# 1nc msu bp

### T

#### Restrictions are permanent and legally binding

Davis 2 (Todd S., Chief Executive Officer – Hemisphere Development, *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property*, p. 196)

A statutory restriction is utilized by many states in their model codes to ensure that the restriction is forever binding against the landowner and successors in interest." In the context of state voluntary cleanup programs, restrictions are often created between the private property owner and the state. In the belter state programs, the restriction will state that the appropriate state agency may enforce the restriction.1' The restriction should also be recorded or registered with the appropriate land records and authorities, to provide future landowners with notice.

#### This excludes consultation or notification requirements

Fisher 97 (Louis, Senior Specialist in Separation of Power – Congressional Research Service, “Presidential Independence and the Power of the Purse,” U.C. Davis Journal of International Law & Policy, Spring, 3 U.C. Davis J. Int'l L. &Pol'y 107, Lexis)

Members of Congress continue to use the power of the purse to direct the President in foreign affairs and war, but increasingly they exhibit a lack of institutional self-confidence. They do not function like a coequal branch. A greater number of legislators believe that the Constitution, whatever its original purpose, now gives the lion's share (if not the exclusive share) of foreign policy and the war power to the President. The result is statutory language and legislative histories that are conspicuously vague and contradictory. It is not unusual to see legislative principles expressed in non-binding form, merely announcing the "sense" of Congress on a matter of national urgency. Non-binding resolutions are not totally without effect. They at least can be cited as evidence that Congress has not completely acquiesced to presidential actions. n195But if members of Congress want to participate in questions of war and peace on a coequal basis and with maximum effectiveness, they must do so through explicit statutory commands,not sense-of-Congress resolutions. The framers did not create Congress -- the first branch of government -- to debate and release general, non-binding declarations. Nor is it consistent with the Constitution for executive officials to merely "consult" legislators before they act. The purpose of Congress is to authorize national policy, especially in military affairs.

#### Voting issue – for predictable limits and ground. Procedural limitations are minor hurdles that don’t reduce the scope of executive actions – it allows endless small affs that bypass the core literature controversies

### 1nc DA

#### Obama is investing all of his political capital in blocking Iran sanctions – he’s winning the fight and momentum is on his side

**Benen, 1/17/14** – American political writer and blogger, an MSNBC contributor, and a producer for The Rachel Maddow Show (Steve, “Support for new Iran sanctions wanes”

<http://www.msnbc.com/rachel-maddow-show/support-new-iran-sanctions-wanes>)

A week ago, it was practically a foregone conclusion that such a bill would pass the House and Senate; the question is whether President Obama’s veto could be overridden. Just of the last few days, however, the odds of such a bill even reaching the president’s desk have dropped unexpectedly.

The Hill, for example, reported yesterday that House Republicans “are moving away from a proposal to adopt new Iran sanctions.” House Democrats who were otherwise sympathetic to the idea became “irked” by GOP political tactics “and the idea appears to have been at least temporarily shelved.”

In the Senate, meanwhile, BuzzFeed reports that Sen. Bob Corker (R-Tenn.), a co-sponsor of the legislation, has “proposed the idea of scheduling a vote on Iran sanctions six months from now, after the interim nuclear agreement has run its course, instead of voting on sanctions right now.”

In other words, lawmakers could at least wait to see if the talks bear fruit before sabotaging them in advance. Corker’s idea isn’t ideal – it would reportedly lock in the Senate for a vote on July 21, exactly six months after the current deal is implemented, regardless of the status of the diplomacy – but in the larger context it suggests even sanctions supporters are starting to see value in waiting.

Indeed, an unnamed senator who supports the sanctions bill told Greg Sargent this week that opponents have the momentum. The senator added, “At the moment, there’s no rush to put the bill on the floor. I’m not aware of any deadline in anyone’s head.”

Keep in mind, the sanctions legislation was introduced in the Senate on Dec. 19 with a bipartisan group of 26 sponsors. Over the course of just three weeks, that total more than doubled to 59 sponsors. But the last addition was eight days ago – and no other senators have signed on since.

What changed the direction of the debate? To be sure, White House pressure has made a difference, reinforced by President Obama’s direct lobbying to Democratic senators this week. I also talked to a Senate staffer yesterday who said public pressure has also increased, with more voters contacting the Hill with phone calls and emails, voicing opposition to the bill.

#### It’s a war powers fight that Obama is winning

**Merry, 1/1/14** - Robert W. Merry, political editor of the National Interest, is the author of books on American history and foreign policy (Robert, “Obama may buck the Israel lobby on Iran” Washington Times, factiva)

Presidential press secretary Jay Carney uttered 10 words the other day that represent a major presidential challenge to the American Israel lobby and its friends on Capitol Hill. Referring to Senate legislation designed to force President Obama to expand economic sanctions on Iran under conditions the president opposes, Mr. Carney said: “If it were to pass, the president would veto it.”

For years, there has been an assumption in Washington that you can’t buck the powerful Israel lobby, particularly the American Israel Public Affairs Committee, or AIPAC, whose positions are nearly identical with the stated aims of Israeli Prime Minister Benjamin Netanyahu. Mr. Netanyahu doesn’t like Mr. Obama’s recent overture to Iran, and neither does AIPAC. The result is the Senate legislation, which is similar to a measure already passed by the House.

With the veto threat, Mr. Obama has announced that he is prepared to buck the Israel lobby — and may even welcome the opportunity. It isn’t fair to suggest that everyone who thinks Mr. Obama’s overtures to Iran are ill-conceived or counterproductive is simply following the Israeli lobby’s talking points, but Israel’s supporters in this country are a major reason for the viability of the sanctions legislation the president is threatening to veto.

It is nearly impossible to avoid the conclusion that the Senate legislation is designed to sabotage Mr. Obama’s delicate negotiations with Iran (with the involvement also of the five permanent members of the U.N. Security Council and Germany) over Iran’s nuclear program. The aim is to get Iran to forswear any acquisition of nuclear weapons in exchange for the reduction or elimination of current sanctions. Iran insists it has a right to enrich uranium at very small amounts, for peaceful purposes, and Mr. Obama seems willing to accept that Iranian position in the interest of a comprehensive agreement.

However, the Senate measure, sponsored by Sens. Robert Menendez, New Jersey Democrat; Charles E. Schumer, New York Democrat; and Mark Kirk, Illinois Republican, would impose potent new sanctions if the final agreement accords Iran the right of peaceful enrichment. That probably would destroy Mr. Obama’s ability to reach an agreement. Iranian President Hasan Rouhani already is under pressure from his country’s hard-liners to abandon his own willingness to seek a deal. The Menendez-Schumer-Kirk measure would undercut him and put the hard-liners back in control.

Further, the legislation contains language that would commit the United States to military action on behalf of Israel if Israel initiates action against Iran. This language is cleverly worded, suggesting U.S. action should be triggered only if Israel acted in its “legitimate self-defense” and acknowledging “the law of the United States and the constitutional responsibility of Congress to authorize the use of military force,” but the language is stunning in its brazenness and represents, in the view of Andrew Sullivan, the prominent blogger, “an appalling new low in the Israeli government’s grip on the U.S. Congress.”

While noting the language would seem to be nonbinding, Mr. Sullivan adds that “it’s basically endorsing the principle of handing over American foreign policy on a matter as grave as war and peace to a foreign government, acting against international law, thousands of miles away.”

That brings us back to Mr. Obama’s veto threat. The American people have made clear through polls and abundant expression (especially during Mr. Obama’s flirtation earlier this year with military action against Bashar Assad’s Syrian regime) that they are sick and weary of American military adventures in the Middle East. They don’t think the Iraq and Afghanistan wars have been worth the price, and they don’t want their country to engage in any other such wars.

That’s what the brewing confrontation between Mr. Obama and the Israel lobby comes down to — war and peace. Mr. Obama’s delicate negotiations with Iran, whatever their outcome, are designed to avert another U.S. war in the Middle East. The Menendez-Schumer-Kirk initiative is designed to kill that effort and cedes to Israel America’s war-making decision in matters involving Iran, which further increases the prospects for war. It’s not even an argument about whether the United States should come to Israel’s aid if our ally is under attack, but whether the decision to do so and when that might be necessary should be made in Jerusalem or Washington.

2014 will mark the 100th anniversary of beginning of World War I, a conflict triggered by entangling alliances that essentially gave the rulers of the Hapsburg Empire power that forced nation after nation into a war they didn’t want and cost the world as many as 20 million lives. Historians have warned since of the danger of nations delegating the power to take their people into war to other nations with very different interests.

AIPAC’s political power is substantial, but this is Washington power, the product of substantial campaign contributions and threats posed to re-election prospects. According to the Center for Responsive Politics’ Open Secrets website, Sens. Kirk, Menendez and Schumer each receives hundreds of thousands of dollars a year in pro-Israel PAC money and each of their states includes concentrations of pro-Israel voters who help elect and re-elect them.

Elsewhere in the country, AIPAC’s Washington power will collide with the country’s clear and powerful political sentiment against further U.S. adventurism in the Middle East, particularly one as fraught with as much danger and unintended consequence as a war with Iran. If the issue gets joined, as it appears that it will, Mr. Obama will see that it gets joined as a matter of war and peace. If the Menendez-Schumer-Kirk legislation clears Congress and faces a presidential veto, the war-and-peace issue could galvanize the American people as seldom before.

If that happens, the strongly held opinions of a democratic public are liable to overwhelm the mechanisms of Washington power, and the vaunted influence of the Israel lobby may be seen as being not quite what it has been cracked up to be.

#### **Plan’s a perceived loss – that causes Obama’s allies to defect**

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

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

#### That means sanctions proponents will be able to override a veto

**Kampeas, 1/24/14** – Washington, D.C. bureau chief of the Jewish Telegraphic Agency (Ron, Heritage Florida Jewish News, “Iran sanctions have majority backing in Senate, but not enough to override veto”

<http://www.heritagefl.com/story/2014/01/24/news/iran-sanctions-have-majority-backing-in-senate-but-not-enough-to-override-veto/2115.html>

WASHINGTON (JTA)—More than half the United States Senate has signed on to a bill that would intensify sanctions against Iran. But in a sign of the so-far successful effort by the White House to keep the bill from reaching a veto-busting 67 supporters, only 16 Democrats are on board.

The number of senators cosponsoring the bill, introduced by Sens. Mark Kirk (R-Ill.) and Robert Menendez (D-N.J.), reached 58 this week, up from just 33 before the Christmas holiday break.

Notably only one of the 25 who signed up in recent days—Sen. Michael Bennet (D-Colo.)—is a Democrat, a sign of intense White House lobbying among Democrats to oppose the bill.

Backers of the bill say it would strengthen the U.S. hand at the negotiations. But President Obama has said he would veto the bill because it could upend talks now underway between the major powers and Iran aimed at keeping the Islamic Republic from obtaining a nuclear bomb. A similar bill passed this summer by the U.S. House of Representatives had a veto-proof majority.

On Thursday, the White House said backers of the bill should be upfront about the fact that it puts the United States on the path to war.

“If certain members of Congress want the United States to take military action, they should be up front with the American public and say so,” Bernadette Meehan, the National Security Council spokeswoman, said in a statement posted by The Huffington Post. “Otherwise, it’s not clear why any member of Congress would support a bill that possibly closes the door on diplomacy and makes it more likely that the United States will have to choose between military options or allowing Iran’s nuclear program to proceed.”

A number of pro-Israel groups, led by the American Israel Public Affairs Committee, are leading a full-court press for the bill’s passage, with prominent Jewish leaders in a number of states making calls and writing letters to holdouts. Dovish Jewish groups such as J Street and Americans for Peace Now oppose the bill.

#### Sanctions bill causes Israeli strikes

**Perr, 12/24/13 -** B.A. in Political Science from Rutgers University; technology marketing consultant based in Portland, Oregon. Jon has long been active in Democratic politics and public policy as an organizer and advisor in California and Massachusetts. His past roles include field staffer for Gary Hart for President (1984), organizer of Silicon Valley tech executives backing President Clinton's call for national education standards (1997), recruiter of tech executives for Al Gore's and John Kerry's presidential campaigns, and co-coordinator of MassTech for Robert Reich (2002).(Jon, “Senate sanctions bill could let Israel take U.S. to war against Iran” Daily Kos, [http://www.dailykos.com/story/2013/12/24/1265184/-Senate-sanctions-bill-could-let-Israel-take-U-S-to-war-against-Iran#](http://www.dailykos.com/story/2013/12/24/1265184/-Senate-sanctions-bill-could-let-Israel-take-U-S-to-war-against-Iran)

As 2013 draws to close, the negotiations over the Iranian nuclear program have entered a delicate stage. But in 2014, the tensions will escalate dramatically as a bipartisan group of Senators brings a new Iran sanctions bill to the floor for a vote. As many others have warned, that promise of new measures against Tehran will almost certainly blow up the interim deal reached by the Obama administration and its UN/EU partners in Geneva. But Congress' highly unusual intervention into the President's domain of foreign policy doesn't just make the prospect of an American conflict with Iran more likely. As it turns out, the Nuclear Weapon Free Iran Act essentially empowers Israel to decide whether the United States will go to war against Tehran.

On their own, the tough new sanctions imposed automatically if a final deal isn't completed in six months pose a daunting enough challenge for President Obama and Secretary of State Kerry. But it is the legislation's commitment to support an Israeli preventive strike against Iranian nuclear facilities that almost ensures the U.S. and Iran will come to blows. As Section 2b, part 5 of the draft mandates:

If the Government of Israel is compelled to take military action in legitimate self-defense against Iran's nuclear weapon program, the United States Government should stand with Israel and provide, in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force, diplomatic, military, and economic support to the Government of Israel in its defense of its territory, people, and existence.

Now, the legislation being pushed by Senators Mark Kirk (R-IL), Chuck Schumer (D-NY) and Robert Menendez (D-NJ) does not automatically give the President an authorization to use force should Israel attack the Iranians. (The draft language above explicitly states that the U.S. government must act "in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force.") But there should be little doubt that an AUMF would be forthcoming from Congressmen on both sides of the aisle. As Lindsey Graham, who with Menendez co-sponsored a similar, non-binding "stand with Israel" resolution in March told a Christians United for Israel (CUFI) conference in July:

"If nothing changes in Iran, come September, October, I will present a resolution that will authorize the use of military force to prevent Iran from developing a nuclear bomb."

Graham would have plenty of company from the hardest of hard liners in his party. In August 2012, Romney national security adviser and pardoned Iran-Contra architect Elliott Abrams called for a war authorization in the pages of the Weekly Standard. And just two weeks ago, Norman Podhoretz used his Wall Street Journal op-ed to urge the Obama administration to "strike Iran now" to avoid "the nuclear war sure to come."

But at the end of the day, the lack of an explicit AUMF in the Nuclear Weapon Free Iran Act doesn't mean its supporters aren't giving Prime Minister Benjamin Netanyahu de facto carte blanche to hit Iranian nuclear facilities. The ensuing Iranian retaliation against to Israeli and American interests would almost certainly trigger the commitment of U.S. forces anyway.

Even if the Israelis alone launched a strike against Iran's atomic sites, Tehran will almost certainly hit back against U.S. targets in the Straits of Hormuz, in the region, possibly in Europe and even potentially in the American homeland. Israel would face certain retaliation from Hezbollah rockets launched from Lebanon and Hamas missiles raining down from Gaza.

That's why former Bush Defense Secretary Bob Gates and CIA head Michael Hayden raising the alarms about the "disastrous" impact of the supposedly surgical strikes against the Ayatollah's nuclear infrastructure. As the New York Times reported in March 2012, "A classified war simulation held this month to assess the repercussions of an Israeli attack on Iran forecasts that the strike would lead to a wider regional war, which could draw in the United States and leave hundreds of Americans dead, according to American officials." And that September, a bipartisan group of U.S. foreign policy leaders including Brent Scowcroft, retired Admiral William Fallon, former Republican Senator (now Obama Pentagon chief) Chuck Hagel, retired General Anthony Zinni and former Ambassador Thomas Pickering concluded that American attacks with the objective of "ensuring that Iran never acquires a nuclear bomb" would "need to conduct a significantly expanded air and sea war over a prolonged period of time, likely several years." (Accomplishing regime change, the authors noted, would mean an occupation of Iran requiring a "commitment of resources and personnel greater than what the U.S. has expended over the past 10 years in the Iraq and Afghanistan wars combined.") The anticipated blowback?

