# UGA FB Round 6 Vandy

# 1NC

## Off

### Off 1

#### Restrictions are prohibitions on action --- the aff is a reporting requirement

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.

#### Restrictions on authority are distinct from conditions

William Conner 78, former federal judge for the United States District Court for the Southern District of New York United States District Court, S. D. New York, CORPORACION VENEZOLANA de FOMENTO v. VINTERO SALES, http://www.leagle.com/decision/19781560452FSupp1108\_11379

Plaintiff next contends that Merban was charged with notice of the restrictions on the authority of plaintiff's officers to execute the guarantees. Properly interpreted, the "conditions" that had been imposed by plaintiff's Board of Directors and by the Venezuelan Cabinet were not "restrictions" or "limitations" upon the authority of plaintiff's agents but rather conditions precedent to the granting of authority. Essentially, then, plaintiff's argument is that Merban should have known that plaintiff's officers were not authorized to act except upon the fulfillment of the specified conditions.

#### Vote neg---

#### Only prohibitions on authority guarantee neg ground---their interpretation lets affs no link the best neg offense like deference

#### Precision---only our interpretation defines “restrictions on authority”---that’s key to adequate preparation and policy analysis

### Off 2

#### Congressional action undermines the state secrete privilege – ends court deference and spills over

Windsor 12 (Lindsay – J.D. candidate and Master of Security Studies candidate at Georgetown University, “IS THE STATE SECRETS PRIVILEGE IN THE CONSTITUTION? THE BASIS OF THE STATE SECRETS PRIVILEGE IN INHERENT EXECUTIVE POWERS & WHY COURT-IMPLEMENTED SAFEGUARDS ARE CONSTITUTIONAL AND PRUDENT”, 2012, 43 Geo. J. Int'l L. 897, lexis)

In contrast to the acknowledged roles of both Congress and the President in foreign affairs matters, the Constitution does not grant the judiciary branch any authority over foreign affairs, and the courts have traditionally been "hesitant to intrude" upon matters of foreign policy and national security. n153 The Supreme Court "has recognized the generally accepted view that foreign policy [is] the province and responsibility of the Executive." n154 Hence, "courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs." n155 This hesitation and reluctance stem from the limited institutional competence of the judiciary in foreign affairs. As the Court wrote in Boumediene v. Bush, "Unlike the President and some designated Members of Congress, neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people." n156 Echoing the "sole organ" [\*920] scheme of Curtiss-Wright, the Court later wrote that in foreign affairs matters, "The Judiciary is not suited to [make] determinations that would . . . undermine the Government's ability to speak with one voice in this area." n157 A court should, therefore, give great deference to the Executive's invocation of the state secrets privilege because it inherently involves matters of national security. Nonetheless, deciding cases or controversies before the Court is within its field of expertise. n158 Such cases include separation of powers controversies between federal branches and enforcing checks on executive power. n159 Though a court could not amend the substance of the state secrets privilege, it could amend the procedure for its invocation in one of two ways: pursuant to congressional authorization or by interpreting its own rules of procedure. First, if Congress enacts specific legislation under its Article I powers requiring the President to follow certain procedures in invoking the privilege, then a court could enforce that procedure in a case before it. Second, the Court could reinterpret the procedural requirements for the privilege. The Reynolds Court specifically wrote a court should not always "insist[] upon an examination of the evidence, even by the judge alone, in chambers." n160 But in national security cases implicating core civil liberties, the Court could find that plaintiffs' necessity routinely requires different procedures to satisfy the Court that national security matters are at stake. n16

#### Secrecy is key to the effectiveness of cyber operations – covert action is key

Gervais 12 (Michael – J.D from Yale Law School, “Cyber Attacks and the Laws of War\*”, 2012, 30 Berkeley J. Int'l L. 525, lexis)

3. Covert Cyber Attacks Due to the sensitive nature of national security, states do not widely disseminate information regarding their cyber capabilities. Secrecy is a necessary quality for an effective cyber attack. Without secrecy, the intended target may effectively defend or prevent an attack. Thus, there is little public information on the current stockpile of cyber weapons or how they are used in practice. What the public does know is that most cyber attacks occur covertly, n139 where the perpetrator is an unknown actor or where the cyber attack itself is unknown. The exposed "covert" operations--such as the cyber attacks on Estonia--are publicly known due to their widespread effects on civil society or because the attack had an observable physical manifestation. There is also the possibility that information regarding a cyber attack is deliberately unveiled to deter adversaries or because the victim publicly condemns the action. Regardless of how the public learns of a cyber attack, the scraps of available public information indicate that a vast majority of cyber attacks is committed covertly, outside the context of war. Does an action's lawfulness [\*559] change based on whether a perpetrator's identity is concealed? How should international law govern covert cyber operations? There are times when secrecy benefits the international public order. For one, an outcome achieved without force by a covert operation avoids escalation into a military conflict and its attendant costs.

#### Covert operations are protected as state secrets – prevents prosecution

Bohannon 11 (Erin E. – Senior Notes & Comments Editor, University of Miami Law Review; J.D. Candidate, 2011, University of Miami School of Law., “Breaking the Silence: A Challenge to Executive Use of the State Secrets Privilege to Dismiss Claims of CIA Torture in Mohamed v. Jeppesen Dataplan, Inc.”, University of Miami Law Review, Winter, 65 U. Miami L. Rev. 621, lexis)

The United States intervened before Jeppesen answered the complaint and moved for dismissal, asserting the state secrets privilege. n11 The District Court for the Northern District of California granted the motion to intervene and dismissed, holding that the very subject matter of the suit was a state secret because it involved allegations of CIA conduct and covert operations in foreign countries. n12 On appeal, the United States Court of Appeals for the Ninth Circuit reversed the district court, holding that dismissal at the pleading stage was premature unless the subject matter of the suit was a contract for espionage between the plaintiff and the government. n13

#### Cyber covert operations prevent Iran proliferation, Israeli strikes, and Middle East war

Vielhaber 12 (Daniel – Researcher at National Consortium for the Study of Terrorism and Responses to Terrorism (START), “SHADOW WARS”, The Non-Proliferation Review, 2012, http://www.tandfonline.com/doi/pdf/10.1080/10736700.2012.734194)

Expectations, Results, and Unintended Consequences On the strategic level, the authors unanimously agree that covert action was expected to delay the Iranian program, but that neither the United States nor Israel had any illusions that the impact would be devastating enough to end it. The assassinations, defections, cyberattacks, and sabotage efforts were seen as a tool to buy time to achieve a diplomatic solution, give sanctions more time to bite, extend the window for internal regime change, or postpone the undesirable but inevitable military showdown. Sanger asserts that Washington had a second objective: to prevent Israel from launching a unilateral strike and dragging the United States into a broader conflict in the Middle East. Sanger alleges that the United States launched Operation Olympic Games partly to ‘‘ convince the Israelis that there was a smarter, more elegant way to deal with the Iranian nuclear problem than launching an airstrike that could quickly escalate into another Middle East war, one that would send oil prices soaring and could involve all the most volatile players in the region.”

#### Israeli strikes escalate to a nuclear world war --- draws in major powers

**Reuveny**, August **2010** (Rafael – professor in the School of Public and Environmental affairs at Indiana University, Unilateral strike on Iran could trigger world depression, p. http://www.indiana.edu/~spea/news/speaking\_out/reuveny\_on\_unilateral\_strike\_Iran.shtml)

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash. For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force. Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground. All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians, but also the Chinese and, likely, the Russians as well. By now, Iran has also built redundant command and control systems and nuclear facilities, developed early-warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces. Because Iran is well-prepared, a single, conventional Israeli strike — or even numerous strikes — could not destroy all of its capabilities, giving Iran time to respond. A regional war Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt, and the Palestinian Authority to join the assault, turning a bad situation into a regional war. During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat. In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973. An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean. Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops. Russia, China, Venezuela, and maybe Brazil and Turkey — all of which essentially support Iran — could be tempted to form an alliance and openly challenge the U.S. hegemony. Replaying Nixon’s nightmare Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario. Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted. If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons, but would probably not risk using force. While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

### Off 3

#### Text: The executive branch of the United States should issue and enforce and executive order to require consultation prior to the use of offensive cyber operations by the President of the United States and require a prompt and full account to Congress of the use of cyber weapons by the President of the United States. The order should also establish a bipartisan independent executive branch commission to ensure compliance.

#### Executive orders concerning war powers are common, have the same effect as the plan, and withstand judicial scrutiny

Duncan 10 (John C. – Associate Professor of Law, College of Law, Florida A & M University; Ph.D., Stanford University; J.D., Yale Law School, “A CRITICAL CONSIDERATION OF EXECUTIVE ORDERS: GLIMMERINGS OF AUTOPOIESIS IN THE EXECUTIVE ROLE”, Vermont Law Review, 35 Vt. L. Rev. 333, lexis)

Executive orders make "legally binding pronouncements" in fields of authority generally conceded to the President. n92 A prominent example of this use is in the area of security classifications. n93 President Franklin Roosevelt issued an executive order to establish the system of security classification in use today. n94 Subsequent administrations followed the President's lead, issuing their own executive orders on the subject. n95 In 1994, Congress specifically required "presidential issuance of an executive order on classification," by way of an "amendment to the National Security Act of 1947 . . . ." n96 The other areas in which Congress concedes broad power to the President "include ongoing governance of civil servants, foreign service and consular activities, operation and discipline in the military, controls on government contracting, and, until recently, the management and control of public lands." n97 Although there are also statutes that address these areas, most basic policy comes from executive orders. n98 Executive orders commonly address matters "concerning military personnel" n99 and foreign policy. n100 "[D]uring periods of heightened national security activity," executive orders regularly authorize the transfer of responsibilities, personnel, or resources from selected parts of the government to the military or vice versa. n101 Many executive orders have also guided the management of public lands, such as orders creating, expanding, or decommissioning military installations, and creating reservations for sovereign Native American communities. n102 [\*347] Executive orders serve to implement both regulations and congressional regulatory programs. n103 Regulatory orders may target specific businesses and people, or may be designed for general applicability. n104 Many executive orders have constituted "delegations of authority originally conferred on the president by statute" and concerning specific agencies or executive-branch officers. n105 Congress may confer to the President, within the statutory language, broad delegatory authority to subordinate officials, while nevertheless expecting the President to "retain[] ultimate responsibility for the manner in which ." n106 "[I]t is common today for [the President] to cite this provision of law . . . as the authority to support an order." n107 Many presidents, especially after World War II, used executive orders-with or without congressional approval-to create new agencies, eliminate existing organizations, and reorganize others. n108 Orders in this category include President Kennedy's creation of the Peace Corps, n109 and President Nixon's establishment of the Cabinet Committee on Environmental Quality, the Council on Environmental Policy, and reorganization of the Office of the President. n110 At the core of this reorganization was the creation of the Office of Management and Budget. n111 President Clinton continued the practice of creating agencies, including the National Economic Council, with the issuance of his second executive order. n112 President Clinton also used an executive order "to cut one hundred thousand positions from the federal service" a decision which would have merited no congressional review, despite its impact. n113 President George W. Bush created the Office of Homeland Security as his key organizational reaction to the terrorist attacks of September 11, 2001, despite the fact that [\*348] Congress at the time appeared willing to enact whatever legislation he sought. n114 President Obama created several positions of Special Advisor to the President on specific issues of concern, for which there is often already a cabinet or agency position. n115 Other executive orders have served "to alter pay grades, address regulation of the behavior of civil servants, outline disciplinary actions for conduct on and off the job, and establish days off, as in the closing of federal offices." n116 Executive orders have often served "to exempt named individuals from mandatory retirement, to create individual exceptions to policies governing pay grades and classifications, and to provide for temporary reassignment of personnel in times of war or national emergency." n117 Orders can authorize "exceptions from normal operations" or announce temporary or permanent appointments. n118 Many orders have also addressed the management of public lands, although the affected lands are frequently parts of military reservations. n119 The fact that an executive order has the effect of a statute makes it a law of the land in the same manner as congressional legislation or a judicial decision. n120 In fact, an executive order that establishes the precise rules and regulations for governing the execution of a federal statute has the same effect as if those details had formed a part of the original act itself. n121 However, if there is no constitutional or congressional authorization, an executive order may have no legal effect. n122 Importantly, executive orders designed to carry a statute into effect are invalid if they are inconsistent [\*349] with the statute itself, for any other construction would permit the executive branch to overturn congressional legislation capriciously. n123 The application of this rule allows the President to create an order under the presumption that it is within the power of the executive branch to do so. Indeed, a contestant carries the burden of proving that an executive action exceeds the President's authority. n124 That is, as a practical matter, the burden of persuasion with respect to an executive order's invalidity is firmly upon anyone who tries to question it. n125 The President thus has great discretion in issuing regulations. n126 An executive order, with proper congressional authorization enjoys a strong presumption of validity, and the judiciary is likely to interpret it broadly. n127 If Congress appropriates funds for a President to carry out a directive, this constitutes congressional ratification thereof. n128 Alternatively, Congress may simply refer to a presidential directive in later legislation and thereby retroactively shield it from any future challenge. n1

### Off 4

#### Congressional restrictions cause adversaries to doubt the credibility of our threats --- causes crisis escalation

Matthew Waxman 8/25/13, Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN

A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued:¶ In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the most important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179

#### Perception of weak Presidential crisis response collapses heg

John R. Bolton 9, Senior fellow at the American Enterprise Institute & Former U.S. ambassador to the United Nations, “The danger of Obama's dithering,” Los Angeles Times, October 18, 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.

