# 1NC

### 1

#### A. Our interpretation is that the aff must specify judicial or statutory restrictions.

#### B. Violation: The aff doesn’t do that

#### C. Standards

1. Ground – all of our DAs and solvency arguments are based off of either congressional or judicial restrictions. Not specifying makes getting links impossible since they could just shift out in the 2AC

2. Topic Education – One of the main questions of the resolution is whether the courts of congress should institute restrictions – they rob us of that debate

3. No specification in the 2AC, already destroyed 1NC strategy, making it a voting issue is the only way to resolve our impacts, everything else is a post-hoc remedy.

### 2

#### Restrictions on executive war powers DO NOTHING for the state of political legal exception we live in and only gives further justification for violent intervention on the basis of legality

Dyzenhaus 05 (David, is a professor of Law and Philosophy at the University of Toronto, and a Fellow of the Royal Society of Canada, “Schmitt v. Dicey: Are States of Emergency Inside or Outside the Legal Order?” Cardozo Law Review 27)

Rossiter had in mind Lincoln's actions during the Civil War, including the proclamation by which Lincoln, without the prior authority of Congress, suspended habeas corpus. n35 Lincoln, he said, subscribed to a theory that in a time of emergency, the President could assume whatever legislative, executive, and judicial powers he thought necessary to preserve the nation, and could in the process break the "fundamental laws of the nation, if such a step were unavoidable." n36 This power included one ratified by the Supreme Court: "an almost unrestrained power to act toward insurrectionary citizens as if they were enemies of the United States, and thus place them outside the protection of the Constitution." Rossiter's difficulties here illustrate rather than solve the tensions inherent in the idea of constitutional dictatorship. On the one hand, he wants to assert that emergency rule in a liberal democracy can be constitutional in nature. "Constitutional" implies restraints and limits in accordance not only with law, but with fundamental laws. These laws are not the constitution that is in place for ordinary times; rather, they are the laws that govern the management of exceptional times - the eleven criteria that he developed for constitutional dictatorship. The criteria are either put within the discretion of the dictator - they are judgments about necessity - or are couched as limits that should be enshrined either in the constitution or in legislation. However, Rossiter does not properly address the fact that judgments about necessity are for the dictator to make, which means that these criteria are not limits or constraints but merely factors about which the dictator will have to decide. Other criteria look more like genuine limits. Moreover, they are limits that could be constitutionally enshrined - for example, the second criterion, which requires that the person who makes the decision that there is an emergency should not be the person who assumes dictatorial powers. Yet, as we have seen, Rossiter's foremost example of the modern constitutional dictator, Lincoln, not only gave himself dictatorial powers but, Rossiter supposes, had no choice but to do this. Moreover, if these criteria are constitutionally enshrined, so that part of the constitution is devoted to the rules that govern the time when the rest of the constitution might be suspended, they still form part of the constitution. So, no less than the ordinary constitution, what we can think of as the exceptional or emergency constitution - the constitution that governs the state of emergency - is subject to suspension should the dictator deem this necessary. This explains why, on the other hand, Rossiter equated emergency rule with potentially unlimited dictatorship, with Locke's idea of prerogative. And Rossiter said, "whatever the theory, in moments of extreme national emergency the facts have always been with ... John Locke." So Rossiter at one and the same time sees constitutional dictatorship as unconstrained in nature and as constrainable by principles - his eleven criteria. The upshot is that "constitutional" turns out not to mean what we usually take it to mean; rather, it is a misleading name for the hope that the person who assumes dictatorial powers does so because of a good faith evaluation that this is really necessary and with the honest and steadfast intention to return to the ordinary way of doing things as soon as possible. Giorgio Agamben is thus right to remark that the bid by modern theorists of constitutional dictatorship to rely on the tradition of Roman dictatorship is misleading. n39 They rely on that tradition in an effort to show that dictatorship is constitutional or law-governed. But in fact they show that dictatorship is in principle absolute - the dictator is subject to whatever limits he deems necessary, which means to no limits at all. As H.L.A. Hart described the sovereign within the tradition of legal positivism, the dictator is an uncommanded commander. n40 He [\*2015] operates within a black hole, in Agamben's words, "an emptiness of law." n41 Agamben thus suggests that the real analogue to the contemporary state of emergency is not the Roman dictatorship but the institution of iustitium, in which the law is used to produce a "juridical void" - a total suspension of law. n42 And in coming to this conclusion, Agamben sides with Carl Schmitt, his principal interlocutor in his book. However, it is important to see that Schmitt's understanding of the state of exception is not quite a legal black hole, a juridically produced void. Rather, it is a space beyond law, a space which is revealed when law recedes, leaving the state, represented by the sovereign, to act. In substance, there might seem to be little difference between a legal black hole and space beyond law since neither is controlled by the rule of law. But there is a difference in that nearly all liberal legal theorists find the idea of a space beyond law antithetical, even if they suppose that law can be used to produce a legal void. This is so especially if such theorists want to claim for the sake of legitimacy that law is playing a role, even if it is the case that the role law plays is to suspend the rule of law. Schmitt would have regarded such claims as an attempt to cling to the wreckage of liberal conceptions of the rule of law brought about by any attempt to respond to emergencies through the law. They represent a vain effort to banish the exception from legal order. Because liberals cannot countenance the idea of politics uncontrolled by law, they place a veneer of legality on the political, which allows the executive to do what it wants while claiming the legitimacy of the rule of law. We have seen that Rossiter presents a prominent example which supports Schmitt's view, and as I will now show, it is a depressing fact that much recent post 9/11 work on emergencies is also supportive of Schmitt's view. II. Responding to 9/11 For example, Bruce Ackerman in his essay, The Emergency Constitution, n43 starts by claiming that we need "new constitutional concepts" in order to avoid the downward spiral in protection of civil liberties that occurs when politicians enact laws that become increasingly repressive with each new terrorist attack. n44 We need, he says, to rescue the concept of "emergency powers ... from fascist thinkers like Carl Schmitt, who used it as a battering ram against liberal [\*2016] democracy." n45 Because Ackerman does not think that judges are likely to do, or can do, better than they have in the past at containing the executive during an emergency, he proposes mainly the creative design of constitutional checks and balances to ensure, as did the Roman dictatorship, against the normalization of the state of emergency. Judges should not be regarded as "miraculous saviors of our threatened heritage of freedom." n46 Hence, it is better to rely on a system of political incentives and disincentives, a "political economy" that will prevent abuse of emergency powers. He calls his first device the "supramajoritarian escalator" n48 - basically the requirement that a declaration of a state of emergency requires legislative endorsement within a very short time, and thereafter has to be renewed at short intervals, with each renewal requiring the approval of a larger majority of legislators. The idea is that it will become increasingly easy with time for even a small minority of legislators to bring the emergency to an end, thus decreasing the opportunities for executive abuse of power. n49 The second device requires the executive to share security intelligence with legislative committees and that a majority of the seats on these committees belong to the opposition party. Ackerman does see some role for courts. They will have a macro role should the executive flout the constitutional devices. While he recognizes both that the executive might simply assert the necessity to suspend the emergency constitution and that this assertion might enjoy popular support, he supposes that if the courts declare that the executive is violating the constitution, this will give the public pause and thus will decrease incentives on the executive to evade the constitution. n51 In addition, the courts will have a micro role in supervising what he regards as the inevitable process of detaining suspects without trial for the period of the emergency. Suspects should be brought to court and some explanation should be given of the grounds of their detention, not so that they can contest it - a matter which Ackerman does not regard as practicable - but in order both to give the suspects a public identity so that they do not disappear and to provide a basis for compensation once the emergency is over in case the executive turns out to have fabricated [\*2017] its reasons. He also wishes to maintain a constitutional prohibition on torture, which he thinks can be enforced by requiring regular visits by lawyers. Not only is the judicial role limited, but it is clear that Ackerman does not see the courts as having much to do with preventing a period of "sheer lawlessness." n53 Even within the section on the judiciary, he says that the real restraint on the executive will be the knowledge that the supramajoritarian escalator might bring the emergency to an end, whereupon the detainees will be released if there is no hard evidence to justify detaining them. In sum, according to Ackerman, judges have at best a minimal role to play during a state of emergency. We cannot really escape from the fact that a state of emergency is a legally created black hole, a lawless void. It is subject to external constraints, controls on the executive located at the constitutional level and policed by the legislature. But internally, the rule of law does next to no work; all that we can reasonably hope for is decency. But once one has conceded that internally a state of emergency is more or less a legal black hole because the rule of law, as policed by judges, has no or little purchase, it becomes difficult to understand how external legal constraints, the constitutionally entrenched devices, can play the role Ackerman sets out. Recall that Ackerman accepts that the reason we should not give judges more than a minimal role is the history of judicial failure to uphold the rule of law during emergencies in the face of executive assertions of a necessity to operate outside of law's rule. For that reason, he constructs a political economy to constrain emergency powers. But that political economy still has to be located in law in order to be enforceable, which means that Ackerman cannot help but rely on judges. But why should we accept his claim that we can rely on judges when the executive asserts the necessity of suspending the exceptional constitution, the constitution for the state of emergency, when one of his premises is that we cannot so rely? Far from rescuing the concept of emergency powers from Schmitt, Ackerman's devices for an emergency constitution, an attempt to update Rossiter's model of constitutional dictatorship, fails for the same reasons that Rossiter's model fails. Even as they attempt to respond to Schmitt's challenge, they seem to prove the claim that Schmitt made in late Weimar that law cannot effectively enshrine a distinction between constitutional dictatorship and dictatorship. They appear to be vain attempts to find a role for law while at the same time conceding that law has no role. Of course, this last claim trades on an ambiguity in the idea of the rule of law between, on the one hand, the rule of law, understood as the rule of substantive principles, and, on the other, rule by law, where as long as there is a legal warrant for what government does, government will be considered to be in compliance with the rule of law. Only if one holds to a fairly substantive or thick conception of the rule of law will one think that there is a point on a continuum of legality where rule by law ceases to be in accordance with the rule of law. Ackerman's argument for rule by law, by the law of the emergency constitution, might not answer Schmitt's challenge. But at least it attempts to avoid dignifying the legal void with the title of rule of law, even as it tries to use law to govern what it deems ungovernable by law. The same cannot be said of those responses to 9/11 that seem to suggest that legal black holes are not in tension with the rule of law, as long as they are properly created. While it is relatively rare to find a position that articulates so stark a view, it is quite common to find positions that are comfortable with grey holes, as long as these are properly created. A grey hole is a legal space in which there are some legal constraints on executive action - it is not a lawless void - but the constraints are so insubstantial that they pretty well permit government to do as it pleases. And since such grey holes permit government to have its cake and eat it too, to seem to be governing not only by law but in accordance with the rule of law, they and their endorsement by judges and academics might be even more dangerous from the perspective of the substantive conception of the rule of law than true black holes.

#### Our alternative is to recognize the necessity of the opposition. Sovereignty necessarily functions in exception to the law. This exception is necessary to avoid the universal violence of the Law and the affirmative.

