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### Harms

#### Contention 1 is Harms

#### A—Preemption

#### Obama’s re-asserting preemption doctrine—assuaging international concerns key

Feaver, 13 [2/13/13, Professor and CMR advocate, Obama's embrace of the Bush doctrine and the meaning of 'imminence, <http://shadow.foreignpolicy.com/posts/2013/02/05/obamas_embrace_of_the_bush_doctrine_and_the_meaning_of_imminence>]

This should sound familiar to anyone who has debated American foreign policy for the past decade, for precisely that sort of logic undergirded the Bush Administration's preemption doctrine. Here is the relevant section from Bush's 2006 National Security Strategy (itself quoting from the earlier and controversial articulation in the 2002 National Security Strategy): If necessary, however, under long-standing principles of self defense, we do not rule out the use of force before attacks occur, even if uncertainty remains as to the time and place of the enemy's attack. When the consequences of an attack with WMD are potentially so devastating, we cannot afford to stand idly by as grave dangers materialize. This is the principle and logic of preemption. The place of preemption in our national security strategy remains the same. We will always proceed deliberately, weighing the consequences of our actions. Of course, the Bush Administration was excoriated for framing the issue that way, and there arose a lively cottage industry devoted to attacking this aspect of the Bush doctrine. While Obama has tended to get away with things his predecessors could not, I suspect that even he will face some tough questioning now that the overlap with the controversial Bush doctrine is so unmistakable. The issue is a difficult one, for the applicability of the self-defense principle depends crucially on context. Everyone agrees that if someone is attacking you with a knife, you do not have to wait for the blade to puncture your skin before you can strike at the assailant. And everyone agrees that it is not self-defense to attack someone just because you think there is a dim and distant possibility that one day that person might decide that he wants to attack you even though there is no evidence of such intent today. In the real world of national security policymaking, however, there are abundant hard cases in between those easy calls and those hard cases are what policymakers -- as distinct from pundits -- can't avoid. The memo reveals the Obama Administration wrestling with these problems and coming to conclusions strikingly similar to those of the Bush Administration. I wonder if Team Obama will be more successful than the Bush Administration was in arguing the merits and logic of the preemption doctrine.

#### That’s modeled globally – causes conflict

Sloane, 8 [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.

#### Sets a precedent that escalates

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.

#### And causes extinction

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.

#### Binding Congressional role signals measured restraint and checks escalation

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.

#### Those constraints decrease war and strengthen global norms

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.

#### B—Mission Failure

#### War decisions are insulated from Congressional will, resulting in lack of unity and foreign policy coherence

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. 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 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 use of force 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.

#### Conflicts are likely – the plan makes leadership durable

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? 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. 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.

#### Leadership failure causes extinction

Brzezinski, 12 [1/24/12, Zbigniew, Former National Security Advisor to President of the Great United States Jimmy Carter, Professor of American Foreign Policyat Johns Hopkins University's [School of Advanced International Studies](http://en.wikipedia.org/wiki/Johns_Hopkins_SAIS), scholar at the Center for Strategic and International Studies, Strategic Vision: America and the Crisis of Global Power (Kindle Locations 1476-1485). Perseus Books Group. Kindle Edition]

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.

#### C—Groupthink

#### Executive war power causes groupthink and interventions – the plan solves

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>]

While Nzelibe and Yoo's model is clearly plausible, it misses certain critical institutional constructs. Their analysis attempts to determine which branch is the more effective agent in this principal-agent problem; however, they fail to realize that the institutional design is not an either-or choice. n96 The whole notion of separation of powers or checks and balances is rooted in the idea of having one agent checking the other agent. n97 The system's design "promotes deliberation among multiple agents, which encourages them to reveal private information that might otherwise remain hidden." n98 While there is little empirical evidence on the value of deliberation, Professor James Fishkin has found evidence that "significant shifts in opinion" take place after participating in public policy deliberations. n99 Studies [\*152] such as this one show that there is value to deliberating. Thus, there must be something unique and different about war powers that justifies abandoning the traditional and effective means of coming to a decision. The first argument offered by Nzelibe and Yoo reasons that presidents tend to be held more democratically accountable for foreign policy than Congress and should therefore be given significant power in this area, and asserts that ex post congressional action is sufficient to mitigate the effects of poor decisions. n100 First of all, while the President may be seen as the key decision maker in the war powers arena, that does not mean that congressional actors are immune from being held democratically accountable for the decision to engage in significant armed conflict. n101 Beyond overestimating the negative accountability effects of going to war, Nzelibe and Yoo fail to account for the numerous benefits from going to war. Professors Cecil Crabb and Pat Holt observed that "once a president has made a foreign affairs decision that becomes known to the public, he automatically receives the support of at least 50 percent of the American people, irrespective of the nature of the decision." n102 This is commonly known as the "rally around the flag" effect. n103 This surge of patriotic sentiment is temporary, n104 but very real. When this sentiment evaporates, the President can react in a multitude of ways. While accountability can breed prudence, it can also lead to "gambling for resurrection." n105 This is an [\*153] agency problem in which leaders prolong unsuccessful wars in the hope that the tides of war will eventually turn, saving the leader's legacy. n106 Ultimately, unilateral Executive action does garner increased accountability, but can lead to short-term political gain and an unwillingness to concede defeat. Furthermore, ex post congressional constraints on presidential actions are insufficient. The fact is, "ex post congressional involvement can only terminate some presidential mistakes and can never recover the sunk costs of bad presidential decisions." n107 Not only are there sunk costs, but "even some opponents of the initial decision to go to war recognize that overly hasty withdrawal could be a poor policy at later stages." n108 Ex post decisions are made in response to a new status quo, one in which use of the power of the purse can be viewed as endangering troops n109 or giving America a weaker image abroad. n110 The second way in which Nzelibe and Yoo justify expansive executive powers is by arguing that the President has superior information to Congress. n111 Yet, allowing for a second opinion on the same information will reduce the likelihood of poor decision making, while not positively or negatively impacting the quality of the information in and of itself. n112 Therefore, Type I errors n113 are less likely when Congress is consulted. Nzelibe and Yoo cite the Iraq War as proof that intelligence failures can occur with or without congressional involvement. n114 However, it could instead be argued that the failure was caused by "executive manipulation of information to exaggerate a threat." n115 The problem was not the informational asymmetry, but rather the use of that information. One logical solution to this problem would be to increase the information gathering and interpreting capabilities of Congress. Nzelibe and Yoo mistakenly take the Executive's informational advantage as a given when it is entirely alterable. [\*154] Therefore, the information advantage can be lessened, which would greatly diminish the odds of Type I errors. Any shift in an independent variable should lead to a corresponding shift in the causal variable. In this case, to the extent that the frequency of Type I errors is correlated with informational disparities, correcting the disparities should negate the odds of Type I errors occurring. The third functional argument presented by Nzelibe and Yoo concerns the relative value of signaling to different regime types. n116 Given that they advocate for a President-First approach, but concede that congressional authorization has value in disputes between democratic states, n117 there is no real disagreement about the value of congressional authorization in these disputes. That leaves conflicts between democratic nations and rogue states or terrorist organizations as the lone area where the two sides disagree on this issue. Even before one can question this distinction, the definition of a rogue nation must be determined. Nzelibe and Yoo leave this task to the President. Nzelibe and Yoo believe that the leaders of rogue states are insulated from domestic political pressure, n118 but this is simply not true, as "all leaders are answerable to some coalition of domestic political forces on which their power and political survival rests. Failure in conflict and war helps shorten the tenure of such leaders." n119 All leaders pursue a rational strategy to maintain power. n120 Wars occur when political leaders attempt to rally the masses behind a national cause via aggressive rhetoric and policies. Thus, all leaders, whether of rogue nations or of first world countries, are subject to popular pressure and suffer consequences at home for losing wars. Nonetheless, elected presidents are more concerned with national support and are therefore more likely to engage in such rhetoric and promote war, since it has been shown to increase the approval rating of presidents. n121 [\*155] On the other hand, the Legislature has more localized interests and would be resistant to using such rhetoric. Localized interests are not rallied by promoting a national identity or a national battle but by catering to a smaller community's needs and interests. Because of the political advantages gained by a president going to war and the Legislature's inclination to shirk the issue, n122 unilateral presidential action is likely to lead to an overly aggressive position on military engagements. Therefore, congressional involvement should decrease the likelihood of Type I errors with respect to all regimes. The totality of the analysis suggests that deliberation decreases the likelihood of Type I errors. This type of deliberation cannot occur within the Executive branch alone. While the president consults with staffers and cabinet secretaries, they are likely to "succumb to groupthink, as it has been called - the overt and subtle pressures driving group cohesiveness that can distort the decision-making process." n123 When a group decides upon a view, dissent becomes difficult and there is pressure to reject alternatives. n124 Furthermore, even before coalescing around a particular opinion, executive staffers are likely to possess policy preferences. Type II errors (not entering "good" wars) would only be more likely under the Congress-First approach if Congress were more likely than the Executive to be opposed to good wars. However, since research shows that Congress is likely to approve most wars independent of circumstances n125 that is highly unlikely to be the case. But there is no reason to believe that Congress has any aversion to good wars. n126 Ultimately, a Congress-First system would decrease Type I errors and have little impact on Type II errors when dealing with traditional warfare, and it is the institutional design that would better accommodate functionalists' concerns and desires.

