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No Solvency – Revoking Consent

( ) Iraq proves that consent is not necessary for military presence.

Adam Roberts, “Transformative Military Occupation,” 100 A.J.I.L. 580, July 2006

 There was a precedent, of sorts, in Iraq: the "safe haven" established in northern Iraq in 1991. The U.S.-led military intervention that began on April 17, 1991, resulting in the establishment of the zone, enjoyed neither the specific authorization of the UN Security Council, nor, initially, the consent of the Iraqi government, whose forces had only a few months before been repulsed from Kuwait. After the initial phase, northern Iraq was protected from Iraqi government incursions almost entirely through the establishment of a U.S.-initiated air exclusion zone. The history of this protected zone illustrates certain transformative possibilities of foreign military involvement. However, the zone never assumed the character of anything approaching a full occupation regime. Initiated to enable large numbers of refugees from the region to return home, it resulted in the application of enough coalition military pressure to keep Hussein's [\*605] forces out of northern Iraq, enabling the Iraqi Kurds to develop their own administrative structures in the region. Here, indeed, was a transformation facilitated by a foreign military role: but that role took the form of a short-term military presence on the ground, followed by a more remote one in the air that could not be viewed as an occupation. Transformation as one basis of the decision to use force in Iraq. The military operations launched in Iraq on March 19-20, 2003, raised numerous issues relating to the jus ad bellum. These are not reviewed here, partly because of the familiar principle that the laws of war apply irrespective of the legality or otherwise of the original resort to force. However, one question must be briefly addressed: is transformation a legitimate reason for resorting to force? This question is distinct from whether transformation is a legitimate goal once force has (for whatever reason) been used. The case of Iraq confirms that a complex mixture of political motives may underlie intervention, and a no less complicated mixture of legal and other justifications. The U.S.-led invasion followed a prolonged and confused legal-cum-political debate, in which the stated purposes of intervention varied not just over time, but also within and between different U.S. agencies and participating states.

No Solvency – Revoking Consent

( ) Afghanistan proves that government consent is not necessary for military presence.

Gordon Lubold, Christian Science Monitor, February 14, 2010, http://www.csmonitor.com/USA/Military/2010/0214/Marjah-offensive-a-test-of-Obama-s-broader-Afghanistan-strategy

The Marjah offensive is considered the biggest operation the US has mounted in Afghanistan since American forces arrived in October 2001. It differs from previous offensives in other ways, too: The US and allied troops are in a stronger partnership with Afghan forces than ever before, with many more Afghan soldiers and police in the fight; and the Afghan government approved the Marjah operation in recent days, unlike other operations sometimes conducted without the consent of Afghanistan President Hamid Karzai.

**No Solvency – Status of Forces Agreements**

( ) SOFAs aren’t relevant to the scope of military presence.

R. Chuck Mason, Congressional Research Service, June 18, 2009, http://www.fas.org/sgp/crs/natsec/RL34531.pdf

SOFAs may include many provisions, but the most common issue addressed is which country may exercise criminal jurisdiction over U.S. personnel. The United States has concluded agreements where it maintains exclusive jurisdiction over its personnel, but more often the agreement calls for shared jurisdiction with the receiving country. In general, a SOFA does not authorize specific exercises, activities, or missions. Rather, it provides the framework for legal protections and rights while U.S. personnel are present in a country for agreed upon purposes. A SOFA is not a mutual defense agreement or a security agreement. The existence of a SOFA does not affect or diminish the parties’ inherent right of self-defense under the law of war.

( ) Belize proves that SOFAs don’t authorize specific military presence.

