# 1nc

### Off

#### Interpretation – the affirmative must defend a statutory and/or judicial restriction on the president’s war powers authority.

#### Statutory laws are specific written instructions from a legislature

West’s 08 (West’s encyclopedia of American Law 2008, “Statute,” http://legal-dictionary.thefreedictionary.com/statute+law)

An act of a legislature that declares, proscribes, or commands something; a specific law, expressed in writing. A statute is a written law passed by a legislature on the state or federal level. Statutes set forth general propositions of law that courts apply to specific situations. A statute may forbid a certain act, direct a certain act, make a declaration, or set forth governmental mechanisms to aid society. **A statute begins as a bill proposed or sponsored by a legislator. If the bill survives the legislative committee process and is approved by both houses of the legislature, the bill becomes law when it is signed by the executive officer (the president on the federal level or the governor on the state level).** When a bill becomes law, the various provisions in the bill are called statutes. The term statute signifies the elevation of a bill from legislative proposal to law. State and federal statutes are compiled in statutory codes that group the statutes by subject. These codes are published in book form and are available at law libraries. Lawmaking powers are vested chiefly in elected officials in the legislative branch. The vesting of the chief lawmaking power in elected lawmakers is the foundation of a representative democracy. Aside from the federal and state constitutions, statutes passed by elected lawmakers are the first laws to consult in finding the law that applies to a case.

#### “Judicial” means belonging to the judiciary branch

Merriam-Webster 13

(http://www.merriam-webster.com/dictionary/judicial)

Belonging to the branch of government that is charged with trying all cases that involve the government and with the administration of justice within its jurisdiction

#### Violation – the plan text says the United States federal government should prohibit the president’s authority – it does not use a statutory or judicial restriction.

#### Vote negative

#### Ground and limits – the affirmative can shift the means by which the government prohibit presidential war powers – could be the executive prohibiting his own action – kills core counterplan and disadvantage ground on the statutory and judicial restriction topic.

#### Topicality is a question of the plan text – key to pre-round prep and only stable locus for counterplan competition and disadvantage links. Any other interpretation mixes burdens.

#### This is the NDT – they have a plan flaw – they should be held accountable- and it should be evaluated through a lens of competing interpretations

### Off

#### The Executive Branch of the United States should publicly announce and adhere to a policy that prohibits the President of the United States from unilaterally deploying Armed Forces on Responsibility to Protect missions unless congress passes legislation compelling the president to act on responsibility to protect grounds.

#### De Facto and De Jure self-binding create accountability from the courts and risk political alienation for going back on promises

Posner and Vermeule 2010 [Eric A. , Professor of Law at the University of Chicago Law School and Editor of The Journal of Legal Studies; Adrian , Harvard Law Professor, The Executive Unbound: After the Madisonian Republic, Oxford Press, p. 138-139//wyo-sc]

Many of our mechanisms are unproblematic from a legal perspective, as they involve presidential actions that are clearly lawful. But a few raise legal questions; in particular, those that involve self-binding.59 Can a president bind himself to respect particular first-order policies? With qualifications, the answer is "yes, at least to the same extent that a legislature can." Formally, a duly promulgated executive rule or order binds even the executive unless and until it is validly abrogated, thereby establishing a new legal status quo.60 The legal authority to establish a new status quo allows a president to create inertia or political constraints that will affect his own future choices. In a practical sense, presidents, like legislatures, have great de facto power to adopt policies that shape the legal landscape for the future. A president might commit himself to a long-term project of defense procurement or infrastructure or foreign policy, narrowing his own future choices and generating new political coalitions that will act to defend the new rules or policies. More schematically, we may speak of formal and informal means of selfbinding: 1. The president might use formal means to bind himself. This is possible in the sense that an executive order, if otherwise valid, legally binds the president while it is in effect and may be enforced by the courts. It is not possible in the sense that the president can always repeal the executive order if he can bear the political and reputational costs of doing so. 2. The president might use informal means to bind himself. This is not only possible but frequent and important. Issuing an executive rule providing for the appointment of special prosecutors, as Nixon did, is not a formal self-binding.61 However, there may be political costs to repealing the order. This effect does not depend on the courts' willingness to enforce the order, even against Nixon himself. Court enforcement makes the order legally binding while it is in place, but only political and reputational enforcement can protect it from repeal. Just as a dessert addict might announce to his friends that he is going on a no-dessert diet in order to raise the reputational costs of backsliding and thus commit himself, so too the repeal of an executive order may be seen as a breach of faith even if no other institution ever enforces it. In what follows, we will invoke both formal and informal mechanisms. For our purposes, the distinction between the authority to engage in de jure self-binding (legally limited and well-defined) and the power to engage in de facto self-binding (broad and amorphous) is secondary. So long as policies are deliberately chosen with a view to generating credibility, and do so by constraining the president’s own future choices in ways that impose greater costs on ill-motivated presidents than on well-motivated ones, it does not matter whether the constraint is formal or informal.

### Off

**Prez powers high now- Obama broad uses of force prove-The plan would uniquely decimate Obama and the military’s ability to calm alliances and deter enemies ---- results in terrorism and global nuclear war more likely**

**WAXMAN 2013** - law professor at Columbia Law School, co-chairs the Roger Hertog Program on Law and National Security (Matthew Waxman, “The Constitutional Power to Threaten War,” August 27, 2013, http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2316777)

As a prescriptive matter, Part II also shows that examination of threatened force and the credibility requirements for its effectiveness calls into question many orthodoxies of the policy advantages and risks attendant to various allocations of legal war powers, including the existing one and proposed reforms.23 Most functional arguments about war powers focus on fighting wars or hostile engagements, but that is not all – or even predominantly – what the United States does with its military power. Much of the time it seeks to avert such clashes while achieving its foreign policy objectives: to bargain, coerce, deter.24 The President’s flexibility to use force in turn affects decision-making about threatening it, with major implications for securing peace or dragging the United States into conflicts. Moreover, constitutional war power allocations affect potential conflicts not only because they **may constrain U.S. actions** but because **they** maysend **signal**s **and shape** other states’ (including adversaries’) expectations of U.S. actions.25 That is, most analysis of war-powers law is inward-looking, focused on audiences internal to the U.S. government and polity, but thinking about threatened force prompts us to look outward, at how war-powers law affects external perceptions among adversaries and allies. Here, extant political science and strategic studies offer few clear conclusions, but they point the way toward more sophisticated and realistic policy assessment of legal doctrine and proposed reform. More generally, as explained in Part III, analysis of threatened force and war powers exposes an under-appreciated relationship between constitutional doctrine and grand strategy. Instead of proposing a functionally optimal allocation of legal powers, as legal scholars are often tempted to do, this Article in the end denies the tenability of any such claim. Having identified new spaces of war and peace powers that legal scholars need to take account of in understanding how those powers are really exercised, this Article also highlights the extent to which any normative account of the proper distribution of authority over this area depends on many matters that cannot be predicted in advance or expected to remain constant.26 Instead of proposing a policy-optimal solution, this Article concludes that the allocation of constitutional war powers is – and should be –geopolitically and strategically contingent; the actual and effective balance between presidential and congressional powers over war and peace in practice necessarily depends on fundamental assumptions and shifting policy choices about how best to secure U.S. interests against potential threats.27 I. Constitutional War Powers and Threats of Force Decisions to go to war or to send military forces into hostilities are immensely consequential, so it is no surprise that debates about constitutional war powers occupy so much space. But one of the most common and important ways that the United States uses its military power is by threatening war or force – and the constitutional dimensions of that activity receive almost no scrutiny or even theoretical investigation. A. War Powers Doctrine and Debates The Constitution grants Congress the powers to create military forces and to “declare war,”28 which the Supreme Court early on made clear includes the power to authorize limited uses of force short of full-blown war.29 The Constitution then vests the President with executive power and designates him commander in chief of the armed forces,30 and it has been well-accepted since the Founding that these powers include unilateral authority to repel invasions if the United States is attacked.31 Although there is nearly universal acceptance of these basic starting points, there is little legal agreement about how the Constitution allocates responsibility for the vast bulk of cases in which the United States has actually resorted to force. The United States has declared war or been invaded only a handful of times in its history, but it has used force – sometimes large-scale force – hundreds of other times.32 Views split over questions like when, if ever, the President may use force to deal with aggression against third parties and how much unilateral discretion the President has to use limited force short of full-blown war. For many lawyers and legal scholars, at least one important methodological tool for resolving such questions is to look at historical practice, and especially the extent to which the political branches acquiesced in common practices.33 Interpretation of that historical practice for constitutional purposes again divides legal scholars, but most would agree at least descriptively on some basic parts of that history. In particular, most scholars assess that from the Founding era through World War II, Presidents and Congresses alike recognized through their behavior and statements that except in certain narrow types of contingencies, congressional authorization was required for large-scale military operations against other states and international actors, even as many Presidents pushed and sometimes crossed those boundaries.34 Whatever constitutional constraints on presidential use of force existed prior to World War II, however, most scholars also note that the President asserted much more extensive unilateral powers to use force during and after the Cold War, and many trace the turning point to the 1950 Korean War.35 Congress did not declare war in that instance, nor did it expressly authorize U.S. participation.36 From that point forward, presidents have asserted broad unilateral authority to use force to address threats to U.S. interests, including threats to U.S. allies, and that neither Congress nor courts pushed back much against this expanding power.37 Concerns about expansive presidential war-making authority spiked during the Vietnam War. In the wind-down of that conflict, Congress passed – over President Nixon’s veto – the War Powers Resolution,38 which stated its purpose as to ensure the constitutional Founders’ original vision that the “collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”39 Since then, presidentialists have argued that the President still retains expansive authority to use force abroad to protect American interests,40 and congressionalists argue that this authority is tightly circumscribed.41 These constitutional debates have continued through the first decade of the 21st century. Constitutional scholars split, for example, over President Obama’s power to participate in coalition operations against Libya without congressional authorization in 2011, especially after the War Powers Resolution’s 60-day clock expired.42 Some argue that President Obama’s use of military force without specific congressional authorization in that case **reflects the broad constitutional discretion presidents** now **have** to protect American interests, at least short of full-blown “war”, while others argue that it is the latest in a long record of presidential violations of the Constitution and the War Powers Resolution.43 B. Threats of Force and Constitutional Powers These days it is usually taken for granted that – whether or not he can make war unilaterally – the President is constitutionally empowered to threaten the use of force, implicitly or explicitly, through diplomatic means or shows of force. It is never seriously contested whether the President may declare that United States is contemplating military options in response to a crisis, or whether the President may move substantial U.S. military forces to a crisis region or engage in military exercises there. To take the Libya example just mentioned, is there any constitutional limitation on the President’s authority to move U.S. military forces to the Mediterranean region and prepare them very visibly to strike?44 Or his authority to issue an ultimatum to Libyan leaders that they cease their brutal conduct or else face military action? Would it matter whether such threats were explicit versus implicit, whether they were open and public versus secret, or whether they were just a bluff? If not a constitutional obstacle, could it be argued that the War Powers Resolution’s reporting requirements and limits on operations were triggered by a President’s mere ultimatum or threatening military demonstration, insofar as those moves might constitute a “situation where imminent involvement in hostilities is clearly indicated by the circumstances”? These questions simply are not asked (at least not anymore).45 If anything, most lawyers would probably conclude that the President’s constitutional powers to threaten war **are not just expansive but largely beyond Congress’s authority** to regulate directly. From a constitutional standpoint, to the extent it is considered at all, the President’s power to threaten force is probably regarded to be at least as broad as his power to use it. One way to look at it is that the power to threaten force is a lesser included element of presidential war powers; the power to threaten to use force is simply a secondary question, the answer to which is bounded by the primary issue of the scope of presidential power to actually use it. If one interprets the President’s defensive war powers very broadly, to include dealing with aggression not only directed against U.S. territories but also against third parties,46 then it might seem easy to conclude that the President can also therefore take steps that stop short of actual armed intervention to deter or prevent such aggression. If, however, one interprets the President’s powers narrowly, for example, to include only limited unilateral authority to repel attacks against U.S. territory,47 then one might expect objections to arguably excessive presidential power to include his unilateral threats of armed intervention. Another way of looking at it is that in many cases, threats of war or force might fall within even quite narrow interpretations of the President’s inherent foreign relations powers to conduct diplomacy or his express commander in chief power to control U.S. military forces – or some combination of the two – depending on how a particular threat is communicated. A President’s verbal warning, ultimatum, or declared intention to use military force, for instance, could be seen as merely exercising his role as the “sole organ” of U.S. foreign diplomacy, conveying externally information about U.S. capabilities and intentions.48 A president’s movement of U.S. troops or warships to a crisis region or elevation of their alert level could be seen as merely exercising his dayto- day tactical control over forces under his command.49 Generally it is not seriously contested whether the exercise of these powers alone could so affect the likelihood of hostilities or war as to intrude on Congress’s powers over war and peace.50 We know from historical examples that such unilateral military moves, even those that are ostensibly pure defensive ones, can provoke wars – take, for example, President Polk’s movement of U.S. forces to the contested border with Mexico in 1846, and the resulting skirmishes that led Congress to declare war.51 Coming at the issue from Congress’s Article I powers rather than the President’s Article II powers, the very phrasing of the power “To declare War” puts most naturally all the emphasis on the present tense of U.S. military action, rather than its potentiality. Even as congressionalists advance interpretations of the clause to include not merely declarative authority but primary decision-making authority as to whether or not to wage war or use force abroad, their modern-day interpretations do not include a power to threaten war (except perhaps through the specific act of declaring it). None seriously argues – at least not any more – that the Declare War Clause precludes presidential threats of war. This was not always the case. During the early period of the Republic, there was a powerful view that beyond outright initiation of armed hostilities or declaration of war, more broadly the President also could not unilaterally take actions (putting aside actual military attacks) that would likely or directly risk war,52 provoke a war with another state,53 or change the condition of affairs or relations with another state along the continuum from peace to war.54 To do so, it was often argued, would usurp Congress’s prerogative to control the nation’s state of peace or war.55 During the Quasi-War with France at the end of the 18th century, for example, some members of Congress questioned whether the President, absent congressional authorization, could take actions that visibly signaled an intention to retaliate against French maritime harassment,56 and even some members of President Adams’ cabinet shared doubts.57 Some questions over the President’s power to threaten force arose (eventually) in relation to the Monroe Doctrine, announced in an 1823 presidential address to Congress and which in effect declared to European powers that the United States would oppose any efforts to colonize or reassert control in the Western Hemisphere.58 “Virtually no one questioned [Monroe’s proclamation] at the time. Yet it posed a constitutional difficulty of the first importance.”59 Of course, Monroe did not actually initiate any military hostilities, but his implied threat – without congressional action – risked provoking rather than deterring European aggression and by putting U.S. prestige and credibility on the line it limited Congress’s practical freedom of action if European powers chose to intervene.60 The United States would have had at the time to rely on British naval power to make good on that tacit threat, though a more assertive role for the President in wielding the potential for war or intervention during this period went hand in hand with a more sustained projection of U.S. power beyond its borders, especially in dealing with dangers emanating from Spanish-held Florida territory.61 Monroe’s successor, John Quincy Adams, faced complaints from opposition members of Congress that Monroe’s proclamation had exceeded his constitutional authority and had usurped Congress’s by committing the United States – even in a non-binding way – to resisting European meddling in the hemisphere.62 The question whether the President could unilaterally send militarily-threatening signals was in some respects a mirror image of the issues raised soon after the Constitution was ratified during the 1793 Neutrality Controversy: could President Washington unilaterally declare the United States to be neutral as to the war among European powers. Washington’s politically controversial proclamation declaring the nation “friendly and impartial” in the conflict between France and Great Britain (along with other European states) famously prompted a back-and-forth contest of public letters by Alexander Hamilton and James Madison, writing pseudonymously as “Pacificus” and “Helvidius”, about whether the President had such unilateral power or whether it belonged to Congress.63 Legal historian David Currie points out the irony that the neutrality proclamation was met with stronger and more immediate constitutional scrutiny and criticism than was Monroe’s threat. After all, Washington’s action accorded with the principle that only Congress, representing popular will, should be able to take the country from the baseline state of peace to war, whereas Monroe’s action seemed (at least superficially) to commit it to a war that Congress had not approved.64 Curiously (though for reasons offered below, perhaps not surprisingly) this issue – whether there are constitutional limits on the President’s power to threaten war – has almost vanished completely from legal discussion, and that evaporation occurred even before the dramatic post-war expansion in asserted presidential power to make war. Just prior to World War II, political scientist and presidential powers theorist Edward Corwin remarked that “[o]f course, it may be argued, and has in fact been argued many times, that the President is under constitutional obligation not to incur the risk of war in the prosecution of a diplomatic policy without first consulting Congress and getting its consent.”65 “Nevertheless,” he continued,66 “the supposed principle is clearly a maxim of policy rather than a generalization from consistent practice.” In his 1945 study World Policing and the Constitution, James Grafton Rogers noted: [E]xamples of demonstrations on land and sea made for a variety of purposes and under Presidents of varied temper and in different political climates will suffice to make the point. The Commander-in-Chief under the Constitution can display our military resources and threaten their use whenever he thinks best. The weakness in the **diplomatic weapon** is the possibility of **dissidence at home** which may cast doubt on our serious intent. The danger of the weapon is war.67 At least since then, however, the importance to U.S. foreign policy of threatened force has increased dramatically, while legal questions about it have receded further from discussion. In recent decades a few prominent legal scholars have addressed the President’s power to threaten force, though in only brief terms.

