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#### Restrictions are prohibitions on action

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

3. The ordinary definition of the term "restrictions" also does not include the reporting and monitoring or supervising terms and conditions that are included in the 2001 Stipulation.

Black's Law Dictionary, 'fifth edition,(1979) defines "restriction" as;

A limitation often imposed in a deed or lease respecting the use to which the property may be put. The term "restrict' is also cross referenced with the term "restrain." Restrain is defined as; To limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion on; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle, to repress or suppress, to curb.

In contrast, the terms "supervise" and "supervisor" are defined as; To have general oversight over, to superintend or to inspect. See Supervisor. A surveyor or overseer. . . In a broad sense, one having authority over others, to superintend and direct. The term "supervisor" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but required the use of independent judgment.

Comparing the above definitions, it is clear that the definition of "restriction" is very different from the definition of "supervision"-very few of the same words are used to explain or define the different terms. In his 2001 stipulation, Mr. Kincheloe essentially agreed to some supervision conditions, but he did not agree to restrict his license.

#### War powers authority is derived from congressional statute - restrictions are increased via statutory or judicial prohibitions on the source

**Bradley, 10** - \* Richard A. Horvitz Professor of Law and Professor of Public Policy Studies, Duke Law School (Curtis, “CLEAR STATEMENT RULES AND EXECUTIVE WAR POWERS” <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2730&context=faculty_scholarship>)

The scope of the President’s independent war powers is notoriously unclear, and courts are understandably reluctant to issue constitutional rulings that might deprive the federal government as a whole of the flexibility needed to respond to crises. As a result, courts often look for signs that Congress has either supported or opposed the President’s actions and rest their decisions on statutory grounds. This is essentially the approach outlined by Justice Jackson in his concurrence in Youngstown.1 For the most part, the Supreme Court has also followed this approach in deciding executive power issues relating to the war on terror. In Hamdi v. Rumsfeld, for example, Justice O’Connor based her plurality decision, which allowed for military detention of a U.S. citizen captured in Afghanistan, on Congress’s September 18, 2001, Authorization for Use of Military Force (AUMF).2 Similarly, in Hamdan v. Rumsfeld, the Court grounded its disallowance of the Bush Administration’s military commission system on what it found to be congressionally imposed restrictions.3 The Court’s decision in Boumediene v. Bush4 might seem an aberration in this regard, but it is not. Although the Court in Boumediene did rely on the Constitution in holding that the detainees at Guantanamo have a right to seek habeas corpus re‐ view in U.S. courts, it did not impose any specific restrictions on the executive’s detention, treatment, or trial of the detainees.5 In other words, Boumediene was more about preserving a role for the courts than about prohibiting the executive from exercising statutorily conferred authority.

#### Vote neg---

#### Ground---only prohibitions on particular authorities guarantee links to every core argument like flexibility and deference

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

### 1NC – Flex DA

#### The plan’s precedent causes further constraint --- undermines overall war powers

Paul 8 Christopher, Senior Social Scientist; Professor, Pardee RAND Graduate School Pittsburgh Office Education Ph.D., M.A., and B.A. in sociology, University of California, Los Angeles, “US Presidential War Powers: Legacy Chains in Military Intervention Decisionmaking\* ,” Journal of Peace Research, Vol. 45, No. 5 (Sep., 2008), pp. 665-679

Legacy Chains

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

#### Causes nuclear war and bioterror---exec flex is key to successful fourth-gen warfare

Zheyao Li 9, J.D. candidate, Georgetown University Law Center, 2009; B.A., political science and history, Yale University, 2006. This paper is the culmination of work begun in the "Constitutional Interpretation in the Legislative and Executive Branches" seminar, led by Judge Brett Kavanaugh, “War Powers for the Fourth Generation: Constitutional Interpretation in the Age of Asymmetric Warfare,” 7 Geo. J.L. & Pub. Pol'y 373 2009 WAR POWERS IN THE FOURTH GENERATION OF WARFARE

A. The Emergence of Non-State Actors

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

### 1NC – Patent Reform (L)

#### Momentum for patent reform now---PC key

David Kravets 3-20, WIRED senior staff writer, 2014, "History Will Remember Obama as the Great Slayer of Patent Trolls," Threat Level, http://www.wired.com/threatlevel/2014/03/obama-legacy-patent-trolls/

But Obama will leave another gift to posterity, one not so obvious, one that won’t be felt until years after his term ends: The history ebooks will remember the 44th president for setting off a chain of reforms that made predatory patent lawsuits a virtual memory. Obama is the patent troll slayer. Even now, a perfect storm of patent reform is brewing in all three branches of government. Over time, it could reshape intellectual property law to turn the sue-and-settle troll mentality into a thing of the past. “If these reforms go into effect, they will be felt only minimally during the Obama administration,” says Joe Gratz, a San Francisco-based patent lawyer who is representing Twitter in a patent dispute. “They will be felt quite strongly well after the Obama administration.” “The president is a strong leader on these issues. We haven’t really seen that before,” says Julie Samuels, the executive director of startup advocacy group Engine. “I do think that this could be one of the legacies of this administration.” A patent troll is generally understood to be a corporation that exists to stockpile patents for litigation purposes, instead of to build products. Often taking advantage of vague patent claims and a legal system slanted in the plaintiff’s favor, the company uses the patents to sue or threaten to sue other companies, with an eye to settling out of court for a fraction of what they were originally seeking. The nation’s legal dockets are littered with patent cases with varying degrees of merit, challenging everything from mobile phone push notifications and podcasting to online payment methods and public Wi-Fi. Some 2,600 companies were targeted in new patent lawsuits last year alone. Against that backdrop, Obama issued five executive orders on patent reform last summer. Among other things, they require the Patent and Trademark Office to stop issuing overly broad patents, and to force patent applicants to provide more details on what invention they are claiming. One of the orders opens up patent applications for public scrutiny — crowdsourcing — while they are in the approval stage, to help examiners locate prior art and assist with analyzing patent claims. Since a patent is binding for 20 years, the impact of the new rules won’t be felt for some time. But they will be felt, says Gratz, a litigator who defends technology-heavy patent lawsuits. “The supply of overly broad, vague patents will start to dry up as new rules get put into place,” he says. In January, Obama became the first president to elevate patent reform to a national meat-and-potatoes issue, when he used the State of the Union address to urge Congress to “pass a patent reform bill that allows our businesses to stay focused on innovation, not costly and needless litigation.” The market is already reacting to the wind change. Shares of patent-litigation firm Acacia dropped sharply following Obama’s State of the Union, and are hovering near 52-week lows. Shares of VirnetX are in a similar tailspin. RPX, another intellectual-property concern, has seen its share prices slashed in half over the past three years. The House passed major patent reform legislation last year, on a 325-91 vote, in a bid to even out the litigation playing field. Among other things, the Innovation Act requires plaintiffs in lawsuits to be more specific about what they believe is being infringed, and to identify the people who have financial interests behind a company. Perhaps most significantly, it requires that plaintiffs pay litigation expenses if they lose at trial. The bill also prohibits patent holders from suing mere users of a technology that allegedly infringes on an invention, like restaurants offering Wi-Fi access to their diners. The Senate is debating similar legislation in a piecemeal manner. Whatever it finally approves, the package will have to go back to the House for final approval before landing on the president’s desk.

#### Plan wrecks PC

Douglas L. Kriner 10, Assistant Professor of Political Science at Boston University, 2010, After the Rubicon: Congress, Presidents, and the Politics of Waging War, p. 68-69

Raising or Lowering Political Costs by Affecting Presidential Political Capital

Shaping both real and anticipated public opinion are two important ways in which Congress can raise or lower the political costs of a military action for the president. However, focusing exclusively on opinion dynamics threatens to obscure the much broader political consequences of domestic reaction—particularly congressional opposition—to presidential foreign policies. At least since Richard Neustadt's seminal work Presidential Power, presidency scholars have warned that costly political battles in one policy arena frequently have significant ramifications for presidential power in other realms. Indeed, two of Neustadt's three "cases of command"—Truman's seizure of the steel mills and firing of General Douglas MacArthur—explicitly discussed the broader political consequences of stiff domestic resistance to presidential assertions of commander-in-chief powers. In both cases, Truman emerged victorious in the case at hand—yet, Neustadt argues, each victory cost Truman dearly in terms of his future power prospects and leeway in other policy areas, many of which were more important to the president than achieving unconditional victory over North Korea."¶ While congressional support leaves the president's reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president's foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president's political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War.60¶ In addition to boding ill for the president's perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson's dream of a Great Society also perished in the rice paddies of Vietnam. Lacking both the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush's highest second-term domestic priorities, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61

#### Universities are on the brink of large-scale patent sales to trolls---crushes federal research funding---reform solves

Robin Feldman 3-28, professor of Law, Harry & Lillian Hastings Chair, and director of the Institute for Innovation Law at the University of California Hastings College of Law, 3/28/14, “Next patent troll victims: Pharma and bio?,” http://thehill.com/blogs/congress-blog/judicial/201945-next-patent-troll-victims-pharma-and-bio

With scattered signs showing that patent trolls are beginning to purchase biopharmaceutical patents, however, my co-author and I wondered whether the industry was really as safe as assumed. In particular, we wondered whether university holdings could provide a tempting pool of ammunition to launch against current biopharmaceutical products.

To test that theory, we looked at the life science patent holdings of five major research universities: University of California, University of Texas, MIT, CalTech, and the University of South Florida. Our study identified dozens of patents that could be deployed against current bio and pharma industries, following the patterns that NPEs have used against other industries. These include patents on drug formulas, methods of treatments, research methods, dosage forms, and others.

If patents like these are around and threatening, why hasn’t the biopharmaceutical industry found and dealt with them? The answer may be that up until now, university holdings have has posed little threat, particularly peripheral patents that could be used for the type of bargaining leverage popularized in modern patent trolling. Another recent study of mine—an extensive academic study of all 13,000 patent lawsuits filed over the last four years—showed that universities filed less than half of 1 percent of all of the patent lawsuits. Thus, the threat of university holdings may have been too low to justify the costs of searching out and licensing every patent that could potentially be launched against a product.

That safety net, however, may be coming down. Last fall, the Association of University Technology Managers began revisiting its policy against selling patents to NPEs. Pressure on university technology offices to bring in more revenue is causing the Association to rethink its position. That re-evaluation, however, could have serious consequences for the biopharmaceutical industry and for universities themselves.

Many university patents are developed at least in part with federal funds, and there are concerns when government-funded inventions end up as NPE lawsuits. For example, in what economists are calling the “leaky bucket,” only an estimated 20 percent of the money paid to NPEs gets back to the original inventors or into any internal R&D. And that’s a very small amount. On the flip side, the majority of NPE lawsuits are filed against small businesses. These perspectives raise concerns that government-funded research is being used to harm American businesses with little return to innovation.

As a result, dancing with NPEs could be a risky business for universities. If public anger about patent trolling focuses on universities, they have much more to lose in terms of federal dollars than they have to gain from NPEs.

Concerns about university portfolios and patent trolling are particularly relevant as Congress considers reform proposals. Some of the proposals would exempt universities and those working with universities. It is critical for legislative drafters to understand the potential for problems within university portfolios in general and as they might be aimed at the life sciences in particular.

The study is intended to sound a warning bell. Technology trolling seeped in silently under the radar, growing to extraordinary dimensions before lawmakers had time to react. In contrast, life sciences trolling is predictable and in its infancy. If reforms are implemented before the problem proliferates throughout the industry, legislators and regulators have a chance to cabin the activity before it becomes deeply entrenched and before too much harm occurs.

#### University research funding’s the backbone of the nuclear complex---key to stockpile maintenance and attribution for nuclear terrorism

Warren Miller et al 7, Research Professor and Associate Director, Nuclear Security Science and Policy Institute, Texas A&M University, 1/18/7, “Nuclear’s Human Element,” http://www2.ans.org/pi/fine/docs/finereport.pdf

The situation in the world today is extremely complex as it relates to nuclear technology for both peaceful and security applications. After a three‐decade period of essentially no new nuclear power plant construction in the United States and slow growth around the world, there is a renewed interest in nuclear‐generated electricity. Many factors have contributed to this renaissance, including concerns about possible climate change due to carbon emissions; fundamental changes in the costs of nuclear‐generated electricity due to significant improvements in safety and operating performance; government encouragement as manifested in, for example, the U.S. Energy Act of 2005 (Ref. 2); and energy security concerns driving nations toward more diverse electricity production portfolios.

At the same time, concerns about the potential malevolent use of nuclear technology have dramatically increased. Owing to concerns that a few countries may be using civilian nuclear technology as a cover to develop a weapons program, new ideas are being developed in the international security community to strengthen the Nuclear Nonproliferation Treaty. It is clear that the growing problems associated with the interface between nuclear weapons and nuclear power will increasingly require innovative technical and policy solutions and people who are literate, trained, and educated in nuclear processes.

The United States must have appropriate numbers of high‐quality NSE graduates for the needs of government and national laboratories, particularly for nuclear security roles, and for industry to continue to contribute to the growth and strength of nuclear power as well as to the other many applications of nuclear processes (e.g., nuclear medicine and food safety). As such, the Committee has concluded that Congress’s mandate in the Atomic Energy Act, which required the federal government, through the DOE, to be actively involved in supporting U.S. nuclear education, remains necessary and warranted today. Indeed, the Committee believes that it is in the economic and national security interests of the United States to remain at the forefront of nuclear R&D worldwide. As a consequence, the U.S. government, and specifically the DOE, must serve as a steward for the national nuclear research and education enterprise.

For the purposes of this study, NSE includes the disciplines of nuclear engineering, health physics, and nuclear physics of direct relevance to nuclear engineering, as well as nuclear and radiochemistry of direct relevance to nuclear engineering. For our purposes, nuclear engineering is concerned with the practical application of nuclear and radiation processes. In addition to energy from nuclear fission and fusion processes, nuclear engineering includes the production and use of radiation and radioisotopes in medicine, food processing, and industrial processes. It includes issues related to nuclear waste management and nuclear security, including technologies to protect against proliferation of nuclear weapons and nuclear material as well as against nuclear terrorism. It is based on fundamental areas related to the interaction of radiation with matter.

THE DOE ROLE IN US NSE EDUCATION

Although  university‐based  NSE  programs across the country receive support from various state and federal agencies as well as industry, there are very important differences when they are compared to other science and engineering disciplines. The understanding of nuclear processes in the core of a nuclear reactor is generally not a subject within the purview of the federal governmentʹs basic research funding agencies (e.g., NSF). This is due in large part to DOE’s clear charter, dating from the Atomic Energy Act, as the principal steward of the U.S. nuclear education enterprise. Further, issues associated with the interaction of ionizing radiation with matter, biological and nonbiological, are generally ignored by funding agencies other than the DOE [the National Aeronautics and Space Administration’s (NASA’s) interest in radiation effects on humans in space is a notable exception].

It is true that university‐based NSE programs often conduct research that is only somewhat related to nuclear processes and that funding for these activities can be obtained from basic research and mission‐related programs across the federal government. For example, many nuclear engineering departments have substantial research activities in areas such as thermal hydraulics, materials science, and/or plasma physics. These research activities, all related to the practical applications of nuclear energy, may be funded by the NSF, the U.S. Department of Defense (DOD), the DOE/SC, and other agencies. But, to a large extent, fundamental nuclear process research cannot be addressed without the financial support of the DOE. For example, the support of computational methods development for neutron transport processes, a field that underpins nuclear reactor analysis, medical physics, and nuclear weapons design, is not available outside DOE/NE.

DOE support of graduate programs in NSE is particularly important. Because NSE is so complex and applicable in so many fields, today’s undergraduate nuclear engineering program must cover a broad range of technical material. It is only in graduate school that an NSE student can focus on a particular application, e.g., design of new nuclear power plants, development of instruments to detect nuclear materials in shipping containers, new techniques for radiation treatment of cancer, etc. Many of the NSE positions in government agencies, national laboratories, universities, and medical facilities can be filled only by people holding graduate degrees. A graduate degree in NSE requires both study of advanced theory and research that involves practical application of theory in the student’s area of specialization. That research, which is guided by a professor, typically requires specialized equipment and significant financial support. However, it serves two purposes. It is part of the student’s training, but it also provides information of value to the sponsoring agency. Thus, DOE funding of NSE programs is important not only because it provides training for future essential NSE professionals but also because the results of the research can be immediately useful.

The Committee believes the Atomic Energy Act also requires the DOE to take a general role in nurturing and monitoring NSE education in support of the national interest. This role includes monitoring (a) the relationship between demand and supply of NSE graduates; (b) the NSE education infrastructure, including faculty, facilities, and equipment; and (c) the level and quality of research in NSE university programs. The DOE must provide financial support to sustain faculty, students, and infrastructure to the extent needed to assure a healthy NSE enterprise in the country.

On the other hand, the DOE NSE education support programs cannot, alone, provide the resources needed for a healthy and comprehensive national effort. University‐based NSE programs must continue to aggressively seek and obtain research and education support from mission agencies, basic research funding organizations, national laboratories, and industry.

In short, the Committee believes DOE’s stewardship role is to continuously monitor the NSE education enterprise to ensure that it meets present and future national needs and to conduct a modest research, development, and education program, to appropriately augment other federal and industry supporting efforts, assuring the near‐ and long‐term robustness and health of the discipline to address national needs.

DEMAND FOR UNIVERSITY‐BASED NSE RESEARCH

University‐based  NSE  activities lead to R&D results, as well as to graduates for government, national laboratories, and industry. In the R&D realm, there are challenges in energy security, nuclear security, and other fields. In the area of nuclear energy, there are new, DOE‐funded initiatives in advanced reactors, in nuclear energy for hydrogen production, and in spent‐fuel management. Advanced reactor programs include novel ideas in water‐cooled, gas‐cooled, and liquid‐metal‐cooled reactors. Research programs are directed toward fielding Generation IV reactors in the first half of the 21st century. In addition, there continue to be R&D efforts to demonstrate the tokamak and other plasma confinement concepts that could lead to a demonstration fusion reactor in the middle of the century. Nuclear energy can potentially be used to produce hydrogen for transportation applications in an economically feasible manner and there is a vigorous research program to develop high‐temperature reactors for this purpose. A newly announced DOE program, the Global Nuclear Energy Partnership (GNEP), is intended to develop the systems, technologies, and policy regimes to allow recycling of used light water reactor fuel and, to a large extent, eliminate the actinides in fast‐spectrum reactors in a way that enhances proliferation resistance. The resulting waste streams are envisioned to have characteristics that would lessen the demand for geologic repository assets. These and other DOE‐funded research efforts will need to make great use of university‐based NSE capabilities.

In the nuclear security arena, unclassified research needs are also varied and rich. In addition to assuring the safety, reliability, and security of the U.S. nuclear weapons stockpile, innovations are needed to detect and defend against the proliferation of weapons‐usable nuclear materials. From systems analysis to new nuclear detector innovations and new approaches to analyze intelligence data, research opportunities abound. Defense against nuclear terrorism requires new approaches to border security and new methodologies to attribute nuclear and radiological contamination to a particular country or source. Federal agencies are specifically targeting universities for innovations in these fields. New attention is also being given to other applications of nuclear processes, especially to provide process heat. Potential applications vary from water desalination to recovery of usable petroleum products from oil shale and tar sands

#### Key to deterrence

Townsend 9 (Frances Fragos, Former Assistant to President Bush for Homeland Security and Counterterrorism and Senior Member of the Department of Justice, et al., "Leveraging Science for Security: A Strategy for the Nuclear Weapons Laboratories in the 21st Century", Task Force on Leveraging the Scientific and Technological Capabilities of the NNSA National Laboratories for 21st Century National Security, March, http://www.stimson.org/images/uploads/research-pdfs/Leveraging\_Science\_for\_Security\_FINAL.pdf)

On the campaign trail, President Obama embraced the vision of a nuclear free world, but he made clear that until the time such a world was possible, the US would maintain a “robust deterrent.” Resolving the inherent tension in these divergent goals is no easy task. The backbone of our deterrent is the scientific base at our nuclear weapons Laboratories. In order to recruit, train, and retain young, talented scientists, our political leaders must articulate a vision for the Laboratories that translates into meaningful work – a mission that young scientists can embrace and to which they will dedicate their professional lives. Simultaneously, the work to achieve this vision should not undercut US nonproliferation goals.

#### Global nuclear war

John P. Caves 10 Jr., Senior Research Fellow in the Center for the Study of Weapons of Mass Destruction at the National Defense University, January 2010, “Avoiding a Crisis of Confidence in the U.S. Nuclear Deterrent,” Strategic Forum, No. 252

Perceptions of a compromised U.S. nuclear deterrent as described above would have profound policy implications, particularly if they emerge at a time when a nuclear-armed great power is pursuing a more aggressive strategy toward U.S. allies and partners in its region in a bid to enhance its regional and global clout. A dangerous period of vulnerability would open for the United States and those nations that depend on U.S. protection while the United States attempted to rectify the problems with its nuclear forces. As it would take more than a decade for the United States to produce new nuclear weapons, ensuing events could preclude a return to anything like the status quo ante. The assertive, nuclear-armed great power, and other major adversaries, could be willing to challenge U.S. interests more directly in the expectation that the U**nited** S**tates** would be less prepared to threaten or deliver a military response that could lead to direct conflict. They will want to keep the U**nited** S**tates** from reclaiming its earlier power position. Allies and partners who have relied upon explicit or implicit assurances of U.S. nuclear protection as a foundation of their security could lose faith in those assurances. They could compensate by accommodating U.S. rivals, especially in the short term, or acquiring their own nuclear deterrents, which in most cases could be accomplished only over the mid- to long term. A more nuclear world would likely ensue over a period of years. Important U.S. interests could be compromised or abandoned, or a major war could occur as adversaries and/or the U**nited** S**tates** miscalculate new boundaries of deterrence and provocation. At worst, war could lead to state-on-state employment of weapons of mass destruction (WMD) on a scale far more catastrophic than what nuclear-armed terrorists alone could inflict.

### 1NC – K Regular

#### Security renders lawfare a tool of violent biopolitical governance---the result is endless violence

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Security, not liberty: the ‘permanent emergency’ of the security society

The US military’s evident disdain for international law, indifference to the pain of ‘Others’ and endless justifying of its actions via the language of ‘emergency’ have prompted various authors to reflect on Giorgio Agamben’s work, in particular, on bare life and the state of exception in accounting for the functioning of US sovereign power in the contemporary world.111 Claudio Minca, for example, has used Agamben to attempt to lay bare US military power in the spaces of exception of the global war on terror; for Minca, “it is precisely the absence of a theory of space able to inscribe the spatialisation of exception that allows, today, such an enormous, unthinkable range of action to sovereign decision”.112 This critique speaks especially to the excessive sovereign violence of our times, all perpetrated in the name of a global war on terror.113 Minca’s argument is that geography as a discipline has failed to geo-graph and theorise the spatialization of the ‘pure’ sovereign violence of legitimated geopolitical action overseas. He uses the notion of the camp to outline the spatial manifestation and endgame of a new global biopolitical ‘nomos’ that has unprecedented power to except bare life.114

In the ‘biopolitical nomos’ of camps and prisons in the Middle East and elsewhere, managing detainees is an important element of the US military project. As CENTCOM Commander General John Abizaid made clear to the Senate Armed Services Committee in 2006, “an essential part of our combat operations in both Iraq and Afghanistan entails the need to detain enemy combatants and terrorists”.115 However, it is a mistake to characterize as ‘exceptional’ the US military’s broader biopolitical project in the war on terror. Both Minca’s and Agamben’s emphasis on the notion of ‘exception’ is most convincing when elucidating how the US military has dealt with the ‘threat’ of enemy combatants, rather than how it has planned for, legally securitized and enacted, its ‘own’ aggression against them. It does not account for the proactive juridical warfare of the US military in its forward deployment throughout the globe, which rigorously secures classified SOFAs with host nations and protects its armed personnel from transfer to the International Criminal Court. Far from designating a ‘space of exception’, the US does this to establish normative parameters in its exercise of legally sanctioned military violence and to maximize its ‘operational capacities of securitization’.

A bigger question, of course, is what the US military practices of lawfare and juridical securitization say about our contemporary moment. Are they essentially ‘exceptional’ in character, prompted by the so-called exceptional character of global terrorism today? Are they therefore enacted in ‘spaces of exceptions’ or are they, in fact, simply contemporary examples of Foucault’s ‘spaces of security’ that are neither exceptional nor indeed a departure from, or perversion of, liberal democracy? As Mark Neocleous so aptly puts it, has the “liberal project of ‘liberty’” not always been, in fact, a “project of security”?116 This ‘project of security’ has long invoked a powerful political dispositif of ‘executive powers’, typically registered as ‘emergency powers’, but, as Neocleous makes clear, of the permanent kind.117 For Neocleous, the pursuit of ‘security’ – and more specifically ‘capitalist security’ – marked the very emergence of liberal democracies, and continues to frame our contemporary world. In the West at least, that world may be endlessly registered as a liberal democracy defined by the ‘rule of law’, but, as Neocleous reminds us, the assumption that the law, decoupled from politics, acts as the ultimate safeguard of democracy is simply false – a key point affirmed by considering the US military’s extensive waging of liberal lawfare. As David Kennedy observes, the military lawyer who “carries the briefcase of rules and restrictions” has long been replaced by the lawyer who “participate[s] in discussions of strategy and tactics”.118

The US military’s liberal lawfare reveals how the rule of law is simply another securitization tactic in liberalism’s ‘pursuit of security’; a pursuit that paradoxically eliminates fundamental rights and freedoms in the ‘name of security’.119 This is a ‘liberalism’ defined by what Michael Dillon and Julian Reid see as a commitment to waging ‘biopolitical war’ for the securitization of life – ‘killing to make live’.120 And for Mark Neocleous, (neo)liberalism’s fetishization of ‘security’ – as both a discourse and a technique of government – has resulted in a world defined by anti-democratic technologies of power.121 In the case of the US military’s forward deployment on the frontiers of the war on terror – and its juridical tactics to secure biopolitical power thereat – this has been made possible by constant reference to a neoliberal ‘project of security’ registered in a language of ‘endless emergency’ to ‘secure’ the geopolitical and geoeconomic goals of US foreign policy.122 The US military’s continuous and indeed growing military footprint in the Middle East and elsewhere can be read as a ‘permanent emergency’,123 the new ‘normal’ in which geopolitical military interventionism and its concomitant biopolitical technologies of power are necessitated by the perennial political economic ‘need’ to securitize volatility and threat.

