulated by IHL (see e.g. art. 19(2) of the Terrorist Bombings Convention. The combination of art. 2(1)(a) and art. 21 of the Terrorist Financing Convention has the same effect). Arguably, a definition of terrorist attacks in war-time – as ‘acts or threats of violence the primary purpose of which is to spread terror among the civilian population’ – is envisaged by art. 51(2) of Additional Protocol I (AP I) to the Geneva Conventions and art. 13(2) of Additional Protocol II (AP II), both deemed to have reached customary status (See the ICRC Study on customary IHL, Rule 2). The Supreme Court nevertheless found no reason to read the definition narrowly, based on two strands of argument. The first strand (§§ 44-51) stems from the consideration that there is no accepted definition of terrorism in international law, and there is certainly no agreement as to whether attacks by so-called freedom fighters (i.e. peoples fighting against a racist regime, an alien occupation or a colonial domination) can be exempted from the terrorism label. The negotiations for a Draft Comprehensive Convention on Terrorism have stopped precisely for this reason. Moreover, in any case, there would be no combatant immunity for those who have taken arms against their state in non-international armed conflicts, so these would be punishable under domestic law even for attacks against military targets. These assumptions are problematic. The finding on the absence of a comprehensive definition of terrorism admittedly contradicts the conclusion of the Court of Appeal, which had agreed that a customary definition existed at least for acts of terrorism in peace-time, based on the STL decision cited above (see §§ 33-35 of the Court of Appeal’s judgment). The reference to freedom fighters does not match the issue at stake in the Gul case: the negotiations over a Comprehensive Convention seem to have stopped because some countries wanted to exempt attacks by freedom fighters even when launched against civilians. There was never a question as to whether attacks against military targets could be considered to be terrorist attacks. And indeed they are not, according to the ICTY in Galić (Trial Judgment, § 133) and the ICRC commentary (§ 1940) on art. 51(2) AP I. The reference to the absence of a combatant immunity in NIACs is not conclusive either: discriminate and proportionate attacks against governmental forces might well be punishable under domestic law, but they do not constitute terrorist attacks according to the applicable international rules. This final consideration is clearly linked to the second line of arguments put forward by the Supreme Court (§§ 52-58). The Justices indeed affirm that, even if a number of international rules binding on the UK provide a definition of terrorism, the Parliament is not bound by them when defining terrorism at the domestic level. Domestic legislation could go a great deal further than what would normally be required by the international rule to be implemented, as long as the former does not contradict the latter. This practice, known as ‘gold plating’, would not be prohibited as such. The Supreme Court bases its reasoning on the famous Lotus principle (S.S. Lotus, France v. Turkey, 1927 PCIJ Series A, No. 10., § 44), according to which States are free to do whatever they like, as long as their behaviour is not explicitly prohibited by international law. It appears, however, that this principle does not give the Supreme Court a sound basis for its argument. The Lotus principle dates back to 1927, when international law was far less developed compared to present day. At that time, the comparatively smaller number of applicable international rules conceded a wider margin of manoeuvre to States. After almost 90 years, however, the domaine réservé of States has been significantly reduced. The emergence of human rights law, international criminal law, and the law of non-international armed conflicts, inter alia, has significantly changed the setting. Nowadays the behaviour of States is regulated by the interplay of a vast number of sources, not all of them containing explicit prohibitions. The international regulatory framework on terrorism, in particular, gives a sufficient indication as to what can – and cannot – be considered terrorism. If a State can totally disregard this indication in its domestic law, what is the point of negotiating and signing all these conventions? These considerations are particularly relevant given that, under the umbrella of counter-terrorism, some governments have in the past fought political dissent. I am not at all suggesting that the UK definition of terrorism is anti-democratic. However, it certainly raises deep concerns about respect for the principle of legality. The definition is so broad that, despite the contrary stand taken by the Supreme Court (§ 36), it ultimately delegates to the Prosecution the decision as to what constitutes a criminal act of terrorism. The case law of regional human rights bodies has already warned against such wide definitions of criminal offences. The Inter-American Court, in Castillo Petruzzi (30.05.1999, § 121), has made clear that crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offense, thus giving full meaning to the principle of nullum crimen nulla poena sine lege praevia in criminal law. This means a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offences or are punishable but not with imprisonment. The European Court of Human Rights took a similar position in Kokkinakis, 25.05.1993, § 52. Moreover, one should not forget that the entire body of UK counter-terrorism laws is based on this wide definition. Limitations of other human rights, including the right to liberty and security (because of increased police powers) and the right to freedom of expression (because of the prohibition on disseminating ‘terrorist publications’), risk becoming violations of the rules established by applicable international instruments, precisely because of the wide meaning given to the word ‘terrorism’. Despite its questionable reasoning, the Supreme Court at least acknowledged its concerns over the wording of the definition of terrorism in UK law (§§ 63-64). By doing so, the Justices implicitly accepted that Mr. Gul’s conviction might be based on a vitiated piece of legislation. It is therefore surprising that they decided to uphold that same conviction, though accompanying it with a few tears of sorrow.

### AT: Resource Wars

#### No risk of resource wars

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Water/food resources, war and conflict¶ The question of resource scarcity has led to many debates on whether scarcity (whether of food or water) will lead to conflict and war. The underlining reasoning behind most of these discourses over food and water wars comes from the Malthusian belief that there is an imbalance between the economic availability of natural resources and population growth since while food production grows linearly, population increases exponentially. Following this reasoning, neo-Malthusians claim that finite natural resources place a strict limit on the growth of human population and aggregate consumption; if these limits are exceeded, social breakdown, conflict and wars result. Nonetheless, it seems that most empirical studies do not support any of these neo-Malthusian arguments. Technological change **and greater inputs of capital** have **dramatically increased labour productivity in agriculture.** More generally, the neo-Malthusian view has suffered because during the last two centuries **humankind has breached many resource barriers that seemed unchallengeable**.¶ Lessons from history: alarmist scenarios, resource wars and international relations¶ In a so-called age of uncertainty, a number of alarmist scenarios have linked the increasing use of water resources and food insecurity with wars. The idea of water wars (perhaps more than food wars) is a dominant discourse in the media (see for example Smith, 2009), NGOs (International Alert, 2007) and within international organizations (UNEP, 2007). In 2007, UN Secretary General Ban Ki-moon declared that ‘water scarcity threatens economic and social gains and is a potent fuel for wars and conflict’ (Lewis, 2007). Of course, this type of discourse has an **instrumental purpose**; security and conflict are here used for raising water/food as key policy priorities at the international level.¶ In the Middle East, presidents, prime ministers and foreign ministers have also used this bellicose rhetoric. Boutrous Boutros-Gali said; ‘the next war in the Middle East will be over water, not politics’ (Boutros Boutros-Gali in Butts, 1997, p. 65). The question is not whether the sharing of transboundary water sparks political tension and alarmist declaration, but rather to what extent water has been a principal factor in international conflicts. The evidence seems quite weak.