Serious costs to U.S. interests would also be felt over the longer term, we believe, with problematic consequences for global and regional stability, including economic stability. A dynamic of escalation, action, and counteraction could produce serious unintended consequences that would significantly increase all of these costs and lead, potentially, to all-out regional war.

#### An Israeli strike fails, but triggers World War 3, collapses heg and the global economy

**Reuveny, 10** – professor in the School of Public and Environmental Affairs at Indiana University (Rafael, “Unilateral strike could trigger World War III, global depression” Gazette Xtra, 8/7, - See more at: <http://gazettextra.com/news/2010/aug/07/con-unilateral-strike-could-trigger-world-war-iii-/#sthash.ec4zqu8o.dpuf>)

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.

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. After years of futilely fighting Palestinian irregular armies, Israel has lost some of its perceived superiority—bolstering its enemies’ resolve.

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.

From there, things could deteriorate as they did in the 1930s. 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.

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.

### 1nc CP

#### Plan: The United States Federal Government should preclude the President from initiating offensive use of non-nuclear military force without prior authorization from Congress, unless acting to repel armed attacks against the United States.

#### Congressional authorization for nuclear weapons erodes deterrence – causes nuclear war

Hansen 89 (Peter Raven-Hansen, Professor of Law, George Washington University National Law Center, “Special Issue: The United States Constitution In Its Third Century: Foreign Affairs: Distribution Of Constitutional Authority: Nuclear War Powers,” American Journal of International Law, October 1989, 83 A.J.I.L. 786)

The constitutionally most problematical, yet most likely, scenario for U.S. use of nuclear weapons is neither first nor second strike, but first use in deliberate escalation of a conventional war in Europe. Since a Warsaw Pact attack on our tripwire armed forces in Europe and our NATO allies would place us in a general war, n13 the President would assume the power as commander in chief to conduct that war as he chooses, and to use nuclear weapons first according to long-standing NATO plans, without the formality of congressional authorization. Defenders of this distribution of nuclear [\*789] war power find nothing in the Constitution that restricts the commander in chief's choice of weapons in a general war, and much in the preconstitutional experience of the Continental Congress that suggests the President has unfettered command of such tactical decisions. n14 The question, however, is less, what power does the President have to command the armed forces and make tactical decisions in war, than what war? Even if the President possesses inherent constitutional authority to fight a conventional war started by attack on our armed forces in Europe, does it necessarily follow that he has the authority to start and fight a nuclear war? A conventional war in Europe is a serious threat to our national security and would certainly cost thousands of American lives. But would it be the same war after the first use of nuclear weapons? A broad range of informed opinion, running across the political spectrum, agrees that nuclear escalation of a conventional European war would probably be uncontrollable, that "limited" nuclear war is a contradiction in terms. n15 As four of the deans of modern American national security policy have concluded: It is time to recognize that no one has ever succeeded in advancing any persuasive reason to believe that any use of nuclear weapons, even on the smallest scale, could reliably be expected to remain limited. . . . There is no way for anyone to have confidence that such a nuclear action will not lead to further and more devastating exchanges. Any use of nuclear weapons in Europe, by the Alliance or against it, carries with it a high and inescapable risk of escalation into the general nuclear war which would bring ruin to all and victory to none. n16 As grave as it is, the threat posed to U.S. national security by a conventional attack on NATO pales in significance beside the threat of general nuclear war. The Defense Department has justified the President's claims to nuclear war powers by reference to "emergency situations that would threaten the survival of the United States as a viable society." n17 But it is nuclear war that directly threatens the survival of the United States as a viable society, not, in the short run, a conventional war fought in Europe. Why should the President's conceded power to conduct a conventional war in Europe include the power to start, without congressional approval in any form, a nuclear war that carries a "high and inescapable risk" of destroying much of the American continent? The war clause of the Constitution vests in Congress alone the power to start a war that has not already been started by others, and a conventional attack in Europe does not start a nuclear war. Moreover, even if the commander in chief is conceded the choice of weapons and tactical alternatives, the nuclear weapon is hardly just another weapon. First use has political, not narrowly military, purposes; it is intended [\*790] to signal to the Warsaw Pact that continuation of the conventional attack will mean general nuclear war in which everyone loses. n18 In fact, NATO's threat of first use -- accurately characterized as a policy of "suicidal deterrence" n19 -- arguably rests on the probability that any first use will uncontrollably escalate into general nuclear war. The decision to "go nuclear" in a conventional war "is a political decision of the highest order," as President Lyndon Johnson said, n20 not a tactical choice of weapons. As such, it is not an inherent component of the commander in chief's command authority or a technical byproduct of military expertise, but precisely the ultimate national life-or-death decision that the Framers intended Congress to make when time permits. That time will not permit, however, is another argument for the current distribution of nuclear war power. It was partly to meet the exigencies of time that the Framers vested the power of command during war in a single commander in chief. If there are only minutes in which to decide to use nuclear weapons, Congress cannot possibly participate. In these circumstances, the President must be conceded inherent nuclear decision-making authority.

### 1nc CP

The United States federal government should pass a concurrent Congressional resolution expressing Congressional support for the statutory requirement of Congressional authorization prior to initiating offensive use of military force unless to repel attacks on the United States.

 and expressing the intent to remove funding if the executive continues to initiate offense use of military force unless to repel attacks on the United States.

#### It competes – it’s non-statutory.

Swaine, 10 **-** Associate Professor, George Washington University Law School (Edward, “THE POLITICAL ECONOMY OF YOUNGSTOWN” <http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1017&context=faculty_publications>)

Furthermore, Justice Jackson’s framework also suggested that congressional will

could be expressed non-statutorily – again, at least insofar as its negative was involved. Assessing Truman’s seizure, Jackson appeared to reason that the absence of circumstances qualifying for Category One or Category Two necessarily meant that Category Three applied; where “the President cannot claim that [his action was] necessitated or invited by failure of Congress to legislate,” he suggested, such an action must be incompatible with the implied will of Congress.104 That implied will might be expressed informally,105 as clarified by passages from the other concurrences to which Justice Jackson expressly subscribed.106 Justices Black and Frankfurter, in particular, each invoked congressional inaction – namely, the fact that Congress had refused amendments to the Taft-Hartley Act that would have clearly given President Truman seizure authority.107 If congressional will can be informally expressed, as by refusing to take action, it suggests the relevance of acts by a subset of Congress rather than Congress as a whole. Individual legislators, certainly, may rise in sufficient opposition to defeat a statutory initiative, and a committee may prevent a bill from making the requisite progress. Presumably other “soft law” measures – like simple resolutions passed by the majority of one house only, or concurrent resolutions passed by both houses but not presented to the President – would be even better indicia.108

#### The CP changes the allocation of authority without enforcing legal restrictions on it.

Gersen and Posner, 8 **-** Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

Soft statutes can also play an important role in the allocation of authority between Congress and the President. Consider the question of how the courts should evaluate executive action at the boundaries of Article II authority. In Youngstown Sheet & Tube Co. v. Sawyer, n113 Justice Jackson famously established a typology for understanding the borders of Article II power. "When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum ... ." n114 When Congress has said nothing or there is concurrent authority, there is a "zone of twilight" n115:

When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. n116

The President is on weakest ground when Congress has disapproved of the action: "When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter." n117

Justice Jackson's language is instructive. He does not say "when a formal statute grants or denies presidential authority." Instead, he refers to the express or implied will of Congress, suggesting that implicit acquiescence will be enough to justify executive action in the zone of ambiguous executive authority.

The soft statute should be the preferred mechanism for articulating congressional views in this setting n118 because it is a better indicator of legislative views than legislative inaction. There are dozens of reasons Congress fails to act, and negative inferences in the context of Article II powers are especially hazardous. In fact, the soft law analytic frame makes clear that Justice Jackson's typology is actually incomplete. Speaking of congressional agreement, disapproval, or silence is unnecessarily crude. The House might authorize the presidential action and the Senate might expressly disavow it (or vice versa), creating a twilight of the twilight category.

In fact, Congress does sometimes use resolutions for these purposes. For example, during 2007, a concurrent resolution was introduced, "expressing the sense of Congress that the President should not initiate military action against Iran without first obtaining authorization from Congress." n119 During the same Congress, Senate Resolutions were offered to censure the President, Vice-President, and Attorney General for conduct related to the war in Iraq, detainment of enemy combatants, and wiretapping practices undertaken without warrants. n120 Another proposed resolution expressed the sense of the Senate that the President has constitutional authority to veto individual items of appropriation without additional statutory authorization. n121 These potential soft [\*604] statutes were not passed by majorities, but they are precisely the sort of information on the scope of permissible executive authority that would inform Justice Jackson's analysis. n122

In this scenario, legislative sentiments, expressed in nonbinding mechanisms, are taken as inputs in the decision-making processes of other institutions - the courts - that themselves generate binding rules, that is, hard law. Even without judicial involvement, however, resolutions that assert congressional authority or limitations on presidential authority may influence the way that the two political branches share power with each other - either as moves in a game where each side must both cooperate and compete, or as appeals to public opinion. n123

#### It avoids politics

**Harvard Law Review, 11** (“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

If Congress wishes to resolve a statutory ambiguity, it always has the option of passing a law via bicameralism and presentment. In reality, however, passing laws is extremely difficult, and often the legislative enactment costs are simply greater than the benefits of resolving the ambiguity correctly. n1 Indeed, these high legislative enactment costs are among the reasons that so many of our statutes set forth broad principles rather than specify concrete requirements: gaining consensus on concrete textual mandates imposes even more costs on the already difficult process of legislation. A future Congress may want to clarify these vague statutory mandates as societal, legal, or technological circumstances change, as the consequences of certain policy choices become more apparent, or as legislators simply resolve their differences of opinion. But the costs of legislating a fix are usually too high. n2

Some leading commentators argue that this problem of statutory ossification due to high legislative enactment costs requires judges to interpret statutes as living documents. Professor William Eskridge claims that a statute’s meaning changes over time, and thus judges should “dynamically” interpret statutes.3 Judge Calabresi argues that judges should “update” obsolete statutes by striking down or ignoring any statute that is “sufficiently out of phase with the whole [contemporary] legal framework so that, whatever its age, it can only stand if a current majoritarian or representative body reaffirms it.”4 However, most commentators have criticized such approaches as putting too much power in the hands of unelected and unaccountable judges.5

Instead, Congress has largely relied on administrative agencies to continually update the policies that implement various statutes. When charged with administering statutes, such agencies often have the authority to interpret the legislation's vague commands by translating them into more precise and concrete rules. n6 Moreover, courts have given great deference to agency interpretations of ambiguous statutes under Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc. n7 These agency interpretations, although the products of a more politically accountable process than judicial interpretations, nonetheless are not as publicly deliberative or as nationally representative as a congressional decision. Worse, many other statutes that are similarly indefinite are not administered by any particular agency, thus leaving courts with the primary responsibility to develop the law - and thus the policy - under these statutes, despite judges' lack of expertise and accountability. n8 But by prohibiting one house of Congress from vetoing agency actions, the Supreme Court, in INS v. Chadha, n9 limited Congress's role in administering statutes, despite its institutional advantages over courts - and, in some respects, over agencies - in developing policy.

In a recent article, Professors Jacob Gersen and Eric Posner suggest that courts should pay greater attention to post-enactment congressional resolutions when interpreting statutes. n10 This Note develops their idea by proposing more modest congressional involvement than the legislative veto invalidated in Chadha: courts should defer to a [\*1509] House or Senate resolution that adopts a reasonable interpretation of an ambiguous statute. n11 For statutes not administered by any agency with interpretive authority, such deference to a congressional resolution would improve lawmaking by bringing to bear the legislature's policy expertise and democratic accountability. But even for statutes administered by agencies, this proposal would increase accountability. Further, this proposal would help to restore checks and balances and the Constitution's original allocation of power by making the House and Senate coequal with executive agencies in interpreting ambiguous statutory provisions. Whenever these institutions disagree, courts should simply adopt their own best reading of the statute, de novo.

I. Statutes Without Agencies

Courts should give Chevron-like deference to any resolution passed by either the House or the Senate that reasonably interprets a statutory ambiguity. When deciding whether to defer to such a congressional resolution, courts should engage in both steps of the Chevron analysis, just as they do for agency interpretations of statutes: First, the statute must be "silent or ambiguous with respect to the specific issue" addressed by the congressional resolution. n12 Second, the resolution's interpretation must be "based on a permissible construction of the statute." n13

## Interventions

### 1nc groupthink

#### Get real—this is the same Congress that tried to repeal ObamaCare 41 times. The only thing Cantor or Mitch McConnell will contribute to foreign policy is intellectual diarrhea.

#### Congress can't solve groupthink

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

The idea that Congress will, on net, weed out bad policies rests on an institutional comparison. The president is elected by a national constituency on a winner-take-all basis (barring the remote chance that the Electoral College will matter), whereas Congress is a summation of local constituencies and thus affords more voice to political and racial minorities. At the level of political psychology, decisionmaking within the executive is prone to group polarization and other forms of groupthink or irrational panic,51 whereas the internal diversity of legislative deliberation checks these forces. At the level of political structure, Congress contains internal veto gates and chokepoints—consider the committee system and the fi libuster rule—that provide minorities an opportunity to block harmful policies, whereas executive decisionmaking is relatively centralized and unitary.

The contrast is drawn too sharply, because in practice the executive is a they, not an it. Presidential oversight is incapable of fully unifying executive branch policies, which means that disagreement flourishes within the executive as well, dampening panic and groupthink and providing minorities with political redoubts.52 Where a national majority is internally divided, the structure of presidential politics creates chokepoints that can give racial or ideological minorities disproportionate influence, just as the legislative process does. Consider the influence of Arab Americans in Michigan, often a swing state in presidential elections.

It is not obvious, then, that statutory authorization makes any difference at all. One possibility is that a large national majority dominates both Congress and the presidency and enacts panicky policies, oppresses minorities, or increases security in ways that have ratchet effects that are costly to reverse. If this is the case, a requirement of statutory authorization does not help. Another possibility is that there are internal institutional checks, within both the executive branch and Congress, on the adoption of panicky or oppressive policies and that democratic minorities have real infl uence in both arenas. If this is the case, then a requirement of authorization is not necessary and does no good. Authorization only makes a difference in the unlikely case where the executive is thoroughly panicky, or oppressively majoritarian, while Congress resists the stampede toward bad policies and safeguards the interests of oppressed minorities.

Even if that condition obtains, however, the argument for authorization goes wrong by failing to consider both sides of the normative ledger. As for majoritarian oppression, the multiplicity of veto gates within Congress may allow minorities to block harmful discrimination, but it also allows minorities to block policies and laws which, although targeted, are nonetheless good. As for panic and irrationality, if Congress is more deliberative, one result will be to prevent groupthink and slow down stampedes toward bad policies, but another result will be to delay necessary emergency measures and slow down stampedes toward good policies. Proponents of the authorization requirement sometimes assume that quick action, even panicky action, always produces bad policies. But there is no necessary connection between these two things; expedited action is sometimes good, and panicky crowds can stampede either in the wrong direction or in the right direction. Slowing down the adoption of new policies through congressional oversight retards the adoption not only of bad policies, but also of good policies that need to be adopted quickly if they are to be effective.