Conclusion: enabling biopolitical power in the age of securitization

“Law and force flow into one another. We make war in the shadow of law, and law in the shadow of force” – David Kennedy, Of War and Law 124

Can a focus on lawfare and biopolitics help us to critique our contemporary moment’s proliferation of practices of securitization – practices that appear to be primarily concerned with coding, quantifying, governing and anticipating life itself? In the context of US military’s war on terror, I have argued above that it can. If, as David Kennedy points out, the “emergence of a global economic and commercial order has amplified the role of background legal regulations as the strategic terrain for transnational activities of all sorts”, this also includes, of course, ‘warfare’; and for some time, the US military has recognized the “opportunities for creative strategy” made possible by proactively waging lawfare beyond the battlefield.125 As Walter Benjamin observed nearly a century ago, at the very heart of military violence is a “lawmaking character”.126 And it is this ‘lawmaking character’ that is integral to the biopolitical technologies of power that secure US geopolitics in our contemporary moment. US lawfare focuses “the attention of the world on this or that excess” whilst simultaneously arming “the most heinous human suffering in legal privilege”, redefining horrific violence as “collateral damage, self-defense, proportionality, or necessity”.127 It involves a mobilization of the law that is precisely channelled towards “evasion”, securing 23 classified Status of Forces Agreements and “offering at once the experience of safe ethical distance and careful pragmatic assessment, while parcelling out responsibility, attributing it, denying it – even sometimes embracing it – as a tactic of statecraft and war”.128

Since the inception of the war on terror, the US military has waged incessant lawfare to legally securitize, regulate and empower its ‘operational capacities’ in its multiples ‘spaces of security’ across the globe – whether that be at a US base in the Kyrgyz Republic or in combat in Iraq. I have sought to highlight here these tactics by demonstrating how the execution of US geopolitics relies upon a proactive legal-biopolitical securitization of US troops at the frontiers of the American ‘leasehold empire’. For the US military, legal-biopolitical apparatuses of security enable its geopolitical and geoeconomic projects of security on the ground; they plan for and legally condition the ‘milieux’ of military commanders; and in so doing they render operational the pivotal spaces of overseas intervention of contemporary US national security conceived in terms of ‘global governmentality’.129 In the US global war on terror, it is lawfare that facilitates what Foucault calls the “biopolitics of security” – when life itself becomes the “object of security”.130 For the US military, this involves the eliminating of threats to ‘life’, the creating of operational capabilities to ‘make live’ and the anticipating and management of life’s uncertain ‘future’.

Some of the most key contributions across the social sciences and humanities in recent years have divulged how discourses of ‘security’, ‘precarity’ and ‘risk’ function centrally in the governing dispositifs of our contemporary world.131 In a society of (in)security, such discourses have a profound power to invoke danger as “requiring extraordinary action”.132 In the ongoing war on terror, registers of emergency play pivotal roles in the justification of military securitization strategies, where ‘risk’, it seems, has become permanently binded to ‘securitization’. As Claudia Aradau and Rens Van Munster point out, the “perspective of risk management” seductively effects practices of military securitization to be seen as necessary, legitimate and indeed therapeutic.133 US tactics of liberal lawfare in the long war – the conditioning of the battlefield, the sanctioning of the privilege of violence, the regulating of the conduct of troops, the interpreting, negating and utilizing 24 of international law, and the securing of SOFAs – are vital security dispositifs of a broader ‘risk- securitization’ strategy involving the deployment of liberal technologies of biopower to “manage dangerous irruptions in the future”.134 It may well be fought beyond the battlefield in “a war of the pentagon rather than a war of the spear”,135 but it is lawfare that ultimately enables the ‘toxic combination’ of US geopolitics and biopolitics defining the current age of securitization.

#### The impact is permanent warfare---security and fear-driven politics create the enabling conditions for executive overreach and violence which means it’s try or die and we turn the case

Vivienne Jabri 6, Director of the Centre for International Relations and Senior Lecturer at the Department of War Studies, King’s College London, War, Security and the Liberal State, Security Dialogue, 37;47

LATE MODERN TRANSFORMATIONS are often conceived in terms of the sociopolitical and economic manifestations of change emergent from a globalized arena. What is less apparent is how late modernity as a distinct era has impacted upon our conceptions of the social sphere, our lived experience, and our reflections upon the discourses and institutions that form the taken-for-granted backdrop of the known and the knowable. The paradigmatic certainties of modernity – the state, citizenship, democratic space, humanity’s infinite capacity for progress, the defeat of dogma and the culmination of modernity’s apotheosis in the free-wheeling market place – have in the late modern era come face to face with uncertainty, unpre- dictability and the gradual erosion of the modern belief that we could indeed simply move on, assisted by science and technology, towards a condition where instrumental rationality would become the linchpin of government and human interaction irrespective of difference. Progress came to be associated with peace, and both were constitutively linked to the universal, the global, the human, and therefore the cosmopolitan. What shatters such illusions is the recollection of the 20th century as the ‘age of extremes’ (Hobsbawm, 1995), and the 21st as the age of the ever-present condition of war. While we might prefer a forgetting of things past, a therapeutic anamnesis that manages to reconfigure history, it is perhaps the continuities with the past that act as antidote to such righteous comforts.

How, then, do we begin to conceptualize war in conditions where distinctions disappear, where war is conceived, or indeed articulated in political discourse, in terms of peace and security, so that the political is somehow banished in the name of governmentalizing practices whose purview knows no bounds, whose remit is precisely the banishment of limits, of boundaries and distinctions. Boundaries, however, do not disappear. Rather, they become manifest in every instance of violence, every instance of control, every instance of practices targeted against a constructed other, the enemy within and without, the all-pervasive presence, the defences against which come to form the legitimizing tool of war.

Any scholarly take on the present juncture of history, any analysis of the dynamics of the present, must somehow render the narrative in measured tones, taking all factors into account, lest the narrator is accused of exaggeration at best and particular political affiliations at worst. When the late modern condition of the West, of the European arena, is one of camps, one of the detention of groups of people irrespective of their individual needs as migrants, one of the incarceration without due process of suspects, one of overwhelming police powers to stop, search and detain, one of indefinite detention in locations beyond law, one of invasion and occupation, then language itself is challenged in its efforts to contain the description of what is. The critical scholarly take on the present is then precisely to reveal the conditions of possibility in relation to how we got here, to unravel the enabling dynamics that led to the disappearance of distinctions between war and criminality, war and peace, war and security. When such distinctions disappear, impunity is the result, accountability shifts beyond sight, and violence comes to form the linchpin of control. We can reveal the operations of violence, but far more critical is the revelation of power and how power operates in the present. As the article argues, such an exploration raises fundamental questions relating to the relationship of power and violence, and their mutual interconnection in the complex interstices of disrupted time and space locations. Power and violence are hence separable analytical categories, separable practices; they are at the same time connected in ways that work on populations and on bodies – with violence often targeted against the latter so that the former are reigned in, governed. Where Michel Foucault sought, in his later writings, to distinguish between power and violence, to reveal the subtle workings of power, now, in the present, this article will venture, perhaps the distinction is no longer viable when we witness the indistinctions I highlight above

The article provides an analysis of the place of war in late modern politics. In particular, it concentrates on the implications of war for our conceptions of the liberty–security problematique in the context of the modern liberal state. The first section of the article argues the case for the figure of war as analyser of the present. The second section of the article reveals the con- ditions of possibility for a distinctly late modern mode of war and its imbri- cations in politics. The final section of the article concentrates on the political implications of the primacy of war in late modernity, and in particular on possibilities of dissent and articulations of political agency. The aim through- out is to provide the theoretical and conceptual tools that might begin to meet the challenges of the present and to open an agenda of research that concentrates on the politics of the present, the capacities or otherwise of contestation and accountability, and the institutional locations wherein such political agency might emerge.

The Figure of War and the Spectre of Security

The so-called war against terrorism is constructed as a global war, transcend- ing space and seemingly defiant of international conventions. It is dis- tinguished from previous global wars, including the first and the second world wars, in that the latter two have, in historiography, always been analysed as interstate confrontations, albeit ones that at certain times and in particular locations peripherally involved non-state militias. Such distinc- tions from the old, of course, will be subject to future historical narratives on the present confrontation and its various parameters. What is of interest in the present discussion is the distinctly global aspect of this war, for it is the globality1 of the war against terrorism that renders it particularly relevant and pertinent to investigations that are primarily interested in the relation- ship between war and politics, war and the political processes defining the modern state. The initial premise of the present article is that war, rather than being confined to its own time and space, permeates the normality of the political process, has, in other words, a defining influence on elements con- sidered to be constitutive of liberal democratic politics, including executive answerability, legislative scrutiny, a public sphere of discourse and inter- action, equal citizenship under the law and, to follow liberal thinkers such as Habermas, political legitimacy based on free and equal communicative practices underpinning social solidarity (Habermas, 1997). War disrupts these elements and is a time of crisis and emergency. A war that has a permanence to it clearly normalizes the exceptional, inscribing emergency into the daily routines of social and political life. While the elements of war – conflict, social fragmentation, exclusion – may run silently through the assemblages of control in liberal society (Deleuze, 1986), nevertheless the persistent iteration of war into politics brings these practices to the fore, and with them a call for a rethinking of war’s relationship to politics.

The distinctly global spatiality of this war suggests particular challenges that have direct impact on the liberal state, its obligations towards its citizenry, and the extent to which it is implicated in undermining its own political institutions. It would, however, be a mistake to assume that the practices involved in this global war are in any way anathema to the liberal state. The analysis provided here would argue that while it is crucial to acknowledge the transformative impact of the war against terrorism, it is equally as important to appreciate the continuities in social and political life that are the enabling conditions of this global war, forming its conditions of possibility. These enabling conditions are not just present or apparent at global level, but incorporate local practices that are deep-rooted and institu- tionalized. The mutually reinforcing relationship between global and local conditions renders this particular war distinctly all-pervasive, and poten- tially, in terms of implications, far more threatening to the spaces available for political contestation and dissent.

Contemporary global politics is dominated by what might be called a ‘matrix of war’2 constituted by a series of transnational practices that vari- ously target states, communities and individuals. These practices involve states as agents, bureaucracies of states and supranational organizations, quasi-official and private organizations recruited in the service of a global machine that is highly militarized and hence led by the United States, but that nevertheless incorporates within its workings various alliances that are always in flux. The crucial element in understanding the matrix of war is the notion of ‘practice’, for this captures the idea that any practice is not just situated in a system of enablements and constraints, but is itself constitutive of structural continuities, both discursive and institutional. As Paul Veyne (1997: 157) writes in relation to Foucault’s use of the term, ‘practice is not an agency (like the Freudian id) or a prime mover (like the relation of produc- tion), and moreover for Foucault, there is no agency nor any prime mover’. It is in this recursive sense that practices (of violence, exclusion, intimidation, control and so on) become structurated in the routines of institutions as well as lived experience (Jabri, 1996). To label the contemporary global war as a ‘war against terrorism’ confers upon these practices a certain legitimacy, suggesting that they are geared towards the elimination of a direct threat. While the threat of violence perpetrated by clandestine networks against civilians is all too real and requires state responses, many of these responses appear to assume a wide remit of operations – so wide that anyone interested in the liberties associated with the democratic state, or indeed the rights of individuals and communities, is called upon to unravel the implications of such practices.

When security becomes the overwhelming imperative of the democratic state, its legitimization is achieved both through a discourse of ‘balance’ between security and liberty and in terms of the ‘protection’ of liberty.3 The implications of the juxtaposition of security and liberty may be investigated either in terms of a discourse of ‘securitization’ (the power of speech acts to construct a threat juxtaposed with the power of professionals precisely to so construct)4 or, as argued in this article, in terms of a discourse of war. The grammars involved are closely related, and yet that of the latter is, para- doxically, the critical grammar, the grammar that highlights the workings of power and their imbrications with violence. What is missing from the securitization literature is an analytic of war, and it is this analytic that I want to foreground in this article.

The practices that I highlight above seem at first hand to constitute differ- ent response mechanisms in the face of what is deemed to be an emergency situation in the aftermath of the events of 11 September 2001. The invasion and occupation of Iraq, the incarceration without due process of prisoners in camps from Afghanistan to Guantánamo and other places as yet un- identified, the use of torture against detainees, extra-judicial assassination, the detention and deportation – again without due process – of foreign nationals deemed a threat, increasing restrictions on refugees, their confine- ment in camps and detention centres, the construction of the movement of peoples in security terms, and restrictions on civil liberties through domestic legislation in the UK, the USA and other European states are all represented in political discourse as necessary security measures geared towards the protection of society. All are at the same time institutional measures targeted against a particular other as enemy and source of danger.

It could be argued that the above practices remain unrelated and must hence be subject to different modes of analysis. To begin with, these practices involve different agents and are framed around different issues. Afghanistan and Iraq may be described as situations of war, and the incarceration of refugees as encompassing practices of security. However, what links these elements is not so much that they constitute a constructed taxonomy of dif- ferentiated practices. Rather, what links them is the element of antagonism directed against distinct and particular others. Such a perspective suggests that the politics of security, including the production of fear and a whole array of exclusionary measures, comes to service practices that constitute war and locates the discourse of war at the heart of politics, not just domes- tically, but, more crucially in the present context, globally. The implications for the late modern state and the distinctly liberal state are monumental, for a perpetual war on a global scale has implications for political structures and political agency, for our conceptions of citizenship and the role of the state in meeting the claims of its citizens,5 and for the workings of a public sphere that is increasingly global and hence increasingly multicultural.

The matrix of war is centrally constituted around the element of antago- nism, having an association with existential threat: the idea that the continued presence of the other constitutes a danger not just to the well-being of society but to its continued existence in the form familiar to its members, hence the relative ease with which European politicians speak of migrants of particular origins as forming a threat to the ‘idea of Europe’ and its Christian origins.6 Herein lies a discourse of cultural and racial exclusion based on a certain fear of the other. While the war against specific clandestine organiza- tions7 involves operations on both sides that may be conceptualized as a classical war of attrition, what I am referring to as the matrix of war is far more complex, for here we have a set of diffuse practices, violence, disci- plinarity and control that at one and same time target the other typified in cultural and racial terms and instantiate a wider remit of operations that impact upon society as a whole.

The practices of warfare taking place in the immediate aftermath of 11 September 2001 combine with societal processes, reflected in media representations and in the wider public sphere, where increasingly the source of threat, indeed the source of terror, is perceived as the cultural other, and specifically the other associated variously with Islam, the Middle East and South Asia. There is, then, a particularity to what Agamben (1995, 2004) calls the ‘state of exception’, a state not so much generalized and generalizable, but one that is experienced differently by different sectors of the global population. It is precisely this differential experience of the exception that draws attention to practices as diverse as the formulation of interrogation techniques by military intelligence in the Pentagon, to the recent provisions of counter-terrorism measures in the UK,8 to the legitimizing discourses surrounding the invasion of Iraq. All are practices that draw upon a discourse of legitimization based on prevention and pre-emption. Enemies constructed in the discourses of war are hence always potential, always abstract even when identified, and, in being so, always drawn widely and, in consequence, communally. There is, hence, a ‘profile’ to the state of exception and its experience. Practices that profile particular communities, including the citizens of European states, create particular challenges to the self-understanding of the liberal democratic state and its capacity, in the 21st century, to deal with difference.

While a number of measures undertaken in the name of security, such as proposals for the introduction of identity cards in the UK or increasing surveillance of financial transactions in the USA, might encompass the population as a whole, the politics of exception is marked by racial and cul- tural signification. Those targeted by exceptional measures are members of particular racial and cultural communities. The assumed threat that under- pins the measures highlighted above is one that is now openly associated variously with Islam as an ideology, Islam as a mode of religious identi- fication, Islam as a distinct mode of lifestyle and practice, and Islam as a particular brand associated with particular organizations that espouse some form of a return to an Islamic Caliphate. When practices are informed by a discourse of antagonism, no distinctions are made between these various forms of individual and communal identification. When communal profiling takes place, the distinction between, for example, the choice of a particular lifestyle and the choice of a particular organization disappears, and diversity within the profiled community is sacrificed in the name of some ‘pre- cautionary’ practice that targets all in the name of security.9 The practices and language of antagonism, when racially and culturally inscribed, place the onus of guilt onto the entire community so identified, so that its indi- vidual members can no longer simply be citizens of a secular, multicultural state, but are constituted in discourse as particular citizens, subjected to particular and hence exceptional practices. When the Minister of State for the UK Home Office states that members of the Muslim community should expect to be stopped by the police, she is simply expressing the condition of the present, which is that the Muslim community is particularly vulnerable to state scrutiny and invasive measures that do not apply to the rest of the citizenry.10 We know, too, that a distinctly racial profiling is taking place, so that those who are physically profiled are subjected to exceptional measures.

Even as the so-called war against terrorism recognizes no boundaries as limits to its practices – indeed, many of its practices occur at transnational, often indefinable, spaces – what is crucial to understand, however, is that this does not mean that boundaries are no longer constructed or that they do not impinge on the sphere of the political. The paradox of the current context is that while the war against terrorism in all its manifestations assumes a boundless arena, borders and boundaries are at the heart of its operations. The point to stress is that these boundaries and the exclusionist practices that sustain them are not coterminous with those of the state; rather, they could be said to be located and perpetually constructed upon the corporeality of those constructed as enemies, as threats to security. It is indeed the corporeal removal of such subjects that lies at the heart of what are constructed as counter-terrorist measures, typified in practices of direct war, in the use of torture, in extra-judicial incarceration and in judicially sanctioned detention. We might, then, ask if such measures constitute violence or relations of power, where, following Foucault, we assume that the former acts upon bodies with a view to injury, while the latter acts upon the actions of subjects and assumes, as Deleuze (1986: 70–93) suggests, a relation of forces and hence a subject who can act. What I want to argue here is that violence is imbricated in relations of power, is a mode of control, a technology of governmentality. When the population of Iraq is targeted through aerial bombardment, the consequence goes beyond injury and seeks the pacifica- tion of the Middle East as a political region.

When legislative and bureaucratic measures are put in place in the name of security, those targeted are categories of population. At the same time, the war against terrorism and the security discourses utilized in its legitimiza- tion are conducted and constructed in terms that imply the defence or protection of populations. One option is to limit policing, military and intel- ligence efforts through the targeting of particular organizations. However, it is the limitless construction of the war against terrorism, its targeting of particular racial and cultural communities, that is the source of the challenge presented to the liberal democratic state. In conditions constructed in terms of emergency, war permeates discourses on politics, so that these come to be subject to the restraints and imperatives of war and practices constituted in terms of the demands of security against an existential threat. The implications for liberal democratic politics and our conceptions of the modern state and its institutions are far-reaching,11 for the liberal democratic polity that considers itself in a state of perpetual war is also a state that is in a permanent state of mobilization, where every aspect of public life is geared towards combat against potential enemies, internal and external.

One of the most significant lessons we learn from Michel Foucault’s writ- ings is that war, or ‘the distant roar of battle’ (Foucault, 1977: 308), is never quite so distant from liberal governmentality. Conceived in Foucaultian terms, war and counter-terrorist measures come to be seen not as discontinuity from liberal government, but as emergent from the enabling conditions that liberal government and the modern state has historically set in place. On reading Foucault’s renditions on the emergence of the disciplinary society, what we see is the continuation of war in society and not, as in Hobbes and elsewhere in the history of thought, the idea that wars happen at the outskirts of society and its civil order. The disciplinary society is not simply an accumulation of institutional and bureaucratic procedures that permeate the everyday and the routine; rather, it has running through its interstices the constitutive elements of war as continuity, including confrontation, struggle and the corporeal removal of those deemed enemies of society. In Society Must Be Defended (Foucault, 2003) and the first volume of the History of Sexuality (Foucault, 1998), we see reference to the discursive and institutional continuities that structurate war in society. Reference to the ‘distant roar of battle’ suggests confrontation and struggle; it suggests the ever-present construction of threat accrued to the particular other; it suggests the immediacy of threat and the construction of fear of the enemy; and ultimately it calls for the corporeal removal of the enemy as source of threat. The analytic of war also encompasses the techniques of the military and their presence in the social sphere – in particular, the control and regulation of bodies, timed pre- cision and instrumentality that turn a war machine into an active and live killing machine. In the matrix of war, there is hence the level of discourse and the level of institutional practices; both are mutually implicating and mutually enabling. There is also the level of bodies and the level of population. In Foucault’s (1998: 152) terms: ‘the biological and the historical are not con- secutive to one another . . . but are bound together in an increasingly com- plex fashion in accordance with the development of the modern technologies of power that take life as their objective’.

What the above suggests is the idea of war as a continuity in social and political life. The matrix of war suggests both discursive and institutional practices, technologies that target bodies and populations, enacted in a complex array of locations. The critical moment of this form of analysis is to point out that war is not simply an isolated occurrence taking place as some form of interruption to an existing peaceful order. Rather, this peaceful order is imbricated with the elements of war, present as continuities in social and political life, elements that are deeply rooted and enabling of the actuality of war in its traditional battlefield sense. This implies a continuity of sorts between the disciplinary, the carceral and the violent manifestations of government.

#### Our alternative is to refuse technical debates about war powers in favor of subjecting the 1ac’s discourse to rigorous democratic scrutiny

Aziz Rana 12, Assistant Professor of Law, Cornell University Law School; A.B., Harvard College; J.D., Yale Law School; PhD., Harvard University, July 2012, “NATIONAL SECURITY: LEAD ARTICLE: Who Decides on Security?,” 44 Conn. L. Rev. 1417

But this mode of popular involvement comes at a key cost. Secret information is generally treated as worthy of a higher status than information already present in the public realm—the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although the actual content of this secret information is flawed,197 its status as secret masks these problems and allows policymakers to cloak their positions in added authority. This reality highlights the importance of approaching security information with far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’—marked fundamentally by epistemological uncertainty as opposed to verifiable fact—than policymakers admit.

If the objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this meahn for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that the central problem with the procedural solutions offered by constitutional scholars-emphasizing new statutory frameworks or greater judicial assertiveness-is that they mistake a question of politics for one of law. In other words, such scholars ignore the extent to which governing practices are the product of background political judgments about threat, democratic knowledge, professional expertise, and the necessity for insulated decision-making. **To the extent that Americans are convinced that they face continuous danger from hidden and potentially limitless assailants**-danger too complex for the average citizen to comprehend independently-it is inevitable that institutions (regardless of legal reform initiatives) will operate to centralize power in those hands presumed to enjoy military and security expertise. Thus, any systematic effort to challenge the current framing of the relationship between security and liberty must begin by challenging the underlying assumptions about knowledge and security upon which legal and political arrangements rest. Without a sustained and public debate about the validity of security expertise, its supporting institutions, and the broader legitimacy of secret information, there can be no substantive shift in our constitutional politics. The problem at present, however, is that it remains unclear which popular base exists in society to raise these questions. Unless such a base fully emerges, we can expect our prevailing security arrangements to become ever more entrenched.

### 1NC - Exec/Cong CP

#### The United States Congress should create a Joint Congressional committee to oversee the introduction of naval forces into hostilities under the appropriate articles of the Law of the Sea Treaty. The United States federal government should codify Articles 301 and 88 of the Law of the Sea Treaty, but not increase statutory restrictions on the president’s war powers authority. The Executive Branch issue a public policy memorandum declaring that it will not introduce naval forces into hostilities contravening the codified Articles and engage in meaningful consultation and transparency efforts with the committee in regards to the above commitment.

#### CP solves the whole case without restricting war powers which links to politics

Warren Christopher 8, **et al** 63rd Secretary of State. He also served as Deputy Attorney General in the Lyndon Johnson Administration, and as Deputy Secretary of State in the Carter Administration, Over 14 months, this bipartisan body met seven times in full-day sessions, interviewing more than 40 witnesses about the respective war powers of the President and Congress., James A. Baker, III, Slade Gorton Lee H. Hamilton Carla A. Hills John O. Marsh, Jr Edwin Meese, III Abner J. Mikva J. Paul Reason Brent Scowcroft Anne-Marie Slaughter Strobe Talbott, National War Powers Commission Report, http://web1.millercenter.org/reports/warpowers/report.pdf

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 his- tory, 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 fram- ers disputed these very issues in the years following the Constitution’s ratiﬁ ca- tion, 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.” ¶ Over the years, public ofﬁ cials, academics, and experts empaneled on com- missions much like this one have expressed a wide range of views on how the war powers are allocated — or could best be allocated — among the branches of government. One topic on which a broad consensus does exist is that the War Powers Resolution of 1973 does not provide a solution because it is at least in part unconstitutional and in any event has not worked as intended. ¶ Historical practice provides no decisive guide. One can point to examples of Presidents and Congresses exercising various powers, but it is hard to ﬁ nd a “golden age” or an unbroken line of precedent in which all agree the Executive and Legislative Branches exercised their war powers in a clear, consistent, and agreed-upon way. ¶ Finally, the courts have not settled many of the open constitutional ques- tions. Despite opportunities to intervene in several inter-branch disputes, courts frequently decline to answer the broader questions these war powers cases raise, and seem willing to decide only those cases in which litigants ask them to protect individual liberties and property rights affected by the conduct of a particular war. ¶ Unsurprisingly, this uncertainty about war powers has precipitated a number of calls for reform and yielded a variety of proposals over the years. These proposals have largely been rejected or ignored, in many cases because they came down squarely on the side of one camp’s view of the law and dismissed the other. ¶ However, one common theme runs through most of these efforts at reform: the importance of getting the President and Congress to consult meaningfully and deliberate before committing the nation to war. Gallup polling data throughout the past half century shows that Americans have long shared this desire for consultation. Yet, such consultation has not always occurred. ¶ No clear mechanism or requirement exists today for the President and Congress to consult. The War Powers Resolution of 1973 contains only vague consultation requirements. Instead, it relies on reporting requirements that, if triggered, begin the clock running for Congress to approve the particular armed conﬂ ict. By the terms of the 1973 Resolution, however, Congress need not act to disapprove the conﬂ ict; the cessation of all hostilities is required in 60 to 90 days merely if Congress fails to act. Many have criticized this aspect of the Resolution as unwise and unconstitutional, and no President in the past 35 years has ﬁ led a report “pursuant” to these triggering provisions. ¶ This is not healthy. It does not promote the rule of law. It does not send the right message to our troops or to the public. And it does not encourage dialogue or cooperation between the two branches. ¶ In our efforts to address this set of problems, we have been guided by three principles: ■ First, that our proposal be practical, fair, and realistic. It must have a rea- sonable chance of support from both the President and Congress. That requires constructing a proposal that avoids clearly favoring one branch over the other, and leaves no room for the Executive or Legislative Branch justiﬁably to claim that our proposal unconstitutionally infringes on its powers. ¶ Second, that our proposal maximize the likelihood that the President and Congress productively consult with each other on the exercise of war powers. Both branches possess unique competencies and bases of support, and the country operates most effectively when these two branches of govern- ment communicate in a timely fashion and reach as much agreement as possible about taking on the heavy burdens associated with war. ¶ ■ Third, that our proposal should not recommend reform measures that will be subject to widespread constitutional criticism. It is mainly for this reason that our proposal does not explicitly deﬁne a role for the courts, which have been protective of deﬁ ning their own jurisdiction in this area. ¶ Consistent with these principles, we propose the passage of the War Powers Consultation Act of 2009. The stated purpose of the Act is to codify the norm of consultation and “describe a constructive and practical way in which the judg- ment of both the President and Congress can be brought to bear when deciding whether the United States should engage in signiﬁ cant armed conﬂict.” ¶ The Act requires such consultation before Congress declares or autho- rizes war or the country engages in combat operations lasting, or expected to last, more than one week (“signiﬁ cant armed conﬂ ict”). There is an “exigent circumstances” carve-out that allows for consultation within three days after the beginning of combat operations. In cases of lesser conﬂ icts — e.g., limited actions to defend U.S. embassies abroad, reprisals against terrorist groups, and covert operations — such advance consultation is not required, but is strongly encouraged. ¶ Under the Act, once Congress has been consulted regarding a signiﬁ cant armed conﬂ ict, it too has obligations. Unless it declares war or otherwise expressly authorizes the conﬂ ict, it must hold a vote on a concurrent resolution within 30 days calling for its approval. If the concurrent resolution is approved, there can be little question that both the President and Congress have endorsed the new armed conﬂ ict. In an effort to avoid or mitigate the divisiveness that commonly occurs in the time it takes to execute the military campaign, the Act imposes an ongoing duty on the President and Congress regularly to consult for the duration of the conﬂ ict that has been approved. ¶ If, instead, the concurrent resolution of approval is defeated in either House, any member of Congress may propose a joint resolution of disapproval. Like the concurrent resolution of approval, this joint resolution of disapproval shall be deemed highly privileged and must be voted on in a deﬁ ned number of days. If such a resolution of disapproval is passed, Congress has several options. If both Houses of Congress ratify the joint resolution of disapproval and the President signs it or Congress overrides his veto, the joint resolution of disapproval will have the force of law. If Congress cannot muster the votes to overcome a veto, it may take lesser measures. Relying on its inherent rule making powers, Congress may make internal rules providing, for example, that any bill appropriating new funds for all or part of the armed conﬂ ict would be out of order. ¶ In our opinion, the Act’s requirements do not materially increase the burdens on either branch, since Presidents have often sought and received approval or authorization from Congress before engaging in signiﬁcant armed conﬂ ict. Under the Act, moreover, both the President and the American people get some- thing from Congress — its position, based on deliberation and consideration, as to whether it supports or opposes a certain military campaign. If Congress fails to act, it can hardly complain about the war effort when this clear mechanism for acting was squarely in place. If Congress disapproves the war, the disapproval is a political reality the President must confront, and Congress can press to make its disapproval binding law or use its internal rule-making capacity or its power of the purse to act on its disapproval. ¶ We recognize the Act we propose may not be one that satisﬁes all Presidents or all Congresses in every circumstance. On the President’s side of the ledger, however, the statute generally should be attractive because it involves Congress only in “signiﬁ cant armed conﬂ ict,” not minor engagements. Moreover, it reverses the presumption that inaction by Congress means that Congress has disapproved of a military campaign and that the President is acting lawlessly if he proceeds with the conﬂ ict. On the congressional side of the ledger, the Act gives the Legislative Branch more by way of meaningful consultation and information. It also provides Congress a clear and simple mechanism by which to approve or disapprove a military campaign, and does so in a way that seeks to avoid the constitutional inﬁrmities that plague the War Powers Resolution of 1973. Altogether, the Act works to gives Congress a seat at the table; it gives the President the beneﬁt of Congress’s counsel; and it provides a mechanism for the President and the public to know Congress’s views before or as a mili- tary campaign begins. History suggests that building broad-based support for a military campaign — from both branches of government and the public — is often vital to success. ¶ To enable such consultation most proﬁtably to occur, our proposed Act establishes a Joint Congressional Consultation Committee, consisting of the majority and minority leaders of both Houses of Congress, as well as the chair- men and ranking members of key committees. We believe that if the President and Committee meet regularly, much of the distrust and tension that at times can characterize inter-branch relationships can be dissipated and overcome. In order that Congress and the Committee possess the competence to pro- vide meaningful advice, the Act both requires the President to provide the Committee with certain reports and establishes a permanent, bipartisan congressional staff to facilitate its work. Given these resources, however, our proposed Act limits the incentives for Congress to act by inaction — which is exactly the course of conduct that the default rules in the War Powers Resolution of 1973 often promoted. ¶ To be clear, however, in urging the passage of War Powers Consultation Act of 2009, we do not intend to strip either political branch of government of the constitutional arguments it may make about the scope of its power. As the Act itself makes plain, it “is not meant to deﬁne, circumscribe, or enhance the con- stitutional war powers of either the Executive or Legislative Branches of government, and neither branch by supporting or complying with this Act shall in any way limit or prejudice its right or ability to assert its constitutional war powers or its right or ability to question or challenge the constitutional war powers of the other branch.”