#### The impact is global instability and nuclear war

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.

#### Congressional requirement 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.

### Plan

#### The United States Federal Government should restrict executive authority for operations introducing United States Armed Forces into significant armed conflict to those authorized by a Joint Congressional Consultation Committee, established by a statute that includes a point of order mechanism, and defines ‘significant armed conflict’ as any conflict expressly authorized by Congress, or any mission conducted by United States Armed Forces pursuant to Rules of Engagement.

### Solvency

#### Contention 2 is Solvency

#### Congress 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. 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.

#### The aff spurs inter-branch debate and builds coherent foreign policy despite circumvention risks

**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. 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 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.

#### Point of order solves loopholes and vague AUMF applications

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.

#### Our WPCA modifications avoid circumvention and solidify congressional 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. 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.

#### Maintains flex, 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 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.

#### It’s credible and improves 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.

## 2ac

### AT: No Groupthink 2ac

#### Yes groupthink – applies to Obama

Ignatius 13 David Ignatius (Armenian American journalism, associate editor and columnist for the New York Post). “Out: Team of rivals. In: Obama’s guys.” February 22, 2013. http://www.washingtonpost.com/opinions/david-ignatius-in-obamas-new-cabinet-rivals-out-loyalists-in/2013/02/22/13f2f27e-7c73-11e2-82e8-61a46c2cde3d\_story.html //Chappell

During President Obama’s first term, there was hidden friction between powerful Cabinet secretaries and a White House that wanted control over the foreign-policy process. Now Obama has assembled a new team that, for better or worse, seems more likely to follow the White House lead. The first term featured the famous “team of rivals,” people with heavyweight egos and ambitions who could buck the White House and get away with it. Hillary Clinton and Bob Gates were strong secretaries of state and defense, respectively, because of this independent power. Leon Panetta had similar stature as CIA director, as did David Petraeus, who became CIA director when Panetta moved to the Pentagon. The new team has prominent players, too, but they’re likely to defer more to the White House. Secretary of State John Kerry has the heft of a former presidential candidate, but he has been a loyal and discreet emissary for Obama and is likely to remain so. Chuck Hagel, who will probably be confirmed next week as defense secretary, is a feisty combat veteran with a sometimes sharp temper, but he has been damaged by the confirmation process and will need White House cover. John Brennan, the nominee for CIA director, made a reputation throughout his career as a loyal deputy. This was especially true these past four years, when he carried the dark burden of counterterrorism policy for Obama. It’s a Washington truism that every White House likes Cabinet consensus and hates dissent. But that’s especially so with Obama’s team, which has centralized national security policy to an unusual extent. This starts with national security adviser Tom Donilon, who runs what his fans and critics agree is a “tight process” at the National Security Council (NSC). Donilon was said to have been peeved, for example, when a chairman of the Joint Chiefs of Staff insisted on delivering a dissenting view to the president. This centralizing ethos will be bolstered by a White House team headed by Denis McDonough, the new chief of staff, who is close to Obama in age and temperament. Tony Blinken, who was Vice President Biden’s top aide, has replaced McDonough as NSC deputy director, and State Department wunderkind Jacob Sullivan, who was Clinton’s most influential adviser, is expected to replace Blinken. That’s lot of intellectual firepower for enforcing a top-down consensus. The real driver, obviously, will be Obama, and he has assembled a team with some common understandings. They share his commitment to ending the war in Afghanistan and avoiding new foreign military interventions, as well as his corresponding belief in diplomatic engagement. None has much experience managing large bureaucracies. They have independent views, to be sure, but they owe an abiding loyalty to Obama. In Obama’s nomination of people skeptical about military power, you can sense a sharp turn away from his December 2009 decision for a troop surge in Afghanistan. The White House felt jammed by the military’s pressure for more troops, backed by Gates and Clinton. Watching Obama’s lukewarm support for the war after 2009, one suspected he felt pushed into what he eventually concluded was a mistake. Clearly, he doesn’t intend to repeat that process. Obama’s choice for CIA director is also telling. The White House warily managed Petraeus, letting him run the CIA but keeping him away from the media. In choosing Brennan, the president opted for a member of his inner circle with whom he did some of the hardest work of his presidency. Brennan was not a popular choice at the CIA, where some view him as having been too supportive of the Saudi government when he was station chief in Riyadh in the 1990s; these critics argue that Brennan didn’t push the Saudis hard enough for intelligence about the rising threat of Osama bin Laden. But agency officials know, too, that the CIA prospers when its director is close to the president, which will certainly be the case with Brennan and Obama. Obama has some big problems coming at him in foreign policy, starting with Syria and Iran. Both will require a delicate mix of pressure and diplomacy. To get the balance right, Obama will need a creative policy debate where advisers “think outside the box,” to use the management cliche. Presidents always say that they want that kind of open debate, and Obama handles it better than most. But by assembling a team where all the top players are going in the same direction, he is perilously close to groupthink.

### AT: Drones AC

#### Drones are carefully calibrated to avert triggering preemption

Woods, 13 [“White House briefings lay out new drone rulebook – but questions”, Chris, May 24th remain, http://www.thebureauinvestigates.com/2013/05/24/white-house-briefings-lay-out-new-drone-rulebook-but-questions-remain/]

In the wake of President Obama’s Thursday speech on counter-terrorism policy, White House national security officials have released two key documents. The first, US Policy Standards and Procedures for the Use of Force in Counterterrorism, lays out the standards now being used to decide whether to deploy ‘lethal force’ outside the battlefield. The White House has also released the transcript of a background briefing for journalists, in which anonymous senior administration officials offer their interpretation of the new guidance. Between them, the two documents offer significant insights into how the US targeted killing programme is governed. Officials have also provided the most comprehensive understanding yet of how the US government defines a civilian – or ‘non-combatant’ – in places such as Pakistan and Yemen. But claims that the US has ended controversial ‘signature strikes’ – and will transfer all covert drones from the CIA to the Pentagon – appear to have been overstated. As one official puts it, ‘you’ll see also a lot of continuity in the way in which we approach these things that are basically being codified in the guidance that’s been issued.’ Rule Book Building on President Obama’s counter terrorism speech at National Defense University on Thursday, officials have laid out ‘certain key elements’ of the standards and procedures governing the US targeted killing programme. Noting that the US has a preference where possible ‘to capture a terrorism suspect’, guidance notes then lay out the circumstances in which a lethal covert drone strike or other form of targeted killing can take place. All proposed killings outside the conventional battlefield must have a ‘legal basis’; must not be an act of punishment; and must only be used if the target represents ‘a continuing, imminent threat to US persons’, according to the document. You’ll see also a lot of continuity in the way in which we approach these things that are basically being codified in the guidance that’s been issued.’ Senior US administration official But it goes on to make clear: ‘It is simply not the case that all terrorists pose a continuing, imminent threat to US persons; if a terrorist does not pose such a threat, the United States will not use lethal force.’ In recent months, some senior administration figures including CIA Director John Brennan have pushed for a far looser definition of imminence. That effort appears to have failed. The White House then presents five rules which it says must now be followed before a targeted killing can take place: 1) Near certainty that the terrorist target is present; 2) Near certainty that non-combatants will not be injured or killed; 3) An assessment that capture is not feasible at the time of the operation; 4) An assessment that the relevant governmental authorities in the country where action is contemplated cannot or will not effectively address the threat to US persons 5) An assessment that no other reasonable alternatives exist to effectively address the threat to US persons.