R. Chuck Mason, Congressional Research Service, June 18, 2009, http://www.fas.org/sgp/crs/natsec/RL34531.pdf

SOFAs do not generally authorize specific military operations or missions by U.S. forces. While SOFAs do not generally provide authority to fight, the inherent right of self-defense is not affected or diminished. U.S. personnel always have a right to defend themselves, if threatened or attacked, and a SOFA does not take away that right.32 Language is often found within the SOFA that defines the scope of applicability of the agreement. For example, the SOFA with Belize expressly applies to U.S. personnel “who may be temporarily in Belize in connection with military exercises and training, counter-drug related activities, United States security assistance programs, or other agreed purposes.”33 The United States had previously entered into two different agreements with Belize related to military training and the provision of defense articles.34 The SOFA itself does not authorize specific operations, exercises, or activities, but provides provisions addressing the legal status and protections of U.S. personnel while in Belize. Under the terms of the agreement, U.S. personnel are provided legal protections as if they were administrative and technical staff of the U.S. Embassy.35

No Solvency – Iraq

( ) The Iraqi government already consented to a bilateral security agreement with the US – breaking it would hurt US-Iraq relations.

New York Times, “Iraq: Status of Forces Agreement,” 2010, http://topics.nytimes.com/topics/news/international/countriesandterritories/iraq/status-of-forces-agreement/index.html

On Nov. 27, 2008, the Iraqi Parliament ratified a Status of Forces agreement with the United States that sets a course for an end to the United States’ role in the war and marks the beginning of a new relationship between the countries. The pact calls for American troops to pull out of most Iraqi cities by the summer of 2009 and sets the end of 2011 as the date by which the last American troops must leave the country. The agreement, the product of a year of hard bargaining with the government of Prime Minister Nuri Kamal al-Maliki, replaced a United Nations Security Council resolution adopted in October 2003 authorizing the presence of the military forces of the United States and its coalition partners. That resolution was to last only until an Iraqi government was formed. Instead, it was regularly renewed, even after an Iraqi Constitution was written and a permanent government, led by Mr. Maliki, took office in the spring of 2006. At that time, civil war raged across the country, and Iraq agreed to postpone the drafting of a document to govern the relations between Iraq and the foreign troops, known as a status of forces agreement. The United Nations resolution was eventually extended into 2008. But as the country regained a measure of stability and Mr. Maliki gained a firmer grasp on the levers of power, demands for the status of forces agreement (often called the SOFA) increased. The Iraqi position also hardened on a number of points, particularly after an incident in which gunmen hired by Blackwater USA, a private security firm, killed 17 civilians in a Baghdad shootout. Mr. Maliki and other Iraqi officials grew firmer in resisting American requests that both soldiers and contractors continue to have immunity from prosecution by Iraqis. Eventually, a compromise was reached in which American soldiers alone would continue to function under their own code of justice, for acts committed while on duty. The security agreement and an accompanying document that outlines America’s relationship with Iraq in areas like economics, health care and education, would grant Iraq considerable authority over American troop operations, requiring court orders to search buildings and detain suspects. The agreement was passed by a large margin in Parliament, despite the grumbling of many Sunni and Kurdish politicians who fear Shiite domination once the American troop presence dwindles. The pact was seen a clear victory for Mr. Maliki, a Shiite.

No Solvency – Iraq

( ) US-Iraq security agreement is vital to maintaining relations.

Yochi Dreazen, WSJ, July 29, 2009, http://online.wsj.com/article/SB124876767249586221.html

BAGHDAD -- Defense Secretary Robert Gates said the American military withdrawal from Iraqi cities went fairly smoothly, clearing the way for Baghdad to reshape its relationship with the U.S. and begin assuming primary security responsibility for the entire country. Mr. Gates's unannounced trip on Tuesday to Iraq came at a pivotal moment for Washington and Baghdad, as the two countries try to take advantage of a decline in Iraq's violence to focus attention on trade, weapons sales and nonmilitary aspects of their complex relationship. On Wednesday, Mr. Gates is slated to visit Iraq's semiautonomous Kurdish region, where, he said, the U.S. is prepared to help resolve a growing political dispute between Arabs and Kurds over land and oil. It was Mr. Gates's first visit to Iraq since U.S. forces left the country's cities in late June, a milestone both nations describe as the first step toward a complete American military withdrawal by the end of 2011. In the first days after the pullout from Iraq's cities, several U.S. commanders complained that the Iraqis were imposing too many restrictions on U.S. forces, barring them from certain roads and demanding sensitive information about future U.S. ground convoys. Fueling tensions, an Iraqi officer tried to detain U.S. soldiers this month after they killed three Iraqi civilians while chasing militants near the restive city of Abu Ghraib. Iraqi Prime Minister Nouri al-Maliki, on a visit to Washington last week, said the Iraqi officer had been "out of line." Mr. Gates acknowledged some early miscues, but said U.S. and Iraqi officials had hammered out their differences and were cooperating closely on security matters. "The agreement has changed the chemistry of the relationship," Mr. Gates told reporters. "Nobody's the boss or the occupier or however you want to put it, but there's a real sense of empowerment by the Iraqis."