#### Avoids politics---turf battles over authority are key

James A. Baker 11, was secretary of state from 1989 to 1992. Lee H. Hamilton is a former Democratic representative from Indiana who chaired the House Committee on Foreign Affairs, Breaking the war powers stalemate, www.washingtonpost.com/opinions/breaking-the-war-powers-stalemate/2011/06/08/AGX0CrNH\_story.html

Breaking the war powers stalemate¶ With our country engaged in three critical military conflicts, the last thing that Congress and the White House should be doing is squabbling over which branch of government has the final authority to send American troops to war. But that is exactly what has been happening, culminating with the House’s rebuke of the Obama administration last Friday for the way it has gone about the war in Libya.¶ On one hand is a bipartisan group of House members who argue that President Obama overreached because he failed to seek congressional approval for the military action in Libya within 60 days of the time the war started, as required by the War Powers Resolution. The lawmakers are particularly upset because the administration sought, and received, support from the United Nations — but not from them.¶ On the other hand is the White House, which argues that history is on its side. The 1999 NATO-led bombing over Kosovo lasted 18 days longer than the resolution’s 60-day requirement before the Serbian regime relented.¶ Stuck in the middle are the American people, particularly our soldiers in arms. They would be best served if our leaders debated the substantive issues regarding the conflict in Libya — and those of Afghanistan and Iraq — rather than engaging in turf battles about who has ultimate authority concerning the nation’s war powers.¶ There is, unfortunately, no clear legal answer about which side is correct. Some argue for the presidency, saying that the Constitution assigns it the job of “Commander in Chief.” Others argue for Congress, saying that the Constitution gives it the “power to . . . declare war.” But the Supreme Court has been unwilling to resolve the matter, declining to take sides in what many consider a political dispute between the other branches of government.¶ We believe there is a better way than wasting time disputing who is responsible for initiating or continuing war.¶ Almost three years ago, we were members of the Miller Center’s bipartisan National War Powers Commission, which proposed a pragmatic framework for consultation between the president and Congress. Co-chaired by one of us and the late Warren Christopher, the commission could not resolve the legal question of which branch has the ultimate authority. Only the court system can do that. Instead, the commission strove to foster interaction and consultation, and reduce unnecessary political friction. The commission — which represented a broad spectrum of views, from Abner Mikva on the liberal end to Edwin Meese on the conservative end — made a unanimous recommendation to the president and Congress in 2008.¶ The commission’s proposed legislation would repeal and replace the War Powers Resolution. Passed over a presidential veto and in response to the Vietnam War, the 1973 resolution was designed to give Congress the ability to end a conflict and force the president to consult more actively with the legislative branch before engaging in military action. The resolution, a hasty compromise between competing House and Senate plans, stated that the president must terminate a conflict within 90 days if Congress has not authorized it. But no president has ever accepted the statute’s constitutionality, Congress has never enforced it and even the bill’s original sponsors were unhappy with the end product. In reality, the resolution has only further complicated the issue of war powers.

# Case

## Solvency – Congress

### 1NC---Yes Motive/Capability

#### Obama has motive and capability to circumvent the plan

Jeffrey Crouch 13, assistant professor of American politics at American University, Mark J. Rozell, acting dean and a professor of public policy at George Mason University, and Mitchel A. Sollenberger, associate professor of political science at the University of Michigan-Dearborn, December 2013, The Law: President Obama's Signing Statements and the Expansion of Executive Power, Presidential Studies Quarterly 43.4

Signing statements are a natural result of the vast growth in the exercise of unilateral presidential powers in the modern era. Presidents increasingly seek methods for governing by avoiding the traditional constraints provided by a system of separated powers. The rise of an increasingly powerful and virtually unchecked executive has been aided by various factors, including what Gene Healy (2008) calls a “cult of the presidency” in which power-seeking presidents are seen as the norm and even the ideal. It is hard to imagine a president today suggesting the need to give greater deference to the other branches of government.¶ Nonetheless, the Bush era witnessed a remarkably open and critical national debate over the limits of presidential powers. In 2007-08, presidential candidate Obama made no secret of his disagreement with President Bush's conception of executive powers. Through his pledges during the campaign, Senator Obama gave clear signals that he would not push the outer limits of executive power and that he would respect the system of checks and balances. Maybe he was not exactly promising to scale back the presidency, but he left the unmistakable impression that he would not continue the Bush era trend of runaway executive powers.¶ It is therefore appropriate to criticize President Obama for the actions we have described here because he had promised a higher standard of conduct than that practiced by his predecessors. Longtime observers of the modern presidency should not be surprised, though, as his actions fall into a customary pattern: when a new president sees the utility of a particular power established by his predecessors, he is not going to give that power away. On several occasions now, what President Obama has not been able to achieve through the normal ebb and flow of deliberations with the legislative branch, he has stipulated through the issuance of a signing statement. He has even made quips about how he looks for ways to govern without direct congressional involvement (Savage 2012).¶ The “Unitary Executive” Theory¶ During the George W. Bush presidency, there was substantial scholarly debate over what had been termed the “unitary executive” theory, defined by Stephen Skowronek as the claim “that the Constitution mandates an integrated and hierarchical administration—a unified executive branch—in which all officers performing executive business are subordinate to the President, accountable to his interpretations of their charge, and removable at his discretion” (2009, 2077). Skowronek's definition is drawn from four crucial constitutional provisions relating to presidential power. First, the “executive power” vested in the president by Article II is interpreted broadly by unitary executive theory proponents to justify vast authority over the rest of the executive branch. Second, the “vesting” clause of Article II, which does not contain the “herein granted” language of Article I, seems to imply greater executive power than the explicit words of the Constitution may suggest. Third, the president's oath of office is his responsibility to “preserve, protect and defend the Constitution.” Finally, the “take care” clause—the idea that the president has total control over his subordinates in the executive branch and is responsible to the entire nation for the implementation of the laws—rounds out the list (Skowronek 2009, 2076; see Kelley, forthcoming, 12-13).¶ For legal scholars Steven Calabresi and Christopher Yoo “all of our nation's presidents have believed in the theory of the unitary executive” (2008, 4). Along similar lines, although looking at the question from a political development perspective, Skowronek casts the unitary executive theory backers as the latest in a long line of insurgents. In the past progressives extolled the virtues of a strong presidency; more recently the rebels have been conservatives who see the unitary executive theory as a way to gather power and avoid accountability (Skowronek 2009).¶ The unitary executive theory—at least, in its current form—was essentially a creation of conservative attorneys in the Ronald Reagan Justice Department. As Christopher Kelley and Bryan Marshall note, presidents from Reagan onward have, to some degree, exhibited a belief in the unitary executive theory (2007, 144). After Watergate, the presidency faced unprecedented scrutiny from the public and the mass media, and Congress had passed a series of laws intended to check presidential power, including the Congressional Budget and Impoundment Control Act, the Ethics in Government Act, and the War Powers Resolution (Kelley 2010, 108; see Kelley 2003, 23; Rudalevige 2006). To fight back, lawyers in the Reagan OLC devised plans for the president to act unilaterally, even if against Congress's wishes (Kelley forthcoming, 6).¶ Their actions stimulated a debate over the constitutional powers of the presidency. One prominent critic, Cass Sunstein, writes, “It has become a pervasive view within the executive branch, and to a large degree within the courts, that the original vision of the Constitution put the President on top of a pyramid, with the administration below him. This vision, set out in numerous documents by the Department of Justice's Office of Legal Counsel, my former home, is not an accurate interpretation of the Constitution. It is basically a fabrication by people of good intentions who have spoken ahistorically” (Sunstein 1993-94, 300).¶ Similarly, it is obvious to Louis Fisher that the president does not have complete control over the executive branch. The Constitution assumes that others will share in the workload: “The Constitution does not empower the President to carry out the law. That would be an impossible assignment. It empowers the President to see that the law is faithfully carried out” (Fisher 2009-10, 591). In the separation of powers system, those executive branch agencies actually executing the laws necessarily have relationships with—and are responsible to—the other branches of government and to the laws passed by Congress, not just the president.¶ The “Decider” Model¶ Peter Shane argues that a different presidential model took hold during the Bush years. Shane contends that the traditional understanding of the president's role is that of the chief executive regarding himself as the “overseer” of the executive branch responsible for “general oversight” and able to “indirectly” influence his subordinates. In contrast, Bush believed more in the “decider” model, which gave him direct input into everything his subordinates might do, “without regard to any limitations Congress might try to impose on the President's power of command” (Shane 2009, 144-45). Shane concludes that the “decider” model is “profoundly undemocratic and deeply dangerous” (2009, 144). It is also contrary to law. Executive officials carry out numerous mandatory and adjudicatory duties pursuant to statutory policy. Presidents and White House aides may not intervene to change the outcomes of those decisions. Many attorneys general have advised presidents that they may not interfere with statutory duties assigned to particular executive officials (Fisher 2009-10, 576-79).¶ Signing statements comfortably fit the “decider” model of presidential power. Scholars identify signing statements as among the current litany of unilateral presidential powers (see Cooper 2002; Moe and Howell 1999), and some see no danger in the exercise of this practice (Ostrander and Sievert 2013a, 2013b). The trouble is that some presidents have used signing statements to revise legislative intent or even to alter the balance of power between the political branches and have thus undermined democratic controls on executive power (Pfiffner 2008, 196; see also Korzi 2011, 197; Fisher 2006, 1).

### 1NC---Glennon

#### U.S. security policy is overwhelmingly controlled by a “Trumanite” network of executive branch officials who are beyond the reach of “Madisonian” checks by the three branches---the plan’s restriction is hopeless because it mis-diagnoses where true war powers authority is located

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Given Senator Obama's powerful criticism of such policies before he took office as President, the question, n39 then, is this: Why does national [\*10] security policy remain constant even when one President is replaced by another who as a candidate repeatedly, forcefully, and eloquently promised fundamental changes in that policy?

I. Bagehot's Theory of Dual Institutions

A disquieting answer is provided by the theory that Walter Bagehot suggested in 1867 to explain the evolution of the English Constitution. n40 While not without critics, his theory has been widely acclaimed and has generated significant commentary. n41 Indeed, it is something of a classic on the subject of institutional change generally, and it foreshadowed modern organizational theory. n42 In brief, Bagehot's notion was as follows.

Power in Britain reposed initially in the monarch alone. Over the decades, however, a dual set of institutions emerged. n43 One set comprises the monarchy and the House of Lords. n44 These Bagehot called the "dignified" institutions--dignified in the sense that they provide a link to the past and excite the public imagination. n45 Through theatrical show, pomp, [\*11] and historical symbolism, they exercise an emotional hold on the public mind by evoking the grandeur of ages past. n46 They embody memories of greatness. Yet it is a second, newer set of institutions--Britain's "efficient" institutions--that do the real work of governing. n47 These are the House of Commons, the Cabinet, and the Prime Minister. n48 As Bagehot put it: "[I]ts dignified parts are very complicated and somewhat imposing, very old and rather venerable; while its efficient part . . . is decidedly simple and rather modern . . . . Its essence is strong with the strength of modern simplicity; its exterior is august with the Gothic grandeur of a more imposing age." n49

Together these institutions comprise a "disguised republic" n50 that obscures the massive shift in power that has occurred, which if widely understood would create a crisis of public confidence. n51 This crisis has been averted because the efficient institutions have been careful to hide where they begin and where the dignified institutions end. n52 They do this by ensuring that the dignified institutions continue to partake in at least some real governance and also by ensuring that the efficient institutions partake in at least some inspiring public ceremony and ritual. n53 This promotes continued public deference to the efficient institutions' decisions and continued belief that the dignified institutions retain real power. n54 These dual institutions, one for show and the other for real, afford Britain expertise and experience in the actual art of governing while at the same time providing a façade that generates public acceptance of the experts' decisions. Bagehot called this Britain's "double government." n55 The structural duality, some have suggested, is a modern reification of the "Noble Lie" that, two millennia before, Plato had thought necessary to insulate a state from the fatal excesses of democracy and to ensure deference to the golden class of efficient guardians. n56

[\*12] Bagehot's theory may have overstated the naiveté of Britain's citizenry. When he wrote, probably few Britons believed that Queen Victoria actually governed. Nor is it likely that Prime Minister Lord Palmerston, let alone 658 members of the House of Commons, could or did consciously and intentionally conceal from the British public that it was really they who governed. Big groups keep big secrets poorly. Nonetheless, Bagehot's enduring insight--that dual institutions of governance, one public and the other concealed, evolve side-by-side to maximize both legitimacy and efficiency--is worth pondering as one possible explanation of why the Obama and Bush national security policies have been essentially the same. There is no reason in principle why the institutions of Britain's juridical offspring, the United States, ought to be immune from the broader bifurcating forces that have driven British institutional evolution.

As it did in the early days of Britain's monarchy, power in the United States lay initially in one set of institutions--the President, Congress, and the courts. These are America's "dignified" institutions. Later, however, a second institution emerged to safeguard the nation's security. This, America's "efficient" institution (actually, as will be seen, more a network than an institution) consists of the several hundred executive officials who sit atop the military, intelligence, diplomatic, and law enforcement departments and agencies that have as their mission the protection of America's international and internal security. Large segments of the public continue to believe that America's constitutionally established, dignified institutions are the locus of governmental power; by promoting that impression, both sets of institutions maintain public support. But when it comes to defining and protecting national security, the public's impression is mistaken. America's efficient institution makes most of the key decisions concerning national security, removed from public view and from the constitutional restrictions that check America's dignified institutions. The United States has, in short, moved beyond a mere imperial presidency to a bifurcated system--a structure of double government--in which even the President now exercises little substantive control over the overall direction of U.S. national security policy. Whereas Britain's dual institutions evolved towards a concealed republic, America's have evolved in the opposite direction, toward greater centralization, less accountability, and emergent autocracy.

[\*13] The parallels between U.S. and British constitutionalism are, of course, inexact. In the United States, the transfer of power has not been purposeful, as Bagehot implied it was in Britain. n57 Members of America's efficient institutions have not secretly colluded in some dark plot aimed at wresting control over national security from its dignified institutions. What may appear in these institutions' collective motivation as conscious parallelism has in fact been a wholly open and, indeed, unabashed response to incentives deeply rooted in the legal and political structures in which they operate.

Some of the evolutionary drivers, on the other hand, have been similar in both countries. Electoral incapacity, for example, has been key. Organized deception would be unnecessary, Bagehot suggested, and the trappings of monarchy could be dispensed with if Britain's population had been generally well-educated, well-off, and politically intelligent. n58 But he believed it was not. n59 The lower and middle classes were "narrow-minded, unintelligent, incurious"; n60 they found educated discourse "unintelligible, confused and erroneous." n61 Bagehot wrote: "A life of labour, an incomplete education, a monotonous occupation, a career in which the hands are used much and the judgment is used little" n62 had produced "the last people in the world to whom . . . an immense nation would ever give" controlling authority. n63 No one will ever tell them that, of course: "A people never hears censure of itself," n64 least of all from political candidates. The road to public respect (and re-election) lies in ingratiation. So long as their awe and imaginations remain engaged, however, the public could be counted upon to defer--if not to their real rulers, then to what Bagehot referred to as "the theatrical show" that accompanied the apparent rulers. n65 The "wonderful spectacle" of monarchical pomp and pageantry captured the public's [\*14] imagination, convinced the public that they were not equal to the greatness governance demanded, and induced them to obey. n66

America's population today is of course far removed from the Dickensian conditions of Victorian England. Yet the economic and educational realities remain stark. n67 Nearly fifty million Americans--more than 16% of the population and almost 20% of American children--live in poverty. n68 A 2009 federal study estimated that thirty-two million American adults, about one in seven, are unable to read anything more challenging than a children's picture book and are unable to understand the side effects of medication listed on a pill bottle. n69 The Council on Foreign Relations reported that the United States has "slipped ten spots in both high school and college graduation rates over the past three decades." n70 One poll found that nearly 25% of Americans do not know that the United States declared its independence from Great Britain. n71 A 2011 Newsweek survey disclosed that 80% did not know who was president during World War I; 40% did not know who the United States fought in World War II; 29% could not identify the current Vice President of the United States; 70% did not know that the Constitution is the supreme law of the land; 65% did not know what happened at the constitutional convention; 88% could not identify any of [\*15] writers of the Federalist Papers; 27% did not know that the President is in charge of the Executive Branch; 61% did not know the length of a Senate term; 81% could not name one power conferred on the federal government by the Constitution; 59% could not name the Speaker of the House; and 63% did not know how many justices are on the Supreme Court. n72 Far more Americans can name the Three Stooges than any member of the Supreme Court. n73 Other polls have found that 71% of Americans believe that Iran already has nuclear weapons n74 and that 33% believed in 2007 that Saddam Hussein was personally involved in the 9/11 attacks. n75 In 2006, at the height of U.S. military involvement in the region, 88% of American 18- to 24-year-olds could not find Afghanistan on a map of Asia, and 63% could not find Iraq or Saudi Arabia on a map of the Middle East. n76 Three quarters could not find Iran or Israel, n77 and 70% could not find North Korea. n78 The "over-vote" ballots of several thousand voters--greater in number than the margin of difference between George W. Bush and Al Gore--were rejected in Florida in the 2000 presidential election because voters did not understand that they could vote for only one candidate. n79

There is, accordingly, little need for purposeful deception to induce generalized deference; in contemporary America as in Bagehot's Britain, a healthy dose of theatrical show goes a long way.

[\*16] II. The Trumanite Network

"The trained official," Bagehot wrote, "hates the rude, untrained public." n80 "He thinks that they are stupid, ignorant, restless . . . ." n81 President Harry Truman's Secretary of State Dean Acheson, not renowned for bluntness, let slip his own similar assessment of America's electorate. "If you truly had a democracy and did what the people wanted," he said, "you'd go wrong every time." n82 Acheson's views were shared by other influential foreign policy experts, n83 as well as government officials; n84 thus emerged America's "efficient" national security institution. n85

[\*17] Before examining the origins and contemporary operation of those institutions, let us adopt more neutral terms that better describe their historical roots. The terms "efficient" and "dignified" have taken on somewhat different implications over the years and, to put it delicately, imply qualities that not all contemporary American institutions fully embody.

James Madison was perhaps the principal architect of the constitutional design. n86 Honoring Madison's founding role, this Article will substitute "Madisonian" for "dignified," referring to the three branches of the federal government formally established by the Constitution to serve as checks on the instruments of state security. Under the Madisonian system, Congress was given power to "raise and support Armies"; n87 to "provide and maintain a Navy"; n88 to "make Rules for the Government and Regulation of the land and naval Forces"; n89 to "provide for calling forth the Militia to execute the laws of the Union, suppress Insurrections and repel Invasions"; n90 and to "provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress." n91 The commander-in-chief of the armed forces was to be a civilian, the President. n92 The President was authorized to make treaties, but only with the advice and consent of two thirds of the Senate. n93 No special immunities were carved out for the military from judicial process, to be exercised by courts with jurisdiction over "all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties . . . ." n94

[\*18] These constitutional provisions thus divide power over national security. Animating the separation of powers is a well-known theory. Madison believed that dividing authority among the three branches of government would cause the members of each of the three branches to seek to expand their power but also to rebuff encroachments on their power. n95 An equilibrium would result, and this balance would forestall the rise of centralized, despotic power. But more than mere institutional design was required; the government Madison envisioned was not a machine that would check itself. n96 Essential to the effectiveness of these checks and the maintenance of balance was civic virtue--an informed and engaged electorate. n97 The virtue of the people who held office would rest on the intelligence and public-mindedness of the people who put them there. Absent civic virtue, the governmental equilibrium of power would face collapse. n98 This is the Madisonian model.

President Harry S. Truman, more than any other President, is responsible for creating the nation's "efficient" national security apparatus. n99 Under him, Congress enacted the National Security Act of 1947, which unified the military under a new Secretary of Defense, set up the CIA, created the modern Joint Chiefs of Staff, and established the National Security Council ("NSC"). n100 Truman also set up the National Security Agency, which was intended at the time to monitor communications abroad. n101 Friends as well as detractors viewed Truman's role as decisive. n102 Honoring Truman's founding role, this Article will substitute "Trumanite" for "efficient," referring to the network of several hundred high-level military, intelligence, diplomatic, and law enforcement officials within the Executive Branch who are responsible for national security policymaking.

## Adv 1

### AT: South China Sea

#### SCS tension inevitable but won’t escalate, even if they win a huge internal link

Michal Meidan 12, China Analyst at the Eurasia Group, 8/7/12, “Guest post: Why tensions will persist, but not escalate, in the South China Sea,” <http://blogs.ft.com/beyond-brics/2012/08/07/guest-post-why-tensions-will-persist-but-not-escalate-in-the-south-china-sea/#axzz2Cbw54ORc>

These tensions are likely to persist. And Beijing is not alone in perpetuating them. Vietnam and the Philippines, concerned with the shifting balance of powers in the region, are pushing their maritime claims more aggressively and increasing their efforts to internationalise the question by involving both ASEAN and Washington. Attempts to come up with a common position in ASEAN have failed miserably but as the US re-engages Asia, it is drawn into the troubled waters of the South China Sea.¶ Political dynamics in China – with a once in a decade leadership transition coming up, combined with electoral politics in the US and domestic constraints for both Manila and Hanoi – all augur that the South China Sea will remain turbulent. No government can afford to appear weak in the eyes of domestic hawks or of increasingly nationalistic public opinions. The risk of a miscalculation resulting in prolonged standoffs or skirmishes is therefore higher now than ever before. But there are a number of reasons to believe that even these skirmishes are unlikely to escalate into broader conflict.¶ First, despite the strong current of assertive forces within China, cooler heads are ultimately likely to prevail. While a conciliatory stance toward other claimants is unlikely before the leadership transition, China’s top brass will be equally reluctant to significantly escalate the situation, since this will send southeast Asian governments running to Washington. Hanoi and Manila also recognize that despite their need for assertiveness to appease domestic political constituencies, a direct confrontation with China is overly risky.¶ Second, military pundits in China also realize that the cost of conflict is too high, since it will strengthen Washington’s presence in the region and disrupt trade flows. And even China’s oil company CNOOC, whose portfolio of assets relies heavily on the South China Sea, is diversifying its interests in other deepwater plays elsewhere, as its attempted takeover of Nexen demonstrates.

### AT: Naval Arms Race

#### No impact to Asian naval arms races or tensions

Geoffrey Till 13, Professor of Maritime Studies in the Defence Studies Department of King’s College London, 2/15/13, “What Arms Race? Why Asia Isn’t Europe 1913,” http://thediplomat.com/2013/02/15/what-arms-race-why-asia-isnt-europe-1913/?all=true

In the Asia-Pacific region many media outlets and pundits fear that a naval arms race is indeed developing and lament its possible consequences. It is not hard to see why— Whether it is Malaysia’s Scorpene submarines, Vietnam’s Kilos, India’s unprecedented naval building program or China’s new carrier the Liaoning and its carrier-killing ballistic missiles, naval modernization across the region is producing, if not always an overall increase in numbers, then at least substantially more impressive offensive and defensive naval capabilities.

And all of this is coinciding with, or even produced by, rising maritime tensions in the East and South China Seas. There are more narrowly focused tensions too, with analysts especially debating the dismayingly competition between China’s “counter-intervention” strategies and capabilities, and the U.S.Air-Sea Battle construct. Vietnam’s Kilos can also be seen as a more modest version of an anti-access/area-denial (A2/AD) strategy. These examples all suggest a worsening competition between “offensive” and “defensive” capabilities.