Rasch 2000 (William. "Conflict as a Vocation: Carl Schmitt and the Possibility of Politics." Theory Culture Society 17.1)

It is not difficult to see that the polemical elevation of sovereignty over the rule of law replicates a lively historical opposition, one that can be perhaps best evoked by that happy pair, Hobbes and Locke. Within the liberal tradition, the rule of law invokes reason and calculability in its battles against the arbitrary and potentially despotic whim of an unrestrained sovereign. The legitimacy of the sovereign is thus replaced by a legality that claims to provide its own immanent and unforced legitimacy. Predictable and universally accessible reason - the normative validity of an "uncorked consensus", to use the words of a prominent modern exponent - gently usurps, so it is claimed, the place that would otherwise be occupied by a cynical, pragmatic utilitarianism and the tyranny of a dark, incalculable will. The rule of law brings all the comforts of an uncontroversial, rule-based, normative security as if legality preceded by way of simple logical derivation, abolishing above all the necessity of decisions. Schmitt clearly will have none of this and in various writings attempts to expose what he considers to be the two-fold fallacy of the liberal position. As we have seen, if taken at its word, legality, or the rule of law, is seen by Schmitt to be impotent; it can neither legitimize nor effectively defend itself against determined enemies in times of crisis. Were law truly the opposite of force, it would cease to exist. But this self-description is deceptive, for if judged by its deeds, the same liberal regime that enunciates the self-evidence validity of universal norms strives to enact a universal consensus that is, indeed, far from uncorked. The rule of law inevitably reveals itself, precisely during moments of crisis, as the force of law, perhaps, not every bit as violent and "irrational" as the arbitrary tyrant, but nonetheless compelling and irresistible - indeed, necessarily so. Thus, Schmitt would argue the distinction between "decision", "force" and sovereignty", on the one hand, and the "rule of law", on the other, is based on a blithe and simple illusion. What agitates Schmitt is not the force, but the deception. More precisely, what agitates Schmitt is what he perceives to be the elimination of politics in the name of a higher legal or moral order. In its claim to a universal, normative, rule-bound validity, the liberal sleight-of-hand reveals itself to be not the opposite of force, but a force that outlaws opposition. In resurrecting the notion of sovereignty, therefore, Schmitt sees himself as one who rescues a legitimate notion of politics. Of course, this rescue attempt is itself political, a battle over the correct definition of politics. That is, we are not merely dealing with a logical problem, and not merely dealing with a desire to provide constitutional mechanisms that would prevent the self-dissolution of the constitution. Rather, we are dealing with a contest between a particularist notion of politics, in which individual conflicts can be resolved, but in which antagonism as a structure and reservoir of possible future conflicts is never destroyed, versus politics as the historical unfolding and pacific expansion of the universal morality. To evoke the long shadows of an ongoing contemporary debate, we are dealing with the difference between a politics of dissensus and a politics of consensus. Whereas the latter ideology entails an explicit or implicit belief in the "highest good" that can be rationally discerned and achieved, a "right regime", to use Leo Strauss's term, or the "just society" that hopes to actualize aspects of the City of God here on earth, the former stresses the necessity of determining a workable order where no single order bears the mantle of necessity, in fact, where all order is contingent, hence imperfect, and thus seeks to make the best of an inherently contradictory world by erecting structures that minimize self-inflicted damage. In Schmitt's eyes, the elements of such a structure must be the manifold of sovereign states. The liberal says there can only be one world-wide sovereign, the sovereignty of a universal moral and legal order. Schmitt counters with a plurality of equal sovereigns, for only in this way, he believes, can the economic and moral extinction of politics be prevented. Politics, on this view, is not the means by which the universally acknowledged good is actualized, but the mechanism that negotiates and limits disputes in the absence of any universally acknowledged good. Politics exists, in other words, because the just society does not.

### 3

#### Iran sanctions are at the top of the docket – Obama is spending capital to persuade Democrats to sustain a veto

Lobe, 12-27

Reporter for Inter Press Service(Jim, “Iran sanctions bill: Big test of Israel lobby power”

<http://www.arabamericannews.com/news/index.php?mod=article&cat=World&article=8046>)

WASHINGTON - This week’s introduction by a bipartisan group of 26 senators of a new sanctions bill against Iran could result in the biggest test of the political clout of the Israel lobby here in decades.¶ The White House, which says the bill could well derail ongoing negotiations between Iran and the U.S. and five other powers over Tehran’s nuclear program and destroy the international coalition behind the existing sanctions regime, has already warned that it will veto the bill if it passes Congress in its present form.¶ The new bill, co-sponsored by two of Congress’s biggest beneficiaries of campaign contributions by political action committees closely linked to the powerful American Israel Public Affairs Committee (AIPAC), would impose sweeping new sanctions against Tehran if it fails either to comply with the interim deal it struck last month in Geneva with the P5+1 (U.S., Britain, France, Russia, China plus Germany) or reach a comprehensive accord with the great powers within one year.¶ To be acceptable, however, such an accord, according to the bill, would require Iran to effectively dismantle virtually its entire nuclear program, including any enrichment of uranium on its own soil, as demanded by Israeli Prime Minister Benjamin Netanyahu.¶ The government of President Hassan Rouhani has warned repeatedly that such a demand is a deal-breaker, and even Secretary of State John Kerry has said that a zero-enrichment position is a non-starter.¶ The bill, the Nuclear Weapon Free Iran Act, also calls for Washington to provide military and other support to Israel if its government “is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program.”¶ The introduction of the bill last week by Republican Sen. Mark Kirk and Democratic Sen. Robert Menendez followed unsuccessful efforts by both men to get some sanctions legislation passed since the Geneva accord was signed Nov. 24.¶ Kirk at first tried to move legislation that would have imposed new sanctions immediately in direct contradiction to a pledge by the P5+1 in the Geneva accord to forgo any new sanctions for the six-month life of the agreement in exchange for, among other things, enhanced international inspections of Iran’s nuclear facilities and a freeze on most of its nuclear program.¶ Unable to make headway, Kirk then worked with Menendez to draw up the new bill which, because of its prospective application, would not, according to them, violate the agreement. They had initially planned to attach it to a defense bill before the holiday recess. But the Democratic leadership, which controls the calendar, refused to go along.¶ Their hope now is to pass it – either as a free-standing measure or as an amendment to another must-pass bill after Congress reconvenes Jan. 6.¶ To highlight its bipartisan support, the two sponsors gathered a dozen other senators from each party to co-sponsor it.¶ Republicans, many of whom reflexively oppose President Barack Obama’s positions on any issue and whose core constituencies include Christian Zionists, are almost certain to support the bill by an overwhelming margin. If the bill gets to the floor, the main battle will thus take place within the Democratic majority.¶ The latter find themselves torn between, on the one hand, their loyalty to Obama and their fear that new sanctions will indeed derail negotiations and thus make war more likely, and, on the other, their general antipathy for Iran and the influence exerted by AIPAC and associated groups as a result of the questionable perception that Israel’s security is uppermost in the minds of Jewish voters and campaign contributors (who, by some estimates, provide as much as 40 percent of political donations to Democrats in national campaigns).¶ The administration clearly hopes the Democratic leadership will prevent the bill from coming to a vote, but, if it does, persuading most of the Democrats who have already endorsed the bill to change their minds will be an uphill fight. If the bill passes, the administration will have to muster 34 senators of the 100 senators to sustain a veto – a difficult but not impossible task, according to Congressional sources.¶ That battle has already been joined. Against the 13 Democratic senators who signed onto the Kirk-Menendez bill, 10 Democratic Senate committee chairs urged Majority Leader Harry Reid, who controls the upper chamber’s calendar, to forestall any new sanctions legislation.

#### Obama’s strategy is working but failure scuttles the nuclear deal

Merry 1-1

Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy (Robert, “Obama may buck the Israel lobby on Iran” Washington Times, factiva)

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.”¶ For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House.¶ With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.¶ It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.¶ However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.¶ Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “an appalling new low in the Israeli government’s grip on the U.S. Congress.”¶ While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”¶ That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.¶ That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.¶ 2014 will mark the 100th anniversary of beginning of World War I, a conflict triggered by entangling alliances that essentially gave the rulers of the Hapsburg Empire power that forced nation after nation into a war they didn’t want and cost the world as many as 20 million lives. Historians have warned since of the danger of nations delegating the power to take their people into war to other nations with very different interests.¶ AIPAC’s political power is substantial, but this is Washington power, the product of substantial campaign contributions and threats posed to re-election prospects. According to the Center for Responsive Politics’ Open Secrets website, Sens. Kirk, Menendez and Schumer each receives hundreds of thousands of dollars a year in pro-Israel PAC money and each of their states includes concentrations of pro-Israel voters who help elect and re-elect them.¶ Elsewhere in the country, AIPAC’s Washington power will collide with the country’s clear and powerful political sentiment against further U.S. adventurism in the Middle East, particularly one as fraught with as much danger and unintended consequence as a war with Iran. If the issue gets joined, as it appears that it will, Mr. Obama will see that it gets joined as a matter of war and peace. If the Menendez-Schumer-Kirk legislation clears Congress and faces a presidential veto, the war-and-peace issue could galvanize the American people as seldom before.¶ If that happens, the strongly held opinions of a democratic public are liable to overwhelm the mechanisms of Washington power, and the vaunted influence of the Israel lobby may be seen as being not quite what it has been cracked up to be.

#### The plan causes an inter-branch fight – saps PC and derails his agenda

Kriner 10

Douglas Kriner, Assistant Profess of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 67-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea." While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races." Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.6° In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's highest second-term domestic priorities, such as Social Security and immigration reform, failedperhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq. When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### That causes a US-Iran war and Iranian prolif

WORLD TRIBUNE 11-13

[Obama said to suspend Iran sanctions without informing Congress, http://www.worldtribune.com/2013/11/13/obama-said-to-suspend-iran-sanctions-without-informing-congress/]

The administration has also pressured Congress to suspend plans for new sanctions legislation against Iran. The sources said the White House effort has encountered resistance from both Democrats and Republicans, particularly those in the defense and foreign affairs committees.¶ “I urge the White House and the Senate to learn from the lessons of the past and not offer sanctions relief in return for the false hopes and empty promises of the Iranian regime,” Rep. Ileana Ros-Lehtinen, chairwoman of the House Middle East and North Africa Subcommittee, said. “Instead, new rounds of sanctions must be implemented to gain further leverage because any misstep in calculations at this juncture will have devastating and irreversible consequences that will be difficult to correct retroactively.”¶ On Nov. 12, the White House warned that additional sanctions on Iran would mean war with the United States. White House press secretary Jay Carney, in remarks meant to intensify pressure on Congress, said sanctions would end the prospect of any diplomatic solution to Iran’s crisis. ¶ “The American people do not want a march to war,” Carney said. “It is important to understand that if pursuing a resolution diplomatically is disallowed or ruled out, what options then do we and our allies have to prevent Iran from acquiring a nuclear weapon?”¶ Still, the Senate Banking Committee has agreed to delay any vote on sanctions legislation until a briefing by Secretary of State John Kerry on Nov. 13. The sources said Kerry was expected to brief the committee on the P5+1 talks in Geneva that almost led to an agreement with Teheran.¶ “The secretary will be clear that putting new sanctions in place would be a mistake,” State Department spokeswoman Jen Psaki said on Nov. 12. “We are still determining if there’s a diplomatic path forward. What we are asking for right now is a pause, a temporary pause, in sanctions.”

