# Round 2—Aff vs John Carroll MS

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#### Advantage one Preemption

#### Presidential authority is modeled globally – causes global preemptive conflict

Sloane, 08 [Associate Professor of Law, Boston University School of Law, Robert, Boston University Law Review, April, 88 B.U.L. Rev. 341, p. lexis]

There is a great deal more constitutional history that arguably bears on the scope of the executive power in the twenty-first century. But it is vital to appreciate that the scope of the executive power, particularly in the twenty-first century, is not only a constitutional or historical issue. As an international lawyer rather than a constitutionalist, I want to stress briefly that these debates and their concrete manifestations in U.S. law and policy potentially exert a profound effect on the shape of international law. Justice Sutherland's sweeping dicta in United States v. Curtiss-Wright Export Corp., that the President enjoys a "very delicate, plenary and exclusive power ... as the sole organ of the federal government in the field of international relations - a power which does not require as a basis for its exercise an act of Congress," n52 has been (correctly, in my view) criticized on a host of grounds. n53 But in practice, in part for institutional and structural reasons, n54 it accurately reflects the general **preeminence of the President** in the realm of U.S. foreign affairs. Because of the nature of the international legal and political system, what U.S. Presidents do and say often establish precedents that strongly influence what other states do and say - with potentially dramatic consequences for the shape of customary international law. The paradigmatic example is the establishment of customary international law on the continental shelf following the Truman Proclamation of September 28, 1945, n55 which produced an echo of similar claims and counterclaims, culminating in a whole new corpus of the international law of the sea for what had previously been understood only as a geological term of art. n56 Many states took note, for example, when in the 2002 National Security Strategy of the United States ("NSS"), President Bush asserted that the United States had the right under international law to engage in preventive wars of [\*350] self-defense. n57 While, contrary to popular belief, the United States never in fact formally relied on that doctrine in practice, many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS's robust claims of a right to engage in preventive wars of self-defense. n58 Yet even within this brief, four-year period, an astonishing number of other states have asserted a comparable right to engage in preventive self-defense. These include not only states that the United States has described as "rogue states," such as North Korea and Iran, but Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and (though technically not a state) Taiwan. n59 I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century. Equally, after President Bush's decision to declare a global war on terror or terrorism - rather than, for example, the Taliban, al-Qaeda, and their immediate allies - virtually every insurgency or disaffected minority around the world, including peoples suffering under repressive regimes and seeking to assert legitimate rights to liberty and self-determination, has been recharacterized by opportunistic state elites as part of the enemy in this global war. n60 The techniques employed and justified by the United States, including the resurrection of rationalized torture as an "enhanced interrogation technique," n61 likewise have emerged - and will continue to emerge - in the [\*351] practice of other states. Because of customary international law's acute sensitivity to authoritative assertions of power, the widespread repetition of claims and practices initiated by the U.S. executive may well shape international law in ways the United States ultimately finds disagreeable in the future. So as we debate the scope of the executive power in the twenty-first century, the stakes, as several panelists point out, could not be higher. They include more than national issues such as the potential for executive branch officials to be prosecuted or impeached for exceeding the legal scope of their authority or violating valid statutes. n62 They also include international issues like the potential use of catastrophic weapons by a rogue regime asserting a right to engage in preventive war; the deterioration of international human rights norms against practices like torture, norms which took years to establish; and the atrophy of genuine U.S. power in the international arena, which, as diplomats, statesmen, and international relations theorists of all political persuasions appreciate, demands far more than the largest and most technologically advanced military arsenal. In short, what Presidents do, internationally as well as domestically - the precedents they establish - may affect not only the technical scope of the executive power, as a matter of constitutional law, but the practical ability of future Presidents to exercise that power both at home and abroad. We should candidly debate whether terrorism or other perceived crises require an expanded scope of executive power in the twenty-first century. But it is dangerous to cloak the true stakes of that debate with the expedient of a new - and, in the view of most, indefensible - "monarchical executive" theory, which claims to be coextensive with the defensible, if controversial, original Unitary Executive theory. n63 We should also weigh the costs and benefits of an expanded scope of executive power. But it is vital to appreciate that there are costs. They include not only short-term, acute consequences but long-term, systemic consequences that may not become fully apparent for years. In fact, the exorbitant exercise of broad, supposedly inherent, executive powers may well - as in the aftermath of the Nixon administration - culminate in precisely the sort of reactive statutory constraints and de facto diplomatic obstacles that proponents of a robust executive regard as misguided and a threat to U.S. national security in the twenty-first century.

#### That precedent causes global escalation

Rehman, 12 [9/13/12, Fehzan, International Relations at the University of Westminster, "Analyzing America’s National Security Strategy", e-International Relations, http://www.e-ir.info/2012/09/13/analyzing-americas-national-security-strategy/]

Another implication on sovereignty, due to the NSS, was, yet again, demonstrated by the killing of Osama Bin Laden in Pakistan. Some academics have argued that it impeded national sovereignty. Pakistan’s foreign secretary Salman Bashir asserted that this “violation of sovereignty, and the modalities for combating terrorism, raises certain legal and moral issues which fall … in the domain of the international community” (Bowcott, 2011). Others have claimed that America sees itself as above international law and feels that they are able to take actions for which a smaller sovereign state would have received major international repercussions. Many academics believe that what America is doing is setting a new precedent, as it “continues to confuse preemption with preventive war” (Korb & Wadhams, 2006, p.1). This could lead to the demise of the international laws and norms that prohibit the offensive attacks by one state against another for simply self-gain (Korb & Wadhams, 2006, p.2). Other academics have accused the Bush Doctrine of “legitimating a doctrine of anticipatory war” (Wheeler, 2003, p.199). Senator Edward M. Kennedy assured that the Bush Doctrine “would also send a signal to governments the world over that the rules of aggression **have changed** for them too, which could increase the risk of conflict between countries” (Kennedy, The Bush Doctrine of Pre-Emption). The criticism of the NSS’s advancement of pre-emptive strike has been reverberated in foreign ministries across the world. Secretary General Kofi Annan, in his speech to the General Assembly in September 2003, articulated his deep restlessness with a policy that: “represents a fundamental challenge to the principles on which, however imperfectly, world peace and stability have rested for the last fifty eight years… if it were to be adopted, it could set precedents that resulted in a proliferation of the unilateral and lawless use of force” (Annan, 2003). “The Bush administration has stubbornly resisted these warnings about the dangers of the preemptive policy set out in the NSS” (Wheeler, 2003, p.199). Kaufman agrees with the international stance that the NSS has set a dangerous precedent (Kaufman, 2007. P142). The NSS has devised other states, like India-Pakistan, Russia-Georgia, and China-Taiwan, legitimate rationales of unilateral military force for its own gains. This has already happen with the Russia-Georgia crisis of August 2008, where Russia used military intervention in South Ossetia against Georgia. Who is to say that India may use this precedent to use military force against Pakistan, asserting that it believes that Pakistan is a threat to India’s national security? Similarly, China, as an emerging super power, may want to compete with or follow American democracy promotion through pre-emption and preventive wars against Taiwan for the promotion of its Chinese values.

#### These conflicts go nuclear

Arbatov, 13 [Military Power in World Politics in the 21st Century Alexei Arbatov is Director of the International Security Center at the Institute of World Economy and International Relations; Full Member of the Russian Academy of Sciences, Real and Imaginary Threats, http://eng.globalaffairs.ru/number/Real-and-Imaginary-Threats-15925]

At the same time, there is an ongoing rivalry between them, involving **indirect means** and **local conflicts**, for economic, political and military influence in the post-Soviet space and in some regions (especially rich in raw materials) in Asia, Africa and Latin America. In addition, they are seeking to gain military and technological advantages over rivals to exert political and psychological pressure on them (missile defense, and high-precision conventional weapons, including suborbital and hypersonic ones). Military force is used to stake one’s claim to control over important geographical areas and lines of communication (the Eastern Mediterranean, the Black Sea, the Hormuz and Taiwan Straits, the Strait of Malacca, the South China Sea, shipping lanes in the Indian Ocean, extensions of the continental shelf and communications in the Arctic, etc.). Intense rivalry is going on in arms markets (especially in countries of the Middle East, Asia, Latin America, and North Africa). This rivalry involves political leverage and has political consequences. Of all hypothetical conflicts among the great powers, a conflict between China and the U.S. over Taiwan would be of the greatest danger. There is a possibility of an aggravation of the crisis over South China Sea islands, in which Southeast Asian countries will support the U.S. against China. Generally, U.S.-Chinese rivalry for domination in the Asia-Pacific region is becoming the epicenter of global military-political confrontation and competition. Failure of cooperation among the great powers and alliances against common security threats (terrorism, the proliferation of WMD and their delivery systems) **is** quite **imaginable**, which would bring about inability to counter new challenges and threats and an increasing chaos in the world economy and politics. **More** likely are conflicts **between major regional powers**: India and Pakistan, Israel (together with or without the United States) and Iran, and North and South Korea. The danger of these conflicts is exacerbated by their possible escalation to a nuclear war. The greatest threat in this regard is posed by military-political confrontation in South Asia.

#### The plan precludes conflict escalation – binding Congressional role signals restraint

Damrosch, 97 [Lori Fisler Damrosch, Professor of Law at the Columbia University School of Law, “Use of Force and Constitutionalism”, Columbia Journal of Transnational Law, 36 Colum. J. Transnat'l L. 449, Lexis]

Structural-institutional explanations, on the other hand, point to features of liberal-democratic systems that could act as brakes on conflict-initiation, as the American framers and Kant in Perpetual Peace had long ago suggested. n27 To the extent that executive military powers are subject to checks and balances--for example, **by accountability to the legislature**--war (or at least war-initiation) ought to become less likely under the structural-institutional view. Latter-day exponents of [\*457] the Kantian claim have thus hypothesized that structural constraints on executive military powers belong among the factors that may well explain (or help explain) the peace among democracies. n28 For this reason, democracy-and-peace research has pointed to the extent of constraints on the chief executive as one of the components of democracy which ought to be measured and studied in relation to the war-involvement of democratic regimes; n29 but the role of such constraints in keeping democratic polities from becoming involved in wars (or certain wars) is still only imperfectly understood. n30 The perception that one's adversary is (or is not) constrained **may be just as important as actual constraints**: "the presence of democratic institutions provides a visible and generally correct signal of "practical dovishness'--restraints on war in the form of institutional constraint if not of inherent disposition." n31

[TO FOOTNOTE] n31. Russett, supra note 23, at 39 (citing War and Reason, supra note 23, at 157-58) (the "presence of democratic institutions provides a basis for rivals to have an above-average prior belief that the potential foe is restrained from using force too readily. When this restraint exists for both sides, **amicable settlements of disputes are more likely**." ). See also War and Reason, supra note 23, at 272 ("When both sides are democracies, each actor is likely to be dovish, to see the other as dovish, and to be encouraged to pursue negotiated solutions to differences."); Russett, supra note 23, at 141 n.17 (tracing precursors of "the insight that forms of government signal a state's likely international behavior"). Conversely, where one or both sides do not perceive the other as possessing democratic institutions (e.g., U.S. perception of Spain in 1898), the restraint may fail to take effect.

#### It is necessary to create constraints that decrease the prevalence of war

Martin, 11 [ Copyright (c) 2011 Brooklyn Law Review Brooklyn Law Review Winter, 2011 Brooklyn Law Review 76 Brooklyn L. Rev. 611LENGTH: 52175 words ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with International Law NAME: Craig Martin+ BIO: + Visiting Assistant Professor, University of Baltimore School of Law]

Conclusion The prevention of armed conflict is central to modern international law, and reducing the prevalence of war one of the enduring philosophical problems with which man has grappled. The causes of war are understood to operate at three levels--that of the individual, the state, and the international system. It follows that we need mechanisms that are capable of addressing causes within all three levels. In legal terms, that requires legal constraints at both the domestic and the international level. Yet in the twentieth century, we have left the legal constraint of armed conflict entirely to a positivist international legal system, one with thin theoretical and philosophical foundations, and without any of the domestic implementation that is necessary to improve compliance with international law regimes. The proposed Model would be a significant step towards the development of more robust and multi-dimensional legal constraints on the use of armed force, thereby reducing the prevalence of war. The domestic implementation of the international law principles on the use of force would be consistent with the ever increasing penetration of international law into domestic legal systems, and the use of domestic law mechanisms to enforce and enhance compliance with the international law regimes. This incorporation of international law principles would not only operate to ameliorate the permissiveness of the international system, **the primary cause of war** at the international level, but it would also engage significant domestic causes of war as well. The move is consistent with and supported by international law compliance [\*729] theory and constitutional law theory, operating to realize both international law and constitutional law objectives. The requirement for legislative approval of government decisions to use armed force would amplify and strengthen the operation of the first provision. Such legislative involvement would also enhance democratic accountability and bring to bear the deliberative and oversight functions of the legislature on the decision-making process, making it both more transparent and subject to diverse perspectives and arguments. It would more fully realize the structure originally thought to make republics less likely to wage war, and would engage the domestic causes of war in important ways. Subjecting the entire process to a limited form of judicial review would place a further check on the system, helping to ensure that the decision-making process was conducted as required, and genuinely based on the mandated considerations. Together, the separation of powers elements of the Model would operate to resolve aspects of the Kantian dilemma, reducing the tendency of democracies to engage in armed conflict with illiberal states, while strengthening the features of democracies that help explain the democratic peace. This would not only be a benefit to the international society more generally, but it would fundamentally benefit the states that adopt the Model, not only by increasing democratic accountability and strengthening the rule of law, but ultimately by protecting them from involvement in illegitimate and unwise military adventures.

#### The propensity for conflict is causally related to executive influence

Daskal and Vladeck 14 (Jennifer, Assistant Professor of Law – American University Washington College of Law, “After the AUMF,” Harvard National Security Journal, Vol. 5, January, <http://harvardnsj.org/wp-content/uploads/2014/01/Daskal-Vladeck-Final1.pdf>)

Thus, while certain entities and individuals clearly fall outside of the Administration’s definition of “associated forces” (for example, a group of two or more terrorists with no direct affiliation with al Qaeda, such as the two brothers responsible for the 2013 Boston Marathon bombing; or entities that share ideological affinities with al Qaeda but do not engage in any hostilities against the United States or its coalition partners), there is a total lack of transparency as to who is covered. Even with respect to al Qaeda in the Arabian Peninsula (“AQAP”), the government has never clarified whether operations against its members are covered by the AUMF because they are deemed to be “part of” al Qaeda or because the group qualifies as an “associated force.” 35 **Public statements by DoD officials have only served to** confuse matters more, suggesting that there may be a long list of covered groups— while remaining unclear as to whether such references are to “associates” covered by the AUMF or “affiliates” that fall under a separate (heretofore non-public) definition that have ties with al Qaeda, but are not in fact subsumed under the 2001 AUMF. 36 As a result, there is no clarity as to which, if any, of the many groups operating in the tribal areas of Northwest Pakistan qualify, or whether and under what circumstances entities such as al Shabaab, 37 al Qaeda in the Islamic Maghreb (“AQIM”), or the Nusra Front—or parts of such groups—might also be encompassed within the definition of “associated forces.” The pervasive secrecy surrounding the government’s application of that concept has led some to speculate that the Executive Branch will simply subsume “extra-AUMF” cases within the existing AUMF framework, shoehorning emerging threats into the increasingly outdated ambit of the original statute simply by labeling the groups that pose them as “associated forces.” 38 Were this to happen, the government could—despite the incapacitation of those responsible for the September 11 attacks and the pending withdrawal of all U.S. ground troops from Afghanistan—seek to rely on the AUMF as authority for **offensive military operations in Mali, Syria, or Somalia**, even if the targets were not also deemed members of al Qaeda, to say nothing of operations in other corners of the globe with loose affiliations with al Qaeda and little to no connection to the September 11 attackers. 39 To be clear, we are not suggesting that this shift has already taken place. Indeed, we do not and would not know if it did, as the list of covered groups remains classified. 40 There is, however, relatively widespread agreement that such a shift would be unsatisfactory. 41 The more that the AUMF is used to justify the use of military force against those with no connection to the September 11 attacks and the ensuing armed conflict, the more it becomes an essentially limitless authorization, allowing the President to use force as a matter of first resort in a wide range of conflicts, untethered to the self-defense justification for the post-9/11 use of force, and irrespective of constitutional limits that give Congress, not the Executive, the authority to declare war.42 As we explain in Part II below, this is not an appropriate interpretation of the statute, and it is not an appropriate exercise of presidential power. If new groups emerge that pose a threat sufficient to warrant independent use-of-force authority, the government should affirmatively and publicly identify them and obtain from Congress specific authorization to use force against those groups. If, in contrast, no special use-of-force authority is needed to respond to these groups, then this only underscores our more fundamental point: that a new, expanded AUMF is unnecessary. The proponents of the Hoover proposal, however, have seized upon an alternative possibility: in their view, the government will seek to use force against so-called “extra-AUMF” threats regardless of the underlying statutory authorization. They rely upon this presumed fact, coupled with a concern about the lack of transparency as to which groups fall within the AUMF, to justify a new approach presented as a moderate solution: Congress delegates to the President the power to identify those groups against which military force is necessary pursuant to specific statutory criteria. In other words, Congress delegates its war-declaration authority to the Executive Branch, subject to specified criteria. The proposal further requires such delegations to be public—with ex post auditing and reporting to address the current transparency deficit. As the Hoover proposal concludes: a listing system modeled on this approach best cabins presidential power while at the same time giving the president the flexibility he needs to address emerging threats. Such a listing scheme will also render more transparent and regularized the now very murky process by which organizations and their members are deemed to fall within the September 2001 AUMF. 43 The Hoover proposal thus rests on a view—which we share—of the insufficient transparency of the identification of “associated forces.” Its solution, however, is a new use-of-force regime in which Congress enacts a wholesale delegation to the President of the power to identify the groups against which armed conflict is authorized, rather than case-by-case authorizations of such force by Congress. Although we agree that greater transparency and accountability are necessary limitations on the government’s scope of authority to use force against “associated forces” under the AUMF, we fail to see how the transparency concern justifies the type of open-ended or broad force authorizations that the Hoover paper advocates. 44 To the contrary, as we explain below, such an approach rests on two assumptions that we vigorously dispute: that an expansive and expanding war is inevitable and that no alternative means exist for achieving a comparable result. Indeed, not only do such alternatives exist, but an ever-expanding armed conflict paradoxically threatens to make the nation less safe in the long term.

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#### Advantage Two Coherence

#### Executive decision making historically fails

**Rockman, 12** – University Professor of Political Science and Research Professor in the University Center for International Studies at the Uniersity of Pittsburgh (Bert, Poor Leadership and Bad Governance ed: Helms, p. 18-19

Being a global power, the United States has more opportunity to fail with greater consequence than virtually all other countries despite the teetering status of Italy`s fate for Eurozone stability. Much of the US power base lies in the size of its economy, even diminished as it has been since the great recession of 2007-09. The American power base, even more however, resides in its military establishment. The United States spends more on its military than all other countries combined and it **tends to be** more **inclined to intervene** on behalf of what its leaders define as national interests than are other countries. Many examples of problematic leadership originate in the Cold War era when the United States was the chief Western protagonist. Certainly, the American engagement in the war in Vietnam reflected the domino mentality of the political leadership as a class. Similarly, the military proxy engagement in Afghanistan following the Soviet incursion into that country mirrored a tit for tat response to Soviet behavior characteristic of Cold War behavior. It does not appear that there was anything beyond a superficial understanding of why the Soviets invaded Afghanistan in the first place. And after the Soviet forces left, the US went from being actively, though indirectly engaged to total disengagement. The disengagement meant that the importance of Afghanistan to the United States was mostly a function of its importance to the Soviet Union. The US disengagement resulted from changed priorities illustrating the difficulty that competitive political systems have in sustaining activity abroad once the reasons for it have fallen out of the headlines. Yet another case occurred during the first months of the Kennedy administration when it continued a plan, devised by the Central Intelligence Agency (CIA) and originated by the Eisenhower administration, to overthrow the Fidel Castro regime in Cuba. That regime, seeking a big brother patron in the Western hemisphere, had begun to ally itself with the Soviet Union in the face of US hostility. The episode was known as the Bay of Pigs for the area where the anti-Castro Cuban exiles trained by the CIA were to land. As we examine these cases, two things stand out. One of these was a mindset across political leaders molded by the Cold War. Wherever the Soviets acted - or in some cases the Chinese - the United States reacted, and often in ways that either directly or indirectly became costly. The other characteristic that stands out is that despite the high costs of intervention, especially direct military intervention, leaders typically began to look for exit strategies out of the particular morass they helped to create or they simply walked away, meaning that a big investment of resources and blood had been committed to no clear purpose. In the post-Cold War era, the al Qaeda attacks on the United States in September 2001 provided a rationale for the American invasion of Iraq in 2003. Whatever its purposes - and these remain in doubt - the invasion and occupation were hastily and inadequately planned. The result **was** serious backlash against the US forces and the unleashing of costly sectarian strife in Iraq, a country about which America`s leaders knew too little. Another consequence of the invasion and occupation is that it also created an alliance between a new Shiite governed Iraq and the Shiite regime of America's antagonist in the Persian Gulf, Iran. There also were a number of covert operations against various regimes - Castro in Cuba (beyond the Bay of Pigs), Arbenz in Guatemala in 1954, the overthrow of the Mossadeqh regime in Iran and the restoration of the Shah in 1953, the effort to overthrow the Sandinista regime in Nicaragua later leading to scandal (known as the Iran-Contra episode) during the Reagan presidency. At least one of these events was tinged with comic opera characteristics such as the CIA-Mafia collaboration to assassinate Fidel Castro by planting explosive devices inside his cigars. Other episodes were short term successes but longer term failures as they left a heavy imprint of American imperialism and resentment. The removal of President Arbenz in Guatemala led to periods of military repression there, especially toward indigenous populations. The coup that restored the Shah`s rule in Iran ultimately led a quarter of a century later to the reactionary anti-American dictatorship of the mullahs. The effort to eliminate the Ortega-Sandinista rule in Nicaragua settled with Ortega back in power. The leadership in these situations suffered from myopia and, too often, from the conditioning of the Cold War. The short run successes often proved to be more problematic than not in the longer run.

#### Future interventions are likely – they escalate and go nuclear

Friedman, 11 [George Friedman, President of Stratfor Global Forecasting, “What Happened to the American Declaration of War?”, http://www.stratfor.com/weekly/20110328-what-happened-american-declaration-war]

An Increasing Tempo of Operations All of this came just before the United States emerged as the world's single global power -- a global empire -- that by definition would be waging war at an increased tempo, from Kuwait, to Haiti, to Kosovo, to Afghanistan, to Iraq, and so on in an ever-increasing number of operations. **And** now in Libya, we have reached the point that even resolutions are no longer needed. It is said that there is no precedent for fighting al Qaeda, for example, because it is not a nation but a subnational group. Therefore, Bush could not reasonably have been expected to ask for a declaration of war. But there is precedent: Thomas Jefferson asked for and received a declaration of war against the Barbary pirates. This authorized Jefferson to wage war against a subnational group of pirates as if they were a nation. Had Bush requested a declaration of war on al Qaeda on Sept. 12, 2001, I suspect it would have been granted overwhelmingly, and the public would have understood that the United States was now at war for as long as the president thought wise. The president would have been free to carry out operations as he saw fit. Roosevelt did not have to ask for special permission to invade Guadalcanal, send troops to India, or invade North Africa. In the course of fighting Japan, Germany and Italy, it was understood that he was free to wage war as he thought fit. In the same sense, a declaration of war on Sept. 12 would have freed him to fight al Qaeda wherever they were or to move to block them wherever the president saw fit. Leaving aside the military wisdom of Afghanistan or Iraq, the legal and moral foundations would have been clear -- so long as the president as commander in chief saw an action as needed to defeat al Qaeda, it could be taken. Similarly, as commander in chief, Roosevelt usurped constitutional rights for citizens in many ways, from censorship to internment camps for Japanese-Americans. Prisoners of war not adhering to the Geneva Conventions were shot by military tribunal -- or without. In a state of war, different laws and expectations exist than during peace. Many of the arguments against Bush-era intrusions on privacy also could have been made against Roosevelt. But Roosevelt had a declaration of war and full authority as commander in chief during war. Bush did not. He worked in twilight between war and peace. One of the dilemmas that could have been avoided was the massive confusion of whether the United States was engaged in hunting down a criminal conspiracy or waging war on a foreign enemy. If the former, then the goal is to punish the guilty. If the latter, then the goal is to destroy the enemy. Imagine that after Pearl Harbor, FDR had promised to hunt down every pilot who attacked Pearl Harbor and bring them to justice, rather than calling for a declaration of war against a hostile nation and all who bore arms on its behalf regardless of what they had done. The goal in war is to prevent the other side from acting, not to punish the actors. The Importance of the Declaration A declaration of war, I am arguing, is an essential aspect of war fighting particularly for the republic when engaged in frequent wars. It achieves a number of things. First, it holds both Congress and the president equally responsible for the decision, and does so unambiguously. Second, it affirms to the people that their lives have now changed and that they will be bearing burdens. Third, it gives the president the political and moral authority he needs to wage war on their behalf and forces everyone to share in the moral responsibility of war. And finally, by submitting it to a political process, many wars might be avoided. When we look at some of our wars after World War II it is not clear they had to be fought in the national interest, nor is it clear that the presidents would not have been better remembered if they had been restrained. A declaration of war both frees and restrains the president, as it was meant to do. I began by talking about the American empire. I won't make the argument on that here, but simply assert it. What is most important is that the republic not be overwhelmed in the course of pursuing imperial goals. The declaration of war is precisely the point at which imperial interests can overwhelm republican prerogatives. There are enormous complexities here. Nuclear war has not been abolished. The United States has treaty obligations to the United Nations and other countries. Covert operations are essential, as is military assistance, both of which can lead to war. I am not making the argument that constant accommodation to reality does not have to be made. I am making the argument that the suspension of Section 8 of Article I as if it is possible to amend the Constitution with a wink and nod represents a mortal threat to the republic. If this can be done, what can't be done? My readers will know that I am far from squeamish about war. I have questions about Libya, for example, but I am open to the idea that it is a low-cost, politically appropriate measure. But I am not open to the possibility that quickly after the commencement of hostilities the president need not receive authority to wage war from Congress. And I am arguing that neither the Congress nor the president has the authority to substitute resolutions for declarations of war. Nor should either want to. Politically, this has too often led to disaster for presidents. Morally, committing the lives of citizens to waging war requires meticulous attention to the law and proprieties. As our international power and interests surge, it would seem reasonable that our commitment to republican principles would surge. These commitments appear inconvenient. They are meant to be. War is a serious matter, and presidents and particularly Congresses should be inconvenienced on the road to war. Members of Congress should not be able to hide behind ambiguous resolutions only to turn on the president during difficult times, claiming that they did not mean what they voted for. A vote on a declaration of war ends that. It also **prevents a president from acting as king** by default. Above all, it prevents the public from pretending to be victims when their leaders take them to war. The possibility of war will concentrate the mind of a distracted public like nothing else. It turns voting into a life-or-death matter, a tonic for our adolescent body politic.

#### The plan solves – Congressional requirements avoids insularity and confirmation bias

**Holmes, 9 -** Walter E. Meyer Professor of Law, New York University School of Law (Stephen, 97 Calif. L. Rev. 301, “In Case of Emergency: Misunderstanding Tradeoffs in the War on Terror”, lexis)

The most disastrous result of the Bush administration's hostility to adversarial decision making was the choice to invade Iraq. None of the many books and articles published about the run-up to the war has managed to discover any trace of a serious debate or discussion, even inside the executive branch, of the pros and cons of the war. Such a serious and informed debate did [\*329] not occur in Congress either. Members of Congress were presumably reluctant to assume serious responsibility for such a momentous choice, and the voting public, having been led to believe that Saddam Hussein was somehow responsible for 9/11, would very likely have punished any elected representative who did not favor retaliation against the alleged perpetrators of the attacks. On the other hand, Congress may not have passed the AUMF of 2002 if certain of its key members had not been deliberately deceived by executive-branch prevarication. n61

To refute the Founders' claim that the executive branch will, on balance, perform better if compelled to give plausible reasons for its actions, Eric Posner and Adrian Vermeule argue, first, that Congress and especially the courts are less well-informed about terrorism than experts in the executive branch and, second, that representatives and judges are subject to the same cognitive biases that plague the president and his agents. Because judges, in particular, lack national-security expertise, they assert, non-deferential review cannot, on balance, increase executive effectiveness in the area of counterterrorism. n62 This argument is a non sequitur. That the executive branch acting alone is more effective than the judicial or legislative branches acting alone does not imply that the executive branch acting alone is more effective than the executive branch acting in coordination with the other branches. Indeed, the claim that an executive agency will, on balance, perform best when it is never observed or criticized would not be worth discussing were it not so vehemently advanced in defense of the executive-discretion agenda. The liberty which one-sided advocates of extralegal executive discretion find most odious is the right of citizens and their elected representatives to demand that the executive branch provide plausible reasons for its actions. **If a government no longer has to provide plausible reasons** for its actions, however, it is very likely, in the relative short term, to stop having plausible reasons for its actions. n63

Its capacity for secrecy and dispatch, as mentioned, qualifies the executive branch for acting effectively in a crisis. But such institutional advantages do not necessarily make the executive the most qualified branch for understanding the shape and scope of an unprecedented threat. It is not at all obvious that its hierarchical structure makes the executive capable, in bunkered isolation from the other branches, to analyze intelligently a changing and complex national- [\*330] security environment, to rank various difficult-to-compare threats according to their gravity and urgency, and to make delicate security-security tradeoffs in a responsible fashion. It has often been insinuated - but never proved - that compelling national-security officials to testify before congressional committees and to explain their interpretation of the country's national-security environment will have a detrimental chilling effect on zealous counterterrorism efforts. Reporting requirements can admittedly be onerous. But the assumption that legislative oversight will, on balance, reduce the thoughtfulness with which the executive branch approaches security-security tradeoffs is questionable.

