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### Sanctions DA

#### US is pushing for Europe to sign on to harsher sanctions but lacks credibility

Allam 3/4/2014 (Hannah, “U.S., Europe split over imposing tough sanctions on Russia” Read more here: <http://www.islandpacket.com/2014/03/04/2982336/us-europe-split-over-imposing.html#storylink=cpy>)

U.S. officials are struggling to get Europe on board for harsh punitive measures against Russia, whose incursion into neighboring Ukraine is putting transatlantic relations to the test as nervous European states seek to avoid the fray. Under pressure from U.S. lawmakers to issue a tough response to what they see as Russian President Vladimir Putin’s challenge to U.S. resolve, Obama administration officials have said without much elaboration that a sanctions package is in the works. But it took enormous wrangling to get the European Union to agree to the largely symbolic move of suspending preparations for the Group of 8’s June meeting in Russia, and analysts who receive briefings on the diplomatic efforts said Tuesday that the American side, despite working around the clock, is having difficulty finding common ground with the Europeans. So far, they say, Europe sees high risks for the continent and very little to suggest that any such action would sway a defiant Putin. The options, then, are the United States going the sanctions route alone or watering down the measures to mollify Europe – both scenarios that would please Putin, who has a reputation of exploiting any sign of transatlantic splits. “This is the biggest challenge the transatlantic partnership has had since before the Cold War,” said Susan Corke, director of Eurasia programs at Freedom House and a former State Department official who focused on Europe. “There can’t be an overstating of how important the next 90 days are,” Corke added, referring to fears that, without de-escalation, the Ukrainian caretaker government and the country’s fragile economy won’t make it to elections set for May. The result so far is an unusually public divergence over which course to pursue on Russia, with the United States pushing for what one official described as sanctions that “make it hurt” and European partners such as Germany, the Netherlands and Britain urging a more measured approach that leaves room for diplomacy in a crisis that’s escalated at an alarming pace.

#### Resolving EU drone backlash is key to strengthen the alliance

Devin Streeter, Liberty University Strategic Intelligence Society, Director of Activities, Public Relations, and Recruitment, 4/19/2013, http://www.academia.edu/3523639/U.S.\_Drone\_Policy\_Tactical\_Success\_and\_Strategic\_Failure

In essence, the United States has sparked a miniature arms race and has intimidated nations with the threat of a new, superior technology. Governments that have begun pursuing their own UAV programs have shown a notable bitterness to the United States for its unchecked use of drones. 34 Nations such as China, Japan, Russia, and Brazil all disapprove of United States drone policies by over 30 percentage points. 35 To them, the United States seems heavy handed and brutish; holding back technology while indiscriminately using it against our enemies. The lack of consideration and cooperation is a negative influence on world leaders. At the same time, other nations feel that drones violate their airspace and are used without approval from the international community. 36 The majority of these nations fall within the boundaries of the European Union, and while their disapproval is not as notable as the first group, it often reaches the double digits rate. 37 Germany, Great Britain, Poland, and other European Union members do not understand the ‘fire from the hip’ mentality of drone strikes. 38 The European Council on Foreign Relations noted “it [United States] seems to interpret the concept of imminence in a rather more permissive way than most Europeans would be comfortable with.” 39 The European Union fully supports drones in combat support and reconnaissance roles, but has issues with the concept of targeted killings, which often result in collateral damage. 40 European leaders desire an international consensus on how drones should be operated, before more civilians become casualties. 41 The European Council on Foreign Relations further notes: The Obama administration has so far chosen to operate by analogy with inter-state war, but in an era marked by the individualization of conflict, this seems like an outdated approach. 42 Europe does not share the mentality of drone strikes with "acceptable" collateral damage and apolicy that is not accountable to the international community. As a result, relations with Europe have reached a critical point. 43 European nations, alienated by the Obama administration’s progressive dialogue but aggressive drone policy, 44 are ready to try and take the lead in international relations. 45 Germany in particular will be a key nation as it increases in prominence among European states. 46 Hans Kundnani, a well-known journalist and political pundit, notes, “Obama is extremely popular in Germany, but Berlin’s deeply-held views on the use of military force… have the potential to create a Europe-America split.” 47 Kundnani also states, “A ‘special relationship’ is developing between China and Germany.” 48 Because of anti-drone sentiment, long-time U.S. allies grow increasingly distant, to the point of forming new relationships with China. This is a direct threat to the United States’ place in international relations and a direct challenge to its hegemony. If the relations with Europe are to be fixed, a change in drone protocol is needed.

#### Closer ties with Europe get them to sign on to sanctions

Jervis 9—chaired prof of IR at Columbia. PhD (Robert, Unipolarity; A Structural Perspective, World Politics 61;1 Jan 2009)

Against terrorism, force is ineffective without excellent intelligence. Given the international nature of the threat and the difficulties of gaining information about it, international cooperation is the only route to success. The maintenance of international prosperity also requires joint efforts, even leaving aside the danger that other countries could trigger a run on the dollar by cashing in their holdings. Despite its lack of political unity, Europe is in many respects an economic unit, and one with a greater gdp than that of the U.S. Especially because of the growing Chinese economy, economic power is spread around the world much more equally than is military power, and the open economic system [End Page 210] could easily disintegrate despite continued unipolarity. In parallel, on a whole host of problems such as aids, poverty, and international crime (even leaving aside climate change), the unipole can lead and exert pressure but cannot dictate. Joint actions may be necessary to apply sanctions to various unpleasant and recalcitrant regimes; proliferation can be stopped only if all the major states (and many minor ones) work to this end; unipolarity did not automatically enable the U.S. to maintain the coalition against Iraq after the first Gulf War; close ties within the West are needed to reduce the ability of China, Russia, and other states to play one Western country off against the others.¶ But in comparison with the cold war era, there are fewer incentives today for allies to cooperate with the U.S. During the earlier period unity and close coordination not only permitted military efficiencies but, more importantly, gave credibility to the American nuclear umbrella that protected the allies. Serious splits were dangerous because they entailed the risk that the Soviet Union would be emboldened. This reason for avoiding squabbles disappeared along with the USSR, and the point is likely to generalize to other unipolar systems if they involve a decrease of threats that call for maintaining good relations with the superpower.¶ This does not mean that even in this particular unipolar system the superpower is like Gulliver tied down by the Lilliputians. In some areas opposition can be self-defeating. Thus for any country to undermine American leadership of the international economy would be to put its own economy at risk, even if the U.S. did not retaliate, and for a country to sell a large proportion of its dollar holding would be to depress the value of the dollar, thereby diminishing the worth of the country’s remaining stock of this currency. Furthermore, cooperation often follows strong and essentially unilateral action. Without the war in Iraq it is not likely that we would have seen the degree of cooperation that the U.S. obtained from Europe in combating the Iranian nuclear program and from Japan and the PRC in containing North Korea.¶ Nevertheless, many of the American goals depend on persuading others, not coercing them. Although incentives and even force are not irrelevant to spreading democracy and the free market, at bottom this requires people to embrace a set of institutions and values. Building the world that the U.S. seeks is a political, social, and even psychological task for which unilateral measures are likely to be unsuited and for which American military and economic strength can at best play a supporting role. Success requires that others share the American vision and believe that its leadership is benign. [End Page 211]

#### Concessions – Europe needs to know what’s in it for them

Politico 3/23/14 (“Another Obama reset: Europe” <http://www.politico.com/story/2014/03/barack-obama-europe-reset-104917.html?hp=f1>)

Talks with European leaders on Ukraine during this week’s presidential visit will be tough, in part because Obama’s style of diplomacy hasn’t meshed with the European approach in the way many expected, said Schake, now a fellow at Stanford’s Hoover Institution. “Europeans really invest in personal relationships in a way the president doesn’t feel a need to,” she said. “Now we’re asking the Europeans to impose sanctions against Russia that are much more damaging to the European economy than ours. They’re not just going to do it. They’re going to ask what’s in it for them.” The planned focus of the Brussels stop and speech had been trade, and the pending negotiations over the proposed Transatlantic Trade and Investment Partnership. That’s now largely overshadowed by the Ukraine crisis and questions of whether Europe and the U.S. can forge a response that is both robust and unified. However, even the trade issues have some Europeans skeptical at the moment, since Obama is trying to wrap up negotiations even as Senate Majority Leader Harry Reid vows not to give fast-track authority for such a deal. The negotiations are also triggering concern in Europe over a lack of transparency, fueling fears that a new trade deal will bring major backsliding in European regulation and lead to massive imports of hormone-ridden American poultry and beef. “There’s a lot of resistance building up in Europe to the secrecy of TTIP,” said Heike MacKerron of the German Marshall Fund. “I think it’s time for a good public policy statement around what this thing is about.” MacKerron said that despite the tensions in relations between the U.S. and Europe under Obama, both sides still regard the other as the most reliable global counterparts in tackling the world’s thorniest problems. ”All things considered, the administration still believes — or I hope they believe — that Europe is the best partner they have. The fact is there is nobody else,” she said. “The glue that keeps us together is not love of history or common values. It’s necessity.

#### Russian retaliation toward Europe collapses the global economy

Mercier 3/15/14 (Gilbert, “Ukraine’s Crisis: Economic Sanctions Could Trigger a Global Depression” <http://newsjunkiepost.com/2014/03/15/ukraines-crisis-economic-sanctions-could-trigger-a-global-depression/#sthash.pEZWGXtx.dpuf>)

The referendum in Crimea on March 16, 2014 will probably attach the peninsula to the Russian federation. While it is unlikely that NATO will intervene and seek a direct military confrontation with Russia, the United States and the European Union are already cooking some broad and unwise economic sanctions with which to punish Russia. Russia, for its part, has at its disposal some mighty economic weapons with which to retaliate, as needed. The economic pain from this tit for tat of sanctions will be, in particular, inflicted on the EU. Because of the interconnections between all economies and financial markets, mutual economic sanctions could drive a still fragile world economy to a financial crash. The West, acting as if it solely and arrogantly represents the international community, has formulated a hazardous policy to isolate Russia. This ill-advised strategy is extremely shortsighted on all levels. Unlike Iran, Russia is fully integrated into the global economy. A test for BRICS The Ukraine crisis is a major test of BRICS‘ geopolitical validity as an economic group, political force and potential military alliance. China, Russia’s biggest partner in BRICS, has been strangely muted about Ukraine and the Crimea referendum, urging for “restraint on all sides” and pushing for a political solution. During the emergency meeting of the United Nations Security Council on March 15, 2014, on a resolution to declare Crimea’s referendum illegal, China did not side with Russia by using its veto power but instead abstained from voting. China’s abstention does not fare well for the future of BRICS, as it plays into the strategy of the US and its EU partner to isolate Russia. China, by its abstention from the UN vote, and India, Brazil and South Africa, by their subdued responses, have already played into the hands of the US and its European allies. Will China and other BRICS members step in forcefully to stop the madness of multilateral economic sanctions? Dumping US Treasury Bonds Russia, to prevent the announced freeze of its assets in the US, has already acted on the looming sanctions by liquidating more than $100 billion of its holdings in US Treasury Bonds. The bonds, which represent about 80 percent of Russia’s holding in US T-Bonds, were transferred out of the US Central Bank. The withdrawal was revealed by the US central bank when it announced that its holdings in T-Bonds dropped by $105 billion for the week ending March 12, 2014, from $2.96 trillion to $2.85 trillion. This abrupt sale is three times higher than any weekly sale was at the peak of the 2008 financial crisis. Of all countries, China has the means to diffuse the potential economic crisis by also threatening to dump US T-Bonds. China owns an estimated $1.3 trillion in US Treasury Bonds and is the number one investor amongst foreign governments. Other BRICS members such Brazil and India own respectively $250 billion and $64 billion in T-Bonds. Consequently, the threat by BRICS members of a coordinated fire sale would represent more than $1.6 trillion in T-Bonds. This would be a powerful enough “financial weapon of mass destruction,” to quote Warren Buffet, to crash Wall Street, the US dollar, and by a ripple effect, the European financial markets. Economic sanctions’ global boomerang effect China has rightly warned that drastic economic sanctions against Russia, and Russia’s subsequent retaliation could make the global economy “spiral into chaos.” Sanctions on Russian exports would greatly expose the EU. Europe imports 30 percents of its gas from the Russian state-owned company Gazprom. Russia is also Europe’s biggest customer. The EU is, by far, Russia’s leading trade partner and accounts for about 50 percent of all Russian exports and imports. In 2014, EU-Russia overall trade stands at around 360 billion Euros per year. Russia’s total export to the EU, which is principally raw materials such as gas and oil, stands at around 230 billion Euros, while Russia’s imports from the EU amount to around 130 billion Euros of mainly manufactured products as well as foodstuff. The EU is also the largest investor in the Russian economy and accounts for 75 percent of all foreign investments in Russia. In case of Western economic sanctions, Russian lawmakers have announced that they would pass a bill to freeze the assets of European and American companies that operate in Russia. On the other side, more than 100 Russian businessmen and politicians are allegedly targeted by the EU for a freeze of their European assets. Besides Alexey Miller, head of the state-owned Gazprom, the CEO of Rosneft, Igor Sechin, is also apparently on the sanction hit list. Rosneft is the largest listed oil company in the world and, as such, has partners worldwide, including in the West. For example, the US-based company Exxon-Mobil has a $500 million oil-exploration project with Rosneft in Siberia, and Exxon-Mobil is already in partnership with the Russian giant oil company to exploit Black Sea oil reserves.

#### Global economic collapse ensures great power conflict and accesses every impact possible

Green & Schrage, IR Prof @ Georgetown, ’09

[Michael Green, Senior Advisor & Japan Chair @ The Center for Strategic and International Studies & Associate Professor @ The Walsh School of Foreign Service, Steven Schrage, CSIS Scholl Chair in International Business, Former Senior official with the U.S. Trade Representative's Office, State Department and Ways & Means Committee, “It's not just the economy,” March 26th 2009, <http://www.atimes.com/atimes/Asian_Economy/KC26Dk01.html>]

Facing the worst economic crisis since the Great Depression, analysts at the World Bank and the US Central Intelligence Agency are just beginning to contemplate the ramifications for international stability if there is not a recovery in the next year. For the most part, the focus has been on fragile states such as some in Eastern Europe.  However, the Great Depression taught us that a downward global economic spiral can even have jarring impacts on great powers. It is no mere coincidence that the last great global economic downturn was followed by the most destructive war in human history.  In the 1930s, economic desperation helped fuel autocratic regimes and protectionism in a downward economic-security death spiral that engulfed the world in conflict. This spiral was aided by the preoccupation of the United States and other leading nations with economic troubles at home and insufficient attention to working with other powers to maintain stability abroad. Today's challenges are different, yet 1933's London Economic Conference, which failed to stop the drift toward deeper depression and world war, should be a cautionary tale for leaders heading to next month's London Group of 20 (G-20) meeting. There is no question the US must urgently act to address banking issues and to restart its economy. But the lessons of the past suggest that we will also have to keep an eye on those fragile threads in the international system that could begin to unravel if the financial crisis is not reversed early in the Barack Obama administration and realize that economics and security are intertwined in most of the critical challenges we face. A disillusioned rising power? Four areas in Asia merit particular attention, although so far the current financial crisis has not changed Asia's fundamental strategic picture. China is not replacing the US as regional hegemon, since the leadership in Beijing is too nervous about the political implications of the financial crisis at home to actually play a leading role in solving it internationally. Predictions that the US will be brought to its knees because China is the leading holder of US debt often miss key points. China's currency controls and full employment/export-oriented growth strategy give Beijing few choices other than buying US Treasury bills or harming its own economy. Rather than creating new rules or institutions in international finance, or reorienting the Chinese economy to generate greater long-term consumer demand at home, Chinese leaders are desperately clinging to the status quo (though Beijing deserves credit for short-term efforts to stimulate economic growth). The greater danger with China is not an eclipsing of US leadership, but instead the kind of shift in strategic orientation that happened to Japan after the Great Depression. Japan was arguably not a revisionist power before 1932 and sought instead to converge with the global economy through open trade and adoption of the gold standard. The worldwide depression and protectionism of the 1930s devastated the newly exposed Japanese economy and contributed directly to militaristic and autarkic policies in Asia as the Japanese people reacted against what counted for globalization at the time. China today is similarly converging with the global economy, and many experts believe China needs at least 8% annual growth to sustain social stability. Realistic growth predictions for 2009 are closer to 5%. Veteran China hands were watching closely when millions of migrant workers returned to work after the Lunar New Year holiday last month to find factories closed and jobs gone. There were pockets of protests, but nationwide unrest seems unlikely this year, and Chinese leaders are working around the clock to ensure that it does not happen next year either. However, the economic slowdown has only just begun and nobody is certain how it will impact the social contract in China between the ruling communist party and the 1.3 billion Chinese who have come to see President Hu Jintao's call for "harmonious society" as inextricably linked to his promise of "peaceful development". If the Japanese example is any precedent, a sustained economic slowdown has the potential to open a dangerous path from economic nationalism to strategic revisionism in China too. Dangerous states It is noteworthy that North Korea, Myanmar and Iran have all intensified their defiance in the wake of the financial crisis, which has distracted the world's leading nations, limited their moral authority and sown potential discord. With Beijing worried about the potential impact of North Korean belligerence or instability on Chinese internal stability, and leaders in Japan and South Korea under siege in parliament because of the collapse of their stock markets, leaders in the North Korean capital of Pyongyang have grown increasingly boisterous about their country's claims to great power status as a nuclear weapons state. The junta in Myanmar has chosen this moment to arrest hundreds of political dissidents and thumb its nose at fellow members of the 10-country Association of Southeast Asian Nations. Iran continues its nuclear program while exploiting differences between the US, UK and France (or the P-3 group) and China and Russia - differences that could become more pronounced if economic friction with Beijing or Russia crowds out cooperation or if Western European governments grow nervous about sanctions as a tool of policy. It is possible that the economic downturn will make these dangerous states more pliable because of falling fuel prices (Iran) and greater need for foreign aid (North Korea and Myanmar), but that may depend on the extent that authoritarian leaders care about the well-being of their people or face internal political pressures linked to the economy. So far, there is little evidence to suggest either and much evidence to suggest these dangerous states see an opportunity to advance their asymmetrical advantages against the international system. Challenges to the democratic model; The trend in East Asia has been for developing economies to steadily embrace democracy and the rule of law in order to sustain their national success. But to thrive, new democracies also have to deliver basic economic growth. The economic crisis has hit democracies hard, with Japanese Prime Minister Aso Taro's approval collapsing to single digits in the polls and South Korea's Lee Myung-bak and Taiwan's Ma Ying Jeou doing only a little better (and the collapse in Taiwan's exports - particularly to China - is sure to undermine Ma's argument that a more accommodating stance toward Beijing will bring economic benefits to Taiwan). Thailand's new coalition government has an uncertain future after two years of post-coup drift and now economic crisis. The string of old and new democracies in East Asia has helped to anchor US relations with China and to maintain what former secretary of state Condoleezza Rice once called a "balance of power that favors freedom". A reversal of the democratic expansion of the past two decades would not only impact the global balance of power but also increase the potential number of failed states, with all the attendant risk they bring from harboring terrorists to incubating pandemic diseases and trafficking in persons. It would also undermine the demonstration effect of liberal norms we are urging China to embrace at home.

### XO CP

#### The executive branch of the United States federal government should issue and enforce an executive order to establish ex ante transparency of targeted killing standards and procedures.

#### The executive branch should clarify that those standards mean the administration will not carry out drone strikes that violate the right to life.

#### The CP is binding and solves the whole aff

Graham Dodds, Ph.D., Concordia professor of political science, 2013, Take Up Your Pen: Unilateral Presidential Directives in American Politics, p. 10

If executive orders, proclamations, memoranda, and other unilateral presidential directives merely expressed the president's view, then they would be important but not necessarily determinative. However, these directives are not mere statements of presidential preferences; rather, they establish binding policies and have the force of law, ultimately backed by the full coercive power of the state. In Armstrong v. United States, 80 U.S. (13 Wall.) 154 (1871), the Supreme Court considered the legal status of a proclamation and decided that such directives are public acts to which courts must “give effect.” In other words, in the eyes of the judiciary, unilateral presidential directives are just as binding as laws. In 1960, Senator Robert Byrd (D-WV) advised his colleagues, “Keep in mind that an executive order is not statutory law.” 46 Politically, that may be true, as unilateral presidential directives represent the will only of the chief executive and lack the direct endorsement of congressional majorities. But constitutionally and legally, a unilateral presidential directive is as authoritative and compulsory as a regular law, at least until such time as it is done away with by Congress, courts, or by a future unilateral presidential directive.

Executive order establishing transparency of targeting decisions resolves drone legitimacy and resentment

Jennifer Daskal, Fellow and Adjunct Professor, Georgetown Center on National Security and the Law, Georgetown University Law Center, April 2013, ARTICLE: THE GEOGRAPHY OF THE BATTLEFIELD: A FRAMEWORK FOR DETENTION AND TARGETING OUTSIDE THE "HOT" CONFLICT ZONE, 161 U. Pa. L. Rev. 1165

4. Procedural Requirements

Currently, officials in the executive branch carry out all such ex ante review of out-of-battlefield targeting and detention decisions, reportedly with the involvement of the President, but without any binding and publicly articulated standards governing the exercise of these authorities. n163 All ex post review of targeting is also done internally within the executive branch. There is no public accounting, or even acknowledgment, of most strikes, their success and error rates, or the extent of any collateral damage. Whereas the Department of Defense provides solatia or condolence payments to Afghan civilians who are killed or injured as a result of military actions in Afghanistan (and formerly did so in Iraq), there is no equivalent effort in areas outside the active conflict zone. n164

Meanwhile, the degree of ex post review of detention decisions depends on the location of detention as opposed to the location of capture. Thus, [\*1219] Guantanamo detainees are entitled to habeas review, but detainees held in Afghanistan are not, even if they were captured far away and brought to Afghanistan to be detained. n165

Enhanced ex ante and ex post procedural protections for both detention and targeting, coupled with transparency as to the standards and processes employed, serve several important functions: they can minimize error and abuse by creating time for advance reflection, correct erroneous deprivations of liberty, create endogenous incentives to avoid mistake or abuse, and increase the legitimacy of state action.

a. Ex Ante Procedures

Three key considerations should guide the development of ex ante procedures. First, any procedural requirements must reasonably respond to the need for secrecy in certain operations. Secrecy concerns cannot, for example, justify the lack of transparency as to the substantive targeting standards being employed. There is, however, a legitimate need for the state to protect its sources and methods and to maintain an element of surprise in an attack or capture operation. Second, contrary to oft-repeated rhetoric about the ticking time bomb, few, if any, capture or kill operations outside a zone of active conflict occur in situations of true exigency. n166 Rather, there is often the time and need for advance planning. In fact, advance planning is often necessary to minimize damage to one's own troops and nearby civilians. n167 Third, the procedures and standards employed must be transparent and sufficiently credible to achieve the desired legitimacy gains.

These considerations suggest the value of an independent, formalized, ex ante review system. Possible models include the Foreign Intelligence [\*1220] Surveillance Court (FISC), n168 or a FISC-like entity composed of military and intelligence officials and military lawyers, in the mode of an executive branch review board. n169

Created by the Foreign Intelligence Surveillance Act (FISA) in 1978, n170 the FISC grants ex parte orders for electronic surveillance and physical searches, among other actions, based on a finding that a "significant purpose" of the surveillance is to collect "foreign intelligence information." n171 The Attorney General can grant emergency authorizations without court approval, subject to a requirement that he notify the court of the emergency authorization and seek subsequent judicial authorization within seven days. n172 The FISC also approves procedures related to the use and dissemination of collected information. By statute, heightened restrictions apply to the use and dissemination of information concerning U.S. persons. n173 Notably, the process has been extraordinarily successful in protecting extremely sensitive sources and methods. To date, there has never been an unauthorized disclosure of an application to or order from the FISC court.