Whether by president Sadat in Egypt or King Hussein in Jordan, none **of these declarations have been followed up by military action**.¶ The governance of transboundary water has gained increased attention these last decades. This has a direct impact on the global food system as water allocation agreements determine the amount of water that can used for irrigated agriculture. The likelihood of conflicts over water is an important parameter to consider in assessing the stability, sustainability and resilience of global food systems.¶ None **of the** various and extensive databases on the causes of war show water as a casus belli. Using the International Crisis Behavior (ICB) data set and supplementary data from the University of Alabama on water conflicts, Hewitt, Wolf and Hammer found only seven disputes where water seems to have been at least a partial cause for conflict (Wolf, 1998, p. 251). In fact, about 80% of the incidents relating to water were limited purely to governmental rhetoric intended for the electorate (Otchet, 2001, p. 18).¶ As shown in The Basins At Risk (BAR) water event database, **more than two-thirds of over 1800 water-related ‘events’ fall on the ‘cooperative’ scale** (Yoffe et al., 2003). Indeed, if one takes into account a much longer period, the following figures clearly demonstrate this argument. According to studies by the United Nations Food and Agriculture Organization (FAO), organized political bodies signed between the year 805 and 1984 more than 3600 water-related treaties, and approximately 300 treaties dealing with water management or allocations in international basins have been negotiated since 1945 ([FAO, 1978] and [FAO, 1984]).¶ The fear around water wars have been driven by a Malthusian outlook which equates scarcity with violence, conflict and war. There is however **no direct correlation between water scarcity and transboundary conflict**. Most specialists now tend to agree that the major issue is not scarcity per se but rather the allocation of water resources between the different riparian states (see for example [Allouche, 2005], [Allouche, 2007] and [Rouyer, 2000]). Water rich countries have been involved in a number of disputes with other relatively water rich countries (see for example India/Pakistan or Brazil/Argentina). The perception of each state’s estimated water needs really constitutes the core issue in transboundary water relations. Indeed, whether this scarcity exists or not in reality, perceptions of the amount of available water shapes people’s attitude towards the environment (Ohlsson, 1999). In fact, some water experts have argued that scarcity drives the process of co-operation among riparians ([Dinar and Dinar, 2005] and [Brochmann and Gleditsch, 2006]).¶ In terms of international relations, the threat of water wars due to increasing scarcity **does not make much sense in the light of the recent** historical record. Overall, the water war rationale expects conflict to occur over water, and appears to suggest that violence is a viable means of securing national water supplies, an argument which is highly contestable.¶ The debates over the likely impacts of climate change have again popularised the idea of water wars. The argument runs that climate change will precipitate worsening ecological conditions contributing to resource scarcities, social breakdown, institutional failure, mass migrations and in turn cause greater political instability and conflict ([Brauch, 2002] and [Pervis and Busby, 2004]). In a report for the US Department of Defense, Schwartz and Randall (2003) speculate about the consequences of a worst-case climate change scenario arguing that water shortages will lead to aggressive wars (Schwartz and Randall, 2003, p. 15). Despite growing concern that climate change will lead to instability and violent conflict, **the evidence base to substantiate the connections is thin** ([Barnett and Adger, 2007] and [Kevane and Gray, 2008]).

## DAs

### 2AC Israel DA

#### Israel will only release prisoners as a quid pro quo

Israel Hayom 3/30, March 30, 2014, "PM: No deal to free prisoners without clear benefit in return," [www.israelhayom.com/site/newsletter\_article.php?id=16499](http://www.israelhayom.com/site/newsletter_article.php?id=16499)¶ Israel refrains from conducting fourth stage of prisoner release on Saturday as originally scheduled • Palestinian official to Israel Hayom: U.S. and Israel holding intensive discussions on release, which is still likely to take place sometime this week.¶ Israel did not conduct the fourth stage of the prisoner release on Saturday night, prompting anger among Palestinians.¶ ¶ Some 26 imprisoned terrorists were supposed to have been released in the fourth and final stage of the release that was agreed to as part of the renewal of Israeli-Palestinian peace negotiations last July. However, Israel decided to refrain from carrying out the fourth stage until it becomes clear whether the Palestinians intend to agree to a one-year extension of the negotiations, currently set to end next month.¶ ¶ During a meeting with Likud ministers on Sunday morning, Prime Minister Benjamin Netanyahu said that discussions about the release could continue for several more days. Netanyahu stated that there would be no deal to free prisoners "without a clear benefit [for Israel] in return." The prime minister also said that negotiations to reach such a deal could potentially "blow up."¶ ¶ On Saturday, Transportation Minister Yisrael Katz (Likud) said, "the place for murderers of Jews is in the crosshairs of a gun, and if not there, then in prison."¶ ¶ Deputy Defense Minister Danny Danon (Likud) said, "It's good the Palestinians understand that Israel won't give them anything if it doesn't receive something in return."¶ ¶ A Palestinian official told Israel Hayom that the Palestinian Authority has acquiesced to an American request for the release to be delayed a few days, and said that the release would still likely take place sometime this week. He said the U.S. and Israel were holding intensive discussions on the issue and he declined to elaborate on whether Israeli Arab prisoners would be included in the release.¶ ¶ Palestinian Authority Prisoners Affairs Minister Issa Qaraqe said the Palestinians were waiting for Israel and the U.S. to finish deliberating on the fourth stage of the prisoner release.¶ ¶ The Palestinian Authority did not comment on a report that Israel had offered to release 400 more prisoners in exchange for an extension of the peace talks.¶ ¶ Meanwhile, the London-based pan-Arab newspaper Al-Hayat reported that U.S. Secretary of State John Kerry had delivered a message from Netanyahu to Palestinian Authority President Mahmoud Abbas. The message reportedly said that there was a chance Netanyahu's government would collapse if Israeli Arab prisoners were released.

#### No link – not reverse causal, Israel won’t relax detentions and they model bad immigration detention instead

Bali 5 Asli, Assistant Professor of Law (UCLA), former Irving S. Ribicoff Fellow in Law and coordinator of the Middle East Legal Forum (Yale), JD (Yale), "Scapegoating the Vulnerable: Preventive Detention of Immigrants in America’s "War on Terror," UMASS, http://people.umass.edu/~~leg397v/Readings/Scapegoating20the20vulnerable.pdf

For the readers of this journal, the greatest contribution of an analysis of administrative ¶ detention in the United States may lie in the comparison to Israel. Some commentators ¶ have suggested an actual link between U.S. administrative abuse of detainees and the ¶ tactics developed by the Israeli government to control Palestinian resistance to Israeli ¶ occupation, suggesting an “Israelization” of U.S. policies in the “war on terror.”97 ¶ Whether such a direct connection exists or not, there are significant similarities in the ¶ domestic strategies of using administrative detention to hold large numbers of individuals ¶ without charge during periods of heightened national security alerts. President Moshe ¶ Katsav recently remarked that sometimes democracies must take “undemocratic steps,”98 ¶ and apparently when they do, they do so in similar ways. Many of the practices ¶ documented in the American context by this article have their analog in Israel, including ¶ the specific forms of abuse detailed above. A comparison of specific suspensions of ¶ basic due process protections in the two countries – the presumption of guilt based on ¶ ethnicity and national origin, the use of incommunicado detention, the transferring of ¶ detainees between facilities to prolong detention and the abusive conditions of detention ¶ – suggests an alarming convergence in the violation of basic rights by both ¶ governments.99

*\*\*\*End of MSU’s card\*\*\**

Israeli and international human rights organizations have extensively documented the use of administrative detention to hold, at times, large numbers of Palestinians in custody without charge and often without timely hearings to review the grounds for their detention.100 As in the case of immigration detention within the U.S., these detentions are authorized by administrative rather than judicial order and represent serious harm to the due process rights of those detained. While Israeli authorities do not typically deport administrative detainees outside of Israeli jurisdiction (which includes the Occupied Palestinian Territories), there have been instances in which Israeli authorities have expelled or “transferred” prisoners without due process of law as a punitive measure, a tactic comparable to the deportations and renditions by which the U.S. has sought to expel large numbers of Arab and Muslim men from within its territory.101

#### Peace Process will fail inevitably --- borders, Jerusalem, water rights, refugees, and “Jewish state” all prevent success

Judis 3/25 John Judis - Writer for The New Republic, "John Kerry's Peace Process Is Nearly Dead And the fault is mostly Netanyahu's," [www.newrepublic.com/article/117141/john-kerrys-peace-process-nearly-dead](http://www.newrepublic.com/article/117141/john-kerrys-peace-process-nearly-dead)