#### Iran war escalates

White 11

July/August 2011 (Jeffrey—defense fellow at the Washington Institute for Near East Policy, What Would War With Iran Look Like, National Interest, p. http://www.the-american-interest.com/article-bd.cfm?piece=982)

A U.S.-Iranian war would probably not be fought by the United States and Iran alone. Each would have partners or allies, both willing and not-so-willing. Pre-conflict commitments, longstanding relationships, the course of operations and other factors would place the United States and Iran at the center of more or less structured coalitions of the marginally willing. A Western coalition could consist of the United States and most of its traditional allies (but very likely not Turkey, based on the evolution of Turkish politics) in addition to some Persian Gulf states, Jordan and perhaps Egypt, depending on where its revolution takes it. Much would depend on whether U.S. leaders could persuade others to go along, which would mean convincing them that U.S. forces could shield them from Iranian and Iranian-proxy retaliation, or at least substantially weaken its effects. Coalition warfare would present a number of challenges to the U.S. government. Overall, it would lend legitimacy to the action, but it would also constrict U.S. freedom of action, perhaps by limiting the scope and intensity of military operations. There would thus be tension between the desire for a small coalition of the capable for operational and security purposes and a broader coalition that would include marginally useful allies to maximize legitimacy. The U.S. administration would probably not welcome Israeli participation. But if Israel were directly attacked by Iran or its allies, Washington would find it difficult to keep Israel out—as it did during the 1991 Gulf War. That would complicate the U.S. ability to manage its coalition, although it would not necessarily break it apart. Iranian diplomacy and information operations would seek to exploit Israeli participation to the fullest. Iran would have its own coalition. Hizballah in particular could act at Iran’s behest both by attacking Israel directly and by using its asymmetric and irregular warfare capabilities to expand the conflict and complicate the maintenance of the U.S. coalition. The escalation of the Hizballah-Israel conflict could draw in Syria and Hamas; Hamas in particular could feel compelled to respond to an Iranian request for assistance. Some or all of these satellite actors might choose to leave Iran to its fate, especially if initial U.S. strikes seemed devastating to the point of decisive. But their involvement would spread the conflict to the entire eastern Mediterranean and perhaps beyond, complicating both U.S. military operations and coalition diplomacy.

### 4

#### Text: The United States Federal Government should limit the war power authority of the president for self-defense drone strikes to outside an armed conflict. The U.S. Special Operations Command should ban the use of drones in Special Forces missions. The United States federal government should ban AC-130 and cruise missile attacks. The United States federal government should invest in a sufficient amount of quality staff and intelligence, analytical, and planning resources.

#### Competes – Targeted killing includes drones and special force raids – only the plan restricts Special Forces

Alston 11 (Phillip – John Norton Pomeroy Professor of Law, New York University School of Law, “ARTICLE: The CIA and Targeted Killings Beyond Borders”, 2011, 2 Harv. Nat'l Sec. J. 283, lexis)

The two principal targeted killing techniques are kill-or-capture raids and air strikes from unmanned aerial vehicles commonly known as drones. The individuals targeted are alleged terrorists or others deemed dangerous, and their inclusion on what are known as kill/capture lists is based on undisclosed intelligence applied against secret criteria. In Afghanistan alone it appears that there are at least six different kill/capture lists, with a total of thousands of names on them. While the CIA has been actively engaged in kill/capture missions since its arrival in Afghanistan in the days immediately after 9/11, it sometimes operates in conjunction with DOD Special Operations Forces under the command of JSOC, a body that also leads a determinedly twilight existence. Because the targeting operations and the kill/capture lists on which they are based are secret, the CIA will neither confirm nor deny their existence. [\*286] The CIA's drone-based killing programs have so far killed well in excess of 2,000 persons in Pakistan, and it has been involved in such drone programs in at least four other countries. This number is likely to expand significantly in the years ahead as a result of a combination of factors, including the perceived effectiveness of drone killings, the relatively low costs involved, shrinking overall defense budgets, a diminishing appetite for traditional warfare, the very low risk to United States personnel, the rapidly growing sophistication of tracking, targeting, and delivery technologies, and major investments aimed at further accelerating technological breakthroughs. Seen against this background, the targeted killing of Osama bin Laden in May 2011 was not a dramatic departure from the United States' established practice, but rather just another example of its increasingly frequent use of extraterritorial targeted killings as an integral part of its overall national security strategy. As the CIA Director observed at the time, the Special Forces that carried out the bin Laden raid--the United States Navy SEALS--"conduct these kinds of operations two and three times a night in Afghanistan." n5

#### Restrictions on targeted killings destroy Special Forces operational effectiveness

Maher 10 (Larry, Quartermaster General, Veterans of Foreign Wars, et al, 9/30/10, BRIEF OF THE VETERANS OF FOREIGN WARS OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS AND DISMISSAL, Nasser al-Aulaqi, Plaintiff, vs. Barack H. Obama, et al., Defendants, http://www.lawfareblog.com/wp-content/uploads/2010/10/VFW\_Brief\_PACER.pdf)

As a member organization comprised of individual veterans who have served this nation in war, and who continue to do so around the world, the VFW has a strong interest in protecting the operations of the U.S. armed forces from unwarranted or inappropriate judicial intrusion, as it believes is the case here. Such judicial interference with the Executive Branch and its constitutional war powers has dangerous implications for national security and our armed forces. Litigation over combat activities would undermine unit cohesion, the core of combat effectiveness at the small unit level. Judicial scrutiny of combat decision making—including strategic, operational and tactical decisions—would induce risk aversion and second-guessing among America’s military leaders, degrading their effectiveness. And, in the sensitive field of special operations, cases such as this may compromise the sources and methods used by America’s elite warriors, potentially threatening both their mission and their safety. Because of the importance of these issues, and the serious threat that this suit and similar litigation pose to national defense, the VFW is submitting this amicus curiae brief in order to share with the Court its perspective on the reasons why this action should be dismissed for lack of subject-matter jurisdiction. SUMMARY OF ARGUMENT The VFW agrees with the Government’s arguments regarding why this suit is barred, including by the political question doctrine. Rather than repeating those arguments, this amicus brief seeks to add perspective to the reasons why suits like the present action would threaten national security by interfering with ongoing military operations. Allowing this case to proceed would contravene the core military principle of “unity of command,” and undermine the military’s chain of command, creating uncertainty for subordinate leaders and soldiers. Such litigation also would adversely affect unit cohesion, the glue which binds small units together in the heat of battle, and enables them to survive and accomplish their missions. Further, litigation of cases such as this would undermine battlefield decisionmaking by subjecting tactical, operational and strategic decisions to second-guessing by courts far removed from the battlefield. And, to the extent this case will involve the activities of special operations forces, the VFW urges the Court to tread with particular caution, because of the need to protect the extremely sensitive sources and methods utilized by our nation’s elite forces.

#### Special forces operations are key to counter-prolif---solves nuclear war

Thomas 13 (Jim, Vice President and Director of Studies at the Center for Strategic and Budgetary Assessments, and Chris Dougherty is a Research Fellow at the Center for Strategic and Budgetary Assessments, 2013, “BEYOND THE RAMPARTS THE FUTURE OF U.S. SPECIAL OPERATIONS FORCES,” http://www.csbaonline.org/wp-content/uploads/2013/05/SOF-Report-CSBA-Final.pdf)

WMD do not represent new threats to U.S. security interests, but as nascent nuclear powers grow their arsenals and aspirants like Iran continue to pursue nuclear capabilities, the threat of nuclear proliferation, as well as the potential for the actual use of nuclear weapons, will increase. Upheaval in failing or outlaw states like Libya and Syria, which possess chemical weapons and a range of missiles, highlights the possibility that in future instances of state collapse or civil war, such weapons could be used by failing regimes in an act of desperation, fall into the hands of rebel forces, or be seized by parties hostile to the United States or its interests. SOF can contribute across the spectrum of counter-WMD efforts, from stopping the acquisition of WMD by hostile states or terrorist groups to preventing their use. The global CT network SOF have built over the last decade could be repurposed over the next decade to become a global counter-WMD network, applying the same logic that it takes a network to defeat a network. Increasing the reach and density of a global counter-WMD network will require expanding security cooperation activities focused on counter-proliferation. Finally, SOF may offer the most viable strategic option for deposing WMD-armed regimes through UW campaigns should the need arise.

### Contention 1

#### Only compliance with Self-defense norm – not other international norms

Ohlin ‘11

(Jens David Ohlin “THE FUTURE OF LEGAL THEORY: ESSAY AND COMMENT: NASH EQUILIBRIUM AND INTERNATIONAL LAW” Cornell Law Review¶ May, 2011¶ Cornell Law Review¶ 96 Cornell L. Rev. 869 Lexis, TSW)

The same analysis would apply in a multilateral context. Consider, for example, the most important area of international legal regulation: the use of force. n44 This is also the most contentious area of international legal regulation, one that the new realists often use as a poster child for their contention that legal norms will give way to self-interest when the cost of compliance becomes inconvenient. n45 However, [\*879] the Nash Equilibrium here is clear. The norm in question is the legal prohibition on the use of force, in both the UN Charter and customary law, unless such use of force is authorized by the Security Council - the central clearing house for decisions regarding international peace and security. n46 Some scholars trace the norm back to the Kellogg-Briand Pact, before which aggressive war was simply recognized as inevitable (and therefore not presumptively illegal). n47 This is too simplistic, since it was at the very least implicit in the notion of Westphalian sovereignty that states were free not just from outside interference in the widest sense, but also from outside attack in the narrowest sense. n48 In the current scheme, the prohibition against the use of force is now coupled with the Security Council's authority to authorize use of force to restore international peace and security. n49¶ Unfortunately, Security Council authorizations for the use of force are rare, and, since the threat of a veto is always present, states cannot predict with any reasonable certainly when the Security Council will authorize such use of force. n50 Thus, State A complies with the norm and eschews the use of force. This strategy of compliance is made with the hope that the other players in the game will also favor compliance. However, no state can assume that competitors will adopt the same strategy; the competitors might choose violation as their strategy and in so doing reserve the right to use force at their discretion. Why would the second state choose this strategy? Perhaps because the costs associated with noncompliance are relatively mild. Although they might be sued before the International Court of Justice (ICJ) and lose international standing (e.g., reputation), these costs pale in comparison to foregoing the use of force when your competitors refuse to do the same. This is why the international legal community has not navigated toward a Nash Equilibrium that grants the Security Council the exclusive authority to authorize military force. The stakes are too high and the legal prohibitions insufficient to incentivize reciprocal compliance. Simply put, each participant has an incentive to change its strategy away from compliance regardless of the strategy chosen by its competitors.¶ [\*880] It is precisely for this reason that, at its earliest incarnation, international law gravitated toward a norm regarding the use of force that allowed unilateral exceptions to the prohibition against the use of force in cases of self-defense. Nineteenth-century treatises regarding public international law, in discussing the use of force, made clear that military force was legal in cases of self-defense or self-preservation. n51 This exception to the norm prohibiting the use of force is as old as the prohibition itself. Although states were unwilling to adopt a strategy of compliance with a blanket prohibition on military force, states have been willing to adopt a strategy of compliance with a more nuanced legal norm that always allows military force in self-defense. n52 A state can comply with this norm because even if a competitor in the game changes strategy, defects from the norm, and engages in aggressive warfare, the first state can still use force in self-defense to protect itself, consistent with the legal norm. In other words, the cost of compliance with the norm does not require that a state risk its national security. n53¶ Consequently, states have a reason to stick with the strategy of compliance even given the uncertainty regarding the strategy of their competitors in the game. That is why a Nash Equilibrium has developed around a prohibition regarding the use of force unless authorized by the Security Council or in self-defense. Each state benefits from the legal norm - a stable world order without aggressive force and constant warfare - and therefore complies with the legal norm because compliance with the norm is also consistent with purely defensive force when competitors in the game change their strategy. n54 So, no state has reason to unilaterally change its strategy in the game.