#### No realistic scenario

Pillar, 13 -- Brookings Foreign Policy Senior Fellow

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

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

### No intervention

#### US won’t do more mindless interventions

**Mandelbaum 11** (Michael Mandelbaum, A. Herter Professor of American Foreign Policy, the Paul H. Nitze School of Advanced International Studies, Johns Hopkins University, Washington DC; and Director, Project on East-West Relations, Council on Foreign Relations, “CFR 90th Anniversary Series on Renewing America: American Power and Profligacy,” Jan 2011) [http://www.cfr.org/publication/23828/cfr\_90th\_anniversary\_series\_on\_renewing\_america.html?cid=rss-fullfeed-cfr\_90th\_anniversary\_series\_on-011811&utm\_source=feedburner&utm\_medium=feed&utm\_campaign=Feed:+cfr\_main+(CFR.org+-+Main+Site+Feed)](http://www.cfr.org/publication/23828/cfr_90th_anniversary_series_on_renewing_america.html?cid=rss-fullfeed-cfr_90th_anniversary_series_on-011811&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+cfr_main+%28CFR.org+-+Main+Site+Feed%29)

MANDELBAUM:  I think it is, Richard.  And I think that this period really goes back two decades.  I think the wars or the interventions in Somalia, in Bosnia, in Kosovo, in Haiti belong with the interventions in Afghanistan and Iraq, although they were undertaken by different administrations for different reasons, and had different costs.  But all of them ended up in the protracted, unexpected, unwanted and expensive task of nation building. Nation building has never been popular.  The country has never liked it.  It likes it even less now.  And I think we're not going to do it again.  We're not going to do it because there won't be enough money.  We're not going to do it because there will be other demands on the public purse.  We won't do it because we'll be busy enough doing the things that I think ought to be done in foreign policy.  And we won't do it because it will be clear to politicians that the range of legitimate choices that they have in foreign policy will have narrowed and will exclude interventions of that kind.  So I believe and I say in the book that the last -- the first two post-Cold War decades can be seen as a single unit.  And that unit has come to an end.

#### Public Opposition will prevent future interventions

**Foley 11** (Elise; Huffington Post, “John McCain: We Won't Go To War In The Middle East Again,” <http://www.huffingtonpost.com/2011/09/11/john-mccain-we-wont-go-to_n_957303.html>)

Sen. Jon McCain defended the government's decision to go to war in Iraq and Afghanistan in the wake of the Sept. 11 terrorist attacks, but said he recognizes that public opinion would prevent the United States from going to war in the Middle East again soon.

"I think we did the right thing there, but I also think we learned a lot of lessons, and frankly, I don't think you're going to see the United States of America in another war in that part of the world," McCain (R-Ariz.) said on "Fox News Sunday," speaking on the 10-year anniversary of the 9/11 attacks.

"I don't think American public opinion would stand for it," he added.

McCain's tone was a slight shift from his normal hawkishness on foreign policy, where he has been quick to criticize the president for using too little force in Libya and planning a draw-down of troops in Afghanistan.

He acknowledged the frustration that many Americans feel with the wars in Iraq and Afghanistan, which have continued for years beyond their planned end-dates.

Still, McCain defended the decisions to invade the two nations, saying Americans can "be proud of the fact that there has not been another terrorist attack."

“Whether we should have gone to Iraq or Afghanistan, I believe we should have," he said. "Whether it's mismanaged and whether we underestimated the enormity of the challenge we faced, I think historians will judge. But I don't think we should ever forget that those attacks originated in Afghanistan."

One major mistake, he argued, was the torture and abuse of detainees that went on in the Abu Ghraib prison in Iraq, a human rights violation that was revealed in 2004.

"It's probably not the time to bring this up, but Abu Ghraib and the torture of prisoners hurt us a great deal and did provide a propaganda tool for our enemies including Al Qaeda,” he said.

He said he understands the desire to focus on domestic issues, when unemployment rates continue at staggering rates. But he said national security is just as important.

"There is a perception in the world, rightly or wrongly, that the United States is in a decline and we are, in many ways, withdrawing the fortress of America," he said. "We can't afford to do that."

#### American public won’t support future interventions

**Falk 11** (Richard; International Law and International Relations Scholar who taught at Princeton for 40 years, “The Afghanistan War in the Mirror of the Tet Offensive: When ‘Defeat’ Became ‘Victory,’” Foreign Policy Journal, <http://www.foreignpolicyjournal.com/2011/08/15/the-afghanistan-war-in-the-mirror-of-the-tet-offensive-when-defeat-became-victory/>)

This same skepticism among Americans about foreign military intervention now applies more generally, although it could shift quickly if a foreign source of terrorism was able to inflict major damage on perceived American interests. According to Newsmax (August 11, 2011), only 24% of Americans support the U.S. military role in Libya, and 75% believe that the United States should not engage in overseas military action “unless the cause is vital to our national security.” It is obvious that the Libya does not qualify as ‘vital,’ and the justification relied upon did not even pretend that ‘security’ was the rationale for military intervention, but invoked ‘humanitarism.’ Of course, leaders will always argue that an intervention undertaken is vital, and could hardly do less, considering that lives of citizens are put at risk. But what these poll results show is the relative wisdom of the unacknowledged force of public opinion: rejection of humanitarianism as an adequate basis for war-making and disbelief in the post-facto security arguments put forth by elected leaders; healthy doubts about the self-serving claims of the military to be on the verge of victory. But such wars go on, however dysfunctional, the bodies pile up, and the political opposition is disregarded, and this despite the American empire teetering on the edge of financial disaster.

### 1nc interventions

#### No escalation—executives will be responsible

**Weiner 2007**

Michael Anthony, J.D. Candidate, Vanderbilt School of Law, 2007, “A Paper Tiger with Bite: A Defense of the War Powers Resolution,” http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Weiner.pdf

IV. CONCLUSION: THE EXONERATED WPR AND THE WOLF IN SHEEP'S CLOTHING The WPR is an effective piece of war powers legislation. As Part III made clear, no presidential unilateral use of force since 1973 has developed into a conflict that in any way resembles the WPR's impetus, Vietnam. Rather, the great majority of these conflicts have been characterized by their brevity, safety, and downright success. Yes, there have been tragic outcomes in Lebanon and Somalia; but what happened in response to those tragedies? In Lebanon, President Reagan actually submitted to being Congress's "messengerboy," 203 asking for its permission, per the WPR, to continue the operation. And in Somalia, at the first sight of a looming disaster, it was President Clinton who cut short the operation. Thus, from 1973 on, it is easy to argue that sitting Executives have made responsible use of their power to act unilaterally in the foreign affairs realm. The WPR has even contributed to a congressional resurgence in the foreign affairs arena. In many of these conflicts, we have seen Congress conducting numerous votes on whether and how it should respond to a unilaterally warring Executive. In some of the conflicts, Congress has come close to invoking the WPR against rather impetuous Executives. 20 4 In Lebanon, Congress actually succeeded in the task.20 5 It is this Note's contention, though, that even when Congress failed to legally invoke the WPR, these votes had normative effects on the Executives in power. Such votes demonstrate that Congress desires to be, and will try to be, a player in foreign affairs decisions. So, perhaps the enactment of the WPR, the rise of Congress (at least in the normative sense) and the successful string of unilateral presidential uses of force are just a series of coincidences. This Note, however, with common sense as its companion, contends that they are not. Rather, it is self-evident that the WPR has played a significant role in improving the implementation of presidential unilateral uses of force.

### 1nc miscalc

#### No accidents—safeguards and ocean targeting

**Slocombe 9** (Walter, senior advisor for the Coalition Provisional Authority in Baghdad and a former Under Secretary of Defense for Policy, he is a four-time recipient of an award for Distinguished Public Service and a member of the Council on Foreign Relations, “De-Alerting: Diagnoses, Prescriptions, and Side-Effects,” Presented at the seminar on Re-framing De-Alert: Decreasing the Operational Readiness of Nuclear Weapons Systems in the US-Russia Context in Yverdon, Switzerland, June 21-23)

Let’s start with Technical Failure – the focus of a great deal of the advocacy, or at least of stress on past incidents of failures of safety and control mechanisms.4 Much of the “de-alerting” literature points to a succession of failures to follow proper procedures and draw from that history the inference that a relatively simple procedural failure could produce a nuclear detonation. The argument is essentially that nuclear weapons systems are sufficiently susceptible of pure accident (including human error or failure at operational/field level) that it is essential to take measures that have the effect of making it necessary to undertake a prolonged reconfiguration of the elements of the nuclear weapons force for a launch or detonation to be physically possible. Specific measures said to serve this objective include separating the weapons from their launchers, burying silo doors, removal of fuzing or launching mechanisms, deliberate avoidance of maintenance measures need to permit rapid firing, and the like. . My view is that this line of action is unnecessary in its own terms and highly problematic from the point of view of other aspects of the problem and that there is a far better option that is largely already in place, at least in the US force – the requirement of external information – a code not held by the operators -- to arm the weapons Advocates of other, more “physical,” measures often describe the current arrangement as nuclear weapons being on a “hair trigger.” That is – at least with respect to US weapons – a highly misleading characterization. The “hair trigger” figure of speech confuses “alert” status – readiness to act quickly on orders -- with susceptibility to inadvertent action. The “hair trigger” image implies that a minor mistake – akin to jostling a gun – will fire the weapon. The US StratCom commander had a more accurate metaphor when he recently said that US nuclear weapons are less a pistol with a hair trigger than like a pistol in a holster with the safety turned on – and he might have added that in the case of nuclear weapons the “safety” is locked in place by a combination lock that can only be opened and firing made possible if the soldier carrying the pistol receives a message from his chain of command giving him the combination. Whatever other problems the current nuclear posture of the US nuclear force may present, it cannot reasonably be said to be on a “hair trigger.” Since the 1960s the US has taken a series of measures to insure that US nuclear weapons cannot be detonated without the receipt of both external information and properly authenticated authorization to use that information. These devices – generically Permissive Action Links or “PALs” – are in effect combination locks that keep the weapons locked and incapable of detonation unless and until the weapons’ firing mechanisms have been unlocked following receipt of a series of numbers communicated to the operators from higher authority. Equally important in the context of a military organization, launch of nuclear weapons (including insertion of the combinations) is permitted only where properly authorized by an authenticated order. This combination of reliance on discipline and procedure and on receipt of an unlocking code not held by the military personnel in charge of the launch operation is designed to insure that the system is “fail safe,” i.e., that whatever mistakes occur, the result will not be a nuclear explosion. Moreover, in recent years, both the US and Russia, as well as Britain and China, have modified their procedures so that **even if** a nuclear-armed missile were **launched**, it would go not to a “real” target in another country but – at least in the US case - to empty ocean. In addition to the basic advantage of insuring against a nuclear detonation in a populated area, the fact that a missile launched in error would be on flight path that diverged from a plausible attacking trajectory should be detectable by either the US or the Russian warning systems, reducing the possibility of the accident being perceived as a deliberate attack. De-targeting, therefore, provides a significant protection against technical error. These arrangements – PALs and their equivalents coupled with continued observance of the agreement made in the mid-90s on “de-targeting” – do not eliminate the possibility of technical or operator-level failures, but they come very close to providing absolute assurance that such errors cannot lead to a nuclear explosion or be interpreted as the start of a deliberate nuclear attack.6 The advantage of such requirements for external information to activate weapons is of course that the weapons remain available for authorized use but not susceptible of appropriation or mistaken use.

#### No miscalc—accidents don’t cause all-out war

**Mueller** **10** – Woody Hayes chair of national security studies at Ohio State University (John, Atomic Obsession, p. 100-101)

It is a plausible argument that, all other things equal, if the number of nuclear weapons in existence increases, the likelihood one will go off by accident will also increase. In fact, all things haven't been equal. As nuclear weapons have increased in numbers and sophistication, so have safety devices and procedures. Precisely because the weapons are so dangerous, extraordinary efforts to keep them from going off by accident or by an unauthorized deliberate act have been instituted, and these measures have, so far, been effective: no one has been killed in a nuclear explosion since Nagasaki. Extrapolating further from disasters that have not occurred, many have been led to a concern that, triggered by a nuclear weapons accident, a war could somehow be started through an act of desperation or of consummate sloppiness. Before the invention of nuclear weapons, such possibilities were not perhaps of great concern, because no weapon or small set of weapons could do enough damage to be truly significant. Each nuclear weapon, however, is capable of destroying in an instant more people than have been killed in an average war, and the weapons continue to exist in the tens of thousands. However, **even if a bomb, or a few bombs, were to go off**, it does not necessarily follow that war would result. For that to happen, it is assumed, the accident would have to take place at a time of war-readiness, as during a crisis, when both sides are poised for action and when one side could perhaps be triggered – or panicked –into major action by an explosion mistakenly taken to be part of, or the prelude to, a full attack. This means that the unlikely happening –a nuclear accident – would have to coincide precisely with an event, a militarized international crisis, something that is rare to begin with, became more so as the cold war progressed, and has become even less likely since its demise. Furthermore, even if the accident takes place during a crisis, it does not follow that escalation or hasty response is inevitable, or even very likely. As Bernard Brodie points out, escalation scenarios essentially impute to both sides "a well-nigh limitless concern with saving face" and/or "a deal of ground-in automaticity of response and counterresponse." None of this was in evidence during the Cuban missile crisis when there were accidents galore. An American spy plane was shot down over Cuba, probably without authorization, and another accidentally went off course and flew threateningly over the Soviet Union. As if that weren’t enough, a Soviet military officer spying for the West sent a message, apparently on a whim, warning that the Soviets were about to attack.31 **None of these remarkable events triggered anything** in the way of precipitous response. They were duly evaluated and then ignored. Robert Jervis points out that "when critics talk of the impact of irrationality, they imply that all such deviations will be in the direction of emotional impulsiveness, of launching an attack, or of taking actions that are terribly risky. But irrationality could also lead a state to passive acquiescence." In moments of high stress and threat, people can be said to have three psychological alternatives: (1) to remain calm and rational, (2) to refuse to believe that the threat is imminent or significant, or to panic, lashing out frantically and incoherently at the threat. Generally, people react in one of the first two ways. In her classic study of disaster behavior, Martha Wolfenstein concludes, “The usual reaction is one of being unworried.” In addition, the historical record suggests that **wars simply do not begin by accident**. In his extensive survey of wars that have occurred since 1400, diplomat-historian Evan Luard concludes, "It is impossible to identify a single case in which it can be said that a war started accidentally; in which it was not, at the time the war broke out, the deliberate intention of at least one party that war should take place." Geoffrey Blainey, after similar study, very much agrees: although many have discussed "accidental" or "unintentional" wars, "it is difficult," he concludes, "to find a war which on investigation fits this description." Or, as Henry Kissinger has put it dryly, "Despite popular myths, large military units do not fight by accident."

## China

#### **Flex turn - the WPR is being circumvented now, leading to a robust military response rate, but Congressional authorizations will hamper our ability to respond in a crisis, especially in the South China Sea; they say extinction.**

The Diplomat 13 “Does the President Have the Power to Protect US Allies? Obama going to Congress on Syria raises questions about America’s commitments to allies in Asia.” The Diplomat. September 05, 2013. <http://thediplomat.com/2013/09/does-the-president-have-the-power-to-protect-us-allies/> /Chappell//Red

President Obama’s decision to seek Congressional authorization for military action against Syria has renewed discussion over the meaning and impact of the War Powers Resolution. Some commentators, including Peter Spiro, have argued that President Obama’s decision to seek authorization places executive foreign policy prerogatives in serious jeopardy. Given that part of the purpose of the War Powers Act was to prevent the executive from undertaking conflicts like the Korean War and the Vietnam War, it makes sense to wonder what potential effects the decision to seek authorization for the use of force against Syria might have on U.S. commitments in Asia.

What does the War Powers Resolution require? The most well-known elements include the requirement that the President consult with Congress shortly after using force, and the executive being limited to 60 (extendable to 90) days of hostilities without gaining Congressional approval. However, section 2c (under the “Purpose and Policy” heading) while probably not enforceable in any meaningful sense, does describe the intent of the law as ensuring that the President only go to war when:

“The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.”

Again, the chances that this clause would be enforced in any meaningful way under any imaginable circumstances approach zero. However, it is conceivable that a President might share an expansive view of the War Powers Resolution (some have argued that Obama’s decision to seek prior authorization from Congress implies this). How might this affect some extant U.S. commitments?

With regards to either South Korea or Japan, there would be little legal difficulty in using U.S. forces without immediate Congressional authorization. An attack by China or North Korea would clearly place U.S. armed forces in imminent jeopardy of attack, triggering any authority the President might need in order to conduct those conflicts (although the conduct would presumably need to be pursuant to the other elements of the WPR, such as notification, consultation, and time-frame). Moreover, the wide range of bilateral agreements between the U.S. and Seoul and Tokyo would likely suffice to satisfy the statutory authorization requirement, as well.

