# 1AC

## 1AC- Districts

### Contention 1- Rule of Law

#### Afghanistan has adopted detention policies modeled off US law

Rodgers 12 (Chris Rogers is a human rights lawyer for the Open Society Foundations specializing in human rights and conflict in Afghanistan and Pakistan, May 14, “Karzai's bid for a dictatorial detention law”, http://afpak.foreignpolicy.com/posts/2012/05/14/karzais\_bid\_for\_a\_dictatorial\_detention\_law)

As part of the agreement to transfer control of Bagram, the Afghan government is creating the authority to hold individuals without charge or trial for an indefinite period of time on security grounds-a power it has never before said it needed. While such "administrative detention" regimes are permissible under the laws of war, this new detention power is being established in order to hand over a U.S. detention facility, not because changes in the conflict have convinced Afghan officials that it is necessary. A surge in U.S. detention operations like night raids has driven the prison population to over 3,000 detainees, most of whom the United States lacks evidence against for prosecution under Afghans law. Because the Afghan constitution, like the United States', protects individuals from being detained without charge or trial, the Afghan government needs a new detention law, which is now being modeled on deeply problematic U.S. detention policies and practices. As a result, Bagram's real legacy may be the establishment of a detention regime that will be ripe for abuse in a country with pervasive corruption and weak rule of law. Despite potentially far-reaching consequences, the development of this new detention power has been hidden from public view. When I met with leading Afghan lawyers and civil society organizations in Kabul several weeks ago, few knew that the government was proposing to create a new, non-criminal detention regime. Their reaction was disbelief and dismay. None had even seen a copy of the proposed regime, which the Afghan government has not made public and is trying to adopt by presidential fiat. The Open Society Foundations recently obtained a copy of the proposed detention regime, and after review, we have found what it details deeply troubling. The proposed changes leave open critical questions about the nature and scope of this proposed detention regime, which if left unanswered make it ripe for abuse. Who can be held in administrative detention and for how long? Where will it apply? When will the government cease to have this power? How will the government ensure it will not be abused to imprison the innocent or suppress political opposition? Most alarming is the failure to address the serious, long-term risks posed by such a regime. From apartheid South Africa to modern day China, administrative detention regimes adopted on security grounds have too often been used as tools of repression. In Egypt, the former government used administrative detention for decades to commit gross human rights violations and suppress political opposition, relying on a state of emergency declared in 1958, and nominally lifted only after last year's revolution. Across the border in Pakistan, the draconian Frontier Crimes Regulations are another stark reminder of the long, dark shadow that such legal regimes can cast. The ongoing imposition of these British, colonial-era laws, which among other things legalize collective punishment and detention without trial, are cited by many as a key driver of the rise of militancy in the tribal areas of Pakistan. But there is still time for the United States to avoid this legacy in Afghanistan. If the Afghan government cannot be dissuaded from adopting an administrative detention regime, then the United States should urge the Afghan government to include provisions that limit its scope and reduce its vulnerability to abuse. First, a ‘sunset' provision should be adopted, which would impose a time limit on such powers, or require an act by the Afghan Parliament to extend their duration. Second, the regime should be limited to individuals currently held by the United States at Bagram prison. There is no clear reason why the handover of Bagram detainees requires the creation of a nation-wide administrative detention regime. More generally, the scope of who can be detained must be clearly defined and limited. Third, detainees must have right to counsel as well as access to the evidence used against them in order to have a meaningful opportunity to challenge their detention-a fundamental right in international law. At present it seems the government will follow the well-documented due process shortfalls of the U.S. model. The United States and its Afghan partners must be honest about the serious, long-term risks of establishing an administrative detention regime in Afghanistan-particularly one that lacks clear limits and is democratically unaccountable. Protection from arbitrary or unlawful deprivation of life or liberty is at the constitutional core of the United States, and is essential to lasting stability and security in Afghanistan. Living up to the President's promise of responsibly ending the war in Afghanistan requires defending, not betraying this principle.

#### This has prevented rule of law restoration in Afghanistan- judicial modeling makes US action key

ICG 10 (International Crisis Group, November 17, “REFORMING AFGHANISTAN’S BROKEN JUDICIARY”, http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx)

U.S. detention policy has frequently been cited by Afghan and international legal experts as one of the chief obstacles to restoring balance to the Afghan justice system and citizens’ faith in the rule of law.233 The operation of parallel U.S.-controlled prisons has been problematic from the start. Thousands of Afghans have been detained since the start of Operation Enduring Freedom in 2001 without recourse to trial or the means to challenge their detention. Abuse of prisoners at the U.S.-run Bagram Theatre Internment Facility in the early years of its operation under the Bush administration has been well documented, including the use of harsh interrogation techniques that resulted in the deaths of two Afghans.234 Extrajudicial detentions at Bagram have eroded support for foreign troops and for many Afghans – Pashtuns in particular – stand as a symbol of oppression. Like its sister facility at the U.S. military base in Guantanamo, Cuba, the Bagram prison has provided much grist for Taliban propaganda mills.235 U.S. officials under the Obama administration appear to have begun to recognise that extrajudicial detentions have negatively impacted Afghan perceptions of the rule of law. In January 2009, the U.S. government announced plans to close the facility at Guantanamo and to re-evaluate its detainee programs overall. A U.S. federal district court ruling in April 2009 concluding that non-Afghan detainees held at the Bagram facility have a right to challenge their detention in American courts has hastened the need to find solutions to the legal conundrum posed by the extrajudicial status of prisoners at Bagram.236 In September 2009, the U.S. Department of Defense adopted a new framework for evaluating the status of detainees in U.S. facilities in Afghanistan. Responsibility for detainee policy and operations now falls to Task Force 435, an interagency unit under joint military-civilian leadership whose mission is to bring detention and rule of law practices in line with U.S. strategic goals in Afghanistan. The old Bagram facility has since been replaced by the more modern Detention Facility in Parwan (DFIP), which opened in 2009 at the edge of the Bagram military base. Under this new policy, new detainee review board (DRB) procedures were adopted to bring detention practices in Afghanistan more in line with U.S. and international law. They replaced the Unlawful Enemy Combatant Review Boards, which had been generally deemed inadequate because they afforded detainees few, if any, opportunities to challenge their arrest or to review evidence in cases brought against them in closed hearings. Under the new procedures, a military panel determines if a detainee has been properly captured and poses a future threat to the Afghan government or international security forces. Although the U.S. government is careful not to characterise the proceedings as legal or adversarial in the sense that a trial might be, detainees are allowed to some extent to present their version of events with the help of a U.S.-assigned “personal representative”. Hundreds of detainees have had their cases reviewed since the new review procedures were adopted and a number have been released because of insufficient evidence that they posed a threat to the Afghan government.237 These new guidelines are an important step forward, but they are far from replicating internationally recognised fair trial standards. A number of other actions must be taken to make U.S. detention policy more transparent, humane and fair and to bring it in line with international law. Specifically, U.S. investigation and intelligence gathering standards must be improved and the review board process must incorporate a more vigorous mechanism that allows detainees to review and challenge evidence brought against them, including measures for classified evidence. Transition to Afghan control of specially designated detainees will also necessitate a re-evaluation of classification procedures both at the point of capture and across agencies – both Afghan and U.S. The current process of declassifying information is far too cumbersome and there is a demand for greater clarity on the rules of transfer of information from coalition and Afghan sources to Afghan government sources.238 Changes in declassification policy will necessitate a serious review of current Afghan law and investigative practices and procedures employed by the Afghan National Directorate of Security and other security organs. In January 2010, the U.S. and Afghan government signed a memorandum of understanding calling for the DFIP to pass from U.S. to Afghan control in July 2011. By that time, review proceedings should be conducted entirely by Afghan judges and prosecutors; an Afghan judge in the Parwan provincial courts has already reviewed a number of detainee cases.239 The U.S. has set up a rule of law centre at the new facility with a view to training Afghan legal professionals to build cases against the roughly 1,100 detainees housed at the prison. The training and transition are important first steps toward dismantling the parallel legal systems that have co-existed uneasily in Afghanistan since the start of the U.S. military engagement. The transition could entail some tricky procedural challenges in terms of potential conflicts between Afghan courts and U.S. military authorities over the danger posed by “highrisk” detainees.240 This and other issues should be clarified before the transition in 2011.

#### Starting with US policy leads to Afghan judiciary improvements

Eviatar 12 (Daphne Eviatar Law and Security Program Human Rights First, 1-9, “The Latest Skirmish in Afghanistan: Hate to Say We Told You So”, http://www.humanrightsfirst.org/2012/01/09/the-latest-skirmish-in-afghanistan-hate-to-say-we-told-you-so/)

Responsibility begins with due process. As we wrote in our report in May, based on our observations of the hearings given to detainees at the U.S.-run detention facility at Bagram: “the current system of administrative hearings provided by the U.S. military fails to provide detainees with an adequate opportunity to defend themselves against charges that they are collaborating with insurgents and present a threat to U.S. forces.” As a result, the U.S. hearings “fall short of minimum standards of due process required by international law.” For President Karzai, that’s an argument that the U.S. should immediately turn the thousands of detainees it’s holding over to the government of Afghanistan. But that would do little to solve the problem. TheUnited Nations reported in October that Afghanistan’s intelligence service systematically tortures detainees during interrogations. The U.S. government cannot hand prisoners over to the Afghans if they’re likely to be tortured, according to its obligations under international law. And unfortunately, as we also noted in our report, the Afghan justice system, although improving with the growing introduction of defense lawyers, is still hardly a model of due process. Still, unlike the United States, at least Afghan law does not permit detention without criminal charge, trial and conviction. The United States hasn’t exactly proven itself the best model for the Afghan justice system. Restoring U.S. credibility is going to be key to our ability to withdraw from Afghanistan without it becoming a future threat to U.S. national security. The U.S. government can’t credibly insist that the Afghans improve their justice system and treatment of detainees if the U.S. military doesn’t first get its own detention house in order. Whether for the sake of international law, U.S. credibility, or merely to improve relations with the Karzai government, upon which U.S. withdrawal from Afghanistan depends, the U.S. military needs to start providing real justice to the thousands of prisoners in its custody.

#### Judicial action is key to international credibility and restoring the rule of law

Hecht, 05 (Daryl, Judge for the Iowa Court of Appeals, 50 S.D. L. REV. 78, lexis)  
Americans proclaim with some justification that liberty and human rights are among the crown jewels of their national identity. Claiming the status of human rights watchdogs around the globe, representatives of the United States government commonly criticize human rights failures of other nations. If such criticism is to be taken seriously and carry force abroad when well-founded, the United States government must heed its own admonitions. It should accord due process not only to all persons detained within its borders but also to those it imprisons offshore at locations under the exclusive control of the United States. Affirmation by federal courts of the liberty interests of alien prisoners imprisoned on Guantanamo would give important symbolic assurance to citizens of the United States, foreign nationals, friends, and foes that liberty is a cherished universal human right that does not persist or perish according to technicalities such as geographic boundaries. As they clarify the nature and extent of process due the Guantanamo prisoners, federal courts will consider the Eisentrager Court's concerns about the prospect that thorough judicial review might disrupt war efforts. [288](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n288) The realities [\*111] of war may justify reasonable restriction of the process available to prisoners of war during times of armed conflict and justify some judicial deference allowing the executive to conduct military campaigns with a minimum of distraction. However, the risk that the war effort will be disrupted by judicial or administrative review of the grounds for detention are diminished in these cases because the prison is distant from the present theaters of war. Modern technology will facilitate the presentation of evidence at remote sites in ways not contemplated by the Court in the Eisentrager era and will render unpersuasive many of the Executive's war-powers arguments against meaningful judicial review. The recent commencement of administrative hearings conducted by the Combatant Status Review Tribunals and the discharge of some of the Guantanamo prisoners are positive developments. It remains to be seen whether federal courts will conclude these administrative tribunals within the Executive branch allow for meaningful review of the prisoners' status. Although passage of the Military Tribunals Act of 2003 would, especially with suggested amendments, alleviate many of the most egregious legal infirmities associated with the ongoing detention of uncharged prisoners, a timely legislative solution to the problem through the action of the political branches of government is unlikely. The best and perhaps only prospect for meaningful protection of the uncharged detainees' rights against indefinite imprisonment lies in the litigation pending in federal courts. The remaining uncharged prisoners have languished too long in prison without charge or access to counsel, and the courts must be vigilant to prevent the continuation of arbitrary detentions in violation of international humanitarian and human rights principles. Alien prisoners ought not be disqualified from fundamental constitutional protections solely as a consequence of the government's choice of an off-shore location for their confinement. If deprivation of aliens' property interests may legally be imposed within the United States only in conformity with due process principles, the liberty interests of aliens held on Guantanamo should receive no less protection against state action. It should be understood that arguments in favor of meaningful review of the status of the Guantanamo prisoners is not an argument for the immediate release of all aliens imprisoned on Guantanamo. The evidence presented in habeas proceedings or in fair administrative tribunal hearings may establish reasonable grounds to believe some petitioners are properly designated and detained as enemy combatants. Under international humanitarian law, they may be detained during the conflict, but it seems evident that the GPW did not contemplate perpetual imprisonment without charge during an interminable war. [289](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n289) The [\*112] evidence offered in a meaningful review process may support war crimes charges against some of the prisoners who will be tried before military commissions under the regulations adopted by the Department of Defense. If the evidence establishes that still other prisoners have, as they allege, been improvidently incarcerated, they should be promptly discharged. In Korematsu v. United States, [290](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n290) the Court deferred during a declared war to the Executive's decision to evacuate persons of Japanese ancestry from locations on the west coast and relocate them in internment camps without the benefit of charges or hearings. That decision has since been widely criticized, and at least one member of the Court later publicly regretted his vote to defer to the military's judgment of necessity. [291](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n291) In 1976, as part of the celebration of the Bicentennial of the Constitution, President Gerald Ford issued a proclamation acknowledging that the internment of the Japanese Americans, many of whom were citizens, during World War II was wrong and calling upon the United States to "resolve that this kind of action shall never again be repeated." [292](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n292) Federal courts now have the opportunity to revisit the appropriate balance between precious civil liberties and measures properly taken in furtherance of national security during times of crisis. As the proper balance is recalibrated to fit the circumstances presented in the Guantanamo litigation, the courts can interrupt the "all too easy slide from a case of genuine military necessity ... to one where the threat is not critical and the power [sought to be exercised is] either dubious or nonexistent." [293](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n293)If the Guantanamo litigation forces meaningful review of the prisoners' status, it will advance the rule of law and model a fundamental principle of international leadership. "If the UnitedStates represents values that others want to follow, it will cost us less to lead." [294](https://www.lexis.com/research/retrieve?_m=938acabc8d208f2c7d5fa60db492ee72&docnum=98&_fmtstr=FULL&_startdoc=51&wchp=dGLbVzb-zSkAt&_md5=eeae0c139818f7b3acae88f6aed6f150&focBudTerms=supreme%20court%20should%20w/30%20guantanamo%20and%20deference%20and%20date%3E2001&focBudSel=all#n294) There is, of course, no doubt that the United States has the military power to ignore the prisoners' liberty interests and continue to hold them indefinitely without charge. But the raw power to maintain the status quo provides no legal justification consistent with reason, fundamental human rights, and principles of limited government for doing so.

#### Only restoring confidence in their judiciary can make our withdrawal successful

ICG 10 (International Crisis Group, November 17, “REFORMING AFGHANISTAN’S BROKEN JUDICIARY”, http://www.crisisgroup.org/~/media/Files/asia/south-asia/afghanistan/195%20Reforming%20Afghanistans%20Broken%20Judiciary.ashx)

A substantial course correction is needed to restore the rule of law in Afghanistan. Protecting citizens from crime and abuses of the law is elemental to state legitimacy. Most Afghans do not enjoy such protections and their access to justice institutions is extremely limited. As a result, appeal to the harsh justice of the Taliban has become increasingly prevalent. In those rare instances when Afghans do appeal to the courts for redress, they find uneducated judges on the bench and underpaid prosecutors looking for bribes. Few judicial officials have obtained enough education and experience to efficiently execute their duties to uphold and enforce the law. Endemic problems with communications, transport, infrastructure and lack of electricity mean that it is likely that the Afghan justice system will remain dysfunctional for some time to come. Restoring public confidence in the judiciary is critical to a successful counter-insurgency strategy. The deep-seated corruption and high levels of dysfunction within justice institutions have driven a wedge between the government and the people. The insurgency is likely to widen further if Kabul does not move more swiftly to remove barriers to reform. The first order of business must be to develop a multi-year plan aimed at comprehensive training and education for every judge and prosecutor who enters the system. Pay-and-rank reform must be implemented in the attorney general’s office without further delay. Building human capacity is essential to changing the system. Protecting that capacity, and providing real security for judges, prosecutors and other judicial staff is crucial to sustaining the system as a whole. The international community and the Afghan government need to work together more closely to identify ways to strengthen justice institutions. A key part of any such effort will necessarily involve a comprehensive assessment of the current judicial infrastructure on a province-byprovince basis with a view to scrutinising everything from caseloads to personnel performance. This must be done regularly to ensure that programming and funding for judicial reform remains dynamic and responsive to real needs. More emphasis must be placed on public education about how the system works and where there are challenges. Transparency must be the rule of thumb for both the government and the international community when it comes to publishing information about judicial institutions. Little will change without more public dialogue about how to improve the justice system. The distortions created in the justice system by lack of due process and arbitrary detentions under both Afghan institutions and the U.S. military are highly problematic. Until there is a substantial change in U.S. policy that provides for the transparent application of justice and fair trials for detainees, the insurgency will always be able to challenge the validity of the international community’s claim that it is genuinely interested in the restoration of the rule of law. If the international community is serious about this claim, then more must be done to ensure that the transition from U.S. to Afghan control of detention facilities is smooth, transparent and adheres to international law.