#### Hegemony solves great power war

Khalilzad 11 – Zalmay Khalilzad, the United States ambassador to Afghanistan, Iraq, and the United Nations during the presidency of George W. Bush and the director of policy planning at the Defense Department from 1990 to 1992, February 8, 2011, “The Economy and National Security; If we don’t get our economic house in order, we risk a new era of multi-polarity,” online: <http://www.nationalreview.com/articles/259024/economy-and-national-security-zalmay-khalilzad>

We face this domestic challenge while other major powers are experiencing rapid economic growth. Even though countries such as China, India, and Brazil have profound political, social, demographic, and economic problems, their economies are growing faster than ours, and this could alter the global distribution of power. These trends could in the long term produce a multi-polar world. If U.S. policymakers fail to act and other powers continue to grow, it is not a question of whether but when a new international order will emerge. The closing of the gap between the United States and its rivals could intensify geopolitical competition among major powers, increase incentives for local powers to play major powers against one another, and undercut our will to preclude or respond to international crises because of the **higher risk of escalation.**¶ The stakes are high. In modern history, the longest period of peace among the great powers has been the era of U.S. leadership. By contrast, multi-polar systems have been unstable, with their competitive dynamics resulting in frequent crises and major wars among the great powers. Failures of multi-polar international systems produced both world wars.¶ American retrenchment could have devastating consequences. Without an American security blanket, regional powers could rearm in an attempt to balance against emerging threats. Under this scenario, there would be a heightened possibility of arms races, miscalculation, or other crises spiraling into all-out conflict. Alternatively, in seeking to accommodate the stronger powers, weaker powers may shift their geopolitical posture away from the United States. Either way, hostile states would be emboldened to make aggressive moves in their regions.¶ As rival powers rise, Asia in particular is likely to emerge as a zone of **great-power competition**. Beijing’s economic rise has enabled a dramatic military buildup focused on acquisitions of naval, cruise, and ballistic missiles, long-range stealth aircraft, and anti-satellite capabilities. China’s strategic modernization is aimed, ultimately, at denying the United States access to the seas around China. Even as cooperative economic ties in the region have grown, China’s expansive territorial claims — and provocative statements and actions following crises in Korea and incidents at sea — have roiled its relations with South Korea, Japan, India, and Southeast Asian states. Still, the United States is the most significant barrier facing Chinese hegemony and aggression.

#### OCOs give the US coercive leverage to deescalate North Korean nuclear brinksmanship --- speed is key

Martin C. Libicki 13, Senior Management Scientist @ RAND and adjunct fellow @ Georgetown’s Center for Security Studies, “Brandishing Cyberattack Capabilities,” RAND, <http://www.rand.org/pub> s/research\_reports/RR175.html

Our inquiry is therefore more humble. Could a U.S. threat that it might interfere with a rogue state’s nuclear weapon delivery help shape a nuclear confrontation? For this question, assume a rogue nuclear power with a handful of weapons capable of hitting nearby countries (but generally incapable of hitting the continental United States). The United States has a robust cyberattack capability (in general terms), from which the rogue state’s nuclear arsenal is not provably immune. Although the United States enjoys escalation dominance, the rogue state is far more willing to go to the nuclear brink than the United States is. The rogue state (thinks it) has more at stake (i.e., regime survival). Furthermore, it may act in ways that are irrational by Western perspectives.¶ We first model a two-state confrontation, then later introduce a friendly state on whose behalf the United States has intervened. The United States enters this scenario facing the choice of acting when doing so risks the rogue state releasing a nuclear weapon. Whether the threat is explicit or implicit is secondary. The usual calculus applies. The rogue state is better off if its threat leads the United States to stop. The United States is better off ignoring the threat and going ahead with what it would have done in the absence of the threat if the threat can be nullified but cannot know that it will be for certain. The rogue state understands that if it does use nuclear weapons, it could face great retaliation.1¶ If the United States acts (successfully) in the face of warning and if the rogue state does not use nuclear weapons, the United States achieves its objectives and wins the overall confrontation.2 If the United States flinches, the rogue state wins. If the rogue state uses its nuclear weapons and if, as is likely, the United States responds likewise, the rogue state loses greatly, but the United States is also far worse off.3¶ Two-Party Confrontations¶ In a confrontation in which disaster would result from both sides carrying out their threats, each must ask: Are such threats credible? If one side thinks the other will yield, it pays to stand firm. If it thinks, however, that the other is implacable, it may have no good choice but to yield itself. The projection of implacability is beneficial, but the reality of implacability is frequently suicidal.¶ Note that the basis for the implacability can also be entirely subjective, which is to say, unfounded on the facts of the matter. If one party is convinced that it will never pay a high price for being implacable, communicates as much, and acts as if it were so, the other cannot take any comfort from the fact that the first has no technical basis for the belief. The only consideration is whether the first party actually believes as much, is willing to act accordingly, and can ignore the logic that whispers that no one can possibly be completely confident on the basis of iffy information. To one party, the willingness to act on the basis of the impossible seems like cheating. To use an analogy, imagine a game of “chicken” in which the driver of one of the two oncoming cars throws the steering wheel out the window. This cheat forces the opponent to choose between a certain crash or veering away (and thus losing). However, when the consequences of a crash are far greater than the benefits of winning, this strategy is irrational if there is a nontrivial likelihood that the other side will be intent on punishing cheaters at the cost of all other values. In the analogy, the second driver might rather crash than lose to a cheater.4 But in general, a strategy of implacability, can, if credible, do well, as long as the other side is not equally implacable.¶ So, the United States creates the belief (whether by saying so, hinting, or letting others draw their own conclusion) that the rogue state cannot carry out its nuclear threat. That is, the United States acts as though a flaw somewhere in the nuclear command-and-control cycle, probably an induced flaw, prevents immediate nuclear use. A lesser case is that the command and control is less certain, the weapon is weaker, and/or the delivery system is far less accurate than feared.5 Although permanently disabling a nuclear command-and-control system is quite a stretch for cyberwar, it is less fantastic to imagine that the United States could delay a weapon’s use. A temporary advantage, though, may still give the United States time to cross the red line and thereby attain a fait accompli.¶ So posturing, the United States prepares to cross the red line, while communicating its confidence that the rogue state will not retaliate. This confidence stems from a combination of its own nuclear deterrence capability plus its ability to confound the rogue state’s nuclear capability: The rogue nuclear state probably will not decide to retaliate, and if it did decide to, probably cannot retaliate. The combination, in this case, is what reduces the odds of a nuclear response to a sufficiently low level, if the rogue state is at all rational. Even if it later assures itself and others that its nuclear capacity is intact, but the United States has already acted, the onus then falls on the rogue nuclear state to respond to what could well be a done deal. If the rogue state understands the logic before brandishing its own nuclear weapons, it may choose not to ratchet up tensions in advance of the U.S. crossing red lines.

#### Threat of OCO strikes deescalates Senkaku conflict --- prevents great power war

Leigh Drogen 13, founder and chief investment officer of Surfview Capital, LLC, a New York based investment management firm, “Why Cyber Weapons Will Make The World Even Safer,” 3/4, http://www.leighdrogen.com/why-cyber-weapons-will-make-the-world-even-safer/

Scene: China has just exchanged fire with Japan over the East China Sea Islands. The US Navy is in theatre and has as promised under its security umbrella treaty with Japan vows to protect the sovereignty of Japanese territory. In response China has threatened to hold US infrastructure (power, water, transportation) hostage and gives the US 48 hours to exit the theatre. The US immediately responds with a similar threat to cripple Chinese infrastructure via cyber attacks unless China relinquishes cyber attacks within 48 hours.¶ Now you can bet your last dollar that the US has been holding war games designed to simulate exactly this scenario. And while we don’t know how they’ve played out, we can make some pretty informed assumptions based on the corollary of nuclear war theory.¶ The ability for foreign agents to hijack critical infrastructure and cripple it within a short period of time is now to the point where we, and our potential adversaries, could face damage many magnitudes higher than a nuclear strike, not in lives lost, but economic, social, and political damage.¶ Cyber warfare has reached a level where we can say that there is mutually assured destruction of critical infrastructure in a war between the US and China.¶ Which is exactly why I’m ready to say that cyber warfare will make the world an even safer place.¶ There is no argument against the claim that nuclear weapons have massively decreased overall warfare across the world since World War II. During that time we haven’t seen a war between two nuclear states.¶ But the more important development, as Tom Friedman loves to point out, we haven’t seen a major conflict between two countries with a McDonalds. Now, look past the frivolity of that statement through to the bigger point, lives lost is no longer the major determinant of why countries decide to forgo war, it is now primarily an economic and social decision.¶ The cost in treasure and political capital that it takes to go to war as a developed economy with another state is massive. The US has had a huge hand in this no doubt playing the world’s policeman since World War II. Police are not very effective at hunting down transgressors, their job is primarily prevention, a job that the US has pretty much perfected at this point.¶ China will not follow through on its cyber war threat because the cost in economic, social, and political damage to the regime from a crippling US cyber attack would be far too much to handle versus the benefit from its move on the islands. What do you think middle and upper class urban Chinese citizens would do if China risked everything they’ve worked so hard to build over the past 25 years for the islands? They risk nothing less than the regime being toppled. They are already walking on thin ice under the unwritten deal they’ve made, continued economic development for the regime’s position in power.¶ Cyber war has reached the level of mutually assured destruction as the damage caused will lead to popular revolt. It certainly would here in the US.¶ The flip side to this argument, as it is made with nuclear weapons, is that non state actors are not tied to the same consequences and therefor are much more dangerous. I would agree, and in the case of cyber war they it’s even scarier as their capability to inflict damage is far greater (this was the theme of Skyfall), it’s hard to obtain and deliver a nuclear weapon.¶ That said, I believe cyber weapons will add to global security as they become more pervasive.

## On

### 1NC Frontline – China

#### International law doesn’t change state action—no compliance and selective interpretation of the law.

Posner 12 (Eric, law prof, Slate, “Obama’s Drone Dilemma”, Oct. 8, 2012, http://www.slate.com/articles/news\_and\_politics/view\_from\_chicago/2012/10/obama\_s\_drone\_war\_is\_probably\_illegal\_will\_it\_stop\_.single.html, ZBurdette)

The Wall Street Journal recently reported on debates within the Obama administration about the legality of the drone war in Pakistan. State Department legal adviser Harold Koh, the former dean of Yale Law School and even more former darling of the left for his criticisms of the Bush administration’s aggressive theories of executive power, plays a prominent role in them. Koh apparently concluded that the drone war “veers near the edge” of illegality but does not quite tumble over it.

That is a questionable judgment. The U.N. Charter permits countries to use military force abroad only with the approval of the U.N. Security Council, in self-defense, or with the permission of the country in which military force is to be used. The U.N. Security Council never authorized the drone war in Pakistan. Self-defense, traditionally defined to mean the use of force against an “imminent” armed attack by a nation-state, does not apply either, because no one thinks that Pakistan plans to invade the United States. That leaves consent as the only possible legal theory.

But Pakistan has never consented to the drone war. Publicly and officially the country has opposed it. Before the raid that killed Osama bin Laden in May 2011, the CIA sent a fax every month to Pakistan’s Inter-Services Intelligence agency that would identify the airspace in which drones would be sent. The ISI would send back an acknowledgment that it had received the fax, and the U.S. government inferred consent on the basis of the acknowledgments. But after the raid, the ISI stopped sending back the acknowledgments.

Now what to do? The administration argues that consent can still be inferred despite the unanswered faxes. The reason is that “the Pakistani military continues to clear airspace for drones and doesn’t interfere physically with the unpiloted aircraft in flight”—meaning that Pakistan does not shoot down the drones or permit private aircraft to collide with them.

We might call this “coerced consent.” Consider it this way: You walk into a jewelry store and the proprietor announces that he will deem you to have consented to the purchase of a diamond tiara for $10,000, despite all your protests to the contrary, unless you use physical force to stop him as he removes your wallet from your pocket. Imagine further that he’s 7 feet tall and weighs 400 pounds. This is what a Pakistani official meant when he told the Wall Street Journal that shooting down a drone would be “needlessly provocative.” He meant that such an action would risk provoking retaliation from the United States, a risk that Pakistan cannot afford to take. Because Pakistan lies prostrate and endures the pummeling rather than makes a futile effort to stop it, it is deemed to consent to the bombing of its own territory.

But don’t blame government lawyers like Koh for devising this theory. International law lacks the resources for constraining the U.S. government. Koh knows this now if he did not before. Since he built his academic career on the claim that international law can and should be used to control nation-states and harshly criticized the Bush administration for violating international law, this must have been a bitter pill to swallow. (Though he has swallowed so many bitter pills that perhaps he has lost his sense of taste: The man who told the Senate at the end of the Bush administration that the United States must “unambiguously reassert our historic commitments to human rights and the rule of law as a major source of our moral authority” has backed away from his earlier opposition to expansive war powers, targeted killing, military commissions, and military detention.)

The weakness of international law governing the use of military force goes back to the signing of the U.N. Charter in 1945. The founders understood that a simple rule prohibiting the use of military force except in self-defense, or with the consent of another state, would not be adequate for regulating war. But they could not draft a code complex enough to anticipate all the contingencies that might justify war. Instead they set up the Security Council and reasoned that this body could determine when war might be justified for purposes other than self-defense. But the Security Council was frozen first by the Cold War rivalry between the United States and the Soviet Union, and then the cold peace rivalries between the United States, Russia, and China. It has authorized only two wars since its inception (the Korean War and the first Iraq War; it also retroactively approved the U.S. invasion of Afghanistan in 2001).

Needless to say, there have been dozens of wars since 1945. Participants have included countries as diverse as China, the Soviet Union, India, Pakistan, the United Kingdom, Vietnam, Iran, Iraq, Egypt, Israel, and Argentina. Even the supposedly pacific European countries participated via NATO in several of these wars. The United States has on several occasions justified wars (for example, in Kosovo in 1999, Libya in 2011) as humanitarian interventions—a principle that can be found nowhere in the U.N. Charter but enjoys some international support. In other cases, including current drone operations in Pakistan, the United States has invoked a new idea of the “unable or unwilling” country, one that outside powers can invade because that country cannot prevent terrorists located on its territory from launching attacks across its borders. But most U.S. wars can be fit into these two categories only with difficulty. Those wars are undertaken to shut down a destabilizing or dangerous regime, one that typically has used violence to keep itself in power. One can put the second Iraq War in this category, as well as the Panama intervention in 1990, the interventions in Yugoslavia in the 1990s, and the intervention in Granada in 1983. During the Cold War, the United States also often evaded the U.N. prohibition on interstate war by funding and training a domestic insurgency.