### AT: Circumvention – 2ac

#### constraints effective

**Huq, 12** - Assistant Professor of Law, University of Chicago Law School (Aziz, “BINDING THE EXECUTIVE (BY LAW OR BY POLITICS)”, August, <http://www.law.uchicago.edu/files/file/400-ah-binding.pdf>) **PV = Posner and Vermeule**

To see the utility of reorienting attention to the interaction of legal and political mechanisms, notice how the respective frailties and strengths of legal and political mechanisms of executive constraint play out. Objections that legal rules are mere parchment barriers lose much of their force when a political coalition stands behind that law or constitutional principle. The Madisonian architecture of separated powers in which each branch defends its own prerogatives may be fragile, but congressional coalitions can and do nonetheless push to enforce specific legal constraints for electoral or normative reasons. That political coalitions should marshal their capital behind specific laws is not surprising: statutes and other rules often embody, in a temporally durable form, the political commitments of a given political coalition. Statutes, moreover, can be used as focal points for organizing by that coalition to **enable resistance** against the disruptive initiatives of new Presidents and emergent factions. The interaction of law with political commitments can be observed in granular form within the executive. American political culture has developed in a path-dependent fashion that invests legal rules with normative significance. With notable outliers on both sides of the aisle, most officials express sincere normative preferences for legality and constitutionalism.207 Legality has its own standing constituency. That lobby is cultivated by law schools and by law professors who profess to teach what the Constitution and federal statutes command. This has consequences for the breadth of presidential discretion because lawyers trained in this tradition currently staff the length and breadth of the executive branch. These lawyers’ preferences for legality impose frictions on executive initiatives that run afoul of legal limits. At the limit, these lawyers are likely aware of the leverage they have by dint of the fact that their noisy exit would inflict damage on the government’s policy projects. As one scholar of executive branch legal interpretation has recently observed, **good-faith lawyering** by attorneys within the Justice Department and other components of the executive will constrain presidential options so long as “the press, the lawyerly public, and Congress [] care about preserving the traditional structures of executive-branch legal interpretation.” 208 Outside government, legal rules and legally constituted institutions also furnish something of a solution to some of the transaction cost and information cost problems for groups within the general public wishing to challenge government policy decisions. 209 Laws and legal institutions reduce the coordination and informational costs for the public associated with identifying undesirable acts by the government in three ways. First, legislators and judges, as holders of institutional power and as generally recognized experts in matters of legality, are vested with publicly recognized authority to draw attention and to seek remediation.210 Compared to ordinary citizens, they also have greater access to media platforms. They can thus better disseminate information, priming the electorate to attend to issues and thereby lowering the costs of collective action. 211 Second, legislators and judges have credible tools to threaten the executive ranging from politically damaging criticism to enactment of new rules further binding the President.212 Finally, specific legal rules can mitigate informational and coordination problems beyond their function as focal points. The First Amendment, most obviously, ensures that information in the public sphere may be transmitted freely; prior restraints against national media are de facto unknown today. In the national security domain, remedies such as habeas corpus have served as informational platforms by revealing details of executive policies that contradict official narratives.213 Ex ante legal prohibitions also make public coordination easier because violation of legal rules is evidence that an executive act is undesirable, harmful, or unjustified. Whatever justifications the executive offers, the public knows that a previous political coalition already weighed the costs and benefits of a policy and found a categorical bar appropriate.

#### Self-interest and normative pressure

Pildes, 12 [Richard H. Pildes, Sudler Family Professor of Constitutional Law at the NYU School of Law and Co-Director of the NYU Center on Law and Security, “Book Review: Law and the President”, Harvard Law Review, April, 125 Harv. L. Rev. 1381, Lexis III.]

The Incomplete Consequentialist Theory for the Role of Law For these reasons, I want to move beyond empirical issues and engage Posner and Vermeule on their own terms, and at a deeper, more theoretical, and general level. Posner and Vermeule see presidents as Holmesians, not Hartians. n69 Yet even if we enter their purely consequentialist world, in which presidents follow the law not out of any normative obligation or the more specific duty to faithfully execute the laws but only when the cost-benefit metric of compliance is more favorable than that of noncompliance, powerful reasons suggest that presidents will comply with law far more often than Posner and Vermeule imply. And analysis of those reasons might also point us to understanding better the contexts in which presidents are less likely to comply (either by invoking disingenuous or wholly unpersuasive legal interpretations or by defying the law outright). The Posner and Vermeule approach is characteristic of a general approach to assessing public institutions and the behavior of judges, legislators, presidents, and other public officials that has emerged recently within legal scholarship. Under the influence of rational-choice theory and empirical social science from other disciplines, such as political science and economics, some public law scholarship has shifted to trying to predict and understand the behavior of public officials wholly in terms of the material incentives to which they are posited to respond. These incentives include the power of effective sanctions other actors can impose on public officials who deviate from those actors' preferred positions. In this general rational-choice approach, considerations of morality or duty internal to the legal system do not motivate public actors. Indeed, in the case of Posner and Vermeule's book, that is more the working assumption of the approach than a fact that the theories actually prove. Public officials do not follow the law out of any felt normative sense of official or moral obligation. In what they view as hard-headed realism, scholars like Posner and Vermeule believe a more external perspective is required to understand presidential behavior. All that matters, from this vantage point, are the consequences that will or will not flow from compliance or defiance and manipulation of the law. If other actors, including Congress, the [\*1405] courts, or "the public" (whatever that might mean, precisely) will accept an action, the President will be able to do it; if not, his credibility and power will be undermined. It is that externally oriented cost-benefit calculation - not the law and not any internal sense of obligation to obey the law - that determines how presidents act in fact. Thus, "politics," not "law," determines how much discretion presidents actually have. This approach to presidential power finds its analog in the way a number of constitutional law scholars have come to portray the behavior of the Supreme Court. These scholars, such as Professors Michael Klarman, n70 Barry Friedman, n71 Jack Balkin, n72 and others, have asserted various versions of what I call the "majoritarian thesis" n73: the claim that Court decisions are constrained to reflect the policy preferences of national political majorities (or national political elite majorities), rather than the outcomes that good-faith internal elaboration of legal doctrine would compel based on normative considerations about appropriate methods of legal reasoning and interpretation. In some versions of the majoritarian thesis, these potential external sanctions impose outer boundaries on the degrees of freedom the Court has; within those boundaries, the Court remains free to act on its own considerations, including perhaps purely legal ones as viewed from an internal perspective. In other versions, the Court is cast as almost mirroring the preferences of national political majorities. Here, too, the behavior of the Court is seen as based less on internal, legal considerations and more on the anticipated external reactions to decisions. At an even broader theoretical level, Professor Daryl Levinson has employed the same kind of purely consequentialist framework to analyze what he calls the "puzzle" of the stability and effectiveness in general of constitutional law. n74 Constitutional law decisions often frustrate [\*1406] the preferences of political majorities. As Levinson puts it, the question of why those majorities do or should ever abide by such decisions is much like the question of why presidents do or should abide by law. For Levinson, as for Posner and Vermeule, legal compliance, to the extent that it occurs, cannot be explained by more traditional accounts of the normative force of law or by the sense that courts are politically legitimate institutions whose authority ought to be accepted for that reason. Instead, the explanation must lie in considerations external to the legal system, such as the material incentives other actors have to obey, or ignore, Court decisions. Levinson then catalogues an array of material incentives political majorities confront in deciding whether to follow Court decisions whose outcomes they dislike; the resulting cost-benefit calculations end up making compliance with Court decisions usually the "rational" course of action even for disappointed political majorities (at least in well-functioning constitutional systems). n75 Thus, the rational-choice and normative views end up converging in practice. And presumably, most actors do not actually run through these consequentialist calculations in deciding whether to obey particular Court decisions. Instead, these calculations lie deep beneath the surface of much larger systems of education, socialization, public discourse, and the like; most individuals, including public officials, comply with Court decisions unreflectively, because it is the "right" thing to do. But the rational-choice framework leaves open the possibility that, at any given moment, the actors the Court's decision limits - the President, Congress, state legislatures, or others - could mobilize the underlying cost-benefit calculations that otherwise lie latent and conclude that, this time around, refusal to abide by the law is the more "rational" course. But as Levinson's work helps to show, even on its own terms, Posner and Vermeule's approach offers an incomplete account of the role of law. Levinson's work, for example, is devoted to showing why constitutional law will be followed, even by disappointed political majorities, for purely instrumental reasons, even if those majorities do not experience any internal sense of duty to obey. He identifies at least six rational-choice mechanisms that will lead rational actors to adhere to constitutional law decisions of the Supreme Court: coordination, reputation, repeat-play, reciprocity, asset-specific investment, and positive political feedback mechanisms. n76 No obvious reason exists to explain why all or some of these mechanisms would fail to lead presidents similarly to calculate that compliance with the law is usually important to [\*1407] a range of important presidential objectives. At the very least, for example, the executive branch is an enormous organization, and for internal organizational efficacy, as well as effective cooperation with other parts of the government, law serves an essential coordination function that presidents and their advisors typically have an interest in respecting. There is a reason executive branch departments are staffed with hundreds of lawyers: while Posner and Vermeule might cynically speculate that the reason is to figure out how to circumvent the law artfully, the truth, surely, is that law enables these institutions to function effectively, both internally and in conjunction with other institutions, and that lawyers are there to facilitate that role. In contrast to Posner and Vermeule, who argue that law does not constrain, and who then search for substitute constraints, scholars like Levinson establish that rational-choice theory helps explain why law does constrain. Indeed, as Posner and Vermeule surely know, there is a significant literature within the rational-choice framework that explains why powerful political actors would agree to accept and sustain legal constraints on their power, including the institution of judicial review. n77 That Posner and Vermeule miss the role of legal compliance as a powerful signal, perhaps the most powerful signal, in maintaining a President's critical credibility as a well-motivated user of discretionary power is all the more surprising in light of the central role executive self-binding constraints play in their theory. After asserting that "one of the greatest constraints on [presidential] aggrandizement" is "the president's own interest in maintaining his credibility" (p. 133), they define their project as seeking to discover the "social-scientific microfoundations" (p. 123) of presidential credibility: the ways in which presidents establish and maintain credibility. One of the most crucial and effective mechanisms, in their view, is executive self-binding, "whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors" (p. 137). As they also put it, "a well-motivated president can distinguish himself from an ill-motivated president by binding himself to a policy position that an ill-motivated president would reject" (p. 135). By complying with these constraints, presidents signal their good faith and accrue more trust to take further action. Most importantly from within Posner and Vermeule's theory, these constraints, many self-generated through executive self-binding, substitute for the constraints of law. Law does not, or cannot, or should not constrain presidents, in their view, but rational-actor presidents recognize that [\*1408] complying with constraints is in their own self-interest; presidents therefore substitute or accept other constraints. Thus, Posner and Vermeule recognize the importance of "enabling constraints" n78 in effective mobilization and maintenance of political power; that is, they recognize that what appear to be short-term constraints on the immediate preferences of actors like presidents might actually enable long-term marshaling of effective presidential power. Yet they somehow miss that law, too, can work as an enabling constraint; when it comes to law, Posner and Vermeule seem to see nothing but constraint. Indeed, this failing runs even deeper. For if presidents must signal submission to various constraints to maintain and enhance their credibility - as Posner and Vermeule insist they must - Posner and Vermeule miss the fact that the single most powerful signal of that willingness to be constrained, particularly in American political culture, is probably the President's willingness to comply with law. In theoretical terms, then, Posner and Vermeule emerge as inconsistent or incomplete consequentialists. Even if law does not bind presidents purely for normative reasons, presidents will have powerful incentives to comply with law - even more powerful than the incentives Posner and Vermeule rightly recognize presidents will have to comply with other constraints on their otherwise naked power. To the extent that Posner and Vermeule mean to acknowledge this point but argue that it means presidents are not "really" complying with the law and are only bowing to these other incentives, they are drawing a semantic distinction that seems of limited pragmatic significance, as the next Part shows.

