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#### Obama is prioritizing capture over drone strikes now

David Corn 13, Washington Bureau Chief at Mother Jones, 5/23/13, “Obama's Counterterrorism Speech: A Pivot Point on Drones and More?,” http://www.motherjones.com/mojo/2013/05/obama-speech-drones-civil-liberties

So Obama's speech Thursday on counterterrorism policies—which follows his administration's acknowledgment yesterday that it had killed four Americans (including Anwar al-Awlaki, an Al Qaeda leader in Yemen)—is a big deal, for with this address, Obama is self-restricting his use of drones and shifting control of them from the CIA to the military. And the president has approved making public the rules governing drone strikes.¶ The New York Times received the customary pre-speech leak and reported:¶ A new classified policy guidance signed by Mr. Obama will sharply curtail the instances when unmanned aircraft can be used to attack in places that are not overt war zones, countries like Pakistan, Yemen and Somalia. The rules will impose the same standard for strikes on foreign enemies now used only for American citizens deemed to be terrorists.¶ Lethal force will be used only against targets who pose "a continuing, imminent threat to Americans" and cannot feasibly be captured, Attorney General Eric H. Holder Jr. said in a letter to Congress, suggesting that threats to a partner like Afghanistan or Yemen alone would not be enough to justify being targeted.¶ These moves may not satisfy civil-liberties-minded critics on sthe right and the left. Obama is not declaring an end to indefinite detention or announcing the closing of Gitmo—though he is echoing his State of the Union vow to revive efforts to shut down that prison. Still, these moves would be unimaginable in the Bush years. Bush and Cheney essentially believed the commander in chief had unchallenged power during wartime, and the United States, as they saw it, remained at war against terrorism. Yet here is Obama subjecting the drone program to a more restrictive set of rules—and doing so publicly. This is very un-Cheney-like. (How soon before the ex-veep arises from his undisclosed location to accuse Obama of placing the nation at risk yet again?)¶ Despite Obama's embrace of certain Bush-Cheney practices and his robust use of drones, the president has tried since taking office to shift US foreign policy from a fixation on terrorism. During his first days in office, he shied away from using the "war on terrorism" phrase. And his national security advisers have long talked of Obama's desire to reorient US foreign policy toward challenges in the Pacific region. By handing responsibility for drone strikes to the military, Obama is helping CIA chief John Brennan, who would like to see his agency move out of the paramilitary business and devote more resources to its traditional tasks of intelligence gathering and analysis.¶ With this speech, Obama is not renouncing his administration's claim that it possesses the authority to kill an American overseas without full due process. The target, as Holder noted in that letter to Congress, must be a senior operational leader of Al Qaeda or an associated group who poses an "imminent threat of violent attack against the United States" and who cannot be captured, and Holder stated that foreign suspects now can only be targeted if they pose "a continuing, imminent threat to Americans." (Certainly, there will be debates over the meaning of "imminent," especially given that the Obama administration has previously used an elastic definition of imminence.) And Obama is not declaring an end to the dicey practice of indefinite detention or a conclusion to the fight against terrorism. **But the speech may well mark a** pivot point. Not shockingly, **Obama is attempting to find middle ground**, where there is more oversight and more restraint regarding activities that pose serious civil liberties and policy challenges. The McCainiacs of the world are likely to howl about any effort to place the effort to counter terrorism into a more balanced perspective. The civil libertarians will scoff at half measures. But Obama, at the least, is showing that he does ponder these difficult issues in a deliberative manner and is still attempting to steer the nation into a post-9/11 period. That journey, though, may be a long one.

#### Restricting detention policies means we kill

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

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

#### Increased drone use sets a precedent that causes South China Sea conflict

Roberts 13 (Kristen, News Editor at National Journal, “When the Whole World Has Drones”, 3/22/13, <http://www.nationaljournal.com/magazine/when-the-whole-world-has-drones-20130321>)

And that’s a NATO ally seeking the capability to conduct missions that would run afoul of U.S. interests in Iraq and the broader Middle East. Already, Beijing says it considered a strike in Myanmar to kill a drug lord wanted in the deaths of Chinese sailors. What happens if China arms one of its remote-piloted planes and strikes Philippine or Indian trawlers in the South China Sea? Or if India uses the aircraft to strike Lashkar-e-Taiba militants near Kashmir? “We don’t like other states using lethal force outside their borders. It’s destabilizing. It can lead to a sort of wider escalation of violence between two states,” said Micah Zenko, a security policy and drone expert at the Council on Foreign Relations. “So the proliferation of drones is not just about the protection of the United States. It’s primarily about the likelihood that other states will increasingly use lethal force outside of their borders.” LOWERING THE BAR Governments have covertly killed for ages, whether they maintained an official hit list or not. Before the Obama administration’s “disposition matrix,” Israel was among the best-known examples of a state that engaged, and continues to engage, in strikes to eliminate people identified by its intelligence as plotting attacks against it. But Israel certainly is not alone. Turkey has killed Kurds in Northern Iraq. Some American security experts point to Russia as well, although Moscow disputes this. In the 1960s, the U.S. government was involved to differing levels in plots to assassinate leaders in Congo and the Dominican Republic, and, famously, Fidel Castro in Cuba. The Church Committee’s investigation and subsequent 1975 report on those and other suspected plots led to the standing U.S. ban on assassination. So, from 1976 until the start of President George W. Bush’s “war on terror,” the United States did not conduct targeted killings, because it was considered anathema to American foreign policy. (In fact, until as late as 2001, Washington’s stated policy was to oppose Israel’s targeted killings.) When America adopted targeted killing again—first under the Bush administration after the September 11 attacks and then expanded by President Obama—the tools of the trade had changed. No longer was the CIA sending poison, pistols, and toxic cigars to assets overseas to kill enemy leaders. Now it could target people throughout al-Qaida’s hierarchy with accuracy, deliver lethal ordnance literally around the world, and watch the mission’s completion in real time. The United States is smartly using technology to improve combat efficacy, and to make war-fighting more efficient, both in money and manpower. It has been able to conduct more than 400 lethal strikes, killing more than 3,500 people, in Afghanistan, Pakistan, Yemen, Somalia, and North Africa using drones; reducing risk to U.S. personnel; and giving the Pentagon flexibility to use special-forces units elsewhere. And, no matter what human-rights groups say, it’s clear that drone use has reduced the number of civilians killed in combat relative to earlier conflicts. Washington would be foolish not to exploit unmanned aircraft in its long fight against terrorism. In fact, defense hawks and spendthrifts alike would criticize it if it did not. “If you believe that these folks are legitimate terrorists who are committing acts of aggressive, potential violent acts against the United States or our allies or our citizens overseas, should it matter how we choose to engage in the self-defense of the United States?” asked Rep. Mike Rogers, R-Mich., chairman of the House Intelligence Committee. “Do we have that debate when a special-forces team goes in? Do we have that debate if a tank round does it? Do we have the debate if an aircraft pilot drops a particular bomb?” But defense analysts argue—and military officials concede—there is a qualitative difference between dropping a team of men into Yemen and green-lighting a Predator flight from Nevada. Drones lower the threshold for military action. That’s why, according to the Council on Foreign Relations, unmanned aircraft have conducted 95 percent of all U.S. targeted killings. Almost certainly, if drones were unavailable, the United States would not have pursued an equivalent number of manned strikes in Pakistan. And what’s true for the United States will be true as well for other countries that own and arm remote piloted aircraft. “The drones—the responsiveness, the persistence, and without putting your personnel at risk—is what makes it a different technology,” Zenko said. “When other states have this technology, if they follow U.S. practice, it will lower the threshold for their uses of lethal force outside their borders. So they will be more likely to conduct targeted killings than they have in the past.” The Obama administration appears to be aware of and concerned about setting precedents through its targeted-strike program. When the development of a disposition matrix to catalog both targets and resources marshaled against the United States was first reported in 2012, officials spoke about it in part as an effort to create a standardized process that would live beyond the current administration, underscoring the long duration of the counterterrorism challenge. Indeed, the president’s legal and security advisers have put considerable effort into establishing rules to govern the program. Most members of the House and Senate Intelligence committees say they are confident the defense and intelligence communities have set an adequate evidentiary bar for determining when a member of al-Qaida or an affiliated group may be added to the target list, for example, and say that the rigor of the process gives them comfort in the level of program oversight within the executive branch. “They’re not drawing names out of a hat here,” Rogers said. “It is very specific intel-gathering and other things that would lead somebody to be subject for an engagement by the United States government.”

#### South China Sea conflicts cause extinction

Wittner 11 (Lawrence S. Wittner, Emeritus Professor of History at the State University of New York/Albany, Wittner is the author of eight books, the editor or co-editor of another four, and the author of over 250 published articles and book reviews. From 1984 to 1987, he edited Peace & Change, a journal of peace research., 11/28/2011, "Is a Nuclear War With China Possible?", www.huntingtonnews.net/14446)

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction.

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#### Counterplan text:

The United States Federal Government should create a National Security Court with exclusive jurisdiction over United States’ indefinite detention policy.

#### Creating an NSC solves detention problems

Andrew McCarthy 09, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

2. Creation of a National Security Court. Congress should establish a special national security court (NSC) with jurisdiction over cases involving international terrorism and other national security issues, including judicial review of enemy combatant detentions, within limits that respect the prerogatives of the political branches.¶ This NSC would be analogous to the court created by the Foreign Intelligence Surveillance Act of 1978, i.e., the Foreign Intelligence Surveillance Court (or, as it is better known, the “FISA court”), which now hears government applications for national security wiretaps and searches.62 Like the FISA court, the NSC would have district and appellate court components, both drawn from the national pool of experienced federal judges.63 The judges would be selected by the Chief Justice of the United States for renewable four-year terms. Renewal would be in the discretion of the Chief Justice, and judges could be removed from their assignment to the NSC for bad behavior or poor performance. The NSC could be centrally located in Washington, D.C., and/or could sit in other courthouses throughout the country that have been hardened in light of the terrorist threat – i.e., districts which have court, prison, government office and storage facilities that the Justice Department’s Security Office, the U.S. Marshals Service and the federal Bureau of Prisons have secured to deal with classified information and the dangers unavoidably attendant to international terrorism matters.64 As appropriate, it could also convene in safe facilities under the control of the Defense Department overseas, such as the naval base at Guantanamo Bay.65¶ The new NSC’s appellate tribunal (not its district court) would have jurisdiction to review combatant status review tribunals – just as the D.C. Circuit, rather than a district court, currently has it under the MCA.66 The CSRT-review would be highly deferential to the executive branch (especially while war still ensues), there being no reason to believe it is not being performed in good faith by the military. Thus, one round of judicial review by an appellate court (empowered to remand the case back to the military for additional proceedings if necessary) is perfectly adequate – with the proviso that certiorari review may be sought in the Supreme Court. ¶ The NSC would, in addition, be given concurrent original jurisdiction over offenses that by statute or under the laws of war may currently be tried by military commissions,67 as well as jurisdiction over other statutory offenses common to international terrorism cases. It would have jurisdiction over any alleged offenders, regardless of where in the world they have been apprehended (including inside the United States), if those offenders qualify as alien enemy combatants upon the determination of a CSRT.¶ Designed in this manner, the NSC would ensure development of judicial expertise in the complex legal issues peculiar to this realm, including among others: classified information procedures (see the Classified Information Procedures Act, 18 U.S.C. Append. III), the laws and customs of war, international humanitarian law, the limited entitlements of aliens under U.S. law, and the strict construction of discovery rights in national security cases. Not only would this expertise enable the judges sitting on the NSC to dispense justice fairly and more efficiently; it would also result in the affected executive branch agencies (primarily, the Justice Department, the Defense Department, and the components of the intelligence community) having to adapt to but a single body of jurisprudence. ¶ Symmetrically, the executive branch would form an NSC unit combining Justice Department attorneys who specialize in terrorism and other national security cases with military lawyers drawn from the services’ Judge Advocate General’s offices, selected by the Secretary of Defense (or, perhaps, the Defense Department’s General Counsel). This unit would be the NSC’s liaison with the affected executive branch agencies and would represent the government before the NSC. The NSC would also have its own panel of defense counsel, which would mirror what now exists in the military system: a chief defense counsel drawn from the Judge Advocate General’s office of one of the armed services, and other judge advocates and qualifying civilian defense counsel who would have appropriate security clearances and experience in national security litigation. (Some, of course, would also have expertise in capital litigation). ¶ Significantly, transferring these matters to a new NSC would also foster the salutary effects of disconnecting most international terrorists from the justice system that applies to ordinary Americans accused of crimes. On the other hand, although the new forum would not give detained terrorists the right to judicial enforcement of treaties, its existence, independence and the public interest in its proceedings would provide the U.S. government with a powerful incentive to honor its treaty obligations, and a stage on which to exhibit that it does so.68

#### Counterplan solves executive flexibility

Andrew McCarthy 09, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies. From 1985 through 2003, he was a federal prosecutor at the U.S. Attorney’s Office for the Southern District of New York, and was the lead prosecutor in the seditious conspiracy trial against Sheikh Omar Abdel Rahman and eleven others, described subsequently. AND Alykhan Velshi, a staff attorney at the Center for Law & Counterterrorism, where he focuses on the international law of armed conflict and the use of force, 8/20/09, “Outsourcing American Law,” AEI Working Paper, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

What is an asset in the criminal justice system, however, would be a liability in a system whose priority is not justice for the individual but the security of the American people. That liability, though, can be satisfactorily rectified by clear procedural rules which underscore that the overriding mission – into which the judicial function is being imported for very limited purposes – remains executive and military. The default position of the criminal justice system would not carry over to a system conceived for enemies of the United States – i.e., terrorist operatives who would not be facing NSC trials in the first place absent a finding, tested by judicial review, that they were alien enemy combatants. ¶ In such a system, the opportunities for judicial creativity would be limited by being plainspoken and unapologetic in enabling legislation about the fact that the defendants are not Americans but those who mean America harm; that the task of federal judges is not to ensure that defendants are considered as equals to our government before the bar of justice, but merely to ensure that they are not capriciously convicted of war crimes by the same branch of government that is prosecuting the war; that if credible and convincing evidence supports the allegations, the system’s preference is that defendants be convicted and harshly sentenced; and that the authority of judges is enumerated and finite – if the rules as promulgated do not expressly provide for the defendant to have particular relief, the judge is powerless to direct it. In short, the system would curb judicial excess by the recognition, which underlies the military justice system, that prosecuting war remains a quintessentially executive endeavor; in the NSC, judges would be a check against arbitrariness but they would not have any general supervisory authority over the conduct of proceedings and they would not be at liberty to create new entitlements by analogizing to ordinary criminal proceedings.

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#### Exec flexibility on detention powers now

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President Obama signed the NDAA "despite having serious reservations with certain provisions that regulate the detention, interrogation, and prosecution of suspected terrorists." n114 While the Administration voiced concerns throughout the legislative process, those concerns were addressed and ultimately resulted in a bill that preserves the flexibility needed to adapt to changing circumstances and upholds America's values. The President reiterated his support for language in Section 1021 making clear that the new legislation does not limit or expand the scope of Presidential authority under the AUMF or affect existing 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." n115¶ The President underscored his Administration "will not authorize the indefinite military detention without trial of American citizens" and will ensure any authorized detention "complies with the Constitution, the laws of war, and all other applicable law." n116 Yet understanding fully the Administration's position requires recourse to its prior insistence that the Senate Armed Services Committee remove language in the original bill which provided that U.S. citizens and lawful resident aliens captured in the United States would not be subject to Section 1021. n117 There appears to be a balancing process at work here. On the one hand, the Administration is in lock-step with Congress that the NDAA should neither expand nor diminish the President's detention authority. On the other hand, policy considerations led the President to express an intention to narrowly exercise this detention authority over American citizens.¶ The overriding point is that the legislation preserves the full breadth and depth of detention authority existent in the AUMF, to include the detention of American citizens who join forces with Al Qaida. This is a dynamic and changing conflict. If a home-grown terrorist destroys a U.S. target, the FBI gathers the evidence, and a U.S. Attorney prosecutes, traditional civilian criminal laws govern, and the military detention authority resident in the NDAA need never come into play. This is a reasonable and expected outcome in many cases. The pending strike on rail targets posited in this paper's introduction, where intelligence sources reveal an inchoate attack involving American and foreign nationals operating overseas and at home, however, may be precisely the type of scenario where military detention is not only preferred but vital to thwarting the attack, conducting interrogations about known and hidden dangers, and preventing terrorists from continuing the fight.

#### Reforms result in catastrophic terrorism---releases them and kills intel gathering---turns the case

Jack Goldsmith 09, Henry L. Shattuck Professor at Harvard Law School, 2/4/09, “Long-Term Terrorist Detention and Our National Security Court,” http://www.brookings.edu/~/media/research/files/papers/2009/2/09%20detention%20goldsmith/0209\_detention\_goldsmith.pdf

These three concerns challenge the detention paradigm. They do nothing to eliminate the need for detention to prevent detainees returning to the battlefield. But many believe that we can meet this need by giving trials to everyone we want to detain and then incarcerating them under a theory of conviction rather than of military detention. I disagree. For many reasons, it is too risky for the U.S. government to deny itself the traditional military detention power altogether, and to commit itself instead to try or release every suspected terrorist. ¶ For one thing, military detention will be necessary in Iraq and Afghanistan for the foreseeable future. For another, we likely cannot secure convictions of all of the dangerous terrorists at Guantánamo, much less all future dangerous terrorists, who legitimately qualify for non-criminal military detention. The evidentiary and procedural standards of trials, civilian and military alike, are much higher than the analogous standards for detention. With some terrorists too menacing to set free, the standards will prove difficult to satisfy. Key evidence in a given case may come from overseas and verifying it, understanding its provenance, or establishing its chain of custody in the manners required by criminal trials may be difficult. This problem is exacerbated when evidence was gathered on a battlefield or during an armed skirmish. The problem only grows when the evidence is old. And perhaps most importantly, the use of such evidence in a criminal process may compromise intelligence sources and methods, requiring the disclosure of the identities of confidential sources or the nature of intelligence-gathering techniques, such as a sophisticated electronic interception capability. ¶ Opponents of non-criminal detention observe that despite these considerations, the government has successfully prosecuted some Al Qaeda terrorists—in particular, Zacharias Moussaoui and Jose Padilla. This is true, but it does not follow that prosecutions are achievable in every case in which disabling a terrorist suspect represents a surpassing government interest. Moreover, the Moussaoui and Padilla prosecutions highlight an under-appreciated cost of trials, at least in civilian courts. The Moussaoui and Padilla trials were messy affairs that stretched, and some observers believe broke, our ordinary criminal trial conceptions of conspiracy law and the rights of the accused, among other things. The Moussaoui trial, for example, watered down the important constitutional right of the defendant to confront witnesses against him in court, and the Padilla trial rested on an unprecedentedly broad conception of conspiracy.15 An important but under-appreciated cost of using trials in all cases is that these prosecutions will invariably bend the law in ways unfavorable to civil liberties and due process, and these changes, in turn, will invariably spill over into non-terrorist prosecutions and thus skew the larger criminal justice process.16¶ A final problem with using any trial system, civilian or military, as the sole lawful basis for terrorist detention is that the trials can result in short sentences (as the first military commission trial did) or even acquittal of a dangerous terrorist.17 In criminal trials, guilty defendants often go free because of legal technicalities, government inability to introduce probative evidence, and other factors beyond the defendant's innocence. These factors are all exacerbated in terrorist trials by the difficulties of getting information from the place of capture, by classified information restrictions, and by stale or tainted evidence. One way to get around this problem is to assert the authority, as the Bush administration did, to use non-criminal detention for persons acquitted or given sentences too short to neutralize the danger they pose. But such an authority would undermine the whole purpose of trials and would render them a sham. As a result, putting a suspect on trial can make it hard to detain terrorists the government deems dangerous. For example, the government would have had little trouble defending the indefinite detention of Salim Hamdan, Osama Bin Laden's driver, under a military detention rationale. Having put him on trial before a military commission, however, it was stuck with the light sentence that Hamdan is completing at home in Yemen.¶ As a result of these considerations, insistence on the exclusive use of criminal trials and the elimination of non-criminal detention would significantly raise the chances of releasing dangerous terrorists who would return to kill Americans or others. Since noncriminal military detention is clearly a legally available option—at least if it is expressly authorized by Congress and contains adequate procedural guarantees—this risk should be unacceptable. In past military conflicts, the release of an enemy soldier posed risks. But they were not dramatic risks, for there was only so much damage a lone actor or small group of individuals could do.18 Today, however, that lone actor can cause far more destruction and mayhem because technological advances are creating ever-smaller and ever-deadlier weapons. It would be astounding if the American system, before the advent of modern terrorism, struck the balance between security and liberty in a manner that precisely reflected the new threats posed by asymmetric warfare. We face threats from individuals today that are of a different magnitude than threats by individuals in the past; having government authorities that reflect that change makes sense.

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#### Congress will ultimately compromise to avert shutdown – GOP divisions make it more likely, not less

Tom Cohen, 9-20-2013, “Congress: will it be a government shutdown or budget compromise?” CNN, http://www.cnn.com/2013/09/19/politics/congress-shutdown-scenarios/index.html?utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed%3A+rss%2Fcnn\_allpolitics+(RSS%3A+Politics)

There hasn't been a government shutdown in more than 17 years, since the 28 days of budget stalemate in the Clinton administration that cost more than $1 billion. Now we hear dire warnings and sharpening rhetoric that another shutdown is possible and perhaps likely in less than two weeks when the current fiscal year ends. Despite an escalating political imbroglio, the combination of how Congress works and what politicians want makes the chances of a shutdown at the end of the month uncertain at best. In particular, a rift between Republicans over how to proceed has heightened concerns of a shutdown in the short run, but remains a major reason why one is unlikely in the end. A more probable scenario is a last-minute compromise on a short-term spending plan to fund the government when the current fiscal year ends on September 30. After that, the debate would shift to broader deficit reduction issues tied to the need to raise the federal debt ceiling sometime in October. "There's going to be a lot of draconian talk from both sides, but the likelihood of their being an extended shutdown is not high," said Darrell West, the vice president and director of governance studies at the Brookings Institution. Government shutdown: Again? Seriously? Conservatives tie Obamacare to budget talks While the main issue is keeping the government funded when the new fiscal year begins October 1, a conservative GOP wing in the House and Senate has made its crusade against Obamacare the focus of the debate. They demand a halt to funding for the signature program from President Barack Obama's first term, and they seem indifferent about forcing a government shutdown if that doesn't happen. "I will do everything necessary and anything possible to defund Obamacare," Republican Sen. Ted Cruz of Texas said Thursday, threatening a filibuster and "any procedural means necessary." The GOP split was demonstrated later Thursday by Sen. John McCain, who told CNN that "we will not repeal or defund Obamacare" in the Senate. "We will not, and to think we can is not rational," McCain said. A compromise sought by House Speaker John Boehner and fellow GOP leaders would have allowed a symbolic vote on the defunding provision that the Senate would then strip out. The result would have been what legislators call a "clean" final version that simply extended current levels of government spending for about two months of the new fiscal year, allowing time for further negotiations on the debt ceiling. However, conservative opposition to the compromise made Boehner agree to a tougher version that made overall government funding contingent on eliminating money for Obamacare. Moderate Republicans question the strategy, but fear a right-wing backlash in the 2014 primaries if they go against the conservative wing. In reference to the divisions in the House, McCain said it was "pretty obvious that (Boehner) has great difficulties within his own conference." The House passed the tea party inspired plan on an almost strictly party line vote on Friday, setting in motion what is certain to be 10 days or so of legislative wrangling and political machinations. The measure now goes to the Democratic-led Senate, where Majority Leader Harry Reid made clear on Thursday that any plan to defund Obamacare would be dead on arrival. Instead, the Senate was expected to strip the measure of all provisions defunding Obamacare and send it back to the House. "They're simply postponing an inevitable choice they must face," Reid said of House Republicans. Here is a look at the two most-discussed potential outcomes -- a government shutdown or a short-term deal that keeps the government funded for a few months while further debate ensues. House GOP: defund Obamacare or shut government down Shutdown scenario According to West, the ultimate pressure on whether there is a shutdown will rest with Boehner. With the Republican majority in the House passing the spending measure that defunds Obamacare, Senate Democrats say they will stand united in opposing it. "Don't make it part of your strategy that eventually we'll cave," Sen. Chuck Schumer of New York warned Republicans on Thursday. "We won't. We're unified, we're together. You're not." That means the Senate would remove any provisions to defund Obamacare and send the stripped-down spending proposal back to the House. Boehner would then have to decide whether to put it to a vote, even though that could undermine his already weakened leadership by having the measure pass with only a few dozen moderate Republicans joining Democrats in support. If he refuses to bring the Senate version to the floor for a vote, a shutdown would ensue. "The key player is really Boehner," West said. Polls showing a decrease in public support for the health care reforms embolden the Republican stance. Meanwhile, surveys showing most people oppose a government shutdown and that more would blame Republicans if it happens bolster Democratic resolve. Compromise scenario Voices across the political spectrum warn against a shutdown, including Congressional Budget Office Director Douglas Elmendorf, Federal Reserve Chairman Ben Bernanke, the U.S. Chamber of Commerce and Republican strategist Karl Rove. "Even the defund strategy's authors say they don't want a government shutdown. But their approach means we'll get one," Rove argued in an op-ed published Thursday by the Wall Street Journal. He noted the Democratic-controlled Senate won't support any House measure that eliminates funding for Obamacare, and the White House said Thursday that Obama would veto such a spending resolution. "Republicans would need 54 House Democrats and 21 Senate Democrats to vote to override the president's veto," Rove noted, adding that "no sentient being believes that will happen." West concurred, telling CNN that "you can't expect a president to offer his first born to solve a political problem for the other party." "It's the House split that's causing this to happen," he noted. "People now equate compromise with surrender. It's hard to do anything under those circumstances." Under the compromise scenario, the Senate would remove provisions defunding Obamacare from what the House passes while perhaps making other relatively minor changes to provide Boehner and House Republicans with political cover to back it.