We’ll know within the next month, and perhaps even within the next week, whether there is any chance for resolving the Israeli-Palestinian conflict during Barack Obama’s second term. Yet even if the negotiations between the parties survive past the April 29 deadline, there is little chance that they will succeed. The talks, which Secretary of State John Kerry initiated last July with enthusiasm and promise, are floundering. Israeli Prime Minister Benjamin Netanyahu is determined to blame the Palestinians if the talks fail, but blame should almost certainly be assigned to Netanyahu and the Israelis.¶ Kerry has clamped down on leaks about the talks. And with some justification: Attempts to negotiate agreements through public jousting invariably fail. But there have been enough leaks, and I have talked to enough people who have either talked to the negotiators or been involved peripherally with the negotiations, to construct a tentative outline of what has transpired. But be warned: Some of the details remain murky, probably to the negotiators themselves.¶ Last July, the Israelis and Palestinians agreed to begin talks on a two-state solution. To smooth the way, Kerry got the Palestinians to put aside their campaign at the United Nations against the Israeli occupation and the Israelis to release, in four stages, 104 Palestinian prisoners. There were misgivings on both sides. Within the executive committee of the Palestine Liberation Organization (PLO), skeptics outnumbered those who believed an agreement with the Israelis was possible. They were won over by the promise of the prisoner release. Netanyahu’s governing coalition was also split, and probably would have to be reconstituted if he agreed to a two-state proposal.¶ According to Kerry’s plan, which both sides endorsed, the Israelis and Palestinians would reach a “final status” agreement by April 29 of this year. Kerry specifically rejected the idea of another “framework” that would merely outline areas of potential agreement. The Quartet of the U.S., European Union, United Nations, and Russia had tried that approach a decade before, and it had failed abysmally. So Kerry wanted the parties to resolve key issues, including borders, Jerusalem, security, water rights, and refugees, in nine months. Formal talks began in August, but broke down by November. No agreement was reached on any of the final status issues. In addition, Netanyahu had introduced a new issue—that the Palestinians must not merely grant recognition to Israel, as other countries had done, but recognize Israel specifically as a “Jewish state.”¶ Final proof of Netanyahu’s motives will have to await the release of his papers, but he appears to have introduced the new demand because he expected that the Palestinians would reject it

and that he could then blame the failure of the talks on them. Israel is, obviously, a Jewish state, and has been described as such in United Nations resolutions and American diplomatic statements. But when Netanyahu made the term an unconditional demand in negotiations, he made clear that it meant that Palestinians would have to recognize that Jews had a legal right to Israel, based on Biblical history, that took precedence over their own claims to the land. Netanyahu was not simply demanding that Palestinians adopt a common sense usage, but that they deny their own historical ties to the land. He is “asking me to forgo my narrative,” Palestinian negotiator Saeb Erekat explained. He is also asking Palestinians to reject the right of return and ignore the political rights of Arab Israelis—and to do so as a precondition to agreement on anything else.¶ On matters of substance, Netanyahu refused to concede Palestinians a capital in East Jerusalem, where Palestinians still make up a majority of residents. Former prime ministers Ehud Barak in 2000 and Ehud Olmert in 2008 had both accepted Palestinian demands for a capital in East Jerusalem. Netanyahu also insisted on an indefinite Israeli military presence in the Jordan Valley, which makes up a third of the West Bank; Olmert had agreed to an international force for a limited period. And Netanyahu would not explicitly accept the 1967 “Green Line” as the basis for negotiations over borders and land swaps. (To make matters worse, Israeli housing starts in the occupied West Bank more than doubled in 2013.) So in November, negotiations between the two sides ground to a halt, and have never resumed. Instead, the United States has negotiated separately with the two parties.

#### No Middle East impact

Cook 7**—**CFR senior fellow for Mid East Studies. BA in international studies from Vassar College, an MA in international relations from the Johns Hopkins School of Advanced International Studies, and both an MA and PhD in political science from the University of Pennsylvania(Steven, Ray Takeyh, CFR fellow, and Suzanne Maloney, Brookings fellow, 6 /28, Why the Iraq war won't engulf the Mideast, http://www.iht.com/bin/print.php?id=6383265, AG)

Underlying this anxiety was a scenario in which Iraq's sectarian and ethnic violence spills over into neighboring countries, producing conflicts between the major Arab states and Iran as well as Turkey and the Kurdistan Regional Government. These wars then destabilize the entire region well beyond the current conflict zone, involving heavyweights like Egypt. This is scary stuff indeed, but with the exception of the conflict between Turkey and the Kurds, the scenario is far from an accurate reflection of the way Middle Eastern leaders view the situation in Iraq and calculate their interests there. It is abundantly clear that major outside powers like Saudi Arabia, Iran and Turkey are heavily involved in Iraq. These countries have so much at stake in the future of Iraq that it is natural they would seek to influence political developments in the country. Yet, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq. The reasons are fairly straightforward. First, Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: self-preservation. Committing forces to Iraq is an inherently risky proposition, which, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq. Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict. Middle Eastern leaders are preparing for this possibility. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, Arab security services are being vigilant about who is coming in and going from their countries. In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom. Finally, there is no precedent for Arab leaders to commit forces to conflicts in which they are not directly involved. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. The civil war in Lebanon was regarded as someone else's fight. Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight. As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement. At a time when Tehran has access and influence over powerful Shiite militias, a massive cross-border incursion is both unlikely and unnecessary. So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq. The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, **the region has** also **developed an intuitive ability to contain its civil strife and prevent local conflicts from enveloping the entire Middle East.**

### 2AC Riders DA

#### Zero chance of conflict

James Kraska 14 is Mary Derrickson McCurdy visit- ing scholar at Duke University Marine Laboratory and senior fellow at the Center for Oceans Law and Policy, University of Virginia School of Law. Betsy Baker is associate professor of law and senior fellow for Oceans and Energy at the Institute for Energy and the Environment at Vermont Law School. "Emerging Arctic Security Challenges" Policy Brief for the Center for a New American Study in March 2014 from www.cnas.org/sites/default/files/publications-pdf/EmergingArcticSecurityChallenges\_policybrief.pdf)

It would be easy to become pessimistic about Arctic military stability; we are not. International conflict in the region is unlikely because the Arctic nations are committed to a rules-based approach to secu- rity. Worries about the potential for conflict over seabed rights in the Arctic are misplaced.6 War is far less likely above the Arctic Circle than in nearly any other part of the world.7 Cooperation is break- ing out everywhere in the region; international law is followed; there is no political vacuum.8¶ While elsewhere Russia is exhibiting its propensity toward military displays, in the Arctic, Russia is playing a constructive role in maintaining regional stability. Russia is intently focused on regional security in part because it sees in the Arctic an opportunity to recapture the former influence and superpower standing that it enjoyed during the Cold War. Russia strategically and successfully takes advantage of its dominant geographic posi- tion surrounding 170 degrees of the Arctic Circle, and its energy and economic presence in the region dwarfs that of all other Arctic states combined.¶ The United States and Russia enjoy a pragmatic working relationship in managing the security¶ of the Bering Strait.9 The U.S. Coast Guard and Russian Border Patrol have cooperated for nearly two decades under a bilateral treaty to manage safety and security in the 53-mile-wide strait.10 The neighbors also jointly led negotiations among all eight Arctic states to adopt binding agreements on search and rescue and oil spill preparedness and response. Now the United States and Russia are leading efforts to adopt agreements on marine pol- lution prevention and marine scientific research in the region.¶ The remoteness and physical isolation of the Arctic region also reduces military risk. Arctic states¶ find comfort in their exclusive and shared geogra- phy. They are united to resist efforts from outside the region that might erode, let alone upend, the contemporary order. The one thing all Arctic states have in common is a rather circumspect view of states from outside the region that seek to play a greater role in the Arctic.¶ Furthermore, all Arctic states are invested in a rules-based approach to stability and security, based principally on the United Nations Convention on the Law of the Sea (UNCLOS).11 The consensus among Arctic states that UNCLOS is the framework for distribution of rights and duties in the region minimizes risk of conflict over maritime boundaries. Every Arctic nation is a party to the treaty except the United States, which, since 1983, has made a commitment to adhere to most provi- sions of the treaty.12¶ Finally, the likelihood of conflict breaking out over the region’s vast offshore resources is also remote since Arctic states are pursuing their mari- time claims through the multilateral Commission on the Limits of the Continental Shelf (CLCS), an independent international technical body estab- lished by UNCLOS. Every Arctic coastal state except the United States has submitted at least partial information for consideration of a claim to sovereign rights over seabed riches of oil, gas and minerals. To the extent that overlapping maritime claims exist, the four other Arctic Ocean coastal states, including Russia, are proceeding with deliberate professionalism in appropriate bilateral forums and with the CLCS to resolve them.13 In 2010, Russia and Norway, for example, signed a treaty to resolve their 40-year disagreement over maritime resource boundaries in the Barents Sea. More recently, Denmark and Canada established maritime delimitation in the Lincoln Sea, north- west of Greenland. Similarly, Canada and the United States are exploring a way ahead to resolve a benign disagreement over a single boundary line in the Beaufort Sea.