It should also be said that the executive branch cannot hide from Congress, the courts, the public, and the press, without hiding from itself as well. Indeed, one of the main reasons why the Bush administration was reluctant to explain itself to the public was apparently that a small group of fallible individuals inside the Defense Department and the Office of the Vice President wanted to make sure that their bureaucratic rivals in other executive agencies, such as the State Department, did not learn of game-changing decisions until it was too late to reverse them. Secrecy was invoked not only to protect national security but, less justifiably, "to avoid dissent" from other executive-branch officials. n64 The personal hostility, turf warfare, and information hoarding that afflicts America's national security bureaucracies is probably more paralyzing than the government's general commitment to due process or checks and balances. Judge Richard Posner himself contends that intra-executive pathologies such as bureaucratic fragmentation and duplication, unclear chains of command, failure to standardize security clearances, and investment in the wrong set of employee skills pose greater obstacles to effective counterterrorism than congressional or judicial micromanagement. n65 The extent to which Bush's counterterrorism policy led executive agencies to withhold important secrets from each other is startling, among other reasons, because the Bush administration originally singled out the wall between national-security agencies as an important source of governmental dysfunction in the run-up to 9/11.

#### Clear rules in advance are superior in a crisis situation

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What the new functionalists fail to engage, however, are flexibility's substantial costs, especially in grappling with an emergency. For example, organizations that depend on decentralized decision-making but leave subordinates too much flexibility can face substantial principal-agent problems, resulting in effectively arbitrary decisions. The problem of differences in motivation or understanding between organizational leaders and frontline agents is a familiar one, a disjunction that can leave agents poorly equipped to translate organizational priorities into priority-consistent operational goals. As Sagan found in the context of U.S. nuclear weapons safety, whatever level of importance organizational leadership placed on safety, leaders and operatives would invariably have conflicting priorities, making it likely that leaders would pay "only arbitrary attention to the critical details of deciding among trade-offs" faced by operatives in real time. n186 One way of describing this phenomenon is as "goal displacement"-a narrow interpretation of operational goals by agents that obscures focus on overarching priorities. n187 In the military context, units in the field may have different interests than commanders in secure headquarters; n188 prison guards have different [\*1603] interests from prison administrators. n189 Emergencies exacerbate the risk of such effectively arbitrary decisions. Critical information may be unavailable or inaccessible. n190 Short-term interests may seek to exploit opportunities that run counter to desired long-term (or even near-term) outcomes. n191 The distance between what a leader wants and what an agent knows and does is thus likely even greater.

The Cuban Missile Crisis affords striking examples of such a problem. When informed by the Joint Chiefs of Staff of the growing tensions with the Soviet Union in late October 1962, NATO's Supreme Allied Commander in Europe, American General Lauris Norstad, ordered subordinate commanders in Europe not to take any actions that the Soviets might consider provocative. n192 Putting forces on heightened alert status was just the kind of potentially provocative move Norstad sought to forestall. Indeed, when the Joint Chiefs of Staff ordered U.S. forces globally to increase alert status in a directive leaving room for Norstad to exercise his discretion in complying with the order, Norstad initially decided not to put European-stationed forces on alert. n193 Yet despite Norstad's no- provocation instruction, his subordinate General Truman Landon, then Commander of U.S. Air Forces in Europe, increased the alert level of nuclear-armed NATO aircraft in the region. n194 In Sagan's account, General Landon's first organizational priority-to maximize combat potential-led him to undermine higher priority political interests in avoiding potential provocations of the Soviets. n195

It is in part for such reasons that studies of organizational performance in crisis management have regularly found that "planning and effective [\*1604] response are causally connected." n196 Clear, well-understood rules, formalized training and planning can function to match cultural and individual instincts that emerge in a crisis with commitments that flow from standard operating procedures and professional norms. n197 Indeed, "the less an organization has to change its pre-disaster functions and roles to perform in a disaster, the more effective is its disastetr [sic] response." n198 In this sense, a decisionmaker with absolute flexibility in an emergency-unconstrained by protocols or plans-may be systematically more prone to error than a decision-maker who is in some way compelled to follow procedures and guidelines, which have incorporated professional expertise, and which are set as effective constraints in advance.

Examples of excessive flexibility producing adverse consequences are ample. Following Hurricane Katrina, one of the most important lessons independent analysis drew from the government response was the extent to which the disaster was made worse as a result of the lack of experience and knowledge of crisis procedures among key officials, the absence of expert advisors available to key officials (including the President), and the failure to follow existing response plans or to draw from lessons learned from simulations conducted before the fact. n199 Among the many consequences, [\*1605] basic items like food, water, and medicines were in such short supply that local law enforcement (instead of focusing on security issues) were occupied, in part, with breaking into businesses and taking what residents needed. n200

Or consider the widespread abuse of prisoners at U.S. detention facilities such as Abu Ghraib. Whatever the theoretical merits of applying coercive interrogation in a carefully selected way against key intelligence targets, n201 the systemic torture and abuse of scores of detainees was an outcome no one purported to seek. There is substantial agreement among security analysts of both parties that the prisoner abuse scandals have produced predominantly negative consequences for U.S. national security. n202 While there remain important questions about the extent to which some of the abuses at Abu Ghraib were the result of civilian or senior military command actions or omissions, one of the too often overlooked findings of the government investigations of the incidents is the unanimous agreement that the abuse was (at least in part) the result of structural organization failures n203 -failures that one might expect to [\*1606] produce errors either to the benefit or detriment of security.

[Pearlstein continues]

In particular, military investigators looking at the causes of Abu Ghraib cited vague guidance, as well as inadequate training and planning for detention and interrogation operations, as key factors leading to the abuse. Remarkably, "pre-war planning [did] not include[] planning for detainee operations" in Iraq. n204 Moreover, investigators cited failures at the policy level- decisions to lift existing detention and interrogation strictures without replacing those rules with more than the most general guidance about custodial intelligence collection. n205 As one Army General later investigating the abuses noted: "By October 2003, interrogation policy in Iraq had changed three times in less than thirty days and it became very confusing as to what techniques could be employed and at what level non-doctrinal approaches had to be approved." n206 It was thus unsurprising that detention and interrogation operations were assigned to troops with grossly inadequate training in any rules that were still recognized. n207 The uncertain effect of broad, general guidance, coupled [\*1607] with the competing imperatives of guidelines that differed among theaters of operation, agencies, and military units, caused serious confusion among troops and led to decisionmaking that it is overly kind to call arbitrary. n208

Would the new functionalists disagree with the importance of government planning for detention operations in an emergency surrounding a terrorist nuclear attack? Not necessarily. Can an organization anticipate and plan for everything? Certainly not. But such findings should at least call into question the inclination to simply maximize flexibility and discretion in an emergency, without, for example, structural incentives that might ensure the engagement of professional expertise. n209 Particularly if one embraces the view that the most potentially damaging terrorist threats are nuclear and biological terrorism, involving highly technical information about weapons acquisition and deployment, a security policy structure based on nothing more than general popular mandate and political instincts is unlikely to suffice; a structure that systematically excludes knowledge of and training in emergency response will almost certainly result in mismanagement. n210 In this light, a general take on role effectiveness might suggest favoring a structure in which the engagement of relevant expertise in crisis management is required, leaders have incentives to anticipate and plan in advance for trade-offs, and [\*1608] organizations are able to train subordinates to ensure that plans are adhered to in emergencies. Such structural constraints could help increase the likelihood that something more than arbitrary attention has been paid before transcendent priorities are overridden.

#### The existence of restrictions induces superior executive branch decision-making

**Cole, 12** – professor of law at Georgetown (David, “Are We Stuck with the Imperial Presidency?” 6/7,

<http://www.nybooks.com/articles/archives/2012/jun/07/are-we-stuck-imperial-presidency/?pagination=false>)

Posner and Vermeule contend that more specific statutory regimes have also failed to constrain the president. The War Powers Resolution, the National Emergencies Act, and the International Emergency Economic Powers Act, for example, all enacted after Watergate to rein in presidential action, have proved largely ineffectual. Presidents have repeatedly argued that the statutes do not apply. The Obama administration recently did so when it implausibly claimed that the War Powers Resolution—requiring congressional approval of any use of troops in “hostilities” that last more than sixty days—did not apply to the military intervention in Libya. And Congress has failed to exercise meaningful oversight even where such statutes call for it to do so. All of this seems right, to a point. But ironically, Posner and Vermeule base their “legal realist” critique on an excessively formalist assessment of whether law constrains, looking almost entirely at statutory language on its face and at judicial decisions. They argue that legal standards are often manipulable, and that judges therefore often defer to the executive. But the fact that law usually does not dictate particular executive decisions—hardly a surprising revelation—does not mean that it does not constrain them. And in particular, it is misguided to look only at judicial decisions, for law operates outside the courts as well. Thus, while the APA’s open-ended standards undoubtedly permit judges to defer to the executive, they do not require them to defer. Some judges will defer; others will not, as when the Supreme Court in 1983 reversed the National Highway Traffic Safety Administration’s repeal of a requirement for passive restraints in all new cars, or when the D.C. Circuit Court in 2008 rejected the Environmental Protection Agency’s rules for mercury emissions. The executive generally cannot know in advance whether court review will be strict or deferential, and that uncertainty itself has a deterrent effect on the choices it makes, even in the many cases that do not end up in court. In my experience, lawyers for the executive branch generally take legal limits seriously. They take an oath and have been trained to uphold the law. They know that claims of illegality can undermine their programmatic objectives. They cannot predict when they will end up in court and so try to avoid legal challenges. To focus exclusively on specific judicial decisions is to miss law’s daily operation outside the courts. Similarly, to look only at enacted laws misses the checking role that legislators play through other means—such as holding oversight hearings, launching investigations, or simply requesting information about executive practices. The experiences of executive officials, who devote much of their time to compliance with legal mandates and to defending their agency’s actions in Congress and the courts, contradict Posner and Vermeule’s armchair claims that legislative and judicial checks are illusory.3 And President Obama, who has had to fight Congress—and has often lost—on virtually every initiative he has pursued, from economic reform to health care to Guantánamo’s closure, would certainly be surprised to learn that his power knows no limits.

#### Incoherent policies undermine military operations – the plan solves

Gallagher, 11 [Lieutenant Colonel Joseph V. Gallagher III, United States Marine Corps, “Unconstitutional War: Strategic Risk in the Age of Congressional Abdication”, Parameters, summer, http://strategicstudiesinstitute.army.mil/pubs/parameters/articles/2011summer/gallagher.pdf]

Understanding the Gap Since World War II, a wide gap has developed between Congress and the executive branch with respect to the critical issue of war powers. Like a black hole, this gap draws in the roles and abilities of the branches to execute foreign policy. Ostensibly, this gap has resulted from two symbiotic behaviors: executive aggressiveness and congressional abdication. The historical record reveals the evolution of this phenomenon. But history does not clearly reveal the structural and political dimensions of this phenomenon. The Constitution grants most foreign policy prerogative to Congress in Article I. Article II grants the president very limited authority in the foreign policy arena.49 This results in a structural dichotomy because the executive branch is better positioned to lead and execute, but congressional actions are more indirect and diffuse. Congress’s bicameral design and widely dispersed support base do not optimize the expeditious exercise of its power. Consequently, considerable power has flowed from Congress to the president.50 Execution of US foreign policy is fraught with political uncertainty and vulnerability. Compared to domestic issues, foreign policy decisions and initiatives are susceptible to greater unpredictability.51 Therefore, when dealing with high levels of uncertainty, Congress often finds it easier to defer to the executive branch, thereby reducing congressional members’ exposure or liability.52 Because most Americans elect their congressional representatives based on domestic issues, they tend to pay little attention to foreign policy; members of Congress often defer acting on foreign policy matters as a safer political option.53 This political safe haven of indecision, however, does not serve the nation well because it encourages concentrating power in the executive branch. Likewise, it severs the link between the electorate, the constitutionally intended legislative process, and the executor. Matters of war, however, require the collective involvement of the people. Militaries fight wars, but nations go to war. In the final analysis, **congressional abdication** of its Article I authority to oversee the nation’s foreign policy has exposed America to unacceptable strategic risk. War, Strategy, and the Constitution One of Clausewitz’ greatest contributions to the study of war is his emphasis on the conceptual link between politics and war. “War is never a separate phenomenon,” Clausewitz wrote, “but the continuation of politics by other means.”54 Behind this proposition is a deeply textured argument about the intrinsic political purpose of war. This political purpose encompasses the components comprising war: societal disposition, economic capability, and strategy. Clausewitz advised leaders to thoroughly consider any use of violence. So the link between war and politics “should never be overlooked.”55 Even in the 21st century, war retains this political dimension despite the recent emergence of nonstate actors and transnational groups.56 In other words, success at the tactical level of war first requires careful preparations at the political and strategic levels. The enabling institutions for success in war—Congress, the president, the cabinet, and other advisors—all need to be fully engaged in the development of feasible, suitable, and acceptable strategy.57 And this carefully crafted strategy needs to include legitimate justification for violence, rigorous calculation and valuation of political objectives, and commitment of resources sufficient to achieve strategic objectives.58 Since 1945, the United States has built the world’s most capable war-fighting machine. So why, then, have most of the nation’s large military interventions since World War II ended in defeat or, at best, stalemate? Political leaders should attend more to what Clausewitz calls the political dimensions of war—national unity and the political value of the objective—as inseparable from national and military strategy. War theorists have long emphasized the importance of national unity and the political value of the war objective. Thousands of years ago, Sun Tzu identified the necessary pre-condition of national unity for successful war strategy.59 National unity enables political leaders to muster resources needed to win wars and to amass the human capital that makes an army. Clausewitz advised, “to discover how much of our resources must be mobilized for war, we must first examine our own political aim.”60 National unity underwrites the commitment the nation needs to successfully prosecute war, provided the war has political value commensurate to the effort expended.61 The founders directed this nation to use a collaborative process to assess the political value of a war. So the Constitution requires Congress to deliberate on the decision to go to war and, when it so decides, to declare war. Therefore, the Constitution serves as the guarantor of ensuring national unity and a legitimate valuation of the war’s political objective—provided through the mechanism of the war declaration. Consider the language of the 1941 war declaration against Japan. It captures the national unity, the political value of the objective, and the will and support of Congress to support the war.62 A Risk to Strategy As the practice of declaring war has become passé, American strategy has likewise become disjointed and disconnected from national security objectives. Following World War II, an acquiescent Congress and an aggressive presidency have, for decades, fostered a strategic climate that failed to maintain the links between the political dimensions of the state and its strategy. The predominant “NSC-68 thinking,” largely a product of executive national security panels that administrations have embraced and Congress has blithely followed, provided inadequate guidance on how objectives and capabilities should be joined to produce coherent overall strategy.63 This connection, Clausewitz observed, is necessary for success in war.

[Gallagher continues]

For example, US strategy following World War II ironically came to resemble the German strategy of the early 20th century, relying heavily on military ways and means that failed to address the political and economic components of warfare.64 Historians are quick to extol the superiority of the German military machine, but Germany lost two world wars. Similarly, the United States has pursued a strategy built on loosely linked operational and tactical successes. Unfortunately, without concretely defined end states specified in a coherent all-encompassing strategy, these successes have not achieved national strategic ends. In Vietnam, Afghanistan, and Iraq, our leaders failed to properly define the national strategic ends, so the attendant strategies have been inchoate. Leaders’ attempts to match ways and means to fluctuating or poorly defined ends resulted in unacceptable levels of uncertainty and risk. These protracted and strategically uncertain conflicts are alien to America’s strategic culture, which has little tolerance for long, risky, or uncertain conflicts.65 More recently, as the executive branch exercises greater authority in directing military interventions, the gap between risk and strategy becomes wider. Theater commanders charged with developing adequate or complete strategies with sound ends and feasible ways to achieve them lack confidence in congressional support to provide the means necessary to achieve these strategic objectives.66 As the world’s only superpower, the United States can expect asymmetrical conflict as the norm. Future adversaries will increasingly focus on the strategic target of the American people’s collective will in their efforts to subvert our national strategy.67 Vietnam Strategy The tragic military and political experience of Vietnam was spawned by an aggressive president promoting foreign policy absent congressional and public blessings.68 Vietnam War strategy affirms how congressional abdication on war matters resulted in protracted disaster. As historian George Herring points out, “America’s failure in Vietnam and the tragedy that resulted also make clear what can happen when major decisions are made without debate or discussion.”69 After Congress passed the Gulf of Tonkin Resolution, the strategy formulation and decision process operated vacuously, failing to determine strategic objectives and the means to obtain them.70 President Johnson made numerous decisions concerning the strategy and operations of the war, resulting in a strategy of incremental gradualism. Despite some tactical successes, Vietnam strategy never developed sufficient coherence nor the sustained support of the American people. Through executive design, Congress and the people never fully vetted the value of the political objective in the context of large-scale military intervention before President Johnson committed forces to combat.71 As a result, President Johnson lacked the top cover of a war declaration. This prevented him from unleashing the nation’s enormous military capability to achieve full, quick military success. Instead, he implemented a strategy that he thought was least likely to jeopardize his legislative agenda, upset the domestic apple cart, or threaten his reelection.72 In retrospect, the incoherence of the Vietnam strategy reflected the real value of the political objective in the eyes of the American people; they could not have cared less about Vietnam.73 Afghanistan and Iraq Strategies The strategies for the ongoing conflicts in Iraq and Afghanistan have both failed to properly incorporate national strategic ends, ways, and means in a consistent manner across the whole of government. In the absence of a national consensus on strategic ends, Congressman James Marshall (D-GA) not surprisingly identified: The mismatches among the needs of post-conflict stability operations in Afghanistan and Iraq, the size and the types of military forces available, and the pitiful scarcity of capability in the civilian branches of our government to effect nation-building efforts, as well as, our utter incompetence as a government in strategic communications.74 US Afghanistan strategy has continually morphed from 2001 to the present. The sweeping language in the September 2001 congressional resolution did little to shape the effort and focus the nation on acceptable long-term national ends.75 A careful analysis of coalition command and control structures indicates how the United States, partners, and allies prosecuted any number of operational strategies.76 Strategic priorities changed from counterterrorism to counterinsurgency, to nation building, back to counterterrorism, then eventually to a combination of all of them. During the lead-up to Operation Iraqi Freedom, significant executive power may have subjected the strategy to unnecessary risk. Indeed, failure of Congress to deliberate a declaration of war may have resulted in poorly defined national objectives and shoddy strategy.77 Significant executive powers facilitated side-stepping full disclosure of policy risk. The president’s obsession with regime change subordinated other key elements crucial to a comprehensive strategy, particularly with respect to clear strategic ends. This obsession obscured full debate and railroaded the nation into a course of action fraught with unexamined risk. Additionally, it masked the real cost of the strategy in terms of lives and dollars and inevitably compromised support for the effort when the strategy did not unfold as planned.78 Eventually, the wars in Iraq and Afghanistan and their strategies became focal points in the 2008 presidential campaign. Similar to President Johnson on Vietnam, candidate Obama politicized the Iraq and Afghanistan conflicts, promising on the campaign trail that, if elected, he would redeploy US combat forces out of Iraq and refocus on Afghanistan as the central front on the war against extremism. This politicalization of the war efforts may have removed strategic considerations from decisionmaking, exposing the strategies to additional, unnecessary risk at a crucial time.79 Another Cry for Reform In 2009, The National War Powers Commission, a bipartisan group commissioned under the auspices of the University of Virginia’s Miller Center for Public Affairs, reviewed the existing WPR and addressed executive overreach with respect to military intervention. Chaired by Warren Christopher and James Baker, the 2009 War Powers Commission concluded that the 1973 WPR does not function as intended and needs replacement.80 Commission members testified before the House Foreign Affairs Committee and Senate Foreign Relations Committee recommending a policy to restore the constitutional grounding for mandatory congressional war declaration for “large” force deployments and “significant armed conflict.”81 The Commission recommended replacing the 1973 WPR with the War Powers Consultation Act of 2009 that adds fidelity to the size, scope, and types of conflict subject to the Act. Most significantly, it directs the president to consult with Congress before introducing troops into “significant armed conflict.”82 Despite the bipartisan clout of former Secretaries of State Warren Christopher and James Baker, the Commission’s recommendations still lacked the necessary political power to prevent the president from deploying forces into significant armed conflict without the full blessing of Congress.83

[Gallagher continues]

Conclusion Reminiscent of the 1973 WPR, the National War Powers Commission’s effort to redress war power authority hoists another warning flag about war power overreach and executive presumption of constitutional power. But it is insufficient to have an academic debate over the constitutionality of war authority. Since the end of World War II, an assertive executive branch has run roughshod over an abdicating Congress, which has compromised US military efficacy. It has repeatedly resulted in the expenditure of national blood and treasure for strategically hollow ends. The Constitution is, in itself, a strategic national security document. The founders’ wisdom imbued within Articles I and II capture, in the Clausewitzian sense, the necessary prerequisites for successful prosecution of war. As the executive and congressional branches deviate from US constitutional foundations with respect to war authority, they increasingly leave the military—and the nation—vulnerable to unacceptable strategic risk. The current interpretations or disregard for war power authority, as practiced today, no longer maintain the necessary connective tissue between political and military muscle movements. As a result, US national and military strategy has become disjoined from legitimate political will. American military operations are hampered by the leadership’s inability to harness the national will. If this nation declared war when it engaged in war, as the Constitution requires, the United States would wage fewer of them—and be far better positioned to win them.

#### Effective power projection stops hotspot escalation to nuclear war

O’Hanlon, 07 [Michael O’Hanlon, Senior Fellow and Sydney Stein Jr. Chair in Foreign Policy Studies at the Brookings Institution and Frederick Kagan, Resident Scholar at the American Enterprise Institute, and “The Case for Larger Ground Forces”, Stanley Foundation Report, April, http://stanleyfoundation.org/publications/other/Kagan\_OHanlon\_07.pdf]

We live at a time when wars not only rage in nearly every region but threaten to erupt in many places where the current relative calm is tenuous. To view this as a strategic military challenge for the United States is not to espouse a specific theory of America’s role in the world or a certain political philosophy. Such an assessment flows directly from the basic bipartisan view of American foreign policy makers since World War II that overseas threats must be countered before they can directly threaten this country’s shores, that the basic stability of the international system is essential to American peace and prosperity, and that no country besides the United States is in a position to lead the way in countering major challenges to the global order. Let us highlight the threats and their consequences with a few concrete examples, emphasizing those that involve key strategic regions of the world such as the Persian Gulf and East Asia, or key potential threats to American security, such as the spread of nuclear weapons and the strengthening of the global Al Qaeda/jihadist movement. The Iranian government has rejected a series of international demands to halt its efforts at enriching uranium and submit to international inspections. What will happen if the US—or Israeli—government becomes convinced that Tehran is on the verge of fielding a nuclear weapon? North Korea, of course, has already done so, and the ripple effects are beginning to spread. Japan’s recent election to supreme power of a leader who has promised to rewrite that country’s constitution to support increased armed forces—and, possibly, even nuclear weapons— may well alter the delicate balance of fear in Northeast Asia fundamentally and rapidly. Also, in the background, at least for now, Sino- Taiwanese tensions continue to flare, as do tensions between India and Pakistan, Pakistan and Afghanistan, Venezuela and the United States, and so on. Meanwhile, the world’s nonintervention in Darfur troubles consciences from Europe to America’s Bible Belt to its bastions of liberalism, yet with no serious international forces on offer, the bloodletting will probably, tragically, continue unabated. And as bad as things are in Iraq today, they could get worse. What would happen if the key Shiite figure, Ali al Sistani, were to die? If another major attack on the scale of the Golden Mosque bombing hit either side (or, perhaps, both sides at the same time)? Such deterioration might convince many Americans that the war there truly was lost—but the costs of reaching such a conclusion would be enormous. Afghanistan is somewhat more stable for the moment, although a major Taliban offensive appears to be in the offing. Sound US grand strategy must proceed from the recognition that, over the next few years and decades, the world is going to be a very unsettled and quite dangerous place, with Al Qaeda and its associated groups as a subset of a much larger set of worries. The only serious response to this international environment is to develop armed forces capable of protecting America’s vital interests throughout this dangerous time. Doing so requires a military capable of a wide range of missions—including not only deterrence of great power conflict in dealing with potential hotspots in Korea, the Taiwan Strait, and the Persian Gulf but also associated with a variety of Special Forces activities and stabilization operations. For today’s US military, which already excels at high technology and is increasingly focused on re-learning the lost art of counterinsurgency, this is first and foremost a question of finding the resources to field a large-enough standing Army and Marine Corps to handle personnelintensive missions such as the ones now under way in Iraq and Afghanistan. Let us hope there will be no such large-scale missions for a while. But preparing for the possibility, while doing whatever we can at this late hour to relieve the pressure on our soldiers and Marines in ongoing operations, is prudent. At worst, the only potential downside to a major program to strengthen the military is the possibility of spending a bit too much money. Recent history shows no link between having a larger military and its overuse; indeed, Ronald Reagan’s time in office was characterized by higher defense budgets and yet much less use of the military, an outcome for which we can hope in the coming years, but hardly guarantee. While the authors disagree between ourselves about proper increases in the size and cost of the military (with O’Hanlon preferring to hold defense to roughly 4 percent of GDP and seeing ground forces increase by a total of perhaps 100,000, and Kagan willing to devote at least 5 percent of GDP to defense as in the Reagan years and increase the Army by at least 250,000), we agree on the need to start expanding ground force capabilities by at least 25,000 a year immediately. Such a measure is not only prudent, it is also badly overdue.

