# 1nc

### 1nc 1

#### Iran sanctions is top of the docket and Obama is spending capital in persuading Democrats to sustain a veto

**Lobe, 12/27**/13 - reporter for Inter Press Service(Jim, “Iran sanctions bill: Big test of Israel lobby power”

<http://www.arabamericannews.com/news/index.php?mod=article&cat=World&article=8046>)

WASHINGTON - This week’s introduction by a bipartisan group of 26 senators of a new sanctions bill against Iran could result in the biggest test of the political clout of the Israel lobby here in decades.

The White House, which says the bill could well derail ongoing negotiations between Iran and the U.S. and five other powers over Tehran’s nuclear program and destroy the international coalition behind the existing sanctions regime, has already warned that it will veto the bill if it passes Congress in its present form.

The new bill, co-sponsored by two of Congress’s biggest beneficiaries of campaign contributions by political action committees closely linked to the powerful American Israel Public Affairs Committee (AIPAC), would impose sweeping new sanctions against Tehran if it fails either to comply with the interim deal it struck last month in Geneva with the P5+1 (U.S., Britain, France, Russia, China plus Germany) or reach a comprehensive accord with the great powers within one year.

To be acceptable, however, such an accord, according to the bill, would require Iran to effectively dismantle virtually its entire nuclear program, including any enrichment of uranium on its own soil, as demanded by Israeli Prime Minister Benjamin Netanyahu.

The government of President Hassan Rouhani has warned repeatedly that such a demand is a deal-breaker, and even Secretary of State John Kerry has said that a zero-enrichment position is a non-starter.

The bill, the Nuclear Weapon Free Iran Act, also calls for Washington to provide military and other support to Israel if its government “is compelled to take military action in legitimate self-defense against Iran’s nuclear weapon program.”

The introduction of the bill last week by Republican Sen. Mark Kirk and Democratic Sen. Robert Menendez followed unsuccessful efforts by both men to get some sanctions legislation passed since the Geneva accord was signed Nov. 24.

Kirk at first tried to move legislation that would have imposed new sanctions immediately in direct contradiction to a pledge by the P5+1 in the Geneva accord to forgo any new sanctions for the six-month life of the agreement in exchange for, among other things, enhanced international inspections of Iran’s nuclear facilities and a freeze on most of its nuclear program.

Unable to make headway, Kirk then worked with Menendez to draw up the new bill which, because of its prospective application, would not, according to them, violate the agreement. They had initially planned to attach it to a defense bill before the holiday recess. But the Democratic leadership, which controls the calendar, refused to go along.

Their hope now is to pass it – either as a free-standing measure or as an amendment to another must-pass bill after Congress reconvenes Jan. 6.

To highlight its bipartisan support, the two sponsors gathered a dozen other senators from each party to co-sponsor it.

Republicans, many of whom reflexively oppose President Barack Obama’s positions on any issue and whose core constituencies include Christian Zionists, are almost certain to support the bill by an overwhelming margin. If the bill gets to the floor, the main battle will thus take place within the Democratic majority.

The latter find themselves torn between, on the one hand, their loyalty to Obama and their fear that new sanctions will indeed derail negotiations and thus make war more likely, and, on the other, their general antipathy for Iran and the influence exerted by AIPAC and associated groups as a result of the questionable perception that Israel’s security is uppermost in the minds of Jewish voters and campaign contributors (who, by some estimates, provide as much as 40 percent of political donations to Democrats in national campaigns).

The administration clearly hopes the Democratic leadership will prevent the bill from coming to a vote, but, if it does, persuading most of the Democrats who have already endorsed the bill to change their minds will be an uphill fight. If the bill passes, the administration will have to muster 34 senators of the 100 senators to sustain a veto – a difficult but not impossible task, according to Congressional sources.

That battle has already been joined. Against the 13 Democratic senators who signed onto the Kirk-Menendez bill, 10 Democratic Senate committee chairs urged Majority Leader Harry Reid, who controls the upper chamber’s calendar, to forestall any new sanctions legislation.