The U.N. Charter does not permit states to use military force to unilaterally address long-term threats in this way. It is too easy for states to characterize other states as long-term threats regardless of whether they are. And yet this omission rendered the charter unworkable, because all states must take long-term threats seriously, whether or not the members of the Security Council can be persuaded or bribed to agree with them.

Government lawyers like Koh must scramble to revise their interpretation of international law so as to keep up with the new events that justify, in the eyes of the president, a military intervention. The “coerced consent” doctrine, the “unable and unwilling” doctrine, and the exception for humanitarian intervention all whittle away at whatever part of the law on United Nations use of force blocks U.S. goals. If the United States ever decides to invade Iran in order to prevent it from acquiring nuclear weapons, expect a new doctrine to take shape, perhaps one that emphasizes the unique dangers of nuclear weapons and Iran’s declared hostility toward a nearby country.

It is curious that there is not a global outcry about the illegality of the wars in Pakistan or Libya, as there was about the illegality of the recent war in Iraq, which the Bush administration dubiously justified on the basis of Iraq’s violations of earlier U.N. resolutions that had suspended hostilities after the first Iraq War. Maybe the world doesn’t care as much about Pakistan, which has no oil. Or maybe people have finally realized that the United States, which has been almost continuously at war since the collapse of the Soviet Union, will not be swayed by legal arguments. A powerful army is too useful not to use, whether you are a Republican president or a Democratic one.

#### Can’t solve norms

**Lewis 11, Senior Fellow at CSIS** (James Andrew, Confidence-building and international agreement in cybersecurity, citizenlab.org/cybernorms2012/Lewis2011.pdf)

Obstacles to reaching a multilateral agreement

The immense utility of cyber action will shape any international agreement on cybersecurity. ¶ States will not give up this new tool for state power. Cyber attack is cheap and offers strategic ¶ advantage. First, the importance of information superiority in warfare and the ability to gain ¶ real military advantage from the use of information assets makes digital infrastructures too ¶ valuable a target to be declared off limits or for cyber attacks to be renounced. The necessary ¶ technologies are either commercial or easily derived from widely available commercial ¶ products—a laptop computer, an internet connection and a few computer programs. We ¶ cannot control the “precursors” for assembling these “weapons”. They are cheap, small, ¶ portable, easy to conceal and, for sophisticated programmers in or out of government, easy ¶ to construct. Special purpose tools for cyber attack are widely available on thriving cybercrime ¶ black markets. It is unlikely that any state will renounce the use of cyber attacks. ¶ Nor would a treaty that excludes certain targets from cyber attack make sense. Existing laws ¶ of war already define safeguards and limitations on (but do not ban) attacks on civilian targets. ¶ We cannot expect more for cyberspace. An alternate approach could be based on nonproliferation, where states developed multilateral norms that define responsible behaviour. ¶ The simplest norm would extend existing law and practice to say that a state is responsible for ¶ the behaviour of those on its territory—this would constrain the use of proxies and “patriotic” ¶ hackers.¶ Second, action in cyberspace has been an immense boon to espionage. The close linkage ¶ to espionage makes states reluctant to discuss or even admit they possess cyber capabilities, ¶ and this linkage also makes it unlikely that they will agree to “ban” first use. A “no first use” ¶ commitment could require states to renounce cyber espionage—something they are unlikely ¶ to do. Since the techniques of attack and espionage are similar, asking for a commitment ¶ not to develop or use cyber tools for penetration of opponent networks is really asking for a ¶ commitment not to spy. A “no first use” commitment could even be destabilizing if a victim ¶ were to misinterpret an instance of cyber espionage as an attack. four l 2011¶ 58¶ Confronting cyberconflict¶ The perceived difficulty of attribution of an attack may encourage some states to believe that ¶ they can successfully engage in covert cyber action while evading responsibility. A covert ¶ attack where the identity of the attacker is unknown has much less political risk. In addition, ¶ mercenaries (usually cybercriminals recruited by a state) can launch sophisticated attacks, ¶ providing an additional degree of deniability. The difficulty of attribution is often overstated, ¶ as it is increasingly possible in many cyber incidents to determine who is responsible using ¶ forensic techniques or active intelligence measures, but the perceived attribution problem ¶ increases the temptation to use cyber attack.¶ These problems mean that approaches that seek to limit cyber attack through multilateral ¶ agreement on technological constraints face intrinsic and potentially insurmountable ¶ difficulties. Cyber attack is a behaviour rather than a technology. Cyberconflict is shaped ¶ by covertness, ease of acquisition and uncertainty, and a legally binding convention that ¶ depends upon renouncing use, restricting technology, or upon verification of compliance is ¶ an unworkable approach for reducing the risk to international security from cyber attacks. An ¶ effort to secure an overarching cybersecurity agreement or treaty that attempted to address ¶ the full range of cybersecurity issues would be impractical. ¶ An incremental approach¶ Agreements to reduce the possibility of misinterpretation, escalation or unintended ¶ consequences in cyberconflict are a legitimate subject for international agreement and would ¶ improve international security. Just as states feel a degree of constraint from norms and ¶ agreements on non-proliferation, establishing explicit international norms for behaviour in ¶ cyberspace would affect political decisions on the potential risks and costs of cyber attack. The ¶ effect of globalization—the deep economic interconnection among states—has if anything ¶ increased the need for cooperation among states. ¶ The creation of norms for responsible state behaviour in cyberspace, the expansion of ¶ common understandings on the application of international law to cyberconflict, and the ¶ development of assurances on the use of cyber attacks would increase stability and reduce ¶ the risks of miscalculation or escalation. The single most important norm for multilateral ¶ agreement might be a norm that establishes state responsibility for the actions of its private ¶ citizens—such a norm could make it more difficult for states to tacitly encourage proxies by ¶ ignoring them or denying involvement with their actions. ¶ However, even simple norms face serious opposition. Conflicting political agendas, covert ¶ military actions, espionage and competition for global influence form the context for ¶ international discussion of cybersecurity. While there is little or no support for the idea of a ¶ treaty, and while international efforts now focus on a norms-based approach, the level of ¶ distrust among powerful states is too high for easy agreement on norms. 59¶ Confidence-building and international agreement in cybersecurity¶ Disparate values and deep distrust shape the environment for negotiation. Fundamental ¶ differences over values, despite formal acceptance of universal human rights, means that ¶ the initial set of norms likely to be acceptable to many states is limited. Ultimately, increased ¶ stability and security in cyberspace will require common understandings among states on ¶ their national responsibilities, on how the laws of war apply, where restraint in the use of the ¶ new military capability is possible, and where red lines or thresholds for escalation might exist. ¶ But there is too much distrust among competitors to move immediately towards global norms ¶ for cybersecurity.

#### Secrecy means Congress would be ineffective—no solvency

Stephen Dycus—1AC Author—10, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>

The National Security Act of 1947 23 showed Congress’s determination to exert some control over this nation’s intelligence apparatus. That determination was strengthened after the disclosure of widespread intelligence abuses by the CIA and other agencies.24¶ In 1991, in response to the Iran-Contra Affair, Congress adopted a measure directing the President to keep the congressional intelligence committees “fully and currently informed of the intelligence activities of the United States, including any significant anticipated intelligence activity.”25 The term “intelligence activity” expressly includes “covert actions,”26 which additionally require a written finding by the President that they are “necessary to support identifiable foreign policy objectives of the United States and [are] important to the national security of the United States.”27 Intelligence activities are also understood to include “all activities that elements of the Intelligence Community are authorized to conduct pursuant to [Executive Order No. 12,333],” the executive charter for such activities.28 The “intelligence community” includes the Office of the Director of National Intelligence, CIA, NSA, other Defense Department intelligence components, and other federal intelligence elements,29 which are authorized to engage in, inter alia, intelligence collection and analysis and “activities to protect against international terrorism . . . and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents.”30 This broad mandate certainly encompasses many U.S. efforts to defend against cyber attack and to employ cyber weapons offensively. By this definition, most preparations for and conduct of cyber warfare should be reported to the intelligence committees as “intelligence activities.” It is significant that the reporting requirement in the 1991 law is not limited to agencies within the intelligence community. ¶ Yet this legislation provides no guarantee that Congress will receive the information it needs to play a meaningful role in the development or execution of cyber warfare policy. It is not known, for example, precisely what it means for the intelligence committees to be “fully and currently” informed, what kinds of intelligence activities are regarded as “significant” enough to report, or who decides.31 Other sections of the 1991 law call on all agencies involved in intelligence activities, not just the President, to keep the intelligence committees informed about those activities, but only “[t]o the extent consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.”32 The “due regard for” language might be invoked to keep Congress in the dark. ¶ Under the 1991 law, “covert actions,” those with respect to which “it is intended that the role of the United States Government will not be apparent or acknowledged publicly,”33 need only be reported to a small group of legislators known as the “Gang of Eight,”34 and then only in a “timely fashion,” a term not defined by statute.35 Characterization of U.S. planning and execution of electronic warfare as “covert” could enable reporting to the smaller group, making it more difficult for Congress to play a significant role.36 Moreover, any reporting might be delayed indefinitely.37

#### No Taiwan war

**Saunders and Kastner 2009** – \*Senior Research Fellow at the Institute for National Strategic Studies at the National Defense University, \*Assistant Professor in the Department of Government and Politics at the University of Maryland and former China Security Fellow at the Institute for National Strategic Studies (Phillip and Scott, International Security, 33.4, “Bridge over troubled water? Envisioning a China-Taiwan peace agreement”, http://www.mitpressjournals.org/doi/pdf/10.1162/isec.2009.33.4.87, WEA)

Most observers agree that the issue of Taiwan’s status is not ripe for resolution. China remains committed to the ultimate goal of unification and refuses to renounce the use of force to prevent Taiwan independence. Former President Jiang Zemin emphasized the goal of unification, and China’s policies sometimes implied a timetable for achievement of that objective.2 China’s policy toward the Taiwan issue, however, has undergone a significant shift under President Hu Jintao, who has emphasized the short-to-medium-term goal of deterring Taiwan independence, postponing unification into the indefinite future.3

On Taiwan, public opinion polls consistently show strong (more than 75 percent) public support for maintaining the status quo. Only a small percentage favors either immediate independence or immediate unification with China.4 Although this polling reflects conditional preferences that factor in the likelihood of China using force if Taiwan were to declare independence,5 it accurately reflects the widespread view on Taiwan that permanent resolution of the issue of Taiwan’s status is not presently possible. While the Democratic Progressive Party (DPP) has sought to mobilize voters by highlighting Taiwan’s separate identity and sought ways to emphasize Taiwan’s sovereignty during President Chen Shui-bian’s term in office, the KMT has adjusted the emphasis in its cross-strait policy to more closely match the views of mainstream Taiwan voters. In the 2008 presidential campaign, KMT candidate (and eventual victor) Ma Ying-jeou articulated “three nos” that would govern policy toward China in his administration. These were a pledge that there would be no pursuit of de jure independence, no negotiations with the mainland about unification, and no use of force.6 President Ma reiterated these points in his May 20, 2008, inaugural address.

Collectively, these positions suggest that China and Taiwan may be prepared to defer the issue of Taiwan’s status for resolution at some point in the future. **Both sides have expressed the desire to improve relations, expand cross-strait contacts, and negotiate a peace agreement** between Taipei and Beijing. These goals were articulated in the joint press communiqué issued following KMT Chairman Lien Chan’s April 2005 meeting with Chinese President Hu Jintao.7 Hu Jintao reiterated China’s willingness to negotiate a peace agreement with Taiwan in his statements at the October 2007 17th Party Congress: “On the basis of the one-China principle, let us discuss a formal end to the state of hostility between the two sides, reach a peace agreement, construct a framework for peaceful development of cross-straits relations, and thus usher in a new phase of peaceful development.”8 Both candidates in Taiwan’s 2008 presidential election called for negotiation of a peace agreement with Beijing, and President Ma repeated the call in his inaugural address.9 Upon assuming office, Ma moved quickly to restart dialogue between Taiwan’s Straits Exchange Foundation (SEF) and the PRC’s Association for Relations Across the Taiwan Straits (ARATS), the semiofficial bodies that previously served as vehicles for cross-strait dialogue.10

#### China wants a peaceful rise---any threats are just saber rattling---US also deters

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Nevertheless, **it remains unlikely that any conflict** between China and Japan, Philippines, or Vietnam will **amount to more than saber rattling and harsh words.** Even a "small" police action against the Philippines or Vietnam over the Spratly Islands, however successful for China, would have severe consequences. Any Chinese use of force **would realize the fears of every state** in the region. Moreover, **Beijing's hope for a peaceful rise would be immediately set back, if not ruined**.

Presently, tensions are already running high; however, any clear displays of Chinese aggression would simply add fuel to the fire. Countries such as the Philippines and Vietnam would then be able to turn some of their neighbours—previously skeptical, if not cautious, about standing in opposition to China—and convince these states to protest openly. Any goodwill China possessed among some of these countries would evaporate as the Philippines and/or Vietnam make their case.

However, of all the scenarios of a conflict involving China, what can be certain is the potential for an immediate American intervention. While it is questionable that the US would directly intervene in any skirmish between nations, it is likely that Washington would use the conflict as an excuse for deploying a larger, if not more permanent, security force in Asia-Pacific. Although an increased American footprint would not be welcomed by all in the region, **the US would prove to be an appropriate balance against China.**

#### Economic ties lead to MAD with China.

Shor 12 (Francis, Professor of History – Wayne State, “Declining US Hegemony and Rising Chinese Power: A Formula for Conflict?”, Perspectives on Global Development and Technology, 11(1), pp. 157-167)

While the United States no longer dominates the global economy as it did during the first two decades after WWII, it still is the leading economic power in the world. However, over the last few decades China, with all its internal contradictions, has made enormous leaps until it now occupies the number two spot. In fact, the IMF recently projected that the Chinese economy would become the world's largest in 2016. In manufacturing China has displaced the US in so many areas, including becoming the number one producer of steel and exporter of four-fifths of all of the textile products in the world and two-thirds of the world's copy machines, DVD players, and microwaves ovens. Yet, a significant portion of this manufacturing is still owned by foreign companies, including U.S. firms like General Motors. [5] On the other hand, China is also the largest holder of U.S. foreign reserves, e.g. treasury bonds. This may be one of the reasons mitigating full-blown conflict with the U.S. now, since China has such a large stake in the U.S. economy, both as a holder of bonds and as the leading exporter of goods to the U.S. Nonetheless, "the U.S. has blocked several large scale Chinese investments and buyouts of oil companies, technology firms, and other enterprises." [6] In effect, there are still clear nation-centric responses to China's rising economic power, especially as an expression of the U.S. governing elite's ideological commitment to national security.