#### There are no alt causes

USAID 13 (February, “Fact Sheet Infrastructure Sector- Feb 2013”, download here- <http://afghanistan.usaid.gov/en/programs/infrastructure#Tab=Description>)

ENERGY Surveys indicate increased electricity supply is a top priority for Afghans. USAID efforts have significantly increased access to electricity among the Afghan population. USAID has supported the Afghan government in coordinating multi-donor efforts to build the North East Power System (NEPS) needed to transmit low-cost power from Uzbekistan to Kabul and other major population centers in Afghanistan. The U.S. has also rehabilitated part of Kajaki hydropower facility resulting in a doubling of the hydropower generation capacity of the dam. In addition, USAID constructed the Tarakhil Power Plant, which provides up to 105 Megawatts (MW) of backup power to Kabul and those living in communities supported by NEPS. USAID’s current priorities in the power sector include the NEPS SEPS connector project, also known as PTEC, planned to bring inexpensive imported grid power to a much wider Afghan population. Another priority is to work with Da Afghanistan Breshna Sherkat (DABS) to install the third turbine at Kajaki Dam and investments to improve distribution and transmission in Kandahar and Helmand provinces. A key component of the U.S.-Afghan energy strategy is increasing the number of Afghans working in the power sector. In concert with this effort, USAID is actively supporting the commercialization of the national state-owned utility, Da Afghanistan Breshna Sherkat (DABS). Collections improvements at DABS has doubled revenues in two years and increased power distribution by 18 percent. In addition to large-scale projects, the U.S. assists more than 300 rural communities gain access to advanced technologies to power their homes, schools, and businesses through clean, renewable energy, such as micro-hydropower, solar, and wind projects. ROADS An expanded and improved road network supports increased economic activity while enabling Afghans to access key services such as healthcare and education. USAID has funded the rehabilitation of more than 2,000 km of regional, national, provincial, and rural roads. Construction of a 105 km road from the city of Keshim to the city of Faizabad was completed in 2011, and highlights the benefits of economic gains from new and improved roads. The number of new businesses such as fuel stations and markets has substantially increased, commercial bus activity has increased, and market prices have declined along the road’s path because of increased efficiency relating to transportation. Ongoing U.S.-funded projects include rehabilitation of a national highway linking Khost and Gardez to the Ring Road. USAID worked closely with the Afghan government and the private-sector to maintain more than 2,500 km of roads nationwide. USAID projects strengthen the capacity of government staff in road design and support national efforts to establish an independent road authority and road fund that will enable efficient long-term management and maintenance of the transportation infrastructure. WATER & SANITATION Currently, only 27 percent of Afghan rural households have access to safe drinking water. In partnership with the Afghan government, USAID has increased access to safe drinking water to rural communities by constructing over 26,000 wells. Where well water has been provided, sanitation facilities have been improved and nearly 33,000 latrines have been built or renovated improving the health of Afghans. USAID also supports the government’s water and sanitation sector reforms, which seek to commercialize the urban water sector, increase cost recovery, and improve management. In addition, USAID is working to develop river basin master plans that will allow the Afghan government to optimize its future water resource development.

#### Unsuccessful drawdown makes nuclear war inevitable

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

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

#### **Great powers will get involved- Afghanistan stability is the key internal link**

Blank 12 (Stephen Blank¶ Strategic Studies Institute, US Army War College- he studies this stuff, January 27, “Whither the new great game in Central Asia?”, pdf)

Although many scholars dislike the term “great game”¶ or “new great game” because to them these terms smack of¶ echoes of the imperial rivalry of the nineteenth and¶ twentieth centuries; the point of the term “new great¶ game” is precisely that we have surmounted the era and¶ what we see now is something entirely different. This¶ difference does not, however, mean that we have seen the¶ end of policies resembling those of the age of imperialism.¶ First, there is an enormous competition among the US,¶ Russia, India, and China for military bases in Central Asia.¶ All of these states either have bases, have had bases, or have¶ sought bases in Central Asia in the last decade and the¶ growth of the CSTO eloquently testifies to the continuation¶ of the military dimension in the great powers’ search for¶ security in Central Asia. The different factor today is that¶ local governments of their own accord are actively soliciting¶ US military involvement if not that of Russia and China¶ for the reasons outlined above (Kucera, 2011a).¶ Similarly we see what amounts to naked land grabs by¶ the great powers, albeit on a relatively small scale in Central¶ Asia. For example, Tajikistan has been induced to surrender¶ to China 1100 square miles (2000 ha of land) to Chinese¶ farmers. Allegedly this “rectification” of the borders¶ ensures Tajikistan’s inviolability of its borders, definitively¶ solves its border problems with China, and ensures its¶ stability “for decades to come.” (Laruelle & Peyrouse, 2011c)¶ But that statement implies that without this agreement¶ Tajikistan’s security vis-à-vis China would have been¶ questioned if not at risk. And the further details of this¶ agreement indicate the visible presence of Chinese power¶ in Dushanbe’s decision-making.¶ This agreement, allegedly based on a prior accord¶ between the two governments in 2002 that was ratified¶ again in 2010 cedes about 1000 square km in the Pamir¶ Mountains to China, about 1 percent of Tajikistan, albeit¶ a sparsely settled area (Singh, 2011; Pannier, 2011a, 2011b).¶ Tajikistan’s government hailed this as a victory because¶ China had actually claimed some 28,000 km and settled for¶ only about 3.5 percent of its claims. Moreover, Shukhrob¶ Sharipov, Director of the Presidential Center for Strategic¶ Studies, argued that, “If we hadn’t decided to transfer the¶ land (at this time), we would not have been able to resist¶ China’s pressure” (Pannier, 2011a, 2011b). This remark¶ basically sums up the nature of Central Asian states’ relationship¶ to China.¶ This agreement clearly also conformed to the pattern we¶ have seen in China’s earlier expansionist activities vis-à-vis¶ Kazakhstan and Kyrgyzstan. Worse yet, the raw material¶ resources in the land ceded by Tajikistan allegedly equals¶ the entire Chinese investment in Tajikistan to date. Thus¶ China has allegedly recouped its investment at no cost to¶ itself and has both the land and its resources as well as¶ maintaining its investments and penetration of Tajikistan¶ (Singh, 2011). On the other hand, these deals triggered¶ a strong political backlash in all three countries against¶ China and its perceived intentions. Perhaps Tajikistan’s¶ backlash was triggered more by the fact that between 1500¶ and 2000 Chinese farmers will settle another 2000 ha of¶ land beyond the border agreement (Pannier, 2011a, 2011b).¶ According to the opposition Tajikistan is becoming¶ increasingly economically dependent on China due to its¶ large investment in the area and this causes great resentment.¶ Attacks on Chinese workers in other countries also¶ testifies to this backlash across Central Asia.¶ At the same time, we might also point to the following¶ likely developments in what presently constitutes the great¶ power rivalry for influence in Central Asia. In the current¶ configuration it is not only the great powers: US, Russia,¶ China, India, and the EU who are pursuing influence, access,¶ and leverage in Central Asia, indeed, middle ranking¶ powers: Pakistan and Iran are clearly enhancing their¶ efforts to improve relations with all the actors in Central¶ Asia as are South Korea and Japan in order to obtain¶ economic-political and possibly even strategic benefits.¶ Third, beyond these aforementioned trends, regional¶ actors like Kazakhstan and Uzbekistan have already begun¶ to take actions to shape their security environment as their¶ power and wealth grows and second, in the expectation of¶ both the US withdrawal and concurrently intensified Sino-¶ Russian pressure upon them and rivalry with each other for¶ precedence in Central Asia. Indeed, we even find Uzbekistan¶ and Kazakhstan thinking of projecting their influence¶ and power into neighboring Central Asian states like¶ Kyrgyzstan either through investments as in Kazakhstan’s¶ case or in more direct military threats and interference in¶ other states’ economic activity as we often see with Uzbekistan¶ (Weitz, 2008b). But we also find that on occasion, e.g.¶ during the Kyrgyz revolution of 2010, these two governments¶ engaged each other in substantive disussions about¶ possible reactions and power projection into Kyrgyzstan.¶ Fourth, international financial institutions (IFI) like the¶ Asian Development Bank, the World Bank, the UN and its¶ agencies like the UN Development Program (UNDP), are¶ also heavily involved in major projects and policies here.¶ Finally, and perhaps most important, as a mark of distinction¶ from the imperial past, each of the Central Asian states¶ is now a fully empowered (at least formally) state and¶ sovereign foreign policy actor. Consequently each one is¶ conducting its own version, insofar as possible, of a multivector¶ or more accurately balancing approach attempting¶ to balance all the multiple external sources of benefits to¶ them to enhance their domestic stability.¶ Therefore, based on the foregoing we can point to¶ certain likely developments regarding interstate rivalry¶ and especially great or major power rivalry and competition¶ in Central Asia for the foreseeable future. First, because the effort to define and gain control over Central Asia or at¶ least gain lasting influence over it coincides with the¶ escalation of the war in Afghanistan since 2008 the stakes¶ involved in the effort to direct the destiny of Central Asia¶ Central Asia have grown. Though the following assertion by¶ Ahmed Rashid may somewhat exaggerate the importance¶ of these stakes, from the standpoint of regional governments¶ this is actually an understatement because they¶ believe their fate is linked with that of Afghanistan. Thus¶ Rashid writes that,¶ The consequences of state failure in any single country¶ are unimaginable. At stake in Afghanistan is not just the¶ future of President Hamid Karzai and the Afghan people¶ yearning for stability, development, and education but¶ also the entire global alliance that is trying to keep¶ Afghanistan together. At stake are the futures of the¶ United Nations, the North Atlantic Treaty Organization¶ (NATO), the European Union, and of course America’s¶ own power and prestige. It is difficult to imagine how¶ NATO could survive as the West’s leading alliance if the¶ Taliban are not defeated in Afghanistan or if Bin Laden¶ remains at large indefinitely.(Rashid, 2009, p. xxxix)¶ Those stakes also involve the other states of Central Asia¶ as well since it is widely believed that a Taliban victory in¶ Afghanistan makes them a prime target for insurgency in¶ the future. Especially in the light of fears for the stability of¶ the Karzai government and the overall region in the light of¶ a US withdrawal, every state, large or small, is jockeying for¶ greater capability and power in the region and some, like¶ Uzbekistan, clearly expect both to have to project power¶ and that they will be asked to project power to neighbors to¶ preserve stability in the area after 2014. Second, as Emelian¶ Kavalski has observed, the nature of what we call the “new¶ great game,” the proliferation of actors in a continuous¶ multi-dimensional struggle for influence in Central Asia¶ precludes any one actor obtaining previous levels of¶ imperial or neo-imperial domination, though Russia still¶ tries for it, and has led to a situation where, given the¶ concurrent proliferation of actors and agents operating in¶ Central Asia,¶ The simultaneity of these two dynamics reveals that the¶ agency of external actors is distinguished not by an¶ imperial desire for the control of territory, but by the¶ establishment of ‘niches of influence.’ Consequently, the¶ notion of the ‘new great game’ comes to characterize the¶ dynamics of processing, selection and internalization of¶ some externally promoted ideas and not others. (Rashid,¶ 2009, p. xxxix).¶ Third, in view of the impending US military withdrawal¶ ssit is not clear that Washington, confronted by wrenching¶ fiscal stresses, either has the vision or the means to develop¶ or implement a coherent post-Afghanistan Central Asian¶ strategy, a vacuum could well develop there with regard to¶ the US position that will inevitably be filled by other actors.¶ Certainly there is no sign yet of what will replace the US¶ military presence after 2014 and no sign of a formal¶ document worked out with Afghanistan that delineates the¶ extent to which a US presence in the region will look like. In¶ the absence of such a policy statement every regional actor¶ is hedging its bets and preparing for the worst in the future,¶ a trend that most likely means intensified competition¶ among the great, regional, and local powers for influence in¶ Central Asia.¶

#### There’s no check on escalation- 2014 is the key year for stability- unsuccessful withdrawal makes war inevitable

Gupta 14 -- Anubhav, Asia Society, Senior Program officer for the Asia Society Policy Institute, 2014, asiasociety.org/blog/asia/2014-south-asias-make-or-break-year

2013 was a difficult year for South Asia. The year, which began portentously with the beheading of an Indian soldier, saw over 150 ceasefire violations between India and Pakistan. Violence along their border brought high-level diplomatic dialogue to a halt. There was trouble brewing inside Kashmir as well. The militancy, which had cooled considerably over the past decade, began to smolder once again. For the first time in ten years, terrorism-related deaths in the state were higher than the previous year. And Afghanistan continued to struggle with instability and weak governance, so much so that at the end of 2013 a U.S. intelligence assessment predicted an especially bleak future for the country.¶ This year could define the fate of the region for years to come. The leaders of India, Pakistan, Afghanistan, and the United States have an opportunity to secure a more stable future or risk the outbreak of greater conflict. As is often the case in South Asia, success is far from certain. Before the United States draws down its military presence in Afghanistan, it must redouble its diplomatic engagement with South Asia and pursue a regional strategy to enhance stability.¶ The Tough Road Ahead for India, Pakistan, and Afghanistan¶ With presidential elections and the end of NATO’s combat mission coming up, 2014 is perhaps most critical for Afghanistan. Unfortunately, there remains uncertainty on both fronts. After months of negotiating, the U.S. and Afghanistan finally brokered a bilateral security agreement in November, providing a legal framework for a small number of U.S. troops to remain in the country post-2014 to train, advise, and support Afghan forces as well as carry out some counterterrorism operations.¶ Shortly after the agreement was finalized, President Hamid Karzai stymied U.S. plans by deciding to delay signing the agreement until after the 2014 elections or until the U.S. agrees to certain preconditions it finds unacceptable. Though U.S. troops have largely handed off security responsibilities to the Afghan National Security Forces, there is a general consensus that a small contingent of U.S. troops is necessary to ensure stability. Military planning for the troop draw down and a limited presence post-2014 requires time. If this issue is not resolved soon, the U.S. could withdraw all troops in 2014, which could be calamitous for stability in the country.

### Contention 2- Geneva

#### The courts failure to apply Geneva to detention policy has eviscerated the conventions credibility

Gruber 11 (Aya- Professor of Law, University of Colorado Law School, 1/1, “An Unintended Casualty of the War on Terror”, http://scholarworks.gsu.edu/gsulr/vol27/iss2/12/)

As President Obama inches ever closer to embracing the “twilight zone” model of terrorism law, it would be wise to keep in mind the reputational harm the Bush administration’s war on terror caused the United States. One human rights advocate warned the Obama administration, “The results of the cases [tried in military commissions] will be suspect around the world. It is a tragic mistake to continue them.”200 More than just a source of embarrassment, there are real consequences to America’s sullied international reputation. Our experiments with “alternative” military justice not only affect our high court’s world influence, they operatively prevent the United States from assuming a leadership role in defining and defending international human rights. For example, in 2007, the Chinese government responded to the U.S. State Department’s annual human rights report by stating that America had no standing to comment on others’ human rights violations given its conduct of the war on terror. Specifically, the Chinese characterized the United States as “pointing the finger” at other nations while ignoring its “flagrant record of violating the Geneva Convention.”201 Supreme Court validation of treaty law would no doubt help repair the international reputation of the United States.202 The lesson here is about fear and missed opportunity. Guantánamo stands as a stark reminder of the great importance of international humanitarian law during times of crisis. The Geneva Conventions were the very barrier between terrorism detainees and a government regime singularly committed to national security through any means possible. Unfortunately, when international law mattered most, even the liberal Supreme Court justices avoided cementing its legal status. By contrast, Medellín, a convicted murderer, was apparently afforded the full panoply of constitutional protections, and in all likelihood, his inability to confer with consular officials did not prejudice his case. Much less was at stake, and those on the Supreme Court critical of humanitarian law impediments to waging the war on terror could fashion anti-internationalist rules with little public fanfare or liberal resistance. Consequently, although Hamdan will likely go down in history as evidence of the Court’s willingness to protect individual rights in the face of massive public fear and executive pressure, it also represents a failure to truly support the comprehensive international regime governing war-time detention, a regime in which the United States long ago vowed to participate. But all may not be lost. The Supreme Court might have another chance to rule on the status of the Geneva Conventions, and Medellín leaves some wiggle room on self-execution. If the Supreme Court is once again to be a beacon of judicial light, it must move beyond the xenophobic exceptionalism of the Bricker past and embrace the straightforward and fair principle that signed and ratified treaties are the law of the land.