But is all this really developing into a naval arms race similar in style (and potentially effect) to the Dreadnought race that took place between Britain and Germany before the First World War – and even if it is, how serious might its consequences in the Asia-Pacific Region actually be?

While the answer to this question partly depends partly on how one defines a naval arms race, there are some major differences between pre-war Europe and the situation now. Most obviously—and with some exceptions like China, Singapore, and India— Asian countries today are devoting a far smaller proportion of their national treasure to defense than did Britain, Germany and the other countries of pre-war Europe. In general, naval armaments are making much slower technical advances than was the case a century ago, with acquisition programs around the area being more incremental, deliberate, and less determined by transformational technology. It is hard to think of a modern equivalent, for example, of HMS Invincible, brand spanking new and revolutionary when commissioned in 1909 but obsolescent when sunk at the Battle of Jutland seven years later in 1916.

Compared to then, technological transformation now is much steadier, and the importance of maintaining an edge over rivals more debatable, given the rise of asymmetric technological/political/legal alternatives and strategies. Crucially, few national leaders, diplomats, or even sailors talk in arms race terms, and they certainly do not justify their efforts by the need to “get ahead.” On the contrary policymakers make every effort to avoid publically naming possible adversaries that they need to build against.

This was not the case in Europe before WWI when some politicians did not hesitate to single out adversaries and warn of the dire consequences of falling behind them militarily. Others, on the contrary, conceded their countries were in an arms race and warned of the catastrophic consequences it was likely to have, unless it was stopped. Particularly in the years 1909-12, there was, with good reason, an air of imminent disaster.

Nor did Europe have the kind of compensating institutional arrangements that draw nations together rather than drive them apart. For all the limitations of the “Asian way,” increasing levels of economic interdependence and transnational regional structures like ASEAN restrain violate competition. They also facilitate cooperation between regional navies against common threats such as maritime crime in its various forms (piracy, drugs , human trafficking and so forth), hold innumerable bilateral and multilateral exercises and operate side by side in dealing with humanitarian and civil disasters (the tsunami relief operation of 2004). Although there were such acts of naval togetherness amongst the European navies of the period before the First World War, they never became as routine as they currently are in the Asia-Pacific.

### Asian Alliances---Squo Solves

#### The Asian alliance system is rock-solid---locked in

Eric S. Edelman 10, former Under Secretary of Defense for Policy, was Principal Deputy Assistant to the Vice President for National Security Affairs, 2010, “Understanding America’s Contested Primacy,” Center for Strategic and Budgetary Assessments

Notwithstanding the criticism of America’s alleged unilateralism in the Bush years it is generally acknowledged that US relations with its Asian allies have been strong, and in some cases closer than they have ever been. Common concerns over the DPRK’s development of nuclear weapons have allowed the United States to enhance its alliance relationships with both South Korea and Japan (the current difficulties with the latter may well be a function of a new and inexperienced government and not a harbinger of a more far-reaching divergence between allies). The transfer of power from John Howard to Kevin Rudd in Australia did nothing to disturb the increasingly close US-Australian partnership, and relations with India, Indonesia and Vietnam have all improved markedly over the past few years. Despite China’s “charm offensive” to increase its soft power and influence, it will take more than that to offset the United States’ structural advantage in Asia. Asian leaders, in response to the “new, sometimes intimidating triumphalism emerging from Beijing,” have been urging President Obama to maintain America’s position in Asia.125

## Adv 2

### AT: Arctic

#### Zero chance of conflict

James Kraska 14 is Mary Derrickson McCurdy visit- ing scholar at Duke University Marine Laboratory and senior fellow at the Center for Oceans Law and Policy, University of Virginia School of Law. Betsy Baker is associate professor of law and senior fellow for Oceans and Energy at the Institute for Energy and the Environment at Vermont Law School. "Emerging Arctic Security Challenges" Policy Brief for the Center for a New American Study in March 2014 from www.cnas.org/sites/default/files/publications-pdf/EmergingArcticSecurityChallenges\_policybrief.pdf)

It would be easy to become pessimistic about Arctic military stability; we are not. International conflict in the region is unlikely because the Arctic nations are committed to a rules-based approach to secu- rity. Worries about the potential for conflict over seabed rights in the Arctic are misplaced.6 War is far less likely above the Arctic Circle than in nearly any other part of the world.7 Cooperation is break- ing out everywhere in the region; international law is followed; there is no political vacuum.8¶ While elsewhere Russia is exhibiting its propensity toward military displays, in the Arctic, Russia is playing a constructive role in maintaining regional stability. Russia is intently focused on regional security in part because it sees in the Arctic an opportunity to recapture the former influence and superpower standing that it enjoyed during the Cold War. Russia strategically and successfully takes advantage of its dominant geographic posi- tion surrounding 170 degrees of the Arctic Circle, and its energy and economic presence in the region dwarfs that of all other Arctic states combined.¶ The United States and Russia enjoy a pragmatic working relationship in managing the security¶ of the Bering Strait.9 The U.S. Coast Guard and Russian Border Patrol have cooperated for nearly two decades under a bilateral treaty to manage safety and security in the 53-mile-wide strait.10 The neighbors also jointly led negotiations among all eight Arctic states to adopt binding agreements on search and rescue and oil spill preparedness and response. Now the United States and Russia are leading efforts to adopt agreements on marine pol- lution prevention and marine scientific research in the region.¶ The remoteness and physical isolation of the Arctic region also reduces military risk. Arctic states¶ find comfort in their exclusive and shared geogra- phy. They are united to resist efforts from outside the region that might erode, let alone upend, the contemporary order. The one thing all Arctic states have in common is a rather circumspect view of states from outside the region that seek to play a greater role in the Arctic.¶ Furthermore, all Arctic states are invested in a rules-based approach to stability and security, based principally on the United Nations Convention on the Law of the Sea (UNCLOS).11 The consensus among Arctic states that UNCLOS is the framework for distribution of rights and duties in the region minimizes risk of conflict over maritime boundaries. Every Arctic nation is a party to the treaty except the United States, which, since 1983, has made a commitment to adhere to most provi- sions of the treaty.12¶ Finally, the likelihood of conflict breaking out over the region’s vast offshore resources is also remote since Arctic states are pursuing their mari- time claims through the multilateral Commission on the Limits of the Continental Shelf (CLCS), an independent international technical body estab- lished by UNCLOS. Every Arctic coastal state except the United States has submitted at least partial information for consideration of a claim to sovereign rights over seabed riches of oil, gas and minerals. To the extent that overlapping maritime claims exist, the four other Arctic Ocean coastal states, including Russia, are proceeding with deliberate professionalism in appropriate bilateral forums and with the CLCS to resolve them.13 In 2010, Russia and Norway, for example, signed a treaty to resolve their 40-year disagreement over maritime resource boundaries in the Barents Sea. More recently, Denmark and Canada established maritime delimitation in the Lincoln Sea, north- west of Greenland. Similarly, Canada and the United States are exploring a way ahead to resolve a benign disagreement over a single boundary line in the Beaufort Sea.

### AT: Biodiversity

#### No impact to biodiversity

Sagoff 97  Mark, Senior Research Scholar – Institute for Philosophy and Public policy in School of Public Affairs – U. Maryland, William and Mary Law Review, “INSTITUTE OF BILL OF RIGHTS LAW SYMPOSIUM DEFINING TAKINGS: PRIVATE PROPERTY AND THE FUTURE OF GOVERNMENT REGULATION: MUDDLE OR MUDDLE THROUGH? TAKINGS JURISPRUDENCE MEETS THE ENDANGERED SPECIES ACT”, 38 Wm and Mary L. Rev. 825, March, L/N

Note – Colin Tudge - Research Fellow at the Centre for Philosophy at the London School of Economics. Frmr Zoological Society of London: Scientific Fellow and tons of other positions. PhD. Read zoology at Cambridge.

Simon Levin = Moffet Professor of Biology, Princeton. 2007 American Institute of Biological Sciences Distinguished Scientist Award 2008 Istituto Veneto di Scienze Lettere ed Arti 2009 Honorary Doctorate of Science, Michigan State University 2010 Eminent Ecologist Award, Ecological Society of America 2010 Margalef Prize in Ecology, etc… PhD

Although one may agree with ecologists such as Ehrlich and Raven that the earth stands on **the brink of** an episode of **massive extinction, it may not follow** from this grim fact **that human** being**s will suffer** as a result. On the contrary, skeptics such as science writer Colin Tudge have challenged biologists to explain **why we need more than a tenth of the 10 to 100 million species that grace the earth**. Noting that "cultivated systems often out-produce wild systems by 100-fold or more," Tudge declared that "the argument that humans need the variety of other species is, when you think about it, a theological one." n343 Tudge observed that "the elimination of all but a tiny minority **of our fellow creatures does not affect the material well-being of humans** one iota."n344 This skeptic challenged ecologists to list more than 10,000 species (other than unthreatened microbes) that are essential to ecosystem productivity or functioning. n345 "**The human species could survive just as well** if 99.9% of our fellow creatures went extinct, provided only that we retained the appropriate 0.1% that we need." n346   [\*906]   The monumental Global Biodiversity Assessment ("the Assessment") identified two positions with respect to redundancy of species. "At one extreme is the idea that each species is unique and important, such that its removal or loss will have demonstrable consequences to the functioning of the community or ecosystem." n347 The authors of the Assessment, a panel of eminent ecologists, endorsed this position, saying it is "unlikely that there is much, if any, ecological redundancy in communities over time scales of decades to centuries, the time period over which environmental policy should operate." n348 These eminent ecologists rejected the opposing view, "the notion that species overlap in function to a sufficient degree that removal or loss of a species will be compensated by others, with negligible overall consequences to the community or ecosystem." n349  Other biologists believe, however, that species are so fabulously redundant in the ecological functions they perform that the life-support systems and processes of the planet and ecological processes in general will function perfectly well with fewer of them, certainly fewer than the millions and millions we can expect to remain **even if** **every threatened organism becomes extinct**. n350 Even the kind of sparse and miserable world depicted in the movie Blade Runner could provide a "sustainable" context for the human economy as long as people forgot their aesthetic and moral commitment to the glory and beauty of the natural world. n351 The Assessment makes this point. "Although any ecosystem contains hundreds to thousands of species interacting among themselves and their physical environment, the emerging consensus is that the system is driven by a small number of . . . biotic variables on whose interactions the balance of species are, in a sense, carried along." n352   [\*907]   To make up your mind on the question of the functional redundancy of species, consider an endangered species of bird, plant, or insect and ask how the ecosystem would fare in its absence. The fact that the creature is endangered suggests an answer: it is already in limbo as far as ecosystem processes are concerned. What crucial ecological services does the black-capped vireo, for example, serve? Are any of the species threatened with extinction necessary to the provision of any ecosystem service on which humans depend? If so, which ones are they?  Ecosystems and the species that compose them have changed, dramatically, continually, and totally in virtually every part of the United States. There is little ecological similarity, for example, between New England today and the land where the Pilgrims died. n353 In view of the constant reconfiguration of the biota, **one may wonder why Americans have not suffered more as a result of ecological catastrophes**. The cast of species in nearly every environment changes constantly-local extinction is commonplace in nature-but the crops still grow. Somehow, it seems, property values keep going up on Martha's Vineyard in spite of the tragic disappearance of the heath hen.  One might argue that the sheer number and variety of creatures available to any ecosystem buffers that system against stress. Accordingly, we should be concerned if the "library" of creatures ready, willing, and able to colonize ecosystems gets too small. (Advances in genetic engineering may well permit us to write a large number of additions to that "library.") In the United States as in many other parts of the world, however, the number of species has been increasing dramatically, not decreasing, as a result of human activity. This is because the hordes of exotic species coming into ecosystems in the United States far exceed the number of species that are becoming extinct. Indeed, introductions may outnumber extinctions by more than ten to one, so that the United States is becoming more and more species-rich all the time largely as a result of human action. n354 [\*908] Peter Vitousek and colleagues estimate that over 1000 non-native plants grow in California alone; in Hawaii there are 861; in Florida, 1210. n355 In Florida more than 1000 non-native insects, 23 species of mammals, and about 11 exotic birds have established themselves. n356 Anyone who waters a lawn or hoes a garden knows how many weeds desire to grow there, how many birds and bugs visit the yard, and how many fungi, creepy-crawlies, and other odd life forms show forth when it rains. All belong to nature, from wherever they might hail, but not many homeowners would claim that there are too few of them. Now, not all exotic species provide ecosystem services; indeed, some may be disruptive or have no instrumental value. n357 This also may be true, of course, of native species as well, especially because all exotics are native somewhere. Certain exotic species, however, such as Kentucky blue grass, establish an area's sense of identity and place; others, such as the green crabs showing up around Martha's Vineyard, are nuisances. n358 Consider an analogy [\*909] with human migration. Everyone knows that after a generation or two, immigrants to this country are hard to distinguish from everyone else. The vast majority of Americans did not evolve here, as it were, from hominids; most of us "came over" at one time or another. This is true of many of our fellow species as well, and they may fit in here just as well as we do. It is possible to distinguish exotic species from native ones for a period of time, just as we can distinguish immigrants from native-born Americans, but as the centuries roll by, species, like people, fit into the landscape or the society, changing and often enriching it. Shall we have a rule that a species had to come over on the Mayflower, as so many did, to count as "truly" American? Plainly not. When, then, is the cutoff date? Insofar as we are concerned with the absolute numbers of "rivets" holding ecosystems together, extinction seems not to pose a general problem because a far greater number of kinds of mammals, insects, fish, plants, and other creatures thrive on land and in water in America today than in prelapsarian times. n359 The Ecological Society of America has urged managers to maintain biological diversity as a critical component in strengthening ecosystems against disturbance. n360 Yet as Simon Levin observed, "much of the detail about species composition will be irrelevant in terms of influences on ecosystem properties." n361 [\*910] He added: "For net primary productivity, as is likely to be the case for any system property, **biodiversity matters only up to a point**; above a certain level, increasing biodiversity is likely to make **little difference**." n362 What about the use of plants and animals in agriculture? There is no scarcity foreseeable. "Of an estimated 80,000 types of plants [we] know to be edible," a U.S. Department of the Interior document says, "only about 150 are extensively cultivated." n363 About twenty species, not one of which is endangered, provide ninety percent of the food the world takes from plants. n364 Any new food has to take "shelf space" or "market share" from one that is now produced. Corporations also find it difficult to create demand for a new product; for example, people are not inclined to eat paw-paws, even though they are delicious. It is hard enough to get people to eat their broccoli and lima beans. It is harder still to develop consumer demand for new foods. This may be the reason the Kraft Corporation does not prospect in remote places for rare and unusual plants and animals to add to the world's diet. Of the roughly 235,000 flowering plants and 325,000 nonflowering plants (including mosses, lichens, and seaweeds) available, farmers ignore virtually all of them in favor of a very few that are profitable. n365 To be sure, any of the more than 600,000 species of plants could have an application in agriculture, but would they be preferable to the species that are now dominant? Has anyone found any consumer demand for any of these half-million or more plants to replace rice or wheat in the human diet? There are reasons that farmers cultivate rice, wheat, and corn rather than, say, Furbish's lousewort. There are many kinds of louseworts, so named because these weeds were thought to cause lice in sheep. How many does agriculture really require? [\*911] The species on which agriculture relies are domesticated, not naturally occurring; they are developed by artificial not natural selection; they might not be able to survive in the wild. n366 This argument is not intended to deny the religious, aesthetic, cultural, and moral reasons that command us to respect and protect the natural world. These spiritual and ethical values should evoke action, of course, but we should also recognize that they are spiritual and ethical values. We should recognize that ecosystems and all that dwell therein compel our moral respect, our aesthetic appreciation, and our spiritual veneration; we should clearly seek to achieve the goals of the ESA. There is no reason to assume, however, that these goals have anything to do with human well-being or welfare as economists understand that term. These are ethical goals, in other words, not economic ones. Protecting the marsh may be the right thing to do for moral, cultural, and spiritual reasons. We should do it-but someone will have to pay the costs. In the narrow sense of promoting human welfare, protecting nature often represents a net "cost," not a net "benefit." It is largely for moral, not economic, reasons-ethical, not prudential, reasons- that we care about all our fellow creatures. They are valuable as objects of love not as objects of use. What is good for   [\*912]  the marsh may be good in itself even if it is not, in the economic sense, good for mankind. The most valuable things are quite useless.

#### No impact to the environment and no solvency

Holly Doremus 2k Professor of Law at UC Davis, "The Rhetoric and Reality of Nature Protection: Toward a New Discourse," Winter 2000 Washington & Lee Law Review 57 Wash & Lee L. Rev. 11, lexis

Reluctant to concede such losses, tellers of the ecological horror story highlight how close a catastrophe might be, and how little we know about what actions might trigger one. But the apocalyptic vision is **less credible today than it seemed in the 1970s.** Although it is clear that the earth is experiencing a mass wave of extinctions, n213 the **complete elimination of life on earth seems unlikely.** n214 **Life is remarkably robust**. **Nor is human extinction probable** any time soon. Homo sapiens is **adaptable to nearly any environment**. Even if the world of the future includes far fewer species, it likely will hold people. n215 One response to this credibility problem tones the story down a bit, arguing not that humans will go extinct but that ecological disruption will bring economies, and consequently civilizations, to their knees. n216 But this too may be **overstating the case**. Most ecosystem functions are **performed by multiple species**. This **functional redundancy** means that **a high proportion of species can be lost without precipitating a collapse**.

n217 Another response drops the horrific ending and returns to a more measured discourse of the many material benefits nature provides humanity. Even these more plausible tales, though, suffer from an important limitation. They call for nature protection only at a high level of generality. For example, human-induced increases in atmospheric carbon dioxide levels may cause rapid changes in global temperatures in the near future, with drastic consequences for sea levels, weather patterns, and ecosystem services. n218 Similarly, the loss of large numbers of species undoubtedly reduces the genetic library from which we might in the future draw useful resources. n219 But it is difficult to translate these insights into convincing arguments against any one of the small local decisions that contribute to the problems of global warming or biodiversity loss. n220 It is easy to argue that **the** material **impact of any individual decision to increase** carbon **emissions slightly or to destroy a small amount of habitat will be small.** It is difficult to identify the specific straw that will break the camel's back. Furthermore, **no unilateral action at the local or even national level can solve these global problems**. Local decisionmakers may feel paralyzed by the scope of the problems, or may conclude that any sacrifices they might make will go unrewarded if others do not restrain their actions. In sum, at the local level at which most decisions affecting nature are made, the material discourse provides little reason to save nature. Short of the ultimate catastrophe, the material benefits of destructive decisions frequently will exceed their identifiable material costs. n221

### AT: Food Wars

#### No risk of resource wars

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Water/food resources, war and conflict¶ The question of resource scarcity has led to many debates on whether scarcity (whether of food or water) will lead to conflict and war. The underlining reasoning behind most of these discourses over food and water wars comes from the Malthusian belief that there is an imbalance between the economic availability of natural resources and population growth since while food production grows linearly, population increases exponentially. Following this reasoning, neo-Malthusians claim that finite natural resources place a strict limit on the growth of human population and aggregate consumption; if these limits are exceeded, social breakdown, conflict and wars result. Nonetheless, it seems that most empirical studies do not support any of these neo-Malthusian arguments. Technological change **and greater inputs of capital** have **dramatically increased labour productivity in agriculture.** More generally, the neo-Malthusian view has suffered because during the last two centuries **humankind has breached many resource barriers that seemed unchallengeable**.¶ Lessons from history: alarmist scenarios, resource wars and international relations¶ In a so-called age of uncertainty, a number of alarmist scenarios have linked the increasing use of water resources and food insecurity with wars. The idea of water wars (perhaps more than food wars) is a dominant discourse in the media (see for example Smith, 2009), NGOs (International Alert, 2007) and within international organizations (UNEP, 2007). In 2007, UN Secretary General Ban Ki-moon declared that ‘water scarcity threatens economic and social gains and is a potent fuel for wars and conflict’ (Lewis, 2007). Of course, this type of discourse has an **instrumental purpose**; security and conflict are here used for raising water/food as key policy priorities at the international level.¶ In the Middle East, presidents, prime ministers and foreign ministers have also used this bellicose rhetoric.

Boutrous Boutros-Gali said; ‘the next war in the Middle East will be over water, not politics’ (Boutros Boutros-Gali in Butts, 1997, p. 65). The question is not whether the sharing of transboundary water sparks political tension and alarmist declaration, but rather to what extent water has been a principal factor in international conflicts. The evidence seems quite weak. Whether by president Sadat in Egypt or King Hussein in Jordan, none **of these declarations have been followed up by military action**.¶ The governance of transboundary water has gained increased attention these last decades. This has a direct impact on the global food system as water allocation agreements determine the amount of water that can used for irrigated agriculture. The likelihood of conflicts over water is an important parameter to consider in assessing the stability, sustainability and resilience of global food systems.¶ None **of the** various and extensive databases on the causes of war show water as a casus belli. Using the International Crisis Behavior (ICB) data set and supplementary data from the University of Alabama on water conflicts, Hewitt, Wolf and Hammer found only seven disputes where water seems to have been at least a partial cause for conflict (Wolf, 1998, p. 251). In fact, about 80% of the incidents relating to water were limited purely to governmental rhetoric intended for the electorate (Otchet, 2001, p. 18).¶ As shown in The Basins At Risk (BAR) water event database, **more than two-thirds of over 1800 water-related ‘events’ fall on the ‘cooperative’ scale** (Yoffe et al., 2003). Indeed, if one takes into account a much longer period, the following figures clearly demonstrate this argument. According to studies by the United Nations Food and Agriculture Organization (FAO), organized political bodies signed between the year 805 and 1984 more than 3600 water-related treaties, and approximately 300 treaties dealing with water management or allocations in international basins have been negotiated since 1945 ([FAO, 1978] and [FAO, 1984]).¶ The fear around water wars have been driven by a Malthusian outlook which equates scarcity with violence, conflict and war. There is however **no direct correlation between water scarcity and transboundary conflict**. Most specialists now tend to agree that the major issue is not scarcity per se but rather the allocation of water resources between the different riparian states (see for example [Allouche, 2005], [Allouche, 2007] and [Rouyer, 2000]). Water rich countries have been involved in a number of disputes with other relatively water rich countries (see for example India/Pakistan or Brazil/Argentina). The perception of each state’s estimated water needs really constitutes the core issue in transboundary water relations. Indeed, whether this scarcity exists or not in reality, perceptions of the amount of available water shapes people’s attitude towards the environment (Ohlsson, 1999). In fact, some water experts have argued that scarcity drives the process of co-operation among riparians ([Dinar and Dinar, 2005] and [Brochmann and Gleditsch, 2006]).¶ In terms of international relations, the threat of water wars due to increasing scarcity **does not make much sense in the light of the recent** historical record. Overall, the water war rationale expects conflict to occur over water, and appears to suggest that violence is a viable means of securing national water supplies, an argument which is highly contestable.¶ The debates over the likely impacts of climate change have again popularised the idea of water wars. The argument runs that climate change will precipitate worsening ecological conditions contributing to resource scarcities, social breakdown, institutional failure, mass migrations and in turn cause greater political instability and conflict ([Brauch, 2002] and [Pervis and Busby, 2004]). In a report for the US Department of Defense, Schwartz and Randall (2003) speculate about the consequences of a worst-case climate change scenario arguing that water shortages will lead to aggressive wars (Schwartz and Randall, 2003, p. 15). Despite growing concern that climate change will lead to instability and violent conflict, **the evidence base to substantiate the connections is thin** ([Barnett and Adger, 2007] and [Kevane and Gray, 2008]).

# Block

## T

### TREATIES

#### Statutory restrictions must be legislative limits

The Law Dictionary 13 “What is Statutory Restriction?, The Law Dictionary: **Featuring Black’s Law Dictionary Free Online Legal Dictionary 2nd Edition**, Accessed 7-22-2013, http://thelawdictionary.org/statutory-restriction/

What is STATUTORY RESTRICTION?

Limits or controls that have been place on activities by its ruling legislation.

#### Treaties aren't

Curtis J. Mahoney 7, Williams & Connolly LLP, "Treaties as Contracts: Textualism, Contract Theory, and the Interpretation of Treaties", http://www.utexas.edu/law/journals/tlr/sources/Issue%2087.5/Kirsch/53.mahoney.pdf

A trio of cases, United States v. Stuart, 13 Chan v. Korean Air Lines, Ltd., 14 and Olympic Airways v. Husain, 15 illustrates the Court’s recent approach to treaty interpretation. Two dominant themes run through these cases: recognition that a treaty interpreter should start with the text of the agreement, and acknowledgment that treaty interpretation is different from statutory interpretation because treaties are contracts, not acts of legislation.16

#### Treaties and statutes are treated separately in the context of War Powers

Samuel Hoff 95, PhD, is a Professor of Political Science @ Delaware State University. “Review of PRESIDENTIAL WAR POWER by Louis Fisher,” June, http://www.gvpt.umd.edu/lpbr/subpages/reviews/fisher2.htm

PRESIDENTIAL WAR POWER compares favorably with two other recent books on the subject. In their edited work, Gary Stern and Morton Halperin include ten chapters on various topics associated with the war power. These include a historical survey written by Fisher, chapters on constitutional, treaty, international law, statutory, and judicial constraints on executive military actions abroad, and sections addressing covert actions, emergency war power, and common ground between the branches. Although containing a wealth of information, Stern and Halperin's book is far from comprehensive and is somewhat problematical in its organization.

### AT W/M "Treaties=Law"

#### Law is broader than statutes

West's Encyclopedia of American Law 8 “Law,” The Free Dictionary by Farlex, accessed 8-25-2013, http://legal-dictionary.thefreedictionary.com/Statutes+and+Treaties

Law¶ A body of rules of conduct of binding legal force and effect, prescribed, recognized, and enforced by controlling authority.¶ In U.S. law, the word law refers to any rule that if broken subjects a party to criminal punishment or civil liability. Laws in the United States are made by federal, state, and local legislatures, judges, the president, state governors, and administrative agencies.¶ Law in the United States is a mosaic of statutes, treaties, case law, Administrative Agency regulations, executive orders, and local laws. U.S. law can be bewildering because the laws of the various jurisdictions—federal, state, and local—are sometimes in conflict. Moreover, U.S. law is not static. New laws are regularly introduced, old laws are repealed, and existing laws are modified, so the precise definition of a particular law may be different in the future from what it is today.

### AT: Reasonability

#### Reasonability’s arbitrary and undermines research

Evan Resnick 1, assistant professor of political science – Yeshiva University, “Defining Engagement,” Journal of International Affairs, Vol. 54, Iss. 2

In matters of national security, establishing a clear definition of terms is a precondition for effective policymaking. Decisionmakers who invoke critical terms in an erratic, ad hoc fashion risk alienating their constituencies. They also risk exacerbating misperceptions and hostility among those the policies target. Scholars who commit the same error undercut their ability to conduct valuable empirical research. Hence, if scholars and policymakers fail rigorously to define "engagement," they undermine the ability to build an effective foreign policy.