### 1NC Frontline – Deterrence

#### No space war

Klein 12 – CDR John J. Klein, USN (BS, Georgia Institute of Technology; MS, Naval Postgraduate School; MA, Naval War College), is assistant air officer (“miniboss”) aboard the USS John C. Stennis (CVN 74). He has served as maintenance officer, Sea Control Squadron 24 (VS‑24); test and evaluation project officer, Naval Force Aircraft Test Squadron (VX-20); naval flight officer under instruction, US Naval Test Pilot School; tactical development and evaluation officer (VS-24); and maintenance branch officer, Sea Control Squadron 28 (VS‑28). Commander Klein is the author of several journal articles and the book Space Warfare: Strategy, Principles and Policy (London: Routledge, 2006). March 6th, 2012, Astropolitics: The International Journal of Space Politics & Policy, "The Influence of Technology on Space Strategy," [www.tandfonline.com/doi/pdf/10.1080/14777622.2012.651700](http://www.tandfonline.com/doi/pdf/10.1080/14777622.2012.651700)

Fourth, advanced space-based technology and weapons systems can have a stabilizing effect on the international community. As was the case with nuclear weapons during the Cold War, if a weapons system poses a large enough threat to two or more adversaries, its potential use can cause state leaders to avoid direct confrontation. This is not to suggest that future space-based weapons will eliminate tensions among competing states, nations, or groups, but **weapons can provide a stabilizing influence at times.**

#### No internal – Crossx proves they cant articulate the difference between escalatory cyber war and non-escalatory and who attacks

#### No risk of space weapons

Rosen 13 Armin Rosen, an Atlantic Media fellow, The Atlantic, January 16, 2013, "Give Peace a Chance—in Space", http://www.theatlantic.com/international/archive/2013/01/give-peace-a-chance-in-space/267223/

"The wars of the future will not be fought on the battlefield or at sea," a military academy commandant voiced by Willem Dafoe intones toward the end of a now-classic 1997 episode of The Simpsons. "They will be fought in space, or possibly on top of a very tall mountain." This was meant as a joke, but the latter half of that statement would soon prove eerily prescient when India and Pakistan battled over Kashmir's Siachen glacier -- a strategically irrelevant ice field sitting over 18,000 feet above sea level -- during the Kargil War in 1999. For now, the prospect of military conflict in outer space still resides in the realm of dystopia or absurdity, to the point that a White House petition demanding the construction of a Star Wars-style "Death Star" could be treated as a harmless prank. In rejecting the petition this week, the White House rightly wondered why a debt-strapped U.S. government would spend $850 quadrillion on a weapons system "with a fundamental flaw that can be exploited by a one-man starship." Thankfully, the prospect of an orbital space-to-earth battlestation doesn't even need to be treated seriously. But it wasn't always this way. In 1952, the eminent rocket scientist Werner Von Braun imagined that a future space station would function as an orbital nuclear platform. Space historians believe that Russia's Salyut 3 space station, which was launched in June of 1974, had a cannon on board, in case a craft or satellite from an enemy country attempted to disrupt its mission. The Soviet Union experimented with Fractional Orbital Bombardment Systems in the 1960s and 70s -- basically nuclear delivery systems that were capable of orbiting the earth. The U.S. even detonated a nuclear weapon over 200 miles above the Pacific Ocean in July of 1962, an incident known as Starfish Prime that, according to Harvard University astrophysicist Jonathan McDowell, halved the useful lifetime of all satellites then in orbit, knocked out power in Hawaii, created an artificial Van Allen Belt that persisted for five years, and released radiation into the atmosphere that wouldn't fully dissipate until the end of the decade. For a time, it was all but taken for granted that space would not only be militarized, but weaponized -- used as a venue or staging area for violent clashes between space-faring nations, or attacks on the surface of the earth. Space war wasn't a punch line, but a possibility that nuclear-armed powers didn't think they could afford to ignore. The results of the Starfish event hint at one reason why that changed. "This is a great weapon. It does a lot of damage -- but it also killed everything you had yourself," McDowell says of the results of the high-altitude nuclear test. War in space was sure to have a cataclysmic effect on the country with the most space assets, regardless of the end result. But what about war from space? For powerful space-faring countries, space-to-earth or earth-to-space combat is about as practical as it is desirable -- which is to say, not very. "Space is incredibly useful for the military for a lot of things," McDowell explains. "It's great for intelligence, communication and navigation. The natural thing is to ask, 'where are my X-Wing fighters?' The fact is that it's hard to find a rationale for them." Laura Grego, a senior scientist in the global security program at the Union of Concerned Scientists, explained why an orbital weapons platform -- the kind of big-ticket military asset that you might want a fleet of X-Wing-type vehicles to protect -- is impractical for attacking targets on earth. "Everything in space is moving at rapid speeds. At the same time, the earth is rotating underneath it....as it's going around, you can't hold [the weapon] above your target. You might be over one country for 15 minutes and then you're gone." This tiny orbital window is called the absentee ratio, and an ICBM, which can hit any target on earth within minutes, isn't constrained by one. McDowell added that in order to reach atmospheric velocity, a rocket needs to reach a breakneck seven kilometers-per-second, far faster than the four to five kilometers-per-second an ICBM must travel. From a purely strategic standpoint, orbiting a weapon for space-to-ground use is more expensive and far less useful than existing, more earth-bound capabilities. Simply orbiting a nuke, while possible, is good for little other than blackmail, or, at best, a Dr. Strangelove or Dead Hand-style insurance policy for a paranoid and heavily-armed space-faring state. The space nuke would be a means of ensuring that someone (or some thing) has the capability of effectively wiping out most or perhaps all of the 1,016 satellites that currently orbit the earth, while rendering their orbits so debris-strewn as to be totally and perhaps permanently useless. Such dangerous and cavalier behavior is the stuff of cinematic super-villainy -- not statecraft. But there's another, more idealistic reason humanity is safe from the scourge of space war. And ironically, it suggests that we might not be safe forever. The ban on Death Star-like orbital weaponry is one of the more robust norms in international law. A prohibition on stationing weapons of mass destruction in space, as well as the total demilitarization of the Moon, is enshrined in article 4 of the Outer Space Treaty of 1967, which 126 countries have signed. As University of Nebraska law professor and space law expert Frans von der Dunk notes, the treaty bans the stationing of weapons of mass destruction in space without banning their actual use in space. The stationing and use of kinetic or conventional weaponry is also allowed. Yet the most worrying aspect of the current legal regime is that the laws of war extend to the heavens as well. "The general international law on the law of force and the prohibition on the use of military force also applies in outer space," says von der Dunk. "If, as part of your self-defense you need your satellite to shoot down the satellite of your aggressor...that is perfectly allowed." Even so, the 1967 treaty demonstrates that in space, the peaceniks seem to be winning, at least for now. Joan Johnson-Freese of the Naval War College explained that there are two ways that, at the most schematic level, there are two ways the international legal regime could conceive of outer space: "On one end you put the view that space is a common heritage of mankind," she says. "The other end of the spectrum is that air, land and sea are all environments, and all those environments have been weaponized and therefore it's inevitable that space too will also become weaponized." The latter formulation raises a number of chilling possibilities: most people probably don't expect a war to break out in space, but the soldiers at Siachen probably didn't expect to be fighting atop an 18,000 mountain pass either. Humanity has proven willing to fight over literally anything, so long as the capability exists. Why should we assume space will be different? Space hasn't been weaponized, and the general anti-weaponization tilt of the 1967 treaty is part of the reason why. That tilt has gained the status of a respected legal norm, one arguably strengthened by the fact that the treaty itself was founded on a bedrock of mutual self-interest. "In the 1960s, the superpowers were able to agree that there was more of a benefit in keeping the other party from doing it than they saw a drawback in themselves being forced to abstain from it," von der Dunk says of the U.S. and Soviet Union's view towards stationing weapons of mass destruction in space. In other words, each side believed that preventing their opponent from weaponizing space was worth the potential strategic cost of foreclosing on their own ability to weaponize space. Even after the Cold War, the norm has endured.

#### No solvency – Kramer says we need to establish deterrent capability – also that failure to communicate *resolve* sparks the internal – that’s cross-x

#### Cyberweapons are inev --- US restraint does nothing --- norm setting is utopian

James Lewis 12, Director of the Technology and Public Policy Program at the Center for Strategic and International Studies, “Benefits Are Great, and the Risks Exist Anyway,” Oct 17, NYT, http://www.nytimes.com/roomfordebate/2012/06/04/do-cyberattacks-on-iran-make-us-vulnerable-12/benefits-are-great-and-the-risks-exist-anyway

Nor do cyberattacks against Iran increase the risk of damaging cyberattacks against the United States. It is true that we are defenseless; efforts to make us safer are hamstrung by self-interest, ideology and the gridlock of American politics. But we are no more vulnerable today than we were the day before the news. If someone decides to attack us, they may cite Iran as precedent, but it will only be to justify a decision they had already made.¶ We could ask whether the United States creates more problems for itself when it makes public a new weapon while potential opponents keep it secret. Four other countries can launch sophisticated and damaging cyber attacks -- including China and Russia -- and plan to use them in warfare. Another 30 nations are acquiring cyber weapons, including Iran and North Korea.¶ There is a very old argument for disarmament that holds that if the United States were to renounce some weapons -- usually nuclear weapons -- the world would be a better place. This utopianism has a revered place in American political thinking, but when humans invent weapons they rarely give them up, especially useful weapons whose components are easy to acquire. Cyberattack is now part of warfare, no different from any other weapon. The publicity around Stuxnet may complicate U.S. efforts to get international rules for the use of cyberattack, but the White House decided that tampering with Iran’s nuclear program was more important than possible risk to slow-moving negotiations.

#### No solvency – Healy and Wilson – it says congress has to check executive power – plan doesn’t specify binding consultation

#### No risk of cyber attack and even if it happens no impact

Douglas Birch 10-1, former foreign correspondent for the Associated Press and the Baltimore Sun who has written extensively on technology and public policy, 10/1/12, “Forget Revolution,” Foreign Policy, http://www.foreignpolicy.com/articles/2012/10/01/forget\_revolution?page=full

Government officials sometimes describe a kind of Hieronymus Bosch landscape when warning of the possibility of a cyber attack on the electric grid. Imagine, if you will, that the United States is blindsided by an epic hack that interrupts power for much of the Midwest and mid-Atlantic for more than a week, switching off the lights, traffic signals, computers, water pumps, and air conditioners in millions of homes, businesses, and government offices. Americans swelter in the dark. Chaos reigns! ¶ Here's another nightmare scenario: An electric grid that serves two-thirds of a billion people suddenly fails in a developing, nuclear-armed country with a rich history of ethnic and religious conflict. Rail transportation is shut down, cutting off travel to large swathes of the country, while many miners are trapped underground. ¶ Blackouts on this scale conjure images of civil unrest, overwhelmed police, crippled hospitals, darkened military bases, the gravely injured in the back of ambulances stuck in traffic jams. ¶ The specter of what Defense Secretary Leon Panetta has called a "digital Pearl Harbor" led to the creation of U.S. Cyber Command, which is tasked with developing both offensive and defensive cyber warfare capabilities, and prompted FBI Director Robert Mueller to warn in March that cyber attacks would soon be "the number one threat to our country." Similar concerns inspired both the Democrats and Republicans to sound the alarm about the cyber threat in their party platforms. ¶ But are cyber attacks really a clear and present danger to society's critical life support systems, capable of inflicting thousands of casualties? Or has fear of full-blown cybergeddon at the hands of America's enemies become just another feverish national obsession -- another of the long, dark shadows of the 9/11 attacks? ¶ Worries about a large-scale, devastating cyber attack on the United States date back several decades, but escalatedfollowing attacks on Estonian government and media websites during a diplomatic conflict with Russia in 2007. That digital ambush was followed by a cyber attack on Georgian websites a year later in the run-up to the brief shooting war between Tbilisi and Moscow, as well as allegations of a colossal, ongoing cyber espionage campaign against the United States by hackers linked to the Chinese army. ¶ Much of the concern has focused on potential attacks on the U.S. electrical grid. "If I were an attacker and I wanted to do strategic damage to the United States...I probably would sack electric power on the U.S. East Coast, maybe the West Coast, and attempt to cause a cascading effect," retired Admiral Mike McConnell said in a 2010 interview with CBS's 60 Minutes. ¶ But the scenarios sketched out above are not solely the realm of fantasy. This summer, the United States and India were hit by two massive electrical outages -- caused not by ninja cyber assault teams but by force majeure. And, for most people anyway, the results were less terrifying than imagined. ¶ First, the freak "derecho" storm that barreled across a heavily-populated swath of the eastern United States on the afternoon of June 29 knocked down trees that crushed cars, bashed holes in roofs, blocked roads, and sliced through power lines. ¶ According to an August report by the U.S. Department of Energy, 4.2 million homes and businesses lost power as a result of the storm, with the blackout stretching across 11 states and the District of Columbia. More than 1 million customers were still without power five days later, and in some areas power wasn't restored for 10 days. Reuters put the death tollat 23 people as of July 5, all killed by storms or heat stroke. ¶ The second incident occurred in late July, when 670 million people in northern India, or about 10 percent of the world's population, lost power in the largest blackout in history. The failure of this huge chunk of India's electric grid was attributed to higher-than-normal demand due to late monsoon rains, which led farmers to use more electricity in order to draw water from wells. Indian officials told the media there were no reports of deaths directly linked to the blackouts. ¶ But this cataclysmic event didn't cause widespread chaos in India -- indeed, for some, it didn't even interrupt their daily routine. "[M]any people in major cities barely noticed the disruption because localized blackouts are so common that many businesses, hospitals, offices and middle-class homes have backup diesel generators," the New York Timesreported. ¶ The most important thing about both events is what didn't happen. Planes didn't fall out of the sky. Governments didn't collapse. Thousands of people weren't killed. Despite disruption and delay, harried public officials, emergency workers, and beleaguered publics mostly muddled through. ¶ The summer's blackouts strongly suggest that a cyber weapon that took down an electric grid even for several days could turn out to be little more than a weapon of mass inconvenience.¶ That doesn't mean the United States can relax. James Lewis, director of the technology program at the Center for Strategic and International Studies, believes that hackers threaten the security of U.S. utilities and industries, and recently penned an op-ed for the New York Times calling the United States "defenseless" to a cyber-assault. But he told Foreign Policy the recent derecho showed that even a large-scale blackout would not necessarily have catastrophic consequences.