The ability of the U.S. to intervene in a cross-straits conflict with China over Taiwan is more hazy. With no deployed units in Taiwan, U.S. troops would only be placed in jeopardy after intervention. Given the speed at which the modern PLA might defeat Taiwanese resistance, the delay required for Congressional authorization (to the extent, for example, of the current debate on Syria) could make it impossible for the United States to meaningfully intervene. The Taiwan Relations Act specifies some responsibilities on the part of the United States towards Taiwan, but it would be hard to argue that this constitutes specific authorization. Although the stakes are lower, a similar logic applies to U.S. intervention in conflict between China, Vietnam, and the Philippines over the South China Sea.

That said, given the amorphous nature of the WPR and the practical unenforceability of its most significant requirements, any decisions about intervening in a war between China and Taiwan or between China and one of the South China Sea disputants would likely treat legal considerations only as an afterthought. Indeed, the Obama administration worked around the WPR in the Libya context by arguing that its military actions did not, below a certain level, constitute hostilities. Given the difficulties of enforcing any robust conception of the WPR on a recalcitrant administration (including the general unwillingness of Congress to assert foreign policy preferences, and the reluctance of the judiciary to intervene on national security questions), the WPR will likely only restrict future administrations insofar as they choose to be restricted

### 1nc meddling

#### Active congressional leadership is bad – wrecks foreign policy coherence

**Lindsay, 11/19/13** ­- senior vice president, director of studies and Maurice R. Greenberg Chair at the Council on Foreign Relations (James, “Backseat Driving: The Role of Congress in American Diplomacy”

<http://www.worldpoliticsreview.com/articles/13379/backseat-driving-the-role-of-congress-in-american-diplomacy>)

Although diplomacy is a well-established executive function, individual members of Congress may become involved, whether properly or improperly, in diplomatic negotiations. Members may occasionally pursue their own Lone Ranger diplomacy to circumvent the president’s. Months before Lodge released his letter, he privately urged Allied leaders to oppose Wilson’s proposal to incorporate a league of nations into any peace treaty. Lodge’s successor as chair of the Foreign Relations Committee, Sen. William E. Borah, opened his own talks on oil exploration with the president of Mexico in direct contradiction of U.S. policy. A half-century later, House Speaker Jim Wright sought to torpedo Reagan’s Nicaragua policy by meeting secretly over three days with the Nicaraguan president and opposition leaders.

Despite its long lineage, Lone Ranger diplomacy seldom pays off. The prohibition against private diplomacy is deeply ingrained in American politics. So when such efforts become public, they attract considerable criticism. Wright’s Nicaragua foray, for instance, prompted calls for his prosecution under the Logan Act, a 1799 law that bars American citizens from negotiating with foreign officials without the permission of the U.S. government. Suddenly the discussion shifted from the merits of the speaker’s ends to the propriety of his means.

Lone Ranger diplomacy involves lawmakers acting independently of the White House. But members often observe or even participate in negotiations at the president’s invitation, a practice that dates back to the War of 1812. Members of Congress may also act as unofficial emissaries for the White House. Then-Sen. John Kerry performed that task repeatedly during Obama’s first term. In 2009, for instance, Kerry visited Kabul in a bid to persuade Afghan President Hamid Karzai to hold a run-off election. In 2011, he visited Pakistan to help smooth relations after the killing of Osama bin Laden. In these and similar trips, Kerry closely coordinated his travels and talking points with the White House and State Department, and he typically sent them lengthy memos summarizing what he learned. And presidents may solicit diplomatic advice from trusted voices on Capitol Hill.

How much influence invited participation gives lawmakers over U.S. diplomacy is debatable. William McKinley’s decision to invite senators to serve on the team negotiating the end to the Spanish-American War is frequently credited with securing Senate consent to the resulting Treaty of Paris, the first significant treaty to pass the Senate in four decades. Conversely, Wilson’s refusal to ask any senator to join him in Paris may have contributed to the Senate’s rejection of the Treaty of Versailles. But the White House likely invites lawmakers to participate in negotiations or to offer advice less because it wants to adopt contrarian views and more because it hopes to co-opt opponents. Lawmakers may be less likely to criticize agreements in which they have had a hand, however small it may be. Likewise, when the White House encourages a member to act as an unofficial envoy, it is typically using the lawmaker’s connections and credibility to make its case to foreign leaders rather than to outsource diplomatic decision-making.

Even if the White House doesn’t ask lawmakers to act as envoys, many of them have direct contact with foreign leaders and diplomats. Until the 1970s, such communications were uncommon; the executive branch dominated foreign policy and foreign governments saw few benefits in appealing directly to Congress. But that changed as Congress reasserted its foreign policy prerogatives in reaction to Vietnam. Today, foreign leaders routinely schedule meetings with members of Congress when they visit Washington; foreign embassy personnel cultivate contacts on Capitol Hill, especially when legislation affecting their country is being considered; and members with foreign policy interests regularly travel abroad to conduct fact-finding missions.

Direct communications with foreign officials can be critical when a significant portion of Capitol Hill believes that the White House is treating a close ally unfairly. In the 1950s and 1960s, for example, the so-called China Lobby in Congress often advised Nationalist Chinese leader Chiang Kai-shek on how to navigate his disputes with the White House. More recently, Israeli Prime Minister Benjamin Netanyahu’s many meetings with pro-Israel lawmakers on Capitol Hill likely reinforced his calculation that he could contest Obama’s policies on Israeli settlements and other issues. Conversely, in situations in which Congress favors White House policy, direct communications between lawmakers and foreign diplomats are likely to strengthen the president’s diplomatic hand.

In the Eye of the Beholder

Congress takes a back seat to the president on diplomatic matters. It cannot match the president’s constitutional authority as the nation’s sole representative abroad, and much of the time its members have no desire to contest what the administration is doing overseas. When lawmakers are interested in charting a different course, however, Congress’s constitutional authorities, combined with practical politics, give lawmakers tools to put their mark on American diplomacy. They typically do so by blocking presidential initiatives, either by withholding the legislative cooperation needed to make an initiative work or by making the policy the White House favors too politically costly to pursue.

Congressional efforts to shape what the United States says and does abroad clearly complicate presidential diplomacy. Foreign governments seeing a Washington divided may doubt that the White House can deliver on its promises—or its threats. Assessments of whether that is good or bad for U.S. interests in any particular instance invariably turn on judgments about the wisdom of the president’s preferred policy. White House supporters prefer a compliant Congress, while White House critics favor an assertive one. Given the lack of consensus in the United States on America’s role in the world and the deep polarization of politics in Washington, the two sides will have plenty to argue about in the years to come.

#### Congressional treaty power is incoherent and expanding the it causes a shift to sole executive agreements

**Lindsay, 11/19/13** ­- senior vice president, director of studies and Maurice R. Greenberg Chair at the Council on Foreign Relations (James, “Backseat Driving: The Role of Congress in American Diplomacy”

<http://www.worldpoliticsreview.com/articles/13379/backseat-driving-the-role-of-congress-in-american-diplomacy>)

The problem for presidents is that senators sometimes refuse to consent. How willing the Senate is to reject, revise or ignore treaties has varied over U.S. history as the consensus about America’s interests overseas has waxed and waned and partisan divisions have flared and subsided. In the second half of the 19th century the Senate refused to approve every major treaty submitted to it, leading the young Woodrow Wilson to lament that the treaty-making power had become “the treaty-marring power.” By contrast, in the 1950s and 1960s senators were often “stumbling over each other to see who can say ‘yea’ the quickest and the loudest,” as one of their number described it. Senatorial assertiveness resurfaced during Vietnam and escalated after the Cold War ended. Over the past two decades, the Senate has rejected the Comprehensive Test Ban Treaty, sidelined the Kyoto Protocol and forced President Barack Obama into a protracted fight to win passage of the modest New Start Treaty.

Presidents can bypass a reluctant Senate to an extent by signing executive agreements. These constitute a binding commitment by the United States, enjoy the same constitutional status as treaties and do not require approval of two-thirds of the Senate (and in many cases require no congressional approval at all). These advantages help explain why executive agreements have been the preferred method for striking international deals since World War II, outnumbering treaties by more than nine-to-one. Nonetheless, in many instances tradition and politics prevent the president from using executive agreements to negate the Senate’s treaty power.

#### Weakening treaty clause is good, it shifts to Congressional-Executive agreements which bolster international engagement

Oona A. Hathaway 8, Associate Professor of Law at Yale, Treaties' End: The Past, Present, and Future of International Lawmaking in the United States, The Yale Law Journal, Vol. 117, No. 7 (May, 2008), pp. 1236-1372

A B S T R A C T. Nearly every international agreement that is made through the Treaty Clause ¶ should be approved by both houses of Congress as a congressional-executive agreement instead. ¶ In making this case, this Article examines U.S. international lawmaking through empirical, ¶ comparative, historical, and policy lenses. U.S. international lawmaking is currently haphazardly ¶ carved up between two tracks of international lawmaking, with some areas assigned to the ¶ Treaty Clause route, others to the congressional-executive agreement route, and many ¶ uncomfortably straddling the two. Moreover, the process for making international law that is ¶ outlined in the U.S. Constitution is close to unique in cross-national perspective. To explain how ¶ the United States came to have such a haphazard and unusual system, this Article traces the ¶ history of U.S. international lawmaking back to the Founding. The rules and patterns of practice ¶ that now govern were developed in response to specific contingent events that for the most part ¶ have little or no continuing significance. The Treaty Clause process is demonstrably inferior to ¶ the congressional-executive agreement process as a matter of public policy on nearly all crucial ¶ dimensions: ease of use, democratic legitimacy, and strength of the international legal ¶ commitments that are created. Thus, this Article concludes by charting a course toward ending ¶ the Treaty Clause for all but a handful of international agreements. By gradually replacing most ¶ Article II treaties with ex post congressional-executive agreements, policymakers can make ¶ America's domestic engagement with international law more sensible, effective, and democratic.

#### Solves problems with withdrawal and enhances US credibility.

Oona A. Hathaway 8, Associate Professor of Law at Yale, Treaties' End: The Past, Present, and Future of International Lawmaking in the United States, The Yale Law Journal, Vol. 117, No. 7 (May, 2008), pp. 1236-1372

This Article makes the case for a new direction: nearly everything that is ¶ done through the Treaty Clause can and should be done through ¶ congressional-executive agreements approved by both houses of Congress. The ¶ congressional-executive agreement includes the House of Representatives in ¶ the lawmaking process, is less subject than is a treaty to stonewalling by an ¶ extreme minority, and rarely requires the passage of separate implementing ¶ legislation to enter into effect. Moreover, the agreement is often easier to enforce and can be subject to more stringent rules regarding unilateral withdrawal, thus allowing the United States to make stronger and more ¶ consistent international commitments. A congressional-executive agreement ¶ might seem to lack the "'dignity' of a treaty."8 But in fact a congressional ¶ executive agreement that is expressly approved by Congress is more legitimate ¶ and more reliable than a treaty, and it can and should be used for even the most ¶ important international commitments.9

### 1nc china relations

#### No impact—cooperation’s impossible but so is hostility

**Blackwill 2009** – former US ambassador to India and US National Security Council Deputy for Iraq, former dean of the Kennedy School of Government at Harvard (Robert D., RAND, “The Geopolitical Consequences of the World Economic Recession—A Caution”, http://www.rand.org/pubs/occasional\_papers/2009/RAND\_OP275.pdf, WEA)

Alternatively, will the current world economic crisis change relations between China and the United States in a much more positive and intimate direction, producing what some are calling a transcendent G-2? This seems improbable for seven reasons. First, the United States and China **have profoundly different visions** of Asian security. For Washington, maintaining U.S. alliances in Asia is the hub of its concept of Asian security, whereas, for Beijing, America’s alliance system is a destabilizing factor in Asian security and over time should wither away. These opposing concepts will be an **enduring source** of tension between the two sides. Second, these two countries systematically prepare for war against one another, which is reflected in their military doctrines, their weapons procurement and force modernization, and their deployments and military exercises. As long as this is the case, it will provide a formidable psychological and material barrier to much closer bilateral relations. Third, the United States is critical of China’s external resource acquisition policy, which Washington believes could threaten both American economic and security interests in the developing world. Fourth, despite their deep economic dependence on each other, U.S.-China economic relations are **inherently** fragile. China sells too much to the United States and buys too little, and the United States saves too little and borrows too much from China. This will inevitably lead to a backlash in the United States and a Chinese preoccupation with the value of its American investments. Fifth, Chinese environmental policy will be an increasing problem, both for U.S. policymakers who are committed to bringing China fully into global efforts to reduce climate degradation and for Chinese leaders who are just as determined to emphasize domestic economic growth over international climate regimes. Sixth, China and the United States have wholly different **domestic political arrangements** that make a sustained entente difficult to manage. Americans continue to care about human rights in China, and Beijing resents what it regards as U.S. interference in its domestic affairs. This will be a drag on the bilateral relationship for the foreseeable future. And seventh, any extended application by Washington of “Chimerica,” as Moritz Schularick of Berlin’s Free University has called it,23 would so alarm America’s Asian allies, beginning with Japan, that the United States would soon retreat from the concept.24

**Nevertheless**, these factors are unlikely to lead to a substantial downturn in U.S.-China bilateral ties. In addition to their economic interdependence, both nations have important reasons to keep their interaction more or less stable. As Washington wants to concentrate on its many problems elsewhere in the world, especially in the Greater Middle East, Beijing prefers to keep its focus on its domestic economic development and political stability. Neither wants the bilateral relationship to getout of hand. In sum, a positive strategic breakthrough in the U.S.-China relationship or a serious deterioration in bilateral interaction both seem doubtful in the period ahead. And the current economic downturn will not essentially affect the abiding primary and constraining factors on the two sides. Therefore, the U.S.-China relationship in five years will probably look pretty much as it does today—part cooperation, part competition, part suspicion—unaffected by today’s economic time of troubles, except in the increasing unlikely event of a cross-strait crisis and confrontation.

#### Relations are resilient

**Rosecrance and Qingguo 2010** – \*political science professor at Cal and senior fellow at Harvard’s Belfer Center for Science and International Affairs, former director of the Burkle Center for International Relations at UCLA, \*\*PhD from Cornell, Professor and Associate Dean of the School of International Studies of Peking University (Jia Qingguo and Richard Rosecrance, Global Asia, 4.4, “Delicately Poised: Are China and the US Heading for Conflict?”, <http://www.globalasia.org/l.php?c=e251>, WEA)

Sustained Cooperation?
The fact that the rise of China is unlikely to lead to armed conflict with the US does not necessarily mean that the two countries can achieve a wholly cooperative relationship in the long term. For that to happen, the two need to have shared interests, aspirations, and mutually acceptable approaches to promoting their national goals. It appears that these conditions are increasingly becoming a reality.
To begin with, after years of interaction, China and the US have developed a **shared stake** in cooperation. Their relationship has deepened to the point where their economic futures have become closely interlinked. Western demand, principally from the US, sustains a whole range of Chinese industries. Chinese investments support America’s deficit financing, with China holding more than $1 trillion of US government debt. The US, meanwhile, contributes greatly to China’s foreign trade surplus. If America stopped buying Chinese goods, it would put a serious crimp in Chinese economic growth. Chinese sovereign wealth funds are also moving into the US financial market to rebalance the amount of foreign direct investment on each side.
The Emergence of Shared Values
Chinese-American ties now range well beyond economics. As major beneficiaries of existing international arrangements, both China and the US have an important stake in many areas, including defending a free trade system, maintaining international peace and stability, opposing proliferation of weapons of mass destruction, fighting terrorism, ensuring secure energy supplies and reversing global warming. In addition, as a result of changes within China, the two countries increasingly find themselves sharing similar aspirations in the world. Among other things, China has replaced its centrally-planned economy with a market-oriented one. It has attached increasing importance to the rule of law. It has publicly advocated protection of human rights and has adopted many measures to improve its human rights situation. It has also tried to introduce democratic reforms such as nationwide village-level elections and measures to broaden participation in the selection of leaders at various levels of the Chinese government and in the policy making process. Recently, Chinese Premier Wen Jiabao said that China wants democracy and will make more efforts in this regard. These and other changes on the part of China have narrowed the value differences between the two countries and provided an expanding political basis for China-US cooperation.
Finally, leaders of the two countries have learned how to cooperate after years of interaction. With the scope and depth of contacts increasing, China and the US find themselves with **greater understanding** and appreciation of each other’s legitimate interests and political sensitivities than ever before. Policy makers in the two countries not only know each other as counterparts, but also increasingly as personal friends. Many become acquainted long before they become important in their respective policy making institutions. Previous misunderstandings at the policy level are **no longer serious**. This has made miscalculation between the two countries less likely and facilitated cooperation.