#### Decline causes every scenario for extinction

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An American decline would impact the nuclear domain most profoundly by inciting a **crisis of confidence** in the credibility of the American nuclear umbrella. Countries like South Korea, Taiwan, Japan, Turkey, and even Israel, among others, rely on the United States’ extended nuclear deterrence for security. If they were to see the United States slowly retreat from certain regions, forced by circumstances to pull back its guarantees, or even if they were to lose confidence in standing US guarantees, because of the financial, political, military, and diplomatic consequences of an American decline, then they will have to seek security elsewhere. That “elsewhere” security could originate from only two sources: from nuclear weapons of one’s own or from the extended deterrence of another power—most likely Russia, China, or India. It is possible that countries that feel threatened by the ambition of existing nuclear weapon states, the addition of new nuclear weapon states, or the decline in the reliability of American power would develop their own nuclear capabilities. For crypto-nuclear powers like Germany and Japan, the path to nuclear weapons would be easy and fairly quick, given their extensive civilian nuclear industry, their financial success, and their technological acumen. Furthermore, the continued existence of nuclear weapons in North Korea and the potentiality of a nuclear-capable Iran could prompt American allies in the Persian Gulf or East Asia to build their own nuclear deterrents. Given North Korea’s increasingly aggressive and erratic behavior, the failure of the six-party talks, and the widely held distrust of Iran’s megalomaniacal leadership, the guarantees offered by a declining America’s nuclear umbrella might not stave off a regional nuclear arms race among smaller powers. Last but not least, even though China and India today maintain a responsible nuclear posture of minimal deterrence and “no first use,” the uncertainty of an increasingly nuclear world could force both states to reevaluate and escalate their nuclear posture. Indeed, they as well as Russia might even become inclined to extend nuclear assurances to their respective client states. Not only could this signal a renewed regional nuclear arms race between these three aspiring powers but it could also create new and antagonistic **spheres of influence** in Eurasia driven by competitive nuclear deterrence. The decline of the United States would thus precipitate drastic changes to the nuclear domain. An increase in proliferation among insecure American allies and/or an arms race between the emerging Asian powers are among the more likely outcomes. This ripple effect of proliferation would undermine the transparent management of the nuclear domain and increase the likelihood of **interstate rivalry, miscalc**ulation, and eventually even perhaps of international **nuclear terror**. In addition to the foregoing, in the course of this century the world will face a series of novel geopolitical challenges brought about by significant changes in the physical environment. The management of those changing environmental commons—the growing scarcity of fresh water, the opening of the Arctic, and global warming—will require global consensus and mutual sacrifice. American leadership alone is not enough to secure cooperation on all these issues, but a decline in American influence would reduce the likelihood of achieving cooperative agreements on environmental and resource management. America’s retirement from its role of global policeman could create greater opportunities for emerging powers to further exploit the environmental commons for their own economic gain, increasing the chances of resource-driven conflict, particularly in Asia. The latter is likely to be the case especially in regard to the increasingly scarce water resources in many countries. According to the United States Agency for International Development (USAID), by 2025 more than 2.8 billion people will be living in either water-scarce or water-stressed regions, as global demand for

water will double every twenty years.9 While much of the Southern Hemisphere is threatened by potential water scarcity, interstate conflicts—the geopolitical consequences of cross-border water scarcity—are most likely to occur in Central and South Asia, the Middle East, and northeastern Africa, regions where limited water resources are shared across borders and political stability is transient. The combination of political insecurity and resource scarcity is a menacing geopolitical combination. The threat of water conflicts is likely to intensify as the economic growth and increasing demand for water in emerging powers like Turkey and India collides with instability and resource scarcity in rival countries like Iraq and Pakistan. Water scarcity will also test China’s internal stability as its burgeoning population and growing industrial complex combine to increase demand for and decrease supply of usable water. In South Asia, the never-ending political tension between India and Pakistan combined with overcrowding and Pakistan’s heightening internal crises may put the Indus Water Treaty at risk, especially because the river basin originates in the long-disputed territory of Jammu and Kashmir, an area of ever-increasing political and military volatility. The lingering dispute between India and China over the status of Northeast India, an area through which the vital Brahmaputra River flows, also remains a serious concern. As American hegemony disappears and **regional competition intensifies**, disputes over natural resources like water have the potential to develop into **full-scale conflicts**. The slow thawing of the Arctic will also change the face of the international competition for important resources. With the Arctic becoming increasingly accessible to human endeavor, the five Arctic littoral states—the United States, Canada, Russia, Denmark, and Norway—may rush to lay claim to its bounty of oil, gas, and metals. This run on the Arctic has the potential to cause severe shifts in the geopolitical landscape, particularly to Russia’s advantage. As Vladimir Radyuhin points out in his article entitled “The Arctic’s Strategic Value for Russia,” Russia has the most to gain from access to the Arctic while simultaneously being the target of far north containment by the other four Arctic states, all of which are members of NATO. In many respects this new great game will be determined by who moves first with the most legitimacy, since very few agreements on the Arctic exist. The first Russian supertanker sailed from Europe to Asia via the North Sea in the summer of 2010.10 Russia has an immense amount of land and resource potential in the Arctic. Its territory within the Arctic Circle is 3.1 million square kilometers—around the size of India—and the Arctic accounts for 91% of Russia’s natural gas production, 80% of its explored natural gas reserves, 90% of its offshore hydrocarbon reserves, and a large store of metals.11 Russia is also attempting to increase its claim on the territory by asserting that its continental shelf continues deeper into the Arctic, which could qualify Russia for a 150-mile extension of its Exclusive Economic Zone and add another 1.2 million square kilometers of resource-rich territory. Its first attempt at this extension was denied by the UN Commission on the Continental Shelf, but it is planning to reapply in 2013. Russia considers the Arctic a true extension of its northern border and in a 2008 strategy paper President Medvedev stated that the Arctic would become Russia’s “main strategic resource base” by 2020.12 Despite recent conciliatory summits between Europe and Russia over European security architecture, a large amount of uncertainty and distrust stains the West’s relationship with Russia. The United States itself has always maintained a strong claim on the Arctic and has continued patrolling the area since the end of the Cold War. This was reinforced during the last month of President Bush’s second term when he released a national security directive stipulating that America should “preserve the global mobility of the United States military and civilian vessels and aircraft throughout the Arctic region.” The potentiality of an American decline could embolden Russia to more forcefully assert its control of the Arctic and over Europe via energy politics; though much depends on Russia’s political orientation after the 2012 presidential elections. All five Arctic littoral states will benefit from a peaceful and cooperative agreement on the Arctic—similar to Norway’s and Russia’s 2010 agreement over the Barents Strait—and the geopolitical stability it would provide. Nevertheless, political circumstances could rapidly change in an environment where control over energy remains Russia’s single greatest priority. Global climate change is the final component of the environmental commons and the one with the greatest potential geopolitical impact. Scientists and policy makers alike have projected catastrophic consequences for mankind and the planet if the world average temperature rises by more than two degrees over the next century. Plant and animal **species could grow extinct** at a rapid pace, large-scale **ecosystems** **could** **collapse**, human **migration** could increase to untenable levels, and global **economic development could be** categorically **reversed**. Changes in geography, forced migration, and global economic contraction layered on top of the perennial regional security challenges could create a geopolitical reality of **unmanageable** complexity and **conflict**, especially in the densely populated and politically unstable areas of Asia such as the Northeast and South. Furthermore, any legitimate action inhibiting global climate change will require unprecedented levels of self-sacrifice and international cooperation. The United States does consider climate change a serious concern, but its lack of both long-term strategy and political commitment, evidenced in its refusal to ratify the Kyoto Protocol of 1997 and the repeated defeat of climate-change legislation in Congress, deters other countries from participating in a global agreement. The United States is the second-largest global emitter of carbon dioxide, after China, with 20% of the world’s share. The United States is the number one per capita emitter of carbon dioxide and the global leader in per capita energy demand. Therefore, US leadership is essential in not only getting other countries to cooperate, but also in actually inhibiting climate change. Others around the world, including the European Union and Brazil, have attempted their own domestic reforms on carbon emissions and energy use, and committed themselves to pursuing renewable energy. Even China has made reducing emissions a goal, a fact it refuses to let the United States ignore. But none of those nations currently has the ability to lead a global initiative. President Obama committed the United States to energy and carbon reform at the Copenhagen Summit in 2009, but the increasingly polarized domestic political environment and the truculent American economic recovery are unlikely to inspire progress on costly energy issues. China is also critically important to any discussion of the management of climate change as it produces 21% of the world’s total carbon emissions, a percentage that will only increase as China develops the western regions of its territory and as its citizens experience a growth in their standard of living. China, however, has refused to take on a leadership role in climate change, as it has also done in the maritime, space, and cyberspace domains. China uses its designation as a developing country to shield itself from the demands of global stewardship. China’s tough stance at the 2009 Copenhagen Summit underscores the potential dangers of an American decline: no other country has the capacity and the desire to accept global stewardship over the environmental commons. Only a vigorous Unites States could lead on climate change, given Russia’s dependence on carbon-based energies for economic growth, India’s relatively low emissions rate, and China’s current reluctance to assume global responsibility. The protection and good faith management of the global commons—**sea**, **space**, **cyberspace**, nuclear **prolif**eration, **water** security, **the Arctic**, and **the environment** itself—**are imperative to** the long-term growth of the global economy and **the continuation of** basic geopolitical **stability**. But in almost every case, the potential absence of constructive and influential US leadership would fatally undermine the essential communality of the global commons.     The argument that America’s decline would generate global insecurity, endanger some vulnerable states, produce a more troubled North American neighborhood, and make cooperative management of the global commons more difficult is not an argument for US global supremacy. In fact, the strategic complexities of the world in the twenty-first century—resulting from the rise of a politically self-assertive global population and from the dispersal of global power—make such supremacy unattainable. But in this increasingly complicated geopolitical environment, an America in pursuit of a new, timely strategic vision is crucial to helping the world avoid a dangerous slide into international turmoil.

### 1ac plan

#### The United States federal government should statutorily establish a permanent war powers consultation committee, requiring the President to consult with the committee over the introduction of United States armed forces into significant armed conflict, and require a Congressional authorization vote following consultation. The statute should define ‘significant armed conflict’ as any conflict expressly authorized by Congress, or any mission conducted by United States armed forces pursuant to Rules of Engagement authorizing the use of force beyond the scope of authority provided by the inherent right of self-defense. The statute should include an explicit point-of order mechanism.

#### We reserve the right to clarify!

### 1ac solvency

#### Solvency!

#### The plans restrictions spur democratic debate over the use of force and create strategic coherence in U.S. foreign policy even if there are risks of non-enforcement

**Smidt, 9 –** LIEUTENANT COLONEL MICHAEL L. SMIDT, US Army. Paper submitted in fulfillment of a Masters in Strategic Studies degree at the US Army War College ( “THE PROPOSED 2009 WAR POWERS CONSULTATION ACT” dtic.mil)

Although the primary benefit from a joint Congressional and Presidential decision to commit the armed forces into armed conflict, it turns out, over the long run, there are significant strategic benefits in complying with the shared power construct laid out in the Constitution. Certainly Clausewitz never formally supported the ideals of the United States Constitution. However, his writings regarding the importance of government in warfare ironically do suggest there are strategic advantages for a government to follow its political principles. While certainly no two wars are alike, there are, according to Carl von Clausewitz, three common components present in all armed conflicts. This “paradoxical trinity,” as he describes it, is “composed of primordial violence, hatred and enmity. . . .”82 The first of these three aspects is generally associated with the “people,” the second, “with the commander and his army,” and the third with “the government.”83 Clausewitz goes on to explain that a successful military policy or strategy will be one that considers each leg of the trinity and balances the relationship between them like “an object suspended between three magnets.”84 Clausewitz explains that any successful wartime strategy must include participation by the political arm. In the final analysis, the use of military force is nothing more than the clear manifestation and forceful exercise of state policy by violent or potentially violent means.85 Therefore, the state political arm must clearly articulate to the military the underlying political objective sought and how the government defines success.86 Strategy is neither a purely political creation, nor a military one;87 however, “strategy ultimately derives its significance from the realm of politics. . .”88 and “the political dimension of strategy is the one that gives it meaning.”89 The governing body, not just its military forces, must participate in the making of strategy. When a decision is made to apply military force to a problem, the body politic must determine the scope, magnitude and duration of its commitment. The state must decide what it is willing to spend in terms of lives and treasure. The state must calculate what risks it is willing to assume regarding its own national security and that of its allies and the international community. 90 Failure of the government to participate in the making of strategy can lead to potentially catastrophic results on the battlefield.91 Achieving the political object underlying the decision to use military power determines the degree of effort and commitment required of the military.92 Success on the battlefield may be as much about the quality, clarity, and suitability of a state’s political objectives as it is about the relative military vitality, strength and tactical superiority of the various opponents in the conflict. When the government fails to fulfill its responsibility to set and clearly articulate policy, it creates strategic uncertainty within its own population, its armed forces and allies. Moreover, absent clearly articulated state policy, the military element of power will not enjoy its full deterrent potential against the enemy.93 As discussed above, the Framers created a system that requires the participation of both branches of government in national security decisions. Unless both branches participate, the President is acting without congressional power and he is therefore only exercising half of the available war making power of the US government. Moreover, where the President fails to consult with Congress and seek concurrence for any significant commitment of forces in hostilities, or where Congress chooses to avoid participating in any such decision, strategic uncertainty may be the result. Unless both Congress and the President clearly articulate their objectives through a declaration of war or similar legislative or regulatory equivalent, US armed forces, US allies, and perhaps most importantly, the enemy, will not be certain of America’s resolve and determination. Allies might question whether the United States has the stomach to continue for a lengthy period. Commanders will be uncertain as to the funding available and the degree to which the country will mobilize. Where both political branches participate in any significant commitment of the armed forces of the United States, constitutional principles are preserved and there are strategic benefits as well. First, adherence to these priciples demonstrates to the world that as a democratic institution, built on the rule of law, the United States remains faithful to the principles and checks and balances established in the Constitution. Second, the government leg of Clausewitz’s trinity is strengthened where both branches are involved. Any failure to include both political branches means that only half of the power available to the government is employed. Purposes and Problems Associated With The 1973 War Powers Resolution The stated purpose of the 1973 War Powers Resolution (Resolution),94 is to “insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or such situations.”95 The Resolution limits a President’s power to introduce troops into hostilities where there is (1) a congressional declaration of war, (2) a specific congressional statutory authorization, or (3) a “national emergency created by attack upon the United States, its territories or possessions or its armed forces.”96 Presidents of both political parties have argued that their power to deploy troops exceeds these three limited circumstances. For example, Presidents have asserted the power to “rescue Americans abroad, rescue foreign nationals where such action facilitates the rescue of U.S. citizens, protect U.S. Embassies and legations, suppress civil insurrection, implement the terms of an armistice or cease-fire involving the United States, and carry out the terms of security commitments contained in treaties.”97 Just to name a few, examples where Presidents have deployed military forces which exceed the authority of the Resolution include Grenada, Yugoslavia and Haiti.98 Even many strong supporters of congressional power agree that the Resolution overly restricts the President in the types of situations he may send armed forces.99 The Resolution contains requirements relating to consulting with, and reporting to, Congress. However, because of poor drafting, these otherwise justifiable requirements create issues. Presidents are to “consult” with Congress “before” introducing forces into “hostilities or into situations where imminent involvement in hostilities is clearly indicated.”100 The President must continue to consult with Congress regularly until the forces are removed from the situation.101 However, the Resolution does not explain with whom among the 535 members of Congress the President is required to consult.102 The President is required to provide a written report to Congress whenever he introduces forces into hostilities or when hostilities are imminent. He must report deploying troops to a foreign country “equipped for combat” unless those troops are involved in training exercises.103 Unless the President is granted a 30 day extension, 60 days after such a report is provided to Congress, the President must remove the forces if Congress does not affirmatively declare war or provide a statutory equivalent.104 No President has ever filed a report as required by this section.105 Many law scholars agree that Section 5(c),106 which requires the President to withdraw troops from hostile areas where Congress issues a “concurrent” resolution to withdraw troops, is unconstitutional. Only one branch of government is required to participate in a concurrent resolution. In INS v. Chadha, 107 a case decided by the Supreme Court subsequent to the 1973 War Powers Resolution, the Court struck down the practice of using one-house legislative vetoes.108 The Supreme Court has never decided a case on the constitutionality of the War Powers Resolution. Over the course of its existence, over 100 individual members of Congress, acting alone or in small contingents, have petitioned the courts in order to challenge the legality of presidential decisions to deploy American forces. However, Congress as a whole has never sought to compel the President to comply with the Resolution, and therefore, the Supreme Court has avoided considering the issue.109 For example, individual members of Congress have redressed the courts for actions in El Salvador, Nicaragua, Grenada, tanker escort duty in the Persian Gulf, the first Iraq war, and Kosovo. In each case, the judicial branch managed to avoid making a determination on the constitutionality of the Resolution due to the courts’ determination to leave issues of national security to the political branches.110 In addition to its apparent constitutional defects, from a policy standpoint, some have argued the Resolution is detrimental to the operational effectiveness of U.S. forces. The Resolution places troops and civilians abroad at greater risk and has the potential to negatively affect a strategy based partially on deterrence.111 Critics of the Resolution point out that in 1983 members of Congress cited the Resolution and insisted on specifically knowing how long the Marines would be stationed in Lebanon. A precise timetable would certainly have benefited terrorist groups in terms of their own strategy and whether they could simply outlast the United States.112 When the U.S. agreed to reflag ships traveling through the Persian Gulf in the late 80’s, there was some concern that this reflagging action required the President to report to Congress the possibility of hostilities. Some in the international community may have been concerned that the notice to Congress of possible hostilities could have been a masked indication of the real U.S. intent to use the reflagging operations as a pretext introduce combat forces in the area for follow on combat activities in the region.113 Cirtics point out that the Resolution places citizens abroad at greater risk because the Resolution does not permit the President to send troops to rescue Americans overseas.114 Americans overseas may have been placed at greater risk in Vietnam had the President sought congressional authority to conduct a rescue when Vietnam collapsed, in Grenada when Cubans took control of that county, and in Panama when Americans were subject to attack prior to the removal of Noriega. Certainly Congress would have granted authority to rescue in these cases; however, having to seek permission takes time where time is often of the essence. Where secrecy is paramount, having to go to Congress would threaten compromise.

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Although Presidents have asserted the Resolution is unconstitutional, various Presidents have made decisions in order to avoid triggering certain provisions of the Resolution and thereby placing troops at risk. For example, US soldiers in El Salvador were not allowed to carry M16s in order to avoid triggering the “equipped for combat” provisions. 115 Marines in Lebanon were not permitted to carry loaded weapons and were under a very defensive ROE so that the President would not have to report to Congress that the Marines were facing “imminent involvement in hostilities.”116 As with the creation of many laws, there are potential unintended consequences. The timetables in the Resolution grant the President the ability to operate up to 90 days in certain cases without reporting to Congress. Critics of the Resolution have argued that a President may elect to bring far greater military force to bear on an opponent than is reasonable in order to ensure any military action would be complete prior to exceeding the time limits listed in the Resolution.117 Conversely, these same time tables might give strength to an enemy trying to hold on for 90 days and incite the enemy to surge and to create maximum U.S. casualties in during that same 90 day period.118 Finally, the Resolution seeks to limit a President’s authority to introduce forces into hostilities based on a mutual defense treaty unless Congress specifically grants the executive the power to deploy forces into hostilities as part of congressional implementation of such a treaty.119 These means that in a regional arrangement such as NATO, where an attack on one is considered an attack on all, the President could not come to the defense of the relevant ally without first getting a green light from Congress. This might give potential treaty partners cause for concern because although the President is promising support, his promise is contingent on congressional support and the time it takes to secure that support. Defects Cured in the Proposed 2009 War Powers Consultation Act Although the War Powers Commission concluded that the 1973 War Powers Resolution is unworkable, the Commission concurs that creating an effective legislative framework requiring both branches to participate in any decision to commit U.S. armed forces is worth pursuing. The Commission has proposed a statute that addresses the shortcomings of the 1973 War Powers Resolution by “eliminating aspects of the War Powers Resolution of 1973 that have opened it to constitutional challenge,” and by “. . . promoting meaningful consultation between the branches without tying the President’s hands.” The Act also focuses on “providing a heightened degree of clarity and striking a realistic balance that both advocates of the Executive and Legislative Branches should want.”120 If the proposed 2009 War Powers Consultation Act (Act) is enacted, it will repeal the 1973 War Powers Resolution.121 It does not seek to “define, circumscribe, or enhance the constitutional war powers of either the Executive or Legislative Branches of government. . . .”122 Its primary purpose is to require the participation of both political branches of government when American armed forces are involved in “significant armed conflict.”123 The proposed Act defines “significant armed conflict” as any conflict “expressly authorized by Congress,” or “any combat operation by U.S. armed forces lasting more than a week or expected by the President to last more than a week.”124 The drafters of the proposed Act wanted to involve Congress “only where consultation seems essential.”125 As an example of the application of the definition of significant armed conflict, the Commission points out that President Reagan’s “limited air strikes against Libya would not be considered ‘significant armed conflicts’”, but conversely, the “two Iraq Wars clearly would be . . .” the later would require consultation, the former would not.126 Certain types of combat or combat like operations are specifically exempted from coverage by the statute. For example, the Act would not be triggered when the President is acting to “repel attacks, or prevent imminent attacks” against the “United States, its territorial possessions, its embassies, its consulates, or its armed forces abroad.”127 The Act also exempts “limited acts of reprisal against terrorists or states that sponsor terrorism.”128 Other types of troop deployments expressly exempt from the coverage of the statute include foreign disaster relief,129 “acts to prevent criminal activity abroad,”130 covert operations,131 training exercises,132 and rescuing U.S. citizens abroad.”133 Therefore, the Act would not apply in a Grenada-like rescue of American citizens. Unlike the War Powers Resolution of 1973, the proposed Act clearly lays out with whom in Congress the President must consult when the statute is applicable.134 The Act further requires the President to consult with the listed members of Congress, “Before ordering the deployment of United States armed forces into significant armed conflict . . . .”135 However, where the “need for secrecy or other emergent circumstances precludes consultation. . .” prior to deploying forces, the President must consult with the members of Congress listed in the Act within “three calendar days after the beginning of the significant armed conflict.”136 The President is required to consult with Congress on matters of national security and foreign policy “regularly.”137 Where a “significant armed conflict” is involved, the statute requires continued consultation every two months.138 In addition to consultation with Congress, the Act requires the President to submit a written “classified” report to Congress “setting forth the circumstances necessitating the significant armed conflict, the objectives, and the estimated scope and duration of the conflict.”139 The President must submit the report prior to ordering or approving sending of troops into significant armed conflict.140 Where however, there is a need for “secrecy” or where “emergent circumstance” exists, he must submit the report within three calendar days after the beginning of any significant armed conflict.141 The Act also creates an annual written reporting requirement for the President “due each first Monday of April each year” regarding all ongoing operations.142 Section 5 has been described as “the heart” of the Proposed War Powers Consultation Act of 2009.143 If Congress has not authorized the commitment of U.S. forces in a “significant armed conflict” after receiving presidential notice, then the Act states that the, “Joint Consultation Committee shall introduce an identical concurrent resolution in the Senate and House of Representatives calling for [its] approval.”144 If a concurrent resolution supporting the action is defeated, then any Senator or Representative may file a joint resolution of disapproval which “shall” be voted on within five calendar days.145 The joint resolution will have the force of law only if signed by the President, or if approved by Congress over the President’s veto.146 Section 5 recognizes that the framers of the Constitution intended Congress to play a role in foreign affairs and to influence the use of military force abroad. This Act requires Congress to vote up or down on a President’s decision to commit military forces in a significant armed conflict. Unlike the 1973 War Powers Resolution, the Act does require the President to remove forces from hostilities where Congress fails to act. Forcing those in Congress to vote early either places the entire strength of the government behind the action, or, in the alternative, may require the removal of troops where the entire body politic, and by extension, the American people do not support the effort. While the Act does not delineate which branch has primacy in war making decisions, or who ultimately has the responsibility to decide, , or exactly what roles the respective branches are to play; it does establish a framework requiring each branch is required to participate and work together in a cooperative and deliberative fashion when deciding whether to employ military force.147 Conclusion It is in the United States’ best interests to enact the proposed 2009 War Powers Consultation Act on the grounds that it will encourage shared decision making for any significant use of the armed forces. Joint, rather than unilateral, congressional and presidential foreign policy decisions to use the military are more consistent with the national security framework in the Constitution. The Framers intentionally built a framework which would prevent an overly aggressive government from engaging military forces without deliberate and thoughtful consideration,148 but one which would also be able to take resolute action and defend itself and its interests when necessary.149 Both branches of government have certain indispensable keys relating to the effective use of the military as an instrument of power.150 The constitutional requirement for near simultaneous use of these keys creates a shared power framework. However, Presidents have often been willing to commit troops without first consulting with Congress and Congress has simply gone along. This phenomenon has been described by one scholar as, “Executive custom and Congressional acquiescence.”151 The proposed 2009 War Powers Consultation Act preserves the spirit and objectives of the 1973 War Powers Resolution. The Act facilitates the participation of both political branches of government in any decision to commit forces in any significant operation, while addressing the constitutional and policy defects associated with the Resolution. Passage of the Act should not only serve to protect the American people from an adventurous President, but citizens will also benefit because the Act seeks to force a reluctant Congress to debate and participate in these most important governmental decisions. The Act will go a long way toward restoring the balance of power established by the Framers in the Constitution. In a democracy built on the rule of law, it is imperative that the government comply with the ideals enunciated in the Constitution even though this might, on occasion, mean more time and debate. As discussed above, the Act carves out exceptions to the consultation and voting requirements for emergency situations where time is of the essence. Congress is the peoples’ branch of government and the people need to be heard when their sons and daughters are sent into harms way.152

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Moreover, when the government adheres to constitutional provisions in matters of national security, strategic advantages will follow. First, in the general sense, the government will appear strong when in compliance with its own rules. The government will not appear panicked or stressed. Second, with regard to the specific conflict involved, when both branches of government support a military action, it will be clear to allies, neutrals and enemies alike the United States means business and is willing to use its military element of power to resolve the issue. Third, a declaration of war or similar statutory pronouncement would have the pragmatic advantage of legal sanction and all that that entails. A declaration of war or similar vote as required by the 2009 War Powers Consultation Act would serve to mobilize the American public.153 And finally, U.S. commanders and soldiers on the ground we be in a better position to plan and execute military operations on the ground. The political objectives established by the policy makers will be more clear. Commanders will have a better idea of how the civilian leadership defines success when national interest are at stake. Where the entire government supports a military action, commanders and soldiers will have reason for faith that the government will provide the resources and personnel required. As has been said, Unless Congress has un-equivocally authorized a war at the outset, it is a good deal more likely to undercut the effort, leaving it in a condition that satisfies neither the allies we induced to rely on us, our troops who fought and sometimes died, nor for that matter anyone else except, conceivably the enemy.154 Congress can easily strangle any war effort where it has not been consulted in advance.155 Of course there are potential risks involved with any attempt to shore up the Constitution with statutory law. First, any legislative framework carries with it the possibility of creating new and unforeseen problems. An overly ambitious attempt to create a more shared balance of power between the Executive and the Legislature, could cause the system to take on the nature of a more parliamentary form of government, which, when viewing the European experience since 9/11, and our own experience during the Revolutionary War, may not be in the United States’ best security interests. Others may argue that we do not need a legislative solution which attempts to mandate exactly how the two branches are to balance the war making power. What we currently have works. Our current system, as flawed as it may be, is one born both of constitutional theory and the “gloss” of historical practice. As Justices Jackson and Douglas teach us in Youngstown,156 both political branches have participated to varying degrees in the decisions to use the armed forces. These two justices seem to be suggesting that the Constitution created a theoretical framework of balanced or shared power, leaving it to history and application to fill in the details. Statutory refinements may only serve to frustrate the application of the Constitution. And finally, it is questionable whether the 2009 War Powers Consultation Act would be enforced anymore than the 1973 War Powers Resolution has been. As with the 1973 War Powers Resolution, there is no guarantee that one or both branches will not simply ignore the law. Furthermore, based on the political question doctrine, the Supreme Court may be just as reluctant to enforce or interpret the Act as it has been the Resolution. These potential risks are minimal as compared to the likely benefits of the Act. The potential restoration of a balanced and shared war making power as originally intended by the Framers outweighs the risks. After 35 years of War Powers Resolution experimentation, the drafters have been able to create a statute which will alleviate the constitutional and policy problems with the Resolution. And as a pragmatic benefit, compliance with the act will lead to greater strategic certainty. From the trench, that sounds like a strategy worth pursuing.