#### Uncontrollability of cyber-war is a neg warrant --- means countries won’t use them

Thomas P.M. Barnett 13, special assistant for strategic futures in the U.S. Defense Department's Office of Force Transformation from 2001 to 2003, is chief analyst for Wikistrat, March/April 2013, “Think Again: The Pentagon,” Foreign Policy, http://www.foreignpolicy.com/articles/2013/03/04/the\_pentagon?page=full

As for cyber serving as a stand-alone war-fifighting domain, there you'll find the debates no less theological in their intensity. After serving as senior managing director for half a dozen years at a software firm that specializes in securing supply chains, I'm deeply skeptical. Given the uncontrollable nature of cyberweapons (see: Stuxnet's many permutations), I view them as the 21st century's version of chemical weapons -- nice to have, but hard to use. Another way to look at it is to simply call a spade a spade: Cyberwarfare is nothing more than espionage and sabotage updated for the digital era. Whatever cyberwar turns out to be in the national security realm, it will always be dwarfed by the industrial variants -- think cyberthieves, not cyberwarriors. But you wouldn't know it from the panicky warnings from former Defense Secretary Leon Panetta and the generals about the imminent threat of a "cyber Pearl Harbor."¶ Please remember amid all this frenetic scaremongering that the Pentagon is never more frightened about our collective future than when it's desperately uncertain about its own. Given the rising health-care costs associated with America's aging population and the never-ending dysfunction in Washington, we should expect to be bombarded with frightening scenarios of planetary doom for the next decade or two. None of this bureaucratic chattering will bear any resemblance to global trends, which demonstrate that wars have grown increasingly infrequent, shorter in duration, and diminished in lethality. But you won't hear that from the next-warriors on the Potomac.

#### Diminishing marginal returns means there’s no impact

Martin C. Libicki 9, Senior Management Scientist @ RAND and adjunct fellow @ Georgetown’s Center for Security Studies, “Cyberdeterrence and Cyberwar,” RAND, <http://www.rand.org/pubs/monographs/MG877.html>

Strategic Cyberwar Is Unlikely to Be Decisive ¶ No one knows how destructive any one strategic cyberwar attack would be. Estimates of the damage from today’s cyberattacks within the United States range from hundreds of billions of dollars to just a few billion dollars per year. ¶ The higher dollar figures suggest that cyberattacks on enemy civilian infrastructures—strategic cyberwar—may be rationalized as a way to assist military efforts or as a way to coerce the other side to yield to prevent further suffering. But can strategic cyberwar induce political compliance the way, say, strategic airpower would? Airpower tends to succeed when societies are convinced that matters will only get worse. With cyberattacks, the opposite is more likely. As systems are attacked, vulnerabilities are revealed and repaired or routed around. As systems become more hardened, societies become less vulnerable and are likely to become more, rather than less, resistant to further coercion.

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#### Clash is key to depth which is comparatively better – studies overwhelmingly vote NEG

TPC (Texas Panhandle P-16 Council, Texas-based group of teachers and educators from across the state) 2010 “Breadth vs. Depth of High School Curriculum Content” http://www.panhandlep-16.net/users/0001/docs/Position%20Paper2.pdf

Less breadth and more depth in curriculum better prepares students for future careers and education. This is the position of over one hundred faculty assembled in the Texas Panhandle, and it is also the conclusion of many scholarly studies reviewed for this paper. In fact, there are far too many studies to cite in this paper, so only a few representative studies are used. In a 2008 study entitled “Depth Versus Breadth: How Content Coverage in High School Science Courses Relates to Later Success in College Science Coursework”1 the researchers noted: “In a comparison of 46 countries, Schmidt et al. (2005) noted that in top-achieving countries, the science frameworks cover far fewer topics than in the United States, and that students from these countries perform significantly better than students in the United States. They conclude that U.S. standards are not likely to create a framework that develops a deeper understanding of the structure of the discipline. By international standards, the U.S. science framework is „unfocused, repetitive, and undemanding‟”. The study went on to say that “the baseline model reveals a direct and compelling outcome: teaching for depth is associated with improvements in later performance”.

#### It’s a quantifiable impact – it literally doubles

Arrington 2009 (Rebecca, UVA Today, “Study Finds That Students Benefit From Depth, Rather Than Breadth, in High School Science Courses” March 4)

A recent study reports that high school students who study fewer science topics, but study them in greater depth, have an advantage in college science classes over their peers who study more topics and spend less time on each. Robert Tai, associate professor at the University of Virginia's Curry School of Education, worked with Marc S. Schwartz of the University of Texas at Arlington and Philip M. Sadler and Gerhard Sonnert of the Harvard-Smithsonian Center for Astrophysics to conduct the study and produce the report. "Depth Versus Breadth: How Content Coverage in High School Courses Relates to Later Success in College Science Coursework" relates the amount of content covered on a particular topic in high school classes with students' performance in college-level science classes. The study will appear in the July 2009 print edition of Science Education and is currently available as an online pre-print from the journal. "As a former high school teacher, I always worried about whether it was better to teach less in greater depth or more with no real depth. This study offers evidence that teaching fewer topics in greater depth is a better way to prepare students for success in college science," Tai said. "These results are based on the performance of thousands of college science students from across the United States." The 8,310 students in the study were enrolled in introductory biology, chemistry or physics in randomly selected four-year colleges and universities. Those who spent one month or more studying one major topic in-depth in high school earned higher grades in college science than their peers who studied more topics in the same period of time. The study revealed that students in courses that focused on mastering a particular topic were impacted twice as much as those in courses that touched on every major topic

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#### Interpretation – OCO includes only cyberattacks – that excludes exploitation and active defense – key to precision

Lorber 13 (Eric, J.D. Candidate, University of Pennsylvania Law School, Ph.D Candidate, Duke University Department of Political Science, "COMMENT: Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?," 15 U. Pa. J. Const. L. 961, lexis)

Cyberattacks are "efforts to alter, disrupt, or destroy computer systems or networks or the information or programs on them ... [,] encompassing activities that range in target (military versus civilian, public versus private), consequences (minor versus major, direct versus indirect), and duration (temporary versus long-term)." n83 While this definition provides broad [\*977] guidance as to what may constitute a cyberattack, for the purposes of applying existing legal structures, the definition must be conceptualized in a way that usefully fits into those preexisting regimes. Because of the complexity and great number of potential means of cyberattack, this Comment groups such attacks based on employment, i.e., the way in which they are utilized and their intended purposes. Such an approach provides greater clarity as to which U.S. domestic legal regime will likely govern their employment. The following section proceeds by first discussing some of the technical details of cyberattacks and then moves into understanding how they have been - and likely will be - employed in future conflicts.¶ Before moving to a discussion of what cyberattacks are, it is important to note what they are not. They are not cyberexploitation, that is, "the use of actions and operations ... to obtain information that would otherwise be kept confidential ... . Cyberexploitations are usually clandestine and conducted with the smallest possible intervention that still allows extraction of the information sought." n84 The core difference between attack and exploitation is in the cyber operation's purpose; cyberattacks are meant to be destructive whereas cyberexploitation acquires information nondestructively. n85 While the term offensive cyber operations usually encompasses both attack and exploitative elements, here "OCO" refers only to attacks. n86

#### B. Vote Neg – they can only restrict direct attacks – not deterrence or deterrent postures – explodes the number of Affs because they could read a ton of different defensive policies in order to solve.

## Deterrence

### 2NC Cyber Inevitable

#### Pandora’s box has already been opened --- cyber-war inevitable

Mikko Hypponen 12, an authority on cybercrime and one of Foreign Policy’s ‘Top 100 Global Thinkers,’ is the chief research officer at F-Secure Corporation, “A Pandora’s Box We Will Regret Opening,” June 5, NYT, http://www.nytimes.com/roomfordebate/2012/06/04/do-cyberattacks-on-iran-make-us-vulnerable-12/a-pandoras-box-we-will-regret-opening

If somebody would have told me five years ago that by 2012 it would be commonplace for countries to launch cyberattacks against each other, I would not have believed it. If somebody would have told me that a Western government would be using cybersabotage to attack the nuclear program of another government, I would have thought that's a Hollywood movie plot. Yet, that's exactly what's happening, for real.¶ Cyberattacks have several advantages over traditional espionage or sabotage. Cyber attacks are effective, cheap and deniable. This is why governments like them. In fact, if Obama administration officials would not have leaked the confirmation that the U.S. government (together with the Israelis) was behind Stuxnet, we probably would have never known for sure.¶ In that sense, it's a bit surprising that the U.S. government seems to have taken the credit ­ and the blame ­ for Stuxnet. Why did they do it? The most obvious answer seems to be that it's an election year and the voters like to see the president as taking on adversaries like Iran. But we don't really know.¶ The downside for owning up to cyberattacks is that other governments can now feel free to do the same. And the United States has the most to lose from attacks like these. No other country has so much of its economy linked to the online world.¶ Other governments are already on the move. The game is on, and I don't think there's anything we could do to stop it any more. International espionage has already gone digital. Any future real-world crisis will have cyberelements in play as well. So will any future war. The cyberarms race has now officially started. And nobody seems to know where it will take us.¶ By launching Stuxnet, American officials opened Pandora's box. They will most likely end up regretting this decision.

# 1NR

## Flex DA

### O/V

They conceded Korean War

Turns the case – accesses your impacts

Heg solves the terminal impact to all of your cyber attacks evidence

### 2ac Overview Generic

#### Heg is Good-

#### First- Threats are inevitable,

#### Second- We will always be engaged-

#### Third-

And the transition goes nuclear

Posen and Ross 97

[Barry Posen, Professor of Political Science in the Defense and Arms Control Studies Program at MIT, Andrew Ross, Professor of National Security Studies at the Naval War College, International Security, Winter 1997]

The United States can, more easily than most, go it alone. Yet we do not find the arguments of the neo-isolationists compelling. Their strategy serves U.S. interests only if they are narrowly construed. First, though the neo-isolationists have a strong case in their argument that the United States is currently quite secure, disengagement is unlikely to make the United States more secure, and would probably make it less secure. The disappearance of the United States from the world stage would likely precipitate a good deal of competition abroad for security. Without a U.S. presence, aspiring regional hegemons would see more opportunities. States formerly defended by the United States would have to look to their own military power; local arms competitions are to be expected. Proliferation of nuclear weapons would intensify if the U.S. nuclear guarantee were withdrawn. Some states would seek weapons of mass destruction because they were simply unable to compete conventionally with their neighbors. This new flurry of competitive behavior would probably energize many hypothesized immediate causes of war, including preemptive motives, preventive motives, economic motives, and the propensity for miscalculation**. There would** like **be more war. W**eapons of **m**ass **d**estruction **might be used in** some of **the wars**, with unpleasant effects even for those not directly involved.

### Impact – Senkanku

#### Senkaku conflict coming and escalation is likely.

**Wittmeyer**, **3/19**/2013 (Alicia – assistant editor at Foreign Policy, Why Japan and China could accidentally end up at war, Foreign Policy, p. <http://blog.foreignpolicy.com/posts/2013/03/19/china_japan_accidental_war_islands>)

Great. At a time when Chinese authorities seem to be making efforts to dial down tensions with Japan over disputed islands, could a war between East Asian superpowers be sparked by accident -- by some frigate commander gone rogue? That nuclear war could come about in just such a scenario was, of course, a major concern during the Cold War. But decades of tension, as well as apocalyptic visions of global annihilation as a result of the U.S. and U.S.S.R. locking horns, produced carefully designed systems to minimize the damage any one rogue actor could inflict (only the president can access the nuclear codes), and to minimize misunderstandings from more minor incidents (the Kremlin-White House hotline). But East Asia -- relatively free of military buildup until recently -- doesn't have these same systems in place. A soon-to-be-released report from the International Institute for Strategic Studies highlights the danger that emerges when a region's military systems develop faster than its communication mechanisms, and finds that accidental war in East Asia is a real possibility: Across East Asia, advanced military systems such as anti-ship missiles, new submarines, advanced combat aircraft are proliferating in a region lacking security mechanisms that could defuse crises. Bilateral military-to-military ties are often only embryonic. There is a tangible risk of accidental conflict and escalation, particularly in the absence of a strong tradition of military confidence-building measures." The Senkaku-Diaoyu Islands dispute has been marked by an increasing number of deliberate provocations on both sides: surveillance vessels entering nearby waters, patrol planes making passes by the islands, scrambled fighter jets. These are planned actions, designed to incrementally heighten tensions. But the more fighter jets that get scrambled without good communications systems in place, the higher the chances that these deliberate moves escalate beyond what either Japan or China is anticipating.