Taylor Reveley noted in his volume on war powers the importance of allocating constitutional responsibility not only for the actual use of force but also “[v]erbal or written threats or assurances about the circumstances in which the United States will take military action …, whether delivered by declarations of American policy, through formal agreements with foreign entities, by the demeanor or words of American officials, or by some other sign of national intent.”68 Beyond recognizing the critical importance of threats and other non-military actions in affecting war and peace, however, Reveley made little effort to address the issue in any detail. Among the few legal scholars attempting to define the limiting doctrinal contours of presidentially threatened force, Louis Henkin wrote in his monumental Foreign Affairs and the Constitution that: Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a President begins to exceed his authority if he willfully or recklessly moves the nation towards war…69 The implication seems to be that the President may not unilaterally threaten force in ways that are dramatically escalatory and could likely lead to war, or perhaps that the President may not unilaterally threaten the use of force that he does not have the authority to initiate unilaterally.70 Jefferson Powell, who generally takes a more expansive view than Henkin of the President’s war powers, argues by contrast that “[t]he ability to warn of, or threaten, the use of military force is an ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy.”71 For Powell, the President is constantly taking actions as part of everyday international relations that carry a risk of military escalation, and these are well-accepted as part of the President’s broader authority to manage, if not set, foreign policy. Such brief mentions are in recent times among the rare exceptions to otherwise barren constitutional discussion of presidential powers to threaten force. That the President’s authority to threaten force is so well-accepted these days as to seem self-evident is not just an academic phenomenon. It is also reflected in the legal debates among and inside all three branches of government. In 1989, Michael Reisman observed: Military maneuvers designed to convey commitment to allies or contingent threats to adversaries … **are matters of presidential competence**. Congress does not appear to view as within its bailiwick many low-profile contemporaneous expressions of gunboat diplomacy, i.e., the physical interposition of some U.S. war-making capacity as communication to an adversary of United States’ intentions and capacities to oppose it.72 This was and remains a correct description but understates the pattern of practice, insofar as even major and high-profile expressions of coercive diplomacy are regarded among all three branches of government as within presidential competence. In Dellums v. Bush – perhaps the most assertive judicial scrutiny of presidential power to use large-scale force abroad since the end of the Cold War – the district court dismissed on ripeness grounds congressmembers’ suit challenging President George H. W. Bush’s intended military operations against Iraq in 1991 and seeking to prevent him from initiating an offensive attack against Iraq without first securing explicit congressional authorization for such action.73 That at the time of the suit the President had openly threatened war – through ultimatums and deployment of several hundred thousand U.S. troops – but had not yet “committed to a definitive course of action” to carry out the threat meant there was no justiciable legal issue, held the court.74 The President’s threat of war did not seem to give the district court legal pause at all; quite the contrary, the mere threat of war was treated by the court as a non-issue entirely.75 There are several reasons why constitutional questions about threatened force have dropped out of legal discussions. First, the more politically salient debate about the President’s unilateral power to use force has probably swallowed up this seemingly secondary issue. As explained below, it is a mistake to view threats as secondary in importance to uses of force, but they do not command the same political attention and their impacts are harder to measure.76 Second, the expansion of American power after World War II, combined with the growth of peacetime military forces and a set of defense alliance commitments (developments that are elaborated below) make at least some threat of force much more common – in the case of defensive alliances and some deterrent policies, virtually constant – and difficult to distinguish from other forms of everyday diplomacy and security policy.77 Besides, for political and diplomatic reasons, presidents rarely threaten war or intervention without at least a little deliberate ambiguity. As historian Marc Trachtenberg puts it: “It often makes sense … to muddy the waters a bit and avoid direct threats.”78 Any legal lines one might try to draw (recall early attempts to restrict the President’s unilateral authority to alter the state of affairs along the peacetime-wartime continuum) have become blurrier and blurrier. In sum, if the constitutional power to threaten war ever posed a serious legal controversy, it does so no more. As the following section explains, however, threats of war and armed force have during most of our history become a greater and greater part of American grand strategy, defined here as long-term policies for using the country’s military and non-military power to achieve national goals. The prominent role of threatened force in U.S. strategy has become the focus of political scientists and other students of security strategy, crises, and responses – but constitutional study has not adjusted accordingly.79 C. Threats of Force and U.S. Grand Strategy While the Korean and Vietnam Wars were generating intense study among lawyers and legal scholars about constitutional authority to wage military actions abroad, during that same period many political scientists and strategists – economists, historians, statesmen, and others who studied international conflict – turned their focus to the role of threatened force as an instrument of foreign policy. The United States was building and sustaining a massive war-fighting apparatus, but its security policy was not oriented primarily around waging or winning wars but around deterring them and using the threat of war – including demonstrative military actions – to advance U.S. security interests. It was the potential of U.S. military might, not its direct application or engagement with the enemy, that would do much of the heavy lifting. U.S. military power would be used to deter the Soviet Union and other hostile states from taking aggressive action. It would be unsheathed to prompt them to back down over disputes. It would reassure allies that they could depend on U.S. help in defending themselves. All this required that U.S. willingness to go to war be credible in the eyes of adversaries and allies alike. Much of the early Cold War study of threatened force concerned nuclear strategy, and especially deterrence or escalation of nuclear war. Works by Albert Wohlstetter, Herman Kahn, and others not only studied but shaped the strategy of nuclear threats, as well as how to use limited applications of force or threats of force to pursue strategic interests in remote parts of the globe without sparking massive conflagrations.80 As the strategic analyst Bernard Brodie wrote in 1946, “Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them.”81 Toward that end, U.S. government security and defense planners during this time focused heavily on preserving and improving the credibility of U.S. military threats – while the Soviet Union was doing likewise.82 The Truman administration developed a militarized version of containment strategy against the Soviet empire, emphasizing that stronger military capabilities were necessary to prevent the Soviets from seizing the initiative and to resist its aggressive probes: “it is clear,” according to NSC-68, the government document which encapsulated that strategy, “that a substantial and rapid building up of strength in the free world is necessary to support a firm policy intended to check and to roll back the Kremlin's drive for world domination.”83 The Eisenhower administration’s “New Look” policy and doctrine of “massive retaliation” emphasized making Western collective security both more effective and less costly by placing greater reliance on deterrent threats – including threatened escalation to general or nuclear war. As his Secretary of State John Foster Dulles explained, “[t]here is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power.”84 As described in Evan Thomas’s recent book, Ike’s Bluff, Eisenhower managed to convince Soviet leaders that he was ready to use nuclear weapons to check their advance in Europe and elsewhere. In part due to concerns that threats of massive retaliation might be insufficiently credible in Soviet eyes (especially with respect to U.S. interests perceived as peripheral), the Kennedy administration in 1961 shifted toward a strategy of “flexible response,” which relied on the development of a wider spectrum of military options that could quickly and efficiently deliver varying degrees of force in response to foreign aggression.85 Throughout these periods, the President often resorted to discrete, limited uses of force to demonstrate U.S. willingness to escalate. For example, in 1961 the Kennedy administration (mostly successfully in the short-run) deployed intervention-ready military force immediately off the coast of the Dominican Republic to compel its government's ouster,86 and that same year it used military exercises and shows of force in ending the Berlin crisis;87 in 1964, the Johnson administration unsuccessfully used air strikes on North Vietnamese targets following the Tonkin Gulf incidents, failing to deter what it viewed as further North Vietnamese aggression.88 The point here is not the shifting details of U.S. strategy after World War II – during this era of dramatic expansion in asserted presidential war powers – but the central role of credible threats of war in it, as well as the interrelationship of plans for using force and credible threats to do so. Also during this period, the United States abandoned its long-standing aversion to “entangling alliances,”89 and committed to a network of mutual defense treaties with dependent allies. Besides the global collective security arrangement enshrined in the UN Charter, the United States committed soon after World War II to mutual defense pacts with, for example, groups of states in Western Europe (the North Atlantic Treaty Organization)90 and Asia (the Southeast Asia Treaty Organization,91 as well as a bilateral defense agreement with the Republic of Korea,92 Japan,93 and the Republic of China,94 among others). These alliance commitments were part of a U.S. effort to “extend” deterrence of Communist bloc aggression far beyond its own borders.95 “Extended deterrence” was also critical to reassuring these U.S. allies that their security needs would be met, in some instances to head off their own dangerous rearmament.96 Among the leading academic works on strategy of the 1960s and 70s were those of Thomas Schelling, who developed the theoretical structure of coercion theory, arguing that rational states routinely use the threat of military force – the manipulation of an adversary’s perceptions of future risks and costs with military threats – as a significant component of their diplomacy.97 Schelling distinguished between deterrence (the use of threats to dissuade an adversary from taking undesired action) and compellence (the use of threats to persuade an adversary to behave a certain way), and he distinguished both forms of coercion from brute force: “[B]rute force succeeds when it is used, whereas the power to hurt is most successful when held in reserve. It is the threat of damage to come that can make someone yield of comply. It is latent violence that can influence someone’s choice.”98 Alexander George, David Hall, and William Simons then led the way in taking a more empirical approach, reviewing case studies to draw insights about the success and failure of U.S. coercive threats, analyzing contextual variables and their effects on parties’ reactions to threats during crises. Among their goals was to generate lessons informed by history for successful strategies that combine diplomatic efforts with threats or demonstrations of force, recognizing that the United States was relying heavily on threatened force in addressing security crises. Coercive diplomacy – if successful – offered ways to do so with minimal actual application of military force.99 One of the most influential studies that followed was Force Without War: U.S. Armed Forces as a Political Instrument, a Brookings Institution study led by Barry Blechman and Stephen Kaplan and published in 1977.100 They studied “political uses of force”, defined as actions by U.S. military forces “as part of a deliberate attempt by the national authorities to influence, or to be prepared to influence, specific behavior of individuals in another nation without engaging in a continued contest of violence.”101 Blechman and Kaplan’s work, including their large data set and collected case studies, was important for showing the many ways that threatened force could support U.S. security policy. Besides deterrence and compellence, threats of force were used to assure allies (thereby, for example, avoiding their own drive toward militarization of policies or crises) and to induce third parties to behave certain ways (such as contributing to diplomatic resolution of crises). The record of success in relying on threatened force has been quite mixed, they showed. Blechman and Kaplan’s work, and that of others who built upon it through the end of the Cold War and the period that has followed,102 helped understand the factors that correlated with successful threats or demonstrations of force without resort or escalation to war, especially the importance of credible signals.103 After the Cold War, the United States continued to rely on coercive force – threatened force to deter or compel behavior by other actors – as a central pillar of its grand strategy. During the 1990s, the United States wielded coercive power with varied results against rogue actors in many cases that, without the overlay of superpower enmities, were considered secondary or peripheral, not vital, interests: Iraq, Somalia, Haiti, Bosnia, and elsewhere. For analysts of U.S. national security policy, a major puzzle was reconciling the fact that the United States possessed overwhelming military superiority in raw terms over any rivals with its difficult time during this era in compelling changes in their behavior.104 As Daniel Byman and I wrote about that decade in our study of threats of force and American foreign policy: U.S. conventional and nuclear forces dwarf those of any adversaries, and the U.S. economy remains the largest and most robust in the world. Because of these overwhelming advantages, the United States can threaten any conceivable adversary with little danger of a major defeat or even significant retaliation. Yet coercion remains difficult. Despite the United States’ lopsided edge in raw strength, regional foes persist in defying the threats and ultimatums brought by the United States and its allies. In confrontations with Somali militants, Serb nationalists, and an Iraqi dictator, the U.S. and allied record or coercion has been mixed over recent years…. Despite its mixed record of success, however, coercion will remain a critical element of U.S. foreign policy.105 One important factor that seemed to undermine the effectiveness of U.S. coercive threats during this period was that many adversaries perceived the United States as still afflicted with “Vietnam Syndrome,” unwilling to make good on its military threats and see military operations through.106 Since the turn of the 21st Century, major U.S. security challenges have included non-state terrorist threats, the proliferation of nuclear and other weapons of mass destruction (WMD), and rapidly changing power balances in East Asia, and the United States has accordingly been reorienting but retaining its strategic reliance on threatened force. The Bush Administration’s “preemption doctrine” was premised on the idea that some dangerous actors – including terrorist organizations and some states seeking WMD arsenals – are undeterrable, so the United States might have to strike them first rather than waiting to be struck.107 On one hand, this was a move away from reliance on threatened force: “[t]he inability to deter a potential attacker, the immediacy of today’s threats, and the magnitude of potential harm that could be caused by our adversaries’ choice of weapons, do not permit” a reactive posture.108 Yet the very enunciation of such a policy – that “[t]o forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively”109 – was intended to persuade those adversaries to alter their policies that the United States regarded as destabilizing and threatening. Although the Obama administration pulled back from this rhetoric and placed greater emphasis on international institutions, it has continued to rely on threatened force as a key pillar of its strategy with regard to deterring threats (such as aggressive Iranian moves), intervening in humanitarian crises (as in Libya), and reassuring allies.110 With regard to East Asia, for example, the credible threat of U.S. military force is a significant element of U.S. strategy for deterring Chinese and North Korean aggression as well as reassuring other Asian powers of U.S. protection, to avert a destabilizing arms race.111 D. The Disconnect Between Constitutional Discourse and Strategy There is a major disconnect between the decades of work by strategists and many political scientists on American security policy and practice since the Second World War and legal analysis and scholarship of constitutional war powers during that period. Lawyers and strategists have been relying on not only distinct languages but distinct logics of military force – in short, when it comes to using U.S. military power, lawyers think in terms of “going to war” while strategists focus on potential war and processes leading to it. These framings manifest in differing theoretical starting points for considering how exercises of U.S. military might affect war and peace, and they skew the empirical insights and normative prescriptions about Presidential power often drawn from their analyses. 1. Lawyers’ Misframing Lawyers’ focus on actual uses of force – especially engagements with enemy military forces – as constitutionally salient, rather than including threats of force in their understanding of modern presidential powers tilts analysis toward a one-dimensional strategic logic, rather than a more complex and multi-dimensional and dynamic logic in which the credible will to use force is as important as the capacity to do so. As discussed above, early American constitutional thinkers and practitioners generally wanted to slow down with institutional checks decisions to go to war, because they thought that would make war less likely. “To invoke a more contemporary image,” wrote John Hart Ely of their vision, “it takes more than one key to launch a missile: It should take quite a number to start a war.”112 They also viewed the exercise of military power as generally a ratchet of hostilities, whereby as the intensity of authorized or deployed force increased, so generally did the state of hostilities between the United States and other parties move along a continuum from peace to war.113 Echoes of this logic still reverberate in modern congressionalist legal scholarship: the more flexibly the President can use military force, the more likely it is that the United States will find itself in wars; better, therefore, to clog decisions to make war with legislative checks.114 Modern presidentialist legal scholars usually respond that rapid action is a virtue, not a vice, in exercising military force.115 Especially as a superpower with global interests and facing global threats, presidential discretion to take rapid military **action** – endowed with what Alexander Hamilton called “[**d]ecision, activity, secrecy, and dispatch**”116 – **best protects American interests**. In either case the emphasis tends overwhelmingly to be placed on actual military engagements with adversaries. Strategists and many political scientists, by contrast, view some of the most significant use of military power as starting well before armed forces clash – and including important cases in which they never actually do. Coercive diplomacy and strategies of threatened force, they recognize, often involve a set of moves and countermoves by opposing sides and third parties before or even without the violent engagement of opposing forces. It is often the parties’ perceptions of anticipated actions and costs, not the actual carrying through of violence, that have the greatest impact on the course of events and resolution or escalation of crises. Instead of a ratchet of escalating hostilities, the flexing of military muscle can increase as well as decrease actual hostilities, inflame as well as stabilize relations with rivals or enemies. Moreover, those effects are determined not just by U.S. moves but by the responses of other parties to them – or even to anticipated U.S. moves and countermoves.117 Indeed, as Schelling observed, strategies of brinkmanship sometimes operate by “the deliberate creation of a recognizable risk of war, a risk that one does not completely control.”118 This insight – that effective strategies of threatened force involve not only great uncertainty about the adversary’s responses but also sometimes involve intentionally creating risk of inadvertent escalation119 – poses a difficult challenge for any effort to cabin legally the President’s power to threaten force in terms of likelihood of war or some due standard of care.120 2. Lawyers’ Selection Problems Methodologically, a lawyerly focus on actual uses of force – a list of which would then commonly be used to consider which ones were or were not authorized by Congress – vastly undercounts the instances in which presidents wield U.S. military might. It is already recognized by some legal scholars that studying actual uses of force risks ignoring instances in which President contemplated force but refrained from using it, whether because of political, congressional, or other constraints.121 The point here is a different one: that some of the most significant (and, in many instances, successful) presidential decisions to threaten force do not show up in legal studies of presidential war powers that consider actual deployment or engagement of U.S. military forces as the relevant data set. Moreover, some actual uses of force, whether authorized by Congress or not, were preceded by threats of force; in some cases these threats may have failed on their own to resolve the crisis, and in other cases they may have precipitated escalation. To the extent that lawyers are interested in understanding from historical practice what war powers the political branches thought they had and how well that understanding worked, they are excluding important cases. Consider, as an illustration of this difference in methodological starting point, that for the period of 1946-1975 (during which the exercise of unilateral Presidential war powers had its most rapid expansion), the Congressional Research Service compilation of instances in which the United States has utilized military forces abroad in situations of military conflict or potential conflict to protect U.S. citizens or promote U.S. interests – which is often relied upon by legal scholars studying war powers – lists only about two dozen incidents.122 For the same time period, the Blechman and Kaplan study of political uses of force (usually threats) – which is often relied upon by political scientists studying U.S. security strategy – includes dozens more data-point incidents, because they divide up many military crises into several discrete policy decisions, because many crises were resolved with threat-backed diplomacy, and because many uses of force were preceded by overt or implicit threats of force.123 Among the most significant incidents studied by Blechman and Kaplan but not included in the Congressional Research Service compilation at all are the 1958-59 and 1961 crises over Berlin and the 1973 Middle East War, during which U.S. Presidents signaled threats of superpower war, and in the latter case signaled particularly a willingness to resort to nuclear weapons.124 Because the presidents did not in the end carry out these threats, these cases lack the sort of authoritative legal justifications or reactions that accompany actual uses of force. It is therefore difficult to assess how the executive branch and congress understood the scope of the President’s war powers in these cases, but historical inquiry would probably show the executive branch’s interpretation to be very broad, even to include full-scale war and even where the main U.S. interest at stake was the very credibility of U.S. defense commitments undergirding its grand strategy, not simply the interests specific to divided Germany and the Middle East region.