#### The plans modifications to the WPCA avoid circumvention and solidify a congressional lead role

Corn, 09 [Geoffrey S. Corn, “Triggering Congressional War Powers Notification: A Proposal to Reconcile Constitutional Practice with Operational Reality”, Professor of Law and Presidential Research Professor, p. online]

The inherent flaws in the War Powers Resolution have recently become the focus of an initiative far more important than the scholarly debate that has previously been its primary product.16 In a recently published report,17 the National War Powers Commission, composed of distinguished former public officials and nationally renowned constitutional scholars proposed the enactment of the War Powers Consultation Act of 2009 (WPCA) as a replacement for the War Powers Resolution.18 This Commission performed its work at the Miller Center of the University of Virginia, and its report articulates in compelling terms why the WPR has failed19, and why consultation between the two political branches has and remains the sine qua non of constitutionally legitimate war powers decisions. Accordingly, the members of the Commission: urge that in the first 100 days of the next presidential Administration, the President and Congress work jointly to enact the War Powers Consultation Act of 2009 to replace the impractical and ineffective War Powers Resolution of 1973. The Act we propose places its focus on ensuring that Congress has an opportunity to consult meaningfully with the President about significant armed conflicts and that Congress expresses its views. We believe this new Act represents not only sound public policy, but a pragmatic approach that both the next President and Congress can and should endorse. The need for reform **stems from** the gravity and uncertainty posed by war powers questions. Few would dispute that the most important decisions our leaders make involve war. Yet after more than 200 years of constitutional history, what powers the respective branches of government possess in making such decisions is still heavily debated. The Constitution provides both the President and Congress with explicit grants of war powers, as well as a host of arguments for implied powers. How broadly or how narrowly to construe these powers is a matter of ongoing debate. Indeed, the constitution’s framers disputed these very issues in the years following the Constitution’s ratification, expressing contrary views about the respective powers of the President, as “Commander in Chief,” and Congress, which the Constitution grants the power “To declare War.”20 The proposals focus on “meaningful” consultation is unsurprising. Indeed, this was a key concern of the drafters of the WPR. As is noted throughout the Report, consultation must be meaningful in order to ensure the cooperative decision-making process essential to constitutionally valid war powers decisions21. This in turn leads to the core of the Commission’s proposal: that consultation occurs prior to, or immediately after a use of the armed forces in a “significant armed conflict.” This term is defined in the proposal as either a use of the armed forces expressly authorized by Congress, or any other use ordered by the President that involves hostilities lasting more than 7 days It is clear from the Commission Report that the key objective of this proposal is to not only ensure cooperation between the political branches of government in relation to the decision to engage in the nation in hostilities, but perhaps more importantly to define with greater precision than the WPR those situations in which such cooperation is required. As I will argue below, this objective is consistent with the historical constitutional “gloss” of war powers. However, it is the thesis of this article that the proposal suffers from the same inherent flaw that hobbled the notification and consultation provisions of the WPR, namely a twilight zone surrounding the trigger for such notification and consultation. Like the failed concept of “hostilities or where imminent hostilities are present24”, the concept of “armed conflict25” will almost inevitably be susceptible to interpretive debate. In addition, the 7 day trigger, like the ubiquitous 60 day clock, will almost inevitably lead to assertions that the President has plenary authority to initiate hostilities, an assertion that is simply overbroad. Finally, and perhaps most problematically, it is unlikely any President will acquiesce to mandated consultation obligations for armed conflicts “thrust” upon the nation, irrespective of their duration. Instead, it is much more likely that they will assert such military operations are conducted pursuant to their exclusive authority to respond to sudden attacks by “meeting force with force26.” There is, however, simply no question that the effort to eliminate the WPR’s express authorization requirement – the provision of the Resolution most inconsistent with the history of constitutional war powers – and the effort to define a more effective triggering event for consultation, is perhaps the ideal remedy to the ongoing debate over how to effectively balance the war powers of the two political branches. What is therefore needed to “close this deal” is a more effective consultation trigger. Such a trigger will ensure Congress is placed on notice in advance of military operations that implicate its institutional war authorization (or prohibition) role. Such a trigger, if properly tailored, would facilitate the ability of Congress to “take a stand” on war making initiative in a timely manner, prevent the President from presenting Congress with a fait accompli, and validate reliance on subsequent congressional acquiescence.

[corn continues]

The consultation trigger of the proposed replacement for the WPR provides the start point for ensuring “meaningful” consultation. However, the efficacy of this proposal will remain compromised until uncertainty as to when such consultation is constitutionally required is resolved. Enhancing this proposal with a more precisely tailored and operationally grounded “trigger” for such pre-execution notice and consultation with Congress is therefore essential. This trigger must be more carefully tailored than either the current “hostilities or…situations where imminent involvement in hostilities is clearly indicated27” language of the WPR – terms that to this day remain undefined, or the proposed “significant armed conflict28” trigger of the WPCA. In addition, the trigger must be tailored to exempt from such mandated notification uses of the armed forces falling under the inherent and exclusive authority of the President – namely responses to sudden attacks. This article will propose such a trigger. Instead of using general terms subject to divergent definitions (and therefore evasion), it will propose a trigger derived from the principles of military operations. This trigger will be linked to the nature of the Rules of Engagement proposed for National Command Authority approval in relation to a given military operations29. These rules reflect the fundamental nature of the authority granted to the armed forces by the President as an aspect of all military operations, and therefore provide a viable mechanism to distinguish responsive uses of armed force from operations where the United States initiates combat activities. It is only in this latter category that pre-operation congressional notification should be required. Linking such notification to the authorization of “mission specific” Rules of Engagement – a concept that will be explained below – will substantially contribute to the efficacy of the historically validated war making balance between the President and Congress.

#### This avoids presidential powers – maintains the right to self-defense, but creates a binding requirement impervious to circumvention

Corn, 09 [Geoffrey S. Corn, “Triggering Congressional War Powers Notification: A Proposal to Reconcile Constitutional Practice with Operational Reality”, Professor of Law and Presidential Research Professor, p. online]

Proposing an ROE Linked Notification Provision. This article is premised on the conclusion that express congressional approval is not a constitutionally required predicate for the initiation of armed hostilities by the United States. However, it is also premised on the equally important conclusion that this lack of an express approval requirement – perhaps the ultimate overreach of the War Powers Resolution – cannot properly be interpreted as authorizing the President to initiate all hostilities based on an assertion of inherent executive power. Instead, with the limited exceptions of response to sudden attack and genuine rescue operations, Congress retains the ultimate “check” on the assertion of executive war-making initiatives225. Accordingly, the essential element of the effective execution of the Constitution’s shared war powers framework is providing Congress with a meaningful opportunity to exercise its constitutional role226. Meaningful is the key qualifier, for it indicates that Congress must be afforded the opportunity to check executive war making initiative before they are presented with a fait accompli as the result of initiation of combat operations prior. It therefore becomes clear that pre-execution notification of a planned initiation of hostilities is essential to satisfy this constitutional imperative227. This conclusion was central to the congressional effort to re-establish its role in the war-making process when it passed the War Powers Resolution, and is equally central to the recent Miller Center proposal to amend that law.228 While the Resolution is generally regarded as ineffective,229 it is not necessarily the notification provision that led to this conclusion. In fact, that provision is perhaps the one component of the Resolution that has proved relatively successful. However, as the Miller Center proposal recognizes, uncertainty as to when notification is triggered has and will continue to compromise the efficacy of even that component of the Resolution230. Unfortunately, while the MillerCenter Proposal of a “significant armed conflict” trigger231 is less susceptible to interpretive avoidance than the current Resolution notification provision, it nonetheless fails to link notification to a military operational criteria for distinguishing responsive uses of force from initiations of hostilities. Linking notification to the authorization of ROE measures beyond the standing “inherent” right of self-defense cures this defect. Because National Command Authority approval is necessary for ROE measures that permit the application of combat power in a manner necessary to initiate hostilities with another state or even a non-state entity,232 a contemporaneous notification provision provides the most effective method of ensuring notification is provided to Congress based on an operational standard for conflict initiation. In addition, required notification will be triggered by the decision-making process of the President, and not on an interpretation of the term “hostilities”. Perhaps most importantly, it will ensure notification occurs no later than the point in time when the authorization necessary to employ force for mission accomplishment is provided, thereby mitigating the risk of presenting Congress with a proverbial fait accompli, a result essentially conceded as acceptable by the Miller Center proposal.233

[corn continues]

It is the opinion of this author that incorporating such a notification trigger into the proposed War Powers Consultation Act of 2009 would result in a significant improvement to that exceptionally well conceived legislation. This improvement would be the result of the elimination of the one remaining source of uncertainty inherent in the proposal. To accomplish this, the definition provision of that law should be amended as follows: 3(A). For purposes of this Act, “significant armed conflict” means (i) any conflict expressly authorized by Congress, or (ii) any mission conducted by the U.S. armed forces pursuant to Rules of Engagement authorizing the ue of force beyond the scope of authority provided by the inherent rightof self-defense permitting those forces to initiate hostilities with any state or non-state opponent. Based on this revised definition, the notification/consultation trigger of the proposed law235 should be amended as follows: 4(B). Before ordering the deployment of United States armed forces into significant armed conflict, the President shall consult with the Joint Congressional Consultation Committee. To “consult,” for purposes of this Act, the President shall provide an opportunity for the timely exchange of views regarding whether to engage in the significant armed conflict, and not merely notify the Joint Congressional Consultation Committee that the significant armed conflict is about to be initiated. In order to ensure this constitutionally meaningful consultation, the President shall engage in such consultation no later than that point in time when he or the Secretary of Defense authorize mission accomplishment supplement Rules of Engagement for the purpose of providing U.S. armed forces with the use of force authority necessary to accomplish the anticipated military mission. If one of the military actions described in Section 3(B) of this Act becomes a significant armed conflict as defined in Section 3(A), the President shall similarly initiate consultation with the Joint Congressional Consultation Committee. Providing for an operationally grounded trigger will ensure the full effectiveness of the remainder of the proposed statute with no further modifications. Even the three day “exigency” exception will operate consistently with this amendment, for it will limit late notification to causes beyond the control of the President, namely an inability to communicate with the designated legislators. However, this ROE trigger will eliminate or at least greatly mitigate the risk that a President might attempt to exploit this exemption in the same way that past Presidents have exploited the current sixty-day clock.236 Enacting the War Powers Consultation Act of 2009237 with this limited but important modification holds the greatest promise of finally achieving the objective of the drafters of the War Powers Resolution sought to achieve 36 year ago: to “fulfill the intent of the framers of the Constitution of the United Statesand insure that the collective judgment of both the Congress and the President238” apply to the decision to initiate armed hostilities.

#### Future conflicts are likely – the plan maintains the basis for US leadership

Kaine and McCain, 14 [Senator Kaine From West Virginia and John McCain, Senator from Arizona, “STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS”, http://beta.congress.gov/congressional-record/2014/1/16/senate-section/article/S441-1]

Mr. McCAIN. Mr. President, I am pleased today to join my colleague, the junior Senator from Virginia, as we introduce the War Powers Consultation Act of 2014. This legislation is the final product of the National War Powers Commission, which was a bipartisan effort co-led by former Secretary of State Jim Baker and former Secretary of State Warren Christopher. The commission was set up by the Miller Center at the University of Virginia to devise a modern and workable war powers consultation mechanism for the executive and legislative branches. It included some of our Nation's most distinguished and respected thinkers and practitioners of national security policy and law. In 2008, after more than a year of hard work, the commission released the final product--an actual legislative proposal to repeal and replace the War Powers Resolution of 1973, which no American President has ever accepted as constitutional. As does my colleague, I view our introduction of this legislation today as the start of an important congressional and national debate, not the final word in that debate. We wish to pick up where the National War Powers Commission left off 6 years ago, and we do so fully understanding and hopeful that **this legislation should be considered** and debated and amended and improved through regular order. My colleague from Virginia has done a great job on this legislation, and I am proud to join him. I wish to expand a bit on why updating the War Powers Resolution is such a worthwhile endeavor for the Senate to consider right now. The Constitution gives the power to declare war to the Congress, but Congress has not formally declared war since June of 1942 even though our Nation has been involved in dozens of military actions of one scale or another since that time. There is a reason for this. The nature of war is changing. It is increasingly unlikely that the combat operations our Nation will be involved in will resemble those of World War II, where the standing armies and navies of nation states squared off against those of rival nation states on clearly defined fields of battle. Rather, the conflicts in which increasingly we find ourselves and for which we must prepare will be murkier, harder to reconcile with the traditional notions of warfare; they may be more limited in their objectives, their scope, and their duration; and they likely will not conclude with a formal surrender ceremony on the deck of a battleship. The challenge for all of us serving in Congress is this: How do we reconcile the changing nature of war with Congress's proper role in the declaration of war? It is not exactly a new question, but it is a profound one, for unless we in Congress are prepared to cede our constitutional authority over matters of war to the executive, we need a more workable arrangement for consultation and decisionmaking between the executive and legislative branches. We have seen several manifestations of this challenge in recent years. In 2011 President Obama committed U.S. military forces to combat operations in Libya to protect civilian populations from imminent slaughter by a brutal, anti-American tyrant. I, for one, believe he was right to do so. But 6 months later, when our armed services were still involved in kinetic actions in Libya--not just supporting our NATO allies but conducting air-to-ground operations and targeted strikes from armed, unmanned aerial vehicles--the administration claimed, as other administrations would, that it had no obligations to Congress under the War Powers Resolution because our Armed Forces were not involved in combat operations. That struck many Members of Congress, including me, as fundamentally at odds with reality, and unfortunately it pushed more Members of Congress into opposition against the mission itself. More recently, we saw the opposite problem manifested with regard to Syria. Perhaps due to the backlash in Congress that the administration's handling of the Libya conflict engendered, President Obama decided to seek congressional authorization for limited airstrikes against the Assad regime after it slaughtered more than 1,400 of its own citizens with chemical weapons last August. An operation that likely would have lasted a few days and thus been fully consistent with the President's authority under the existing War Powers Resolution had he decided to act decisively and take limited military action instead devolved into a stinging legislative repudiation of executive action. The tragic result was that the Assad regime was spared any meaningful consequences for its use of a weapon of mass destruction against innocent men, women, and children, and, as with Libya, the forces that want to turn America away from the world were not checked but empowered. Some of us may see the problem in these two instances as a failure of Presidential leadership, and I would agree, but I also believe the examples of Libya and Syria represent the broader problem we as a nation face: What is the proper war power authority of the executive and legislative branches when it comes to limited conflicts, which are increasingly the kinds of conflicts with which we are faced?

[kaine and mccain continue]

It is essential for the Congress and the President to work together to define a new war powers consultative agreement that reflects the nature of conflict in the 21st century and is in line with our Constitution. Our Nation does not have 535 commanders in chief. We have one--the President--and that role as established by our Constitution must be respected. Our Nation is poorly served when Members of Congress try to micromanage the Commander in Chief in matters of war. At the same time, now more than ever, we need to create a broader and more durable national consensus on foreign policy and national security, especially when it comes to matters of war and armed conflict. We need to find ways to make internationalist policies more politically sustainable. After the September 11 attack, we embarked on an expansive foreign policy. Spending on defense and foreign assistance went up, and energy shifted to the executive. Now things are changing. Americans want to pull back from the world. Our foreign assistance and defense budgets are declining. The desire to curb Presidential power across the board is growing, and the political momentum is shifting toward the Congress. America has gone through this kind of political rebalancing before, and much of the time we have gotten it wrong. That is how we got isolationism and disarmament after World War I, that is how we got a hollow army after Vietnam, and that is how we weakened our national security after the Cold War in the misplaced hope of cashing in on a peace dividend. **We can't afford to repeat these mistakes.** A new war powers resolution--one that is recognized as both constitutional and workable in practice--can be an important contribution to this effort. It can more effectively invest in the Congress the critical decisions that impact our national security. It can help build a more durable consensus in favor of the kinds of policies we need to sustain our global leadership and protect our Nation. In short, the legislation we are introducing today can restore a better balance to the way national security decisionmaking should work in a great democracy such as ours. Let me say again. Neither the Senator from Virginia nor I believe the legislation we are introducing today answers all of the monumental and difficult questions surrounding the issue of war powers. We believe this is a matter of transcendent importance to our Nation, and we as a deliberative body of our government should debate this issue, and we look forward to that debate. This legislation should be seen as a way of starting that discussion both here in the Congress and across our Nation. We owe that to ourselves and our constituents. Most of all, we owe that to the brave men and women who serve our Nation in uniform and are called to risk their lives in harm's way for the sake of our Nation's national defense. Before I yield to my tardy colleague from Virginia, I wish to mention again another reason why I think this legislation should be the beginning of a serious debate which we should bring to some conclusion. The fact is that no President of the United States has recognized the constitutionality of the War Powers Act. That is a problem in itself. That is a perversion, frankly, of the Constitution of the United States of America. That is one reason, but the most important reason is that I believe we are living in incredibly dangerous times. When we look across the Middle East, when we look at Asia and the rise in the tensions in that part of the world and we look at the conflicts that are becoming regional--and whose fault they are is a subject for another debate and discussion, but the fact is that we are in the path of some kind of conflict in which--whether the United States of America wants to or not--we may have to be involved in some ways. We still have vital national security interests in the Middle East. It is evolving into a chaotic situation, and one can look from the Mediterranean all the way to the Strait of Hormuz, the Gulf of Aqaba, and throughout the region. So I believe the likelihood of us being involved in some way or another in some conflict is greater than it has been since the end of the Cold War, and I believe the American people deserve legislation and a clear definition of the responsibilities of the Congress of the United States and that of the President of the United States. Again, I thank my colleague from Virginia, whose idea this is, who took a great proposal that was developed at the University of Virginia and was kind enough to involve me in this effort. I thank him for it. I thank him for his very hard work on it, despite the fact that, as the Chair will recognize, he was late for this discussion. I yield the floor. The PRESIDING OFFICER. The Senator from Virginia. Mr. KAINE. Mr. President, I thank my colleague from Arizona for pointing out to all in the Chamber my tardiness, and I should not have been tardy because I do not like to follow the Senator from Arizona. I would rather begin before him. But I want to thank him for his work with me, together, on this important issue and amplify on a few of the comments he has made. Today, together, as cosponsors we are introducing the War Powers Consultation Act of 2014, which would repeal the 1973 War Powers Resolution and replace it. I could not have a better cosponsor than Senator McCain and appreciate all the work he and his staff have done over the last months with us. I gave a floor speech about this issue in this Chamber in July of 2013, almost to the day, 40 years after the Senate passed the War Powers Resolution of 1973. Many of you remember the context of that passage. When it was passed in the summer of 1973, it was in the midst of the end of the Vietnam war. President Nixon had expanded the Vietnam war into Cambodia and Laos without explicit congressional approval, and the Congress reacted very negatively and passed this act to try to curtail executive powers in terms of the initiation of military hostilities. It was a very controversial bill. When it was passed, President Nixon vetoed it. Congress overrode the veto at the end of 1973. But as Senator McCain indicated, no President has conceded the constitutionality of the 1973 act, and most constitutional scholars who have written about the question have found at least a few of what they believe would be fatal infirmities in that 1973 resolution. It was a hyperpartisan time, maybe not unlike some aspects of the present, and in trying to find that right balance in this critical question of when the Nation goes to war or initiates military action, Congress and the President did not reach an accord. I came to the Senate with a number of passions and things I hoped to do. But I think I came with only one obsession, and this is that obsession. Virginia is a State that is most connected to the military of any State in the country. Our map is a map of American military history--from Yorktown, where the Revolutionary War ended, to Appomattox, where the Civil War ended, to the Pentagon, where 9/11 happened. That is who we are. One in nine Virginians is a veteran. If you add our Active Duty, our Guard and Reserve, our military families, our DOD civilians, our DOD contractors, you are basically talking about one in three Virginians. These issues of war and peace matter so deeply to us, as they do all Americans.

[kaine and mccain continue]

The particular passion I had in coming to this body around war powers was because of kind of a disturbing thought, which is, if the President and Congress do not work together and find consensus in matters around war, we might be asking our men and women to fight and potentially give their lives without a clear political consensus and agreement behind the mission. I do not think there is anything more important that the Senate and the Congress can do than to be on board on decisions about whether we initiate military action, because if we do not, we are asking young men and women to fight and potentially give their lives, with us not having done the hard work of creating the political consensus to support them. That is why I have worked hard to bring this to the attention of this body with Senator McCain. The Constitution actually sets up a fairly clear framework. The President is the Commander in Chief, not 535 commanders-in-chief, as Senator McCain indicated. But Congress is the body that has the power both to declare war and then to fund military action. In dividing the responsibilities in this way, the Framers were pretty clear. James Madison, who worked on the Constitution, especially the Bill of Rights, wrote a letter to Thomas Jefferson and said: The constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It [[Page S443]] has accordingly with studied care vested the question of war in the Legislature. Despite that original constitutional understanding, our history has not matched the notion that Congress would always be the initiator of military action. Congress has only declared war five times in the history of the United States, while Presidents have initiated military action prior to any congressional approval more than 120 times. In some of these instances where the President has initiated war, Congress has come back and either subsequently ratified Presidential action--sometimes by a formal approval or sometimes by informal approval such as budgetary allocation--but in other instances, including recently, Presidents have acted and committed American military forces to military action without any congressional approval. The Senator from Arizona mentioned the most recent one. President Obama committed military force to NATO, action against Libya in 2011, without any congressional approval, and he was formally censured by the House of Representatives for doing so. The current context that requires a reanalysis of this thorny question, after 40 years of the War Powers Resolution, was well stated by the Senator from Arizona. Wars are different. They start differently. They are not necessarily nation state against nation state. They could be limited in time or, as of now, we are still pursuing a military force that was authorized on September 18, 2001, 12 or 13 years later. Wars are of different duration, different scope, different geography. Nation states are no longer the only entities that are engaged in war. These new developments that are challenging--what do we do about drones in countries far afield from where battles were originally waged--raise the issue of the need to go back into this War Powers Resolution and update it for the current times. As the Senator from Arizona mentioned, this has been a question that Members of Congress have grappled with and thought about, as have diplomats and scholars and administration officials and Members of Congress for some time. In 2007, the Miller Center for the study of the presidency at the University of Virginia convened a National War Powers Commission under the chairmanships of two esteemable and bipartisan leaders--former Secretaries of State Warren Christopher and James Baker. The remaining members of the Commission were a complete A list of thinkers in this area--Slade Gorton, Abner Mikva, Ed Meese, Lee Hamilton. The Commission's historian was no less than Doris Kearns Goodwin, who looked at the entire scope of this problem in American history and what the role of Congress and the President should be. The Commission issued a unanimous report, proposing an act to replace the War Powers Act of 1973, briefed Congress and incoming President Obama on the particular act in 2007 and 2008, but at that time, the time was not yet ripe for consideration of this bill. But now that we are 40 years into an unworkable War Powers Resolution and now, as the Senator indicated, we have had a string of Presidents-- both Democratic Presidents and Republican Presidents--who have maintained that the act is unconstitutional and now that we have had a 40-year history of Congress often exceeding to the claim of unconstitutionality by not following the War Powers Resolution itself, we do think it is time to revisit. Let me just state two fundamental, substantive issues that this bill presents in the War Powers Consultation Act of 2014. First, there is a set of definitions. What is war? The bill defines significant military action as any action where involvement of U.S. troops would be expected to be in combat for at least a week or longer. Under those circumstances, the provisions of the act would be triggered. There are some exceptions in the act. The act would not cover defined covert action operations. But once a combat operation was expected to last for more than 7 days, the act would be triggered. The act basically sets up two important substantive improvements on the War Powers Resolution. First, a permanent consultation committee is established in Congress, with the majority and minority leaders of both Houses and the chairs and ranking members of the four key committees in both Houses that deal with war issues--Intel, Armed Services, Foreign Relations, and Appropriations. That permanent consultation committee is a venue for discussion between the executive and legislative branches--permanent and continuous--over matters in the world that may require the use of American military force. Because the question comes up often: What did the President do to consult with Congress? Is it enough to call a few leaders or call a few committee chairs? This act would normalize and regularize what consultation with Congress means by establishing a permanent consultation committee and requiring ongoing dialogue between the Executive and that committee. The second requirement of this bill is that once military action is commenced that would take more than 7 days, there is a requirement for a vote in both Houses of Congress. The consultation committee itself would put a resolution on the table in both Houses to approve or disapprove of military action. It would be a privileged motion with expedited requirements for debate, amendment, and vote, and that would ensure that we do not reach a situation where action is being taken at the instance of one branch with the other branch not in agreement, because to do that would put our men and women who are fighting and in harm's way at the risk of sacrificing their lives when we in the political leadership have not done the job of reaching a consensus behind the mission. To conclude, I will acknowledge what the Senator from Arizona said. This is a very thorny and difficult question that has created challenges and differences of interpretation since the Constitution was written in 1787. Despite the fact that the Framers who wrote the Constitution actually had a pretty clear idea about how it should operate, it has never operated that way. Forty years of a failed War Powers Resolution in today's dangerous world suggests that it is time now to get back in and to do some careful deliberation to update and normalize the appropriate level of consultation between a President and the legislature. The recent events as cited by the Senator--whatever you think about the merits or the equities, whether it is Libya, whether it is Syria, whether it is the discussions we are having now with respect to Iran or any other of a number of potential spots around the world that could lead to conflict--suggest that while decisions about war and initiation of military action will never be easy, they get harder if we do not have an agreed-upon process for coming to understand each other's points of view and then acting in the best interest of the Nation to forge a consensus.

#### Explicitly mandated congressional authorization maintains flexibility, while restraining the executive

Fleischman, 10 [J.D. Candidate, 2010, New York University School of Law; B.A., 2007, Washington University in St. Louis, A FUNCTIONAL DISTRIBUTION OF WAR POWERS Matthew Fleischman \*, <http://www.nyujlpp.org/wp-content/uploads/2012/11/Matthew-Fleischman-A-Functional-Distribution-of-War-Powers.pdf>]

IV. THE WAR POWERS LAW WE NEED Given the theoretical outline above, this Note will now present an alternative statute, **based upon the WPCA**, to govern this complex problem. The full text of the statute is appended to the end of this Note. I will explain, section by section, how and why my proposed act differs from the WPCA. Section 1 includes an alternative title for the act: the War Powers Procedure Act (WPPA). This title reinforces that this new statute does not intend to alter the constitutional distribution of war powers, but simply prescribes a process by which those powers can be effectuated. The title will still include the word “Act,” “to avoid the confusion surrounding the term ‘Resolution.’”196 Section 2 of the proposed WPPA still “recognizes that we cannot resolve the constitutional questions underlying the war powers debate,” 197 but only prescribe a process by which they will be exercised. Some have argued that the language of the WPR’s section 2 provides a mechanism for the Executive to circumvent the act.198 Nonetheless, the proposed language in the WPPA **mitigates the risk of the act being deemed unconstitutional** just as similar language did so in the WPR. The language simply serves to explain the reasons underlying the adoption of the WPPA. Just as in the WPCA, section 3 of the WPPA clearly defines the core terms of the statute. This is designed to **remedy the ambiguity created by the WPR.** Section 3(A) is altered to also include “significant armed conflict” in the definition of “declarations of war.” While formal declarations of war rarely occur and few would debate that they qualify as significant armed conflicts, it is nonetheless important to write a statute that provides for all reasonably foreseeable possibilities. Section 3(A)(iii) is modified to shorten the minimum time period required for a use of force to qualify as a significant armed conflict. Given that there is substantial reason to require congressional authorization, 199 this qualification is designed only to provide adequate flexibility for small tactical missions that are not included in the exceptions of section 3(B). The list of exceptions in section 3(B) now contains a maximum number of days the exception can last. Rather than use the vague language in the WPCA (e.g. “limited”200), the cap on the number of days that each of the exceptions can last provides increased clarity. This alteration ensures that an action in defense of our nation cannot be turned into an extended offensive strike. This is important since it is critical to limit the number of methods by which the Executive can evade congressional authorization. The number of days is capped at 10 because that should be sufficient time for Congress to fully debate the issue at hand.201 Often times the debate over whether or not to go to war begins long before an action is commenced and, even if it is not, it is critical for decisions to be made quickly before policy options become more limited. The list of exceptions is also altered to no longer include limited acts of reprisal against states that sponsor terrorism. Attacks of reprisal on another state very well could lead to an increase in hostilities and, therefore, could be used as a backdoor around the section 4 requirement of congressional preapproval. Section 4 is the first section of the WPCA to be significantly altered.

[Fleischman continues]

The WPPA would strengthen the reporting requirements, as compared to what appeared in section 4 of the WPCA. Namely, sections 4(A) and 4(B) of the WPCA explain that consultation with Congress is to occur before military engagement, and state what information is to be provided to the Joint Congressional Consultation Committee.202 The WPPA preserves the Executive’s right to begin military operations unilaterally when secrecy is required, but section 4(C) has been amended to ensure that the President reports immediately to the Committee under such circumstances. By accelerating the process of consultation, fewer policy options are foreclosed and the potential costs of the attack are limited. Section 4(F) is modified to provide greater clarity on what intelligence agencies are required to provide to the Committee’s staff. Information can be distorted in the process of writing and condensing reports; by explicitly requiring raw data to be turned over, the Committee can come to its own conclusions with limited distortion by the Executive branch.203 Section 5 is the most significantly changed aspect of the WPPA, requiring congressional pre-authorization of military action rather than a congressional vote after hostilities begin. This Congress-First approach is at the heart of the functionalist analysis discussed above. The outlined procedure is reminiscent of that delineated in the WPCA, in that it ensures a speedy decision, but the WPPA goes much further, as the process leads to a vote and deliberation with the entirety of Congress. Section 5(D) provides an avenue for the President to renew his request for congressional authorization; however, the President is required to wait fifteen days. This waiting period is required so that the Executive cannot badger Congress into submission. It also allows both for the Executive to collect more information, and for the circumstances of the conflict to change. While the waiting period may be disconcerting to some, given that certain situations can be urgent, there is a mechanism to temporarily bypass congressional authorization when necessary. In the interim, the President can engage in operations that do not qualify as significant military operations. In section 6, delayed congressional authorization is explained The free period is limited to fourteen days, which is significantly shorter than the sixty days written into the WPR204 and the twenty days written into John Hart Ely’s suggested act.205 Given that the longest deliberation on a declaration of war was seventeen days, and that it occurred in the early part of the nineteenth century,206 this should still provide ample opportunity for a full discussion of the issue. By requiring immediate production of information by the President, the Act will allow Congress to act faster, as Congress can begin processing the President’s proposal immediately. While a longer time period would permit greater deliberation, the policy options become more limited the longer the conflict rages on. If the resolution passes, the military engagement becomes an approved significant armed conflict and the other enumerated sections become binding. Alternatively, if the resolution fails to pass, the President is given ten days to withdraw troops from the area. While the War Powers Commission recommended tying Congress’s hands through House rules, the WPPA instead uses a modified version of the spending restrictions advocated by then-Senator Biden in his attempt to amend the WPR, the Use of Force Act.207 While some have questioned the constitutionality of this provision, it is unlikely the provision would be found unconstitutional, as the Court has already found a constitutional basis for this sort of a funding restriction. 208 Furthermore, there is little reason to believe that anyone would or could challenge the constitutionality of this act. CONCLUSION: THE REAL-WORLD POTENTIAL OF THE WPPA The distribution of war powers in America has “remain[ed] a dark continent of American jurisprudence”210 for too long. A consistent procedure by which it is effectuated must be established. The plan proposed in this Note attempts to codify a method backed by an in-depth analysis of the rational incentives of political actors. Every combat mission is unique and even the most justifiable wars can end in defeat. A war powers law cannot be evaluated based upon how it would function in any single conflict. Instead, it must be evaluated based on whether it creates adequate opportunities for discourse between the branches of government without overly hindering the ability of the government to wage effective warfare. Congress legislated a role for itself after Vietnam with the WPR, but Congress should now pass the WPPA to further clarify its role in one of our nation’s most important decisions.