An ex parte review system for targeting and detention outside zones of active hostility could operate in a similar way. Judges or the review board would approve selected targets and general procedures and standards, while still giving operators wide rein to implement the orders according to the approved standards. Specifically, the court or review board would determine whether the targets meet the substantive requirements and would [\*1221] evaluate the overarching procedures for making least harmful means-determinations, but would leave target identification and time-sensitive decisionmaking to the operators. n174

Moreover, there should be a mechanism for emergency authorizations at the behest of the Secretary of Defense or the Director of National Intelligence. Such a mechanism already exists for electronic surveillance conducted pursuant to FISA. n175 These authorizations would respond to situations in which there is reason to believe that the targeted individual poses an imminent, specific threat, and in which there is insufficient time to seek and obtain approval by a court or review panel as will likely be the case in instances of true imminence justifying the targeting of persons who do not meet the standards applicable to operational leaders. As required under FISA, the reviewing court or executive branch review board should be notified that such an emergency authorization has been issued; it should be time-limited; and the operational decisionmakers should have to seek court or review board approval (or review, if the strike has already taken place) as soon as practicable but at most within seven days. n176

Finally, and critically, given the stakes in any application namely, the deprivation of life someone should be appointed to represent the potential target's interests and put together the most compelling case that the individual is not who he is assumed to be or does not meet the targeting criteria.

The objections to such a proposal are many. In the context of proposed courts to review the targeting of U.S. citizens, for example, some have argued that such review would serve merely to institutionalize, legitimize, and expand the use of targeted drone strikes. n177 But this ignores the reality of their continued use and expansion and imagines a world in which targeted [\*1222] killings of operational leaders of an enemy organization outside a zone of active conflict is categorically prohibited (an approach I reject n178). If states are going to use this extraordinary power (and they will), there ought to be a clear and transparent set of applicable standards and mechanisms in place to ensure thorough and careful review of targeted-killing decisions. The formalization of review procedures along with clear, binding standards will help to avoid ad hoc decisionmaking and will ensure consistency across administrations and time.

Some also condemn the ex parte nature of such reviews. n179 But again, this critique fails to consider the likely alternative: an equally secret process in which targeting decisions are made without any formalized or institutionalized review process and no clarity as to the standards being employed. Institutionalizing a court or review board will not solve the secrecy issue, but it will lead to enhanced scrutiny of decisionmaking, particularly if a quasi-adversarial model is adopted, in which an official is obligated to act as advocate for the potential target.

That said, there is a reasonable fear that any such court or review board will simply defer. In this vein, FISC's high approval rate is cited as evidence that reviewing courts or review boards will do little more than rubber-stamp the Executive's targeting decisions. n180 But the high approval rates only tell part of the story. In many cases, the mere requirement of justifying an application before a court or other independent review board can serve as an internal check, creating endogenous incentives to comply with the statutory requirements and limit the breadth of executive action. n181 Even if this system does little more than increase the attention paid to the stated requirements and expand the circle of persons reviewing the factual basis for the application, those features in and of themselves can lead to increased reflection and restraint.

Additional accountability mechanisms, such as civil or criminal sanctions in the event of material misrepresentations or omissions, the granting of far-reaching authority to the relevant Inspectors General, and meaningful ex post review by Article III courts, n182 are also needed to help further minimize abuse.

Conversely, some object to the use of courts or court-like review as stymying executive power in wartime, and interfering with the President's Article II powers. n183 According to this view, it is dangerous and potentially unconstitutional to require the President's wartime targeting decisions to be subject to additional reviews. These concerns, however, can be dealt with through emergency authorization mechanisms, the possibility of a presidential override, and design details that protect against ex ante review of operational decisionmaking. The adoption of an Article II review board, rather than an Article III-FISC model, further addresses some of the constitutional concerns.

Some also have warned that there may be no "case or controversy" for an Article III, FISC-like court to review, further suggesting a preference for an Article II review board. n184 That said, similar concerns have been raised with respect to FISA and rejected. n185 Drawing heavily on an analogy to courts' roles in issuing ordinary warrants, the Justice Department's Office of Legal Counsel concluded at the time of enactment that a case and controversy existed, even though the FISA applications are made ex parte. n186 [\*1224] Here, the judges would be issuing a warrant to kill rather than surveil. While this is significant, it should not fundamentally alter the legal analysis. n187 As the Supreme Court has ruled, killing is a type of seizure. n188 The judges would be issuing a warrant for the most extreme type of seizure. n189

It is also important to emphasize that a reviewing court or review board would not be "selecting" targets, but determining whether the targets chosen by executive branch officials met substantive requirements much as courts do all the time when applying the law to the facts. Press accounts indicate that the United States maintains lists of persons subject to capture or kill operations lists created in advance of specific targeting operations and reportedly subject to significant internal deliberation, including by the President himself. n190 A court or review board could be incorporated into the existing ex ante decisionmaking process in a manner that would avoid interference with the conduct of specific operations reviewing the target lists but leaving the operational details to the operators. As suggested above, emergency approval mechanisms could and should be available to deal with exceptional cases where ex ante approval is not possible.

Additional details will need to be addressed, including the temporal limits of the court's or review board's authorizations. For some high-level operatives, inclusion on a target list would presumably be valid for some set period of [\*1225] time, subject to specific renewal requirements. Authorizations based on a specific, imminent threat, by comparison, would need to be strictly time-limited, and tailored to the specifics of the threat, consistent with what courts regularly do when they issue warrants.

In the absence of such a system, the President ought to, at a minimum, issue an executive order establishing a transparent set of standards and procedures for identifying targets of lethal killing and detention operations outside a zone of active hostilities. n192 To enhance legitimacy, the procedures should include target list reviews and disposition plans by the top official in each of the agencies with a stake in the outcome the Secretary of Defense, the Director of the CIA, the Secretary of State, the Director of Homeland Security, and the Director of National Intelligence, with either the Secretary of Defense, Director of National Intelligence, or President himself, responsible for final sign-off. n193 In all cases, decisions should be unanimous, or, in the absence of consensus, elevated to the President of the United States. n194 Additional details will need to be worked out, including critical questions about the standard of proof that applies. Given the stakes, a clear and convincing evidentiary standard is warranted. n195

While this proposal is obviously geared toward the United States, the same principles should apply for all states engaged in targeting operations. n196 States would ideally subject such determinations to independent review or, alternatively, clearly articulate the standards and procedures for their decisionmaking, thus enhancing accountability.

b. Ex Post Review

For targeted-killing operations, ex post reviews serve only limited purposes. They obviously cannot restore the target's life. But retrospective review either by a FISC-like court or review board can serve to identify errors or overreaching and thereby help avoid future mistakes. This can, and ideally would, be supplemented by the adoption of an additional Article III damages mechanism. n197 At a minimum, the relevant Inspectors General should engage in regular and extensive reviews of targeted-killing operations. Such post hoc analysis helps to set standards and controls that then get incorporated into ex ante decisionmaking. In fact, post hoc review can often serve as a more meaningful and often more searching inquiry into the legitimacy of targeting decisions. Even the mere knowledge that an ex post review will occur can help to protect against rash ex ante decisionmaking, thereby providing a self-correcting mechanism.

Ex post review should also be accompanied by the establishment of a solatia and condolence payment system for activities that occur outside the active zone of hostilities. Extension of such a system beyond Afghanistan and Iraq would help mitigate resentment caused by civilian deaths or injuries and would promote better accounting of the civilian costs of targeting operations. n198

### Warfighting 1NC – Congress

#### Obama’s Syria maneuver has maximized presidential war powers because it’s on his terms

Posner 9/3, Law Prof at University of Chicago

(Eric, Obama Is Only Making His War Powers Mightier, www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2013/09/obama\_going\_to\_congress\_on\_syria\_he\_s\_actually\_strengthening\_the\_war\_powers.html)

President Obama’s surprise announcement that he will ask Congress for approval of a military attack on Syria is being hailed as a vindication of the rule of law and a revival of the central role of Congress in war-making, even by critics. But all of this is wrong. Far from breaking new legal ground, President Obama has reaffirmed the primacy of the executive in matters of war and peace. The war powers of the presidency remain as mighty as ever. It would have been different if the president had announced that only Congress can authorize the use of military force, as dictated by the Constitution, which gives Congress alone the power to declare war. That would have been worthy of notice, a reversal of the ascendance of executive power over Congress. But the president said no such thing. He said: “I believe I have the authority to carry out this military action without specific congressional authorization.” Secretary of State John Kerry confirmed that the president “has the right to do that”—launch a military strike—“no matter what Congress does.” Thus, the president believes that the law gives him the option to seek a congressional yes or to act on his own. He does not believe that he is bound to do the first. He has merely stated the law as countless other presidents and their lawyers have described it before him. The president’s announcement should be understood as a political move, not a legal one. His motive is both self-serving and easy to understand, and it has been all but acknowledged by the administration. If Congress now approves the war, it must share blame with the president if what happens next in Syria goes badly. If Congress rejects the war, it must share blame with the president if Bashar al-Assad gases more Syrian children. The big problem for Obama arises if Congress says no and he decides he must go ahead anyway, and then the war goes badly. He won’t have broken the law as he understands it, but he will look bad. He would be the first president ever to ask Congress for the power to make war and then to go to war after Congress said no. (In the past, presidents who expected dissent did not ask Congress for permission.) People who celebrate the president for humbly begging Congress for approval also apparently don’t realize that his understanding of the law—that it gives him the option to go to Congress—maximizes executive power vis-à-vis Congress. If the president were required to act alone, without Congress, then he would have to take the blame for failing to use force when he should and using force when he shouldn’t. If he were required to obtain congressional authorization, then Congress would be able to block him. But if he can have it either way, he can force Congress to share responsibility when he wants to and avoid it when he knows that it will stand in his way.

#### Statutory restriction of Presidential War Powers makes warfighting impossible

Yoo 12 – prof of law @ UC Berkeley

(John, War Powers Belong to the President, ABA Journal February 2012 Issue, http://www.abajournal.com/magazine/article/war\_powers\_belong\_to\_the\_president) <we do not endorse the ableist language used in this card, but have left it in to preserve the author’s intent. we apologize for the author’s inappropriate use of the word “paralyze”>

The framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand swift, decisive action—sometimes under pressured or even emergency circumstances—that is best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. Congress is too large and unwieldy to take the swift and decisive action required in wartime. Our framers replaced the Articles of Confederation, which had failed in the management of foreign relations because they had no single executive, with the Constitution’s single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, Congress’ loose, decentralized structure would paralyze American policy while foreign threats grow. Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure. Congress’ track record when it has opposed presidential leadership has not been a happy one. Perhaps the most telling example was the Senate’s rejection of the Treaty of Versailles at the end of World War I. Congress’ isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed the Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president’s foreign adventurism, the real threat to our national security may come from inaction and isolationism. Many point to the Vietnam War as an example of the faults of the “imperial presidency.” Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War and the passage of the ineffectual War Powers Resolution. Congress passed the resolution in 1973 over President Richard Nixon’s veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it. Despite the record of practice and the Constitution’s institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to “declare war.” But these observers read the 18th century constitutional text through a modern lens by interpreting “declare war” to mean “start war.” When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain—where the framers got the idea of the declare-war power—fought numerous major conflicts but declared war only once beforehand. Our Constitution sets out specific procedures for passing laws, appointing officers and making treaties. There are none for waging war because the framers expected the president and Congress to struggle over war through the national political process. In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not “engage” in war “without the consent of Congress” unless “actually invaded, or in such imminent danger as will not admit of delay.” This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive. Presidents, of course, do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy, if it wants to. Only Congress can raise the military, which gives it the power to block, delay or modify war plans. Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military. Congress’ check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse. If Congress feels it has been misled in authorizing war, or it disagrees with the president’s decisions, all it need do is cut off funds, either all at once or gradually. It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action. Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation. The framers expected Congress’ power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: “The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist.” Congress ended America’s involvement in Vietnam by cutting off all funds for the war. Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress’ funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo or Korea, it is only because Congress has chosen not to exercise its easy check. We should not confuse a desire to escape political responsibility for a defect in the Constitution. A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy. The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### The plan spills over to broader Congressional decisionmaking

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Legacy Chains

Finegold & Skocpol (1995: 222) describe policy legacies: Past and present policies are connected in at least three different ways. First, past policies give rise to analogies that affect how public officials think about contemporary policy issues. Second, past policies suggest lessons that help us to understand the processes by which contemporary policies are formulated and implemented and by which the conse quences of contemporary policies will be determined. Third, past policies impose limi tations that reduce the range of policy choices available as responses to contemporary problems. All three of the ways in which they connect past policy to present policy can be viewed as changes in the institutional context in which policy is made. These legacies are institutionalized in two different ways: first, through changes in formal rules or procedures, and second, in the 'taken for granteds', 'schemas', and accepted wisdom of policy makers and ordinary citizens alike (Sewell, 1992: 1-29). While a policy or event can leave multiple legacies, it often leaves a single major legacy. For example, the War Powers Resolution for mally changed the relationship between the president and the congress with regard to war-making and the deployment of troops. Subsequent military interventions were influenced by this change and have, in turn, left their own legacy (legal scholars might call it precedent) as a link in that chain. Legacy chains can be modified, trans formed, or reinforced as they step through each 'link' in the chain. As another example, US involvement in Vietnam left a legacy in the sphere of press/military relations which affected the intervention in Grenada in 1983 (the press was completely excluded for the first 48 hours of the operation). The press legacy chain begun in Vietnam also affected the Panama invasion of 1989 (a press pool was activated, in country, but excluded from the action), but the legacy had been trans formed slightly by the Grenada invasion (the press pool system itself grew out of complaint regarding press exclusion in Grenada) (Paul & Kim, 2004). Because of the different ways in which policy legacies are institutionalized, some legacies have unintended institutional conse quences. The War Powers Resolution was intended to curtail presidential war-making powers and return some authority to the con gress. In practice, the joint resolution failed to force presidents to include congressional participation in their intervention decision making, but it had the unintended conse quence of forcing them to change the way they planned interventions to comply with the letter of the law (see the extended ex ample presented later in the article).1

#### Executive control of warmaking is key to avoiding nuclear war and terrorism

Li 2009 - J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University (Zheyao, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE)

A. The Emergence of Non-State Actors

Even as the quantity of nation-states in the world has increased dramatically since the end of World War II, the institution of the nation-state has been in decline over the past few decades. Much of this decline is the direct result of the waning of major interstate war, which primarily resulted from the introduction of nuclear weapons.122 The proliferation of nuclear weapons, and their immense capacity for absolute destruction, has ensured that conventional wars remain limited in scope and duration. Hence, "both the size of the armed forces and the quantity of weapons at their disposal has declined quite sharply" since 1945.123 At the same time, concurrent with the decline of the nation-state in the second half of the twentieth century, non-state actors have increasingly been willing and able to use force to advance their causes. In contrast to nation-states, who adhere to the Clausewitzian distinction between the ends of policy and the means of war to achieve those ends, non-state actors do not necessarily fight as a mere means of advancing any coherent policy. Rather, they see their fight as a life-and-death struggle, wherein the ordinary terminology of war as an instrument of policy breaks down because of this blending of means and ends.124 It is the existential nature of this struggle and the disappearance of the Clausewitzian distinction between war and policy that has given rise to a new generation of warfare. The concept of fourth-generational warfare was first articulated in an influential article in the Marine Corps Gazette in 1989, which has proven highly prescient. In describing what they saw as the modem trend toward a new phase of warfighting, the authors argued that: In broad terms, fourth generation warfare seems likely to be widely dispersed and largely undefined; the distinction between war and peace will be blurred to the vanishing point. It will be nonlinear, possibly to the point of having no definable battlefields or fronts. The distinction between "civilian" and "military" may disappear. Actions will occur concurrently throughout all participants' depth, including their society as a cultural, not just a physical, entity. Major military facilities, such as airfields, fixed communications sites, and large headquarters will become rarities because of their vulnerability; the same may be true of civilian equivalents, such as seats of government, power plants, and industrial sites (including knowledge as well as manufacturing industries). 125 It is precisely this blurring of peace and war and the demise of traditionally definable battlefields that provides the impetus for the formulation of a new. theory of war powers. As evidenced by Part M, supra, the constitutional allocation of war powers, and the Framers' commitment of the war power to two co-equal branches, was not designed to cope with the current international system, one that is characterized by the persistent machinations of international terrorist organizations, the rise of multilateral alliances, the emergence of rogue states, and the potentially wide proliferation of easily deployable weapons of mass destruction, nuclear and otherwise. B. The Framers' World vs. Today's World The Framers crafted the Constitution, and the people ratified it, in a time when everyone understood that the state controlled both the raising of armies and their use. Today, however, the threat of terrorism is bringing an end to the era of the nation-state's legal monopoly on violence, and the kind of war that existed before-based on a clear division between government, armed forces, and the people-is on the decline. 126 As states are caught between their decreasing ability to fight each other due to the existence of nuclear weapons and the increasing threat from non-state actors, it is clear that the Westphalian system of nation-states that informed the Framers' allocation of war powers is no longer the order of the day. 127 As seen in Part III, supra, the rise of the modem nation-state occurred as a result of its military effectiveness and ability to defend its citizens. If nation-states such as the United States are unable to adapt to the changing circumstances of fourth-generational warfare-that is, if they are unable to adequately defend against low-intensity conflict conducted by non-state actors-"then clearly [the modern state] does not have a future in front of it.' 128 The challenge in formulating a new theory of war powers for fourthgenerational warfare that remains legally justifiable lies in the difficulty of adapting to changed circumstances while remaining faithful to the constitutional text and the original meaning. 29 To that end, it is crucial to remember that the Framers crafted the Constitution in the context of the Westphalian system of nation-states. The three centuries following the Peace of Westphalia of 1648 witnessed an international system characterized by wars, which, "through the efforts of governments, assumed a more regular, interconnected character."' 130 That period saw the rise of an independent military class and the stabilization of military institutions. Consequently, "warfare became more regular, better organized, and more attuned to the purpose of war-that is, to its political objective."' 1 3' That era is now over. Today, the stability of the long-existing Westphalian international order has been greatly eroded in recent years with the advent of international terrorist organizations, which care nothing for the traditional norms of the laws of war. This new global environment exposes the limitations inherent in the interpretational methods of originalism and textualism and necessitates the adoption of a new method of constitutional interpretation. While one must always be aware of the text of the Constitution and the original understanding of that text, that very awareness identifies the extent to which fourth-generational warfare epitomizes a phenomenon unforeseen by the Framers, a problem the constitutional resolution of which must rely on the good judgment of the present generation. 13 Now, to adapt the constitutional warmarking scheme to the new international order characterized by fourth-generational warfare, one must understand the threat it is being adapted to confront. C. The Jihadist Threat The erosion of the Westphalian and Clausewitzian model of warfare and the blurring of the distinction between the means of warfare and the ends of policy, which is one characteristic of fourth-generational warfare, apply to al-Qaeda and other adherents of jihadist ideology who view the United States as an enemy. An excellent analysis of jihadist ideology and its implications for the rest of the world are presented by Professor Mary Habeck. 133 Professor Habeck identifies the centrality of the Qur'an, specifically a particular reading of the Qur'an and hadith (traditions about the life of Muhammad), to the jihadist terrorists. 134 The jihadis believe that the scope of the Qur'an is universal, and "that their interpretation of Islam is also intended for the entire world, which must be brought to recognize this fact peacefully if possible and through violence if not."' 135 Along these lines, the jihadis view the United States and her allies as among the greatest enemies of Islam: they believe "that every element of modern Western liberalism is flawed, wrong, and evil" because the basis of liberalism is secularism. 136 The jihadis emphasize the superiority of Islam to all other religions, and they believe that "God does not want differing belief systems to coexist."' 37 For this reason, jihadist groups such as al-Qaeda "recognize that the West will not submit without a fight and believe in fact that the Christians, Jews, and liberals have united against Islam in a war that will end in the complete destruction of the unbelievers.' 138 Thus, the adherents of this jihadist ideology, be it al-Qaeda or other groups, will continue to target the United States until she is destroyed. Their ideology demands it. 139 To effectively combat terrorist groups such as al-Qaeda, it is necessary to understand not only how they think, but also how they operate. Al-Qaeda is a transnational organization capable of simultaneously managing multiple operations all over the world."14 It is both centralized and decentralized: al-Qaeda is centralized in the sense that Osama bin Laden is the unquestioned leader, but it is decentralized in that its operations are carried out locally, by distinct cells."4 AI-Qaeda benefits immensely from this arrangement because it can exercise direct control over high-probability operations, while maintaining a distance from low-probability attacks, only taking the credit for those that succeed. The local terrorist cells benefit by gaining access to al-Qaeda's "worldwide network of assets, people, and expertise."' 42 Post-September 11 events have highlighted al-Qaeda's resilience. Even as the United States and her allies fought back, inflicting heavy casualties on al-Qaeda in Afghanistan and destroying dozens of cells worldwide, "al-Qaeda's networked nature allowed it to absorb the damage and remain a threat." 14 3 This is a far cry from earlier generations of warfare, where the decimation of the enemy's military forces would generally bring an end to the conflict. D. The Need for Rapid Reaction and Expanded Presidential War Power By now it should be clear just how different this conflict against the extremist terrorists is from the type of warfare that occupied the minds of the Framers at the time of the Founding. Rather than maintaining the geographical and political isolation desired by the Framers for the new country, today's United States is an international power targeted by individuals and groups that will not rest until seeing her demise. The Global War on Terrorism is not truly a war within the Framers' eighteenth-century conception of the term, and the normal constitutional provisions regulating the division of war powers between Congress and the President do not apply. Instead, this "war" is a struggle for survival and dominance against forces that threaten to destroy the United States and her allies, and the fourth-generational nature of the conflict, highlighted by an indiscernible distinction between wartime and peacetime, necessitates an evolution of America's traditional constitutional warmaking scheme. As first illustrated by the military strategist Colonel John Boyd, constitutional decision-making in the realm of war powers in the fourth generation should consider the implications of the OODA Loop: Observe, Orient, Decide, and Act. 44 In the era of fourth-generational warfare, quick reactions, proceeding through the OODA Loop rapidly, and disrupting the enemy's OODA loop are the keys to victory. "In order to win," Colonel Boyd suggested, "we should operate at a faster tempo or rhythm than our adversaries." 145 In the words of Professor Creveld, "[b]oth organizationally and in terms of the equipment at their disposal, the armed forces of the world will have to adjust themselves to this situation by changing their doctrine, doing away with much of their heavy equipment and becoming more like police."1 46 Unfortunately, the existing constitutional understanding, which diffuses war power between two branches of government, necessarily (by the Framers' design) slows down decision- making. In circumstances where war is undesirable (which is, admittedly, most of the time, especially against other nation-states), the deliberativeness of the existing decision-making process is a positive attribute. In America's current situation, however, in the midst of the conflict with al-Qaeda and other international terrorist organizations, the existing process of constitutional decision-making in warfare may prove a fatal hindrance to achieving the initiative necessary for victory. As a slow-acting, deliberative body, Congress does not have the ability to adequately deal with fast-emerging situations in fourth-generational warfare. Thus, in order to combat transnational threats such as al-Qaeda, the executive branch must have the ability to operate by taking offensive military action even without congressional authorization, because only the executive branch is capable of the swift decision-making and action necessary to prevail in fourth-generational conflicts against fourthgenerational opponents.