Of course, one might argue that because the threatened military actions were never carried out in these cases, it is impossible to know if the President would have sought congressional authorization or how Congress would have reacted to the use of force; nonetheless, it is easy to see that in crises like these a threat by the President to use force, having put U.S. credibility on the line in addition to whatever other foreign policy stakes were at issues, would have put Congress in a bind. 3. Lawyers’ Mis-Assessment Empirically, analysis of and insights gleaned from any particular incident – which might then be used to evaluate the functional merits of presidential powers – looks very different if one focuses predominantly on the actual use of force instead of considering also the role of threatened force. Take for example, the Cuban Missile Crisis – perhaps the Cold War’s most dangerous event. To the rare extent that they consider domestic legal issues of this crisis at all, lawyers interested in the constitutionality of President Kennedy’s actions generally ask only whether he was empowered to initiate the naval quarantine of Cuba, because that is the concrete military action Kennedy took that was readily observable and that resulted in actual engagement with Soviet forces or vessels – as it happens, very minimal engagement.125 To strategists who study the crisis, however, the naval quarantine is not in itself the key presidential action; after all, as Kennedy and his advisers realized, a quarantine alone could not remove the missiles that were already in Cuba. The most consequential presidential actions were threats of military or even nuclear escalation, signaled through various means including putting U.S. strategic bombers on highest alert.126 The quarantine itself was significant not for its direct military effects but because of its communicative impact in showing U.S. resolve. If one is focused, as lawyers often are, on presidential military action that actually engaged the enemy in combat or nearly did, it is easy to dismiss this case as not very constitutionally significant. If one focuses on it, as strategists and political scientists often do, on nuclear brinkmanship, it is arguably the most significant historical exercise of unilateral presidential powers to affect war and peace.127 Considering again the 1991 Gulf War, most legal scholars would dismiss this instance as constitutionally a pretty uninteresting military conflict: the President claimed unilateral authority to use force, but he eventually sought and obtained congressional authorization for what was ultimately – at least in the short-run – a quite successful war. For the most part this case is therefore neither celebrated nor decried much by either side of legal war powers debates,128 though some congressionalist scholars highlight the correlation of congressional authorization for this war and a successful outcome.129 Political scientists look at the case differently, though. They often study this event not as a successful war but as failed coercive diplomacy, in that the United States first threatened war through a set of dramatically escalating steps that ultimately failed to persuade Saddam Hussein to withdraw from Kuwait.130 Some political scientists even see U.S. legal debate about military actions as an important part of this story, assessing that adversaries pay attention to congressional arguments and moves in evaluating U.S. resolve (an issue taken up in greater detail below) and that congressional opposition to Bush’s initial unilateralism in this case undermined the credibility of U.S. threats.131 Whether one sees the Gulf War as a case of (successful) war, as lawyers usually do, or (unsuccessful) threatened war, as political scientists usually do, colors how one evaluates the outcome and the credit one might attach to some factors such as vocal congressional opposition to initially-unilateral presidential moves. Notice also that legal analysis of Presidential authority to use force is sometimes thought to turn partly on the U.S. security interests at stake, as though those interests are purely contextual and exogenous to U.S. decision-making and grand strategy. In justifying President Obama’s 2011 use of force against the Libyan government, for example, the Justice Department’s Office of Legal Counsel concluded that the President had such legal authority “because he could reasonably determine that such use of force was in the national interest,” and it then went on to detail the U.S. security and foreign policy interests.132 The interests at stake in crises like these, however, are altered dramatically if the President threatens force: doing so puts the credibility of U.S. threats at stake, which is important not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. actions.133 The President’s power to threaten force means that he may unilaterally alter the costs and benefits of actually using force through his prior actions.134 The U.S. security interests in carrying through on threats are partly endogenous to the strategy embarked upon to address crises (consider, for example, that once President George H.W. Bush placed hundred of thousands of U.S. troops in the Persian Gulf region and issued an ultimatum to Saddam Hussein in 1990, the credibility of U.S. threats and assurances to regional allies were put on the line).135 Moreover, interests at stake in any one crisis cannot simply be disaggregated from broader U.S. grand strategy: if the United States generally relies heavily on threats of force to shape the behavior of other actors, then its demonstrated willingness or unwillingness to carry out a threat and the outcomes of that action affect its credibility in the eyes of other adversaries and allies, too.136 It is remarkable, though in the end not surprising, that the executive branch does not generally cite these credibility interests in justifying its unilateral uses of force. It does cite when relevant the U.S. interest in sustaining the credibility of its formal alliance commitments or U.N. Security Council resolutions, as reasons supporting the President’s constitutional authority to use force.137 The executive branch generally refrains from citing the similar interests in sustaining the credibility of the President’s own threats of force, however, probably in part because doing so would so nakedly expose the degree to which the President’s prior unilateral strategic decisions would tie Congress’s hands on the matter. \* \* \* In sum, lawyers’ focus on actual uses of force – usually in terms of armed clashes with an enemy or the placement of troops into hostile environments – does not account for much vaster ways that President’s wield U.S. military power and it skews the claims legal scholars make about the allocation of war powers between the political branches. A more complete account of constitutional war powers should recognize the significant role of threatened force in American foreign policy. II. Democratic Checks on Threatened Force The previous Parts of this Article showed that, especially since the end of World War II, the United States has relied heavily on strategies of threatened force in wielding its military might – for which credible signals are a necessary element – and that the President is not very constrained legally in any formal sense in threatening war. Drawing on recent political science scholarship, this Part takes some of the major questions often asked by students of constitutional war powers with respect to the actual use of force and reframes them in terms of threatened force. First, as a descriptive matter, in the absence of formal legal checks on the President’s power to threaten war, is the President nevertheless informally but significantly constrained by democratic institutions and processes, and what role does Congress play in that constraint? Second, as a normative matter, what are the strategic merits and drawbacks of this arrangement of democratic institutions and constraints with regard to strategies of threatened force? Third, as a prescriptive matter, although it is not really plausible that Congress or courts would ever erect direct legal barriers to the President’s power to threaten war, how might legal reform proposals to more strongly and formally constrain the President’s power to use force indirectly impact his power to threaten it effectively? For reasons discussed below, I do not consider whether Congress could legislatively restrict directly the President’s power to threaten force or war; in short, I set that issue aside because assuming that were constitutionally permissible, even ardent congressionalists have exhibited no interest in doing so, and instead have focused on legally controlling the actual use of force. Political science insights that bear on these questions emerge from several directions. One is from studies of Congress’ influence on use of force decisions, which usually assume that Congress’s formal legislative powers play only a limited role in this area, and the effects of this influence on presidential decision-making about threatened force. Another is international relations literature on international bargaining138 as well as literature on the theory of democratic peace, the notion that democracies rarely, if ever, go to war with one another.139 In attempting to explain the near-absence of military conflicts between democracies, political scientists have examined how particular features of democratic governments – electoral accountability, the institutionalized mobilization of political opponents, and the diffusion of decision-making authority regarding the use of force among executive and legislative branches – affect decision-making about war.140 These and other studies, in turn, have led some political scientists (especially those with a rational choice theory orientation) to focus on how those features affect the credibility of signals about force that governments send to adversaries in crises.141 My purpose in addressing these questions is to begin painting a more complete and detailed picture of the way war powers operate, or could operate, than one sees when looking only at actual wars and use of force. This is not intended to be a comprehensive account but an effort to synthesize some strands of scholarship from other fields regarding threatened force to inform legal discourse about how war powers function in practice and the strategic implications of reform. The answers to these questions also bear on raging debates among legal scholars on the nature of American executive power and its constraint by law. Initially they seem to support the views of those legal scholars who have long believed that in practice law no longer seriously binds the President with respect to war-making.142 That view has been taken even further recently by Eric Posner and Adrian Vermeule, who argue that “[l]aw does little constraint the modern executive” at all, but also observe that “politics and public opinion” operate effectively to cabin executive powers.143 The arguments offered here, however, do more to support the position of those legal scholars who describe a more complex relationship between law and politics, including that law is constitutive of the processes of political struggle.144 That law helps constitute the processes of political struggles is true of any area of public policy, though, and what is special here is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too. Democratic Constraints on the Power to the Threaten Force Whereas most lawyers usually begin their analysis of the President’s and Congress’s war powers by focusing on their formal legal authorities, political scientists usually take for granted these days that the President is – in practice – the dominant branch with respect to military crises and that Congress wields its formal legislative powers in this area rarely or in only very limited ways. A major school of thought, however, is that congressional members nevertheless wield significant influence over decisions about force, and that this influence extends to threatened force, so that Presidents generally refrain from threats that would provoke strong congressional opposition. Even without any serious prospect for legislatively blocking the President’s threatened actions, Congress under certain conditions can loom large enough to force Presidents to adjust their policies; even when it cannot, congressional members can oblige the President expend lots of political capital. As Jon Pevehouse and William Howell explain: When members of Congress vocally **oppose a use of force, they undermine the president’s ability to convince** foreign states that he will see a fight through to the end. Sensing hesitation on the part of the United States, **allies may be reluctant to contribute** to a military campaign, **and adversaries are likely to fight harder and longer** when conflict erupts— thereby raising the costs of the military campaign, decreasing the president’s ability to negotiate a satisfactory resolution, and increasing the probability that American lives are lost along the way. Facing a limited band of allies willing to participate in a military venture and an enemy emboldened by domestic critics, presidents may choose to curtail, and even abandon, those military operations that do not involve vital strategic interests. 145 This statement also highlights the important point, alluded to earlier, that force and threatened force are not neatly separable categories. Often limited uses of force are intended as signals of resolve to escalate, and most conflicts involve bargaining in which the threat of future violence – rather than what Schelling calls “brute force”146 – is used to try to extract concessions. The formal participation of political opponents in legislative bodies provides them with a forum for registering dissent to presidential policies of force through such mechanisms floor statements, committee oversight hearings, resolution votes, and funding decisions.147 These official actions prevent the President “from monopolizing the nation’s political discourse” on decisions regarding military actions can thereby make it difficult for the President to depart too far from congressional preferences.148 Members of the political opposition in Congress also have access to resources for gathering policy relevant information from the government that informs their policy preferences. Their active participation in specialized legislative committees similarly gives opponent party members access to fact-finding resources and forums for registering informed dissent from decisions within the committee’s purview.149 As a result, legislative institutions within democracies can enable political opponents to have a more **immediate** and informed **impact** on executive’s decisions regarding force than can opponents among the general public. Moreover, studies suggest that Congress can actively shape media coverage and public support for a president’s foreign policy engagements.150 In short, these findings among political scientists suggest that, even without having to pass legislation or formally approve of actions, Congress often operates as an important check on threatened force by providing the president’s political opponents with a forum for registering dissent from the executive’s decisions regarding force in ways that attach domestic political costs to contemplated military actions or even the threats to use force. Under this logic, Presidents, anticipating dissent, will be more selective in issuing¶ threats in the first place, making only those commitments that would not incite¶ widespread political opposition should the threat be carried through.151 Political¶ opponents within a legislature also have few electoral incentives to collude in an¶ executive’s bluff, and they are capable of expressing opposition to a threatened use of¶ force in ways that could expose the bluff to a threatened adversary.152 This again narrows¶ the President’s range of viable policy options for brandishing military force. Counter-intuitively, given the President’s seemingly unlimited and unchallenged¶ constitutional power to threaten war, it may in some cases be easier for members of¶ Congress to influence presidential decisions to threaten military action than presidential¶ war decisions once U.S. forces are already engaged in hostilities. It is widely believed¶ that once U.S. armed forces are fighting, congress members’ hands are often tied: policy¶ opposition at that stage risks being portrayed as undermining our troops in the field.153¶ Perhaps, it could be argued, the President takes this phenomenon into account and¶ therefore discounts political opposition to threatened force; he can assume that such¶ opposition will dissipate if he carries it through. Even if that is true, before that point¶ occurs, however, members of Congress may have communicated messages domestically¶ and communicated signals abroad that the President will find difficult to counter.154 The bottom line is that a body of recent political science, while confirming the¶ President’s dominant position in setting policy in this area, also reveals that policymaking¶ with respect to threats of force is significantly shaped by domestic politics and¶ that Congress is institutionally positioned to play a powerful role in influencing those¶ politics, even without exercising its formal legislative powers. Given the centrality of¶ threatened force to U.S. foreign policy strategy and security crises, this suggests that the¶ practical war powers situation is not so imbalanced toward the President as many assume. B. Democratic Institutions and the Credibility of Threats A central question among constitutional war powers scholars is whether robust¶ checks – especially congressional ones – on presidential use of force lead to “sound”¶ policy decision-making. Congressionalists typically argue that legislative control over¶ war decisions promotes more thorough deliberation, including more accurate weighing of¶ consequences and gauging of political support of military action.155 Presidentialists¶ usually counter that the executive branch has better information and therefore better¶ ability to discern the dangers of action or inaction, and that quick and decisive military¶ moves are often required to deal with security crises.156 If we are interested in these sorts of functional arguments, then reframing the¶ inquiry to include threatened force prompts critical questions whether such checks also¶ contribute to or detract from effective deterrence and coercive diplomacy and therefore¶ positively or negatively affect the likelihood of achieving aims without resort to war.¶ Here, recent political science provides some reason for optimism, though the scholarship¶ in this area is neither yet well developed nor conclusive. To be sure, “soundness” of policy with respect to force is heavily laden with¶ normative assumptions about war and the appropriate role for the United States in the¶ broader international security system, so it is difficult to assess the merits and¶ disadvantages of constitutional allocations in the abstract. That said, whatever their¶ specific assumptions about appropriate uses of force in mind, constitutional war powers¶ scholars usually evaluate the policy advantages and dangers of decision-making¶ allocations narrowly in terms of the costs and outcomes of actual military engagements¶ with adversaries. The importance of credibility to strategies of threatened force adds important new¶ dimensions to this debate. On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations –¶ that institutional centralization and secrecy of decision-making might better equip nondemocracies¶ to wield threats of force. As Quincy Wright speculated in 1944, autocracies¶ “can use war efficiently and threats of war even more efficiently” than democracies,157¶ especially the American democracy in which vocal public and congressional opposition¶ may undermine threats.158 Moreover, proponents of democratic checks on war powers¶ usually assume that careful deliberation is a virtue in preventing unnecessary wars, but¶ strategists of deterrence and coercion observe that perceived irrationality is sometimes¶ important in conveying threats: “don’t test me, because I might just be crazy enough to¶ do it!”159 On the other hand, some political scientists have recently called into question this¶ view and concluded that the institutionalization of political contestation and some¶ diffusion of decision-making power in democracies of the kind described in the previous¶ section make threats to use force rare but especially credible and effective in resolving¶ international crises without actual resort to armed conflict. In other words, recent¶ arguments in effect turn some old claims about the strategic disabilities of democracies¶ on their heads: whereas it used to be generally thought that democracies were ineffective¶ in wielding threats because they are poor at keeping secrets and their decision-making is¶ constrained by internal political pressures, a current wave of political science accepts this¶ basic description but argues that these democratic features are really strategic virtues.160 Rationalist models of crisis bargaining between states assume that because war is¶ risky and costly, states will be better off if they can resolve their disputes through¶ bargaining rather than by enduring the costs and uncertainties of armed conflict.161¶ Effective bargaining during such disputes – that which resolves the crisis without a resort¶ to force – depends largely on states’ perceptions of their adversary’s capacity to wage an¶ effective military campaign and its willingness to resort to force to obtain a favorable¶ outcome. A state targeted with a threat of force, for example, will be less willing to resist¶ the adversary’s demands if it believes that the adversary intends to wage and is capable of¶ waging an effective military campaign to achieve its ends. In other words, if a state¶ perceives that the threat from the adversary is credible, that state has less incentive to¶ resist such demands if doing so will escalate into armed conflict. The accuracy of such perceptions, however, is often compromised by¶ informational asymmetries that arise from private information about an adversary’s¶ relative military capabilities and resolve that prevents other states from correctly¶ assessing another states’ intentions, as well as by the incentives states have to¶ misrepresent their willingness to fight – that is, to bluff.162 Informational asymmetries¶ increase the potential for misperception and thereby make war more likely; war,¶ consequentially, can be thought of in these cases as a “bargaining failure.”163 Some political scientists have argued in recent decades – contrary to previously common wisdom – that features and constraints of democracies make them better suited than non-democracies to credibly signal their resolve when they threaten force. To bolster their bargaining position, states will seek to generate credible signals of their resolve by taking actions that can enhance the credibility of such threats, such as mobilizing military forces or making “hand-tying” commitments from which leaders cannot back down without suffering considerable political costs domestically.164 These domestic audience costs, according to some political scientists, are especially high for leaders in democratic states, where they may bear these costs at the polls.165 Given the potentially high domestic political and electoral repercussions democratic leaders face from backing down from a public threat, they have considerable incentives to refrain from bluffing. An adversary that understands these political vulnerabilities is thereby more likely to perceive the threats a democratic leader does issue as highly credible, in turn making it more likely that the adversary will yield.166 Other scholars have recently pointed to the special role of legislative bodies in signaling with regard to threatened force. This is especially interesting from the perspective of constitutional powers debates, because it posits a distinct role for Congress – and, again, one that does not necessarily rely on Congress’s ability to pass binding legislation that formally confines the President. Kenneth Schultz, for instance, argues that the open nature of competition within democratic societies ensures that the interplay of opposing parties in legislative bodies over the use of force is observable not just to their domestic publics but to foreign actors; this inherent transparency within democracies – magnified by legislative processes – **provides more information to adversaries** regarding the unity of domestic opponents around a government’s military and foreign policy decisions.167 Political opposition parties can undermine the credibility of some threats by the President to use force if they publicly voice their opposition in committee hearings, public statements, or through other institutional mechanisms. Furthermore, legislative processes – such as debates and hearings – make it difficult to conceal or misrepresent preferences about war and peace. Faced with such institutional constraints, Presidents will incline to be more selective about making such threats and avoid being undermined in that way.168 This restraining effect on the ability of governments to issue threats simultaneously makes those threats that the government issues more credible, if an observer assumes that the President would not be issuing it if he anticipated strong political opposition. Especially when members of the opposition party publicly support an executive’s threat to use force during a crisis, their visible support lends additional credibility to the government’s threat by demonstrating that political conditions domestically favor the use of force should it be necessary.169 In some cases, Congress may communicate greater willingness than the president to use force, for instance through non-binding resolutions.170 Such powerful signals of resolve should in theory make adversaries more likely to back down. The credibility-enhancing effects of legislative constraints on threats are subject to dispute. Some studies question the assumptions underpinning theories of audience costs – specifically the idea that democratic leaders suffer domestic political costs to failing to make good on their threats, and therefore that their threats are especially credible171 – and others question whether the empirical data supports claims that democracies have credibility advantages in making threats.172 Other scholars dispute the likelihood that leaders will really be punished politically for backing down, especially if the threat was not explicit and unambiguous or if they have good policy reasons for doing so.173 Additionally, even if transparency in democratic institutions allows domestic dissent from threats of force to be visible to foreign audiences, it is not clear that adversaries would interpret these mechanisms as political scientists expect in their models of strategic interaction, in light of various common problems of misperception in international relations.174 These disputes are not just between competing theoretical models but also over the links between any of the models and real-world political behavior by states. At this point there remains a dearth of good historical evidence as to how foreign leaders interpret political maneuvers within Congress regarding threatened force. Nevertheless, at the very least, strands of recent political science scholarship cast significant doubt on the intuition that democratic checks are inherently disadvantageous to strategies of threatened force. Quite the contrary, they suggest that legislative checks – or, indeed, even the signaling functions that Congress is institutionally situated to play with respect to foreign audiences interpreting U.S. government moves – can be harnessed in some circumstances to support such strategies. C. Legal Reform and Strategies of Threatened Force Among legal scholars of war powers, the ultimate prescriptive question is whether the President should be constrained more formally and strongly than he currently is by legislative checks, especially a more robust and effective mandatory requirement of congressional authorization to use force. Calls for reform usually take the form of narrowing and better enforcement (by all three branches of government) of purported constitutional requirements for congressional authorization of presidential uses of force or revising and enforcing the War Powers Resolutions or other framework legislation requiring express congressional authorization for such actions.175

As applied to strategies of threatened force, generally **under these proposals the President would lack authority to make good on them** unilaterally (except in whatever narrow circumstances for which he retains his own unilateral authority, such as deterring imminent attacks on the United States). Whereas legal scholars are consumed with the internal effects of war powers law, such as whether and when it constrains U.S. government decision-making, the analysis contained in the previous section shifts attention externally to whether and when U.S. law might influence decision-making by adversaries, allies, and other international actors. In prescriptive terms, if the President’s power to use force is linked to his ability to threaten it effectively, then any consideration of war powers reform on policy outcomes and longterm interests should include the important secondary effects on deterrent and coercive strategies – and how U.S. legal doctrine is perceived and understood abroad.176 Would stronger requirements for congressional authorization to use force reduce a president’s opportunities for bluffing, and if so would this improve U.S. coercive diplomacy by making ensuing threats more credible? Or would it undermine diplomacy by taking some threats off the table as viable policy options? Would stronger formal legislative powers with respect to force have significant marginal effects on the signaling effects of dissent within Congress, beyond those effects already resulting from open political discourse? These are difficult questions, but the analysis and evidence above helps generate some initial hypotheses and avenues for further research and analysis. One might ask at this point why, though, having exposed as a hole in war powers legal discourse the tendency to overlook threatened force, this Article does not take up whether Congress should assert some direct legislative control of threats – perhaps statutorily limiting the President’s authority to make them or establishing procedural conditions like presidential reporting requirements to Congress. This Article puts such a notion aside for several reasons. First, for reasons alluded to briefly above, such limits would be very constitutionally suspect and difficult to enforce.177 Second, even the most ardent war-power congressionalists do not contemplate such direct limits on the President’s power to threaten; they are not a realistic option for reform. Instead, this Article focuses on the more plausible – and much more discussed – possibility of strengthening Congress’s power over the ultimate decision whether to use force, but augments the usual debate over that question with appreciation for the importance of credible threats. A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued: In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps **the *most* important** of all the powers in our constitutional armory to prevent confrontations that could **carry nuclear implications**. … [I]t is the **diplomatic power the President needs** most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179 In his veto statement on the War Powers Resolution, President Nixon echoed these concerns, arguing that **the law would undermine the credibility of U.S. deterrent** and coercive threats in the eyes of both adversaries and allies – they would know that presidential authority to use force would expire after 60 days, so absent strong congressional support they could assume U.S. withdrawal at that point.180 In short, those who oppose tying the president’s hands with mandatory congressional authorization requirements to use force sometimes argue that doing so incidentally and dangerously ties his hands in threatening it. A critical assumption here is that presidential flexibility, preserved in legal doctrine, enhances the credibility of presidential threats to escalate.