**Restricting war powers authority causes the executive shift to self-defense justification --- guts the plan’s signal and causes global instability**

Barnes, 12

J.D. at Boston University and M.A. in Law and Diplomacy at The Fletcher School of Law and Diplomacy at Tufts University (Spring 2012, Beau D., Military Law Review, “REAUTHORIZING THE “WAR ON TERROR”: THE LEGAL AND POLICY IMPLICATIONS OF THE AUMF’S COMING OBSOLESCENCE,” 211 Mil. L. Rev. 57)

2. Effect on the International Law of Self-Defense¶ **A failure to reauthorize military force would lead to significant negative consequences on the international level as well. Denying the Executive Branch the authority to carry out military operations in the armed conflict against Al Qaeda would force the President to find authorization elsewhere**, **most likely in the international law of self-defense**--the jus ad bellum. n142 Finding sufficient legal authority for the United States's ongoing counterterrorism operations in the international law of self-defense, however, is problematic for several reasons. As a preliminary matter, **relying on this rationale usurps Congress's role in regulating the contours of U.S. foreign and national security policy. If the Executive Branch can assert "self-defense against a continuing threat" to target and detain terrorists worldwide, it will almost always be able to find such a threat.** n143 Indeed, the Obama Administration's broad understanding of the concept of "imminence" illustrates the danger of allowing the executive to rely on a **self-defense authorization** alone. n144 [\*94] This approach also **would inevitably lead to dangerous "slippery slopes."** **Once the President authorizes a targeted killing of an individual who does not pose an imminent threat in the strict law enforcement sense of "imminence,"** n145 **there are few potential targets that would be off-limits to the Executive Branch. Overly malleable concepts are not the proper bases for the consistent use of military force in a democracy.** **Although the Obama Administration has disclaimed this manner of broad authority because the AUMF "does not authorize military force against anyone the Executive labels a 'terrorist,'"** n146 **relying solely on the international law of self defense would likely lead to precisely such a result**.¶ The slippery slope problem, however, is not just limited to the United States's military actions and the issue of domestic control. **The creation of international norms is an iterative process**, **one to which the** **U**nited **S**tates **makes significant contributions**. **Because of this outsized influence, the U**nited **S**tates **should not claim international legal rights that it is not prepared to see proliferate around the globe**. Scholars have observed that **the** Obama **Administration's "expansive and open-ended interpretation of the right to self-defence threatens to destroy the prohibition on the use of armed force . . . ."** n147 **Indeed, "[i]f other states were to claim the broad-based authority that the United States does, to kill people anywhere, anytime, the result would be chaos."** n148¶ [\*95] **Encouraging the proliferation of an expansive law of international self-defense would** not only be harmful to U.S. national security and global stability, but it would also directly contravene the Obama Administration's national security policy, **sap**ping **U.S. credibility**. The Administration's National Security Strategy emphasizes U.S. "moral leadership," basing its approach to U.S. security in large part on "pursu[ing] a rules-based international system that can advance our own interests by serving mutual interests." n149 **Defense Department General Counsel** Jeh **Johnson has argued that "[a]gainst an unconventional enemy that observes no borders and does not play by the rules, we must guard against aggressive interpretations of our authorities that will discredit our efforts, provoke controversy and invite challenge."** n150 **Cognizant of the risk of establishing unwise international legal norms, Johnson argued that the** **U**nited States **"must not make [legal authority] up to suit the moment."** n151 The Obama Administration's global counterterrorism strategy is to "adher[e] to a stricter interpretation of the rule of law as an essential part of the wider strategy" of "turning the page on the past [and rooting] counterterrorism efforts within a more durable, legal foundation." n152

#### Low risk of a successful bioterror attack – wind patterns, logistics and weaponization

Keller ‘13

(Rebecca Keller of Stratfor which is a geopolitical intelligence firm that provides strategic analysis and forecasting to individuals and organizations around the world. By placing global events in a geopolitical framework, we help customers anticipate opportunities and better understand international developments. “Bioterrorism and the Pandemic Potential” THURSDAY, MARCH 7, 2013 - 04:01 <http://www.stratfor.com/weekly/bioterrorism-and-pandemic-potential>, TSW)

The Risk-Reward Equation¶ The risk of an accidental release of H5N1 is similar to that of other infectious pathogens currently being studied. Proper safety standards are key, of course, and experts in the field have had a year to determine the best way to proceed, balancing safety and research benefits. Previous work with the virus was conducted at biosafety level three out of four, which requires researchers wearing respirators and disposable gowns to work in pairs in a negative pressure environment. While many of these labs are part of universities, access is controlled either through keyed entry or even palm scanners. There are roughly 40 labs that submitted to the voluntary ban. Those wishing to resume work after the ban was lifted must comply with guidelines requiring strict national oversight and close communication and collaboration with national authorities. The risk of release either through accident or theft cannot be completely eliminated, but given the established parameters the risk is minimal.¶ The use of the pathogen as a biological weapon requires an assessment of whether a non-state actor would have the capabilities to isolate the virulent strain, then weaponize and distribute it. Stratfor has long held the position that while terrorist organizations may have rudimentary capabilities regarding biological weapons, the likelihood of a successful attack is very low. ¶ Given that the laboratory version of H5N1 -- or any influenza virus, for that matter -- is a contagious pathogen, there would be two possible modes that a non-state actor would have to instigate an attack. The virus could be refined and then aerosolized and released into a populated area, or an individual could be infected with the virus and sent to freely circulate within a population.¶ There are severe constraints that make success using either of these methods unlikely. The technology needed to refine and aerosolize a pathogen for a biological attack is beyond the capability of most non-state actors. Even if they were able to develop a weapon, other factors such as wind patterns and humidity can render an attack ineffective. Using a human carrier is a less expensive method, but it requires that the biological agent be a contagion. Additionally, in order to infect the large number of people necessary to start an outbreak, the infected carrier must be mobile while contagious, something that is doubtful with a serious disease like small pox. The carrier also cannot be visibly ill because that would limit the necessary human contact.¶ As far as continued research is concerned, there is a risk-reward equation to consider. The threat of a terrorist attack using biological weapons is very low. And while it is impossible to predict viral outbreaks, it is important to be able to recognize a new strain of virus that could result in an epidemic or even a pandemic, enabling countries to respond more effectively. All of this hinges on the level of preparedness of developed nations and their ability to rapidly exchange information, conduct research and promote individual awareness of the threat.

#### Can get vaccines - new vaccine facility with a faster process

Hamilton ‘13

(Reeve Hamilton covers higher education and politics for The Texas Tribune and hosts the Tribune's weekly podcast. His writing has also appeared in Texas Monthly and The Texas Observer. Born in Houston and raised in Massachusetts, he has a bachelor's degree in English from Vanderbilt University. “New Vaccine Facility in Bryan-College Station Approved” March 26, 2013 <http://www.texastribune.org/2013/03/26/m-system-announces-partnership-glaxosmithkline/>, TSW)

The U.S. Department of Health and Human Services approved a $91 million influenza-vaccine manufacturing facility to be based in the Bryan-College Station area and run by the Texas A&M University System and GlaxoSmithKline, a global pharmaceutical company.¶ Speaking Tuesday at a news conference at the Texas Capitol, A&M System Chancellor John Sharp predicted that decades from now, the announcement would be remembered as "one of the most significant economic developments ever created in the state of Texas." The system predicts that the project will generate $41 billion in expenditures and more than 6,800 jobs for the state over the next 25 years.¶ Gov. Rick Perry, on hand for the announcement, said it was "fitting that this is coming to Texas." He cited innovations in Texas oilfields, NASA's work at the Johnson Space Center in Houston and the invention of the integrated circuit at Texas Instruments. "Texas is home to innovative minds and world-changing ideas," Perry said.¶ But why is this happening in College Station? As Brett Giroir, the system's vice chancellor for strategic initiatives, noted, "It's not exactly at the crossroads of Philadelphia and Brussels."¶ Last June, an A&M System-led team, which includes GSK, landed a roughly $285 million federal contract to develop one of three new national centers focused on developing and manufacturing medicine and vaccines to respond to pandemic diseases and bioterror threats.¶ The facility announced Tuesday will anchor what the team named the Texas A&M Center for Innovation in Advanced Development and Manufacturing. It will produce vaccines using a cell-culture process rather than the traditional, slower, egg-based process.¶ The efforts are expected to complement GSK's existing vaccine operations in Canada and Germany. The vaccines made in College Station will be packaged, inspected and distributed by the company's operations hub in Marietta, Penn.¶ Giroir said that Tuesday's announcement was about a decade in the making, but specific discussions with GSK about the facility began in 2010. And there were hints that there could be more to come from this partnership.¶ Antoon Loomans, a senior vice president and general counsel at GSK Vaccines, said of the new facility and working with the A&M System, "We want to use this to build on our platform, particularly in Texas."

**Theory vs. practice – even if terrorists could access WMDs they won’t use them—It’s not beneficial**

**Roberts & Moodie ‘2**

(Brad, research staff at the Institute for Defense Analyses, and Michael, president of the Chemical and Biological Arms Control Institute, July, Biological Weapons: Toward a Threat Reduction Strategy, Defense Horizons)

Terrorists generally **have not killed as many as they have been capable of killing. This** restraint **seems to** derive froman understanding of mass casualty attacks as both **unnecessary and** counterproductive**. They are unnecessary** becauseterrorists, by and large, have succeeded by conventional means. Also, they **are counterproductive because they** might alienate **key** constituencies, whether among the public, state sponsors, or the terrorist leadership group. In Brian Jenkins' famous words, **terrorists want a lot of people watching, not a lot of people dead**. Others have argued that the lack of mass casualty terrorism and effective exploitation of BW has been more a matter of accident and good fortune than capability or intent. Adherents of this view, including former Secretary of Defense William Cohen, argue that "it's not a matter of if but when." The attacks of September 11 would seem to settle the debate about whether terrorists have both the motivation and sophistication to exploit weapons of mass destruction for their full lethal effect. After all, those were terrorist attacks of unprecedented sophistication that seemed clearly aimed at achieving mass casualties--had the World Trade Center towers collapsed as the 1993 bombers had intended, perhaps as many as 150,000 would have died. Moreover, Osama bin Laden's constituency would appear to be not the "Arab street" or some other political entity but his god. And terrorists answerable only to their deity have proven historically to be among the most lethal. But this debate cannot be considered settled. **Bin Laden and his followers could have killed many more on September 11 if killing as many as possible had been their primary objective. They now face the core dilemma of asymmetric warfare: how to escalate without creating new interests for the stronger power** and thus the incentive **to exploit its power potential more fully. Asymmetric adversaries want their stronger enemies fearful, not fully engaged--militarily** or otherwise. They seek to win by preventing the stronger partner from exploiting its full potential. To kill millions in America with biological or other weapons would only commit the United States--and much of the rest of the international community--to the annihilation of the perpetrators.