### Notification/Consultation 1NC

#### Interpretation –

#### Restriction means prohibition of action – it’s distinct from supervision/oversight

Jean Schiedler-Brown 12, Attorney, Jean Schiedler-Brown & Associates, Appellant Brief of Randall Kinchloe v. States Dept of Health, Washington, The Court of Appeals of the State of Washington, Division 1, http://www.courts.wa.gov/content/Briefs/A01/686429%20Appellant%20Randall%20Kincheloe%27s.pdf

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation. ¶ Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as; ¶ A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb. ¶ In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment. ¶ Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### War power is the power to conduct war successfully

HIRABAYASHI v. UNITED STATES - SUPREME COURT - June 21, 1943, Decided, 320 U.S. 81; 63 S. Ct. 1375; 87 L. Ed. 1774; 1943 U.S. LEXIS 1109

The war power of the national government is "the power to wage war successfully." See Charles Evans Hughes, War Powers Under the Constitution, 42 A. B. A. Rep. 232, 238.It extends to every matter and activity so related to war as substantially to affect its conduct and progress. The power is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces every phase of the national defense, including the protection of war materials and the members of the armed forces from injury and from the dangers which attend the rise, prosecution and progress of war. Prize Cases, supra; Miller v. United States, 11 Wall. 268, 303-14; Stewart v. Kahn, 11 Wall. 493, 506-07; Selective Draft Law Cases, 245 U.S. 366; McKinley v. United States, 249 U.S. 397; United States v. Macintosh, 283 U.S. 605, 622-23. HN4Go to this Headnote in the case.Since the Constitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means for resisting it. Ex parte Quirin, supra, 28-29; cf. Prize Cases, supra, 670; Martin v. Mott, 12 Wheat. 19, 29. Where, as they did here, the conditions call for the exercise of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of war-making, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs.

#### Authority is the power to act

COURT OF APPEALS OF TENNESSEE, EASTERN SECTION - October 31, 1925, Decided, RACY CREAM COMPANY v. MARY BELLE WALDEN., 1 Tenn. App. 653; 1925 Tenn. App. LEXIS 85

While the circumstances in and of themselves do not necessarily show that the driver was the agent, employee or servant of the owner at the time of the accident, and if so that he was engaged in the master's business when the injury was effected, yet good reasons are shown justifying the purposes of the Legislature, if such justification was necessary, as to why these two essential facts should be presumed. The driver fled immediately after the accident, so that his name or identity was not known, and the difficulty of proving the same is therefore manifest, together with the necessity of indulging some such presumption, or else justice will be defeated in an ever increasing number of similar incidents. On the other hand, if in any case the presumption should be ill founded, it would be an easy matter to furnish facts to controvert [\*\*33] it, which are, or would be, more easily within the knowledge of the defendants, or at least much less difficult for them to establish, and thus the ends of justice be subserved. Besides, as it appears from the facts of this case, the proposition has attractions of original merit. When evidence has been furnished as to the negligent injury by one driving the defendants' truck, presumably from the name Racy Cream Company on the truck, engaged in the sale, distribution or transportation of cream or its products, and at a time of day, nine o'clock in the forenoon, in a city where such business might reasonably be pursued, and where just such an outfit so manned might reasonably have been employed, with a woman almost dead in the street from having been wantonly mowed down by its rapid and illegal operation, it furnishes a combination of facts and circumstances from which, it could be more reasonably inferred that the driver was the owner's servant rather than a thief, and that he was engaged in the owners business rather than his own, or that of someone else in which the truck was borrowed or hired. At least these first conceptions are less involved and more direct than the latter, and [\*\*34] are the most natural and legitimate to which the mind first gravitates, and why not indulge them? These first-hand legitimate inferences call for explanation rather than to be combatted by other circumstances neither ordinary nor proximate. It is not a case of draft without reason, but a case of the accusing finger pointing naturally sought to a conclusion which the Legislature in the act just mentioned sought to mature as a prima-facie case. Has the body of the act in the use of the terms employed sufficiently effectuated the purposes expressed in the title? Considered without reference to the amendment, we think it has. It is conceded that while under our constitution [\*669] the body of an act cannot be broader than the restrictions of the title, it may be less pretentious, and thus fall short of the purpose expressed; and in this case authority for the prima-facie case claimed to justify any personal judgment against the defendants must be found in the use of the word "authority," as the other words ("knowledge and consent") used express nothing more than the permissive authority necessary to effect a lien against the machine, if the negligence consists in willful violation [\*\*35] of the statute. It is true that in a certain sense the word "authority" has a meaning synonimous with the other terms, "knowledge and consent," but used as it is in the act, and in connection with the other terms mentioned, it may have another meaning implying direction or supervision, signifying control of subordinate agency. As expressed in 6th. Volume of C. J., page 864, with reference to the term "authority," in defining same it is said: "In another sense power delegated by a principal to his agent or attorney. . . . Power to act, whether originally or delegated. Control over. Jurisdiction. The word is generally used to express a derivative power."

#### Violation – Requiring notification does not limit the President’s ability to successfully conduct the progress of war operations – it only adds a supervisory step

#### Specific to war powers – consulting requirements in the WPR don’t “restrict”

PATRICK D. ROBBINS - FALL, 1988, American University, Washington College of Law JD candidate, COMMENT: THE WAR POWERS RESOLUTION AFTER FIFTEEN YEARS: A REASSESSMENT., The American University, 38 Am. U.L. Rev. 141,

The War Powers Resolution states that its purpose is to fulfill the congressional conception of the Framers' intent, n85 and to ensure that Congress plays a substantive role in the use of United States armed forces abroad. n86 The statute requires that the President consult with Congress "in every possible instance," before placing troops into hostile or potentially hostile situations, and at regular [\*156] intervals thereafter. n87 It prescribes the circumstances under which the President must submit a detailed n88 report describing the situation. n89 The Resolution provides that where the President introduces armed forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances," n90 section 5(b) of the Resolution activates a sixty-day clock, at the end of which the President must withdraw the troops. n91 The Resolution further states that the armed forces may remain deployed pursuant only to a declaration of war, or legislation specifically authorizing their use, or when an attack upon the United States prevents Congress from meeting. n92 To avoid a presidential veto of congressional decisions to force a withdrawal prior to the end of sixty days, section 5(c) provides that a concurrent resolution n93 by both Houses of Congress may mandate a withdrawal at any time. n94 Sections 6 and 7 of the Resolution set out certain procedures whereby the House and Senate can consider, on an accelerated basis, legislation authorizing continued military action. n95 Section 8 estalishes [\*157] the construction, intent and effect Congress intended for the Resolution's provisions. n96 Most notably, in section 8 the Resolution claims to have left the constitutional balance of power and the war powers untouched, neither augmenting nor diminishing the President's authority. n97

FOOTNOTE 97: n97. See id. § 1547(d). Section 8(d) states:

Nothing in this joint resolution --

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

Id.

Despite this provision, some members of Congress viewed the War Powers Resolution as an expansion of presidential power. Indeed, the statute places no restriction whatsoever on the President's use of force for sixty days. One Representative argued that the Resolution "does not prevent the commencement of an illegal war, but allows one to continue for from 60 to 90 days." 119 CONG. REC. 33872 (1973) (statement of Rep. Holtzman); see id. at 33556 (statement of Sen. Eagleton) (arguing that sixty day provision gave President "blank check" to wage brief wars).

#### Vote Neg

#### Predictable limits – There are 1000s of procedural steps Congress could ask the president to take – minimum page requirements, specific military officials to notify, filling out the right TPS report – impossible for the neg to keep up with all the boxes they could have the President check

#### Ground – “Presidential flexibility bad” is core negative ground – procedural requirements leave every presidential power on the table – aff claims a perception advantage without touching core questions of presidential power

### Solvency

#### Drone courts fail – no expertise and won’t satisfy concerns about transparency

Groves 2013 – fellow at Heritage Foundation (April 10, Steven, “Drone Strikes: The Legality of U.S. Targeting Terrorists Abroad” <http://www.heritage.org/research/reports/2013/04/drone-strikes-the-legality-of-us-targeting-terrorists-abroad>)

The proponents of a drone court apparently do not appreciate the potential unintended consequences of establishing such an authority. The idea is wrongheaded and raises more questions than it answers. For instance, could the drone court decide as a matter of law that a targeted strike is not justified because the United States is not engaged in an armed conflict with al-Qaeda? Could the drone court rule that members of a force associated with al-Qaeda (e.g., AQAP) may not be targeted because AQAP was not directly involved in the September 11 attacks and therefore the strike is not authorized under the AUMF? The proposed drone court cannot avoid these fundamental questions since the justification for the targeted strikes is dependent on the answers to these questions. Even if the proposed drone court attempts to eschew intervention into foundational questions such as the existence of an armed conflict, it still would not be in a position to rule on the “easy” questions involved in each and every drone strike. Does the target constitute an “imminent threat” to the United States? When civilian casualties may occur as a result of the strike, does the drone court have the authority to overrule the targeting decision as a violation of the principle of proportionality? Is the target an innocent civilian or a civilian “directly participating in hostilities”? Should U.S. forces attempt to capture the target before resorting to a drone strike? Is capture feasible? Any drone court, even if constituted with former military and intelligence officials, is ill suited to weigh all of the competing factors that go into a decision to target an al-Qaeda operative and make a timely decision, particularly when there is often only a short window of time to order a strike. Regardless, creating a judicial or quasi-judicial review process will not ameliorate, much less resolve, objections to U.S. targeted killing practices. Critics will continue to demand more judicial process, including appeals from the proposed drone court, and additional transparency no matter what kind of forum is established to oversee targeting decisions.

#### Either the plan does nothing or it jacks the state secrets privilege

Rosen 2011 - Professor of Law and Director, Center for Military Law and Policy, Texas Tech University School of Law (Richard D., “PART III: ARTICLE: DRONES AND THE U.S. COURTS” 37 Wm. Mitchell L. Rev. 5280)

Assuming a complaint survives the jurisdictional, justiciability, immunity, and other hurdles to lawsuits challenging U.S. drone policy, the state secrets doctrine is likely to bring the suit to a quick end. n93 Under the doctrine, the United States may prevent the disclosure of information in judicial proceedings if there is a reasonable danger of revealing military or state secrets. n94 Once the privilege is properly invoked and a court is satisfied that release would pose a reasonable danger to secrets of state, "even the most compelling necessity cannot overcome the claim of privilege." n95 Not only will the state secrets doctrine thwart plaintiffs from acquiring or introducing evidence vital to their case, n96 it could result in dismissal of the cases themselves. Under the doctrine, the courts will dismiss a case either because the very subject of the case involves state secrets, n97 or a case cannot proceed without the privileged evidence or presents an unnecessary risk of revealing [\*5293] protected secrets. n98 Employing drones as a weapons platform against terrorists and insurgents in an ongoing armed conflict implicates both the nation's military tactics and strategy as well as its delicate relations with friendly nations. n99 As such, lawsuits challenging the policy cannot be tried without access to and the possible disclosure of highly classified information relating to the means, methods, and circumstances under which drones are employed. VI. Conclusion The instinctive reaction of most lawyers to a party's unlawful actions is to turn to the courts for redress. Although the lawfulness of U.S. policy of attacking al Qaeda and Taliban leaders with drones is contentious, the controversy must be resolved through the political process and outside the courts.

#### Secrecy doctrine is key to national security – differential in expertise

Ellis 2006 – district judge (May 12, Tim, “EL-MASRI v. TENET” <http://www.leagle.com/decision/2006967437FSupp2d530_1914>)

How searching the judicial inquiry must be depends on the particular circumstances of the case, for it is well-settled that the depth of a court's inquiry increases relative to the adverse party's need for the information the government seeks to protect. Reynolds, 345 U.S. at 11, 73 S.Ct. 528; Sterling, 416 F.3d at 343. If the information is peripheral to the adverse party's claims, the court's inquiry need not be as searching as it must be in cases where the claimed state secrets are at the core of the suit. In those cases where the claimed state secrets are at the core of the suit and the operation of the privilege may defeat valid claims, courts must carefully scrutinize the assertion of the privilege lest it be used by the government to shield "material not strictly necessary to prevent injury to national security." Ellsberg, 709 F.2d at 58. But, in undertaking this inquiry, courts must also bear in mind the Executive Branch's preeminent authority over military and diplomatic matters and its greater expertise relative to the judicial branch in predicting the effect of a particular disclosure on national security.7 Accordingly, the judiciary must accept the executive branch's assertion of the privilege whenever its independent inquiry discloses a "reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged." Reynolds, 345 U.S. at 10, 73 S.Ct. 528 (emphasis added). Importantly, once the court is satisfied that any disclosure of the putative secrets "might have a deleterious effect on national security, the claim of the privilege will be accepted without requiring further disclosure.'" Id. (quoting Reynolds, 345 U.S. at 9, 73 S.Ct. 528).

#### A network of national security officials actually determines policy --- enacting external checks just legitimates them without providing any constraint

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, “National Security and Double Government,” [http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf)](http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf%29))

VI. Conclusion

U.S. national security policy has scarcely changed from the Bush to the Obama Administration. The theory of Walter Bagehot explains why. Bagehot described the emergence in 19th-century Britain of a “disguised republic” consisting of officials who actually exercised governmental power but remained unnoticed by the public, which continued to believe that visible, formal institutions exercised legal authority.601 Dual institutions of governance, one public and the other concealed, were referred to by Bagehot as “double government.”602 A similar process of bifurcated institutional evolution has occurred in the United States, but in reverse: a network has emerged within the federal government that exercises predominant power with respect to national security matters. It has evolved in response to structural incentives rather than invidious intent, and it consists of the several hundred executive officials who manage the military, intelligence, diplomatic, and law enforcement agencies responsible for protecting the nation’s security. These officials are as little disposed to stake out new policies as they are to abandon old ones. They define security more in military and intelligence terms rather than in political or diplomatic ones. Enough examples exist to persuade the public that the network is subject to judicial, legislative, and executive constraints. This appearance is important to its operation, for the network derives legitimacy from the ostensible authority of the public, constitutional branches of the government. The appearance of accountability is, however, largely an illusion fostered by those institutions’ pedigree, ritual, intelligibility, mystery, and superficial harmony with the network’s ambitions. The courts, Congress, and even the presidency in reality impose little constraint. Judicial review is negligible; congressional oversight dysfunctional; and presidential control nominal. Past efforts to revive these institutions have thus fallen flat. Future reform efforts are no more likely to succeed, relying as they must upon those same institutions to restore power to themselves by exercising the very power that they lack. External constraints—public opinion and the press—are insufficient to check it. Both are manipulable, and their vitality depends heavily upon the vigor of constitutionally established institutions, which would not have withered had those external constraints had real force. Nor is it likely that any such constraints can be restored through governmental efforts to inculcate greater civic virtue, which would ultimately concentrate power even further. Institutional restoration can come only from an energized body politic. The prevailing incentive structure, however, encourages the public to become less, not more, informed and engaged.

#### Executive lawyers instruct the president in how to circumvent the plan

Shane, 12 --- Jacob E. Davis and Jacob E. Davis II Chair in Law, The Ohio State University Moritz School of Law (Peter M., Journal of National Security Law & Policy, “Executive Branch Self-Policing in Times of Crisis: The Challenges for Conscientious Legal Analysis,” 5 J. Nat'l Security L. & Pol'y 507))

II. The Breakdown of Government Lawyering

The military and foreign policy disasters generated by presidential unilateralism demonstrate the practical importance of maintaining a pluralist view of checks and balances. Political officials are not simply rational actors who respond with dispassionate calculation to evidence and circumstance. Facts and options are always filtered through ideological prisms. Presidentialism narrows the prism. Pluralism works to offset that filtering. Pluralism guards against too much distortion by seeking to maximize the number of meaningful institutional voices in the policy making process.

Equally troubling is the risk of presidentialism to the rule of law. Even in normal times, a heavy burden falls on government attorneys in virtually every agency. Government lawyering frequently represents the exclusive avenue through which the law is actually brought to bear on decisionmaking. This professional review within the executive branch is crucial. Most government decisions are simply too low in visibility, or too diffuse in impact, to elicit judicial review or congressional oversight as ways of monitoring legal compliance. Yet, the ideological prism of presidentialism can bend the light of the law so that nothing is seen other than the claimed prerogatives of the sitting chief executive. Champions of executive power - even skilled lawyers who should know better - wind up asserting that, to an extraordinary extent, the President as a matter of constitutional entitlement is simply not subject to legal regulation by either of the other two branches of government.

[\*511] Government attorneys must understand their unique roles as both advisers and advocates. In adversarial proceedings before courts of law, it may be fine for each of two contesting sides, including the government, to have a zealous, and not wholly impartial, presentation, with the judge acting as a neutral decisionmaker. But in their advisory function, government lawyers must play a more objective, even quasi-adjudicative, role. They must give the law their most conscientious interpretation. If they fail in that task, frequently there will be no one else effectively situated to do the job of assuring diligence in legal compliance. Government lawyers imbued with the ideology of presidentialism too easily abandon their professional obligations as advisers and too readily become ethically blinkered advocates for unchecked executive power.

Jack Goldsmith headed the Office of Legal Counsel (OLC) for a little less than ten months in 2003-2004. Of the work done by some government attorneys and top officials after 9/11, he said they dealt with FISA limitations on warrantless surveillance by the National Security Agency (NSA) "the way they dealt with other laws they didn't like: they blew through them in secret based on flimsy legal opinions that they guarded closely so no one could question the legal basis for the operations." n7 He describes a 2003 meeting with David Addington, who was Counsel and later Chief of Staff to Vice President Dick Cheney, in which Addington denied the NSA Inspector General's request to see a copy of OLC's legal analysis in support of the NSA surveillance program. Before Goldsmith arrived at OLC, "not even NSA lawyers were allowed to see the Justice Department's legal analysis of what NSA was doing." n8

OLC's analysis of the legality of NSA surveillance, issued on January 19, 2006, justified the program on two grounds: the President's inherent war powers and the Authorization for Use of Military Force (AUMF). However, the AUMF did not say anything about electronic surveillance. In 1978, Congress expressly stated that no statute other than the Foreign Intelligence Surveillance Act (FISA) or Title III - the law that applies to ordinary federal criminal prosecution - provides authority for electronic surveillance by the federal government. The AUMF could supersede FISA by repealing it, but only by making the repeal explicit. An argument that the AUMF implicitly repealed FISA necessarily falls short. OLC also argued that the President had an inherent constitutional power to conduct the NSA program no matter what FISA said. According to OLC, if FISA of 1978, as amended, were read to preclude the NSA program, the statute would be unconstitutional. n9

 [\*512] What prompted the Justice Department to argue in this fashion? One answer might be that Justice Department lawyers are institutionally expected to advocate for the President's powers and simply adopt the most ambitious arguments consistent with appropriate standards of professional competence in legal research and analysis. However, it is not the responsibility of Justice Department lawyers to advocate for every contemplated assertion of presidential authority, no matter how far-fetched. Even in my brief period at Justice, I witnessed multiple and significant examples of Department lawyers refusing to provide analytic support for legally ill-conceived proposals for executive action. Moreover, it is difficult to make a case for the professional competence of the FISA memorandum. Although the Justice Department manages to elaborate its views in over forty pages of single-spaced and highly technical verbiage, its memorandum never confronts the enormity of the initiative it is endorsing or the power of alternative arguments. Instead, it proffers distinctions from contrary precedents that are often, in a word, silly. Even if the authors felt institutionally constrained to reach a particular bottom line, the failure to assert any principle limiting the claims being made and the too-frequent lack of rhetorical judgment in structuring their argument suggest something other than diligent lawyering was at play.

What accounted for the bad arguments was political and professional pressure. When I worked at Justice, the refusal to take positions that could not be defended by respectable standards did not harm the lawyer. As anyone who has ever worked in an organization knows, however, informal pressure can be an extraordinarily effective method of stifling disagreement and guiding decisions in the way top management desires. We know that supervision of the process of executive branch lawyering on the NSA memorandum was significantly usurped by the Office of the Vice President. David Addington, the Vice President's Counsel, and John Yoo, then a deputy in OLC, worked together to craft a series of arguments for unprecedented claims of executive power to pursue the campaign against terrorism. n10 Jack Goldsmith reports that Addington blackballed from future advancement in the executive branch any lawyer who dared cross swords with him. n11

The deficiencies of legal analysis of NSA surveillance were replicated in other initiatives after 9/11, including the treatment of persons captured and suspected of aiding and abetting terrorism. The Justice Department, through OLC, produced legal opinions stating, in effect, that anyone [\*513] captured in the Afghanistan campaign had few, if any, rights under U.S. or international law and certainly no rights susceptible to vindication in U.S. courts. n12 The function of these legal opinions - indeed, their obvious purpose - was to ratify a scheme of maximum license to do with the detainees whatever the military, the CIA, or any other U.S. authority might choose to do with them. The Administration's lawyering process cleared the path to horrors at the Abu Ghraib prison and Guantanamo - crimes whose stain upon our national honor is likely to remain, for decades at least, firmly embedded in the world's collective memory, deeply undermining our image and influence abroad.

It is understandable that the Administration would want some flexibility in dealing with a threat it rightly regarded as in some ways unprecedented and of very grave magnitude. And yet, to move the detainees so completely beyond the realm of normal legal process was itself a plainly risky strategy in terms of compromising international support, exposing U.S. military personnel to mistreatment, risking the honor of U.S. military culture, and weakening the fabric of international law generally in its protection of both combatants and civilians during wartime. The desire for flexibility was understandable, but not at the cost of all other values.

On a number of the most important points discussed in the OLC lawyers' memoranda, the courts subsequently held them to be wrong. Contrary to OLC, the Supreme Court held that foreign detainees at Guantanamo who challenged their classification as enemy combatants were entitled to judicial review of the legality of their detention. n13 Contrary to OLC, the Court held that the Geneva Conventions protected the detainees, whether or not they strictly qualified as prisoners of war. n14 Contrary to OLC and Justice Department briefs, the Court held that the military commissions as originally constituted were not sufficiently protective of the detainees' rights to permit their use for war crimes trials. n15

On all of these questions, whether of morality, policy, or law, there were at least serious arguments to be entertained by both sides. The fact that the Administration reached incorrect conclusions is, in itself, only a limited indictment of its lawyering. Even good lawyers make mistakes, and the fact that executive branch lawyers would consistently make mistakes erring on the side of executive authority is not in itself damning. What is damning, however, is that on critical questions - questions going to the core of national honor and identity - executive branch lawyering was not just [\*514] wrong, misguided, or ethically insensitive. It was incompetent. It was so sloppy, so one-sided, and at times so laughably unpersuasive that it cannot be defended as ethical lawyering in any context. Tax advice this bad would be malpractice. Government lawyering this bad should be grounds for discharge.

### AT: UN

**The U.N. structurally fails**

**Rhode 13**, David Rohde is a reporter for Reuters, two-time winner of the Pulitzer Prize, and a former reporter for The New York Times. His latest book, Beyond War: Reimagining American Influence in a New Middle East, was published in 2013, http://www.theatlantic.com/international/archive/2013/04/the-un-keeps-failing-right-when-we-really-need-it/274962/

**It is the world's most important organization, yet remains one of its most dysfunctional.** This week a former **U**nited **N**ations **employee** **described a pervasive culture of impunity** inside the organization - one in which **whistle-blowers are punished** for exposing wrongdoing. James Wasserstrom, a veteran American diplomat, said he was fired from his job and detained by U.N. police - who searched his apartment and placed his picture on wanted posters - after he reported possible corruption among senior U.N. officials in Kosovo. As Washington steps back in the world, a dynamic United Nations must step forward. So far, the U.N. of **Ban Ki-moon has not been up to the task.** "It's supposed to be maintaining the ideals of human rights, the rule of law and anti-corruption," Wasserstrom said in an interview. "And it doesn't adhere to them on the inside." The United Nations is under attack as well for its [decision last month](http://www.nytimes.com/2013/02/23/world/americas/un-rejects-claim-for-direct-compensation-to-victims-of-cholera-epidemic-in-haiti.html) to pay no compensation to the families of 8,000 Haitians who died and 646,000 who fell ill from a 2010 cholera outbreak that experts believe Nepalese U.N. peacekeepers set off in the country. The organization, though, remains a vital tool. On Thursday, President Barack Obama used [a White House meeting](http://www.guardian.co.uk/world/2013/apr/11/obama-north-korea-nuclear-threat) with U.N. Secretary General Ban Ki-moon to pressure North Korea. Administration officials hope that [punishing new U.N. economic sanctions](http://www.nytimes.com/2013/03/08/world/asia/north-korea-warns-of-pre-emptive-nuclear-attack.html?pagewanted=all) , supported by China for the first time, will cause North Korea to end its saber rattling. "It's important for North Korea, like every other country in the world," Obama said, "to observe the basic rules and norms that are set forth, including a wide variety of U.N. resolutions." **The U**nited **N**ations has been, and **will always be, an imperfect institution. Its greatest** strength - and **weakness - is** its **193 member states. Getting a majority to agree** on major issues, pass reform or refrain from political patronage **can be maddening. Russia's shameful blocking** **of** Security Council **action against Syria**, for example, **has shown** the **continued limitations of that antiquated body**. But the United Nations is likely to grow more important in the years ahead as Washington's fiscal problems curtail U.S. overseas ambitions. Sadly, as the United Nations enters a potentially dangerous phase of peacekeeping missions, **Ban's leadership is lacking.** The 68-year-old former South Korean foreign minister has [highlighted](http://www.bbc.co.uk/news/business-16760371) the need to combat global warming, create sustainable development and increase the number of women in leadership positions. But **he** has **failed to provide the dynamic leadership and reforms the institution desperately needs. "It's a very mixed record**," said a senior United Nations official, who spoke on condition of anonymity. "**He spends a lot of time in Davos,** the Arctic Circle or Monaco, and **meanwhile there are critical issues - such as** the future of **peacekeeping - facing** a real **crisis**."