#### Credible US lead of Geneva key to prevent hotspot escalation

Koh 4, dean of Yale Law School and professor of international agreement, 9/20/2004

(Harold, “On America's Double Standard,” http://prospect.org/article/americas-double-standard)

When the United States holds Taliban detainees at Guantanamo Bay, Cuba, without Geneva Convention hearings, then decries the failure of others to accord Geneva Convention protections to their American prisoners, it supports a double standard. When George W. Bush tries to “unsign” the International Criminal Court (ICC) treaty that Bill Clinton signed in 2000, yet expects other nations to honor signed treaties, he does the same. When U.S. courts ignore an International Court of Justice decision enjoining American execution of foreign nationals, even as we demand that other countries obey international adjudications that favor American interests, the United States is using its vast power and wealth to promote a double standard. In these and other instances, the United States proposes that a different rule should apply to itself than to the rest of the world. U.S. officials say that they must act to protect our security and to avoid unacceptable constraints on national prerogative. But to win the illusion of unfettered sovereignty, they are actually undermining America's capacity to participate in international affairs. Over the past two centuries, the United States has become party not just to a few treaties but to a global network of closely interconnected treaties enmeshed in multiple frameworks of international institutions. Unilateral administration decisions to bend or break one treaty commitment thus rarely end the matter; rather, they usually trigger vicious cycles of treaty violation. Repeated insistence on a double standard creates the damaging impression of a United States contemptuous of both its treaty obligations and its treaty partners, even as America tries to mobilize those same partners to help it solve problems it simply cannot solve alone -- most obviously, the war against global terrorism, but also the postwar construction of Iraq, the Middle East crisis, and the renewed nuclear militarization of North Korea. \* \* \* Historically, American administrations have tended to distance and distinguish themselves from the rest of the international community; human-rights advocates have often condemned this “American exceptionalism.” But while the promotion of double standards is indeed corrosive, not all forms of exceptional American behavior are equally harmful. America's distinctive rights culture, for example, sometimes sets it apart. Due to our particular history, some human rights, such as the norm of nondiscrimination based on race or First Amendment protections for speech and religion, have received far greater emphasis and judicial protection in the United States than in Europe. But our distinctive rights culture is not fundamentally inconsistent with universal human-rights values. Nor is America genuinely exceptional because it sometimes uses different labels to describe synonymous concepts. When I appeared before the UN Committee Against Torture in Geneva, Switzerland, to defend the first U.S. report on U.S. compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, I was asked the reasonable question of why the United States does not “maintain a single, comprehensive collation of statistics regarding incidents of torture and cruel, inhuman or degrading treatment or punishment,” a universally understood concept. My answer, in effect, was that we applied different labels, not different standards. The myriad bureaucracies of the federal government, the 50 states, and the territories did gather statistics regarding torture and cruel, inhuman, or degrading treatment, but we called that practice different things, including “cruel and unusual punishment,” “police brutality,” “section 1983 actions,” applications of the exclusionary rule, violations of civil rights under color of state law, and the like. Refusing to accept the internationally accepted term reflected national quirkiness, somewhat akin to our continuing use of feet and inches rather than the metric system. A third form of American exceptionalism, our penchant for non-ratification (or ratification with reservations) of international treaties, is more problematic -- but for the United States, not for the world. For example, it is a huge embarrassment that only two nations in the world -- the United States and Somalia, which until recently did not have an organized government -- have not ratified the international Convention on the Rights of the Child. But this is largely our loss. In no small part because of its promiscuous failure to ratify a convention with which it actually complies in most respects, the United States rarely gets enough credit for the large-scale moral and financial support that it actually gives to children's rights around the world. In my view, by far the most dangerous and destructive form of American exceptionalism is the assertion of double standards. For by embracing double standards, the United States invariably ends up not on the higher rung but on the lower rung with horrid bedfellows -- for example, such countries as Iran, Nigeria, and Saudi Arabia, the only other nations that have not in practice either abolished or declared a moratorium on the imposition of the death penalty on juvenile offenders. This appearance of hypocrisy sharply weakens America's claim to lead globally through moral authority. More important, by opposing global rules in order to loosen them for our purposes, the United States can end up -- as it has done with the Geneva Conventions -- undermining the legitimacy of the rules themselves, just when we need them most.

#### Affirmation of the conventions is key to solve eco-degredation

Wexler 8 (Lesley, Assistant Professor, Florida State University College of Law, “HUMAN RIGHTS IMPACT STATEMENTS: AN IMMIGRATION CASE STUDY,” 22 Geo. Immigr. L.J. 285, Lexis)

Enhancing our reputation for human rights compliance is especially important given current political realities. Many countries hold a declining opinion of the United States.53 The international community would welcome America’s affirmation of the continuing importance of human rights in the wake of many post-September 11th actions such as torture, extraordinary rendition, increased domestic surveillance, and harsher and more frequent detention of immigrants. Moreover, the international community would benefit from the assurance that the concept of “human rights” means more than a justification for regime change.54 American exceptionalism to human rights law angers our allies and complicates efforts to secure their cooperation.55 Not surprisingly, many countries view the United States’ silence about its own human rights failings as hypocritical.56 In particular, the international community strongly criticizes the State Department’s annual human rights reports for omitting an assessment of domestic performance as well as omitting “actions by governments taken at the request of the United States or with the expressed support of the United States . . . .”57 Human rights advocates suggest that U.S. leadership on human rights faces a severe credibility gap - for instance, other countries perceive the United States as a laggard on human rights treaty compliance in regards to migrants58 - but that repudiation of past abuses and momentum for policy changes could restore its leadership.59¶ As many have suggested, good international relations are vital to winning the War on Terror.60 Moreover, international cooperation is essential to address immigration related issues such as human trafficking. A visible commitment to migrants’ human rights might bolster the United States’ credibility when it seeks better treatment for the approximately 2 million American émigrés.61 Other international problems, such as climate change and related environmental issues, also require cooperation and leadership. An increased willingness to participate in global human rights discourse and demonstrate adherence to human rights treaties might enhance our ability to lead and participate in other arenas.

#### Environmental degradation risks extinction

Coyne 7 (Jerry and Hopi Hoekstra , \*professor in the Department of Ecology and Evolution at the University of Chicago AND Associate Professor in the Department of Organismic and Evolutionary Biology at Harvard University, New Republic, “The Greatest Dying,” 9/24, http://www.truthout.org/article/jerry-coyne-and-hopi-e-hoekstra-the-greatest-dying)

But it isn't just the destruction of the rainforests that should trouble us. Healthy ecosystems the world over provide hidden services like waste disposal, nutrient cycling, soil formation, water purification, and oxygen production. Such services are best rendered by ecosystems that are diverse. Yet, through both intention and accident, humans have introduced exotic species that turn biodiversity into monoculture. Fast-growing zebra mussels, for example, have outcompeted more than 15 species of native mussels in North America's Great Lakes and have damaged harbors and water-treatment plants. Native prairies are becoming dominated by single species (often genetically homogenous) of corn or wheat. Thanks to these developments, soils will erode and become unproductive - which, along with temperature change, will diminish agricultural yields. Meanwhile, with increased pollution and runoff, as well as reduced forest cover, ecosystems will no longer be able to purify water; and a shortage of clean water spells disaster. In many ways, oceans are the most vulnerable areas of all. As overfishing eliminates major predators, while polluted and warming waters kill off phytoplankton, the intricate aquatic food web could collapse from both sides. Fish, on which so many humans depend, will be a fond memory. As phytoplankton vanish, so does the ability of the oceans to absorb carbon dioxide and produce oxygen. (Half of the oxygen we breathe is made by phytoplankton, with the rest coming from land plants.) Species extinction is also imperiling coral reefs - a major problem since these reefs have far more than recreational value: They provide tremendous amounts of food for human populations and buffer coastlines against erosion. In fact, the global value of "hidden" services provided by ecosystems - those services, like waste disposal, that aren't bought and sold in the marketplace - has been estimated to be as much as $50 trillion per year, roughly equal to the gross domestic product of all countries combined. And that doesn't include tangible goods like fish and timber. Life as we know it would be impossible if ecosystems collapsed. Yet that is where we're heading if species extinction continues at its current pace. Extinction also has a huge impact on medicine. Who really cares if, say, a worm in the remote swamps of French Guiana goes extinct? Well, those who suffer from cardiovascular disease. The recent discovery of a rare South American leech has led to the isolation of a powerful enzyme that, unlike other anticoagulants, not only prevents blood from clotting but also dissolves existing clots. And it's not just this one species of worm: Its wriggly relatives have evolved other biomedically valuable proteins, including antistatin (a potential anticancer agent), decorsin and ornatin (platelet aggregation inhibitors), and hirudin (another anticoagulant). Plants, too, are pharmaceutical gold mines. The bark of trees, for example, has given us quinine (the first cure for malaria), taxol (a drug highly effective against ovarian and breast cancer), and aspirin. More than a quarter of the medicines on our pharmacy shelves were originally derived from plants. The sap of the Madagascar periwinkle contains more than 70 useful alkaloids, including vincristine, a powerful anticancer drug that saved the life of one of our friends. Of the roughly 250,000 plant species on Earth, fewer than 5 percent have been screened for pharmaceutical properties. Who knows what life-saving drugs remain to be discovered? Given current extinction rates, it's estimated that we're losing one valuable drug every two years. Our arguments so far have tacitly assumed that species are worth saving only in proportion to their economic value and their effects on our quality of life, an attitude that is strongly ingrained, especially in Americans. That is why conservationists always base their case on an economic calculus. But we biologists know in our hearts that there are deeper and equally compelling reasons to worry about the loss of biodiversity: namely, simple morality and intellectual values that transcend pecuniary interests. What, for example, gives us the right to destroy other creatures? And what could be more thrilling than looking around us, seeing that we are surrounded by our evolutionary cousins, and realizing that we all got here by the same simple process of natural selection? To biologists, and potentially everyone else, apprehending the genetic kinship and common origin of all species is a spiritual experience - not necessarily religious, but spiritual nonetheless, for it stirs the soul. But, whether or not one is moved by such concerns, it is certain that our future is bleak if we do nothing to stem this sixth extinction. We are creating a world in which exotic diseases flourish but natural medicinal cures are lost; a world in which carbon waste accumulates while food sources dwindle; a world of sweltering heat, failing crops, and impure water. In the end, we must accept the possibility that we ourselves are not immune to extinction. Or, if we survive, perhaps only a few of us will remain, scratching out a grubby existence on a devastated planet. Global warming will seem like a secondary problem when humanity finally faces the consequences of what we have done to nature: not just another Great Dying, but perhaps the greatest dying of them all.

#### Precautionary principle means any risk of this impact outweighs

Cerutti 7, Professor of Political Philosophy at the University of Florence, 2007  
(Furio Cerutti, “Global Challenges for Leviathan: A Political Philosophy of Nuclear Weapons and Global Warming.” Lexington Books. p. 31)

The second feature of the impasse is irreversibility, which is peculiar to the worst outcomes of global challenges and to some more ordinary issues of environmental policy as well, for example, the extinction of a species. We cannot completely undo the hole in the ozone layer (it will take decades to re­cover, even if we totally and immediately stop using chlorofluorocarbons); nor can we be confident that, after a large nuclear war, we would be able to reconstruct world society as we did after World War II. Not addressing the global challenges is not a risk that can be taken in the expectation that, if something goes wrong, we pay the price owed and go back to business as usual, or nearly as usual, as happened after Hiroshima and Chemobyl. The difference is-and this is the third aspect of the impasse-even greater, at least with regard to nuclear weapons: if something goes wrong, it could be not just "something," but everything and everyone that is doomed. Among the casualties there would probably be the very actor (humanity as a civilized species) who calculated and decided to take the risk (even if the calculation and decision were actually made by few leading members of our kind, a fact whose relevance we will soon assess). This is a circumstance that is not considered in any theory or philosophy of risk and is rather likely to outmaneuver this altogether. Whoever would counter this argument with reference to an established game like Russian roulette, should bear in mind that in this game 1. the player has something to gain, if s/he wins and does not lose her/his life (money, self-esteem, or social esteem because of her/his "courage"); 2. if s/he kills himself, s/he only kills her/himself and not others (a collective version of the game has not been proposed); 3. others (family, group) could even reap benefit from the money or the fame s/he may leave behind. None of these circumstances or opportunities apply to our risky game with lethal weapons. If we want to preserve our modem ability to rationally take risks, we should not deal with global and ultimate menaces as if they were risks to be taken. There is nothing to be gained by taking them. The unprecedented severity of the possible losses and the uncertainty in which these issues are enveloped request a different approach, which will be looked into in the last three chapters.

#### Credible US Geneva promotion solves contractor targeting- status quo makes operation collapse inevitable

Beard, 7 (Law Prof-UCLA & Former General Counsel-DOD, “The Geneva Boomerang: The Military Commissions Act of 2006 And U.S. Counterterror Operations,” 101 A.J.I.L. 56, January, Lexis)

Images depicting the mistreatment of Iraqi detainees by U.S. personnel at the Abu Ghraib prison prompted calls in the U.S. Congress for the enactment of clearer and more humane standards to govern the detention and interrogation of persons in U.S. custody. n49 While many commentators suggested that these graphic images of detainee abuse would lead to the mistreatment of captured U.S. personnel, some legal scholars have argued that the logic behind such claims is dubious. n50 In examining states' compliance with obligations under the law of war, these scholars question implicit assumptions about the conditions of symmetry and reciprocity that make such obligations genuinely self-enforcing, and enable and motivate states to keep conflicts limited. n51 Whether or not individual violations of the law of war by a state in a particular conflict produce immediate and traceable reciprocal action by other states, an act of Congress that officially attempts to reinterpret or revise key obligations under the Geneva Conventions and the law of war presents more complex and overarching law-related problems. As a powerful state with worldwide military interests, the United States has had strong incentives to participate in formulating, supporting, and strengthening the Geneva Conventions and the law of war. Beyond promoting the rule of law, encouraging the proper treatment of captured U.S personnel, and serving larger humanitarian purposes, the observance of obligations under the law of war is viewed by the U.S. military as fundamentally advancing U.S. military objectives. n52 For these reasons, the United States has generally resisted taking official actions with respect to law of war obligations and rights that would undermine the long-term American interests in maintaining the existing law of war regime. It is thus not surprising that the Bush administration has already been forced to withdraw some "aggressive" interpretations of Geneva Convention obligations in light of their potential long-term negative impact on U.S operations. For example, President Bush decided on January 18, 2002, that the Geneva Conventions were inapplicable to Afghanistan's Taliban regime [\*65] largely on the basis of memorandums from the Department of Justice arguing that it was a "failed state" or nothing more than a militant group of terrorists. n53 While accepting the Department of Justice's conclusion that he had the authority "to suspend [the Third Geneva Convention] as between the United States and Afghanistan," the president ultimately declined to exercise that authority and determined that the Geneva Conventions did apply to the conflict with the Taliban. n54 This reevaluation of the complete inapplicability of the Geneva Conventions took place in the context of memorandums to the president from the Department of State emphasizing the negative impact of such an action on long-term U.S. interests. n55 While captured Taliban fighters could properly be determined not to have fulfilled the four prerequisites of lawful belligerency and thus not to have qualified as prisoners of war (POWs), n56 the issuance of sweeping pronouncements about the inapplicability of the Geneva Conventions to foreign countries by attaching labels to those countries would undermine the overall U.S. commitment to the Conventions and serve as a dangerous precedent in future conflicts. Such actions also make little sense for the U.S. government, as it has often taken a broad view of the different types of conflicts and enemies that can give rise to demands that captured U.S. soldiers be accorded POW status. n57 At a fundamental level, unilateral revision of the Geneva Conventions by the United States undermines the credibility of the U.S. commitment to the existing Geneva regime. In an international setting that lacks effective external enforcement mechanisms, allowing the easy violation of agreements, a state may seek to send a signal of credible commitment to other states by constraining its own ability to act in ex ante legal structures, institutions, or procedures that reduce ex post incentives for such noncompliance. n58 A legislative act that restrains or makes it [\*66] costly to exercise such discretionary power and reduces the attractiveness of breaching an agreement can serve such a signaling function. n59 To the extent, however, that the MCA is perceived as unilaterally revising key obligations in the Geneva Conventions and providing the president with the discretion to issue further reinterpretations, it undermines the credible commitment of the United States to other states in the international community. n60 And to the extent that the U.S. commitment is perceived as increasingly less credible, theory suggests that other countries are unlikely to maintain the stringency of their own commitments. As for the future assertion of particular legal rights or obligations, the revisions of the Geneva Conventions officially sanctioned by the MCA may impede or estop the United States from taking legal positions that it has previously relied on to support its operations and protect its personnel from violations of the law of war. Furthermore, in adopting a statute that incorporates a flawed approach to the law of war to advance immediate U.S. objectives against terrorism, Congress may have inadvertently offered adversaries of the United States a legal model for future conflicts, with attendant negative consequences for U.S. operations and personnel. In spite of the inherent risks for the United States that are associated with unilaterally reinterpreting or revising the Geneva Conventions, the MCA nonetheless does so. By redefining the concept of combatancy, for example, the MCA may have created a particularly destructive legal boomerang. Prior to the MCA's enactment, the U.S. government had sought carefully to maintain the distinction between combatants and noncombatants, not only for the purpose of preserving key law of war principles but also in a self-interested effort to prevent large numbers of U.S. civilians and contractors who support U.S. operations from becoming legitimate targets under the law of war. This effort appears to be particularly important as private contractors assume an increasingly significant role in supporting U.S. operations in countries such as Iraq. n61 Current DoD regulations reflect considerable diligence in attempting to distinguish such contractors from combatants, in part by defining as "indirect" the role played by private contractors who provide communications support, transport munitions and other supplies, [\*67] maintain military equipment, and furnish various security and logistic services. n62 Such concerns, along with interests in attending to command-and-control issues, are reflected in DoD regulations aimed at preventing contractors from becoming too closely associated with or involved in "major combat operations" that are "ongoing or imminent." n63 Rather than expecting accredited contractors who accompany and support U.S. forces to be treated as unlawful combatants in the event that they are captured in an armed conflict, DoD regulations presume they will be entitled to POW status under the Third Geneva Convention as "[p]ersons who accompany the armed forces without actually being members thereof." n64 Such status for civilians, however, remains contingent under the Third Geneva Convention on their not actively or directly participating in hostilities. Although legal risks may be associated with any civilian activity that closely supports combat operations, the fact that a civilian contributes in some general way to the war effort or is employed by or accompanies the armed forces does not turn him into a combatant. n65 This statement has long been widely accepted as a formulation of the current rules, at least before Congress expanded the definition of combatancy in the MCA and risked confusing this extraordinarily key distinction upon which the United States has long relied. n66

#### Key to irregular warfighting

Wallace 9 – deputy head of the Department of Law at the US Military Academy prof since 2001 and a prof at the Judge Advocate General’s School of the Army from 1996-99, B.A. from Carnegie Mellon University, a JD from Seattle University School of Law, MSBA from Boston University, military law degree, specialty in contract law (Col David A., “The future use of corporate warriors with the U.S. Armed Forces: legal, policy, and practical considerations and concerns”, http://www.thefreelibrary.com/The+future+use+of+corporate+warriors+with+the+U.S.+Armed+Forces:...-a0205637482)  
It is apparent that private security contractors possess a number of these important capabilities and characteristics. In terms of attributes that would make them a force multiplier for future conflicts, private security contractors can be adaptable/tailored, precise, fast, agile, and lethal. The government, for example, can expand, shrink, and refine the contractor workforce structure very quickly by means of solicitation and statement of work process. Highly skilled contractors can be retained to execute a contract on an ad hoc basis in whatever numbers the government needs to accompany the armed forces or other government entities to address a wide ranging array of security concerns. Additionally, procurement officials may use a variety of legal authorities and contract types to award such contracts quickly and efficiently, and terminate them immediately at the conflict's end, with no back-end retirement or medical costs to the government. Within the military force structure, however, it often takes years to make significant changes. After consideration of the nature of the future security challenges (i.e., irregular, disruptive, traditional, and catastrophic), it does not take much imagination to envision how private security contractors could augment U.S. forces in a variety of scenarios. The United States could, for example, use armed contractors with the appropriate skill sets to provide a continuum of services. For example, contractor personnel could serve as peacekeepers or peacemakers (e.g., support U.S. efforts in conflicts like Darfur); locate, tag, and track terrorists; secure critical infrastructure, lines of communication, and potential high-value targets; and assist in foreign internal defense. Moreover, private security contractors could arguably be used as a constabulary force during a military occupation or during stability and support operations. Given that a number of private security firms employ highly skilled former special operations personnel, it is readily foreseeable that contractors could add value to special operations forces as they work to meet the challenges of irregular conflicts or catastrophic challenges. Furthermore, in a resource-constrained environment, private security contractors have an intuitive appeal. The government can hire the armed security contractors only when needed. Their services can be terminated at the convenience of the government when the contingency ends; contractors can also be terminated for default if they fail to perform. The contractual agreements can specify the skill sets necessary to satisfy the government's requirements. In sum, security contractors offer important capabilities and attributes that potentially make them an attractive option for future strategic planners. There are, however, significant risks and concerns associated with using private security contractors to augment the future force.