( ) Drawdown is already worked out – there’s only a risk the counterplan hurts relations.

Yochi Dreazen, WSJ, July 29, 2009, http://online.wsj.com/article/SB124876767249586221.html

U.S. military officials are working with the Iraqis on the next stages of the drawdown. U.S. commanders say roughly 80,000 of the 130,000 U.S. troops currently in Iraq will leave the country by August 2010. At the same time, U.S. officials want to build a long-term relationship with Iraq that more closely resembles America's ties to other Arab allies.

No Solvency – Afghanistan

( ) US-Afghan cooperation is high – the counterplan destroys relations.

Gordon Lubold, Christian Science Monitor, February 14, 2010, http://www.csmonitor.com/USA/Military/2010/0214/Marjah-offensive-a-test-of-Obama-s-broader-Afghanistan-strategy

The Marjah offensive is considered the biggest operation the US has mounted in Afghanistan since American forces arrived in October 2001. It differs from previous offensives in other ways, too: The US and allied troops are in a stronger partnership with Afghan forces than ever before, with many more Afghan soldiers and police in the fight; and the Afghan government approved the Marjah operation in recent days, unlike other operations sometimes conducted without the consent of Afghanistan President Hamid Karzai. While in and of itself the offensive will not be a “game changer,” say American military officials, it could create the conditions to see if the new strategy, which puts nearly 100,000 Americans in Afghanistan by the end of this year, will work. “It is the first major operation in which we will demonstrate, I think successfully, that the new elements of the strategy – which combine not only security operations but economic reform and good governance at the local and regional level with a much more visible presence of Afghan forces – will take place,” said James Jones, Mr. Obama’s national security adviser, on "Fox News Sunday." Thousands of US marines – with Afghan soldiers or police beside them – pushed into the Marjah district over the weekend for an operation that the US military has intentionally publicized for weeks. Telegraphing the operation forced at least some of the estimated 1,000 Taliban fighters there to flee the area, and small numbers of fighters have already asked to be reintegrated into society. By announcing the operation in advance, the US hoped to "shape" the battlefield, weeding out lower-level fighters who may flee and concentrating on the more ideologically driven fighters who may stay. “It’s very hard to make predictions about what is going to happen because it will depend heavily on how enemy leaders are going to react,” says Fred Kagan, a senior fellow at American Enterprise Institute, a conservative think tank in Washington, on Friday. “In principle, it’s shaping up to be a pretty big fight.” The marines and the Afghan forces have met some resistance and “sporadic but intense” gunfire, according to the Los Angeles Times. The newspaper also reported that the Marine commander there, Brig. Gen. Larry Nicholson, had to duck sniper fire on Sunday. The operation is risky, too, because of the many roadside bombs that insurgents have placed in the region. The large trucks the US military uses to protect troops from such bombs won’t be as useful during this battle because it is expected to be as a street-to-street, house-to-house fight in which troops will be traveling by foot. Gen. Stanley McChrystal, the top commander in Afghanistan, has already apologized to Mr. Karzai for the American rocket strike Sunday that killed Afghan civilians. Marines and Afghan soldiers had been taking fire from a compound in the area, but a rocket strike the Americans mounted in response that was meant to target the building hit another one instead, killing about a dozen villagers. Some analysts and other military experts suggest that Helmand should not be the priority. Kandahar Province to the east would be a more important prize for the US-Afghan-Allied force because it is the spiritual home of the Taliban and a large population center crucial to Afghanistan's future, they argue. But most of the opium that comes from Afghanistan – which provides roughly 90 percent of the world’s production – comes from Helmand, US military officials say. About $400 million of the $4 billion the county produces is fed directly to the Taliban or to the corrupt Afghan government.