### Off

#### Obama is holding off new Iranian sanctions that would scuttle a deal that makes war likely

Jacob Glass, Truman-Albright Fellow, “As Iran Nuclear Negotiations Begin, Threat of Increased Sanctions Looms Large,” Huffington Post, 3/25/2014. http://www.huffingtonpost.com/jacob-glass/as-iran-nuclear-negotiati\_b\_5024604.html

Last week Iran and the so-called P5+1 countries -- Russia, China, Britain, France, the U.S., plus Germany -- began a new round of negotiations in the Austrian capital of Vienna. While perhaps overshadowed by tensions on the Crimean Peninsula and missing Malaysian Flight 370, the talks mark a significant step towards resolving the Iranian nuclear crisis. Yet misguided calls by Congress to increase sanctions on Iran threaten to scuttle progress, and underscore the fragility of the negotiating process.¶ Over the past three decades, Iran has faced crippling sanctions imposed by America and the international community. Trade restrictions have steadily increased to block Iran's lucrative petroleum export market as well as the country's participation in the global banking system. All told, international sanctions have cost Iran over $100 billion in lost oil profits alone.¶ So called "carrot and stick" policies have long been fundamental to international diplomacy. The "stick" has been a sharp one, and has finally brought the Iranians to the negotiating table.¶ During his September visit to the UN General Assembly in New York, Iranian President Hassan Rouhani spoke with President Obama over the phone, marking the first direct communication between an American and Iranian president since 1979. On November 24, an interim "first-step" deal was reached to freeze Iran's nuclear development program and pave the way for a comprehensive agreement. The deal halts uranium enrichment above 3.5 percent and puts international observers on the ground in Iran, all but ensuring that negotiations cannot be used as a delay tactic.¶ Yet amid these positive signs that diplomacy is working, members of Congress have advocated for even more sanctions to be levied against Iran, specifically in the form of Senate Bill 1881, sponsored by Illinois Republican Mark Kirk and New Jersey Democrat Robert Menendez.¶ New sanctions would torpedo the Vienna talks and reverse the diplomatic progress that has been made.¶ Iranian officials have already promised to abandon negotiations if new sanctions are passed. Even our own allies, along with Russia and China, have opposed the move. Passing unilateral sanctions will splinter the fragile international coalition, needlessly antagonize Iranian negotiators, and make a violent conflict with Iran more likely. Diplomatic victory will only be achieved if the international community stands united before Iran.¶ To this point, the Obama administration has avoided a vote on SB 1881 by threatening a veto of the bill, and the administration's full court press to prevent Senate Democrats from supporting new sanctions has bought international negotiators time. Several influential Democrats, including Senator Richard Blumenthal from Connecticut, have agreed to postpone a vote on the bill, contingent on productive negotiations.¶ Although legislation imposing new sanctions has been avoided thus far, the pressure on Congressional Democrats to act will intensify as talks in Vienna move forward. This round of negotiations is widely projected to be more difficult than the November deal, and inflammatory rhetoric from Tehran is likely. Nevertheless, sanctions are not the answer. Instead, we must continue to let diplomacy run its course.¶ Sanctions have done their job by bringing Iran to the table. In return, Iran expects to be rewarded with sanctions relief. The passage of new trade restrictions would effectively withdraw the carrot, and hit Iran with another stick. Consider the negotiations over.¶ The risks of delaying new sanctions is slight. The sanctions relief Iran is receiving is valued between $6 and $7 billion, and represents only a small fraction of the remaining restrictions blocking Iran from using the international banking system and selling oil. Should Iran prove to be a dishonest negotiating partner, sanctions can be renewed and ratcheted up. Most importantly, international observers will be on the ground in Iran to prevent Tehran from racing towards a nuclear weapon while negotiations are ongoing.¶ At the same time, the benefits of successful diplomacy are immense, as a comprehensive deal would be a dramatic victory for U.S. non-proliferation efforts. Further, the dismantling of Iran's nuclear program would significantly ease tensions between its two biggest rivals in the region, Israel and Saudi Arabia.¶ Our congressional leaders must not be so confident as to think Iran is desperate for a deal. The unprecedented overtures of President Rouhani to the West are widely seen as a test to gauge if a favorable solution can be negotiated with the international community. Should he fail to do so, hardliners within the Iranian government will be empowered to revert back to a pre-Rouhani foreign policy dominated by isolation from the West and an aggressive nuclear development program.¶ Our senators are facing significant political pressure to resist multilateralism and pursue increased sanctions based on an uncompromising mistrust of Iran. But history judges leaders not upon their conformity with party politics, but upon the ultimate results they achieve. It's time to negotiate with the Iranians on good faith, and begin the serious work of establishing a meaningful nuclear agreement that could signal the beginning of a new era in Iranian-Western relations.

#### The plan forces Obama to defend his war power – saps his capital

**Kriner, 10** --- assistant professor of political science at Boston University

(Douglas L. Kriner, “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69)

**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** 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 proprieties, 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 **When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies.** If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### Loss of political capital causes Democrats flop and support sanctions

Kraushaar 1-22

(Josh Kraushaar, staff writer at the National Journal. “The Iran Deal Puts Pro-Israel Democrats in a Bind” 1-22-14 http://www.nationaljournal.com/magazine/the-iran-deal-puts-pro-israel-democrats-in-a-bind-20131122//wyoccd)

All of this puts Democrats, who routinely win overwhelming support from Jewish Americans on Election Day, in an awkward position. Do they stand with the president on politically sensitive foreign policy issues, or stake their own course? That difficult dynamic is currently playing out in Congress, where the Obama administration is resisting a Senate push to maintain tough sanctions against Iran. This week, Obama met with leading senators on the Banking and Foreign Relations committees to dissuade them from their efforts while diplomacy is underway. "There's a fundamental disagreement between the vast majority of Congress and the president when it comes to increasing Iran sanctions right now," said one Democratic operative involved in the advocacy efforts. "Pro-Israel groups, like AIPAC, try to do things in a bipartisan way; they don't like open confrontation. But in this instance, it's hard." That awkwardness has been evident in the lukewarm reaction from many of Obama's Senate Democratic allies to the administration's outreach to Iran. Senate Foreign Relations Committee Chairman Robert Menendez of New Jersey said last week he was concerned that the administration seems "to want the deal almost more than the Iranians." Normally outspoken Sen. Chuck Schumer of New York, a reliable ally of Israel, has been conspicuously quiet about his views on the negotiations. In a CNN interview this month, Democratic Rep. Debbie Wasserman Schultz of Florida, whose job as chairwoman of the Democratic National Committee is to defend the president, notably declined to endorse the administration's approach, focusing instead on Obama's past support of sanctions. This, despite the full-court press from Secretary of State John Kerry, a former congressional colleague. On Tuesday, after meeting with Obama, Menendez and Schumer signed a bipartisan letter to Kerry warning the administration about accepting a deal that would allow Iran to continue its nuclear program. The letter was also signed by Sens. John McCain, R-Ariz., Lindsey Graham, R-S.C., Susan Collins, R-Maine, and Robert Casey, D-Pa. Democrats, of course, realize that the president plays an outsized role in the policy direction of his party. Just as George W. Bush moved the Republican Party in a more hawkish direction during his war-riven presidency, Obama is nudging Democrats away from their traditionally instinctive support for the Jewish state. "I can't remember the last time the differences [between the U.S. and Israel] were this stark," said one former Democratic White House official with ties to the Jewish community. "There's now a little more freedom [for progressive Democrats] to say what they want to say, without fear of getting their tuchus kicked by the organized Jewish community." A Gallup survey conducted this year showed 55 percent of Democrats sympathizing with the Israelis over the Palestinians, compared with 78 percent of Republicans and 63 percent of independents who do so. A landmark Pew poll of American Jews, released in October, showed that 35 percent of Jewish Democrats said they had little or no attachment to Israel, more than double the 15 percent of Jewish Republicans who answered similarly. At the 2012 Democratic National Convention, many delegates booed a platform proposal supporting the move of the U.S. Embassy in Israel from Tel Aviv to Jerusalem. In 2011, Democrats lost Anthony Weiner's heavily Jewish, solidly Democratic Brooklyn House seat because enough Jewish voters wanted to rebuke the president's perceived hostility toward Israel. Pro-Israel advocacy groups rely on the mantra that support for Israel carries overwhelming bipartisan support, a maxim that has held true for decades in Congress. But most also reluctantly acknowledge the growing influence of a faction within the Democratic Party that is more critical of the two countries' close relationship. Within the Jewish community, that faction is represented by J Street, which positions itself as the home for "pro-Israel, pro-peace Americans" and supports the Iran negotiations. "Organizations that claim to represent the American Jewish community are undermining [Obama's] approach by pushing for new and harsher penalties against Iran," the group wrote in an action alert to its members. Some supporters of Israel view J Street with concern. "There's a small cadre of people that comes from the progressive side of the party that are in the business of blaming Israel first. There's a chorus of these guys," said a former Clinton administration foreign policy official. "But that doesn't make them the dominant folks in the policy space of the party, or the Hill." Pro-Israel activists worry that one of the ironies of Obama's situation is that as his poll numbers sink, his interest in striking a deal with Iran will grow because he'll be looking for any bit of positive news that can draw attention away from the health care law's problems. Thus far, Obama's diminished political fortunes aren't deterring Democrats from protecting the administration's prerogatives. Congressional sources expect the Senate Banking Committee, chaired by South Dakota Democrat Tim Johnson, to hold off on any sanctions legislation until there's a resolution to the Iranian negotiations. But if Obama's standing continues to drop, and if Israel doesn't like the deal, don't be surprised to see Democrats become less hesitant about going their own way.

#### Sanctions bill causes Israeli strikes

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

As 2013 draws to close, the negotiations over the Iranian nuclear program have entered a delicate stage. But in 2014, the tensions will escalate dramatically as a bipartisan group of Senators brings a new Iran sanctions bill to the floor for a vote. As many others have warned, that promise of new measures against Tehran will almost certainly blow up the interim deal reached by the Obama administration and its UN/EU partners in Geneva. But Congress' highly unusual intervention into the President's domain of foreign policy doesn't just make the prospect of an American conflict with Iran more likely. As it turns out, the Nuclear Weapon Free Iran Act essentially empowers Israel to decide whether the United States will go to war against Tehran.¶ On their own, the tough new sanctions imposed automatically if a final deal isn't completed in six months pose a daunting enough challenge for President Obama and Secretary of State Kerry. But it is the legislation's commitment to support an Israeli preventive strike against Iranian nuclear facilities that almost **ensures** the U.S. and Iran will come to blows. As Section 2b, part 5 of the draft mandates:¶ If the Government of Israel is compelled to take military action in legitimate self-defense against Iran's nuclear weapon program, the United States Government should stand with Israel and provide, in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force, diplomatic, military, and economic support to the Government of Israel in its defense of its territory, people, and existence.¶ Now, the legislation being pushed by Senators Mark Kirk (R-IL), Chuck Schumer (D-NY) and Robert Menendez (D-NJ) does not automatically give the President an authorization to use force should Israel attack the Iranians. (The draft language above explicitly states that the U.S. government must act "in accordance with the law of the United States and the constitutional responsibility of Congress to authorize the use of military force.") But there should be little doubt that an AUMF would be forthcoming from Congressmen on both sides of the aisle. As Lindsey Graham, who with Menendez co-sponsored a similar, non-binding "stand with Israel" resolution in March told a Christians United for Israel (CUFI) conference in July:¶ "If nothing changes in Iran, come September, October, I will present a resolution that will authorize the use of military force to prevent Iran from developing a nuclear bomb."¶ Graham would have plenty of company from the hardest of hard liners in his party. In August 2012, Romney national security adviser and pardoned Iran-Contra architect Elliott Abrams called for a war authorization in the pages of the Weekly Standard. And just two weeks ago, Norman Podhoretz used his Wall Street Journal op-ed to urge the Obama administration to "strike Iran now" to avoid "the nuclear war sure to come."¶ But at the end of the day, the lack of an explicit AUMF in the Nuclear Weapon Free Iran Act doesn't mean its supporters aren't giving Prime Minister Benjamin Netanyahu de facto carte blanche to hit Iranian nuclear facilities. The ensuing Iranian retaliation against to Israeli and American interests would almost certainly trigger the commitment of U.S. forces anyway.¶ Even if the Israelis alone launched a strike against Iran's atomic sites, Tehran will almost certainly hit back against U.S. targets in the Straits of Hormuz, in the region, possibly in Europe and even potentially in the American homeland. Israel would face certain retaliation from Hezbollah rockets launched from Lebanon and Hamas missiles raining down from Gaza.¶ That's why former Bush Defense Secretary Bob Gates and CIA head Michael Hayden raising the alarms about the "disastrous" impact of the supposedly surgical strikes against the Ayatollah's nuclear infrastructure. As the New York Times reported in March 2012, "A classified war simulation held this month to assess the repercussions of an Israeli attack on Iran forecasts that the strike would lead to a wider regional war, which could draw in the United States and leave hundreds of Americans dead, according to American officials." And that September, a bipartisan group of U.S. foreign policy leaders including Brent Scowcroft, retired Admiral William Fallon, former Republican Senator (now Obama Pentagon chief) Chuck Hagel, retired General Anthony Zinni and former Ambassador Thomas Pickering concluded that American attacks with the objective of "ensuring that Iran never acquires a nuclear bomb" would "need to conduct a significantly expanded air and sea war over a prolonged period of time, likely several years." (Accomplishing regime change, the authors noted, would mean an occupation of Iran requiring a "commitment of resources and personnel greater than what the U.S. has expended over the past 10 years in the Iraq and Afghanistan wars combined.") The anticipated blowback?¶ Serious costs to U.S. interests would also be felt over the longer term, we believe, with problematic consequences for global and regional stability, including economic stability. A dynamic of escalation, action, and counteraction could produce serious unintended consequences that would significantly increase all of these costs and lead, potentially, to all-out regional war.

#### War with Iran escalates and draws in all major powers

-Strikes fail: intel gap and buried

-Iran second strike = nuclear

-Economy: stops oil

-Hegemony: Balancers

-Miscalc/Escalation: Forces on nuclear alter

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

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.¶ For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.¶ Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.¶ All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians but also the Chinese and, likely, the Russians as well.¶ By now, Iran has also built redundant command and control systems and nuclear facilities, devloped early warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.¶ Because Iran is well-prepared, a single, conventional Israeli strike—or even numerous strikes—could not destroy all of its capabilities, giving Iran time to respond.¶ Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt and the Palestinian Authority to join the assault, turning a bad situation into a regional war.¶ During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. After years of futilely fighting Palestinian irregular armies, Israel has lost some of its perceived superiority—bolstering its enemies’ resolve.¶ Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.¶ In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.¶ An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.¶ Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.¶ From there, things could deteriorate as they did in the 1930s. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops.¶ Russia, China, Venezuela, and maybe Brazil and Turkey—all of which essentially support Iran—could be tempted to form an alliance and openly challenge the U.S. hegemony.¶ Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.¶ Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted.¶ If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons but would probably not risk using force.¶ While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

### Warming

#### No impact to Warming- Mitigation and adaptation will solve

Robert O. Mendelsohn 9, the Edwin Weyerhaeuser Davis Professor, Yale School of Forestry and Environmental Studies, Yale University, June 2009, “Climate Change and Economic Growth,” online: http://www.growthcommission.org/storage/cgdev/documents/gcwp060web.pdf

These statements are largely alarmist and misleading. Although climate change is a serious problem that deserves attention, society’s immediate behavior has an extremely low probability of leading to catastrophic consequences. The science and economics of climate change is quite clear that emissions over the next few decades will lead to only mild consequences. The severe impacts predicted by alarmists require a century (or two in the case of Stern 2006) of no mitigation. Many of the predicted impacts assume there will be no or little adaptation. The net economic impacts from climate change over the next 50 years will be small regardless. Most of the more severe impacts will take more than a century or even a millennium to unfold and many of these “potential” impacts will never occur because people will adapt. It is not at all apparent that immediate and dramatic policies need to be developed to thwart long‐range climate risks. What is needed are long‐run balanced responses.

#### China outweighs and won’t be influenced by the plan

Harvey, environment reporter – the Guardian, 11/9/’11

(Fiona, <http://www.guardian.co.uk/environment/2011/nov/09/fossil-fuel-infrastructure-climate-change>)

Birol also warned that China – the world's biggest emitter – would have to take on a much greater role in combating climate change. For years, Chinese officials have argued that the country's emissions per capita were much lower than those of developed countries, it was not required to take such stringent action on emissions. But the IEA's analysis found that within about four years, China's per capita emissions were likely to exceed those of the EU. In addition, by 2035 at the latest, China's cumulative emissions since 1900 are likely to exceed those of the EU, which will further weaken Beijing's argument that developed countries should take on more of the burden of emissions reduction as they carry more of the responsibility for past emissions. In a recent interview with the Guardian recently, China's top climate change official, Xie Zhenhua, called on developing countries to take a greater part in the talks, while insisting that developed countries must sign up to a continuation of the Kyoto protocol – something only the European Union is willing to do. His words were greeted cautiously by other participants in the talks. Continuing its gloomy outlook, the IEA report said: "There are few signs that the urgently needed change in direction in global energy trends is under way. Although the recovery in the world economy since 2009 has been uneven, and future economic prospects remain uncertain, global primary energy demand rebounded by a remarkable 5% in 2010, pushing CO2 emissions to a new high. Subsidies that encourage wasteful consumption of fossil fuels jumped to over $400bn (£250.7bn)."Meanwhile, an "unacceptably high" number of people – about 1.3bn – still lack access to electricity. If people are to be lifted out of poverty, this must be solved – but providing people with renewable forms of energy generation is still expensive. Charlie Kronick of Greenpeace said: "The decisions being made by politicians today risk passing a monumental carbon debt to the next generation, one for which they will pay a very heavy price. What's seriously lacking is a global plan and the political leverage to enact it. Governments have a chance to begin to turn this around when they meet in Durban later this month for the next round of global climate talks." One close observer of the climate talks said the $400bn subsidies devoted to fossil fuels, uncovered by the IEA, were "staggering", and the way in which these subsidies distort the market presented a massive problem in encouraging the move to renewables. He added that Birol's comments, though urgent and timely, were unlikely to galvanise China and the US – the world's two biggest emittters – into action on the international stage. "The US can't move (owing to Republican opposition) and there's no upside for China domestically in doing so. At least China is moving up the learning curve with its deployment of renewables, but it's doing so in parallel to the hugely damaging coal-fired assets that it is unlikely to ever want (to turn off in order to) to meet climate targets in years to come."