#### Biotech irrelevant – it’s too hard for terrorists

Jonathan B. **Tucker** Spring **11**

(Expert in arms control and nonproliferation policy, specializing in chemical and biological weapons. He served in the U.S. government in several capacities, including as a biological-weapons inspector in Iraq in the 1990s. He also worked at several think tanks and advocacy groups, including the Center for Nonproliferation Studies of the Monterey Institute of International Studies. Studied biology as an undergraduate at Yale, and earned a Ph.D. in political science from M.I.T.; “Could Terrorists Exploit Synthetic Biology?” http://www.thenewatlantis.com/publications/could-terrorists-exploit-synthetic-biology)

Field research by sociologists of science has shown that advanced biotechnologies such as whole-genome synthesis demand high levels of both personal and communal tacit knowledge. For example, Kathleen Vogel of Cornell University found that the Stony Brook researchers who synthesized the polio virus did not rely exclusively on written protocols but made extensive use of intuitive skills acquired through years of experience. Tacit knowledge was particularly important in one step of the process: preparing the cell-free extracts needed to translate the synthetic genome into infectious virus particles. If the cell-free extract was not prepared correctly by relying on subtle tricks and sensory cues, it proved impossible to reproduce the published experiment.[8]¶ Based on her empirical research, Vogel concludes that biotechnology is a “socio-technical assemblage” — an activity whose technical and social dimensions are inextricably linked.[9]¶ Such factors help to explain the problems that scientists often encounter when trying to replicate a research protocol developed in another laboratory, or when translating a scientific discovery from the research bench to commercial application.[10]¶ Despite the ongoing “revolution” in the life sciences, these traditional bottlenecks persist. Other case studies of technological innovation have confirmed the importance of the socio-technical dimension, which includes tacit knowledge, teamwork, laboratory infrastructure, and organizational factors.¶ In the field of whole-genome synthesis, for example, the importance of socio-technical factors continues to grow as scientists take on larger and more complex genomes. Researchers at the J. Craig Venter Institute announced in May 2010 that they had synthesized an artificial bacterial genome consisting of more than one million DNA units, a task that required a unique configuration of expertise and resources.[11]¶ In an interview, Dr. Venter noted that at each stage in the process, a team of highly skilled and experienced molecular biologists had to develop new methodologies, which could be made to work only through a lengthy process of trial and error. For instance, because the long molecules of synthetic bacterial DNA were fragile, they had to be stored in supercoiled form inside of gel blocks and handled carefully to keep them from breaking up. “As with all things in science,” Venter explained, “it’s the little tiny breakthroughs on a daily basis that make for the big breakthrough.”[12]¶ Recent developments in scientific publishing also reflect the fact that the growing complexity of research tools and processes has increased the importance of tacit knowledge. One online scientific publication, the Journal of Visualized Experiments, has since 2006 used video recordings of experimental techniques to portray subtle details that cannot be captured in written form.[13]¶ Other online repositories of research-protocol videos include Dnatube.com and SciVee.tv.[14]¶ Based on such evidence, Vogel, along with Sonia Ben Ouagrham-Gormley of George Mason University, have concluded that the technical and socio-organizational hurdles involved in whole-genome synthesis pose a major obstacle to the ability of terrorist organizations to exploit this technology for harmful purposes.[15]

#### China and Japan made a deal on the islands

Economist 12-15

“The Rocky Road to Revival,” <http://www.economist.com/news/china/21568392-region-ponders-policy-chinas-new-leaders-over-disputed-waters-and-shudders-rocky>

The most serious—China’s fierce reaction to Japan’s purchase in September from their private owner of three of the disputed Senkaku islands (known in China as the Diaoyu islands) in the East China Sea—now seems less immediately threatening. Fears that the squabble over the rocky, uninhabited, goat-infested specks might escalate, and even drag in America through its mutual security treaty with Japan, now look overblown. China and Japan seem to have worked out a provisional compromise. For its part, Japan has refused to reverse its “nationalisation” of the islands, but accepted that China has started to visit them more frequently. On December 7th, for example, four Chinese government civilian vessels entered their 12-mile territorial waters. A tacit agreement stops both sides landing on the islands, building there or deploying their navies close by. Hardly a sustainable solution, perhaps, but better than a shoot-out.

#### Nationalism is the root cause of Senkakus conflict – not energy

Park Min-hee, Beijing correspondent for Hankyoreh, 9/28/2012

<http://english.hani.co.kr/arti/english_edition/e_editorial/553832.html>

Maoism may indeed be the single most powerful religion in China today. As rage against widespread corruption, income inequality, and injustice combines with anxieties over an economy that is losing steam by the day, people in China have been turning to their old leader. In his book "China in Ten Words," Yu Hua writes that the many problems that emerged after development may be "precisely why Mao keeps being brought back to life." A dangerous combination, fed by discontent with reality, is taking shape between China's left wing and patriots, who are presenting nostalgia for the Mao days as some kind of alternative.¶ In Japan, we can also find shadows reminiscent of this growing Sinocentrism. **The latest round of friction was touched off by Japan's far right**, **which irresponsibly exploited a territorial issue in the hopes of winning political points**. Having lost their way amid a Fukushima nuclear crisis, an economy mired in quicksand, an aging society, and the disgruntlement of young people robbed of opportunity, these right-wingers have derided the Peace Constitution and any kind of reflection on history, and are working to promote a sense of nostalgia for the glories of the militarist [imperial] era.¶ Japan's right-winger par excellence may be Tokyo Gov. Shintaro Ishihara, whose declaration of the Senkaku Islands' nationalization back in April hinted at the conflict to come. History shows that Japan's acquisition of Okinawa and the Senkaku Islands in 1885 was the result of expansionist incursions. The Cold War order that the US built in Northeast Asia after the Second World War is what left the potential for territorial disputes over Dokdo and the Senkaku Islands. Even after this latest development, it is difficult to find any words of reflection in Japan - anyone willing to say that **the claims of dominion over Senkaku are tied to a history of invasion**, or that the situation worsened because of the breaking of an implicit agreement at the time Tokyo and Beijing established relations.¶ Meanwhile, far right-leaning former Prime Minister Shinzo Abe, a man who denies that comfort women were forcibly mobilized, is considered likely to win reelection. East Asia is now under threat from the Chinese left and the Japanese right, both of whom are turning to nostalgia rather than tackling their real issues. **The Senkaku conflict is just a symptom of a deeply rooted problem of multiple contradictions and political confusion in both countries**.

#### The new Israeli government would never attack Iran

Journal of Turkish Weekly 3/20/13

[http://www.turkishweekly.net/news/148220/is-israel-going-to-attack-iran.html, mg]

As we are approaching spring, it reminds us of Benjamin Netanyahu's theatrical gesture at the United Nations General Assembly last September, while holding up a cartoon-like drawing of a bomb with a fuse as he drew the famous “red line” for Iran’s nuclear program. That red line represents this spring and is just below a presumed “final stage” to a bomb. But, let us conjure up the initial question: **Is Israel really going to attack Iran? Many observers** tend to **give a simple answer of** “NO”, **saying all this is** sheer fantasy**, especially with the prospective structure of the** new Israeli government coalition **and the current developments in the Middle East.**

#### It’s all rhetorical hot air--- no Israeli attack

Journal of Turkish Weekly 3/20/13

[http://www.turkishweekly.net/news/148220/is-israel-going-to-attack-iran.html, mg]

Experts believe that any Israeli attack would not deter Iranian nuclear program and its ambition would not be ended, but simply delayed. **Israeli military and intelligence chiefs believe that a strike on Iran is a bad idea,** while the **Obama** administration **has told Israel to back off** and wait for sanctions to work. ¶ While it would be naive to disregard the possibility that these reports and drills do indeed reflect something cooking on low heat, **pure rhetoric and psychological war** still **remain** as **a possibility.** According to the Washington Post; "**A sort of psychological conflict has developed between Israel and Iran, a war of signals."** Tehran wants to demonstrate to Israel that a strike would be too costly and too ineffective to be worthwhile and Israel wants to demonstrate that its will – and its defenses – are unshakable, so Iran might as well just give up on the program now".¶

### Contention 2

#### Obama will resist the plan - fights over war powers create intractable national diversions and destroys military decision making, interbranch cooperation and rule of law

Lobel 8

Lobel, Pittsburgh law professor, 2008¶ (Jules, “Conflicts Between the Commander in Chief and Congress: Concurrent Power over the Conduct of War”, Ohio State Law Journal, vol 69, lexis)

The critical difficulty with a contextual approach is its inherent ambiguity and lack of clarity, which tends to sharply shift the balance of power in favor of a strong President acting in disregard of congressional will. For example, the application of the Feldman and Issacharoff test asking whether the congressional restriction makes realistic sense in the modern world would yield no coherent separation of powers answer if applied to the current Administration’s confrontation with Congress. It would undoubtedly embolden the President to ignore Congress’s strictures. The President’s advisors would argue that the McCain Amendment’s ban on cruel and inhumane treatment, or FISA’s requirement of a warrant, does not make realistic sense in the context of the contemporary realities of the war on terror in which we face a shadowy, ruthless nonstate enemy that has no respect for laws or civilized conduct, a conclusion hotly disputed by those opposed to the President’s policies. Focusing the debate over whether Congress has the power to control the treatment of detainees on the President’s claim that the modern realities of warfare require a particular approach will merge the separation of powers inquiry of who has the power with the political determination of what the policy ought to be. Such an approach is likely to encourage the President to ignore and violate legislative wartime enactments whenever he or she believes that a statute does not make realistic sense—that is, when it conflicts with a policy the President embraces. 53 The contextual approach has a “zone of twilight” quality that Justice Jackson suggested in Youngstown. 54 Often constitutional norms matter less than political realities—wartime reality often favors a strong President who will overwhelm both Congress and the courts. While it is certainly correct— as Jackson noted—that neither the Court nor the Constitution will preserve separation of powers where Congress is too politically weak to assert its authority, a fluid contextual approach is an invitation to Presidents to push beyond the constitutional boundaries of their powers and ignore legislative enactments that seek to restrict their wartime authority. Moreover, another substantial problem with a contextual approach in the war powers context is that the judiciary is unlikely to resolve the dispute. 55 The persistent refusal of the judiciary to adjudicate the constitutionality of the War Powers Resolution strongly suggests that courts will often refuse to intervene to resolve disputes between the President and Congress over the constitutionality of a statute that a President claims impermissibly interferes with her conduct of an ongoing war. 56 This result leaves the political branches to engage in an intractable dispute over the statute’s constitutionality that saps the nation’s energy, diverts focus from the political issues in dispute, and endangers the rule of law. Additionally, in wartime it is often important for issues relating to the exercise of war powers to be resolved quickly. Prompt action is not usually the forte of the judiciary. If, however, a constitutional consensus exists or could be consolidated that Congress has the authority to check the President’s conduct of warfare, that consensus might help embolden future Congresses to assert their power. Such a consensus might also help prevent the crisis, chaos, and stalemate that may result when the two branches assert competing constitutional positions and, as a practical matter, judicial review is unavailable to resolve the dispute. Moreover, the adoption of a contextual, realist approach will undermine rather than aid the cooperation and compromise between the political branches that is so essential to success in wartime. In theory, an unclear, ambiguous division of power between the branches that leaves each branch uncertain of its legal authority could further compromise and cooperation. However, modern social science research suggests that the opposite occurs. 57 Each side in the dispute is likely to grasp onto aspects or factors within the ambiguous or complex reality to support its own self-serving position. This self-serving bias hardens each side’s position and allows the dispute to drag on, as has happened with the ongoing, unresolved dispute over the constitutionality of the War Powers Resolution. Pg. 407-409