#### Extinction

Bennett 8 (12/4, John, DefenseNews, “JFCOM Releases Study on Future Threats”, http://www.defensenews.com/story.php?i=3850158, WEA)

The study predicts future U.S. forces' missions will range "from regular and irregular wars in remote lands, to relief and reconstruction in crisis zones, to sustained engagement in the global commons." Some of these missions will be spawned by "rational political calculation," others by "uncontrolled passion." And future foes will attack U.S. forces in a number of ways. "Our enemy's capabilities will range from explosive vests worn by suicide bombers to long-range precision-guided cyber, space, and missile attacks," the study said. "The threat of mass destruction - from nuclear, biological, and chemical weapons - will likely expand from stable nation-states to less stable states and even non-state networks." The document also echoes Adm. Michael Mullen, chairman of the Joint Chiefs of Staff, and other U.S. military leaders who say America is likely in "an era of persistent conflict." During the next 25 years, it says, "There will continue to be those who will hijack and exploit Islam and other beliefs for their own extremist ends. There will continue to be opponents who will try to disrupt the political stability and deny the free access to the global commons that is crucial to the world's economy." The study gives substantial ink to what could happen in places of strategic import to Washington, like Russia, China, Africa, Europe, Asia and the Indian Ocean region. Extremists and Militias But it calls the Middle East and Central Asia "the center of instability" where U.S. troops will be engaged for some time against radical Islamic groups. The study does not rule out a fight against a peer nation's military, but stresses preparation for irregular foes like those that complicated the Iraq war for years. Its release comes three days after Deputy Defense Secretary Gordon England signed a new Pentagon directive that elevates irregular warfare to equal footing - for budgeting and planning - as traditional warfare. The directive defines irregular warfare as encompassing counterterrorism operations, guerrilla warfare, foreign internal defense, counterinsurgency and stability operations. Leaders must avoid "the failure to recognize and fully confront the irregular fight that we are in. The requirement to prepare to meet a wide range of threats is going to prove particularly difficult for American forces in the period between now and the 2030s," the study said. "The difficulties involved in training to meet regular and nuclear threats must not push preparations to fight irregular war into the background, as occurred in the decades after the Vietnam War." Irregular wars are likely to be carried out by terrorist groups, "modern-day militias," and other non-state actors, the study said. It noted the 2006 tussle between Israel and Hezbollah, a militia that "combines state-like technological and war-fighting capabilities with a 'sub-state' political and social structure inside the formal state of Lebanon." One retired Army colonel called the study "the latest in a serious of glaring examples of massive overreaction to a truly modest threat" - Islamist terrorism. "It is causing the United States to essentially undermine itself without terrorists or anyone else for that matter having to do much more than exploit the weaknesses in American military power the overreaction creates," said Douglas Macgregor, who writes about Defense Department reform at the Washington-based Center for Defense Information. "Unfortunately, the document echoes the neocons, who insist the United States will face the greatest threats from insurgents and extremist groups operating in weak or failing states in the Middle East and Africa." Macgregor called that "delusional thinking," adding that he hopes "Georgia's quick and decisive defeat at the hands of Russian combat forces earlier this year [is] a very stark reminder why terrorism and fighting a war against it using large numbers of military forces should never have been made an organizing principle of U.S. defense policy." Failing States The study also warns about weak and failing states, including Mexico and Pakistan. "Some forms of collapse in Pakistan would carry with it the likelihood of a sustained violent and bloody civil and sectarian war, an even bigger haven for violent extremists, and the question of what would happen to its nuclear weapons," said the study. "That 'perfect storm' of uncertainty alone might require the engagement of U.S. and coalition forces into a situation of immense complexity and danger with no guarantee they could gain control of the weapons and with the real possibility that a nuclear weapon might be used." On Mexico, JFCOM warns that how the nation's politicians and courts react to a "sustained assault" by criminal gangs and drug cartels will decide whether chaos becomes the norm on America's southern border. "Any descent by Mexico into chaos would demand an American response based on the serious implications for homeland security alone," said the report.

### Plan

#### Plan: The United States federal judiciary should restrict the authority of the President of the United States to indefinitely detain by ruling that Third Geneva Convention Article Five rights are self-executing for those combatants found in adherence to the Third Geneva Convention.

### Contention 3- Solvency

#### A selective interpretation is key- expansive interpretations anger our allies, and erode the credibility of the treaty

CSP 2 (Center for Security Policy, Excerpts from articles written by History Profs at Oxford & Sarah Lawrence and WSJ Editorial, Worried About Civilian Casualties in the War on Terror? Don’t Allow Terrorists to Masquerade as Non-Combattants, 2/13, http://www.centerforsecuritypolicy.org/2002/02/13/worried-about-civilian-casualties-in-the-war-on-terror-dont-allow-terrorists-to-masquerade-as-non-combattants-2/)

Fortunately, in recent days, two published items have helpfully clarified the compelling reasons for the U.Sgovernment to continue rejecting appeals to call the detainees POWsThe first is an excellent White Paper by the Foundation for Defense of Democracies co-authored by Andrew Apostolou, an historian at Oxford University, and Fredric Smoler, a professor of history at Sarah Lawrence CollegeThe second appeared as an editorial in the Wall Street Journal on 11 FebruaryBoth should be required reading for everyone participating in the debate over those incarcerated at GitmoExcerpts from The Geneva Convention Is Not a Suicide Pact by Andrew Apostolou and Fredric Smoler, Foundation for the Defense of Democracy Maintaining a strict distinction between lawful combatants (conscripts, professionals, militiamen and resistance fighters) and unlawful combatants (such as bandits and terrorists) not only protects the dignity of real soldiers, it safeguards civiliansBy defining who can be subject to violence and capture, the horror of war is, hopefully, focused away from civilians and limited to those willing put themselves in the line of fire, and seek no cover other than that acquired by military skill If we want soldiers to respect the lives of civilians and POWs, soldiers must be confident that civilians and prisoners will not attempt to kill them Civilians who abuse their non-combatant status are a threat not only to soldiers who abide by the rules, they endanger innocents everywhere by drastically eroding the legal and customary restraints on killing civiliansRestricting the use of arms to lawful combatants has been a way of limiting war’s savagery since at least the Middle AgesIn addition to the legal and military practicalities, there is an obvious moral danger in setting the precedent that captured terrorists are soldiers Not only does that elevate Mohammad Atta from a calculating murderer into a combatant, it puts the IRA, ETA and the Red Brigades on a par with the Marine Corps and the French ResistanceThe U.Sis trying hard to find the most humane way to wage, and win, this warThere is no precedent for this challenge and no perfect legal model that can be taken off the shelfYet it is precisely because the U.Stakes the Geneva Convention seriously, with both its protections for combatants and the line it draws between combatants and civilians, that the U.Sis being so careful in the use of the POW labelSome of the detainees may yet be termed POWs, but restricting the Geneva Convention’s protections to those who obey its rules is the only mechanism that can make the Geneva Convention enforceable Supreme Court Justice Robert Jackson once said that the U.S Constitution is not a suicide pact Neither is the Geneva Convention If well-meaning but misguided human rights activists turn the Geneva Convention into a terrorist’s charter and a civilian’s death warrant, the result will be that it will be universally ignored, with all that implies for the future of the international rule of law Geneva Conviction Review & Outlook The Wall Street Journal, 11 February 2002 If international human rights groups had the courage of their convictions, they’d applaud President Bush’s decision last week that the Geneva Convention applies to Taliban, but not al Qaeda, fighters captured by the U.SIn doing so, he is showing more respect for the Convention than his criticsThe core purpose of the Geneva Convention is to encourage the conduct of war in a way that minimizes violence to civiliansAnother aim is to encourage respect for basic human dignities — toward civilians, combatants and captivesYet another goal is to encourage warring powers to set up chains of command to ensure that combatants are held responsible for their actionsOne of the most important ways the Convention accomplishes these goals is to require that warring parties make a distinction between combatants and civiliansSoldiers are supposed to be subject to a chain of command, wear insignia and carry their arms openly; they are required to abide by the laws of war, which forbid attacks on civiliansIf they don’t, then they’re not soldiers; they are illegal combatants, not entitled to the protections of the Convention Breaking down this distinction — as the human rights groups wish to do — would have the effect of legitimatizing terrorists and giving them more incentives to hide among civilians and go after civilian targets.

#### Application of the conventions solves credibility, roadblocks and circumvention

Feldman 13 (Noah, professor of Constitutional and International Law at Harvard, “Obama Can Close Guantanamo: Here’s How,” Bloomberg, May 7, 2013, http://www.bloomberg.com/news/2013-05-07/obama-has-leverage-to-get-his-way-on-guantanamo.html)

To deepen the argument beyond executive power, the president is also in charge of foreign affairs. Keeping the detainees at Guantanamo is very costly to international relations, since most nations see the prison there as a reminder of the era of waterboarding and abuses at the Abu Ghraib prison in Iraq. Surely the president should be able to salvage the U.S.’s reputation without being held hostage by Congress?¶ The answer from Congress would have several elements. First, Congress has the power to enact a law defining who can come into the U.S., and the American public doesn’t want the detainees in the country either for trial or in a new Supermax facility. Second, Congress has the power to declare war and could conceivably assert that this should include the right to tell the president how to treat prisoners. Then there’s the power of the purse: Congress could make things difficult by declining to authorize funds for a sui table new stateside detention facility.¶ Faced with a standoff between two branches, the system allows an orderly answer: turning to the third branch, the courts, to resolve the conflict. Since 2003, the Supreme Court has taken an interest in Guantanamo, deciding on the statutory and constitutional rights extended there, and vetting procedures for detainee hearings and trials. Along the way, it has shown an equal-opportunity willingness to second-guess the executive -- as when President George W. Bush denied hearings to detainees -- and Congress, which passed a law denying habeas corpus to the prisoners.¶ How could the court get involved? The first step would be for the Obama administration to show some of the legal self-confidence it did in justifying drone strikes against U.S. citizens or in ignoring the War Powers Resolution in the Libya military intervention. Likewise, it could assert a right of control over where the detainees should be held. And if the president’s lawyers are worried about Bush-style assertions of plenary executive power (which, for the record, didn’t concern them when it came to drones or Libya), there is a path they could follow that would hew closer to their favored constitutional style.¶ Geneva Conventions¶ The reasoning could look like this: The president’s war power must be exercised pursuant to the laws of war embodied in the Geneva Conventions. And though Guantanamo once conformed to those laws -- as the administration asserted in 2009 -- it no longer does. The conditions are too makeshift to manage the continuing prisoner resistance, and indefinite detention in an indefinite war with no enemy capable of surrendering is pressing on the bounds of lawful POW detention.¶ Congress doesn’t have the authority to force the president to violate the laws of war. Yet by blocking Obama from closing Guantanamo, that is just what Congress is doing. What’s more, he has the inherent authority to ensure that we are complying with our treaty obligations.

#### Observer effect solves circumvention- this card assumes all your empirics and warrants

Deeks 10/21 (Ashley, Ashbley Deeks served as an attorney-adviser in the Office of the Legal Adviser at the U.S. Department of State. She worked on issues related to the law of armed conflict, including detention, the U.S. relationship with the International Committee of the Red Cross, conventional weapons, and the legal framework for the conflict with al-Qaeda. Courts Can Influence National Security Without Doing a Single Thing <http://www.newrepublic.com/article/115270/courts-influence-national-security-merely-watching>)

While courts rarely intervene directly in national security disputes, they nevertheless play a significant role in shaping Executive branch security policies. Let’s call this the “observer effect.” Physics teaches us that observing a particle alters how it behaves. Through psychology, we know that people act differently when they are aware that someone is watching them. In the national security context, the “observer effect” can be thought of as the impact on Executive policy-setting of pending or probable court consideration of a specific national security policy. The Executive’s awareness of likely judicial oversight over particular national security policies—an awareness that ebbs and flows—plays a significant role as a forcing mechanism. It drives the Executive to alter, disclose, and improve those policies before courts actually review them. Take, for example, U.S. detention policy in Afghanistan. After several detainees held by the United States asked U.S courts to review their detention, the Executive changed its policies to give detainees in Afghanistan a greater ability to appeal their detention—a change made in response to the pending litigation and in an effort to avoid an adverse decision by the court. The Government went on to win the litigation. A year later, the detainees re-filed their case, claiming that new facts had come to light. Just before the government’s brief was due in court, the process repeated itself, with the Obama Administration revealing another rule change that favored the petitioners. Exchanges between detainees and their personal representatives would be considered confidential, creating something akin to the attorney-client privilege. Thus we see the Executive shifting its policies in a more rights-protective direction without a court ordering it to do so.

#### No disads- Congress removed transfer restrictions for detainees- Obama signing it proves he won’t circumvent

ACLU 12/20 (Senate Eases Transfer Restrictions for Guantánamo Detainees <https://www.aclu.org/national-security/senate-eases-transfer-restrictions-guantanamo-detainees>)

WASHINGTON – The Senate late last night passed the National Defense Authorization Act for fiscal year 2014, which will ease transfer restrictions for detainees currently held at the military detention camp at Guantánamo Bay, Cuba, most of whom have been held without charge or trial for over a decade. The bill, which passed the House of Representatives last week, cleared the Senate by a vote of 84-15. The improved transfer provisions were sponsored by Senate Armed Services Committee Chairman Carl Levin and were strongly supported by the White House and the Defense Department. "This is a big step forward for meeting the goal of closing Guantánamo and ending indefinite detention. For the first time ever, Congress is making it easier, rather than harder, for the Defense Department to close Guantánamo – and this win only happened because the White House and Defense Secretary worked hand in hand with the leadership of the congressional committees," said Christopher Anders, senior legislative counsel at the ACLU’s Washington Legislative Office. "After years of a blame-game between Congress and the White House, both worked together to clear away obstacles to transferring out of Guantánamo the vast majority of detainees who have never been charged with a crime." The current population at Guantánamo stands at 158 detainees, approximately half of whom were cleared for transfer to their home or third-party countries by U.S. national security officials four years ago. Also, periodic review boards have recently started reviews of detainees who have not been charged with a crime and had not been cleared in the earlier reviews. While the legislation eases the transfer restrictions for sending detainees to countries abroad, it continues to prohibit the transfer of detainees to the United States for any reason, including for trial or medical emergencies. "There has been a sea change on the Guantánamo issue, both in Congress and at the White House. With the president’s renewed commitment to closing it, and the support of Congress, there now is reason to hope that the job of closing Guantánamo and ending indefinite detention can get done before the president leaves office," said Anders. "As big as this win is, there is more work left to be done. The Defense Department has to use the new transfer provisions to step up transfers out of Guantánamo, and Congress needs to remove the remaining ban on using federal criminal courts to try detainees."