#### It’s a war powers fight that Obama will win – but failure commits the U.S. to supporting Israeli strikes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### That emboldens the opposition and collapses the deal

**Muhammad, 12/31**/13 – cites David Bositis, Vice President and Senior Research Analyst at the Joint Center for Political and Economic Studies (Askia, The Final Call, “Obama's burden” <http://www.finalcall.com/artman/publish/National_News_2/article_101094.shtml>

In foreign affairs, the President’s burden is made even more awkward by dug-in opposition by leaders of both parties here in this country. Despite unprecedented breakthroughs on his watch with Syria concerning its stockpile of chemical weapons, and with Iran concerning its nuclear enrichment plans, the Israel-lobby would prefer more saber-rattling and possible military action than any peaceful resolution. Other challenges are complicated by some of Mr. Obama’s own decisions.

“On the international level,” Dr. Horne explained, “it’s clear that the Obama administration wants to pivot toward Asia, which mean’s China.

“But, you may recall, when he first came into office that was to be accompanied by a reset with Russia, because it’s apparent that the United States confronting Russia and China together is more than a notion. And yet, the Obama administration finds itself doing both.

“Look at its misguided policy towards Ukraine, for example, where it’s confronting Russia head-on, and its confrontation with China off the coast of eastern China. So, I guess in the longer term, it’s probably evident that the most severe challenge for the Obama administration comes from (the) international situation because as we begin to mark the 100th anniversary of the onset of World War I in 2014, it’s evident that unfortunately the international situation today, in an eerie way, resembles some ways the international situation at the end of 1913.

“In the end of 1913 there was a rising Germany, just like there is a rising China. There was a declining Britain, just like there is a declining United States of America, and we all know the rather morbid consequences of World War I, so it is for that reason that I say that I would say that Mr. Obama’s most severe challenge is in the international arena,” said Dr. Horne.

“In terms of foreign policy, his wanting to negotiate with Iran about their stopping their nuclear program, almost immediately there were people in the Congress speaking out in public who were totally against everything he wanted to do,” said Dr. Bositis.

“There are people who don’t want to put any pressure on Israel about coming to terms with the Palestinians. There are people who are unhappy with what he’s done in terms of Syria,” he said. These stumbling blocks also stand in the way of the President’s ability to deliver on his pre-election promise to close the Guantanamo prison camp where hundreds are being detained, although most have been cleared for release by all U.S. intelligence agencies because they pose no threat to this country. Yet the prisoners languish, some even resorting to hunger strikes because of the hopelessness of their plight, with the U.S. turning to painful force-feeding the inmates to keep them from starving themselves to death.

“Change is always hard,” Ms. Jarrett said Mr. Obama told a group of youth leaders recently. “The Civil Rights Movement was hard. People sacrificed their freedom. They went to prison. They got beat up. Look through our history and then look around the world. It’s always hard. You can’t lose faith because it’s hard. It just means you have to try harder. That’s really what drives him every day,” said Ms. Jarrett.

And at the end of the day, Mr. Obama remains in control and holding all the “trump cards.”

“Remember something,” Dr. Bositis said. “These people can say or make all these claims about Obama, but the fact of the matter is that Obama is president, and he’s going to be president for three more years, and he’s going to have a lot more influence than all of these clowns,” who disparage his leadership.

“He’s not going to blink. He learned that lesson. With these guys, they’re like rapists. If you give them an inch, they will own you,” Dr. Bositis concluded.

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

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

A unilateral Israeli strike on Iran’s nuclear facilities would likely have dire consequences, including a regional war, global economic collapse and a major power clash.

For an Israeli campaign to succeed, it must be quick and decisive. This requires an attack that would be so overwhelming that Iran would not dare to respond in full force.

Such an outcome is extremely unlikely since the locations of some of Iran’s nuclear facilities are not fully known and known facilities are buried deep underground.

All of these widely spread facilities are shielded by elaborate air defense systems constructed not only by the Iranians but also the Chinese and, likely, the Russians as well.