**Resource shortages mean it can’t solve**

**Rhode 13**, David Rohde is a reporter for Reuters, two-time winner of the Pulitzer Prize, and a former reporter for The New York Times. His latest book, Beyond War: Reimagining American Influence in a New Middle East, was published in 2013, http://www.theatlantic.com/international/archive/2013/04/the-un-keeps-failing-right-when-we-really-need-it/274962/

Current and former U.N. officials worry about a repeat of the 1990s debacles. **Undermanned, poorly equipped peacekeepers with vague instructions** about **when to use force were deployed** to Somalia, Rwanda and Bosnia. **Civilians** who expected to be protected **were abandoned.** In by far the most shameful case, 500,000 Tutsis and moderate Hutus died in the 1994 Rwandan genocide. The 1995 U.N. promise to protect the town of Srebrenica in eastern Bosnia also proved fallacious, and 8,000 Muslim men and boys were executed. Current and former U.N. officials fear that the "intervention brigade" in Congo sets a dangerous precedent. And **poorly equipped U.N. peacekeepers in Mali will be no match for committed jihadists.** "Well-established principles of peacekeeping are being set aside," said the U.N. official, who spoke on condition of anonymity. "I don't think the long-term implications are being thought through." Meanwhile, American officials are calling for sweeping management reform at the United Nations, which spent [$769 million on travel alone](http://usun.state.gov/briefing/statements/205608.htm) over the last two years, eight times the amount budgeted. The United Nations has cut [some spending](http://http/www.foxnews.com/world/2011/03/15/ban-ki-moon-warns-uns-managers-trim-bloated-budgets/), but **proposals to modernize** its operations have **stalled in the fractious** General **Assembly**.

**Hypocrisy dooms the U.N.**

**Leech 12/1**, Phil Leech lectures in International Relations and Middle Eastern Studies at the University of Liverpool http://newint.org/sections/argument/2013/12/01/argument-junk-un-security-council/

The UN Security Council (**UNSC**), in its current form, **represents an antiquated approach to international politics.** The original intention behind its creation was for it to be an executive arm of the UN, enforcing the will of the international community against rogue states, ensuring compliance with international norms and promoting world peace. However, **in reality the** Security **Council has proven to be Western-centric, overly concerned with** the rights and interests of **states – rather than** that of individual **human** being**s** or human societies – **and incompatible with the very urgent need to address many of the key issues and challenges of the contemporary world**. The UNSC ‘permanent five’, which exclusively claim veto power, comprises three closely allied Western states – the US, Britain and France (all NATO members) – and their traditional ‘great power’ opponents: Russia and China. The very **existence of this privileged clique undermines any claims to fairness that supporters of the UNSC can make**. Furthermore, **the fact** that **those** three Western **powers have a long record of acting outside the perimeters of the UN when it suits them** (Iraq and Kosovo, inter alia), **or ignoring** their **responsibilities to other international norms** when it suits them (Rwanda, Darfur…) **and yet are willing to utilize their privileged positions in order to protect themselves or their friends demonstrates fundamental hypocrisy. What we have is an inconsistency between the basic structure of the UN, the actions of the UNSC and the principle of fairness that occurs at two levels**. First, the UN acknowledges states as the only legitimate form of human organization, despite the wide array of types of state and the unrepresentative nature of some states; and second, the UNSC represents the domination of that system by a few, very privileged, states. Given that this inconsistency is apparently irreconcilable, I contend that the UNSC should be scrapped.

**They have not read a terminal impact to CBWs --- their internal link evidence just says the U.N. can have a role reducing crime not that they’re KEY**

**Bioweapons don’t cause extinction -- they’re weak and easy to control.**

**Mueller ‘10** [John, Woody Hayes Chair of National Security Studies at the Mershon Center for International Security Studies and a Professor of Political Science at The Ohio State University, A.B. from the University of Chicago, M.A. and Ph.D. @ UCLA, Atomic Obsession – Nuclear Alarmism from Hiroshima to Al-Qaeda, Oxford University Press]

Properly developed and deployed, biological weapons could potentially, if thus far only in theory, kill hundreds of thousands, perhaps even millions, of people. The discussion remains theoretical because biological weapons have scarcely ever been used. For the most destructive results, they need to be dispersed in very low-altitude aerosol clouds. Since aerosols do not appreciably settle, pathogens like anthrax (which is not easy to spread or catch and is not contagious) would probably have to be sprayed near nose level. Moreover, **90 percent of the microorganisms are likely to die during the process of aerosolization, while their effectiveness could be reduced still further by sunlight, smog, humidity, and temperature changes.** Explosive methods of dispersion may destroy the organisms, and, except for anthrax spores, long-term storage of lethal organisms in bombs or warheads is difficult: even if refrigerated, most of the organisms have a limited lifetime. Such weapons can take days or weeks to have full effect, during which time **they can be countered with medical and civil defense measures.** In the summary judgment of two careful analysts, delivering microbes and toxins over a wide area in the form most suitable for inflicting mass casualties-as an aerosol that could be inhaled-requires a delivery system of enormous sophistication, and even then effective dispersal could easily be disrupted by unfavorable environmental and meteorological conditions.

**Can’t be a “global emergency room”**

**Leech 12/1**, Phil Leech lectures in International Relations and Middle Eastern Studies at the University of Liverpool http://newint.org/sections/argument/2013/12/01/argument-junk-un-security-council/

Conversely, the **USSR and** the **US managed to bring the world to the brink of nuclear disaster** over Cuba, **despite the fact that both were members of the UNSC. It was not high politics in New York that prevented war** in 1962, **but** the **prospect of mutual obliteration**! (A similar calculation surely constrains hawks in Delhi, Islamabad and Pyongyang now.)

### New

### Stable – WTO

#### **Broader NATO strikes make it inevitable --- that was CX**

#### **WTO accession solves Afghanistan**

CI News 14 (Chamber International, “Greater stability beckons as deal gives Afghanistan path to WTO”, 2/14/14, http://www.chamber-international.com/news/latest-news/greater-stability-beckons-as-deal-gives-afghanistan-path-to-wto/)

Afghanistan – which has been involved in almost constant conflict for 30 years– is finally set to get a chance to stabilise, enhance its internati, onal contacts and reform its economy by joining the World Trade Organisation (WTO) after a deal signed on February 10.¶ The bilateral deal – signed by EU Ambassador Angelos Pangratis and Afghanistan’s deputy minister for trade, Mr Mozammil Shinwari – provides for lower tariffs and export duties for goods and for opening up services markets once Afghanistan joins the WTO.¶ These commitments will eventually be included in an official Protocol of Accession of Afghanistan to the WTO.¶ The EU is already one of Afghanistan’s main trading partners, accounting for almost nine per cent of its exports and 12 per cent of its imports. In 2012 the total value of EU goods exported to Afghanistan was €935m while imports from Afghanistan were €56m.¶ Afghanistan mainly supplies the EU with skins and leather products, fruits and nuts and electronic equipment, which, combined, represent more than 50 per cent of its EU exports. The main EU exports to Afghanistan are vehicles, mineral fuels, machinery and electrical equipment.¶ As Afghanistan – which has no railway system – counts as a Least Developed Country, all its mainstream products have duty and quota free access to the EU market.¶ Afghanistan’s accession to the WTO is expected to make a lasting contribution to the country’s stabilisation, economic reform and sustainable development.

### Stable – AT: Withdrawal

#### **Karzai’s replacement will sign the BSA – solves the withdrawal.**

Katzman 14 (Kenneth Katzman, Specialist in Middle Eastern Affairs, Strategic Studies Institute at the US Army War College, PhD in Poli Sci from NYU, Congressional Research Service, “Afghanistan: Post-Taliban Governance, Security, and U.S. Policy”, 3/4/14, http://www.fas.org/sgp/crs/row/RL30588.pdf)

A White House statement issued on November 25, 2013, at the conclusion of NSC Adviser Rice’s trip stated that the negotiations had been concluded and that signing the BSA after the Afghan election would cause the United States to do initial planning for the “zero option” discussed above.40 Since then, U.S. officials have tried varying approaches to persuade Karzai to sign, without success, and Ambassador to Afghanistan Cunningham reportedly has told the Administration he expects Karzai will not relent unless his demands are met.41 By the end of February 2014, the Administration reportedly reached the conclusion that Karzai would not sign before leaving office and, after a call to President Karzai on February 25, 2014, he reportedly directed the Department of Defense to plan for a full U.S. withdrawal. The Administration also indicated that the longer the BSA goes unsigned, the more constrained are U.S. options and the smaller the size of the post-2014 U.S. force will likely be. The NATO meeting held on February 27, 2014, took a similar position. Still, the United States and its partners reportedly believe that Karzai’s successor will sign the agreement, based on their statements of support. The United States and NATO, as discussed above, reportedly are planning their force structure for 2014 on the assumption that the agreement will be signed late into 2014, but in enough time to go forward with the intended mission.

### Stable – AT: Terrorism

#### China will replace U.S. forces – solves instability from terrorism.

Martina & Blanchard 14 (Michael Martina and Ben Blanchard, Reuters, “China says to work with Afghanistan to fight terrorism”, 3/8/14, http://www.reuters.com/article/2014/03/08/us-china-afghanistan-idUSBREA2706Y20140308)

China said on Saturday that it will work with Afghanistan to fight terrorism, after it blamed a deadly train station attack on extremists from its western Xinjiang region, which shares a short border with the war-torn nation.¶ Beijing has become increasingly concerned about security in restive Xinjiang, where it says Muslim extremists receive help from militants in neighboring countries.¶ China says separatists from the region, home to a large Muslim Uighur minority, launched a terrorist attack in the southwestern city of Kunming last week, killing at least 29 people and injuring about 140.¶ China will work with the international community for political reconciliation in Afghanistan and support reconstruction, Foreign Minister Wang Yi said at a press briefing during an annual session of China's largely rubber-stamp parliament.¶ "We will also work with Afghanistan and other neighbors to resolutely fight all terrorist forces," he said.¶ China will host a foreign ministerial conference on Afghanistan in August to encourage "a move toward lasting peace", Wang said.¶ Wang last month visited Afghanistan as U.S. and allied troops prepare to draw down their forces after more than 12 years of fighting Taliban extremists.¶ China has been stepping up its engagement with other regional players in recent months in Afghanistan, Beijing-based diplomats say, mainly out of concern that the NATO-led force's pullout may spawn instability that could spill into Xinjiang.

#### **No terrorist threat – they’re in survival mode.**

McLeary 14 (Paul McLeary, Defense News, “ISAF Chief: Taliban No Longer 'Existential Threat' to Afghanistan”, 3/12/14, http://www.defensenews.com/article/20140312/DEFREG02/303120033/ISAF-Chief-Taliban-No-Longer-Existential-Threat-Afghanistan)

The Taliban no longer presents an “existential threat” to the Afghan government, the commander of NATO forces in Afghanistan told a congressional panel Wednesday morning, but the Afghan armed forces still aren’t ready to operate alone without significant US and NATO assistance.¶ Marine Corps Gen. Joseph Dunford told the Senate Armed Services Committee that while the power of al-Qaida in Afghanistan has largely been blunted, “extremist networks hmave now expanded in the country,” and “increased cooperation and coordination can be seen between al-Qaida and other extremists like the Haqqani Network, Tahrik-e Taliban Pakistan and Lashkar-e-Taiba.”¶ He also described an al-Qaida in Afghanistan that today is in “survival mode.”

**Impact’s empirically denied**

**Drum ‘7**

**(Kevin-, Political Blogger @ the Washington Monthly, Sept. 9, Washington Monthly, “The Chaos Hawks”, http://www.**

**washingtonmonthly.com/archives/individual/2007\_09/012029.php )**

Having admitted, however, that the odds of a military success in Iraq are almost impossibly long, Chaos **Hawks** nonetheless **insist** that the U.S. military needs to stay in Iraq for the foreseeable future. Why? Because if we leave **the** entire **Middle East will become a bloodbath**. Sunni and Shiite will engage in mutual genocide, oil fields will go up in flames, fundamentalist parties will take over, and al-Qaeda will have a safe haven bigger than the entire continent of Europe.

Needless to say, **this is nonsense**. **Israel has fought war after war in the Middle East. Result: no regional conflagration. Iran and Iraq fought one of the bloodiest wars of the second half the 20th century. Result: no regional conflagration**. **The Soviets fought in Afghanistan and then withdrew. No regional conflagration**. The **U.S. fought the Gulf War and then left. No regional conflagration. Algeria fought an internal civil war for a decade. No regional conflagration.** So where does this bogeyman come from? Hard to say. Probably a deep-seated unwillingness to confront the fact that the United States can't really influence a course of events we originally set in motion. But Iraq is already fighting a civil war, and that civil war will continue whether we stay or go. If we go it will likely become more intense, but also shorter lived. The eventual result, however, will almost certainly be the same: a de facto independent Kurdistan in the north and a Shiite theocracy in the south. **The rest of the Middle East will**, as usual, **watch events unfold without doing much of anything about them**, and will accept the inevitable results. The U.S., for its part, will remain in the north to protect Kurdistan, in the east in Afghanistan, in the west in the Mediterranean, and in the south in its bases in the Gulf. We'll hardly be absent from the region.

**Nuclear deterrence is stable between India and Pakistan**

**Ganguly, poli sci prof- Indiana, 08 (Sumit, Nuclear Stability in South Asia, Intl Security Vol 33, No 2, Fall)**

The Robustness of Nuclear Deterrence As the outcomes of the 1999 and 2001–02 crises show, nuclear deterrence is robust in South Asia. Both crises were contained at levels considerably short of full-scale war. That said, as Paul Kapur has argued, Pakistan's acquisition of a nuclear weapons capability may well have emboldened its leadership, secure in the belief that India had no good options to respond. India, in turn, has been grappling with an effort to forge a new military doctrine and strategy to enable it to respond to Pakistani needling while containing the possibilities of conflict escalation, especially to the nuclear level.78 Whether Indian military planners [End Page 65] can fashion such a calibrated strategy to cope with Pakistani probes remains an open question. This article's analysis of the 1999 and 2001–02 crises does suggest, however, that nuclear deterrence in South Asia is far from parlous, contrary to what the critics have suggested. Three specific forms of evidence can be adduced to argue the case for the strength of nuclear deterrence. First, there is a serious problem of conflation in the arguments of both Hoyt and Kapur. Undeniably, Pakistan's willingness to provoke India has increased commensurate with its steady acquisition of a nuclear arsenal. This period from the late 1980s to the late 1990s, however, also coincided with two parallel developments that equipped Pakistan with the motives, opportunities, and means to meddle in India's internal affairs—particularly in Jammu and Kashmir. The most important change that occurred was the end of the conflict with the Soviet Union, which freed up military resources for use in a new jihad in Kashmir. This jihad, in turn, was made possible by the emergence of an indigenous uprising within the state as a result of Indian political malfeasance.79 Once the jihadis were organized, trained, armed, and unleashed, it is far from clear whether Pakistan could control the behavior and actions of every resulting jihadist organization.80 Consequently, although the number of attacks on India did multiply during the 1990s, it is difficult to establish a firm causal connection between the growth of Pakistani boldness and its gradual acquisition of a full-fledged nuclear weapons capability. Second, India did respond with considerable force once its military planners realized the full scope and extent of the intrusions across the Line of Control. Despite the vigor of this response, India did exhibit restraint. For example, Indian pilots were under strict instructions not to cross the Line of Control in pursuit of their bombing objectives.81 They adhered to these guidelines even though they left them more vulnerable to Pakistani ground fire.82 The Indian military exercised such restraint to avoid provoking Pakistani fears of a wider attack into Pakistan-controlled Kashmir and then into Pakistan itself. Indian restraint was also evident at another level. During the last war in [End Page 66] Kashmir in 1965, within a week of its onset, the Indian Army horizontally escalated with an attack into Pakistani Punjab. In fact, in the Punjab, Indian forces successfully breached the international border and reached the outskirts of the regional capital, Lahore. The Indian military resorted to this strategy under conditions that were not especially propitious for the country. Prime Minister Jawaharlal Nehru, India's first prime minister, had died in late 1964. His successor, Lal Bahadur Shastri, was a relatively unknown politician of uncertain stature and standing, and the Indian military was still recovering from the trauma of the 1962 border war with the People's Republic of China.83 Finally, because of its role in the Cold War, the Pakistani military was armed with more sophisticated, U.S.-supplied weaponry, including the F-86 Sabre and the F-104 Starfighter aircraft. India, on the other hand, had few supersonic aircraft in its inventory, barring a small number of Soviet-supplied MiG-21s and the indigenously built HF-24.84 Furthermore, the Indian military remained concerned that China might open a second front along the Himalayan border. Such concerns were not entirely chimerical, because a Sino-Pakistani entente was under way. Despite these limitations, the Indian political leadership responded to Pakistani aggression with vigor and granted the Indian military the necessary authority to expand the scope of the war. In marked contrast to the politico-military context of 1965, in 1999 India had a self-confident (if belligerent) political leadership and a substantially more powerful military apparatus. Moreover, the country had overcome most of its Nehruvian inhibitions about the use of force to resolve disputes.85 Furthermore, unlike in 1965, India had at least two reserve strike corps in the Punjab in a state of military readiness and poised to attack across the border if given the political nod.86 Despite these significant differences and advantages, the Indian political leadership chose to scrupulously limit the scope of the conflict to the Kargil region. As K. Subrahmanyam, a prominent Indian defense analyst and political commentator, wrote in 1993: [End Page 67] The awareness on both sides of a nuclear capability that can enable either country to assemble nuclear weapons at short notice induces mutual caution. This caution is already evident on the part of India. In 1965, when Pakistan carried out its "Operation Gibraltar" and sent in infiltrators, India sent its army across the cease-fire line to destroy the assembly points of the infiltrators. That escalated into a full-scale war. In 1990, when Pakistan once again carried out a massive infiltration of terrorists trained in Pakistan, India tried to deal with the problem on Indian territory and did not send its army into Pakistan-occupied Kashmir.87 Subrahmanyam's argument takes on additional significance in light of the overt acquisition of nuclear weapons by both India and Pakistan. Third, Sagan's assertion about the dominance of the Pakistani military in determining Pakistan's security policies is unquestionably accurate. With the possible exception of the Kargil conflict, however, it is far from clear that the Pakistani military has been the primary force in planning for and precipitating aggressive war against India. The first Kashmir war, without a doubt, had the explicit approval of Pakistan's civilian authorities.88 Similarly, there is ample evidence that the highly ambitious foreign minister, Zulfikar Ali Bhutto, goaded President Ayub Khan to undertake the 1965 war.89 Finally, once again Bhutto, as much as the Pakistani military dictator Yahya Khan, was complicit in provoking a war with India in 1971, following the outbreak of a civil war in East Pakistan.90

**Wouldn’t cause extinction**

**Copley News Service, 02 (Bruce Lieberman, “Fallout from nuclear war in South Asia seen as unlikely to reach U.S.”, http://www.globalsecurity.org/org/news/2002/020610-indopak1.htm)**

The horror of a nuclear war between India and Pakistan could decimate South Asia's largest cities, killing up to 12 million people and bringing misery to countless others. But a war, if limited to those two nations and the nuclear arsenals they are thought to possess, poses little danger of radioactive fallout reaching North America, physicists and atmospheric scientists say. There are fundamental reasons. First, India and Pakistan are believed armed with less potent weapons, probably no larger than the equivalent of 15,000 tons of TNT, about the same size as the bombs the United States dropped on Hiroshima and Nagasaki in 1945. In contrast, the typical nuclear weapon in the U.S. stockpile today is 10 to 20 times more powerful than the weapons held by India and Pakistan, according to GlobalSecurity.org. Second, the two countries are thought to have no more than 200 warheads between them - not enough, scientists believe, to endanger populations far beyond South Asia. More than 31,000 nuclear weapons, by contrast, are maintained by eight known nuclear powers, and 95 percent are in the United States and Russia, according to the Bulletin of Atomic Scientists, which monitors nuclear proliferation. Third, the approaching summer in the Northern Hemisphere will mean an absence of fast-moving winter storms that could carry nuclear fallout quickly across the globe. Further, South Asia's monsoon season, which begins this month and extends into October, could wash nuclear fallout back to Earth, confining the worst environmental damage to that part of the world. "Of course, there will be some radiation reaching globally, but the amounts will be small compared to the levels that would produce health effects," said Charles Shapiro, a physicist at San Francisco State University, who co-authored a 1985 study on the environmental effects of nuclear war. Irradiated particles blasted into the atmosphere from a nuclear war between India and Pakistan, carried aloft by the jet stream, would eventually reach every part of the globe and rain back down to Earth as fallout, scientists say. Atmospheric studies conducted by scientists at the Scripps Institution of Oceanography in La Jolla, Calif., have found that particulate from pollution in South Asia can reach the West Coast of the United States in as few as six days. However, those studies focused on the migration of haze in South Asia that covers thousands of square kilometers - a much greater area than that affected by a nuclear explosion, said V. Ramanathan, an atmospheric scientist at Scripps. "It's very risky to extrapolate" data from the pollution study, he said. Ramanathan's study found that particulates larger than 10 microns in diameter fell to Earth before reaching North America, so it's unclear how much radioactive fallout might reach the West Coast, or how dispersed it would be, he said. "I think East Asia has more to worry about, as well as Europe," Ramanathan said. Larry Riddle, a climatologist at Scripps, said the levels of radiation reaching the United States probably would not be any higher than background radiation. Humans are exposed every day to radiation from space, from deep in the Earth, and from man-made sources such as medical X-rays and other consumer products. "Essentially, it would have no effect," Riddle said.

**Pakistan won’t collapse-there are multiple safeguards against this.**

**Yusuf, 7**, Moed Yusuf, Pakistan; Still Growing at 60, http://www.brookings.edu/opinions/2007/0814pakistan\_yusuf.aspx

Let me end by pointing out that Pakistan's decline into chaos is far from inevitable. In fact, if we are to look beyond the present alarmist sentiment focused on the extremist threat, the state's recovery is far more probable than a further deterioration and eventual collapse. The presence of a functional bureaucracy, a strong secular military, as well as the writ of law (the lawlessness in the tribal belt has historical explanations and ought not to be conflated with the situation in the Pakistani hinterland) are all entrenched in the state structure and continue to act as strong buffers against any sudden breakdown.