#### Inclusion of point of order solves executive loopholes and prevents vague interpretation of the AUMF

Mitchell 9 (Jonathan F., Assistant Professor of Law – George Mason University School of Law, “Legislating Clear-Statement Regimes in National-Security Law,” Georgia Law Review, Summer, 43 Ga. L. Rev. 1059, Lexis)

The proposals to add funding restrictions to FISA and the War Powers Resolution are equally vulnerable to expansive executive branch theories of implied repeal. Recall that the OLC Kosovo memo asserts that the 1999 Emergency Supplemental Appropriations Act implicitly repealed restrictions in the War Powers Resolution, even though the Appropriations Act never earmarked funds for military operations in Kosovo, nor specifically authorized military operations in Kosovo beyond the WPR’s sixtyday window. According to OLC, it was enough that some 178 members of Congress thought that the President might continue the Kosovo hostilities beyond sixty days and that the appropriations legislation did not expressly withhold funds for that purpose.179 In like manner, a future executive might claim that a generic Authorization to Use Military Force implicitly repeals Senator Specter’s proposed funding restrictions under the last-in-time rule, so long as it can concoct some argument that legislators are aware (or should be aware) that warrantless surveillance of the enemy is a “fundamental incident of the use of military force.” Or the 180 President might claim that annual appropriations bills for the intelligence agencies implicitly repeal the earlier-enacted funding restrictions if legislators are aware of the President’s warrantless surveillance activities but fail to expressly reaffirm FISA’s restrictions. Proposals that would add funding restrictions to the War Powers Resolution are similarly incapable of withstanding the executive-branch lawyers’ broad theories of implied repeal. Those funding restrictions, like § 8(a)(1) of the War Powers Resolution, would be brushed aside whenever implicit congressional “authorization” might be found in later-enacted statutory language. The challenge for these efforts to strengthen the War Powers Resolution and FISA is that any future ambiguous statute will provide rope for executive-branch lawyers to concoct congressional "authorization" for the President's actions, no matter what restrictions or interpretive instructions Congress provides in framework legislation. None of these proposed reforms will disable the executive from using its expansive theories of constitutional avoidance and implied repeal to provide a veneer of legality for the President's actions, and minimize the prospect of future criminal sanctions and political reprisals against executive-branch employees. b. point-of-order mechanisms Congress could establish more effective clear-statement regimes in national security law if it pre-committed itself against enacting vague or ambiguous statutory language that the executive might use to claim implicit congressional "authorization." One such precommitment strategy would be to include point-of-order mechanisms in the War Powers Resolution and FISA (and other national-security framework statutes). These would **empower any individual legislator** to object to any bill **that authorizes military force**, or that funds the military or the intelligence agencies, and that fails to explicitly prohibit military hostilities beyond sixty days or warrantless electronic surveillance, unless Congress has specifically authorized such activities. Congress could further specify that if the point of order is sustained, the bill will be automatically amended to specifically prohibit or withhold funding for such activities. When a legislator raises a point of order, the chair must either sustain it and declare the legislation out of order, or overrule it. n181 Then a majority vote of the chamber can reverse the chair's ruling. Establishing point-of-order mechanisms in the War Powers Resolution and FISA **would strengthen the codified clear-statement requirements** in two ways. First, such mechanisms would impose a procedural roadblock to ambiguous statutory language that executive-branch lawyers might construe as implicitly authorizing extended military hostilities or warrantless electronic surveillance. Second, they would help deter future legislators from acquiescing to Presidential actions that Congress has not specifically authorized. Yet Congress has never established a point-of-order mechanism to [\*1105] enforce the clear-statement requirements in its national-security legislation, n182 even though it regularly employs this device to enforce precommitments in legislation that governs the federal budget process. If Congress had included such a point-of-order mechanism in the War Powers Resolution, any legislator could have objected to the 1999 Emergency Supplemental Appropriations Act when it reached the House or Senate floor. Any such objection would have required the chair to sustain the point of order and amend the legislation, because the bill appropriated money for the military yet failed to withhold funds for military hostilities that extend beyond sixty days. Then a majority vote of the entire chamber would have been necessary to overturn the chair's ruling and allow the 1999 Emergency Supplemental Appropriations Act to survive as written. And, if the chair had decided to overrule the point-of-order objection in violation of the chamber's rule, the objecting legislator could have appealed the chair's ruling to the full chamber, where a majority vote could overrule the chair's ruling and sustain the point of order. If FISA had included a point-of-order enforcement mechanism, any legislator could have raised a similar objection to the post-September 11th Authorization to Use Military Force, and the annual appropriations legislation to fund the intelligence agencies, unless those statutes were amended to specifically preclude electronic surveillance outside of FISA. Point-of-order mechanisms would not completely foreclose Congress from enacting ambiguous legislation such as the 1999 Emergency Supplemental Appropriations Act or the post-9/11 Authorization to Use Military Force. But they would impose significant procedural obstacles to legislation that executive-branch lawyers might use to claim implicit congressional authorization for extended military hostilities or electronic surveillance. Unless Congress specifically authorizes military hostilities beyond sixty days or warrantless electronic surveillance, appropriations statutes that fail to explicitly prohibit or withhold funding for such activities will survive only if: (1) Every single legislator in a chamber fails to raise a point-of-order objection; (2) A majority in that chamber votes to overrule a point-of-order objection; or (3) Congress repeals the point-of-order device before considering the bill.

## 2AC

### Case

#### It’s an existential threat

**Morgan 9**—Hankuk University of Foreign Studies, Yongin Campus (Dennis Ray, 10 July 2009, “World on fire: two scenarios of the destruction of human civilization and possible extinction of the human race,” *Science Direct*)

Russell and Einstein warned of bombs that are thousands of times more powerful than those of Hiroshima or Nagasaki, bombs that would send ‘‘radio-active particles into the upper air’’ and then return to the Earth in the form of a ‘‘deadly dust or rain’’ that would infect the human race thousands of times greater than those ‘‘Japanese fishermen and their catch of fish,’’ to quite **possibly ‘‘put an end to the human race**.’’ They feared that ‘‘if many H-bombs are used there will be universal death, sudden only for a minority, but for the majority a slow torture of disease and disintegration.’’ [7]. Years later, in 1982, at the height of the Cold War, Jonathon Schell, in a very stark and horrific portrait, depicted sweeping, bleak global scenarios of total nuclear destruction. Schell’s work, The Fate of the Earth [8] represents one of the gravest warnings to humankind ever given. The possibility of complete annihilation of humankind is not out of the question as long as these death bombs exist as symbols of national power. As Schell relates, the power of destruction is now not just thousands of times as that of Hiroshima and Nagasaki; now it stands at more than one and a half million times as powerful, **more than fifty times enough to wipe out all of human civilization and much of the rest of life along with it** [8]. In Crucial Questions about the Future, Allen Tough cites that Schell’s monumental work, which ‘‘eradicated the ignorance and denial in many of us,’’ was confirmed by ‘‘subsequent scientific work on nuclear winter

 and other possible effects: humans really could be completely devastated. Our human species really could become extinct.’’ [9]. Tough estimated the chance of human self-destruction due to nuclear war as one in ten. He comments that few daredevils or high rollers would take such a risk with so much at stake, and yet ‘‘human civilization is remarkably casual about its high risk of dying out completely if it continues on its present path for another 40 years’’ [9]. What a precarious foundation of power the world rests upon. The basis of much of the military power in the developed world is nuclear. It is the reigning symbol of global power, the basis, – albeit, unspoken or else barely whispered – by which powerful countries subtly assert aggressive intentions and ambitions for hegemony, though masked by ‘‘diplomacy’’ and ‘‘negotiations,’’ and yet this basis is not as stable as most believe it to be. In a remarkable website on nuclear war, Carol Moore asks the question ‘‘Is Nuclear War Inevitable??’’ [10].4 In Section 1, Moore points out what most terrorists obviously already know about the nuclear tensions between powerful countries. No doubt, they’ve figured out that the best way to escalate these tensions into nuclear war is to set off a nuclear exchange. As Moore points out, all that militant terrorists would have to do is get their hands on one small nuclear bomb and explode it on either Moscow or Israel. Because of the Russian ‘‘dead hand’’ system, ‘‘where regional nuclear commanders would be given full powers should Moscow be destroyed,’’ it is likely that any attack would be blamed on the United States’’ [10]. Israeli leaders and Zionist supporters have, likewise, stated for years that if Israel were to suffer a nuclear attack, whether from terrorists or a nation state, it would retaliate with the suicidal ‘‘Samson option’’ against all major Muslim cities in the Middle East. Furthermore, the Israeli Samson option would also include attacks on Russia and even ‘‘anti-Semitic’’ European cities [10]. In that case, of course, Russia would retaliate, and the U.S. would then retaliate against Russia. China would probably be involved as well, as thousands, if not tens of thousands, of nuclear warheads, many of them much more powerful than those used at Hiroshima and Nagasaki, would rain upon most of the major cities in the Northern Hemisphere. Afterwards, for years to come, massive radioactive clouds would drift throughout the Earth in the nuclear fallout, bringing death or else radiation disease that would be genetically transmitted to future generations in a nuclear winter that could last as long as a 100 years, **taking a savage toll upon the environment and fragile ecosphere as well**. And what many people fail to realize is what a precarious, hair-trigger basis the nuclear web rests on. Any accident, mistaken communication, false signal or ‘‘lone wolf’ act of sabotage or treason could, in a matter of a few minutes, unleash the use of nuclear weapons, and once a weapon is used, then the likelihood of a rapid escalation of nuclear attacks is quite high while the likelihood of a limited nuclear war is actually less probable since each country would act under the ‘‘use them or lose them’’ strategy and psychology; restraint by one power would be interpreted as a weakness by the other, which could be exploited as a window of opportunity to ‘‘win’’ the war. In otherwords, once Pandora’s Box is opened, it will spread quickly, as it will be the signal for permission for anyone to use them. Moore compares swift nuclear escalation to a room full of people embarrassed to cough. Once one does, however, ‘‘everyone else feels free to do so. The bottom line is that as long as large nation states use internal and external war to keep their disparate factions glued together and to satisfy elites’ needs for power and plunder, these nations will attempt to obtain, keep, and inevitably use nuclear weapons. And as long as large nations oppress groups who seek self-determination, some of those groups will look for any means to fight their oppressors’’ [10]. In other words, as long as war and aggression are backed up by the implicit threat of nuclear arms, it is only a matter of time before the escalation of violent conflict leads to the actual use of nuclear weapons, and once even just one is used, it is very likely that many, if not all, will be used, leading to horrific scenarios of global death and the destruction of much of human civilization while condemning a mutant human remnant, if there is such a remnant, to a life of unimaginable misery and suffering in a nuclear winter. In ‘‘Scenarios,’’ Moore summarizes the various ways a nuclear war could begin: Such a war could start through a reaction to terrorist attacks, or through the need to protect against overwhelming military opposition, or through the use of small battle field tactical nuclear weapons meant to destroy hardened targets. It might quickly move on to the use of strategic nuclear weapons delivered by short-range or inter-continental missiles or long-range bombers. These could deliver high altitude bursts whose electromagnetic pulse knocks out electrical circuits for hundreds of square miles. Or they could deliver nuclear bombs to destroy nuclear and/or nonnuclear military facilities, nuclear power plants, important industrial sites and cities. Or it could skip all those steps and start through the accidental or reckless use of strategic weapons. [10] She then goes on to describe six scenarios for catastrophic nuclear exchanges between various nations. Each scenario incorporates color-coded sections that illustrate four interrelated factors that will determine how a nuclear war will begin, proceed and escalate. These factors are labeled as accidental, aggressive, pre-emptive, and retaliatory. As for the accidental factor of nuclear war, both the U.S. and Russia have ‘‘launch on warning’’ systems that send off rockets before confirmation that a nuclear attack is underway; thus, especially during a time of tensions, a massive nuclear war could take place within only 30 min after a warning—even if the warning is false. This scenario has almost happened on several occasions in the past. It was only because of individual human judgments, which disbelieved the false warnings, that nuclear war did not happen, but if the human judgment had indeed interpreted the warnings according to protocol, an all-out nuclear war would surely have taken place. Besides the accidental factor, another factor that could incite nuclear war is that of aggression. When nuclear powers are involved in wars of aggression, the nuclear option is always available. Especially when a nuclear power explicitly states that ‘‘all options are on the table,’’ concern about the nuclear option is well founded. Thus, Moore defines the aggressive factor as when ‘‘one or more nations decide to use weapons against a nuclear or non-nuclear nation in order to promote an economic, political or military goal, as part of an ongoing war or as a first strike nuclear attack. (The state, of course, may claim it is a preemptive, retaliatory or even accidental attack.)’’ [10].5 Especially in light of the recent U.S. attack on Iraq (ideologically based on Bush’s preventative war doctrine), the ‘‘pre-emptive’’ factor in instigating a nuclear war should be taken seriously. It is when one or more nations believe, whether correctly or incorrectly, or claims to believe ‘‘that another nuclear nation is about to use nuclear weapons against its nuclear, military, industrial or civilian targets and preemptively attacks that nation.’’ [10].6 Similarly, ‘‘brinkmanship’’ could play a role in nuclear war escalation as well. We can see how this brinkmanship scenario is currently underway in U.S. plans to build a missile defense shield in Poland, all set against the background of a militarist, expansionist Bush Administration that prosecuted a war of aggression against the sovereign country of Iraq and currently seems poised to do the same against Iran. As the U.S. proceeds with its plans to employ the missile defense shield in Poland, the Russians feel threatened and are now proceeding with countermeasures ‘‘to ensure its territory integrity and security are maintained.’’ [11]. Finally, the ‘‘retaliatory’’ factor in nuclear war scenarios is when nations respond to the use of weapons of mass destruction (whether nuclear, chemical or biological) by attacking with nuclear weapons. Then, once again, when the evil genie is let loose from the bottle, counter retaliatory strikes lead to escalation by the parties involved, as well as other concerned parties. All of these interrelated factors are woven into the storyline of Moore’s six scenarios that depict how a nuclear war might start and escalate. The ‘‘bottom line assumption’’ is that any nuclear exchange will (under a ‘‘use it or lose it’’ mentality) result in a series of escalations among immediate parties and their allies that will spiral out of control ‘‘until most of the planet’s 20,000 odd nuclear weapons are exhausted.’’ [10].7 Thus does Moore dismiss the limited exchange assumption, which does not take into account that ‘‘whatever can go wrong will go wrong’’ and especially the ‘‘use them or lose them’’ underlying psychology or strategy. There is simply no way to demonstrate that limited strikes will stay limited. Under such unprecedented circumstances, the unpredictable element of human nature would certainly determine the extent of the global nuclear holocaust, and when we consider the predominate fear that underlies the psychology of the nuclear game of death, perhaps that element of human nature is not so unpredictable after all; fear will insure that an all-out nuclear war would prevail rather than limited strikes.

Drezner, 5 [Daniel W. Drezner, Professor of International Politics at the Fletcher School of Law and Diplomacy at Tufts University, Senior Editor at the National Interest, M.A. in Economics and Ph.D. in Political Science from Stanford University, “Gregg Easterbrook, War, and the Dangers of Extrapolation”, <http://www.danieldrezner.com/archives/002087.html>]

Via Oxblog's Patrick Belton, I see that Gregg Easterbrook has a cover story in The New Republic entitled "The End of War?" It has a killer opening: Daily explosions in Iraq, massacres in Sudan, the Koreas staring at each other through artillery barrels, a Hobbesian war of all against all in eastern Congo--combat plagues human society as it has, perhaps, since our distant forebears realized that a tree limb could be used as a club. But here is something you would never guess from watching the news: War has entered a cycle of decline. Combat in Iraq and in a few other places is an exception to a significant global trend that has gone nearly unnoticed--namely that, for about 15 years, there have been steadily fewer armed conflicts worldwide. In fact, it is possible that a person's chance of dying because of war has, in the last decade or more, become the lowest in human history. Is Easterbrook right? He has a few more paragraphs on the numbers: The University of Maryland studies find the number of wars and armed conflicts worldwide peaked in 1991 at 51, which may represent the most wars happening simultaneously at any point in history. Since 1991, the number has fallen steadily. There were 26 armed conflicts in 2000 and 25 in 2002, even after the Al Qaeda attack on the United States and the U.S. counterattack against Afghanistan. By 2004, Marshall and Gurr's latest study shows, the number of armed conflicts in the world had declined to 20, even after the invasion of Iraq. All told, there were less than half as many wars in 2004 as there were in 1991. Marshall and Gurr also have a second ranking, gauging the magnitude of fighting. This section of the report is more subjective. Everyone agrees that the worst moment for human conflict was World War II; but how to rank, say, the current separatist fighting in Indonesia versus, say, the Algerian war of independence is more speculative. Nevertheless, the Peace and Conflict studies name 1991 as the peak post-World War II year for totality of global fighting, giving that year a ranking of 179 on a scale that rates the extent and destructiveness of combat. By 2000, in spite of war in the Balkans and genocide in Rwanda, the number had fallen to 97; by 2002 to 81; and, at the end of 2004, it stood at 65. This suggests the extent and intensity of global combat is now less than half what it was 15 years ago. Easterbrook spends the rest of the essay postulating the causes of this -- the decline in great power war, the spread of democracies, the growth of economic interdependence, and even the peacekeeping capabilities of the United Nations. Easterbrook makes a lot of good points -- most people are genuinely shocked when they are told that even in a post-9/11 climate, there has been a steady and persistent decline in wars and deaths from wars. That said, what bothers me in the piece is what Easterbrook leaves out. First, he neglects to mention the biggest reason for why war is on the decline -- there's a global hegemon called the United States right now. Easterbrook acknowledges that "the most powerful factor must be the end of the cold war" but he doesn't understand why it's the most powerful factor. Elsewhere in the piece he talks about the growing comity among the great powers, without discussing the elephant in the room: the reason the "great powers" get along is that the United States is much, much more powerful than anyone else. If you quantify power only by relative military capabilities, the U.S. is a great power, there are maybe ten or so middle powers, and then there are a lot of mosquitoes. [If the U.S. is so powerful, why can't it subdue the Iraqi insurgency?--ed. Power is a relative measure -- the U.S. might be having difficulties, but no other country in the world would have fewer problems.] Joshua Goldstein, who knows a thing or two about this phenomenon, made this clear in a Christian Science Monitor op-ed three years ago: We probably owe this lull to the end of the cold war, and to a unipolar world order with a single superpower to impose its will in places like Kuwait, Serbia, and Afghanistan. The emerging world order is not exactly benign – Sept. 11 comes to mind – and Pax Americana delivers neither justice nor harmony to the corners of the earth. But a unipolar world is inherently more peaceful than the bipolar one where two superpowers fueled rival armies around the world. The long-delayed "peace dividend" has arrived, like a tax refund check long lost in the mail. The difference in language between Goldstein and Easterbrook highlights my second problem with "The End of War?" Goldstein rightly refers to the past fifteen years as a "lull" -- a temporary reduction in war and war-related death. The flip side of U.S. hegemony being responsible for the reduction of armed conflict is what would happen if U.S. hegemony were to ever fade away. Easterbrook focuses on the trends that suggest an ever-decreasing amount of armed conflict -- and I hope he's right. But I'm enough of a realist to know that if the U.S. should find its primacy challenged by, say, a really populous non-democratic country on the other side of the Pacific Ocean, all best about the utility of economic interdependence, U.N. peacekeeping, and the spread of democracy are right out the window. UPDATE: To respond to a few thoughts posted by the commenters: 1) To spell things out a bit more clearly -- U.S. hegemony important to the reduction of conflict in two ways. First, U.S. power can act as a powerful if imperfect constraint on pairs of enduring rivals (Greece-Turkey, India-Pakistan) that contemplate war on a regular basis. It can't stop every conflict, but it can blunt a lot of them. Second, and more important to Easterbrook's thesis, U.S. supremacy in conventional military affairs prevents other middle-range states -- China, Russia, India, Great Britain, France, etc. -- from challenging the U.S. or each other in a war. It would be suicide for anyone to fight a war with the U.S., and if any of these countries waged a war with each other, the prospect of U.S. intervention would be equally daunting.

#### Plan solves the UN

McGuinness, 09 [Copyright (c) 2009 Willamette Law Review Willamette Law Review Spring, 2009 Willamette Law Review 45 Willamette L. Rev. 417 LENGTH: 15253 words PRESIDENTIAL POWER IN THE 21ST CENTURY SYMPOSIUM: ARTICLE: THE PRESIDENT, CONGRESS AND THE SECURITY COUNCIL: COUNTERTERRORISM AND THE USE OF FORCE THROUGH THE INTERNATIONALIST LENS NAME: Margaret E. McGuinness\* BIO: \* Associate Professor, University of Missouri Law School, p. lexis]

The Value of More Explicit Ex Ante Congressional Involvement in U.S./U.N. Counterterrorism Measures A shift in thinking toward involving the United States Congress in a more formal method of ex ante internal consultation on U.S. activities at the U.N. Security Council would have several salutary effects. First, it would reinforce and solidify the acceptance of U.N. Security Council substantive norms within the U.S. legal and political system. Second, it would create opportunities for capacity building within the U.N. Security Council on the question of parliamentary and legislative participation (which itself is an important dimension of the comprehensive counterterrorism policy, as well as important to addressing the democracy gap). This, in turn, has the potential to influence efforts to increase democratic accountability of other member states. Third, increased involvement of the U.S. Congress can also influence accountability and coordination of other transnational actors (in particular NGOs) who can "game" the accountability gap at the international and domestic level. Fourth, it may increase "buy-in" by the U.S. through Congress's power of the purse. The United States provides 25% of the United Nations' peacekeeping budget and already provides important outside accountability for management problems at the U.N. n134 Increased consultation can serve to sharpen those processes by providing early congressional input into the form and financing of particular U.N. measures. Moreover, democratically grounded participation in U.N. counterterrorism policies will enable the United States to demonstrate its commitment to protection of human rights as consistent with counterterrorism policy. The U.N. Charter balances the mandate of maintaining peace and security with the mandate to uphold human rights and human dignity. n135 By recognizing that counterterrorism policy implicates the dual pillars of the U.N. Charter, the United States will go a long way in addressing the concerns of the human rights community regarding particular past national policies (e.g., [\*448] communications monitoring, creation of watch lists, and administrative or preventative detention). n136 Terrorist groups are allied against the universality of human rights espoused by the U.N. Charter and the central human rights instruments of the human rights system. n137 By working within that system to correct its problems and support its infrastructure, the United States will create a more effective bulwark against the nihilist ideologies of those terrorist and jihadist groups. Finally, the strongest argument for more robust and ongoing congressional participation in Council military activities is that failure to secure and sustain strong domestic support for American involvement in U.N. operations would leave U.S. counterterrorism policy especially vulnerable to sudden reversal by Congress - and potentially also by the courts. n138 While building a consensus in support of particular policies is not easy, Congress can serve as an early warning for programs that raise particular domestic constitutional or human rights concerns. Congressional backlash that can occur when consultation does not take place can be costly. n139 Judicial reversal, as with the Kadi case in Europe, is also costly to the effectiveness of Council measures. Adding more voices to the process before detailed enforcement measures are put in place may be one way to avoid these reversals.