#### The plan would trade off with Congress’s ability to avert the shutdown - GOP has momentum and will, but they need literally every hour to get it done

Frank James, 9-13-2013, “Congress Searches For A Shutdown-Free Future,” NPR, http://www.npr.org/blogs/itsallpolitics/2013/09/13/221809062/congress-searches-for-a-shutdown-free-future

The only thing found Thursday seemed to be more time for negotiations and vote-wrangling. Republican leaders recall how their party was blamed for the shutdowns of the mid-1990s and earnestly want to avoid a repeat, especially heading into a midterm election year. Cantor alerted members Thursday that during the last week of September, when they are supposed to be on recess, they will now most likely find themselves in Washington voting on a continuing resolution to fund the government into October. It looks like lawmakers will need every hour of that additional time. While talking to reporters Thursday, Boehner strongly suggested that House Republicans weren't exactly coalescing around any one legislative strategy. "There are a lot of discussions going on about how — about how to deal with the [continuing resolution] and the issue of 'Obamacare,' and so we're continuing to work with our members," Boehner said. "There are a million options that are being discussed by a lot of people. When we have something to report, we'll let you know."

#### Shutdown wrecks the economy

Yi Wu, 8-27-2013, “Government Shutdown 2013: Still a Terrible Idea,” PolicyMic, http://www.policymic.com/articles/60837/government-shutdown-2013-still-a-terrible-idea

Around a third of House Republicans, many Tea Party-backed, sent a letter last week calling on Speaker John Boehner to reject any spending bills that include implementation of the Affordable Care Act, otherwise known as Obamacare. Some Senate Republicans echo their House colleagues in pondering this extreme tactic, which is nothing other than a threat of government shutdown as neither congressional Democrats nor President Obama would ever agree on a budget that abolishes the new health care law. Unleashing this threat would amount to holding a large number of of the federal government's functions, including processing Social Security checks and running the Centers for Disease Control, hostage in order to score partisan points. It would be an irresponsible move inflicting enormous damage to the U.S. economy while providing no benefit whatsoever for the country, and Boehner is rightly disinclined to pursue it. Government shutdowns are deleterious to the economy. Two years ago in February 2011, a similar government shutdown was looming due to a budget impasse, and a research firm estimated that quater's GDP growth would be reduced by 0.2 percentage points if the shutdown lasted a week. After the budget is restored from the hypothetical shutdown, growth would only be "partially recouped," and a longer shutdown would result in deeper slowdowns. Further, the uncertainties resulting from a shutdown would also discourage business. A shutdown was avoided last-minute that year, unlike in 1995 during the Clinton administration where it actually took place for four weeks and resulted in a 0.5 percentage-point dent in GDP growth. Billions of dollars were cut from the budget, but neither Boehner nor the Republicans at the time were reckless enough to demand cancellation of the entire health care reform enacted a year before.

#### Global nuclear war

Harris & Burrows 9 Mathew, PhD European History @ Cambridge, counselor of the U.S. National Intelligence Council (NIC) and Jennifer, member of the NIC’s Long Range Analysis Unit “Revisiting the Future: Geopolitical Effects of the Financial Crisis” http://www.ciaonet.org/journals/twq/v32i2/f\_0016178\_13952.pdf

Of course, the report encompasses more than economics and indeed believes the future is likely to be the result of a number of intersecting and interlocking forces. With so many possible permutations of outcomes, each with ample Revisiting the Future opportunity for unintended consequences, there is a growing sense of insecurity. Even so, history may be more instructive than ever. While we continue to believe that the Great Depression is not likely to be repeated, the lessons to be drawn from that period include the **harmful effects on fledgling democracies** and multiethnic societies (think Central Europe in 1920s and 1930s) and on the sustainability of multilateral institutions (think League of Nations in the same period). There is no reason to think that this would not be true in the twenty-first as much as in the twentieth century. For that reason, the ways in which **the potential for** greater **conflict could grow** would seem to be even more apt in a constantly volatile economic environment as they would be if change would be steadier. In surveying those risks, the report stressed the likelihood that terrorism and nonproliferation will remain priorities even as resource issues move up on the international agenda. **Terrorism**’s appeal will decline if economic growth continues in the Middle East and youth unemployment is reduced. For those terrorist groups that remain active in 2025, however, the diffusion of technologies and scientific knowledge will place some of the world’s most dangerous capabilities within their reach. Terrorist groups in 2025 will likely be a combination of descendants of long established groups\_inheriting organizational structures, command and control processes, and training procedures necessary to conduct sophisticated attacks and newly emergent collections of the angry and disenfranchised that become self-radicalized, particularly in the absence of economic outlets that would become narrower in an economic downturn. The most dangerous casualty of any **economically-induced drawdown** of U.S. military presence would almost certainly be the Middle East. Although Iran’s acquisition of nuclear weapons is not inevitable, worries about a nuclear-armed Iran could lead states in the region to develop new security arrangements with external powers, **acquire additional weapons**, and consider pursuing their own **nuclear ambitions**. It is not clear that the type of stable deterrent relationship that existed between the great powers for most of the Cold War would emerge naturally in the Middle East with a nuclear Iran. Episodes of low intensity conflict and terrorism taking place under a nuclear umbrella could lead to an **unintended escalation** and **broader conflict** if clear red lines between those states involved are not well established. The close proximity of potential **nuclear rivals** combined with underdeveloped surveillance capabilities and mobile dual-capable Iranian missile systems also will produce inherent difficulties in achieving reliable indications and warning of an impending nuclear attack. The lack of strategic depth in neighboring states like Israel, short warning and missile flight times, and uncertainty of Iranian intentions may place more focus on **preemption** rather than defense, potentially leading to **escalating crises**. 36 Types of conflict that the world continues to experience, such as over resources, could reemerge, particularly if protectionism grows and there is a resort to neo-mercantilist practices. Perceptions of renewed energy scarcity will drive countries to take actions to assure their future access to energy supplies. In the worst case, this could result in **interstate conflicts** if government leaders deem assured access to energy resources, for example, to be essential for maintaining domestic stability and the survival of their regime. Even actions short of war, however, will have important geopolitical implications. Maritime security concerns are providing a rationale for naval buildups and modernization efforts, such as China’s and India’s development of blue water naval capabilities. If the fiscal stimulus focus for these countries indeed turns inward, one of the most obvious funding targets may be military. Buildup of regional naval capabilities could lead to increased tensions, rivalries, and counterbalancing moves, but it also will create opportunities for multinational cooperation in protecting critical sea lanes. With water also becoming scarcer in Asia and the Middle East, cooperation to manage changing water resources is likely to be increasingly difficult both within and between states in a more dog-eat-dog world.

### 1nc---case

#### Alt causes:

#### torture

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

Beginning at least in 2002, the United States created and developed a policy instituting torture — what it calls “enhanced interrogation” — of its detainees in the “global war on terror”2 under the general framework of a state of necessity. Many of these torture techniques have already been used and refined by the Western powers during the 20th century.3 They are also built partially into U.S. “survival, evasion, resistance, escape” (sere) training program techniques, which reportedly also adapt techniques previously used by China.4 The logic of torture used as an information-seeking instrument in the current conflict, however, has entailed the creation of a large-scale institution of torture, spread among several countries, and implicating hundreds and perhaps thousands of people.5¶ This institution strikes at the heart of the very idea of human rights and core principles of liberal democratic society. It raises important and uncomfortable questions about the nature of human rights in the wake of the torture at Guantánamo and other sites, the policy and practice of extraordinary rendition, indefinite detentions and the suspension of due process and habeas corpus, the violation of domestic and international laws, and perhaps other features and goals of the program yet to come into the public light. The claim is a claim to exception or necessity to the suspension of laws and civil liberties in a moment of national emergency. This is not unusual, unfortunately. Most states have similar national emergency procedures, even if only implicit. The law will always be suspended in the name of survival and the global war on terror was framed as a matter of the survival of civilization. With self-defense being the moral justification of violence par excellence, extraordinary acts may be viewed as entirely legitimate in the defense of civilization. What should also concern us, however, is the suspension of rights in the name of political expediency. In other words, this is not only a moment for lawyers to rise to the occasion. The problem is political and philosophical. There is more at stake than the legally appropriate punishment of terrorists and credibility of certain public officials and agencies.¶ The prohibition of torture has been formal international law since the UN Declaration on Human Rights (1948) and the Geneva Conventions (1949). It is also generally assumed to be an international peremptory norm (jus cogens), a norm accepted universally by the international community that cannot be derogated, such as the norm of state sovereignty. The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984/1987) and the non-binding Istanbul Protocol (1999), among other international legal instruments, further codified the norm into international law. Torture violates international law, usually domestic law (as, for example, in the 8th Amendment to the United States constitution banning “cruel and unusual punishment”), basic morality, and one of the fundamental shared norms of international society. Violation of the law entails criminality by definition. Violation of a basic shared norm entails a loss of moral and political standing, of credibility, trust, and legitimacy in international society.

#### Broader CT practices

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

One should be cautious of jumping too quickly to condemnation. No country has a perfect record on human rights. Indeed, as Darius Rejali and others have documented, modern torture techniques have been perfected not only by totalitarian states but also by the grand liberal democracies, particularly the UK, France, and the U.S. 6 But the scope and magnitude of the post-9/11 institutionalization of torture and other abuses is unique in modern history among the liberal democratic states. The institution undermines the principles of equality before the law, universal human dignity and autonomy, and basic liberties are the moral-philosophical core of the liberal democratic state. ¶ The system of torture and its legal arguments created in its defense have damaged international human rights standards and diminished credibility and legitimacy of the United States as a lead advocate for human rights. It is likely to have compromised national security as well. Is it possible to reverse this damage to credibility and security? A number of tenuous balancing acts are involved. Each of these elements stands on their own as a nest of complex issues in need of resolution and for which present options are suboptimal. Credibility, however, depends on each of them taken as an interrelated whole. these critical balancing acts include: 1) legally and humanely processing Guantanamo detainees and other detainees in light of the abuses, while also ensuring national and international security; 2) pursuing the moral and legal accountability required in a representational democracy, while mitigating other resulting political and social injuries; and 3) reinforcing international human rights standards and ensuring the rule of law in tandem with the pursuit of national interests. Furthermore, the events compel us to revisit a larger and older question addressed briefly in the final section: what must be said about the contemporary status and nature of human rights and their enforcement if powerful countries may ignore them or rewrite their content to accommodate the perceived interests of that country?

#### Drones---our evidences is comparative

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

On the basis of undisclosed evidence, evaluated in unspecified procedures by rotating personnel with heterogeneous backgrounds, the US is continuing to kill those it classifies as suspected terrorists in Somalia, Yemen and Pakistan. It has certainly been eliminating militants who had nothing to do with 9/11, including local insurgents fighting local battles who, while posing no realistic threat to America, had allied themselves opportunistically with international anti-American jihadists. By following the latter wherever they go, the US is allowing ragtag militants to impose ever new fronts in its secret aerial war. Mistakes are made and can’t be hidden, at least not from local populations. Nor can the resentment of surrounding communities be easily assuaged. This is because, even when it finds its target, the US is killing not those who are demonstrably guilty of widely acknowledged crimes but rather those who, it is predicted, will commit crimes in the future. Of course, the civilian populations in the countries where these strikes take place will never accept the hunches of CIA or Pentagon futurologists. And so they will never accept American claims about the justice of Obama’s slimmed-down war on terror, but instead claim the right of self-defence, and this would be true even if drone operators could become as error-free as Brennan once claimed they already are. But of course collateral damage and mistaken-identity strikes will continue. They are inevitable accompaniments of all warfare. And they, too, along with intentional killings that are never publicly justified, will communicate resoundingly to the world that the arbitrary and unpredictable killing of innocent Muslims falls within America’s commodious concept of a just war.

The rage such strikes incite will be all the greater if onlookers believe, as seems likely, that the killing they observe makes relatively little contribution to the safety of Americans. Indeed, this is already happening, which is the reason that the drone, whatever its moral superiority to land armies and heavy weaponry, has replaced Guantánamo as the incendiary symbol of America’s indecent callousness towards the world’s Muslims. As Bush was the Guantánamo president, so Obama is the drone president. This switch, whatever Obama hoped, represents a worsening not an improvement of America’s image in the world.

#### PRISM

Migranyan 7/5 (Andranik is the director of the Institute for Democracy and Cooperation in New York. He is also a professor at the Institute of International Relations in Moscow, a former member of the Public Chamber and a former member of the Russian Presidential Council. “Scandals Harm U.S. Soft Power,” 2013, http://nationalinterest.org/commentary/scandals-harm-us-soft-power-8695)

For the past few months, the United States has been rocked by a series of scandals. It all started with the events in Benghazi, when Al Qaeda-affiliated terrorists attacked the General Consulate there and murdered four diplomats, including the U.S. ambassador to Libya. Then there was the scandal exposed when it was revealed that the Justice Department was monitoring the calls of the Associated Press. The Internal Revenue Service seems to have targeted certain political groups. Finally, there was the vast National Security Agency apparatus for monitoring online activity revealed by Edward Snowden. Together, these events provoke a number of questions about the path taken by contemporary Western societies, and especially the one taken by America.¶ Large and powerful institutions, especially those in the security sphere, have become unaccountable to the public, even to representatives of the people themselves. Have George Orwell’s cautionary tales of total government control over society been realized?¶ At the end of the 1960s and the beginning of the 1970s, my fellow students and I read Orwell’s 1984 and other dystopian stories and believed them to portray fascist Germany or the Soviet Union—two totalitarian regimes—but today it has become increasingly apparent that Orwell, Huxley and other dystopian authors had seen in their own countries (Britain and the United States) certain trends, especially as technological capabilities grew, that would ultimately allow governments to exert total control over their societies. The potential for this type of all-knowing regime is what Edward Snowden revealed, confirming the worst fears that the dystopias are already being realized.¶ On a practical geopolitical level, the spying scandals have seriously tarnished the reputation of the United States. They have circumscribed its ability to exert soft power; the same influence that made the U.S. model very attractive to the rest of the world. This former lustre is now diminished. The blatant everyday intrusions into the private lives of Americans, and violations of individual rights and liberties by runaway, unaccountable U.S. government agencies, have deprived the United States of its authority to dictate how others must live and what others must do. Washington can no longer lecture others when its very foundational institutions and values are being discredited—or at a minimum, when all is not well “in the state of Denmark.”¶ Perhaps precisely because not all is well, many American politicians seem unable to adequately address the current situation. Instead of asking what isn’t working in the government and how to ensure accountability and transparency in their institutions, they try, in their annoyance, to blame the messenger—as they are doing in Snowden’s case. Some Senators hurried to blame Russia and Ecuador for anti-American behavior, and threatened to punish them should they offer asylum to Snowden.¶ These threats could only cause confusion in sober minds, as every sovereign country retains the right to issue or deny asylum to whomever it pleases. In addition, the United States itself has a tradition of always offering political asylum to deserters of the secret services of other countries, especially in the case of the former Soviet Union and other ex-socialist countries. In those situations, the United States never gave any consideration to how those other countries might react—it considered the deserters sources of valuable information. As long as deserters have not had a criminal and murderous past, they can receive political asylum in any country that considers itself sovereign and can stand up to any pressure and blackmail.¶ Meanwhile, the hysteria of some politicians, if the State Department or other institutions of the executive branch join it, can only accelerate the process of Snowden’s asylum. For any country he might ask will only be more willing to demonstrate its own sovereignty and dignity by standing up to a bully that tries to dictate conditions to it. In our particular case, political pressure on Russia and President Putin could turn out to be utterly counterproductive. I believe that Washington has enough levelheaded people to understand that fact, and correctly advise the White House. The administration will need sound advice, as many people in Congress fail to understand the consequences of their calls for punishment of sovereign countries or foreign political leaders that don’t dance to Washington’s tune.¶ Judging by the latest exchange between Moscow and Washington, it appears that the executive branches of both countries will find adequate solutions to the Snowden situation without attacks on each other’s dignity and self-esteem. Russia and the United States are both Security Council members, and much hinges on their decisions, including a slew of common problems that make cooperation necessary.¶ Yet the recent series of scandals has caused irreparable damage to the image and soft power of the United States. I do not know how soon this damage can be repaired. But gone are the days when Orwell was seen as a relic of the Cold War, as the all-powerful Leviathan of the security services has run away from all accountability to state and society. Today the world is looking at America—and its model for governance—with a more critical eye.

#### Syria

Anthony Cordesman 9/1/13, holds the Arleigh A. Burke Chair in Strategy at the Center for Strategic and International Studies (CSIS) in Washington, D.C., “President Obama and Syria: The ‘Waiting for Godot’ Strategy,” http://csis.org/publication/president-obama-and-syria-waiting-godot-strategy

Instead, the Administration first rushed into the kind of rhetoric you only use if you actually intend to act regardless of domestic and international support. It tied its entire effort to Syrian use of chemical weapons and the precedent for using such weapons forever. And only then did it suddenly spun around and talked about then need for delay, measured action, and Congressional approval.¶ While Beckett might not appreciate my efforts to define Godot as the Syrian Civil war, the Administration followed the script of Beckett’s play to the extent it never defined the reasons for what the actors were doing, why they were waiting, or what would happen after Godot came. Chemical weapons are a very real issue, but they are only a subset of the real issue: the overall level of suffering and growing regional instability coming out of the Syrian civil war.¶ We now face the inevitable reaction. The President’s decisions have reinforced all of the doubts about American strength, and our willingness to act, of both our friends and foes. We now have ten days of confusion and uncertainty to deal with, and then Congress will be evidently be asked to act only on a strike tailored to deter the future use of chemical weapons. It will still lack a meaningful plan for dealing with the Syrian civil war and its impact on the region.¶ Israel is threatening to return to hawk mode over Iran. Russia and China are in the “we told you so” mode. Assad has already launched new conventional artillery barrages against Syrian civilian areas and now has time enough to disperse a significant number of key physical assets from fixed target sites. France is left hanging – as is Britain for very different reasons. Our Arab allies and Turkey have no clear lead to follow. Our whole strategy in the Middle East remains unclear, as is our entire national security posture in an era of Sequestration and funding crises.¶ If the Congress does support the President, it will only be after we have openly faltered, and after having rushed forward before deciding on a course of delay. The President will have set a uniquely dangerous precedent by turning to Congress only after he appeared weak, rather than doing from the start, and will have then committed himself to wait at least ten days for the congress to return for its holiday. The message to the world is obvious.

#### Zero data supports the resolve or credibility thesis

Jonathan Mercer 13, associate professor of political science at the University of Washington in Seattle and a Fellow at the Center for International Studies at the London School of Economics, 5/13/13, “Bad Reputation,” <http://www.foreignaffairs.com/articles/136577/jonathan-mercer/bad-reputation>

Since then, the debate about what to do in Syria has been sidetracked by discussions of how central reputation is to deterrence, and whether protecting it is worth going to war.

There are two ways to answer those questions: through evidence and through logic. The first approach is easy. Do leaders assume that other leaders who have been irresolute in the past will be irresolute in the future and that, therefore, their threats are not credible? No; broad and deep evidence dispels that notion. In studies of the various political crises leading up to World War I and of those before and during the Korean War, I found that leaders did indeed worry about their reputations. But their worries were often mistaken.

For example, when North Korea attacked South Korea in 1950, U.S. Secretary of State Dean Acheson was certain that America’s credibility was on the line. He believed that the United States’ allies in the West were in a state of “near-panic, as they watched to see whether the United States would act.” He was wrong. When one British cabinet secretary remarked to British Prime Minister Clement Attlee that Korea was “a rather distant obligation,” Attlee responded, “Distant -- yes, but nonetheless an obligation.” For their part, the French were indeed worried, but not because they doubted U.S. credibility. Instead, they feared that American resolve would lead to a major war over a strategically inconsequential piece of territory. Later, once the war was underway, Acheson feared that Chinese leaders thought the United States was “too feeble or hesitant to make a genuine stand,” as the CIA put it, and could therefore “be bullied or bluffed into backing down before Communist might.” In fact, Mao thought no such thing. He believed that the Americans intended to destroy his revolution, perhaps with nuclear weapons.

Similarly, Ted Hopf, a professor of political science at the National University of Singapore, has found that the Soviet Union did not think the United States was irresolute for abandoning Vietnam; instead, Soviet officials were surprised that Americans would sacrifice so much for something the Soviets viewed as tangential to U.S. interests. And, in his study of Cold War showdowns, Dartmouth College professor Daryl Press found reputation to have been unimportant. During the Cuban Missile Crisis, the Soviets threatened to attack Berlin in response to any American use of force against Cuba; despite a long record of Soviet bluff and bluster over Berlin, policymakers in the United States took these threats seriously. As the record shows, reputations do not matter.

#### Multilateral coop will always structurally fail regardless of their internal link

Barma et al., 13 (Naazneen, assistant professor of national-security affairs at the Naval Postgraduate School; Ely Ratner, a fellow at the Center for a New American Security; and Steven Weber, professor of political science and at the School of Information at the University of California, Berkeley, March/April 2013, “The Mythical Liberal Order,” The National Interest, http://nationalinterest.org/print/article/the-mythical-liberal-order-8146)

Assessed against its ability to solve global problems, the current system is falling progressively further behind on the most important challenges, including financial stability, the “responsibility to protect,” and coordinated action on climate change, nuclear proliferation, cyberwarfare and maritime security. The authority, legitimacy and capacity of multilateral institutions dissolve when the going gets tough—when member countries have meaningfully different interests (as in currency manipulations), when the distribution of costs is large enough to matter (as in humanitarian crises in sub-Saharan Africa) or when the shadow of future uncertainties looms large (as in carbon reduction). Like a sports team that perfects exquisite plays during practice but fails to execute against an actual opponent, global-governance institutions have sputtered precisely when their supposed skills and multilateral capital are needed most. ¶ WHY HAS this happened? The hopeful liberal notion that these failures of global governance are merely reflections of organizational dysfunction that can be fixed by reforming or “reengineering” the institutions themselves, as if this were a job for management consultants fiddling with organization charts, is a costly distraction from the real challenge. A decade-long effort to revive the dead-on-arrival Doha Development Round in international trade is the sharpest example of the cost of such a tinkering-around-the-edges approach and its ultimate futility. Equally distracting and wrong is the notion held by neoconservatives and others that global governance is inherently a bad idea and that its institutions are ineffective and undesirable simply by virtue of being supranational. ¶ The root cause of stalled global governance is simpler and more straightforward. “Multipolarization” has come faster and more forcefully than expected. Relatively authoritarian and postcolonial emerging powers have become leading voices that undermine anything approaching international consensus and, with that, multilateral institutions. It’s not just the reasonable demand for more seats at the table. That might have caused something of a decline in effectiveness but also an increase in legitimacy that on balance could have rendered it a net positive.¶ Instead, global governance has gotten the worst of both worlds: a decline in both effectiveness and legitimacy. The problem is not one of a few rogue states acting badly in an otherwise coherent system. There has been no real breakdown per se. There just wasn’t all that much liberal world order to break down in the first place. The new voices are more than just numerous and powerful. They are truly distinct from the voices of an old era, and they approach the global system in a meaningfully different way.¶

#### Multilateralism can’t stop conflict—4 reasons

Bordachev 6/30 (Timofei, Doctor of Political Science, is the Director of the Center for Comprehensive International and European Studies at the Higher School of Economics, “Political Tsunami Hits Hard,” 2013, http://eng.globalaffairs.ru/number/Political-Tsunami-Hits-Hard-16054)

The financial crisis in the United States, which in 2008 went global, and the continuing efforts by countries around the world to fight its effects have highlighted four most important tendencies in international affairs.¶ First, pretty obvious is the conflict between the growing economic unity of the world and its worsening political fragmentation. The rise of sovereign ambitions and attempts to address all problems at the national level has come into conflict with financial and economic globalization and exacerbates crisis trends.¶ Second, democratization in international politics and greater independence of individual states play an ever greater role. This “in-depth unfreezing” for the first time manifested itself in China’s soaring global ambitions and in the national interests and requests of other Asian countries. Turkey, a stable ally of the West in NATO and a EU aspirant waiting patiently in the antechamber, is trying on the guise of a regional power ever more often. In the meantime, the need for taking into account the ever larger range of opinions quickly erodes the international institutions that emerged in the Cold War era. This is seen not just in the sphere of security: the United Nations efficiency has largely fallen victim to the first phase of the global geopolitical catastrophe of the 1990s.¶ Third, the growing international weight of the new countries and attempts by the old-timers, who won the Cold War, to preserve the hard-won status quo bring back the conservative interpretations of such terms as “sovereignty” and “sovereign rights.” Not only the leaders of new-comers to world politics, or the United States, traditionally concerned about its sovereignty, but quite respectable heads of European states, too, start talking about the protection of national interests.¶ Finally, military power is ever more frequently employed by major powers as a tool to address foreign policy issues. EU countries and the United States used force and threats to use force back at the time when they were getting their hands on the assets of the former USSR. However, they were faced with a very limited set of tasks then. It never occurred to anyone in the West to say in 1999 that the purpose of NATO’s operation against Yugoslavia was to force Slobodan Milosevic to resign or, still worse, to put him to death by some untraditional way of hanging. The need for using military force with or without reason merely confirms that the international community has no other means to prevent the emergence or escalation of conflicts.