#### No radar impact

Komp, 6 **(Catherine, Core Contributor to The NewStandard, a journalist and radio producer, “Defense Dept. Continues to Stall Wind Power Projects,” Sept. 1, The NewStandard, http://newstandardnews.net/content/index.cfm/items/3622)**

Sept. 1, 2006 – Environmentalists and alternative-energy advocates say the US Department of Defense is stymieing the development of wind-energy projects after failing to meet a second deadline regarding the impact of wind farms on military radar. The environmental group Sierra Club, which filed a lawsuit in June to compel the agency to finish a study on wind farms and radar, accused the Department of "foot-dragging" and "paralyzing" clean-energy development. "There are a lot of energy issues being discussed in the country," Sierra Club spokesperson David Willett told The NewStandard, "both in terms of energy costs and the way our energy sources contribute to global warming, and this would be a perfect time to be building more wind-power plants. So any delay for that is providing multiple costs both in terms of environmental protection and in financial burden for power on the American people." The Defense Department first missed a May 8 deadline to deliver an assessment to Congress on whether winds farms obstruct nearby military radar installations, and to determine technologies to mitigate any adverse effects on military operations. Groups say wind farms at military bases at Guant?namo Bay in Cuba and Ascension Island in the South Atlantic are examples that the government is already finding solutions to reduce or eliminate the impact of wind turbines on military radar. The study was required in a last minute amendment that US Senator John Warner (R-Virginia) attached to a 2006 defense appropriations bill. Critics say the missed deadlines and the delays in approving wind-farm projects threaten to disqualify some developers from a clean energy federal tax credit that expires at the end of 2007. In response to the missed deadline, Sierra Club filed a lawsuit in federal court accusing the Defense Department of unlawfully withholding or unreasonably delaying information under the Administrative Procedures Act. The Department had until August 28 to respond to Sierra Club?s challenge and explain why it had failed to turn in the study on time. However, according to Sierra Club, the Department?s lawyers instead told the group it would not be able to meet this deadline either and requested an extension until the first week of October. Sierra Club?s Willett said the organization consented to the Department?s request. The Defense Department refused to respond to TNS?s specific questions about the missed deadlines, stating only that it does "not discuss details of pending lawsuits." However in a prepared statement on the issue, the agency said it "will continue to work to complete the report as soon as possible" and that it "must ensure it is accurate and complete." Meanwhile, the Defense Department is following an interim policy to contest the proposed construction of wind farms that would be "in the radar field of view of the long-range air defense radars." The final decision on wind-farm permits, however, is up to the Federal Aviation Administration (FAA). According to FAA spokesperson Diane Spitaliere, the FAA is continuing to review all applications it receives, the number of which has increased "dramatically" over the last several years. Spitaliere said the FAA has only denied four permit applications completely since 2004 due to possible radar interference

### Doc-Fix Pounder

#### Congress will attach sanctions to the “doc fix” bill --- it’s must-pass

Derek Wallbank 3-26, “House Plans Vote on Delaying Cuts to Physician Payments,” Bloomberg, 3-26-14, http://www.bloomberg.com/news/2014-03-26/house-plans-vote-on-delaying-cuts-to-physician-payments.html

The House will vote as soon as tomorrow to avoid an estimated 24 percent reduction in physician payment rates under Medicare scheduled to take effect after March 31, and to delay any future cuts to doctors for a year.¶ The 121-page bill was posted late yesterday -- three minutes before midnight -- allowing the Republican-led House to vote on the measure tomorrow without technically violating its three-day rule for reviewing legislation.¶ House Speaker John Boehner said the measure represents an agreement with Senate Majority Leader Harry Reid, a Nevada Democrat, to “patch” the Medicare payments to doctors for the next 12 months.¶ “The House will act tomorrow, and I would expect the Senate would probably act pretty quickly thereafter,” Boehner, an Ohio Republican, told reporters today in Washington.¶ The “doc fix,” as it’s referred to in Congress, is considered a must-pass bill because lawmakers don’t want to risk that physicians would refuse to treat Medicare patients because their billable rates would be too low.

#### It will be debated today --- takes out the DA

Ramsey Cox 3-27, “Reid sets up ‘doc fix’ vote for Monday,” The Hill, 3-27-14, http://thehill.com/blogs/floor-action/senate/201995-reid-sets-up-doc-fix-vote-for-monday

The Senate won’t vote on a bill that prevents a pending cut to Medicare physician rates until the day of the deadline.¶ Senate Majority Leader Harry Reid (D-Nev.) set up a vote on the “doc fix” for Monday. For the fix to be approved, it will have to get 60 votes.¶ Earlier Thursday, the House approved a doc fix bill by voice vote. The bill would prevent a 24 percent cut to those rates set to hit on April 1 without congressional action.

#### Passage is likely but controversial

The Hill 3-29, Kavita Patel, MD, MS and Jeffrey Nadel, BA, “Yet another short-term ‘doc fix’, but with glimmers of hope,” http://thehill.com/blogs/congress-blog/healthcare/202063-yet-another-short-term-doc-fix-but-with-glimmers-of-hope

Another short-term ‘doc-fix’—or legislative repair made to the broken Medicare Sustainable Growth Rate (SGR) system—did not come as a surprise, but carried substantial frustration and disappointment. Over the past year, Congress has made great strides toward a permanent fix to the dysfunctional SGR system. In 2013, bipartisan and bicameral legislation was released to repeal the SGR formula and replace it with a period of stable updates to provider payments. It also included provisions to incentivize the movement of providers away from fee-for-service reimbursement and into value-based payment arrangements, such as Accountable Care Organizations. In the end, none of the bills came to full chamber vote.¶ There was a broad sense of optimism around a permanent SGR fix last year. A favorable score from the Congressional Budget Office (CBO) and unprecedented cross-chamber and cross-party collaboration made passing a full repeal a no-brainer. However, without consensus on a solution to cover the law’s $180 billion price tag before December 2013 recess, a 3-month patch landed us to where we are today: yet another patch.¶ The patch bill, which passed the House of Representatives on Thursday, March 27 and will likely pass through the Senate next week, is expected to be signed by President Obama. The bill is nearly identical to the majority of other SGR patches passed by Congress in recent years (all 16 of them). Though it has not yet been scored by the CBO, the House legislation will cost approximately $20 billion, and offsets include the following:¶ Value-based purchasing for skilled nursing facilities¶ Linking fee schedule rates for clinical laboratory services to reported commercial rates¶ Cuts to CT services by physicians and outpatient departments using outdated CT scanning equipment¶ Applying $2.3 billion accrued from the “Transitional Fund for SGR Reform” after an extension of the Medicare sequester ¶ Delaying the inclusion of oral-only drugs in the bundled payment system to 2024¶ Cuts to mis-valued codes in the physician fee schedule¶ Reallocation of the Medicare sequester for 2024

### 2AC Patent Reform Won’t Pass

#### Won’t pass because too diluted---key Senators oppose

Katy Bachman 3-27, writer for Adweek, March 27th, 2014, "Senate Patent Troll Bill Gets Delayed in Committee Sen. Leahy hoped to hammer out compromise next week," www.adweek.com/news/technology/senate-patent-troll-bill-gets-delayed-committee-156572

The Senate's version of a bill to curb patent troll abuses suffered a slight setback Thursday when Sen. Patrick Leahy (D-Vt.), chairman of the judiciary committee, was forced to push back consideration of his bill to next week, April 3.¶ Advocates for patent troll reform have been anxiously waiting for the Senate to catch up to the House, which easily passed a bill last year. Just last month, the White House urged the Senate to "finish the job." ¶ But a number of members on the Senate judiciary committee, including Sens. John Cornyn (R-Tex.), Orrin Hatch (R-Utah), and Chuck Schumer (D-N.Y.) pushed for more changes to Leahy's bill, effectively derailing Leahy's goal to move his bill out of committee as planned.¶ "I don't think we should pass a bill if it doesn't change the system," said Schumer. "But at the same time, we have to have minority support. We have to get a bill done."