**No impact to ocean acidification -- alarmists are empirically denied**

**Taylor 10** [James M. Taylor is a senior fellow of The Heartland Institute and managing editor of Environment & Climate News., “Ocean Acidification Scare Pushed at Copenhagen,” Feb 10 http://www.heartland.org/publications/environment%20climate/article/26815/Ocean\_Acidification\_Scare\_Pushed\_at\_Copenhagen.html]

With global temperatures continuing their decade-long decline and United Nations-sponsored global warming talks falling apart in Copenhagen, **alarmists** at the U.N. talks **spent considerable time claiming carbon dioxide** emissions **will cause catastrophic ocean acidification**, regardless of whether temperatures rise. **The latest scientific data, however, show no such catastrophe is likely to occur**. Food Supply Risk Claimed The United Kingdom’s environment secretary, Hilary Benn, initiated the Copenhagen ocean scare with a high-profile speech and numerous media interviews claiming ocean acidification threatens the world’s food supply. “**The fact is our seas absorb CO2**. They absorb about a quarter of the total that we produce, but it is making our seas more acidic,” said Benn in his speech. “If this continues as a problem, then it can affect the one billion people who depend on fish as their principle source of protein, and we have to feed another 2½ to 3 billion people over the next 40 to 50 years.” **Benn’s claim of oceans becoming “more acidic” is misleading**, however. **Water with a pH of 7.0 is considered neutral. pH values lower than 7.0 are considered acidic**, while those higher than 7.0 are considered alkaline. **The world’s oceans have a pH of 8.1, making them alkaline, not acidic. Increasing carbon dioxide** concentrations **would make the oceans less alkaline but not acidic**. **Since human industrial activity first began** emitting carbon dioxide into the atmosphere a little more than 200 years ago, **the pH of the oceans has fallen merely 0.1**, from 8.2 to 8.1. Following Benn’s December 14 speech and public relations efforts, most of the world’s major media outlets produced stories claiming ocean acidification is threatening the world’s marine life. An Associated Press headline, for example, went so far as to call ocean acidification the “evil twin” of climate change. Studies Show CO2 Benefits Numerous recent scientific studies show **higher carbon dioxide levels in the** world’s **oceans have the same beneficial effect on marine life as higher levels of atmospheric carbon dioxide have on terrestrial plant life**. **In a 2005 study published in the Journal of Geophysical Research, scientists examined trends in chlorophyll concentrations**, critical building blocks in the oceanic food chain. The French and American scientists reported “an overall increase of the world ocean average chlorophyll concentration by about 22 percent” during the prior two decades of increasing carbon dioxide concentrations. In a 2006 study published in Global Change Biology, scientists observed higher CO2 levels are correlated with better growth conditions for oceanic life. **The highest CO2 concentrations produced “higher growth rates and biomass yields” than the lower CO2 conditions**. **Higher CO2 levels may well fuel “subsequent primary production, phytoplankton blooms, and sustaining oceanic food-webs**,” the study concluded. Ocean Life ‘Surprisingly Resilient’ **In a 2008 study published in Biogeosciences, scientists subjected marine organisms to varying concentrations of CO2, including abrupt changes of CO2 concentration. The ecosystems were “surprisingly resilient” to changes** in atmospheric CO2, and “the ecosystem composition, bacterial and phytoplankton abundances and productivity, grazing rates and total grazer abundance and reproduction were not significantly affected by CO2-induced effects.” In a 2009 study published in Proceedings of the National Academy of Sciences, scientists reported, “Sea star growth and feeding rates increased with water temperature from 5ºC to 21ºC. A doubling of current [CO2] also increased growth rates both with and without a concurrent temperature increase from 12ºC to 15ºC.” Another False CO2 Scare “**Far too many predictions of CO2-induced catastrophes are treated by alarmists as sure to occur, when real-world observations show these doomsday scenarios to be highly unlikely or even virtual impossibilities,**” said Craig Idso, Ph.D., author of the 2009 book CO2, Global Warming and Coral Reefs. “The phenomenon of CO2-induced ocean acidification appears to be no different.

#### New study from National Center for Atmospheric Research indicates even a small nuclear conflict would generate catastrophic dust and smoke events that destroy the ozone layer and collapse agricultural productivity around the world

CBS 3.26.2014

[Study: ‘Small’ Nuclear War Would Destroy The World, http://denver.cbslocal.com/2014/03/26/study-small-nuclear-war-would-destroy-the-world/]

DENVER (CBS4) – With an estimated 17,000 nuclear weapons in the world, we have the power to exterminate humanity many times over. But it wouldn’t take a full-scale nuclear war to make Earth uninhabitable, reports Live Science. Even a relatively small regional nuclear war, like a conflict between India and Pakistan, could spark a global environmental catastrophe, says a new study. “Most people would be surprised to know that even a very small regional nuclear war on the other side of the planet could disrupt global climate for at least a decade and wipe out the ozone layer for a decade,” said lead author Michael Mills, an atmospheric scientist at the National Center for Atmospheric Research in Colorado. Researchers developed a computer model of the Earth’s atmosphere and ran simulations to find out what would happen if there was a nuclear war with just a fraction of the world’s arsenal. What they saw was the stuff of nightmares: Firestorms would belch over 5 million tons of ash into the sky. The ash would absorb the sun’s rays, causing deadly cooling on the surface. Global temperatures would plummet my nearly 3 degrees Farenheit on average, with most of North America experiencing winters that would be colder by 4 to 10 degrees. Lethal frosts would cover the Earth and reduce the growing seasons bu about a month for several years. Rainfall and other precipitation would be reduced by about 10 percent, triggering worldwide droughts and leading to wildfires in the Amazon, which would spew more smoke into the atmosphere. The sky ash would heat the stratosphere and accelerate the chemical reactions that destroy the ozone layer. The intense ultraviolet radiation that would get through to the surface would be a dramatic threat to human health and damage fragile ecosystems on land and sea. “All in all, these effects would be very detrimental to food production and to ecosystems,” Mills said. The findings are published in the journal Earth’s Future.

#### Prefer the new study- it is the third independent study that corroborates the same conclusion that even a small exchange would be catastrophic for the planet

International Business Times 3.27

[Osbourne, Very Small Regional Nuclear War 'Would Wipe Out Ozone Layer for a Decade

http://www.ibtimes.co.uk/very-small-regional-nuclear-war-would-wipe-out-ozone-layer-decade-1442139]

Even a very small regional nuclear war would have catastrophic effects on our planet, researchers have warned. A small nuclear war would wipe out the ozone layer for a decade, could trigger global cooling and cause droughts for at least 10 years, a LiveScience report says. Following the Netherlands G7 Nuclear Security Summit, in which world leaders discussed the ever increasing risk of nuclear war, scientists have said concerns of the threat are justified. Michael Mills, an atmospheric scientist at the National Center for Atmospheric Research in Colorado, told the website: "Most people would be surprised to know that even a very small regional nuclear war on the other side of the planet could disrupt global climate for at least a decade and wipe out the ozone layer for a decade." A small nuclear war, researchers predict, would send about 5.5 million tonnes of black carbon into the atmosphere, absorbing solar heat and resulting in global cooling. Temperatures would fall by an estimated 1.5C, causing Europe, North America, the Middle East and Asia to experience winters up to 6C colder than current levels. The destruction of the ozone layer would lead to huge amounts of ultraviolet radiation to Earth's surface, threatening ecosystems and causing skin cancer rates to soar. "All in all, these effects would be very detrimental to food production and to ecosystems," Mills said. "This is the third independent model examining the effects a regional nuclear conflict on the atmosphere and the ocean and the land, and their conclusions all support each other. It's interesting that every time we've approached this same question with more sophisticated models, the effects seem to be more pronounced. "One could produce a global nuclear famine using just 100 of the smallest nuclear weapons. There are about 17,000 nuclear weapons on the planet right now, most of which are much more powerful than the 100 we looked at in this study. This raises the questions of why so many of these weapons still exist, and whether they serve any purpose."

#### Nuclear war causes extinction - prefer the latest studies

Choi 11

writer for National Geographic News [Charles Q., 2/22/2011, National Geographic, “Small Nuclear War Could Reverse Global Warming for Years?,” <http://news.nationalgeographic.com/news/2011/02/110223-nuclear-war-winter-global-warming-environment-science-climate-change/>, DS]

**Even a regional nuclear war could spark "unprecedented" global cooling and reduce rainfall for years, according to U.S. government computer models. Widespread famine and disease would likely follow, experts speculate.** During the Cold War a nuclear exchange between superpowers—such as the one feared for years between the United States and the former Soviet Union—was predicted to cause a "nuclear winter." In that scenario **hundreds of nuclear explosions spark huge fires, whose smoke, dust, and ash blot out the sun for weeks amid a backdrop of dangerous radiation levels.** Much of humanity eventually dies of starvation and disease. Today, with the United States the only standing superpower, nuclear winter is little more than a nightmare. But nuclear war remains a very real threat**—for instance, between developing-world nuclear powers, such as India and Pakistan.** To see what climate effects such a regional nuclear conflict might have, **scientists from NASA and other institutions modeled a war involving a hundred Hiroshima-level bombs, each packing the equivalent of 15,000 tons of TNT—just 0.03 percent of the world's current nuclear arsenal.** (See a National Geographic magazine feature on weapons of mass destruction.) **The researchers predicted the resulting fires would kick up roughly five million metric tons of black carbon into the upper part of the troposphere, the lowest layer of the Earth's atmosphere.** In NASA climate models, **this carbon then absorbed solar heat and, like a hot-air balloon, quickly lofted even higher, where the soot would take much longer to clear from the sky.** (Related: "'Nuclear Archaeologists' Find World War II Plutonium.") Reversing Global Warming? **The global cooling caused by these high carbon clouds wouldn't be as catastrophic as a superpower-versus-superpower nuclear winter, but "the effects would still be regarded as leading to unprecedented climate change,"** **research physical scientist Luke Oman said** during a press briefing Friday at a meeting of the American Association for the Advancement of Science in Washington, D.C. **Earth is currently in a long-term warming trend. After a regional nuclear war, though, average global temperatures would drop by 2.25 degrees F (1.25 degrees C) for two to three years afterward,** the models suggest. At the extreme, **the tropics, Europe, Asia, and Alaska would cool by 5.4 to 7.2 degrees F (3 to 4 degrees C),** according to the models. Parts of the Arctic and Antarctic would actually warm a bit, due to shifted wind and ocean-circulation patterns, the researchers said. After ten years, **average global temperatures would still be 0.9 degree F (0.5 degree C) lower than before the nuclear war**, the models predict. (Pictures: "Red Hot" Nuclear-Waste Train Glows in Infrared.) Years Without Summer **For a time Earth would likely be a colder, hungrier planet. "Our results suggest that agriculture could be severely impacted, especially in areas that are susceptible to late-spring and early-fall frosts**," said Oman, of NASA's Goddard Space Flight Center in Greenbelt, Maryland. **"Examples similar to the crop failures and famines experienced following the Mount Tambora eruption in 1815 could be widespread and last several years**," he added. That Indonesian volcano ushered in "the year without summer," a time of famines and unrest. (See pictures of the Mount Tambora eruption.) **All these changes would also alter circulation patterns in the tropical atmosphere, reducing precipitation by 10 percent globally for one to four years**, the scientists said. **Even after seven years, global average precipitation would be 5 percent lower than it was before the conflict**, according to the model. In addition, researcher Michael Mills, of the National Center for Atmospheric Research in Colorado, found **large decreases in the protective ozone layer, leading to much more ultraviolet [uv] radiation reaching Earth's surface and harming the environment and people.** "The main message from our work," NASA's Oman said, "would be that even a regional nuclear conflict would have global consequences."

#### Extinction

Hellman 8

(Martin E. Hellman, emeritus prof of engineering @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, <http://www.nuclearrisk.org/paper.pdf>)

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

#### Nuclear war causes extinction- new studies

Starr ‘9 (Catastrophic Climatic Consequences of Nuclear Conflict, October 2009, by Steven Starr Steven Starr is a Senior Scientist with Physicians for Social Responsibility, and the Director of the Clinical Laboratory Science Program at the University of Missouri. He has been published in the Bulletin of the Atomic Scientists and the STAR (Strategic Arms Reduction) website of the Moscow Institute of Physics and Technology.

Despite a two-thirds reduction in global nuclear arsenals since 1986, new scientific research makes it clear that the environmental consequences of nuclear war can still end human history. A series of peer-reviewed studies, performed at several U.S. universities, predict the detonation of even a tiny fraction of the global nuclear arsenal within large urban centers will cause catastrophic disruptions of the global climate and massive destruction of the protective stratospheric ozone layer.

### Intervention

**The worst case scenario happened – no extinction**

**Dove 12** [Alan Dove, PhD in Microbiology, science journalist and former Adjunct Professor at New York University, “Who’s Afraid of the Big, Bad Bioterrorist?” Jan 24 2012, http://alandove.com/content/2012/01/whos-afraid-of-the-big-bad-bioterrorist/]

The second problem is much more serious. Eliminating the toxins, we’re left with a list of infectious bacteria and viruses. With a single exception, these organisms are probably near-useless as weapons, and history proves it.¶ There have been at least three well-documented military-style deployments of infectious agents from the list, plus one deployment of an agent that’s not on the list. I’m focusing entirely on the modern era, by the way. There are historical reports of armies catapulting plague-ridden corpses over city walls and conquistadors trying to inoculate blankets with Variola (smallpox), but it’s not clear those “attacks” were effective. Those diseases tended to spread like, well, plagues, so there’s no telling whether the targets really caught the diseases from the bodies and blankets, or simply picked them up through casual contact with their enemies.¶Of the four modern biowarfare incidents, two have been fatal. The first was the 1979 Sverdlovsk anthrax incident, which killed an estimated 100 people. In that case, a Soviet-built biological weapons lab accidentally released a large plume of weaponized Bacillus anthracis (anthrax) over a major city. Soviet authorities tried to blame the resulting fatalities on “bad meat,” but in the 1990s Western investigators were finally able to piece together the real story. The second fatal incident also involved anthrax from a government-run lab: the 2001 “Amerithrax” attacks. That time, a rogue employee (or perhaps employees) of the government’s main bioweapons lab sent weaponized, powdered anthrax through the US postal service. Five people died.¶ That gives us a grand total of around 105 deaths, entirely from agents that were grown and weaponized in officially-sanctioned and funded bioweapons research labs. Remember that.¶Terrorist groups have also deployed biological weapons twice, and these cases are very instructive. The first was the 1984 Rajneeshee bioterror attack, in which members of acult in Oregon inoculated restaurant salad bars with Salmonella bacteria (an agent that’s not on the “select” list). 751 people got sick, but nobody died. Public health authorities handled it as a conventional foodborne Salmonella outbreak, identified the sources and contained them. Nobody even would have known it was a deliberate attack if a member of the cult hadn’t come forward afterward with a confession. Lesson: our existing public health infrastructure was entirely adequate to respond to a major bioterrorist attack.¶ The second genuine bioterrorist attack took place in 1993. Members of the Aum Shinrikyo cult successfully isolated and grew a large stock of anthrax bacteria, then sprayed it as an aerosol from the roof of a building in downtown Tokyo. The cult was well-financed,and had many highly educated members, so **this** release over the world’s largest city really **represented a worst-case scenario**.¶ **Nobody got sick** or died. From the cult’s perspective, it was a complete and utter failure. Again, the only reason we even found out about it was a post-hoc confession. Aum members later demonstrated their lab skills by producing Sarin nerve gas, with far deadlier results. Lesson: one of the top “select agents” is extremely hard to grow and deploy even for relatively skilled non-state groups. It’s a really crappy bioterrorist weapon.¶ Taken together, these events point to an uncomfortable but inevitable conclusion: our biodefense industry is a far greater threat to us than any actual bioterrorists.

#### There’s a low threshold for risk mitigation – we just have to win that terrorists would prefer convention means, not that they don’t want to attack at all.

Stratfor 8, (“Busting the Anthrax Myth,” July 30, <http://www.stratfor.com/print/120756>)

In fact, based on the past history of nonstate actors conducting attacks using biological weapons, we remain skeptical that a nonstate actor could conduct a biological weapons strike capable of creating as many casualties as a large strike using conventional explosives — such as the October 2002 Bali bombings that resulted in 202 deaths or the March 2004 train bombings in Madrid that killed 191. We do not disagree with Runge’s statements that actors such as al Qaeda have demonstrated an interest in biological weapons. There is ample evidence [4] that al Qaeda has a rudimentary biological weapons capability. However, there is a huge chasm of capability that separates intent and a rudimentary biological weapons program from a biological weapons program that is capable of killing hundreds of thousands of people. Misconceptions About Biological Weapons There are many misconceptions involving biological weapons. The three most common are that they are easy to obtain, that they are easy to deploy effectively, and that, when used, they always cause massive casualties. While it is certainly true that there are many different types of actors who can easily gain access to rudimentary biological agents, there are far fewer actors who can actually isolate virulent strains of the agents, weaponize them and then effectively employ these agents in a manner that will realistically pose a significant threat of causing mass casualties. While organisms such as anthrax are present in the environment and are not difficult to obtain, more highly virulent strains of these tend to be far more difficult to locate, isolate and replicate. Such efforts require highly skilled individuals and sophisticated laboratory equipment. Even incredibly deadly biological substances such as ricin [5] and botulinum toxin are difficult to use in mass attacks. This difficulty arises when one attempts to take a rudimentary biological substance and then convert it into a weaponized form — a form that is potent enough to be deadly and yet readily dispersed. Even if this weaponization hurdle can be overcome, once developed, the weaponized agent must then be integrated with a weapons system that can effectively take large quantities of the agent and evenly distribute it in lethal doses to the intended targets. During the past several decades in the era of modern terrorism, biological weapons have been used very infrequently and with very little success. This fact alone serves to highlight the gap between the biological warfare misconceptions and reality. Militant groups desperately want to kill people and are constantly seeking new innovations that will allow them to kill larger numbers of people. Certainly if biological weapons were as easily obtained, as easily weaponized and as effective at producing mass casualties as commonly portrayed, militant groups would have used them far more frequently than they have. Militant groups are generally adaptive and responsive to failure. If something works, they will use it. If it does not, they will seek more effective means of achieving their deadly goals. A good example of this was the rise and fall of the use of chlorine [6] in militant attacks in Iraq.

#### No one will use bioweapons

Palmquist 08

(Matt, “How and why the threat of bioterrorism has been so greatly exaggerated.” 5-19-08. http://www.miller-mccune.com/politics/bioterror-in-context-355)

Clark: The more I looked into it, I thought, "Jeez, what are these guys talking about?" What are the odds that a terrorist group, no matter how well financed, would be able to create a bioterror weapon? I began looking into what it takes to really make a successful bioterrorism agent, and I just became very skeptical of this whole thing. The (United States ) military gave up bioweapons 30 years ago. They're too undependable; they're too hard to use; they're too hard to make. Then I started checking around, and I found there's a whole literature out there of people who've been screaming for years that this whole bioterrorism thing is really overblown; it's not practical; it's never going to work. Aum Shinrikyo couldn't get it to work; those guys put millions and millions of dollars into it. So you think of a bunch of guys sitting in a cave in Afghanistan — they're sure as hell not going to do it. Is any government going to do it? No. So that made me very skeptical, and I went back to Oxford and said, "This whole thing's a crock." And they said, "But that's even more interesting!" M-M: Thus the question mark at the end of the title, Bracing for Armageddon? Clark: Yeah, exactly. Scientifically, it is a crock. And this really verges into the political, but we've spent $50 billion on it. So Oxford paid for me to take a trip back East and talk to a bunch of these voices that haven't been heard and interview them. M-M: How much research was involved? Clark: A couple of years. The science is pretty straightforward on paper. The kind of an organization you'd have to put together, with the varying expertise that is required to make one of these things and deploy it, takes a whole group of people with all kinds of different skills, from engineers to meteorologists. That's just not going to happen. You can run an airplane into an office tower, and you get instant everything you could ever possibly hope for. So why would anybody sit around for years and years? The Aum Shinrikyo guys tried for six, seven years and couldn't get it to work. And a lot of them had Ph.D.s.

#### R2P norm not modeled/used

Andrew Garwood-Gowers 2011 Libya and the international community’s ‘responsibility to protect’. On line Opinion : Australia’s eJournal of Social and Political Debate. This ﬁle was downloaded from: <http://eprints.qut.edu.au/45425/>

The concept of R2P evolved out of dismay at the international community’s failure to prevent atrocities at Rwanda, Srebrenica and elsewhere in the 1990s. It consists of 3 mutually reinforcing pillars: first, that states have an obligation to protect their own citizens from mass atrocity crimes (genocide, war crimes, ethnic cleansing, and crimes against humanity); second, that the international community should assist states in fulfilling their obligations under pillar one; and third, that where states are “manifestly failing” to protect their populations the international community has an obligation to respond in a “timely and decisive manner”. International responses under the third pillar could include non-forceful measures such as economic sanctions, or even collective military action authorised by the Security Council in accordance with Chapter VII of the UN Charter. This third pillar has proved to be the most controversial, as it challenges the traditional principles of state sovereignty and non-intervention in the affairs of other states. Critics of R2P, such as Noam Chomsky, see it as a mere re-branding of the concept of “humanitarian intervention”, and as a cloak for Western imperialism. Yet despite those claims all states endorsed the concept of R2P at the 2005 World Summit. Although R2P has not yet reached the status of a legal norm imposing a positive duty on states to intervene to prevent mass atrocity crimes, there is a clear political and moral commitment to this concept. References to R2P are increasingly appearing in UN resolutions, including on Darfur, and in the Security Council’s recent statement on Libya.