#### No climate multilateralism — nationalism ensures gridlock

David Held 13, Professor of Politics and International Relations, at the University of Durham AND Thomas Hale, Postdoctoral Research Fellow at the Blavatnik School of Government, Oxford University AND Kevin Young, Assistant Professor in the Department of Political Science at the University of Massachusetts Amherst, 5/24/13, “Gridlock: the growing breakdown of global cooperation,” http://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation

Gridlock exists across a range of different areas in global governance today, from security arrangements to trade and finance. This dynamic is, arguably, most evident in the realm of climate change. The diffusion of industrial production across the world—a process enabled by economic globalization—has created a situation in which the basic consumption of each individual directly affects the life chances of every other individual on the planet, as well as the life chances of future generations.¶ This is a powerful and entirely new form of global interdependence. Bluntly put, the future of our civilization depends on our ability to cooperate across borders. And yet, despite twenty years of multilateral negotiations under the UN, a global deal on climate change mitigation or adaptation remains elusive, with differences between developed countries, which have caused the problem, and developing countries, which will drive future emissions, forming the core barrier to progress. Unless we overcome gridlock in climate negotiations, as in other issue areas, we will be unable to continue to enjoy the peace and prosperity we have inherited from the postwar order.¶ There are, of course, several forces that might work against gridlock. These include the potential of social movements to uproot existing political constraints, catalysed by IT innovation and the use of associated technology for coordination across borders; the capacity of existing institutions to adapt and accommodate factors such as emerging multipolarity (the shift from the G-5/7 to the G-20 is one example); and efforts at institutional reform which seek to alter the organizational structure of global governance (for example, proposals to reform the Security Council or to establish a financial transaction tax). ¶ Whether there is the political will or leadership to move beyond gridlock remains a pressing question. Social movements find it difficult to convert protests into consolidated institutional change. At the same time, the political leadership of the great power blocs appears dogged by national concerns: Washington is sharply divided, Europe is preoccupied with the future of the Euro and China is absorbed by the challenge of sustaining economic growth as the prime vehicle of domestic legitimacy. Against this background, the further deepening of gridlock and the continuing failure to address global collective action problems appears likely.

#### 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.

#### Best data proves climate change doesn’t cause conflict---cooling’s more likely to cause war

Erik Gartzke 11, Associate Professor of Political Science at UC-San Diego, March 16, 2011, “Could Climate Change Precipitate Peace?,” online: <http://dss.ucsd.edu/~egartzke/papers/climate_for_conflict_03052011.pdf>

An evolving consensus that the earth is becoming warmer has led to increased interest in the social consequences of climate change. Along with rising sea levels, varying patterns of precipitation, vegetation, and possible resource scarcity, perhaps the most incendiary claims have to do with conflict and political violence. A second consensus has begun to emerge among policy makers and opinion leaders that global warming may well result in increased civil and even interstate warfare, as groups and nations compete for water, soil, or oil. Authoritative bodies, leading government officials, and even the Nobel Peace prize committee have highlighted the prospect that climate change will give rise to more heated confrontations as communities compete in a warmer world.

Where the basic science of climate change preceded policy, this second consensus among politicians and pundits about climate and conflict formed in the absence of substantial scientific evidence. While anecdote and some focused statistical research suggests that civil conflict may have worsened in response to recent climate change in developing regions (c.f., Homer-Dixon 1991, 1994; Burke et al. 2009). these claims have been severely criticized by other studies (Nordas & Gleditsch 2007; Buhaug et al. 2010: Buhaug 2010).1 In contrast, long-term macro statistical studies find that conflict increases in periods of climatic chill (Zhang et al. 2006, 2007; Tol & Wagner 2010).2 Research on the more recent past reveals that interstate conflict has declined in the second half of the twentieth century, the very period during which global warming has begun to make itself felt (Goldstein 2002; Levy et al. 2001; Luard 1986, 1988; Hensel 2002; Sarkees, et al. 2003; Mueller 2009).3 While talk of a ''climatic peace” is premature, broader claims that global warming causes conflict must be evaluated in light of countervailing evidence and a contrasting set of causal theoretical claims.4

#### Article III courts can’t solve—delays and security issues kill due process

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

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

#### The president will circumvent the aff

Gregory McNeal 08, Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law. The author previously served as an academic consultant to the former Chief Prosecutor, Department of Defense Office of Military Commissions, “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” August 08, 103 Nw. U. L. Rev. Colloquy 29

3. Executive Forum-Discretion--Any reform which allows for adjudication of guilt in different forums, each with differing procedural protections, raises serious questions of legitimacy and also incentivizes the Executive to use "lesser" forms of justice--nonprosecution or prosecutions by military commission.

In this section, my focus is on the incentives which compel the Executive to not prosecute, or to prosecute in military commissions rather than Article III courts. Understanding the reason for these discretionary decisions will guide reformers pondering whether a new system will actually be used by the next President.¶ There are two primary concerns that executive actors face when selecting a forum: protecting intelligence and ensuring trial outcomes. Executive forum-discretion is a different form of prosecutorial discretion with a different balancing inquiry from the one engaged in by courts. Where prosecutorial discretion largely deals with the charges a defendant will face, executive forum-discretion impacts the procedural protections a defendant can expect at both the pretrial and trial phase. Where balancing by Courts largely focuses on ensuring a just outcome which protects rights, the balancing engaged in by executive actors has inwardly directed objectives [\*50] which value rights only to the degree they impact the Executive's self interest.¶Given the unique implications flowing from forum determinations, reformers can benefit from understanding why an executive actor chooses one trial forum over another. I contend that there are seven predictive factors that influence executive discretion; national security court reformers should be aware of at least the two most salient predictive factors: trial outcomes and protection of intelligence equities. n112 The Executive's balancing of factors yields outcomes with direct implications for fundamental notions of due process and substantial justice. Any proposed reform is incomplete without thoroughly addressing the factors that the Executive balances.

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#### Hypocrisy on Syria destroys credibility

Gary Younge 9/8/13, columnist for the Guardian, “The US has little credibility left: Syria won't change that,” http://www.theguardian.com/commentisfree/2013/sep/08/us-little-credibility-syria-chemical-weapons

The alleged urgency to bomb Syria at this moment is being driven almost entirely by the White House's desire to assert both American power and moral authority as defined by a self-imposed ultimatum. It is to this beat that the drums of war are pounding. But thus far few are marching. The American public is against it by wide margins. As a result it is not clear that Congress, whose approval he has sought, will back him. The justification and the objectives for bombing keep changing and are unconvincing. He has written a rhetorical cheque his polity may not cash and the public is reluctant to honour. On Tuesday night he'll make his case to a sceptical nation from the White House.¶ Before addressing why people are right to be sceptical, it is necessary to attend to some straw men lest they are crushed in the stampede to war. The use of chemical weapons is abhorrent and the Syrian regime is brutal (whether it used chemical weapons in this case or not). With more than 100,000 dead in the civil war, diplomatic efforts have clearly not been successful thus far. Those who claim the principles of human solidarity and internationalism should not sit idly by while the killing continues. Nobody can claim, with any integrity, that they have a plan that will stem the bloodshed.¶ But the insistence that a durable and effective solution to this crisis lies at the end of an American cruise missile beggars belief. It is borne from the circular sophistry that has guided most recent "humanitarian interventions": (1) Something must be done now; (2) Bombing is something; (3) Therefore we must bomb.¶ The roots of this conflict are deep, entangled and poisoned. Arguments against the Syrian regime and the use of chemical weapons are not the same as arguments for bombing. And arguments against bombing are not the same as arguments to do nothing. That is why most remain unconvinced by the case for military intervention. It carries little chance of deterring the Syrian regime and great risk of inflaming an already volatile situation. Intensifying diplomatic pressure, allowing the UN inspectors to produce their report while laying the groundwork for a political settlement between the rival factions, remains the best hope from a slender range of poor options.¶ The problem for America in all of this is that its capacity to impact diplomatic negotiations is limited by the fact that its record of asserting its military power stands squarely at odds with its pretensions of moral authority. For all America's condemnations of chemical weapons, the people of Falluja in Iraq are experiencing the birth defects and deformities in children and increases in early-life cancer that may be linked to the use of depleted uranium during the US bombardment of the town. It also used white phosphorus against combatants in Falluja.¶ Its chief ally in the region, Israel, holds the record for ignoring UN resolutions, and the US is not a participant in the international criminal court – which is charged with bringing perpetrators of war crimes to justice – because it refuses to allow its own citizens to be charged. On the very day Obama lectured the world on international norms he launched a drone strike in Yemen that killed six people.¶ Obama appealing for the Syrian regime to be brought to heel under international law is a bit like Tony Soprano asking the courts for a restraining order against one of his mob rivals – it cannot be taken seriously because the very laws he is invoking are laws he openly flouts.¶ So his concerns about the US losing credibility over Syria are ill-founded because it has precious little credibility left. The call to bomb an Arab country without UN authority or widespread international support, on the basis of partial evidence before UN inspectors have had a chance to report their findings, sounds too familiar both at home and abroad. The claim that he should fight this war, not the last one, is undermined by the fact that the US is still fighting one of the last ones. And with a military solution proving elusive in Afghanistan, the US is trying to come to a political settlement with the Taliban before leaving.

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#### Drones are worse than detention for international perception

Rohde 13 (Stephen, Constitutional lawyer and Chair of the ACLU Foundation of Southern California, “Bush Detained Alleged Terrorists Without Due Process - Obama Is Killing Them With Drones”, 3/13/13, <http://www.truth-out.org/opinion/item/15086-bush-detained-terrorists-without-due-process-obama-is-killing-them-with-drones>)

In the context of the serious constitutional issues surrounding Obama's drone policy, there is much to learn from these Supreme Court decisions. Before and after 9/11, the US military has been fully capable of capturing and detaining alleged terrorists. Even in the war on terror, the court has consistently held that before alleged terrorists, Americans and noncitizens alike, can be denied "life, liberty or property," they are entitled to due process. The court has consistently rejected the presidential claim to unilateral authority to detain suspected terrorists, without charges, without lawyers and without trial. Since alleged terrorists - Americans and noncitizens alike - cannot be denied "liberty" without due process, surely they cannot be denied "life" without due process. The men whom Bush detained in Guantanamo Bay, like the men whom Obama killed by targeted drones, were all accused of being dangerous terrorists who posed a grave threat to America. Yet once Rasul, Iqbal, Hicks, Hamdi, Hamdan and Boumediene were afforded due process, they were eventually released and are alive today. When Padilla and al-Marri were afforded due process, represented by legal counsel, they were duly tried and convicted in a court of law and are serving their sentences. But al-Awlaki, his 16-year-old son, Khan and the others were NOT afforded due process. Instead, they were placed on Obama's "kill list" and were systematically targeted and summarily killed by drones. Summary execution is illegal, as it violates the right of the accused to a fair trial before a punishment of death. Almost all constitutions or legal systems based on common law have prohibited execution without the decision and sentence of a competent judge. The UN's International Covenant on Civil and Political Rights declares that "Every human being has the inherent right to life. This right shall be protected by law. No man shall be deprived of his life arbitrarily." "[The death] penalty can only be carried out pursuant to a final judgment rendered by a competent court." (ICCPR Articles 6.1 and 6.2) Major treaties such as the Geneva Convention and Hague Convention protect the rights of captured regular and irregular members of an enemy's military, along with civilians from enemy states. Prisoners of war must be treated in carefully defined ways which ban summary execution. "No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality." (Second Protocol of the Geneva Conventions (1977) Article 6.2) Obama's use of a "kill list" and the systematic targeting and summary killing of individuals by drones is an unspeakable violation of the constitution, international law and human rights. President Obama's legacy will forever be tarnished, and our constitutional system forever diminished, unless he immediately suspends his illegal policy of targeted drone killings and subjects the entire program to open, transparent and independent review.

#### Increased killing turns legitimacy

Dan Roberts 13, the Guardian's Washington Bureau chief, 5/2/13, “US drone strikes being used as alternative to Guantánamo, lawyer says,” http://www.theguardian.com/world/2013/may/02/us-drone-strikes-guantanamo

The lawyer who first drew up White House policy on lethal drone strikes has accused the Obama administration of overusing them because of its reluctance to capture prisoners that would otherwise have to be sent to Guantánamo Bay.¶ John Bellinger, who was responsible for drafting the legal framework for targeted drone killings while working for George W Bush after 9/11, said he believed their use had increased since because President Obama was unwilling to deal with the consequences of jailing suspected al-Qaida members.¶ "This government has decided that instead of detaining members of al-Qaida [at Guantánamo] they are going to kill them," he told a conference at the Bipartisan Policy Center.¶ Obama this week pledged to renew efforts to shut down the jail but has previously struggled to overcome congressional opposition, in part due to US disagreements over how to handle suspected terrorists and insurgents captured abroad.¶ An estimated 4,700 people have now been killed by some 300 US drone attacks in four countries, and the question of the programme's status under international and domestic law remains highly controversial.¶ Bellinger, a former legal adviser to the State Department and the National Security Council, insisted that the current administration was justified under international law in pursuing its targeted killing strategy in countries such as Pakistan and Yemen because the US remained at war.¶ "We are about the only country in the world that thinks we are in an armed conflict with al-Qaida," Bellinger said. "We really need to get on top of this and explain to our allies why it is legal and why it is permissible under international law," he added.¶ "These drone strikes are causing us great damage in the world, but on the other hand if you are the president and you do nothing to stop another 9/11 then you also have a problem," Bellinger said.¶ Nevertheless, the legal justification for drone strikes has become so stretched that critics fear it could now encourage other countries to claim they were acting within international law if they deployed similar technology.¶ A senior lawyer now advising Barack Obama on the use of drone strikes conceded that the administration's definition of legality could even apply in the hypothetical case of an al-Qaida drone attack against military targets on US soil.¶ Philip Zelikow, a member of the White House Intelligence Advisory Board, said the government was relying on two arguments to justify its drone policy under international law: that the US remained in a state of war with al-Qaida and its affiliates, or that those individuals targeted in countries such as Pakistan were planning imminent attacks against US interests.¶ When asked by the Guardian whether such arguments would apply in reverse in the unlikely event that al-Qaida deployed drone technology against military targets in the US, Zelikow accepted they would.¶ "Yes. But it would be an act of war, and they would suffer the consequences," he said during the debate at the Bipartisan Policy Center in Washington. "Countries under attack are the ones that get to decide whether they are at war or not," added Zelikow.¶ Hina Shamsi, a director at the American Civil Liberties Union, warned that the issue of legal reciprocity was not just a hypothetical concern: "The use of this technology is spreading and we have to think about what we would say if other countries used drones for targeted killing programmes."¶ "Few thing are more likely to undermine our legitimacy than the perception that we are not abiding by the rule of law or are indifferent to civilian casualties," she added.

#### PRISM caused huge and long lasting backlash

Hudgins 7/17 (Sarabrynn, Internet Freedom and Human Rights Program Associate at the New America Foundation's Open Technology Institute, “US Surveillance Unsettles Civilians More Than States,” 2013, http://www.huffingtonpost.com/sarabrynn-hudgins/us-surveillance-unsettles\_b\_3610941.html)

Allegations of American decline persist despite the United States' command of the world's largest economy and strongest military. It is in global esteem that the US is lagging, and where the international implications of US mass surveillance could do long-lasting harm.¶ Revelations about the National Security Agency's (NSA) surveillance programs have drawn enormous attention and opprobrium. US officials are fielding questions while Congress members draft legislation and civil rights groups file lawsuits. But these apparatuses have largely failed to address how US surveillance efforts affect non-Americans.¶ In a wired world where the US tells other countries that "full respect for human rights must be maintained" online, the privacy of US citizens and non-Americans alike must be part of the conversation. Hawks too should be concerned, for the soft power hits that come with serious international anger will only hamper US security and foreign policy. That is why the frustrations of everyday citizens around the world - not their governments - are more problematic for the US.¶ Governments React...Rather Weakly¶ French President Hollande insisted that NSA surveillance programs "stop immediately" and demanded a US explanation, while German Chancellor Angela Merkel stated her intention to question Obama on the "possible impairment of German citizens." Media speculates that European ire may inspire the European Parliament (EP) to veto the passage of the wide-ranging Trans-Atlantic Trade Deal. The Parliament did, after all, term the surveillance programs a "serious violation" and call for an investigation whose findings could threaten transatlantic cooperation.¶ These fears are overblown. Any recommendations to come from the EP will require passage not only by Parliamentarians, but also EU member states, before becoming law, in a labyrinthine process that is unlikely to occur. Also far-fetched is the notion that EU states will make a principled stand against the trade deal to their own financial detriment, or that they would suspend collaboration on security measures like the Terrorist Finance Tracking Programme.¶ Brazil, whose President called US surveillance of the Brazilian military an affront to Brazilian sovereignty and human rights, may pose the most serious state challenge to US surveillance.¶ Yet, considering that the NSA's PRISM program had 117,675 active foreign surveillance targets by April 2013, these reactions are rather tame.¶ State indignation (especially in Europe) may be muted, as some allege, because most web-savvy countries, including France, Great Britain, and the Netherlands, conduct their own sweeping surveillance programs. These black pots are loathe to disparage the US kettle, no matter how dark. The German government's outcry, the loudest in Europe, has been derided as largely "a flurry of activity apparently designed to reassure German electors." Le Monde ascribes France's "weak signs of protest" to "two excellent reasons: Paris already knew. And it does the same thing."¶ The song and dance of recrimination will continue mainly because governments want to appease "public pressure to respond assertively." US officials understand that they need not worry about real intergovernmental hostilities, at least for now.¶ The Civilian Storm¶ Foreign governments know that their constituents, on the other hand, are furious. Individuals around the world accuse the US government and US-based businesses like Google and Apple of far-reaching surveillance that inexcusably subsumes non-US citizens under US law. These people, and the groups through which they organize, point to the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights to demand freedom of expression and the right to privacy.¶ In comparison to heads of state, however, they lack the power levers necessary to demand US attention and a sincere response. Swiss civil rights groups have filed a criminal complaint saying that US surveillance violates local law, but such arguments will fall deaf in Washington, and the Swiss government has not taken up their mantle. Another European-based human rights group delivered a letter demanding data protections to the US Embassy, but a sympathetic US response will be rhetorical at best.¶ 96 international activists and organizations wrote an open letter to the United Nations Human Rights Council demanding that it ask states to "report on practices and laws in place on surveillance and what corrective steps will they will take to meet human rights standards." A similar letter addressed to the US Congress then asked the US "to take immediate action to dismantle existing, and prevent the creation of future, global Internet and telecommunications based surveillance systems." The expression of "serious alarm" by the 372 individuals and non-profits from 53 countries that signed the latter letter likely represents millions or billions more around the world who are outraged even if their governments will not make strong public stands against the US.¶ Speak Now, or Forever Hold Your Peace¶ Sorting out the extent of NSA surveillance efforts and how those programs affect everyday users will take time. As lawmakers and public officials debate programs like PRISM, it is all of us, American and otherwise, who should be concerned about their implications for privacy and freedom of expression. The preservation of human rights online cannot be contained by national borders.¶ While governments continue to wink at one another over stoic speeches, individuals around the world are authentically angry. If allowed to foment unabated, public pressure could yet back governments into punishing the US-- whether through trade breaks, diplomatic downgrade, or disengagement from US technology firms-- despite their current reticence to do so. Such moves will ensure that it is not just the right to privacy, but also American standing, that suffers. If for that reason alone, American officials should engage the international community, and not just their governmental counterparts, sooner rather than later.

#### US support for Israel demolishes our credibility---it comparatively outweighs the gains made by the plan

Hroub 11—Prof of Modern Middle Eastern Politics and Identity, Cambridge. PhD (Khaled, US fumbles Arab Spring gains over Palestine's UN bid, 11/3/11, http://www.grc.ae/?frm\_action=view\_newsletter\_web&sec\_code=grcanalysis&frm\_module=contents&show\_web\_list\_link=1&int\_content\_id=76208)

In a quick and angry response to UNESCO's decision to admit Palestine as a full member, the US administration stopped its $60 million annual contribution to the organisation's budget. Almost immediately, a flurry of condemnations of the American reaction erupted in the pan-Arab media. Once the news was broadcast, hundreds of frustrated viewers posted angry comments on Al-Jazeera and Al-Arabiya websites, both based in the Gulf and considered to be the leading news websites in Arabic. Particularly since the UNESCO step is more symbolic than anything else, the US reaction is seen to be way out of proportion.

General Arab frustration at the blindly pro-Israeli policies of the US has become compounded especially after Washington's (over)reaction to the Palestinian call for full statehood status at the UN in September. At that time, American pressure on the Palestinian leadership to withdraw their application ranged across the whole spectrum and continued to the very last minute. Not only were threats made including cutting annual aid to the Palestinian Authority, but President Barack Obama was reported to have held the Palestinian President Mahmoud Abbas personally responsible for any drop of American blood that might be shed in connection with the American veto against the Palestinian request. Some lawmakers in the US Congress have already started drafting measures to punish the Palestinians by effecting financial cuts. It could be said that the strong overall American reaction across the political spectrum in Washington has taken a harder line against the Palestinian petition than that taken in Tel Aviv.

Palestinian and other Arab commentators criticise the Americans for becoming plus royaliste que le roi, pointing to the many voices inside Israel that have been calling upon the government not only to accept the Palestinian move, but to support it. When the Palestinians started seriously considering this strategy over the past year, a prominent group of Israeli intellectuals and politicians, many of them holding prestigious Israeli awards, issued a statement, in April, in support of the declaration of a Palestinian state within the 1967 borders. This new Palestinian strategy of pursuing higher diplomatic status at the UN is bound within international law and creates no contradiction with any of the previous UN resolutions. In fact it is a harmless step which conforms to the parameters of the long-conducted peace process which has made the establishment of a Palestinian state within the 1967 boundaries its ultimate goal.

The short-sighted American reaction to Palestine's UN bid can only be understood as a means of appeasing the strong Jewish-American lobbies in light of the coming elections. Such electioneering tactics, in blockheadedly showing imagined support for Israel against the almost universal support to legitimate Palestinian rights acknowledged by the US itself, will cost the Americans a high and unwarranted price. Israel is not under any existential threat that could justify the hysterical American reaction. Neither is the US even in full consensual agreement with the hard line populist politics of Israel's current government. There has recently been a need for even more rational and balanced American positioning vis-a-vis the Palestinian effort rather than the head-to-head clashes in the context of which Obama's speech at the UN will be noted in history as the most Zionist speech delivered by an American president ever.

But what is really new about all this when American policies have always sided with Israel in good times and bad? Well, actually, there are two new developments that would render an American continuation of old policies in this respect more damaging than before: the recent Arab revolutions along with what the US has invested in supporting them; and the more assertive Gulf positions supporting the Palestinians.

By adopting such a blindly over-blown line of support to the current right-wing Israeli government, the US is simply losing all the gains that it might have garnered from the Arab Spring. Starting with revolutions in Tunisia and Egypt back in January, Washington faced the dilemma of either moving along with the rising sentiment in the Arab street which would change pro-Western regimes, or support their ailing and corrupt governments. The carefully calculated positions and neatly worded statements that Washington made in response to the speedy success of these revolutions had been meant to keep a balanced stance: to side with the wave of change, but to keep other allies in the Arab region assured of American support. In the end, the official American position was read by their allies in the region as tilting towards these revolutions even if they led to the toppling of the old regimes. At the level of Arab public perception, the American stance in ditching the Tunisian and Egyptian presidents had shaken the long-lived and deep-seated anti-American sentiment in the region. One could argue that for the first time in the past two decades parts of Arab public opinion were nudged out of their strong black anti-American feeling into a decidedly lighter 'grey' area.

This move from a black and white perception of the US to a 'grey' area in a span of a mere few months should have been considered a massive strategic achievement. All previous efforts over the past decade and longer, and investments in 'Public Diplomacy' and other fruitless projects, had yielded very little. Winning the 'hearts and minds' of the Arabs required real change in politics, and many Arabs had started to see the beginning of such a change in the Arab Spring. This beginning seemed to have redressed for a while the frustration and loss of hope in President Obama, especially after the high expectations he managed to raise in his Istanbul and Cairo speeches in April and June 2009, respectively.