#### Won’t pass---new controversial attachments

Julian Hattem 3-26, March 26th, 2014, "OVERNIGHT TECH: FCC's Wheeler and Pai to talk agency budget again," thehill.com/blogs/hillicon-valley/technology/201878-overnight-tech-fccs-wheeler-and-pai-to-talk-agency-budget

Other members of the committee, including Cornyn and Sens. Orrin Hatch (R-Utah) and Charles Schumer (D-N.Y.), are hoping to attach their more contentious provisions, which include additional scrutiny for software patents and requiring the losing party of a frivolous infringement lawsuit to pay the winner's legal fees.¶ In a statement on Wednesday, Leahy responded to recent reports that Cornyn would be willing to hold out for his provision — even if it means waiting on patent reform — in the hopes that Republicans could control the Senate next year.¶ “The idea that Republicans are playing politics with this important priority for American businesses is a major disappointment. We have been working with businesses and innovators for months to craft meaningful legislation to address the problem of patent trolls," he said.¶ He added that he has "personally committed" to including provisions like Cornyn's and hopes that "politics will not rule the day, and we can work together to pass this bill to help American businesses.”

#### CIA larger issue than the plan—it’ll keep escalating

Conor Friedersdorf 3/24, The Atlantic, 2014, False Equivalence and the Feud Between the CIA and the Senate, www.theatlantic.com/politics/archive/2014/03/false-equivalence-and-the-feud-between-the-cia-and-the-senate/284596/

But now that the Justice Department is involved in the dispute between Feinstein’s Intelligence Committee staff and the CIA—deciphering whether the CIA violated the Constitution or federal law by searching Senate computers, or whether Democratic staffers hacked into the CIA’s system to obtain classified documents—things have escalated to an unprecedented level. What vexes me about how this dispute is being covered—not just in this Politico story, but in many media outlets—is the false equivalence implicit in the juxtaposition: as if the CIA and the Senate committee stand accused of like transgressions. If the charges against the CIA are true, our nation's foreign spy agency, which is forbidden from conducting any surveillance in the U.S., snooped on our legislature. That's a transgression against our constitutional framework. If the accusations against the Senate intel committee are accurate, its staffers, who have security clearances, obtained documents that the CIA ought to have turned over anyway. Are we prepared to accept that, during a comprehensive congressional inquiry into torture, the CIA was justified withholding torture documents? Senate staffers committed no great sin getting documents wrongly denied them. To its credit, the Politico article quotes Majority Leader Harry Reid articulating some of these points about the separation of powers. But the analysis next offered is the following: With no clear resolution in sight, Capitol Hill and the CIA are stuck in the awkward spot of trying to maintain business as usual, when the reality is it’s anything but. “This is the most serious feud since the Intelligence committees were established,” said Amy Zegart, a former National Security Council staffer and senior fellow at Stanford University’s Hoover Institution. Most alarming, Zegart explained, is Feinstein’s Senate floor broadside earlier this month against the CIA. The senator’s remarks broke from her well-established reputation as a staunch defender of another wing of the intelligence community, the National Security Agency, amid scores of Edward Snowden-inspired leaks to the media. “When someone who says they can be trusted now says they can’t, it’s really bad,” Zegart said. Incredible. "Business as usual" is implicitly defined as the desirable state of affairs. And what's deemed "most alarming"? Not CIA torture. Not the CIA withholding torture documents from a Senate investigation. Not the CIA spying on Congress, or trying to intimidate oversight staffers with criminal charges for doing their jobs. Bizarrely, the thing declared "most alarming" are Feinstein's words! By attacking rather than deferring to the CIA, she disrupted business as usual. Her act of "saying" is emphasized as the important factor. Then a bit farther on: Feinstein and [CIA Director John] Brennan are standing by their contradictory explanations of what happened in the course of the Democratic staff’s investigation into the Bush-era CIA programs. Absent a meeting of the minds, some say the only way for the chairwoman to save face is for Brennan to go. The article might have said, "Absent a meeting of the minds, some say the Senate intel committee should show its oversight ability is intact by forcing Brennan to resign." Instead, the focus is on Feinstein's ability to save face, as if her face-saving itself—not its implications for good governance—is what's important. Perhaps face-saving is what they're gossiping about in Washington, D.C.? In the article's defense, it then goes on to quote former Representative Pete Hoekstra, who has a far more sensible analysis of the stakes: "The real question it will come down to is whether Dianne Feinstein believes she can have a working relationship with John Brennan. And if she believes that relationship is beyond repair and it’s going to be difficult to rebuild that trust between the oversight committee and the CIA … then there’s really only one alternative. And that’s Brennan has to step aside." The reporter also quotes House Intelligence Committee Chairman Mike Rogers: “Our oversight is alive and well and robust. That won’t change,” House Intelligence Committee Chairman Mike Rogers said in an interview. But the Michigan Republican also warned that the dispute needed to be resolved, and soon—otherwise there could be consequences. “I think if this doesn’t get handled right in the next short period of time this has the potential of having other broader implications, and I hope it doesn’t get to that,” Rogers said. “You don’t want everything to become adversarial,” he added. “The oversight will continue. If it’s adversarial or not, it will continue. It’s always better when both sides agree to a framework on what will be provided; otherwise, it becomes a subpoena exchange, and that’s just not helpful.” This is why the Tea Party should subject Rogers to a primary challenge: A man charged with overseeing the CIA actually believes that the spy agency would agree to a framework where it voluntarily provided overseers with all they needed to know! It's hard to say whether he's been co-opted or is staggeringly naive. The article goes astray again by putting forth the following passage without rebuttal: In the absence of answers of what happened, several intelligence veterans said the Feinstein-CIA dispute is taking up lawmakers’ limited oxygen supply on complex issues ranging from Snowden’s revelations about government surveillance overreach to cybersecurity threats and tensions flaring in Ukraine, Syria, Egypt and other global hotspots. Implicit in this treatment is the notion that CIA spying on Congress is a tertiary concern, a controversy distracting us from more important issues. I'd argue that, if there's a limited oxygen supply in Washington, D.C., safeguarding the separation of powers and adequate oversight of the CIA is far more important than, say, Syria. It is troubling, but unsurprising, that intelligence veterans think otherwise.