#### Syria was the test case for R2P and wasn’t invoked- the concept is dead

Findlay 11 (Martha Hall, "Can Responsibility to Protect Survive Libya and Syria," Ipolitics, www.ipolitics.ca/2011/11/18/martha-hall-findlay-can-responsibility-to-protect-survive-libya-and-syria/)

The Canadian-inspired concept of “Responsibility to Protect” may already be in danger, less than a decade after it was accepted by the United Nations. The very first time it was invoked by the UN Security Council was to support the no-fly zone in Libya (UNSCR 1973). Ironically, it will be the actions and events that subsequently transpired in Libya, together with corresponding inaction in similar circumstances in Syria, which may put the future of R2P at risk. In 1994, the world reeled from the reports and images of the atrocities and sheer scale of the slaughter in Rwanda. How could any of us have allowed this to happen? How could the international community NOT have intervened? Next, the world learned of the horrors of Srebrenica. And then came Kosovo in 1999. This time, however, frustration with the UN’s inability to respond in an effective or timely way to the situations in both Rwanda and Srebrenica led some states to take military action through NATO instead of waiting for the UN. This raised big questions about the concept of sovereignty of states. A fundamental aspect of sovereignty is the right not to have one state interfere in another state’s internal affairs. This concept of non-interference has been key to the evolution of international law and fundamental to the creation of the United Nations. It was clear that international intervention would sometimes be needed for humanitarian reasons, but it was also clear that we needed a non-ideological process that would be internationally accepted. The Canadian-created International Commission on Intervention and State Sovereignty (ICISS) went to work. It was the ICISS Report, issued in 2001, which authored the concept of “Responsibility to Protect”. The fundamental principles are: (A) State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself; and (B) Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect. Thanks in large part to Canadian efforts, R2P was adopted by the General Assembly of the United Nations in 2005 and endorsed by the Security Council a year later. Importantly, though, international support for R2P was (and is) qualified by worry that it could be abused for political purposes. This is why events in Libya and elsewhere may put R2P in danger. In the Security Council vote, UNSCR 1973 was passed with 10 in favour and 5 abstentions. Although the commentary by those in support focussed on the “measures to protect civilians under threat of attack”, it was clear almost immediately that international action in Libya was no longer about protecting innocent, unarmed civilians peacefully protesting. Rightly or wrongly, this was regime change, and supporting an armed insurgency to achieve it. That’s not R2P. The commentary by the abstaining members of the UN Security Council suggests significant worry about the potential abuse of military force for just this kind of political purpose and this is why R2P is now at risk because of Libya. Those already hesitant to support R2P will point to Libya and say it was only used to overthrow Gadhafi. Why is R2P also at risk because of Syria? Because of the lack of action by the UN in what appear to be very similar circumstances. Similar crackdowns by the Syrian government against protesters in Syria have not elicited anywhere close to the same level of international condemnation or action. Indeed, there have been far more examples of peaceful, unarmed civilians being killed by government forces in Syria than in Libya, arguably making a stronger case for R2P. Yet R2P was not invoked and not even contemplated. Why? Is R2P just another nice-sounding concept that will be used only when politically expedient to do so? Those who supported UNSCR 1973 seemed keen to overthrow Gadhafi, but apparently not Bashar al-Assad. Because of Libya and Syria, it may be that much harder to rally international support the next time R2P is truly needed.

#### Other states have a responsibility to intervene—UN would undermine regionalism

#### R2P doesn’t result in intervention

Albright, 2013

Madeleine K. Albright and Richard S. Williamson, THE UNITED STATES AND R2P

From Words to Action, http://www.brookings.edu/~/media/research/files/papers/2013/07/23%20united%20states%20responsibility%20protect%20albright%20williamson/23%20united%20states%20responsibility%20protect%20albright%20williamson.pdf] /Wyo-MB

Unfortunately, R2P is better known in many other parts of the world than it is in the United States, and to the extent the phrase is familiar to the U.S. public, it is often misun- derstood. One purpose of this report is to help explain the concept to a U.S. audience and to show how it is connected to our country’s best interests and traditions. Although R2P has a relatively narrow purpose, the actions that satisfy it can be broad. Americans can take pride in some of the signature efforts past administrations have undertaken, including support for hu- man rights (under President Jimmy Carter); the promotion of democracy (President Ronald Reagan); opposing international aggression (President George H. W. Bush); halting ethnic cleansing (President Bill Clinton); acknowledging a genocide while it was occurring in Dar- fur (President George W. Bush); and making an institutional commitment, at the highest level, to preventing atrocities (President Barack Obama). All except the last of these initiatives began before the inauguration of R2P, but each is directly or indirectly consistent with its objectives: to safeguard people everywhere from genocide, war crimes, ethnic cleansing, and crimes against humanity.

#### No R2P interventions—each context is specific—Darfur proves

John Holmes

theguardian.com, Wednesday 28 August 2013 11.51 EDTDoes the UN's Responsibility to Protect necessitate an intervention in Syria?

This UN doctrine can justify military action where citizens need protection – but it does not provide a practical guide The justification for any military response cannot be punishment, but has to be deterring further use of such weapons, and protecting civilians in particular. So, does the UN doctrine of the Responsibility to Protect (R2P), which provides for the international community to intervene when a government is not protecting its own citizens, oblige a response? And would military strikes in fact protect civilians?¶ From my experience as UN emergency relief co-ordinator, humanitarians are deeply and rightly sceptical of military interventions presented as for protecting civilians. The unintended consequences tend to be severe, including further civilian casualties, as we saw all too clearly in Iraq. The impact on humanitarian operations themselves can be very damaging: those attacked all too readily lash out at aid organisations, particularly NGOs seen as western-based. In my time at the UN, relief efforts in places such as Afghanistan, Pakistan, Darfur and Somalia were constantly at severe risk from this kind of backlash from perceptions of direct or indirect western intervention, with poorer outcomes and many deaths of aid workers as a result.¶ The responsibility to protect rightly increases the pressure to act when civilians are suffering. But it does not provide a practical guide to what should be done, which has to be case-specific and fully thought-through. This responsibility was not used in the conflict in Darfur from 2003 onwards, despite the large-scale civilian casualties: it looked unlikely that one-off strikes would have any effect, and no-one was prepared to intervene on a large enough scale to change the nature of the conflict.

# 2NC

#### Talk is cheap. The international community won’t just believe the plan unless there is proof of compliance – vote neg on presumption.

Alston 11 (Philip, John Norton Pomeroy Professor of Law, New York University School of Law, Harvard National Security Journal, “The CIA and Targeted Killings Beyond Borders”, 2 Harv. Nat'l Sec. J. 283, Lexis Law)

Before moving to consider the Obama administration's approach to these issues, it is important to underscore the fact that we are talking about two different levels of accountability. The first is that national procedures must meet certain standards of transparency and accountability in order to meet existing international obligations. The second is that the nationalprocedures must themselves be sufficiently transparent tointernational bodies as to permit the latter to make their ownassessment of the extent to which the state concerned is in compliance with its obligations. In other words, *even in situations in which states argue that they put in place highly impartial and reliable accountability mechanisms, the international community cannot be expected to take such assurances on the basis of faith rather than of convincing information*. Assurances offered by other states accused of transgressing international standards would not be accepted by the United States in the absence of sufficient information upon the basis of which some form of verification is feasible. Since the 1980s, the phrase "trust but verify" n104 has been something of a mantra in the arms control field, but it is equally applicable in relation to IHL and IHRL. The United States has consistently demanded of other states that they demonstrate to the international community the extent of their compliance with international standards. A great many examples could be cited, not only from the annual State Department reports on the human rights practices of other states, but also from a range of statements by the President and the Secretary of State in relation to countries like Egypt, Libya, and Syria in the context of the Arab Spring of 2011. [\*318] Since I began this section of the Article by citing the emphasis on accountability adopted by the UN report on Sri Lanka, it is appropriate to conclude by reference to the position taken by the United States in that regard. Sri Lanka argued that it had undertaken its own national inquiry into alleged violations of international law committed in the final phases of its civil war and that such an inquiry satisfied whatever accountability obligations the government had. In August 2011, however, the United States called upon Sri Lanka to submit the report of that national inquiry directly to the UN Human Rights Council so that it could be scrutinized by the international community and demonstrate that it "meets international standards." n105 In other words, the two levels of accountability are ultimately separate, and national insistence on the adequacy of domestic procedures can never be considered a substitute for the degree of transparency required to enable the international community to discharge its separate monitoring obligations. We turn now to take note of the position taken in terms of the applicable international law by the Obama administration. C. The Obama Administration and International Law The United States has consistently affirmed its commitment to the general principles of transparency and accountability and its broader commitment to comply with all of its international obligations. The Army Field Manual, for example, highlights the need for the United States to respect the rule of law in its military activities: Law and policy govern the actions of the U.S. forces in all military operations, including counterinsurgency. For U.S. forces to conduct operations, a legal basis must exist. This legal basis profoundly influences many aspects of the operation.

#### Finally precision is vital—turns solvency and research quality

**Resnick 1** [Evan Resnick, Journal of International Affairs, 0022197X, Spring 2001, Vol. 54, Issue 2, “Defining Engagement”]

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

### AT: perm

#### First, -Doesn’t solve prez powers - congressional silence is key

Bellia 2

[Patricia, Professor of Law @ Notre Dame, “Executive Power in Youngstown’s Shadows” Constitutional Commentary, , 19 Const. Commentary 87, Spring, Lexis]

To see the problems in giving dispositive weight to inferences from congressional action (or inaction), we need only examine the similarities between courts' approach to executive power questions and courts' approach to federal-state preemption questions. If a state law conflicts with a specific federal enactment, n287 or if Congress displaces the state law by occupying the field, n288 a court cannot give the state law effect. Similarly, if executive action conflicts with a specific congressional policy (reflected in a statute or, as Youngstown suggests, legislative history), or if Congress passes related measures not authorizing the presidential conduct, courts cannot give the executive action effect. n289 When Congress is silent, however, the state law will stand; when Congress is silent, the executive action will stand. This analysis makes much sense with respect to state governments with reserved powers, but it makes little sense with respect to an Executive Branch lacking such powers. **The combination of** congressional silence **and judicial inaction** has the **practical** effect of creating power. Courts' reluctance to face questions about the scope of the President's constitutional powers - express and implied - creates three other problems. First, **the implied** presidential power given **effect** by virtue ofcongressional silence **and judicial inaction** can solidify into a broader claim**. When the Executive exercises an "initiating"** or "concurrent" **power, it will tie that power to a textual provision or to a claim about the structure of the Constitution.** Congress's silence **as a practical matter** tends to validate theexecutive rationale, and the Executive **Branch** maythen claim a power not only to exercise the **disputed** authority in the face of congressional silence, but also **to exercise the disputed authority** inthe face of congressional opposition. In other words, a power that the Executive Branch claims is "implied" in the Constitution may soon become an "implied" and "plenary" one. Questions about presidential power to terminate treaties provide a  [\*151]  ready example. The Executive's claim that the President has the power to terminate a treaty - the power in controversy in Goldwater v. Carter, where Congress was silent - now takes a stronger form: that congressional efforts to curb the power are themselves unconstitutional. n290

### AT: Object Fiat Theory

#### No link: Object of the resolution is “authority” not “war powers”--restricting authority requires reducing the permission to act, not the ability to act.

#### Taylor, 1996 (Ellen, 21 Del. J. Corp. L. 870 (1996), Hein Online)

The term authority is commonly thought of in the context of the law of agency, and the Restatement (Second) of Agency defines both power and authority.'89 Power refers to an agent's ability or capacity to produce a change in a legal relation (whether or not the principal approves of the change), and authority refers to the power given (permission granted) to the agent by the principal to affect the legal relations of the principal; the distinction is between what the agent can do and what the agent may do.

#### This is a core legal distinction

Rob Jenkins.—associate professor of English at Georgia Perim¶ 27-year veteran of higher education, as both a faculty member and an administrator April 3, 2012, 12:22 pm¶ How Much Do You Work? <http://chronicle.com/blogs/onhiring/author/rjenkins/page/5>. Gender edited

Anytime the President of the United States sends American servicemen and women into harm’s way, politicians and pundits are sure to argue over whether or not [s]he has the authority to do so. I’m not qualified to participate in that kind of constitutional debate. But I can offer the following observation: whether or not the President has the authority to deploy troops in a given situation, [s]he certainly has the power to do so. That’s because authority and power are not the same thing, even though many leaders fail to grasp the distinction. In particular, an alarming number of academic administrators these days don’t seem to understand the difference between exercising duly constituted authority and merely wielding power. Authority is essentially the capacity to carry out one’s duties and responsibilities. Faculty members have the authority to assign final grades, because doing so is one of their responsibilities. Likewise, department chairs have authority to evaluate faculty members, deans have authority to assign faculty lines, presidents have authority to determine budgets, and so on. For authority to be valid, it must be ceded, which is to say derived from something larger than itself. The officers of a college, for instance, typically derive their authority from elected or appointed boards. At an institution that truly embraces the principles of shared governance, other stakeholders are also ceded authority in certain areas by the properly constituted bylaws and policies of the institution–for example, the faculty’s authority over curricular issues. Even a college president does not have the authority, outside of the policies by which all are bound, to tell faculty members how to teach, how to conduct research, or what to write. However, this does not mean that presidents and other administrators do not sometimes take such authority upon themselves. They can do so, even if illegitimately, because of the enormous power they wield. Power is something quite different from authority. It tends to be seized rather than ceded. It is essentially the ability to force others to conform to one’s wishes, whether they want to or not, because of what might happen to them if they don’t. People with power can make other people’s lives miserable, prevent them from getting promotions and raises, perhaps cost them their jobs–even when such actions are not strictly within their properly ceded authority.

#### If they win the link-

#### Interpretation: CP’s can’t fiat the direct object of the resolution.

#### The president is the beneficiary of the direct object, which is presidential war powers- means the CP restricts the INDIRECT object of the resolution.

#### Ground-impossible to compete without the counterplan -private bodies can’t affect statutes or courts AND impossible to predict aff mechanisms due to multitude of ways congress/courts can limit presidential powers – need the cp to soak all of them up

#### OR limits us to international actor counterplans which is infinitely worse- we’ll just pick a new country every round, impossible to predict

#### Education- Executive self-restraint versus oversight by congress or the courts is the core of the topic- comparative solvency lit also solves your education and abuse claims

**Sales 2012** – Assistant Professor of Law, George Mason University School of Law (7/3, Nathan Alexander, Journal of National Security Law & Policy, 6.227, “Self-Restraint and National Security”)

With this framework in mind, we can begin to offer some preliminary ¶ hypotheses about why national security officials sometimes adopt selfrestraints. From a policymaker’s standpoint, the expected benefits of a ¶ national security operation often will be dwarfed by its expected costs ¶ (enemy propaganda, loss of national prestige, individual criminal liability, ¶ and so on). For **rational policymakers**, the welfare maximizing choice ¶ sometimes will be to avoid bold and aggressive operations. Reviewers ¶ likewise can find inaction to be welfare maximizing. For an influence- and ¶ autonomy-maximizing reviewer, vetoing an operation proposed by a ¶ bureaucratic competitor can redistribute power and turf away from one’s ¶ rival and to oneself. Operators, by contrast, are likely to have a very ¶ different cost-benefit calculus. An operator’s expected benefits typically ¶ will be larger than a policymaker’s or a reviewer’s, because he will account ¶ for the psychic income (such as feelings of exhilaration and satisfaction)¶ that accrues to those who personally participate in a mission. As a result, ¶ rational operators may regard a given operation as welfare-enhancing even ¶ when policymakers and reviewers regard the same mission as welfarereducing. ¶ A few observations are needed about the public choice framework ¶ sketched out above – its possibilities and its limitations – before applying it. ¶ This article emphasizes restraints imposed by elements **within the executive** ¶ branch. But the framework also might be used to explain why Congress ¶ sometimes adopts restraints for the government as a whole – i.e., why ¶ Congress enacts legislation restricting the executive’s operational authority ¶ more severely than is required by domestic law (in this case the ¶ Constitution) or international law. First, there may be an asymmetry in the ¶ legislators’ expected value calculations. Members of Congress might ¶ conclude, for example, that the expected costs of conducting mildly ¶ coercive interrogations outweigh the expected benefits and thus enact ¶ legislation banning the military from using any technique not listed in the ¶ Army Field Manual, as it did in the Detainee Treatment Act of 2005.33¶ Second, members might engage in a form of empire building, allocating to ¶ themselves a greater portion of the war powers they share with the ¶ President. For example, Congress might assert its primacy over covert ¶ operations by passing a law prohibiting the President from approving ¶ assassinations, as the Church Committee proposed in the late 1970s.34 Still, ¶ the Executive probably is more likely to adopt restraints than Congress is, ¶ because the Executive’s expected costs of an operation gone wrong usually ¶ will be greater.35 Unlike legislators, executive branch officials face the ¶ prospect of personal legal liability for approving or participating in ¶ operations that are alleged to violate domestic or international law.36

#### If you focus topic on the nature of the restriction, it achieves the legal purpose of the topic- which is the goal of the topic- not about determining actions good/bad but if his authority is

#### -legal education is good- every other topic is a policy question, never learn about the ways policy interacts with law

#### Reject the argument not the team

#### Always evaluate the status quo because losing the cp doesn’t prove the aff is a good idea

# 1nr

### Add-On

No Impact-

Parsons and Hennessey, 3-25-2014

[Christi Parsons and Kathleen Hennessey, President Obama says Russia seized Crimea 'out of weakness' http://www.latimes.com/world/europe/la-fg-obama-europe-20140326,0,5939653.story#ixzz2xLu9h6sV] /Wyo-MB

President Obama has shunned comparisons to the Cold War era on his trip to Europe this week, focusing on diplomacy while saying Russia is no longer a global power.¶ On Tuesday he sought to calm allies rattled by Moscow's seizure of Crimea from Ukraine, pointedly referring to the United States as "the most powerful nation in the world."¶ "Russia is a regional power that is threatening some of its immediate neighbors — not out of strength, but out of weakness," Obama said. "The fact that Russia felt compelled to go in militarily and lay bare these violations of international law indicates less influence, not more."¶ Obama's comments during a news conference in The Hague came at the end of a two-day summit on nuclear security. He is scheduled to give a speech Wednesday in Brussels, where he is expected to argue that the world remains undeterred in its turn toward democracy.¶ The president wants to reassure Americans that the U.S. is not poised to go to war over Ukraine, while pushing back against Republican critics who charge that a renewed Cold War is emerging on his watch and that he is not standing up to his rival.¶ He rejected the contention, made by then-GOP presidential candidate Mitt Romney, that Russia was the most serious threat to U.S. interests. "They don't pose the No. 1 national security threat to the United States," Obama said, adding that he was much more worried about a terrorist attack in Manhattan.¶ As he has done in private meetings all week, Obama will make the case in his address to college students and others at the Palais des Beaux-Arts in Brussels that democracy, human rights and civil society were the winners in the decades-long standoff between the Soviet Union and the West, although that progress may be tested from time to time.