Yet, all efforts that the US has made, or the little achievements that it has been gaining on the Arab/Muslim public opinion front, have been continuously whittled away because of the way it has dealt with the Palestine/Israel issue. The credibility that Obama had projected in the first year of his presidency, which rapidly changed much of the negative image of the US among Arabs and Muslims, would later fail because of the stubborn Israeli position on settlements. As a condition set by the international community and by the US itself in the Roadmap for Peace, Obama pressed the Israelis to freeze building settlements prior to the resumption of negotiations between Israel and the Palestinians. The Israelis rejected his demand and have continued right up to the very present to construct new settlements in the West Bank and East Jerusalem. Obama did nothing, or, being unable to do anything, lost his face and credibility in the Arab and Muslim world, one may even add humiliatingly! A common metaphor that was frequently used in the Arab press depicted the US bowing on its knees before Israel.

The other new and noticeable development which would further expose America's pro-Israel policies is the new foreign policy of the Gulf countries, individually or as a GCC bloc. The Arab Spring has given the GCC an unprecedented role in leading collective Arab action, in Libya, Yemen and Syria. Egypt, Iraq and Syria, the countries that until recently would claim Arab leadership or enjoyed great influence on other Arab countries, have all taken the back seat each for obvious reasons. Within the framework of the Arab League or even outside it, the GCC bloc seems to remain, and perhaps despite many internal shortcomings, the only coherent Arab bloc that is able to function collectively and show leadership. On the Palestine front, this has been exhibited in the challenging remarks made by the Saudi prince Turki Al-Faisal in the American press, stating boldly that his country will support the Palestinian UN move without reservation. It was the concrete GCC support for the Palestinian president at the UN, according to many accounts, which had strengthened his position. There is some serious talk within the GCC that it (along with Turkey) should step in if the American threats of cutting the annual half a billion dollar or so support to the Palestinian Authority were to materialise. However, Washington is fully aware that a cut in aid would mean a cut in leverage, thus such an extreme measure would actually be very unlikely.

In the moving sands of the post-revolutions Arab region, the usual American policies towards the Israeli/Palestinian conflict have become out of date. What Washington attempts to build and invest with certain policies is destroyed and divested by other policies. Unless a radical change and a major shift in Washington's policies on Palestine is pursued, winning the hearts and minds of the Arabs seems likely to be a futile exercise - as the old Arab proverb most accurately describes, the Americans pointlessly 'are ploughing the sea'!

#### Cred is terminally low — lack of coherent security strategy means that individual actions (like the plan) aren’t perceived

Mario Loyola 9/8/13, Chief Counsel to the Texas Public Policy Foundation, served in the Pentagon as a special assistant to the Under Secretary of Defense for Policy, and on Capitol Hill as counsel for foreign and defense affairs to the U.S. Senate Republican Policy Committee, “Syria and U.S. Credibility,” http://www.nationalreview.com/corner/357889/syria-and-us-credibility-mario-loyola

Many of my fellow Syria hawks argue that the U.S. should strike because its “credibility” is at stake. They mean “credibility” in the sense of credible U.S. power to maintain peace and security, particularly the ability to project a credible threat. We certainly have a credibility problem, but the problem is much worse than most hawks seem to realize. It arises not just from Obama’s head-in-the-sand pacifism but — more important — from the lack of a consensus national-security strategy that is rationally related to the threats we face abroad. ¶ The Bush doctrine focused on the confluence of rogue regimes, terrorism, and weapons of mass destruction. It called for early preemption of gathering threats and the spread of democracy to drain the swamp in which threats take root. But the Bush doctrine was largely discredited by the trauma of the Iraq war, particularly among independents and younger conservatives of a more isolationist bent. The doctrine was replaced in the Obama administration by a fluffy collection of meaningless platitudes and campaign talking points. Since then, America has been almost totally permissive of rogue regimes that support terrorism and proliferate WMD. It no longer has any real policy of confronting them. Hence there is no real “threat” against Syria or Iran, and if there is no threat, there can’t be a credible threat. ¶ It certainly is worrisome that Obama is in danger of not following through on an explicit threat against Syria’s use of chemical weapons. But the source of his threat was not U.S. national-security policy. It was an “international norm” that matters mostly to proponents of world government among the academic Left. That group does not have enough influence to provide Obama with a solid majority in favor of strikes, so Obama has had to go looking for support among proponents of the old Bush doctrine. And they insist that any military strikes must materially weaken the Assad regime, enough to bring it down or at least push Assad to the negotiating table. To get their support, the administration is expanding the target list. But that does not mean Obama has embraced the Bush policy (which Bush himself often shied away from) of confronting rogue regimes that support terrorism and proliferate WMD. Even if he carries through on his threat, the threat doesn’t stem from any consensus policy, so strikes can’t make the policy more credible. ¶ Simply put, there is no national-security policy right now. That’s why we have a credibility problem. Following through on one isolated threat is not going to prevent U.S. credibility from diminishing further, because U.S. credibility is already zero. We know this by looking at the Persian Gulf, where a constant rotation of several aircraft-carrier strike forces — armadas of terrifying power — are having exactly the same effect on Iranian policy as a bunch of ducks floating in the water.

#### American hypocrisy in the Middle East destroys credibility

Neil Macdonald 9/5/13, Senior Washington Correspondent for CBC News, “Obama's indecision on Syria strains U.S. credibility: Neil Macdonald,” http://www.cbc.ca/news/world/story/2013/09/04/f-vp-obama-congress-syria-missile-strike-neil-macdonald.html

In fact, “red lines” are old hat in the Middle East. They are constantly being set, violated and moved. The term was popular there before it ever entered the American lexicon.¶ But in a region where people remember the betrayal of the Sykes-Picot agreement as though it was yesterday (Great Britain and France secretly carved up the Middle East between them after World War One), and regard the Crusades as though they happened last week, it is the long history of American and other Western actions that burdens the U.S.¶ Americans might move on after a week or so; the rest of the world doesn’t.¶ Take chemical weapons. Obama and Kerry are boiling righteously about their use in Syria, but Washington was considerably less outraged just a few decades ago.¶ There is ample evidence America supplied Saddam Hussein with the precursors for the chemical weapons he used in battle against Iran in the 1980s. Even when he turned them on his own citizens, and the U.S. Senate was finally persuaded to pass economic sanctions, the House of Representatives stopped them dead.¶ The Reagan administration, which propped up tyrants throughout the region, opposed taking any action.¶ “I always found it ironic,” Rep. Chris Van Hollen said last week, “that the United States went to war on false pretenses that Saddam Hussein had chemical weapons and weapons of mass destruction in 2003, when he did not have them, but failed to take any action in 1988 when he actually used them.”¶ One suspects Iraqis felt that irony, too. Certainly they remember George H.W. Bush telling them to rise up after the first Gulf War, before leaving them to Saddam’s tender mercies.¶ Going back much further, there is still debate over whether British colonial authorities deployed chemical weapons as part of the wholesale slaughter its air force carried out to suppress Iraqi uprisings after the First World War.¶ Certainly Winston Churchill was keen. "I am strongly in favour of using poisoned gas against uncivilised tribes . . . [to] spread a lively terror,” wrote the great man.¶ Empty declarations¶ In any event, does anyone think the average Syrian distinguishes between the rape and torture and bombs and bullets Assad’s executioners have used to dispatch their wives and husbands and children, and the sarin gas he’s alleged to have dropped in the suburbs of Damascus last month?¶ It’s just as likely they recall George W. Bush’s empty inaugural declarations in 2005 about protecting the oppressed of the world from dictators. And of course, Barack Obama’s words as he went to war against Muammar Ghaddafi two and a half years ago: “As President, I refused to wait for the images of slaughter and mass graves before taking action.”¶ More than 100,000 Syrian corpses later, Obama has done nothing.¶ Yes, the White House did announce in June that as a result of earlier chemical weapons attacks by Assad, it was authorizing the CIA to arm the Syrian rebels. But as of today, those arms remain undelivered.¶ More than two years ago, Obama and his officials began declaring that Assad must go. Now, fearing who might come next, “regime change” in Syria is out, and “containment” is in. Any military strikes will somehow be limited to deterring use of chemical weapons without influencing the outcome of the civil war — as though such a thing is possible.¶ In Egypt, the United States is now backing and financially supporting the military junta that removed a democratically elected president from office and massacred his supporters. Because American law forbids the provision of financial aid to any government installed by a coup, Obama has simply chosen not to call it a coup.¶ The list goes on. And on.

#### Middle East cred low, but no impact to cred

Aaron Miller 9/9/13, vice president for new initiatives and a distinguished scholar at the Woodrow Wilson International Center for Scholars, “Can Obama Afford Not to Bomb Syria?,” http://www.foreignpolicy.com/articles/2013/09/09/can\_obama\_afford\_not\_to\_bomb\_syria?page=0,2

4. Failure to act will undermine U.S. credibility: Absent a strike against Syria, supporters of military action argue, U.S. credibility will be badly damaged.¶ There's a legitimate fear here, related to the gap between words and deeds, rhetoric and action. Presidents should say what they mean and mean what they say. Indeed, credibility really means believability, and when friends and foes don't believe a president's commitment, bad things can happen.¶ But we know that presidents don't always mean what they say, let alone act on their words. When Barack Obama calls for a settlements freeze, proclaims Assad must go, or promises consequences if the Chinese and the Russians don't cooperate on Edward Snowden and nothing happens, it hurts American street cred. And these days, most everyone says "no" to the United States without much cost or consequence. In other words, U.S. credibility is already very low. An attack without a strategic underpinning won't make it much better.¶ Still, the United States isn't doing all that badly in protecting its core interests in the challenging, angry, and dysfunctional Middle East. We're out of Iraq and getting out of Afghanistan; we're reducing our dependence on Arab hydrocarbons; we've prevented another major attack on the United States; and we're managing the U.S.-Israeli relationship. John Kerry has even managed to re-launch Israeli-Palestinian negotiations (and by the degree of radio silence attending the talks, he may even be making progress). And everyone's favorite Iranian president, Hasan Rouhani, is making the right noises about a more moderate course.¶ The fact is that, given the odds against success in this region, we're not doing badly on tangible and concrete things, even as we're not doing that well on the more amorphous matter of our credibility. Credibility can be a much overrated commodity, particularly if its pursuit leads to actions that make matters worse, or if it becomes a substitute for clear and realizable goals.

#### Cooperation fails — multiple interlocking factors create gridlock

David Held 13, Professor of Politics and International Relations, at the University of Durham AND Thomas Hale, Postdoctoral Research Fellow at the Blavatnik School of Government, Oxford University AND Kevin Young, Assistant Professor in the Department of Political Science at the University of Massachusetts Amherst, 5/24/13, “Gridlock: the growing breakdown of global cooperation,” http://www.opendemocracy.net/thomas-hale-david-held-kevin-young/gridlock-growing-breakdown-of-global-cooperation

The Doha round of trade negotiations is deadlocked, despite eight successful multilateral trade rounds before it. Climate negotiators have met for two decades without finding a way to stem global emissions. The UN is paralyzed in the face of growing insecurities across the world, the latest dramatic example being Syria. Each of these phenomena could be treated as if it was independent, and an explanation sought for the peculiarities of its causes. Yet, such a perspective would fail to show what they, along with numerous other instances of breakdown in international negotiations, have in common.¶ Global cooperation is gridlocked across a range of issue areas. The reasons for this are not the result of any single underlying causal structure, but rather of several underlying dynamics that work together. Global cooperation today is failing not simply because it is very difficult to solve many global problems – indeed it is – but because previous phases of global cooperation have been incredibly successful, producing unintended consequences that have overwhelmed the problem-solving capacities of the very institutions that created them. It is hard to see how this situation can be unravelled, given failures of contemporary global leadership, the weaknesses of NGOs in converting popular campaigns into institutional change and reform, and the domestic political landscapes of the most powerful countries.

#### Multilat fails — disagreements prevent consensus action — empirics prove

Chang 10 – Counsel to the American law firm Paul Weiss and earlier in Hong Kong as Partner in the international law firm Baker & McKenzie. oken at Columbia, Cornell, Princeton, Yale, and other universities and at The Brookings Institution, The Heritage Foundation, the Cato Institute, RAND, the American Enterprise Institute, the Council on Foreign Relations, and other institutions.  He has given briefings at the National Intelligence Council, the Central Intelligence Agency, the State Department, and the Pentagon.  He has also spoken before industry and investor groups including Bloomberg, Sanford Bernstein, and Credit Lyonnais Securities Asia.  Chang has testified before the U.S.-China Economic and Security Review Commission and has delivered to the Commission a report on the future of China’s economy, and has appeared on CNN, Fox News Channel, CNBC, MSNBC, PBS, the BBC, and Bloomberg Television. He has appeared on The Daily Show with Jon Stewart.   (Gordon G. January 18, “The End of Multilateralism” Vol. 15, No. 17 <http://www.weeklystandard.com/articles/end-multilateralism> )

Just before Christmas, the U.N. Security Council adopted an arms embargo on Eritrea, which has been supplying weapons to Islamic insurgents in nearby Somalia. In one sense, the strictly worded measure is a symbol of the international community’s determination to stop tragic conflicts in the Horn of Africa. The resolution, however, is years late and could end up having little effect. A similar U.N. embargo on Somalia has not prevented weapons from being freely traded in Mogadishu. The concept of global collective security, unfortunately, has not worked well, either last century or this one. It is no surprise that the United Nations is not meeting important challenges, but even once-successful global institutions are losing effectiveness. The International Monetary Fund, for instance, completely failed to handle—or even anticipate—the global economic downturn. The G-7 and G-8 are now thought to be irrelevant, and the G-20, considered a replacement for these two groupings, has little to show for three grand gatherings in 2008 and 2009. The World Trade Organization has been unable to prevent a resurgence of protectionism, and its Doha Round negotiations, now more than eight years old, have stalled. These negotiations could be the first major trade talks to fail since the 1930s. Last month’s Copenhagen climate change summit, the 15th installment of the once-productive Conference of the Parties talks, flopped even though it was hailed as “the most important meeting in the history of the world.” Weak nuclear rogues like Syria are now getting the better of the once-mighty International Atomic Energy Agency. North Korea has already outsmarted the watchdog organization by covertly building plutonium-core weapons, and Iran is developing an atomic warhead with impunity.  President Obama says the United States cannot solve the world’s problems alone. Maybe that’s true, but sooner or later he has to realize he’s not going to get the help of the world’s other powers. The “international community” is not coming together to solve common problems. This is not how we thought things would work out two decades ago. In the early 1990s, optimistic Western analysts predicted that, with the Soviet Union gone, the world would enter a generally harmonious era. As Francis Fukuyama famously argued, events would continue to occur, but “the evolution of human societies through different forms of government had culminated in modern liberal democracy and market-oriented capitalism.” Because democracies did not fight one another, the reasoning went, the international system would become more manageable. Nations would generally tend to agree with one another on the big issues—or at least manage to get along. In this type of world, multilateralism was not only considered possible, it was thought to be necessary and even desirable. Multilateralism, by its emphasis on consensual action, implicitly delegitimized America’s leading role in defending core Western values. So did the concept of globalization. Trade, the theory went, would lead to open -economies, open economies to prosperity, prosperity to representative governance, and representative governance to peace. In this extraordinarily benign environment, the impersonal forces of history, relentlessly grinding forward, would finish off Communists, autocrats, and bad actors of all stripes. As we now know, the opposite occurred. When the political barriers to trade fell, globalization indeed kicked into high gear, creating unprecedented amounts of wealth and liquidity. But global prosperity also strengthened hardline states, notably China and Russia, giving them the means to resist democratization, pursue aggressive foreign policies, and even bend the international system more to their liking. The Chinese, in particular, are displaying a newfound “sense of triumphalism” (as a senior U.S. official put it to the Washington Post last week) and are acting as if their economic success means they don’t have to listen to anybody. Developing democracies, such as India and Brazil, also gained prominence and a platform to pursue policies that differed from those of the more advanced nations.  The result is a world with many different voices, one where consensus, or even agreement, on important issues is not possible. Simply put, among the 195 nations of the world there is no common view of the troubling events of the day and no accepted approach to handling them. Even though the conditions that gave rise to multilateralism no longer exist, the concept has not only survived but attained the status almost of a geopolitical religion. In this environment, solutions are legitimate only if they are multilateral. Yet because multilateral solutions are becoming increasingly difficult to reach, problems fester. Most of the time, the best the international community can manage are lowest common denominator fixes on matters marginal to global security. It was thus utterly predictable that the Security Council chose last month to deal with Eritrea instead of, say, the Islamic Republic of Iran.

#### Multilat fails — US unwilling to make commitments

Vezirgiannidou 13 - Lecturer in International Organizations, University of Birmingham (SEVASTI-ELENI, “The United States and rising powers in a post-hegemonic global order,” International Affairs, May, Wiley Online)

The current US approach to rising powers, which engages them as equals in informal forums with little ‘hard’ law capabilities, while being passive or hesitant in reforming international institutions where it has a primary role (and a veto), exemplifies its own commitment to sovereignty and freedom of action in international politics. The US is just as reluctant as the BRICS to be bound by hard law commitments. It also indicates a lukewarm commitment to sharing its power with rising powers in hard law institutions. Some of this reluctance may be attributable to the constraints of congressional politics (and American exemptionalism); its strength can also depend on who sits in the White House and who his advisers are.118 Irrespective of the cause, this reluctance to share power formally while promoting multilateralism in informal settings is likely to have transformative implications on global order if it continues.¶ Specifically, the resulting order will become more plurilateral than multilateral, with the exclusion of minor powers and most decision­making moving into forums like the G20. It will also shift to more ‘soft law’ policy­making, as informal institutions will be less intrusive on sovereignty but also less able to move far beyond political declarations followed up on a voluntary basis. Finally, it is also likely to be more fragmented, as each power establishes a ‘sphere of influence’ in its region. This kind of order will not necessarily be more unstable, but even in such an order the US will have to accept some limits to its exercise of power abroad; it will not, though, be limited in its domestic policies, thus satisfying the exemptionalists in Congress. However, US policy­makers should be aware of the direction in which their current choices are moving global order; if they do not desire such an order, they should question their strategy towards both rising and minor powers and should show more leadership in the reform of formal institutions.

#### Diplomacy fails — countries pocket concessions — empirics prove

Feaver 10---pol sci, Duke. PhD in government, Harvard (Peter, Assessing a benchmark in Obama’s 'yes, but' strategy, 1 June 2010, http://shadow.foreignpolicy.com/posts/2010/06/01/assessing\_a\_benchmark\_in\_obama\_s\_yes\_but\_strategy)

The end of the NonProliferation Treaty Review conference provides an opportunity to assess how well President Obama's "Yes, But" strategy is working. My provisional assessment: not as well as I might have hoped. Recall that Obama's foreign policy efforts of the past 16 months can be summarized as one long effort to neutralize the talking points of countries unwilling to partner more vigorously with the United States on urgent international security priorities (like countering the Iranian regime's nuclear weapons program). Despite a determined and focused effort at forging effective multilateralism, the Bush administration enjoyed only mixed success on the thorniest problems. The Obama team came in believing that more could have been achieved if the United States had made more concessions up front to address the talking points of complaints/excuses would-be partners offered as rationalizations for not doing more. Yes, Iran's pursuit of a nuclear weapon is a problem, but what about Israel's? The Bush administration tended to view these talking points skeptically as a distraction and was not willing to pay much of a price in order to buy a rhetorical marker to offer in rebuttal. By contrast, the Obama Administration embraced them and devoted themselves to buying markers to deploy in response: Yes, but we have gone further than any other U.S. administration effort to publicly delegitimize the nuclear program of our ally Israel, so what about it, why don't you do more to help us on Iran? The just completed NPT Review conference was in some sense the ultimate benchmark for assessing the "Yes, But" strategy. The last review conference in 2005 collapsed in mutual recriminations with states unwilling to accept the Bush administration's prioritization of nonproliferation threats and responses. The Obama administration was determined to do better and by one measure they did: instead of diplomats storming out of the room, the 2010 NPT Review conference produced a document the states were willing to sign. This allowed the administration to boast, "We've got the NPT back on track." But in exchange for this, the United States endorsed an action plan that contains provisions Obama's National Security Advisor Jim Jones has characterized as "deplorable." As the Post describes it: "The United States got few of the specific goals it sought at the conference, such as penalties for nations that secretly develop nuclear weapons, then quit the pact (think North Korea). Language calling on countries to allow tougher nuclear inspections was greatly watered down." It is an action plan that singles out Israel by name for criticism but does not criticize Iran. The hypocrisy in the action plan was so great that apparently many countries were surprised when Obama's negotiators swallowed it. Obama's surprise last-minute concession temporarily wrong-footed the Iranian delegation. I do not know whether this compromise is the best that could have been negotiated in 2010. I do suspect, however, that something like it was achievable in 2005 -- meaning that if the Bush Administration had been willing to sign a "deplorable" compromise it could have done so in 2005. If I am right about that, then perhaps the "Yes, But" strategy failed. As the Post story put it: "Still, U.S. officials appeared frustrated that the Obama administration did not get more credit for its record. It has signed a new arms-reduction treaty with Russia, hosted a 47-nation summit on nuclear security and lessened the role of nuclear weapons in U.S. defense policy. "The disarmament stuff Obama did, they just pocketed," said David Albright, president of the Institute for Science and International Security. Non-nuclear countries, he said, "didn't give anything back."" The "Yes, But" strategy was supposed to elicit better cooperation and more effective multilateralism -- what Obama's NSS has called "An international order advanced by U.S. leadership that promotes peace, security, and opportunity through stronger cooperation to meet global challenges." This benchmark would be met if the preliminary concessions sealed deals at lower prices. But if even after all the preliminary concessions our would-be partners still demand top dollar for their grudging acquiescence, it is hard to see what the "Yes, But" strategy won us.

#### Diplomatic overstretch makes US multilat ineffective

Xinhua 9 [“U.S. power diplomacy loses steam in first year,” 12/18, http://news.xinhuanet.com/english/2009-12/19/content\_12671848.htm]

The power diplomacy of the United States has sensed in the past year that the country's diplomatic drive is losing steam to mostly unintended practice leaks and a few intentional policy picks.

The power -- hard, soft, or smart -- was stretched too thin by concurrent maneuvers in Baghdad, Beijing, Brussels, Copenhagen, Geneva, Islamabad, Jerusalem, Kabul, Moscow, New York, Pyongyang and Tehran, to list just a few hotspots where Americans had been busy mending rather than making diplomacy.

#### No data supports mass extinction theories---their models are flawed

David Stockwell 11, Researcher at the San Diego Supercomputer Center, Ph.D. in Ecosystem Dynamics from the Australian National University, developed the Genetic Algorithm for Rule-set Production system making contributions modeling of invasive species, epidemiology of human diseases, the discovery of new species, and effects on species of climate change, April 21, 2011, “Errors of Global Warming Effects Modeling,” online: <http://landshape.org/enm/errors-of-global-warming-effects-modeling/>

Predictions of massive species extinctions due to AGW came into prominence with a January 2004 paper in Nature called Extinction Risk from Climate Change by Chris Thomas et al.. They made the following predictions:

“we predict, on the basis of mid-range climate-warming scenarios for 2050, that 15â€“37% of species in our sample of regions and taxa will be â€˜committed to extinctionâ€™.

Subsequently, three communications appeared in Nature in July 2004. Two raised technical problems, including one by the eminent ecologist Joan Roughgarden. Opinions raged from “Dangers of Crying Wolf over Risk of Extinctions” concerned with damage to conservationism by alarmism, through poorly written press releases by the scientists themselves, and Extinction risk [press] coverage is worth the inaccuracies stating “we believe the benefits of the wide release greatly outweighed the negative effects of errors in reporting”.

Among those believing gross scientific inaccuracies are not justified, and such attitudes diminish the standing of scientists, I was invited to a meeting of a multidisciplinary group of 19 scientists, including Dan Bodkin from UC Santa Barbara, mathematician Matt Sobel, Craig Loehle and others at the Copenhagen base of BjÃ¸rn Lomborg, author of The Skeptical Environmentalist. This resulted in Forecasting the Effects of Global Warming on Biodiversity published in 2007 BioScience. We were particularly concerned by the cavalier attitude to model validations in the Thomas paper, and the field in general:

Of the modeling papers we have reviewed, only a few were validated. Commonly, these papers simply correlate present distribution of species with climate variables, then replot the climate for the future from a climate model and, finally, use one-to-one mapping to replot the future distribution of the species, without any validation using independent data. Although some are clear about some of their assumptions (mainly equilibrium assumptions), readers who are not experts in modeling can easily misinterpret the results as valid and validated. For example, Hitz and Smith (2004) discuss many possible effects of global warming on the basis of a review of modeling papers, and in this kind of analysis the unvalidated assumptions of models would most likely be ignored.

The paper observed that few mass extinctions have been seen over recent rapid climate changes, suggesting something must be wrong with the models to get such high rates of extinctions. They speculated that species may survive in refugia, suitable habitats below the spatial scale of the models.

Another example of an unvalidated assumptions that could bias results in the direction of extinctions, was described in chapter 7 of my book Niche Modeling.

When climate change shifts a species’ niche over a landscape (dashed to solid circle) the response of that species can be described in three ways: dispersing to the new range (migration), local extirpation (intersection), or expansion (union). Given the probability of extinction is correlated with range size, there will either be no change, an increase (intersection), or decrease (union) in extinctions depending on the dispersal type. Thomas et al. failed to consider range expansion (union), a behavior that predominates in many groups. Consequently, the methodology was inherently biased towards extinctions.