# 2NC

## Case

### Afghanistan A/C

#### This is the only article their shares project evidence cites – undermines any concept that the plan is key to a deal

NYT 2013 (November 28, “Afghan Leader Lashes Out at U.S. Allies After NATO Drone Strike” <http://www.nytimes.com/2013/11/29/world/asia/afghan-leader-lashes-out-at-us-allies-after-nato-drone-strike.html?_r=3&>)

KABUL, Afghanistan — President Hamid Karzai lashed out at his American allies again on Thursday after word came that at least one, and possibly two, NATO drone strikes had killed civilians in southern Afghanistan. The attacks came at a delicate moment, when talks between Mr. Karzai and the United States over a long-term security agreement had reached an impasse. The Americans have told Mr. Karzai that unless he signs the agreement promptly, they will begin planning for a total withdrawal of American and NATO forces after the end of next year. Mr. Karzai vowed this week, at the conclusion of a loya jirga, or grand council, that he would cancel the security agreement completely if there was even one more raid that killed civilians. On Thursday, he said in effect that that moment had come. “For as long as such arbitrary acts and oppression of foreign forces continue, the security agreement with the United States will not be signed,” he said. The loya jirga overwhelmingly approved the security agreement last week and called on Mr. Karzai to sign it quickly. The Americans have said that was necessary to allow time to prepare for a longer-term mission. Instead, Mr. Karzai said he was adding a series of new conditions beyond what he had already negotiated and would not sign until those were satisfied. One of those new conditions was an immediate ban on any raids on Afghan homes. While the raids he was speaking of were primarily those carried out by Special Operations forces on the ground, his statement Thursday made it clear that he now included drone strikes in his prohibition.

### Stable – AT: Terrorism

#### China will replace U.S. forces – solves instability from terrorism.

Martina & Blanchard 14 (Michael Martina and Ben Blanchard, Reuters, “China says to work with Afghanistan to fight terrorism”, 3/8/14, http://www.reuters.com/article/2014/03/08/us-china-afghanistan-idUSBREA2706Y20140308)

China said on Saturday that it will work with Afghanistan to fight terrorism, after it blamed a deadly train station attack on extremists from its western Xinjiang region, which shares a short border with the war-torn nation.¶ Beijing has become increasingly concerned about security in restive Xinjiang, where it says Muslim extremists receive help from militants in neighboring countries.¶ China says separatists from the region, home to a large Muslim Uighur minority, launched a terrorist attack in the southwestern city of Kunming last week, killing at least 29 people and injuring about 140.¶ China will work with the international community for political reconciliation in Afghanistan and support reconstruction, Foreign Minister Wang Yi said at a press briefing during an annual session of China's largely rubber-stamp parliament.¶ "We will also work with Afghanistan and other neighbors to resolutely fight all terrorist forces," he said.¶ China will host a foreign ministerial conference on Afghanistan in August to encourage "a move toward lasting peace", Wang said.¶ Wang last month visited Afghanistan as U.S. and allied troops prepare to draw down their forces after more than 12 years of fighting Taliban extremists.¶ China has been stepping up its engagement with other regional players in recent months in Afghanistan, Beijing-based diplomats say, mainly out of concern that the NATO-led force's pullout may spawn instability that could spill into Xinjiang.

### 1NC AT: India/Pakistan

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### AT: Pakistan Collapse

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### AT: Indo/Pak

#### No escalation- crises will be resolved through negotiations

Alagappa, Distinguished Senior Fellow at the East-West Center, PhD in International Affairs from the Fletcher School of Law and Diplomacy, 2009 (Muthiah, “Nuclear Weapons Reinforce Security and Stability in 21st Century Asia”, Vol 4 No 1)

The stabilizing effect of nuclear weapons may be better illustrated in India-Pakistan relations, as the crises between these two countries during the 1999–2002 period are often cited as demonstrating nuclear weapon-induced instability. Rather than simply attribute these crises to the possession of nuclear weapons, a more accurate and useful reading would ground them in Pakistan’s deliberate policy to alter the status quo through military means on the premise that the risk of escalation to nuclear war would deter India from responding with full-scale conventional retaliation; and in India’s response, employing compellence and coercive diplomacy strategies. In other words, particular goals and strategies rather than nuclear weapons per se precipitated the crises. Further, the outcomes of these two crises revealed the limited utility of nuclear weapons in bringing about even a minor change in the territorial status quo and highlighted the grave risks associated with offensive strategies. Recognition of these limits and the grave consequences in part contributed to the two countries’ subsequent efforts to engage in a comprehensive dialogue to settle the many disputes between them. The crises also led to bilateral understandings and measures to avoid unintended hostilities. Though it is too soon to take a long view, it is possible to argue that, like the Cuban missile crisis in 1962, the 1999 and 2001–02 crises between India and Pakistan mark a watershed in their strategic relations: the danger of nuclear war shifted their focus to avoiding a major war and to finding a negotiated settlement to bilateral problems. Large-scale military deployments along the common border, Pakistan-supported insurgent activities in India, and cross-border terrorism continue; and the two countries regularly conduct large-scale military exercises and test nuclear-capable missiles that have each other’s entire territory within range. Despite these activities, the situation has become relatively less tense; stability with the ability to absorb shocks even like that created by the November 26terrorist attack in Mumbai has begun to characterize the bilateral relationship.

### Stable – AT: Regional Interference

#### **U.S. influence and regional economic integration prevents other countries from meddling in Afghanistan.**

Katzman 14 (Kenneth Katzman, Specialist in Middle Eastern Affairs, Strategic Studies Institute at the US Army War College, PhD in Poli Sci from NYU, Congressional Research Service, “Afghanistan: Post-Taliban Governance, Security, and U.S. Policy”, 3/4/14, http://www.fas.org/sgp/crs/row/RL30588.pdf)

The Obama Administration is attempting to deter Afghanistan’s neighbors from meddling there to secure their own interests, and promoting Afghanistan’s integration into regional security and economic organizations and patterns, and The Administration is emphasizing development of a Central Asia-South Asia trading hub—part of a “New Silk Road” (NSR)—in an effort to keep Afghanistan stable and economically vibrant as donors wind down their involvement. The FY2014 omnibus appropriation, H.R. 3547 (P.L. 113-76), provides up to $150 million to promote Afghanistan’s links within its region. The Administration obtained pledges from Afghanistan’s neighbors to non-interference in Afghanistan at an international meeting on Afghanistan in Istanbul on November 2, 2011 (“Istanbul Declaration”), and again at the December 5, 2011, Bonn Conference on Afghanistan (the 10th anniversary of the Bonn Conference that formed the post-Taliban government). As a follow-up to the Istanbul Declaration, confidence-building measures to be taken by Afghanistan’s neighbors, were discussed at a Kabul ministerial conference on June 14, 2012. At that meeting, also known as the “Heart of Asia” ministerial conference, Afghanistan hosted 14 other countries from the region, as well as 14 supporting countries and 11 regional and international organizations. The assembled nations and organizations agreed to jointly fight terrorism and drug trafficking, and pursue economic development.59 A subsequent Heart of Asia meeting was held in April 2013 in Kazakhstan. Post-Taliban Afghanistan has been slowly integrated into regional security and economic organizations. In November 2005, Afghanistan joined the South Asian Association for Regional Cooperation (SAARC), and, in June 2012, Afghanistan was granted full observer status in the Shanghai Cooperation Organization (SCO), a security coordination body that includes Russia, China, Uzbekistan, Tajikistan, Kazakhstan, and Kyrgyzstan. There was extensive discussion of greater SCO country involvement in Afghanistan after the 2014 transition during the June 6-7, 2012, meeting of the group in Beijing, which Karzai attended. U.S. officials have also sought to enlist both regional and greater international support for Afghanistan through the still-expanding 50-nation “International Contact Group.” Another effort is the Regional Economic Cooperation Conference (RECCA) on Afghanistan, which was launched in 2005. It held its fifth meeting in Tajikistan on March 26-27, 2012. Turkey and UNAMA co-chair a “Regional Working Group” initiative, which organized the November 2, 2011, Istanbul meeting mentioned above. UNAMA also leads a “Kabul Silk Road” initiative to promote regional cooperation on Afghanistan. In addition, several regional meetings series have been established between the leaders of Afghanistan and neighboring countries. These series include summit meetings between Afghanistan, Pakistan, and Turkey; and between Iran, Afghanistan, and Pakistan. However, this latter forum ended in mid-2012 after Afghanistan signed the SPA with the United States, which Iran strongly opposed. Britain hosted an Afghanistan-Pakistan meeting in February 2013. Russia has assembled several “quadrilateral summits” among it, Pakistan, Afghanistan, and Tajikistan, to focus on counter-narcotics and anti-smuggling.

## Circumvention

### 2NC Overview

#### CIA controls policy --- it empirically lies and gets what it wants

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, “National Security and Double Government,” [http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf)](http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf%29))

Justice Douglas, a family friend of the Kennedys, saw the Trumanites’ influence first-hand: “In reflecting on Jack’s relation to the generals, I slowly realized that the military were so strong in our society that probably no President could stand against them.”375 As the roles of the generals and CIA have converged, the CIA’s influence has expanded—aided in part by a willingness to shade the facts, even with sympathetic Madisonian sponsors. A classified, 6,000-word report by the Senate Intelligence Committee reportedly concluded that the CIA was “so intent on justifying extreme interrogation techniques that it blatantly misled President George W. Bush, the White House, the Justice Department and the Congressional intelligence committees about the efficacy of its methods.”376 “The CIA gets what it wants,” President Obama told his advisers when the CIA asked for authority to expand its drone program and launch new paramilitary operations.377

#### The plan can’t solve --- creates illusion of control that allows national security bureaucracy to flourish

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, “National Security and Double Government,” [http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf)](http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf%29))

V. Is Reform Possible? Checks, Smoke, and Mirrors

Madison, as noted at the outset,543 believed that a constitution must not only set up a government that can control and protect the people, but, equally importantly, must protect the people from the government.544 Madison thus anticipated the enduring tradeoff: the lesser the threat from government, the lesser its capacity to protect against threats; the greater the government’s capacity to protect against threats, the greater the threat from the government.

Recognition of the dystopic implications of double government focuses the mind, naturally, on possible legalist cures to the threats that double government presents. Potential remedies fall generally into two categories. First, strengthen systemic checks, either by reviving Madisonian institutions—by tweaking them about the edges to enhance their vitality— or by establishing restraints directly within the Trumanite network. Second, cultivate civic virtue within the electorate.

A. Strengthening Systemic Checks

The first set of potential remedies aspires to tone up Madisonian muscles one by one with ad hoc legislative and judicial reforms, by, say, narrowing the scope of the state secrets privilege; permitting the recipients of national security letters at least to make their receipt public; broadening standing requirements; improving congressional oversight of covert operations, including drone killings and cyber operations; or strengthening statutory constraints like FISA545 and the War Powers Resolution.546 Law reviews brim with such proposals. But their stopgap approach has been tried repeatedly since the Trumanite network’s emergence. Its futility is now glaring. Why such efforts would be any more fruitful in the future is hard to understand. The Trumanites are committed to the rule of law and their sincerity is not in doubt, but the rule of law to which they are committed is largely devoid of meaningful constraints.547 Continued focus on legalist band-aids merely buttresses the illusion that the Madisonian institutions are alive and well—and with that illusion, an entire narrative premised on the assumption that it is merely a matter of identifying a solution and looking to the Madisonian institutions to effect it. That frame deflects attention from the underlying malady. What is needed, if Bagehot’s theory is correct, is a fundamental change in the very discourse within which U.S. national security policy is made. For the question is no longer: What should the government do? The questions now are: What should be done about the government? What can be done about the government? What are the responsibilities not of the government but of the people?

#### It is a unique turn --- Madisonians’ role is decreasing now which risks exposing the illusion of double government

Glennon, 14 --- Professor of International Law at Tufts (Michael, Harvard National Security Journal, “National Security and Double Government,” [http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf)](http://harvardnsj.org/wp-content/uploads/2014/01/Glennon-Final.pdf%29))

E. Implications for the Future

The aim of this Article thus far has been to explain the continuity in U.S. national security policy. An all-too-plausible answer, this Article has suggested, lies in Bagehot’s concept of double government. Bagehot believed that double government could survive only so long as the general public remains sufficiently credulous to accept the superficial appearance of accountability, and only so long as the concealed and public elements of the government are able to mask their duality and thereby sustain public deference.501 As evidence of duality becomes plainer and public skepticism grows, however, Bagehot believed that the cone of governance will be “balanced on its point.”502 If “you push it ever so little, it will depart farther and farther from its position and fall to earth.”503

If Bagehot’s theory is correct, the United States now confronts a precarious situation. Maintaining the appearance that Madisonian institutions control the course of national security policy requires that those institutions play a large enough role in the decision-making process to maintain the illusion. But the Madisonians’ role is too visibly shrinking, and the Trumanites’ too visibly expanding, to maintain the plausible impression of Madisonian governance.504 For this reason and others, public confidence in the Madisonians has sunk to new lows.505 The Trumanites have resisted transparency far more successfully than have the Madisonians, with unsurprising results. The success of the whole dual institutional model depends upon the maintenance of public enchantment with the dignified/ Madisonian institutions. This requires allowing no daylight to spoil their magic,506 as Bagehot put it. An element of mystery must be preserved to excite public imagination. But transparency—driven hugely by modern internet technology, multiple informational sources, and social media— leaves little to the imagination. “The cure for admiring the House of Lords,” Bagehot observed, “was to go and look at it.”507 The public has gone and looked at Congress, the Supreme Court, and the President, and their standing in public opinion surveys is the result. Justices, senators, and presidents are not masters of the universe after all, the public has discovered. They are just like us. Enquiring minds may not have read enough of Foreign Affairs508 to assess the Trumanites’ national security polices, but they have read enough of People Magazine509 to know that the Madisonians are not who they pretend to be. While the public’s unfamiliarity with national security matters has no doubt hastened the Trumanites’ rise, too many people will soon be too savvy to be misled by the Madisonian veneer,510 and those people often are opinion leaders whose influence on public opinion is disproportionate to their numbers. There is no point in telling ghost stories, Holmes said, if people do not believe in ghosts.511

#### The executive always has the upper hand – rally around the leader effect

Rojas, 12 --- Associate Professor of Sociology at Indiana University (4/16/2012, Fabio, “rachel maddow will not bring peace,” <http://orgtheory.wordpress.com/2012/04/16/rachel-maddow-will-not-bring-peace/>)

Andrew Sullivan’s blog excerpted a passage from Rachel Maddow’s recent book. Understandably, Maddow’s book urges Congress to take a stand against war:

 When we go to war, we should raise taxes to pay for it. We should get rid of the secret military. The reserves should go back to being reserves. We should cut way back on the contractors and let troops peel their own potatoes. And above all, Congress should start throwing its weight around again…

I agree in principle, but disagree on practice. Rules and institutions that end war are ineffective for two reasons. First, if you really want war, you can always vote to have a new rule for war or to make an exception. Also, most rules have wiggle room in them, which makes it easy to wage war under other guises. Secondly, there’s a consistent “rally around the leader effect.” It is incredibly hard for anyone to oppose leaders during war time. Elected leaders are in a particularly weak position. Simply put, legislatures can’t be trusted to assert their restraining role in most cases.

#### The Obama administration has a stated preference for maintaining aggressive counterterror tactics – they ignore legal barriers

Scheuerman, 13 --- Professor of Poli Sci at Indiana University (Spring 2013, William E., Constitutional Commentary, “BOOK REVIEW: BARACK OBAMA'S WAR ON TERROR: POWER AND CONSTRAINT: THE ACCOUNTABLE PRESIDENCY AFTER 9/11,” 28 Const. Commentary 519))

Despite Obama's initial promise to close it down, Guantanamo Bay (GTMO) remains open and operative, albeit on a smaller scale (i.e., with only 167 detainees n12) than under Bush (pp. 11-12). Even if blame for this failure can by no means be placed solely or perhaps even chiefly at Obama's feet, he has followed Bush in endorsing indefinite detention for some suspected terrorists, many of whom will apparently remain in more-or-less permanent limbo at GTMO (pp. 12-13). Similarly, the Obama Administration reformed, but by no means abandoned, the system of military commissions inherited from the Bush Administration (p. 9). While the commissions now look quite different from the kangaroo courts initially sought by former Secretary of Defense Rumsfeld and others, in part because of some real procedural improvements (p. 187), the overall picture remains sobering: the Administration is still fighting off legal challenges to its attempt to give base commanders carte blanche authority over visits by legal counsel, along with discretion to decide how lawyers can use classified information they may glean from detainees they represent. n13

Again reminiscent of its forerunner, the Obama Administration continues to practice rendition, and though most evidence suggests that it has done so more humanely, the legal test it employs for determining where to send accused terrorists remains unchanged: only if there is more than a 50% chance of [\*524] detainees facing torture in a particular country are officials prohibited from sending them there (p. 15). Similarly, even though it has improved screening and procedural protections for detainees, the Administration also argues that basic habeas corpus protections do not cover those captured overseas (e.g., in Afghanistan) (p. 13). It seems as well to have appropriated the Bush Administration's hard line views on state secrecy, fighting no less aggressively in using it to dismiss lawsuits challenging its policies (e.g., in recent legal challenges to "targeted killings" of suspected terrorists) (pp. 13-14, 17-19). Like the Bush Administration, Obama's Administration insists on its right to engage in forum shopping: only when it is legally and politically convenient will suspected foreign-born terrorists get their day in civilian court (pp. 10-11). Moreover, as the New York Times editors recently commented, "any remaining hope for imposing meaningful accountability for torture and other abuses committed" under the Bush Administration has "for all practical purposes" now ended. n14 Even those CIA interrogators who likely tortured prisoners to death, going well beyond even those suspect interrogation practices condoned by President Bush, will not be facing prosecution under Attorney General Eric Holder. n15

Last but by no means least, the Obama Administration has gone beyond anything President Bush attempted in one major area: he has dramatically ramped up the targeted killing of suspected terrorists abroad, even claiming legal authority to kill - and then proceeding to do so - a U.S. citizen, Anwar al-Aulaqi, and then turning to Bush-era legal doctrines to beat back a courtroom challenge from the ACLU (pp. 13-14, 18-19). As Newsweek journalist Daniel Klaidman shows in his aptly entitled Kill or Capture: The War on Terror and the Soul of the Obama Presidency, an insightful account of the Administration's internal battles about counterterrorism, targeted killings, preferably by means of drones, quickly became the Administration's favored device for combating terrorism for a mix of interlocking political and legal imperatives. n16 They allow the Administration to minimize unnecessary U.S. military casualties in a seemingly endless war on terror, while typically garnering strong public support and permitting Obama to accentuate his image as a strong leader tough on national [\*525] security issues. n17 Just as conveniently, they do not require capturing and detaining dangerous terrorists, which has become a political and legal morass given congressional hostility to trying foreign terrorists in ordinary courts as well as the Administration's own commitment to downsize Gitmo and other offshore detention centers. n18 Despite widespread condemnation from abroad, the Administration continues to favor targeted killings as its weapon of choice in the war on terror. In fact, they have even garnered the unlikely imprimatur of one of the Administration's most prominent liberal jurists, State Department Legal Advisor and Yale Law School professor Harold Koh, who interprets them - when targets are properly selected - as legitimized by the U.S. declaration of war against Al-Qaeda. n19 Nonetheless, they remain controversial for one straightforward reason: President Obama has taken it upon himself to serve as judge, jury, and executioner even in cases involving U.S. citizens.

Civil libertarians may be exaggerating somewhat when they dub Obama's war on terror "Bush Lite." Nonetheless, a powerful case can be made that Obama has in fact mostly followed in his predecessor's footsteps, and that at least in one arena (i.e., targeted killings) he has in fact radicalized employment of one suspect, controversial Bush-era antiterrorism tool.

## DA

### Overview

#### Agility is key to solving every challenge – hegemony is insufficient

Berkowitz, 8 - research fellow at the Hoover Institution at Stanford University and a senior analyst at RAND. He is currently a consultant to the Defense Department and the intelligence community (Bruce, STRATEGIC ADVANTAGE: CHALLENGERS, COMPETITORS, AND THREATS TO AMERICA’S FUTURE, p. 1-4)

THIS BOOK is intended to help readers better understand the national security issues facing the United States today and offer the general outline of a strategy for dealing with them. National security policy—both making it and debating it — is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice. Yesterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers. Threats are also more likely to be intertwined—proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers. Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat — the Soviet Union — was brittle, most of the potential adversaries and challengers America now faces are resilient. In at least one dimension where the Soviets were weak (economic efficiency, public morale, or leadership), the new threats are strong. They are going to be with us for a long time. As a result, we need to reconsider how we think about national security. The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events.1 When you hold the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not. As national goals go, “keeping the strategic advantage” may not have the idealistic ring of “making the world safe for democracy” and does not sound as decisively macho as “maintaining American hegemony.” But keeping the strategic advantage is critical, because it is essential for just about everything else America hopes to achieve — promoting freedom, protecting the homeland, defending its values, preserving peace, and so on. The Changing Threat If one needs proof of this new, dynamic environment, consider the recent record. A search of the media during the past fifteen years suggests that there were at least a dozen or so events that were considered at one time or another the most pressing national security problem facing the United States — and thus the organizing concept for U.S. national security. What is most interesting is how varied and different the issues were, and how many different sets of players they involved — and how each was replaced in turn by a different issue and a cast of characters that seemed, at least for the moment, even more pressing. They included, roughly in chronological order, • regional conflicts — like Desert Storm — involving the threat of war between conventional armies; • stabilizing “failed states” like Somalia, where government broke down in toto; • staying economically competitive with Japan; • integrating Russia into the international community after the fall of communism and controlling the nuclear weapons it inherited from the Soviet Union; • dealing with “rogue states,” unruly nations like North Korea that engage in trafficking and proliferation as a matter of national policy; • combating international crime, like the scandal involving the Bank of Credit and Commerce International, or imports of illegal drugs; • strengthening international institutions for trade as countries in Asia, Eastern Europe, and Latin America adopted market economies; • responding to ethnic conflicts and civil wars triggered by the reemergence of culture as a political force in the “clash of civilizations”; • providing relief to millions of people affected by natural catastrophes like earthquakes, tsunamis, typhoons, droughts, and the spread of HIV/AIDS and malaria; • combating terrorism driven by sectarian or religious extremism; • grassroots activism on a global scale, ranging from the campaign to ban land mines to antiglobalization hoodlums and environmentalist crazies; • border security and illegal immigration; • the worldwide ripple effects of currency fluctuations and the collapse of confidence in complex financial securities; and • for at least one fleeting moment, the safety of toys imported from China. There is some overlap in this list, and one might want to group some of the events differently or add others. The important point, however, is that when you look at these problems and how they evolved during the past fifteen years, you do not see a single lesson or organizing principle on which to base U.S. strategy. Another way to see the dynamic nature of today's national security challenges is to consider the annual threat briefing the U.S. intelligence community has given Congress during the past decade. These briefings are essentially a snapshot of what U.S. officials worry most about. If one briefing is a snapshot, then several put together back to back provide a movie, showing how views have evolved.2 Figure 1 summarizes these assessments for every other year between 1996 and 2006. It shows when a particular threat first appeared, its rise and fall in the rankings, and in some cases how it fell off the chart completely. So, in 1995, when the public briefing first became a regular affair, the threat at the very top of the list was North Korea. This likely reflected the crisis that had occurred the preceding year, when Pyongyang seemed determined to develop nuclear weapons, Bill Clinton's administration seemed ready to use military action to prevent this, and the affair was defused by an agreement brokered by Jimmy Carter. Russia and China ranked high as threats in the early years, but by the end of the decade they sometimes did not even make the list. Proliferation has always been high in the listings, although the particular countries of greatest concern have varied. Terrorism made its first appearance in 1998, rose to first place after the September 11, 2001, terrorist attacks, and remains there today. The Balkans appeared and disappeared in the middle to late 1990s. A few of the entries today seem quaint and overstated. Catastrophic threats to information systems like an “electronic Pearl Harbor” and the “Y2K problem” entered the list in 1998 but disappeared after 2001. (Apparently, after people saw an airliner crash into a Manhattan skyscraper, the possible loss of their Quicken files seemed a lot less urgent.) Iraq first appeared in the briefing as a regional threat in 1997 and was still high on the list a decade later—though, of course, the Iraqi problem in the early years (suspected weapons of mass destruction) was very different from the later one (an insurgency and internationalized civil war). All this is why the United States needs agility. It not only must be able to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources

#### Maintaining warfighting capabilities key to deter Chinese invasion of the South China Seas

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(Bonnie, Pivot to Asia: Prepare for Unintended Consequences, http://csis.org/files/publication/120413\_gf\_glaser.pdf)