No Solvency – Afghanistan

( ) Multiple bases exist for military presence in Afghanistan – no solvency.

US Naval War College, 2008, http://www.usnwc.edu/Events/The-War-in-Afghanistan---A-Legal-Analysis-Workshop.aspx

The workshop’s first panel, on “The Legal Basis for Military Operations,” consisted of a Royal Navy officer and scholars from the US, UK and Germany, who discussed the possible legal bases for the use of force in Afghanistan: self-defense pursuant to Article 51 of the UN Charter; the implementation of specific UN mandates; the consent of the Afghan government; and, at the tactical level, individual and unit self-defense. There was considerable debate about the legal categorization of the conflict. Did an international armed conflict become non-international, for instance, upon the assumption of power by the Karzai government? How does the legal basis for the UN-mandated ISAF forces differ from that of non-ISAF, US forces fighting under Operation Enduring Freedom (OEF)? Cross-border operations across the famously porous and uncontrolled Afghan-Pakistani border, the 1893 “Durand Line”, dominated much of the discussion. Possible legal bases for such operations include localized self-defense from actual or imminent attack and consent by Pakistan. But are coalition forces legally entitled to interfere with third countries’ navigation and aviation outside Afghanistan? Possibly not if the conflict is solely a non-international armed conflict; but perhaps so for Security Council-backed efforts like counter-terrorism, counter-proliferation, and ISAF itself.

No Solvency – Japan

( ) Hatoyama’s resignation over Okinawa proves that the counterplan doesn’t solve and destroys now fragile US-Japan relations.

Andrew Yeo, Foreign Policy in Focus, June 23, 2010, http://www.fpif.org/articles/anti-base\_movements\_in\_south\_korea

Much recent discussion on anti-base opposition in the Asia-Pacific has focused on island-wide protests against the relocation of Marine Corps Air Station (MCAS) Futenma.1 By uniting in mass demonstrations against the construction of a new U.S. base, and by staging a multi-year round the clock demonstration at the proposed site of the new base, Okinawans put pressure squarely on Prime Minister Yukio Hatoyama to keep his campaign pledge to move Futenma air base off the island.2 However, shortly after the sinking of the South Korean warship Cheonan, which South Korea and the U.S. charge was the work of a torpedo launched by a North Korean submarine, Hatoyama reversed his pledge. The Japanese government bowed to U.S. pressure, agreeing to move forward with earlier plans to relocate Futenma within Okinawa to smooth over U.S.-Japan relations.

No Solvency – Japan

( ) The US-Japan Treaty of Mutual Security is the cornerstone of US-Japan relations and regional stability – the counterplan doesn’t solve the case.

Jim Webb, June 30, 2010, http://webb.senate.gov/newsroom/pressreleases/2010-06-30-01.cfm

Washington, DC—The Senate last night approved a resolution introduced by Senator Jim Webb, chairman of the Senate Foreign Relations Subcommittee on East Asia and Pacific Affairs, which recognized the 50th anniversary of the ratification of the Treaty of Mutual Security and Cooperation with Japan and affirmed support for the United States-Japan security alliance and relationship (S.RES.564). “The U.S.-Japan alliance has preserved for generations a largely stable environment in Asia which has directly and crucially contributed to the region’s robust economic growth and political development,” said Webb. “Recent troubles in the region—for example, the sinking of the Republic of Korea’s ship, the Cheonan, by North Korea—have underscored the need to maintain this strategic relationship and regional balance.”

( ) The counterplan fractures the US-Japan alliance which is vital to regional security.