By now, Iran has also built redundant command and control systems and nuclear facilities, developed early warning systems, acquired ballistic and cruise missiles and upgraded and enlarged its armed forces.

Because Iran is well-prepared, a single, conventional Israeli strike—or even numerous strikes—could not destroy all of its capabilities, giving Iran time to respond.

Unlike Iraq, whose nuclear program Israel destroyed in 1981, Iran has a second-strike capability comprised of a coalition of Iranian, Syrian, Lebanese, Hezbollah, Hamas, and, perhaps, Turkish forces. Internal pressure might compel Jordan, Egypt and the Palestinian Authority to join the assault, turning a bad situation into a regional war.

During the 1973 Arab-Israeli War, at the apex of its power, Israel was saved from defeat by President Nixon’s shipment of weapons and planes. Today, Israel’s numerical inferiority is greater, and it faces more determined and better-equipped opponents. After years of futilely fighting Palestinian irregular armies, Israel has lost some of its perceived superiority—bolstering its enemies’ resolve.

Despite Israel’s touted defense systems, Iranian coalition missiles, armed forces, and terrorist attacks would likely wreak havoc on its enemy, leading to a prolonged tit-for-tat.

In the absence of massive U.S. assistance, Israel’s military resources may quickly dwindle, forcing it to use its alleged nuclear weapons, as it had reportedly almost done in 1973.

An Israeli nuclear attack would likely destroy most of Iran’s capabilities, but a crippled Iran and its coalition could still attack neighboring oil facilities, unleash global terrorism, plant mines in the Persian Gulf and impair maritime trade in the Mediterranean, Red Sea and Indian Ocean.

Middle Eastern oil shipments would likely slow to a trickle as production declines due to the war and insurance companies decide to drop their risky Middle Eastern clients. Iran and Venezuela would likely stop selling oil to the United States and Europe.

From there, things could deteriorate as they did in the 1930s. The world economy would head into a tailspin; international acrimony would rise; and Iraqi and Afghani citizens might fully turn on the United States, immediately requiring the deployment of more American troops.

Russia, China, Venezuela, and maybe Brazil and Turkey—all of which essentially support Iran—could be tempted to form an alliance and openly challenge the U.S. hegemony.

Russia and China might rearm their injured Iranian protege overnight, just as Nixon rearmed Israel, and threaten to intervene, just as the U.S.S.R. threatened to join Egypt and Syria in 1973. President Obama’s response would likely put U.S. forces on nuclear alert, replaying Nixon’s nightmarish scenario.

Iran may well feel duty-bound to respond to a unilateral attack by its Israeli archenemy, but it knows that it could not take on the United States head-to-head. In contrast, if the United States leads the attack, Iran’s response would likely be muted.

If Iran chooses to absorb an American-led strike, its allies would likely protest and send weapons but would probably not risk using force.

While no one has a crystal ball, leaders should be risk-averse when choosing war as a foreign policy tool. If attacking Iran is deemed necessary, Israel must wait for an American green light. A unilateral Israeli strike could ultimately spark World War III.

### 1nc 2

#### War powers authority is enumerated in prior statutes---restrictions need to be on a specified source of authority

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

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

#### express Congressional authorization is key

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

Nevertheless, the contextual considerations outlined above support a requirement of more express congressional authorization for the Al‐Marri situation, for several reasons. First, his‐ torical practice is less helpful to the executive in the Al‐Marri context than in Hamdi: When one moves away from individuals connected to the fighting in Afghanistan, one is moving towards something more like indefinite detention, not just detention during active combat. To then apply nontraditional detention authority to individuals residing in U.S. territory is an additional step that further suggests the desirability of multi‐ branch deliberation.

Second,  considerations  of  functional  necessity  also  seem  low here: al‐Marri was already going to be tried in civilian court, and he was a class of one in terms of so‐called enemy combatants currently detained in the United States.44 More‐ over, this class has had a total of only three people during the war on terror, one of whom (Hamdi) was released and the other of whom (Padilla) was eventually tried in a regular ci‐ vilian court. With these facts, it is far from clear that a domes‐ tic military detention authority was necessary in order to fight  the war on terror effectively.