#### Extinction

Tharooor, 03 [Shashi Tharoor, is the [Indian](http://en.wikipedia.org/wiki/India) [Minister of State](http://en.wikipedia.org/wiki/Minister_of_State#Minor_government_ranks) for Human Resource Development, [Member of Parliament](http://en.wikipedia.org/wiki/Member_of_Parliament) (MP) from the [Thiruvananthapuram](http://en.wikipedia.org/wiki/Thiruvananthapuram_%28Lok_Sabha_constituency%29) of [Kerala](http://en.wikipedia.org/wiki/Kerala), an [author](http://en.wikipedia.org/wiki/Author) and a [columnist](http://en.wikipedia.org/wiki/Columnist), Tharoor subsequently obtained a [Bachelor of Arts](http://en.wikipedia.org/wiki/Bachelor_of_Arts) degree in history from [St. Stephen's College](http://en.wikipedia.org/wiki/St._Stephen%27s_College%2C_Delhi) in [Delhi](http://en.wikipedia.org/wiki/Delhi).[[5]](http://en.wikipedia.org/wiki/Shashi_Tharoor#cite_note-5) and went on to pursue graduate studies at [The Fletcher School of Law and Diplomacy](http://en.wikipedia.org/wiki/The_Fletcher_School_of_Law_and_Diplomacy) at [Tufts University](http://en.wikipedia.org/wiki/Tufts_University), from where he obtained an M.A in 1976, an M.A.L.D in 1977 and a Ph.D. in 1979 at age 23.[[6]](http://en.wikipedia.org/wiki/Shashi_Tharoor#cite_note-Tufts-6), <http://www.cfr.org/world/why-america-still-needs-united-nations/p7567>]

Summary: Multilateralism is a means, not an end, and there is no more multilateral body than the UN. That may make it unwieldy at times, but the UN's inclusiveness is the key to the legitimacy only it can confer. The organization thus remains an essential force in international politics, and one the United States benefits from greatly. THE POWER OF LEGITIMACY In September 2002, a radical new document declared that "no nation can build a safer, better world alone." These words came not from some utopian internationalist or ivory-tower academic, but from the new National Security Strategy of the United States. For all its underpinnings in realpolitik, the strategy committed the United States to multilateralism. This statement should not have been surprising, for multilateralism, of course, is not only a means but an end. And for good reason: in international affairs, the choice of method can serve to advertise a country's good faith or disinterestedness. Most states act both unilaterally and multilaterally at times: the former in defense of their national security or in their immediate backyard, the latter in pursuit of global causes. The larger a country's backyard, however, the greater the temptation to act unilaterally across it -- a problem most acute in the case of the United States. But the more far-reaching the issue and the greater the number of countries affected, the less sufficient unilateralism proves, and the less viable it becomes. Hence the ongoing need for multilateralism -- which the U.S. National Security Strategy seemed to recognize. The United Nations is the preeminent institution of multilateralism. It provides a forum where sovereign states can come together to share burdens, address common problems, and seize common opportunities. The UN helps establish the norms that many countries -- including the United States -- would like everyone to live by. Throughout its history, the United States has seen the advantages of living in a world organized according to laws, values, and principles; in fact, the republic was not yet 30 years old when it first went to war in defense of international law (attacking the Barbary pirates in 1804), and it has done so multiple times since, including in the first Gulf War. The UN, for all its imperfections -- real and perceived -- reflects this American preference for an ordered world. That Washington has often used force on behalf of such principles makes good political sense. After all, acting in the name of international law is always preferable to acting in the name of national security. Everyone has a stake in the former, and so couching U.S. action in terms of international law universalizes American interests and comforts potential allies. When American actions seem driven by U.S. national security imperatives alone, partners can prove hard to find -- as became clear when, in marked contrast to the first Gulf War, only a small "coalition of the willing" joined Washington the second time around in Iraq. Working within the UN allows the United States to maximize what Joseph Nye calls its "soft power" -- the ability to attract and persuade others to adopt the American agenda -- rather than relying purely on the dissuasive or coercive "hard power" of military force. Global challenges also require global solutions, and few indeed are the situations in which the United States or any other country can act completely alone. This truism is currently being confirmed in Iraq, where Washington is discovering that it is better at winning wars than constructing peace. The limitations of military strength in nation building are readily apparent; as Talleyrand pointed out, the one thing you cannot do with a bayonet is to sit on it. Equally important, however, is the need for legitimacy, and here again the UN has proven invaluable. The organization's role in legitimizing state action has been both its most cherished function and, in the United States, its most controversial. As the world's preeminent international organization, the UN embodies world opinion, or at least the opinion of the world's legally constituted states. When the UN Security Council passes a resolution, it is seen as speaking for (and in the interests of) humanity as a whole, and in so doing it confers a legitimacy that is respected by the world's governments, and usually by their publics. When the resolution in question is passed under Chapter VII of the charter -- that document's enforcement provisions -- it becomes legally binding on all member states. The composition of the council that passes a particular resolution is no more relevant to its legitimacy than that of a national parliament that passes a law; congressional legislation, by the same logic, is not less binding on Americans if the majority that votes for it comes overwhelmingly from small states. The legitimacy of the UN inheres in its universality and not in its structural details, which have long been subject to the clamor for reform. Some Americans have scorned the status and conduct of many of the Security Council members that failed to support the United States on Iraq. But this unseemly sneering over the right of Angola, Cameroon, or Guinea to pass judgment in the council overlooks the valuable contribution their presence makes. The election of small countries to the council bolsters its legitimacy by enhancing its role as a repository of world opinion. Universality of membership also allows the world to view the UN as something more than the sum of its parts, as an entity that transcends the interests of any one member state. The UN guards the vital principles entrenched in its charter, notably the sovereign equality of states and the inadmissibility of interference in their internal affairs. It is precisely because the UN is the chief guardian of both these sacrosanct principles that it alone is allowed to approve derogations from them. Thus when the UN, in particular the Security Council, legislates an intervention in a sovereign state, it is still seen as upholding the basic principles even while approving a departure from them. When an individual state acts in defiance of the UN, on the other hand, it merely violates these principles. This is why so many countries, including the most powerful ones, take care to embed their actions within the framework of the principles and purposes of the UN Charter. For examples of this, one need only peruse a random selection of speeches by countries explaining their votes on the Security Council, especially those concerning military action. The value of internationally recognized principles resonates across the globe and has been reified through 58 years of repetition -- including last March, when the council debated Iraq. SHOWDOWN IN NEW YORK To suggest -- as did some critics of the UN during the Iraq crisis -- that the organization has become irrelevant overlooks the message President George W. Bush himself sent when he appeared before the General Assembly in September 2002. In calling on the Security Council to take action, Bush framed the problem of Iraq as a question not of what the United States (unilaterally) wanted, but of how to implement Security Council resolutions. Indeed, these resolutions were at the heart of the U.S. case. Had the Security Council been able to agree that force was warranted, it would have provided unique (and incontestable) legitimacy for U.S. military action. The fact that the council did not ultimately agree, however, strengthens, rather than dilutes, the rationale for approaching it in such situations. The council's refusal to serve as a rubber stamp for Washington will give any future support it lends to the United States greater credibility. Council resolutions do not serve only to codify the acceptable in the eyes of the world; they also, quite directly, lay down the law. In fact, several countries, from Norway to India, do not or cannot (as a matter of politics, policy, or constitutional law) commit forces overseas without the council's explicit authorization. Such a practice ensures that these countries will not be drawn into military adventures at the behest of one or a handful of powerful states. They send troops only when the Security Council, speaking in the name of the world as a whole, blesses an enterprise. Nonetheless, since the Iraq crisis, some critics have suggested that "coalitions of the willing" will eventually eliminate the need for formal structures such as the UN. "Multilateralism á la carte," the thinking goes, will replace "multilateralism á la charte." But even ad hoc coalitions require structure: many states, when asked by Washington to contribute troops for Iraq, have hesitated to do so without the sanction of a UN resolution or a UN-authorized command structure. International institutions give the United States' potential partners a framework within which they can feel empowered on (at least notionally) equal terms -- and without which they are not willing to participate. Put another way, the difference between a UN operation, in which everyone wears a blue helmet, and a "coalition of the willing" led by one big power is similar to that between a police squad and a posse. Posses are more difficult to find and to fund than are police. Similarly, developing countries in any coalition need financing in order to play their part, and such financing is more easily provided through the UN's agreed cost-sharing formula. Unilateralism is always more expensive than its alternative, and in today's tight world economy, the costs of international unilateralism may no longer be sustainable. Even when a Security Council resolution is not legally required for an action, the UN's imprimatur can still prove extremely useful for the United States. A council decision does not just spread expense and political risk, by diluting Washington's responsibility for a course of action that might provoke resentment or hostility. It is also easier for many governments to sell a policy to their publics if they can describe it as a response to a UN resolution, instead of to an American request. The United States has already learned this lesson: for example, when it has tried to prompt countries to revise and update their domestic security procedures or laws on terrorism, it has discovered that governments are often happier to receive the same American expert as a UN adviser than as a U.S. one. In fact, part of the value of the UN (including for Washington) is the respect in which its members hold the body. Such respect has permitted the United States, on numerous occasions, to advance its specific interests under the cover of international law. For example, UN sanctions on Libya helped the United States achieve a settlement over the Lockerbie bombing. And after the attacks of September 11, 2001, the Security Council's two subsequent resolutions provided an international framework for the global battle against terrorism. Resolution 1373 required nations to interdict arms flows and financial transfers to suspected terrorist groups, report on terrorists' movements, and update national legislation to fight them. Without the legal authority of a binding Security Council resolution, Washington would have been hard-pressed to obtain such cooperation "retail" from 191 individual states, and it would have taken decades to negotiate and ratify separate treaties and conventions imposing the same standards on all countries. As such examples demonstrate, it is clearly not in the U.S. interest to discredit the UN or the Security Council. For every rare occasion when the council thwarts Washington, there are a dozen more when it acts in accordance with U.S. wishes and compels other countries to do the same. To marginalize the council, then, would be to blunt a vital arrow in the U.S. diplomaticquiver**.**  BEYOND LIMITS What about the Security Council's structural deficiencies? For all the carping about its outdated composition -- which, by common consensus, reflects the geopolitical realities of 1945 rather than 2003 -- no other body has acquired the kind of legitimacy it brings to bear on world affairs. The council may need reform, therefore, but until member states agree on how to go about making changes, it remains the only global body with responsibility for maintaining international peace and security. Suggestions that the UN should be replaced -- by a coalition of democracies, for example -- overlook the fact that during the Iraq debate, the most vigorous resistance to the United States in the council came from other democracies. Nor is NATO a feasible alternative to the council, because its legitimacy is geographically limited, as is that of other regional organizations. NATO authorization might have been deemed sufficient for the Kosovo campaign. But in that war, the target was another European state, Yugoslavia. NATO's imprimatur would not have been enough to justify military action in Iraq, which is why the United States and the United Kingdom tried so hard to get the Security Council's benediction for that action. In any case, the council's final vote (or lack thereof) on Iraq was not the only gauge of its relevance to that situation. Just four years ago, when NATO bombed Yugoslavia without even referring to the council (let alone securing its approval), many critics similarly argued that the UN had become irrelevant. But the Kosovo question soon came up again at the Security Council, first when an unsuccessful attempt was made to condemn the bombing, and then when arrangements had to be made to administer the province after the war. Only the Security Council could have approved the arrangements so as to confer on them international legitimacy and encourage all nations to extend their support and resources. And only one body was trusted enough to run the civilian administration of Kosovo: the United Nations. The same pattern was not followed precisely in the case of Iraq, but the events were similar. Resolution 1483, adopted unanimously on May 22, granted the UN a significant role in postwar Iraq. That the United States chose to give the UN such a prominent position reflects not just British pressure but also Washington's own recognition that it needs the world body. Indeed, the very fact that the United States submitted the resolution to the Security Council was an acknowledgment by Washington that there is, in Secretary-General Kofi Annan's words, no substitute for the unique legitimacy provided by the UN. The body might have been written off during the war. But as with Kosovo, it was quickly found to be essential to the ensuing peace. Of course, peace can be kept in many ways, and Kosovo, East Timor, Afghanistan, and now Iraq offer four different models for how the UN can engage in postconflict situations. But peacekeeping (which includes mediation, monitoring, and disarmament) remains exactly the kind of mission where using the UN has advantages for Washington that greatly outweigh the negatives. First, there is the obvious attraction of burden-sharing: UN peacekeeping allows other countries to help shoulder the United States' responsibility for maintaining peace around the world. Second, despite some well-publicized failures, UN peacekeeping works. The UN's "blue helmets" won the Nobel Peace Prize in 1988; since then, they have brought peace and democracy to Namibia, Cambodia, El Salvador, Mozambique, and East Timor; helped ease the U.S. burden after regime changes in Haiti and Afghanistan; and policed largely bloodless stalemates from Cyprus to the Golan Heights to Western Sahara. Third, UN peacekeeping is highly cost-effective. The UN is used to running operations on a shoestring, and it spends less per year on peacekeeping worldwide than is spent on the budgets of the New York City Fire and Police Departments. UN peacekeeping is also far cheaper than the alternative, which is war. Two days of Operation Desert Storm in 1991 cost more than the entire UN peacekeeping budget that year, and one week of Operation Iraqi Freedom would amply pay for all UN peacekeeping for 2003. The UN operation that ended the Iran-Iraq War cost less annually than the crude oil carried in two supertankers. Considering how many supertankers were placed at risk during that ruinous conflict, this makes peacekeeping an extraordinary bargain. None of this is to deny that the Security Council's record has been mixed. The body has acted unwisely at times and failed to act altogether at others: one need only think of the fate of the "safe areas" in Bosnia and the genocide in Rwanda for instances of each. The council has also sometimes been too divided to succeed, as was the case in early 2003 over Iraq. And all too often, member states have passed resolutions they had no intention of implementing. But the UN, at its best, is only a mirror of the world: it reflects divisions and disagreements as well as hopes and convictions. Sometimes it only muddles through. As Dag Hammarskjöld, the UN's second secretary-general, put it, the UN was not created to take humanity to heaven but to save it from hell. And this it has done innumerable times, especially during the Cold War, when it prevented regional or local conflicts from igniting a superpower conflagration. To suggest, on the basis of the disagreement over Iraq, that the Security Council has become dysfunctional or irrelevant is to greatly distort the record by viewing it through the prism of just one issue. Even while disagreeing on Iraq, the members of the Security Council unanimously agreed on a host of other vital issues, from Congo to Côte d'Ivoire, from Cyprus to Afghanistan. Indeed, the Security Council remains on the whole a remarkably harmonious body. Authorizing wars has never been among its principal responsibilities -- only twice in its 58 years of existence has the council explicitly done so -- and it seems unduly harsh to condemn it solely over its handling of so rare a challenge. In any case, it would be folly to discredit an entire institution for a disagreement among its members. One would not close down the Senate (or even the Texas legislature) because its members failed to agree on one bill. The UN's record of success and failure is no worse than that of most representative national institutions, yet its detractors seem to expect the UN to succeed (or at least to agree with the United States) all the time. Too often, the UN's critics seem to miss another fundamental characteristic of the world body: the way it functions both as a stage and as an actor. On the one hand, the UN is a stage on which its member states declaim their differences and their convergences. Yet the UN is also an actor (particularly in the person of the secretary-general, his staff, agencies, and operations) that executes the policies made on its stage. The general public usually fails to see this distinction and views the UN as a shapeless aggregation. Sins (of omission or commission) committed by individual governments on the UN stage are thus routinely blamed on the organization itself. Sometimes member states deliberately contribute to this confusion, as when American officials blamed the UN for not preventing genocide in Rwanda -- despite the fact that Washington itself had blocked the Security Council from taking action in that crisis. Indeed, one of the more unpleasant, if convenient, uses to which the UN has regularly been put has been to serve as a pliant scapegoat for the failures of its member states. Former Secretary-General Boutros Boutros-Ghali ruefully noted this point when alleged UN deficiencies were blamed for the purely American-made disaster in Mogadishu in October 1993. And Annan has often joked that the abbreviation by which he is known inside the organization -- "SG" -- stands for "scapegoat," not "secretary-general." There is, sadly, considerable utility in having an institution that, by embodying the collective will (or lack thereof) of 191 member states, can safely be blamed for the errors that no individual state could politically afford to admit. But those who need a whipping boy must be careful not to flog him to death. IN IT TOGETHER The UN's relevance does not stand or fall on its conduct on any one issue. When the crisis has passed, the world will still be left with, to use Annan's phrase, innumerable "problems without passports" -- threats such as the proliferation of weapons of mass destruction (WMD), the degradation of our common environment, contagious disease and chronic starvation, human rights and human wrongs, mass illiteracy and massive displacement. These are problems that no onecountry, however powerful, can solve alone. The problems are the shared responsibility of humankind and cry out for solutions that, like the problems themselves, also cross frontiers. The UN exists to find these solutions through the common endeavor of all states. It is the indispensable global organization for a globalizing world. Large portions of the world's population require the UN's assistance to surmount problems they cannot overcome on their own. As these words are written, civil war rages in Congo and Liberia and sputters in Côte d'Ivoire, while long-running conflicts may be close to permanent solution in Cyprus and Sierra Leone. The arduous task of nation building proceeds fitfully in Afghanistan, the Balkans, East Timor, and Iraq. Twenty million refugees and displaced persons, from Palestine to Liberia and beyond, depend on the UN for shelter and succor. Decades of development in Africa are being wiped out by the scourge of hiv/aids (and its deadly interaction with famine and drought), and the Millennium Development Goals -- agreed on with much fanfare in September 2000, at the UN's Millennium Summit, the largest gathering of heads of government in human history -- remain unfulfilled. Too many countries still lack the wherewithal to eliminate poverty, educate girls, safeguard health, and provide their people with clean drinking water. If the UN did not exist to help tackle these problems, they would undoubtedly end up on the doorstep of the world's only superpower. The UN is also essential to Americans' pursuit of their own prosperity. Today, whether one is from Tashkent or Tallahassee, it is simply not realistic to think only in terms of one's own country. Global forces press in from every conceivable direction; people, goods, and ideas cross borders and cover vast distances with ever greater frequency, speed, and ease. The Internet is emblematic of an era in which what happens in Southeast Asia or southern Africa -- from democratic advances to deforestation to the fight against aids -- can affect Americans. As has been observed about water pollution, we all live downstream now. Thus U.S. foreign policy today has become as much a matter of managing global issues as managing bilateral ones. At the same time, the concept of the nation-state as self-sufficient has also weakened; although the state remains the primary political unit, most citizens now instinctively understand that it cannot do everything on its own. To function in the world, people increasingly have to deal with institutions and individuals beyond their country's borders. American jobs depend not only on local firms and factories, but also on faraway markets, grants of licenses and access from foreign governments, international trade rules that ensure the free movement of goods and persons, and international financial institutions that ensure stability. There are thus few unilateralists in the American business community. Americans' safety, meanwhile, depends not only on local police forces, but also on guarding against the global spread of pollution, disease, terror, illegal drugs, and WMD. As the World Health Organization's successful battle against the dreaded sars epidemic has demonstrated, "problems without passports" are those that only international action can solve. Fortunately, the UN and its broad family of agencies have, in nearly six decades of life, built a remarkable record of expertise and achievement on these issues. The UN has brought humanitarian relief to millions in need and helped people rebuild their countries from the ruins of war. It has challenged poverty, fought apartheid, protected the rights of children, promoted decolonization and democracy, and placed environmental and gender issues at the top of the world's agenda. These are no small achievements, and represent issues the United States cannot afford to neglect. The United Nations is a valuable antidote to the tendency to disregard the problems of the periphery -- the kinds of problems Americans may prefer not to deal with but that are impossible to ignore. Handling them multilaterally is the obvious way to ensure they are tackled; it is also the only way. Americans will be safer in a world improved by the UN's efforts, which will be needed long after Iraq has passed from the headlines. KEEPING GULLIVER ON BOARD The exercise of American power may well be the central issue in world politics today, but that power is only enhanced if its use isperceived as legitimate**.** Ironically, although many in Washington distrust the world body, many abroad think the Security Council is too much in thrall to its most powerful member. The debates over Iraq proved that that is not always the case; but even if it were, it is far better to have a world organization that is anchored in geopolitical reality than one that is too detached from the verities of global power to be effective. A UN that provides a vital political and diplomatic framework for the actions of its most powerful member, while casting them in the context of international law and legitimacy (and bringing to bear on them the perspectives and concerns of its universal membership) is a UN that remains essential to the world in which we live. The goals of the charter, however, cannot be met without embracing the fundamental premise that President Harry Truman enunciated in 1945: We all have to recognize that no matter how great our strength, we must deny ourselves the license to do always as we please. No one nation ... can or should expect any special privilege which harms any other nation. ... Unless we are all willing to pay that price, no organization for world peace can accomplish its purpose. And what a reasonable price that is! The UN, from the start, assumed the willingness of its members to accept restraints on their own short-term goals and policies by subordinating their actions to internationally agreed rules and procedures, in the broader long-term interests of world order. This was an explicit alternative to the model of past centuries, when strong states developed their military power to enforce their politics, and weak states took refuge in alliances with stronger ones. This formula guaranteed large-scale warfare; as Franklin Roosevelt put it to both houses of Congress after the Allied conference at Yalta, the UN would replace the arms races, military alliances, balance-of-power politics, and "all the arrangements that had led to war" so often in the past. The UN was meant to help create a world in which its member states would overcome their vulnerabilities by embedding themselves in international institutions, where the use of force would be subjected to the constraints of international law. Power politics would not disappear from the face of the earth but would be practiced with due regard for universally upheld rules and norms. Such a system also offered the United States -- then, as now, the world's unchallenged superpower -- the assurance that other countries would not feel the need to develop coalitions to balance its power. Instead, the UN provided a framework for them to work in partnership with the United States.

### T

#### We meet – the plan is a restriction on authority to introduce Armed Forces into hostilities

Keynes 10 – Edward Keynes, Professor of Political Science at Penn State University, Undeclared War: Twilight Zone of Constitutional Power, p. 163-164

Although the zones of exclusive legislative and executive authority cannot be defined precisely, the Federal judiciary has employed the Framers’ distinction between defensive and offensive war in differentiating presidential from congressional power to wage military hostilities. Article 1, Section 8 (Cl. Il) of the Constitution vests exclusive power in Congress to declare war or authorize undeclared war and mili tary hostilities. Only Congress has the constitutional authority to initiate war and military hostilities; only Congress can change the nation’s con dition from peace to war. Absent a declaration of war or other explicit authorizing legislation, the President has constitutional authority to defend the nation, its armed forces, and its citizens and their property against armed attack or when the threat of such an attack is imminent. Without congressional authorization. Article 2 does not confer independent constitutional authority on the President to initiate hostilities or to transform defensive military actions into offensive wars. Whether Congress declares war or authorize, limited military hostil ities, the legislature has ample constitutional authority to restrict presidential war making. Although one can question the wisdom or desirabil ity of restricting the President’. power to initiate military hostilities, Congress can employ its auxiliary war powers to limit presidential initiative. Congress can use its fiscal poweii (to tax and spend) to regulate the size and composition of the armed forces available to the President. Congress can control military organization and the command structure through its power to make rules for the government and regulation of the land and naval forces. Congress has the authority to limit the Presi dents power to dispatch U.S. troops abroad by enacting conscription laws that geographically restrict military service. Congress can employ its militia powers to limit the commander in chief’s authority to call up the National Guard for foreign military service. Since the Constitution confers the auxiliary war powers exclusively on Congress, only the legislature can decide the wisdom or propriety of limiting the President’s power to initiate war and military hostilities. In addition to exercising ils auxiliary war powers, some commentators suggest that Congress could employ the necessary-and-proper clause to restnct presidential warmaking. If Congress can delegate power to the executive to wage war, it can also deny such power through the neces sary-and-proper clause. By emphasizing the horizontal effect of the sweeping clause (Art 1, Sec. 8, Cl. 18) and by interpreting presidential power narrowly. as William Van Alstyne implies. Congress could employ its authority to limit the commander in chief. power to initiate military hostilities without congressional authorization. However attractive the necessary-arid -proper clause appears to advocates of congressional power, there s no conclusive evidence to suggest that the Framers in tended the sweeping clause as an unqualified grant of power that Con gress could manipulate to reduce the executive to a mere ministerial agenc)2 Once war begins. Congress has the constitutional authority to control the magnitude, i.e., scope, and duration of military hostilities. Congress can employ its auxiliary war powers to restrict or terminate military actions that exceed the President’s defensive authority During the Viet nam War for example, Congress enacted no less than ten major bills between 1969 and 1973 that restricted presidential power to conduct military hoetilities in Laos, Cambodia, and Vietnam. Indeed, Congress enacted legislation termrnating U.S. military action in Laos and Cam bodia on August 15, 1973.

#### They overlimit – the plan is a stronger WPR

Jorritsma, 09 [THE WAR POWERS CONSULTATION ACT OF 2009 – A MEANS FOR CONGRESS TO CURB AN IMPERIAL PRESIDENT? by Remy Jorritsma,Faculty of Law, Maastricht University August 31, 2009,http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2248227]

5.1. Consultation and reporting under the WPR and the WPCA compared The problem with consultation under the WPR, illustrated by the Mayaguez rescue, is addressed in full in the WPCA. In contrast to the WPR, the WPCA defines the concept of “consultation” and gives an interpretation with whom the President must consult. 63 The WPCA states that consultation is to be understood as ‘[providing] an opportunity for the timely exchange of views regarding whether to engage in the significant armed conflict […] not merely [notifying]’. This exchange of views takes place between the President and a to be established JCCC. The membership of this Committee is defined in Section 3(C) WPCA and enables bipartisan consultation both with majority and minority leaders in Congress and with the key members of the four affected House and Senate Committees.

#### That’s clearly T

Scheffer, 99 [Copyright (c) 1999 Oklahoma City University Oklahoma City University Law Review Spring / Summer, 1999 24 Okla. City U.L. Rev. 233 LENGTH: 27979 words FRANCHISING LAW SYMPOSIUM: ARTICLE: Does Absolute Power Corrupt Absolutely? Part I. A Theoretical Review of Presidential War Powers NAME: Martin S. Sheffer \* BIO: \* Associate Professor (retired), Old Dominion University and Tuskegee University; A.B., A.M., Hunter College, CUNY; Ph.D., New School For Social Research, p. lexis]

 Earlier I suggested that the essence of the debate over the President's powers as commander-in-chief outside of declared wars is whether he has independent power to commit our military forces to combat. That question, notwithstanding Jackson's concurrence in Youngstown, n195 has not been answered by any definitive Supreme Court decision. Congress, however, has indicated its own answer in the War Powers Resolution (WPR) n196 and the National Emergencies Act (NEA). n197 The former was vetoed by President Nixon as an unconstitutional infringement of the President's powers as commander-in-chief. It was enacted over his veto. The WPR is a statutory restriction on the President's powers. It is also ambiguous. It limits the President's power to commit troops into hostilities to instances of (1) a declaration of war, (2) a specific statutory authorization, or (3) a national emergency created by an attack on the United States, its territories or possessions, or its armed forces. n198 The supposed prohibitions contained in the WPR, however, are more imagined than real. The Resolution does in fact recognize, according to Arthur S. Miller, that the President can unilaterally employ the armed forces of the United States whenever and wherever he wishes to do so. n199 In other words, despite the fire storm of emotion and rhetoric, very little, if anything, has changed.

#### Restrict doesn’t mean prohibit

CAA 8,COURT OF APPEALS OF ARIZONA, DIVISION ONE, DEPARTMENT A, STATE OF ARIZONA, Appellee, v. JEREMY RAY WAGNER, Appellant., 2008 Ariz. App. Unpub. LEXIS 613

P10 The term "restriction" is not defined by the Legislature for the purposes of the DUI statutes. See generally A.R.S. § 28-1301 (2004) (providing the "[d]efinitions" section of the DUI statutes). In the absence of a statutory definition of a term, we look to ordinary dictionary definitions and do not construe the word as being a term of art. Lee v. State, 215 Ariz. 540, 544, ¶ 15, 161 P.3d 583, 587 (App. 2007) ("When a statutory term is not explicitly defined, we assume, unless otherwise stated, that the Legislature intended to accord the word its natural and obvious meaning, which may be discerned from its dictionary definition.").

P11 The dictionary definition of "restriction" is "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 1999). In fact, "limited" and "restricted" are considered synonyms. See Webster's II New Collegiate Dictionary 946 (2001). Under these commonly accepted definitions, Wagner's driving privileges were "restrict[ed]" when they were "limited" by the ignition interlock requirement. Wagner was not only [\*7] statutorily required to install an ignition interlock device on all of the vehicles he operated, A.R.S. § 28-1461(A)(1)(b), but he was also prohibited from driving any vehicle that was not equipped with such a device, regardless whether he owned the vehicle or was under the influence of intoxicants, A.R.S. § 28-1464(H). These limitations constituted a restriction on Wagner's privilege to drive, for he was unable to drive in circumstances which were otherwise available to the general driving population. Thus, the rules of statutory construction dictate that the term "restriction" includes the ignition interlock device limitation.

### AT: Executive CP

#### Congress must be the first mover – key to broader leadership and enforcement

Hansen, 09 [Hansen and Friedman, professors of law at the New England School of Law, 2009 (Victor and Lawrence, The Case for Congress: Separation of Powers and the War on Terror, p.130]

The problem, of course, is that much of this congressional involvement has come much too late in the process and only after significant damage to our constitutional values had been inflicted by the Bush administration. If Congress only acts after being goaded by the courts, or only after high profile scandals have come to light, or only after the President’s policies have prolonged wars and made us at the same time less secure and less free, then we have reached a level of constitutional brinkmanship which can only be regarded as intolerable. Likewise, members of Congress would be sorely mistaken if they believed that these legislative initiatives have once and for all ended the possibility of executive assertions of dominance in these areas. Put simply, Congress cannot afford to wait for some crisis to act. As we have already discussed, the consequences are too dire. As many of the post-September 11 policy decisions of the Bush administration demonstrate, a President who acts without securing the benefits of the deliberative process established in the Constitution is likely to fail in making us more secure while maintaining basic liberties. Moreover, when Congress only engages in these issues after the fact, its relevance as an institution is undermined. Unless Congress is as proactive and assertive of its constitutionally appointed responsibilities as the executive is about its authority, the checks and balances of our system simply will not work**.** Congress will be relegated to a second tier institution in the realm of national security, and it will be ever more difficult for Congress to stand up to an assertive and aggressive president.

#### Perm do both

#### Links to ptx – involves congress

#### Bold congressional assertion key to access the case

Schumer 7 [Charles E. Schumer, JD from Harvard Law School, AB in Politics from Harvard College, Senior United States Senator from New York, Youngest Representative in the History of New York State, “Under Attack: Congressional Power in the Twenty-First Century”, Harvard Law & Policy Review, 1(1), http://web.archive.org/web/20120625034444/http://www.hlpronline.com/Vol1No1/schumer.pdf]

Every basic civics text recites that our government is divided into three branches and that these three branches are co-equal partners. But as true as that once was, this system of exquisite checks and balances is at risk of being made anachronistic by recent legal and political developments. The traditional functions of Congress as lawmaker and a check on other branches have come under sustained and systematic assault from both the judicial and executive branches. The assault from the Executive began as a gradual diminution of congressional power after a post-Nixon-era zenith, but has accelerated most dramatically under President George W. Bush. The threat to Congress from the Judiciary comes in the form of rulings invalidating congressional enactments at an alarming pace over the past ªfteen years, largely in service of a cramped interpretation of congressional authority under both the Commerce Clause and Section 5 of the Fourteenth Amendment. Together, these twin trends have undermined Congress’s role as lawmaker and its role as a bulwark against overreaching by the other branches. Although the trends in the two other branches of American government have developed separately, they are born of the same philosophy. Commentators and political actors have traditionally focused on just one or the other trend, but in my view it is the unprecedented combination of these two threats that poses a real danger to our democracy. There is much more at stake here than institutional pride and the collective egos of 535 elected legislators. The costs of an anemic Congress over the long term are considerable. First, continued erosion of Congress’s lawmaking power undermines democracy. Preemption of the legislative function by the President increases the concentration of power and the risk of abuse. It also decreases the transparency that accompanies a legislative process marked by open debate and compromise. Preemption of the legislative function by the Judiciary similarly diminishes democracy. Second, in the absence of a prompt reassertion of Congress’s power, its powerlessness risks becoming institutionalized. Unflexed, congressional muscles atrophy. Handicaps created by the Executive may be difficult to dismantle. Federalism precedents espoused by the Judiciary may be impossible to undo. Even if one believes that the current President has not taken executive power too far (though I do), the next president, from whichever party, will likely continue the trend if unchecked. A compliant Congress risks permanently undermining its credibility and its relevance. When Congress needs to rein in a future president, it may find that it lacks the institutional capacity to do so. In sum, Congress does have a role equal to the other branches and must have this equal role. It is a role envisioned by the Framers, enshrined in the Constitution, and ennobled by the historical examples of our greatest legislators. A responsible and responsive Congress can solve many of the problems America confronts, improve respect for government by providing oversight and demanding accountability, and decrease partisan gridlock in Washington.1 Undoubtedly, Congress is at something of an institutional disadvantage against the Executive. It has no agencies and bureaucracy to rival the Secretary of Defense or the Attorney General. Rather, Congress consists of 535 individual lawmakers divided between two parties and dedicated to unique and varying agendas. However, members of both parties ought to agree that our representative system demands—and the American people deserve—a Congress that is not just a rubber stamp for the Executive, but an independent, co-equal, and assertive branch of government. A Congress grown weak and compliant imperils democracy.