Under the current administration, the pendulum in U.S. policy toward China has swung from attempting to cooperate with China on global problems to pushing back against Chinese assertiveness and challenges to international laws and norms. Getting tougher with Beijing was necessary, but it has also created unintended consequences that the next administration, either a second Obama team or a Republican lineup, will have to contend with. The Obama administration’s initial policy in 2009 raised fears in many Asian capitals of a G2 condominium that would make decisions over the heads of others. Those concerns were unwarranted and short lived. Beijing interpreted the U.S. approach as weakness, which, along with China’s economic success and America’s struggles, led to a year of Chinese hubris that manifested itself in a series of intimidating actions in China’s neighborhood. Subsequent entreaties by regional states to counterbalance China increased U.S. attention to the Asia-Pacific region. Now, the U.S. Asia “pivot” has prompted Chinese anxiety about U.S. containment and heightened regional worries about intensified U.S.-China strategic competition. In the run-up to the leadership transition that will take place at China’s 18th Party Congress this fall, Beijing is inwardly focused and unlikely to act on its fears. However, 2013 could see a shift in Chinese foreign policy based on the new leadership’s judgment that it must respond to a U.S. strategy that seeks to prevent China’s reemergence as a great power. Signs of a potential harsh reaction are already detectable. The U.S. Asia pivot has triggered an outpouring of anti-American sentiment in China that will increase pressure on China’s incoming leadership to stand up to the United States. Nationalistic voices are calling for military countermeasures to the bolstering of America’s military posture in the region and the new U.S. defense strategic guidelines. For example, an article published in China’s Global Times, a jingoistic newspaper owned by the Communist Party mouthpiece People’s Daily, called for China to strengthen its long-range strike capabilities. Deng Xiaoping’s guideline to keep a low profile in the international arena, designed more than two decades ago to cope with uncertainty produced by the collapse of the Soviet bloc, is increasingly seen by China’s elite and public as irrelevant and even harmful to the task of defending Chinese ever-expanding “core interests.” Some voices are calling for closer alignment with Moscow and promoting the BRICS grouping (Brazil, Russia, India, and China) as a new “pole” in the international arena to strengthen the emerging powers against the West. Xi Jinping, who will assume the helm as China’s new leader later this year, will be under pressure from many domestic constituencies to more forcefully defend Chinese interests in the international arena. Seeking to quickly consolidate his power and enhance the legitimacy of the Communist Party, Xi and his newly installed Politburo Standing Committee colleagues may be more willing than their predecessors to test drive a policy that is more confrontational. The U.S. response to a more muscular Chinese foreign and military policy, should it appear, will have to be carefully calibrated. Ignoring greater Chinese assertiveness would fuel the belief—already emerging in China and elsewhere— that the United States is in inexorable decline. History shows that when great powers falter, China does not hesitate to seize the opportunity to advance its interests, especially in the South China Sea. As American forces withdrew from Vietnam in the mid-1970s, the Chinese grabbed the Paracel Islands from Saigon. Similarly, when the Soviet Union withdrew from Vietnam’s Cam Ranh Bay and the United States terminated its base agreement with the Philippines, China quietly occupied Mischief Reef to the dismay of Manila. Yet a hostile and overbearing U.S. response would confirm Chinese suspicions that the United States seeks to contain its rise, which could cement the emergence of a U.S.-China Cold War. In addition, it would further alarm regional states who seek at all costs to avoid having to choose between the United States and China. U.S. policy will need to combine firmness with subtlety. A strategy will need to be shaped that protects regional stability and reassures China’s neighbors, but also avoids greater U.S.- China strategic competition and the classic security dilemma, wherein each side believes that growing capabilities reflect hostile intent and responds by producing that reality. Sustained attention and commitment of sufficient resources to the Asia- Pacific region will be key to assuaging the doubts of regional friends and allies about U.S. staying power. The United States also will need to maintain the military capabilities necessary to deter Chinese aggression.

#### South China Sea conflict causes nuclear extinction

Wittner 11, Professor of History at SUNY Albany

(Is a Nuclear War With China Possible?, [www.huntingtonnews.net/14446](http://www.huntingtonnews.net/14446))

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

#### **No correlation between drone use and recruitment levels.**

Etzioni 13, Professor of International Relations @ George Washington University

(Aimtai Etzioni, senior adviser to the Carter administration, “Everything Libertarians and Liberals Get Wrong About Drones”, The Atlantic, 4/30/13, http://www.theatlantic.com/politics/archive/2013/04/everything-libertarians-and-liberals-get-wrong-about-drones/275356/)

Some critics worry that relying upon drones will engender significant resentment and potentially aid terrorist recruitment efforts. However, those who are inclined towards terrorism already loathe the United States for a thousand other reasons. Pew surveys show that anti-Americanism thrives in regions where there have been no drone strikes (for example, in Egypt) and, where drones have been active, high levels of anti-Americanism predated their arrival (for instance in Pakistan).

#### **\*\*Drones aren’t a recruitment tool – Al Qaeda uses money to recruit and anti-drone propaganda is elitist hype.**

Axe 13

(David Axe, quoting Christopher Swift, fellow at the University of Virginia’s Center for National Security Law,“Expert: No Drone Backlash in Yemen”, http://christopher-swift.com/th\_gallery/expert-no-drone-backlash-in-yemen)

Lethal strikes by armed drones are America’s best and less obtrusive method of killing Islamic militants and dismantling their terror networks while minimizing civilian casualties. Or they’re a misguided and counter-productive attempt at sterilizing the dirty work of counter-terrorism — one that serves as a rallying cry for terrorist recruiters and ends up creating more militants than it eliminates.¶ Those are the opposing views in one of the most urgent debates in military, policy and humanitarian circles today. Now a new, ground-level investigation by a daring American researcher adds a fresh wrinkle to the controversy. Chris Swift, a fellow at the University of Virginia’s Center for National Security Law, spent a week in late May interviewing around 40 tribal leaders in southern Yemen, one of the major drone battlegrounds.¶ What he found might disappoint activists and embolden counter-terrorism officials. “Nobody in my cohort [of interview subjects] drew a causal link between drones on one hand and [militant] recruiting on other,” Swift says.¶ Tweets, blog posts and news reporting from Yemen seem to contradict Swift’s conclusion. Drone strikes in Yemen have gone up, way up, from around 10 in 2011 to some two dozen so far this year. No fewer than 329 people have died in the Yemen drone campaign, at least 58 of whom were innocent civilians, according to a count by the British Bureau of Investigative Journalism.¶ But some Yemenis believe the civilian body count is much higher. “For every headline you read regarding ‘militants’ killed by drones in #Yemen, think of the civilians killed that are not reported,” NGO consultant Atiaf Al Wazir Tweeted.¶ Another Yemeni Twitter user drew the link between the drone war’s innocent victims in a Tweet directed at top U.S. counterterrorism adviser John Brennan. “Brennan do you hear us?!!! We say #NoDrones #NoDrones #NoDrones. You are killing innocent people and creating more enemies in #Yemen.”¶ Reporters have run with the claim that drone strikes breed terrorists. “Drones have replaced Guantánamo as the recruiting tool of choice for militants,” Jo Becker and Scott Shane wrote in The New York Times.¶ “Across the vast, rugged terrain of southern Yemen, an escalating campaign of U.S. drone strikes is stirring increasing sympathy for Al Qaeda-linked militants and driving tribesmen to join a network linked to terrorist plots against the United States,” The Washington Post‘s Sudarsan Raghavan reported.¶ But the narrative embraced by Yemeni Tweeters the Times and the Post originated in, and is sustained by, a comparatively wealthy, educated and English-speaking community based in Yemen’s capital city Sana’a, Swift explains. He calls them the “Gucci jean-wearing crowd.” But cosmopolitan Sana’a isn’t breeding many terrorists, and popular opinions in the city don’t necessarily reflect the reality in Yemen’s embattled south.¶ To get to the sources that really mattered, Swift sensed he had to “get out of the Sana’a political elite,” he says. He teamed up with an experienced fixer — a combined guide, translator and protector — and slipped into heavily-armed Aden in Yemen’s south in the back of pickup trucks. “I always expected that my next checkpoint was going to be my last,” Swift says.¶ Swift survived some close calls and brought back what is arguably the freshest and most relevant data on militant recruiting in southern Yemen. He has since written articles for Foreign Affairs and the Sentinel counterterrorism journal. In southern Yemen “nobody really gets excited about drones,” he explains. He says his sources were “overwhelming saying that Al Qaeda is recruiting through economic inducement.” In other words, for the most part the terror group pays people to join.¶ Which isn’t to say Yemen’s militants don’t fear the American killer robots. In fact, they’re “terrified of drones,” Swift says. “They make a big deal of surviving drones in their propaganda videos.”¶ The militants’ fear of drones perhaps underscores the robots’ effectiveness. It does not argue for widespread resentment among everyday people in southern Yemen that compels them to join the terrorists’ ranks. At least, that’s what Swift believes.

### Now Key for Terrorism

#### Now is key to pop terrorists – Al Qaeda is at a transitional moment

McLaughlin 13 (John McLaughlin was a CIA officer for 32 years and served as deputy director and acting director from 2000-2004. He currently teaches at the Johns Hopkins University's School of Advanced International Studies and is a Non-Resident Senior Fellow at the Brookings Institution, ¶ 06:00 AM ET¶ Terrorism at a moment of transition7/12, http://security.blogs.cnn.com/2013/07/12/terrorism-at-a-moment-of-transition/)

A third major trend has to do with the debate underway among terrorists over tactics, targets, and ways to correct past errors.¶ On targets, jihadists are now pulled in many directions. Many experts contend they are less capable of a major attack on the U.S. homeland. But given the steady stream of surprises they’ve sprung – ranging from the 2009 “underwear bomber” to the more recent idea of a surgically implanted explosive – it is hard to believe they’ve given up trying to surprise us with innovations designed to penetrate our defenses.¶ We especially should remain alert that some of the smaller groups could surprise us by pointing an attacker toward the United States, as Pakistan’s Tehrik e Taliban did in preparing Faizal Shazad for his attempted bombing of Times Square in 2010.¶ At the same time, many of the groups are becoming intrigued by the possibility of scoring gains against regional governments that are now struggling to gain or keep their balance – opportunities that did not exist at the time of the 9/11 attacks.¶ Equally important, jihadists are now learning from their mistakes, especially the reasons for their past rejection by populations where they temporarily gained sway.¶ Documents from al Qaeda in the Islamic Maghreb, discovered after French forces chased them from Mali, reveal awareness that they were too harsh on local inhabitants, especially women. They also recognized that they need to move more gradually and provide tangible services to populations – a practice that has contributed to the success of Hezbollah in Lebanon.¶ We are now seeing a similar awareness among jihadists in Syria, Tunisia, Libya, and Yemen. If these “lessons learned” take hold and spread, it will become harder to separate terrorists from populations and root them out.¶ Taken together, these three trends are a cautionary tale for those seeking to gauge the future of the terrorist threat.¶ Al Qaeda today may be weakened, but its wounds are far from fatal. It is at a moment of transition, immersed in circumstances that could sow confusion and division in the movement or, more likely, extend its life and impart new momentum.¶ So if we are ever tempted to lower our guard in debating whether and when this war might end, we should take heed of these trends and of the wisdom J. R. R. Tolkien has Eowyn speak in “Lord of the Rings”: "It needs but one foe to breed a war, not two ..."

### AT: UN Solves

#### Superpower status is meaningless – only capability and speed matter

* Kind of says the status quo fails so maybe don’t read this

Cordesman 2000 - a senior fellow at the Center for Strategic and International Studies (date obtained from most recent cite, Anthony, “The Military in a New Era: Living with Complexity” <http://indianstrategicknowledgeonline.com/web/C18Corde.pdf>)

No other power or international body is likely to fill this gap. Kosovo is living evidence of the fact that there is little near- to mid-term prospect that globalization will create meaningful international peacemaking capabilities under the United Nations. In fact, divisions in the Security Council make it likely that little effort will be made to create any kind of global norms for the use of armed force to intervene in humanitarian, peacemaking, and regional crises and conflicts. While Europe is creating a "crisis-management force" under the European Union, its members are simultaneously making major cuts in their military expenditures and forces. There is no other region where regional coalition partners are likely to create military capabilities that can greatly reduce the strain on U.S. forces. This creates a strong prospect that the United States will find itself remaining the world's only superpower, largely because no peer will emerge to expose the limits of its military capabilities. Like Britain during the Pax Britannica of a century ago, the United States is likely to remain overdeployed in ad hoc operations and to make resource decisions that steadily compromise its military capabilities. The end result may be a cruel parody of an old joke about force planning, namely, the goal is to do more and more with less and less, until the resulting forces attempt to do everything with nothing. The only way that the United States could avoid this would be to fund a capabilities-driven force rather than a requirements-driven force. The United States cannot now predict the timing or scale of the conflicts that will involve it in the future. All it can predict is that global interests will require global power projection capability, that major regional contingencies will remain a mid- and long-term requirement, and that the United States must at least consider the long-term emergence of some form of major peer threat and/or proliferator.

### AT: Obama Weak

#### Putin’s public statements of strength are irrelevant to the DA – it’s about the pure military power to defeat enemies

#### Perceptions of American weakness are shoddy journalism – Obama is being smart about Russia

Cohen, 3/3 (Michael, 3/3/2014, “Don't listen to Obama's Ukraine critics: he's not 'losing' – and it's not his fight; The ‘do something’ pundits rear their heads. Just like they did on Iraq, Afghanistan and every other crisis of US ‘credibility’,” http://www.theguardian.com/commentisfree/2014/mar/03/obama-ukraine-russia-critics-credibility))

In the days since Vladimir Putin sent Russian troops into the Crimea, it has been amateur hour back in Washington. I don’t mean Barack Obama. He’s doing pretty much everything he can, with what are a very limited set of policy options at his disposal. No, I’m talking about the people who won’t stop weighing in on Obama’s lack of “action” in the Ukraine. Indeed, the sea of foreign policy punditry – already shark-infested – has reached new lows in fear-mongering, exaggerated doom-saying and a stunning inability to place global events in any rational historical context. This would be a useful moment for Americans to have informed reporters, scholars and leaders explaining a crisis rapidly unfolding half a world away. Instead, we’ve already got all the usual suspect arguments: Personality-driven Analysis Let’s start here with Julia Ioffe of the New Republic, a popular former reporter in Moscow who now tells us that Putin has sent troops into Crimea “because he can. That’s it, that’s all you need to know”. It’s as if things like regional interests, spheres of influence, geopolitics, coercive diplomacy and the potential loss of a key ally in Kiev (as well as miscalculation) are alien concepts for Russian leaders. Overstated Rhetoric Shorn of Political Context David Kramer, president of Freedom House, hit the ball out of the park on this front when he hyperbolically declared that Obama’s response to Putin’s actions “will define his two terms in office” and “the future of U.S. standing in the world”. Honorable mention goes to Ian Bremmer of Eurasia Group for calling this crisis “the most seismic geopolitical events since 9/11”. Putting aside the Iraq and Afghanistan wars, the Arab Spring, Syria’s civil war and tensions in the South China Sea, Bremmer might have a point. Unhelpful Policy Recommendations Admiral James Stavridis, former Supreme Commander of Nato, deserves a shout-out for calling on Nato to send maritime forces into the Black Sea, among other inflammatory steps. No danger of miscalculation or unnecessary provocation there. No, none at all. Inappropriate Historical Analogies So many to choose from here, but when you compare seizing Crimea to the Nazi annexation of Austria in 1938, as Leonid Bershidsky did at Bloomberg View, you pretty much blow away the competition. Making It All About Us As in practically every international crisis, the pundit class seems able to view events solely through the prism of US actions, which best explains Edward Luce in the Financial Times writing that Obama needs to convince Putin “he will not be outfoxed”, or Scott Wilson at the Washington Post intimating that this is all a result of America pulling back from military adventurism. Shocking as it may seem, sometimes countries take actions based on how they view their interests, irrespective of who the US did or did not bomb. Missing from this “analysis” about how Obama should respond is why Obama should respond. After all, the US has few strategic interests in the former Soviet Union and little ability to affect Russian decision-making. Our interests lie in a stable Europe, and that’s why the US and its European allies created a containment structure that will ensure Russia’s territorial ambitions will remain quite limited. (It’s called Nato.) Even if the Russian military wasn’t a hollow shell of the once formidable Red Army, it’s not about to mess with a Nato country. The US concerns vis-à-vis Russia are the concerns that affect actual US interests. Concerns like nuclear non-proliferation, or containing the Syrian civil war, or stopping Iran’s nuclear ambitions. Those are all areas where Moscow has played an occasionally useful role. So while Obama may utilize political capital to ratify the Start treaty with Russia, he’s not going to extend it so save the Crimea. The territorial integrity of Ukraine is not nothing, but it’s hardly in the top tier of US policy concerns. What is America’s problem is ensuring that Russia pays a price for violating international law and the global norm against inter-state war. The formal suspension of a G8 summit in Sochi is a good first step. If Putin’s recalcitrance grows – and if he further escalates the crisis – then that pressure can be ratcheted up. But this crisis is Putin’s Waterloo, not ours. Which brings us to perhaps the most bizarre element of watching the Crimean situation unfold through a US-centric lens: the iron-clad certainty of the pundit class that Putin is winning and Obama is losing. The exact opposite is true. Putin has initiated a conflict that will, quite obviously, result in greater diplomatic and political isolation as well as the potential for economic sanction. He’s compounded his loss of a key ally in Kiev by further enflaming Ukrainian nationalism, and his provocations could have a cascading effect in Europe by pushing countries that rely on Russia’s natural gas exports to look elsewhere for their energy needs. Putin is the leader of a country with a weak military, an under-performing economy and a host of social, environmental and health-related challenges. Seizing the Crimea will only make the problems facing Russia that much greater. For Obama and the US, sure, there might be less Russian help on Syria going forward – not that there was much to begin with – and it could perhaps affect negotiations on Iran. But those issues are manageable. Meanwhile, Twitter and the opinion pages and the Sunday shows and too many blog posts that could be informative have been filled with an over-the-top notion: that failure to respond to Russia’s action will weaken America’s credibility with its key allies. To which I would ask: where are they gonna go? If anything, America’s key European allies are likely to fold the quickest, because, you know, gas. And why would any US ally in the Far East want Obama wasting his time on the Crimea anyway? You don’t have to listen to the “do something” crowd. These are the same people who brought you the wars in Iraq and Afghanistan, among other greatest hits. These are armchair “experts” convinced that every international problem is a vital interest of the US; that the maintenance of “credibility” and “strength” is essential, and that any demonstration of “weakness” is a slippery slope to global anarchy and American obsolescence; and that being wrong and/or needlessly alarmist never loses one a seat at the table.

### 2NC Congress Spillover Block (With XO)

#### The plan spills over to all other warfighting capabilities –

#### 1.) Institutional memory – the plan embeds normative categories

Paul 2008 - Senior Social Scientist; Professor, Pardee RAND Graduate School Pittsburgh Office Education Ph.D., M.A., and B.A. in sociology, University of California, Los Angeles (September, Christopher, “US Presidential War Powers: Legacy Chains in Military Intervention Decisionmaking\* ,” Journal of Peace Research, Vol. 45, No. 5 (Sep., 2008), pp. 665-679)

The Institutional Context 'Institution' is used quite inclusively in this article. Following Nee & Ingram (1998: 19), 'An institution is a web of interrelated norms ? formal and informal ? governing social relationships' (emphasis in original).For military intervention decisions, these institutions include not only the formal organizations and departments of the gov ernment, but also the basic building blocks of the policy formation process: the laws gov erning who participates in the policy process and the procedures that must be followed. More subtle factors in policy formation are also institutionalized: the relationships between different policy participants (for ex ample, the congress and the White House, or the press and the military), taken for granted normative categories such as isolationism vs. interventionism, and the range of policies that are considered 'legitimate' by the elec torate and by other nations. The preferences, capabilities, and basic self-identities of indi viduals are conditioned by these institutional structures; if these individuals are part of the policymaking process, they can affect policy (Haney, 1997: 17). All actors are constrained by existing political institutions (Mann, 1993: 52). These institutions create and constitute the context (writ large) in which policy is made. The changes in the institutional contexts that constitute policy legacies tend to be of two different types. The first type of institutional legacy is a formal change in rules, structure, organization, or procedure. The second type is an informal institutional change, perhaps a change in the broad taken-for-granted logics that inform decision making. This could include changes in institu tionalized preferences, perceptions, informal rules, and 'schemas' (Sewell, 1992: 1-29). The most important difference between the two has to do with how the legacy comes about. Changes in taken-for-granted logics and schemas involve subtle shifts in perceptions based on demonstrated challenges to previously held assumptions or beliefs. These changes may or may not be undertaken consciously and reflexively, but they are certainly not something that is discussed and decided on; rather, they are a product of collective logic, sense, and unspoken consensus. For example, prior to President Truman's commitment of US forces to combat in Korea without congressional permission or a declaration of war, the division of powers laid down in the Constitution was assumed to be a sufficient protection of the various branches of the government s prerogatives with regarding to war-making. After Korea, such protections were less taken for granted and more contested, ultimately resulting in a formal institutional change: the War Powers Resolution of 1973. Such formal organizational institutional legacies, on the other hand, are the product of active decisionmaking and are codified in rule or law. As the product of a decision making process, these are 'intended' changes, and, if the language formalizing the change is not precisely aligned with its intentions, unintended institutional consequences can result. A case in point: the War Powers Re solution has not so much retilted the balance of power over war-making toward congress as placed artificial institutional constraints (time limits, reporting requirements) on how presidents plan and launch military interventions.

#### 2.) Precedential effect – the plan requires reframing constitutional separations of power

Heder 2010 - magna cum laude , J. Reuben Clark Law School, Brigham Young University (Adam, J.D., “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is no constitutional provision on whether Congress has the legislative power to limit, end, or otherwise redefine the scope of a war. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 the same cannot be said about Congress’s legislative authority to terminate or limit a war in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully declined to grant Congress such powers. And as this Article argues, granting Congress this power would be inconsistent with the general war powers structure of the Constitution. Such a reading of the Constitution would unnecessarily empower Congress and tilt the scales heavily in its favor. More over, it would strip the President of his Commander in Chief authority to direct the movement of troops at a time when the Executive’s expertise is needed. 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

#### 3.) Perception of divided government – causes enemies to be emboldened

Posner and Vermeule, 10 - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 60)

In this way, measures urged by the executive to cope with a crisis of unclear magnitude acquired a kind of self-created momentum. Rejection of those measures would themselves create a political crisis that might, in turn, reduce confidence and thus trigger or exacerbate the underlying financial crisis. A similar process occurred in the debates over the AUMF and the Patriot Act, where proponents of the bills urged that their rejection would send terrorist groups a devastating signal about American political willpower and unity, thereby encouraging more attacks. These political dynamics, in short, create a self-fulfilling crisis of authority that puts legislative institutions under tremendous pressure to accede to executive demands, at least where a crisis is even plausibly alleged. Critics of executive power contend that the executive exploits its focal role during crises in order to bully and manipulate Congress, defeating Madisonian deliberation when it is most needed. On an alternative account, the legislature rationally submits to executive leadership because a crisis can be addressed only by a leader. Enemies are emboldened by institutional conflict or a divided government; financial markets are spooked by it. A government riven by internal conflict will produce policy that varies as political coalitions rise and fall. Inconsistent policies can be exploited by enemies, and they generate uncertainty at a time that financial markets are especially sensitive to agents’ predictions of future government action. It is a peculiar feature of the 2008 financial crises that a damaged president could not fulfill the necessary leadership role, but that role quickly devolved to the Treasury secretary and Fed chair who, acting in tandem, did not once express disagreement publicly.