Third, there is also a reasonable argument that Congress had already attempted to regulate the al‐Marri situation in the Pa‐ triot Act because the Act contains provisions that allow for de‐ tention of alien residents suspected of being connected with terrorism, while also disallowing indefinite detention.45 Fourth, the amount of time that had elapsed since the enactment of the AUMF is also relevant, both because a variety of issues have arisen that probably were not anticipated by Congress and because the executive branch has had plenty of time to work with  Congress to obtain more specific legislation.

Finally, although the executive could argue that the deten‐ tion relates to a Commander‐in‐Chief power—interacting with  the enemy—and that Congress had identified al Qaeda as the  enemy, the enemy class is much more uncertain here than in  traditional wars. The al Qaeda organization is a decentralized  and  amorphous  collection  of  groups  with  no  clear  chain  of  command, and affiliation with that organization is both non‐ obvious and varies in extent from individual to individual.

Pushing this issue to Congress would likely produce more guidance for the courts about how to define the enemy class, a difficult issue once one moves beyond a traditional battlefield context. To put it differently, there is a good case here for a “democracy‐forcing” construction of the AUMF, similar to what the Court did in Hamdan.46

What this analysis ultimately suggests is that deciding issues of executive war powers requires contextual and pragmatic judgment rather than resort to abstract classifications, whether they are liberal or conservative in character, some‐ thing that Justice Jackson recognized in his justifiably famous Youngstown concurrence. Jackson’s concurrence is now so celebrated that it is becoming almost de rigueur among legal academics to criticize it, and some aspects of his three‐tiered framework are certainly vulnerable to criticism.47 Neverthe‐ less, as a starting point for the application of judicial review in  cases involving challenges to executive war powers, it still has  much to commend it.

#### Vote neg---

#### Limits---allowing restrictions on potential authorities blows the lid off the topic---makes adequate preparation and clash impossible --- also kills precision

### 1nc 3

#### The United States federal government should limit the war power authority of the president for self-defense targeted killings to outside an armed conflict

#### COUNTERPLAN: The President of the United States should issue an Executive Order committing the executive branch to Solicitor General representation and advance consultation with the Office of Legal Counsel over decisions regarding targeted killings. The Department of Justice officials involved should counsel that the president of the United States should limit the use of self-defense targeted killings tooutside an armed conflict. The Executive Order should also require written publication of Office of Legal Counsel opinions.

#### The counterplan restrains the executive through DOJ adjudication—solves case through pre-commitment

**Pillard 2005** – JD from Harvard, Faculty Director of Supreme Court Institute at Georgetown University Law Center, former Deputy Assistant Attorney General in the DOJ (February, Cornelia T., Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758, http://scholarship.law.georgetown.edu/facpub/189/)

V. ENABLING EXECUTIVE CONSTITUTIONALISM

The courts indisputably do not and cannot fully assure our enjoyment of our constitutional rights, and it is equally clear that the federal executive has an independent constitutional duty to fulfill the Constitution's promise. Executive constitutionalism seems ripe with promise. Yet, it is striking how limited and court-centered the executive's normative and institutional approaches to constitutional questions remain.

One conceivable way to avoid the pitfalls of court-centric executive lawyering on one hand and constitutional decisions warped by political expedience on the other would be to make the Solicitor General and Office of Legal Counsel - or perhaps the entire Department of Justice - as structurally independent as an independent counsel or independent agency.207 Making the SG and OLC independent in order to insulate them from politics presumably would alleviate the "majoritarian difficulty" resulting from their service to elected clients. Promoting fuller independence in that sense does not, however, appear to be clearly normatively attractive, constitutionally permissible, nor particularly feasible. In all the criticism of our current constitutionalism, there is little call for an SG or OLC that would act, in effect, as a fully insulated and jurisprudentially autonomous constitutional court within the executive branch, operating with even less transparency and accountability than the Supreme Court. Moreover, as a practical matter it would be complex and problematic to increase the independence of the SG and OLC. The federal government faces Article II obstacles to formally insulating executive lawyers from politics and institutional pressures, and the president and his administration likely would be less amenable to guidance from such unaccountable lawyers.208