### AT: Prohibition

#### 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.

#### 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.

#### Authority limiting presidential discretion

Jules Lobel 8, Professor of Law at the University of Pittsburgh  Law School, President of the Center for Constitutional Rights, represented members of Congress challenging assertions of Executive power to unilaterally initiate warfare, “Conflicts Between the Commander in Chief and Congress: Concurrent Power  over the Conduct of War,” Ohio State Law Journal, Vol 69, p 391, 2008, http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/69.3.lobel\_.pdf

So too, the congressional power to declare or authorize war has been long held to permit Congress to authorize and wage a limited war—“limited in place, in objects, and in time.” 63 When Congress places such restrictions on the President’s authority to wage war, it limits the President’s discretion to conduct battlefield operations. For example, Congress authorized President George H. W. Bush to attack Iraq in response to Iraq’s 1990 invasion of Kuwait, but it confined the President’s authority to the use of U.S. armed forces pursuant to U.N. Security Council resolutions directed to force Iraqi troops to leave Kuwait. That restriction would not have permitted the President to march into Baghdad after the Iraqi army had been decisively ejected from Kuwait, a limitation recognized by President Bush himself.64

#### 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.

### 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 o**f national **security**, and it will be ever more difficult for Congress to stand up to an assertive and aggressive president.

#### 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.

### AT: Commission CP

#### Doesn’t solve perception --- and Congress won’t pass.

Marshall 10 (William, President – Progressive Policy Institute, “Obama’s Deficit Commission”, Progressive Fix, 2-18, http://www.progressivefix.com/obamas-deficit-commission)

It’s easy to be cynical about such “blue ribbon” commissions. They are supposed to signal that political leaders are serious about solving intractable problems, but often convey the opposite — a craven desire to punt tough decisions to retired dignitaries who don’t have to face the voters. And setting up a commission by executive order is distinctly inferior to enacting one into law, since the president can’t compel Congress to give his panel’s recommendations an up-or-down vote. Speaker Nancy Pelosi has offered distinctly unenthusiastic assurances that the House will consider the commission’s suggestions.

#### Links to politics.

Anderson 10 (Stuart, Executive Director – National Foundation for American Policy and Former Executive Associate Commissioner for Policy and Planning and Counselor to the Commissioner – INS, “Regaining America’s Competitive Advantage: Making Our Immigration System Work”, 8-12, http://www.uschamber.com/sites/default/fi les/reports/100811\_skilledvisastudy\_full.pdf)

One argument offered for a commission is it would keep politics out of immigration policy. A non-political commission in Washington, D.C. is unlikely. Elected officeholders would choose all of the members. Lobbying from all sides of the issue would move to these commission members. Employers would need to ask if the commission could certify certain types of employees, while the AFL-CIO and others would lobby the commission to oppose the entry of any workers. A commission would not end lobbying, but simply shift its focus to this new, unelected body of bureaucratic officials.

#### Congress has to act first – key to SOP and Congressional leadership

Fisher, 04 [Louis, Senior Specialist in Separation of Powers at the Congressional Research Service, Specialist in Constitutional Law at Law Library, Presidential War Power, 2nd ed., 2004, p. 280-281]

Members of Congress need to participate in the daily grind of overseeing administration policies, passing judgment on them, and behaving as a coequal, independent branch. When Presidents overstep constitutional barriers or threaten to do so, Congress must respond with solid statutory checks, not floor speeches and “sense of Congress” resolution. Action by statute is needed to safeguard the legislative institution, maintain a vigorous system of checks and balances, and fulfill the role of Congress as the people’s representatives. Members do more than represent districts and states; they represent popular control. Citizens entrust to Congress the safekeeping of their powers, especially over matters of war and peace. Legislators act as custodians of the people. If they neglect that function, citizens, scholars, and interest groups must apply constant pressure on Congress to discharge the constitutional duties assigned to it. Congress may stand against the President or stand behind him, but should not stand aside as it did year after year during the Vietnam War, looking the other way and occasionally complaining about executive usurpation. Members have to participate actively in questions of national policy, challenging Presidents and contesting their actions. Military issues need the thorough exploration and ventilation that only Congress can provide.

### AT: Asia

#### Methodological limitations disprove their spillover link

Sitaraman, 14 [Essay Credibility and War Powers Ganesh Sitaraman, 127 Harv. L. Rev. F. 123 (2014),Assistant Professor of Law Vanderbilt, <http://www.harvardlawreview.org/issues/127/january14/forum_1024.php>]

B. The Logical Limits of Credibility Arguments In the context of military threats and the use of force, credibility arguments suffer from some important limitations. First, because both past actions and reputation are based on audience interpretations, a country can have multiple reputations and a single action can create different reputations among different audiences.17 To some, following through on a threat demonstrates resolve; to others, foolishness. Second, action in one context might not migrate into reputation in another.18 If the United States sets a “red line” on a fishing issue for Micronesia and then backs down, it is unlikely to send a signal to Iran that all American “red lines” are bluffs. The Iranians may ignore the Micronesian case because it is fundamentally different from their own. Third, if we assume that credibility matters, then both sides know that it matters, and both sides can take it into account. Social scientists call the resulting problem recursion,19 but we generally know it as the “if she knows that I know that she knows . . .” problem. Take Syria.20 If we assume Assad is simpleminded, and the United States backs down, then Assad will think he can use chemical weapons again. But if Assad also knows that credibility is important, and the United States backs down, then Assad knows Pesident Obama has paid a reputation cost in bluffing. Perhaps some in the United States will even say “never again!” If Assad then uses chemical weapons again, it will be harder for Obama to bluff a second time. As a result, backing down the first time actually makes any future threat by Obama more credible. And Assad knows this. Now take it one step further. If Assad knows that Obama knows this, then Assad will reason that Obama’s threat is a bluff because Obama knows Assad will think Obama’s action is more credible. “Keeping the logic straight is difficult,” as Jonathan Mercer puts it, “but it is also irrelevant: no one knows how many rounds the game will go on, for there is no logical place to stop.”21 Credibility arguments are self-defeating because if we assume they matter, everyone else knows they matter too — and can account for them. Because the recursion game goes on ad infinitum, it is impossible to determine what policy to pursue.