#### Citations on article 3 and 75 should have triggered the link to your DA’s

Tony Ginsburg et al\* 9, law prof at Chicago, “brief of international law experts as amici curiae in support of petitioners”, <http://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_08_1234_PetitionerAmCuIntlLawExperts.authcheckdam.pdf>

\*Ryan Goodman is Anne and Joel Ehrenkranz Professor of Law Professor of Politics and Sociology and Co-Chair of the Center for Human Rights and Global Justice at NYU School of Law. Oona Hathaway is Gerard C. and Bernice Latrobe Smith Professor of International Law at Yale Law School. Jennifer Martinez is Professor of Law and Justin M. Roach, Jr. Faculty Scholar at Stanford Law School. Steven R. Ratner is Bruno Simma Collegiate Professor of Law at the University of Michigan Law School. Kal Raustiala is Professor at UCLA School of Law and UCLA International Institute and Director of the UCLA Ronald W. Burkle Center for International Relations. Beth Van Schaack is Associate Professor of Law at Santa Clara University School of Law and a Visiting Scholar with the Center on Democracy, Development & The Rule of Law at Stanford University. David Scheffer is Mayer Brown/Robert A. Helman Professor of Law at Northwestern University School of Law and Director of the Center for International Human Rights. James Silk is Clinical Professor of Law at Yale Law School, where he directs the Allard K. Lowenstein International Human Rights Clinic. He is also executive director of the Law School’s Orville H. Schell, Jr. Center for International Human Rights. David Sloss is Professor of Law and Director of the Center for Global Law and Policy at Santa Clara University School of Law.

The law of war creates an independent legal obligation that the District Court be permitted to order Petitioners’ release. The law of war does not displace the obligations under the Covenant outlined above, but creates an additional international legal obligation on the United States to permit the District Court to order Petitioners’ release.10 Common Article 3 of the Geneva Conventions, which the United States has ratified, requires that detainees be treated humanely. This principle is appropriately interpreted in light of recognized customary international law that requires the release of detainees when the reason for their detention has ceased. In the case at hand, the District Court must have the authority to order the release of Petitioners, whose detention is unlawful and who pose no threat to the United States.¶ Article 3 of the Geneva Conventions – often called Common Article 3 because it appears in all four of the Geneva Conventions – requires that all persons taking no active part in the hostilities, including detainees, be “treated humanely.” Common Article 3, supra. In Hamdan v. Rumsfeld, 548 U.S. 557, 630 (2006), the Supreme Court held that Common Article 3 is legally binding on the United States and enforceable in U.S. courts

11 Common Article 3 provides that in a “conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum,” certain provisions. Common Article 3, supra. Among these provisions is the requirement that “[p]ersons taking no active part in the hostilities, including . . . those placed hors de combat by . . . detention . . . shall in all circumstances be treated humanely.” Id. (second emphasis added).¶ The obligation that detained civilians be “treated humanely” must be read in light of Article 75 of Protocol I to the Geneva Conventions, see Article 75, supra. Article 75, which is “indisputably part of the customary international law,” 548 U.S. at 634 (plurality opinion),12 provides that all detainees held in connection with armed conflict “shall be released with the minimum delay possible

and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.” Article 75, supra, § 3 (emphasis added).13¶ Although the United States has not ratified Protocol I, the Protocol’s status as customary international law renders it an appropriate interpretive tool for the Court. See Hamdan, 548 U.S. at 633 (plurality opinion) (noting that Common Article 3 “must be understood to incorporate at least the barest of those trial protections that have been recognized by customary international law,” many of which are “described in Article 75 of Protocol I”). Under Article 75, civilians initially detained because they were thought to pose a security risk must be released as soon as it is clear that they pose no such risk. This reading of Common Article 3 in light of Article 75 is consistent with the conclusions of a 2005 study on Customary International Humanitarian Law by the International Committee of the Red Cross, which concludes that as a matter of treaty law, “arbitrary deprivation of liberty is not compatible” with humane treatment under Common Article 3. See Int’l Comm. Red Cross, I Customary International Humanitarian Law 344 (Jean-Marie Henckaerts & Louise DoswaldBeck eds., 2007).¶ State Department Legal Advisers have repeatedly stated that the fundamental guarantees expressed in Article 75 are part of the law of war.14¶ While serving as Legal Adviser to President George W. Bush, William H. Taft, IV wrote that the “customary law notion of fundamental guarantees found more expansive expression in Article 75 of Additional Protocol I to the Geneva Conventions” and that the United States “does regard the provisions of Article 75 as an articulation of safeguards to which all persons in the hands of an enemy are entitled.” William H. Taft, IV, The Law of Armed Conflict After 9/11: Some Salient Features, 28 Yale J. Int’l L. 319, 321-22 (2003). His successor, John Bellinger, argued for a public statement recognizing Article 75 as customary international law binding on the United States, noting in the process that U.S. practice conforms to Article 75. See Letter from John B. Bellinger, III, Legal Adviser, Dep’t of State, to William J. Haynes, II, Gen. Counsel, Dep’t of Def. (Jan. 16, 2008) (on file with the Yale Law School Library). These Legal Advisers were reaffirming a position declared more than two decades ago under then-Deputy Legal Adviser Michael Matheson. See Michael J. Matheson, The United States Position on the Relation of Customary International Law to the 1977 Protocols Additional to the 1949 Geneva Conventions, 2 Am. U. J. Int’l L. & Pol’y 419, 427 (1987) (“We support in particular the fundamental guarantees contained in article 75. . . .”). It is therefore appropriate to interpret the binding legal obligations on the United States under Common Article 3 in light of Article 75’s obligation to release detainees as soon as the reason for their detention has ceased.¶ The United States’ obligation under Common Article 3 to ensure the courts have the authority to order release of detainees when there is no lawful basis for detention can be enforced by this Court through the habeas statute. Section 2241 expressly provides that habeas relief is available where detention is contrary to U.S. treaty obligations. 28 U.S.C. § 2241(c)(3) (2006) (noting that writ extends to prisoners held “in custody in violation of the Constitution or laws or treaties of the United States”); see Mali v. Keeper of the Common Jail, 120 U.S. 1, 17 (1887) (holding that because a “treaty is part of the supreme law of the United States,” the power to issue writs of habeas corpus applies to prisoners held in violation of treaties). At a minimum, Common Article 3 should be used to interpret the domestic habeas corpus statute. See Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64, 118 (1804).

#### That only leaves the affs application- trails in regular courts are key

Ratner, 8 (Law Prof-Michigan, “Think Again: Geneva Conventions,” 2/19, http://www.foreignpolicy.com/articles/2008/02/19/think\_again\_geneva\_conventions?page=0,6)

“The Geneva Conventions Are Obsolete” Only in the minor details. The laws of armed conflict are old; they date back millennia to warrior codes used in ancient Greece. But the modern Geneva Conventions, which govern the treatment of soldiers and civilians in war, can trace their direct origin to 1859, when Swiss businessman Henri Dunant happened upon the bloody aftermath of the Battle of Solferino. His outrage at the suffering of the wounded led him to establish what would become the International Committee of the Red Cross, which later lobbied for rules improving the treatment of injured combatants. Decades later, when the devastation of World War II demonstrated that broader protections were necessary, the modern Geneva Conventions were created, producing a kind of international “bill of rights” that governs the handling of casualties, prisoners of war (POWs), and civilians in war zones. Today, the conventions have been ratified by every nation on the planet. Of course, the drafters probably never imagined a conflict like the war on terror or combatants like al Qaeda. The conventions were always primarily concerned with wars between states. That can leave some of the protections enshrined in the laws feeling a little old-fashioned today. It seems slightly absurd to worry too much about captured terrorists’ tobacco rations or the fate of a prisoner’s horse, as the conventions do. So, when then White House Counsel Alberto Gonzales wrote President George W. Bush in 2002 arguing that the “new paradigm” of armed conflict rendered parts of the conventions “obsolete” and “quaint,” he had a point. In very specific—and minor—details, the conventions have been superseded by time and technology. But the core provisions and, more crucially, the spirit of the conventions remain enormously relevant for modern warfare. For one, the world is still home to dozens of wars, for which the conventions have important, unambiguous rules, such as forbidding pillaging and prohibiting the use of child soldiers. These rules apply to both aggressor and defending nations, and, in civil wars, to governments and insurgent groups. The conventions won’t prevent wars—they were never intended to—but they can and do protect innocent bystanders, shield soldiers from unnecessary harm, limit the physical damage caused by war, and even enhance the chances for cease-fires and peace. The **fundamental bedrock** of the conventions is to prevent suffering in war, and that gives them a legitimacy for anyone touched by conflict, anywhere and at any time. That is hardly quaint or old-fashioned. “The Conventions Don’t Apply to Al Qaeda” Wrong. The Bush administration’s position since Sept. 11, 2001, has been that the global war on terror is a different kind of war, one in which the Geneva Conventions do not apply. It is true that the laws do not specifically mention wars against nonstate actors such as al Qaeda. But there have always been “irregular” forces that participate in warfare, and the conflicts of the 20th century were no exception. The French Resistance during World War II operated without uniforms. Vietcong guerrillas fighting in South Vietnam were not part of any formal army, but the United States nonetheless treated those they captured as POWs. So what treatment should al Qaeda get? The conventions contain one section—Article 3—that protects all persons regardless of their status, whether spy, mercenary, or terrorist, and regardless of the type of war in which they are fighting. That same article prohibits torture, cruel treatment, and murder of all detainees, requires the wounded to be cared for, and says that **any trials** must be conducted by regular courts respecting due process. In a landmark 2006 opinion, the U.S. Supreme Court declared that at a minimum Article 3 applies to detained al Qaeda suspects. In other words, the rules apply, even if al Qaeda ignores them. And it may be that even tougher rules should be used in such a fight. Many other governments, particularly in Europe, believe that a “war” against terror—a war without temporal or geographic limits—is complete folly, insisting instead that the fight against terrorist groups should be a law enforcement, not a military, matter. For decades, Europe has prevented and punished terrorists by treating them as criminals. Courts in Britain and Spain have tried suspects for major bombings in London and Madrid. The prosecutors and investigators there did so while largely complying with obligations enshrined in human rights treaties, which constrain them far more than do the Geneva Conventions.

# 2AC

## Geneva

### 2AC China

#### No China threat

Eland ‘13 (Ivan Eland, Senior Fellow and Director of the Center on Peace & Liberty at The Independent Institute, Ph.D. in Public Policy from George Washington University. He has been Director of Defense Policy Studies at the Cato Institute, and he spent 15 years working for Congress on national security issues, including stints as an investigator for the House Foreign Affairs Committee and Principal Defense Analyst at the Congressional Budget Office. He also has served as Evaluator-in-Charge (national security and intelligence) for the U.S. General Accounting Office (now the Government Accountability Office), “Threat From China Is Being Hyped”, http://original.antiwar.com/eland/2013/06/04/threat-from-china-is-being-hyped/, June 5, 2013)

Articles in the American media usually portray China as a potential adversary, and recent press coverage is no exception. Stories have appeared about China’s military hacking into the computer systems of the American government and business and Chinese oil companies’ reaping of unfair gains in Iraq on the backs of dead American soldiers. Yet the threat from China in the popular American mind instilled by such articles is overblown. Undoubtedly, the U.S. military and intelligence services also attempt to hack into Chinese computer systems; this unseemly fact is glossed over by the usually nationalist American media. Even if Chinese military espionage is taken in isolation, it indicates that the Chinese realize a technological gap exists between China and the West and that they are having trouble developing technologies themselves. Similarly, the same conclusions could be reached about the much-ballyhooed Chinese purchase of Russian military equipment. In contrast, the United States develops its own military technologies, and they are the best in the world. Although Chinese defense spending has been growing at a double digit annual pace for a while now, China’s military started from only a low base. Chinese yearly defense spending is still only a fifth of that of the United States and the results of that annual disparity have [has] accumulated over many years in a vastly superior U.S. military force. Also, much of China’s recent increases in defense spending have been spent increasing military pay to keep people from defecting to the white-hot civilian economy and converting a Maoist people’s land army into one more designed to project power from China’s coasts using air and sea power. Both of these requirements have constrained the purchase of new weaponry. Even so, China has made gains in its ability to project power, recently obtaining a small, old Ukrainian aircraft carrier. Yet carrier operations take a long time to master, and China is still very limited in its power projection capability. Also, China’s imitation of the United States in emphasis on carrier forces could be ill advised. In any naval war, carriers may very well prove vulnerable to submarines using cruise missiles and torpedoes. To the extent that pursuing carriers has an opportunity cost for the Chinese in forgoing more of those potent sea-denial forces, it may lessen China’s ability to defend itself against U.S. carriers. China’s sea-denial forces make up any real threat to the all-in U.S. force of 11 large deck carriers. But of course this threat is to the American Empire, not the United States itself. The U.S. carrier-heavy force is deployed far forward in East Asia to contain China and protect allies, such as Japan, Taiwan, South Korea, and Australia. Those wealthy allies should be doing more to provide their own security but will never do so as long as the United States provides the first line of defense. Japan already has a stronger navy than China and could do much more if it spent more of its large GDP on defense. As for Taiwan, being an easily defended island nation (amphibious assaults are notoriously difficult), it doesn’t need to match China dollar for dollar on defense spending but merely needs to adopt a porcupine strategy by being able to deter the same by inflicting unacceptable damage on the attacker. Finally, an American retraction of its defense perimeter to Hawaii and Guam would undoubtedly motivate these four nations, plus others in the region such as the Philippines and Vietnam, to band together in an alliance to be the first line of defense against China. Because China’s ability to project military power is so limited, the fears that China is expanding in Africa and the Middle East are fanciful. For example, recent press articles have implied that Chinese state-owned oil companies have exploited the American invasion of Iraq to win oil contracts from the Iraqi government. Because they don’t have to satisfy private shareholders, those companies can accept low profit margins on oil contracts that Western companies, such as Exxon, cannot. To some neoconservatives, such as Victor Davis Hanson, such failure of America to economically exploit its military empire is praiseworthy; to other imperialists, it is merely foolish. In any event, such Chinese commercial penetration is little threat to the United States and may actually be of some help. Because a worldwide oil market exists and any new petroleum being produced anywhere lowers the price for everyone, Chinese state-owned companies may be indirectly subsidizing U.S. oil consumers by bringing to market oil deposits that would be uneconomical for private firms to find and pump. Of course, implicitly, a worldwide oil market would also obviate the need for the military forces of the United States, China, or any other nation to “secure” oil. In my award-winning book No War for Oil: U.S. Dependency and the Middle East, I explain why it is cheaper to just pay higher prices caused by any disruption of Middle Eastern oil than to pay for forward-deployed military forces to attempt to prevent this rare occurrence. In conclusion, the Chinese “threat” is being dragged out and hyped to attempt to forestall cuts in U.S. security budgets, not because it severely undermines American security.

## T

### 2AC JSPEC

#### We meet- SCOTUS would have to review the aff to apply I-law to domestic law- that’s Feldman- 2AC specification is sufficient given it doesn’t change the link to your DA’s- yes normal means

#### Counterinterp- Federal Judiciary is the judiciary of the United States which is responsible for interpreting and enforcing federal laws- that’s a Quote from Free-dictionary.com

(http://www.thefreedictionary.com/Federal+Judiciary)

Federal Judiciary - the judiciary of the United States which is responsible for interpreting and enforcing federal laws

judicatory, judicial system, judiciary, judicature - the system of law courts that administer justice and constitute the judicial branch of government

federal court - a court establish by the authority of a federal government

#### Prefer it:

#### 1) Court education- creates an undue burden on courts affs that congress affs don’t- creates a topic shift that ignores half the topic which kills topic education

#### 2) Aff ground- shifts debates to process CP’s based on different court rulings which forces us to find comparative solvency deficits to each CP

#### 3) No impact to your offense- there is no solvency implication- all cases are the same, there is no object fiat, this is how courts work- no non-abusive mechanism- only saying SCOTUS ignores how the law works

#### Good is good enough- the negative must prove we don’t meet a good version of the topic, not that we don’t meet the best. Literature and substantial checks their offense- especially true given our aff is core of the topic

### T

#### We meet-

#### 1) post-plan detention is no longer indefinite since detainees have trails- which effectively prohibits that war power- we don’t rule on immigration that is CX

#### 2) Ruling on the Geneva Conventions is a restriction

Wolensky 9 (Spring, 2009¶ Chapman Law Review¶ 12 Chap. L. Rev. 721¶ LENGTH: 10495 words Comment: Discretionary Sentencing in Military Commissions: Why and How the Sentencing Guidelines in the Military Commissions Act Should be Changed\* \* This article was initially written and published when the state of military commissions were in flux. It reflects the events regarding military commissions up to and through April 2009. However, an important decision was made by President Obama in May of 2009. See William Glaberson, Obama Considers Allowing Please by 9/11 Suspects, N. Y. Times, June 6, 2009, at A1, A12. Obama decided to continue the use of military commissions under a new set of rules which provide more protections for detainees. Id. Due to the timing of publication, this decision is not incorporated in this article. Although Obama has decided to continue the military commissions, he has not finalized a set of rules. Id. This article serves as a recommendation for changes to the rules of the Military Commissions Act, which Congress and the Obama Administration should consider. NAME: Brian Wolensky\*\*)

One of the main treatises included in the Law of War is the Third Geneva Convention, which was enacted in 1949 to regulate the treatment of prisoners of war**.** [n31](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.719762.7040113385&target=results_DocumentContent&returnToKey=20_T17977639921&parent=docview&rand=1376739692140&reloadEntirePage=true#n31) The Law of War places restrictions on the way certain countries can act during times of warand the United States is bound by it when it establishes and uses military commissions. [n32](http://www.lexisnexis.com/lnacui2api/frame.do?tokenKey=rsh-20.719762.7040113385&target=results_DocumentContent&returnToKey=20_T17977639921&parent=docview&rand=1376739692140&reloadEntirePage=true#n32)

#### 3) we only rule on article five- their violation is based on article 11 they are different- here’s article five text in case you where wondering:

<http://www.icrc.org/ihl/WebART/375-590008?OpenDocument>

The present Convention shall apply to the persons referred to in Article 4 [ Link ] from the time they fall into the power of the enemy and until their final release and repatriation.

Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in Article 4 [ Link ] , such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal.