## Case

### Defense just norm

#### No international convergence on norms – no check and I-lawyer disagreements

Murphy ‘05

(Sean D. Murphy Professor, George Washington University Law School. B.A., Catholic University; J.D., Columbia University; LL.M., Cambridge University; S.J.D., University of Virginia. “BRAVE NEW WORLD: U.S. RESPONSES TO THE RISE IN INTERNATIONAL CRIME: ARTICLE: THE DOCTRINE OF PREEMPTIVE SELF-DEFENSE” Villanova Law Review¶ October, 2005¶ 50 Vill. L. Rev. 699 Lexis, TSW)

The strikingly divergent views on the legality of preemptive self-defense no doubt have several causal explanations. International law as a whole suffers from the lack of authoritative decision-makers, such as a supreme court with plenary power to decide controversial questions of either legal process or substance, thus making a convergence of views harder. Further, international law on the use of force presents particular difficulties in promoting state fidelity to a normative structure given that adherence to norms is under the greatest stress when issues of national security are at stake. Finally, the norms may not be static in nature. Whether September 11 can be viewed as a "constitutional moment" for [\*720] international law - meaning a moment in which seismic shifts in international law occurred without any formal amendment - is unclear, but the rise of global terrorism represented by those attacks challenges many of the conventional assumptions upon which international law has been based.¶ Despite these many factors, a central reason for these divergences of view may well be that: (1) international lawyers are not explaining the methodology that they are employing in determining the state of the law; (2) are not recognizing that their disagreement with other international lawyers arises largely from the use of different methodologies; and (3) are not articulating why one methodology is superior to another. In particular, to the extent that state practice is deemed significant for purposes of interpreting the U.N. Charter or determining the emergence of a new customary rule of law, international lawyers rarely explain their view as to the circumstances that merit using state practice to establish an evolution in the state of the law and too often provide only a cursory analysis of such practice to see if those circumstances are met. Unfortunately, in reading the literature one cannot help but feel that international lawyers are often coming to this issue with firm predispositions as to whether anticipatory self-defense or preemptive self-defense should or should not be legal and then molding their interpretation of state practice to fit their predispositions.¶ Ideally, international lawyers would agree upon a narrative explanatory protocol that would set forth a coherent structure for analyzing and configuring state practice, as has been done in the field of international relations theory. n69 Among other things, developing such a protocol may allow international lawyers to move away from a binary discussion of whether preemptive self-defense is lawful or unlawful, to one that explores the subtleties and nuances of how states react to varying levels of such force being used in different kinds of factual scenarios. The purpose of this section is to identify some of the key issues that arise in assessing methodology and state practice on this topic in the hope that it may promote the pursuit of an explanatory protocol, and in turn, more rigorous analyses by international lawyers and more convergence in the positions taken by them regarding the legality of preemptive self-defense. n70 Through greater convergence in the views taken by international lawyers, the normative [\*721] standards set by international law may become clearer and more helpful for states in ordering their relations.

#### Use of force norm can’t be eroded self-defense is the norm

Ryngaert ‘12

(CEDRIC RYNGAERT Associate Professor of International Law, Utrecht University; Associate Professor of International Law, Leuven University; Rapporteur of the International Law Association's Committee on Non-State Actors. “REFLECTIONS ON A DECADE OF INTERNATIONAL LAW: INTERNATIONAL LEGAL THEORY: SNAPSHOTS FROM A DECADE OF INTERNATIONAL LEGAL LIFE:” Melbourne Journal of International Law¶ June 2012¶ Melbourne Journal of International Law¶ 13 Melbourne J. of Int'l Law 266, Lexis, TSW)

Let us now turn to what is possibly Lubell's most controversial stated principle, developed in the first part of the book on the jus ad bellum: states should, as a general matter, be allowed to use force extraterritorially, in self-defence under the jus ad bellum, against non-state actors who have attacked them, provided that the attack crossed the threshold of armed attack (measured by its scale and effects), and that the territorial state proves unwilling or unable to end the attacks taking place from its soil (in the absence of which the customary law criterion of necessity would not be met). n20 This statement [\*270] constitutes a marked departure from the case law of the International Court of Justice, which in its Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) ruled out the use of self-defence against non-state actors. n21 Lubell submits that '[t]here is in fact plentiful evidence to provide solid support for the contention that non-state actors can be responsible for armed attacks which give rise to self-defence'. n22 However, he goes on to cite only the 1837 Caroline Case, the 2001 US action against al-Qaeda in Afghanistan, and the brief military operation by Israel against Hezbollah in Lebanon in 2006. n23 True, a substantial number of other commentators also support the use of self-defence against non-state actors, n24 but their opinions are not a formal source of law. One may be hard-pressed to consider the few cases of state practice mentioned to constitute 'virtually uniform' and 'extensive' practice, that is, the necessary material element for the formation of norms of customary international law. n25¶ Lubell is not alone, though. Michael Byers already warned as early as 2002 -- that is, before the invasion of Iraq -- in the context of the law on the use of force, including the lawfulness of self-defence, that physical acts of states, as compared to statements (such as statements of protest), seem to be accorded more weight than before and that the practice of the powerful may count more than the practice of the weak. n26 The extended right of self-defence against non-state actors may then be seen as a vindication of the hegemony of militarily powerful states such as the US and Israel. It remains no less true, however, that the exercise of such self-defence has not met with much opposition from other states. It is not so much the case that verbal practice has lost its weight, but rather that there is hardly any verbal practice that counters powerful states' physical practice -- thereby seemingly validating the latter practice. Moreover, recent practice shows that the right of self-defence is also exercised by states that are [\*271] not a major global power, such as Colombia (in Ecuador), Kenya (in Somalia), or Turkey (in Iraqi Kurdistan).

## Cp

### 2NC Link -- Disclosure

#### Plan would collapse the effectiveness of Special Forces missions-

Larry Maher 10, Quartermaster General, Veterans of Foreign Wars, et al, 9/30/10, BRIEF OF THE VETERANS OF FOREIGN WARS OF THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS AND DISMISSAL, Nasser al-Aulaqi, Plaintiff, vs. Barack H. Obama, et al., Defendants, http://www.lawfareblog.com/wp-content/uploads/2010/10/VFW\_Brief\_PACER.pdf

Finally, the VFW’s membership includes many current and former members of the U.S. armed forces’ elite special operations forces—Army Rangers and Special Forces, Navy SEALs, Air Force parajumpers and combat controllers, and Marine Corps Force Reconnaissance personnel, among others. These elite warriors conduct highly dangerous missions today in Iraq, Afghanistan, and other countries around the world. By definition, special operations “are operations conducted in hostile, denied, or politically sensitive environments to achieve military, diplomatic, informational, and/or economic objectives employing military capabilities for which there is no broad conventional force requirement. These operations often require covert, clandestine, or low-visibility capabilities.” U.S. Joint Chiefs of Staff, Joint Pub. 3-05, Doctrine for Joint Special Operations, at I-1 (2003), available at http://www.dtic.mil/doctrine/new\_pubs/jp3\_05.pdf. Special operations are differentiated from conventional operations in many ways, but foremost among these are their “degree of physical and political risk, operational techniques, mode of employment, independence from friendly support, and dependence on detailed operational intelligence and indigenous assets.” Id. “Surprise is often the most important principle in the conduct of successful [special operations] and the survivability of employed [special operations forces],” and the very nature of special operations requires “high levels of security . . . to protect the clandestine/covert nature of missions.” Id. at I-6. More than mission accomplishment is at stake—“[g]iven their operating size, [special operations teams] are more vulnerable to potential hostile reaction to their presence than larger conventional units,” and therefore the protection of sources and methods is essential for the survival of special operations forces. Id. To preserve this element of surprise, special operations forces must broadly conceal their tactics, techniques and procedures, including information about unit locations and movements, targeting decisions, and operational plans for future missions. Disclosure of this information would allow this nation’s adversaries to defend themselves more effectively, potentially inflicting more casualties upon U.S. special operations forces. Such disclosure would also provide information about how the U.S. military gathers information about its adversaries, enabling terrorist groups like Al Qaeda to alter its communications and activities in order to evade future detection and action by the U.S. Government. Such harm would not be limited to just this instance or terrorist group group; these disclosures would also provide future terrorist adversaries and military adversaries with insight into U.S. special operations capabilities which would enable them to counter such capabilities in future conflicts. Cf. Public Declaration of Robert M. Gates, Secretary of Defense, Govt. Exhibit 4, September 23, 2010, at ¶¶ 6-7. In this matter, the Plaintiff asks the Court to pull back the veil on the U.S. special operations community, exposing special operations sources and methods to the public, including this nation’s enemies. This would do tremendous harm to current special operations personnel, including VFW members, who are operating abroad in Iraq, Afghanistan, and elsewhere, and who depend on stealth, security and surprise for their survival and mission accomplishment. Further, in his prayer for relief, Plaintiff asks the Court to order the disclosure of “the criteria that are used in determining whether the government will carry out the targeted killing of a U.S. citizen.” As Secretary Gates states in his public declaration filed by the Government, without confirming or denying any allegation made by Plaintiff, this type of information “constitutes highly sensitive and classified military information that cannot be disclosed without causing serious harm to the national security of the United States." Id. at ¶5. These criteria necessarily reflect the sources, methods and analytic processes used to produce them, and would tend to reveal other information about military' sources and methods which are essential to the success and survival of special operations personnel.

### 2NC Impact Overview

#### Proliferation causes nuclear war - it’s likely and existential

Horowitz 9(Professor of Political Science @ University of Pennsylvania [Michael Horowitz (Former Emory debater and NDT Champion), “The Spread of Nuclear Weapons and International Conflict: Does Experience Matter?,” Journal of Conflict Resolution, Volume 53 Number 2, April 2009 pg. 234-257]

Learning as states gain experience with nuclear weapons is complicated. While to some extent, **nuclear acquisition** might provide information about resolve or capabilities, it also **generates uncertainty about the way an actual conflict would go**—**given the new risk of nuclear escalation—and uncertainty about relative capabilities**. **Rapid proliferation** **may especially heighten uncertainty** given the potential for reasonable states to disagree at times about the quality of the capabilities each possesses. 2 What follows is an attempt to describe the implications of inexperience and incomplete information on the behavior of nuclear states and their potential opponents over time. Since it is impossible to detail all possible lines of argumentation and possible responses, the following discussion is necessarily incomplete. This is a first step. **The acquisition of nuclear weapons increases the confidence of adopters in their ability to impose costs in the case of a conflict and the expectations of likely costs if war occurs by potential opponents**. The key questions are whether nuclear states learn over time about how to leverage nuclear weapons and the implications of that learning, along with whether actions by nuclear states, over time, convey information that leads to changes in the expectations of their behavior—shifts in uncertainty— on the part of potential adversaries. Learning to Leverage? When a new state acquires nuclear weapons, how does it influence the way the state behaves and how might that change over time? Although **nuclear acquisition** might be orthogonal to a particular dispute, it **might be related to a particular security challenge, might signal revisionist aims with regard to an enduring dispute, or might signal the desire to reinforce the status quo**. This section focuses on how acquiring nuclear weapons influences both the new nuclear state and potential adversaries. In theory, systemwide perceptions of nuclear danger could allow new nuclear states to partially skip the early Cold War learning process concerning the risks of nuclear war and enter a proliferated world more cognizant of nuclear brinksmanship and bargaining than their predecessors. However, **each new nuclear state has to resolve its own particular civil–military issues surrounding operational control and plan its national strategy in light of its new capabilities**. Empirical research by Sagan (1993), Feaver (1992), and Blair (1993) suggests that viewing the behavior of other states does not create the necessary tacit knowledge; **there is no substitute for experience when it comes to handling a nuclear arsenal, even if experience itself cannot totally prevent accidents**. Sagan contends that civil–military **instability in many likely new proliferators and pressures generated by the requirements to handle the responsibility of dealing with nuclear weapons will skew decision making toward more offensive strategies** (Sagan 1995). The questions surrounding Pakistan’s nuclear command and control suggest there is no magic bullet when it comes to new nuclear powers’ making control and delegation decisions (Bowen and Wolvén 1999). Sagan and others focus on inexperience on the part of new nuclear states as a key behavioral driver. **Inexperienced operators and the bureaucratic desire to “justify” the costs spent developing nuclear weapons**, combined with organizational biases that may favor escalation to avoid decapitation—**the “use it or lose it” mind-set— may cause new nuclear states to adopt riskier launch postures, such as launch on warning, or at least be perceived that way by other states** (Blair 1993; Feaver 1992; Sagan 1995). 3 **Acquiring nuclear weapons** **could** alter state preferences **and make states more likely to escalate disputes once they start**, given their new capabilities. 4 But their general lack of experience at leveraging their nuclear arsenal and effectively communicating nuclear threats could mean **new nuclear states will be more likely to select adversaries poorly and to find themselves in disputes with resolved adversaries that will reciprocate militarized challenges**.