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#### Prior involvement avoids mission interference after the fact

Barron, 08 [David J. Barron, Professor of Law at Harvard Law School and Martin S. Lederman, Visiting Professor of Law at the Georgetown University Law Center, “The Commander in Chief at the Lowest Ebb -- A Constitutional History”, Harvard Law Review, February, 121 Harv. L. Rev. 941, Lexis]

By the conclusion of the Clinton Administration, however, it appeared that something of a practical settlement between the political branches regarding this long-contested constitutional question had been reached. By that time, Presidents were in rough agreement that, whatever the Founding-era understandings might have been, extensive historical practice had established that the Commander in Chief was, [\*1057] to some not fully specified extent, "authorized to commit American forces in such a way as to seriously risk hostilities ... without prior congressional approval." n476 Some Presidents made even bolder claims; n477 but executive branch precedent and opinions from after 1951 generally indicated that any conflict of a scale directly comparable to Korea or Vietnam must be carried out with legislative approval. n478 Congress, for its part, seemed largely resigned to this executive branch approach to the initiation question, and has therefore recently focused its attention more on policing the duration and conduct of campaigns, rather than on challenging their legality at the outset. Meanwhile, the courts have not had much to say about the question of unilateral executive use of military force.

#### Congress solves casualty aversion

Samples, 11 [John Samples, Director of the Center for Representative Government at the Cato Institute, “Congress Surrenders the War Powers: Libya, the United Nations, and the Constitution”, Cato Policy Analysis, 10-27, http://www.cato.org/sites/cato.org/files/pubs/pdf/pa687.pdf]

Conclusion The practice of limited war in the years after the Cold War does not serve the nation well. Contrary to the Constitution, such wars are declared without congressional approval. The president begins such wars and yet is constrained politically by a strict need to avoid casualties; implicitly these wars are worth fighting if they are expected to be (and turn out to be) costless with regard to American deaths in combat. In war as in life, such undertakings may turn out to be worth their marginal cost, that is, nothing. If combat deaths are avoided, however, presidents may avoid responsibility for contravening public opinion about a limited war. Respecting the congressional power to authorize limited wars would improve the republican or representative character of American government. Congress has not distinguished itself regarding these limits to wars. Pushed to the side, Congress is often divided and incapable or unwilling to take up its constitutional responsibilities. Its investigations and criticisms can affect the conduct of a limited war but not its inception. The public generally becomes less supportive of limited wars over time, and majorities often doubt that such conflicts are worth their cost. The public’s desire for congressional authorization of such wars goes unfulfilled. Generally, these limited wars seem half-made, conflicts presidents feel are essential to fight and yet beyond constitutional propriety. It is hard to imagine that seeking approval for these wars from international institutions will solve these republican shortcomings at home. A congressional authorization of a limited war would have advantages beyond constitutional propriety. If such wars are worth fighting, they should attract sufficient support from Congress. After all, Congress has been at times more hawkish than the executive in the period surveyed here, and put to the choice and forced to meet its constitutional obligations, Congress might well have approved all of the limited wars examined here. If such wars are worth fighting, casualties might be inevitable, and congressional authorization would give such losses legitimacy. Of course, as we have seen in the survey data, the public might believe that limited wars are not worth fighting, and Congress might not authorize a future conflict. Perhaps that denial will pose risks for the nation. But those putative risks should be balanced against the known shortcomings of the current practice of limited wars, failures that vitiate both the Constitution and the republican character of our government.

#### Kills heg

Record, 2k [Jeffrey Record, Professor of International Security Studies at the Air War College, MA and Ph.D. from the Johns Hopkins School of Advanced International Studies, “Failed States and Casualty Phobia: Implications for Force Structure and Technology Choices”, Occasional Paper No. 18, September, http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA425499]

The strategic consequences of elite casualty phobia as well as its implications for the military ethic have been treated elsewhere. xvii Suffice to say here that they are averse and include: political vacillation in war-threatening crises, degraded military effectiveness, lowered deterrence, discouraged friends and allies, and a morally compromised professional military ethos—and above all politically inconclusive uses of force. In the short run it is always less risky to treat the symptoms of aggression rather than its political sources. Yet casualty phobia encourages strategically indecisive, even half-baked, uses of force. A refusal to take advantage of the opportunity of war to use the force necessary to topple the regimes of Saddam Hussein and Slobodan Milosevic, both of whom senior American policy makers publicly compared to Adolph Hitler, simply invited more war later. To be sure, in both the Gulf War and the War Over Kosovo, U.S. political objectives were limited, and did not include enemy regime overthrow. Yet, surely, the exclusion of regime change was driven mainly by fear of the anticipated risks and costs involved.

### 2ac add on

#### Legitimizing preventive war causes a Chinese attack on US missile defense

Stephen Walt 4, Robert and Renee Belfer Professor of International Affairs at Harvard, PhD in Political Science from UC Berkeley, October 1, “The Strategic Environment,” Panel Discussion at “Preemptive Use of Force: A Reassessment,” Conference held by the Fletcher Forum on International Affairs, <http://www.brookings.edu/views/papers/daalder/daalder_fletcher.pdf>

Finally, as Ivo has already noted, there is this precedent problem. By declaring that preventive war is an effective policy option for us, we make it easier for others to see it as an effective policy option for them. Why can’t India attack Pakistan before it develops more nuclear weapons? Why can’t Turkey attack Iraqi Kurdistan to prevent the emergence of an independent state there? Why was it wrong for Serbia to take preventive action against the Kosovars, given that there was a guerilla army attacking Serbs in Kosovo, and given that the Serbs could see a long term threat to their national security if the Kosovar-Albanians got more and more politically organized and tried to secede? Why couldn’t a stronger China decide that America’s national missile defense program was a direct threat to their nuclear deterrent capability, and therefore decide to order a preventive commando strike against American radar sites in Alaska? Now this sounds wildly far-fetched, of course, but imagine the situation being reversed. Imagine if another country threatened our second strike capability, wouldn’t we have looked for some way to prevent that from happening? Of course we would. So again, we’re creating a precedent here.

#### That goes nuclear

John W. Lewis 12, William Haas Professor of Chinese Politics, emeritus, at Stanford University, PhD from UCLA, and Xue Litai, research scholar at the Project on Peace and Cooperation in the Asian-Pacific Region at Stanford University’s Center for International Security and Cooperation, “Making China’s nuclear war plan,” Bulletin of the Atomic Scientists September/October 2012 vol. 68 no. 5 45-65, http://bos.sagepub.com/content/68/5/45.full

If the CMC authorizes a missile base to launch preemptive conventional attacks on an enemy, however, the enemy and its allies could not immediately distinguish whether the missiles fired were conventional or nuclear. From their perspective, the enemy forces could justifiably launch on warning and retaliate against all the command-and-control systems and missile assets of the Chinese missile launch base and even the overall command-and-control system of the central Second Artillery headquarters. In the worst case, a self-defensive first strike by Chinese conventional missiles could end in the retaliatory destruction of many Chinese nuclear missiles and their related command-and-control systems. That disastrous outcome would force the much smaller surviving and highly vulnerable Chinese nuclear missile units to fire their remaining missiles against the enemy’s homeland. In this quite foreseeable action-reaction cycle, escalation to nuclear war could become accelerated and unavoidable. This means that the double policies could unexpectedly cause, rather than deter, a nuclear exchange.