### Patent Reform Watered Down

#### Patent reform won’t solve – Senate will water down the House proposal

Adi Kamdar 3-20-2014, "Thousands Speak Out in Favor of Strong Patent Reform from the Senate," Electronic Frontier Foundation, https://www.eff.org/deeplinks/2014/03/thousands-speak-out-favor-strong-patent-reform-senate

This week, EFF joined over 5,600 individuals in a letter (PDF) pressing the Senate for meaningful patent reform—reform that goes beyond the current Senate proposals and provides strong fixes to the patent troll problem. As we wrote: We need to increase transparency in the litigation process, starting with demand letters and patent ownership; we need to control the costs of litigation by, when appropriate, shifting fees and limiting expensive discovery; we need better programs for challenging bad patents; and we need to protect end-users and consumers. Patent reform affects everybody involved in an innovation's lifecycle. The 5,600 individual signers included over 1,500 entrepreneurs, over 750 investors, and over 1000 inventors. Over 150 signers have patents of their own. EFF was joined by the App Developers Alliance, CCA, CCIA, Engine, Foursquare, Public Knowledge, and R Street. The Innovation Act was a great start and passed the House with overwhelming bipartisan support. Unfortunately, the proposed Senate bills are not as comprehensive. Currently, the most popular Senate bill—Sen. Leahy's Patent Transparency and Improvements Act—touches upon a few major reforms, **but by no means goes far enough**: transparency in ownership, cracking down on bad faith demand letters, and a stay on end-user cases if a manufacturer intervenes. **We need more. The Innovation Act, for example, features extremely important fee shifting provisions and delayed discovery costs. Of course, no bill would be ideal without addressing the elephant in the room: poor quality software patents.**

### No Link

#### Plan boosts capital

John W. Dean 9, former Counsel to the President, Chief Minority Counsel to the Judiciary Committee of the United States House of Representatives, the Associate Director of a law reform commission, and Associate Deputy Attorney General of the United States, graduate fellowship from American University to study government and the presidency, before entering Georgetown University Law Center, 1/9/09, <http://writ.news.findlaw.com/dean/20090109.html>

During the past eight years, President Bush has asserted presidential power in a singular fashion, drawing on the concept of a “unitary executive” who has unquestioned authority in times of war and is not beholden to international laws or treaties. This unusually broad interpretation of the Constitution provided the rationale for actions after the Sept. 11 terrorist attacks, including the establishment of military tribunals to try enemy combatants, the authorization of warrantless electronic surveillance of Americans and the assertion that the president may use any interrogation technique he deems necessary to protect national security. There is a widespread perception that Bush’s actions have collectively strengthened the presidency and fundamentally altered the balance of power between the executive and legislative branches. Bush, in many ways, embodies the concept of an “imperial presidency” as sketched by historian Arthur M. Schlesinger Jr. in the 1970s to describe chief executives who push their power to the absolute limit. But many experts believe Bush’s assertions of power have left the presidency fundamentally weaker, both for legal and political reasons. His boldest step, the order to convene military tribunals, was declared unconstitutional by the Supreme Court in 2006. The warrantless surveillance program triggered a host of as-yet-unresolved legal challenges and antagonized Congress, making it unlikely that Obama, for pragmatic reasons, would risk a similarly daring policy without sensitivity to legal precedents or clear-cut authorization by the legislative branch. In general, the experts predict, Obama will derive more clout and influence by dialing back Bush’s conception of executive power and taking a more circumscribed view of the presidency. Bush’s actions “made the institution of the presidency more suspect in the eyes of Congress,” said Stephen J. Wayne, a presidential scholar at Georgetown University. “I think it’s generated a lot of resentment that will result in Congress demanding more collaboration from the president. Obama knows how the Senate works and understands the needs of members. His thinking is based on bringing groups together and unity, and that means give and take, not just pronouncing.”

#### Clarifying restrictions avoids political backlash

Paul John DeSena 13, JD from NYU School of Law, "Substantial, Purposeful, or Material? Defining the Contours of Support for Terrorism", 2013 N.Y.U. J. LEGIS. & PUB. POL'Y QUORUM 20, [www.nyujlpp.org/wp-content/uploads/2013/07/DeSena-Comment-2013-nyujlpp-quorum-20.pdf](http://www.nyujlpp.org/wp-content/uploads/2013/07/DeSena-Comment-2013-nyujlpp-quorum-20.pdf)

The fear surrounding Section 1021 stems in large part from the uncertainty of its application. **Expressly limiting its scope would remove that uncertainty** and help to restore citizens’ faith that, no matter who their crime involves, constitutional guarantees will remain intact. This would undercut much of the furor surrounding the law. It is not difficult to drum up opposition to a law that may or may not subject United States citizens to military detention; when that law is expressly limited to those who would seek to terrorize the United States through active participation, in combat or out, in terrorist organizations, **it becomes a much easier pill to swallow**.

#### Obama’s PC is low and won’t recover

Charlie Cook 3-17-2014, "6 Ways Washington Will Stay the Same," www.nationaljournal, http://www.nationaljournal.com/off-to-the-races/6-ways-washington-will-stay-the-same-20140317

President Obama's job-approval ratings are very likely to remain pretty much where they are today, which means he will be running pretty low on political capital. His approval generally oscillates between 38 and 46 percent in most polls, with disapproval usually between 50 and 54 percent (looking only at polls using live interviewers). Obama's approval ratings have ranged from as low as 38 percent in Fox and occasional Gallup nightly tracking to as high as 46 percent in polling by ABC News/Washington Post, CBS News/New York Times, and at times, Gallup. Most often, the president's approval rating runs around 41 percent, as NBC News/Wall Street Journal and the most recent CBS/NYT poll found. Obama's disapproval numbers have run from as low as 47 percent in older CBS News polls to as high as 54 percent in NBC/WSJ's and Fox's polling (there is a Bloomberg News poll that was something of an outlier that showed 48 percent for both approval and disapproval of the president). The most recent (March 14-16) Gallup tracking shows 40 percent approval, 55 percent disapproval. If Obama were a stock, you would say he has a narrow trading range, with a high floor and a low ceiling. Barring some cataclysmic event, his approval is unlikely to stay below 38 percent or above 46 percent for long, meaning that his political capital will remain pretty low for the duration of his presidency.

### Ukraine Pounder

#### Ukraine was a huge Obama loss

Michael Tomasky 3-26, March 26th, 2014, "The GOP Just Screwed Ukraine Out of Billions to Hurt Obama," [www.thedailybeast.com/articles/2014/03/26/the-gop-just-screwed-ukraine-out-of-billions-to-hurt-obama.html](http://www.thedailybeast.com/articles/2014/03/26/the-gop-just-screwed-ukraine-out-of-billions-to-hurt-obama.html)

The GOP Just Screwed Ukraine Out of Billions to Hurt Obama¶ Agreeing to IMF reforms would have helped him. So now Republicans’ mission to weaken the president is spilling over into foreign policy, too.¶ You know those people who carry on all the time about how the United States looks weak to the world, and how we have to do everything we possibly can to help poor Ukraine stand up to the evil Vladimir Putin? Well, guess what they just did? They just made the United States look weak to the world—and they actually just reduced (yes, reduced) the amount of global aid that can flow to Ukraine to help it stand up to the evil Vladimir Putin.¶ The deal was this: The Obama administration’s aid package to Ukraine placed before the Senate included some long-sought International Monetary Fund reforms. These reforms, which the administration agreed to in 2010 with the leading nations of Europe, and which those nations have already signed off on, would have helped Ukraine get more money from the IMF after this quick tranche from the United States ran dry. It’s complicated, but in essence, the reforms shifted money from one narrow spending category to a broader one that could be tapped by countries for projects like building and sustaining democracy, of which Ukraine is in rather desperate need. So while there wasn’t a specific dollar figure on the table, the IMF reforms could potentially, a Senate Democratic aide explained to me, have led to several billion more in aid to the country.¶ What’s to object to? To Republicans, this: The reforms include an increase in the U.S. contribution quota to the IMF of $63 billion. They would also give more voice to emerging nations. Now, these two measures are offset by the facts that 1) the overall U.S. expenditure on the IMF wouldn’t go up, because the U.S. would be allowed to decrease other commitments by a like amount, and 2) the U.S. would still have enough voting shares at IMF meetings to retain the veto power it has currently.¶ But those points don’t matter on the right, of course. Over there, it all spells a diminution of American power, the hated global governance, like Pat Buchanan’s old warnings about sending our boys out to global hotspots donning light-blue (i.e. United Nations) helmets. John McCain and Bob Corker, to their credit, supported the aid with the IMF reform tacked on. But most Republicans didn’t, and even though the full package easily passed a procedural vote, Democrats were getting the strong sense that an aid deal with the IMF stuff included wasn’t going to make it.¶ And so, it emerged this week that the Obama administration and Senate Democrats apparently backed off their demand for the Ukraine aid bill on Capitol Hill to include the reforms. On Monday, John Kerry visited Congress and threw in the towel. Better to have whatever we can get now than fight over this and delay matters. Or worse, lose altogether, because there was no chance that the House would ever have passed the IMF-laden version.¶ Let’s take stock of this. The Crimea/Ukraine crisis broke. Republicans immediately were all over Obama for being weak. The whole thing was his fault.