Jim Webb, June 30, 2010, http://webb.senate.gov/newsroom/pressreleases/2010-06-30-01.cfm

The bipartisan resolution was cosponsored by Senators Kit Bond, Benjamin Cardin, Christopher Dodd, James Inhofe, John Kerry, Joseph Lieberman, and Richard Lugar. “The U.S.-Japan alliance is critical to the continued security and economic prosperity of the Asia Pacific region. It is critical we continue to strengthen this strategic partnership between our two nations in order to deal with new and emerging challenges in the 21st century,” said Senator Kit Bond. “For more than half a century, our alliance with Japan has been the foundation for unprecedented security, freedom, and prosperity in the Asia-Pacific region. Like all Americans, I am proud of that our alliance has grown into a force for good all over the world. In a dynamic and uncertain future, I am convinced that our alliance and friendship with Japan will only grow more important,” said Senator Joe Lieberman.

No Solvency – Japan

( ) The US-Japan alliance is the lynchpin of regional stability – the counterplan sparks a new arms race, Japanese nuclearization, and dangerous regional realignment.

Daizo Sakurada, Associate Professor of International Relations in the Faculty of Integrated Arts & Sciences of the University of Tokushima in Japan, “For Mutual Benefit,” Working Paper, Centre for Strategic Studies, Victoria University of Wellington, September 1997, http://www.victoria.ac.nz/css/docs/Working\_Papers/WP07.pdf

The withdrawal of the US military forces from Japan would represent a fundamental disengagement of US military commitments in East Asia; it would signify the end of American trustworthiness. Fearing Japan’s remilitarisation, no state in the Asia-Pacific region, except perhaps North Korea, seeks the termination of the Treaty. Once the Treaty is abolished, Japan would be forced to consider options that Washington would currently regard as unpalatable. Japan may decide to take on a more independent strategic role in the region. The SDF could be developed to a greater potential, and could be used directly in support of its foreign policy goals. Strategic links with China and Russia could be reconsidered. Moreover, Japan might have to seriously consider a nuclear option. At the extreme both Japan and the US could grow to regard each other as hostile entities.44 The Treaty provides a mechanism to avoid this strategic rivalry and to deepen the cooperative strategic relationship between Japan and the United States. 7 Today’s broad consensus in Japan is that the Treaty should remain intact for the foreseeable future. With the withdrawal of US forces from the Philippines, the importance of keeping the US bases in North Asia has increased. These forces underpin not only the security of Japan but also that of Asia-Pacific as a whole. US air force units based in Okinawa, for instance, are responsible as well for the defence of South Korea.45 The Treaty also psychologically reassures policy makers on both sides of the Pacific that the tragedy of 1941 will never occur again.46 In addition, Japan would not need to develop her own nuclear deterrent as long as the Treaty continues.47 It should now be seen as an insurance for stability in the region as opposed to that against a potential threat in the region during the Cold War.

No Solvency – South Korea

( ) The counterplan is politically unpopular in South Korea – the prevailing view is that US-ROK security cooperation is vital to national security.

Andrew Yeo, Foreign Policy in Focus, June 23, 2010, http://www.fpif.org/articles/anti-base\_movements\_in\_south\_korea

 A pro-U.S. security consensus still ingrained in the national security perceptions of South Korean and Japanese elites continues to dominate strategic thinking in Seoul and Tokyo. Heightened tension with North Korea under the conservative Lee Myung-Bak regime has dampened the political climate for anti-base opposition and shaped Asian leaders’ perceptions of U.S. force posture and base realignment in South Korea. Although many South Koreans rebuked President Lee for his harsh response towards the North, the Cheonan incident has nevertheless reinforced this dominant security consensus.25 In South Korea, escalating tensions with North Korea even before the Cheonan incident had strengthened South Korean support for continued U.S. military presence on the Korean Peninsula. In this environment, opposition to U.S. military initiatives ring hollow to the broader public compared to previous campaigns. For example, the emerging anti-base movement on Jeju Island earlier this year against the construction of a South Korean naval base capable of hosting two Aegis destroyers has been isolated primarily to Gangjeong village.26 Although the appeal of Gangjeong village’s mayor and residents have received significant attention from global anti-base activists in Okinawa, Japan, Guam, Europe, and the U.S., the movement has garnered relatively little attention in South Korea. The Cheonan incident has also reinvigorated calls to delay the transfer of wartime operational control (OPCON) from the United States to South Korea.27 Currently scheduled to take place in April 2012, the South Korean MND, as well as conservative forces in Seoul and Washington, have advocated delaying the transfer until 2015 after USFK completes its relocation process from Seoul to Pyeongtaek.28 The previous government and progressive NGOs supported transfer of OPCON to South Korea sooner rather than later. However, as East Asia Institute president Sook-Jong Lee argues, following the Cheonan incident, “public opinion began to shift toward the conservative view that Seoul is not ready to take on OPCON.”29 Proponents argue that OPCON’s transfer provides South Korea with greater independence when dealing with North Korea.