### AT: Iran DA

#### The AFF turns Iran

Katherine Slager 13, JD Candidate at the University of North Carolina School of Law, Articles Editor for the North Carolina Journal of International Law and Commercial Regulation, “Legality, Legitimacy and Anticipatory Self-Defense: Considering an Israeli Preemptive Strike on Iran's Nuclear Program,” 38 N.C.J. Int'l L. & Com. Reg. 267, lexis

Under both traditional and alternative analyses, Israel would not be presently justified to preemptively strike Iran's nuclear program. Under the customary international law analysis, Israel would not be justified because the threat is not yet imminent: Iran has not demonstrated a clear intent to attack Israel and does not yet have the capability to carry out a nuclear attack. Under Sadoff's proposed framework, Israel would not be justified for many of the same reasons: there is not a sufficient likelihood that an attack would occur.¶ There is room, however, for Israel to justify a preemptive strike under the "preventive" self-defense approach, in which a preemptive strike may occur though the threat is more temporally removed. n402 This demonstrates the danger inherent in adopting such an approach, which discounts the importance of anticipatory force being used only as a "last resort." An approach that strays too far from existing modern law norms runs the risk of endorsing actions that would be widely viewed as illegitimate.

 n403¶ [\*324] An additional consideration is that under a legitimacy argument, the danger that a nuclear Iran poses to global peace and security may be enough to justify a preemptive strike in order to ensure global security. Many nations have indeed spoken out against Iran's development of nuclear weapons. By several accounts, a nuclear-capable Iran would be a serious threat to the entire Middle East region and the world. n404 For example, Algerian ministers claim that once Iran achieves nuclear capability, they will share the technology with "its fellow Muslim nations." n405 However, this danger should not be addressed by the unilateral assessment of a paternalistic nation, such as the United States. If the threat Iran poses to global security warrants a preemptive strike, then multilateral action by the U.N. Security Council should be taken. n406¶ In conclusion, though it is tempting to simply "rewrite the rules" to adapt the traditional international laws to address modern day threats, doing so would disrupt the international legal order. Deficiencies in the modern legal framework should be addressed incrementally, with a priority given to incorporating legitimacy and creating clear, practicable standards to evaluate use of force in anticipatory self-defense. Such a framework would clarify the [\*325] present illegitimacy and illegality of an Israeli strike on Iran's nuclear program. Wide recognition of the illegitimacy of a strike would lead to international condemnation, thus foiling the trigger that would lead the world into World War III.

#### Reid blocks and 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.

#### Drones thump

**Miller, 1/15/14** (Greg, Washington Post, “Lawmakers seek to stymie plan to shift control of drone campaign from CIA to Pentagon” http://www.washingtonpost.com/world/national-security/lawmakers-seek-to-stymie-plan-to-shift-control-of-drone-campaign-from-cia-to-pentagon/2014/01/15/c0096b18-7e0e-11e3-9556-4a4bf7bcbd84\_story.html)

Congress has moved to block President Obama’s plan to shift control of the U.S. drone campaign from the CIA to the Defense Department, inserting a secret provision in the massive government spending bill introduced this week that would preserve the spy agency’s role in lethal counterterrorism operations, U.S. officials said. The measure, included in a classified annex to the $1.1 trillion federal budget plan, would restrict the use of any funding to transfer unmanned aircraft or the authority to carry out drone strikes from the CIA to the Pentagon, officials said. The provision represents an unusually direct intervention by lawmakers into the way covert operations are run, impeding an administration plan aimed at returning the CIA’s focus to traditional intelligence gathering and possibly bringing more transparency to drone strikes.

#### TPA does too

**Parnes, 1/21/14** (Arnie, “Obama: Give me fast track trade” The Hill,

<http://thehill.com/homenews/administration/195858-white-house-works-to-convince-dems-to-give-obama-fast-track-on-trade>

The White House is making a major push to convince Congress to give the president trade promotion authority (TPA), which would make it easier for President Obama to negotiate pacts with other countries. A flurry of meetings has taken place in recent days since legislation was introduced to give the president the authority, with U.S. Trade Representative Mike Froman meeting with approximately 70 lawmakers on both sides of the aisle in the House and Senate. White House chief of staff Denis McDonough has also been placing calls and meeting with top Democratic lawmakers in recent days to discuss trade and other issues. Republicans have noticed a change in the administration’s interest in the issue, which is expected to be a part of Obama’s State of the Union address in one week. While there was “a lack of engagement,” as one senior Republican aide put it, there is now a new energy from the White House since the bill dropped. The effort to get Congress to grant Obama trade promotion authority comes as the White House seeks to complete trade deals with the European Union, and a group of Asian and Latin American countries as part of the Trans-Pacific Partnership, or TPP. The authority would put time limits on congressional consideration of those deals and prevent the deals from being amended by Congress. That would give the administration more leverage with trading partners in its negotiations. The trade push dovetails with the administration’s efforts to raise the issue of income inequality ahead of the 2014 midterm elections. The White House is pressing Republicans to raise the minimum wage and extend federal unemployment benefits. The difference is, on the minimum wage hike and unemployment issue, Obama has willing partners in congressional Democrats and unions, who are more skeptical of free trade. Republicans are more the willing partner on backing trade promotion authority. Legislation introduced last week to give Obama trade promotion authority was sponsored by House Ways and Means Committee Chairman Dave Camp (R-Mich.) and Senate Finance Committee Chairman Max Baucus (D-Mont.), as well as Sen. Orrin Hatch (R-Utah), the ranking member on Finance. No House Democrats are co-sponsoring the bill, however, and Rep. Sandy Levin (D-Mich.), the Ways and Means Committee ranking member, and Rep. Charles Rangel (D-N.Y.), the panel’s former chairman, have both criticized it. They said the legislation doesn’t give enough leverage and power to Congress during trade negotiations. Getting TPA passed would be a major victory for the administration, and one that would please business groups, but the White House will first have to convince Democrats to go along with it. One senior administration official said the White House has been in dialogue with lawmakers on both sides of the aisle “with a real focus on Democrats” to explain TPA and take into account their concerns. “Any trade matter presents challenges,” the senior administration official said, adding that White House officials are “devoted” to working with members on the issue. The Democratic opposition makes it highly unlikely the trade promotion authority bill, in its current form at least, will go anywhere. One big problem is that it was negotiated by Baucus, who is about to leave the Senate to become ambassador to China. Baucus will be replaced by Sen. Ron Wyden (Ore.), who is said to disagree with the approach taken by his predecessor. Democratic aides predict the legislation, which Majority Leader Harry Reid (D-Nev.) called “controversial” last week, would have to be completely redone to gain traction among lawmakers in their party.

#### Deal fails

**Clyne, 1/23/14** – summary of interview conducted by Fareed Zakharia with Rouhani (Melissa, Newsmax, “CNN: Iranian President Says No Centrifuges Will Be Destroyed”

<http://www.newsmax.com/newsfront/iran-us-nuclear-program/2014/01/23/id/548667>

Iran's assurance that it would temporarily halt its nuclear program in exchange for the easing of international sanctions is a complete farce, according to a CNN interview with Iranian President Hassan Rouhani. CNN correspondent Fareed Zakaria, who recently interviewed Rouhani, said the agreement struck in Geneva late last year between Tehran and the United States, along with five other world powers, is a "train wreck.""This strikes me as a huge obstacle because the Iranian conception of what the deal is going to look like, and the American conception, now look like they are miles apart," said Zakaria, discussing the interview with Chris Cuomo, co-host of CNN's morning show "New Day." CNN released a portion of Zakaria's interview and will air it in full on Sunday morning, according to the network. Rouhani stated in no uncertain terms that his regime will not limit its centrifuges, adding that Iran is "not afraid of threats." When Zakaria asked whether there would be any destruction of centrifuges, Rouhani answered: "Not under any circumstances."