One of the many errors in this work was a failure to evaluate the impact of such assumptions.

The prevailing view now, according to Stephen Williams, coauthor of the Thomas paper and Director for the Center for Tropical Biodiversity and Climate Change, and author of such classics as “Climate change in Australian tropical rainforests: an impending environmental catastrophe”, may be here.

Many unknowns remain in projecting extinctions, and the values provided in Thomas et al. (2004) should not be taken as precise predictions. … Despite these uncertainties, Thomas et al. (2004) believe that the consistent overall conclusions across analyses establish that anthropogenic climate warming at least ranks alongside other recognized threats to global biodiversity.

So how precise are the figures? Williams suggests we should just trust the beliefs of Thomas et al. — an approach referred to disparagingly in the forecasting literature as a judgmental forecast rather than a scientific forecast (Green & Armstrong 2007). These simple models gloss over numerous problems in validating extinction models, including the propensity of so-called extinct species quite often reappear. Usually they are small, hard to find and no-one is really looking for them.

#### Historical data---CO2 concentrations 18 times higher than current levels didn’t cause mass extinctions

Kathy J. Willis et al 10, Professor of Long-Term Ecology at the University of Oxford; Keith D. Bennett, professor of late-Quaternary environmental change at Queen's University Belfast, guest professor in palaeobiology at Uppsala University in Sweden, et al, 2010, “4°C and beyond: what did this mean for biodiversity in the past?,” Systematics and Biodiversity, Vol. 8, No. 1, p. 3-9

Within a time-frame of Earth's history, current atmospheric CO2 levels at 380 ppmv are relatively low compared with the past; geological evidence and geochemical models suggest intervals of time when levels have been up to 18 times higher than present (Royer, 2008). The fossil record thus provides plenty of opportunity to assess biotic responses to intervals of higher global atmospheric CO2 and temperatures. However, this only makes sense if it is also possible to examine the responses of extant species, which have modern-day distributions; and where the position of global lithospheric plates is relatively similar to the present. Therefore, an ideal time interval for consideration is the past 65 million years when many of the ancestors of modern tropical and temperate trees had evolved (Willis & McElwain, 2002; Murat et al., 2004; Morley, 2007). It is also fair to assume that these species had broadly similar ecological tolerances to present day; it has been demonstrated in a number of studies that most species are remarkably conservative in their ecological niches (Wiens & Graham, 2005), and that these remain relatively unchanged through time despite populations persisting through intervals of wide amplitude fluctuations in climate (Svenning & Condit, 2008).

The most recent climate models and fossil evidence for the early Eocene Climatic Optimum (53–51 million years ago) indicate that during this time interval atmospheric CO2 would have exceeded 1200 ppmv and tropical temperatures were between 5–10 °C warmer than modern values (Zachos et al., 2008). There is also evidence for relatively rapid intervals of extreme global warmth and massive carbon addition when global temperatures increased by 5 °C in less than 10 000 years (Zachos et al., 2001). So what was the response of biota to these ‘climate extremes’ and do we see the large-scale extinctions (especially in the Neotropics) predicted by some of the most recent models associated with future climate changes (Huntingford et al., 2008)? In fact the fossil record for the early Eocene Climatic Optimum demonstrates the very opposite. All the evidence from low-latitude records indicates that, at least in the plant fossil record, this was one of the most biodiverse intervals of time in the Neotropics (Jaramillo et al., 2006). It was also a time when the tropical forest biome was the most extensive in Earth's history, extending to mid-latitudes in both the northern and southern hemispheres – and there was also no ice at the Poles and Antarctica was covered by needle-leaved forest (Morley, 2007). There were certainly novel ecosystems, and an increase in community turnover with a mixture of tropical and temperate species in mid latitudes and plants persisting in areas that are currently polar deserts. [It should be noted; however, that at the earlier Palaeocene–Eocene Thermal Maximum (PETM) at 55.8 million years ago in the US Gulf Coast, there was a rapid vegetation response to climate change. There was major compositional turnover, palynological richness decreased, and regional extinctions occurred (Harrington & Jaramillo, 2007). Reasons for these changes are unclear, but they may have resulted from continental drying, negative feedbacks on vegetation to changing CO2 (assuming that CO2 changed during the PETM), rapid cooling immediately after the PETM, or subtle changes in plant–animal interactions (Harrington & Jaramillo, 2007).]

#### Prefer our evidence---their models vastly underestimate ecological tolerance of most species

Kathy J. Willis et al 10, Professor of Long-Term Ecology at the University of Oxford; Keith D. Bennett, professor of late-Quaternary environmental change at Queen's University Belfast, guest professor in palaeobiology at Uppsala University in Sweden, et al, 2010, “4°C and beyond: what did this mean for biodiversity in the past?,” Systematics and Biodiversity, Vol. 8, No. 1, p. 3-9

Why is there such a discrepancy between model predictions for future vegetational responses and the observed responses in the past recorded in the fossil record? First, it should be noted that modelled predictions are based upon the present-day distribution of the plants under investigation, which almost certainly do not take into account their full ecological tolerances (Svenning & Condit, 2008). It is important also to note that ancestors of many of our modern tropical and temperate plants evolved in the late Cretaceous/early Palaeogene when global temperatures and atmospheric CO2 were much higher than present (summarized in Willis & McElwain, 2004) indicating that they have much wider ecological tolerances than are predicted based on present-day climates alone. In fact it is probable that it is cold conditions and lower levels of atmospheric CO2 that pose a greater extinction threat to many tropical and subtropical plants; a suggestion supported by the evidence for widespread regional extinction of subtropical species in Europe with the onset of the cold-stages of the Quaternary (Svenning, 2003). Second, it is presumed that the rates of climate change are going to be much higher than have been seen before, or at least for the past 60 million years – thus exceeding the capacity of biota to respond – but again this assumption should be questioned critically when looking at the fossil record. An ideal interval of time to address this question is the late-glacial/post-glacial transition about 11 600 years ago.

#### Growth will radically increase adaptive capacity---their studies discount it---produces huge over-estimates of warming impacts

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In other words, the countries that are today poorer will be extremely wealthy (by today’s standards) and their adaptive capacity should be correspondingly higher. Indeed, their adaptive capacity should on average far exceed the U.S.’s today. So, although claims that poorer countries will be unable to cope with future climate change may have been true for the world of 1990 (the base year), they are simply inconsistent with the assumptions built into the IPCC scenarios and the Stern Review’s own (exaggerated) analysis.

If the world of 2100 is as rich—and warm—as the more extreme scenarios suppose, the problems of poverty that warming would exacerbate (i.e. low agricultural productivity, hunger, malnutrition, malaria and other vector-borne diseases) ought to be reduced, if not eliminated, by 2100. Research shows that deaths from malaria and other vector-borne diseases is “cut down to insignificant numbers” when a society’s annual per capita income reaches about $3,100. 23 Therefore, even under the poorest scenario (A2), developing countries should be free of malaria well before 2100, even assuming no technological change in the interim.

Similarly, if the average net GDP per capita in 2100 for developing countries is between $10,000 and $62,000, and technologies become more cost-effective as they have been doing over the past several centuries, then their farmers would be able to afford technologies that are unaffordable today (e.g., precision agriculture) as well as new technologies that should come on line by then (e.g., drought-resistant seeds). 24 But, since impact assessments generally fail to fully account for increases in economic development and technological change, they substantially overestimate future net damages from global warming.

#### Their studies don’t assume accelerating technological change as a result of growth---that artificially inflates their impact

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The second major reason why future adaptive capacity has been underestimated (and the impacts of global warming systematically overestimated) is that few impact studies consider secular technological change. 25 Most assume that no new technologies will come on line, although some do assume greater adoption of existing technologies with higher GDP per capita and, much less frequently, a modest generic improvement in productivity. 26 Such an assumption may have been appropriate during the Medieval Warm Period, when the pace of technological change was slow, but nowadays technological change is fast (as indicated in Figures 1 through 5) and, arguably, accelerating. 27 It is unlikely that we will see a halt to technological change unless so-called precautionary policies are instituted that count the costs of technology but ignore its benefits, as some governments have already done for genetically modified crops and various pesticides.28

#### This means their evidence vastly overestimate the impacts of warming

Indur M. Goklany 11, science and technology policy analyst and Assistant Director of Programs, Science and Technology Policy for the United States Department of the Interior; was associated with the Intergovernmental Panel on Climate Change off and on for 20 years as an author, expert reviewer and U.S. delegate, December 2011, “Misled on Climate Change: How the UN IPCC (and others) Exaggerate the Impacts of Global Warming,” online: <http://goklany.org/library/Reason%20CC%20and%20Development%202011.pdf>

So how much of a difference in impact would consideration of both economic development and technological change have made? If impacts were to be estimated for five or so years into the future, ignoring changes in adaptive capacity between now and then probably would not be fatal because neither economic development nor technological change would likely advance substantially during that period. However, the time horizon of climate change impact assessments is often on the order of 35–100 years or more. The Fast Track Assessments use a base year of 1990 to estimate impacts for 2025, 2055 and 2085. 39 The Stern Review’s time horizon extends to 2100– 2200 and beyond. 40 Over such periods one ought to expect substantial advances in adaptive capacity due to increases in economic development, technological change and human capital.

As already noted, retrospective assessments indicate that over the span of a few decades, changes in economic development and technologies can substantially reduce, if not eliminate, adverse environmental impacts and improve human well-being, as measured by a variety of objective indicators. 41 Thus, not fully accounting for changes in the level of economic development and secular technological change would understate future adaptive capacity, which then could overstate impacts by one or more orders of magnitude if the time horizon is several decades into the future.

#### Growth means even the poorest countries can successfully adapt to the IPCC’s warmest scenario

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It is often argued that unless greenhouse gases are reduced forthwith, the resulting GW could have severe, if not catastrophic, consequences for people in poor countries because they lack the economic and human resources to cope with GW’s consequences. But there are two major problems with this argument. First, although poor countries’ adaptive capacity is low today, it does not follow that their ability to cope will be low forever. In fact, under the IPCC’s warmest scenario, which would increase globally averaged temperature by 4°C relative to 1990, net GDP per capita in poor countries (that is, after accounting for losses due to climate change per the Stern Review’s exaggerated estimates) will be double the U.S.’s 2006 level in 2100, and triple that in 2200. Thus developing countries should in the future be able to cope with climate change substantially better than the U.S. does today. But these advances in adaptive capacity, which are virtually ignored by most assessments of the impacts and damages from global warming, are the inevitable consequence of the assumptions built into the IPCC’s emissions scenarios.

Hence the notion that countries that are currently poor will be unable to cope with GW does not square with the basic assumptions that underpin the magnitude of emissions, global warming and its projected impacts under the IPCC scenarios.

#### Growth solves the impacts of warming better than emissions reductions

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Yet another approach would be to address the root cause of why poor countries are deemed to be most at risk, namely, poverty. But the only way to reduce poverty is to have sustained economic growth. This would not only address the climate-sensitive problems of poverty but all problems of poverty, and not just that portion caused by GW. It would, moreover, reduce these problems faster and more cost-effectively. No less important, it is far more certain that sustained economic growth would provide real benefits than would emission reductions because although there is no doubt that poverty leads to death, disease and other problems, there is substantial doubt regarding the reality and magnitude of the negative impacts of GW, especially since they ignore, for the most part, improvements in adaptive capacity.

Of the three approaches outlined above, human well-being in poor countries is most likely to be advanced furthest by sustained economic development and to be advanced least by emission reductions. 77 In addition, because of the inertia of the climate system, economic development is likely to bear fruit faster than any emission reductions.

This conclusion is consistent with Figure 6, which shows that despite exaggerating the negative consequences of global warming, net GDP per capita is highest under the richest-but-warmest scenario and lowest under the poorest scenario. Thus poor countries should focus on becoming wealthier. The wealthier they are, the better able they will be to cope not only with the urgent problems they face today and will face in the future, but any additional problems brought about by GW, if and when they occur. For richer countries, too, economic growth and technological development are superior to emissions reduction as a means of addressing climate-related problems.

#### Emissions reductions are the worst of all worlds---they cause a decline in growth that’s worse than warming for overall welfare

Indur M. Goklany 11, science and technology policy analyst and Assistant Director of Programs, Science and Technology Policy for the United States Department of the Interior; was associated with the Intergovernmental Panel on Climate Change off and on for 20 years as an author, expert reviewer and U.S. delegate, December 2011, “Misled on Climate Change: How the UN IPCC (and others) Exaggerate the Impacts of Global Warming,” online: <http://goklany.org/library/Reason%20CC%20and%20Development%202011.pdf>

Thus, at least through 2085–2100, GW may relieve some of the problems that some poor countries face currently (e.g., water shortage and habitat loss), while in other instances, the contribution of GW to the overall problem (e.g., cumulative mortality from malaria, hunger and coastal flooding) would be substantially smaller than that of non-GW related factors. Notably, economic development, one of the fundamental drivers of GW, would reduce mortality problems regardless of whether they are due to GW or non-GW related factors (see Figure 4). Hence, lack of economic development would be a greater problem than global warming, at least through 2085–2100. This reaffirms the story told by Figure 6, which shows that notwithstanding global warming and despite egregiously overestimating the negative consequences of global warming while underestimating its positive impacts, future net GDP per capita will be much higher than it is today under each scenario through at least 2200.

Note that Figure 6 also shows that through 2200, notwithstanding global warming, net GDP per capita will be highest under the warmest scenario, and lowest under the poorest scenario (A2). This suggests that if humanity has a choice of which development path to take, it ought to strive to effect the scenario that has the highest economic growth, whether or not that exacerbates global warming. 61 The additional economic development would more than offset the cost of any warming.

#### Our ev uses IPCC estimates of growth---if growth is slower, then warming’s slower too

Indur M. Goklany 11, science and technology policy analyst and Assistant Director of Programs, Science and Technology Policy for the United States Department of the Interior; was associated with the Intergovernmental Panel on Climate Change off and on for 20 years as an author, expert reviewer and U.S. delegate, December 2011, “Misled on Climate Change: How the UN IPCC (and others) Exaggerate the Impacts of Global Warming,” online: <http://goklany.org/library/Reason%20CC%20and%20Development%202011.pdf>

It may be argued that the high levels of economic development depicted in Figure 6 are unlikely. But if that’s the case, then economic growth used to drive the IPCC’s scenarios are equally unlikely, which necessarily means that the estimates of emissions, temperature increases, and impacts and damages of GW projected by the IPCC are also overestimates.

#### The plan isn’t key to solve terrorism---Arab populations won’t turn to Al Qaeda, even though they don’t like US policies

Allen 11—Editor of Democracy Digest. Special Assistant to the Vice President, Government & External Relations, NED (Michael, Arab Spring ‘the strongest answer’ to jihadist ideology behind 9/11, 9/9/11, http://www.demdigest.net/blog/2011/09/arab-spring-the-strongest-answer-to-jihadist-ideology-behind-911/)

Have the non-violent pro-democracy movements of the Arab Spring destroyed the appeal of the violent ideology that motivated the 9/11 attacks? Or does the West’s failure to win the war of ideas mean that radical Islamism still represent a threat?

“There is a newfound conviction that protests, strikes and civil action are more effective than fighting and force,” said Marwan Shehadeh, a Jordan-based expert on radical Islamist groups and ideology.

The Muslim Brotherhood, which long ago disavowed violence, has participated in the political process for years in Jordan and Egypt. But now…. those who identify as jihadis, so-called Salafis, are also participating. The result, he said, will force a contest of ideas between the moderates and the radicals who for decades were able to sell their line of thinking to an audience made receptive by repression and the failure of the political process to produce change.

The Arab Spring has vindicated the conviction “that Arab dictatorships were inherently unstable and that democracy has more appeal to the people of the Middle East than jihadist violence and ideology,” writes Carl Gershman, President of the National Endowment for Democracy, the Washington-based democracy assistance group.

Even more than the killing of Osama bin Laden, the revolts in Egypt, Libya, Tunisia, Syria, Yemen, and Bahrain “have not only shaken the very foundation of the regional authoritarian order but threatened to unravel our narrative about terrorism,” writes Fawaz Gerges, author of The Far Enemy: Why Jihad Went Global and Journey of the Jihadist: Inside Muslim Militancy:

As the uprisings gained momentum, Al Qaeda was notably absent. The Arab Spring reinforced what many of us have known for a while: Al Qaeda’s core message is in conflict with the universal aspirations of the Arab world. Despite the group’s best efforts, Arabs and Muslims do not hate the West. Rather, they admire its democratic institutions, including free elections, peaceful transition of leadership, and separation of powers. The millions of Arabs involved have neither burned American and Western flags nor blamed the West for their predicament.

The region’s pro-democracy surge killed the myth of Arab exceptionalism, according to the FT’s Gideon Rachman, but also demonstrated the need for political reform to be home-grown and locally-owned:

The “Arab spring” has provided support for the neoconservative notion that the Arab world could not – and should not – be exempt from a global trend towards democracy. But it has also illustrated that durable change is much more likely to come from within, than via US intervention.

Recent events confirm that Arab citizens have been moved to protest largely by socio-economic grievances and demands that radical Islamists cannot begin to address: people want jobs not jihad, democracy not dogma.

“The Arab Spring and the clamor for democracy across the world shows how redundant al-Qaida has become – it has lost all relevance; its vision of some pan-Islamic Caliphate is not what people want,” according to Anthony Tucker-Jones, author of The Rise of Militant Islam. “Ultimately, religious dogma is no substitute for social aspiration and economic achievement.”

The region’s pro-democracy movements are “the strongest answer” to the fanaticism that motivated the 9/11 attacks a decade ago, the European Union said today.

“Ten years on, the people in the streets of Tunis, Cairo, Benghazi and across the Arab world have sent a strong signal for freedom and democracy,” said EU president Herman Van Rompuy and European Commission president Jose Manuel Barroso in a joint statement. “This is the strongest answer to the fatuous hate and blind fanaticism of the 9/11 crimes.

“The Sept. 11 attacks were in part inspired by a radical ideology and belief that the fundamental problems plaguing Arab and Muslim people could be resolved by attacking foreign powers, those propping up dictators, promoting Western culture, oppressing Islam and corrupting civilization,” according to Michael Slackman and Mona El-Naggar:

The Arab Spring has turned that formula inside out, negating premises fundamental to a world that bore and nurtured Osama bin Laden. Arab majorities, still harboring resentment toward Western policies, are first looking inward to promote change, blaming their own leaders for decades of political, economic and cultural decline. There is a degree of societal introspection taking place, one that was pointless in totalitarian societies that discouraged, and often punished, civic participation.

#### No cred solvency---plan causes raising expectations and can’t solve anti-Americanism

Singh 11—managing director of The Washington Institute and a former senior director for Middle East affairs at the National Security Council.. Former prof at Harvard (Michael, What has really changed in the Middle East?, shadow.foreignpolicy.com/posts/2011/09/22/what\_has\_really\_changed\_in\_the\_middle\_east)

Second, the new governments that spring up around the Arab world will likely be more anti-Western, and anti-Israel, than those they succeeded. Fairly or not, the West and the United States in particular is strongly associated with the old regimes in the Middle East, and thus seen as accomplices in oppression. This is in part a problem of our own making -- the United States supported Arab dictators during the Cold War as foils to Soviet expansionism. When the USSR fell, however, we continued to support those dictators rather than pressing for democratic reform. Those moments, such as the mid-2000s, when the US took a different approach, were not sustained, leading raised expectations in the region to be dashed and our public esteem lower than it began. Our image has not been helped by US policy during the Arab Spring, during which we have been perceived as a fair-weather friend, taking sides only when a conflict's outcome was already clear rather than acting on our pro-democracy proclamations.

#### Credibility theory is incoherent — Syria proves

Jonathan Mercer 8/28, 2013, associate professor of political science at the University of Washington in Seattle and a Fellow at the Center for International Studies at the London School of Economics. Bad Reputation, 28 August 2013, www.foreignaffairs.com/articles/139376/jonathan-mercer/bad-reputation

Even if Assad were so simpleminded, the administration’s critics are wrong to suggest that the president should have acted sooner to protect U.S. credibility. After the red line was first crossed, Obama could have taken the United States to war to prevent Assad from concluding that an irresolute Obama would not respond to any further attacks -- a perception on Syria’s part that seems to have now made a U.S. military response all but certain. But going to war to prevent a possible misperception that might later cause a war is, to paraphrase Bismarck, like committing suicide out of fear that others might later wrongly think one is dead.

It is also possible that the United States did not factor into Assad’s calculations. A few months before the United States invaded Iraq, Saddam Hussein’s primary concerns were avoiding a Shia rebellion and deterring Iran. Shortsighted, yes, but also a good reminder that although the United States is at the center of the universe for Americans, it is not for everyone else. Assad has a regime to protect and he will commit any crime to win the war. Finally, it is possible that Assad never doubted Obama’s resolve -- he just expects that he can survive any American response. After all, if overthrowing Assad were easy, it would already have been done.

#### Game theory proves states will never base their actions on assessments of adversaries’ resolve or credibility

Jonathan Mercer 13, associate professor of political science at the University of Washington in Seattle and a Fellow at the Center for International Studies at the London School of Economics, 5/13/13, “Bad Reputation,” <http://www.foreignaffairs.com/articles/136577/jonathan-mercer/bad-reputation>

Arguments never seem to be won on evidence alone, though, which is where the second approach comes in. Simply put, the logic behind the claim that reputation matters is self-invalidating; common knowledge of the claim changes behavior in ways that undermine it. For example, if I know that a specific signal makes my commitment seem credible, you know it too. You will discount my sending you that signal if you think I have reason to be deceptive. Logic kills strategy, in other words, because anything I can deduce, you can deduce as well. (And I can likely deduce your deduction.) This “he thinks that she thinks that he thinks” logic is part of how people strategize, and it is called recursion.

Recursive thinking can get complicated. In The Logic of Images, Robert Jervis, a professor of international affairs at Columbia, wrote about a wonderful example of recursion in World War II. During the war, there was a French colonel who had been spying on the British and taking the secrets back to the Germans. The British flipped the Frenchman and started using him to pass bad information back to the Germans, who quickly became aware that the colonel was a double agent. After discovering that the Germans had found out about the Frenchman’s status, the British decided to inform the agent that the Normandy invasion was set for early June (it really was). The informant passed the information along, and it only served as proof to the Germans that the Allies were not invading Normandy in early June. All this is to illustrate how strategists use recursive thinking -- and how it quickly becomes nearly impossible to follow.

Recursion poses another strategic problem: When does the game stop? If you count on my going only one round but I go multiple rounds, you will incorrectly predict my behavior. Consider this simple guessing game: A large number of competitors is asked to pick a number between zero and 100 that will be half the average of the number that everyone else picks. Students with training in game theory reason through multiple rounds and know that the logical answer is zero. But few people think like game theorists. Most engage in only two or three iterations, which leads them to believe that the right answer is around 25.

#### Only irrational states base their actions on assessments of rivals’ credibility---the fact that they’re irrational means it’s useless to deter them by being credible

Jonathan Mercer 13, associate professor of political science at the University of Washington in Seattle and a Fellow at the Center for International Studies at the London School of Economics, 5/13/13, “Bad Reputation,” <http://www.foreignaffairs.com/articles/136577/jonathan-mercer/bad-reputation>

And that brings us back to reputation. Say that Assad interprets Obama’s backing down on his red line remark as irresolute and that Assad’s reasoning stops there. He might decide that Obama will always be irresolute in the future and that Obama will play the second round of the game as if the first round had not happened. Neither the political context nor the interests at stake are important. In this case Assad, perhaps like McCain, is rather simple-minded when it comes to strategy.

Of course, it is plausible that Assad is capable of reasoning just as well as the public at large and will go through two rounds of reasoning. In this case, he might realize that Obama has taken heat at home for his red line comment. Assad might also reason that Obama knows that Assad no longer believes that Obama will follow through on his threats. And that changes Assad’s calculations entirely: in the second round of the game, he will think it unlikely that whatever Obama says is a bluff. In some ways, then, a called bluff makes Obama’s future threats more credible, not less.

Now, if Assad is a master strategist and game theory devotee, he might engage in three rounds of reasoning. In this case, Assad would believe that Obama is actually more likely to bluff because Obama thinks that Assad thinks that Obama is less likely to bluff. Keeping the logic straight is difficult, but it is also irrelevant: no one knows how many rounds the game will go on, for there is no logical place to stop.

Those who argue that reputation and credibility matter are depending on strategists to be simple-minded, illogical, and blissfully unaware of recursion. And if Assad is illogical, then calibrating U.S. foreign policy to elicit particular responses from him is pointless. The same goes for other adversaries. No one can know what the North Korean leadership will make of U.S. behavior in Syria. They might think that Obama has no credibility, that he is, in fact, resolute, or that he is driven by other U.S. interests. Whatever conclusion they come to will be driven by their own beliefs and interests.