#### They escalate.

**Auslin**, 1/28/**2013** (Michael – scholar at the American Enterprise Institute, The Sino-Japanese Standoff, National Review, p. http://www.nationalreview.com/articles/338852/sinondashjapanese-standoff-michael-auslin?pg=2)

This Sino–Japanese standoff also is a problem for the United States, which has a defense treaty with Tokyo and is pledged to come to the aid of Japanese forces under attack. There are also mechanisms for U.S.–Japanese consultations during a crisis, and if Tokyo requests such military talks, Washington would be forced into a difficult spot, since Beijing would undoubtedly perceive the holding of such talks as a serious provocation. The Obama administration has so far taken pains to stay neutral in the dispute; despite its rhetoric of “pivoting” to the Pacific, it has urged both sides to resolve the issue peacefully. Washington also has avoided any stance on the sovereignty of the Senkakus, supporting instead the status quo of Japanese administration of the islands. That may no longer suffice for Japan, however, since its government saw China’s taking to the air over the Senkakus as a significant escalation and proof that Beijing is in no mind to back down from its claims. One does not have to be an alarmist to see real dangers in play here. As Barbara Tuchman showed in her classic The Guns of August, events have a way of taking on a life of their own (and one doesn’t need a Schlieffen Plan to feel trapped into acting). The enmity between Japan and China is deep and pervasive; there is little good will to try and avert conflict. Indeed, the people of both countries have abysmally low perceptions of the other. Since they are the two most advanced militaries in Asia, any tension-driven military jockeying between them is inherently destabilizing to the entire region. Perhaps of even greater concern, neither government has shied away from its hardline tactics over the Senkakus, despite the fact that trade between the two has dropped nearly 4 percent since the crisis began in September. Most worrying, if the two sides don’t agree to return to the status quo ante, there are only one or two more rungs on the ladder of military escalation before someone has to back down or decide to initiate hostilities when challenged. Whoever does back down will lose an enormous amount of credibility in Asia, and the possibility of major domestic demonstrations in response. The prospect of an armed clash between Asia’s two largest countries is one that should bring both sides to their senses, but instead the two seem to be maneuvering themselves into a corner from which it will be difficult to escape. One trigger-happy or nervous pilot, and Asia could face its gravest crisis perhaps since World War II.

#### Miscalculation is likely --- historical animosity prevents de-escalation.

**He**, 9/18/**2012** (Yinan – expert on Sino-Japan relations, associate professor at the Whitehead School of Diplomacy, Seton Hall University, Nationalism and the China-Japan Island Disputes, Council on Foreign Relations, p. <http://blogs.cfr.org/asia/2012/09/18/nationalism-and-the-china-japan-island-disputes/>)

In the past week mass protests against Japan’s nationalization of the disputed Diaoyu/Senkaku Islands have swept Chinese cities across both coastal and inland areas, unprecedented since 2005 when many Chinese took to the streets to oppose Japan’s revision of history textbooks that whitewashed its wartime aggression. Since then, the damage has been slowly mended thanks to years of painstaking diplomatic efforts on both sides. But in no time things have been pushed back to square one—or even worse. Both long-standing historical grievances powered by nationalist indoctrination and the emerging shift of power in the region account for the new escalation of tension. It all seems to have started in April when the hawkish governor of Tokyo, Ishihara Shintaro, made a bid to purchase the islands. The central government then stepped in with a nationalization deal. But attentive watchers of Sino-Japanese relations can find deeper roots of the recent crisis. One may point to the previous flare-up two years ago as a trigger for Ishihara’s move. In that incident Tokyo attempted to prosecute the captain of a Chinese fishing boat that collided with Japanese Coast Guard ships near the islands, but ultimately submitted to Beijing’s high-handed diplomacy. A more profound cause of mutual animosity is the decades of nationalist preaching in both countries about a traumatic war they fought from 1937 to 1945, as explained in my book. In an effort to salvage the weakened legitimacy of the Communist regime, patriotic propaganda emphasizing Japanese wartime atrocities and heroic Chinese resistance have since the 1980′s replaced the tired communist ideology. It fueled victim consciousness and a sense of entitlement toward Japan among the Chinese. Meanwhile, with its economic miracle stunted and political reform stagnating, many Japanese politicians played to nationalist groups in order to boost national confidence and win popular votes. While pacifism and the Japanese feeling of war guilt used to keep anti-Chinese nationalism marginal, the old culture has gradually faded, much due to people’s anxiety about an increasingly powerful and assertive China in East Asia. When an ancient feud is inflamed by new fears, overreactions occur. Not only are the anti-Japanese demonstrations in China the largest and vandalism the worst since the two countries normalized relations in 1972, but Chinese surveillance ships also entered Japan’s claimed territorial waters near the islands, hiking the danger of a military clash. Should armed conflicts erupt, the U.S. would have to intervene based on its alliance commitment to Japan, which is about the last thing that Washington wants to do at the moment. But given Japanese public sentiment and oppositional pressure, backpedalling is hardly conceivable for Tokyo. Beijing’s hands are equally tied, as it faces the dilemma of either appearing soft-kneed if it suppresses mass protests too harshly, or suffering damage to China’s social stability and international image should the chaos drag on.

**Nuclear escalation is likely.**

**Fisher**, 10/31/**2011** (Max – associate editor at the Atlantic, 5 Most Likely Ways the U.S. and China Could Spark Accidental Nuclear War, The Atlantic, p. http://www.theatlantic.com/international/archive/2011/10/5-most-likely-ways-the-us-and-china-could-spark-accidental-nuclear-war/247616/#slide1)

After 10 years of close but unproductive talks, the U.S. and China still fail to understand one another's nuclear weapons policies, according to a disturbing report by Global Security Newswire. In other words, neither the U.S. nor China knows when the other will or will not use a nuclear weapon against the other. That's not due to hostility, secrecy, or deliberate foreign policy -- it's a combination of mistrust between individual negotiators and poor communication; at times, something as simple as a shoddy translation has prevented the two major powers from coming together. Though nuclear war between the U.S. and China is still extremely unlikely, because the two countries do not fully understand when the other will and will not deploy nuclear weapons, the odds of starting an accidental nuclear conflict are much higher. Neither the U.S. nor China has any interest in any kind of war with one other, nuclear or non-nuclear. The greater risk is an accident. Here's how it would happen. First, an unforeseen event that sparks a small conflict or threat of conflict. Second, a rapid escalation that moves too fast for either side to defuse. And, third, a mutual misunderstanding of one another's intentions. This three-part process can move so quickly that the best way to avert a nuclear war is for both sides to have absolute confidence that they understand when the other will and will not use a nuclear weapon. Without this, U.S. and Chinese policy-makers would have to guess -- perhaps with only a few minutes -- if and when the other side would go nuclear. This is especially scary because both sides have good reason to err on the side of assuming nuclear war. If you think there's a 50-50 chance that someone is about to lob a nuclear bomb at you, your incentive is to launch a preventative strike, just to be safe. This is especially true because you know the other side is thinking the exact same thing. In fact, even if you think the other side probably won't launch an ICBM your way, they actually might if they fear that you're misreading their intentions or if they fear that you might over-react; this means they have a greater incentive to launch a preemptive strike, which means that you have a greater incentive to launch a preemptive strike, in turn raising their incentives, and on and on until one tiny kernel of doubt can lead to a full-fledged war that nobody wants. The U.S. and the Soviet Union faced similar problems, with one important difference: speed. During the first decades of the Cold War, nuclear bombs had to be delivered by sluggish bombers that could take hours to reach their targets and be recalled at any time. Escalation was much slower and the risks of it spiraling out of control were much lower. By the time that both countries developed the ICBMs that made global annihilation something that could happen within a matter of minutes, they'd also had a generation to sort out an extremely clear understanding of one another's nuclear policies. But the U.S. and China have no such luxury -- we inherited a world where total mutual destruction can happen as quickly as the time it takes to turn a key and push a button. The U.S. has the world's second-largest nuclear arsenal with around 5,000 warheads (first-ranked Russia has more warheads but less capability for flinging them around the globe); China has only about 200, so the danger of accidental war would seem to disproportionately threaten China. But the greatest risk is probably to the states on China's periphery. The borders of East Asia are still not entirely settled; there are a number of small, disputed territories, many of them bordering China. But the biggest potential conflict points are on water: disputed naval borders, disputed islands, disputed shipping lanes, and disputed underwater energy reserves. These regional disputes have already led to a handful of small-scale naval skirmishes and diplomatic stand-offs. It's not difficult to foresee one of them spiraling out of control. But what if the country squaring off with China happens to have a defense treaty with the U.S.? There's a near-infinite number of small-scale conflicts that could come up between the U.S. and China, and though none of them should escalate any higher than a few tough words between diplomats, it's the unpredictable events that are the most dangerous. In 1983 alone, the U.S. and Soviet Union almost went to war twice over bizarre and unforeseeable events. In September, the Soviet Union shot down a Korean airliner it mistook for a spy plane; first Soviet officials feared the U.S. had manufactured the incident as an excuse to start a war, then they refused to admit their error, nearly pushing the U.S. to actually start war. Two months later, Soviet spies misread an elaborate U.S. wargame (which the U.S. had unwisely kept secret) as preparations for an unannounced nuclear hit on Moscow, nearly leading them to launch a preemptive strike. In both cases, one of the things that ultimately diverted disaster was the fact that both sides clearly understood the others' red lines -- as long as they didn't cross them, they could remain confident there would be no nuclear war. But the U.S. and China have not yet clarified their red lines for nuclear strikes. The kinds of bizarre, freak accidents that the U.S. and Soviet Union barely survived in 1983 might well bring today's two Pacific powers into conflict -- unless, of course, they can clarify their rules. Of the many ways that the U.S. and China could stumble into the nightmare scenario that neither wants, here are five of the most likely. Any one of these appears to be extremely unlikely in today's world. But that -- like the Soviet mishaps of the 1980s -- is exactly what makes them so dangerous.

#### Senkaku dispute causes rare earth cut-off --- that collapses Japan’s renewable and tech sectors.

**Foxton**, 9/18/**2012** (Willard – investigative journalist for the Telegraph, Why the latest row between China and Japan is a nightmare for the tech industry, The Telegraph, p. <http://blogs.telegraph.co.uk/technology/willardfoxton2/100007708/why-the-latest-row-between-china-and-japan-is-a-nightmare-for-the-tech-industry/>)

The mines at Baotao have slowed production in the light of the Diaoyou situation; they provide around 99 per cent of the world's supply of rare earths. Indeed, the Chinese government has explicitly stated it will not allow the shipping of these rare earths to Japan, which currently consumes around 60 per cent of Baotao's output. Those rare earths, shipped from Mongolia to Japan, go into practically every gadget we buy or make. Almost every flatscreen TV, every mobile phone, everything that requires memory, requires parts made in Japan with Chinese minerals. The Japanese can't switch suppliers or buy the elements from somewhere else for more money. No rare earths, no manufacturing. It's not just the gadget industry, either. In news that will delight my colleague James Delingpole, the renewables industry is also dependent on the mines of Baotao. You can't make a Prius battery or a wind turbine magnet without Neodymium mined there and machined in Japan. The Japanese have been aware of this nightmare scenario for some time; indeed, they've invested in sci-fi schemes such as underwater rare earth mining to try to wean themselves off their dependence on Chinese minerals. Unfortunately, the crisis has blown up before these projects could bear fruit. If the crisis around the Senkakus, there will be huge consequences for all of us, as supply chains all over the world break at the Japanese link. For all our sakes, let's hope this dispute is resolved quickly.

#### Extinction

**Wood 10** (Duncan, Director – Program in International Relations and Canadian Studies Program – Instituto Tecnológico Autónomo de México, “Environment, Development and Growth: U.S.-Mexico Cooperation in Renewable Energies,” Woodrow Wilson International Center for Scholars – Mexico Institute, May, http://www.wilsoncenter.org/topics/pubs/U.S.%20Mexico%20Cooperation%20in%20Renewable%20Energies.pdf)

It is by now common knowledge that the world is facing a climate change crisis caused by the effects of fossil fuel driven industrialization. A significant rise in global temperatures, combined with more severe weather conditions, more frequent floods and droughts, are bringing a paradigm shift to the way we think about our relationship with the planet. For the first time in over 150 years policy makers are thinking seriously about decreasing dependency on fossil fuels and looking for alternatives that may be more expensive in the short and medium terms, but ultimately more sustainable. 7 All of this has happened at the same time as two other, related phenomena. The first is that the global population is reaching new highs and by 2040‐50 will total over 9 billion people. Experts predict that 85% of the world’s population will be located in the developing world, which will mean a rapidly growing demand for goods and for energy. Both of these factors will result in a need to increase energy efficiency as well as find new sources of energy. What’s more, this massive jump in population will coincide not only with climate change but also with increasingly difficult conditions for hydrocarbons exploration and production. As most of the world’s “easy” oil has already been discovered, oil companies and nation states are turning to alternatives such a non‐conventional oil reserves (tar sands, complex fields) and reserves that in the past would have been considered unrecoverable, such as in very deep ocean waters. Furthermore, political conditions in many of the world’s oil rich regions are uncertain, unstable and often unfriendly to private oil companies and to the countries of the West. Climate change and natural disasters The urgency of finding alternatives to fossil fuels has been confirmed in recent years by mounting scientific evidence that we are undergoing a noticeable anthropogenic shift in the world’s weather and temperature. Not only are a range of indicators showing that the planet is warming, but the retreat of the polar ice caps, the melting of glaciers, and most importantly in the short term extreme weather conditions and increased incidence of natural disasters have highlighted the consequences of maintaining the status quo in our patterns of energy consumption and industrial development. It is estimated that we have experienced a 1 degree Celsius rise in global temperatures over the past 100 years and that by the end of the current century global temperatures may have risen by as much 7 or 8 degrees. Even with the reduction in greenhouse gas emissions that is contemplated by the most ambitious mitigation strategies, global temperatures may rise by as much as 6%. This would have a dramatic and disastrous impact on both developed and developing nations and will threaten the existence of both humans and animal and plant species. Though the connection between man‐made greenhouse gases and global warming was denied for many years by industry and governments alike, it has now been accepted that something must be done to reduce the amount of greenhouse gases released into the atmosphere. Given that 86% of all global energy comes from fossil fuels, and that these fossil fuels produce 27,000,000,000 tons of CO2 emissions annually, finding alternative sources of energy is a crucial component of climate change mitigation strategies.