#### Unilateral action solves

**Tobin, 1/21/14** – editor of Commentary (Jonathan, “Will Obama Bypass Congress on Iran?” <http://www.commentarymagazine.com/2014/01/21/will-obama-bypass-congress-on-iran-sanctions/>)

But the current uphill struggle by a majority of the Senate to ensure that the end of the current talks doesn’t lead to a collapse of the sanctions may be only a sideshow to the real fight over Iran that lies ahead in 2014. As the Washington Free Beacon reports, the administration is thinking ahead to the next step in the debate over Iran and exploring the possibility of lifting sanctions without congressional approval. Congressional insiders say that the White House is worried Congress will exert oversight of the deal and demand tougher nuclear restrictions on Tehran in exchange for sanctions relief. Top White House aides have been “talking about ways to do that [lift sanctions] without Congress and we have no idea yet what that means,” said one senior congressional aide who works on sanctions. “They’re looking for a way to lift them by fiat, overrule U.S. law, drive over the sanctions, and declare that they are lifted.” Although only Congress has the power to revoke the sanctions it has enacted, this is not a far-fetched scenario. It is entirely possible that the president may wish to end sanctions on his own. That could come as the result of a nuclear deal that failed to satisfy those who rightly worry about the possibility of an agreement that left Iran with its nuclear infrastructure intact. Or it might be part of a further effort to appease Tehran by scaling back sanctions in order to entice it to sign a deal. And the president believes he can achieve these ends by executive action that would come dangerously close to unconstitutional behavior, but for which Congress might have no remedy. The key to any unilateral action by the president on sanctions is effective enforcement. It has long been understood by insiders that the U.S. government has only selectively enforced the existing sanctions on Iran. In 2010, the New York Times reported that more than 10,000 exemptions had already been granted by the Treasury Department to companies wishing to transact business with Iran. Since then there have been worries that the administration has been slow to open new cases by which suspicious economic activity with Iran could be proscribed. As the Washington Institute for Near East Policy noted in a paper published in November 2013, the president can legitimize a policy of non-enforcement by the granting of waivers that could effectively gut any and all sanctions enacted by Congress. The only effective check on such a decision would be the political firestorm that would inevitably follow a relaxation of the sanctions that would be accurately viewed as a craven offering to the ayatollahs and also an affront to both Congress and America’s Middle East allies such as Israel and Saudi Arabia that rightly fear a nuclear Iran. The administration has already made clear on other contentious issues, such as the application of immigration law, that it will only enforce laws with which it agrees. This is clearly unconstitutional, but as we have already seen with the president’s unilateral actions on immigration, Congress cannot prevent him from doing what he likes in these matters. The same might be true on Iran sanctions, especially if he is prepared to double down on inflammatory arguments falsely labeling sanctions proponents as warmongers. Having begun the process of loosening sanctions on Iran with the interim deal signed in November and seemingly intent on promoting a new détente with Tehran, it requires no great leap of imagination to envision the next step in this process. Unless the president produces a deal that truly ends the Iranian nuclear threat—something that would require the dismantling of Iran’s facilities and ensuring it could not possibly continue enriching uranium or building plutonium plants—a confrontation with Congress is likely. In that event, it appears probable that the president will choose to run roughshod over the will of Congress and the rule of law.

#### PC Fails

**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.”

#### There won’t be a post-interim deal which makes sanctions inevitable

**Klapper, 1/24/14** – Associated Press (Bradley, “Final Iran deal could prove hard to come by for US” The Times of Israel, http://www.timesofisrael.com/final-iran-deal-could-prove-hard-to-come-by-for-us/)

But analysts say another short-term deal may be the only feasible outcome given the vast differences between Tehran and the international coalition. “I think it’s extremely unlikely that it will be possible to reach a comprehensive agreement in the next six months,” said Gary Samore, who until last year was Obama’s top arms control adviser. “We’re in for a rolling series of extensions.” The talks could also crumble completely if Iran violates

 the terms of the agreement or the parties make no progress in moving the negotiations forward. It’s not clear what the US and its coalition partners would do if a comprehensive agreement isn’t reached in six months. US officials are currently meeting with their counterparts in the so-called P5+1 to plot strategy for the February meetings. French Foreign Ministry spokesman Romain Nadal told The Associated Press on Thursday that the coalition’s priority is to reach a big deal and do so quickly. “We are not going to go through a succession of interim deals,” Nadal said. He added that the push in Congress for tougher sanctions against Iran “increases the pressure.” The White House has so far been able to hold off a Senate vote on a sanctions bill, arguing that it would violate the terms of the interim agreement with Iran and could disrupt diplomacy, even if Obama vetoes the bill. But congressional aides say even those who support Obama’s outreach to Iran could buckle if forced to accept another six-month deal. Backers of the congressional sanctions push say the crippling economic penalties are what’s drawn Iran to the negotiating table in the first place and should not be eased until the Islamic republic bends on all international demands. Many have been unmoved by Obama’s pleas to hold off on legislation. “It’s time to schedule a vote on the bill to give the American people the diplomatic insurance policy they deserve,” says Sen. Mark Kirk,a Republican and a leading sanctions advocate. The prospect of Iran using interim agreements as a delaying tactic has also stoked concern in the Middle East, particularly in Israel, which sees an Iranian nuclear program as a threat to its very existence. Senior Israeli officials say they’re concerned that even if Iran complies with the terms of interim agreements, the nature of those accords will allow the Islamic republic to keep key elements of its program intact. Yet pushing directly for a comprehensive pact is not without pitfalls. Negotiations are likely to be far thornier than in the months of discussions that went into producing the interim agreement. And any final pact, US officials have stressed, must settle once and for all any concerns that Iran may be trying to produce nuclear weapons. Iran has denied it is seeking a bomb and says it is pursuing nuclear capabilities for peaceful purposes. In a report released this week, David Albright, a former UN weapons inspector who regularly consults with the Obama administration, said Iran must remove some 15,000 of its estimated 20,000 centrifuges to make a final agreement palatable for the United States. Albright, whose report drew on discussions with senior US officials, also said Tehran would have to shut down an underground uranium enrichment site and significantly downgrade its heavy water reactor. Iran has never come close to accepting such conditions. They would eliminate the possibility of a plutonium-based weapon core, and extend by several months the timespan needed for Iran to “break out” through higher-grade uranium enrichment toward nuclear weapons development.

## 1ar

### AT: Circumvention

#### Increases political costs and solves signal regardless—they can’t call Obama honey badger and read a pc disad

Wilkinson, 12 [Will Wilkinson, Research Fellow at the Cato Institute, M.A. in Philosophy from the Northern Illinois University, Academic Coordinator of the Social Change Project and the Global Prosperity Initiative at The Mercatus Center at George Mason University, “Rebridling the Executive”, Economist, 4<http://www.economist.com/blogs/democracyinamerica/2012/04/democracy-and-war>]

I think this is good, sound sense. Fabio Rojas, a professor of sociology at Indiana University, disagrees. "[T]he sorts of rules that Maddow proposes are useless", he argues. "People will just ignore the rules when they want to when they want war". How so? First, if you really want war, you can always vote to have a new rule for war or to make an exception. Also, most rules have wiggle room in them, which makes it easy to wage war under other guises. Secondly, there's a consistent “rally around the leader effect.” It is incredibly hard for anyone to oppose leaders during war time. Elected leaders are in a particularly weak position. Simply put, legislatures can't be trusted to assert their restraining role in most cases. This is too fatalistic. Taking advantage of "wiggle room" or finding a way to "wage war in other guises" requires some effort and some expenditure of political capital. A weak impediment is an impediment nonetheless, and can be well worth having. Anyway, I suspect Ms Maddow's policy proposals, should they be enacted, would not be as impotent as Mr Rojas contends. Imagine Congress did explicitly require that wars be financed with new tax revenue, that democratically unaccountable clandestine operations must either be suspended or made subject to congressional oversight, that appropriations not be approved to pay mercenaries, and so forth. It's inconceivable that Congress would set in place these measures if they did not reflect widespread public sentiment. And in that case, it would seem that such policies would stand as a powerful expression of the people's resistance to easy, unaccountable wars. New rules explicitly intended to reign in unilateral executive power will exist only if they are popular. The executive would defy them at his or her electoral peril. That's how democracies restrain, isn't it? How is that useless?

#### Legacy costs

Ackerman 13 [Bruce Ackerman, Sterling Professor of Law at Yale Law School, “Oversight Now”, Foreign Policyhttp://www.foreignpolicy.com/articles/2013/06/11/oversight\_now\_FISA\_executive\_congress?page=full]

Partisans of the status quo will claim that a serious congressional effort will only make the problem worse, generating statutes that will give a legal imprimatur for a new cycle of executive abuse. But this downside risk will be minimized during Obama's last two years, when he will turn increasingly to the legacy he is leaving behind. The challenge instead is to press him finally to redeem his fine words by building a solid structure for the future. This will demand real statesmanship from Congress. But it is the only serious path that will allow the country to heed Madison's warning about the dangers of "continual warfare."