#### Obama will stick to military commissions to get desired outcomes

Gregory McNeal 08, Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law. The author previously served as an academic consultant to the former Chief Prosecutor, Department of Defense Office of Military Commissions, “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” August 08, 103 Nw. U. L. Rev. Colloquy 29

Consistent with the theme of this Essay, I theorize that protecting intelligence equities enjoys primary importance in the eyes of the Executive, and that trial outcomes are a close second. Since September 11, 2001, 1,562 individuals have been charged in Article III courts with terrorism-related offenses, n116 while only a handful of individuals have been charged in military commissions. The number of detainees tried in Article III courts reveals that Article III courts are adequate in most cases. The system though, is under strain. A recent NPR report indicated that while the number of counterterrorism-related FISA warrants requested by the federal government has increased, the number of counterterrorism prosecutions has decreased. n117 Reinforcing the intelligence protection principle discussed above, a former FBI official interviewed by NPR stated that once prosecutors indict a terrorism suspect, "you start rolling a public process that after a point you can no longer really control. It becomes very public what you knew about this person, and that avenue of gathering more information or creating new sources is kind of cut off." n118 This fact, coupled with the continued use of Guantanamo suggests that the Executive perceives some value in the military [\*52] commission system. Clearly, some specific factors must influence the Executive to prefer trial by military commission over trial in Article III court. Otherwise those cases would be brought in Article III courts as many others have. I argue that two benefits of military commissions explain this phenomenon.¶ First, military commissions provide a marginal intelligence protection benefit over Article III courts. The language of the MCA related to protecting intelligence is nearly identical to the procedures detailed in the U.C.M.J. n119 Despite these similarities, military commissions provide the intelligence protection benefit of: security cleared counsel for the parties, security cleared panel members (jurors), security cleared administrative staff, and regimented procedures for reviewing all documents offered in pleadings or field with the court. Perhaps most importantly, military commissions do not require as many disclosures as those required in Article III courts and allow for the admission of hearsay. n120 These procedures enable evidence to be admitted in a manner which protects intelligence (such as ex parte affidavits) and are also more likely to secure a conviction.¶ Consider the intelligence protection benefit of these procedures as compared to Article III courts. In the 1993 World Trade Center bombing case, a letter was revealed to the defense during discovery listing "200 names of people who might be alleged as unindicted co-conspirators." n121 Six years later, that letter turned up as evidence in the trial of those who bombed U.S. embassies in Africa. Within days "the letter had found its way to Sudan and was in the hands of bin Laden (who was on the list), having been fetched for him by an al-Qaeda operative who had gotten it from one of his associates." n122 Based on this information, bin Laden was able to determine which of his operatives had been compromised. Disclosures such as this, which are mandated in Article III courts, threaten the protection of intelligence, and also provide defendants with greater rights which may result in an acquittal. Protecting intelligence and securing convictions [\*53] are considerations that weigh heavily on the mind of the Executive, who will seek to maximize both.¶ Congressional reformers must be aware of executive forum-discretion and limit the availability of alternative fora, especially in any transition to a national security court. Otherwise, the benefits of trial in military commissions will prove too alluring to the Executive, making any new forum underutilized.

#### Exec will inevitably choose tribunals

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To understand my executive forum-discretion framework, it is necessary to understand several key assumptions. I begin by assuming that the Executive is a rational actor: that executive behavior based on rational ordering of policy preferences will result in deliberate and consistent conduct. n114 This assumption highlights the importance of my analytical approach: if the Executive has ordered policy preferences that govern his choices, and his choices are expected to result in deliberate and consistent conduct, some factor must contribute to the Executive's decision to choose one trial forum over another for similarly situated defendants.¶ Where we observe alleged terrorists who could satisfy the jurisdictional predicate for military commissions who are instead tried in an Article III court, or vice versa, I theorize that a multitude of factors are balanced by the Executive and account for the differences in conduct. Thus, a thorough exposition of the Executive's potential policy preferences can provide predictive guidance regarding what the Executive considers when making [\*51] decisions. n115 Quite simply, this analytical approach leads me to the conclusion that, so long as a forum exists which better protects intelligence or allows for easier convictions, the Executive will choose that forum over any other.

#### Evidence constraints means he won’t use the plan

Gregory McNeal 08, Visiting Assistant Professor of Law, Pennsylvania State University Dickinson School of Law. The author previously served as an academic consultant to the former Chief Prosecutor, Department of Defense Office of Military Commissions, “ARTICLE: BEYOND GUANTANAMO, OBSTACLES AND OPTIONS,” August 08, 103 Nw. U. L. Rev. Colloquy 29

Evidence derived from coercion also presents a challenge for reformers. Many organizations have argued that techniques such as "waterboarding" are torture per se and should result in criminal prosecutions for those responsible. n105 Many released detainees or counsel for those currently held have described even more serious forms of coercive interrogation practices. n106 As the trials of detainees are likely to reveal further details regarding the nature of the interrogation practices, many government officials have a strong interest in preventing the dissemination of or declassification of information revealing those practices.¶ A second factor compelling those officials to resist declassification is possible evidence of detention in secret CIA facilities prior to a detainee's incarceration in Guantanamo. n107 Civil rights groups have alleged that many detainees were subjected to illegal interrogation practices while in those prisons. n108 Given the problem of illegal interrogation practices, some argue that the only realistic course of action is to craft restrictive plea agreements. For example, Australian citizen David Hicks pleaded guilty to the charge of providing material support to terrorism. The terms of his plea preclude him from discussing his detention with the media for a period of one year after making the agreement. n109 This type of plea agreement, critics argue, is the [\*49] only possible course for an administration that wants action but is handicapped by the inadmissibility of statements obtained under coercion or fear of the potential of criminal liability. n110¶ The challenges presented by foreign evidence and coerced evidence both suggest that reformers should temper their optimism regarding a clean reform of either the military commissions or indefinite detentions. The solution to both problems may require the continued use of military commissions, at least for the current eighty triable detainees, and may even suggest a need to maintain a system of administrative detention for selected individuals n111--a conclusion that presents substantial impediments to comprehensive reform.

#### No spillover — lack of credibility in one commitment doesn’t affect others at all

Paul K. MacDonald 11, Assistant Professor of Political Science at Williams College, and Joseph M. Parent, Assistant Professor of Political Science at the University of Miami, Spring 2011, “Graceful Decline?: The Surprising Success of Great Power Retrenchment,” International Security, Vol. 35, No. 4, p. 7-44

Second, pessimists overstate the extent to which a policy of retrenchment can damage a great power's capabilities or prestige. Gilpin, in particular, assumes that a great power's commitments are on equal footing and interdependent. In practice, however, great powers make commitments of varying degrees that are functionally independent of one another. Concession in one area need not be seen as influencing a commitment in another area.25 Far from being perceived as interdependent, great power commitments are often seen as being rivalrous, so that abandoning commitments in one area may actually bolster the strength of a commitment in another area. During the Korean War, for instance, President Harry Truman's administration explicitly backed away from total victory on the peninsula to strengthen deterrence in Europe.26 Retreat in an area of lesser importance freed up resources and signaled a strong commitment to an area of greater significance.

#### Sustained economic growth will vastly outpace warming---ensures even poor countries can adapt easily

Indur M. Goklany 11, science and technology policy analyst and Assistant Director of Programs, Science and Technology Policy for the United States Department of the Interior; was associated with the Intergovernmental Panel on Climate Change off and on for 20 years as an author, expert reviewer and U.S. delegate, December 2011, “Misled on Climate Change: How the UN IPCC (and others) Exaggerate the Impacts of Global Warming,” online: <http://goklany.org/library/Reason%20CC%20and%20Development%202011.pdf>

It is frequently asserted that climate change could have devastating consequences for poor countries. Indeed, this assertion is used by the UN Intergovernmental Panel on Climate Change (IPCC) and other organizations as one of the primary justifications for imposing restrictions on human emissions of greenhouse gases.

But there is an internal contradiction in the IPCC’s own claims. Indeed, the same highly influential report from the IPCC claims both that poor countries will fare terribly and that they will be much better off than they are today. So, which is it?

The apparent contradiction arises because of inconsistencies in the way the IPCC assesses impacts. The process begins with various scenarios of future emissions. These scenarios are themselves predicated on certain assumptions about the rate of economic growth and related technological change.

Under the IPCC’s highest growth scenario, by 2100 GDP per capita in poor countries will be double the U.S.’s 2006 level, even taking into account any negative impact of climate change. (By 2200, it will be triple.) Yet that very same scenario is also the one that leads to the greatest rise in temperature—and is the one that has been used to justify all sorts of scare stories about the impact of climate change on the poor.

Under this highest growth scenario (known as A1FI), the poor will logically have adopted, adapted and innovated all manner of new technololgies, making them far better able to adapt to the future climate. But these improvements in adaptive capacity are virtually ignored by most global warming impact assessments. Consequently, the IPCC’s “impacts” assessments systematically overestimate the negative impact of global warming, while underestimating the positive impact.

#### This eliminates negative impacts of warming

Indur M. Goklany 11, science and technology policy analyst and Assistant Director of Programs, Science and Technology Policy for the United States Department of the Interior; was associated with the Intergovernmental Panel on Climate Change off and on for 20 years as an author, expert reviewer and U.S. delegate, December 2011, “Misled on Climate Change: How the UN IPCC (and others) Exaggerate the Impacts of Global Warming,” online: <http://goklany.org/library/Reason%20CC%20and%20Development%202011.pdf>

These figures also indicate that the compound effect of economic development and technological change can result in quite dramatic improvements even over the relatively short period for which these figures were developed. Figure 5, for instance, covered 26 years. By contrast, climate change impacts analyses frequently look 50 to 100 years into the future. Over such long periods, the compounded effect could well be spectacular. Longer term analyses of climate-sensitive indicators of human well-being show that the combination of economic growth and technological change can, over decades, reduce negative impacts on human beings by an order of magnitude, that is, a factor of ten, or more. In some instances, this combination has virtually eliminated such negative impacts.

For instance, during the 20th century, deaths from various climate-sensitive waterborne diseases were all but eliminated in the U.S. From 1900 to 1970, U.S. GDP per capita nearly quadrupled, while deaths from malaria were eliminated, and death rates for gastrointestinal disease fell by 99.8%. 11 From 1900 to 1997 GDP per capita rose seven-fold, while deaths rate from typhoid and paratyphoid were eliminated and from 1900 to 1998 the death rate for dysentery fell by 99.6%. 12 This suggests a need to be highly skeptical of global warming impacts analyses that extend two or more decades into the future if they do not properly account for the compounded effect on adaptive capacity from (a) economic growth built into emission scenarios and (b) secular technological change.

No extinction from climate change

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

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

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

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

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

#### PRISM created a crisis of confidence — Russia is usurping US soft power

Van Herpen 7/19 (Marcel H., director of the Cicero Foundation, a pro-EU think tank. “The PRISM Scandal, the Kremlin, and the Eurasian Union,” 2013, http://www.atlantic-community.org/-/the-prism-scandal-the-kremlin-and-the-eurasian-union)

The PRISM scandal should serve as a wake-up call for Europe and the US to pay attention to the new geopolitical fault lines in Europe, as the scandal has diminished US soft power, deepened the crisis of confidence between the EU and US, and offered Putin a new opportunity. Putin is poised to launch his project of a Eurasian Union, which would seek to expand Russian influence into the "weak Orthodox underbelly" of Europe and directly compete with the EU.¶ The PRISM scandal was an unexpected, but welcomed present for Russian President Vladimir Putin, for four reasons:¶ The scandal caused a decline in American soft power. After the presidency of George W. Bush, Barack Obama incarnated the promise of a new, value-oriented America, a promise for which he received – rather prematurely – the Nobel Peace Prize. Five years later, the PRISM affair has dealt a heavy blow to Obama's – and America's – reputation, which was already dented by the unresolved question of the Guantanamo detainees and Obama's secret drone war.¶ The PRISM scandal had a negative effect on the transatlantic relationship. It differed in this respect from the Watergate scandal: in the latter case it was Americans, not Europeans, who were the victims of illegal spying activities. For Europeans the news that the US was tapping telephones, bugging buildings, and hacking computers – not of its traditional "usual suspects," but of its European friends and allies – came as a bad surprise.¶ This scandal came on top of an already existing transatlantic estrangement which runs **far deeper than a momentary dip that could easily be repaired**. It is a symptom of a crisis of confidence between the transatlantic partners, which finds an expression in US criticism of Europe's low defense expenditures, and in European fears that Obama's "Asian pivot" means that the US is turning its attention away from Europe.¶ Not to be neglected is the fact that the scandal has opened an unexpected window of opportunity for Mr. Putin. Not only has the affair offered him a unique chance to pose as a principled defender of privacy and free information, but the transatlantic estrangement will help him realize his pet project: the establishment of a "Eurasian Union."¶ This project, presented by him in an Izvestia article in November 2011, is the most important geostrategic project Russia has been engaged in since the demise of the Soviet Union. It would expand the existing Customs Union of Russia, Belarus, and Kazakhstan, further into the former Soviet space. On the surface it looks like an innocent copy of the European Union, however, it is infact a neo-imperial project with one overriding goal: to bring Ukraine definitively back into the Russian orbit. Its final objectives are even more ambitious, as according to Igor Panarin, former Dean of the Russian Diplomatic Academy, the Eurasian Union should have four capitals: St. Petersburg, Almaty, Kiev, and Belgrade. In addition to Ukraine, Serbia, Montenegro, and Moldova are also designated by him as future members. The Eurasian Union is, therefore, in direct competition with the EU.¶ This ambitious project seeks to expand Russian influence into the "weak Orthodox underbelly" of Europe. Fitting into this scheme are the recent Russian overtures made to Cyprus with the aim of opening a naval base on the island – which would compensate for the eventual loss of the Russian naval facility in the Syrian port of Tartus.¶ At a moment in which a heavily rearming Russia plays a "Great Game" in the former Soviet space, the European Union is in a dire state. Inward-looking and in a never-ending crisis, the EU looks like a rudderless ship, with the French lacking clear ideas, the British menacing to leave the boat, and the Germans attacked everywhere for their supposed arrogance. The EU, wrongly considered a space in which a Kantian "eternal peace" has been realized, rather finds itself increasingly on the fault line of a new East-West competition.¶ The PRISM scandal, which diminishes US soft power, deepens the crisis of confidence between Europeans and Americans, and offers Mr. Putin new opportunities, is therefore an unwelcomed surprise, for some involved. Europeans and Americans should sit around the table – not only to build a free trade area, but also to face the new geopolitical challenges in Europe.

#### PRISM kills soft power — hypocrisy

Arkedis 13 (Jim, a Senior Fellow at the Progressive Policy Institute and was a DOD counter-terrorism analyst, “PRISM Is Bad for American Soft Power,” 6/19, <http://www.theatlantic.com/international/archive/2013/06/prism-is-bad-for-american-soft-power/277015/>) \*allies

The lack of public debate, shifting attitudes towards civil liberties, insufficient disclosure, and a decreasing terrorist threat demands that collecting Americans' phone and Internet records must meet the absolute highest bar of public consent. It's a test the Obama administration is failing.¶ This brings us back to Harry Truman and Jim Crow. Even though PRISM is technically legal, the lack of recent public debate and support for aggressive domestic collection is hurting America's soft power.¶ The evidence is rolling in. The China Daily, an English-language mouthpiece for the Communist Party, is having a field day, pointing out America's hypocrisy as the Soviet Union did with Jim Crow. Chinese dissident artist Ai Wei Wei made the link explicitly, saying "In the Soviet Union before, in China today, and even in the U.S., officials always think what they do is necessary... but the lesson that people should learn from history is the need to limit state power."¶ Even America's allies are uneasy, at best. German Chancellor Angela Merkel grew up in the East German police state and expressed diplomatic "surprise" at the NSA's activities. She vowed to raise the issue with Obama at this week's G8 meetings. The Italian data protection commissioner said the program would "not be legal" in his country. British Foreign Minister William Hague came under fire in Parliament for his government's participation.¶ If Americans supported these programs, our adversaries and allies would have no argument. As it is, **the next time the United States asks others for help in tracking terrorists, it's more likely than not that they will question Washington's motives.**

#### No one will cooperate with us because of our position on Palestine

Al Zedjali 11—editor in chief of the Times of Oman (Essa, US loses influence in Middle East, 10/24/11, www.gulfinthemedia.com/index.php?m=opinions&id=577989&lang=en)

Middle East today no longer looks forward to President Obama for solution of its long-standing problems. The light has, in fact, dimmed for the United States in the region. Its strategic position of pre-eminence in Middle East has appreciably disintegrated. And more so in the aftermath of the Arab Spring, which has undercut Washington’s tacit alliance with some of the region’s despotic rulers. The pillars of status quo the United States had built over the years have been rattled exposing more than ever Washington’s real intentions in Middle East.

This has fanned an unprecedented anti-American feeling among people and eroded America’s grip over the region.

The United States is today standing on the way of history. It is a shame, a disgrace and a profanity, which is neither expected of any head of state and particularly from a Nobel laureate president who in 2009 in Cairo attempted to project himself as a redeemer saying: “Israelis must acknowledge that just as Israel’s right to exist cannot be denied, neither can Palestine’s.”

And if Cairo speech wasn’t enough Obama even in the United Nations on September 23, 2010 said: “When we come back here next year, we can have an agreement that will lead to a new member of the United Nations — an independent, sovereign state of Palestine, living in peace with Israel”.

Real face

In sharp contradiction to whatever he said earlier Obama displayed the real face of the United States when he, in no uncertain terms, threatened Palestinian President Mahmoud Abbas that he would use his veto power to thwart Palestinians’ move to seek UN recognition. It was outrageous and enraged every one in Middle East, shocked the world and the broken shards of the kaleidoscope depicted incoherence of American policies in Middle East.

The solidarity which Obama showed in Cairo University has now become a sham. Obama has proved that in his support for Israel and in allowing himself to become the mouthpiece of an unsavoury Jewish client he differs little from his peers.

This has certainly compromised America’s position and influence in the region beyond any short term salvage.

Devoid of logic and diplomatic finesse such US stand is despicable. Washington has actually been the biggest block on the way to any solution to Palestinian issue. In following a policy of insularity from the realities of the world Obama has only contributed in adding to the problem and in creating a deadlock.

Obama’s abject diplomacy and his treachery against the Palestinians and Arabs have made the United States an extremely unreliable partner not just in Middle East but also in the whole of Muslim world. In his failure to stand by what he promised in his Cairo University speech, in myriad failures to strike “a new beginning with the United States and Muslims around the world” and in his deceit against Palestinians Obama has rewritten the American saga of hubris, ineptitude, intractable ignorance and blemished thinking.

Polarised

He has been indeed blemished in his thinking that he could reach out to the Arabs only by means of his rhetoric and doing nothing to alleviate their status in global order. And equally so is his belief that he can get himself re-elected for the second term as the president.

Analysts and political observers, not just in the United States, are clearly polarised on the issue. An overwhelming number of them are rather doubtful of such a possibility. As the trial of his performance inches closer a general feeling is gradually gaining ground that Obama has failed to provide the leadership the United States and the Americans expected from him. His foreign policies, especially in Middle East, have been disasters. He has failed in upholding justice across the world.

Matt Strawn chairman of Iowa’s Republican Party has recently said: “On behalf of over 600,000 Iowa Republicans, I’m excited to announce the first step Iowans will have to replace Barack Obama and his failed presidency will be next January 3 at our First in the Nation Iowa Caucuses. A January 3 date provides certainty to the voters, to our presidential candidates, and to the thousands of statewide volunteers who make the Caucus process a reflection of the very best of our representative democracy”.

Perceptions

But the central question is will the departure of Obama and Democratic rule change the US foreign policy, especially its policies in Middle East. Such a possibility appears rather remote as irrespective of who walks into the Oval Office and which party rules over the US for next four years, America will remain steadfastly supportive of Israel because of its domestic political compulsions. And these political expediencies will further debilitate US influence in Middle East.

Time has changed and so has the world. Perceptions about American stand in the region have now become clearer than ever. And unless the mandarins in Washington realises the realities of the changed time the US shall soon become only a marginalised player in Middle East with little or no influence to wield.

[in AT US led peace process]

#### Blind support for Israel crushes the US’ ability to play a positive role in the region

Khouri 11—Director of the Issam Fares Institute of Public Policy and International Affairs at the American University of Beirut (Rami, Power and Confusion in the United States and Palestine, 10/10/11, www.middle-east-online.com/english/?id=48467)

The most dramatic window into America’s confusion, contradictions, and degraded credibility is its inability to stop the forward motion of the Palestinian bid for United Nations recognition of statehood in the pre-1967 borders. This has dramatically exposed Washington’s sharp isolation in the region, because its strong commitment to Israel apparently overrides any other issue there, including applying the international rule of law on problems like Israeli settlements expansion. The Palestinians not only dismissed strong American objections about the move at the UN, but have now followed this up with a request for recognition at UNESCO, which has received preliminary approval from the body’s executive board. The United States has threatened to cut off its funding for UNESCO, which accounts for 22 percent of the body’s budget. In the new world we are entering, the Palestinians are acting, and Washington is reacting.

This is just one example of how the strongest power in the world also may be the weakest power in the Middle East, despite its armed forces fighting two wars in Iraq and Afghanistan. The isolation of the American-Israeli delegations at the UN reflects a wider reality. Across the region, most people and governments see American policies as being contrary or even hostile to their wellbeing. This will continue to be highlighted by the Palestinian move at the UN in the months ahead.

The Palestinian quest for UN recognition is now widely debated across the United States, with the common denominator attitude in Washington being total uncertainty about its direction and implications. Even Palestinian officials close to President Mahmoud Abbas are not certain of what happens next, because three primary dimensions of the move remain unknown: the Palestinian strategy, its impact on the ground, and American-Israeli retributive reactions. The UN move is intriguing at many levels, most importantly for what it tells us about the determination of even the weak Palestinian leadership to defy the United States and shift the adjudication of the Arab-Israeli conflict out of Washington and into the halls of the UN or other bodies -- where international legitimacy and law, rather than American Zionism, define the ground rules of diplomatic engagement.

#### Lack of accountability for past practices guts cred

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

A second critical element for restoring credibility is accountability for the torture regime undertaken through concrete measures. President Obama’s executive order closing Guantanamo and the black sites is a good first step. Despite the complexities discussed above regarding the detainees, the prison closings demonstrate a presumptive respect for the rule of law and for the public moral element of accountability. Yet these two strains of accountability — legal and public-moral accountability — do not necessarily overlap. Accountability, moreover, must take into account political context. This is not to say that politics should take priority over law and morality. It is to raise the finer point that the purpose of genuine accountability is defeated if undertaken (or not undertaken) for political reasons or if seriously undermined by political upheaval or other comparable damages to a society. A democratic society is defined in part by its accountability mechanisms and the fairness of their application. But we should be very careful. Resistance to investigation and accountability in the name of social unity has deep and manipulative political roots in nearly every country whose leaders have faced war crimes accusations. It would be very tempting simply to “look ahead.”¶ The reason for pursuing accountability is not solely retribution for previous wrongs or, although vital, restoration of the rule of law. Accountability has a pragmatic function. It helps to ensure that acts destructive of any human rights framework we wish to perpetuate, acts such as torture, do not occur again. Indeed, as discussed in the concluding remarks, society reconstructs not only the rule of law but also a more robust human rights regime through demands for and concrete steps towards genuine accountability.¶ Legal accountability. Manfred Nowak, U.N. Special Rapporteur on Torture, has announced that the U.S. is obligated under the U.N. Convention Against Torture to investigate and prosecute officials involved in legally justifying torture as a first step. Otherwise, the other 145 countries of the convention are obligated by law to claim universal jurisdiction and carry out investigations and prosecutions if necessary. Indeed, in the current absence of a U.S. investigation, Spain’s investigating magistrate of the national court, Judge Baltasar Garzón (who brought the war crimes case against Augusto Pinochet of Chile), has opened a criminal investigation into Guantanamo detainee torture, possibly extending to other prisons such as the Baghram military base. A second case brought by the national court against six high-level Bush administration officials is currently under consideration. ¶ The law is clear. U.S. civil code Title 18, Part I, Chapter 113c, § 2340 defines and outlaws torture. Explicitly in accordance with Common Article 3 of the Geneva conventions, Chapter 118, § 2441 outlines prosecutable war crimes, including torture, cruel or inhuman treatment, murder, and sexual assault or abuse. If death results from the abuses, the United States may seek the death penalty. Recall that roughly 100 detainees have died in U.S. custody, 34 of these cases attributed by human rights first to death from torture.40 The Supremacy Clause of the U.S. Constitution (Article VI, Paragraph 2) states, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding,” integrating ratified international treaty law into the heart of U.S. federal law.¶ The U.S. is party to the Geneva conventions, the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the American Convention on Human Rights (signatory only), and other relevant international law. The U.S. has thus far refused to sign the international convention for the Protection of All Persons from enforced Disappearance, a 2006 treaty with over 70 signatories that is not yet in force. The U.S. is not a member of the international criminal court, although as U.S. senator from Illinois Barack Obama previously expressed support for U.S. ratification of the Rome statute of the ICC, the court’s founding treaty (signed but not ratified by the U.S.). ¶ Legal accountability requires investigation into the system of extraordinary rendition, disappearances, indefinite detention, deaths in custody, and torture in the conflict with al Qaeda, the war in Afghanistan, and the Iraq War. It demands investigation of the OLC lawyers’ legal analyses, the “extreme pressure” some lawyers and interrogators have mentioned, and the relations between the policy, political considerations, and legal justifications. The many “landmines” or loopholes in the law created by the OLC memo lawyers will be tested through investigation and civil lawsuits.41 And this process of recalibrating federal law with international human rights will take years.