## DA

### 2NC Overview

#### Secondary sanctions on Iran undermine US leadership and kills china relations - collapses global rules based international order and turns NORMS

Leverett 12

Leverett-professor at Pennsylvania State University's School of International Affairs-7/5/12 ¶ <http://www.worldfinancialreview.com/?p=3490>¶ America’s Iran Policy and the Undermining of International Order

Second, secondary sanctions are a political house of cards. American officials are well aware of their presumptive illegality. Successive U.S. administrations have been reluctant to impose them on non-U.S. entities transacting with Iran, precisely to avoid formal challenges at the WTO. U.S. secondary sanctions are, in effect, an enormous bluff, leveraging the specter of legal and reputational risk in America to bully companies and banks in third countries to stop transacting with Iran, but without pulling the trigger on the threat to punish those that continue doing business in Iran. The UK and European sanctions now facing legal challenges are a product of this bullying campaign. For over a decade, the EU has condemned America’s threatened ‘extraterritorial’ application of national trade law, warning it would go to the WTO if Washington ever sanctioned European companies over Iran-related business. Over the last several years, though, enough British and European businesses stopped transacting with Iran that the EU was no longer under pressure to defend European commercial interests and could begin subordinating its Iran policy to American preferences. By last year, it has imposed a nearly comprehensive economic embargo against the Islamic Republic. While Europe has surrendered on having an independent Iran policy, the U.S. bluff on secondary sanctions will soon be called, most likely by China. To be sure, Beijing does not seek confrontation with America over Iran, and has sought to accommodate Washington in many ways—e.g., by not developing trade and investment positions in the Islamic Republic as rapidly as it might have, and by shifting some Iran-related transactional flows into renminbi to help the Obama administration avoid sanctioning Chinese banks. While China’s imports of Iranian oil appear, in the aggregate, to be growing, Beijing reduces them when the administration is deciding about six-month sanctions waivers for countries buying Iranian crude. The Obama administration, for its part, continues giving China sanctions waivers; the one Chinese bank barred from America for Iran-related transactions is a Chinese energy company subsidiary with no U.S. business. But as Congress legislates more secondary sanctions, Obama’s room to maneuver is shrinking. Obama will soon be in the position of demanding that China cut Iranian oil imports in ways that would harm its economy, and that Chinese banks stop virtually all Iran-related transactions. Beijing will not be able to accommodate such radical demands; it will have to say ‘no’, putting Obama in a classic lose-lose situation. “If America wants a nuclear deal grounded in the NPT, Hassan Rohani is an ideal interlocutor. But this would require Washington to bring its own policy in line with the NPT.” Obama could retreat. But then the world will know that secondary sanctions are a bluff, undercutting their deterrent effect. Alternatively, he could sanction major Chinese firms and banks. But that will force Beijing to respond—at least by taking America to the WTO (where China will win), perhaps by retaliating against U.S. companies. At this point, Beijing has more ways to impose costs on America for violations of international economic law impinging on Chinese interests than Washington has levers to coerce Chinese compliance with U.S. policy preferences. America and its partners will not come out ahead in this scenario. Third, U.S. secondary sanctions accelerate the shift of economic power from West to East. As non-Western economies surpass more Western countries in their relative importance to the global economy, America has a strong interest in keeping non-Western states tied to established, U.S.-dominated mechanisms for conducting, financing, and settling international transactions. Secondary sanctions, though, push in the opposite direction, incentivizing emerging powers to speed up development of non-Western alternatives to existing transactional platforms. “Strategic recovery will also entail reversing Washington’s reliance on secondary sanctions—not because of Iranian surrender (which won’t be forthcoming), but because they delegitimize America’s claim to continuing leadership in international economic affairs.” This trend will diminish Western influence in myriad ways—e.g., reducing the dollar’s role as a transactional currency, lowering the share of cross-border commodity trades on New York and London exchanges, and shrinking the global near-monopoly of Western-based reinsurance companies and P&I clubs. Add the cost of a U.S.-instigated trade dust-up with China, and the self-damaging quality of America’s dysfunctional Iran policy becomes even clearer. Finding a New Approach Putting America on a better strategic trajectory will take thoroughgoing revision of its Iran policy. In this regard, the election of Hassan Rohani—who ran the Islamic Republic’s Supreme National Security Council for sixteen years, was its chief nuclear negotiator during 2003-2005, and holds advanced degrees in Islamic law and civil law—as Iran’s next president is an opportunity. If America wants a nuclear deal grounded in the NPT, Rohani is an ideal interlocutor. But this would require Washington to bring its own policy in line with the NPT—first of all, by acknowledging Iran’s right to safeguarded enrichment. Strategic recovery will also entail reversing Washington’s reliance on secondary sanctions—not because of Iranian surrender (which won’t be forthcoming), but because they delegitimize America’s claim to continuing leadership in international economic affairs. This, however, is even more difficult than revising the U.S. position on Iranian enrichment—for Congress has legislated conditions for lifting sanctions that stipulate Iran’s abandonment of all alleged WMD activities, cutting all ties to those Washington deems terrorists, and political transformation. Overcoming this will require Obama to do what President Nixon did to enable America’s historic breakthrough with China—going to Tehran, strategically if not physically, to accept a previously demonised political order as a legitimate entity representing legitimate national interests. None of this is particularly likely. But if America doesn’t do these things, it condemns itself to a future as an increasingly failing, and flailing, superpower—and as an obstacle, rather than a facilitator, of rules-based international order.

#### US-Sino relations prevent nuclear war and turns their Senkaku Island advantage

Wittner 11 (Wittner, Emeritus Professor of History at the State University of New York/Albany and former editor of Peace & Change, a journal of peace research, “COMMENTARY: Is a Nuclear War with China Possible?,” November 28, <http://www.nytimes.com/2012/06/13/opinion/avoiding-a-us-china-war.html>)

While nuclear weapons exist, there remains a danger that they will be used. After all, for centuries national conflicts have led to wars, with nations employing their deadliest weapons. The current deterioration of U.S. relations with China might end up providing us with yet another example of this phenomenon. The gathering tension between the United States and China is clear enough. Disturbed by China’s growing economic and military strength, the U.S. government recently challenged China’s claims in the South China Sea, increased the U.S. military presence in Australia, and deepened U.S. military ties with other nations in the Pacific region. According to Secretary of State Hillary Clinton, the United States was “asserting our own position as a Pacific power.” But need this lead to nuclear war? Not necessarily. And yet, there are signs that it could. After all, both the United States and China possess large numbers of nuclear weapons. The U.S. government threatened to attack China with nuclear weapons during the Korean War and, later, during the conflict over the future of China’s offshore islands, Quemoy and Matsu. In the midst of the latter confrontation, President Dwight Eisenhower declared publicly, and chillingly, that U.S. nuclear weapons would “be used just exactly as you would use a bullet or anything else.” Of course, China didn’t have nuclear weapons then. Now that it does, perhaps the behavior of national leaders will be more temperate. But the loose nuclear threats of U.S. and Soviet government officials during the Cold War, when both nations had vast nuclear arsenals, should convince us that, even as the military ante is raised, nuclear saber-rattling persists. Some pundits argue that nuclear weapons prevent wars between nuclear-armed nations; and, admittedly, there haven’t been very many—at least not yet. But the Kargil War of 1999, between nuclear-armed India and nuclear-armed Pakistan, should convince us that such wars can occur. Indeed, in that case, the conflict almost slipped into a nuclear war. Pakistan’s foreign secretary threatened that, if the war escalated, his country felt free to use “any weapon” in its arsenal. During the conflict, Pakistan did move nuclear weapons toward its border, while India, it is claimed, readied its own nuclear missiles for an attack on Pakistan. At the least, though, don’t nuclear weapons deter a nuclear attack? Do they? Obviously, NATO leaders didn’t feel deterred, for, throughout the Cold War, NATO’s strategy was to respond to a Soviet conventional military attack on Western Europe by launching a Western nuclear attack on the nuclear-armed Soviet Union. Furthermore, if U.S. government officials really believed that nuclear deterrence worked, they would not have resorted to championing “Star Wars” and its modern variant, national missile defense. Why are these vastly expensive—and probably unworkable—military defense systems needed if other nuclear powers are deterred from attacking by U.S. nuclear might? Of course, the bottom line for those Americans convinced that nuclear weapons safeguard them from a Chinese nuclear attack might be that the U.S. nuclear arsenal is far greater than its Chinese counterpart. Today, it is estimated that the U.S. government possesses over five thousand nuclear warheads, while the Chinese government has a total inventory of roughly three hundred. Moreover, only about forty of these Chinese nuclear weapons can reach the United States. Surely the United States would “win” any nuclear war with China. But what would that “victory” entail? A nuclear attack by China would immediately slaughter at least 10 million Americans in a great storm of blast and fire, while leaving many more dying horribly of sickness and radiation poisoning. The Chinese death toll in a nuclear war would be far higher. Both nations would be reduced to smoldering, radioactive wastelands. Also, radioactive debris sent aloft by the nuclear explosions would blot out the sun and bring on a “nuclear winter” around the globe—destroying agriculture, creating worldwide famine, and generating chaos and destruction. Moreover, in another decade the extent of this catastrophe would be far worse. The Chinese government is currently expanding its nuclear arsenal, and by the year 2020 it is expected to more than double its number of nuclear weapons that can hit the United States. The U.S. government, in turn, has plans to spend hundreds of billions of dollars “modernizing” its nuclear weapons and nuclear production facilities over the next decade. To avert the enormous disaster of a U.S.-China nuclear war, there are two obvious actions that can be taken. The first is to get rid of nuclear weapons, as the nuclear powers have agreed to do but thus far have resisted doing. The second, conducted while the nuclear disarmament process is occurring, is to improve U.S.-China relations. If the American and Chinese people are interested in ensuring their survival and that of the world, they should be working to encourage these policies.