## CP

### 2NC Politics Link Differential

\*\*in 1nc\*\*

#### Avoids politics---turf battles over authority are key

James A. Baker 11, was secretary of state from 1989 to 1992. Lee H. Hamilton is a former Democratic representative from Indiana who chaired the House Committee on Foreign Affairs, Breaking the war powers stalemate, www.washingtonpost.com/opinions/breaking-the-war-powers-stalemate/2011/06/08/AGX0CrNH\_story.html

Breaking the war powers stalemate¶ With our country engaged in three critical military conflicts, the last thing that Congress and the White House should be doing is squabbling over which branch of government has the final authority to send American troops to war. But that is exactly what has been happening, culminating with the House’s rebuke of the Obama administration last Friday for the way it has gone about the war in Libya.¶ On one hand is a bipartisan group of House members who argue that President Obama overreached because he failed to seek congressional approval for the military action in Libya within 60 days of the time the war started, as required by the War Powers Resolution. The lawmakers are particularly upset because the administration sought, and received, support from the United Nations — but not from them.¶ On the other hand is the White House, which argues that history is on its side. The 1999 NATO-led bombing over Kosovo lasted 18 days longer than the resolution’s 60-day requirement before the Serbian regime relented.¶ Stuck in the middle are the American people, particularly our soldiers in arms. They would be best served if our leaders debated the substantive issues regarding the conflict in Libya — and those of Afghanistan and Iraq — rather than engaging in turf battles about who has ultimate authority concerning the nation’s war powers.¶ There is, unfortunately, no clear legal answer about which side is correct. Some argue for the presidency, saying that the Constitution assigns it the job of “Commander in Chief.” Others argue for Congress, saying that the Constitution gives it the “power to . . . declare war.” But the Supreme Court has been unwilling to resolve the matter, declining to take sides in what many consider a political dispute between the other branches of government.¶ We believe there is a better way than wasting time disputing who is responsible for initiating or continuing war.¶ Almost three years ago, we were members of the Miller Center’s bipartisan National War Powers Commission, which proposed a pragmatic framework for consultation between the president and Congress. Co-chaired by one of us and the late Warren Christopher, the commission could not resolve the legal question of which branch has the ultimate authority. Only the court system can do that. Instead, the commission strove to foster interaction and consultation, and reduce unnecessary political friction. The commission — which represented a broad spectrum of views, from Abner Mikva on the liberal end to Edwin Meese on the conservative end — made a unanimous recommendation to the president and Congress in 2008.¶ The commission’s proposed legislation would repeal and replace the War Powers Resolution. Passed over a presidential veto and in response to the Vietnam War, the 1973 resolution was designed to give Congress the ability to end a conflict and force the president to consult more actively with the legislative branch before engaging in military action. The resolution, a hasty compromise between competing House and Senate plans, stated that the president must terminate a conflict within 90 days if Congress has not authorized it. But no president has ever accepted the statute’s constitutionality, Congress has never enforced it and even the bill’s original sponsors were unhappy with the end product. In reality, the resolution has only further complicated the issue of war powers.

#### War powers authority legislation causes fights---CP side-steps

Warren Christopher 8, secretary of state from 1993 to 1997, Put war powers back where they belong, www.nytimes.com/2008/07/08/opinion/08iht-edbaker.1.14330488.html?pagewanted=all

The most agonizing decision we Americans make as a nation is whether to go to war. Our Constitution ambiguously divides war powers between the president (who is the commander in chief) and Congress (which has the power of the purse and the power to declare war).¶ The founders hoped that the executive and legislative branches would work together, but in practice the two branches don't always consult. And even when they do, they often dispute their respective powers.¶ A bipartisan group that we led, the National War Powers Commission, has unanimously concluded after a year of study that the law purporting to govern the decision to engage in war - the 1973 War Powers Resolution - should be replaced by a new law that would, except for emergencies, require the president and Congressional leaders to discuss the matter before going to war.¶ Seventy years of polls show that most Americans expect Congress and the president to talk before making that decision, and in most cases, they have done so.¶ Congress passed the 1973 resolution in response to the Vietnam War. But it is ineffective at best and unconstitutional at worst. No president has recognized its constitutionality, and Congress has never pressed the issue. Nor has the Supreme Court ever ruled on its constitutionality. In fact, courts have largely shied away from refereeing war-powers disputes between the two political branches.¶ Most legal experts, however, interpret a 1983 Supreme Court decision on Congress' authority to overrule the president to mean that parts of the statute are unconstitutional.¶ Its provision saying that Congress may require the president to remove troops from combat merely by passing a concurrent resolution cannot survive the constitutional requirement that a measure must be presented to the president for signature or veto if it is to have the force of law.¶ The statute has other problems as well: It too narrowly defines the president's war powers to exclude the power to respond to sudden attacks on Americans abroad; it empowers Congress to terminate an armed conflict by simply doing nothing; and it fails to identify which of the 535 members of Congress the president should consult before going to war.¶ As a consequence, the 1973 statute has been regularly ignored - a situation that undermines the rule of law, the centerpiece of American democracy.¶ Many have suggested that the war powers resolution be amended or replaced altogether. But proposals to do so haven't gotten very far, typically because most have sided too heavily with either the president or Congress.¶ Our proposed new law, the War Powers Consultation Act of 2009, does not pretend to resolve the underlying constitutional issues - only a constitutional amendment or a Supreme Court decision could do that. It would reserve the ability of both Congress and the president to assert their constitutional war powers.¶ In drawing up the statute we focused on a common theme that almost all past proposals shared: the importance of meaningful consultation between the president and Congress before the nation is committed to war.¶ Our proposed statute would provide that the president must consult with Congress before ordering a "significant armed conflict" - defined as combat operations that last or are expected to last more than a week.¶ To provide more clarity than the 1973 War Powers Resolution, our statute also defines what types of hostilities would not be considered significant armed conflicts - for example, training exercises, covert operations or missions to protect and rescue Americans abroad. If secrecy or other circumstances precluded prior consultation, then consultation - not just notification - would need to be undertaken within three days.¶ To guarantee that the president consults with a cross section of Congress, the act would create a joint Congressional committee made up of the leaders of the House and the Senate as well as the chairmen and ranking members of key committees. These are the members of Congress with whom the president would need to personally consult. Almost as important, the act would establish a permanent, bipartisan staff with access to all relevant intelligence and national-security information.¶ Congress would have obligations, too. Unless it declared war or otherwise expressly authorized a conflict, it would have to vote within 30 days on a resolution of approval. If the resolution of approval was defeated in either House, any member of Congress could propose a resolution of disapproval.¶ Such a resolution would have the force of law, however, only if it were passed by both houses and signed by the president or the president's veto were overridden. If the resolution of disapproval did not survive the president's veto, Congress could express its opposition by, for example, using its internal rules to block future spending on the conflict.¶ We believe our proposal is good for the presidency because it would eliminate a law that every president since Richard Nixon has treated as unconstitutional, while giving the president the political benefit of forcing Congress to take a position on going to war. And it would do so without insisting that the president get the consent of Congress.¶ The statute is good for Congress because the legislative branch would get a more significant role when the nation decides whether to go to war.¶ Some may argue that Congress should have the dominant role in war powers debates. But it hasn't played that role under the 1973 resolution. Rather than endorse any absolutist position, our statute would give Congress access to intelligence, a full-time staff for studying national security issues and a well-defined mechanism for consulting and voting on significant armed conflicts.¶ Finally, the statute is good for the country because it would enhance the prospects for cooperation between Congress and the president. It would ensure that the president received independent advice from Congress, and it would allow the people to hold Congress accountable for its role in the process.¶ When it comes to war, Americans deserve better than a law that is ineffective and ignored. They deserve a law that will encourage future presidents and Congresses to work together to protect our nation.

### 2NC Obama Fights Plan/Perm

#### The President has institutional incentives to resist encroachments on authority even if he agrees with the policy – the perm ensures a fight

Eric Posner 8, and Adrian Vermeule, \*professor of law at the University of Chicago \*\*professor of law at Harvard, Constitutional Showdowns, 156 U. Pa. L. Rev. 991, lexis

In many historical cases, Congress and the President agree about the policy outcome but disagree about lines of authority. For example, suppose that the executive branch has made a controversial decision, and a suspicious Congress wants the relevant executive officials to testify about their role in that decision. The President believes that Congress has no right to compel the officials to testify, whereas Congress believes that it has such a right. However, the President, in fact, does not mind if the officials testify because he believes that their testimony will reveal that the decision was made in good faith and for good reasons. [\*1016] The President's problem is that, if he allows the officials to testify, Congress and the public might interpret his acquiescence as recognition that Congress has the power to force executive officials to testify. If he refuses to allow the officials to testify, then he preserves his claim of executive privilege but loses the opportunity to show that the decision was made in good faith. In addition, he risks provoking a constitutional impasse in which Congress could eventually prevail - if, as we have discussed, public constitutional sentiment turns out to reject executive privilege in these circumstances. Congress faces similar dilemmas, for example, when it approves of officials nominated by the President for an agency or commission but wants to assert the power in general to impose restrictions on appointments. Political agents have long relied on a middle way to avoid the two extremes of acquiescence, on the one hand, and impasse, on the other. They acquiesce in the decision made by the other agent while claiming that their acquiescence does not establish a precedent. Or, equivalently, they argue that their acquiescence was a matter of comity rather than submission to authority. Are such claims credible? Can one avoid the precedential effect of an action by declaring that it does not establish a precedent - in effect, engaging in "ambiguous acquiescence"? The answer to this question is affirmative as long as the alternative explanation for the action is in fact credible. If, for example, observers agree that the President benefits from the testimony of executive officials, then his acquiescence to a congressional subpoena has two equally plausible explanations: that he independently benefits from the testimony, or that he believes that public constitutional sentiment rejects executive privilege. The response is thus ambiguous, and Congress may be no wiser about what will happen in the future when the President does not wish to permit officials to testify because their testimony would harm him or executive branch processes. If so, the ambiguous nature of the action does not establish a focal point that avoids an impasse in the future. On the other hand, if the President's claim that he benefits from the testimony is obviously false, then his authority will be accordingly diminished. This is why ambiguous acquiescence is not a credible strategy when the President and Congress disagree about the policy outcome. If the President thinks the war should continue, Congress thinks the war should end, and the President acquiesces to a statute that terminates the war, then he can hardly argue that he is acting out of comity. He could only be acting because he lacks power. But an agent can lack authority in more complicated settings where no serious [\*1017] policy conflict exists. If the President makes officials available for testimony every time Congress asks for such testimony, and if the testimony usually or always damages the President, then his claim to be acting out of comity rather than lack of authority eventually loses its credibility. Repeated ambiguous acquiescence to repeated claims over time will eventually be taken as unambiguous acquiescence and hence a loss of authority. For this reason, a President who cares about maintaining his constitutional powers will need to refuse to allow people to testify even when testimony would be in his short-term interest.

#### He wants to retain the authority even if he doesn’t want to use it

Dafna Linzer 11, senior reporter at ProPublic, Administration Prepares to Defy Efforts to Limit Obama’s Options for Guantanamo, www.propublica.org/article/administration-prepares-to-defy-efforts-to-limit-obamas-options-for-guantan

Obama administration officials say they plan to reject Congressional efforts to limit the president's options on Guantanamo, setting the stage for a confrontation between the president and the new Congress on an issue that has been politically divisive since Inauguration Day.¶ The Guantanamo provisions, which include limits on where and how prisoners can be tried, were attached to a spending bill for military pay and benefits approved by Congress late last year. Some Administration officials are recommending that President Obama sign the spending bill and then issue a “signing statement” challenging at least some of the Guantanamo provisions as intrusions on his constitutional authority. Others have recommended that he express opposition to the Guantanamo sections without addressing their constitutionality.¶ The statement, officials said, would likely be released along with a new executive order that outlined review procedures for some -- but not all -- of the 174 Guantanamo prisoners still held without charge or trial.¶ Obama has used signing statements in the past, but this one would carry political significance as the first test of his relationship with a Congress in which the House is firmly in Republican control.¶ Officials said the White House is still weighing how to calibrate the signing statement. A statement rejecting all of the bill's Guantanamo provisions would almost certainly be viewed as provocative by Congressional Republicans and some Democrats. But administration officials view the provisions as clear encroachments on the president's right to prosecutorial discretion and some are pushing for their blanket repudiation.¶ The reliance on detention orders and a signing statement -- tools used repeatedly by former President Bush, who built Guantanamo nearly a decade ago -- is seen by Obama's advisers as among the few options left for an administration that has watched the steady erosion of its first White House pledge nearly two years ago: to close the prison.¶ "There is obviously an irony here," said one Obama administration official, "but if we resort to this, it is to close Guantanamo, not keep it open."¶ While the signing statement and the executive order would leave some room for Obama, they would do little to bring his policy goals to fruition. Over the last two years, Congress and the administration, working separately and in conflict, have woven together a complicated set of categories, policies and restrictions that make it difficult, if not impossible, to close Guantanamo.¶ What the White House once saw as bipartisan support for shuttering the prison soon became a bipartisan effort to thwart the administration's plans.¶ The spending measure effectively bars the president from prosecuting any detainees in federal court or conducting military commission trials on U.S. soil. The bill makes it increasingly difficult to transfer detainees to foreign countries, even if the administration deems them safe to release. And it complicates the review process Obama plans in the executive order for nearly 50 detainees the administration has designated as too dangerous to free.¶ A small circle of policymakers and lawyers from the White House, the Justice Department and State Department spent the closing hours of 2010 considering drafts for a statement. A number of administration officials who discussed the internal deliberations declined to be identified because they were not authorized to speak on this subject.¶ They said the statement could amount to a presidential intent to disregard some, but not all, of the provisions relating to Guantanamo detainees. Under consideration are claims that the provisions amount to "undue infringement" on the president's authority to exercise prosecutorial discretion, or that they are viewed by the White House as an "unnecessary and unwarranted intrusion," on that power.¶ Several advisers were pushing for a broader statement that would also take issue with provisions related to detainee transfers. Obama has twice issued signing statements claiming that legislative provisions interfered with his constitutional authority to conduct foreign relations and could do so again. But there is some concern that the White House is on less firm ground in that area. The bill, while making future transfers difficult, does not ban them outright.¶ "There is an honest debate right now, centered primarily inside the White House Counsel's office, and among a number of top staff," said one official who spoke on the condition of anonymity. "The question is: Can we work with some of this stuff and, if not, how sharply do we make that point."¶ The president could veto the spending bill. But officials said the White House will not block legislation on military pay and benefits, especially after the military's support for repealing "Don't Ask, Don't Tell," legislation in December. Spokesmen at the White House and the National Security Council did not respond to requests for comment.¶ The White House has, until now, balked at confrontation even as it watched its policy options dwindle. Not one administration official who spoke about the internal deliberations could say for sure whether the White House, in moving to protect the right to prosecute detainees in federal court, would in fact use it.¶ "All presidents want to preserve maneuverability and authority, that is natural," said Elisa Massimino, president of the civil rights organization Human Rights First. "But President Obama has had the authority to move prisoners to the United States, he's done the background work to identify people to bring to justice and he's squandered the opportunities to exercise that authority. It is striking to now see a fiercer desire to preserve authority than to use it," she said.

#### All of our evidence says that war powers authority division is vague between Congress and the Exec---even if Obama agrees with the plan he wants to retain authority---plan and perm cause a constitutional showdown that results in massive gridlock

Eric Posner 10 and Adrian Vermeule, \*professor of law at the University of Chicago AND \*\*professor of law at Harvard, The Executive Unbound, p. 75-77

Showdowns occur when the location of constitutional authority for making an important policy decision is ambiguous, and multiple political agents (branches, parties, sections, governments) have a strong interest in establishing that the authority lies with them. Although agents often have an interest in negotiating a settlement, asymmetric information about the interests and bargaining power of opposing parties will sometimes prevent such a settlement from being achieved. That is when a showdown occurs. Ultimately, however, someone must yield; this yielding to or acquiescence in the claimed authority of another agent helps clarify constitutional lines of authority, so that next time the issue arises, a constitutional impasse can be avoided. From a normative standpoint, constitutional showdowns thus have an important benefit, but they are certainly not costless. As long as the showdown lasts, the government may be paralyzed, unable to make important policy decisions, at least with respect to the issue under dispute. We begin by examining a simplified version of our problem, one involving just two agents—Congress and the executive. We assume for now that each agent is a unitary actor with a specific set of interests and capacities. We also assume that each agent has a slightly different utility function, reflecting their distinct constituencies. If we take the median voter as a baseline, we might assume that Congress is a bit to the left (or right) of the median voter, while the president is a bit to the right (or left). We will assume that the two agents are at an equal distance from the median, and that the preferences of the population are symmetrically distributed, so that the median voter will be indifferent between whether the president or Congress makes a particular decision, assuming that they have equal information.39 But we also will assume that the president has better information about some types of problems, and Congress has better information about other types of problems, so that, from the median voter’s standpoint, it is best for the president to make decisions about the first type of problem and for Congress to make decisions about the second type ofproblem.40 Suppose, for example, that the nation is at war and the government must decide whether to terminate it soon or allow it to continue. Congress and the president may agree about what to do, of course. But if they disagree, their disagreement may arise from one or both of two sources. First, Congress and the president have different information. For example, the executive may have better information about the foreign policy ramifications of a premature withdrawal, while Congress has better information about home-front morale. These different sources of information lead the executive to believe that the war should continue, while Congress believes the war should be ended soon. Second, Congress and the president have different preferences because of electoral pressures of their different constituents. Suppose, for example, that the president depends heavily on the continued support of arms suppliers, while crucial members of Congress come from districts dominated by war protestors. Thus, although the median voter might want the war to continue for a moderate time, the president prefers an indefinite extension, while Congress prefers an immediate termination. So far, we have explained why the president and Congress might disagree about when to terminate the war, but mere policy disagreement does not result in a showdown. Showdowns arise only when there is a disagreement about authority. If Congress believes that the president has the sole authority to terminate the war, then his view will prevail. Congress may try to pressure him or influence him by offering support for other programs desired by the president, or by trying to rile up the public, but these activities are part of normal politics, and do not provoke a constitutional showdown. Similarly, if the president believes that Congress has the sole authority to terminate the war, then Congress’s view will prevail. This outcome is shown in cell 3 in table 2.1. Similarly, no showdown occurs when the two branches agree both about authority and policy—for example, that the president decides, and Congress agrees with his decision (cell 1). The first column represents the domain of normal politics. Showdowns can arise only when Congress and the president disagree about who decides. Here, there are two further possibilities. First, Congress and the president disagree about who decides but agree about the correct policy outcome (cell 2). In these situations, which arise with some frequency, the two branches are often tempted to paper over their differences because an immediate policy choice is not at stake. But sometimes a showdown will occur. We will discuss this special case later. Second, Congress and the president disagree about the policy outcome and about authority (cell 4). In this case, showdowns are likely, because a policy decision must be made, and if the parties cannot agree about what it should be, then they cannot avoid resolving the question of authority. We focus on this case for now.

#### Obama will fight hard against the plan and lose---their evidence underestimates incentives to preserve power---the CP doesn’t link because it doesn’t alter war powers allocation

Dickinson 11—Professor of political science @ Middlebury College. [Dr. Matthew Dickinson (Expert on presidential powers with a PhD from Harvard), “Will You End Up in Guantanamo Bay Prison?,” Presidential Power, December 3, 2011 pg. http://sites.middlebury.edu/presidentialpower/2011/12/03/will-you-end-up-in-guantanamo-bay/

Despite the overwhelming Senate support for passage (the bill passed 93-7 and will be reconciled with a House version. Senators voting nay included three Democrats, three Republicans and one independent), however, President Obama is still threatening to veto the bill in its current form. However, if administration spokespersons are to be believed, Obama’s objection is based not so much on concern for civil liberties as it is on preserving the president’s authority and flexibility in fighting the war on terror. According to White House press secretary Jay Carney, “Counterterrorism officials from the Republican and Democratic administrations have said that the language in this bill would jeopardize national security by restricting flexibility in our fight against Al Qaeda.” (The administration also objects to language in the bill that would restrict any transfer of detainees out of Guantanamo Bay prison for the next year.) For these reasons, the President is still threatening to veto the bill, which now goes to the Republican-controlled House where it is unlikely to be amended in a way that satisfies the President’s concerns. If not, this sets up an interesting scenario in which the President may have to decide whether to stick by his veto threat and hope that partisan loyalties kick in to prevent a rare veto override.¶ The debate over the authorization bill is another reminder of a point that you have heard me make before: that when it comes to national security issues and the War on Terror, President Obama’s views are much closer to his predecessor’s George W. Bush’s than they are to candidate Obama’s. The reason, of course, is that once in office, the president—as the elected official that comes closest to embodying national sovereignty—feels the pressure of protecting the nation from attack much more acutely than anyone else. That pressure drives them to seek maximum flexibility in their ability to respond to external threats, and to resist any provision that appears to constrain their authority. This is why Obama’s conduct of the War on Terror has followed so closely in Bush’s footsteps—both are motivated by the same institutional incentives and concerns.¶ The Senate debate, however, also illustrates a second point. We often array elected officials along a single ideological line, from most conservative to most liberal. Think Bernie Sanders at one end and Jim DeMint at the other. In so doing, we are suggesting that those individuals at the farthest ends of the spectrum have the greatest divergence in ideology. But on some issues, including this authorization bill, that ideological model is misleading. Instead, it is better to think of legislators arrayed in a circle, with libertarian Republicans and progressive Democrats sitting much closer together, say, at the top of the circle, joined together in their resistance to strong government and support for civil liberties. At the “bottom” of the circle are Republicans like Graham and Democrats like Levin who share an affinity for strengthening the government’s ability to protect the nation’s security.¶ For Obama, however, the central issue is not the clash of civil liberties and national security—it is the relative authority of the President versus Congress to conduct the War on Terror. That explains why he has stuck by his veto threat despite the legislative compromise. And it raises an interesting test of power. To date he has issued only two presidential vetoes, by far the lowest number of any President in the modern era. His predecessor George W. Bush issued 12, and saw Congress override four—a historically high percentage of overrides. On average, presidential vetoes are overridden about 7% of the time. These figures, however, underplay the use of veto threats as a bargaining tool. In the 110th (2007-08) Congress alone, Bush issued more than 100 veto threats. I’ve not calculated Obama’s veto threats, but it is easy enough to do by going to the White House’s website and looking under its Statements of Administrative Policy (SAP’s) listings. Those should include veto threats. Note that most veto threats are relatively less publicized and often are issued early in the legislative process. This latest veto threat, in contrast, seems to have attracted quite a bit of press attention. It will be interesting to see whether, if the current authorization language remains unchanged, Obama will stick to his guns.

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#### Obama will fight the plan---authority’s the key issue

William Scheuerman 13, Professor of Political Science at Indiana University, PhD from Harvard, Barack Obama's "war on terror", http://www.eurozine.com/pdf/2013-03-07-scheuerman-en.pdf

Given dual democratic legitimacy, holders of executive power face deeply rooted institutional incentives to retain whatever power or authority has landed¶ in their laps. Fundamentally, their political fate is separate from that of the¶ legislature's. They have to prove −− on their own −− that they deserve the trust placed in them by the electorate. Unlike prime ministers in parliamentary¶ regimes, they also face strict term limits. As astute observers have noted, this¶ provides political life in presidential regimes with a particular sense of urgency¶ since the executive will only have a short span of time in which to advance his¶ or her program. Presidentialism's strict separation of powers means that the¶ executive will soon likely face potentially hostile opponents who have gained a¶ foothold in the legislature. In the US, for example, even presidents recently¶ elected with large majorities immediately need to worry about looming¶ midterm congressional elections. To be sure, even prime ministers in¶ parliamentary systems will want to get things done. But incentives to do so in a¶ high−speed fashion remain more deeply ingrained in presidential systems.¶ These familiar facts about presidentialism allow us to help make sense of¶ Obama's disappointing record. Without doubt, Obama has been personally as¶ well as ideologically committed to reining in Bush−era executive prerogative.¶ Yet he now occupies an institutional position which necessarily makes him averse to far−reaching attempts to limit his own room for effective political¶ and administrative action, especially when the stakes are high, as is manifestly¶ the case in counterterrorism. Understandably, he needs to worry that the¶ electorate will punish him −− and not the Congress or Supreme Court −− for¶ mistakes which might result in deadly terrorist attacks on US citizens. Given the institutional dynamics of a presidential system characterized by more−or−less permanent rivalry, it is hardly surprising that he has held onto so much of the prerogative power successfully claimed for the executive branch by his right−wing predecessor. As Obama's own political advisors have been¶ vocally telling him since 2009, it might indeed prove politically perilous if he were to go too far in abandoning the substantial discretionary powers he enjoys¶ in the war on terror. Unfortunately, their "sound" political advice −− which¶ indeed may have helped Obama get reelected −− simultaneously has had¶ deeply troublesome humanitarian and legal consequences.

## China

### LOST

#### ( ) Ratifying doesn’t give the U.S. any additional influence over the UN framework – it’s inevitably hostile to our interests

The National Space Society, an independent, international, educational, grassroots nonprofit organization dedicated to the creation of a spacefaring civilization, October 3, 2007, “Rejecting the Law of the Sea Treaty,” online: http://www.nss.org/legislative/NSS-LoST-WhitePaper.pdf, accessed October 18, 2007

Individuals supporting LOST argue that the U.S. will lose the ability to influence the decisions of the ISA if we do not sign the Treaty, and that by signing LOST, the U.S. will improve its prestige, credibility, and ability to affect international policies on the open seas. However, as noted above, the UN has become increasingly hostile to U.S. efforts on a variety of fronts. There is no guarantee that signing the Treaty will change this behavior. History suggests that we would be signing a treaty that would be in direct conflict with our national interests.