### ---Senkaku– AT: No Impact – Escalation (Senkaku)

#### Senkaku conflict will escalate --- that’s Auslin.

#### --Historical animosity undermines goodwill necessary to compromise.

#### --Tensions escalate despite trade drop --- disproves economic interdependence.

#### De-escalation is impossible --- public pressure prevents a back down. That’s He.

### Crisis DA Link Wall: Congress

#### Notification kills effective cyber responses

Stephen Dycus—1AC Author—10, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>

Cyber weapons bear a striking resemblance to nuclear weapons in some important ways. An enemy’s cyber attack would, like a nuclear strike, probably come without a clear warning. There are as yet no reliable defenses against either a cyber attack or a nuclear attack. Collateral damage from a nuclear attack would almost certainly be very extensive and would linger for an extended period.48 The direct and indirect effects of a cyber attack, while different in kind and degree, still could be widespread and indiscriminate.49¶ In other ways, cyber weapons are critically different from their nuclear counterparts. For one thing, the time frame for response to a cyber attack might be much narrower. A nuclear weapon delivered by a land-based ICBM could take 30 minutes to reach its target. An electronic attack would arrive instantaneously, and leave no time to consult with or even inform anyone outside the executive branch before launching a counterstrike, if that were U.S. policy.

#### Consultation kills rapid response

Stephen Dycus—1AC Author—10, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>

8. Require consultation with the designated congressional committees in every possible instance before any significant use of cyber weapons.(Footnote 64 Begins) ¶ 64 . A National Research Council study suggests possible advance congressional approval of some offensive uses of cyber weaponry based on, inter alia, the scale of a contemplated attack, the target, and other circumstances. NATIONAL RESEARCH COUNCIL, supra note 3, at 56. Because of the possible need for immediate action, advance approval is not recommended here. Possible criteria for determining when a contemplated use is “significant” for these purposes are suggested supra note 31.

#### The structure of Congress inherently favors delay and inaction --- that’s awful for crisis response

John Yoo 4, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, visiting scholar @ the American Enterprise Institute, former Fulbright Distinguished Chair in Law @ the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, received his J.D. from Yale and his undergraduate degree from Harvard, “War, Responsibility, and the Age of Terrorism,” UC-Berkeley Public Law and Legal Theory Research Paper Series, http://works.bepress.com/cgi/viewcontent.cgi?article=1015&context=johnyoo

In order to weigh the advantages of the Congress-first approach, it is also important to understand its potential costs. The costs may not be obvious, since grounding the use of force in ex ante congressional consent bears a close resemblance to the process for enacting legislation. The legislative process increases the costs of government action. It is heavily slanted against the enactment of legislation by requiring the concurrence not just of the popularly elected House but also the state-representing Senate and the President. This raises decision costs by increasing the delay needed to get legislative concurrence, requiring an effort to coordinate between executive and legislature, and demanding an open, public discussion of potentially sensitive information. Decision costs are not encapsulated merely in the time-worn hypotheticals that ask whether the President must go to Congress for permissions to launch a preemptive strike against a nation about to launch its own nuclear attack. Rather, these decision costs might arise from delay in using force that misses a window of opportunity, or one in which legislative discussion alerts an enemy to a possible attack, or the uncertainty over whether congressional authorization will be forthcoming.

#### Congress is too slow to respond to 21st century threats --- executive deference is critical

Andrew Rudalevige 6, the Thomas Brackett Reed Professor of Government @ Bowdoin College, “The New Imperial Presidency,” UMich-Ann Arbor Press, Book, p. 264-67

That fragmentation is most obvious at the other end of Pennsylvania Avenue. Despite common grammatical usage, including in this book, Congress is not an “it” but a “they.” That is, Congress is not singular but plural and a fractious plural at that. The geographic basis of House representation— the “territorial imperative”—means that no two House members share identical interests.6 The distinctive constituencies and terms of the House and Senate generate few overlapping sympathies across the chambers. Sequential majorities and supermajorities are required for action, but only a small minority for inaction. This became even more true after the application of reforms in the 1970s designed to apply the openness and decentralization aimed at the executive branch to Congress itself. The reforms enhanced the power of subcommittees and gave party rank-and-‹le more power to override seniority in selecting committee chairs. What nineteenth-century observers like Woodrow Wilson condemned as “committee government” often atomized further into “subcommittee government” instead. As a result, one scholar noted, members of Congress can make laws “only with sweat patience, and a remarkable skill in the handling of creaking machinery.” But stopping laws is a feat “they perform daily, with ease and infinite variety.”7¶ Thus even an alert and aggressive Congress has endemic weaknesses.8 Its large size and relative lack of hierarchy hamper quick decision making. The specialized jurisdictions inherent in the committee system, so necessary for dividing labor, also divide issues and make their comprehensive consideration across functional lines nearly impossible. (Nor do House members’ two-year terms give much incentive for long-term planning.) For similar reasons Congress has difficulty in planning and agenda setting. The ready acceptance of the idea of a presidential legislative program after World War II was partly a question of legislative convenience, a way to weed through innumerable proposals and provide a focus for limited floor time. Finally, with so many members, each seeking press attention, Congress also finds it hard to keep a secret. As President George H. W. Bush’s counsel, Boyden Gray, put it, “any time you notify Congress, it’s like putting an ad in the Washington Post. Notification is tantamount to declaration.”9¶ In short, Congress has the problems inherent to any body of individuals that must take collective action. The decisions that are rational for a single member—especially those aimed at gaining particular benefits for his or her district—are not always good decisions for the body as a whole.10 James Madison wrote as early as 1791 that whenever a question of “general. . . advantage to the Union was before the House . . . [members] commonly resorted to local views.” Then, as now, coalition building had to overcome decentralized inertia, with the result that governing often comes down to, in the words of LBJ budget official Charles Schultze, “a lot of boodle being handed out in large numbers of small boodle.”11¶ Worse, fragmentation is not limited to the legislative branch. After all, Congress created most of the executive branch as well—and in its own image. The “politics of bureaucratic structure” result in a bureaucracy far different than what organization theorists would draw up on a blank page, one rarely aligned along functional lines or with clear lines of executive authority. Legislative majorities hope to institutionalize their own interests in government agencies and to structurally insulate those preferences against future majorities seeking to meddle. They hope to gain access to the bureaucratic decision-making process and to influence it whenever desirable. They hope to gain points with constituents for fixing the errors agencies make, perhaps to the point of structuring agencies that cannot help but make errors. If nothing else, the historical pattern of executive branch development has spurred a particular array of legislative committees—and organized special interests linked to both.12¶ As the size and scope of the national government grew, its organizational inefficiencies became more obvious and more meaningful. This in turn focused increased attention on the need for direction and coordination— for a chief executive who could actually manage the executive branch. The areas of homeland security and intelligence analysis are only the most recent cases where failures of communication or analysis within the bureaucracy have magnified the need for those qualities.¶ Globalization in some ways highlights the continuing limits of the presidency’s authority: its incumbent is not, after all, president of the world. Yet the practical advantages of presidential leadership vis-à-vis the legislature, at least, are further magnified in an era where rapid transportation, instantaneous communication, and huge flows of trade have changed the context of governance in ways that play to presidential strengths. Both opportunities and threats arise quickly and demand immediate response. Their resolution requires a broad national view, not territorialism; resident expertise, not the give-and-take of log-rolling compromise. Further, if, as Richard Neustadt suggested, the cold war’s omnipresent fear of nuclear war made the president for a time the “final arbiter” in the balance of power, the rise of rogue states and nonstate actors with access to similar weaponry ups the ante again. In this one sense at least the “modern presidency” described earlier may have given way to a “postmodern” one.13 As the Bush administration argued to the Supreme Court on behalf of the president’s power to designate enemy combatants,¶ The court of appeals’ attempt to cabin the Commander-in-Chief authority to the conduct of combat operations on a traditional battlefield is particularly ill-considered in the context of the current conflict. . . . The September 11 attacks not only struck targets on United States soil; they also were launched from inside the Nation’s borders. The “full power to repel and defeat the enemy” thus necessarily embraces determining what measures to take against enemy combatants found within the United States. As the September 11 attacks make manifestly clear, moreover, al Qaeda eschews conventional battlefield combat, yet indiicts damage that, if anything, is more devastating.14

#### Plan allows Congress to vocally oppose crisis intervention --- or they literally don’t solve anything--- that destroys international perception of U.S. resolve

Waxman 8/25/13 Matthew Waxman, Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR, citing William Howell, Sydney Stein Professor in American Politics @ U-Chicago, and Jon Pevehouse, Professor of Political Science @ U-Wisconsin-Madison, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN

When members of Congress vocally oppose a use of force, they undermine the president’s ability to convince foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, allies may be reluctant to contribute to a military campaign, and adversaries are likely to fight harder and longer when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests.145

#### Secrecy is key to effective cyber deterrence and response

John Mowchan 11, Lt Col, October, “Don’t Draw the (Red) Line,” http://www.usni.org/magazines/proceedings/2011-10/dont-draw-red-line

Those arguing for establishing red lines fail to comprehend the complexity of the digital domain, in which adaptation and anonymity are the norm. The United States is better served in the long run by not establishing such thresholds, for four reasons. First, not doing so allows government leaders the latitude to tailor response options

based on a hostile act, its physical and digital effects, and how it relates to the current state of affairs in the international system. As retired Air Force General Kevin Chilton remarked in 2009 as commander, U.S. Strategic Command, “I don’t think you take anything off the table when you provide [response] options to the president to decide. Why would we constrain ourselves on how we would respond [to hostile acts in cyberspace]?” 15¶ Such an approach does not differ from the way the United States addresses hostile acts in other domains. If red lines are established, we will be compelled to respond to each threat that crosses the line, which is unrealistic, given that our computer networks are subjected to millions of probes, scans, and attacks on a daily basis. Even if red lines are narrowly focused (e.g., employing military force if a cyber attack results in the deaths of U.S. citizens), the first time the United States fails to respond accordingly, it will undermine the credibility and deterrence effect of our other capabilities.¶ A second reason in favor of ambiguity is that if our adversaries know our response to such acts, they will adjust accordingly. Because neither the national nor the defense strategy explicitly defines a hostile act in cyberspace or exactly how the United States will respond, this leaves it open to interpretation. As one military official remarked, “If you shut down our power grid, maybe we will put a missile down one of your smokestacks.” 16 In addition, hostile actors may perceive a green light for certain acts that do not cross a particular response threshold. While one such act below this threshold may not be harmful to U.S. interests, what if 100 million are? Again, maintaining ambiguity concerning when, how, and to what extent to respond gives the United States greater latitude.¶ Third, because cyberspace is a global domain that emphasizes open access, the free flow of information, and anonymity, it is extremely difficult to determine where the threat or attack originated. For example, U.S. military networks are probed more than six million times a day by assailants operating in one corner of the world using computer networks or servers in another corner. Most perpetrators are never identified, except for a computer Internet protocol address or a one-time user alias. Army General Keith Alexander, commander of U.S. Cyber Command and Director, National Security Agency, emphasized this challenge, saying, “Too often, the military discovers through forensics that network probes have been successful [and] as a consequence, response becomes policing up after the fact versus mitigating it real time.” 17 If red lines demand a timely response and there is no one to pin responsibility on, then how can a response be implemented?¶ Finally, even if the source of the attacks is determined in a timely manner, automatic triggers for a response, particularly those that employ military force, could create negative second- and third-order effects that make a bad situation even worse. Given that nation states pose the greatest threat to U.S. networks, red lines that automatically result in a response could escalate an already volatile situation.¶ For example, in 2009 individuals in China and Russia penetrated computer networks operating parts of the U.S. electrical power grid. 18 They reportedly inserted malware that could destroy infrastructure components. Although their identities or associations with the Russian and Chinese governments were not disclosed, it validates the point that response options must be tailored. If Russia or China, two nuclear powers, were responsible, a U.S. response would be markedly different than if they had they been conducted by a non-nuclear state. Clearly the diplomatic, information, and economic instruments of national power versus military force would receive more emphasis with China or Russia for what could be considered a hostile act in cyberspace.¶ Given the complex and indeterminate 21st century international system and the multitude of current threats, U.S. interests will be better served by not establishing clear thresholds. Ambiguity is a powerful tool to shape our adversaries’ actions in all domains and allows us the maneuverability to respond where, when, and how we choose. Red-line advocates must understand that thresholds only constrain our actions and could undermine credibility and the power to effectively deter our adversaries.

## XO CP

### AT: Owens (Certainty)

#### This card TAKES OUT THE AFF – the plan just says consultation in “every possible circumstance” and Owens clearly indicates that

Decision makers often feel intense pressure to “do something” immediately after the onset of a crisis, and sometimes such pressure is warranted by the facts and circumstances of the situation. On the other hand, the lack of immediate information may prompt decision makers to take a worst-case view of the attack and thus to assume that the worst that might have happened was indeed what actually happened

#### Obama would just claim “impossibility” to consult and will overreact and retaliate to cyber attacks.

#### This card is not about executive control and the fiated nature of the CP ensures consultation in the world of the CP prior to OCO use.

### Object Fiat – 2NC

#### 1. CP is not object fiat – it doesn’t have the president restrict war power authority – it changes the use of that authority.

#### Even if it is object fiat – it’s justified in this instance

#### 2. It’s vital to fairness, particularly on this topic – most neg lit is about how restrictions are put in place by the executive vs. other branches

Fisher 3 (Louis – Senior Specialist in Separation of Powers, Congressional Research Service, The Library of Congress. Ph.D., New School for Social Research, “A Constitutional Structure for Foreign Affairs”, 2003, 19 Ga. St. U.L. Rev. 1059, lexis)

It is conventional, and I suppose convenient, to divide scholars on the war power and foreign affairs into "pro-congressionalists" and "propresidentialists." Their writings may seem to demonstrate a sympathy for one branch over another. However, scholarship is shallow if it merely latches itself onto one branch of government while shooting holes in the other. Analysis of the war power and foreign affairs demands a higher standard: recognizing institutional weaknesses along with institutional strengths, appreciating that the democratic process requires deliberation and collective action, and promoting policies that can endure rather than attempting short-term, unilateral solutions that fail. Moreover, the important point is not which branch has the political power to prevail. If that were the standard, we would always side with autocratic and even totalitarian regimes, or perhaps, in the current United States, an elected monarch. More fundamental to the discussion are the principles and procedures that support and sustain constitutional government.