#### Relations fail—different interests

Elizabeth **Economy**, C.V. Starr senior fellow and director of Asia studies **and** Adam **Segal**, Ira A. Lipman senior fellow for counterterrorism and national security studies at the Council on Foreign Relations, 5-24-**2010**, “Time to Defriend China,” Foreign Policy, http://www.foreignpolicy.com/articles/2010/05/24/time\_to\_defriend\_china?page=0,1

That hope was short-lived. It has become painfully clear during the first year of Barack Obama's administration that mismatched interests, values, and capabilities make it difficult for Washington and Beijing to work together to address global challenges. China's unwillingness to sit down with the United States and its maneuverings with India, Brazil, and South Africa to undermine a larger agreement at Copenhagen were clear signs that building a special relationship would not be easy. America's approval of arms sales to Taiwan in January and the Dalai Lama's visit with Obama in February returned both sides to old suspicions and sensitivities. But while we now have a more realistic assessment of what the U.S.-China relationship is not, we still lack a positive formulation of what it is -- or should realistically become. Next week's U.S.-China Strategic and Economic Dialogue (S&ED), the annual high-level dialogue on economic and political issues led by Clinton and Treasury Secretary Tim Geithner on the U. S side and Vice Premier Wang Qishan and State Councilor Dai Bingguo on the Chinese, is unlikely to address this lack of a larger framework. In fact it will compound the problem. In the run-up to next week's meetings, U.S. officials have been all over the map in framing the topics for discussion. State Department officials have identified at least 20 issues of strategic importance to discuss in Beijing. The Treasury Department has laid out an equally broad agenda that includes trade and investment barriers, balanced growth, financial reform, and strengthening the international economic and financial architecture. Meanwhile, some White House officials have mentioned specific goals, such as RMB revaluation; others have said the goal is the development of a larger framework to address strategic issues; still others have said they hope that by putting controversial issues like local content requirements on the agenda, they can get the most senior Chinese officials to make decisions on topics that would typically disappear within the bureaucracy. These are all worthy objectives and outcomes, but the lackluster history of similar dialogues suggests there are better ways to spend our time and effort. Past such dialogues have achieved only modest success delivering on specific goals. Yes, it's true that the last S&ED yielded agreements on EcoPartnerships, collaboration on electric vehicle standards, and development of smart grids. Yet such small-scale cooperation and capacity-building have been a staple of U.S. energy and environmental talks for decades. These narrow goals would hardly seem to merit flying more than a dozen U.S. cabinet members and agency heads crossing the Pacific. Let's be realistic: Progress on core U.S. strategic interests largely emanates from outside such talks. For instance, at Copenhagen, China reversed its stance on two core issues related to its climate change negotiation position, establishing voluntary emission reduction targets and offering to move to the back of the line for international funding assistance. Both of these moves, however, were a response to concerns in the developing world, not U.S. pressure. Similarly, Beijing's apparent willingness to rescind the most controversial portions of a proposed government procurement strategy that would have closed off a large portion of the Chinese market to foreign technologies arose from widescale global protest, not simply U.S. objections. And China's recent decision to support the U.S.-led sanctions against Iran depended largely on Russia folding first and leaving China without political cover to maintain its opposition.

### 1nc south china seas

#### Chinese leaders won’t let it escalate

**Carlson 13** – Associate Professor in the Government Department of Cornell University [(Allan, “China Keeps the Peace at Sea” http://www.foreignaffairs.com/articles/139024/allen-carlson/china-keeps-the-peace-at-sea](file:///C%3A%5CUsers%5CMarc%5CAppData%5CRoaming%5CMicrosoft%5CWord%5C%28Allan%2C)) Jacome

The nuclear test, though, is a red herring in terms of the conflict over the disputed islands. In truth, the roots of the conflict -- and the reasons it has not yet exploded -- are much deeper. Put simply, China cannot afford military conflict with any of its Asian neighbors.

It is not that China believes it would lose such a spat; the country increasingly enjoys strategic superiority over the entire region, and it is difficult to imagine that its forces would be beaten in a direct engagement over the islands, in the South China Sea or in the disputed regions along the Sino-Indian border. However, Chinese officials see that even the most pronounced victory would be outweighed by the collateral damage that such a use of force would cause to Beijing's two most fundamental national interests -- economic growth and preventing the escalation of radical nationalist sentiment at home. These constraints, rather than any external deterrent, will keep Xi Jinping, China's new leader, from authorizing the use of deadly force in the Diaoyu Islands theater.

For over three decades, Beijing has promoted peace and stability in Asia to facilitate conditions amenable to China's economic development. The origins of the policy can be traced back to the late 1970s, when Deng Xiaoping repeatedly contended that to move beyond the economically debilitating Maoist period, China would have to seek a common ground with its neighbors. Promoting cooperation in the region would allow China to spend less on military preparedness, focus on making the country a more welcoming destination for foreign investment, and foster better trade relations. All of this would strengthen the Chinese economy. Deng was right. Today, China's economy is second only to that of the United States.

#### Nationalism is the root cause—no solvency

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

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

Maoism may indeed be the single most powerful religion in China today. As rage against widespread corruption, income inequality, and injustice combines with anxieties over an economy that is losing steam by the day, people in China have been turning to their old leader. In his book "China in Ten Words," Yu Hua writes that the many problems that emerged after development may be "precisely why Mao keeps being brought back to life." A dangerous combination, fed by discontent with reality, is taking shape between China's left wing and patriots, who are presenting nostalgia for the Mao days as some kind of alternative.

In Japan, we can also find shadows reminiscent of this growing Sinocentrism. **The latest round of friction was touched off by Japan's far right**, **which irresponsibly exploited a territorial issue in the hopes of winning political points**. Having lost their way amid a Fukushima nuclear crisis, an economy mired in quicksand, an aging society, and the disgruntlement of young people robbed of opportunity, these right-wingers have derided the Peace Constitution and any kind of reflection on history, and are working to promote a sense of nostalgia for the glories of the militarist [imperial] era.

Japan's right-winger par excellence may be Tokyo Gov. Shintaro Ishihara, whose declaration of the Senkaku Islands' nationalization back in April hinted at the conflict to come. History shows that Japan's acquisition of Okinawa and the Senkaku Islands in 1885 was the result of expansionist incursions. The Cold War order that the US built in Northeast Asia after the Second World War is what left the potential for territorial disputes over Dokdo and the Senkaku Islands. Even after this latest development, it is difficult to find any words of reflection in Japan - anyone willing to say that **the claims of dominion over Senkaku are tied to a history of invasion**, or that the situation worsened because of the breaking of an implicit agreement at the time Tokyo and Beijing established relations.

Meanwhile, far right-leaning former Prime Minister Shinzo Abe, a man who denies that comfort women were forcibly mobilized, is considered likely to win reelection. East Asia is now under threat from the Chinese left and the Japanese right, both of whom are turning to nostalgia rather than tackling their real issues. **The Senkaku conflict is just a symptom of a deeply rooted problem of multiple contradictions and political confusion in both countries**.

## Korea

### 1nc Asian prolif

**Double Bind – Either:**

#### a.) Prolif will never happen –indicts their scenario

**Alagappa 08** (Muthiah, Distinguished Senior Fellow – East-West Center, in “The Long Shadow: Nuclear Weapons and Security in 21st Century Asia, Ed. Muthiah Alagappa , p. 521-522)

It will be useful at this juncture to address more directly the set of instability arguments advanced by certain policy makers and scholars: the domino effect of new nuclear weapon states, the probability of preventive action against new nuclear weapon states, and the compulsion of these states to use their small arsenals early for fear of losing them in a preventive or preemptive strike by a stronger nuclear adversary. On the domino effect, India's and Pakistan's nuclear weapon programs have not fueled new programs in South Asia or beyond. Iran's quest for nuclear weapons is not a reaction to the Indian or Pakistani programs. It is grounded in that country's security concerns about the United States and Tehran's regional aspirations. The North Korean test has evoked mixed reactions in Northeast Asia. Tokyo is certainly concerned; its reaction, though, has not been to initiate its own nuclear weapon program but to reaffirm and strengthen the American extended deterrence commitment to Japan. Even if the U.S. Japan security treaty were to weaken, it is not certain that Japan would embark on a nuclear weapon program. Likewise, South Korea has sought reaffirmation of the American extended deterrence commitment, but has firmly held to its nonnuclear posture. Without dramatic change in its political, economic, and security circumstances, South Korea is highly unlikely to embark on a covert (or overt) nuclear weapon program as it did in the 1970s. South Korea could still become a nuclear weapon state by inheriting the nuclear weapons of North Korea should the Kim Jong Il regime collapse. Whether it retains or gives up that capability will hinge on the security circumstances of a unified Korea. The North Korean nuclear test has not spurred Taiwan or Mongolia to develop nuclear weapon capability. The point is that each country's decision to embark on and sustain nuclear weapon programs is contingent on its particular security and other circumstances. Though appealing, the domino theory is not predictive; often it is employed to justify policy on the basis of alarmist predictions. The loss of South Vietnam, for example, did not lead to the predicted domino effect in Southeast Asia. In fact the so-called dominos became drivers of a vibrant Southeast Asia and brought about a fundamental transformation in that subregion (Lord 1993, 1996). In the nuclear arena, the nuclear programs of China, India, and Pakistan were part of a security chain reaction, not mechanically falling dominos. However, as observed earlier the Indian, Pakistani, and North Korean nuclear tests have thus far not had the domino effect predicted by alarmist analysts and policy makers. Great caution should be exercised in accepting at face value the sensational predictions of individuals who have a vested interest in accentuating the dangers of nuclear proliferation. Such analysts are now focused on the dangers of a nuclear Iran. A nuclear Iran may or may not have destabilizing effects. Such claims must be assessed on the basis of an objective reading of the drivers of national and regional security in Iran and the Middle East.

**OR**

#### b.) They cant solve the reasons it would happen

**Cha 01 –** Associate Prof. Gov. and School of Foreign Service – Georgetown U., Journal of Strategic Studies (Victor, “The second nuclear age: Proliferation pessimism versus sober optimism in South Asia and East Asia”, 24:4, InformaWorld)

This contribution makes two arguments with regard to the causes and consequences of the second nuclear age in Asia. Regarding causes of proliferation, I argue that these are overdetermined in Asia. As was the case in the first nuclear age, proliferation derives largely from the intersection of security-scarcity and resource constraints. However, in addition to these basic security drivers, there are a plethora of secondary drivers ranging from domestic forces, political currency (insurance and bargaining), prestige, and a healthy dose of skepticism regarding first world hypocrisy that explain the region's proliferation. The combination of these primary and secondary drivers not only ensures that proliferation is overdetermined in Asia, but also means that rollback of these capabilities, though desirable, is not likely.

### Emp

#### **No impact to EMP**

DHS 12 Written testimony of National Protection and Programs Directorate Infrastructure Analysis and Strategy Division Director Brandon Wales for a House Committee on Homeland Security, Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies hearing titled “The Electromagnetic Pulse (EMP) Threat: Examining the Consequences.”

Release Date: September 12, 2012. http://www.dhs.gov/news/2012/09/12/written-testimony-nppd-house-homeland-security-subcommittee-cybersecurity

The Department (of Homeland Security), acting through the Federal Emergency Management Agency (FEMA), the National Protection and Programs Directorate (NPPD) and the Science and Technology Directorate (S&T), has worked extensively to help recognize EMP as a threat to the Nation. Specifically, the Department is working collaboratively, both internally and with external stakeholders, in various arenas to reduce risk. For example, DHS has exercised scenarios involving both EMP and solar weather and is developing plans to help address these evolving threats. Likewise, FEMA and other government agencies are working with states and industry. For example, FEMA is deploying new capabilities as part of the Integrated Public Alert and Warning System, such as the protected Emergency Alert System Primary Entry Point AM and FM radio stations that would be used by the President and key leadership to help keep the public informed and alerted during a major EMP event.7 Both NASA and NOAA are improving and testing their Space Weather warning systems. Many of the Federal Government’s missions rely on satellite imagery, communications satellites, and GPS for their execution. The potential impact of solar storms on satellites led Secretary Napolitano to issue the DHS Space Policy on February 3, 2011, which committed the Department to working with both private and public sector partners on increasing the resilience of mission essential functions.¶ Two offices within NPPD are at the forefront of understanding and working to identify how EMP can impact the homeland security enterprise. First, the Office of Cybersecurity and Communications (CS&C) has worked extensively to model and assess EMP effects and conduct research and propose solutions to understand and mitigate EMP risks. As a result, CS&C has produced many assessments of the risks and mitigation options related to EMP. In particular, significant progress has been made in the last few years in modeling and understanding the risks of SREMP associated with an improvised nuclear device.¶ NPPD’s Office of Infrastructure Protection (IP) also plays a significant role in the Department’s work on EMP. IP conducted a study in 2010 on EMP’s potential impact on extra high voltage (EHV) transformers for the Western United States’ electrical grid. The study included findings about EMP from both artificial and naturally occurring incidents and recommended options for hardening EHV transformers from EMP.¶ S&T has led much of the Department’s research in the EMP area and is conducting important work through the Recovery Transformer (RecX) Project to increase the resiliency of the EHV transmission power grid, through the use of more mobile and modular transformers. EHV transformers are very large, extremely difficult to transport, and until 2009 primarily manufactured overseas, , complicating rapid recovery and restoration efforts. This effort has developed a prototype EHV transformer that can quickly be deployed to a site, via a series of trailers and semi-trucks, and then installed, assembled, and energized rapidly. The prototype RecX was demonstrated and installed in the grid at a host utility and is currently undergoing a one-year observational period to verify its performance.¶ Another Departmental effort to increase the resiliency of the power grid is the S&T Resilient Electric Grid Project. S&T has developed a power-surge limiting, high temperature, superconducting cable for electric grid resiliency that enables distribution-level substations to interconnect and share power and assets, while helping electric utilities manage power surges arising from a variety of causes that can cause cascading blackouts and permanent damage to electrical equipment. The interconnection of substations increases the resiliency of the grid by creating multiple paths for power flow. Superconducting cables also provide additional benefits such as allowing more power to flow through a smaller cable with lower transmission losses. The cable will be installed for testing and evaluation in Yonkers, NY, in 2014. Several approaches to improving the resiliency of the electrical grid are underway both in the United States and abroad that hold promise to reduce the vulnerability of extra large transformers and reduce the threat to the electricity grid.¶ Conclusion¶ DHS has pursued a deeper understanding of the EMP threat as well as its potential impacts, effective mitigation strategies, and a greater level of public awareness and readiness in cooperation with other Federal agencies and private equipment and system owners and operators through various communications channels. However, more work is needed to understand the risk posed by EMP and solar weather to all sectors, through direct and cascading impacts. I commend the Committee for its interest in this key issue and look forward to your questions.