### AT Territ. Disputes---AT China Impact

#### China favors concessions and peaceful resolution—regime instability and empirics

Asia Times 11 (Sudha Ramachandran, “China plays long game on border disputes,” Jan 27, 2011, <http://www.atimes.com/atimes/China/MA27Ad02.html>)

A Sino-Tajik border agreement that was ratified recently by Tajikistan's parliament flies in the face of images of China being a "bullying" and "belligerent" power that "will go to any length to fulfill its territorial ambitions". The agreement, which resolves a 130-year-old territorial dispute, requires Tajikistan to cede around 1,000 square kilometers of land in the Pamir Mountains to China. It means that China will receive roughly 3.5% of the 28,000 square kilometers of land it laid claim to. China's territorial concession has been hailed by Tajik Foreign Minister Hamrokhon Zarifi as a "victory for Tajik diplomacy". This is not the first time that China has made concessions to settle its territorial disputes**.** Under its border agreements with Kazakhstan and Kyrgyzstan, for instance, China received just 22% and 32% respectively of the land disputed with these countries. China's boundaries with Central Asia were originally drawn up under what China describes as "unequal treaties". It alleged that as a result of these treaties, Czarist Russia gained territory at its expense. It therefore refused to recognize these boundaries. Although the Soviet Union and China began negotiating a mutually acceptable border, a settlement remained elusive. With the breakup of the Soviet Union in 1990, the new Central Asian Republics - Tajikistan, Kazakhstan and Kyrgyzstan - inherited the disputes with China. In the 1990s, China began negotiating settlements with these countries. Border agreements with Kyrgyzstan and Kazakhstan were reached in 1996 and 1998 respectively. Border talks with Tajikistan were delayed by the civil war there. However, talks gathered momentum in the late 1990s and an agreement was reached in 2002. It was this agreement that was ratified recently. Analysts have drawn attention to the territorial concessions that China extended to resolve its many disputes. Of its 23 territorial disputes active since 1949, China offered "substantial compromises" in 17, usually agreeing "to accept less than half of the territory being disputed," M Taylor Fravel, associate professor at the Massachusetts Institute of Technology, pointed out in the article "Regime Insecurity and International Cooperation: Explaining China's Compromises in Territorial Disputes," published in the journal International Security. However, there is more to it than meets the eye. The territorial concessions that China is believed to have made are not quite as substantial as they appear to be. Srikanth Kondapalli, a China expert at the Jawaharlal Nehru University in New Delhi pointed out that China's strategy of stepping up territorial claims and then settling for less has enabled it to appear to be making a major territorial concession to reach a border resolution agreement. In several disputes, "whether China actually gave up territory or made a substantial concession is a debatable question," he told Asia Times Online. Still, in the quest for regional stability China overall "has been liberal in border dispute resolution", he said. What has prompted Beijing to seek compromise and extend concessions with regard to territorial disputes involving its land borders? Regime insecurity appears to have been an important motivating factor. According to Fravel, "China's leaders have compromised when faced with internal threats to regime security - the revolt in Tibet, the instability following the Great Leap Forward, the legitimacy crisis after the Tiananmen upheaval, and separatist violence in Xinjiang." The territorial concessions it made to Kazakhstan, Kyrgyzstan and Tajikistan in order to reach border agreements with them was prompted by a sharp surge in separatist violence in Xinjiang province in the early 1990s. The disintegration of the Soviet Union and the emergence of Kazakhstan, Kyrgyzstan and Tajikistan as independent republics stoked long-smoldering Uighur nationalism in Xinjiang and fueled Uighur aspirations for independence. This triggered apprehension in Beijing that Xinjiang would break away. Coming close on the heels of the Tiananmen uprising of 1989, which had undermined the Chinese government's legitimacy, the separatist violence in Xinjiang compounded Chinese regime insecurity, as it posed a threat to China's territorial integrity. This made it imperative for Beijing to nip Uighur unrest in the bud. China's strategy to deal with Uighur separatism has involved ruthless suppression of separatists and economic development of the Xinjiang region. However, the success of this strategy hinged on support from countries bordering Xinjiang - Kazakhstan, Kyrgyzstan and Tajikistan. Their cooperation was essential to get them to crack down on Uighur separatists taking sanctuary on their soil as well as to build robust trade ties that were needed for economic development in Xinjiang. Beijing thus traded territorial concessions for support from Kazakhstan, Kyrgyzstan and Tajikistan in its strategy to quell Uighur separatism. With the exception of its territorial disputes with India and Bhutan, China has settled all its other land-border disputes. In contrast, it has resolved none of its maritime border disputes, although the dispute in the Gulf of Tonkin with Vietnam is being discussed and those discussions are at an advanced stage of resolution. China's strategy for resolving its border disputes and the nature of its border-resolution mechanism provide useful pointers to what lies ahead. In the past, "it is when the contestant state is weak that China has moved quickly to resolve the dispute," points out Kondapalli. The way it went about handling its territorial disputes with the Soviet Union is indicative. Although China did discuss them with the Soviet Union, it was only when the USSR disintegrated that Beijing moved quickly to achieve resolution.

### Hardliners

Smith 14 (Jeff is the director of South Asia Programs and the Kraemer Strategy Fellow at the American Foreign Policy Council in Washington, D.C., 1/15, “Drawing a Red Line for China”, http://www.usnews.com/opinion/blogs/world-report/2014/01/15/us-must-draw-red-line-for-china-in-the-western-pacific)

In recent months, the world's attention has been focused on China's provocative behavior in its Senkaku/Diaoyu island dispute with Japan, and for good reason. That dispute demands our utmost attention, and poses a tangible risk of for interstate conflict in the years to come.¶ However, the issue of maritime sovereignty in the East and South China Seas encompasses more than simply China's territorial disputes with its neighbors. It also involves a volatile disagreement between the U.S. and China over the type of sovereignty China is claiming in its 200-nautical-mile Exclusive Economic Zone, or EEZ, and specifically the right of the U.S. military to conduct surveillance operations there. ¶ Our dispute derives from differing interpretations of the U.N. Convention on the Law of the Sea, or UNCLOS, a treaty the U.S. has not signed but whose maritime boundary distinctions we observe in practice. Under Beijing's interpretation of the treaty, China enjoys expansive sovereign rights in its EEZ, including the right to deny the U.S. military access to conduct surveillance operations. China is not alone in this interpretation – at least 16 other countries share Beijing's position – but China is the only country that has operationally challenged U.S. forces, leading to more than a half-dozen dangerous confrontations at sea over the past decade.¶ The U.S. and most countries of the world reject this interpretation of UNCLOS, arguing that China cannot treat the Exclusive Economic Zone as if it were China's sovereign territorial sea. And U.S. scholars have thoroughly debunked Beijing's reading of the treaty.¶ Yet the confrontations continue, as an incident with the USS Cowpens and a Chinese amphibious dock ship in December 2013 vividly demonstrated. If the U.S. and China don't come to a modus vivendi on a code of maritime conduct in the Western Pacific, the possibility for escalation and confrontation is very real. The U.S. has in the past attempted to create a code of conduct with China on these matters; however, talks have been stalled on Chinese demands that the U.S. end arms sales to Taiwan, put an end to surveillance activities in its EEZ and repeal provisions of the 2000 National Defense Authorization Act, which limits U.S. military cooperation with China. ¶ Further aggravating the situation is the poor military-to-military relationship between our two countries. Though we have taken some small steps forward engaging in recent years, military-to-military cooperation remains the most underdeveloped and concerning aspect of bilateral relations.¶ While the political and professional Chinese elite are experiencing an unprecedented level of exposure to the outside world, this encouraging trend has not reached the People's Liberation Army, which tightly restricts contacts with the U.S., particularly for junior officers. By design, the PLA ranks remain conspiracy-minded, hawkish and insulated from the Western world and even to liberal influences within China. ¶ This is worrying because many Chinese nationalists inside and outside the PLA see the U.S. as engaged in a containment strategy designed to prevent China's rise and undermine its security. Firebrand nationalists are taking to the airwaves and webpages to denounce a U.S. foreign policy they believe is encouraging provocative behavior from Japan, the Philippines and Vietnam. And China's leaders are increasingly pandering to these vocal nationalists, escalating their own hawkish rhetoric and in the process restricting their freedom to maneuver in the future. ¶ When the U.S. and other countries have faltered in the face of this policy, as was the case with the Philippines in the Scarborough Shoal, China has advanced its goals and established a new status quo. However, where the U.S. has held firm in its position and demonstrated resolve, Beijing has backed down.¶ The same resolve must be committed to surveillance activities in China's EEZ. America's position on this issue is not only within the U.S. national interest, it is fully supported by domestic and international law. ¶ Were we to accept China's interpretation of UNCLOS, U.S. military vessels could be barred from operating in large swathes of the world's oceans, an outcome that is clearly unacceptable to Washington — and one that was never envisioned by the drafters of UNCLOS.¶ The U.S. should do everything at its disposal to ensure future incidents do not escalate, but it must reaffirm that U.S. policy will not be subject to fear, intimidation, coercion or reckless behavior from Chinese naval forces.¶ Furthermore, Washington must do a better job drawing clear red lines around unacceptable behavior in the maritime arena, and enforce those red lines when they are crossed. To that end, the U.S. should continue an active schedule of surveillance activities, patrolling and freedom of navigation operations.¶ America carries a special burden on this issue. While Beijing views its neighbors as subservient regional powers subject to intimidation, the Chinese leadership acknowledges and respects American power, even as they increasingly resent it. As perhaps the only country capable of drawing and enforcing red lines with China, America's allies in the region are depending on the U.S. to be a firewall against Chinese aggression in the Western Pacific.

Klare 13 -- (Michael, professor of peace and world security studies at Hampshire College, “The Next War”, Realclearworld.com, January 23, 2013, http://www.realclearworld.com/articles/2013/01/23/the\_next\_war\_100500.html)

Don't look now, but conditions are deteriorating in the western Pacific. Things are turning ugly, with consequences that could prove deadly and spell catastrophe for the global economy.¶ In Washington, it is widely assumed that a showdown with Iran over its nuclear ambitions will be the first major crisis to engulf the next secretary of defense -- whether it be former Senator Chuck Hagel, as President Obama desires, or someone else if he fails to win Senate confirmation. With few signs of an imminent breakthrough in talks aimed at peacefully resolving the Iranian nuclear issue, many analysts believe that military action -- if not by Israel, then by the United States -- could be on this year's agenda.¶ Lurking just behind the Iranian imbroglio, however, is a potential crisis of far greater magnitude, and potentially far more imminent than most of us imagine. China's determination to assert control over disputed islands in the potentially energy-rich waters of the East and South China Seas, in the face of stiffening resistance from Japan and the Philippines along with greater regional assertiveness by the United States, spells trouble not just regionally, but potentially globally.¶ Islands, Islands, Everywhere¶ The possibility of an Iranian crisis remains in the spotlight because of the obvious risk of disorder in the Greater Middle East and its threat to global oil production and shipping. A crisis in the East or South China Seas (essentially, western extensions of the Pacific Ocean) would, however, pose a greater peril because of the possibility of a U.S.-China military confrontation and the threat to Asian economic stability.¶ The United States is bound by treaty to come to the assistance of Japan or the Philippines if either country is attacked by a third party, so any armed clash between Chinese and Japanese or Filipino forces could trigger American military intervention. With so much of the world's trade focused on Asia, and the American, Chinese, and Japanese economies tied so closely together in ways too essential to ignore, a clash of almost any sort in these vital waterways might paralyze international commerce and trigger a global recession (or worse).¶ All of this should be painfully obvious and so rule out such a possibility -- and yet the likelihood of such a clash occurring has been on the rise in recent months, as China and its neighbors continue to ratchet up the bellicosity of their statements and bolster their military forces in the contested areas. Washington's continuing statements about its ongoing plans for a "pivot" to, or "rebalancing" of, its forces in the Pacific have only fueled Chinese intransigence and intensified a rising sense of crisis in the region. Leaders on all sides continue to affirm their country's inviolable rights to the contested islands and vow to use any means necessary to resist encroachment by rival claimants. In the meantime, China has increased the frequency and scale of its naval maneuvers in waters claimed by Japan, Vietnam, and the Philippines, further enflaming tensions in the region.¶ Ostensibly, these disputes revolve around the question of who owns a constellation of largely uninhabited atolls and islets claimed by a variety of nations. In the East China Sea, the islands in contention are called the Diaoyus by China and the Senkakus by Japan. At present, they are administered by Japan, but both countries claim sovereignty over them. In the South China Sea, several island groups are in contention, including the Spratly chain and the Paracel Islands (known in China as the Nansha and Xisha Islands, respectively). China claims all of these islets, while Vietnam claims some of the Spratlys and Paracels. Brunei, Malaysia, and the Philippines also claim some of the Spratlys.¶ Far more is, of course, at stake than just the ownership of a few uninhabited islets. The seabeds surrounding them are believed to sit atop vast reserves of oil and natural gas. Ownership of the islands would naturally confer ownership of the reserves -- something all of these countries desperately desire. Powerful forces of nationalism are also at work: with rising popular fervor, the Chinese believe that the islands are part of their national territory and any other claims represent a direct assault on China's sovereign rights; the fact that Japan -- China's brutal invader and occupier during World War II -- is a rival claimant to some of them only adds a powerful tinge of victimhood to Chinese nationalism and intransigence on the issue. By the same token, the Japanese, Vietnamese, and Filipinos, already feeling threatened by China's growing wealth and power, believe no less firmly that not bending on the island disputes is an essential expression of their nationhood.¶ Long ongoing, these disputes have escalated recently. In May 2011, for instance, the Vietnamese reported that Chinese warships were harassing oil-exploration vessels operated by the state-owned energy company PetroVietnam in the South China Sea. In two instances, Vietnamese authorities claimed, cables attached to underwater survey equipment were purposely slashed. In April 2012, armed Chinese marine surveillance ships blocked efforts by Filipino vessels to inspect Chinese boats suspected of illegally fishing off Scarborough Shoal, an islet in the South China Sea claimed by both countries.¶ The East China Sea has similarly witnessed tense encounters of late. Last September, for example, Japanese authorities arrested 14 Chinese citizens who had attempted to land on one of the Diaoyu/Senkaku Islands to press their country's claims, provoking widespread anti-Japanese protests across China and a series of naval show-of-force operations by both sides in the disputed waters.¶ Regional diplomacy, that classic way of settling disputes in a peaceful manner, has been under growing strain recently thanks to these maritime disputes and the accompanying military encounters. In July 2012, at the annual meeting of the Association of Southeast Asian Nations (ASEAN), Asian leaders were unable to agree on a final communiqué, no matter how anodyne -- the first time that had happened in the organization's 46-year history. Reportedly, consensus on a final document was thwarted when Cambodia, a close ally of China's, refused to endorse compromise language on a proposed "code of conduct" for resolving disputes in the South China Sea. Two months later, when Secretary of State Hillary Rodham Clinton visited Beijing in an attempt to promote negotiations on the disputes, she was reviled in the Chinese press, while officials there refused to cede any ground at all.¶ As 2012 ended and the New Year began, the situation only deteriorated. On December 1st, officials in Hainan Province, which administers the Chinese-claimed islands in the South China Sea, announced a new policy for 2013: Chinese warships would now be empowered to stop, search, or simply repel foreign ships that entered the claimed waters and were suspected of conducting illegal activities ranging, assumedly, from fishing to oil drilling. This move coincided with an increase in the size and frequency of Chinese naval deployments in the disputed areas.¶ On December 13th, the Japanese military scrambled F-15 fighter jets when a Chinese marine surveillance plane flew into airspace near the Diaoyu/Senkaku Islands. Another worrisome incident occurred on January 8th, when four Chinese surveillance ships entered Japanese-controlled waters around those islands for 13 hours. Two days later, Japanese fighter jets were again scrambled when a Chinese surveillance plane returned to the islands. Chinese fighters then came in pursuit, the first time supersonic jets from both sides flew over the disputed area. The Chinese clearly have little intention of backing down, having indicated that they will increase their air and naval deployments in the area, just as the Japanese are doing.¶ Powder Keg in the Pacific¶ While war clouds gather in the Pacific sky, the question remains: Why, pray tell, is this happening now?¶ Several factors seem to be conspiring to heighten the risk of confrontation, including leadership changes in China and Japan, and a geopolitical reassessment by the United States.¶ \* In China, a new leadership team is placing renewed emphasis on military strength and on what might be called national assertiveness. At the 18th Party Congress of the Chinese Communist Party, held last November in Beijing, Xi Jinping was named both party head and chairman of the Central Military Commission, making him, in effect, the nation's foremost civilian and military official. Since then, Xi has made several heavily publicized visits to assorted Chinese military units, all clearly intended to demonstrate the Communist Party's determination, under his leadership, to boost the capabilities and prestige of the country's army, navy, and air force. He has already linked this drive to his belief that his country should play a more vigorous and assertive role in the region and the world.¶ In a speech to soldiers in the city of Huizhou, for example, Xi spoke of his "dream" of national rejuvenation: "This dream can be said to be a dream of a strong nation; and for the military, it is the dream of a strong military." Significantly, he used the trip to visit the Haikou, a destroyer assigned to the fleet responsible for patrolling the disputed waters of the South China Sea. As he spoke, a Chinese surveillance plane entered disputed air space over the Diaoyu/Senkaku islands in the East China Sea, prompting Japan to scramble those F-15 fighter jets.¶ \* In Japan, too, a new leadership team is placing renewed emphasis on military strength and national assertiveness. On December 16th, arch-nationalist Shinzo Abe returned to power as the nation's prime minister. Although he campaigned largely on economic issues, promising to revive the country's lagging economy, Abe has made no secret of his intent to bolster the Japanese military and assume a tougher stance on the East China Sea dispute.¶ In his first few weeks in office, Abe has already announced plans to increase military spending and review an official apology made by a former government official to women forced into sexual slavery by the Japanese military during World War II. These steps are sure to please Japan's rightists, but certain to inflame anti-Japanese sentiment in China, Korea, and other countries it once occupied.¶ Equally worrisome, Abe promptly negotiated an agreement with the Philippines for greater cooperation on enhanced "maritime security" in the western Pacific, a move intended to counter growing Chinese assertiveness in the region. Inevitably, this will spark a harsh Chinese response -- and because the United States has mutual defense treaties with both countries, it will also increase the risk of U.S. involvement in future engagements at sea.¶ \* In the United States, senior officials are debating implementation of the "Pacific pivot" announced by President Obama in a speech before the Australian Parliament a little over a year ago. In it, he promised that additional U.S. forces would be deployed in the region, even if that meant cutbacks elsewhere. "My guidance is clear," he declared. "As we plan and budget for the future, we will allocate the resources necessary to maintain our strong military presence in this region." While Obama never quite said that his approach was intended to constrain the rise of China, few observers doubt that a policy of "containment" has returned to the Pacific.¶ Indeed, the U.S. military has taken the first steps in this direction, announcing, for example, that by 2017 all three U.S. stealth planes, the F-22, F-35, and B-2, would be deployed to bases relatively near China and that by 2020 60% of U.S. naval forces will be stationed in the Pacific (compared to 50% today). However, the nation's budget woes have led many analysts to question whether the Pentagon is actually capable of fully implementing the military part of any Asian pivot strategy in a meaningful way. A study conducted by the Center for Strategic and International Studies (CSIS) at the behest of Congress, released last summer, concluded that the Department of Defense "has not adequately articulated the strategy behind its force posture planning [in the Asia-Pacific] nor aligned the strategy with resources in a way that reflects current budget realities."¶ This, in turn, has fueled a drive by military hawks to press the administration to spend more on Pacific-oriented forces and to play a more vigorous role in countering China's "bullying" behavior in the East and South China Seas. "[America's Asian allies] are waiting to see whether America will live up to its uncomfortable but necessary role as the true guarantor of stability in East Asia, or whether the region will again be dominated by belligerence and intimidation," former Secretary of the Navy and former Senator James Webb wrote in the Wall Street Journal. Although the administration has responded to such taunts by reaffirming its pledge to bolster its forces in the Pacific, this has failed to halt the calls for an even tougher posture by Washington. Obama has already been chided for failing to provide sufficient backing to Israel in its struggle with Iran over nuclear weapons, and it is safe to assume that he will face even greater pressure to assist America's allies in Asia were they to be threatened by Chinese forces.¶ Add these three developments together, and you have the makings of a powder keg -- potentially at least as explosive and dangerous to the global economy as any confrontation with Iran. Right now, given the rising tensions, the first close encounter of the worst kind, in which, say, shots were unexpectedly fired and lives lost, or a ship or plane went down, might be the equivalent of lighting a fuse in a crowded, over-armed room. Such an incident could occur almost any time. The Japanese press has reported that government officials there are ready to authorize fighter pilots to fire warning shots if Chinese aircraft penetrate the airspace over the Diaoyu/Senkaku islands. A Chinese general has said that such an act would count as the start of "actual combat." That the irrationality of such an event will be apparent to anyone who considers the deeply tangled economic relations among all these powers may prove no impediment to the situation -- as at the beginning of World War I -- simply spinning out of everyone's control.¶ Can such a crisis be averted? Yes, if the leaders of China, Japan, and the United States, the key countries involved, take steps to defuse the belligerent and ultra-nationalistic pronouncements now holding sway and begin talking with one another about practical steps to resolve the disputes. Similarly, an emotional and unexpected gesture -- Prime Minister Abe, for instance, pulling a Nixon and paying a surprise goodwill visit to China -- might carry the day and change the atmosphere. Should these minor disputes in the Pacific get out of hand, however, not just those directly involved but the whole planet will look with sadness and horror on the failure of everyone involved.

**Having a seat at EEZ disputes is key to solve China and freedom of navigation laws solves the reason for escalation- codification independently solves Asian arms races**

Glaser 12 (Bonnie S. Glaser, Senior Fellow, Center for Strategic and International Studies, April, “Armed Clash in the South China Sea”, http://www.cfr.org/world/armed-clash-south-china-sea/p27883)

The risk of conflict in the South China Sea is significant. China, Taiwan, Vietnam, Malaysia, Brunei, and the Philippines have competing territorial and jurisdictional claims, particularly over rights to exploit the region's possibly extensive reserves of oil and gas. Freedom of navigation in the region is also a contentious issue, especially between the United States and China over the right of U.S. military vessels to operate in China's two-hundred-mile exclusive economic zone (EEZ). These tensions are shaping—and being shaped by—rising apprehensions about the growth of China's military power and its regional intentions. China has embarked on a substantial modernization of its maritime paramilitary forces as well as naval capabilities to enforce its sovereignty and jurisdiction claims by force if necessary. At the same time, it is developing capabilities that would put U.S. forces in the region at risk in a conflict, thus potentially denying access to the U.S. Navy in the western Pacific.¶ Given the growing importance of the U.S.-China relationship, and the Asia-Pacific region more generally, to the global economy, the United States has a major interest in preventing any one of the various disputes in the South China Sea from escalating militarily.¶ The Contingencies¶ Of the many conceivable contingencies involving an armed clash in the South China Sea, three especially threaten U.S. interests and could potentially prompt the United States to use force.¶ The most likely and dangerous contingency is a clash stemming from U.S. military operations within China's EEZ that provokes an armed Chinese response. The United States holds that nothing in the United Nations Convention on the Law of the Sea (UNCLOS) or state practice negates the right of military forces of all nations to conduct military activities in EEZs without coastal state notice or consent. China insists that reconnaissance activities undertaken without prior notification and without permission of the coastal state violate Chinese domestic law and international law. China routinely intercepts U.S. reconnaissance flights conducted in its EEZ and periodically does so in aggressive ways that increase the risk of an accident similar to the April 2001 collision of a U.S. EP-3 reconnaissance plane and a Chinese F-8 fighter jet near Hainan Island. A comparable maritime incident could be triggered by Chinese vessels harassing a U.S. Navy surveillance ship operating in its EEZ, such as occurred in the 2009 incidents involving the USNS Impeccable and the USNS Victorious. The large growth of Chinese submarines has also increased the danger of an incident, such as when a Chinese submarine collided with a U.S. destroyer's towed sonar array in June 2009. Since neither U.S. reconnaissance aircraft nor ocean surveillance vessels are armed, the United States might respond to dangerous behavior by Chinese planes or ships by dispatching armed escorts. A miscalculation or misunderstanding could then result in a deadly exchange of fire, leading to further military escalation and precipitating a major political crisis. Rising U.S.-China mistrust and intensifying bilateral strategic competition would likely make managing such a crisis more difficult.¶ A second contingency involves conflict between China and the Philippines over natural gas deposits, especially in the disputed area of Reed Bank, located eighty nautical miles from Palawan. Oil survey ships operating in Reed Bank under contract have increasingly been harassed by Chinese vessels. Reportedly, the United Kingdom-based Forum Energy plans to start drilling for gas in Reed Bank this year, which could provoke an aggressive Chinese response. Forum Energy is only one of fifteen exploration contracts that Manila intends to offer over the next few years for offshore exploration near Palawan Island. Reed Bank is a red line for the Philippines, so this contingency could quickly escalate to violence if China intervened to halt the drilling.¶ The United States could be drawn into a China-Philippines conflict because of its 1951 Mutual Defense Treaty with the Philippines. The treaty states, "Each Party recognizes that an armed attack in the Pacific Area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers in accordance with its constitutional processes." American officials insist that Washington does not take sides in the territorial dispute in the South China Sea and refuse to comment on how the United States might respond to Chinese aggression in contested waters. Nevertheless, an apparent gap exists between American views of U.S. obligations and Manila's expectations. In mid-June 2011, a Filipino presidential spokesperson stated that in the event of armed conflict with China, Manila expected the United States would come to its aid. Statements by senior U.S. officials may have inadvertently led Manila to conclude that the United States would provide military assistance if China attacked Filipino forces in the disputed Spratly Islands.¶ With improving political and military ties between Manila and Washington, including a pending agreement to expand U.S. access to Filipino ports and airfields to refuel and service its warships and planes, the United States would have a great deal at stake in a China-Philippines contingency. Failure to respond would not only set back U.S. relations with the Philippines but would also potentially undermine U.S. credibility in the region with its allies and partners more broadly. A U.S. decision to dispatch naval ships to the area, however, would risk a U.S.-China naval confrontation.¶ Disputes between China and Vietnam over seismic surveys or drilling for oil and gas could also trigger an armed clash for a third contingency. China has harassed PetroVietnam oil survey ships in the past that were searching for oil and gas deposits in Vietnam's EEZ. In 2011, Hanoi accused China of deliberately severing the cables of an oil and gas survey vessel in two separate instances. Although the Vietnamese did not respond with force, they did not back down and Hanoi pledged to continue its efforts to exploit new fields despite warnings from Beijing. Budding U.S.-Vietnam relations could embolden Hanoi to be more confrontational with China on the South China Sea issue.¶ The United States could be drawn into a conflict between China and Vietnam, though that is less likely than a clash between China and the Philippines. In a scenario of Chinese provocation, the United States might opt to dispatch naval vessels to the area to signal its interest in regional peace and stability. Vietnam, and possibly other nations, could also request U.S. assistance in such circumstances. Should the United States become involved, subsequent actions by China or a miscalculation among the forces present could result in exchange of fire. In another possible scenario, an attack by China on vessels or rigs operated by an American company exploring or drilling for hydrocarbons could quickly involve the United States, especially if American lives were endangered or lost. ExxonMobil has plans to conduct exploratory drilling off Vietnam, making this an existential danger. In the short term, however, the likelihood of this third contingency occurring is relatively low given the recent thaw in Sino-Vietnamese relations. In October 2011, China and Vietnam signed an agreement outlining principles for resolving maritime issues. The effectiveness of this agreement remains to be seen, but for now tensions appear to be defused.¶ Warning Indicators¶ Strategic warning signals that indicate heightened risk of conflict include political decisions and statements by senior officials, official and unofficial media reports, and logistical changes and equipment modifications. In the contingencies described above, strategic warning indicators could include heightened rhetoric from all or some disputants regarding their territorial and strategic interests. For example, China may explicitly refer to the South China Sea as a core interest; in 2010 Beijing hinted this was the case but subsequently backed away from the assertion. Beijing might also warn that it cannot "stand idly by" as countries nibble away at Chinese territory, a formulation that in the past has often signaled willingness to use force. Commentaries and editorials in authoritative media outlets expressing China's bottom line and issuing ultimatums could also be a warning indicator. Tough language could also be used by senior People's Liberation Army (PLA) officers in meetings with their American counterparts. An increase in nationalistic rhetoric in nonauthoritative media and in Chinese blogs, even if not representing official Chinese policy, would nevertheless signal pressure on the Chinese leadership to defend Chinese interests. Similar warning indicators should be tracked in Vietnam and the Philippines that might signal a hardening of those countries' positions.¶ Tactical warning signals that indicate heightened risk of a potential clash in a specific time and place include commercial notices and preparations, diplomatic and/or military statements warning another claimant to cease provocative activities or suffer the consequences, military exercises designed to intimidate another claimant, and ship movements to disputed areas. As for an impending incident regarding U.S. surveillance activities, statements and unusual preparations by the PLA might suggest a greater willingness to employ more aggressive means to intercept U.S. ships and aircraft.¶ Implications for U.S. Interests¶ The United States has significant political, security, and economic interests at stake if one of the contingencies should occur.¶ Global rules and norms. The United States has important interests in the peaceful resolution of South China Sea disputes according to international law. With the exception of China, all the claimants of the South China Sea have attempted to justify their claims based on their coastlines and the provisions of UNCLOS. China, however, relies on a mix of historic rights and legal claims, while remaining deliberately ambiguous about the meaning of the "nine-dashed line" around the sea that is drawn on Chinese maps. Failure to uphold international law and norms could harm U.S. interests elsewhere in the region and beyond. Ensuring freedom of navigation is another critical interest of the United States and other regional states. Although China claims that it supports freedom of navigation, its insistence that foreign militaries seek advance permission to sail in its two-hundred-mile EEZ casts doubt on its stance. China's development of capabilities to deny American naval access to those waters in a conflict provides evidence of possible Chinese intentions to block freedom of navigation in specific contingencies.¶ Alliance security and regional stability. U.S. allies and friends around the South China Sea look to the United States to maintain free trade, safe and secure sea lines of communication (SLOCs), and overall peace and stability in the region. Claimants and nonclaimants to land features and maritime waters in the South China Sea view the U.S. military presence as necessary to allow decision-making free of intimidation. If nations in the South China Sea lose confidence in the United States to serve as the principal regional security guarantor, they could embark on costly and potentially destabilizing arms buildups to compensate or, alternatively, become more accommodating to the demands of a powerful China. Neither would be in the U.S. interest. Failure to reassure allies of U.S. commitments in the region could also undermine U.S. security guarantees in the broader Asia-Pacific region, especially with Japan and South Korea. At the same time, however, the United States must avoid getting drawn into the territorial dispute—and possibly into a conflict—by regional nations who seek U.S. backing to legitimize their claims.¶ Economic interests. Each year, $5.3 trillion of trade passes through the South China Sea; U.S. trade accounts for $1.2 trillion of this total. Should a crisis occur, the diversion of cargo ships to other routes would harm regional economies as a result of an increase in insurance rates and longer transits. Conflict of any scale in the South China Sea would hamper the claimants from benefiting from the South China's Sea's proven and potential riches.¶ Cooperative relationship with China. The stakes and implications of any U.S.-China incident are far greater than in other scenarios. The United States has an abiding interest in preserving stability in the U.S.-China relationship so that it can continue to secure Beijing's cooperation on an expanding list of regional and global issues and more tightly integrate China into the prevailing international system.