#### No more Russian expansionism—moving to stability and diplomacy now

Golubkova, 3-29-14

[Katya, Reuters, Russia says has "no intention" of further Ukraine incursion, http://www.reuters.com/article/2014/03/29/us-ukraine-crisis-russia-idUSBREA2S06J20140329] /Wyo-MB

(Reuters) - Russia said on Saturday it had "no intention" of invading eastern Ukraine, responding to Western warnings over a military buildup on the border following Moscow's annexation of the Crimean peninsula.¶ Foreign Minister Sergei Lavrov, speaking on Russian television, reinforced a message from President Vladimir Putin that Russia would settle - at least for now - for control over Crimea despite massing thousands of troops near Ukraine's eastern border. "We have absolutely no intention of - or interest in - crossing Ukraine's borders," Lavrov said.¶ But he added that Russia was ready to protect the rights of Russian speakers, referring to what Moscow sees as threats to the lives of compatriots in eastern Ukraine since Moscow-backed Viktor Yanukovich was deposed as president in February.¶ The West imposed sanctions on Russia, including visa bans for some of Putin's inner circle, after Moscow annexed Crimea this month following a referendum on union of the Russian-majority region with the Russian Federation which the West said was illegal.¶ The West has threatened tougher sanctions targeting Russia's stuttering economy if Moscow sends more troops to Ukraine. U.S. officials said as many as 40,000 may be massed near the border.¶ NATO Secretary General Anders Fogh Rasmussen, in an interview with Germany's Focus magazine, said the alliance was "extremely worried".¶ "We view it as a concrete threat to Ukraine and see the potential for further interventions," said Rasmussen, who is due to leave the post in October.¶ "I fear that it is not yet enough for him (Putin). I am worried that we are not dealing with rational thinking as much as with emotions, the yearning to rebuild Russia's old sphere of influence in its immediate neighborhood."¶ FEDERAL UKRAINE¶ In a sign, however, that Putin may be ready to reduce tension in the worst East-West standoff since the Cold War, the Russian leader called U.S. President Barack Obama on Friday to discuss a U.S. diplomatic proposal for Ukraine.¶ The White House said Obama told Putin that Russia must pull back its troops and not move deeper into the ex-Soviet republic.¶ The Kremlin said Putin had suggested "examining possible steps the global community can take to help stabilize the situation.

Your solvency- plan doesn’t do this-

Congress Should Get to the Bottom of This Adopting a doctrine that compels the United States to satisfy a checklist before preventing atrocities occurring in other countries is imprudent. U.S. freedom of action would be compromised if the United States consented to be legally or morally bound by the R2P doctrine. The United States must instead preserve its national sovereignty by maintaining a monopoly over the decision to deploy its military forces. Relevant committees in both houses of Congress should hold hearings to determine the purpose for

### 2NC Impact Overview

**DA outweighs and turns case**

#### Constrained executive can’t respond deter existential threats of prolif, terror, and maintain balance of power- that’s Waxman-

#### [2.] Outweighs

#### -Probability: Legislative and judicial review guarantees crises escalate before the military can respond effectively- Waxman says Obama needs speed, secrecy, and dispatch

#### -Magnitude: unchecked, rapidly shifting threats leave our country exposed to the threat of extinction- only quick response solves- turns prolif-

#### -Timeframe: threats spiral quickly-will try to act in window of time that it takes to decide a course of action

**Turns norms- Weakness is the biggest internal link into credibility**

**GRACIA 2013** - political scientist and a former senior adviser to the Human Services and International Affairs committees at the Hawaii State Legislature, Danny de Gracia, “DE GRACIA: How Obama’s scandals weaken U.S. diplomacy and security”, June 12, 2013, http://communities.washingtontimes.com/neighborhood/making-waves-hawaii-perspective-washington-politic/2013/jun/12/de-gracia-how-obamas-scandals-weaken-us-diplomacy-/

Once a bright light among nations for freedom, innovation and prosperity, the United States of America is now in its death throes as a collapsing empire. Even as large stars that burn out in space often transform into black holes, America’s burdensome government is turning the entire nation into a swirling gyre of political darkness, scandal and public discontent. Nations that are prosperous are seldom paranoid. The emphasis on razor-wire defined borders guarded by assault rifle toting paramilitaries and internal security maintained by armies of secret police is a mark of third world scarcity rather than first world prosperity. When a nation is prosperous, its emphasis is on advancing commerce, science, exploration, philosophy and the arts. When a nation is weak, the apparatus of the state is **directed towards** counterinsurgency, **anti-terrorism**, border security **and internal suppression**. Since all states are at their core a compulsory jurisdictional monopoly for determining the “price” of justice and security, the worse an economy gets, the more a state’s security apparatus is deployed as a pretext for revenue collection. As Thucydides famously wrote in History of the Peloponnesian War, “the revenues of the state increasing, tyrannies were by their means established almost everywhere.” The problem that President Barack Obama faces in this state of decline is that America’s **allies and enemies alike** are carefully observing the health of the United States. What political scientists call high politics ― the realm of decision-making that involves matters of national survival ― is very much **a game of perception**. Foreign **leaders constantly ponder** whether it is in their nation’s best interest to **continue to side with the U**nited **S**tates or whether they should develop their own regional alliances and security agreements. As an example, the question of whether to side with the United States on matters involving Syria or to side with Russia and China increasingly **hinges on whether the U.S. is perceived as a reliable power**. The message that Obama’s wave of scandals projects to the world is that the United States is becoming increasingly unstable and her leadership’s diplomatic assurances may not be at all sincere or enforceable. This ultimately restricts our future diplomatic credibility and national security.

### T’s Terror

**Constrained executive makes it impossible to respond to the rapid and existential nature of the threat posed by terrorism-strong, flexible executive key to check nuclear, chemical, and biological attacks**

**Royal 2011**

[John Paul, Fellow of the Institute for World Politics, 2011, War Powers and the Age of Terrorism, <http://www.thepresidency.org/storage/Fellows2011/Royal-_Final_Paper.pdf>, uwyo//amp]

The international system itself and national security challenges to the United States in particular, underwent rapid and significant change in the first decade of the twenty-first century. War can no longer be thought about strictly in the terms of the system and tradition created by the Treaty of Westphalia over three and a half centuries ago**. Non-state actors now possess a level of destructiveness formerly enjoyed only by nation states. Global terrorism, coupled with the threat of weapons of mass destruction** developed organically or obtained from rogue regimes, **presents new challenges to U.S. national security and place innovative demands on the Constitution’s system of making war. I**n the past, as summarized in the 9/11 Commission Report, threats emerged due to hostile actions taken by enemy states and their ability to muster large enough forces to wage war: “Threats emerged slowly, often visibly, as weapons were forged, armies conscripted, and units trained and moved into place. **Because large states were more powerful, they also had more to lose. They could be deterred"** (National Commission 2004, 362). This mindset assumed that peace was the default state for American national security. Today however, **we know that threats can emerge quickly. Terrorist organizations** half-way around the world **are able to wield weapons of unparalleled destructive power. These attacks are more difficult to detect and deter due to their unconventional and asymmetrical nature. In light of these new asymmetric threats** and the resultant changes to the international system, **peace can no longer be considered the default state of American national security. Many have argued that the Constitution permits the president to use unilateral action only in response to an imminent direct attac**k on the United States. In the emerging security environment described above, **pre-emptive action taken by the executive branch may be needed more often than when nation-states were the principal threat** to American national interests. Here again, the 9/11 Commission Report is instructive as it considers the possibility of pre-emptive force utilized over large geographic areas due to the diffuse nature of terrorist networks: In this sense, 9/11 has taught us that terrorism against American interests “over there” should be regarded just as we regard terrorism against America “over here.” In this sense, the American homeland is the planet (National Commission 2004, 362). Furthermore, the report explicitly describes the global nature of the threat and the global mission that must take place to address it. Its first strategic policy recommendation against terrorism states that **the: U.S. government must identify and prioritize actual or potential terrorist sanctuaries.** For each, it should have a realistic strategy to keep possible terrorists insecure and on the run, using all elements of national power (National Commission 2004, 367). Thus, **fighting continues against terrorists in Afghanistan, Yemen, Iraq, Pakistan, the Philippines, and beyond,** as we approach the tenth anniversary of the September 11, 2001 attacks. **Proliferation of weapons of mass destruction (WMD), especially nuclear weapons, into the hands of these terrorists is the most dangerous threat to the United States**. We know from the 9/11 Commission Report that A**l Qaeda has attempted to make and obtain nuclear weapons for at least the past fifteen years. Al Qaeda considers the acquisition of weapons of mass destruction to be a religious obligation** **while “more than two dozen other terrorist groups are pursing CBRN [chemical, biological, radiological, and nuclear] materials**” (National Commission 2004, 397). Considering these statements**, rogue regimes** that are openly hostile to the United States and have or seek to develop nuclear weapons capability such as North Korea and Iran, **or extremely unstable nuclear countries such as Pakistan, pose a special threat to American national security interests**. These nations were not necessarily a direct threat to the United States in the past. Now, however, **due to proliferation of nuclear weapons and missile technology, they can inflict damage at considerably higher levels** and magnitudes than in the past. In addition, **these regimes may pursue proliferation of nuclear weapons and missile technology to other nations and to allied terrorist organizations. The United States must pursue condign punishment and appropriate, rapid action against hostile terrorist organizations, rogue nation states, and nuclear weapons proliferation threats in order to protect American interest**s both at home and abroad. Combating these threats are the “top national security priority for the United States…with the full support of Congress, both major political parties, the media, and the American people” (National Commission 2004, 361). **Operations may take the form of pre-emptive and sustained action against those who have expressed hostility or declared war on the United States. Only the executive branch can effectively execute this mission,** authorized by the 2001 AUMF. If the national consensus or the nature of the threat changes, Congress possesses the intrinsic power to rescind and limit these powers.

### T’s Warming

#### Strong executive key to solve climate change-lack of congressional action prevents solvency in the squo and executive negotiating power key to check environmental and economic collapse

Wold 2012

[Chris Wold, Professor of Law & Director, International Environmental Law Project

(IELP), 2012, Lewis & Clark Law School, 2012, CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL. 45·2012, uwyo//amp]

In 2007, then-Senator Barack Obama wrote, “As the world’s largest producer of greenhouse gases, America has the responsibility to lead.”1 As President, he has led. At the domestic level, working primarily through the Environmental Protection Agency, President Obama has increased fuel economy standards,2 imposed new limits ongreenhouse gas emissions from “major emitting facilities,”3 and imposed limits on emissions relating to the development of oil and gas,4 among many other things.5 As he has said, he must use his executive power because “We Can’t Wait” for Congress to act on climate change.6 Nonetheless, he must do more. President Obama has pledged to the international community that the United States will reduce its greenhouse gases by 17% of 2005 levels by 2020 and by 83% by 2050.7The President has also set a goal of ensuring that “[b]y 2035 we will generate 80 percent of our electricity from a diverse set of clean energy sources—including renewable energy sources like wind, solar, biomass, and hydropower; nuclear power; efficient natural gas; and clean coal.”8 None of his actions come close to meeting these goals. Moreover, he must do more to help the international community reach its goal of keeping average global temperatures from increasing 2°C above pre-industrial levels.9 Many scientists argue that the 2°C goal can be met, and the worst impacts of climate change avoided, if we keep carbon dioxide concentrations below 350 parts per million (ppm).10 As of July 2012, atmospheric concentrations of carbon dioxide exceeded 394 ppm.11 The United States is by far the largest historic contributor to these high levels of atmospheric carbon dioxide, having contributed 28.52% of carbon dioxide from energy.12 As such, the United States must do much more to ensure that the world’s largest historic emitter of greenhouse gases fulfills its moral and perhaps legal obligation to reduce greenhouse gases before we reach climate change tipping points beyond which climate change will be irreversible for millennia to come.And indeed, President Obama can do much more. As described below, the president can use his foreign affairs power to take a more positive role on the international stage, whether that stage is the climate change negotiations, the negotiations concerning other international treaties, or within the World Trade Organization. He can also do more with his executive power, not only by increasing existing standards but also by applying them to existing sources of greenhouse gases, not just new sources. Further, President Obama has so far failed to take advantage of strategies to mitigate emissions of short-term climate forcers such as black carbon that could provide significant climate benefits. Lastly, the approaches adopted so far have not pushed regulated entities or others to develop the transformative technologies that will be needed to deliver sufficient climate change benefits to avert the environmental and economic crisis that lies ahead if we fail to take more aggressive action.

### Add-On

**Warfighting key to contain NoKo**

**Nzelibe & Yoo 06**

[Jide Nzelibe and John C. Yoo. , Yoo is a professor of law at the University of California at Berkeley School of Law , ,Rational war and constitutional design.(Symposium on Executive Power).

Yale Law Journal 115.9 (July 2006): p2512(30), uwyo//amp]

**The declining value of costly signals is counterbalanced by the benefit of using preemptive force against terrorists and rogue states**. As September 11 showed, terrorist attacks can occur without warning because their unconventional nature allows their preparation to be concealed within the normal activities of civilian life. Terrorists have no territory or regular armed forces from which to detect signs of an impending attack. To defend itself from such an enemy, the United States might need to use force earlier and more often than was the norm during a time when nation-states generated the primary threats to American national security. (63) As with terrorism, **the threat posed by rogue nations may again require the United States to use force earlier and more often** than it would like. (64**) Rogue nations may very well be immune to pressure short of force designed to stop their quest for WMD** or their threat to the United States. **Rogue nations**, for example, **have isolated themselves** from the international system, are less integrated into the international political economy, and repress their own populations. **This makes them less susceptible to** diplomatic or other means of resolving disputes short of force, such as economic **sanctions. Lack of concern for their own civilian populations renders the dictatorships that often govern rogue nations more resistant to deterrence. North Korea,** for example, **appears to have continued its development of nuclear weapons despite** years of diplomatic measures to change its course. (65) These new threats to American national security change the way we think about the relationship between the process and substance of the warmaking system. The international system as it existed at the end of the Cold War allowed the United States to choose a warmaking system that could have placed a premium on deliberation and the approval of multiple institutions, whether for purposes of political consensus (and hence institutional constraints that lower the expected value of war) or for purposes of signaling private information in the interests of reaching a peaceful bargain. If, however, the nature of threats has changed and the level of threats has increased, and military force is the most effective means for responding to those threats, then it may make more sense for the United States to use force preemptively. **Given the threats posed by WMD proliferation, rogue nations, and international terrorism**, at the very least it seems clear **that we should not adopt a warmaking process that contains a built-in presumption against using force abroad or that requires long and deliberate procedures. T**hese developments in the international system may demand that the United States have the ability to use force earlier and more quickly than in the past. In order to forestall a WMD attack, or to take advantage of a window of opportunity to strike at a terrorist cell**, the executive branch needs the flexibility to act quickly, possibly in situations in which congressional consent cannot be obtained in time to act on the intelligence**. These cases suggest that a permanent constitutional rule requiring **congressional permission to use force would be over-inclusive.** In certain situations, particularly when the United States is facing a nation-state with a similar political system or one that can draw on a sophisticated understanding of foreign nations, signaling through congressional participation may prove valuable. But **costly signals may prove ineffective in other situations, particularly when the opponent is a rogue state** or an international terrorist organization. There may be little value in revealing private information through legislative commitments if the opponent does not understand the meaning of congressional participation or does not share a common value system that would allow a bargain to be struck. In other words, the signaling model that underwrites the value of congressional participation breaks down when confronted with these opponents. In such cases, we might conclude that **the benefits of swift, even preemptive military action might outweigh the potential effectiveness of signaling.** These considerations suggest that a two-tier approach to war powers might be desirable, in which conflicts with similar nation-states should involve congressional authorization, which can only assist the executive branch in reaching a bargain with a foreign nation. But **if the opponent is a terrorist organization or a rogue nation, the United States might be better off retaining a system of executive initiative in war**. We should make an important clarification. Our argument does not preclude the possibility that some nondemocractic regimes could understand the informational value of legislative signaling, but it assumes that democratic regimes are more likely to appreciate such signals. In some circumstances, the President might seek legislative authorization for the use of force against nondemocractic states to improve the chances of a peaceful settlement. But it will depend on the circumstances and on whether the benefits of such a signal would be outweighed by the costs of delay. We believe that **the President is best suited, as a structural matter, to determine whether to seek to signal a nondemocractic regime with legislative authorization.**

**An unchecked North Korea causes global catastrophe**

**Hayes and Green, 10**

[\*Victoria University AND Executive Director of the Nautilus Institute (Peter and Michael, “-“The Path Not Taken, the Way Still Open: Denuclearizing the Korean Peninsula and Northeast Asia”, 1/5, http://www.nautilus.org/fora/security/10001HayesHamalGreen.pdf) uwyo//amp]

**The consequences of failing to address the proliferation threat posed by the North Korea developments, and related political and economic issues, are serious, not only for the Northeast Asian region but for the whole international community. At worst, there is the possibility of nuclear attack1, whether by intention, miscalculation, or merely accident, leading to the resumption of Korean War hostilities.** On the Korean Peninsula itself, **key population centres are well within short or medium range missiles.** **The whole of Japan is likely to come within North Korean missile range**. Pyongyang has a population of over 2 million, Seoul (close to the North Korean border) 11 million, and Tokyo over 20 million. **Even a limited nuclear exchange would result in a holocaust of unprecedented proportions. But the catastrophe within the region would not be the only outcome. New research indicates that even a limited nuclear war in the region would rearrange our global climate far more quickly than global warming.** Westberg draws attention to new studies modelling the effects of even a limited nuclear exchange involving approximately 100 Hiroshima-sized 15 kt bombs2 (by comparison it should be noted that the United States currently deploys warheads in the range 100 to 477 kt, that is, individual warheads equivalent in yield to a range of 6 to 32 Hiroshimas).The studies indicate that **the soot from the fires produced would lead to a decrease in global temperature by 1.25 degrees Celsius for a period of 6-8 years**.3 In Westberg’s view: **That is not global winter, but the nuclear darkness will cause a deeper drop in temperature than at any time during the last 1000 years.** The temperature over the continents would decrease substantially more than the global average. **A decrease in rainfall over the continents would also follow…The period of nuclear darkness will cause much greater decrease in grain production than 5% and it will continue for many years...hundreds of millions of people will die from hunger…To make matters even worse, such amounts of smoke injected into the stratosphere would cause a huge reduction in the Earth’s protective ozone.4** These, of course, are not the only consequences. **Reactors might also be targeted, causing further mayhem and downwind radiation effects, superimposed on a smoking, radiating ruin left by nuclear next-use.** Millions of refugees would flee the affected regions. **The direct impacts, and the follow-on impacts on the global economy via ecological and food insecurity, could make the present global financial crisis pale by comparison. How the great powers, especially the nuclear weapons states respond to such a crisis, and in particular, whether nuclear weapons are used in response to nuclear first-use, could make or break the global non proliferation and disarmament regimes. There could be many unanticipated impacts on regional and global security relationships5, with subsequent nuclear breakout and geopolitical turbulence, including possible loss-of-control over fissile material or warheads in the chaos of nuclear war, and aftermath chain-reaction affects involving other potential proliferant states.** The Korean nuclear proliferation issue is not just a regional threat but a global one that warrants priority consideration from the international community.

### Link

#### Statutory restrictions on Presidential authority spills over to affect all of Obama’s war powers- when Congress opposes use of force, they undermine the preident’s ability to convince other states that he’ll see a fight through to the end- that’s Waxman

#### Your Sink and Glaser evidence only assumes credibility, and perception in the abstract but it doesn’t assume the distinction between stat restrictions- and perception-

#### Statutory restrictions outweigh flex qs- he still has the physical capacity to use force if need be-- restrictions means he can’t physically act or make swift decisions during wartime- their ev doesn’t assume stat. codification

#### [2.]Syria proves statute outweighs- Obama AUMF over Syria would set precedent for no president to have to statutorily consult congress- means he or she no longer has to navigate political legitimacy for interventions- can blame congress for expanded authority

Eppssep, 13

(“The Senate's Syria Resolution Has a Huge Secret Giveaway to the President”

[GARRETT EPPS](http://www.theatlantic.com/garrett-epps/)SEP former reporter for The Washington Post, is a novelist and legal scholar. He teaches courses in constitutional law and creative writing for law students at the University of Baltimore. Sept 6 2013, http://www.theatlantic.com/politics/archive/2013/09/the-senates-syria-resolution-has-a-huge-secret-giveaway-to-the-president/279421/) KH

The "Whereas" language in the draft AUMF gives significant support to the position that the President has some (uncertain) independent constitutional authority to use force in Syria, regardless of what Congress authorizes, and (perhaps) beyond what Congress authorizes. Since I believe that a unilateral presidential use of force in Syria would [go beyond all past OLC precedents](http://www.lawfareblog.com/2013/08/how-administration-lawyers-are-probably-thinking-about-the-constitutionality-of-the-syria-intervention-and-a-note-on-the-domestic-political-dangers-of-intervention/), the "Whereas" clause as currently drafted is especially important to the President's novel constitutional position.