### 1nc korea

#### Neither side is willing to risk all-out war

**Zhebin 11**—Ph.D. Political Science, head of the Korean Studies Center, RAS IFES (Alexander, Far Eastern Affairs, No. 1, 2011, “The Korean Peninsula: Approaching The Danger Line,” http://www.eastviewpress.com/Files/FEA\_FROM%20THE%20CURRENT%20ISSUE\_No.%201\_2011\_small.pdf, RBatra)

The myth of the alleged aggressiveness inherent in the DPRK and its readiness to attack its southern neighbor at any moment prevents to reach this. Meanwhile, serious experts who are well aware of the real correlation of forces on the peninsula and around it agree that the DPRK would hardly dare undertake large-scale offensive operations. First, in contrast to the Korean War, there are **no big powers** at present which would support such action. Russia and China have always come out for resolving all problems on the peninsula by peaceful diplomatic means. At the same time the United States officially declares that in case of aggression it will help its ally. The international situation of the DPRK is complicated by the sanctions imposed on it by the UN Security Council. Their broad interpretation by the United States and its allies and the introduction of additional unilateral sanctions by them have resulted in that even legal foreign trade and foreign economic activity of North Korea meets with serious obstacles. Secondly, western experts and South Korean military officers themselves know full well that South Korea surpasses the DPRK in conventional arms and the armed forces. It should also be taken into account that North Korea has not enough fuel, spare parts and other strategic reserves necessary for large-scale offensive operations. And last but not least: the DPRK has been in a quite complex socio-economic situation for the past 15 years and is faced with an acute food problem. Admittedly, **the** **North Korean leadership is well aware of all these factors**, takes them into account, and will not be the first to begin such action. As to South Korea, it can also hardly begin a full-scale war due to other reasons. First, most **South Koreans do not want to put to risk their economic achievements**, which have been gained at a high price, and their standard of living, which is one of Asia’s highest. Secondly, South Koreans cannot start any major conflict, all the more so, invasion of the North without Washington’s permission. From the time of the Korean War there has been an agreement between the United States and the Republic of Korea according to which the South Korean armed forces, in an event of a large-scale conflict on the peninsula, are placed under the supervision of the American general commanding the U.S. military contingent deployed in the Republic of Korea. Moreover, he automatically receives this right when the third degree of battle readiness is announced.

#### Won’t go nuclear

Bennett **Ramberg**, Former US State Dept Analyst, Proliferation expert, Foreign policy consultant, Author of Nuclear Power Plants as Weapons for the Enemy, Global Security Seminar Director, Sept 200**9**, "Living with Nuclear North Korea," Survival, 51.4

Of the challenges presented by a nuclear North Korea – nuclear-materials and technology export, premeditated use of nuclear weapons or initiation due to pre-emption fears or intelligence failures – the risk of premeditated atomic strikes may be the most manageable. After all, despite the historical record of border incidents, clashes, infiltrations and invective coupled with an offensive military doctrine and Pyongyang’s declarations that the North’s ‘supreme national task’ is to reunite the peninsula by whatever means necessary, Washington and Seoul have effectively dissuaded North Korea for decades.

## Solvency

### 1nc squo solves

#### Squo solves and disproves their aff. Even though Obama claimed authority on Syria, the fact he asked for authorization sets a sufficient precedent

Peter M. Shane 9-2-2013; Author, 'Connecting Democracy' and 'Madison's Nightmare'; Law professor, “Rebalancing War Powers: President Obama's Momentous Decision”

<http://www.huffingtonpost.com/peter-m-shane/rebalancing-war-powers-pr_b_3853232.html>

But seeking authorization for a military strike against Syria marks the first time that a modern-day president has taken the initiative to elicit legislative approval for a military action that, by the President's own reckoning, will neither be a prolonged, nor a boots-on-the-ground operation. In announcing his decision, President Obama, like both Presidents Bush, declared that he possessed the constitutional authority to act unilaterally. He said he does not need Congress' approval in order to proceed. But historical precedents have consequences. Whatever their formal legal views, the Bushes' decisions helped cement a consistent pattern: With the exception of Korea, the United States has never engaged in a massive or prolonged military deployment without some form of explicit congressional sanction. A President acting unilaterally to start what is sometimes called "a real war" henceforth would probably be courting impeachment.

### 1nc solvency

#### Congress fails—everyone sucks

**Thompson 13** [Aug 26, Mark, “Obama Can Strike Syria Unilaterally,” <http://swampland.time.com/2013/08/26/obama-can-strike-syria-unilaterally/>]

Washington graybeards like to point out that only Congress can declare war, and only Congress can appropriate the funds to wage war. Technically speaking, that’s true. But it is also irrelevant. The nation has been on a slippery slope for decades, steadily shifting the power to both launch and wage war away from Congress, and toward the President. The last war Congress declared was World War II. Everything since—Korea, Vietnam, Grenada, Panama, Iraq, Bosnia, Afghanistan, Iraq (again!) and Libya—has been fought with something less than a full-throated declaration of war by the U.S. Congress. Generally speaking, the President likes this, since he doesn’t have to convince Congress of the wisdom of his war, and Congress likes it even more. Under the current system, lawmakers get to wink at the White House by passing an authorization for the use of military force or other purported justification as a fig leaf they can abandon if things go sour. A declaration of war demands more, and Congress is leery of going on the record with such declarations for its own political reasons.

#### The executive will arbitrarily define words, they don’t care

Pollack, 13 -- MSU Guggenheim Fellow and professor of history emeritus [Norman, "Drones, Israel, and the Eclipse of Democracy," Counterpunch, 2-5-13, www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/, accessed 9-1-13, mss]

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” In response to the threat, we see the deliberate reshaping of the law: Since 2000, “the Israel Defense Forces, guided by its military lawyers, have attempted to **remake the laws** of war by consciously violating them and then **creating new legal concepts to provide juridical cover** for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; in the US‘s case, targeted assassination, repeated often enough, seems permissible, indeed clever and wise, as pressure is steadily applied to the laws of war. Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (**Obama is hardly a novice at** this game of **stretching the law to suit the convenience of**, shall we say, the **national interest**? In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie if ever there was one, placing him in distinguished European company, Obama **redefined the meaning** of “combatant” status to be any male of military age throughout the area (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

# 2nc

## CP

### 2nc – solvency o/v

#### The counterplan is a non-binding Congressional resolution that threatens the plan. Gersen and Posner say it solves 100% of the case through 2 mechanisms:

#### 1. Judicial clarity –it provides evidence of clear Congressional intent to the Courts – so they don’t have to rule on political questions, instead, they’ve already been provided guidance by the Congress – this has the effect of creating binding restrictions on the president.

#### 2. Executive signaling – the signal of Congressional intent means the executive is more likely to fear the possibility of future Congressional action and the political ramifications of it – so it will back down.

#### The CP induces voluntary executive compliance to forestall the threat of binding restrictions

**Gersen and Posner, 8 -** Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

II. How Does Soft Law Affect Behavior?

We propose two main theories for the use of soft statutes in particular and soft law in general. First, Congress or another lawmaking body uses soft law to convey information about future intentions to enact hard law, allowing people to adjust their behavior in advance of binding statutes and in some cases avoiding constitutional requirements that apply to hard law. As we will show, soft law can be useful in this way even when the anticipated hard-law successor never materializes: if people adjust their behavior in anticipation of hard law, hard-law enactment might not be necessary. n63

 [\*587] Second, Congress uses soft law to convey information about its beliefs about the state of the world - both factual and normative. The Armenian Genocide resolution, for example, expressed the factual belief that the Armenian Genocide actually occurred - a historical event that is officially denied in Turkey - and the normative belief that the Armenian Genocide was wrong, rather than (as Turkey sometimes argues in the alternative) a series of massacres that were an excusable incident to war. Congress's beliefs about states of the world may influence the beliefs of other people.

In both settings, soft law is a signal that provides information. Like other signals, soft law can convey information more or less accurately and more or less efficiently. Soft law is preferable to hard law when the signal conveys information more reliably or more cheaply than hard law does. This Part surveys the relevant variables that affect the direction and magnitude of these tradeoffs.

Solves the aff internal links—

1. solves interventionism—creates the same check on the president, just is non-statutory—that was above
2. solves China—their only “aff key”card, the Kelly evidence says “legislative checks” this is pretty vague, and doesn’t make the nuanced distinction between the plan and CP—the CP resolves the “congressional interference” the advantage is based off of
3. Solves Korea—their Scobell internal link is based off of “us support of reformers” since the CP has the same tangible effect of the plan, means we resolve.

The way they explain Waxman in CX is the “congressional oversight” is key—the CP resolves 100% if this link

#### Err negative on solvency questions – there’s no practical difference between legal rules and non-binding rules because the executive has the power to ignore legal constraints. Everything that affects the President is political – and the CP has the same political effect as the plan.

**Posner and Vermeule, 10** - \*professor of law at the University of Chicago AND \*\*professor of law at Harvard (Eric and Adrian, The Executive Unbound, p. 61)

CONCLUSION

American government in the period 2001 to 2008 bears little resemblance to the constitutional framework erected, or wished for, by liberal legalism. In the liberal-legalist view, legislatures are said or at least hoped to be the primary actors, with executive and judicial power following suit—through law-execution and law-interpretation respectively. Both legislatures and courts are supposed to check and monitor the executive, keeping its power tightly cabined. In these episodes, however, executive officials take center stage, setting the agenda and determining the main lines of the government’s response, with legislatures and courts offering second-decimal modifications. Legislative and judicial monitoring and checking is largely hopeless, in part because of the necessarily ad hoc character of the

government’s initial reaction (“regulation by deal”).88 in part because legislatures and courts come too late to the scene. The overall impression is that the constitutional framework of liberal legalism has collapsed under the pressure of fact, especially the brute fact that the rate of change in the policy environment is too great for traditional modes of lawmaking and policymaking to keep pace. Although crises demonstrate the problem with particular clarity, it is embedded in the structure of the administrative state.

None of this means that the president is all-powerful; that is not our claim. As political science assessments of executive power show,89 the president does face some checks even from a generally supine Congress and even in the domains of war and foreign affairs where presidential power reaches its zenith.90 However, these checks are not primarily legal. Even Congress’s main weapon for affecting presidential behavior is not the cumbersome and costly legal mechanism of legislation. Rather legislators appeal to the court of public opinion, which in turn constrains the president. Oversight and various forms of “soft law”91—congressional statements and resolutions short of legally binding legislation—affect public support for presidential action in the realm of foreign policy, and in many other domains as well. There are real constraints on executive government, but formal constitutional procedures are not their source.

#### It also creates a political climate that causes enactment of the plan down the road

**Harvard Law Review, 11** (“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

A. Why a Congressional Resolution Deserves Deference Even for Agency-Administered Statutes

As explained in section I.A, a house of Congress brings its significant expertise and political accountability to bear when interpreting a statute. Therefore, when an agency charged with administering a statute has not issued an interpretation of an ambiguous provision, courts should defer to a congressional resolution that resolves the ambiguity. But the issue becomes complicated when both an agency and the House or Senate offer conflicting interpretations. As a normative matter, courts should defer to whichever political branch has greater accountability and expertise. Generally, the House and Senate might be assumed to be more democratically accountable than agencies, while agencies might possess greater expertise than Congress does. Policy decisions, however, nearly always require a combination of both expertise and value judgments, and the relative importance of these two elements varies depending on the particular decision. Moreover, the extent of each branch's comparative advantage on either of these variables differs from case to case. Courts therefore should refrain from [\*1516] adopting a categorical rule that favors one political branch over another. n43 Rather, judges should engage in a careful de novo or Skidmore analysis of the particular statute and the interpretations that have been offered before resolving the statutory ambiguity.

Allowing the political branches essentially to veto each other's interpretations of ambiguous statutes by adopting their own conflicting interpretations would increase transparency. Disagreements over the best interpretation would be formalized and public, and each political branch would present its argument for why its interpretation was better - not just as litigants trying to convince the courts, which would have the power to decide between conflicting interpretations, but as elected or accountable officials who are responsible to their constituencies. And by lowering the legislative costs necessary to alter the law, this Note's proposal might promote an investment of resources in developing interpretations that would turn out to be more broadly popular (or where a compromise might be more easily reached) than congressmen initially imagined - thus spurring actual legislation, not just interpretations of existing statutes.

### 2nc politics net benefit

#### The CP avoids politics – 2 reasons –

1. The Congressional resolution is *never submitted to the President*- it’s solely a statement of Congressional will – Obama never has the opportunity to sign or veto it or spend capital on it – that’s Swaine

Swaine, 10 -Associate Professor, George Washington University Law School (Edward, “THE POLITICAL ECONOMY OF YOUNGSTOWN” <http://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1017&context=faculty_publications>)

1. The *process* of legislative mandates is *politically more costly* than passing a simple Congressional resolution – it involves greater *institutional bargaining* – we have comparative evidence on the link differential – that’s Harvard Law Review

Harvard Law Review, 11 (“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

#### And 4 more warrants—they cost *docket time, energy* and *capital* and *focus* on the rest of the agenda.

**Harvard Law Review, 11** (“A CHEVRON FOR THE HOUSE AND SENATE: DEFERRING TO POST-ENACTMENT CONGRESSIONAL RESOLUTIONS THAT INTERPRET AMBIGUOUS STATUTES” 124 Harv. L. Rev. 1507, April, lexis)

One impediment to this outcome is that the costs of legislative enactment are frequently too high to make it worth Congress's limited time and energy to overturn a judicial interpretation. The Senate, for example, might prefer the House and the President's interpretation of a statute if it had the time to consider the question and vote on it, but might simply have other business that consumes all of its time. In that case, any bill on the issue introduced by the House or urged by the President would likely fail (or, more likely, would never be initiated). More fundamentally, even where the costs of legislation are less than the benefits gained by legislating, Congress incurs the opportunity [\*1519] costs of forgoing other legislative work. And although in the abstract it may seem that all three political institutions would only infrequently agree on a different interpretation from the one adopted by the judiciary, such a situation is particularly likely to arise when judges interpret open-ended statutes that require technical determinations or value judgments; because judges lack expertise and are not accountable to the public, their interpretations may frequently diverge from what the political branches would adopt.

#### And the signaling function of the CP means Obama will exercise *restraint* in response so he can *preserve Democratic unity*

Silverstone 4—Assistant Professor of Political Science at the United States Military Academy

(Scott, *Divided Union: The Politics of War in the Early American Republic* pg 61-62, dml)

\*note: federal asymmetry = conflict between executive and legislative policy preferences

Federal asymmetry will also increase the likelihood of presidential self-restraint (see Table 2.1). First, the president may choose to avoid the use of force if he anticipates that Congress will withhold its approval for his preferred policy options. Second, the president may avoid the use of force or the pursuit of certain objectives if he believes that opposition to these policies within certain regions of the federal republic will produce electoral penalties that undermine his ability to attract a winning electoral coalition from across the national political system.1°° The president might exercise self-restraint even if the ex- pected electoral penalties would undermine his political party, and not necessarily his own tenure in office. The president might choose to avoid the kinds of issues or actions that would penalize loyal members of his party in particular regions and thus undermine the party's aggregate national strength. Finally, the president might exercise self-restraint to avoid splitting the party along territorial lines. The president has a strong interest in party unity, which will have a direct impact on his ability to inﬂuence legislative outcomes. Yet the latent internal party tension caused by federal asymmetry on particular is- sues may come to the surface if the president initiates policies that party members from particular regions find objectionable. To avoid the repercussions of dividing the party this way, the president might choose to avoid the types of policies that would have this effect.'°°

#### Statutes on Constitutional authority are likely to trigger vetoes

**Gersen and Posner, 8 -** Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

In addition, if a hard statute is the only legislative vehicle for articulating constitutional views, some statements will not be produced because of an anticipated presidential veto, even when Congress thinks the statute constitutionally unproblematic. Especially when a particular bill has implications for the constitutional roles of Congress and the President, Congress and the President might have good-faith disagreement about the relevant constitutional norms. The President may veto statutes that violate his interpretation of his constitutional powers, in which case Congress's opposing interpretation will not have a formal public airing. In this case, the legislature alone must advance its interpretation of the Constitution; the legislature and the President can only advance a consensus interpretation. n178 Exclusive reliance on hard statutes will produce a body of constitutional law that is biased and incomplete.

#### It means the plan requires a veto override

**Eskridge and Ferejohn, 92** - \* Professor of Law, Georgetown University Law Center. AND\*\* Patrick Suppes Family Professor in Humanities and Social Sciences, Stanford University (William and John, “The Article I, Section 7 Game” 80 Geo. L.J. 523, lexis)

The Constitution's requirements for lawmaking can be modeled as a sequential game, which we dub the "Article I, Section 7 game." The starting point for the game is the status quo, which prevails in the absence of legislation. If the median legislator in both chambers can agree on a similar policy to replace the status quo, the legislature will want to pass a statute implementing the legislative preference. In a parliamentary system, this would be the end of the game. In our presidential system, the President may not prefer the policy preferred by the median legislator to the status quo and, hence, might veto the legislation. The final move would then be that of Congress, to [\*529] override the veto, if two-thirds of the legislators in each chamber prefer the median chamber preference to that of the President.