### AT SCS/Territ. Disputes

#### Economics prevent conflict escalation

Creehan 12 – Senior Editor of the SAIS Review of International Affairs (Sean, “Assessing the Risks of Conflict in the South China Sea,” Winter/Spring, SAIS Review, Vol. 32, No. 1)

Regarding Secretary Clinton’s first requirement, the risk of actual closure of the South China Sea remains remote, as instability in the region would affect the entire global economy, raising the price of various goods and commodities. According to some estimates, for example, as much as 50 percent of global oil tanker shipments pass through the South China Sea— that represents more than three times the tanker traffic through the Suez Canal and over five times the tanker traffic through the Panama Canal.4 It is in no country’s interest to see instability there, least of all China’s, given the central economic importance of Chinese exports originating from the country’s major southern ports and energy imports coming through the South China Sea (annual U.S. trade passing through the Sea amounts to $1.2 trillion).5 Invoking the language of nuclear deterrence theory, disruption in these sea lanes implies mutually assured economic destruction, and that possibility should moderate the behavior of all participants. Furthermore, with the United States continuing to operate from a position of naval strength (or at least managing a broader alliance that collectively balances China’s naval presence in the future), the sea lanes will remain open. While small military disputes within such a balance of power are, of course, possible, the economic risks of extended conflict are so great that significant changes to the status quo are unlikely.

#### Cooperation and lack of motivation prevents conflict

Pradt ’12 – PhD candidate at the Freie Universität of Berlin (Tilman, “ASIA'S NEW GREAT GAME? THE GEOPOLITICS OF THE SOUTH CHINA SEA,” Political Reflection, Vol. 3, No. 1)

Hence, are we attending the beginning of a new round of The Great Game in Asia, this time in the location of the SCS? As this text briefly surveyed, there are various interests at stake and several big and great powers involved, arguably too many for such a small area (especially, when concentrating on the bottleneck of the SCS, the Strait of Malac-ca). But by analyzing the motivations behind the big players’ engagement (i.e., the United States, China, and India) there is reason to believe that a potentially tragic zero-sum Great Game is still avoidable.¶ First, the US has not a real interest in permanently (and substantially) upgrading its military presence in the region. Given the still severing US budget situation and the persistent security situation in the Middle East and Central Asia, policy-makers in Washington are trying to reduce its forces de-ployed to foreign areas not to enlarge them by opening up a new theatre. Plus, the US is mainly interested in the security of the sea lanes and its guaranteed free passage, therefore President Obama’s push on the littoral states to solve their SCS disputes. The US is not interested in confront-ing China directly but to put pressure on Beijing to be more conciliatory in case of the SCS dis-putes. The deployment of US Marines to Darwin is merely presenting the stick not using it (imagine Beijing’s reactions to the US establishing a mili-tary base in Vietnam).¶ Beijing, on the other hand, will now take pains to somehow ease the situation in the SCS and to regain trust among its neighbours of the ASEAN. China has to accept that the US will now sit at the table of future rounds of territorial discussions and China no longer can use its relative power in bilateral negotiations with small ASEAN states. This is probably hard to swallow for Chinese policy-makers given their repeatedly stated premise that the SCS disputes shall be solely discussed among the regional states con-cerned. But in this changed situation, the contin-ued refusal to accept multilateral discussions will provoke further military build-up and confronta-tion in the SCS.¶ Finally, India got only involved because of perceived Chinese assertiveness in the Indian Ocean. India’s military build-up and assumed ambitions towards the SCS is a response to Chi-na’s actions in what India perceives as its territori-al waters. A reciprocal withdrawal will avoid fu-ture naval confrontations among the two Asian heavyweights.

#### All sides have an interest in managing the dispute well

Gupta 11 **[**Rukmani Gupta, Associate Fellow at the Institute for Defence Studies and Analyses, “South China Sea Conflict? No Way,” <http://the-diplomat.com/2011/10/23/south-china-sea-conflict-no-way/2/>]

These suggestions to recalibrate Indian policy towards the South China Sea and its relationship with Vietnam are premature at best. Despite the rhetoric, conflict in the South China Sea may well not be inevitable. If the history of dialogue between the parties is any indication, then current tensions are likely to result in forward movement. In the aftermath of statements by the United States, and skirmishes over fishing vessels, ASEAN and China agreed upon the Guidelines on the Implementation of the Declaration on the Conduct of Parties in the South China Sea at the Bali Summit in July 2010. And recent tensions may well prod the parties towards a more binding code of conduct. This isn’t to suggest that territorial claims and sovereignty issues will be resolved, but certainly they can become more manageable to prevent military conflict.¶ There’s a common interest in making the disputes more manageable, essentially because, nationalistic rhetoric notwithstanding, the parties to the dispute recognize that there are real material benefits at stake. A disruption of maritime trade through the South China Sea would entail economic losses – and not only for the littoral states. No party to the dispute, including China, has thus far challenged the principle of freedom of navigation for global trade through the South China Sea. The states of the region are signatories to the UNCLOS, which provides that ‘Coastal States have sovereign rights in a 200-nautical mile exclusive economic zone (EEZ) with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection’ but that ‘All other States have freedom of navigation and over flight in the EEZ, as well as freedom to lay submarine cables and pipelines.’ The prospect of threats to SLOCS thus seems somewhat exaggerated.

## Arctic

### No Escalation---Predictive

1NC EV 2014

#### Zero chance of Arctic war---experts

Mahony 13 Honor, EU Observer, "Fear of Arctic conflict are 'overblown'", 3/9, euobserver.com/foreign/119479

The Arctic has become a new frontier in international relations, but fear of potential conflict in the resource-rich region is overblown, say experts.¶ For long a mystery because of its general impenetrability, melting ice caps are revealing more and more of the Arctic region to scientists, researchers and industry.¶ Climate change experts can take a more precise look at a what global warming is doing to the planet, shipping trade routes once considered unthinkable are now possible, and governments and businesses are in thrall to the potential exploitation of coal, iron, rare earths and oil.¶ The interest is reflected in the growing list of those wanting to have a foot in the Arctic council, a forum of eight countries with territory in the polar region.¶ While the US, Denmark, Iceland, Finland, Norway, Sweden, Russia and Canada form the council, the EU commission, China, India, South Korea and Japan have all expressed an interest in having a permanent observer status.¶ "The Arctic has become a new meeting place for America, Europe and the Asia Pacific," says Damien Degeorges, founder of the Arctic Policy and Economic Forum.¶ During a recent conference on Arctic shipping routes in the European Parliament, Degeorges noted that "China has been the most active by far in the last years."¶ He points to its red-carpet treatment of politicians from Greenland, a territory that recently got full control over its wealth of natural resources. Bejing also cosied up to Iceland after the island's financial meltdown. The two undertook a joint expedition to the North Pole and the Chinese have the largest foreign embassy in Reykjavik.¶ Meanwhile, South Korea's president visited Greenland last year and shipping hubs like Singapore are holding Arctic conferences.¶ The interest is being spurred by melting icebergs.¶ Last year saw a record low of multi-year ice - permanent ice - in the polar sea. This means greater shipping and mineral exploitation potential. There were 37 transits of the North East Passage (NEP), running from the Atlantic to the Pacific along the top of Russia, in 2011. This rose to 47 in 2012.¶ For a ship travelling from the Netherlands to China, the route around 40 percent shorter than using the traditional Suez Canal. A huge saving for China, where 50 percent of its GDP is connected to shipping. Russia is also keen to exploit the route as the rise in temperatures is melting the permafrost in its northern territory, playing havoc with its roads and railways.¶ According to Jan Fritz Hansen, deputy director of the Danish shipowners’ association, the real breakthrough will come when there is a cross polar route. At the moment there are are two options - the North East Passge for which Russia asks high fees for transiting ships - or the much-less developed North West Passage along Canada.¶ His chief concern is that "trade up there is free. We don't want protectionism. Everyone should be allowed to compete up there."¶ And he believes the biggest story of the Arctic is not how it is traversed but what will be taken out of it. According to the US Geological Survey (2009), the Arctic holds 13 percent of undiscovered oil and 30 percent of undiscovered gas supplies.¶ Greenland is already at the centre of political tussle between the EU and China over future exploitation of its rare earths - used in a range of technologies such as hybrid cars or smart phones.¶ "The biggest adventure will be the Arctic destination. There is a lot of valuable goods that should be taken out of nature up there," he said.¶ This resource potential - although tempered by the fact that much of it is not economically viable to exploit - has led to fears that the Arctic region is ripe for conflict.¶ But this is nonsense, says Nil Wang, a former Danish admiral and Arctic expert.¶ Most resources have an owner¶ "There is a general public perception that the Arctic region holds great potential for conflict because it is an ungoverned region where all these resources are waiting to be picked up by the one who gets there first. That is completely false," he said.¶ He notes that it is an "extremely well-regulated region," with international rules saying that coastal states have territorial jurisdiction up to 12 nautical miles off their coast.¶ On top of that is a further 200 nautical miles of exclusive economic zone "where you own every value in the water and under the seabed."¶ "Up to 97 percent of energy resources is actually belonging to someone already," says Wang.¶ He suggest the actors in the region all want to create a business environment, which requires stable politics and security.

#### No conflict—resources already allocated

The Economist 12 (“Too much to fight over”, 6/16, http://www.economist.com/node/21556797)

Yet the risks of Arctic conflict have been exaggerated. Most of the Arctic is clearly assigned to individual countries. According to a Danish estimate, 95% of Arctic mineral resources are within agreed national boundaries. The biggest of the half-dozen remaining territorial disputes is between the United States and Canada, over whether the north-west passage is in international or Canadian waters, hardly a casus belli.

#### Best predictive evidence concludes no risk of Arctic escalation now or in the future

Jonas Grätz 12, researcher at the Center for Security Studies, July 2012, “The Geopolitics of the Arctic Commons,” <http://www.isn.ethz.ch/isn/Digital-Library/Articles/Special-Feature/Detail/?lng=en&id=157901&tabid=1453469894&contextid774=157901&contextid775=157922>

Against the background of the changes in the Arctic, this region is occasionally identified as a potential area of future conflict. However, it is important first to point out that there is much scope for cooperation. This is particularly apparent when considering “soft” security concerns such as environmental pollution resulting from the extraction of raw materials. The threats that arise for humans from the exceptional climatic situations are pushing actors towards cooperative approaches, too. Many of these issues are taken on by the Arctic Council. Founded in 1996, the Council is a forum to promote coordination among the eight Arctic countries. Representatives of indigenous peoples have a consultative role. One concrete result of the Arctic Council is a binding agreement on maritime search and rescue activities. For 2013, an agreement on standards for oil spill preparedness and response is expected, which will reinforce the current non-binding offshore oil and gas guidelines.

Cooperation among the littoral states is also advancing in the sensitive area of national sovereign rights. The 2010 border treaty between Russia and Norway indicates that bilateral agreements are possible – even though the power asymmetry between the two countries is reflected in a deal advantageous to Russia. International maritime law and the pressure of non-Arctic countries are also fostering multilateral cooperation, at least in areas where all parties can still gain further sovereign rights. The United Nations Convention on the Law of the Sea (UNCLOS) allows for the extension of the continental shelf towards the North Pole, which would extend the mining privileges of the coastal states at the expense of the interests of non-Arctic states. The water column and the animals living in it, by contrast, would continue to enjoy international status. In the Ilulissat Declaration adopted in 2008, the coastal states declared their intention to settle any territorial conflicts within the framework of UNCLOS. By signing the declaration, the US – which has not ratified UNCLO S – has signalled its willingness to observe it within the Arctic. What is more, the coastal states have been collaborating for a long time in the exploration of the sea bed. Provided that there are no major conflicts among these countries, non- Arctic players will hardly be able to assert themselves in this context. Potential for conflict The scope of sovereign rights in the maritime area around the Svalbard archipelago, believed to be rich in oil and gas, is a question that is not easy to resolve. On the one hand, the archipelago and the surrounding 200-mile zone are an undisputed part of Norwegian territory. On the other hand, Norwegian sovereignty over the archipelago is substantially limited by the Svalbard Treaty of 1920. All 40 signatory countries have the right to exploit natural resources and to conduct research. The treaty also states that the archipelago must not be used for offensive military purposes. Likewise, the right to levy taxes is limited to the administrative requirements of Svalbard. It was only later under UNCLO S that the EEZ emerged as an institution. Hence, it remains unclear whether the Svalbard Treaty also applies to this zone. Countries such as Russia, Iceland, and the UK assume this to be the case. Norway takes the opposite view. Nevertheless, Oslo has not declared a full EEZ in this area, but established a fisheries protection zone instead. It concedes fishing privileges to Russia, Iceland, and other nations. This has never been explicitly acknowledged by these countries, but is usually accepted in practice.

The modus vivendi has so far provided stability as it has served Russian interests too, with the fisheries protection zone granting privileges to Russian fishing interests over other signatory states. Moreover, Russia has sufficient oil and gas reserves at its disposal on its own territory. Norway, by contrast, has a strong interest in opening up the area for oil and gas exploration. Such an opening, however, would undermine the current fragile balance and encourage other signatory states to question openly the scope of the Treaty. Even if Norway were to take no action, other nations could try to push for an opening of the area for exploration with reference to the Treaty. Due to the variety of the players concerned and the absence of international rules, the issue can ultimately only be resolved at a political level.

Interests and positions diverge concerning the issue of sovereignty over the new sea routes as well. Again, even the Arctic coastal states do not agree on the legal status: Russia and Canada regard the routes as internal waterways in what is a very broad interpretation of UNCLO S. This implies that ships flying foreign flags must request permission for transit. Other coastal nations, such as the US, and non-Arctic players like the EU and presumably China, however, consider these to be international waterways for which no authorisation for transit is necessary.

For the time being, no escalation of this conflict is to be expected, since the commercial navigation routes are competing with non-Arctic sea routes and the use of these routes will correlate with the extent of their opening and the stability of the agreed arrangements. In addition, Russia and Canada depend on the cooperation of foreign non-state and state-owned players in order to attract investments in their inadequate coastal infrastructures. Also, the International Maritime Organisation is working on a binding Polar Code, which will establish clear rules for polar navigation. This will weaken the case for additional national regulations and approval procedures.

### Their ev

**Arctic border disputes go nuclear**

Wallace and Staples 10(Michael Wallace and Steven Staples. \*Professor Emeritus at the University of British Columbia and President of the Rideau Institute in Ottawa “Ridding the Arctic of Nuclear Weapons: A Task Long Overdue,”http://www.arcticsecurity.org/docs/arctic-nuclear-report-web.pdf)

The fact is, the Arctic is becoming a zone of increased military competition. Russian President Medvedev has announced the creation of a special military force to defend Arctic claims. Last year Russian General Vladimir Shamanov declared that Russian troops would step up training for Arctic combat, and that Russia’s submarine fleet would increase its “operational radius.” 55 Recently, two Russian attack submarines were spotted off the U.S. east coast for the first time in 15 years. 56 In January 2009, on the eve of Obama’s inauguration, President Bush issued a National Security Presidential Directive on Arctic Regional Policy. It affirmed as a priority the preservation of U.S. military vessel and aircraft mobility and transit throughout the Arctic, including the Northwest Passage, and foresaw greater capabilities to protect U.S. borders in the Arctic. 57 The Bush administration’s disastrous eight years in office, particularly its decision to withdraw from the ABM treaty and deploy missile defence interceptors and a radar station in Eastern Europe, have greatly contributed to the instability we are seeing today, even though the Obama administration has scaled back the planned deployments. The Arctic has figured in this renewed interest in Cold War weapons systems, particularly the upgrading of the Thule Ballistic Missile Early Warning System radar in Northern Greenland for ballistic missile defence. The Canadian government, as well, has put forward new military capabilities to protect Canadian sovereignty claims in the Arctic, including proposed ice-capable ships, a northern military training base and a deep-water port. Earlier this year Denmark released an all-party defence position paper that suggests the country should create a dedicated Arctic military contingent that draws on army, navy and air force assets with shipbased helicopters able to drop troops anywhere. 58 Danish fighter planes would be tasked to patrol Greenlandic airspace. Last year Norway chose to buy 48 Lockheed Martin F-35 fighter jets, partly because of their suitability for Arctic patrols. In March, that country held a major Arctic military practice involving 7,000 soldiers from 13 countries in which a fictional country called Northland seized offshore oil rigs. 59 The manoeuvres prompted a protest from Russia – which objected again in June after Sweden held its largest northern military exercise since the end of the Second World War. About 12,000 troops, 50 aircraft and several warships were involved. 609 Ridding the Arctic of Nuclear Weapons: A Task Long Overdue Jayantha Dhanapala, President of Pugwash and former UN under-secretary for disarmament affairs, summarized the situation bluntly: “From those in the international peace and security sector, deep concerns are being expressed over the fact that two nuclear weapon states – the United States and the Russian Federation, which together own 95 per cent of the nuclear weapons in the world – converge on theArctic and have competing claims. These claims, together with those of other allied NATO countries – Canada, Denmark, Iceland, and Norway – could, if unresolved, lead to conflict escalating into the threat or use of nuclear weapons.” 61 Many will no doubt argue that this is excessively alarmist, but no circumstance in which nuclear powers find themselves in military confrontation can be taken lightly. The current geo-political threat level is nebulous and low – for now, according to Rob Huebert of the University of Calgary, “[the] issue is the uncertainty as Arctic states and non-Arctic states begin to recognize the geo-political/economic significance of the Arctic because of climate change.” 62

## Politics

### Top of Docket---2NC

#### Patent reform is top of the docket – it’s where Obama’s spending PC

Jessica M. Karmasek, 3-24-2014, "Senate committee to consider Leahy’s patent reform bill," Legal Newsline, http://legalnewsline.com/news/247947-senate-committee-to-consider-leahys-patent-reform-bill

One of the handful of patent reform bills introduced in Congress will be considered by the Senate Judiciary Committee later this month. The bill, the Patent Transparency and Improvements Act, introduced by U.S. Sen. Patrick Leahy, D-Vt., in November, is scheduled to be heard by the committee March 27. “America’s patent system is the envy of the world and an engine for job creation,” Leahy said Thursday. “Members of the Senate Judiciary Committee have been working on meaningful, targeted legislation to combat patent abuses in our system. As chairman of the committee, I am committed to ensuring we move forward with meaningful legislation this spring.”

### AT: Reform Fails

#### Only legislative fixes solve trolls---nothing else reforms the underlying economic incentives

Gary Shapiro 3-26, president and CEO of the Consumer Electronics Association, 3/26/14, “Senate should finish off the patent trolls,” http://thehill.com/blogs/congress-blog/technology/201701-senate-should-finish-off-the-patent-trolls

Essentially, this is an economic issue. Patent lawsuits are incredibly simple and inexpensive to bring, and extremely complex and costly to defend. Fighting a patent lawsuit can easily cost more than seven figures. No wonder so many victims are forced to “pay the toll to the troll” or simply shut their doors and go out of business. ¶ Fixing the problem requires changing the economic incentives and imposing a penalty on the trolls for their so-called “business model.” To truly free innovators and spark our economy, the system should follow the model of other countries and put the burden of frivolous lawsuits squarely on the shoulders of the trolls. ¶ That is why any Senate patent troll fix must include a fee shifting provision similar to the one found in the House bill. With this provision, if a troll brings a bogus lawsuit and loses, it could pay the winning party’s legal fees. Fee shifting gives defendants a chance to fight back against racketeers who capitalize on the outrageous expense of patent litigation to extort settlements. It does not disadvantage legitimate patent holders bringing actions to enforce their claims. Finally, it imposes a price tag on the patent trolls, which is important since the trolls overwhelmingly lose when their weak patents are actually litigated. ¶ A similarly important provision involves bonding – requiring patent trolls to put up some money at the outset of new litigation. Many trolls work through networks of dozens or even hundreds of thinly-capitalized shell companies. If the defendant manages to win a judgment against the troll, the troll simply declares bankruptcy and disappears, leaving the defendant empty-handed. ¶ A bonding provision would allow a court, if it suspects that a patent is weak, to require that plaintiff put aside money to cover the defendant's eventual legal fees. If the troll litigates and loses a bogus claim, it would be rightfully liable for the costs, and could no longer simply vanish into thin air. ¶ There is no silver bullet to the patent troll problem, but simple, common-sense reforms like these would go a long way to driving the trolls back under the bridge. ¶ Patent trolls are scaring off investors and killing innovation, putting a serious drag on our economy. This must end, for the sake of small businesses and the people they employ. The Senate must follow the president and Congress and enact solutions that drive at the heart of the problem, instead of tiptoeing around the edges. Let’s end the patent troll plague once and for all, and allow innovators to thrive.

#### Fee-shifting and discovery limits are the keys to effectively stop trolling---that requires legislation

Eric Friedman 3-23, assistant professor and the director of the Legal Studies Program at Champlain College, 3/23/14, “ERIC FRIEDMAN: WE NEED PROTECTION FROM THE TROLLS,” http://vtdigger.org/2014/03/23/eric-friedman-need-protection-trolls/

The great news is that Congress recognizes the problem and there is a bipartisan effort to fix it. Congressman Peter Welch voted in favor of a bill in the House and we have seen several bills introduced in the Senate, including one by our own Sen. Patrick Leahy. As chair of the Senate Judiciary Committee, responsible for patent legislation, Sen. Leahy has committed to work together with the authors of other bills – Sens. Grassley, Schumer, Cornyn and Hatch — to move forward comprehensive legislation this spring.

There is no single solution to curbing patent troll abuses, and a number of measures have been proposed in Congress. The original America Invents Act created a very successful pilot program called the Covered Business Method (CBM) program for the financial industry. Run by the U.S. Patent Office, the program ensures that both sides have a fair review of questionable patents, which conserves resources of the courts. And when you are a startup in college, or your parents’ garage, this type of protection can mean all the difference. Many Vermont and national companies, large and small, would like to see the protections that financial services companies enjoy from bad patents expanded to Main Street.

There are also some important provisions that zero in on trolls’ abuse of litigation costs. Trolls are able to drive up costs by requesting swaths of “core” discovery at the onset of a lawsuit. One proposal would create limits for discovery, one of the most expensive parts of litigation, so trolls can’t use it as an intimidation tactic, driving victims into far “cheaper” settlement. Another major provision makes a patent troll liable for legal fees if they lose a spurious patent lawsuit. But it’s important to note that most patent trolls are shell companies with only one asset – the patent itself. Legislation needs to address the many litigation loopholes trolls manipulate to avoid funding litigation.

As many have noted, there is no silver bullet solution to the patent troll problem. But what is clear is the need for a comprehensive bill that can be signed into law this year. The Senate must move forward, building on the president’s State of the Union and demands from employers across the country (from Main Street businesses to startups), and construct a bill that will restore our patent system to the innovator-supportive system it was created to be.

### AT: Executive Action Solves

#### Executive actions are doomed without reform from Congress

Rik Myslewski 2-14, The Register (UK Newspaper), Handcuffed Obama administration pokes patent trolls, pleads for Senate legislation,” 2/21/14, http://www.theregister.co.uk/2014/02/21/obama\_administration\_call\_for\_patent\_reform\_legislation/

The Obama administration has renewed its call for legislation to combat patent trolls, and has issued three new executive actions that – although limited in scope – underline its intent to do whatever it can without Congressional help, as Secretary of Commerce Penny Pritzker put it, "to encourage innovation, not litigation." ¶ Pritzker was speaking at a White House event on Thursday, discussing not only the administration's new executive actions, but also the progress it has made on the executive actions it announced last June: to increase patent-ownership transparency; to tighten scrutiny on overly broad patents ("particularly software patents," Pritzker said); to provide help to "Main Street" businesses hounded by trolls; and to step up research and outreach efforts, engaging legal scholars to study patent litigation and reaching out to trade associations, business groups, advocacy organizations, and individuals to both provide help navigating the patent system and gather public opinion on the system and its problems. ¶ The three executive actions announced on Thursday are fine in and of themselves, but they sadly illustrate how limited the administration's efforts are doomed to be without help from Congress: ¶ 1. Crowdsourcing Prior Art: The US Patent and Trademark Office is launching a new program to gather information from "companies, experts, and the general public" to help patent examiners track down prior art. ¶ 2. Improved Technical Training: The USPTO will expand its Patent Examiner Technical Training Program by calling on "technologists, engineers, and other experts" to provide volunteer help in keeping patent examiners up to speed on developments in technical fields. ¶ 3. Pro Bono Help to Inventors: The USPTO will appoint a full-time Pro Bono Coordinator to enlist volunteer patent attorneys to provide help to inventors who can't afford legal representation, and expand the current America Invents Act pro bono program to all 50 states. ¶ We seriously doubt that patent trolls will be quaking in their finely tooled Italian leather shoes when they hear of these three new initiatives – it will take new laws to rein them in.