#### The CP isn’t sufficient – binding restraints access signaling

Scheuerman, 12 [William E. Scheuerman, Professor of Political Science and West European Studies at Indiana University, “Review Essay: Emergencies, Executive Power, and the Uncertain Future of US Presidential Democracy”, Law and Social Inquiry, Summer, 37 Law & Soc. Inquiry 743, p. lexis]

Posner and Vermeule rely on two main claims. First, even if the president constitutes the dominant actor in a legally unchecked administrative state, he or she has to gain elite and public support to get things done and stand for election. So how can political actors decide whether or not the executive is performing well? Posner and Vermeule tend to hang their hats on "executive signaling": presidents can send signals to voters communicating that they are "well-motivated," and that in fact many voters might make the same (or at least similar) decisions if they possessed the information the president typically has. By communicating in a certain way (e.g., by appointing members of the opposing party to his or her cabinet, promising to accept the recommendations of an independent commission, or by making decisions as transparent as possible), presidents can gain credibility, and voters might thereby come to acknowledge the plausibility--if not necessarily the substantive Tightness--of what the executive is doing (2010, 137-53). However, as Schmitt aptly grasped, even formally free elections potentially become charades when the executive effectively exercises legally unconstrained power (e.g., in Peronist Argentina, or Putin's Russia). Posner and Vermeule never really provide enough evidence for us to dismiss this possibility. Since the president in our system is only subject on one occasion to reelection, it is unclear how their proposals might meaningfully check the executive, particularly during a second term. The fact that executive signaling represents a form of self-binding hardly seems reassuring, either (2010, 135). Nor does the book's highlighting of the possible dangers of different forms of executive signaling (e.g., too much transparency, or an excessive subservience to independent agencies) help very much on this score (2010, 142-46). Why should we expect to get presidents who know how to engage in executive signaling in just the right way? The familiar reason the executive needs elite and popular support, of course, is that it still relies on a popularly elected Congress and other institutional players to get things done: this is why describing such dependence as intrinsically political and "nonlegal" seems odd. For that matter, the relationship between what we traditionally have described as a normative theory of political legitimacy and executive signaling mechanisms--whereby the executive gains popular credibility--remains ambiguous. Is their theory of executive signaling and credibility meant to stand in for a normative theory of legitimacy? If so, one might worry. We can easily imagine an executive diligently doing many of the things prescribed here yet nonetheless pursuing policies deeply at odds with the common good, or at least with what a democratic community under more ideal conditions might determine to be in its best interests. Depending on one's normative preferences, some of the examples provided of executive signaling (e.g., FDR and Obama naming Republicans to their cabinets) might legitimately be taken as evidence for presidential Machiavellianism, rather than as solid proof that the presidents in question were well-motivated and thereby somehow politically acceptable. [\*758] Presidential "signaling" seems like a pale replacement for liberal legalism and the separation of powers.

### K

#### High consequence low probability scenario planning is sweeter than honey—this evidence is the bee’s knees

**Junio and Mahnken 13**—Stanford AND Naval War College

(Timothy and Thomas, “Conceiving of Future War: The Promise of Scenario Analysis for International Relations”, International Studies Review Volume 15, Issue 3, pages 374–395, September 2013, dml)

This article introduces political scientists to scenarios—future counterfactuals—and demonstrates their value in tandem with other methodologies and across a wide range of research questions. The authors describe best practices regarding the scenario method and argue that scenarios contribute to theory building and development, identifying new hypotheses, analyzing data-poor research topics, articulating “world views,” setting new research agendas, avoiding cognitive biases, and teaching. The article also establishes the low rate at which scenarios are used in the international relations subfield and situates scenarios in the broader context of political science methods. The conclusion offers two detailed examples of the effective use of scenarios.

In his classic work on scenario analysis, The Art of the Long View, Peter Schwartz commented that “social scientists often have a hard time [building scenarios]; they have been trained to stay away from ‘what if?’ questions and concentrate on ‘what was?’” (Schwartz 1996:31). While Schwartz's comments were impressionistic based on his years of conducting and teaching scenario analysis, his claim withstands empirical scrutiny. Scenarios—counterfactual narratives about the future—are woefully underutilized among political scientists. The method is almost never taught on graduate student syllabi, and a survey of leading international relations (IR) journals indicates that scenarios were used in only 302 of 18,764 sampled articles. The low rate at which political scientists use scenarios—less than 2% of the time—is surprising; the method is popular in fields as disparate as business, demographics, ecology, pharmacology, public health, economics, and epidemiology (Venable, Li, Ginter, and Duncan 1993; Leufkens, Haaijer-Ruskamp, Bakker, and Dukes 1994; Baker, Hulse, Gregory, White, Van Sickle, Berger, Dole, and Schumaker 2004; Sanderson, Scherbov, O'Neill, and Lutz 2004). Scenarios also are a common tool employed by the policymakers whom political scientists study.

This article seeks to elevate the status of scenarios in political science by demonstrating their usefulness for theory building and pedagogy. Rather than constitute mere speculation regarding an unpredictable future, as critics might suggest, scenarios assist scholars with developing testable hypotheses, gathering data, and identifying a theory's upper and lower bounds. Additionally, scenarios are an effective way to teach students to apply theory to policy. In the pages below, a “best practices” guide is offered to advise scholars, practitioners, and students, and an argument is developed in favor of the use of scenarios. The article concludes with two examples of how political scientists have invoked the scenario method to improve the specifications of their theories, propose falsifiable hypotheses, and design new empirical research programs.

Scenarios in the Discipline

What do counterfactual narratives about the future look like? Scenarios may range in length from a few sentences to many pages. One of the most common uses of the scenario method, which will be referenced throughout this article, is to study the conditions under which high-consequence, low-probability events may occur. Perhaps the best example of this is nuclear warfare, a circumstance that has never resulted, but has captivated generations of political scientists. For an introductory illustration, let us consider a very simple scenario regarding how a first use of a nuclear weapon might occur:

During the year 2023, the US military is ordered to launch air and sea patrols of the Taiwan Strait to aid in a crisis. These highly visible patrols disrupt trade off China's coast, and result in skyrocketing insurance rates for shipping companies. Several days into the contingency, which involves over ten thousand US military personnel, an intelligence estimate concludes that a Chinese conventional strike against US air patrols and naval assets is imminent. The United States conducts a preemptive strike against anti-air and anti-sea systems on the Chinese mainland. The US strike is far more successful than Chinese military leaders thought possible; a new source of intelligence to the United States—unknown to Chinese leadership—allowed the US military to severely degrade Chinese targeting and situational awareness capabilities. Many of the weapons that China relied on to dissuade escalatory US military action are now reduced to single-digit-percentage readiness. Estimates for repairs and replenishments are stated in terms of weeks, and China's confidence in readily available, but “dumber,” weapons is low due to the dispersion and mobility of US forces. Word of the successful US strike spreads among the Chinese and Taiwanese publics. The Chinese Government concludes that for the sake of preserving its domestic strength, and to signal resolve to the US and Taiwanese Governments while minimizing further economic disruption, it should escalate dramatically with the use of an extremely small-yield nuclear device against a stationary US military asset in the Pacific region.

This short story reflects a future event that, while unlikely to occur and far too vague to be used for military planning, contains many dimensions of political science theory. These include the following: what leaders perceive as “limited,” “proportional,” or “escalatory” uses of force; the importance of private information about capabilities and commitment; audience costs in international politics; the relationship between military expediency and political objectives during war; and the role of compressed timelines for decision making, among others. The purpose of this article is to explain to scholars how such stories, and more rigorously developed narratives that specify variables of interest and draw on extant data, may improve the study of IR. An important starting point is to explain how future counterfactuals fit into the methodological canon of the discipline.

#### One speech act doesn’t cause securitization – it’s an ongoing process

**Ghughunishvili 10**

Securitization of Migration in the United States after 9/11: Constructing Muslims and Arabs as Enemies Submitted to Central European University Department of International Relations European Studies In partial fulfillment of the requirements for the degree of Master of Arts Supervisor: Professor Paul Roe <http://www.etd.ceu.hu/2010/ghughunishvili_irina.pdf>

As provided by the Copenhagen School securitization theory is comprised by speech act, acceptance of the audience and facilitating conditions or other non-securitizing actors contribute to a successful securitization. The causality or a one-way relationship between the speech act, the audience and securitizing actor, where politicians use the speech act first to justify exceptional measures, has been criticized by scholars, such as Balzacq. According to him, the one-directional relationship between the three factors, or some of them, is not the best approach. To fully grasp the dynamics, it will be more beneficial to “rather than looking for a one-directional relationship between some or all of the three factors highlighted, it could be profitable to focus on the degree of congruence between them. 26 Among other aspects of the Copenhagen School’s theoretical framework, which he criticizes, the thesis will rely on the criticism of the lack of context and the rejection of a ‘one-way causal’ relationship between the audience and the actor. The process of threat construction, according to him, can be clearer if external context, which stands independently from use of language, can be considered. 27 Balzacq opts for more context-oriented approach when it comes down to securitization through the speech act, where a single speech does not create the discourse, but it is created through a long process, where context is vital. 28 He indicates: In reality, the speech act itself, i.e. literally a single security articulation at a particular point in time, will at best only very rarely explain the entire social process that follows from it. In most cases a security scholar will rather be confronted with a process of articulations creating sequentially a threat text which turns sequentially into a securitization. 29 This type of approach seems more plausible in an empirical study, as it is more likely that a single speech will not be able to securitize an issue, but it is a lengthy process, where a the audience speaks the same language as the securitizing actors and can relate to their speeches.

#### Legal reforms restrain the cycle of violence and prevent error replication

Colm O’Cinneide 8, Senior Lecturer in Law at University College London, “Strapped to the Mast: The Siren Song of Dreadful Necessity, the United Kingdom Human Rights Act and the Terrorist Threat,” Ch 15 in Fresh Perspectives on the ‘War on Terror,’ ed. Miriam Gani and Penelope Mathew, <http://epress.anu.edu.au/war_terror/mobile_devices/ch15s07.html>

This ‘symbiotic’ relationship between counter-terrorism measures and political violence, and the apparently inevitable negative impact of the use of emergency powers upon ‘target’ communities, would indicate that it makes sense to be very cautious in the use of such powers. However, the impact on individuals and ‘target’ communities can be too easily disregarded when set against the apparent demands of the greater good. Justice Jackson’s famous quote in Terminiello v Chicago [111] that the United States Bill of Rights should not be turned into a ‘suicide pact’ has considerable resonance in times of crisis, and often is used as a catch-all response to the ‘bleatings’ of civil libertarians.[112] The structural factors discussed above that appear to drive the response of successive UK governments to terrorist acts seem to invariably result in a depressing repetition of mistakes.¶ However, certain legal processes appear to have some capacity to slow down the excesses of the counter-terrorism cycle. What is becoming apparent in the UK context since 9/11 is that there are factors at play this time round that were not in play in the early years of the Northern Irish crisis. A series of parliamentary, judicial and transnational mechanisms are now in place that appear to have some moderate ‘dampening’ effect on the application of emergency powers.¶ This phrase ‘dampening’ is borrowed from Campbell and Connolly, who have recently suggested that law can play a ‘dampening’ role on the progression of the counter-terrorism cycle before it reaches its end. Legal processes can provide an avenue of political opportunity and mobilisation in their own right, whereby the ‘relatively autonomous’ framework of a legal system can be used to moderate the impact of the cycle of repression and backlash. They also suggest that this ‘dampening’ effect can ‘re-frame’ conflicts in a manner that shifts perceptions about the need for the use of violence or extreme state repression.[113] State responses that have been subject to this dampening effect may have more legitimacy and generate less repression: the need for mobilisation in response may therefore also be diluted.

#### Alt fails – cooption – political engagement key

McCormack, 10 [Tara, is Lecturer in International Politics at the University of Leicester and has a PhD in International Relations from the University of Westminster. 2010, (Critique, Security and Power: The political limits to emancipatory approaches, page 137-138]

In chapter 7 I engaged with the human security framework and some of the problematic implications of ‘emancipatory’ security policy frameworks. In this chapter I argued that the shift away from the pluralist security framework and the elevation of cosmopolitan and emancipatory goals **has served to** **enforce international power inequalities rather than lessen them**. Weak or unstable states are subjected to greater international scrutiny and international institutions and other states have greater freedom to intervene, but the citizens of these states have **no way of controlling or influencing** these international institutions or powerful states. This shift away from the pluralist security framework **has not challenged the status quo**, which may help to explain why major international institutions and states **can easily adopt** a more cosmopolitan rhetoric in their security policies. As we have seen, the shift away from the pluralist security framework has entailed a shift towards a more openly hierarchical international system, in which states are differentiated according to, for example, their ability to provide human security for their citizens or their supposed democratic commitments. In this shift, the old pluralist international norms of (formal) international sovereign equality, non-intervention and ‘blindness’ to the content of a state are overturned. Instead, international institutions and states have more freedom to intervene in weak or unstable states in order to ‘protect’ and emancipate individuals globally. Critical and emancipatory security theorists argue that the goal of the emancipation of the individual means that security must be reconceptualised away from the state. As the domestic sphere is understood to be the sphere of insecurity and disorder, the international sphere represents greater emancipatory possibilities, as Tickner argues, ‘if security is to start with the individual, its ties to state sovereignty must be severed’ (1995: 189). For critical and emancipatory theorists there must be a shift towards a ‘cosmopolitan’ legal framework, for example Mary Kaldor (2001: 10), Martin Shaw (2003: 104) and Andrew Linklater (2005). For critical theorists, one of the fundamental problems with Realism is that it is unrealistic. Because it prioritises order and the existing status quo, Realism attempts to impose a particular security framework onto a complex world, ignoring the myriad threats to people emerging from their own governments and societies. Moreover, traditional international theory serves to obscure power relations and omits a study of why the system is as it is: [O]mitting myriad strands of power amounts to exaggerating the simplicity of the entire political system. Today’s conventional portrait of international politics thus too often ends up looking like a Superman comic strip, whereas it probably should resemble a Jackson Pollock. (Enloe, 2002 [1996]: 189) Yet as I have argued, contemporary critical security theorists seem to show a marked lack of engagement with their problematic (whether the international security context, or the Yugoslav break-up and wars). **Without concrete engagement and analysis**, however, **the critical project is undermined and critical theory becomes nothing more than a request that people behave in a nicer way to each other**. Furthermore, whilst contemporary critical security theorists argue that they present a more realistic image of the world, through exposing power relations, for example, their lack of concrete analysis of the problematic considered **renders them actually unable to engage** with existing power structures and the way in which power is being exercised in the contemporary international system. For critical and emancipatory theorists the central place of the values of the theorist mean that it cannot fulfil its promise to critically engage with contemporary power relations and emancipatory possibilities. Values must be joined with engagement with the material circumstances of the time.

#### **Perm do the plan and** reject security logic

#### **The plan gives security transformative potential --- alt alone fails and their impact is false**

Nunes, 12 [Reclaiming the political: Emancipation and critique in security studies, João Nunes, Security Dialogue 2012 43: 345,Politics and International Studies, University of Warwick, UK, p. sage publications]

In the works of these authors, one can identify a tendency to see security as inherently connected to exclusion, totalization and even violence. The idea of a ‘logic’ of security is now widely present in the critical security studies literature. Claudia Aradau (2008: 72), for example, writes of an ‘exclusionary logic of security’ underpinning and legitimizing ‘forms of domination’. Rens van Munster (2007: 239) assumes a ‘logic of security’, predicated upon a ‘political organization on the exclusionary basis of fear’. Laura Shepherd (2008: 70) also identifies a liberal and highly problematic ‘organizational logic’ in security. Although there would probably be disagreement over the degree to which this logic is inescapable, it is symptomatic of an overwhelmingly pessimistic outlook that a great number of critical scholars are now making the case for moving away from security. The normative preference for desecuritization has been picked up in attempts to contest, resist and ‘unmake’ security (Aradau, 2004; Huysmans, 2006; Bigo, 2007). For these contributions, security cannot be reconstructed and political transformation can only be brought about when security and its logic are removed from the equation (Aradau, 2008; Van Munster, 2009; Peoples, 2011). This tendency in the literature is problematic for the critique of security in at least three ways. First, it constitutes a blind spot in the effort of politicization. The assumption of an exclusionary, totalizing or violent logic of security can be seen as an essentialization and a moment of closure. To be faithful to itself, the politicization of security would need to recognize that there is nothing natural or necessary about security – and that security as a paradigm of thought or a register of meaning is also a construction that depends upon its reproduction and performance through practice. The exclusionary and violent meanings that have been attached to security are themselves the result of social and historical processes, and can thus be changed. Second, the institution of this apolitical realm runs counter to the purposes of critique by foreclosing an engagement with the different ways in which security may be constructed. As Matt McDonald (2012) has argued, because security means different things for different people, one must always understand it in context. Assuming from the start that security implies the narrowing of choice and the empowerment of an elite forecloses the acknowledgment of security claims that may seek to achieve exactly the opposite: alternative possibilities in an already narrow debate and the contestation of elite power.5 In connection to this, the claims to insecurity put forward by individuals and groups run the risk of being neglected if the desire to be more secure is identified with a compulsion towards totalization, and if aspirations to a life with a degree of predictability are identified with violence. Finally, this tendency blunts critical security studies as a resource for practical politics. By overlooking the possibility of reconsidering security from within – opting instead for its replacement with other ideals – the critical field weakens its capacity to confront head-on the exceptionalist connotations that security has acquired in policymaking circles. Critical scholars run the risk of playing into this agenda when they tie security to exclusionary and violent practices, thereby failing to question security actors as they take those views for granted and act as if they were inevitable. Overall, security is just too important – both as a concept and as a political instrument – to be simply abandoned by critical scholars. As McDonald (2012: 163) has put it, If security is politically powerful, is the foundation of political legitimacy for a range of actors, and involves the articulation of our core values and the means of their protection, we cannot afford to allow dominant discourses of security to be confused with the essence of security itself. In sum, the trajectory that critical security studies has taken in recent years has significant limitations. The politicization of security has made extraordinary progress in problematizing predominant security ideas and practices; however, it has paradoxically resulted in a depoliticization of the meaning of security itself. By foreclosing the possibility of alternative notions of security, this imbalanced politicization weakens the analytical capacity of critical security studies, undermines its ability to function as a political resource and runs the risk of being politically counterproductive. Seeking to address these limitations, the next section revisits emancipatory understandings of security.

#### No internal link, threat con doesn’t cause violence

Kaufman, Prof Poli Sci and IR – U Delaware, ‘9

(Stuart J, “Narratives and Symbols in Violent Mobilization: The Palestinian-Israeli Case,” *Security Studies* 18:3, 400 – 434)

Even when hostile narratives, group fears, and opportunity are strongly present, war occurs only if these factors are harnessed. Ethnic narratives and fears must combine to create significant ethnic hostility among mass publics. Politicians must also seize the opportunity to manipulate that hostility, evoking hostile narratives and symbols to gain or hold power by riding a wave of chauvinist mobilization. Such mobilization is often spurred by prominent events (for example, episodes of violence) that increase feelings of hostility and make chauvinist appeals seem timely. If the other group also mobilizes and if each side's felt security needs threaten the security of the other side, the result is a security dilemma spiral of rising fear, hostility, and mutual threat that results in violence. A virtue of this symbolist theory is that symbolist logic explains why ethnic peace is more common than ethnonationalist war. Even if hostile narratives, fears, and opportunity exist, severe violence usually can still be avoided if ethnic elites skillfully define group needs in moderate ways and collaborate across group lines to prevent violence: this is consociationalism.17 War is likely only if hostile narratives, fears, and opportunity spur hostile attitudes, chauvinist mobilization, and a security dilemma.

#### Discourse not first

**Rigakos and Law 9** (George, Assistant Professor of Law at Carleton University, and Alexandra, Carleton University, “Risk, Realism and the Politics of Resistance”, Critical Sociology 35(1) 79-103, dml)

McCann and March (1996: 244) next set out the ‘justification for treating everyday practices as significant’ suggested by the above literature. First, the works studied are concerned with proving people are not ‘duped’ by their surroundings. At the level of consciousness, subjects ‘are ironic, critical, realistic, even sophisticated’ (1996: 225). But McCann and March remind us that earlier radical or Left theorists have made similar arguments without resorting to stories of everyday resistance in order to do so. Second, everyday resistance on a discursive level is said to reaffirm the subject’s dignity. But this too causes a problem for the authors because they: query why subversive ‘assertions of self ’ should bring dignity and psychological empowerment when they **produce no greater material benefits or changes** in relational power … By standards of ‘realism’, … subjects given to avoidance and ‘lumping it’ may be the most sophisticated of all. (1996: 227) Thus, their criticism boils down to two main points. First, everyday resistance **fails to tell us any more about so-called false consciousness than was already known** among earlier Left theorists; and second, that a focus on discursive resistance **ignores the role of material conditions** in helping to shape identity. Indeed, absent a broader political struggle or chance at effective resistance it would seem to the authors that ‘**powerlessness is learned** out of the accumulated experiences of futility and entrapment’ (1996: 228). A lamentable prospect, but nonetheless a source of closure for the governmentality theorist. In his own meta-analysis of studies on resistance, Rubin (1996: 242) finds that ‘discursive practices that **neither alter material conditions nor directly challenge broad structures** are nevertheless’ considered by the authors he examined ‘the stuff out of which power is made and remade’. If this sounds familiar, it is because the authors studied by McCann, March and Rubin found their claims about everyday resistance on the same understanding of power and government employed by postmodern theorists of risk. Arguing against celebrating forms of resistance that fail to alter broader power relations or material conditions is, in part, **recognizing the continued ‘real’ existence of identifiable, powerful groups** (classes). In downplaying the worth of everyday forms of resistance (arguing that these acts are not as worthy of the label as those acts which bring about lasting social change), Rubin appears to be taking issue with a locally focused vision of power and identity that denies the possibility of opposing domination at the level of ‘constructs’ such as class. Rubin (1996: 242) makes another argument about celebratory accounts of everyday resistance that bears consideration: [T]hese authors generally do not differentiate between practices that reproduce power and those that alter power. [The former] might involve pressing that power to become more adept at domination or to dominate differently, or it might mean precluding alternative acts that would more successfully challenge power. … [**I]t is necessary to do more** than show that such discursive acts speak to, or engage with, power. It must also be demonstrated that such acts add up to or engender broader changes. In other words, some of the acts of everyday resistance may in the real world, through their absorption into mechanisms of power, **reinforce the localized domination that they supposedly oppose.** The implications of this argument can be further clarified when we study the way ‘resistance’ is dealt with in a risk society.

### PTX

#### Reid blocks but 77 Senators would vote for it now – it’s veto-proof

**Ziaberi, 1/24/14** ­ - interview with Kaveh Afrasiabi, the author of several books on Iran’s foreign policy and a former advisor of Center for Strategic Research (Kourosh, “Congress New Sanctions Bill Scuttles the Geneva Deal” Iran Review, <http://www.iranreview.org/content/Documents/Congress-New-Sanctions-Bill-Scuttles-the-Geneva-Deal.htm>)

Iran Review conducted an interview with Prof. Afrasiabi regarding the proposed sanctions bill by the U.S. Senate, the implementation of the Joint Plan of Action and the difficulties ahead and President Rouhani’s difficult path for reaching a comprehensive agreement with the West over Iran’s nuclear program. What follows is the text of the interview.

Q: The U.S. Senate majority leader Harry Reid (D., Nev) has announced that he will not permit a vote on new anti-Iran sanctions to come on the floor and so the efforts made by the 77 Senators who are said to be voting in favor of new sanctions would be killed. He has said that the Senate doesn’t have any plans to introduce a new round of sanctions; meanwhile, he has said that we will not allow Iran to produce nuclear weapons. Why do you think he has made it clear that he will not allow new sanctions to be imposed? Does it signify that even the Senators have realized the importance and significance of the Geneva deal and that it should be given a chance to take effect?

A: I think the new sanctions bill is deeply problematic for the US since if passed. It not only scuttles the Geneva deal, it will also heighten tensions between U.S. and some of its key global trade partners, so it’s no surprise that the US Congress is putting the brakes on. On the other hand, the White House has been persuasive that at this point we must let the Geneva deal run its course without intrusion by Congress. Still, the mere threat of the pending bill as a coercive leverage vis-à-vis Iran, serves its own role, given the bumpy road ahead on negotiating a final deal.

#### Presidential leadership fails

Mann and Ornstein 9/14 (Thomas E Mann, PhD in political science, senior fellow of governance studies at the Brookings Institute, former professor at Princeton, JHU, Georgetown, UVirginia, and American University, Norm Ornstein, founder of political capital theory, resident scholar at the American Enterprise Institute, PhD from the University of Michigan, member of the Advisory Board of the Future of American Democracy Foundation, serves on the Advisory Board of the Institute for Law and Politics at the University of Minnesota Law School, member of the Board of Directors of the nonpartisan election reform group Why Tuesday?, one of Foreign Policy’s Top 100 Global Thinkers of 2012, “Mann and Ornstein: “Brighter future for politics and policy requires a different Republican Party”” <http://www.salon.com/2013/09/14/mann_and_ornstein_brighter_future_for_politics_and_policy_requires_a_different_republican_party/>) gz

The year that has passed since this book first appeared has done nothing to make us question our analysis of the causes of America’s dysfunctional politics. First, today’s sharply polarized and strategically focused political parties fit poorly with a constitutional system that anticipates collaboration as well as competition within and across separated institutions. As we initially wrote, parliamentary-style parties in a separation-of-powers government are a formula for willful obstruction and policy irresolution. The continuation of divided party government and the promiscuous use of the filibuster after the 2012 election have largely frustrated the policy direction affirmed by majority electorates and supported in polls of voters taken since the election.¶ Second, the Republican Party continues to demonstrate that it is an insurgent force in our politics, one that aspires to rewrite the social contract and role of government developed and affirmed over a century by both major political parties. The old conservative GOP has been transformed into a party beholden to ideological zealots, one that sees little need to balance individualism with community, freedom with equality, markets with regulation, state with national power, or policy commitments with respect for facts, evidence, science, and a willingness to compromise.¶ These two factors—asymmetric polarization and the mismatch between our parties and governing institutions—continue to account for the major share of our governing problems. But the media continues, for the most part, to miss this story. A good example was the flurry of coverage in the early months of the 113th Congress based on or at best testing the proposition that policymaking failures could be attributed to the failures of Obama’s presidential leadership. Bob Woodward may have started the pack journalism with his conclusion that President Obama, unlike his predecessors Lyndon Johnson, Ronald Reagan, and Bill Clinton, “failed to work his will on Congress” (whatever that means). Soon the critical question to be parsed by the press was whether elements of Obama’s personality (aloofness) or strategic decisions on how and when to engage members of Congress, especially Republicans, accounted for the failure to reach bipartisan consensus. Republicans were delighted to provide commentary on behalf of the affirmative: “he doesn’t call us, meet with us, invite us to the White House, listen to our views, understand where we are coming from, etc.” The drumbeat from the press eventually led Obama to respond. He hosted a dinner with a dozen Republican senators at The Jefferson, lunch with Paul Ryan at the White House, and then a second dinner with another group of Republican senators. He also made trips to Capitol Hill to meet separately with both Republican conferences and Democratic caucuses. Initial reactions from participants were favorable, but it wasn’t long before reporters wondered if the president’s “charm offense” was failing.¶ The framing of this question reveals much about the state of American politics and media commentary on dysfunctional government. Presidential leadership is contextual—shaped by our unique constitutional arrangements and the electoral, partisan, and institutional constraints that flow from and interact with them. Under present conditions of deep ideological polarization of the parties, rough parity between Democrats and Republicans that fuels a strategic hyperpartisanship, and divided party government, opportunities for bipartisan coalitions on controversial policies are severely limited. Constraints on presidential leadership today are exacerbated by the relentlessly oppositional stance taken by the Republicans since Obama’s initial election, their continuing embrace of Grover Norquist’s “no new tax” pledge, and their willingness since gaining the House majority in 2011 to use a series of manufactured crises to impose their policy preferences on the Democrats with whom they share power. Persuasion matters if the people you are trying to persuade have any inclination to go along, or any attachment to the concept of compromise. But if a mythical magician could create a president from the combined DNA of FDR, LBJ, Tip O’Neill, Ronald Reagan, and Bill Clinton, the resulting super-president would be no more successful at charming or working his will in this context.¶ Ironically, Obama made great efforts to work cooperatively with Republicans during his first term. He learned painfully that his public embrace of a policy virtually ensures Republican opposition and that intensive negotiations with Republican leaders are likely to lead to a dead end. No bourbon-and-branch-water-laced meetings with Republicans in Congress or preemptive compromises with them will induce cooperative behavior. The scope for presidential leadership is limited, and based not on naïveté about the opposition he faces but on a hard-headed determination to make some cooperation in the electoral interests of enough Republicans to break the “taxes are off the table” logjam and move forward with an economic agenda that makes sense to most nonpartisan analysts and most Americans.