#### Evidence depicts two different things- 11 and 5

#### Counter-interpretation- indefinite detention is detaining an arrested person without trail that’s a quote from

US LEGAL 13 (<http://definitions.uslegal.com/i/indefinite-detention/>, “Indefinite Detention”)

Indefinite detention is the practice of detaining an arrested person by a national government or law enforcement agency without a trial. It may be made by the home country or by a foreign nation. Indefinite detention is a controversial practice, especially in situations where the detention is by a foreign nation. It is controversial because it seema to violate many national and international laws. It also violates human rights laws.

#### Using the convention meets the restriction

Barron 8 (Professor of Law, Harvard Law School, Harvard Law Review, January 2008, Retrieved 6/1/2013, Lexis/Nexis)

2. Armed Conflict Against Terrorist Organizations and Preexisting Framework Statutes. - Beyond this general executive trend, certain central features of the current military conflict against al Qaeda help to create the conditions for constitutional battles over the legal status of statutory (and treaty-based) limitations that apply to the war on terrorism. Important in this regard is the fact that in most traditional wars, the Executive has perhaps had less reason to feel unduly constrained [\*713] by extant statutory and treaty-based regulations on his treatment of the enemy, in part because many such restrictions (such as those in multilateral treaties) have, at least nominally, merely put the nation on common ground with its enemies with respect to the methods of battle and the treatment of prisoners.

#### Prefer that:

#### Precision- our evidence is the common legal definition of the word- they read generic definitions that don’t mention war powers- that turns their predictability offense.

#### Aff ground- they limit us to four affs, kills innovation and rigids the game in the negs favor

#### 3- I law education- they preclude discussion of international affs which is core aff ground on a war power topic

#### Good is good enough- the negative must prove we don’t meet a good version of the topic, not that we don’t meet the best. Literature and substantial checks their offense- especially true given our aff is core of the topic

#### No impact to extra-T- it’s inevitable because teams will add planks to plans and it increases your PIC ground- we don’t have release offense don’t vote on potential abuse

## CP

### Deficits

#### Doesn’t solve aff- two different CP flaws- non- selfexecution- have to say it supercedes domestic authority kt authority

#### Self-execution ruling is key- the CP maintains squo perceptions of the US as isolationit

Friedman, 5

(JD-University of Florida Law, “The Uneasy US Relationship with Human Rights Treaties: The Constitutional Treaty System and Non-Self-Execution Declarations,” 17 Fla. J. Int'l L. 187, March, Lexis)

E. Policy Arguments Against Nonself-Execution Declarations: The International Implications

Regardless of whether the constitutional arguments against nonself-execution declarations pass muster, the practice of attaching them to human rights treaties is an integral part of the blatantly protectionist U.S. foreign policy on human rights. n418 Routinely using nonself-execution declarations communicates to other nations that the United States does not take its international human rights obligations seriously enough to allow them to take effect as domestic law. n419 It also undermines the foreign policy justifications for ratifying human rights treaties in the first place - most fundamentally, the motivation to serve as an example to other nations. n420 Nonself-execution declarations render the human rights treaties to which they are attached empty promises, because the terms of those treaties do not effect any change in U.S. domestic law. n421 The United States thus [\*251] is seen by other nations as seeking the benefits of human rights treaties - most importantly, membership in the organizations that oversee them - without assuming any of the burdens. n422 The practice of using nonself-execution declarations reflects an attitude that human rights treaties are only for other nations, not for the United States. n423 The U.S. foreign policy on human rights promotes a double standard, whereby the United States seeks to enforce international human rights law against other nations but is unwilling to have its own practices subjected to international regulation and scrutiny. n424 On one hand, the United States [\*252] played a leading role in establishing the United Nations and drafting the UDHR and other human rights treaties. n425 It also frequently expresses concern about human rights violations around the world and sometimes uses economic or military pressure to induce nations to improve their human rights practices. n426 Moreover, U.S. domestic law reflects a fundamental commitment to domestic human rights protection. n427 On the other hand, the United States has an uneasy relationship with human rights treaties and institutions. n428 The United States only occasionally ratifies human rights treaties, n429 and when it does, it attaches nonself-execution declarations without fail. n430 Furthermore, after declaring the treaties nonself-executing, it enacts the necessary implementing legislation erratically, if at all. n431 The root of this double standard lies in U.S. unilateralism, exceptionalism, and isolationism. n432 At the heart of those beliefs are two [\*253] related ideas: first, that human rights in the United States are "alive and well" and do not need scrutiny from other nations whose human rights protections are much less so; n433 and second, that the U.S. government, especially U.S. courts, would take human rights obligations much more seriously than would other governments. There are four basic foundations of this "pervasive sense of cultural relativism, ethnocentrism, and nationalism" n434 in the United States: the U.S. superpower status in world affairs, n435 the exceptional stability of democratic governance inside its borders, n436 the "general conservatism" of its politics, n437 and the decentralized and divided nature of its political institutions. n438 Nonself-execution declarations reflect this nationalistic sense of superiority and communicate a "refusal to consider the possibility that change may potentially bring improvement rather than deterioration" to domestic human rights protections. n439 To a somewhat lesser extent, the foundation of the human rights double standard also lies in the differences between U.S. constitutional rights and international human rights. n440 First, American constitutional rights focus [\*254] on the democratic form of government more specifically than do international rights. n441 Second, American constitutional rights are natural rights, and refer back to ideas that are European - rather than universal - in nature. n442 Other nations are becoming increasingly frustrated with U.S. foreign policy on human rights and with U.S. domestic human rights practices. n443 This widespread criticism damages the U.S. credibility in foreign human rights policy. n444 It also undercuts the U.S. foreign policy motivations for ratifying human rights treaties in the first place, especially the desire to serve as an example to other nations. n445

## Add-On’s

### Ozone

#### Plan’s treaty co-op is key to solve extinction from ozone depletion

Gareau 13 (Brian J. Gareau is an Assistant Professor of Sociology and International Studies at Boston College.

Whatever Happened to Ozone Layer Politics?

http://www.e-ir.info/2013/01/29/whatever-happened-to-ozone-layer-politics/)

The Montreal Protocol on Substances that Depletes the Ozone Layer (1997) is arguably the most successful global environmental agreement ever created. The ozone layer is the Earth’s sunscreen, absorbing up to 99 per cent of the sun’s ultraviolet (UV) radiation. Without it, life on earth would not exist. The Montreal Protocol was created to eliminate human-made chemicals that destroy the ozone layer, what we call “ozone-depleting substances” (ODSs). ODSs destroy the ozone layer, thus allowing more UV radiation to hit the surface and increasing skin cancer and skin disease rates, eye cataracts, damage to the immune system, and sunburn in humans and other animals. The Protocol sought to put a halt to such harmful effects, chiefly to rid the world of chlorofluorocarbons, or CFCs. The most famous ozone holes occur over the Antarctic. In 2006, an Antarctic ozone hole reached a record 11.4 million square miles wide, larger than all of North America. While it mostly covers uninhabited land, the Antarctic ozone hole does reach some populated areas in South America as it is quite mobile. The Arctic hole, a newer phenomenon, has a potentially larger impact on humans. The 2011 Arctic ozone hole moved from the North Pole into Scandinavia and Greenland. The World Meteorological Organization cautioned habitants to protect themselves from the strong UV rays. Parts of Canada and Russia have also been affected lately. It is possible that “ozone depleted air” will move south with the Arctic polar vortex, potentially reaching northern Italy, New York, and San Francisco. The US Environmental Protection Agency estimates that increased UV exposure will lead to “150 million cases of skin cancer and three million deaths during the course of the 21st century at an economic cost of $6 trillion.”[1] Beyond skin cancer, reduced ozone has also been shown to “increase rates of malaria and other infectious diseases.”[2] According to the American Cancer Society, in 2010 in the US alone more than 1 million new cases of skin cancer were expected, 68,000 of which would be melanoma. The odds of contracting melanoma increased from 1:250 to 1:84 over the last quarter century. By the age of 70, 2/3 of Australians will be diagnosed with skin cancer, accounting for “80% of all new cancers diagnosed each year in Australia.”[3] More than 1,000 people in Australia are treated for skin cancer daily. In southern Chile, where ozone layer thinning is extreme, skin cancer rates have escalated 66 per cent since 1994. UV radiation also contributes to genetic disorders – especially in small aquatic species and amphibians. While plants require solar energy to photosynthesize, too much UV radiation stunts plant growth and can lead to a decrease in yields for important crops. Additionally, more UV radiation creates other economic costs by accelerating the degradation of materials such as plastics, paints, and rubber. ODSs such as CFCs were used as early on as the late nineteenth century, when they became chief ingredients for fire extinguishers. By the 1970s, 200,000 metric tons of CFCs were used in aerosols annually in the US alone. Soon after, it became increasingly evident that CFCs had a major side-effect: they depleted the ozone layer. CFC and other ODSs are being eliminated through the Montreal Protocol because these and other ODSs threaten life on earth. Today, every single country on the planet has ratified the Montreal Protocol. Since the Montreal Protocol first entered into force in 1989, CFC levels in the atmosphere have declined. Scientific research predicts that, without the Montreal Protocol, by 2050 even the middle latitudes of the Northern Hemisphere would have lost half of their ozone layer, and the Southern Hemisphere would have lost 70 percent. As Jonathan Shanklin of the British Antarctic Survey put it, the Montreal Protocol “is working. We can quite clearly see that the amount of ozone-destroying substances in the atmosphere is declining.”[4] Because of the high level of compliance and cooperation among countries, it is no exaggeration to state that the Montreal Protocol is the most successful global environmental treaty ever created. Montreal versus Kyoto: Insights for the Climate Regime? Many scholars working in global environmental governance have rightly welcomed the unparalleled successes of the Montreal Protocol. Many believe that the Protocol contains all the ingredients necessary for any successful global environmental regime: scientific consensus and good networking among those scientists; cooperative nation-states willing to put global health ahead of national concerns; and an involved global civil society. Global climate change, we are told, presents an obvious example where the successes of the Montreal Protocol may shed light on global treaties such as the Kyoto Protocol, where attempts at real action to thwart climate change remain stalled. Recognizing that the Montreal Protocol arose out of specific circumstances, many ozone scholars maintain that it is possible that those circumstances could be duplicated in other global environmental treaties. However, if we look at the Montreal Protocol in its more recent past, we can see that it has suffered significantly from major setbacks that more closely resemble the ruinous state of global climate change politics than the flourishing early days of ozone politics. Comparisons could even be made between the Climate Gate scandal, where climatologists were accused by climate skeptics of “acting political” by manipulating climate data, and the Montreal Protocol, where ozone scientists were also accused of “acting political” and manipulating MeBr data by the US government. Urgency regarding global environmental challenges like global climate change has only grown over the years. This even applies to the ozone situation today. In 2011 the BBC reported on how “ozone depletion is often viewed as an environmental problem that has been solved,” but much uncertainty remains with regards to ozone layer recovery, especially since climate change science is so complicated and interconnected with the ozone layer.[5] “The ozone layer remains vulnerable to large depletions because total stratospheric chlorine levels are still high, in spite of the regulation of ozone-depleting substances by the Montreal Protocol” warns Paul Newman, an atmospheric scientist at NASA’s Goddard Space Flight Center.[6] Today, interest groups attempting to hold back global and regional environmental governance appear to be up against a growing wall of scientific evidence that humans are having serious negative effects on the global environment. Ironically, at such a moment of heightened environmental awareness, the Montreal Protocol entered its own moment of uncertainty.

### Water Wars

#### Credible human rights promotion allows for cooperation that solves water wars- convention ruling is key

Varma, 13 (Director of Robert F. Kennedy Center for Justice and Human Rights, 9/9, “Wòch nan soley: The denial of the right to water in Haiti,” http://www.hhrjournal.org/2013/09/09/woch-nan-soley-the-denial-of-the-right-to-water-in-haiti/)

In addition to protections in domestic law, **the right to water is** also **recognized in international** **law**. International and regional human rights bodies and national and international courts have interpreted the right to water as being an implicit part of other human rights, such as the right to life, the right to health, the right to an adequate standard of living, the right to food, the right to housing, and the right to education.117 These rights have **been enshrined in** both UN and regional **human rights instruments**, several of which have been **ratified by** Haiti and the United States. Both Haiti and the United States have ratified the International Covenant on Civil and Political Rights (ICCPR), which protects, inter alia, the right to life. Both have signed the International Covenant on Economic, Social and Cultural Rights (ICESCR), which includes, inter alia, the right to housing, food, health, and an adequate standard of living.118 The right to water is also protected under other international instruments. These instruments are useful indicators of norms accepted by the international community and reflect evidence of political will to make access to water a priority. The provisions in some international instruments have obtained the status of customary international law and thus create legal obligations for states. Customary international law is derived from a clear consensus among states as to a legal rule, which is evidenced by widespread conduct by states accompanied by a sense of legal obligation to adhere to such rule, known as opinio juris.119 The UN Committee on Economic, Social and Cultural Rights (ESCR Committee) has found that the minimum core of the main economic, social, and cultural rights has become customary international law and is thus binding on all states, regardless of whether they have signed or ratified treaties protecting those rights. Many scholars support this position.120 The right to life is further protected by customary international law, and as a necessary component of the right to life, the right to water is thus implicitly protected by customary international law.121 International instruments that may reflect customary international law and that protect the right to water, either explicitly or implicitly, include the Universal Declaration of Human Rights, the Declaration on the Right to Development, and the Millennium Development Goals.122 States’ treaty-based obligations to secure Haitians’ right to water As the situation in Haiti makes clear, **legal rights provide no real protection for individuals without corresponding responsibilities, and the responsibility for fulfilling rights is an integral part of all legal rights**. Generally, the government of each state bears the primary responsibility to ensure the protection and achievement of human rights for those on its territory or otherwise under its jurisdiction. A state’s human rights obligations also apply when it acts as part of a multilateral or international organization, such as the UN or the World Bank.123 Thus, members of the international community bear a measure of legal responsibility. The case of water in Haiti is **directly relevant to the issue of international human rights law as codified in treaties** and under customary international law. When a state signs a treaty, the state is required to refrain from any action that would contradict the object and purpose of the treaty, and when a state ratifies a treaty, the state thereby accepts the duties contained within the treaty and is required to immediately take positive steps to realize the rights contained in the treaty.124 Even if a state has neither signed nor ratified a human rights treaty, it has certain obligations under customary international law, which protects fundamental human rights and in general applies to all states. Types of duties Human rights treaties generally specify three different kinds of duties relating to the rights set out in the treaty. The first is the obligation to respect, meaning that governments must refrain from interfering directly or indirectly with an individual’s enjoyment of rights. The second is the obligation to protect, meaning that governments must prevent the violation of human rights by other actors. States’ actions to protect include actions that prevent individuals, companies, or other entities from violating individuals’ human rights, and also actions to investigate and punish such violations if they occur. And the third duty is the obligation to fulfill, meaning that governments must adopt whatever measures are necessary to achieve the full realization of human rights for all. Thus, governments are required to provide subsidies, services, or other direct assistance to the most vulnerable and needy members of a society when they cannot otherwise access their rights. Obligations of the government of Haiti In accordance with these treaty-based obligations and customary international law, the Haitian government is responsible for guaranteeing and fulfilling the human rights of everyone in Haiti.125 Haiti is a party to the ICCPR, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child, the Organization of American States (OAS) Charter, and the American Convention on Human Rights; it is thus responsible for all the obligations found within each of these treaties. The Haitian government has signed, but not yet ratified, the ICESCR and the Protocol of San Salvador, both of which enumerate many of the rights at issue in this article; thus, these treaties do not strictly bind the government of Haiti. However, as a signatory, Haiti has an obligation to refrain from actions that will frustrate the object and purpose of these treaties.126 Furthermore, given that the Haitian Constitution protects the rights to health and food, the Haitian government has an obligation to ensure the satisfaction of — at the very least — minimum essential levels of each of these rights, of which access to water is an integral component. All Haitians, as rights-holders, have a particular set of entitlements, and the Haitian state, as the primary duty-bearer, has a particular set of obligations. Haitians who cannot access even the most basic forms of these entitlements are being deprived of their constitutional economic and social rights and their rights under treaties guaranteeing basic civil and political rights, such as the right to life, personal liberty, and security.127 The Haitian Constitution requires the Haitian government to recognize and protect Haitians’ rights to health, decent housing, education, and food.128 Because the right to water is an important component of these rights, the Haitian government has a responsibility to ensure the full realization of the right to water through national legislation and policies. A national water strategy should elaborate how the right to water is to be realized and should include concrete goals, policies, and a time frame for implementation.129 Obligations of the international community While the government of Haiti is the primary guarantor of Haitians’ rights, the international community also has obligations.130 Human rights treaty obligations apply not only within the territory of the ratifying state, but also apply to states’ behavior outside of their borders, through the concept of jurisdiction, and to states’ actions as members of the international community.131 This means that states must protect the human rights of all individuals within their territory or under their jurisdiction and **ensure that their actions at the international level are in compliance with their human rights obligations**.132 With respect to the right to water, this means that states must “refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries.”133 The following brief summary of international obligations relevant to Haiti illustrates the importance of this factor in discussing Haitians’ right to water. Two types of state action are most pertinent to the denial of the right to water in Haiti: 1) when states act individually on the international level, and 2) when they act as members of international organizations, particularly international financial institutions (IFIs). The Maastricht Guidelines, developed to clarify which state actions constitute violations of economic, social, and cultural rights, assert that states’ duties to protect human rights extend to their “participation in international organizations, where they act collectively.”134 When authorized by member states, IFIs can take actions that may help fulfill human rights, such as financing the construction of the infrastructure needed to deliver and treat water. Alternatively, actions by IFIs may hinder the enjoyment of human rights, through, for example, requiring governments to minimize social programs or privatize core services as a precondition to receipt of grants or loans. IFI actions in such cases may interfere with the target state’s ability to fulfill human rights obligations.135 To effectively ensure the realization of the right to water, member states must be held accountable for the actions that they take, through IFIs, that have a direct impact on the human rights of individuals located outside their territory.136 At a minimum, member states must abide by their duty to respect human rights in their actions as members of IFIs.137 The ESCR Committee — responsible for interpreting and monitoring compliance with the ICESCR — has determined that states are bound by human rights obligations when acting as members of IFIs.138 With regard to the right to water, the Committee notes that “States parties that are members of international financial institutions, notably the International Monetary Fund (IMF), the World Bank, and regional development banks, should take steps to ensure that the right to water is taken into account in their lending policies, credit agreements and other international measures.”139 This statement further stipulates that “water should never be used as an instrument of political and economic pressure.”140 The majority of members of the World Bank Group and IMF (including the United States) are party to the ICCPR, which can be **seen as providing protections of the right to water as an element of the right to life, a right central to the ICCPR**.141 Also, since the ICESCR has been ratified by the majority of major IFI state members and all European Union countries, these states are obligated to comply with its provisions. The United States has not ratified the ICESCR, but it has signed the treaty, and thus must refrain from acting in a manner that would frustrate the object and purpose of the treaty.142 Many IDB member states are also members of the OAS, through which states may ratify regional treaties, including the American Convention and the Protocol of San Salvador, that protect economic and social rights. Moreover, the minimum core content of the key economic and social rights is regarded as customary international law, binding even non-ratifying states such as the United States. Thus, the action taken by the United States in blocking IDB development loans earmarked for water projects in Haiti is a **direct violation of** the **U**nited **S**tates’ **human rights obligations**.143 In this case, the United States actively impeded the Haitian state’s ability to fulfill Haitians’ human right to water through its actions, breaching its duty to respect. Such blatant frustration of the object and purpose of the human rights treaties to which the United States is a signatory or a state party is a clear violation of international law. Recommendation: Adopt a rights-based approach This article has documented the disastrous consequences of the IDB’s extended failure to disburse loans earmarked for water projects in Haiti. It has demonstrated how these actions directly impeded the Haitian government’s ability to respect, protect, and fulfill its citizens’ right to water. While the government of Haiti is primarily responsible for ensuring this right, other key actors, such as IFIs, foreign states, nongovernmental organizations, and private companies also have a role in solving Haiti’s water crisis. To ensure a sustainable solution, we recommend that all of these actors, in addition to the Haitian government, adopt a rights-based approach to the development and implementation of water projects. Such an approach would enhance the Haitian government’s ability to deliver these services and the Haitian population’s right to access safe and sufficient water. This section provides a brief explanation of a rights-based approach to development and its implications for water security in Haiti. A rights-based approach A rights-based approach to development is a conceptual framework that is based on international human rights law and methodology.144 It integrates the norms, standards, and principles of international human rights law into the plans, policies, and processes of development. A rights-based approach to development is based on five principles. First, a human rights-based approach shifts the language of development from charity to empowerment, viewing the beneficiary of development assistance as the owner of a right. The duty-bearer has a responsibility to develop access to the relevant rights to the rights-holder. Second, a rights-based approach considers the indivisibility and interdependence of interrelated rights (civil, cultural, economic, political, and social), recognizing that a policy affecting one right will necessarily have an impact on the others.145 Third, a rights-based approach requires non-discrimination and attention to vulnerable groups; that is, groups historically excluded from the political process and prohibited access to basic services must receive particular attention. Fourth, a rights-based approach to development ceases to be about charity and instead is about duty-bearers’ accountability to human rights obligations. In this case, accountability falls primarily on the government of Haiti, but also on the actions of donor states and private actors (for example, those providing public services) as they have obligations in particular situations. Transparency is crucial to increasing accountability.146 Finally, a rights-based approach requires duty-bearers to ensure a high degree of participation from communities, civil society, minorities, indigenous peoples, women, and other marginalized groups. Such participation must be active, free, and meaningful and must occur at each level of the development process.147 Measures to address and reduce structural participation inequalities or disadvantages may require appropriate preferential treatment to vulnerable and disadvantaged groups. Transparency is, again, essential. A rights-based approach to water projects in Haiti A rights-based approach to developing the water sector in Haiti requires all actors to incorporate each of these principles into their work. For example, effective participation requires that community members be involved in all efforts to improve the water situation. They should be consulted during the development of water projects, especially on issues such as water source, availability, sanitation precautions, time frames for implementation, water cost, and water quality. There must be regular consultations with the community during project development. Community members must have easy access to ongoing project information during implementation — for example, via posters, meetings, and radio programs. Such participation would help to ensure that water projects are empowering the Haitian people as rights-holders and that the projects are adequately and accurately meeting their needs. A rights-based approach also requires transparency of all efforts and actors involved in developing and implementing water projects in Haiti. There are several means to achieving this transparency. For example, since the government does not yet have the capacity to effectively regulate the private sector, groups responsible for water distribution or sale should also be responsible for regularly checking the safety of sources used for drinking water and publicizing test results. In addition, all water providers should report regularly on the status of projects, providing, at a minimum, information about available project funds, monies spent, specific timelines for implementation and completion, and any changes to original implementation plans. International entities might include mechanisms for transparency in their work in Haiti by providing readily-available public documentation of project status, including expenditures. Finally, a rights-based approach requires that each implementing entity has a clear and accessible accountability mechanism (or mechanisms) through which communities can report project problems. In Haiti’s case, this should include mechanisms for redress from all actors, including international organizations, states, IFIs, NGOs, and private entities. These mechanisms need to be locally focused and easily accessible, and they should have built-in transparency so that community members can follow the status of grievances or complaints and keep the public aware of their outcomes. Accountability also lies with the government, which should build internal accountability mechanisms into its national water strategy, with identifying benchmarks to measure the extent to which the right to water is being realized. The right to water has been compromised in Haiti for too long. **A rights-based approach is an essential strategy in the successful implementation and monitoring of** sustainable development projects, including **water projects**. While the government of Haiti is obligated to implement a rights-based approach, all entities involved in the development and implementation of water projects can contribute to fulfilling Haitians’ human rights by adopting this framework.