Note that this astonishing language did not appear in [the administration's own draft authorization](http://www.cnn.com/2013/08/31/us/obama-authorization-request-text/index.html?hpt=hp_t1). Having been asked for broad authority already, the warriors on the Senate Foreign Relations Committee, for all their minimizing language, have in practice widened the White House's mandate -- to the point that, if it is adopted by Congress, neither Barack Obama nor any future president will likely have to come back for additional authority to fight against Syria and its chemical weapons anywhere in the region. And it will have written into law an explicit statement that the president doesn't need authorization to use force anywhere, any time he or she determines that "national security" demands it.

#### Statutory codification crushes warfighting flexibility

Pillar 10

(Paul R., Visiting Professor and Director of Studies of the Security Studies Program in the Edmund A. Walsh School of Foreign Service at Georgetown University. He retired in 2005 from a twenty-eight-year career in the U.S. intelligence community. His senior positions included National Intelligence Officer for the Near East and South Asia, Deputy Chief of the DCI Counterterrorist Center, and Executive Assistant to the Director of Central Intelligence. He is a retired officer in the U.S. Army Reserve, William Mitchell Law Review, “RESPONSES TO THE TEN QUESTIONS,” June 25, 2010 <http://web.wmitchell.edu/national-security-forum/wp-content/uploads/2011/06/12-Pillar-Published-Version-except-1st-page.pdf>)

Statutory enhancement to U.S. national security policy is not primarily a matter of trying to write into law the substance of wise policy. Past attempts to do so, such as congressional restrictions on aid or trade with certain out-of-favor regimes, have produced rigidity and inflexibility that policymakers in the executive branch have overcome only with liberal use of waivers. To be successful, foreign policy needs to be nimble and capable of responding to emergent opportunities and threats. Enshrining any one approach, however wise it may seem at the moment, in a statute precludes the required agility.

#### Congressional restraints spill over to destabilize all presidential war powers.

Heder ’10

(Adam, J.D., magna cum laude , J. Reuben Clark Law School, Brigham Young University, “THE POWER TO END WAR: THE EXTENT AND LIMITS OF CONGRESSIONAL POWER,” St. Mary’s Law Journal Vol. 41 No. 3, <http://www.stmaryslawjournal.org/pdfs/Hederreadytogo.pdf>)

This constitutional silence invokes Justice Rehnquist’s oftquoted language from the landmark “political question” case, Goldwater v. Carter . 121 In Goldwater , a group of senators challenged President Carter’s termination, without Senate approval, of the United States ’ Mutual Defense Treaty with Taiwan. 122 A plurality of the Court held, 123 in an opinion authored by Justice Rehnquist, that this was a nonjusticiable political question. 124 He wrote: “In light of the absence of any constitutional provision governing the termination of a treaty, . . . the instant case in my view also ‘must surely be controlled by political standards.’” 125 Notably, Justice Rehnquist relied on the fact that there was no constitutional provision on point. Likewise, there is **no constitutional provision** on whether Congress has the legislative power to **limit, end, or otherwise redefine the scope of a war**. Though Justice Powell argues in Goldwater that the Treaty Clause and Article VI of the Constitution “add support to the view that the text of the Constitution does not unquestionably commit the power to terminate treaties to the President alone,” 126 **the same cannot be said about Congress’s legislative authority** to terminate or **limit a war** in a way that goes beyond its explicitly enumerated powers. There are no such similar provisions that would suggest Congress may decline to exercise its appropriation power but nonetheless legally order the President to cease all military operations. Thus, the case for deference to the political branches on this issue is even greater than it was in the Goldwater context. Finally, the Constitution does not imply any additional powers for Congress to end, limit, or redefine a war. The textual and historical evidence suggests the Framers purposefully **declined to grant Congress such powers**. And as this Article argues, granting Congress this power would be **inconsistent with the general war powers structure of the Constitution.** Such a reading of the Constitution would **unnecessarily empower Congress** and **tilt the scales heavily in its favor**. More over, it **would strip the President of his Commander in Chief authority** to direct the movement of troops at a time **when the Executive’s expertise is needed.** 127 And fears that the President will grow too powerful are unfounded, given the reasons noted above. 128 In short, the Constitution does not impliedly afford Congress any authority to prematurely terminate a war above what it explicitly grants. 129 Declaring these issues nonjusticiable political questions would be the most practical means of balancing the textual and historical demands, the structural demands, and the practical demands that complex modern warfare brings . Adjudicating these matters would only lead the courts to engage in impermissible line drawing — lines that would both confus e the issue and add layers to the text of the Constitution in an area where the Framers themselves declined to give such guidance.

**Congressional encroachment on the president’s ability to introduce armed forces into hostilities violates the separation of powers and undermines national security**

**Turner 2012**

[Professor Turner holds both professional and academic doctorates from the University of Virginia School of Law, where in 1981 he co-founded the Center for National Security Law with Professor John Norton Moore—who taught the nation’s first course on national security law in 1969. Turner served as chairman of the ABA Standing Committee on Law and National Security from 1989–1992., The War Powers Resolution at 40: Still an Unconstitutional, Unnecessary, and Unwise Fraud That Contributed CASE WESTERN RESERVE JOURNAL OF INTERNATIONAL LAW·VOL. 45·2012, Directly to the 9/11 Attacks, <http://law.case.edu/journals/JIL/Documents/45CaseWResJIntlL1&2.pdf>, uwyo//amp]

[**T]he War Powers resolution** does not work, because it **oversteps the constitutional bounds on Congress’ power to control the Armed Forces** in situations short of war **and** because **it** potentially **undermines our ability to effectively defend our national interests. By enabling Congress to require**—by its own inaction—**the withdrawal of troops from a situation of hostilities, the resolution unduly restricts the authority granted by the Constitution to the President** as Commander in Chief. . . . Although portrayed as an effort “to fulfill—not to alter, amend or adjust—the intent of the framers of the U.S. Constitution,” **the War Powers Resolution** actually **expands Congress’ authority beyond the power to declare war to the power to limit troop deployment** in situations short of war. . . . **The War Powers Resolution therefore threatens not only the delicate balance of power established by the Constitution. potentially undermines America’s ability to effectively defend our national security**.46 On February 29, 1996, it was my honor to take part in a debate on Capitol Hill under the sponsorship of the Center for National Security Law on the proposition that the War Powers Resolution should be repealed. I was paired in the affirmative with the late House Judiciary Committee Chairman Henry Hyde, and our opponents were former House Foreign Affairs and Intelligence committees chairman Lee Hamilton and Dr. Louis Fisher of the Library of Congress. As the debate unfolded, I was pleasantly shocked to hear that neither Representative Hamilton nor my old friend Lou Fisher was willing to actually defend the War Powers Resolution. Shortly thereafter, Lou co-authored an article calling for the statute’s repeal,47 and in 2008 Representative Hamilton served on the bipartisan National War Powers Commission, which unanimously concluded that the War Powers Resolution was unconstitutional and should be repealed.48It

**2NC- UQ**

#### Ext Waxman- Obama has primacy now- maintains broad presidential discretion, and comparatively expansive to Congressional authorization

#### Your Glass evidence is just about perception- means it doesn’t apply, because it’s about Obama having the capacity to issue a threat- and your evidence is from a quote citing Danielle Pletka’s opinions on the President

### 1NC: Statutory Restrictions-High Now

#### New NDAA increases presidential flexibility and signals an end to ongoing congressional opposition.

Kaplan 13

[REBECCA KAPLAN, “Obama signs budget deal, defense authorization bills into law,” CBS NEWS, December 26, 2013, <http://www.cbsnews.com/news/obama-signs-budget-deal-defense-authorization-bills-into-law/> // wyo-cjh]

The other major piece of legislation the president signed was the National Defense Authorization Act, which stalled in the Senate in December before lawmakers were able to pass a slimmed-down version by crafting a compromise bill between Congress’ two chambers and shutting down the opportunities for senators to offer amendments. The law takes some steps to reform the way the military prosecutes sexual assault cases, but lawmakers did not have the opportunity to vote on a proposal from Sen. Kirsten Gillibrand, D-N.Y., to remove the decision to prosecute cases from the chain of command and put them into the hands of independent military prosecutors. It does give Mr. Obama additional flexibility to transfer detainees from Guantanamo Bay abroad, a step toward allowing him to close the facility and make good on a long-held promise first made in his 2008 campaign. The goal has been frustrated by Congressional opposition, among other challenges. The small bit of additional flexibility in the defense bill drew praise from the president as a “positive step” in a signing statement he released Thursday, but he also urged Congress to lift other restrictions that slow down the process of negotiating with foreign countries to transfer detainees and prevent the administration from transferring Guantanamo detainees to the U.S., where they could be tried. These restrictions, Mr. Obama suggested in the statement, are a violation of the constitutional principle of separation of powers. “The executive branch must have the authority to determine when and where to prosecute Guantanamo detainees, based on the facts and circumstances of each case and our national security interests. For decades, Republican and Democratic administrations have successfully prosecuted hundreds of terrorists in Federal court. Those prosecutions are a legitimate, effective, and powerful tool in our efforts to protect the Nation. Removing that tool from the executive branch does not serve our national security interests,” the statement said.

#### Obama being strong on Russia/Ukraine crisis now-latest sanctions target Putin’s inner circle

Gregory March 20th

[Paul Roderick Gregory, Contributor, March 20th, 2014, <http://www.forbes.com/sites/paulroderickgregory/2014/03/20/new-sanctions-no-joke/>, uwyo//amp]

The first reaction to the first round of U.S. and European sanctions against the Russian ruling elite was laughter. Declared one of those singled out: Whoever put these sanctions together is a “joker.” Indeed, the first set of U.S. sanctions was weak and the European sanctions weaker. This is no longer the case. The Western sanctions bite where they hurt. Moreover, the U.S. Treasury has sent Vladimir Putin a chilling warning: We know where your money is, and we can expose you for what you are.” The Treasury hinted at a “direct (financial) relationship” between Putin and owner of a shadowy oil trading company chartered in Switzerland, who happens to be on the sanctions list.¶ President Obama announced today a second round of sanctions imposed on individuals in Putin’s inner circle, a Russian bank, and against key sectors of the Russian economy. Obama recognized that such sanctions will disrupt not only the Russian but also the global economy. However, these penalties are regrettably necessary if we want to live in a 21st century world that respects the sovereignty of nations, declared Obama.¶ Angela Merkel, earlier today, announced in a Bundestag speech that “the G8 is no more,” before leaving for meetings in Brussels to plan the response to Russia’s violations of international law. Notably, only the small extreme Left party (die Linke) opposed Merkel’s tough stance on Russia. It is expected that the Europeans will grant Ukraine association status in the EU tomorrow, much to Putin’s chagrin. They will also continue to push for international observers in what Putin claims is the extremist and neo-Nazi dominated Ukraine.¶ The Obama administration’s sanctions list, leaked shortly after his speech by the UK’s well-connected Telegraph, coincides largely with that published by banned Russian blogger-opposition leader, Alexey Navalny, in today’s New York Times (How to Punish Putin). Navalny, a lawyer by training, has devoted his career to exposing corruption at the highest levels of the Putin regime. Navalny’s list, a Who’s Who of Putin’s inner circle, includes Putin’s suspected personal money launderers and bankers and Kremlin-favored oligarchs. Obama’s list spares, for the time being, the heads of Russia’s national oil and gas companies.¶ According to reports from the Russian web, the U.S. Treasury goes so far as to note that one of those sanctioned, a founder of the shadowy Russian oil trading company, Gunvor, one Gennady Timchenko, “has a direct relationship to Vladimir Putin.”¶ The furious Putin regime published its own list of sanctions of U.S. figures, most notably, Senator John McCain. Included in the list are none other than Harry Reid and John Boehner. I doubt if any of the U.S. officials have hidden bank accounts in Russia or will be inconvenienced by a ban on travel to Russia.¶ The freezing of assets and visas of the inner circle cannot be spun as a “joke” even by Putin’s spin masters. Any bravado from those sanctioned will be whistling past the graveyard. Moreover, those spared, such as the heads of the national oil and gas companies, must wait for the axe to fall.¶ The impact of these sanctions extends far beyond the inner circle. It sends shudders down the spines of all of Russia’s moneyed elite. Although Putin ordered Russians (presumably excluding his inner circle) to de-offshorize their wealth over a year ago, Russian assets remain conspicuously abroad, concealed behind layers of secrecy that the U.S. Treasury Department can easily penetrate. All Russian citizens with foreign bank accounts, estates, apartments, and children studying at elite Western universities will worry whether they are perhaps next. Among themselves they will whisper: What has this Putin guy got us into? Is there a way to get rid of him?

### AT: Gaffney-

#### Gaffney evidence – Interventions are not successful now because of overstretch and inability to train effectively – no- our ev says Obama will be effective-e

### Link UQ

#### No restrictions-Congress lacks the will

Couch Rozell & Stollenberger Dec. 2013

[Jeffrey Crouch is an assistant professor of American politics at American University.¶ Mark J. Rozell is acting dean and a professor of public policy at George Mason University.¶ Mitchel A. Sollenberger is associate professor of political science at the University of Michigan-Dearborn, Presidential Studies Quarterly, President Obama’s Signing Statements and¶ the Expansion of Executive Power, ProQuest, uwyo//amp]

#### We admit that ﬁnding a solution to presidential abuse of signing statements is not¶ an easy task. Leading scholars who have plowed this ground have not been impressed by¶ either the correctives advocated by the American Bar Association (Fisher 2006) or those¶ initiated by the legislative branch (Fisher 2006; Pﬁffner 2009). We are hopeful that¶ presidents will begin to exercise restraint in the use of this power, and that Congress will¶ be more diligent in using the various traditional powers at its disposal—appropriations,¶ hearings, conﬁrmations, among others—to keep presidents in line. In short, any correc tive against signing statements is only as good as Congress’s willingness to push back¶ against executive encroachments. Lawmakers must regain a sense of their institutional¶ prerogatives.

#### No restrictions

#### A. lack of will

Couch Rozell & Stollenberger Dec. 2013

[Jeffrey Crouch is an assistant professor of American politics at American University.¶ Mark J. Rozell is acting dean and a professor of public policy at George Mason University.¶ Mitchel A. Sollenberger is associate professor of political science at the University of Michigan-Dearborn, Presidential Studies Quarterly, President Obama’s Signing Statements and¶ the Expansion of Executive Power, ProQuest, uwyo//amp]We admit that ﬁnding a solution to presidential abuse of signing statements is not¶ an easy task. Leading scholars who have plowed this ground have not been impressed by¶ either the correctives advocated by the American Bar Association (Fisher 2006) or those¶ initiated by the legislative branch (Fisher 2006; Pﬁffner 2009). We are hopeful that¶ presidents will begin to exercise restraint in the use of this power, and that Congress will¶ be more diligent in using the various traditional powers at its disposal—appropriations,¶ hearings, conﬁrmations, among others—to keep presidents in line. In short, any correc tive against signing statements is only as good as Congress’s willingness to push back¶ against executive encroachments. Lawmakers must regain a sense of their institutional¶ prerogatives.

#### B. Just rhetoric—no real restrictions

Traub 2/28

[James Traub, a fellow of the Center on International Cooperation, “Repeal and Restore,” Foreign Policy, Feb 28, 2014, [http://www.foreignpolicy.com/articles/2014/02/28/repeal\_and\_restore\_obama\_end\_war\_on\_terror //](http://www.foreignpolicy.com/articles/2014/02/28/repeal_and_restore_obama_end_war_on_terror%20//) wyo-cjh]

In every supremely lawyered syllable, Obama was saying: It's not a war anymore. If you look very closely at the guidance on the use of lethal force, Obama was agreeing to bind himself to the rules governing behavior in non-battlefield settings, including the requirement of an imminent threat and the high threshold for the avoidance of civilian casualties. The same holds true for Guantánamo, since international law prohibits indefinite detention save during hostilities. If the United States is no longer at war, the president doesn't need extraordinary war powers. Congress granted those powers on Sept. 14, 2001, in the form of the Authorization for Use of Military Force (AUMF), which permits the president to "use all necessary and appropriate force" against the organizations which carried out the attacks of 9/11. The AUMF is the heart of the legal structure of the war on terror. Repealing the statute, more than any single act, would mark the end of that war. In his speech, Obama called on Congress to "refine, and ultimately repeal" the act. Yet he has said virtually nothing on the subject since then. The president has also never identified the moment when he believes he could do without those powers. § Marked 12:45 § How about at the end of this year? That's when all combat troops will have withdrawn from Afghanistan, thus ending the actual "war" of the war on terror. What's more, in his most recent State of the Union speech, Obama said that Guantánamo should close by the end of this year (though that will prove much harder to do). Harold Koh, the former State Department legal counsel, told me that he favors a repeal of the AUMF in the near term, preferably by the end of 2014. Last summer, Rep. Adam Schiff offered a resolution to do just that. It lost, but garnered 180 votes. Schiff told me that he will re-introduce the measure this spring. The AUMF has a reciprocal relationship to the measures it authorizes. If you're not at war, you don't need it. And if you don't have it, you can't engage in war-like acts such as the indefinite detention of belligerents. One very good reason to repeal the AUMF is to make it absolutely clear that the United States does not wish to have that authority. There is, for example, no further justification for indefinite detention. No new inmate has arrived at Gitmo since 2008, and when the United States withdraws combats troops from Afghanistan, it will no longer be encountering adversaries to be detained. If Congress repealed the AUMF, the president would still be able to rely on the powers enumerated in Article II of the Constitution to defend America from attack. Both Harold Koh and Matthew Waxman, a former Bush administration legal official, agree that this would include the authority to use drones -- or special forces -- for targeted missions, so long as they abide by the more stringent terms of the president's 2013 guidance on the use of lethal force. (The president would probably still be able under certain circumstances to order the killing of an American citizen, as he is now reportedly considering.) Nevertheless, a president without war powers would probably shy away from the outer limits of his constitutional prerogatives, looking instead to the other instruments at his disposal to deal with terrorism. The AUMF is, in any case, very nearly obsolete. In Yemen, Somalia, and across North Africa, the United States is no longer fighting al Qaeda but its affiliates. The Supreme Court has ruled that the AUMF covers "associates" of al Qaeda, but demarcating this category has become an increasingly Jesuitical exercise. Especially after the war ends in Afghanistan, courts are going to be skeptical about the invocation of war powers against tenuously linked associates of al Qaeda. For this reason, Waxman and three colleagues have argued for updating the AUMF rather than repealing it, setting out clear criteria for the use of force and compiling a list of terrorist adversaries. That's a sensible response if you think the most important objective is to preserve the president's freedom of action against terrorist groups. But I would say the most important objective is to restore America to itself. That doesn't simply mean forswearing war powers Americans were quick to grant after 9/11. It also means ending the reign of fear that inevitably emerged after the terrorist attacks. Americans still live inside their fear -- or at least their elected representatives behave as if they do. Think of the insane overreaction to the prospect of holding the trials of major figures like Khalid Sheikh Mohammed in civilian courts in the United States, or of transferring such figures to American prisons; or of the convulsive police reaction to the Tsarnaev brothers' bombing, which paralyzed metropolitan Boston; or of the pervasive military presence in so many public spaces. This is a national pathology that must be overcome -- especially before some new terrorist slips through the net and launches a successful strike on U.S. territory. Obama will have excellent political reasons for putting off the repeal of the AUMF. The Republicans will rain down demagoguery from the skies -- especially should a new terror attack occur. And sure, Obama could "refine" the law rather than