We are all Ukrainians now. We had to stand with Ukraine to send a strong message to the malefactor Putin.¶So what happens when the bill reaches them? The Obama administration tries to live up to an agreement it made—with our friends, our closest allies—four years ago at an opportune moment to press the issue, thinking that the idea that the reform would be of use to Ukraine might help matters. But as with everything, opposition to Obama is more important than anything else. If he’s for it, they’re against it. If Ukraine gets less money because of that, well, tough cheese for them.¶ And so it happens that the people who caterwaul about America being weak in the world become the very people who make it weaker. What does the world think as it watches this? Maybe some think merely that Obama is weak. But I’d wager most don’t. I’d wager most Europeans and others reach the right and reasonable conclusion: That American partisan dysfunction, driven far more by Republicans than by Democrats, now weakens not just our ability to carry out domestic politics but our foreign-policy aims as well.¶ Nothing like this has happened in decades. Yes Democrats—and several moderate Republicans, let’s remember, like John Sherman Cooper and Jacob Javits—blocked funding for the Vietnam War. But at least they were acting in accord with their long-stated principles and goal of ending that war. Today, Republicans are opposing their own stated principle of helping Ukraine as much as possible. Sen. Ted Cruz even went so far as to say that the proposed IMF reforms weakened the U.S. and strengthened Russia (I asked his spokesman to explain why this was so, and he wrote me back but never delivered an answer). In fact, Russia, Reuters has reported, is on record urging the IMF to adopt the reforms without U.S. support, and small wonder: Doing so would mean the end of the U.S. veto. So the Obama administration position of buying into the reforms is clearly something Russia doesn’t want to see.¶ Except for the very early days of the Cold War, politics never really quite stopped at the water’s edge. But politics did soften at the water’s edge. Not anymore. The Republicans are dug in, and as a result they are causing the very decline in standing and prestige that they are blaming on Obama. This jumps the shark from hurting the president to hurting the country. Hope they’re proud.

# 1AR

## CP

### No Follow-On

#### ICJ future overreach causes US backlash --- CP doesn’t set a precedent --- turns the net benefit

Andreas L. **Paulus 4**, assistant professor at the Institute for Public. International Law at the Ludwig-Maximilians-Universit, “From Neglect to Defiance? The United States and International Adjudication”, EJK (2004). Vol. 1 5 No. 4. 783-812

Thus, in spite of a later ruling in a maritime delimitation case, which was quite favourable to the US,25 US patience wore thin when Nicaragua sued the US because of its support for the Contras and the mining of Nicaraguan ports. The **Reagan administration was, like the current one.** not willing to allow international institutions such as the IC] to **intervene in the pursuit of US policies.** **The bad conscience of the US** Government **was visible when it** prepared an exit strategy early on, **attempting, without success, to modify its acceptance of the optional clause ad hoc by excluding cases arising in the Central American context**.2'' **After the Court had assumed jurisdiction of the case**, arguing, inter alia, that the Vandenberg reservation barred the application of the UN Charter, but not the basically identical customary international law on the matter.2' **the US was dismayed by what it regarded as an unequivocal example of judicial overreach, and withdrew from the system** of the optional clause altogether**. It** also disregarded the judgment **itself** **and vetoed measures of implementation by the Security Council** under Article 94. para. 2 of the Charter.2s **The reaction of US international lawyers** to the Nicaragua case **was** decidedly mixed — with **criticism** of the Reagan administration, but also **of the Court for its broad assumption of jurisdiction**.24¶ **The differences in the arguments put forward by the US in the Hostages and the Nicaragua cases are striking. In the former, the US adopted a** broad view of the role of the **Court**; **in the latter, the US** tried to limit the Court's room for manoeuvre **by excluding 'political questions' from its purview**. According to this argument, the Charter exclusively reserves intervention in questions of war and peace for the political organs of the United Nations.50 in particular the Security Council — a Council, of course, where the US can block any decision on non-procedural matters by the exercise of its veto power under Article 27 para. 3 of the Charter. Echoing the "political questions' doctrine in domestic constitutional litigation.31 the judicial character of the Court is said to require a similar approach.12 This line of argument amounts to nothing less than a claim of unfettered political discretion. Maybe there is a law on the use of force, but the Security Council is not bound by it — the criteria of the Charter giving the Council broad political latitude independent of the legality vel non of the threat to peace and security in question. Slates have the inherent right to self-defence, but if the Security Council does not weigh in — and the veto powers may prevent it from doing so — the use of self-defence will remain unchecked.5' Recently, in the Oil Platforms litigation, the US argued that the security exception in the Treaty on Friendship. Commerce and Navigation with Iran, as well as the right to self-defence in general, should be understood as giving maximum discretion to the state parties.14 In its judgment, the Court rejected this approach and decided that the US had failed to show that its measures were necessary and proportionate in the sense of the security exception.5' Again, **the US demonstrated that it purports to** exclude measures regarding international **peace and** security from international judicial scrutiny.**¶** Similarly, **the U**nited **S**tates **has argued that the Court should not follow the requests by the UN** General Assembly to **render advisory opinions on the Legality of the Threat or Use of Nuclear Weapons and**. recently, **on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory**.26 In the first instance, however, the United States added substantive remarks in case the Court would opine otherwise, and also appeared before the Court: in the latter case, the United States limited itself to a Written Statement extensively arguing that the Court should decline to deliver an opinion. **After the most recent opinion** on the barrier in the occupied Palestinian territories **was delivered, the executive branch alleged a political (ab)use of the Court, and the House of Representatives adopted a resolution to the same effect**.5' In spite of the moderate tone of the official criticism of the Wall opinion, **it is to be feared that the ICJ Opinion has further** alienated a substantial part of the US Government and public from the Court.

## DA

### AT: Warming

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

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

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

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

### Nuke War Causes Extinction/Turns Warming

#### Yes extinction—consensus of recent studies—Robock indicts don’t apply

**Farnsworth 2011** – editor and a contributor for Arms Control Now (2/18, Tim, Arms Control Now, “Thinking Existentially about the Worldwide Threat”, <http://armscontrolnow.org/2011/02/18/thinking-existentially-about-the-worldwide-threat/>)

A **panel of scientists** provided a useful update today on the latest thinking about the climatic consequences of nuclear weapons use. The presentation provided a grim reminder that the nuclear Sword of Damocles still hangs over all nations of the earth, nuclear and non-nuclear powers alike – notwithstanding the significant achievement of New START ratification by the United States and Russia.¶ At the annual meeting in Washington of the American Association for the Advancement of Science, Georgiy Stenchikov (King Abdullah University of Science and Technology), Luke Oman (NASA Goddard Space Flight Center), and Michael Mills (National Center for Atmospheric Research) **shared results** of their research, benefiting from **extensive studies** of related phenomenon in recent decades, such as massive forest fires, volcanic eruptions, and oil well fires. **Unlike the “nuclear winter” studies of the 1980s**, which focused on the impact of an all-out US-Soviet nuclear exchange, the latest research looked at the environment effects of a more **limited nuclear war** between India and Pakistan.¶ The speakers reported on their estimates of the environmental consequences resulting from theoretical detonation of 100 15kt-yield nuclear weapons over Indian and Pakistani cities. In such an exchange, millions of tons of soot in the smoke plumes from urban fires would be lofted into the stratosphere, circulating around the earth within days, but adversely affecting the ozone layer, world temperatures, and precipitation for years.