### AT No PC/Econ Thumps

#### PC high now - economic gains

Obeidallah 1/3

(Dean Obeidallah is a former lawyer and writer for the Daily Beast, <http://www.thedailybeast.com/articles/2014/01/03/6-reasons-this-could-be-obama-s-best-year-as-president.html>, 6 Reasons This Could Be Obama’s Best Year as President, AB)

The US economy is improving: A good economy generally equals higher approval ratings for president and in turn more political capital for him to push for his proposals. Even President Clinton had an approval rating of 73% in the midst of his impeachment. Why? One big reason was the US economy was strong with unemployment at 4.5% and falling. Currently, the US economy appears poised for growth. The unemployment rate is at its lowest point during the Obama administration at 7%. This is in sharp contrast to the 10% unemployment rate we saw at one time in Obama’s first term. In addition, the stock market just had its best year since 1997, the GDP for the third quarter of 2013 grew at a surprisingly strong 3.6% annual rate and the IMF recently raised its 2014 growth projection for the US economy.

### AT Talks/Negotiations Failing

#### Talks progressing - mutual understanding now

Rafizadeh 1-3-14

(an Iranian-American political scientist and scholar, is president of the International American Council and he serves on the board of Harvard International Review at Harvard University. Rafizadeh is also a senior fellow at Nonviolence International Organization based in Washington DC and a member of the Gulf project at Columbia University. He is originally from the Islamic Republic of Iran and Syria. He has been a recipient of several scholarships and fellowship including from Oxford University, Annenberg University, University of California Santa Barbara, and Fulbright Teaching program. He served as ambassador for the National Iranian-American Council based in Washington DC, conducted research at Woodrow Wilson International Center for Scholars, and taught at University of California Santa Barbara through Fulbright Teaching Scholarship.)**¶** <http://english.alarabiya.net/en/views/news/middle-east/2014/01/03/Hardliners-strike-back-in-the-third-round-of-Iran-s-nuclear-talks.html>

This week, several news agencies in Iran, including the Fars news agency, reported that officials of the Islamic Republic of Iran have made progress with the six world powers and reached an understanding on the details and nuances of how to implement this November’s provisional nuclear deal. In addition, Iran’s semi-official ISNA news agency released a report this week, quoting Hamid Baidinejad, a nuclear negotiator, as saying that Iran and the P5+1 had “achieved mutual understanding on implementation the nuclear deal.” The report also pointed out that Baidinejad said the deal will likely be implemented in late January. Additionally, Iran’s lead negotiator Abbas Araqchi made announcements that, according to the official news agency IRNA, state “the two sides have made good progress on different issues.” These comments came after the third round of nuclear negotiations continued throughout the night until early Tuesday morning in Geneva.

#### P5 +1 negotiations progressing

Al Jazeera 12-31-13

Iran's chief negotiator has said talks in Geneva with world powers through the night on implementing a nuclear deal had made "good progress".¶ Negotiations continued throughout the night until early on Tuesday morning in the Swiss city "and the two sides have made good progress on different issues", Abbas Araqchi, Iran's lead negotiator, said in comments carried by official news agency IRNA.¶ They are "going to submit their conclusions to the vice-ministers and political heads because there are still questions to be resolved on the political level," he said, stressing that "the experts had done their work".¶ He said there would probably be "a meeting next week with Olga Schmitt", the deputy to European Union foreign policy head Catherine Ashton, who has been representing the P5+1 group in Tehran.¶ Experts from Iran and the so-called P5+1, the US, Britain, France, Russia and China plus Germany, have been holding technical talks on implementing an agreement reached on November 24 on Iran's controversial nuclear programme.¶ The interim deal requires that Iran freeze or curb its nuclear activities for six months in exchange for some sanctions relief while the two sides try to reach a comprehensive agreement.¶ Hamid Baeedinejad, who heads the Iranian delegation of experts, said the Geneva agreement should be implemented in late January, the ISNA news agency has reported.¶ "According to the conclusions of talks held with technical experts from the P5+1 group, it has been agreed to start the application of he Geneva agreement in the last 10 days of January," he said.¶ Baeedinejad said that "political officials" from the two parties had yet to endorse an application date.¶ Tuesday's developments came as local media in Iran reported that a former nuclear negotiator close to President Hassan Rouhani who was sentenced to two years in prison in 2008 for actions against "national security", had returned to Iran.¶ "I have returned to Iran to stay," Hossein Moussavian said on Monday at the funeral for the mother of Mohammad Javad Zarif, foreign minister, according to the IRNA news agency.¶ He had been living in the US in recent years.¶ He had initially been accused of espionage and contacts with foreign embassies, but the charges were later dropped, leading Mahmoud Ahmadinejad, the former president, to demand that the "minutes of the discussions between Mr Moussavian and foreign diplomats be made public".

### AT Treasury Sanctions

#### They’ll follow Obama’s lead on Iran

Kredo 12-13-13

<http://freebeacon.com/stats-obama-administration-paused-iran-sanctions-for-rouhani/>

New statistics indicate that the Obama administration intentionally refrained from sanctioning Iran following the June election of President Hassan Rouhani, lending credence to multiple reports that the White House began secretly courting Tehran from the first moments of Rouhani’s presidency.¶ Prior to Rouhani’s June 14 election, the U.S. Treasury Department issued 10 sanction announcements targeting a total of 183 entities that were aiding and abetting Iran’s rogue oil trade and its nuclear weapons program, according to statistics compiled from publicly available releases on the Treasury’s website.¶ New designations were issued each month from February to June 4, including six in the month of May alone.¶ However, just two announcements targeting a total of 29 rogue entities were issued following Rouhani’s election, which was accompanied by a three-month silence from the Treasury Department.¶ Treasury did not issue a new designation until Sept. 6, and it targeted some 10 rogue entities.¶ The second announcement was made on Thursday morning, after Democrats and Republicans on Capitol Hill lashed out at the White House for killing a new sanctions measure that was on the cusp of passing the Senate.¶ The stark contrast in the Obama administration’s approach on the sanctions front led some Iran experts to suggest that the White House shifted its policy in an attempt to woo the Rouhani administration before public talks that led to a recently inked nuclear accord.¶ “The Treasury folks have typically been warriors in this effort,” said United Against Nuclear Iran spokesman Nathan Carleton. “It seems incredibly likely that this change reflects the White House and State’s efforts to reach out to the Iranians following Rouhani’s election.”¶ “Obviously, this is a dramatic difference, and it suggests a policy change,” added UANI research director Matan Shamir, who has been tracking U.S. sanctions of Iran for months.

### 2NC Link Wall – Generic

#### Prefer Kriner - only comprehensive study

Fowler 10

Professor of Government, Chair in Policy Studies at Dartmouth [Linda L. Fowler, After the Rubicon, CONGRESS, PRESIDENTS, AND THE POLITICS OF WAGING WAR, http://press.uchicago.edu/ucp/books/book/chicago/A/bo10156999.html]

Studies of war and research on Congress typically stand in isolation from each other. Kriner’s new book demonstrates big payoffs from examining the two in concert. He shows how the balance of party power in the legislature trumps conventional strategic variables in explaining the duration of U.S. military conflicts. Kriner also reveals how informal legislative actions, such as hearings, investigations, and resolutions, limit the president’s use of force. The book draws on a wide range of statistical and qualitative evidence and should cause even diehard realists to look more seriously at domestic constraints on U.S. actions abroad. In sum, Kriner’s work suggests that reports of Congress’s death as a participant in international relations are greatly exaggerated.

#### Our link is uniquely true in the context of Iran sanctions – the aff would obviously draw immense backlash from war hawks which would make delaying sanctions more difficult, so he would give in to save face

Chait 13

(Jonathon, “Obama Guards His Left Over Terrorism”, <http://nymag.com/daily/intelligencer/2013/05/obama-guards-his-left-over-terrorism.html>)

President Obama’s speech today defending his conduct in the waron terrorwas notablefor what he was defending it against — not against the soft-on-terror (and maybe sorta-kinda-Muslim) attack that Republicans have lobbed against him since he first ran for president, but against critics on the left.¶ It is a sudden and welcome turnabout. When Obama first appeared on the national scene, he was a political novice, a liberal Democrat who had made his name opposing the Iraq War, a constitutional law professor, and his middle name was Hussein. The need to defend his hawkish credentials was an, and perhaps the, essential task of his 2008 election. And the dynamic persistedthroughout his first term, as Republicans used events like Obama’s attempt to close the Guantanamo Bay prison and the Christmas bomber to revive their weak-on-terror caricature.¶ Having fortified his right flank, Obama’s left was totally exposed. Rand Paul signaled the first volley, by launching a high-profile filibuster speech on drones that attracted the sudden support of fellow Republicans who had expressed zero previous qualms. The Department of Justice leak-prosecution story was the event that turned Obama’s civil liberties weakness into a gaping vulnerability. As I’ve written, its political importance was a pure accident of timing. A new (inaccurate) report on Benghazi, followed by the IRS scandal, created a sudden frenzy.¶ That’s when the DOJ leak story dropped. And what would ordinarily be considered a policy dispute — and one that attracted the interest only of a handful of liberals and libertarians — became a scandal pursued by Republicans, who previously had stood to Obama’s right on the issue. The DOJ story was a problem for Obama because it was a legitimate case of abuse, unlike the nothing-burger Benghazi story or the IRS episode for which the White House seemed to bear no responsibility. The legitimacy of the DOJ policy, even though it’s not a “scandal” by any normal definition, kept the damaging “scandal” meme alive.¶ Obama used his speech today to shore up his exposed left flank. He did so in several ways. He argued for his administration’s drone strikes, which have become a symbol of out-of-control military power, as a flawed but necessary step that minimizes civilian casualties in comparison with the alternative. Obama promised “to review proposals to extend oversight of lethal actions outside of war zones that go beyond our reporting to Congress.” He insisted that he would not and could not use drones to attack an American citizen on U.S. soil. He promised “to engage Congress about the existing Authorization to Use Military Force, or AUMF, to determine how we can continue to fight terrorists without keeping America on a perpetual war-time footing.” And he pledged a review of the DOJ’s approach to prosecuting national security leaks.

#### **Losers lose - the plan saps capital and causes defections**

Loomis 7

Dr. Andrew J. Loomis is a Visiting Fellow at the Center for a New American Security, and Department of Government at Georgetown University, “Leveraging legitimacy in the crafting of U.S. foreign policy”, March 2, 2007, pg 36-37, http://citation.allacademic.com//meta/p\_mla\_apa\_research\_citation/1/7/9/4/8/pages179487/p179487-36.php

Declining political authority encourages defection. American political analyst Norman Ornstein writes of the domestic context, In a system where a President has limited formal power, perception matters. The reputation for success—the belief by other political actors that even when he looks down, a president will find a way to pull out a victory—is the most valuable resource a chief executive can have. Conversely, the widespread belief that the Oval Office occupant is on the defensive, on the wane or without the ability to win under adversity can lead to disaster, as individual lawmakers calculate who will be on the winning side and negotiate accordingly. In simple terms, winners win and losers lose more often than not. Failure begets failure. In short, a president experiencing declining amounts of political capital has diminished capacity to advance his goals. As a result, political allies perceive a decreasing benefit in publicly tying themselves to the president, and an increasing benefit in allying with rising centers of authority. A president’s incapacity and his record of success are interlocked and reinforce each other. Incapacity leads to political failure, which reinforces perceptions of incapacity. This feedback loop accelerates decay both in leadership capacity and defection by key allies. The central point of this review of the presidential literature is that the sources of presidential influence—and thus their prospects for enjoying success in pursuing preferred foreign policies—go beyond the structural factors imbued by the Constitution. Presidential authority is affected by ideational resources in the form of public perceptions of legitimacy. The public offers and rescinds its support in accordance with normative trends and historical patterns, non-material sources of power that affects the character of U.S. policy, foreign and domestic.