#### PC backfires on Iran

**Rogin, 1/11/14** - senior correspondent for national security and politics for Newsweek and The Daily Beast (Josh, “Inside the White House War on Dems” The Daily Beast, <http://www.thedailybeast.com/articles/2014/01/11/inside-the-white-house-war-on-dems.html>)

Regardless, both Democrats who support the administration and those who support Menendez told The Daily Beast that the White House’s tactic of going after their own party’s legislators is over-the-top and ineffective, alienating allies, creating bad will on Capitol Hill, and wasting political capital the administration may need on this issue down the road.

“The White House has clearly overreached in calling Democratic supporters of the Menendez-Kirk bill warmongers,” one senior Democratic Congressional aide said. “These are Democrats, some who have been in public service for decades and have long supported increasing sanctions against Iran. It’s just not credible and not helpful for them to use such extreme language when it’s clearly not true.”

Even those who support the administration’s overall position on Iran sanctions say the White House’s tactics are backfiring. Trita Parsi, the executive director of the National Iranian American Council, which opposes new sanctions legislation, said that the White House doesn’t appreciate that to oppose the Menendez-Kirk bill is a risky decision for Democrats because it puts them at odds with the pro-Israel lobby and many of their constituents.

“The approach of the White House towards Congress, particularly towards allies, is not one that tends to build political capital and as long as they continue to use that approach, there is going to continue to be unnecessary resistance,” said Parsi. “The sense in Congress is that the White House is asking them for political cover but not giving them political cover. There’s a widespread perception that there’s no reciprocity.”

#### Plan popular

Gelb, 05 [Leslie H. Gelb, President Emeritus of the Council on Foreign Relations and Anne-Marie Slaughter, Dean of the Woodrow Wilson School of International and Public Affairs, “Declare War”, The Atlantic, 11-1, http://www.theatlantic.com/magazine/archive/2005/11/declare-war/304301/?single\_page=true]

Passing this legislation might not be easy. But the time is right. Liberals and conservatives alike have become increasingly concerned about the carelessness and costs of wars over the past forty years. A law that established a clear and solemn process for taking the nation to war, while acknowledging the joint responsibility of Congress and the president, could command broad support—especially if it were framed as a return to our constitutional roots. Moderates and liberals would presumably go along. The bill would satisfy their concerns about how easily the United States has gone to war, with subsequent regrets about either the war itself or how it was fought. But in the wake of the Iraq War such a law might also appeal to many conservatives and neo-conservatives—particularly those who have come to feel that the United States is not getting the foreign-policy results it should, despite its awesome military power. Since the Vietnam War, hawks have felt that we tend to lose wars not on the battlefield but at home. The public, they correctly argue, becomes disenchanted with combat as casualties and costs mount, particularly if no steady progress toward victory can be seen. Demands to bring the troops home begin. The enemy becomes emboldened, and we begin to lose—first psychologically and then literally.

#### Util good – equality

Cummiskey 90 – Professor of Philosophy, Bates (David, Kantian Consequentialism, Ethics 100.3, p 601-2, p 606, jstor, AG)

We must not obscure the issue by characterizing this type of case as the sacrifice of individuals for some abstract "social entity." It is not a question of some persons having to bear the cost for some elusive "overall social good." Instead, the question is whether some persons must bear the inescapable cost for the sake of other persons. Nozick, for example, argues that "to use a person in this way does not sufficiently respect and take account of the fact that he is a separate person, that his is the only life he has."30 Why, however, is this not equally true of all those that we do not save through our failure to act? By emphasizing solely the one who must bear the cost if we act, one fails to sufficiently respect and take account of the many other separate persons, each with only one life, who will bear the cost of our inaction. In such a situation, what would a conscientious Kantian agent, an agent motivated by the unconditional value of rational beings, choose? We have a duty to promote the conditions necessary for the existence of rational beings, but both choosing to act and choosing not to act will cost the life of a rational being. Since the basis of Kant's principle is "rational nature exists as an end-in-itself' (GMM, p. 429), the reasonable solution to such a dilemma involves promoting, insofar as one can, the conditions necessary for rational beings. If I sacrifice some for the sake of other rational beings, I do not use them arbitrarily and I do not deny the unconditional value of rational beings. **Persons** may **have "dignity**, an unconditional and incomparable value" that transcends any market value (GMM, p. 436), **but**, as rational beings, persons **also** have **a fundamental equality which dictates that some must** sometimes **give way for the sake of others.** The formula of the end-in-itself thus does not support the view that we may never force another to bear some cost in order to benefit others. If one focuses on the equal value of all rational beings, then equal consideration dictates that one sacrifice some to save many. [continues] According to Kant, the objective end of moral action is the existence of rational beings. Respect for rational beings requires that, in deciding what to do, one give appropriate practical consideration to the unconditional value of rational beings and to the conditional value of happiness. Since agent-centered constraints require a non-value-based rationale, the most natural interpretation of the demand that one give equal respect to all rational beings lead to a consequentialist normative theory. We have seen that there is no sound Kantian reason for abandoning this natural consequentialist interpretation. In particular, a consequentialist interpretation does not require sacrifices which a Kantian ought to consider unreasonable, and it does not involve doing evil so that good may come of it. It simply requires an uncompromising commitment to the equal value and equal claims of all rational beings and a recognition that, in the moral consideration of conduct, one's own subjective concerns do not have overriding importance.

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#### Nothing comes first

Kratochwil, professor of international relations – European University Institute, 2008 (Friedrich, “The Puzzles of Politics,” pg. 200-213)

The lesson seems clear. Even at the danger of “fuzzy boundaries”, when we deal with “practice” ( just as with the “pragmatic turn”), we would be well advised to rely on the use of the term rather than on its reference (pointing to some property of the object under study), in order to draw the bounds of sense and understand the meaning of the concept. My argument for the fruitful character of a pragmatic approach in IR, therefore, does not depend on a comprehensive mapping of the varieties of research in this area, nor on an arbitrary appropriation or exegesis of any specific and self-absorbed theoretical orientation. For this reason, in what follows, I will not provide a rigidly specified definition, nor will I refer exclusively to some prepackaged theoretical approach. Instead, I will sketch out the reasons for which a pragmatic orientation in social analysis seems to hold particular promise. These reasons pertain both to the more general area of knowledge appropriate for praxis and to the more specific types of investigation in the field. The follow- ing ten points are – without a claim to completeness – intended to engender some critical reflection on both areas. Firstly, a pragmatic approach does not begin with objects or “things” (ontology), or with reason and method (epistemology), but with “acting” (prattein), thereby preventing some false starts. Since, **as historical beings placed in a** specific situations**, we do not have the luxury** of deferring decisions **until we have** found the “truth”, **we have to act and must do so always under time pressures and in the face of incomplete information.** Pre- cisely because the social world is characterised by strategic interactions, what a situation “is”, is hardly ever clear ex ante, because it is being “produced” by the actors and their interactions, and the multiple possibilities are rife with incentives for (dis)information. This puts a premium on quick diagnostic and cognitive shortcuts informing actors about the relevant features of the situ- ation, and on leaving an alternative open (“plan B”) in case of unexpected difficulties. Instead of relying on certainty and universal validity gained through abstraction and controlled experiments, we know that completeness and attentiveness to detail, rather than to generality, matter. To that extent, likening practical choices to simple “discoveries” of an already independently existing “reality” which discloses itself to an “observer” – or relying on optimal strategies – is somewhat heroic. These points have been made vividly by “realists” such as Clausewitz in his controversy with von Bülow, in which he criticised the latter’s obsession with a strategic “science” (Paret et al. 1986). While Clausewitz has become an icon for realists, only a few of them (usually dubbed “old” realists) have taken seriously his warnings against the misplaced belief in the reliability and use- fulness of a “scientific” study of strategy. Instead, most of them, especially “neorealists” of various stripes, have embraced the “theory”-building based on the epistemological project as the via regia to the creation of knowledge. A pragmatist orientation would most certainly not endorse such a position. Secondly, since acting in the social world often involves acting “for” someone, special responsibilities arise that aggravate both the incompleteness of knowledge as well as its generality problem. Since we owe special care to those entrusted to us, for example, as teachers, doctors or lawyers, we cannot just rely on what is generally true, but have to pay special attention to the particular case. Aside from avoiding the foreclosure of options, we cannot refuse to act on the basis of incomplete information or insufficient know- ledge, and the necessary diagnostic will involve typification and comparison, reasoning by analogy rather than generalization or deduction. Leaving out the particularities of a case, be it a legal or medical one, in a mistaken effort to become “scientific” would be a fatal flaw. Moreover, **there still remains the crucial element of “timing” –** of knowing when to act. Students of crises have always pointed out the importance of this factor but, in attempts at building a general “theory” of international politics analogously to the natural sci- ences, such elements are neglected on the basis of the “continuity of nature” and the “large number” assumptions. Besides, “timing” seems to be quite recalcitrant to analytical treatment.

#### legal restraints work

William E. Scheuerman 6, Professor of Political Science at Indiana University, Carl Schmitt and the Road to Abu Ghraib, Constellations, Volume 13, Issue 1

Yet this argument relies on Schmitt’s controversial model of politics, as outlined eloquently but unconvincingly in his famous Concept of the Political. To be sure, there are intense conflicts in which it is naïve to expect an easy resolution by legal or juridical means. But the argument suffers from a troubling circularity: Schmitt occasionally wants to define “political” conflicts as those irresolvable by legal or juridical devices in order then to argue against legal or juridical solutions to them. The claim also suffers from a certain vagueness and lack of conceptual precision. At times, it seems to be directed against trying to resolve conflicts in the courts or juridical system narrowly understood; at other times it is directed against any legal regulation of intense conflict. The former argument is surely stronger than the latter. After all, legal devices have undoubtedly played a positive role in taming or at least minimizing the potential dangers of harsh political antagonisms. In the Cold War, for example, international law contributed to the peaceful resolution of conflicts which otherwise might have exploded into horrific violence, even if attempts to bring such conflicts before an international court or tribunal probably would have failed.22¶ Second, Schmitt dwells on the legal inconsistencies that result from modifying the traditional state-centered system of international law by expanding protections to non-state fighters. His view is that irregular combatants logically enjoyed no protections in the state-centered Westphalian model. By broadening protections to include them, international law helps undermine the traditional state system and its accompanying legal framework. Why is this troubling? The most obvious answer is that Schmitt believes that the traditional state system is normatively superior to recent attempts to modify it by, for example, extending international human rights protections to individuals against states. 23 But what if we refuse to endorse his nostalgic preference for the traditional state system? Then a sympathetic reading of the argument would take the form of suggesting that the project of regulating irregular combatants by ordinary law must fail for another reason: it rests on a misguided quest to integrate incongruent models of interstate relations and international law. We cannot, in short, maintain core features of the (state-centered) Westphalian system while extending ambitious new protections to non-state actors.¶ This is a powerful argument, but it remains flawed. Every modern legal order rests on diverse and even conflicting normative elements and ideals, in part because human existence itself is always “in transition.” When one examines the so-called classical liberal legal systems of nineteenth-century England or the United States, for example, one quickly identifies liberal elements coexisting uneasily alongside paternalistic and authoritarian (e.g., the law of slavery in the United States), monarchist, as well as republican and communitarian moments. The same may be said of the legal moorings of the modern welfare state, which arguably rest on a hodgepodge of socialist, liberal, and Christian and even Catholic (for example, in some European maternity policies) programmatic sources. In short, it is by no means self-evident that trying to give coherent legal form to a transitional political and social moment is always doomed to fail. Moreover, there may be sound reasons for claiming that the contemporary transitional juncture in the rules of war is by no means as incongruent as Schmitt asserts. In some recent accounts, the general trend towards extending basic protections to non-state actors is plausibly interpreted in a more positive – and by no means incoherent – light.24¶ Third, Schmitt identifies a deep tension between the classical quest for codified and stable law and the empirical reality of a social world subject to permanent change: “The tendency to modify or even dissolve classical [legal] concepts…is general, and in view of the rapid change of the world it is entirely understandable” (12). Schmitt’s postwar writings include many provocative comments about what contemporary legal scholars describe as the dilemma of legal obsolescence. 25 In The Partisan, he suggests that the “great transformations and modifications” in the technological apparatus of modern warfare place strains on the aspiration for cogent legal norms capable of regulating human affairs (17; see also 48–50). Given the ever-changing character of warfare and the fast pace of change in military technology, it inevitably proves difficult to codify a set of cogent and stable rules of war. The Geneva Convention proviso that legal combatants must bear their weapons openly, for example, seems poorly attuned to a world where military might ultimately depends on nuclear silos buried deep beneath the surface of the earth, and not the success of traditional standing armies massed in battle on the open field. “Or what does the requirement mean of an insignia visible from afar in night battle, or in battle with the long-range weapons of modern technology of war?” (17).¶ As I have tried to show elsewhere, these are powerful considerations deserving of close scrutiny; Schmitt is probably right to argue that the enigma of legal obsolescence takes on special significance in the context of rapid-fire social change.26 Unfortunately, he seems uninterested in the slightest possibility that we might successfully adapt the process of lawmaking to our dynamic social universe. To be sure, he discusses the “motorization of lawmaking” in a fascinating 1950 publication, but only in order to underscore its pathological core.27 Yet one possible resolution of the dilemma he describes would be to figure how to reform the process whereby rules of war are adapted to novel changes in military affairs in order to minimize the danger of anachronistic or out-of-date law. Instead, Schmitt simply employs the dilemma of legal obsolescence as a battering ram against the rule of law and the quest to develop a legal apparatus suited to the special problem of irregular combatants.

#### Accurate and verifiable scholarship shows low deterrence is the most important correlate of war

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As so broadly conceived, there is strong evidence that deterrence - that is, the effect of external factors on the decision to go to war - is the missing link in the war/peace equation. In my War & Peace Seminar, I have undertaken to examine the level of deterrence before the principal wars of the twentieth century. n125 My examination has led me to believe that in every case the potential aggressor made a rational calculation that the war would be won, and won promptly. In fact, the longest period of time calculated for victory through conventional attack seems to be the roughly six weeks predicted by the German General Staff as the time necessary to prevail on the Western Front in World War I under the Schlieffen Plan. Hitler believed in his attack on Poland that Britain and France would not take the occasion to go to war with him. And he believed in his 1941 Operation Barbarossa against the Soviet Union that "[we] have only to kick in the door and the whole rotten structure will come crashing down." n126 In contrast, following Hermann Goering's failure to obtain air superiority in the Battle of Britain, Hitler called off the invasion of Britain and shifted strategy to the nighttime bombing of population centers, which became known as the Blitz, in a mistaken effort to compel Britain to sue for peace. Planners of the North Korean attack on South Korea and Hussein's attack on Kuwait calculated that the operations would be complete in a matter of days. Indeed, virtually all principal wars in the twentieth century, at least those involving conventional invasion, were preceded by what I refer to as a "double deterrence absence." That is, the potential aggressor believed that they had the military force in place to prevail promptly and that nations that might have the military or diplomatic might to prevent this were not inclined to intervene. n127 This  [\*381]  analysis has also shown that many of the perceptions we have about the origins of particular wars are flatly wrong. Anyone who seriously believes that World War I was begun by competing alliances drawing tighter should examine the real historical record of British unwillingness to enter a clear military alliance with the French or to so inform the Kaiser. Indeed, this pre-World War I absence of effective alliance and resultant war contrasts sharply with the later robust NATO alliance and an absence of World War III. n128

Considerable other evidence seems to support this historical analysis as to the importance of deterrence. Of particular note, in 1995 Yale Professor Donald Kagan, a preeminent U.S. historian who has long taught a seminar on war, published a superb book On the Origins of War and the Preservation of Peace. n129 In this book he conducts a detailed examination of the Peloponnesian War, World War I, Hannibal's War, and World War II, among other case studies. A careful reading of these studies suggests that each war could have been prevented by achievable deterrence and that each occurred in the absence of such deterrence. n130 Game theory seems to offer yet further  [\*382]  support for the proposition that appropriate deterrence can prevent war. For example, Robert Axelrod's famous 1980s experiment in an iterated prisoner's dilemma, which is a reasonably close proxy for many conflict settings in international relations, repeatedly showed the effectiveness of a simple tit for tat strategy. n131 Such a strategy is at core simply a basic method of deterrence, influencing behavior through incentives. Similarly, much of the game-theoretic work on crisis bargaining (and the danger of asymmetric information) in relation to war and the democratic peace assumes the importance of deterrence through communication of incentives. n132 The well-known correlation between war and territorial contiguity seems also to underscore the importance of deterrence and is likely principally a proxy for levels of perceived profit and military achievability of aggression in many such settings.

It should further be noted that the democratic peace is not the only significant correlation with respect to war and peace, although it seems to be the most robust. Professors Russett and Oneal, in recently exploring the other elements of the Kantian proposal for "Perpetual Peace," have also shown a strong and statistically significant correlation between economically important bilateral trade between two nations and a reduction in the risk of war between them. Contrary to the arguments of "dependency theorists," such economically important trade seems to reduce the risk of war regardless of the size relationship or asymmetry  [\*383]  in the trade balance between the two states. In addition, there is a statistically significant association between economic openness generally and reduction in the risk of war, although this association is not as strong as the effect of an economically important bilateral trade relationship. n133 Russett and Oneal also show a modest independent correlation between reduction in the risk of war and higher levels of common membership in international organizations. n134 And they show that a large imbalance of power between two states significantly lessens the risk of major war between them. n135 All of these empirical findings about war also seem to directly reflect incentives. That is, a higher level of trade would, if foregone in war, impose higher costs in the aggregate than without such trade, n136though we know that not all wars terminate trade. A large imbalance of power in a relationship rather obviously impacts deterrence and incentives. Similarly, one might incur higher costs with high levels of common membership in international organizations through foregoing some of the heightened benefits of such participation or otherwise being presented with different options through the actions or effects of such organizations.

These external deterrence elements may be yet another reason why democracies have a lower risk of war with one another. For their freer markets, trade, commerce, and international engagement may place them in a position where their generally higher level of interaction means that aggression will incur substantial opportunity costs. Thus, the "mechanism" of the democratic peace may be an aggregate of factors affecting incentives, both external as well as internal factors. Because of the underlying truth in the relationship between higher levels of trade and lower levels of war, it is not surprising that theorists throughout human history, including Baron de Montesquieu in 1748, Thomas Paine in 1792, John Stuart Mill in 1848, and, most recently, the founders of the European Community, have argued that increasing commerce and interactions among nations would end war. Though by themselves these arguments have been overoptimistic, it may well be that some level of  [\*384]  "globalization" may make the costs of war and the gains of peace so high as to powerfully predispose to peace. Indeed, a 1989 book by John Mueller, Retreat From Doomsday, n137 postulates the obsolescence of major war between developed nations (at least those nations within the "first and second worlds") as they become increasingly conscious of the rising costs of war and the rising gains of peace.

In assessing levels of democracy, there are indexes readily available, for example, the Polity III n138 and Freedom House indexes. n139 I am unaware of any comparable index with respect to levels of deterrence that might be used to test the importance of deterrence in war avoidance. n140 Absent such an accepted index, discussion about the importance of deterrence is subject to the skeptical observation that one simply defines effective deterrence by whether a war did or did not occur. In order to begin to deal with the obvious objections to this method and to encourage a more objective methodology for assessing deterrence, I encouraged a project to develop a rough but objective measure of deterrence with a scale from -10 to +10 based on a large variety of contextual features that would be given some relative weighting in a complex deterrence equation before applying the scaling to different war and non-war settings. n141 An innovative first effort uniformly showed high deterrence scores in settings where war did not, in fact, occur. Deterring a Soviet first strike in the Cuban Missile Crisis produced a score of +8.5 and preventing a Soviet attack against NATO produced a score of +6. War settings, however, produced scores ranging from -2.29 (Saddam Hussein's decision to invade Kuwait in the Gulf War), -2.18 (North Korea's decision to invade South Korea in the Korean War), -1.85 (Hitler's decision to invade Poland in World War II), -1.54 (North Vietnam's decision to invade South Vietnam following the Paris Accords), -0.65 (Slobodan Milosevic's decision to defy NATO in Kosovo), +0.5 (the Japanese decision to attack Pearl Harbor), +1.25 (the Austrian decision, encouraged by Germany, to attack Serbia, which  [\*385]  was the real beginning of World War I), to +1.75 (the German decision to invade Belgium and France in World War I). As a further effort at scaling and as a point of comparison, I undertook to simply provide an impressionistic rating based on my study of each pre-crisis setting. That produced high positive scores of +9 for both deterring a Soviet first strike during the Cuban Missile Crisis and NATO's deterrence of a Warsaw Pact attack and even lower scores than the more objective effort in settings where wars had occurred. Thus, I scored North Vietnam's decision to invade South Vietnam following the Paris Accords and the German decision to invade Poland at the beginning of World War II as -6. I scored the North Korean/Stalin decision to invade South Korea in the Korean War as -5, the Iraqi decision to invade Kuwait as -4, Milosevic's decision to defy NATO in Kosovo and the German decision to invade Belgium and France in World War I as -2, and the Austrian decision to attack Serbia and the Japanese decision to attack Pearl Harbor as -1. Certainly even knowledgeable experts would be likely to differ in their impressionistic scores on such pre-crisis settings, and a more objective methodology for scoring deterrence would be valuable. Nevertheless, both exercises did seem to suggest that deterrence matters and that high levels of deterrence can prevent war.

Yet another piece of the puzzle, which may clarify the extent of deterrence necessary in certain settings, may also assist in building a broader hypothesis about war. In fact, it has been incorporated into the efforts at scoring deterrence just discussed. That is, newer studies of human behavior are increasingly showing that certain perceptions of decision makers can influence the level of risk they may be willing to undertake. It now seems likely that a number of such insights about human behavior in decision making may be useful in considering and fashioning deterrence strategies. Perhaps of greatest relevance is the insight of "prospect theory," which posits that individuals evaluate outcomes with respect to deviations from a reference point and that they may be more risk-averse in settings posing potential gain than in settings posing potential loss. n142 The evidence of this "cognitive bias,"  [\*386]  whether in gambling, trading, or, as is increasingly being argued, foreign policy decisions generally, is significant. Because of the newness of efforts to apply a laboratory-based "prospect theory" to the complex foreign policy process generally, and particularly due to ambiguities and uncertainties in framing such complex events, our consideration of it in the war/peace process should certainly be cautious. It does, however, seem to elucidate some of the case studies.

In the war/peace setting, "prospect theory" suggests that deterrence may not need to be as strong to prevent aggressive action leading to perceived gain. For example, there is credible evidence that even an informal warning to Kaiser Wilhelm II from British Foreign Secretary Sir Edward Grey, if it had come early in the crisis before events had moved too far, might have averted World War I. And even a modicum of deterrence in Kuwait, as was provided by a small British contingent when Kuwait was earlier threatened by an irredentist Iraqi government in 1961, might have been sufficient to deter Saddam Hussein from his 1990 attack. Similarly, even a clear U.S. pledge to defend South Korea before the attack might have prevented the Korean War. Conversely, following the July 28 Austrian mobilization and declaration of war against Serbia in World War I, the issue for Austria may have begun to be perceived as loss avoidance, thus requiring much higher levels of deterrence to avoid the resulting war. Similarly, the Rambouillet Agreement may have been perceived by Milosevic as risking loss of Kosovo and his continued rule of Serbia, and, as a result, may have required higher levels of NATO deterrence to prevent Milosevic's actions in defiance. Certainly NATO's previous hesitant response against Milosevic in the Bosnia phase of the Yugoslav crisis did not create a high level of deterrence. n143 One can only surmise whether the [\*387]  killing in Kosovo could have been avoided had NATO taken a different tack, both structuring the issue less as loss avoidance for Milosevic and considerably enhancing deterrence. Suppose, for example, NATO had emphasized that it had no interest in intervening in Serbia's civil conflict with the Kosovo Liberation Army (KLA) but that it would emphatically take action to punish massive "ethnic cleansing" and other humanitarian outrages, as had been practiced in Bosnia. And on the deterrence side, suppose it made clear in advance that any NATO bombardment would be severe, that ground troops would be introduced if necessary, that in any assault it would pursue a "Leadership Strategy" focused on targets of importance to Milosevic and his principal henchmen (including their hold on power), and that unlike earlier in Bosnia, NATO immediately would seek to generate war crime indictments of all top Serbian leaders implicated in any atrocities. The point here is not to second-guess NATO's actions in Kosovo but to suggest that taking into account potential "cognitive bias," such as "prospect theory," may be useful in fashioning effective deterrence. "Prospect theory" may also be relevant in predicting that it is easier to deter (that is, lower levels are necessary) an aggression than to undo that aggression. Thus, much higher levels of deterrence were probably required to compel Saddam Hussein to leave Kuwait than to prevent him from initially invading that State. In fact, not even the presence of a powerful Desert Storm military force and a Security Council Resolution directing him to leave caused Hussein to voluntarily withdraw. As this  [\*388]  real world example illustrates, there is considerable experimental evidence in "prospect theory" of an almost instant renormalization of reference point after a gain. That is, relatively quickly after Saddam Hussein took Kuwait, a withdrawal was framed as a loss setting, which he would take high risks to avoid. Indeed, we tend to think of such settings as settings of compellance, requiring higher levels of incentive to achieve compulsion producing an action, as opposed to lower levels of deterrence needed for prevention.

One should also be careful not to overstate the effect of "prospect theory" or fail to assess a threat in its complete context. We should remember that a belated pledge by Great Britain to defend Poland before the Nazi attack did not deter Hitler, who believed under the circumstances that the British pledge would not be honored. It is also possible that the greater relative wealth of democracies, which have less to gain in all out war, is yet another internal factor contributing to the "democratic peace." n144 In turn, this also supports the extraordinary tenacity and general record of success of democracies fighting in defensive settings, as they may also have more to lose.

In assessing the adequacy of deterrence to prevent war, we might also want to consider whether extreme ideology, strongly at odds with reality, is a factor requiring higher levels of deterrence for effectiveness. One example may be the extreme ideology of Pol Pot, which led to his false belief that his Khmer Rouge forces could defeat the Vietnamese. n145 He apparently acted on that belief in a series of border incursions against Vietnam that ultimately ended in his losing a war. Similarly, Osama bin Laden's 9/11 attack against America, hopelessly at odds with the reality of his defeating the Western World and producing for him a strategic disaster, seems to have been prompted by his extreme ideology rooted in a distorted concept of Islam at war with the enlightenment. The continuing suicide bombings against Israel, encouraged by radical rejectionists and leading to fewer and fewer gains for the Palestinians, may be another example. If extreme ideology is a factor to be considered in assessing levels of deterrence, it does not mean that deterrence is doomed to fail in such settings but only that it must be at higher levels (and properly targeted toward the relevant  [\*389]  decision elites behind the specific attacks) to be effective, as is also true in perceived loss or compellance settings. n146

Even if major war in the modern world is predominantly a result of aggression by nondemocratic regimes, it does not mean that all nondemocracies pose a risk of war all, or even some, of the time. Salazar's Portugal did not commit aggression. Nor, today, do Singapore or Bahrain or countless other nondemocracies pose a threat. That is, today nondemocracy comes close to a necessary condition in generating the high-risk behavior leading to major interstate war. But it is, by itself, not a sufficient condition for war. The many reasons for this, of course, include a plethora of internal factors, such as differences in leadership perspectives and values, size of military, and relative degree of the rule of law, as well as levels of external deterrence. n147 But where an aggressive nondemocratic regime is present and poses a credible military threat, then it is the totality of external factors, that is, deterrence, that become crucial.