No Solvency – South Korea

( ) South Korea will cave to pressure to allow US military presence or destroy US-ROK relations – the counterplan doesn’t solve or creates a relations crisis.

Andrew Yeo, Foreign Policy in Focus, June 23, 2010, http://www.fpif.org/articles/anti-base\_movements\_in\_south\_korea

 Although the South Korean government had legally acquired the majority of base expansion land by the end of 2005, residents and activists squatting in abandoned homes prevented the MND from physically taking control of the land. Facing U.S. pressure and fearful of weakening the U.S.-South Korean alliance, the MND stepped up pressure to acquire land for base expansion. On several occasions in spring 2006, the MND sent workers to Daechuri village to erect barbed wire and prevent activists from entering the expanded base land. Residents and activists continued to resist. Preparing the nation for potential violence, on May 1, the South Korean Prime Minister and the Minister of Defense announced on national broadcast the dispatch of riot police to Pyeongtaek while explaining the necessity for U.S. base expansion. Three days later, the MND sent 2,800 engineering and infantry troops to dig trenches and set up barbed wire around the perimeter. The troops were accompanied by 12,000 riot police.19 As morning approached, riot police physically removed activists and students barricading themselves inside an elementary school used as a makeshift anti-base campaign headquarters. Meanwhile, activists and government forces clashed as activists broke through the barbed wire perimeter. Although anti-base protests continued, by June 2006, various umbrella coalition groups, particularly labor and farmer groups, had shifted away from the anti-base movement to prepare for protests against the upcoming U.S.-South Korea Free Trade Agreement (FTA) negotiations.

No Solvency – Courts

( ) US military presence is permissible under international law – SOFAs and lack of ICJ cases prove that the counterplan doesn’t solve.

Sean Foley, Assistant Prof. in History @ MTSU, “The Iraq Status-of-Forces Agreement, Iran, and Guantanamo Bay,” 34 Rutgers L. Rec. 39, Spring 2009

 Significantly, the United States' SOFA with Iraq is part of a system of agreements which the United States and other national militaries have maintained with governments around the globe since the end of World War II. n15 Besides the United States; Russia, the United Nations, the International Committee of the Red Cross, and many other nations have SOFAs or similar agreements (often called Laws of Visiting Forces). n16 The Soviet Union also had similar agreements with members of the Warsaw Pact during the Cold War. n17 SOFAs generally are not that much different from other international agreements or treaties, n18 and have been recognized under international law for many decades. n19 Although it is possible to challenge the North Atlantic Treaty Organization's SOFA in the International Court of Justice (ICJ), no state has brought a case forward in the ICJ or another any other international legal forum. n20 At least 115 nations, or close to half the global community, had SOFAs with the United States in 2008. n21 There is no standard format for SOFAs, which vary in length from one page to over two hundred. n22 Some of these agreements, such as the United States' SOFA with West Germany, granted sweeping powers to foreign military forces. n23 For instance, American commanders not only had exclusive control over their soldiers and weapons on West German soil, but they also had the right to patrol roads, railways, restaurants, and other large public areas. n24 Other SOFAs have been far more limited in scope.

No Solvency – Courts

( ) The Supreme Court can’t solve—three reasons.