#### Outweighs their impacts- guarantees extinction

Barlow 8—National chairperson of The Council of Canadians. Co-founder of the Blue Planet Project. Chairs the board of Washington-based Food & Water Watch and is also an executive member of the San Francisco–based International Forum on Globalization and a Councillor with the Hamburg-based World Future Council. She is the recipient of eight honorary doctorates. Served as Senior Advisor on Water to the 63rd President of the United Nations General Assembly (Maude, The Global Water Crisis and the Coming Battle for the Right to Water, 25 February 2008, http://www.fpif.org/articles/the\_global\_water\_crisis\_and\_the\_coming\_battle\_for\_the\_right\_to\_water)

The three water crises – dwindling freshwater supplies, inequitable access to water and the corporate control of water – pose the greatest threat of our time to the planet and to our survival. Together with impending climate change from fossil fuel emissions, the water crises impose some life-or-death decisions on us all. Unless we collectively change our behavior, we are heading toward a world of deepening conflict and potential wars over the dwindling supplies of freshwater – between nations, between rich and poor, between the public and the private interest, between rural and urban populations, and between the competing needs of the natural world and industrialized humans. Water Is Becoming a Growing Source of Conflict Between Countries Around the world, more that 215 major rivers and 300 groundwater basins and aquifers are shared by two or more countries, creating tensions over ownership and use of the precious waters they contain. Growing shortages and unequal distribution of water are causing disagreements, sometimes violent, and becoming a security risk in many regions. Britain’s former defense secretary, John Reid, warns of coming “water wars.” In a public statement on the eve of a 2006 summit on climate change, Reid predicted that violence and political conflict would become more likely as watersheds turn to deserts, glaciers melt and water supplies are poisoned. He went so far as to say that the global water crisis was becoming a global security issue and that Britain’s armed forces should be prepared to tackle conflicts, including warfare, over dwindling water sources. “Such changes make the emergence of violent conflict more, rather than less, likely,” former British prime minister Tony Blair told The Independent. “The blunt truth is that the lack of water and agricultural land is a significant contributory factor to the tragic conflict we see unfolding in Darfur. We should see this as a warning sign.” The Independent gave several other examples of regions of potential conflict. These include Israel, Jordan and Palestine, who all rely on the Jordan River, which is controlled by Israel; Turkey and Syria, where Turkish plans to build dams on the Euphrates River brought the country to the brink of war with Syria in 1998, and where Syria now accuses Turkey of deliberately meddling with its water supply; China and India, where the Brahmaputra River has caused tension between the two countries in the past, and where China’s proposal to divert the river is re-igniting the divisions; Angola, Botswana and Namibia, where disputes over the Okavango water basin that have flared in the past are now threatening to re-ignite as Namibia is proposing to build a threehundred- kilometer pipeline that will drain the delta; Ethiopia and Egypt, where population growth is threatening conflict along the Nile; and Bangladesh and India, where flooding in the Ganges caused by melting glaciers in the Himalayas is wreaking havoc in Bangladesh, leading to a rise in illegal, and unpopular, migration to India.

## LOAC

### 2AC LOAC DA

#### Blurring between the LOAC and human rights law inevitable- ICJ

Ryan Goodman 10, “CONTROLLING THE RECOURSE TO WAR BY MODIFYING JUS IN BELLO”, http://ssrn.com/abstract=1666198

3.1 Type I erosion: Humanitarian interventions and other wars of choice 3.1.1 Taxing humanitarian intervention: should higher standards apply? Historically, the greatest challenge to the separation principle has been rooted in a normative proposition that parties fighting for a just cause should benefit from a relaxed application of jus in bello rules that might hinder their ability to win the war or repel an attack.10 A new challenge to the separation principle emerges from a different ambition. It suggests in some circumstances heightening jus in bello rules for states fighting for certain just causes. Notably, an erosion of the line in the former case helped set the stage for the latter. That is, the source of a major challenge to the separation of jus ad bellum and jus in bello was, quite surprisingly, the International Court of Justice. And the Court’s position lent support to other threats to the regime.¶ In the Nuclear Weapons Advisory Opinion, the ICJ cast doubt on the separation principle. The Court concluded that the threat or use of nuclear weapons ‘would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law’.11 The Court then stated that it ‘cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake’.12 In other words, the Court left open the possibility that jus in bello rules would be relaxed when a state acts to defend itself from an existential military threat – to protect sovereign interests that the international community accepts as a core foundation of the global legal order. When a state resorts to force for other – less privileged or less valued – purposes, a higher level of jus in bello applies.13

#### Legal uncertainty is already hurting clarity and effectiveness

Wolff Heintschel von Heinegg 11, Prof of Public International Law at the Europa-Universität Viadrina in Frankfurt, Germany, “Asymmetric Warfare: How to Respond?” International Law Studies - Volume 87

There may be situations, however, that do not qualify as an armed conflict even though armed forces are engaged inmilitary operations against “asymmetric actors.” While the law of armed conflict will not be applicable in such circumstances, this does not mean that public international law is silent on the matterFor instance, counter-piracy operations are governed by the law of the sea or, as in the case of piracy off the coast of Somalia, by applicable UN Security Council resolutions.2 Very often international human rights law—though contained in a regional convention— will play an important role.3 Counterterrorism operations may also be based onUN Security Council resolutions or on the inherent right of self-defense.4 It needs to be emphasized with regard to the latter, however, that States have not yet agreed upon the criteria that give rise to the rightBecause of the variety of regimes thatmay be applicable, the armed forces deployed to counterterrorism operations all too often lack the legal clarity and legal security that are of vital importance for the success of contemporary military operations.

#### Judicial intervention on LOAC application to detention is inevitable – a wave of lawsuits is on the way

Chesney 13, Law Prof at UT

(November, Robert, BEYOND THE BATTLEFIELD, BEYOND AL QAEDA: THE DESTABILIZING LEGAL ARCHITECTURE OF COUNTERTERRORISM, 112 MichLRev163)

The government will not be able to simply ride out the legal friction generated by the fragmentation of al Qaeda and the shift toward shadow warThose trends do not merely shift unsettled questions of substantive law to the forefront of the debate; they also greatly increase the prospects for a new round of judicial intervention focusing on those substantive questions1Military Detention Consider military detention firstFresh judicial intervention regarding the substantive law of detention is a virtual certaintyIt will come in connection with the lingering Guantanamo population, and it will come as well in connection with any future detainees taken into custody on a long-term basis, regardless of where they might be heldaExisting Guantanamo Detainees Most of the existing Guantanamo detainees have already had a shot at habeas relief, and many lost on both the facts and the lawBut some of them can and will pursue a second shot, should changing conditions call into question the legal foundation for the earlier rulings against themn202 The first round of Guantanamo habeas decisions depended in almost every instance on the existence of a meaningful tie to ongoing hostilities in Afghanistan, as did the Supreme Court's 2004 decision in HamdiIndeed, Justice O'Connor in Hamdi was at pains to caution that at some point in the future this baseline condition making LOAC relevant could unraveln203 The declining U.Srole in combat operations in Afghanistan goes directly to that pointThis decline will open the door to a second wave of Guantanamo litigation, with detainees arguing that neither LOAC nor the relevant statutory authorities continues to applyThis argument may or may not succeed on the meritsAt first blush, the NDAA FY12 would seem to present a substantial obstacle to the detaineesThat statute expressly codifies detention authority as to members (and supporters) of al Qaeda, the Afghan Taliban, and "associated forces," n204 thus grounding detention authority directly in domestic law rather than requiring courts to impute such authority into the 2001 AUMF by implication from LOAC (as the Supreme Court had to do in [\*214] Hamdi itself)But it is not quite so simpleThe same section of the NDAA FY12 relinks the question of detention authority to LOAC after allIt specifies that statutory detention authority as an initial matter exists solely "pending disposition under the law of war." n205 And although it then lists long-term military detention as a possible disposition option, the statute specifically defines this authority as "detention under the law of war without trial until the end of the hostilities authorized by the [AUMF]." n206 A court confronted with this language might interpret it in a manner consistent with the government's borderless-conflict position, such that the drawdown in Afghanistan would not matterBut it might notThe repeated references to the "law of war" in the statute--that is to LOAC--might lead at least some judges to conduct a fresh field-of-application analysis regarding the extent to which LOAC remains applicable in light of the drawdown, and judges might then read the results back into the NDAA FY12I am not saying that this is the likely outcome or that any such analysis would necessarily reject the government's borderless-conflict positionI am just saying that judges eventually will decide these matters without real guidance from Congress (unless Congress clarifies its intentions in the interim)Note, too, that any such judicial interpretations may well have far broader implications than just the fate of the particular detainee in question; a ruling that LOAC has no application in a given situation would cast a long shadow over any other LOAC-based actions the U.Sgovernment might undertake in the same or similar contexts (including targeting measures)Regardless of what occurs in Afghanistan, the existing Guantanamo detainee population might also find occasion to come back to court should the decline of the core al Qaeda organization continue to the point where it can plausibly be described as defunctIn such a case, it is likely that at least some current al Qaeda detainees would revive their habeas petitions in order to contend that the demise of the organization also means the demise of detention authority over members of the defunct groupThis argument would be particularly likely to come from those who were held on the ground of membership in al Qaeda but who the government had not shown to have been otherwise involved in hostile actsThis would be a challenging argument to make; the government would surely respond that al Qaeda would no longer be defunct if some of its members were set freeBut setting that possible response aside, such a petition could compel the government to litigate the question of whether the continuing existence of various "franchises," like AQAP or al-Shabaab, suffices to preserve detention authority over al Qaeda membersThat is, such a challenge could lead a judge to weigh in on the organizational boundary question.