#### That kills capital

**Slezak, 7 -** Center for the Study of the Presidency Fellow 2006-2007 at UCLA, MA in Security Studies at Georgetown (Nicole, “The Presidential Veto: A Strategic Asset” https://host.genesis4100.net/thepresidency/pubs/fellows2007/Slezak.pdf)

Although the veto offers the president a significant advantage in dealing with a sometimes combative and divisive Congress, James Gattuso discusses four “caveats” that should be considered by presidents when devising a veto strategy. First, presidents should not veto without care, for if Congress overrides it is politically damaging to the president.8 This means that if the president does not garner the required one-third plus one in either house of Congress and his veto is overridden, he will not only lose face, but lose political capital that gives him leverage in dealing with Congress. If the president loses political capital he can put himself at a disadvantage for future interactions with Congress; hence, when vetoing he must consider his support in Congress and the potential ramifications of an override. However, Gattuso adds that worse than having a veto overridden is a president who threatens to veto and does not follow through once Congress has passed legislation.9 This is even more damaging than an override because the president is caught making “empty threats.” Therefore, Congress will continue to produce legislation to their liking rather than revising it because Congress is inclined to believe the president is no longer serious about his veto threats.

### 2nc – threats solve

#### The mere threat of Congressional action solves – even if Congress has no intent to follow through

**Pevehouse and Howell, 8 –** \*Assistant Professor in the Department of Political Science at the University of Wisconsin, Madison AND \*\*Sydney Stein Professor in American Politics at Chicago Harris(Jon and William, While Dangers Gather : Congressional Checks on Presidential War Powers, p. 133-134)

The Lebanon deployment illustrates two basic lessons about use-of-force politics. First, Congress is capable of disrupting or dismantling military ventures should it desire to do so. As the situation in Lebanon deteriorated, Congress threatened the administration with more hearings, more reporting requirements, and perhaps most important, more news headlines. What is particularly poignant about this example is that Congress enacted few binding laws (other than triggering an extended War Powers clock) that sought to dismantle the military venture. Though Congress may not always have the political will to deny funding for an ongoing use of force outright, Lebanon suggests the mere threat of doing so can be enough to cause the administration to change its course of action. 80a Second, by questioning the operation and insisting that the president abide by the War Powers Resolution, members managed to materially affect the ongoing course of the campaign. Most immediately, they forced the president to consult with them more often than he would have liked. By refusing to present a united front, members bolstered Syrian and Israeli recalcitrance and thereby complicated the president’s efforts to negotiate a satisfactory settlement to the conflagration. The administration repeatedly complained about the message that congressional opposition would send to its allies and enemies in the region; on at least one occasion, Syria refused to honor an accord brokered by Schultz, holding out for better terms to be negotiated. Just weeks after withdrawing the troops from Beirut, Reagan publicly denounced Congress, whose “second-guessing about whether to keep our men [in Lebanon] severely undermined our policy. It hindered the ability of our diplomats to negotiate, encouraged more intransigence from the Syrians and prolonged the violence.”

2 more warrants

#### Statistics- fiating a majority opposition in Congress is an extremely credible threat

**Pevehouse and Howell, 8 –** \*Assistant Professor in the Department of Political Science at the University of Wisconsin, Madison AND \*\*Sydney Stein Professor in American Politics at Chicago Harris(Jon and William, While Dangers Gather : Congressional Checks on Presidential War Powers, p. 222)

It is of some consequence, then, that we find so much evidence that the partisan composition of Congress factors into presidential decision making about the nation’s response to assorted foreign crises. Estimating a wide range of statistical models, we find that those presidents who face large and cohesive congressional majorities from the opposite party exercise military force less regularly than do those whose party has secured a larger number of seats within Congress. Additionally, other statistical models reveal that partisan opposition to the president reliably depresses the likelihood of a military response to specific crises occurring abroad and significantly extends the amount of time that transpires between the precipitating event and the eventual deployment. Modern presidents consistently heed the distinctly political threat posed by large, cohesive, and opposing congressional majorities— a threat that is all too often latent, but that when mobilized, materially affects the president’s efforts to rally public support for an ongoing deployment and to communicate the nation’s foreign policy commitments to both allies and adversaries abroad.

#### Appropriations-- The CP induces executive compliance through the threat of withholding funds

**Gersen and Posner, 8 -** Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

2. Soft statutes as political support

This is not, however, the only way for a soft statute to affect presidential decision making. Suppose that the President announces that recent developments in Iran pose a threat to the interests of the United States and he intends to send troops. Congress enacts one of two potential soft statutes. The first proclaims that a majority of both houses of Congress disagree with the President's determination. The hostilities, in the view of the legislature, do not constitute a threat to U.S. interests. The second potential soft statute proclaims agreement with the President's determination and expresses the mood of the chambers that the conflict warrants U.S. engagement. Even if neither resolution generates legal authority for the President's troops, a soft statute might nonetheless affect presidential decision making in two ways.

If the President believes that he will need congressional cooperation to complete a successful military campaign, he will need to pay attention to the views of the legislature. The President will need appropriations, of course; he may also have needs incidental to the war effort where his constitutional power does not plausibly extend - to raise the salaries of officers, for example. He may need Congress to cooperate in his domestic programs, and a Congress that [\*605] opposes the war may be unwilling to do so. The soft statute will express Congress's opposition more effectively than communications from leaders or other members because Congress acts as a body. If Congress later breaks its word, then its credibility will be diminished, and future efforts to influence the President will be hampered. To avoid this institutional cost, members of Congress may feel bound by earlier votes.

#### Threats of funding cut-offs are empirically effective and create political accountability

**Nzelibe and Yoo, 6** – Jide Nzelibe is Assistant Professor of Law, Northwestern University Law School.

John Yoo is Professor of Law, University of California at Berkeley School of Law (Jide Nzelibe and John Yoo, Rational War and Constitutional Design , 115 Yale L.J. 2512 (2005), Available at: <http://scholarship.law.berkeley.edu/facpubs/68>)

The choice between the Congress-first view and the current system of war powers is not one of total versus zero congressional participation. The question really is one of ex ante versus ex post participation. Even under the strongest President-first theories, Congress still retains the ability to check presidential foreign policy and national security decisions through the funding power. Often Congress can exercise that authority ex ante. It had the opportunity, for example, to prevent Presidents from waging the Persian Gulf War, the Kosovo conflict, and the wars in Afghanistan and Iraq by refusing to appropriate money before the fighting began. Some Congress-first scholars doubt the effectiveness of Congress's appropriation power in constraining presidential military ventures,26 but Congress has frequently used the threat to cut off funding to force withdrawal of forces and terminate conflicts. 7 With the high costs of modern conflict, any significant military undertaking will require Presidents to seek congressional cooperation. Critics of presidential power fail to explain why political accountability would be enhanced by requiring that Congress not just provide funding for military hostilities ex ante, but also go to the additional step of enacting legislation authorizing the conflict.

### 2nc – solves intnl credibility

--All of their solvency ev is based off other countries perceiving the end result of the plan, not the mechanism itself.

--Their evidence is based off of \_\_\_\_\_\_\_

--They concede CP solvency in CX of the 1AC-- they said the US just has to do X to provide a strong enough signal

--View through the lens of sufficiency—we’re a big enough break from the SQ-- intl actors look at CP v. SQ, not aff v. CP.

#### --Legislative checks enhance the credibility of threats but don’t rely on formal binding restrictions

**Waxman, 13** ­- Professor of Law, Columbia Law School; Adjunct Senior Fellow for Law and Foreign Policy, Council on Foreign Relations (Matthew, “The Constitutional Power To Threaten War” Yale Law Journal, SSRN)

The importance of credibility to strategies of threatened force adds important new dimensions to this debate. On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations – that institutional centralization and secrecy of decision-making might better equip nondemocracies to wield threats of force. As Quincy Wright speculated in 1944, autocracies “can use war efficiently and threats of war even more efficiently” than democracies,157 especially the American democracy in which vocal public and congressional opposition may undermine threats.158 Moreover, proponents of democratic checks on war powers usually assume that careful deliberation is a virtue in preventing unnecessary wars, but strategists of deterrence and coercion observe that perceived irrationality is sometimes important in conveying threats: “don’t test me, because I might just be crazy enough to do it!”159

On the other hand, some political scientists have recently called into question this view and concluded that the institutionalization of political contestation and some diffusion of decision-making power in democracies of the kind described in the previous section make threats to use force rare but especially credible and effective in resolving international crises without actual resort to armed conflict. In other words, recent arguments in effect turn some old claims about the strategic disabilities of democracies on their heads: whereas it used to be generally thought that democracies were ineffective in wielding threats because they are poor at keeping secrets and their decision-making is constrained by internal political pressures, a current wave of political science accepts this basic description but argues that these democratic features are really strategic virtues.160

Rationalist models of crisis bargaining between states assume that because war is risky and costly, states will be better off if they can resolve their disputes through bargaining rather than by enduring the costs and uncertainties of armed conflict.161 Effective bargaining during such disputes – that which resolves the crisis without a resort to force – depends largely on states’ perceptions of their adversary’s capacity to wage an effective military campaign and its willingness to resort to force to obtain a favorable outcome. A state targeted with a threat of force, for example, will be less willing to resist the adversary’s demands if it believes that the adversary intends to wage and is capable of waging an effective military campaign to achieve its ends. In other words, if a state perceives that the threat from the adversary is credible, that state has less incentive to resist such demands if doing so will escalate into armed conflict.

The accuracy of such perceptions, however, is often compromised by informational asymmetries that arise from private information about an adversary’s relative military capabilities and resolve that prevents other states from correctly assessing another states’ intentions, as well as by the incentives states have to misrepresent their willingness to fight – that is, to bluff.162 Informational asymmetries increase the potential for misperception and thereby make war more likely; war, consequentially, can be thought of in these cases as a “bargaining failure.”163

Some political scientists have argued in recent decades – contrary to previously common wisdom – that features and constraints of democracies make them better suited than non-democracies to credibly signal their resolve when they threaten force. To bolster their bargaining position, states will seek to generate credible signals of their resolve by taking actions that can enhance the credibility of such threats, such as mobilizing military forces or making “hand-tying” commitments from which leaders cannot back down without suffering considerable political costs domestically.164 These domestic audience costs, according to some political scientists, are especially high for leaders in democratic states, where they may bear these costs at the polls.165 Given the potentially high domestic political and electoral repercussions democratic leaders face from backing down from a public threat, they have considerable incentives to refrain from bluffing. An adversary that understands these political vulnerabilities is thereby more likely to perceive the threats a democratic leader does issue as highly credible, in turn making it more likely that the adversary will yield.166

Other scholars have recently pointed to the special role of legislative bodies in signaling with regard to threatened force. This is especially interesting from the perspective of constitutional powers debates, because it posits a distinct role for Congress – and, again, one that does not necessarily rely on Congress’s ability to pass binding legislation that formally confines the President.

Kenneth Schultz, for instance, argues that the open nature of competition within democratic societies ensures that the interplay of opposing parties in legislative bodies over the use of force is observable not just to their domestic publics but to foreign actors; this inherent transparency within democracies – magnified by legislative processes – provides more information to adversaries regarding the unity of domestic opponents around a government’s military and foreign policy decisions.167 Political opposition parties can undermine the credibility of some threats by the President to use force if they publicly voice their opposition in committee hearings, public statements, or through other institutional mechanisms. Furthermore, legislative processes – such as debates and hearings – make it difficult to conceal or misrepresent preferences about war and peace.

Faced with such institutional constraints, Presidents will incline to be more selective about making such threats and avoid being undermined in that way.168 This restraining effect on the ability of governments to issue threats simultaneously makes those threats that the government issues more credible, if an observer assumes that the President would not be issuing it if he anticipated strong political opposition. Especially when members of the opposition party publicly support an executive’s threat to use force during a crisis, their visible support lends additional credibility to the government’s threat by demonstrating that political conditions domestically favor the use of force should it be necessary.169

In some cases, Congress may communicate *greater* willingness than the president to use force, for instance through non-binding resolutions.170 Such powerful signals of resolve should in theory make adversaries more likely to back down.

### at: Perm do the CP

#### 1. It obviously severs the plan – nothing about the plan is framed in terms of a Congressional resolution; this is an illegitimate 2ac clarification that should be a voting issue – no CP would be competitive

#### 2. The CP is non-statutory – 1nc Swaine says it’s an informal expression of Congressional will – but nothing is codified

#### 3. Statutory restrictions mean they are hard laws published in the CFR and signed by the president

**West's Encyclopedia of American Law, 8** (reprinted in The Free Dictionary, “law”, [http://legal-dictionary.thefreedictionary.com/Statutes+and+Treaties](http://legal-dictionary.thefreedictionary.com/Statutes%2Band%2BTreaties))

Federal statutes are passed by Congress and signed into law by the president. State statutes are passed by state legislatures and approved by the governor. If a president or governor vetoes, or rejects, a proposed law, the legislature may override the Veto if at least two-thirds of the members of each house of the legislature vote for the law.

Statutes are contained in statutory codes at the federal and state levels. These statutory codes are available in many public libraries, in law libraries, and in some government buildings, such as city halls and courthouses. They are also available on the World Wide Web. For example, the statutory codes that are in effect in the state of Michigan can be accessed at <http://www.michigan.gov/orr>. A researcher may access the United States Code, which is the compilation of all federal laws, at <http://uscode.house.gov>. The site is maintained by the Office of the Law Revision Counsel of the U.S. House of Representatives.

#### And, “Statutory restrictions” are permanent and binding

Davis 2 (Todd S., Chief Executive Officer – Hemisphere Development, *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property*, p. 196)

A statutory restriction is utilized by many states in their model codes to ensure that the restriction is forever binding against the landowner and successors in interest." In the context of state voluntary cleanup programs, restrictions are often created between the private property owner and the state. In the belter state programs, the restriction will state that the appropriate state agency may enforce the restriction.1' The restriction should also be recorded or registered with the appropriate land records and authorities, to provide future landowners with notice.

#### The CP is soft law – it isn’t legally binding but it still shapes the behavior of other branches and leads to binding effect down the road

**Gersen and Posner, 8 -** Kirkland and Ellis Professor of Law, The University of Chicago (Jacob and Eric, “Soft Law: Lessons from Congressional Practice” 61 Stan. L. Rev. 573, lexis)

 [\*577] The academic literatures on these topics have different concerns, yet the themes are similar. Soft law refers to statements by lawmaking authorities that do not have the force of law (most often because they do not comply with relevant formalities or for other reasons are not regarded as legally binding n12), but nonetheless affect the behavior of others either (1) because others take the statements as credible expressions of policy judgments or intentions that, at some later point, might be embodied in formally binding law and reflected in the coercive actions of executive agents, or (2) because the statements provide epistemic guidance about how the authorities see the world. n13 Individuals, governments, states, and other agents use soft law in order to enter commitments and influence behavior where legal mechanisms are regarded as undesirable.

#### Funding threats are also separate.

**OMB Watch 2007 – most recent date mentioned** (Regulatory Resource Center, “Background on the Rulemaking Process”, http://www.foreffectivegov.org/files/regs/rcenter/backgroundpdfs/I.-V..pdf)

1. Organic Laws

Congress influences the rulemaking process primarily through legislative action. Through legislation, ¶ Congress directs the agencies to carry out policies. Often legislation gives agencies only broad directives ¶ and leaves the details to the agency. In other cases, Congress will set out specific procedures and ¶ objectives. Congress not only uses legislation to create rules for specific policy issues, but it also uses ¶ legislation to shape the rulemaking process itself.

2. Appropriations Process

**A completely separate process**, that of appropriations, significantly impacts agencies. Each year, as ¶ Congress puts together the federal budget with the executive branch, agencies must explain and justify ¶ their activities. Since agencies can do nothing without money, they are sensitive to the interests of those ¶ members of Congress who sit on the appropriations subcommittees handling their budget requests. ¶ **Even the threat** of a rider (i.e., an amendment to a bill) may cause an agency to abandon a proposal. On ¶ occasion, Congress uses riders on appropriations bills to prohibit an agency from using funds from its ¶ appropriation for an activity to which Congress objects.