#### Indefinite detention is insufficient—loads of alt causes

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

The first step required by law is a formal investigation of abuse. The investigations by the U.S. Department of Justice must be legitimate and comprehensive or the U.S. will be faced with investigations by the governments of other countries, including the NATO allies, who are obligated to do so by international law. However, as Mark Drumbl writes of international accountability for atrocities, “the accountability process remains narrowly oriented to incarceration following liberal criminal trials. It is not a broader process that is yet comfortable with meaningful restorative initiatives, indigenous values, qualified amnesties, reintegrative shaming, the needs of victims, reparations, collective or foreign responsibilities, distributive justice, or pointed questions regarding the structural nature of violence in the international system… With pronouncement of sentence comes a rush to closure, absolution for the acquiescent, and the evaporation of collective responsibility.”42 A clearer legal understanding of the contours and details of the torture regime is necessary before making concrete policy decisions holding into the indefinite future. The point that Drumbl underscores, however, is that to render account involves much more than litigation.

#### US rights abuses are inevitable­

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

Apart from these practical issues, however, the very existence of the U.S. torture institution points to a deeper crisis at the core of the liberal democratic conception of human rights. Historically, the foundational principles of liberal democracy include human dignity, individual autonomy, and the primacy of liberty. The doctrine suggests, in Locke’s and Mill’s formulations, that normative or regulatory limitations on individual autonomy and liberty are justifiable only when individuals cause harm to others or when they engage in acts of cruelty that deny others’ dignity, autonomy, and liberty. These de jure principles of liberalism have often hung in a precarious balance with de facto violations of those principles: the universalizing impulse of principles of individual dignity and freedom in tension with violent means for protecting or preserving a society from enemies both real and imagined. Such contradictions have always been at the heart of the struggle to articulate a robust and legitimate conception of human rights embedded in liberal democratic institutions as the principle of equal respect for all persons. ¶ Consider the liberal notion of toleration, for instance — how far does one tolerate the intolerant? How far does one extend human rights to enemies who wish to destroy you? At what point does the state’s defense of a society or constitution become an assault on human dignity and liberty? Liberalism, despite de facto violations of its principles, attempts to give reason to the management of this balance between substance (its core values — say, autonomy) and procedure (its means of defending those values — say, habeas corpus or universal suffrage). Institutions may fail in practice to live up to these principles — such as in the case of racial bias in criminal sentencing — but the ideals are perhaps most important in giving guidance to and procedures for the ongoing reconstruction of society’s institutions. One important strength of liberal democracy is precisely in its ongoing deliberation through democratic means over the meaning of its basic principles. Such deliberation at its best both defines those principles and is simultaneously an instance of them in action. This perpetual balancing act between substance and procedure defines many of the institutions of modern liberal democracy and, indeed, much of international law. For such a state, however, institutionalization of torture represents liberalism’s preservationist procedures tipping the balance towards an increasingly authoritarian defense of its substance. A torturing society, especially a society with an open policy of torture (which is where the “torture works” argument leads), is no longer a liberal democratic society respectful of human dignity and freedom. Indeed, here the basic principles of liberal democratic society are inconvenient obstacles in the pursuit of other goals. The complexity of the current issues requires more than legal and moral accountability.

#### No spillover—legal and public investigations are key

Thomas Hilde 09, professor at the University of Maryland School of Public Policy, “Beyond Guantanamo. Restoring U.S. Credibility on Human Rights,” Heinrich Böll Foundation, http://www.boell.org/downloads/hbf\_Beyond\_Guantanamo\_Thomas\_Hilde(2).pdf

To summarize, genuine accountability is the route to lasting credibility in the wake of Guantanamo. Accountability comes in several parts, all necessary: legal, public-moral, and pragmatic. Legal accountability is important as both retribution for crimes committed, for reasserting the rule of law by which a decent and secure society lives, and for its power of deterrence from future human rights abuses. Public-moral accountability involves the public expression of a liberal democracy recalibrating the balance between its substance and its procedures. Restoring credibility does not take place in private. A public accounting is particularly important in response to a corrosion of the norms and principles on which such a society stands. What I refer to as pragmatic accountability is the understanding that a full and effective accounting requires a renewed focus on the empathetic element common to human rights. It requires making known the stories of those who are abused, even when they have also committed atrocities, so that we at a minimum ensure a defense against dehumanization. Ultimately, a reflective people must understand that the conditions preparing the way for human rights abuses derive from insecurity writ large. These economic, political, personal, and cultural insecurities are structural conditions that give rise to such acts as terrorism, torture, and other crimes. In terms of short-term policy, then, a legal investigation through the Justice Department and a broader public investigation through its elected representatives are both critical elements to accountability and ultimately credibility.

### Terrorism DA

#### Terrorism turns their multilat impacts

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Hundreds of scientific papers and reports have been published on nuclear terrorism. International conferences have been held on this threat with participation of Russian organizations, including IMEMO and the Institute of U.S. and Canadian Studies. Recommendations on how to combat the threat have been issued by the International Luxembourg Forum on Preventing Nuclear Catastrophe, Pugwash Conferences on Science and World Affairs, Russian-American Elbe Group, and other organizations. The UN General Assembly adopted the International Convention for the Suppression of Acts of Nuclear Terrorism in 2005 and cooperation among intelligence services of leading states in this sphere is developing.¶ At the same time, these efforts fall short for a number of reasons, partly because various acts of nuclear terrorism are possible. Dispersal of radioactive material by detonation of conventional explosives (“dirty bombs”) is a method that is most accessible for terrorists. With the wide spread of radioactive sources, raw materials for such attacks have become much more accessible than weapons-useable nuclear material or nuclear weapons. The use of “dirty bombs” will not cause many immediate casualties, but it will result into long-term radioactive contamination, contributing to the spread of panic and socio-economic destabilization.¶ Severe **consequences can be caused by sabotaging nuclear power plants, research reactors, and radioactive materials storage facilities. Large cities are especially vulnerable to such attacks. A large city may host dozens of research reactors with a nuclear power plant or a couple of spent nuclear fuel storage facilities and dozens of large radioactive materials storage facilities located nearby.** The past few years have seen significant efforts made to enhance organizational and physical aspects of security at facilities, especially at nuclear power plants. Efforts have also been made to improve security culture. But these efforts do not preclude the possibility that well-trained terrorists may be able to penetrate nuclear facilities.¶ Some estimates show that sabotage of a research reactor in a metropolis may expose hundreds of thousands to high doses of radiation. A formidable part of the city would become uninhabitable for a long time.¶ Of all the scenarios, it is building an improvised nuclear device by terrorists that poses the maximum risk. **There are no engineering problems that cannot be solved if terrorists decide to build a simple “gun-type” nuclear device.** Information on the design of such devices, as well as implosion-type devices, is available in the public domain. It is the acquisition of weapons-grade uranium that presents the sole serious obstacle. Despite numerous preventive measures taken, we cannot rule out the possibility that such materials can be bought on the black market. Theft of weapons-grade uranium is also possible. Research reactor fuel is considered to be particularly vulnerable to theft, as it is scattered at sites in dozens of countries. There are about 100 research reactors in the world that run on weapons-grade uranium fuel, according to the International Atomic Energy Agency (IAEA).¶ A terrorist “gun-type” uranium bomb can have a yield of least 10-15 kt, which is comparable to the yield of the bomb dropped on Hiroshima. The explosion of such a bomb in a modern metropolis can kill and wound hundreds of thousands and cause serious economic damage. There will also be long-term sociopsychological and political consequences.¶ The vast majority of states have introduced unprecedented security and surveillance measures at transportation and other large-scale public facilities after the terrorist attacks in the United States, Great Britain, Italy, and other countries. These measures have proved burdensome for the countries’ populations, but the public has accepted them as necessary. A nuclear terrorist attack will make the public accept further measures meant to enhance control even if these measures significantly restrict the democratic liberties they are accustomed to. Authoritarian states could be expected to adopt even more restrictive measures.¶ If a nuclear terrorist act occurs, nations will delegate tens of thousands of their secret services’ best personnel to investigate and attribute the attack. Radical Islamist groups are among those capable of such an act. We can imagine what would happen if they do so, given the anti-Muslim sentiments and resentment that conventional terrorist attacks by Islamists have generated in developed democratic countries. Mass deportation of the non-indigenous population and severe sanctions would follow such an attack in what will cause **violent protests in the Muslim world**. **Series of armed clashing terrorist attacks may follow**. The prediction that Samuel Huntington has made in his book “The Clash of Civilizations and the Remaking of World Order” may come true. Huntington’s book clearly demonstrates that it is not Islamic extremists that are the cause of the Western world’s problems. Rather there is a deep, intractable conflict that is rooted in the fault lines that run between Islam and Christianity. This is especially dangerous for Russia because these fault lines run across its territory. To sum it up, the political leadership of Russia has every reason to revise its list of factors that could undermine strategic stability.  BMD does not deserve to be even last on that list because its effectiveness in repelling massive missile strikes will be extremely low. BMD systems can prove useful only if deployed to defend against launches of individual ballistic missiles or groups of such missiles. Prioritization of other destabilizing factors—that could affect global and regional stability—merits a separate study or studies. But even without them I can conclude that nuclear terrorism should be placed on top of the list. The threat of nuclear terrorism is real, and a successful nuclear terrorist attack would lead to a radical transformation of the global order.  All of the threats on the revised list must become a subject of thorough studies by experts. States need to work hard to forge a common understanding of these threats and develop a strategy to combat them.

#### Both Congress and the Courts have given Obama full authority to indefinitely detain

RT 7/18/13, Russia Today, “Obama wins back the right to indefinitely detain under NDAA,” http://rt.com/usa/obama-ndaa-appeal-suit-229/

The Obama administration has won the latest battle in their fight to indefinitely detain US citizens and foreigners suspected of being affiliated with terrorists under the National Defense Authorization Act of 2012.¶ ¶ Congress granted the president the authority to arrest and hold individuals accused of terrorism without due process under the NDAA, but Mr. Obama said in an accompanying signing statement that he will not abuse these privileges to keep American citizens imprisoned indefinitely. These assurances, however, were not enough to keep a group of journalists and human rights activists from filing a federal lawsuit last year, which contested the constitutionality of Section 1021, the particular provision that provides for such broad power.¶ ¶ A federal judge sided with the plaintiffs originally by granting an injunction against Section 1021, prompting the Obama administration to request an appeal last year. On Wednesday this week, an appeals court in New York ruled in favor of the government and once again allowed the White House to legally indefinitely detain persons that fit in the category of enemy combatants or merely provide them with support. ¶Now with this week’s appellate decision, plaintiffs intend on taking their case to the Supreme Court. Should the high court agree to hear their argument, the top justices in the US may finally weigh in on the controversial counterterrorism law.¶ The so-called “indefinite detention” provision of last year’s National Defense Authorization Act has been at the center of debate since before President Barack Obama autographed the bill in December 2011, but a federal lawsuit filed by Pulitzer Prize-winning war correspondent Chris Hedges and others only two weeks after it went into effect remains as relevant as ever in light of a decision delivered Wednesday by the US Court of Appeals for the Second Circuit. ¶ The plaintiffs in case had previously been successful in convincing a federal district judge to keep Section 1021 from being put on the books, but the latest ruling negates an earlier injunction and once again reestablished the government’s right to indefinitely detain people under the NDAA.¶ Tangerine Bolen, a co-plaintiff in the case alongside Hedges, told RT, “Losing one battle is not losing the war. This war is an assault on truth itself. It flaunts reason, sanity and basic decency. We will not stand down in the face of these egregious assaults on our rights and liberties.”¶ In a statement published to TruthDig, Hedges called the ruling “distressing” and said, “It means there is no recourse now either within the Executive, Legislative or Judicial branches of government to halt the steady assault on our civil liberties and most basic Constitutional rights.”¶ Section 1021 of the NDAA reads in part that the president of the US can indefinitely imprison any person who was part of or substantially supported al-Qaeda, the Taliban or associated forces engaged in hostilities against the US or its coalition partners, as well as anyone who commits a "belligerent act" against the US under the law of war, "without trial, until the end of the hostilities.” The power to do as much was allegedly granted to the commander-in-chief after the Authorization to Use Military Force was signed into law shortly after the September 11, 2001 terrorist attacks, but a team of plaintiffs have argued that Section 1021 provides the White House with broad, sweeping powers that put the First Amendment-guaranteed rights to free speech and assembly at risk while also opening the door for the unlawful prosecution of anyone who can be linked to an enemy of the state.¶ Only two weeks after the 2012 NDAA was signed into law, Hedges filed a lawsuit against the Obama administration challenging the constitutional validity of Section 1021.¶ “I have had dinner more times than I can count with people whom this country brands as terrorists … but that does not make me one,” he said at the time.¶ Naomi Wolf, an American author, told the Guardian last year that she has skipped meetings with individuals and dropped stories that she believed are newsworthy “for no other reason than to avoid potential repercussions under the bill.” ¶ Hedges first filed suit on Jan 13, 2012, and was eventually joined by a number of activists, reporters and human rights workers from both the US and abroad, including Pentagon Papers leaker Daniel Ellsberg, journalist Alexa O’Brien, Revolution Truth founder Bolen and Icelandic PM Birgitta Jónsdóttir. District Court Judge Katherine Forrest granted the plaintiffs a preliminary injunction against Section 1021 that May, only to make that decision permanent four months later. The Obama administration filed a stay against that injunction just days after, though, and the appeals court ruled this week that Judge Forrest’s decision must be vacated.¶ Carl Mayer, an attorney for the plaintiffs, previously told RT that he expected the White House to lose the appeal. “The Obama administration has now lost three times. They lost the temporary injunction, they lost the motion for reconsideration and they lost the hearing for permanent injunction. I say three strikes and you’re out,” he said. ¶ But with the court’s 3-0 ruling this week, a federal panel concluded that the plaintiffs involved in the suit do not have standing to challenge Section 1021. In doing so, however, they offered what is the most official interpretation yet of a law that has continuously attracted criticism for nearly two years now.¶ After years of debate, the appeals court said once and for all that the NDAA does not apply to American citizens, and rehashed the Obama administration’s insistence that it simply reaffirmed rights afforded to the government through the AUMF.¶ “Section 1021(e) provides that Section 1021 just does not speak — one way or the other — to the government’s authority to detain citizens, lawful resident aliens or any other persons captured or arrested in the United States,” the court ruled.¶ “We thus conclude, consistent with the text and buttressed in part by the legislative history, that Section 1021 means this: With respect to individuals who are not citizens, are not lawful resident aliens and are not captured or arrested within the United States, the President’s AUMF authority includes the authority to detain those responsible for 9/11 as well as those who were 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 — a detention authority that Section 1021 concludes was granted by the original AUMF.”¶ “But with respect to citizens, lawful resident aliens, or individuals captured or arrested in the United States, Section 1021 simply says nothing at all,” it concluded.¶ The AUMF, however, is still open to interpretation. An earlier legal ruling concluded that the AUMF “clearly and unmistakable” authorized detaining those who were “part of or supporting forces hostile to the US.” Then a memo issued in March 2009 just weeks’ into Pres. Obama’s first term even added that the government has the authority “to detain persons who were part of or substantially supported” anyone engaged in hostilities against US or its partners.¶ “In any event, the March 2009 Memo took the view that ‘the AUMF is not limited to persons captured on the battlefields of Afghanistan’ nor to those ‘directly participating in hostilities,’” the appeals court noted. When the DC Circuit weighed in further down the road, it determined that the AUMF authorized detention for those who “purposefully and materially support” those hostile forces, although this week’s ruling makes note that the Circuit Court has failed to ever figure out what “support” exactly means.¶ “The government contends that Section 1021 simply reaffirms authority that the government already had under the AUMF, suggesting at times that the statute does next to nothing at all. Plaintiffs take a different view,” wrote the court this week.¶ Definitions aside, however, the appeals court wrote that Hedges and his American co-plaintiffs lack standing to challenge the indefinite detention provisions since a subsection of that rule, 1021(e), frees US citizens from detention under the NDAA.¶ “We recognize that Section 1021 perhaps could have been drafted in a way that would have made this clearer and that the absence of any reference to American citizens in Section 1021(b) led the district court astray in this case. Perhaps the last-minute inclusion of Section 1021(e) as an amendment introduced on the floor of the Senate explains the somewhat awkward construction,” wrote the court. “But that is neither here nor there. It is only our construction, just described, that properly gives effect to the text of all of the parts of Section 1021 and thus reflects congressional intent.”¶ At the same time, though, the appeals court acknowledged that Iceland’s Jónsdóttir, co-plaintiff Kai Wargalla of Germany and other foreign persons could be detained indefinitely under the NDAA. Although Jónsdóttir has argued that her well-documented affiliation with the anti-secrecy group WikiLeaks — particularly with regards to classified material its published much to the chagrin of the US government — is enough to land her in hot water, the court said indefinite imprisonment in a military jail cell is an unrealistic fear and she therefore lacks standing.¶ Jónsdóttir, 46, has been a member of the Iceland parliament since 2009, the same year that US Army Private first class Bradley Manning began supplying materials to WikiLeaks. Jónsdóttir and WikiLeaks founder Julian Assange worked directly with raw video footage supplied by Manning showing a US helicopter fatally wounding innocent civilians and journalists, which the website later released under the name “Collateral Murder.” And although Pfc. Manning is currently on trial for “aiding the enemy” by supplying WikiLeaks — and indirectly al-Qaeda — with that intelligence, the court said Jónsdóttir herself has nothing to fear. ¶ “The claims of Jónsdóttir and Wargalla stand differently. Whereas Section 1021 says nothing about the government’s authority to detain citizens, it does have real meaning regarding the authority to detain individuals who are not citizens or lawful resident aliens and are apprehended abroad,” the court ruled.¶ Elsewhere, the judges wrote that the government insists that WikiLeaks and Manning provided “some support” to hostile forces by publishing classified intelligence, and that the 25-year-old Army private is indeed facing prosecution for such that could put him away for life.¶ “One perhaps might fear that Jónsdóttir’s and Wargalla’s efforts on behalf of WikiLeaks could be construed as making them indirect supporters of al-Qaeda and the Taliban as well,” wrote the court. “The government rejoins that the term ‘substantial support’ cannot be construed so in this particular context. Rather, it contends that the term must be understood — and limited — by reference to who would be detainable in analogous circumstances under the laws of war.”¶ Because “plaintiffs have provided no basis for believing that the government will place Jónsdóttir and Wargalla in military detention for their supposed substantial support,” the court has rejected their lawsuit.¶ “In sum, Hedges and O’Brien do not have Article III standing to challenge the statute because Section 1021 simply says nothing about the government’s authority to detain citizens,” concluded the court. “While Section 1021 does have meaningful effect regarding the authority to detain individuals who are not citizens or lawful resident aliens and are apprehended abroad, Jónsdóttir and Wargalla have not established standing on this record. We vacate the permanent injunction and remand for further proceedings consistent with this opinion.”¶ Meanwhile, the court’s decision did little to resolve what actually is allowed under the AUMF. In fact, the court said Section 1021 “does not foreclose the possibility that previous 'existing law' may permit the detention of American citizens,” making note of American Yaser Esam Hamdi and a three-year ordeal that left him without the right to habeas corpus or an attorney after he was picked up in post-9/11 Afghanistan on suspicion of terroristic ties. Instead, it confirmed that foreign citizens engaged with substantially supporting hostile forces— neither of which term is still properly defined — can be locked up in military jails.

#### congress and the courts have preserved detention powers

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Through a growing series of habeas challenges, the D.C. Circuit has fleshed out habeas requirements in these wartime cases, addressing a number of procedural, definitional and evidentiary considerations. In Al-Bihani v. Obama, the Circuit Court considered the definition under which a person may be detained pursuant to the AUMF. The D.C. Circuit accepted the earlier definition offered: "an individual who was part of or supporting Taliban or al-Qaeda force, or associated forces ... and [\*51] the modified definition offered by the Obama administration requiring "substantial support." n311 Regarding the boundaries of who qualifies under the definition, the Circuit observed that "wherever the outer bounds may lie" they include individuals who engage in "traditional food operations essential to a fighting force and the carrying of arms." They concluded that "Al-Bihani was part of and supported a group--prior to and after September 11-- that was affiliated with al-Qaeda and Taliban forces and engaged in hostilities against a U.S. Coalition partner. Al-Bihani, therefore, falls squarely within the scope of the President's statutory detention powers. n312¶ Al-Bihani next argued that law of war detention authority exists only until the end of hostilities and in this instance, he asserted relevant hostilities had ended. The Circuit cogently rejected this argument. If the election of President Karzai or the installation of a post-Taliban regime required the release of detainees, then¶ . . . each successful campaign of a long war [would be] but a Pyrrhic prelude to defeat. The initial success of the United States and its Coalition partners in ousting the Taliban from the seat of government and establishing a young democracy would trigger an obligation to release Taliban fighters captured in earlier clashes. Thus, the victors would be commanded to constantly refresh the ranks of the fledgling democracy's most likely saboteurs. n313¶ Further, the D.C. Circuit concluded that the determination of when hostilities have ceased is fundamentally a political decision, at least absent a congressional declaration terminating the war. n314 The recent Congressional affirmation of the AUMF's detention authority confirms Congress's view that hostilities against al-Qaeda remain ongoing and constitute a persistent, global military threat.¶ Regarding procedural safeguards, Al Bihani raised a host of issues ranging from the standard of proof to the requirement for a separate evidentiary hearing. n315 [\*52] The D.C. Circuit found that habeas review for military detainees "need not match the procedures developed by Congress and the courts specifically for habeas challenges to criminal convictions." n316 Relying on Boumediene, the court instead embraced innovative, pragmatic procedures that would not unduly burden the military. n317 Further, the D.C. Circuit rejected the contention that proof beyond a reasonable doubt or proof by clear and convincing evidence was necessary to hold a detainee. The court expressly declined to articulate the minimum proof standard required, but found the preponderance standard constitutionally permissible. n318¶ Other cases demonstrate the D.C. Circuit's pragmatic approach. In Bensayah v. Obama, the court recognized the amorphous nature of the al-Qaeda threat and rejected formalistic criteria for determining whether a person is part of al-Qaeda. n319 In Barhoumi v. Obama, the court upheld Barhoumi's detention as a member of an "associated force" based on diary records singling him out as a member of Zubaydah's associated militia organization. n320 In Awad v. Obama, the D.C. Circuit reviewed the district court's factual finding for "clear error," weighing each piece of evidence, not in isolation, but "taken as a whole." n321 In reversing the lower court's ruling in Al-Adahi v. Obama, the court found the district judge failed to take into account the "conditional probability" of the evidence, n322 leading the lower court to reject evidence erroneously because each particular fact did not by itself prove the ultimate fact that Al-Adahi was part of al-Qaeda. The mistake of requiring each [\*53] piece of evidence to bear independent weight constituted a "fundamental mistake that infected the lower court's entire analysis." n323¶ The D.C. Circuit addressed discovery issues in Al Odah v. U.S. n324 For habeas purposes, the touchstone for discovery it developed was enabling a "meaningful review"; thus, access to classified material by detainees' counsel must be necessary to facilitate such a review. n325 A naked declaration or mere certification by the government regarding sensitive information will not suffice. n326 The D.C. Circuit supported a presumption favoring release of most classified information to detainees' counsel and rejected the contention that submission of classified evidence to the court for in camera, ex parte review, in itself, resolved the discovery burden. n327 The court suggested that its opinion in Bismullah v. Gates requiring the district court's ex parte review of "highly sensitive information" n328 did not end the inquiry regarding release to detainees' counsel. In Al Odah, the court concluded that habeas court should proceed further by determining whether "classified information is material and counsel's access to it is necessary to facilitate meaningful review." n329 If no alternatives would afford a detaining the meaningful review required by Boumediene, even sensitive classified information may need to be released to counsel.¶ Much has been written about hearsay in relation to war crimes trials and military commissions. Post-Boumediene, the D.C. Circuit determined hearsay evidence is not automatically invalid, nor is a traditional Confrontation Clause objection sustainable because habeas reviews are not criminal prosecutions. n330 The court explained, "hearsay is always admissible." The issue is what "probative weight to ascribe" to the evidence and whether there is "sufficient indicia of reliability." n331 The D.C. Circuit applied similar logic in Parhat v. Gates, a case involving a Chinese citizen of Uighur heritage. There it required evaluation of the raw evidence, which must be sufficiently reliable and probative to demonstrate the truth of the asserted proposition. n332¶ In summary, the D.C. Circuit has carved out a tailored, pragmatic approach in these detainee cases. Habeas proceedings for law of war detainees are not criminal [\*54] trials. Each habeas-eligible detainee enjoys the benefit of an independent judicial review, but the parameters differ categorically from a criminal trial. The definition of who may be detained is not dependent on formalistic criteria. Proof beyond a reasonable doubt is not required. There is no jury. Confrontation is different--hearsay, for example, is admissible when reliable. The process of weighing evidence must account for the exigencies of military operations. Through this evolving process, some detainees have been released. Others have been continued in law of war detention consistent with the AUMF. Ardent proponents of habeas may find this promised panacea somewhat unsatisfying. Those who feared judicial meddling in military affairs likely would agree habeas has not been the disaster some feared. Thus far, the D.C. Circuit has taken its duty seriously and made some tough calls designed to balance the inevitable tension between liberty and security. The next section briefly considers application of a purely civilian criminal law framework in law of war detainee cases.