#### No incentive

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>)

For all of the reasons described in Part I, the AUMF (coupled with law enforcement and intelligence tools and backstopped by the President’s inherent Article II authorities) has proven to be a more-than-adequate basis for addressing the threat posed by organized terrorist groups since September 11. To the extent there have been failures, they have resulted from gaps in intelligence, not authorities. Should an organized armed group emerge that cannot adequately be dealt with through these existing authorities, the President would be able to ask for, and Congress would be in a position to grant, authorization to deal with the threat posed by that specific group. Notably, **the Obama Administration does not appear to think that such a situation exists** at the present **and is not asking for new, expanded authority**. To the contrary, President Obama has explicitly warned against it, stating that he would “not sign laws designed to expand [the AUMF’s] mandate further;” rather, he looks forward to working with Congress to “refine, and ultimately repeal, the AUMF’s mandate.”90 Never before has Congress declared war against an enemy when the President has not asked it to do so

### AT: Secondary sanctions China impact

#### Their Leverett evidence assumes existing secondary sanctions – not new ones – and those were barely touched in the Iran deal, and if we win deal fails the impact is inevitable

**Rubenfeld, 1/22/14** (Samuel, Wall Street Journal, “US Provides ‘Limited’ Sanctions Relief Under Interim Iran Deal” <http://blogs.wsj.com/riskandcompliance/2014/01/22/us-provides-limited-sanctions-relief-under-interim-iran-deal/>)

Treasury and the State Department explained on Monday, when the agreement went into effect, how its part of the sanctions suspension regime would work, stressing the limited nature and reversibility of the measures.

First, Treasury paused its efforts to force top buyers of Iranian crude to reduce their oil purchases. Second, Treasury said it eased Iran’s ability to conduct humanitarian transactions, and for Iranian students studying abroad to make their tuition payments. Third, Treasury suspended “secondary sanctions” on foreigners and foreign companies doing business in Iran’s petrochemical and auto sectors, as well as trade in precious metals.

In addition, Treasury issued a statement clarifying that its Office of Foreign Assets Control will issue licenses for spare parts and other services for the Iranian civil aviation industry. The statement serves as guidance for companies thinking about applying for a license, the senior official said.

Legal experts stressed how minuscule the changes are, noting how Americans and their foreign subsidiaries are still prohibited from conducting any transactions with Iran.

“It’s not really that much at the end of the day,” said Richard Matheny, a partner at Goodwin Procter. “My message to my clients is: ‘Nothing to see here, move on.”

Samuel Cutler, a policy adviser for Ferrari & Associates PC, pointed out in a blog post that the authorized transactions can only occur within the six-month timeframe of the interim agreement.

“Any transaction currently authorized under the [agreement,] conducted after the six month deadline, will be considered a sanctionable offense,” he wrote. “Therefore, companies interested in the Iranian market have six months from [Monday] to sign contracts, deliver or receive any goods or services, and send or receive payment without risking action by OFAC.”

### 1ar drones

#### It’s a restriction on Obama’s authority for drones

**Carney, 1/16/14** (Jordain, “Congress Restricts Push to Transfer Drone Program From CIA to Pentagon” National Journal, <http://www.nationaljournal.com/defense/congress-restricts-push-to-transfer-drone-program-from-cia-to-pentagon-20140116>)

Lawmakers are using the omnibus spending bill to restrict President Obama's attempt to transfer control of the U.S. drone program to the Pentagon—marking one of the more direct attempts by Congress to interfere in how the administration handles covert operations. The provision restricts the administration from using any funding to move drones or the authority to carry out drone strikes from the CIA—which currently has oversight—to the Defense Department. The provision was included in a classified addition to the bill by members of the Appropriations Committee in both chambers, officials told The Washington Post. Specifics on the restrictions are currently unknown, but a person familiar with the bill said they are more complex than simply withholding money. The move comes as the administration is trying to transition the CIA back to its more traditional intelligence-gathering mission. But some members of Congress have doubts about the Pentagon's ability to oversee the country's drone program effectively and accurately.

#### It’s legal

**Army Times, 1/16/14** (“Senate sends omnibus, Pentagon-funding measure to Obama's desk” http://www.armytimes.com/article/20140116/NEWS05/301160031/Senate-sends-omnibus-Pentagon-funding-measure-Obama-s-desk)

The lawmakers who negotiated the omnibus deal, House and Senate Appropriations Committee Chairs Rep. Harold Rogers, R-Ky., and Sen. Barbara Mikulski, D-Md., are hailing the measure as clear evidence Congress is ready to get back to “regular order” after years of partisan stalemate. “This agreement shows the American people that we can compromise, and that we can govern. It puts an end to shutdown, slowdown, slamdown politics,” Mikulski said. “I’m pleased that this agreement includes all 12 appropriations bills. For the first time since 2011, no mission of our government will be left behind on autopilot.” The floor debate was sometimes raucous in the upper chamber, with defense hawks from the Armed Services Committee slamming a provision in the classified annex that would mandate the US armed drone program remain under the CIA’s control. “The Appropriations Committee has no business making this decision,” said Sen. John McCain, R-Ariz., on the chamber floor. “How many of my colleagues knew this provision was in this mammoth appropriations bill? I’ll bet you a handful. The job of the Armed Services Committee and the job of the Intelligence Committee is to authorize these things.” Because there were no amendments allowed, the provision is headed toward becoming law.

### deal fails

#### New investment wrecks any chance of an Iran deal

**Tobin, 1/19/14** – editor of Commentary Magazine (Jeffrey, “Iran Biz Boom May Already Doom Talks”

<http://www.commentarymagazine.com/2014/01/19/iran-business-boom-may-already-doom-nuclear-talks-sanctions/>

But the problem with that argument, as the New York Times reported on Friday, is that Iran is open for international business now. While there have been signs indicating that Iran’s economy is already recovering from the impact of sanctions, the interim accord has led to a parade of European businessmen trooping to Tehran to lay the groundwork for what they see as the impending collapse of the restrictions on transactions with the Islamist regime. Indeed, according to the Times one of the busiest people in the Iranian capital is Hossein Sheikholeslami, the former terrorist (he was one of the “students” responsible for holding American diplomats hostage in 1979) assigned to fielding offers from nations including Germany, Italy, and Finland which, despite their nominal allegiance to the U.S.-led sanctions coalition, are champing at the bit to get their bids in now for contracts to do business in Iran. Seen in that light, we won’t have to wait until July to know whether the latest P5+1 with Iran talks will succeed. If the sanctions are coming apart at the seams today, then the interim accord has already failed. As critics of the interim accord signed in Geneva in November said at the time, the decision by the Obama administration to begin the process of loosening sanctions just at the moment when they appeared most effective in their goal of forcing Iran to end its nuclear program was nothing short of a fatal mistake. Though the president has mocked the idea that the new sanctions being considered by the Senate would strengthen his hand in the talks, his decision to grant the Iranians significant relief from the earlier sanctions has already begun the process by which the entire edifice of economic restrictions is virtually in shambles. As the Times story illustrates, the actions of European nations that were unenthusiastic about sanctions from the start (which could also be said of the Obama administration since it opposed the current tough sanctions when Congress debated their adoption) are allowing the Iranians to claim that the sanctions regime is tottering. This will strengthen Tehran’s hand in negotiations since it may reasonably conclude the U.S. can’t count on international support for renewed sanctions if, as is more than likely, the Iranians refuse to dismantle or even substantially degrade their nuclear program in the coming talks. Nor is the interest in resuming business with the Islamist tyrants confined to a few outliers or even only Europeans: In the first two weeks of the year, Iran welcomed more delegations from Europe than in all of 2013. “The Europeans are waiting in line to come here,” said Mr. Sheikholeslami, the international affairs adviser to the head of Iran’s Parliament, Ali Larijani, who has been receiving many of the high-profile visitors. “They are coming to seek benefits and to get ahead of their international rivals.” Italy’s foreign minister, Emma Bonino, has been here, as has a former British foreign minister, Jack Straw, in his capacity as the head of the Iran-Britain Friendship Committee. The prime ministers of Italy and Poland have also scheduled visits. Trade delegations from Ireland, Italy and France are expected in coming weeks. American companies have shown some interest, of course. In September the head of President Hassan Rouhani’s office, the former director of the Iranian Chamber of Commerce, Mohammad Nahavandian, held a closed-door meeting with leading chief executives in New York. In March, an Iranian investment company is organizing a $15,000-a-ticket seminar in New York on business opportunities in Iran. President Obama and others who claim more sanctions can only mean war say the only path to peace runs through the diplomatic process and that it must be given more time to succeed. But the boomtown atmosphere in Tehran that has kept Sheikholeslami hopping is proof that the real choice is not between more sanctions and diplomacy. Without a law on the books that will mandate a complete economic embargo of Iran if the diplomats fail to produce a deal that ends the Iranian nuclear threat, Tehran can confidently assume it has nothing to lose from more delaying tactics and a refusal to give up its nuclear dreams.