#### That independently collapses hegemony

Bolton 2009 - Senior fellow at the American Enterprise Institute & Former U.S. ambassador to the United Nations (October 18, John R., “The danger of Obama's dithering,” Los Angeles Times, <http://articles.latimes.com/2009/oct/18/opinion/oe-bolton18>)

Weakness in American foreign policy in one region often invites challenges elsewhere, because our adversaries carefully follow diminished American resolve. Similarly, presidential indecisiveness, whether because of uncertainty or internal political struggles, signals that the United States may not respond to international challenges in clear and coherent ways. Taken together, weakness and indecisiveness have proved historically to be a toxic combination for America's global interests. That is exactly the combination we now see under President Obama. If anything, his receiving the Nobel Peace Prize only underlines the problem. All of Obama's campaign and inaugural talk about "extending an open hand" and "engagement," especially the multilateral variety, isn't exactly unfolding according to plan. Entirely predictably, we see more clearly every day that diplomacy is not a policy but only a technique. Absent presidential leadership, which at a minimum means clear policy direction and persistence in the face of criticism and adversity, engagement simply embodies weakness and indecision.

### 1NC AT: Drone Restrictions Coming

#### No substantial opposition

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

This is the crux of the problem. We stand at the beginning of the Drone Age and the genie is not going to climb back into the bottle. The chances that this way of war will, over time, reduce the amount of random violence in the world are essentially nil. Obama’s drone policy has set an ominous precedent, and not only for future residents of the White House. It promises, over the long term, to engender more violence than it prevents because it excites no public backlash. That, for the permanent national security apparatus that has deftly moulded the worldview of a novice president, is its irresistible allure. It doesn’t provoke significant protest even on the part of people who condemn hit-jobs done with sticky bombs, radioactive isotopes or a bullet between the eyes – in the style of Mossad or Putin’s FSB. That America appears to be laidback about drones has made it possible for the CIA to resume the assassination programme it was compelled to shut down in the 1970s without, this time, awakening any politically significant outrage. It has also allowed the Pentagon to wage a war against which antiwar forces are apparently unable to rally even modest public support.

#### b. There’s a government consensus that drones are justified

Benjamin Wittes, editor in chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. He is the author of several books and a member of the Hoover Institution's Task Force on National Security and Law, 2/27/13, In Defense of the Administration on Targeted Killing of Americans, www.lawfareblog.com/2013/02/in-defense-of-the-administration-on-targeted-killing-of-americans/

This view has currency among European allies, among advocacy groups, and in the legal academy. Unfortunately for its proponents, it has no currency among the three branches of government of the United States. The courts and the executive branch have both taken the opposite view, and the Congress passed a broad authorization for the use of force and despite many opportunities, has never revisited that document to impose limitations by geography or to preclude force on the basis of co-belligerency—much less to clarify that the AUMF does not, any longer, authorize the use of military force at all. Congress has been repeatedly briefed on U.S. targeting decisions, including those involving U.S. persons.[5] It was therefore surely empowered to either use the power of the purse to prohibit such action or to modify the AUMF in a way that undermined the President’s legal reasoning. Not only has it taken neither of these steps, but Congress has also funded the relevant programs. Moreover, as I noted above, Congress’s recent reaffirmation of the AUMF in the 2012 NDAA with respect to detention, once again contains no geographical limitation. There is, in other words, a consensus among the branches of government on the point that the United States is engaged in an armed conflict that involves co-belligerent forces and follows the enemy to the new territorial ground it stakes out. It is a consensus that rejects the particular view of the law advanced by numerous critics. And it is a consensus on which the executive branch is entitled to rely in formulating its legal views.

#### Most qualified evidence

Masters, deputy editor – CFR, 10/3/’11

(Jonathan, “US acquires targeted killing as an essential tactic,” The Nation)

Since assuming office in 2009, Barack Obama's administration has escalated targeted killings, primarily through an increase in unmanned drone strikes on Al-Qaeda and Taliban leadership, but also through an expansion of US Special Operations kill/capture missions. The successful killing of Osama bin Laden in a US Navy SEAL raid in May 2011 and the drone strike on Al-Qaeda's number two, Atiyah Abd Rahman, in August 2011 are prime examples of this trend. The White House points to these outcomes as victories, but critics continue to condemn the lethal tactic on moral, legal, and political grounds. Despite the opposition, most experts expect the United States to boost targeted killings in the coming years as military technology improves and the public appetite for large-scale, conventional armed intervention erodes.

#### Even if they win that Obama will have to say he’s rolling back drone use it’ll continue unhindered

Mazzetti and Landler, August 2013 - Pulitzer Prize for reporting on the intensifying violence in Pakistan and Afghanistan and Washington's response. (August 2, Mark and Mark, “Despite Administration Promises, Few Signs of Change in Drone Wars ” <http://www.nytimes.com/2013/08/03/us/politics/drone-war-rages-on-even-as-administration-talks-about-ending-it.html?pagewanted=print>)

There were more drone strikes in Pakistan last month than any month since January. Three missile strikes were carried out in Yemen in the last week alone. And after Secretary of State John Kerry told Pakistanis on Thursday that the United States was winding down the drone wars there, officials back in Washington quickly contradicted him. More than two months after President Obama signaled a sharp shift in America’s targeted-killing operations, there is little public evidence of change in a strategy that has come to define the administration’s approach to combating terrorism. Most elements of the drone program remain in place, including a base in the southern desert of Saudi Arabia that the Central Intelligence Agency continues to use to carry out drone strikes in Yemen. In late May, administration officials said that the bulk of drone operations would shift to the Pentagon from the C.I.A. But the C.I.A. continues to run America’s secret air war in Pakistan, where Mr. Kerry’s comments underscored the administration’s haphazard approach to discussing these issues publicly. During a television interview in Pakistan on Thursday, Mr. Kerry said the United States had a “timeline” to end drone strikes in that country’s western mountains, adding, “We hope it’s going to be very, very soon.” But the Obama administration is expected to carry out drone strikes in Pakistan well into the future. Hours after Mr. Kerry’s interview, the State Department issued a statement saying there was no definite timetable to end the targeted killing program in Pakistan, and a department spokeswoman, Marie Harf, said, “In no way would we ever deprive ourselves of a tool to fight a threat if it arises.” Micah Zenko, a fellow with the Council on Foreign Relations, who closely follows American drone operations, said Mr. Kerry seemed to have been out of sync with the rest of the Obama administration in talking about the drone program. “There’s nothing that indicates this administration is going to unilaterally end drone strikes in Pakistan,” Mr. Zenko said, “or Yemen for that matter.”

## 1NR

### Kick Ukraine

#### FINISHING 2NC POSNER

 the implicit threat is that the whistleblower will make public any evidence of partisan motivations. The more ambitious case involves actually exposing the executive’s decisionmaking processes to observation. To the extent that an ill-motivated executive cannot publicly acknowledge his motivations or publicly instruct subordinates to take them into account in decisionmaking, transparency will exclude those motivations from the decisionmaking process. The public will know that only a well-motivated executive would promise transparency in the first place, and the public can therefore draw an inference to credibility.

Credibility is especially enhanced when transparency is effected through journalists with reputations for integrity or with political preferences opposite to those of the president. Thus George W. Bush gave Bob Woodward unprecedented access to White House decisionmaking, and perhaps even to classified intelligence,95 with the expectation that the material would be published. This sort of disclosure to journalists is not real-time transparency – no one expects meetings of the National Security Council to appear on CSPAN – but the anticipation of future disclosure can have a disciplining effect in the present. By inviting this disciplining effect, the administration engages in signaling in the present through (the threat of) future transparency.

There are complex tradeoffs here, because transparency can have a range of harmful effects. As far as process is concerned, decisionmakers under public scrutiny may posture for the audience, may freeze their views or positions prematurely, and may hesitate to offer proposals or reasons for which they can later be blamed if things go wrong.96 As for substance, transparency can frustrate the achievement of programmatic or policy goals themselves. Where security policy is at stake, secrecy is sometimes necessary to surprise enemies or to keep them guessing. Finally, one must take account of the incentives of the actors who expose the facts—especially journalists who might reward presidents who give them access by portraying their decisionmaking in a favorable light.97

We will take up the costs of credibility shortly.98 In general, however, the existence of costs does not mean that the credibility-generating mechanisms are useless. Quite the contrary: where the executive uses such mechanisms, voters and legislators can draw an inference that the executive is well-motivated, precisely because the existence of costs would have given an ill-motivated executive an excuse not to use those mechanisms.

Multilateralism. Another credibility-generating mechanism for the executive is to enter into alliances or international institutions that subject foreign policy decisions to multilateral oversight. Because the information gap between voters and legislators, on the one hand, and the executive on the other is especially wide in foreign affairs, there is also wide scope for suspicion and conspiracy theories. If the president undertakes a unilateral foreign policy, some sectors of the domestic public will be suspicious of his motives. All recent presidents have faced this problem. In the case of George W. Bush, as we suggested, many have questioned whether the invasion of Iraq was undertaken to eliminate weapons of mass destruction, or to protect human rights, or instead to safeguard the oil supply, or because the president has (it is alleged) always wanted to invade Iraq because Saddam Hussein ordered the assassination of his father. In the case of Bill Clinton, some said that the cruise missile attack on Osama bin Laden’s training camp in Afghanistan was a “wag the dog” tactic intended to distract attention from Clinton’s impeachment.

A public commitment to multilateralism can close or narrow the credibility gap.

Suppose that a group of nations have common interests on one dimension – say, security from terrorism or from proliferation of nuclear weapons – but disparate interests on other dimensions – say, conflicting commercial or political interests. Multilateralism can be understood as a policy that in effect requires a supermajority vote, or even unanimity, among the group to license intervention. The supermajority requirement ensures that only interventions promoting the security interest common to the group will be approved, while interventions that promote some political agenda not shared by the requisite supermajority will be rejected. Knowing this, domestic audiences can infer that interventions that gain multilateral approval do not rest on disreputable motives.

It follows that multilateralism can be either formal or informal. Action by the United Nations Security Council can be taken only under formal voting rules that require unanimity. Informally, in the face of increasing tensions with Iran, George W. Bush’s policy has been extensive multilateral consultations and a quasi-commitment not to intervene unilaterally. Knowing that his credibility is thin after Iraq, Bush has presumably adopted this course in part to reassure domestic audiences that there is no nefarious motive behind an intervention, should one occur.

It also follows that multilateralism and bipartisan congressional authorization may be substitutes, in terms of generating credibility. In both cases the public knows that the cooperators – partisan opponents or other nations, as the case may be – are unlikely to share any secret agenda the president may have. The substitution is only partial, however; as we suggested in Part III, the Madisonian emphasis on bipartisan authorization has proven insufficient. The interests of parties within Congress diverge less than do the interests of different nations, which makes the credibility gain greater under multilateralism. In eras of unified government, the ability of the president’s party to put a policy through Congress without the co-operation of the other party (ignoring the threat of a Senate filibuster, a weapon that the minority party often hesitates to wield) often undermines the policy’s credibility even if members of the minority go along; after all, the minority members may be going along precisely because they anticipate that opposition is fruitless, in which case no inference about the policy’s merits should be drawn from their approval. Moreover, even a well-motivated president may prefer, all else equal, to generate credibility through mechanisms that do not involve Congress, if concerned about delay, leaks, or obstruction by small legislative minorities. Thus Truman relied on a resolution of the United Nations Security Council rather than congressional authorization to prosecute the Korean War.99

The costs of multilateralism are straightforward. Multilateralism increases the costs of reaching decisions, because a larger group must coordinate its actions, and increases the risks of false negatives – failure to undertake justified interventions. A president who declines to bind himself through multilateralism may thus be either illmotivated and desirous of pursuing an agenda not based on genuine security goals, or well-motivated and worried about the genuine costs of multilateralism. As usual, however, the credibility-generating inference holds asymmetrically: precisely because an ill-motivated president may use the costs of multilateralism as a plausible pretext, a president who does pursue multilateralism is more likely to be well-motivated.

Strict liability. For completeness, we mention that the well-motivated executive might in principle subject himself to strict liability for actions or outcomes that only an ill-motivated executive would undertake. Consider the controversy surrounding George W. Bush’s telecommunications surveillance program, which the president has claimed covers only communications in which one of the parties is overseas; domestic-to-domestic calls are excluded.100 There is widespread suspicion that this claim is false.101 In a recent poll, 26% of respondents believed that the National Security Agency listens to their calls.102 The credibility gap arises because it is difficult in the extreme to know what exactly the Agency is doing, and what the costs and benefits of the alternatives are.

Here the credibility gap might be narrowed by creating a cause of action, for damages, on behalf of anyone who can show that domestic-to-domestic calls were examined.103 Liability would be strict, because a negligence rule – did the Agency exert reasonable efforts to avoid examining the communication? – requires too much information for judges, jurors, and voters to evaluate, and would just reproduce the monitoring problems that gave rise to the credibility gap in the first place. Strict liability, by contrast, would require a much narrower factual inquiry. Crucially, a commitment to strict liability would only be made by an executive who intended to minimize the incidence of (even unintentional and non-negligent) surveillance of purely domestic communications.

However, there are legal and practical problems here, perhaps insuperable ones. Legally, it is hardly clear that the president could, on his own authority, create a cause of action against himself or his agents to be brought in federal court. It is well within presidential authority to create executive commissions for hearing claims against the United States, for disbursing funds under benefit programs, and so on; but the problem here is that there might be no pot of money from which to fund damages. The so-called Judgment Fund, out of which damages against the executive are usually paid, is restricted to statutorily-specified lawsuits. If so, statutory authorization for the president to create the strict liability cause of action would be necessary, as we discuss shortly.104 Practically, it is unclear whether government agents can be forced to “internalize costs” through money damages in the way that private parties can, at least if the treasury is paying those damages.105 And if it is, voters may not perceive the connection between governmental action and subsequent payouts in any event.

The news conference. Presidents use news conferences to demonstrate their mastery of the details of policy. Many successful presidents, like FDR, conducted numerous such conferences.106 Ill-motivated presidents will not care about policy if their interest is just holding power for its own sake; thus, they would regard news conferences as burdensome and risky chores. The problem is that a well-motivated president does not necessarily care about details of policy, as opposed to its broad direction, and journalists might benefit by tripping up a president in order to score points. Reagan, for example, did not care about policy details, but is generally regarded as a successful president.107 To make Reagan look good, his handlers devoted considerable resources trying to prepare him for news conferences, resources that might have been better used in other ways.108

“Precommitment politics.”109 We have been surveying mechanisms that the wellmotivated executive can employ once in office. However, in every case the analysis can be driven back one stage to the electoral campaign for executive office. During electoral campaigns, candidates for the presidency take public positions that partially commit them to subsequent policies, by raising the reputational costs of subsequent policy changes. Under current law, campaign promises are very difficult to enforce in the courts.110 But even without legal enforcement, position-taking helps to separate the well-motivated from the ill-motivated candidate, because the costs to the former of making promises of this sort are higher. To be sure, many such promises are vacuous, meaning that voters will not sanction a president who violates them, but some turn out to have real force, as George H.W. Bush discovered when he broke his clear pledge not to raise taxes.

### Executive Self-binding => Policy Credibility

#### Executive self-binding sends positive signal --- increasing its credibility and earning it goodwill from public, Congress and Courts

Posner & Vermeule, 6 --- \*Prof of Law at U Chicago, AND \*\* Prof of Law at Harvard (9/19/2006, Eric A. Posner & Adrian Vermeule, “The Credible Executive,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931501)>)

The problem, however, is that the public has no simple way to know which type of executive it is dealing with. An ill-motivated executive will just mimic the statements of a well-motivated one, saying the right things and offering plausible rationales for policies that outsiders, lacking crucial information, find difficult to evaluate—policies that turn out not to be in the public interest. The ability of the ill-motivated executive to mimic the public-spirited executive’s statements gives rise to the executive’s dilemma of credibility: the well-motivated executive has no simple way to identify himself as such. Distrust causes voters (and the legislators they elect) to withhold discretion that they would like to grant and that the well-motivated executive would like to receive. Of course the ill-motivated executive might also want discretion; the problem is that voters who would want to give discretion (only) to the well-motivated executive may choose not to do so, because they are not sure what type he actually is. The risk that the public and legislators will fail to trust a well-motivated president is just as serious as the risk that they will trust an ill-motivated president, yet legal scholars have felled forests on the second topic while largely neglecting the first.5

Our aim in this paper is to identify this dilemma of credibility that afflicts the well-motivated executive and to propose mechanisms for ameliorating it; we focus on emergencies and national security, but cast the analysis within a broader framework. Our basic claim is that the credibility dilemma can be addressed by executive signaling. Without any new constitutional amendments, statutes, or legislative action, law and executive practice already contains resources sufficient to allow a well-motivated executive to send a credible signal of his motivations, committing to use increased discretion in public-spirited ways. By tying policies to institutional mechanisms that impose heavier costs on ill-motivated actors than on well-motivated ones, the wellmotivated executive can credibly signal his good intentions and thus persuade voters that his policies are those that voters would want if fully informed. We focus particularly on mechanisms of executive self-binding that send a signal of credibility by committing presidents to actions or policies that only a well-motivated president would adopt.

The discussion is structured as follows. Part I lays out examples of the credibility dilemma, both historical and recent. Part II analyzes the credibility dilemma through the lens of principal-agent theory. Part III examines the attempted Madisonian solution to the credibility dilemma, and explains why it is a failure, for the most part. Part IV suggests a series of mechanisms for credibly demonstrating the executive’s good intentions. These mechanisms include independent commissions within the executive branch; bipartisanship in appointments to the executive branch, or more broadly the creation of domestic coalitions of the willing; the related tactic of counter-partisanship, or choosing policies that run against the preferences of the president’s own party; commitments to multilateral action in foreign policy; increasing the transparency of the executive’s decisionmaking processes; and a regime of strict liability for executive abuses. Not all of these mechanisms succeed, and all of them succeed under some conditions but fail under others. We attempt to identify the conditions under which one or the other mechanism can improve executive credibility.

### Self-binding Mechanisms Empirically Solve

#### Empirical solvency --- use of mechanisms alone boosts credibility

Posner & Vermeule, 6 --- \*Prof of Law at U Chicago, AND \*\* Prof of Law at Harvard (9/19/2006, Eric A. Posner & Adrian Vermeule, “The Credible Executive,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931501)>)

A general objection to our approach might emphasize the cost side, as follows. Whether the benefits outweigh the costs under particular circumstances is very hard for voters and legislators to judge. The ill-motivated executive can always claim that he has not adopted the credibility-generating mechanisms because of these costs; in that respect he can mimic a well-motivated executive who does genuinely believe that the costs exceed the benefits in the case at hand. Because of this second-order information gap, voters and legislators will still be unable to distinguish the good executive from the bad.

This critique is overblown. For one thing, the very availability of these mechanisms, once generally known, indirectly provides the public with information even if they are not used, and indeed because they are not used. The failure to invite members of the other political party, or foreign nations, to participate in a crucial decision of foreign policy might cause voters to increase their skepticism about executive motivations. Relatedly, there is an asymmetry we have emphasized above: where the benefits really do exceed the costs, the well-motivated executive will employ the mechanisms, whereas the ill-motivated executive is less likely to do so, depending on whether use of the mechanisms happens to coincide with his strategic interests. Use of these mechanisms thus provides some evidence from which voters can infer that the executive is well-motivated. If the executive does not adopt (any of) the mechanisms, he might or might not be ill-motivated, but if he does adopt (some of) them, he is more likely to be well-motivated, so the mechanisms help voters and legislators to sort the bad from the good. The inference is evidential, not a logical necessity, but it is useful nonetheless.

More generally, we do not deny that there will always be difficult cases in which the well-motivated executive should adopt a particular policy but has no way to persuade people that his motivations are public-spirited, because the costs of generating credibility really do exceed the benefits. But all we claim is that there is a substantial range of cases in which use of the mechanisms make all concerned better off. So long as voters have some information, then the well-motivated executive has the right incentives. The credibility mechanisms lie on a sliding scale: their value is lower the less voters can understand them, higher the more voters can understand them.

Overall, it is sensible to think that there is a middle range in which voters’ information and competence is high enough that the credibility mechanisms are useful, but not so high that voters can just directly assess whether the executive has good motivations and is adopting optimal policies. Plausibly, the median of the electorate in the United States, and in other advanced democracies, falls in this middle range, most of the time. To be sure, it is hard to demonstrate, for each of the mechanisms we have surveyed, that the benefits exceed the costs under a significant range of circumstances. On the other hand, it is hard to demonstrate the contrary as well. Presidents and others have used them, or near relatives, at many points in the past, which gives some grounds for optimism that these mechanisms have real-world resonance.

### AT: Solvency Deficits \*\*\*

#### Won’t be overturned by future presidents

Branum, 02 --- Associate, Fulbright & Jaworski L.L.P., Houston, Texas. J.D. University of Texas; Austin (Tara L., Journal of Legislation, “PRESIDENT OR KING? THE USE AND ABUSE OF EXECUTIVE ORDERS IN MODERN-DAY AMERICA,” 28 J. Legis. 1)

Congressmen and private citizens besiege the President with demands [\*58] that action be taken on various issues. n273 To make matters worse, once a president has signed an executive order, he often makes it impossible for a subsequent administration to undo his action without enduring the political fallout of such a reversal. For instance, President Clinton issued a slew of executive orders on environmental issues in the weeks before he left office. n274 Many were controversial and the need for the policies he instituted was debatable. n275 Nevertheless, President Bush found himself unable to reverse the orders without invoking the ire of environmentalists across the country. n276 A policy became law by the action of one man without the healthy debate and discussion in Congress intended by the Framers. Subsequent presidents undo this policy and send the matter to Congress for such debate only at their own peril. This is not the way it is supposed to be.

#### Executive orders unlikely to be overturned

Murray, 99 (8/23/1999 (Frank J., The Washington Times, “Clinton's executive orders still are packing a punch; Other presidents issued more, but many of his are sweeping,” Lexis-Nexis Academic)

**\*\*\*Note --- Paul Begala is a former Clinton adviser**

Mr. Begala said that Mr. Clinton did not conceal his intent to make ample use of executive orders.

"Clinton is an activist, muscular president," Mr. Begala said in an interview, recalling that Mr. Clinton chided Mr. Bush in 1992 and said he intended to use the powers of the presidency to the fullest.

"If you won't use the powers of the presidency to help people, step aside. I will," Mr. Begala quoted the president as telling Mr. Bush.

Clearly, Mr. Clinton knew what some detractors do not: Presidential successors of the opposite party do not lightly wipe the slate clean of every order, or even most of them.

Still on the books 54 years after his death are 80 executive orders issued by Franklin D. Roosevelt. No less than 187 of Mr. Truman's orders remain, including one to end military racial segregation, which former Joint Chiefs of Staff Chairman Colin Powell praised for starting the "Second Reconstruction."

"President Truman gave us the order to march with Executive Order 9981," Mr. Powell said at a July 26, 1998 ceremony marking its 50th anniversary.

Mr. Truman's final order, issued one day before he left office in 1953, created a national security medal of honor for the nation's top spies, which is still highly coveted and often revealed only in the obituary of its recipient.

#### External checks on president empirically fail --- only the counterplan is a realistic mechanism

Tichenor, 8 --- Department of Political Science at Rutgers University-New Brunswick

(Last modified 4/30/2008, Daniel J., “The Forgotten Virtues of Executive Restraint: Liberal Democracy, Prerogative Power, and Unfettered Presidentialism,”

[http://www.wcfia.harvard.edu/sites/default/files/The%20Forgotten%20Virtues%20of%20Executive%20Restraint%20Tichenor.pdf)](http://www.wcfia.harvard.edu/sites/default/files/The%20Forgotten%20Virtues%20of%20Executive%20Restraint%20Tichenor.pdf%29))

“The Constitution has not greatly bothered any wartime president,” Roosevelt’s Attorney General Francis Biddle memorably remarked.43 The same may be said of political forces outside the government. Indeed, none of our five potential checks – the judiciary, Congress, the media, advocacy groups, or the general public – posed significant veto-points. Lincoln encountered fierce press criticism, Roger Taney was a nettlesome critic of the habeas suspension, and mass publics were hardly unified behind the war cause, but none kept him from asserting unprecedented prerogative power. Wilson faced some challenges with advocacy groups, but the most obstreperous were easily repressed.