#### Due process collapses intelligence gathering --- sources dry up --- destroys the heart of counter-terror policy

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Defendants' Motion to Dismiss, United States' Statement of Interest, Case 1:12-cv-01192-RMC Document 18 Filed 12/14/12 Page 1 of 58, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, 12/14/2012

Third. Plaintiffs' claims raise the specter of disclosing classified intelligence information in open court. The D.C. Circuit has recognized that "the difficulties associated with subjecting allegations involving CIA operations and covert operatives to judicial and public scrutiny" are pertinent to the special factors analysis. Wilson, 535 F.3d at 710. In such suits, "'even a small chance that some court will order disclosure of a source's identity could well impair intelligence gathering and cause sources to close up like a clam."'1 Id. (quoting Tenet v. Doe, 544 U.S. 1,11 (2005)). And where litigation of a plaintiffs allegations "would inevitably require an inquiry into "classified information that may undermine ongoing covert operations,"\* special factors apply. Wilson, 535 F.3d at 710 (quoting Tenet, 544 U.S. at 11). See also Vance, 2012 WL 5416500 at "8 ("When the state-secrets privilege did not block the claim, a court would find it challenging to prevent the disclosure of secret information.11); Lebron, 670 F.3d at 554 (noting that the "chilling effects on intelligence sources of possible disclosures during civil litigation and the impact of such disclosures on military and diplomatic initiatives at the heart of counterterrorism policy1' are special factors); Arar, 585 F.3d at 576 (holding that the risk of disclosure of classified information is a special factor in the "extraordinary rendition" context).

#### Judicial review prevents effective intelligence gathering --- sources clam up --- spills over

Andrew C. McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies and Alykhan Velshi, staff attorney at the Center for Law & Counterterrorism, “Outsourcing American Law: We Need A National Security Court”, AEI Working Paper #156, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

5. The discovery requirements endanger national security by discouraging cooperation from our allies. As illustrated by the recent investigations conducted by Congress, the Silberman/Robb Commission, and the 9/11 Commission regarding pre-9/11 intelligence failures, the United States relies heavily on cooperation from foreign intelligence services, particularly in areas of the world from which threats to American interests are known to stem and where our own human intelligence resources have been inadequate. It is vital that we keep that pipeline flowing. Clearly, however, foreign intelligence services (understandably, much like our own CIA) will necessarily be reluctant to share information with our country if they have good reason to believe that information will be revealed under the generous discovery laws that apply in U.S. criminal proceedings.

#### Criminal courts kill info gathering

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4. Prosecutions in the criminal justice system arm international terrorist organizations with a trove of intelligence that both identifies methods and sources of information and improves their ability to harm Americans. Equally perilous to national security as the general philosophy of combating terror by trials are the nuts-and-bolts of trial practice itself. ¶ Under discovery rules, the government is required to provide to accused persons, among many other things, any information in its possession that can be deemed “material to preparing the defense.”11 Moreover, under current construction of the Brady doctrine, the prosecution must disclose any information that is even arguably material and exculpatory,12 and, in capital cases, any information that might induce the jury to vote against a death sentence, whether it is exculpatory or not (imagine, for example, the government is in possession of reports by vital, deep-cover informants explaining that a defendant committed a terrorist act but was a hapless pawn in the chain-of-command).13 The more broadly indictments are drawn, the more revelation of precious intelligence due process demands – and, for obvious reasons, terrorism indictments tend to be among the broadest.14 The government must also disclose all prior statements made by witnesses it calls,15 and, often, statements of even witnesses it does not call.16¶ This is a staggering quantum of information, certain to illuminate not only what the government knows about terrorist organizations but the intelligence community’s methods and sources for obtaining that information. When, moreover, there is any dispute about whether a sensitive piece of information needs to be disclosed, the decision ends up being made by a judge on the basis of what a fair trial dictates, rather than by the executive branch on the basis of what public safety demands.¶ Finally, the dynamic nature of the criminal trial process must be accounted for. The discovery typically ordered, virtually of necessity, will far exceed what is technically required by the rules. As already noted, terrorism trials are lengthy and expensive. The longer they go on, the greater is the public interest in their being concluded with finality. The Justice Department does not want to risk reversal and retrial, so it tends to bring close questions of disclosure to the presiding judge for resolution. The judge, in turn, does not wish to risk reversal and, of course, can never be reversed in our system for ruling against the government on a discovery issue. Thus, the incentives in the system press on participants to disclose far more information to defendants than what is mandated by the (already broad) rules. These incentives, furthermore, become more powerful as the trials proceed, the government’s proof is admitted, it becomes increasingly clear that the defendants are probably guilty, and the participants become even less inclined to put a much-deserved conviction at risk due to withheld discovery – even if making legally unnecessary disclosure runs the risk of edifying our enemies.17

#### Trial rules would wreck intel security

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This paper does not argue against the use of federal or state criminal trials in appropriate terrorist cases, but instead argues for an all-in approach that preserves the legal viability of military detention, military interrogation and commission trials in cases involving al-Qaeda and associated forces. In that spirit, it is appropriate to highlight key limitations with an entirely civilian-based approach. The first, and perhaps most obvious, point is that civilian criminals are arrested and typically read their Miranda rights. n333 Subject to limited exceptions, statements adduced by law enforcement absent a Miranda warning are suppressed. By contrast, enemy forces are detained under the law of war, and the Miranda requirement simply doesn't apply. It may elicit discomfort in some, but when the military captures someone, part and parcel of capture is interrogating the individual for purposes of gathering intelligence about such things as enemy positions and planned future attacks. So long as the interrogation methods meet humane treatment standards, the act of questioning a suspected member of a belligerent force is both expected and appropriate. n334 A civilian criminal suspect may invoke their Miranda rights and request an attorney.¶ Some have argued that Miranda need not hamper civilian law enforcement in counter-terrorism cases, and in recent statements the Justice Department has advocated a more expansive use of the so-called public safety exception in counter-terrorism cases. n335 In New York v. Quarles, a divided Supreme Court allowed [\*55] admission of a suspect's pre-Mirandized statement in response to a police officer's question about the whereabouts of a gun he had discarded following commission of a rape. n336 The police were in the act of apprehending the suspect and "were confronted with the immediate necessity of ascertaining the whereabouts" of the discarded gun in order to prevent its use by any potential accomplice or its inadvertent discovery by a member of the public. n337 In recognizing a narrow exception to Miranda, five justices concluded, "the need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination." n338 While it may be possible to shoehorn more expansive questioning of terrorist criminal suspects under the public interest exception, Quarles is quite narrowly conceived and arguably is tied to limited police questioning in the field. Further, even if it is possible to overcome the Miranda issue, there is the challenge of presentment.¶ At common law, an arresting officer was required to bring his prisoner before a magistrate as soon as he reasonably could. n339 This 'presentment' requirement is designed to inform a suspect about the charges against him and to prevent prolonged detention and questioning without access to the court. As with Miranda, an arrested person's statement is "inadmissible if given after an unreasonable delay in bringing him before a judge." n340 This rule is presently encompassed in Federal Rule of Criminal Procedure 5(a) stating: "A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge ...." n341 The Government challenged the presentment requirement in Corley v. United States, essentially arguing that 18 U.S.C. § 3501 (governing the admissibility of confessions) negated the prior rule that confessional statement must be suppressed where the statement is obtained in violation of established presentment requirements. However, the Supreme Court found § 3501 merely modified the prior rule without supplanting it. Thus,¶ [A] district court with a suppression claim must find whether the defendant confessed within six hours of arrest (unless a longer delay was 'reasonable considering the means of transportation and the distance to be traveled to the nearest available [magistrate]')... If the confession occurred before presentment and beyond six hours [of arrest], however, the court must decide whether delaying that long was unreasonable or unnecessary under the McNabb-Mallory cases, and if it was, the confession is to be suppressed. n342¶ [\*56] As with Miranda, standard presentment requirements are ill suited to the detention of warriors of an enemy force. It simply makes no sense to capture a member of an enemy force on the one hand, and then negate all normal military modes of detention, interrogation and intelligence collection by mirandizing the detainee and presenting them to the nearest magistrate within a six hour period. One concerning aspect of the present debate is the tendency to conflate the military and civilian systems. They serve fundamentally distinct roles, and each has its proper place. The Supreme Court recognized this reality as far back as Quirin and reaffirmed it in Hamdi. Trying to force feed military operatives of an enemy force through a purely civilian criminal justice process arguably could weaken that system as it unnecessarily contorts itself to adjust to the exigencies of military conflict. The better approach, and the one thus far preferred by Congress, two Presidents, and the Supreme Court, is to preserve and utilize both military and civilian systems.

#### CIPA doesn’t solve

Andrew C. McCarthy 9, Director of the Center for Law & Counterterrorism at the Foundation for the Defense of Democracies and Alykhan Velshi, staff attorney at the Center for Law & Counterterrorism, “Outsourcing American Law: We Need A National Security Court”, AEI Working Paper #156, http://www.aei.org/files/2009/08/20/20090820-Chapter6.pdf

It is freely conceded that this trove of government intelligence is routinely surrendered along with appropriate judicial warnings: defendants may use it only in preparing for trial and may not disseminate it for other purposes. To the extent classified information is implicated, it is also theoretically subject to the constraints of the Classified Information Procedures Act. 17 Nevertheless, and palpably, people who commit mass murder, who face the death penalty or life imprisonment, and who are devoted members of a movement whose animating purpose is to damage the United States, are certain to be relatively unconcerned about violating court orders (or, for that matter, about being hauled into court at all). Our congenial rules of access to attorneys, paralegals, investigators, and visitors make it a very simple matter for accused terrorists to transmit what they learn in discovery to their confederates—and we know that they do so. 18 (Footnote 18 Begins Here) A single example here is instructive. In 1995, just before trying the aforementioned seditious conspiracy case against the blind sheik and eleven others, one of the authors duly complied with Second Circuit discovery law by writing a letter to defense counsel listing 200 names of people and entities who might be alleged as unindicted coconspirators—i.e., people who were on the government’s radar screen but against whom there was insufficient evidence to charge. Six years later, that letter became evidence in the trial of those who had bombed our embassies in Africa. Within a short time of its being sent, the letter had found its way to Bin Laden in Sudan. It had been fetched for him by al Qaeda operative Ali Mohammed who, upon obtaining it from one of his associates, forwarded it to al Qaeda operative Wadih El Hage in Kenya for subsequent transmission to bin Laden. Mohammed and El Hage were both convicted in the embassy bombing case.

#### Their defense assumes the squo—the plan’s influx of cases would overwhelm security measures

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Unfortunately for any new system, terrorism trials require a lot of resources. A necessary component of any system to replace military commissions is security cleared personnel and secure facilities which protect intelligence. Even in military commissions, prosecutors have frequently been unable to convince other agencies to allow the use of intelligence information [\*46] in military commissions. n94 This inability occurs despite the fact that military commission personnel are required to obtain Top Secret/SCI clearances, a clearance that exceeds the Secret clearance held by the average member of the military. n95 Thus, despite this high clearance, attorneys were unable to obtain the necessary use authority for intelligence information, or they were able to obtain use authority only for closed proceedings that lack the perception of legitimacy of open proceedings. If military commissions' prosecutors cannot successfully convince other government agencies to clear information for use before the current military commissions, the prospects for a transition to a reformed system are dim without specific and detailed reforms. Thus, so long as the options of detention without trial, or trial in closed session exist, those options will always trump open sessions.¶ The experience of the Department of Justice in Article III terrorism trials also suggests obstacles for a transition to national security courts. While a recent Human Rights First report concluded that "the criminal justice system is reasonably well-equipped to handle most international terrorism cases," n96 the report analyzed cases individually so its conclusions are not generalizable to a scenario involving an influx of eighty detainees. Moreover, two similar reports issued by the Federal Judicial Center admit that terrorism cases present unique security challenges for the federal courts. n97 Recurring issues identified in the reports were a lack of security clearances for defense counsel impairing attorney-client communication, a lack of clearances for court staff, significant delays processing clearances, and a lack of secure facilities for reviewing classified evidence--all challenges which resulted in varied solutions which may not be duplicable across federal courts.¶ Article III courts, while capable of individually resolving problems posed by terrorism cases, do so on a case-by-case basis yielding different rights depending on what district the case is in. Federal districts have varied resources and facilities, which creates a disparity amongst the courts regarding how they handle intelligence information. For example, the reports show while some courts have a Sensitive Compartmented Information Facility (SCIF) for review of classified evidence, others lack a SCIF. In [\*47] one case, this lack of resources required the storage of documents in another district court. n98 In another case, the judge traveled to CIA headquarters to review relevant documents. n99 One case even involved a U.S. Attorney instructing a judge not to proceed when his questioning might reveal secret evidence! n100¶ These examples highlight the challenges courts face when handling the intelligence information found in most terrorism cases. For military commissions, the challenge was securing permission to use classified information. In federal courts, each district possesses a tenuous ability to handle terrorism cases on a small scale, but a massive influx of terrorism cases might overwhelm this ability. Before reformers can move detainees into the federal court system, Congress must allocate funding and prioritize a system for creating security cleared personnel and facilities. If reformers create a national security court, the challenge of noncooperative agencies and the administrative challenges of federal courts would be consolidated in one jurisdiction, n101 but these problems would still need to be addressed. In transition, intelligence agencies may refuse to release the information required to successfully prosecute the eighty triable detainees.

#### Detention powers are key to disrupt terror ops

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A second reason for preventive detention and President Bush’s enemy-combatant policy is incapacitation. As explained previously, the battlefield in this war on terror is no longer an actual zone of combat but includes otherwise peaceful civilian areas. Incapacitation as a rationale for preventive detention is obviously more compelling if the terrorist suspect is detained by military personnel on an actual battlefield during hostilities, such as Hamdi, but loses some persuasiveness when the terrorist suspect is detained by the FBI in an American city that is not involved in a battle, such as Padilla and al-Marri. An argument can be made, however, that terrorists, if not incapacitated when caught in a civilian area, may then leave for a zone of combat in Afghanistan or Iraq, or commit terrorist attacks in civilian areas. Critics respond that the criminal justice system can incapacitate terrorist suspects caught in a peaceful civilian area by the filing of criminal charges—not by labeling them as enemy combatants when they are not captured in a zone of combat. While it would be impractical to require “soldiers in the field to worry about warrants, lawyers, Miranda, forensic evidence, and chains of custody if we want to win the war on terrorism,”146 such an argument cannot honestly apply to the situations of Padilla and al-Marri, who were detained in the U.S. by the FBI (not soldiers) and not on an actual battlefield.¶ During the oral argument in Hamdi, Clement argued that incapacitation of Hamdi was a legitimate rationale for designating him an enemy combatant.147 Clement posited that the Bush Administration needed to detain Hamdi so he would not rejoin the battlefield while the United States had 10,000 American troops in Afghanistan.148 According to an affidavit from a DOD official (i.e., the Mobbs declaration), Hamdi surrendered to the Northern Alliance who turned him over to U.S. authorities. Thus, the Mobbs declaration is based on hearsay from a Northern Alliance official who informed the United States that Hamdi was fighting for the Taliban in Afghanistan with an assault rifle.149 Significantly, Hamdi was never allowed to challenge the facts presented in this affidavit. According to his father, Hamdi was in Afghanistan on a humanitarian mission.¶ Justice O’Connor, in her plurality opinion in Hamdi, explicitly upheld incapacitation as a justification for preventive detention as long as the individual was held only for the duration of hostilities and allowed an opportunity to challenge the designation as an enemy combatant: “Because detention to prevent combatant’s return to the battlefield is a fundamental incident of waging war, in permitting the use of ‘necessary and appropriate force,’ Congress has clearly and unmistakably authorized detention in the narrow circumstances considered here.”150 Significantly, after this ruling, the Bush Administration did not provide Hamdi a meaningful opportunity to challenge his designation as an enemy combatant or the underlying facts asserted in the Mobbs declaration. Rather, in October 2004, the government released Hamdi to Saudi Arabia after it determined that he no longer posed a threat to the United States, thereby undermining—to some extent—the Bush Administration’s rationale for detaining this dangerous individual.151¶ Nonetheless, there is evidence to suggest that al-Qaeda detainees who have been released have returned to the battlefield.152 In April 2008, a Kuwaiti man released from Guantanamo Bay in 2005 blew himself up in a suicide bombing in Iraq killing six people.153 The Bush Administration stated “that as many as 12 people released from Guantanamo . . . returned to the battlefield to fight . . . against U.S. interests.”154¶ Although the Supreme Court has upheld the rationale of incapacitation of a terrorist suspect caught in an active zone of combat (e.g., Hamdi), it has not addressed whether incapacitation of terrorist suspects caught by the FBI in an American city is justified (e.g., Padilla and al-Marri). Certainly, in some cases, the filing of criminal charges is one uncontroversial way to incapacitate terrorist suspects caught in a civilian area. Yet, advocates of preventive detention argue that there may not be sufficient admissible evidence to detain a terrorist suspect under the traditional criminal justice system. For instance, a foreign government may provide intelligence about an individual but refuse to provide any admissible evidence, the evidence may have been obtained by unsavory means and therefore inadmissible, or the evidence could compromise sources and methods. Michael Chertoff, former federal appellate judge and former Secretary of Homeland Security, asked a chilling question at an American Bar Association Standing Committee on Law and National Security meeting in 2004.155 He assumed it was September 10, 2001, and FBI agents just received word from a reliable and confidential source that members of an international terrorist organization were planning to hijack commercial airliners and bomb New York and Washington, D.C. Chertoff pondered what the FBI could legally do.156 While FBI agents could arrest the members to disrupt their plans, it would be hard to hold them on specific charges based on the confidential nature of the sources and the hearsay nature of the evidence. It would seem, at a minimum, that these individuals should be arrested and incapacitated at least for a short time to disrupt their plans. Such incapacitation, however, would negate the idea of innocent until proven guilty. Chertoff suggested that America needed changes to its current legal system that balance these real security threats with civil liberties.157 According to former Deputy Attorney General George Terwilliger, “the use of criminal prosecutions to incapacitate terrorists is proving to be clumsy, inadequate and, civil libertarians should note, taking law enforcement powers where they have never gone before.”158 Thus, it appears that one rationale for preventive detention is interruption of plans, even if specific criminal charges cannot be made within forty-eight hours of arrest, as is the usual requirement under the Fourth Amendment of the Constitution.159

#### Weak detention responses emboldens terrorists

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

#### Prez flex is key to quick action and intel

Glenn Sulmasy 9, law faculty of the United States Coast Guard Academy, , Anniversary Contributions: Use of Force: Executive Power: the Last Thirty Years, 30 U. Pa. J. Int'l L. 1355

Since the attacks of 9/11, the original concerns noted by Hamilton, Jay, and Madison have been heightened. Never before in the young history of the United States has the need for an energetic executive been more vital to its national security. The need for quick action in this arena requires an executive response - particularly when fighting a shadowy enemy like al Qaeda - not the deliberative bodies opining on what and how to conduct warfare or determining how and when to respond. The threats from non-state actors, such as al Qaeda, make the need for dispatch and rapid response even greater. Jefferson's concerns about the slow and deliberative institution of Congress being prone to informational leaks are even more relevant in the twenty-first century. The advent of the twenty-four hour media only leads to an increased need for retaining enhanced levels of executive [\*1362] control of foreign policy. This is particularly true in modern warfare. In the war on international terror, intelligence is vital to ongoing operations and successful prevention of attacks. Al Qaeda now has both the will and the ability to strike with the equivalent force and might of a nation's armed forces. The need to identify these individuals before they can operationalize an attack is vital. Often international terror cells consist of only a small number of individuals - making intelligence that much more difficult to obtain and even more vital than in previous conflicts. The normal movements of tanks, ships, and aircrafts that, in traditional armed conflict are indicia of a pending attack are not the case in the current "fourth generation" war. Thus, the need for intelligence becomes an even greater concern for the commanders in the field as well as the Commander-in-Chief.¶ Supporting a strong executive in foreign affairs does not necessarily mean the legislature has no role at all. In fact, their dominance in domestic affairs remains strong. Additionally, besides the traditional roles identified in the Constitution for the legislature in foreign affairs - declaring war, ratifying treaties, overseeing appointments of ambassadors, etc. - this growth of executive power now, more than ever, necessitates an enhanced, professional, and apolitical oversight of the executive. An active, aggressive oversight of foreign affairs, and warfare in particular, by the legislature is now critical. Unfortunately, the United States - particularly over the past decade - has witnessed a legislature unable to muster the political will necessary to adequately oversee, let alone check, the executive branch's growing power. Examples are abundant: lack of enforcement of the War Powers Resolution abound the executive's unchecked invasions of Grenada, Panama, and Kosovo, and such assertions as the Authorization for the Use of Military Force, the USA Patriot Act, military commissions, and the updated Foreign Intelligence Surveillance Act ("FISA"). There have been numerous grand-standing complaints registered in the media and hearings over most, if not all, of these issues. However, in each case, the legislature has all but abdicated their constitutionally mandated role and allowed the judicial branch to serve as the only real check on alleged excesses of the executive branch. This deference is particularly dangerous and, in the current environment of foreign affairs and warfare, tends to unintentionally politicize the Court.¶ The Founders clearly intended the political branches to best serve the citizenry by functioning as the dominant forces in [\*1363] guiding the nation's foreign affairs. They had anticipated the political branches to struggle over who has primacy in this arena. In doing so, they had hoped neither branch would become too strong. The common theme articulated by Madison, ambition counters ambition, n17 intended foreign affairs to be a "give and take" between the executive and legislative branches. However, inaction by the legislative branch on myriad policy and legal issues surrounding the "war on terror" has forced the judiciary to fulfill the function of questioning, disagreeing, and "checking" the executive in areas such as wartime policy, detentions at Guantanamo Bay, and tactics and strategy of intelligence collection. The unique nature of the conflict against international terror creates many areas where law and policy are mixed. The actions by the Bush administration, in particular, led to outcries from many on the left about his intentions and desire to unconstitutionally increase the power of the Presidency. Yet, the Congress never firmly exercised the "check" on the executive in any formal manner whatsoever.¶ For example, many policymakers disagreed with the power given to the President within the Authorization to Use Military Force ("AUMF"). n18 Arguably, this legislation was broad in scope, and potentially granted sweeping powers to the President to wage the "war on terror." However, Congress could have amended or withdrawn significant portions of the powers it gave to the executive branch. This lack of withdrawal or amendment may have been understandable when Republicans controlled Congress, but as of November 2006, the Democrats gained control of both houses of the Congress. Still, other than arguing strongly against the President, the legislature did not necessarily or aggressively act on its concerns. Presumably this inaction was out of concern for being labeled "soft on terror" or "weak on national security" and thereby potentially suffering at the ballot box. This virtual paralysis is understandable but again, the political branches were, and remain, the truest voice of the people and provide the means to best represent the country's beliefs, interests, and national will in the arena of foreign affairs. It has been this way in the past but the more recent (certainly over the past thirty years and even more so in the past decade) intrusions of the judicial branch into what [\*1364] was intended to be a "tug and pull" between the political branches can properly be labeled as an unintended consequence of the lack of any real legislative oversight of the executive branch.¶ Unfortunately, now nine unelected, life-tenured justices are deeply involved in wartime policy decision making. Examples of judicial policy involvement in foreign affairs are abundant including Rasul v. Bush; n19 Hamdi v. Rumsfeld; n20 Hamdan v. Rumsfeld; n21 as well as last June's Boumediene v. Bush n22 decision by the Supreme Court, all impacting war policy and interpretation of U. S. treaty obligations. Simply, judges should not presumptively impact warfare operations or policies nor should this become acceptable practice. Without question, over the past thirty years, this is the most dramatic change in executive power. It is not necessarily the strength of the Presidency that is the change we should be concerned about - the institutional search for enhanced power was anticipated by the Founders - but they intended for Congress to check this executive tendency whenever appropriate. Unfortunately, this simply is not occurring in twenty-first century politics. Thus, the danger does not necessarily lie with the natural desire for Presidents to increase their power. The real danger is the judicial branch being forced, or compelled, to fulfill the constitutionally mandated role of the Congress in checking the executive.¶ 4. PRESIDENT OBAMA AND EXECUTIVE POWER¶ The Bush presidency was, and continues to be, criticized for having a standing agenda of increasing the power of the executive branch during its eight-year tenure. Numerous articles and books have been dedicated to discussing these allegations. n23 However, as argued earlier, the reality is that it is a natural bureaucratic tendency, and one of the Founders presciently anticipated, that each branch would seek greater powers whenever and wherever possible. As the world becomes increasingly interdependent, technology and armament become more sophisticated, and with [\*1365] the rise of twenty-first century non-state actors, the need for strong executive power is not only preferred, but also necessary. Executive power in the current world dynamic is something, regardless of policy preference or political persuasions, that the new President must maintain in order to best fulfill his constitutional role of providing for the nation's security. This is simply part of the reality of executive power in the twenty-first century. n24