### AT: Methane Pounder

#### This ev is atrocious --- “hard look” isn’t investing capital and isn’t a turf battle

#### Obama’s taken everything else off the table

WP 2-22 – Washington Post, 2/22/14, <http://www.washingtonpost.com/politics/obama-seeks-to-defuse-tensions-among-democrats/2014/02/22/92e472fc-9b1b-11e3-ad71-e03637a299c0_story.html>

President Obama is stepping up his efforts to coalesce and energize the Democratic base for the 2014 elections, backing off on issues where his positions might alienate the left, and more aggressively singling out Republicans as being responsible for the country’s problems. Voter turnout in midterm elections tends to be much lighter than it is in years when the country is picking a president, which means that it is crucial to maximize the enthusiasm of the party stalwarts who are most likely to show up at the polls. That helps explain why, in several sensitive policy areas, Obama recently has moved to defuse tensions with his fellow Democrats. Liberals are celebrating the president’s decision not to include a proposal to trim Social Security benefits in his 2015 budget, abandoning his previous stance in favor of making that part of a larger “grand bargain” to bring down the national debt. And while the White House insists that it will continue to press Congress for more authority to negotiate trade deals — something that puts the administration at odds with the Democratic base, and with its own party’s congressional leaders — Vice President Biden this month signaled to House Democrats that it has no expectation that will actually happen. Nor is the administration showing much appetite for bringing about a resolution to the question of allowing construction of the Keystone XL pipeline, an issue that pits environmentalists against unions, both of which the Democrats will be counting on in November. A Nebraska judge’s decision on Wednesday rejecting the pipeline route in that state has raised the possibility that a decision may be delayed until after the election.

### AT: Ukraine Aid Pounder

#### No controversy now and final vote on Tuesday---means our link comes first

ABC 3/28 "House to Vote Next Week on Aid to Ukraine" abcnews.go.com/Politics/

wireStory/congress-backs-bill-cash-strapped-ukraine-23094729

Aid to cash-strapped Ukraine and sanctions on Russia remain on track in the U.S. Congress, but it will take a few days longer before the legislation gets to President Barack Obama.

House leaders decided to vote Tuesday on the package, putting off an expected Friday vote. Congressional aides said the decision by the International Monetary Fund on Thursday to release billions of dollars to Ukraine lessened the urgency to act.

The delay ensures that House members will have a chance to go on record with a roll-call vote in backing the Senate version of the bill.

#### Plan will come first—there’s no urgency, and it won’t be controversial

National Journal 3/28 "Blame the Doc Fix! Congress Fails to Send Obama Ukraine Bill This Week" www.nationaljournal.com/defense/blame-the-doc-fix-congress-fails-to-send-obama-ukraine-bill-this-week-20140328

After much back and forth this week about how the House and Senate would finally send substantially similar legislation to aid Ukraine to the White House, the legislation is rolling over to next week, congressional aides said Friday.

The House and Senate have each passed essentially the same set of measures designed to provide loan guarantees to Ukraine while imposing sanctions against Russia meant to punish President Vladimir Putin. But they are not in the same package, which is necessary to send a bill to the president's desk.

Late Thursday the Senate approved by unanimous consent funding for Voice of America and similar European broadcasts into eastern Ukraine and Crimea geared toward ethnic Russian communities, which was included in the House legislation.

House lawmakers had been expected to approve the Senate Ukraine package Friday on voice vote, while the chamber is adjourned in a pro forma session. But after heartburn over a quick voice vote on the so-called doc-fix legislation Thursday, the chamber decided to instead put the remaining Ukraine legislation on its suspension calendar, **for quick debate and approval on Tuesday**.

The latest delay is only for a few days, but comes at the end of a long month of uncertainty as lawmakers' overwhelming disapproval of Russia's invasion and annexation of Crimea struggled to translate into a straightforward legislative path—despite widespread bipartisan agreement on the fundamental necessity of a U.S. response.

A House aide said **the urgency lessened after Ukraine received aid** from the International Monetary Fund this week, **allowing Congress** more **breathing room** to come up with a legislative deal.

#### Dems backed off IMF reform to avoid a fight---it’s not a loss because there was never a vote

Michael Tomasky 3-26, Daily Beast special correspondent, editor of Democracy: A Journal of Ideas, 3/26/14, “The GOP Just Screwed Ukraine Out of Billions to Hurt Obama,” http://www.thedailybeast.com/articles/2014/03/26/the-gop-just-screwed-ukraine-out-of-billions-to-hurt-obama.html

But those points don’t matter on the right, of course. Over there, it all spells a diminution of American power, the hated global governance, like Pat Buchanan’s old warnings about sending our boys out to global hotspots donning light-blue (i.e. United Nations) helmets. John McCain and Bob Corker, to their credit, supported the aid with the IMF reform tacked on. But most Republicans didn’t, and even though the full package easily passed a procedural vote, Democrats were getting the strong sense that an aid deal with the IMF stuff included wasn’t going to make it.

And so, it emerged this week that the Obama administration and Senate Democrats apparently backed off their demand for the Ukraine aid bill on Capitol Hill to include the reforms. On Monday, John Kerry visited Congress and threw in the towel. Better to have whatever we can get now than fight over this and delay matters. Or worse, lose altogether, because there was no chance that the House would ever have passed the IMF-laden version.

#### Their ev is punditry --- won’t cost PC

Michael Cohen, 3/3/14, Don't listen to Obama's Ukraine critics: he's not 'losing' – and it's not his fight, www.theguardian.com/commentisfree/2014/mar/03/obama-ukraine-russia-critics-credibility

As in practically every international crisis, the pundit class seems able to view events solely through the prism of US actions, which best explains Edward Luce in the Financial Times writing that Obama needs to convince Putin “he will not be outfoxed”, or Scott Wilson at the Washington Post intimating that this is all a result of America pulling back from military adventurism. Shocking as it may seem, sometimes countries take actions based on how they view their interests, irrespective of who the US did or did not bomb. Missing from this “analysis” about how Obama should respond is why Obama should respond. After all, the US has few strategic interests in the former Soviet Union and little ability to affect Russian decision-making. Our interests lie in a stable Europe, and that’s why the US and its European allies created a containment structure that will ensure Russia’s territorial ambitions will remain quite limited. (It’s called Nato.) Even if the Russian military wasn’t a hollow shell of the once formidable Red Army, it’s not about to mess with a Nato country. The US concerns vis-à-vis Russia are the concerns that affect actual US interests. Concerns like nuclear non-proliferation, or containing the Syrian civil war, or stopping Iran’s nuclear ambitions. Those are all areas where Moscow has played an occasionally useful role. So while Obama may utilize political capital to ratify the Start treaty with Russia, he’s not going to extend it so save the Crimea. The territorial integrity of Ukraine is not nothing, but it’s hardly in the top tier of US policy concerns.

### AT: NSA Pounder

#### NSA is the opposite of a thumper---Congress is falling over themselves to point out how much they agree with Obama

David Weigel 3-25, Slate political reporter, 3/25/14, “Turning Off the Vacuum Cleaner,” http://www.slate.com/articles/news\_and\_politics/politics/2014/03/nsa\_bulk\_metadata\_collection\_rand\_paul\_ron\_wyden\_support\_obama\_s\_plan\_to.html

Why Congress supports Obama’s proposal to end the NSA’s bulk metadata collection program.¶ Edward Snowden was the first to declare victory. On Monday night, the Obama administration had, via the New York Times, announced the imminent end of the bulk collection of metadata and proposed new rules requiring the National Security Agency to get warrants before grabbing individual records. It was far less than what civil libertarians had wanted. But Snowden called the White House announcement a “turning point” and the “beginning of a new effort to reclaim our rights from the NSA.”¶ The race to the bandwagon had begun. By Tuesday morning the Republican-run House Intelligence Committee was polishing and promoting the End Bulk Collection Act of 2014, which would grudgingly achieve much of what the White House grudgingly asked for. On Tuesday afternoon, Sens. Rand Paul, Ron Wyden, and Mark Udall strolled into a Senate hallway bustling with reporters to accept the NSA’s partial surrender. ¶ “When the executive branch says you’ve got to collect millions and millions of phone records of law-biding people, we said no,” said Wyden. One year ago he’d asked Director of National Intelligence James Clapper about metadata collection from “law-abiding Americans” in an open hearing. Clapper said it didn’t happen. Snowden proved him wrong. Clapper had never quite recovered. ¶ “It’s very clear now that the administration agrees with us,” said Wyden. “After all these years of saying that collecting these records are vital to Western civilization, they’ve concluded that it’s not.” ¶ “They’re looking for congressional permission to stop doing what they’re doing,” said Paul, who was still suing the administration over the metadata trawling. “They never got congressional permission in the first place. There’s nothing forcing them to keep collecting data.” ¶ “The Congress ought to codify what the president’s done so the message is sent to future presidents,” said Udall, who faces re-election in a swing state this year. “But this administration could go and implement what they’re proposing, today.” ¶ “This is the start of the end of dragnet surveillance in America,” said Wyden. ¶ “Turning off the vacuum cleaner,” added Udall. ¶ It was exactly what the administration and the NSA’s defenders wanted to hear. They’d never wanted to end metadata collection. They defended it for months. Rep. Mike Rogers, the chairman of the House Intelligence Committee, had pulled up to many Sunday show tables to argue that the program was safe, and legal, and that its opponents were ignorant defenders of the treacherous Snowden. ¶ “I passionately believe that this program saved American lives,” said Rogers at an hourlong press conference with Rep. Dutch Ruppersberger, the committee’s ranking member, where they outlined their bill to end bulk metadata collection. “All of the reviews, and I mean all of the reviews, from the IG to congressional review to the presidential review panels, found no misuse of this program. But Americans need to buy into this. … I started out with, maybe we ought to stick with the program that has been tested, legally overseen, and protects civil liberties. Well, we’re beyond that. We get that.” ¶ If it was a “turning point,” as Snowden suggested, it was one that the administration and its critics both needed. The congressional and civic outcry against the NSA started and basically ended with the revelations of domestic snooping. That wasn’t where the Snowden revelations ended. Day after week after month, newspapers were using the Snowden documents to detail American spying in foreign countries. This was costing the American tech industry billions of dollars, maybe as much as $180 billion. ¶ Rogers and Ruppersberger, and the administration, wanted to restore American credibility. Domestic surveillance reform was the only attainable idea, even if it barely addressed most of Snowden’s leaks. The reform, said Ruppersberger, would “set an example,” while “at least a year’s” worth of Snowden revelations continued to trickle out. The world outside would see that America was doing something about surveillance, and their own governments weren’t. Hey, it could work.

#### No vote for 3 months

WP 3-27 – Washington Post, 3/27/14, “White House pushes Congress to quickly pass changes to NSA surveillance program,” http://www.washingtonpost.com/world/national-security/white-house-pushes-congress-to-quickly-pass-changes-to-nsa-surveillance-program/2014/03/27/1a2c4052-b5b9-11e3-8cb6-284052554d74\_story.html

The official did not specify a timeline but noted that the administration was reauthorizing on Friday the current system of data collection by the National Security Agency for another 90 days, suggesting that that would be an appropriate window of time for lawmakers to act.

### AT: Immigration Pounder

#### Immigration’s dead, no one’s pushing it, no one cares

Esther J. Cepeda 3-24, Herald Review columnist, 3/24/14, “Immigration reform dies another slow death,” http://herald-review.com/news/opinion/editorial/columnists/immigration-reform-dies-another-slow-death/article\_1aa9ab61-a01a-5011-8e3d-1d0cbf1a60fa.html

The San Jose Mercury News has ventured to say what everyone is taking as a foregone conclusion: "Immigration reform appears dead for 2014." I hate to admit it sure looks that way. ¶ Over the past 10 years, the so-called immigration debate -- a more descriptive term would be fact-challenged shouting match -- has evolved little and now seems to be devolving. ¶ Now the helplessness surrounding the issue is palpable and the tactics that immigration activists use to rally the troops have proved to have little effect. ¶ It's hard to remember, but in the winter of 2004 the big stories centered around President George W. Bush's principles for the immigration overhaul he worked so hard, in vain, to pass -- and whether the Sierra Club should advocate tough immigration restrictions in order to control environmental damage along the borders. Many people were chattering about the upcoming Sergio Arau movie, "A Day Without a Mexican," released in May of that year. ¶ Mobilization against the Bush proposal began in 2005 when Wisconsin Republican Rep. Jim Sensenbrenner sponsored a bill that would have made assisting unlawful immigrants illegal. It threatened to make criminals of the medical establishment, religious communities and legal immigrants who gave succor to the unlawfully present. ¶ Then came the big immigration reform marches of 2006 -- which upset many because crowds took to the streets waving the flags of foreign countries. Bush's reform effort failed the following summer. ¶ Subsequent marches gave way to a three-pronged effort by immigrant advocates: to make voting the tool for change; recruit coalitions of law enforcement, business and religious leaders to push for reform; and, as a last-ditch effort, try for legislation that would at least give immigrants who came to this country as young children a path to citizenship. You know how that turned out. ¶ And here we are again, beginning another loop that starts with a lame-duck president, upcoming election naysayers and a less-than-fired-up electorate. ¶ It's true: Immigration is not at the top of the agendas of America's policymakers. ¶ President Obama, flummoxed by intractable international troubles, a sluggish economy and problems with his health care program, was recently denounced as the deporter in chief by some of the same high-profile Latino advocates who practically promised Hispanic voters he'd pass reform in his first term. ¶ But now jobs, the economy and health care take precedence over immigration. And those who do think about immigration reform have mixed feelings. A recent Pew Research Center survey found that nearly three-quarters of Americans think that immigrants living here illegally should be allowed to stay if they meet certain requirements. At the same time, nearly half of respondents said the increased deportations under the Obama administration are a good thing.

### AT: Link Turns

#### Codifying status quo policy as law is more likely to cause Presidential resistance---Obama will fear the legislative process might produce additional restrictions, cause unnecessary partisan fights, or disclose classified info---all guarantee resistance

Alberto R. Gonzales 13, Former Counsel to the President and United States Attorney General under the George W. Bush Administration, December 2013, “Article: Drones: The Power to Kill,” The George Washington Law Review, 82 Geo. Wash. L. Rev. 1, p. lexis

Relying on Congress unvaryingly results in additional problems. There is an understandable, institutional reluctance for any White House to pursue or even support congressional action if it believes the President already has constitutional authority to act. The legislative [\*47] process is unpredictable, frustratingly slow, and often becomes politicized. Congress may well achieve the opposite of the result intended, passing a law that inadvertently limits the President's discretion and hurts the nation's ability to respond to threats. Additionally, the legislative process requires open debate, and discussions about drone operations threaten to expose sensitive foreign relationships and classified methods, capabilities, and operations. Moreover, despite recent public concern over drone strikes, Congress appears to have little appetite to tackle this politically sensitive issue, and I believe it is extremely unlikely that the President would call for legislation under such circumstances. n407¶ Review of designations by a neutral body could add to the list of difficulties as well. The involvement of an Article III judge - or any other neutral decisionmaker - in matters of national security raises concerns about inevitable delays because time is often of the essence. n408 From a practical perspective, when the President has instituted a deliberate process to protect against unwarranted harm and to minimize mistakes, his judgments and efforts to protect national security should be given substantial weight by Congress and the courts.¶ Consequently, any new legislation aimed at providing additional due process protections to American citizens must be consistent with the President's constitutional authority to protect our national security. n409 As White House Counsel, I worked every day to protect the institutional prerogatives of the presidency. Based on my experience, I expect that, as an institutional matter, the White House would likely oppose statutory requirements that are not subject to military necessity, or that do not expressly provide the President with discretion to take action necessary to protect the nation's interests.

### Impact

#### Reform that targets patent trolling is key to the entire green tech sector

Adam Gerschel-Clarke 13, independent design strategist specialising in the societal aspects of design and a contributing writer at Sustainable Brands, 11/14/13, “Are patent trolls strangling sustainable innovation?,” http://www.theguardian.com/sustainable-business/patent-trolls-sustainable-innovation

Disputes over intellectual property have risen dramatically over the last few years and, despite the global advantage green technologies offer, they have not been immune from these battles over ownership.¶ According to the latest figures published by the World Intellectual Property Organisation, applications to patent greentech have risen by over 6% since 2011, making it one of the leading growth areas for IP. Over the same period we've seen increasingly urgent global efforts to preserve the environment and avert lasting impact on society. So how is the volatile IP climate affecting the development of green technologies and the pace of progress towards a sustainable future? ¶ Patents were originally conceived as temporary defensive measures to protect and promote innovation. They grant the holder exclusive rights to make, use or sell an invention for up to 20 years. The aim was to ensure businesses investing time and effort into developing technology have the opportunity to commercialise it without competition from firms that haven't made the same commitment. ¶ Trolling¶ However, the ability to sell or licence patents for a fee has led to a slow proliferation of patent 'trolling' which is now threatening the creation of new sustainable systems and products. ¶ Patent trolls are non-manufacturing companies which acquire and exploit libraries of patents to extract licensing fees from creative firms. Small entities, such as entrepreneurs, are particularly at risk from trolling, as their limited budgets often prevent them from contesting spurious claims. Although multi-million pound battles between wealthy technology firms may dominate media coverage, recent figures suggest that 60% of patent litigation is now brought by patent trolls mostly against firms with low annual incomes. ¶ For sustainable development, the danger is that trolling replaces the financial protection that patents offer with financial encumbrance. This reduces the incentive to turn green ideas into green technology and impairs the creativity that is at the core of sustainable progress. ¶ Stifling green growth¶ But there are even greater risks with the patent system. By using patents on essential components and concepts, established manufacturers can keep a tight grip on emerging new technology as well as on creative talent in the field. ¶ Potential innovators and entrepreneurs – the driving force behind economic progress - are faced with the choice of either starting a business at the risk of being crushed by patent litigation, or going to work for one of the same companies that would have sued them. And to add insult to injury, the price of choosing the latter often includes complete surrender of those ideas - Matt Stanford, 2012¶ Often it is not in the interests of incumbent firms to develop new technology. This is especially true of sustainable development, where progress can involve the retirement of serviceable and profitable technology, in favour of alternatives that may threaten existing revenue streams or that cannot yet offer the same economies of scale. This conflict of interest between progress and profit can mean that socially and environmentally beneficial technology is shelved. Worse, it can also provide a temptation to strategically purchase sustainable innovation purely to obstruct its development. ¶ In 1989, for example, innovator Stanford Ovshinsky invented a new nickel-based battery that was cheaper, safer and more powerful than contemporary battery technology. In 1994 he sold the patent to General Motors, to help develop the world's first mass-produced electric car, the EV1. ¶ After testing the technology GM opted to stick with their conventionally powered vehicles and sold the battery patent to Texaco, an oil retailer. Ovshinsky's battery technology has since been licensed by a succession of petrochemical companies. The licence conditions for his batteries limit their application in hybrid vehicles and effectively prohibit use in fully electric vehicles. ¶ The effect of this restriction can be seen in the pace of EV development today. Lithium-based batteries, used in contemporary vehicles such as the Nissan Leaf and Mitsubishi i-MiEV, are only just approaching the range and performance of the original EV1 technology and they cost considerably more to produce. ¶ Even though it seems the patents are failing to promote and protect sustainable innovation, arguably sustainable development would be worse off without them. The system includes an obligation to publish details of protected technology. Without patents, manufacturers may keep valuable scientific and technological knowledge secret, starving the global community of the building blocks of future innovation. ¶ Future of sustainable technology¶ We need to update the existing patent system to reflect the changing face of innovation. The process of finding solutions and meeting societal needs has become a community undertaking, increasingly motivated by concerns over human and environmental welfare, alongside potential profit. ¶ The traditional influence of financiers on the innovation process is diminishing as crowdfunding platforms enable communities to develop products and services without banks and loans. Similarly in business, social enterprises have grown in strength and look set to play a significant role in our future economy. ¶ An effective system to promote and protect innovation must recognise the complete spectrum of stakeholders in technological development, valuing innovation for environmental and social benefit as highly as for financial gain. We need a better regulation of the patent system, to restore the protection and incentives that patents were intended to offer all innovation. This means reducing the influence of incumbent manufacturers and trolls on emerging green technologies by limiting the breadth of patents and regulating licences on basic technologies. ¶ A new protection system for socially and environmentally valuable technology should be set up. We must devise a better IP protection strategy for greentech, such as a royalty or prize fund system to make sustainable knowledge available to all potential innovators and still ensure that those who push technology forward for human and environmental good are financially rewarded. ¶ Whatever strategy we adopt, tackling the negative effects of the present system on innovation must be a priority for the sustainable development community. Without action, as the market for greentech grows, we face the prospect that our journey towards a sustainable future will become ever slower and more difficult.

#### U.S. green tech leadership’s key to overall hegemony and preventing warming---extinction

Klarevas 9 –Louis Klarevas, Professor for Center for Global Affairs @ New York University, 12/15, “Securing American Primacy While Tackling Climate Change: Toward a National Strategy of Greengemony,” http://www.huffingtonpost.com/louis-klarevas/securing-american-primacy\_b\_393223.html

As national leaders from around the world are gathering in Copenhagen, Denmark, to attend the United Nations Climate Change Conference, the time is ripe to re-assess America's current energy policies - but within the larger framework of how a new approach on the environment will stave off global warming and shore up American primacy. By not addressing climate change more aggressively and creatively, the United States is squandering an opportunity to secure its **global primacy** for the next few generations to come. To do this, though, the U.S. must rely on innovation to help the world escape the coming environmental meltdown. Developing the key technologies that will save the planet from global warming will allow the U.S. to outmaneuver potential great power rivals seeking to replace it as the international system's hegemon. But the greening of American strategy must occur soon. The U.S., however, seems to be stuck in time, unable to move beyond oil-centric geo-politics in any meaningful way. Often, the gridlock is portrayed as a partisan difference, with Republicans resisting action and Democrats pleading for action. This, though, is an unfair characterization as there are numerous proactive Republicans and quite a few reticent Democrats. The real divide is instead one between realists and liberals. Students of realpolitik, which still heavily guides American foreign policy, largely discount environmental issues as they are not seen as advancing national interests in a way that generates relative power advantages vis-à-vis the other major powers in the system: Russia, China, Japan, India, and the European Union. ¶ Liberals, on the other hand, have recognized that global warming might very well become the greatest challenge ever faced by [hu]mankind. As such, their thinking often eschews narrowly defined national interests for the greater global good. This, though, ruffles elected officials whose sworn obligation is, above all, to protect and promote American national interests. What both sides need to understand is that by becoming a lean, mean, green fighting machine, the U.S. can actually bring together liberals and realists to advance a collective interest which benefits every nation, while at the same time, securing America's global primacy well into the future. To do so, the U.S. must re-invent itself as not just your traditional hegemon, but as history's first ever green hegemon. Hegemons are countries that dominate the international system - bailing out other countries in times of global crisis, establishing and maintaining the most important international institutions, and covering the costs that result from free-riding and cheating global obligations. Since 1945, that role has been the purview of the United States. Immediately after World War II, Europe and Asia laid in ruin, the global economy required resuscitation, the countries of the free world needed security guarantees, and the entire system longed for a multilateral forum where global concerns could be addressed. The U.S., emerging the least scathed by the systemic crisis of fascism's rise, stepped up to the challenge and established the postwar (and current) liberal order. But don't let the world "liberal" fool you. While many nations benefited from America's new-found hegemony, the U.S. was driven largely by "realist" selfish national interests. The liberal order first and foremost benefited the U.S. With the U.S. becoming bogged down in places like Afghanistan and Iraq, running a record national debt, and failing to shore up the dollar, the future of American hegemony now seems to be facing a serious contest: potential rivals - acting like sharks smelling blood in the water - wish to challenge the U.S. on a variety of fronts. This has led numerous commentators to forecast the U.S.'s imminent fall from grace. Not all hope is lost however. With the impending systemic crisis of global warming on the horizon, the U.S. again finds itself in a position to address a transnational problem in a way that will benefit both the international community collectively and the U.S. selfishly. The current problem is two-fold. First, the competition for oil is fueling animosities between the major powers. The geopolitics of oil has already emboldened Russia in its 'near abroad' and China in far-off places like Africa and Latin America. As oil is a limited natural resource, a nasty zero-sum contest could be looming on the horizon for the U.S. and its major power rivals - a contest which threatens American primacy and global stability. Second, converting fossil fuels like oil to run national economies is producing irreversible harm in the form of carbon dioxide emissions. So long as the global economy remains oil-dependent, greenhouse gases will continue to rise. Experts are predicting as much as a 60% increase in carbon dioxide emissions in the next twenty-five years. That likely means more devastating water shortages, droughts, forest fires, floods, and storms. In other words, if global competition for access to energy resources does not undermine international security, global warming will. And in either case, oil will be a culprit for the instability. Oil arguably has been the most precious energy resource of the last half-century. But "black gold" is so 20th century. The key resource for this century will be green gold - clean, environmentally-friendly energy like wind, solar, and hydrogen power. Climate change leaves no alternative. And the sooner we realize this, the better off we will be. What Washington must do in order to avoid the traps of petropolitics is to convert the U.S. into the world's first-ever green hegemon. For starters, the federal government must drastically increase investment in energy and environmental research and development (E&E R&D). This will require a serious sacrifice, committing upwards of $40 billion annually to E&E R&D - a far cry from the few billion dollars currently being spent. By promoting a new national project, the U.S. could develop new technologies that will assure it does not drown in a pool of oil. Some solutions are already well known, such as raising fuel standards for automobiles; improving public transportation networks; and expanding nuclear and wind power sources. Others, however, have not progressed much beyond the drawing board: batteries that can store massive amounts of solar (and possibly even wind) power; efficient and cost-effective photovoltaic cells, crop-fuels, and hydrogen-based fuels; and even fusion. Such innovations will not only provide alternatives to oil, they will also give the U.S. an edge in the global competition for hegemony. If the U.S. is able to produce technologies that allow modern, globalized societies to escape the oil trap, those nations will eventually have no choice but to adopt such technologies. And this will give the U.S. a tremendous economic boom, while simultaneously providing it with means of leverage that can be employed to keep potential foes in check. The bottom-line is that the U.S. needs to become green energy dominant as opposed to black energy independent - and the best approach for achieving this is to promote a national strategy of greengemony.

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#### Not watered down

Adi Kamdar, 3-20-2014, "Thousands Speak Out in Favor of Strong Patent Reform from the Senate," Electronic Frontier Foundation, https://www.eff.org/deeplinks/2014/03/thousands-speak-out-favor-strong-patent-reform-senate

A bipartisan group of 17 senators, headed by Mark Udall and Rob Portman, submitted a letter (PDF) last week to Senate leadership urging them to pass patent reform along the lines of the House's Innovation Act. This followed a letter from 42 state attorneys general urging reform along the same lines. The momentum isn't just behind reform, it's behind fixes to the law that would have a meaningful impact on the troll problem.