If we wanted to play blithe optimists, we could highlight the extent to which each of our potential sources of resistance to presidential actions that restrict civil liberties have grown over time. The national network of citizen groups championing civil liberties has clearly thickened; public opinion after 2002 has wavered on executive actions; media coverage has expanded dramatically in volume (but my own content analysis is in progress); Congress has not greatly bothered the administration’s prosecution of the War on Terror but its oversight of possible military tribunals and sunset provisions of the Patriot Act illustrate a level legislative reluctance even shortly after the 9/11 attacks; and the federal judiciary of late has been more assertive than earlier wartime courts (see Table 2 for a first-cut evaluation). In the final analysis, however, none of these external checks seriously encumbered Lincoln, Wilson and FDR – or George W. Bush in the immediate aftermath of September 11th – in their exercise of prerogative power. In the absence of dependable external checks on presidential prerogative, internal checks assume special importance.

#### Self-restraint is a more effective check than other branches

Posner & Vermeule, 6 --- \*Prof of Law at U Chicago, AND \*\* Prof of Law at Harvard (9/19/2006, Eric A. Posner & Adrian Vermeule, “The Credible Executive,” <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=931501)>)

As we noted earlier, legal scholars rarely note the problem of executive credibility, preferring to dwell on the problem of aggrandizement by ill-motivated presidents. Ironically, this assumption that presidents seek to maximize power has obscured one of the greatest constraints on aggrandizement, namely, the president’s own interest in maintaining his credibility. Neither a well-motivated nor ill-motivated president can accomplish his goals if the public does not trust him.33 This concern with reputation may put a far greater check on the president’s actions than do the reactions of the other branches of the government.

#### Courts and Congress aren’t adequate --- executive self-restraint through its own lawyers is superior

Johnsen, 7 --- Professor of Law at Indiana

(August 2007, Dawn E., UCLA Law Review, “SYMPOSIUM: Constitutional "Niches": The Role of Institutional Context in Constitutional Law: Faithfully Executing the Laws: Internal Legal Constraints on Executive Power,” 54 UCLA L. Rev. 1559))

Introduction

Since the terrorist attacks of September 11, 2001, the Bush Administration has engaged in a host of controversial counterterrorism actions that threaten civil liberties and at times even endanger the physical safety of the targeted individuals. Prominent examples include the detention of enemy combatants, the use of extreme interrogation techniques and even torture, extraordinary renditions, secret overseas prisons, and warrantless domestic surveillance. To justify policies that would otherwise violate applicable legal constraints, President Bush and his lawyers have espoused an extreme view of expansive presidential power during times of war and national emergency, a view that draws especially on the President's constitutional role as commander-in-chief. For those who believe that the Bush Administration has misinterpreted relevant constitutional authorities, particularly when seeking to justify actions otherwise prohibited by law, the War on Terror brings new urgency to old questions: What can be done to prevent presidential aggrandizement and abuse of power including in the most trying of times, when the nation is at war or serious external threats otherwise threaten national security? What in our constitutional system can help to ensure that Presidents will respect the rule of law and adhere to constitutional and statutory limits on their national security policy options?

The most obvious checks on the President are the other two branches of the federal government: the U.S. Congress and the courts. Our constitutional system of separate and overlapping powers creates the potential for a vibrant legislature and judiciary to check a President who transgresses legal [\*1561] boundaries and violates rights in order to accomplish policy ends. n1 Debate has raged, domestically and internationally, about the details of desirable external checks on the Bush Administration's counterterrorism policies. While the Republicans controlled Congress prior to 2007, most attention understandably focused on the courts, with commentators differing passionately about the level of deference the courts should afford the political branches n2 and about the judiciary's potential to safeguard civil liberties in times of emergency. n3 Thus far, the U.S. Supreme Court has taken a relatively aggressive and nondeferential stance in favor of protecting those whose rights the President's policies may have violated. n4 The Court's approach is warranted: Regardless of the underlying policies' substantive merits, the courts as well as Congress should hold the President [\*1562] accountable for attempts to implement policies with arrogant disrespect for legal constraints and for the coordinate branches' constitutional authorities.

Our recent history, though, has demonstrated the inherent inadequacies of the courts and Congress as external checks on the President. An approach of issue-by-issue review and oversight even by a vigilant judiciary and Congress will incompletely constrain a President who, in the name of national security, is willing to undermine the rule of law. This Article therefore seeks to elevate an essential source of constraint that often is underappreciated and underestimated: legal advisors within the executive branch.

The obstacles to judicial or congressional review of particular executive branch actions on matters of war and national security - especially during times of crisis - are familiar. The courts face (and create) difficult justiciability requirements, in part out of respect for executive authority and expertise. These impediments to judicial review mean, for example, that there may be no party who ever has standing to challenge a clearly unlawful governmental action. Courts may deny or delay relief even to parties with standing because of the political question doctrine, the state secrets privilege, deferential standards of review, or years of complex litigation.

With regard to Congress, oversight obviously tends to be least effective when the President's political party dominates, but even with the shift to Democratic control in 2007, significant obstacles remain to Congress's ability to check executive action. Congress tends to defer strongly to the commander-in-chief on matters of war and national security even in times of divided government. Legislative efforts face the possibility of a filibuster or a presidential veto.

Perhaps the greatest challenge to legislative oversight is that Congress has already enacted legislation with regard to many of the Bush Administration's most objectionable policies. Much of the controversy in fact stems from President Bush's claimed authority to refuse to comply with congressional statutes, including the Foreign Intelligence Surveillance Act (FISA), n5 the anti-torture statute, n6 and the numerous other laws that are [\*1563] the subjects of signing statements in which Bush asserts the right to refuse to enforce the laws in ways that conflict with his view of his office's constitutional authority. n7 When Congress already has legislated and the President unjustifiably threatens nonenforcement, Congress is left with the options of resource-intensive oversight to attempt to police compliance, indirect retribution (such as through appropriations and appointments), and the blunt instrument of impeachment.

Executive branch secrecy further hinders both judicial and congressional review. At times, of course, secrecy is essential to preserving national security, but the Bush Administration has taken the level of executive branch secrecy to a new and unwarranted extreme. By its nature, secrecy undercuts the efficacy of external checks. Congress or potential litigants may not even know about unlawful executive action unless someone in the government violates administration policy, and perhaps statutory prohibitions, to leak information. Such leaks were responsible for the public disclosure of the Bush Administration's legal opinions and policies on coercive interrogations and torture, n8 the National Security Administration's domestic surveillance program that operated outside the requirements of FISA, n9 and the use of secret prisons overseas to detain and interrogate suspected terrorists. n10 Ultimately, even with the current Supreme Court's relatively strong willingness to protect rights in the face of unlawful executive action, coupled with scrutiny from the press and advocacy organizations, the Bush Administration has engaged in years of largely unconstrained illegal practices.

### Perm --- either it links to the DA or it severs statutory restrictions which makes the aff a moving target

### flex

#### Executive action preserves flexibility and prevents overbroad congressional and judicial restrictions

Michaels, 11 --- Acting Professor, UCLA School of Law (June 2011, Jon D., Virginia Law Review, “THE (WILLINGLY) FETTERED EXECUTIVE: PRESIDENTIAL SPINOFFS IN NATIONAL SECURITY DOMAINS AND BEYOND,” 97 Va. L. Rev. 801))

Third, the anti-aggrandizing effects might have been necessary to preempt more stringent congressional regulations. That is to say, the Executive likely will not be alone in noticing that the traditional legal and political constraints are absent or dysfunctional. Congress and the courts will no doubt realize that the President has unfettered discretion. The Executive, aware that Congress or the courts might try to address the accountability deficits, thus has reason to move first, and possibly lessen the need for legislative or judicial intervention. By doing so, the Executive welcomes constraints. But it does so on its terms. The President’s constraints likely will not be as stringent as Congress’s would be. But the President’s constraints might nevertheless be adequate— sufficiently so that the coordinate branches’ concerns are allayed, and they can focus their attention elsewhere.37

### AO

#### Executive branch has internal checks on groupthink – including Congress freezes policymaking

Posner and Vermeule, 7– \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian, Terror in the Balance: Security, Liberty, and the Courts p. 46-47)

The idea that Congress will, on net, weed out bad policies rests on an institutional comparison. The president is elected by a national constituency on a winner-take-all basis (barring the remote chance that the Electoral College will matter), whereas Congress is a summation of local constituencies and thus affords more voice to political and racial minorities. At the level of political psychology, decisionmaking within the executive is prone to group polarization and other forms of groupthink or irrational panic,51 whereas the internal diversity of legislative deliberation checks these forces. At the level of political structure, Congress contains internal veto gates and chokepoints—consider the committee system and the fi libuster rule—that provide minorities an opportunity to block harmful policies, whereas executive decisionmaking is relatively centralized and unitary. The contrast is drawn too sharply, because in practice the executive is a they, not an it. Presidential oversight is incapable of fully unifying executive branch policies, which means that disagreement flourishes within the executive as well, dampening panic and groupthink and providing minorities with political redoubts.52 Where a national majority is internally divided, the structure of presidential politics creates chokepoints that can give racial or ideological minorities disproportionate influence, just as the legislative process does. Consider the influence of Arab Americans in Michigan, often a swing state in presidential elections. It is not obvious, then, that statutory authorization makes any difference at all. One possibility is that a large national majority dominates both Congress and the presidency and enacts panicky policies, oppresses minorities, or increases security in ways that have ratchet effects that are costly to reverse. If this is the case, a requirement of statutory authorization does not help. Another possibility is that there are internal institutional checks, within both the executive branch and Congress, on the adoption of panicky or oppressive policies and that democratic minorities have real infl uence in both arenas. If this is the case, then a requirement of authorization is not necessary and does no good. Authorization only makes a difference in the unlikely case where the executive is thoroughly panicky, or oppressively majoritarian, while Congress resists the stampede toward bad policies and safeguards the interests of oppressed minorities. Even if that condition obtains, however, the argument for authorization goes wrong by failing to consider both sides of the normative ledger. As for majoritarian oppression, the multiplicity of veto gates within Congress may allow minorities to block harmful discrimination, but it also allows minorities to block policies and laws which, although targeted, are nonetheless good. As for panic and irrationality, if Congress is more deliberative, one result will be to prevent groupthink and slow down stampedes toward bad policies, but another result will be to delay necessary emergency measures and slow down stampedes toward good policies. Proponents of the authorization requirement sometimes assume that quick action, even panicky action, always produces bad policies. But there is no necessary connection between these two things; expedited action is sometimes good, and panicky crowds can stampede either in the wrong direction or in the right direction. Slowing down the adoption of new policies through congressional oversight retards the adoption not only of bad policies, but also of good policies that need to be adopted quickly if they are to be effective.

#### Obama administration is the opposite of groupthink

Pillar, 13 -- Brookings Foreign Policy Senior Fellow

[Paul, "The Danger of Groupthink," The National Interest, 2-26-13, webcache.googleusercontent.com/search?q=cache:6rnyjYlVKY0J:www.brookings.edu/research/opinions/2013/02/26-danger-groupthink-pillar+&cd=3&hl=en&ct=clnk&gl=us, accessed9-21-13, mss]

David Ignatius has an interesting take on national security decision-making in the Obama administration in the wake of the reshuffle of senior positions taking place during these early weeks of the president's second term. Ignatius perceives certain patterns that he believes reinforce each other in what could be a worrying way. One is that the new team does not have as much “independent power” as such first-term figures as Clinton, Gates, Panetta and Petraeus. Another is that the administration has “centralized national security policy to an unusual extent” in the White House. With a corps of Obama loyalists, the substantive thinking may, Ignatius fears, run too uniformly in the same direction. He concludes his column by stating that “by assembling a team where all the top players are going in the same direction, he [Obama] is perilously close to groupthink.” We are dealing here with tendencies to which the executive branch of the U.S. government is more vulnerable than many other advanced democracies, where leading political figures with a standing independent of the head of government are more likely to wind up in a cabinet. This is especially true of, but not limited to, coalition governments. Single-party governments in Britain have varied in the degree to which the prime minister exercises control, but generally room is made in the cabinet for those the British call “big beasts”: leading figures in different wings or tendencies in the governing party who are not beholden to the prime minister for the power and standing they have attained. Ignatius overstates his case in a couple of respects. Although he acknowledges that Obama is “better than most” in handling open debate, he could have gone farther and noted that there have been egregious examples in the past of administrations enforcing a national security orthodoxy, and that the Obama administration does not even come close to these examples. There was Lyndon Johnson in the time of the Vietnam War, when policy was made around the president's Tuesday lunch table and even someone with the stature of the indefatigable Robert McNamara was ejected when he strayed from orthodoxy. Then there was, as the most extreme case, the George W. Bush administration, in which there was no policy process and no internal debate at all in deciding to launch a war in Iraq and in which those who strayed from orthodoxy, ranging from Lawrence Lindsey to Eric Shinseki, were treated mercilessly. Obama's prolonged—to the point of inviting charges of dithering—internal debates on the Afghanistan War were the **polar opposite** of this. Ignatius also probably underestimates the contributions that will be made to internal debate by the two most important cabinet members in national security: the secretaries of state and defense. He says John Kerry “has the heft of a former presidential candidate, but he has been a loyal and discreet emissary for Obama and is likely to remain so.” The heft matters, and Kerry certainly qualifies as a big beast. Moreover, the discreet way in which a member of Congress would carry any of the administration's water, as Kerry sometimes did when still a senator, is not necessarily a good indication of the role he will assume in internal debates as secretary of state. As for Chuck Hagel, Ignatius states “he has been damaged by the confirmation process and will need White House cover.” But now that Hagel's nomination finally has been confirmed, what other “cover” will he need? It's not as if he ever will face another confirmation vote in the Senate. It was Hagel's very inclination to flout orthodoxy, to arrive at independent opinions and to voice those opinions freely that led to the fevered opposition to his nomination.

#### This is offense for us --- partisanship means congressional action’s worse

William G. Howell and Jon C. Pevehouse – 2007, Associate Professors at the Harris School of Public Policy at the University of Chicago, When Congress Stops Wars: Partisan Politics and Presidential Power, Foreign Affairs, Vol. 86, No. 5 (Sep. - Oct., 2007), pp. 95-107, http://themonkeycage.org/wp-content/uploads/2013/09/Howell-Pevehouse-2007-1.pdf

FOR MOST of George W. Bush's tenure, political observers have lambasted Congress for failing to fulfill its basic foreign policy obligations. Typical was the recent Foreign Affairs article by Norman Ornstein and Thomas Mann, "When Congress Checks Out," which offered a sweeping indictment of Congress' failure to monitor the president's execution of foreign wars and antiterrorist initiatives. Over the past six years, they concluded, congressional oversight of the White House's foreign and national security policy "has virtually collapsed." Ornstein and Mann's characterization is hardly unique. Numerous constitutional-law scholars, political scientists, bureau crats, and even members of Congress have, over the years, lamented the lack of legislative constraints on presidential war powers. But the dearth of congressional oversight between 2000 and 2006 is nothing new. Contrary to what many critics believe, terrorist threats, an overly aggressive White House, and an impotent Democratic Party are not the sole explanations for congressional inactivity over the past six years. Good old-fashioned partisan politics has been, and continues to be, at play. It is often assumed that everyday politics stops at the water's edge and that legislators abandon their partisan identities during times of war in order to become faithful stewards of their constitutional obligations. But this received wisdom is almost always wrong. The illusion of congressional wartime unity misconstrues the nature of legislative oversight and fails to capture the particular conditions under which members of Congress are likel

y to emerge as meaningful critics of any particular military venture. The partisan composition of Congress has historically been the decisive factor in determining whether lawmakers will oppose or acquiesce in presidential calls for war. From Harry Truman to Bill Clinton, nearly every U.S. president has learned that members of Congress, and members of the opposition party in particular, are fully capable of interjecting their opinions about proposed and ongoing military ventures. When the opposition party holds a large number of seats or controls one or both chambers of Congress, members routinely challenge the president and step up oversight of foreign conflicts; when the legislative branch is dominated by the president's party, it generally goes along with the White House. Partisan unity, not institutional laziness, explains why the Bush administration's Iraq policy received such a favorable hearing in Congress from 2000 to 2006. The dramatic increase in congressional oversight following the 2oo6 midterm elections is a case in point. Immediately after assuming control of Congress, House Democrats passed a resolution condemning a proposed "surge" of U.S. troops in Iraq and Senate Democrats debated a series of resolutions expressing varying degrees of outrage against the war in Iraq. The spring 2007 supplemental appropriations debate resulted in a House bill calling for a phased withdrawal (the president vetoed that bill, and the Senate then passed a bill accepting more war ftinding without withdrawal provisions). Democratic heads of committees in both chambers continue to launch hearings and investigations into the various mishaps, scandals, and tactical errors that have plagued the Iraq war. By all indications, if the govern ment in Baghdad has not met certain benchmarks by September, the Democrats will push for binding legislation that further restricts the president's ability to sustain military operations in Iraq.

### UN

**The U.N. structurally fails**

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**It is the world's most important organization, yet remains one of its most dysfunctional.** This week a former **U**nited **N**ations **employee** **described a pervasive culture of impunity** inside the organization - one in which **whistle-blowers are punished** for exposing wrongdoing. James Wasserstrom, a veteran American diplomat, said he was fired from his job and detained by U.N. police - who searched his apartment and placed his picture on wanted posters - after he reported possible corruption among senior U.N. officials in Kosovo. As Washington steps back in the world, a dynamic United Nations must step forward. So far, the U.N. of **Ban Ki-moon has not been up to the task.** "It's supposed to be maintaining the ideals of human rights, the rule of law and anti-corruption," Wasserstrom said in an interview. "And it doesn't adhere to them on the inside." The United Nations is under attack as well for its [decision last month](http://www.nytimes.com/2013/02/23/world/americas/un-rejects-claim-for-direct-compensation-to-victims-of-cholera-epidemic-in-haiti.html) to pay no compensation to the families of 8,000 Haitians who died and 646,000 who fell ill from a 2010 cholera outbreak that experts believe Nepalese U.N. peacekeepers set off in the country. The organization, though, remains a vital tool. On Thursday, President Barack Obama used [a White House meeting](http://www.guardian.co.uk/world/2013/apr/11/obama-north-korea-nuclear-threat) with U.N. Secretary General Ban Ki-moon to pressure North Korea. Administration officials hope that [punishing new U.N. economic sanctions](http://www.nytimes.com/2013/03/08/world/asia/north-korea-warns-of-pre-emptive-nuclear-attack.html?pagewanted=all) , supported by China for the first time, will cause North Korea to end its saber rattling. "It's important for North Korea, like every other country in the world," Obama said, "to observe the basic rules and norms that are set forth, including a wide variety of U.N. resolutions." **The U**nited **N**ations has been, and **will always be, an imperfect institution. Its greatest** strength - and **weakness - is** its **193 member states. Getting a majority to agree** on major issues, pass reform or refrain from political patronage **can be maddening. Russia's shameful blocking** **of** Security Council **action against Syria**, for example, **has shown** the **continued limitations of that antiquated body**. But the United Nations is likely to grow more important in the years ahead as Washington's fiscal problems curtail U.S. overseas ambitions. Sadly, as the United Nations enters a potentially dangerous phase of peacekeeping missions, **Ban's leadership is lacking.** The 68-year-old former South Korean foreign minister has [highlighted](http://www.bbc.co.uk/news/business-16760371) the need to combat global warming, create sustainable development and increase the number of women in leadership positions. But **he** has **failed to provide the dynamic leadership and reforms the institution desperately needs. "It's a very mixed record**," said a senior United Nations official, who spoke on condition of anonymity. "**He spends a lot of time in Davos,** the Arctic Circle or Monaco, and **meanwhile there are critical issues - such as** the future of **peacekeeping - facing** a real **crisis**."

**Resource shortages mean it can’t solve**

**Rhode 13**, David Rohde is a reporter for Reuters, two-time winner of the Pulitzer Prize, and a former reporter for The New York Times. His latest book, Beyond War: Reimagining American Influence in a New Middle East, was published in 2013, http://www.theatlantic.com/international/archive/2013/04/the-un-keeps-failing-right-when-we-really-need-it/274962/

Current and former U.N. officials worry about a repeat of the 1990s debacles. **Undermanned, poorly equipped peacekeepers with vague instructions** about **when to use force were deployed** to Somalia, Rwanda and Bosnia. **Civilians** who expected to be protected **were abandoned.** In by far the most shameful case, 500,000 Tutsis and moderate Hutus died in the 1994 Rwandan genocide. The 1995 U.N. promise to protect the town of Srebrenica in eastern Bosnia also proved fallacious, and 8,000 Muslim men and boys were executed. Current and former U.N. officials fear that the "intervention brigade" in Congo sets a dangerous precedent. And **poorly equipped U.N. peacekeepers in Mali will be no match for committed jihadists.** "Well-established principles of peacekeeping are being set aside," said the U.N. official, who spoke on condition of anonymity. "I don't think the long-term implications are being thought through." Meanwhile, American officials are calling for sweeping management reform at the United Nations, which spent [$769 million on travel alone](http://usun.state.gov/briefing/statements/205608.htm) over the last two years, eight times the amount budgeted. The United Nations has cut [some spending](http://http/www.foxnews.com/world/2011/03/15/ban-ki-moon-warns-uns-managers-trim-bloated-budgets/), but **proposals to modernize** its operations have **stalled in the fractious** General **Assembly**.

**Hypocrisy dooms the U.N.**

**Leech 12/1**, Phil Leech lectures in International Relations and Middle Eastern Studies at the University of Liverpool http://newint.org/sections/argument/2013/12/01/argument-junk-un-security-council/

The UN Security Council (**UNSC**), in its current form, **represents an antiquated approach to international politics.** The original intention behind its creation was for it to be an executive arm of the UN, enforcing the will of the international community against rogue states, ensuring compliance with international norms and promoting world peace. However, **in reality the** Security **Council has proven to be Western-centric, overly concerned with** the rights and interests of **states – rather than** that of individual **human** being**s** or human societies – **and incompatible with the very urgent need to address many of the key issues and challenges of the contemporary world**. The UNSC ‘permanent five’, which exclusively claim veto power, comprises three closely allied Western states – the US, Britain and France (all NATO members) – and their traditional ‘great power’ opponents: Russia and China. The very **existence of this privileged clique undermines any claims to fairness that supporters of the UNSC can make**. Furthermore, **the fact** that **those** three Western **powers have a long record of acting outside the perimeters of the UN when it suits them** (Iraq and Kosovo, inter alia), **or ignoring** their **responsibilities to other international norms** when it suits them (Rwanda, Darfur…) **and yet are willing to utilize their privileged positions in order to protect themselves or their friends demonstrates fundamental hypocrisy. What we have is an inconsistency between the basic structure of the UN, the actions of the UNSC and the principle of fairness that occurs at two levels**. First, the UN acknowledges states as the only legitimate form of human organization, despite the wide array of types of state and the unrepresentative nature of some states; and second, the UNSC represents the domination of that system by a few, very privileged, states. Given that this inconsistency is apparently irreconcilable, I contend that the UNSC should be scrapped.

**Obvi no spillover**

**Can’t be an emergency room that’s card I forget**

**NSE declarations key—they make it impossible for the US to back norms**

**Friedman, 5**

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

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

Regardless of whether the constitutional arguments against nonself-execution declarations pass muster, the practice of attaching them to human rights treaties **is an integral part of the blatantly protectionist U.S. foreign policy on human rights**. n418 Routinely using nonself-execution declarations communicates to other nations that the United States does not take its international human rights obligations seriously enough to allow them to take effect as domestic law. n419 It also undermines the foreign policy justifications for ratifying human rights treaties in the first place - most fundamentally, the motivation to serve as an example to other nations. n420 Nonself-execution declarations render the human rights treaties to which they are attached **empty promises,** because the terms of those treaties do not effect any change in U.S. domestic law. n421 The United States thus [\*251] is seen by other nations as seeking the benefits of human rights treaties - most importantly, membership in the organizations that oversee them - without assuming any of the burdens. n422 The practice of using nonself-execution declarations reflects an attitude that human rights treaties are only for other nations, not for the United States. n423 The U.S. foreign policy on human rights **promotes a double standard**,

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