Stephen Gordon, 28 St. Mary’s L.J. 665, 1997

Failure of a party to obtain relief through the World Court would not completely foreclose all opportunities to force a change in U.S. nuclear weapons policy. As one scholar has suggested, countries that feel threatened by the United States' use or continued deployment of nuclear weapons might try to bring suit in an American court to settle the issue. n232 This approach may seem promising at first, given that the Supreme Court has long upheld the principles of international law in other contexts, n233 but it is fraught with perils. First, U.S. courts have traditionally given extremely broad deference to the executive branch of government when dealing with matters of foreign policy and national defense. n234 Second, although the U.S. government can be sued for some [\*723] torts, n235 it is generally immune from suit for discretionary acts committed by its employees in the exercise of their official duties. n236 Third, some courts have ruled breach of a treaty alone may not be sufficient to establish a cause of action for violations of international law. n237 The difficulty with overcoming these many obstacles is vividly illustrated by the case of Goldstar (Panama) S.A. v. U.S.. n238

( ) The facts of the test case would be insufficient for a Supreme Court ruling.

Stephen Gordon, 28 St. Mary’s L.J. 665, 1997

In the event that a party was able to achieve standing before the court and convince it to find jurisdiction over the United States once again, the next obstacle it would have to overcome would be proving that the United States policy with regard to the threat or use of nuclear weapons, as specifically applied to it, actually amounted to a violation of its rights under international law. This proof would have to be demonstrated in one of two ways, depending on what type of conduct was at issue. If the party was protesting the United States' actual use of nuclear weapons against it, the party would have to show that the United States did so in violation of one of the court's four principles outlined in Section IV-A of this Comment, or one or more of the United States' basic treaty obligations. If the party was protesting the mere threat of such use, it would have to prove that were the threat followed through, it would amount to such a violation. Proving a mere threat to be a violation of international law could be rather difficult, because the party would undoubtedly have to produce some specific evidence of U.S. intent to use nuclear weapons in a particular manner, and such intentions are usually only available to the public in a generalized form. Evidence that the United States had nuclear weapons [\*720] pointed at or near a particular country would obviously be a worthwhile starting point, perhaps followed by the type of analysis used in Section IV-D of this Comment, but much more would likely be needed. As has been illustrated, in the advisory opinion itself the court was presented with a number of different scenarios involving the use of nuclear weapons, and yet remained unconvinced of the need for a total ban on such use. An argument based upon specific facts rather than hypotheticals or general policy statements would obviously carry more persuasive weight, but it still might not be enough to obtain a ruling that the threat or use of nuclear weapons by the United States was in violation of international law.

Courts Link to Politics

( ) Courts don’t shield the President

Bruce Miroff, Prof. of Political Science @ State University of New York at Albany, *The Presidency and the Political System,* 2000, Ed. Michael Nelson. p. 304.

Spectacle has also been fostered by the president’s rise to primacy in the American political system. A political order originally centered on institutions has given way, especially in the public mind, to a political order that centers on the person of the president. Theodore Lowi wrote, Since the president has become the embodiment of government, it seems perfectly normal for millions upon millions of Americans to concentrate their hopes and fears directly and personally upon him” personal president’ that Lowi described is the object of popular expectations: these expectations, Stephen Wayne and Thomas Cronin have shown, are both excessive and contradictory.

Court action doesn’t shield

Lindsay Harrison, Lecturer in Law @ University of Miami Law School and Stephen I. Vladeck, Associate Professor of Law at the University Of Miami School Of Law, Does the Court Act as "Political Cover" for the Other Branches? November 18, 2005 legaldebate.blogspot.com

While the Supreme Court may have historically been able to act as political cover for the President and/or Congress, that is not true in a world post-Bush v. Gore. The Court is seen today as a politicized body, and especially now that we are in the era of the Roberts Court, with a Chief Justice hand picked by the President and approved by the Congress, it is highly unlikely that Court action will not, at least to some extent, be blamed on and/or credited to the President and Congress. The Court can still get away with a lot more than the elected branches since people don't understand the technicalities of legal doctrine like they understand the actions of the elected branches; this is, in part, because the media does such a poor job of covering legal news. Nevertheless, it is preposterous to argue that the Court is entirely insulated from politics, and equally preposterous to argue that Bush and the Congress would not receive at least a large portion of the blame for a Court ruling that, for whatever reason, received the attention of the public.