#### TK makes the impact inevitable and outweighs the aff- there is a reason this is a Georgetown advantage

Craig Martin, Associate Professor of Law at Washburn University School of Law, 2011, GOING MEDIEVAL: TARGETED KILLING, SELFDEFENSE AND THE JUS AD BELLUM REGIME, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=1956141

The United States has been engaging in this practice of using drone-mounted missile systems to kill targeted individuals since at least 2002.98 An increasing number of countries are developing drone capabilities, and other countries have employed different methods of targeted killing that constitute a use of force under jus ad bellum.99 The evidence suggests that the United States intends to continue and indeed expand the program, and there is a growing body of scholarly literature that either defends the policy’s legality, or advocates adjustment in international law to permit such action. There is, therefore, a real prospect that the practice could become more widespread, and that customary international law could begin to shift to reflect the principles implicit in the U.S. justification andin accordance with the rationales developed to support it**.**¶ Some of the implications of such an adjustment in the jus ad bellum regime are obvious from the foregoing analysis. As discussed, there would be a rejection of the narrow principle of self-defense in favor of something much closer to the Grotian concept of defensive war, encompassing punitive measures in response to past attacks and preventative uses of force to halt the development of future threats. The current conditions for a legitimate use of force in self-defense, namely the occurrence or imminence of an armed attack, necessity, and proportionality, would be significantly diluted or abandoned. Not only the doctrine of self-defense, but other aspects of the collective security system would be relaxed as well. Harkening back to Grotian notions of law enforcement constituting a just cause for war, the adjusted jus ad bellum regime would potentially permit the unilateral use of force against and within states for the purpose of attacking NSAs as such, in effect to enforce international law in jurisdictions that were incapable of doing so themselves.100 This would not only further undermine the concept of self-defense, but would undermine the exclusive jurisdiction that the U.N. Security Council currently has to authorize the use of force for purposes of “law enforcement” under Chapter VII of the Charter. Thus, both of the exceptions to the Article 2(4) prohibition on the use of force would be expanded.¶ In addition, however, the targeted killing policy threatens to create other holes in the jus ad bellum regime. This less obvious injury would arise from changes that would be similarly required of the IHL regime, and the resulting modifications to the fundamental relationship between the two regimes. These changes could lead to a complete severance of the remaining connection between the two regimes. Indeed, Ken Anderson, a scholar who has testified more than once on this subject before the U.S. Congress,101 has advocated just such a position, suggesting that the United States should assert that its use of force against other states in the process of targeted killings, while justified by the right to self-defense, does not rise to such a level that it would trigger the existence of an international armed conflict or the operation of IHL principles.102 If customary international law evolved along such lines, reverting to gradations in the types of use of force, the change would destroy the unity of the system comprised of the jus ad bellum and IHL regimes, and there would be legal “black holes” in which states could use force without being subject to the limitations and conditions imposed by the IHL regime.¶ The structure of Harold Koh’s two-pronged justification similarly implies a severance of this relationship between jus ad bellum and IHL, albeit in a different and even more troubling way. His policy justification consists of two apparently independent and alternative arguments—that the United States is in an armed conflict with Al Qaeda and associated groups; and that the actions are justified as an exercise of self-defense. The suggestion seems to be that the United States is entitled on either basis to use armed force not just against the individuals targeted, but also against states in which the terrorist members are located. In other words, the first prong of the argument is that the use of force against another sovereign state, for the purposes of targeting Al Qaeda members, is justified by the existence of an armed conflict with Al Qaeda. If this is indeed what is intended by the policy justification, it represents an extraordinary move, not just because it purports to create a new category of armed conflict (that is, a “transnational” armed conflict without geographic limitation),103 but because it also suggests that there need be no jus ad bellum justification at all for a use of force against another state. Rather, the implication of Koh’s rationale is that the existence of an armed conflict under IHL can by itself provide grounds for exemption from the prohibition against the threat or use of force under the jus ad bellum regime.¶ This interpretation of the justifications cannot be pressed too far on the basis of the language of Mr. Koh’s speech alone, which he hastened to explain at the time was not a legal opinion.104 The two justifications could be explained as being supplementary rather than independent and alternative in nature. But the conduct of the United States in the prosecution of the policy would appear to confirm that it is based on these two independent justifications.105 The strikes against groups and states unrelated to the 9/11 attacks could be explained in part by the novel idea that force can be used against NSAs as such, wherever they may be situated. But even assuming some sort of strict liability for states in which guilty NSAs are found, that explanation still does not entirely account for the failure to tie the use of force against the different groups to specific armed attacks launched by each such group. This suggests that the United States is also relying quite independently on the argument that it is engaged in an armed conflict with all of these groups, and that the existence of such an armed conflict provides an independent justification for the use of force against the states in which the groups may be operating.¶ While the initial use of force in jus ad bellum terms is currently understood to bring into existence an international armed conflict and trigger the operation of IHL, the changes suggested by the policy would turn this on its head, by permitting the alleged existence of a “transnational” armed conflict to justify the initial use of force against third states. Whereas the two regimes currently operate as two components of an overall legal system relating to war, with one regime governing the use of force and the other the conduct of hostilities in the resulting armed conflict, the move attempted by the U.S. policy would terminate these independent but inter-related roles within a single system, and expand the role and scope of IHL to essentially replace aspects of the jus ad bellum regime. This would not only radically erode the jus ad bellum regime’s control over the state use of force, but it could potentially undermine the core idea that war, or in more modern terms the use of force and armed conflict, constitutes a legal state that triggers the operation of special laws that govern the various aspects of the phenomenon. There is a risk of return to a pre-Grotian perspective in which “war” was simply a term used to describe certain kinds of organized violence, rather than constituting a legal institution characterized by a coherent system of laws designed to govern and constrain all aspects of its operation.¶ There is a tendency in the U.S. approach to the so-called “global war on terror” to cherry-pick principles of the laws of war and to apply them in ways and in circumstances that are inconsistent with the very criteria within that legal system that determine when and how it is to operate. This reflects a certain disdain for the idea that the laws of war constitute an internally coherent system of law.106 In short, the advocated changes to the jus ad bellum regime and to the relationship between it and the IHL regime, and thus to the laws of war system as a whole,107 would constitute marked departures from the trajectory the system has been on during its development over the past century, and would be a repudiation of deliberate decisions that were made in creating the U.N. system after the Second World War.108¶ The premise of my argument is not that any return to past principles is inherently regressive. A rejection of recent innovations in favor of certain past practices might be attractive to some in the face of new transnational threats. The argument here is not even to deny the idea that the international law system may have to adapt to respond to the transnational terrorist threat. The point, rather, is that the kind of changes to the international law system that are implicit in the targeted killing policy, and which are advocated by its supporters, would serve to radically reduce the limitations and constraints on the use of force

by states against states. The modern principles that are being abandoned were created for the purpose of limiting the use of force and thus reducing the incidence of armed conflict among nations. The rejection of those ideas and a return to older concepts relating to the law of war would restore aspects of a system in which war was a legitimate tool of statecraft, and international armed conflict was thus far more frequent and widespread.109¶ The entire debate on targeted killing is so narrowly focused on the particular problems posed by transnational terrorist threats, and how to manipulate the legal limitations that tend to frustrate some of the desired policy choices, that there is insufficient reflection on the broader context, and the consequences that proposed changes to the legal constraints would have on the wider legal system of which they are a part. It may serve the immediate requirements of the American government, in order to legitimize the killing of AQAP members in Yemen, to expand the concept of self-defense, and to suggest that states can use force on the basis of a putative “transnational” armed conflict with NSAs. The problem is that the jus ad bellum regime applies to all state use of force, and it is not being adjusted in some tailored way to deal with terrorism alone. If the doctrine of self-defense is expanded to include preventative and punitive elements, it will be so expanded for all jus ad bellum purposes. The expanded doctrine of self-defense will not only justify the use of force to kill individual terrorists alleged to be plotting future attacks, but to strike the military facilities of states suspected of preparing for future aggression. If the threshold for use of force against states “harboring” NSAs is significantly reduced, the gap between state responsibility and the criteria for use of force will be reduced for all purposes. If the relationship between jus ad bellum and IHL is severed or altered, so as to create justifications for the use of force that are entirely independent of the jus ad bellum regime, then states will be entitled to use force against other states under the pretext of self-proclaimed armed conflict with NSAs generally.¶ We may think about each of these innovations as being related specifically to operations against terrorist groups that have been responsible for heinous attacks, and applied to states that have proven uniquely unwilling or unable to take the actions necessary to deal with the terrorists operating within their territory. But no clear criteria or qualifications are in fact tied to the modifications that are being advanced by the targeted killing policy. Relaxing the current legal constraints on the use of force and introducing new but poorly defined standards, will open up opportunities for states to use force against other states for reasons that have nothing to do with anti-terrorist objectives. Along the lines that Jeremy Waldron argues in chapter 4 in this volume,110 more careful thought ought to be given to the general norms that we are at risk of developing in the interest of justifying the very specific targeted killing policy. Ultimately, war between nations is a far greater threat, and is a potential source of so much more human suffering than the danger posed by transnational terrorism. This is not to trivialize the risks that terrorism represents, particularly in an age when Al Qaeda and others have sought nuclear weapons. But we must be careful not to undermine the system designed to constrain the use of force and reduce the incidence of international armed conflict, in order to address a threat that is much less serious in the grand scheme of things.¶

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#### Their impact defense will be outdated

Stratfor 12 (Stratfor, “Central Asia’s Looming Conflict Over Water, Part 2: The Downriver Countries”, 11/13)

Even before Kyrgyzstan and Tajikistan began their recent push to build hydroelectric dams along Central Asia's two main rivers, downriver countries were coping with water scarcity challenges caused by increased demand and inefficient agricultural practices. Adjusting irrigation techniques in Kazakhstan, Turkmenistan and Uzbekistan could partially mitigate these problems, but political and economic difficulties in these countries -- especially the latter two -- appear likely to stymie any progress. The persistence of water competition in Central Asia has already increased regional tensions and could eventually escalate to armed conflict if the situation goes unaddressed. Analysis Shared but limited water resources are always potential catalysts for regional disputes, especially if those resources are mismanaged. However, the developing conflict involving the Aral Sea basin is unique due to its relatively recent emergence since the fall of the Soviet Union -- an event that left Central Asian countries to resolve such issues on their own without mandates from Moscow for the first time in nearly a century. Origins of the Scarcity Issue During the Soviet era, the Amu Darya and the Syr Darya rivers, which feed into the Aral Sea, were tapped for irrigation. The two rivers are sourced largely from snowmelt and glacial thaw in the mountains of Tajikistan and Kyrgyzstan, keeping flows from the rivers' headwaters relatively consistent over the past 50 years. However, large-scale irrigation schemes geared toward cotton production have prevented water from reaching the Aral Sea, causing its volume to decrease by about 75 percent since the 1960s. The future appears even more uncertain. Reliable environmental information about the region is difficult to acquire, since many monitoring stations fell into disrepair after the collapse of the Soviet Union. Still, there appears to be consensus that temperatures in the region are rising slightly, a change that could cause the glaciers to melt at a faster rate than previously recorded and reduce the annual average river flow by 15 percent or more by 2050. While it is impossible to know with any certainty whether the glaciers will retreat as predicted, demand from downstream countries is projected to increase. Agriculture -- the sector that consumes the most water -- continues to use inefficient irrigation methods; more than 50 percent of allocated water is lost to evaporation or seepage into the ground in improperly lined irrigation canals. Despite ongoing concerns about water scarcity, agriculture remains an important part of the economies of downstream states. Uzbekistan, in particular, depends heavily on continued cotton production. The country is one of the world's top 10 cotton exporters and the crop is one of Uzbekistan's largest sources of revenue from exports. Uzbekistan uses more water from the Aral Sea basin for irrigation than any other country in Central Asia, directing it mainly to the Fergana Valley. However, this area is particularly vulnerable to strife because its borders are arranged in a way that exacerbates the region's numerous ethnic and clan divisions -- another legacy of the Soviet era.

### Unsus

#### Chinese soft power is unsustainable- countries will limit dependence

**Bremmer 11-27**-13 [Ian Bremmer, PhD in political science from Stanford, president and founder of Eurasia Group, the leading global political risk research and consulting firm, global research professor at New York University, “China’s Limited Influence,” http://www.nytimes.com/2013/11/28/opinion/chinas-limited-influence.html]

Even in America, just 47 percent told Pew they believe the United States will remain in that role, and the survey was conducted before Washington’s recent shutdown hardened opinions about America’s political dysfunction.¶ But although China’s economic influence is growing — it is now the lead trade partner for 124 countries, compared to just 76 for the United States — its power to influence other nations is slight. It has achieved little of what policymakers call “capture,” a condition in which economic or security dependence of one country on another allows the more powerful to drive the other’s policy making.¶ Only in countries like North Korea, Cambodia and Laos does China have that kind of heft; in North Korea, for example, China provides 90 percent of the country’s energy and 80 percent of its consumer goods. But these are not the sorts of allies that help an emerging power extend its influence.¶ Based on the size of their commercial relationships with China as a share of their overall economies, the governments next closest to “China capture” are Pakistan and Myanmar. But Beijing’s reluctance to undermine improving relations with India or to become more deeply implicated in Pakistan’s chaotic domestic politics will prevent a closer embrace. Myanmar is moving away from China on its own. Its recent political and economic opening signals an effort to better diversify its international partners to avoid too deep a dependence on Beijing.¶ There are other countries where China wields extraordinary economic influence (Sudan, Angola and the Democratic Republic of Congo) or political clout (Iran, Syria and Venezuela). The former are too corrupt for many Western governments to do business with, and lousy relations with the United States force the latter to look for powerful friends.¶ Russia needs a deep-pocketed customer for its oil and gas, but commercial and political competition with China in the former Soviet states that lie between them, and traditional Russian paranoia over Chinese emigration into sparsely populated Siberia, will prevent a full embrace.¶ In fact, the economic vulnerability and political brittleness in these countries might one day compound weaknesses inside China. As party officials undertake the reforms needed to create a dynamic economy driven by Chinese consumer purchasing power, reliance on commercial and political ties with basket-case countries can be a dangerous thing. That’s because such countries pull partners into their crises, where security and economic risks outweigh any possible benefit from the relationship. China wants a stable Korean peninsula, but Pyongyang’s unpredictable bluster often creates the opposite.¶ Over time, China’s trade and investment relations with key trading partners that hold strategic value like Germany, Brazil, Saudi Arabia and Indonesia might allow Beijing greater influence in their policy making decisions. That kind of clout would lead to direct political and economic benefits: China would win access to commodities, profit-making opportunities for its companies and an increase in its international political leverage vis-à-vis the United States and Europe. Germany in particular could give China a stable foothold into European markets and a means of better aligning European economic policy with Chinese preferences; countries like Brazil, Saudi Arabia and Indonesia provide China with much much-needed commodities. China is already second only to the United States as Germany’s leading non-European export market. It replaced the United States as Brazil’s largest trade partner in 2009. In the Middle East, China is fast becoming the No. 1 source of energy demand for nearly every producer in the region and investing heavily in regional infrastructure to support supply routes.¶ Yet, all these countries have reasons to limit their dependence on China, the United States or any other single power. Even in China’s backyard, emerging powers like Indonesia, Thailand and Vietnam will continue to forge new economic ties with Beijing, but they still hope an expanded U.S. presence in Asia will help them hedge against too great a reliance on China’s good will.¶ In today’s media-driven world, soft power is another crucial element of superpower influence. Yet, beyond the inaccessibility of China’s language for most foreigners and their indifference to its social trends, China’s political and economic systems have little appeal in other countries. Its state capitalist economic model attracts political leaders looking to build wealth and micromanage markets, but it offers little for ordinary citizens.¶ War-weary Americans and their distracted political leaders are less interested in responsibilities overseas, creating a vacuum of international leadership. But for better and for worse, neither China nor anyone else appears ready and able to fill America’s superpower shoes.

### Link

#### China won’t treat power as zero-sum

**Ji ’13** [You, Associate Professor at UNSW Australia, Reader in the School of Social Sciences at the University of New South Wales, “PLA Transformation and Global Power Shift,” 10-6-13, <http://blogs.nottingham.ac.uk/chinapolicyinstitute/2013/10/06/pla-transformation-and-global-power-shift/>]

This trend may have pointed to a potential outcome in international politics in the coming decades: deepening power shift would one day end unipolarity both globally and in the Asia-Pacific region. Traditionally US allies and partners draw great comfort from the unipolar world order and from absolute U.S. military superiority. When these gradually give way to something different, it inflicts a visible level of uncertainties among their leaders and people alike. For instance this anxiety underlined Australia Defense White 2009 that unprecedentedly named China as the source of Australian security concern and much annoyed Chinese authorities.¶ Xi Jinping tried to convince Obama in their Sunnylands Ranch summit that China’s rise would not mean to challenge U.S. global leadership. Although historically rise and fall of major powers are seldom peaceful, Beijing is determined not to allow power shift to become zero-sum. In China’s view absolute U.S. superiority is not an attribute to peace, and its effort to reduce it to a relative one is not a cause for war either. Let us hope this is the historical destiny.

#### Nobody thinks china is credible on human rights- ZERO TRADE OFF

**Huang ‘13** [Chin-Hao Huang, Ph.D. Candidate and a Russell Endowed Fellow in the Political Science and International Relations (POIR) Program at the University of Southern California (USC). Until 2009, he was a researcher at the Stockholm International Peace Research Institute (SIPRI) in Sweden. He specializes in international security and comparative politics, especially with regard to China and Asia, and he has testified before the Congressional U.S.-China Economic and Security Review Commission on Chinese foreign and security policy, “China’s Soft Power in East Asia: A Quest for Status and Influence?” <http://dornsife.usc.edu/assets/sites/451/docs/Huang_FINAL_China_Soft_Power_and_Status.pdf>]

More notably, in an article published in an internally circulated foreign affairs journal, a specialist ¶ opined that the “appreciation of Chinese culture and interest in learning Chinese language would not ¶ automatically increase…support for or understanding of China’s policy. It is impossible to ascertain ¶ to what degree we can achieve our political objectives by projecting our cultural soft power.”27 This ¶ negative outlook mirrors the views of Chinese policy elites and officials in a recent forum on soft ¶ power and China’s public relations convened at Fudan University. In his keynote address to the forum ¶ participants, Wang Guoqing, deputy director of the State Council Information Office, admitted that ¶ China’s soft power lags behind its hard power. He indicated that China should focus on extending ¶ and building up its mass communications and media outreach abroad and expand the export of ¶ Chinese cultural products. Wang also suggested that China push the political and economic model ¶ of the Beijing consensus as a counterweight to Washington’s liberal democracy.28 ¶ Perhaps the most problematic hurdle for China’s projection of soft power abroad is its record on ¶ political reform, particularly on human rights. Some Chinese scholars have attributed the state of ¶ domestic political institutions as a limiting factor for China’s soft power, but this explanation has ¶ not been thoroughly expounded in Chinese academic or policy circles.¶ The limited political reform on the domestic front has stifled the development of civil society ¶ in China, especially regarding political and religious liberties and the freedom of speech and the ¶ press. This remains problematic for the United States, as well as for much of the world, including ¶ the developing South. In Southeast Asia and Africa, political leaders and civil society organizations ¶ have, on their own initiative and without Western coercion, enshrined the universality of human freedoms into the charters of the Association of Southeast Asian Nations (ASEAN) and the African ¶ Union, respectively, and vowed to commit to these principles. The Chinese government’s behavior at ¶ home and abroad on human rights issues likewise seems to be at odds with emerging trends in the ¶ Asia-Pacific. As such, it will be increasingly difficult for China to be accepted as a regional or global ¶ power. As long as Beijing maintains a state-centric approach to soft power (and inevitably projects ¶ these restricted views on political and civil freedoms), it will be difficult for outside observers in ¶ the region to be persuaded that the PRC’s appalling domestic policies are not reflected in its actions abroad.