## China

### FLEX

There is no answer to the flex turn in the 2AC—full weight and no 1ar answers

#### **Flex turn - the WPR is being circumvented now, leading to a robust military response rate, but Congressional authorizations will hamper our ability to respond in a crisis, especially in the South China Sea; they say extinction.**

The Diplomat 13 “Does the President Have the Power to Protect US Allies? Obama going to Congress on Syria raises questions about America’s commitments to allies in Asia.” The Diplomat. September 05, 2013. <http://thediplomat.com/2013/09/does-the-president-have-the-power-to-protect-us-allies/> /Chappell//Red

#### **Plan kills credibility—turns all of their threat and cred interals**

Waxman 13 Matthew C. Waxman, (Matthew C. Waxman is a Professor at Columbia Law School, an Adjunct Senior Fellow at the Council on Foreign Relations, and a Member of the Hoover Institution Task Force on National Security and Law.) Syria, Threats of Force, and Constitutional War Powers, 123 YALE L.J. ONLINE 297 (2013), <http://yalelawjournal.org/2013/11/7/waxman.html>. //Chappell//Red

Intuitively, greater congressional veto power over the use of force would seem generally to undermine the credibility of threats. For this reason, it has long been assumed that democracies are at a disadvantage relative to autocracies when it comes to threats of force and saber-rattling bargaining contests under the shadow of possible war. Quincy Wright speculated in 1942 that autocracies “can use war efficiently and threats of war even more efficiently” than democracies,35 especially democracies like the United States, in which vocal public and congressional opposition may undermine threats.36

Additional, formal legal powers over war or force in the hands of Congress would, it might seem, further disable the President from wielding threats effectively, because opponents and other players in the international system might doubt not only his willingness but his ability to carry them out. 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 serious restrictions on presidential use of force would mean that, in practice, “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”37 This view holds that the merits of Madisonian “clogging” with regard to waging eighteenth century wars are liabilities with regard to deterring twentieth and twenty-first century wars.38

The Syria case would seem to bear out these concerns. By giving Congress a vote, the President appears not only to have tied his own hands in carrying out his threat, but to have tipped off American rivals and partners that congressional support for new military actions (for which the President might also seek congressional authorization) is generally frail.

### link

the aff hamstrings prez flexibility

#### Restrictions don’t solve the aff but undermine presidential flexibility – causes al Qaeda resurgence

**Stimson, 13** – Charles, Manager, National Security Law Program and Senior Legal Fellow at Heritage (“Law of Armed Conflict and the Use of Military Force,” Testimony Before Armed Services Committee United States Senate, 5/16/13, http://www.heritage.org/research/testimony/2013/05/the-law-of-armed-conflict //Red)

Al Qaeda today remains a threat. The organization has evolved substantially from the relatively insular group that planned and carried out the September 11 attacks. Over the past decade, al Qaeda has “franchised” its name, its techniques, and its terrorist mission to any number of associated groups, including al Qaeda in the Arabian Peninsula and al Qaeda in the Islamic Maghreb. That period has also seen the rise of a number of terrorist groups with similar goals and varying relationships to the “core” al Qaeda organization. They include al Shabaab, Boko Haram, Jabhat al-Nusra, and Lebanese Hizballah. Robert Chesney’s 2012 law review article entitled “Beyond the Battlefield, Beyond al Qaeda: The Destabilizing Legal Architecture of Counterterrorism” describes the strategic and legal complexity of the terrorist battlefield today. At the same time that al Qaeda itself has splintered, a number of groups have allied themselves with its mission, its techniques, and only sometimes al Qaeda itself. A few examples are illustrative of this trend: Al Qaeda has been linked in relatively unspecified ways to a group of Islamist extremists in northern Nigeria known as Boko Haram. The Algerian extremist group formerly known as the Salafist Group for Call and Combat has embraced the al Qaeda brand more formally, becoming “al Qaeda in the Islamic Maghreb” or “AQIM,” and has recently seized territory in Northern Mali working in close concert with a local armed group of extremists known as Ansar Dine (“Defenders of the Faith”). Multiple al Qaeda-linked groups have emerged in the area of the Sinai Peninsula in Egypt, including a group calling itself the Mujahideen Shura Council and another called Ansar al Jihad. Iraq famously became the home of al Qaeda in Iraq in the years following the U.S. invasion, and was famously (and foolishly) reluctant to conform its operations to the dictates of al Qaeda’s senior leadership in Pakistan in its first iteration; after nearly being eliminated a few years ago, it is now enjoying a substantial resurgence. And as the civil war in Syria unfolds, there are claims in the media regarding the presence of “al Qaeda” fighters appearing, though whether this represents an influx of al Qaeda in Iraq members, of homegrown extremists appropriating al Qaeda’s brand, something else, or mere propaganda is far from clear at this time. The point being, each of these groups may differ markedly from one another in terms of their actual degree of connection to al Qaeda itself, their interest in conducting operations targeting American or other western targets outside the confines of the state in which they usually operate, and in terms of their own organizational coherence[14]. As Chesney concludes, al Qaeda has embraced an increasingly decentralized model, while seeking ties to already existing regional terrorist actors. The trend makes ever more tenuous the assumption underlying the AUMF that al Qaeda-style terrorism necessarily bears any direct or substantial relationship to al Qaeda itself, as is necessary to fall under the terms of the AUMF. As this trend continues, the day will come when substantial threats to the United States are no longer encompassed within the existing force authorization. For the present, however, al Qaeda’s enormous organizational flexibility—perhaps its chief strength—has allowed us to defer addressing that issue. Additional Authorities to Confront the Evolving Threat Still, it is not too early to begin thinking about what comes after the AUMF, because the day when it will no longer be sufficient to meet the terrorist threat is approaching. At this stage, the most important thing may be to frame how we approach this problem. In general, I commend to your attention a recent white paper by the Hoover Institution’s Task Force on National Security and Law entitled “A Statutory Framework for Next-Generation Terrorist Threats”[15] co-authored by fellow panelist Jack Goldsmith. And in particular, a few key points are worth discussing here: First, the central consideration on whether to enact additional authorizations for the use of military force must be our national security needs. As al Qaeda continues to splinter, and new groups unassociated with al Qaeda proliferate, threats beyond the scope of the AUMF will become increasingly prevalent. At the outset, these may be addressed by greater attenuation of AUMF authority—a phenomenon that has already begun—and by non-military means. But as these threats grow, those methods will become infeasible. Congress and the President, working together, have a duty to ensure that appropriate legal authority exists to address these threats. That will require cooperation between the branches and a relationship of trust, particularly if the nature of this emerging threat requires greater flexibility in targeting than allowed by the AUMF. Second, the substance of the AUMF’s force authorization should be followed. The AUMF’s allowance that the President may bring to bear “all necessary and appropriate force” against the entities encompassed by it is consistent with our constitutional architecture, with centuries of precedent, and with the need for flexibility in fighting a diverse and always evolving threat. Congress has never attempted to regulate the specific means by which the President has exercised his power as Commander in Chief. Beyond raising serious constitutional questions, **limits on that authority would be folly** because they **would constrain the President’s ability to wage war successfully on non-state actors whom Congress has already identified as the nation’s enemies.** The better course is to separate the substance of a force authorization from its breadth. Third, narrowly tailored, flexible legislation by Congress, prepared in an open and transparent manner, best serves the interests of the American people. As Justice Jackson observed in his famous opinion in Youngstown Sheet & Tube, “[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.”[16] Consistent with that principle, **when the President acts with the support of Congress, his actions bear greater legitimacy both domestically and internationally**, in the courts and in these chambers. When the President acts on his own, as sometimes he must, his powers are more constrained and therefore may be less effective, while at the same time subject to less oversight and fewer checks by the Congress and the courts. But make no mistake: the President has a duty to protect the nation’s security, and **any President will, if and as necessary, rely on his Article II powers to carry out that duty in the face of imminent threats, even where Congress has not provided additional authority.** Congress therefore weakens not only the President but also itself when and if it declines to face up to the threats against our nation. Fourth, Congress must build on the AUMF, not replace it. **To replace the AUMF would be risky and unwise** at this time, because doing so would **cast uncertainty on the legal basis for so many aspects of our campaign** against al Qaeda. Any modification to the core AUMF grant of authority is risky for that reason. Over time, the AUMF will obsolete itself, as al Qaeda and the Taliban fade into oblivion, and when that process is finally complete, the AUMF will no longer have any purpose or meaning. We are not yet at that day, however. Therefore Congress may need to build on the AUMF, expanding its authority to reach new threats, rather than altering it at this time. Finally, Congress must always strive to balance the need for expediency in addressing threats with appropriate congressional control and oversight. No one suggests handing the President a blank check to carry out the power to declare war. The Constitution reserves that power to Congress. It also reserves to Congress the power of the purse and the power to regulate the armed services. These powers are essential to ensuring accountability for results and for the protection of Americans’ rights, consistent with our values, as we fight enemies that reject those rights and those values. Conclusion In summary, the United States remains in a legal state of armed conflict with those responsible for the 9/11 attacks. The current AUMF authorizes the use of force against this enemy and also allows this enemy to be detained under the law of war. The mere existence of the AUMF does not, in and of itself, authorize an endless war, as some critics contend. Rather, it merely authorizes the Commander in Chief to use those lawful authorities to confront and ultimately to defeat this enemy. And although those subject to the AUMF’s narrow jurisdiction are now on the run and arguably degraded in their capabilities, the fact remains that **they still pose a national security threat to the U**nited **S**tates. As such, the current AUMF is in the process of becoming obsolete; but unless and until this enemy no longer poses a substantial national security threat to our country, the current AUMF **should not be repealed or replaced.**

**Risk of nuclear terrorism is high, causes extinction**

**Costello, 12** – Ryan, coordinator of the Fissile Materials Working Group at the Connect U.S. Fund (“Involuntary response,” Bulletin of the Atomic Scientists, 1/26/12, http://thebulletin.org/involuntary-response //Red

Earlier this month, widespread inaction on the increasing dangers posed by nuclear proliferation and climate change forced the Bulletin's Doomsday Clock to move one minute closer to midnight, indicating the **mounting perils confronting humanity's survival**. One factor pushing the clock forward to five minutes to midnight was the failure to ensure strict security and comprehensive international oversight for nuclear weapons and materials, which continue to accumulate in a few nations. Despite several ongoing initiatives to strengthen global defenses against nuclear terrorism, it is clear that **much more needs to be done to ensure that the nightmare doesn't become reality.** In April 2010, 47 heads of state met in Washington, DC, for the first Nuclear Security Summit in order to find ways to address the largely overlooked threat of nuclear terrorism. The summit was the largest meeting of heads of state called by an American president since 1945, when leaders gathered in San Francisco in the effort that launched the United Nations. Major obstacles confronted planners for the first Nuclear Security Summit, including a lack of consensus on the dangers of nuclear terrorism and how best to enhance global nuclear security (problems that still persist). By gathering world leaders -- rather than bureaucrats -- to address the issue head on, the first summit made some important steps in helping to raise global awareness about the threat of nuclear terrorism. The 47 heads of state, representing countries from all corners of the globe, concluded in a nonbinding communiqué that "nuclear terrorism is one of the greatest threats to global security" and that "strong nuclear security measures" are the best means to prevent the threat from becoming reality. Additionally, the leaders joined President Obama's goal to secure all vulnerable nuclear material within four years. In addition to the strong normative support generated for preventing nuclear terrorism, the 2010 Nuclear Security Summit resulted in approximately 50 concrete national commitments to strengthen global nuclear security -- many of which have already been fulfilled heading into the second summit this March in Seoul, South Korea. Of particular note are the pledges to eliminate nuclear bombmaking materials. Since April 2010, nearly 400 kilograms of highly enriched uranium (HEU) has been removed from 10 countries. Russia, meanwhile, has destroyed more than 48 metric tons of HEU, with the United States eliminating seven additional metric tons of HEU. Such measures reduce the amount of material that could slip onto the black market and into the wrong hands. Other states, meanwhile, helped to bolster the international legal framework for nuclear security, with 13 additional countries ratifying the amendment to the Convention on the Physical Protection of Nuclear Materials and 12 ratifying the International Convention for the Suppression of Acts of Nuclear Terrorism. Several states made additional contributions to the Office of Nuclear Security of the International Atomic Energy Agency (IAEA), thus increasing the resources of an organization that provides vital guidance on how nations can best enhance their nuclear security. Yet, while the first Nuclear Security Summit greatly enhanced international attention on the threat of nuclear terrorism and gained tangible commitments, it is evident that **much more work remains to ensure that all nuclear materials are secure.** In 2009, the Fissile Materials Working Group (FMWG), a coalition of nongovernmental organizations dedicated to preventing nuclear terrorism, released a set of five consensus policy recommendations: • Launch a new "Next Generation Nuclear Security Initiative." • Accelerate efforts to consolidate and eliminate global HEU, plutonium, and nuclear weapons stockpiles. • Minimize all forms of HEU use and set a timetable for a ban on the civil use of HEU. • Request and aggressively pursue sufficient funding for removing and securing all vulnerable nuclear materials around the world in four years. • Extend and expand the G-8 Global Partnership Against the Spread of Weapons of Mass Destruction for another 10 years. Despite strong international expert consensus on the nature of the threat, the FMWG's original policy recommendations still remain largely applicable two years after they were released. Unfortunately, **governments and citizens don't seem to recognize the urgency of the problem**, and a detailed plan for securing all vulnerable nuclear materials has yet to be created. And, while significant progress has been made to secure fissile materials around the globe, there is enough military and civilian HEU in the world to produce another 60,000 nuclear weapons -- without considering stockpiles of plutonium -- according to the International Panel on Fissile Materials. Plus, the future budget outlook for the United States and Europe is grim, potentially jeopardizing funding for vital programs that secure nuclear materials around the globe. The current nuclear security regime, meanwhile, may **not** be **adequate to prevent potential terrorists from** acquiring nuclear material and **constructing a** crude **nuclear device.** Kenneth Brill, former US ambassador to the IAEA, argues that the "existing global architecture for nuclear security is more like a shantytown than a coherent structure." Nuclear security remains a national responsibility, with very little international oversight, peer review, or enforcement measures. According to Brill: "The existing pastiche of niche treaties, like-minded initiatives, and IAEA recommendations give the appearance of dealing effectively with nuclear security, while the reality is the 'best efforts' and voluntary nature of virtually all international action on nuclear security leave **loopholes through which a determined terrorist group could drive one or more improvised nuclear devices.**" Given the international ramifications of a nuclear terrorist attack, it seems that a regime relying on voluntary national commitments is inadequate, particularly when governmental consensus on the nature of the threat can be uneven and fleeting.

## Korea

### EMP

**No real threat of EMPs, and the impact would be containable**

**Weinberger 2-17-11** [Sharon, Foreign Policy writer, “The Boogeyman Bomb” <http://www.foreignpolicy.com/articles/2010/02/17/the_boogeyman_bomb?page=0,0>]

**If the primary threat is from a crudely constructed EMP weapon launched from a Scud-type missile, that sort of weapon wouldn't have nearly the capabilities needed to take out U.S. infrastructure**, he argues. Butt estimates that such a device, with a one-kiloton yield, would have to be launched much lower in the atmosphere, and thus would have more localized effects. **"Serious long-lasting consequences of a one-kiloton EMP strike would likely be limited to a state-sized region of the country**," he writes. True, an EMP that affected even a single state would be, no doubt, traumatic and disruptive, but **it would** also **be recoverable, and more importantly, fall far short of a "continental-scale time machine." In the end, advocates for EMP preparation could end up being their own worst enemy. The unlikely scenarios they peddle lend themselves to caricature**. And though there are certainly some intellectual heavyweights among those who have warned about the effects of EMP -- like Johnny Foster, the former head of Lawrence Livermore National Laboratory -- **critics have derided EMP defense supporters for relying on the likes of science fiction writer William R. Forstchen to help bolster their case. By talking about "time machines" and turning the EMP bomb into something that goes bump in the night, those advocating for better defenses risk pushing the issue further into the margins of science fiction**.