#### Nuclear war accelerates warming

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Because the production of nuclear weapons material is occurring only in countries that have developed civilian nuclear energy programs, the risk of a limited nuclear exchange between countries or the detonation of a nuclear device by terrorists has increased due to the dissemination of nuclear energy facilities worldwide. As such, it is a valid exercise to estimate the potential number of immediate deaths and carbon emissions due to the burning of buildings and infrastructure associated with the proliferation of nuclear energy facilities and the resulting proliferation of nuclear weapons. The number of deaths and carbon emissions, though, must be multiplied by a probability range of an exchange or explosion occurring to estimate the overall risk of nuclear energy proliferation. Although concern at the time of an explosion will be the deaths and not carbon emissions, **policy makers today must weigh all the potential future risks of mortality and carbon emissions** when comparing energy sources. Here, we detail the link between nuclear energy and nuclear weapons and estimate the emissions of nuclear explosions attributable to nuclear energy. The primary limitation to building a nuclear weapon is the availability of purified fissionable fuel (highly-enriched uranium or plutonium).68 Worldwide, nine countries have known nuclear weapons stockpiles (US, Russia, UK, France, China, India, Pakistan, Israel, North Korea). In addition, Iran is pursuing uranium enrichment, and 32 other countries have sufficient fissionable material to produce weapons. Among the 42 countries with fissionable material, 22 have facilities as part of their civilian nuclear energy program, either to produce highly-enriched uranium or to separate plutonium, and facilities in 13 countries are active.68 Thus, the ability of states to produce nuclear weapons today follows directly from their ability to produce nuclear power. In fact, producing material for a weapon requires merely operating a civilian nuclear power plant together with a sophisticated plutonium separation facility. The Treaty of Non-Proliferation of Nuclear Weapons has been signed by 190 countries. However, international treaties safeguard only about 1% of the world’s highly-enriched uranium and 35% of the world’s plutonium.68 Currently, about 30 000 nuclear warheads exist worldwide, with 95% in the US and Russia, but enough refined and unrefined material to produce another 100 000 weapons.69 The explosion of fifty 15 kt nuclear devices (a total of 1.5 MT, or 0.1% of the yields proposed for a full-scale nuclear war) during a limited nuclear exchange in megacities could burn 63–313 Tg of fuel, adding 1–5 Tg of soot to the atmosphere, much of it to the stratosphere, and killing 2.6–16.7 million people.68 The soot emissions would cause significant short- and medium-term regional cooling.70 **Despite short-term cooling, the CO2 emissions would cause long-term warming**, as they do with biomass burning.62 The CO2 emissions from such a conflict are estimated here from the fuel burn rate and the carbon content of fuels. Materials have the following carbon contents: plastics, 38–92%; tires and other rubbers, 59–91%; synthetic fibers, 63–86%;71 woody biomass, 41–45%; charcoal, 71%;72 asphalt, 80%; steel, 0.05–2%. We approximate roughly the carbon content of all combustible material in a city as 40–60%. Applying these percentages to the fuel burn gives CO2 emissions during an exchange as 92–690 Tg CO2. The annual electricity production due to nuclear energy in 2005 was 2768 TWh yr\_1. If one nuclear exchange as described above occurs over the next 30 yr, the net carbon emissions due to nuclear weapons proliferation caused by the expansion of nuclear energy worldwide would be 1.1–4.1 g CO2 kWh\_1, where the energy generation assumed is the annual 2005 generation for nuclear power multiplied by the number of yr being considered. This emission rate depends on the probability of a nuclear exchange over a given period and the strengths of nuclear devices used. Here, we bound the probability of the event occurring over 30 yr as between 0 and 1 to give the range of possible emissions for one such event as 0 to 4.1 g CO2 kWh\_1. This emission rate is placed in context in Table 3.

### Won’t Pass

#### Won’t pass---markup delay and no support for Schumer’s measure

Alex Brown 3-28, writer for National Journal's Tech Edge, March 28th, 2014, "Patent Action Delayed and the FCC’s Tech is Outdated," www.nationaljournal.com/tech-edge/patent-action-delayed-and-the-fcc-s-tech-is-outdated-20140328

SENATE JUDICIARY DELAYS PATENT MARKUP: The committee Thursday delayed the long-awaited markup of Chairman Patrick Leahy's patent reform legislation until at least April 3, an expected move announced amid chatter that members are earnestly working to forge a grand compromise on how to best slay patent trolls. Leahy promised he is "working closely with other members of this committee to craft a manager's amendment that will bring in additional provisions" and said a compromise could be brokered "in the next few days."¶Still, onlookers have heard this tune before, and many are again growing worried that April could slip by without anything passed out of committee. And while Leahy gave lip service to Sen. Hatch's bill on fee shifting and a bill from Sen. Cornyn aimed at shell companies, notably absent was any such endorsement of Sen. Schumer's crusade to expand review methods to guard against low-quality patents. Schumer, for his part, said he would continue fighting for the controversial measure.

#### No patent reform---controversy over litigation reform

Jimm Phillips 3/17/14, "Some Momentum Observed on Senate Patent Revamp Legislation," Warren's Consumer Electronics Daily Vol.14 Issue 51, Factivia

Recent developments indicate there's some movement on legislation to improve the U.S. patent system and curb abusive patent litigation, though concerns about provisions in individual bills remain, said industry stakeholders in interviews.¶ TD ¶ Senate Judiciary Committee Chairman Patrick Leahy, D-Vt., placed the Patent Transparency and Improvements Act (S-1720) on the docket for the committee's March 27 executive business meeting, meaning the committee could mark up the bill as soon as April 3. Sen. Dianne Feinstein, D-Calif., introduced the Patent Fee Integrity Act Thursday night, earning support from stakeholders. That bill would establish a separate fund for Patent and Trademark Office user fees to allow PTO full access to that line of funding. Sens. Tom Coburn, R-Okla., Amy Klobuchar, D-Minn., and Jeff Flake, R-Ariz., were original co-sponsors of the bill (1.usa.gov/1fYavy4). The future for the Transparency in Assertion of Patents Act (S-2049) remains murky, with no firm date yet set for a rescheduled markup following two postponements, stakeholders said.¶ Leahy said in a statement Thursday that he's "committed to ensuring we move forward" with a bipartisan compromise version of S-1720. Negotiations on the compromise version of S-1720 are still ongoing, and Senate Judiciary has not begun circulating a compromise draft, said an industry official. Senate Judiciary consideration of S-1720 would follow months of behind-the-scenes negotiations on the bill, including staff briefings on industry concerns about provisions the committee is considering for the compromise version of S-1720 (CED Feb 12 p3).¶ One of the remaining sticking points in those negotiations appears to be "how to put litigation reform provisions into the bill," said the industry official. The committee is considering language on litigation reform from two other patent bills: The Patent Abuse Reduction Act (S-1013) and the Patent Litigation Integrity Act (S-1612). Committee Republicans have been pushing litigation reform as key to their support for S-1720, while committee Democrats have expressed concerns about the language of provisions under consideration. Intellectual property and legal groups have also been concerned about the inclusion of litigation reforms in S-1720, as they were when the House included those provisions in the Innovation Act (HR-3309). The American Intellectual Property Law Association "supports S-1720 conceptually," but believes the potential litigation reform provisions -- including court rules in patent cases and fee shifting -- are "much more controversial and much more challenging," said AIPLA President Todd Dickinson, former PTO director.¶ The Patent Fee Integrity Act quickly received praise from AIPLA and other stakeholders.

#### No reform- midterms and GOP hardlines

Politico 3/26/14, Alex Byers, "Early, if cautious, support for W.H. NSA proposal — Cornyn gets political on patents — FTC confirms Target investigation," http://www.politico.com/morningtech/0314/morningtech13414.html¶

CORNYN GETS POLITICAL ON PATENTS — Reform advocates are optimistic about the progress being made this week on patent reform, but even in March, midterm politicking could put a kink in their plans. Sen. John Cornyn, for example, signaled Tuesday he could take a hard line when it comes to including litigation reform provisions like fee-shifting, which he's long supported.¶

"There's no reason to make a bad deal, here in the waning months of this year," he said. That’s because GOP-ers could put patent reform "high on the agenda next year, when Republicans will control both houses," he told on Capitol Hill Tuesday.