#### 3. Inter-branch politics are crucial in the context of war powers – it's the reason restrictions exist – makes the counterplan educational and necessary ground

Jenkins 10 (David – Assistant Professor of Law, University of Copenhagen, “Judicial Review Under a British War Powers Act”, Vanderbilt Journal of Transnational Law, May, 43 Vand. J. Transnat'l L. 611, lexis)

In this pragmatic way, the Constitution attempts to balance the efficiency of centralized, executive military command with heightened democratic accountability through legislative debate, scrutiny, and approval. n28 Therefore, despite the Constitution's formal division of war powers between the executive and the legislature, disputes over these powers in the U.S. are usually resolved politically rather than judicially. n29 This constitutional arrangement implicitly acknowledges that both political branches possess certain institutional qualities suited to war-making. n30 These include the dispatch, decisiveness, and discretion of the executive with the open deliberation of the legislature and localized political accountability of its members, which are virtues that the slow, case specific, and electorally isolated courts do not possess. n31 The open, politically contestable allocation of [\*618] war powers under the Constitution not only permits differing and perhaps conflicting interpretations of the legal demarcations of branch authority but also accommodates differing normative preferences for determining which values and which branches are best-suited for war-making. n32 Furthermore, this system adapts over time in response to inter-branch dynamics and shifting value judgments that are themselves politically contingent. Thus, the American war powers model is an intrinsically political - not legal - process for adjusting and managing the different institutional capabilities of the legislative and executive branches to substantiate and reconcile accountability and efficiency concerns. A deeper understanding of why this might be so, despite the judiciary's power to invalidate even primary legislation, can inform further discussions in the United Kingdom about the desirability and advisability of putting the Crown's ancient war prerogative on a statutory footing.

#### 4. Predictable and fair – they can read signal, credibility, and precedent advantages to congress or court action, it’s at the heart of the literature so there’s plenty of aff and neg lit, and it tests “statutory” and “judicial”.

#### 5. Aff side bias – most of the lit advocates decreasing war powers and four broad categories means there’s a litany of affs but few DA’s. The counterplan provides an inherent check on the topic for the negative so debates mirror the literature

#### 6. Gut check – affs should have to defend their actor. Process is important, otherwise neg ground would become torture and cyberwar good on this topic

#### 7. At worst, reject the argument not the team

### Theory – Agent CP – 2NC

#### Counterplan is legitimate –

#### 1. Tests “statutory” and “judicial” – executive action is a different mechanism. Its non-topical, core ground, and something they should be prepared for – that’s Duncan

#### 2. Inter-branch politics are crucial in the context of war powers – it's the reason restrictions exist – makes the counterplan educational and necessary ground

Jenkins 10 (David – Assistant Professor of Law, University of Copenhagen, “Judicial Review Under a British War Powers Act”, Vanderbilt Journal of Transnational Law, May, 43 Vand. J. Transnat'l L. 611, lexis)

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#### 3. Process key to education

Schuck 99 (Peter H., Professor, Yale Law School, and Visiting Professor, New York Law School, Spring (“Delegation and Democracy” – Cardozo Law Review) http://www.constitution.org/ad\_state/schuck.htm)

God and the devil are in the details of policymaking, as they are in most other important things—and the details are to be found at the agency level. This would remain true, moreover, even if the nondelegation doctrine were revived and statutes were written with somewhat greater specificity, for many of the most significant impacts on members of the public would still be indeterminate until the agency grappled with and defined them. Finally, the agency is often the site in which public participation is most effective. This is not only because the details of the regulatory impacts are hammered out there. It is also because the agency is where the public can best educate the government about the true nature of the problem that Congress has tried to address. Only the interested parties, reacting to specific agency proposals for rules or other actions, possess (or have the incentives to ac-quire) the information necessary to identify, explicate, quantify, and evaluate the real-world consequences of these and alternative proposals. Even when Congress can identify the first-order effects of the laws that it enacts, these direct impacts seldom exhaust the laws’ policy consequences. Indeed, first-order effects of policies usually are less significant than the aggregate of more remote effects that ripple through a complex, interrelated, opaque society. When policies fail, it is usually not because the congressional purpose was misunderstood. More commonly, they fail because Congress did not fully appreciate how the details of policy implementation would confound its purpose. Often, however, this knowledge can only be gained through active public participation in the policymaking process at the agency level where these implementation issues are most clearly focused and the stakes in their correct resolution are highest.

#### 4. Neg flex – we need to test from all angles – agent ground is vital to fairness, particularly on this topic – most neg lit is about how restrictions are put in place, not whether they should be there

Fisher 3 (Louis – Senior Specialist in Separation of Powers, Congressional Research Service, The Library of Congress. Ph.D., New School for Social Research, “A Constitutional Structure for Foreign Affairs”, 2003, 19 Ga. St. U.L. Rev. 1059, lexis)

It is conventional, and I suppose convenient, to divide scholars on the war power and foreign affairs into "pro-congressionalists" and "propresidentialists." Their writings may seem to demonstrate a sympathy for one branch over another. However, scholarship is shallow if it merely latches itself onto one branch of government while shooting holes in the other. Analysis of the war power and foreign affairs demands a higher standard: recognizing institutional weaknesses along with institutional strengths, appreciating that the democratic process requires deliberation and collective action, and promoting policies that can endure rather than attempting short-term, unilateral solutions that fail. Moreover, the important point is not which branch has the political power to prevail. If that were the standard, we would always side with autocratic and even totalitarian regimes, or perhaps, in the current United States, an elected monarch. More fundamental to the discussion are the principles and procedures that support and sustain constitutional government.

#### 5. Fair & Predictable – they can defend “congress/judiciary key”, our net-benefit proves it’s not trivial, and it’s at the heart of the topic

#### 6. Not a voter – reject the argument, not the team

#### 7. DAs Aren’t Enough

#### A. Comparative necessity - backlash DAs don’t help decide which branch is better suited in foreign policy

#### B. CPs are needed to deal with entrenched status quo trends as well as understand different processes, instead of simply debating DAs every round that never get the heart of agent debates

### A2: Perm – Do Both

#### -- Links to politics – it includes legislative action. Only the CP alone shields the links

#### -- Links to state secrets – oversight requires the disclosure of classified material regarding presidential war powers – to present that evidence, the courts must rule against the state secret privilege

### A2: Perm – Do CP

#### -- Severs the mechanism –

#### Statutory restrictions require congressional statutes

Barron and Lederman 8 (David J. – Professor of Law, Harvard Law School, and Martin S. – Visiting Professor of Law, Georgetown University Law Center, “THE COMMANDER IN CHIEF AT THE LOWEST EBB - FRAMING THE PROBLEM, DOCTRINE, AND ORIGINAL UNDERSTANDING”, January, 121 Harv. L. Rev. 689, lexis)

2. Congress (Almost) Always Wins Under the Separation of Powers Principle. - We must also consider a related argument for congressional supremacy. This claim is based on the doctrinal test that generally governs separation of powers issues arising from clashes between the President and the Congress in the domestic setting. n149 Under this test, the "real question" the Court asks is whether the statute "impedes the President's ability to perform" his constitutionally assigned functions. n150 And even if such a potential for disruption of executive authority is present, the Court employs a balancing test to "determine whether that impact is justified by an overriding need to promote objectives within the constitutional authority of Congress." n151 Thus, under the general separation of powers principle, even a "serious impact ... on the ability of the Executive Branch to accomplish its assigned mission" might not be enough to render a statute invalid. n152 This approach appears to have a pro-congressional tilt; yet it actually does little more than relocate the dilemma it is impressed to avoid. Even under this deferential test, it is well understood that certain statutes can infringe the President's constitutionally assigned authority to exercise discretion; a statutory restriction on the pardoning of a given category of persons is an obvious example. Nothing in the application of the separation of powers test, then, explains why certain core executive powers (including merely discretionary authorities, rather than obligatory duties) cannot be infringed, even though it is generally understood that such inviolable cores might exist. For this reason, the general separation of powers principle does not actually resolve the question that arises in a Youngstown Category Three case. In all [\*739] events, the question remains whether the President possesses an illimitable reserve of wartime authority. Insofar as the separation of powers principle is thought to provide affirmative support for congressional control, it seems objectionable because it, too, fails to require the analyst to explain why the particular wartime power the President is asserting is not one that Congress can countermand. It simply asserts that it is not.

#### Statutes are enacted by legislative action

Ballentine’s 10 (Ballentine’s Law Dictionary, “Act”, 2010, lexis)

1. Verb: To perform; to fulfill a function; to put forth energy; to move, as opposed to remaining at rest; to carry into effect a determination of the will. Holt v Middlebrook (CA4 Va) 214 F2d 187, 52 ALR2d 1043. To simulate; to perform on stage, screen or television. 2. Noun: A thing done or established; a part of a play or musical comedy; a deed or other written instrument evidencing a contract or an obligation. A statute; a bill which has been enacted by the legislature into a law, as distinguished from a bill which is in the form of a law presented to the legislature for enactment.

#### Judicial restrictions are imposed by courts

Kang 6 (Michael – Assistant Professor, Emory University School of Law, “De-Rigging Elections: Direct Democracy and the Future of Redistricting Reform”, 2006, 84 Wash. U. L. Rev. 667, lexis)

The Court's general reluctance to restrict partisan gerrymandering appeared motivated by a lack of judicial confidence. Judicial restriction of gerrymandering would draw courts, which are putatively nonpartisan and apolitical institutions, n39 into the untenable position of managing what is fundamentally a political exercise. Justice Kennedy emphasized the difficulty for courts of "acting without a legislature's expertise" and the unwelcome task of removing from the democratic process "one of the most significant acts a State can perform to ensure citizen participation in republican self-governance." n40 Indeed, challenges to gerrymanders demand more of courts than simply striking down excessively partisan plans. Today, judicial intervention against gerrymandering almost necessarily brings with it active judicial management of the redistricting process. A court that strikes down a redistricting plan, for whatever reason, n41 invariably is drawn into authorship of a new redistricting plan to replace it, or a close interaction with legislators working to formulate a new plan (or both). n42 Courts "become active players often placed in the uncomfortable role of determining winners and losers in redistricting, and, therefore, elections." n43 When courts have involved themselves in redistricting matters, namely in racial gerrymandering and one person, one vote cases, [\*675] the courts have drawn heavy criticism. n44 Even so, Justice Stevens predicted that "the present "failure of judicial will' will be replaced by stern condemnation of partisan gerrymandering." n45 Greater judicial direction of the redistricting process is a price that Justice Stevens and reformers seem happy to pay. They are more than willing to trade the costs of judicial entanglement for the perceived benefits of judicial oversight in redistricting. I further discuss the costs of this approach in Part III.

#### Severance is a voter – makes the aff a moving target and makes it impossible for the neg to have stable ground because of shifting, late-breaking debates

#### They destroy legal precision about agency implementation that’s key to topic education and the ability to test “statutory/judicial restrictions”

### AT: 1AC Dycus

#### They can’t access Dycus, he says

Congress accordingly needs to work closely with the executive branch in the development of a policy for this new kind of conflict

### 2NC Exec CP Solves/Aff Fails

#### Congress should let the president do the AFF

Stephen Dycus—1AC Author—10, Professor, Vermont Law School, 8/11/10, “Congress’s Role in Cyber Warfare,” <http://jnslp.com/wp-content/uploads/2010/08/11_Dycus.pdf>

Congress obviously cannot act alone to develop a cyber warfare policy for the United States. Its members and staff lack the technical expertise, agility, and organization to wield this new, evolving weaponry. On the other hand, Congress’s job in our constitutional system is to set national policy for the executive branch to execute. Especially in the matter of cyber warfare, where the diplomatic and strategic stakes are potentially as high as they are in any kinetic conflict, Congress has a critical role to play. It has perspective gained from long experience in foreign affairs and a host of related issues, and it may be more responsive to the popular will. The solution to this apparent conundrum may be found in a close collaboration between the political branches in the planning and implementation of rules for cyber warfare.58¶ Congress needs to act now to create authority and set boundaries within which the President may develop more refined protocols. This legislative development should be guided by advice from executive branch officials. The process must be cooperative rather than competitive. The resulting rules will necessarily be partly statutory, partly executive. The recent White House Cybersecurity Policy Review recommended that the “Administration should partner appropriately with Congress to ensure [that] adequate law, policies, and resources are available to support the U.S. cybersecurity-related missions.”59¶ Set out below are some steps that Congress might take to create an appropriate partnership. Some of these steps involve changes in congressional committees and responsibilities. Others would require coordination of cybersecurity functions within the executive branch. Still others would direct the President to keep Congress fully informed about anticipated and actual uses of cyber weapons. Several would restrict potential executive branch actions that seem – as a matter of policy – particularly unwise.

#### The CP solves and avoids the crisis DA and circumvention turn

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Congress accordingly needs to work closely with the executive branch in the development of a policy for this new kind of conflict. Such a policy ought to reflect the distinctive technology and strategy of digital warfare, and it should be reviewed constantly as the technology evolves. Like other regulations dealing with dynamic subjects, this policy should include general approaches that reflect this nation’s broad strategic concerns and fundamental values. But the policy must also be crafted with enough flexibility to allow those charged with its execution to deal with future developments that cannot now be predicted. And it should set out a procedure for such adaptive use by identifying, for example, who must be consulted under what circumstances, and who will make the final critical decisions. ¶ It is at least theoretically possible that Congress could play an active, real-time role in the implementation of whatever cyber warfare policy is adopted. The policy might, for example, like the War Powers Resolution, require consultation “in every possible circumstance.”50 But it seems more likely that a digital war would begin and end before any notice could ever reach Capitol Hill. Congress therefore needs to lay down clear guidelines, with as much flexibility as prudence requires, for executive branch officials to follow if consultation is not reasonably possible. And Congress should require a prompt and full account of every significant use of cyber weapons.