The challenge, rather, is to draw forth from the executive a constitutional consciousness and practice that helps the government actively to seek to fulfill the commitments of the Constitution and its Bill of Rights, interpreted by the executive as guiding principles for government. Adjustments to executive branch constitutional process and culture should be favored if they encourage the executive to use its experience and capacities to fulfill its distinctive role in effectuating constitutional guarantees. There is transformative potential in measures that break ingrained executive branch habits of looking to the Constitution only as it is mediated through the courts, and of reflexively seeking, where there is no clear doctrinal answer, to minimize constitutional constraint. It is difficult fully to imagine what kinds of changes would best prompt executive lawyers and officials to pick up constitutional analysis where the courts leave off, and to rely on the Constitution as an affirmative, guiding mandate for government action; what follows are not worked-out proposals, but are meant to be merely suggestive.

A. Correcting the Bias Against Constitutional Constraint

As we have seen, the SG's and OLC's default interpretive approach to individual rights and other forms of constitutional constraints on government is to follow what clear judicial precedents there are and, where precedents are not squarely to the contrary, to favor interpretations that minimize constitutional rights or other constitutional obligations on federal actors. Those court-centered and narrowly self-serving executive traditions produce a systematic skew against individual rights.

1. Encourage Express Presidential Articulation of Commitment to Constitutional Rights

To the extent that a president articulates his own rights-protective constitutional vision with any specificity, he ameliorates the tension his constitutional lawyers otherwise face between advancing individual rights and serving their boss's presumed interest in maximum governing flexibility. Case or controversy requirements and restrictions against courts issuing advisory opinions do not, of course, apply to the executive's internal constitutional decisionmaking, and presidents can better serve individual rights to the extent that they expressly stake out their constitutional commitments in general and in advance of any concrete controversy."° When the president takes a stand for advancing abortion rights, property rights, disability rights, "charitable choice," a right to bear arms, or full remediation of race and sex discrimination, he signals to his lawyers that they should, in those areas, set aside their default bias in favor of preserving executive prerogative, even if it requires extra executive effort or restraint to do so.

If presented in a concrete setting with a choice between interpreting and applying the Constitution in fully rights-protective ways or sparing themselves the effort where Supreme Court precedent can be read not to require it, government officials typically default to the latter course without considering whether they might thereby be giving short shrift to a constitutional duty. A president's stated commitment to protection of particular rights, however, flips the default position with respect to those rights, acting as a spur to executive-branch lawyers and other personnel to work to give effect to constitutional rights even where, for a range of institutional reasons, the courts would not. A president is thus uniquely situated to facilitate full executive-branch constitutional compliance by precommitting himself to a rights-protective constitutional vision, and thereby making clear that respect for constitutional rights is part of the executive's interest, not counter to it.

#### Disclosure makes the counterplan credible and checks impulsive decisions

**Marguiles 2012** – Professor of Law, Roger Williams University (5/15, Peter, Pepperdine Law Review, Volume 39, Issue 4, Article 1, “Reforming Lawyers into Irrelevance?: Reconciling Crisis and Constraint at the Office of Legal Counsel”, http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1370&context=plr)

\*NOTE: Marguiles not to be confused with Margolis, who worked in the DOJ after John Yoo

1. Disclosure

Disclosure is an important deliberative safeguard. From an ex ante perspective, disclosure protects against fringe views, since the author of an opinion knows that outside audiences will “kick the tires” and quickly discover and critique views that distort the relevant law.242 Disclosure also helps ex post, by allowing Congress, professional peers, and the public to see distortions as they emerge and campaign to correct them.243 Disclosure also works hand in hand with efforts by the President to secure ratification of an unorthodox view that responds to exigent circumstances; disclosure, at least to Congress, is a necessary incident of ratification.244 Certain opinions may contain sensitive information that makes immediate disclosure inappropriate.245 However, Congress could well require as part of its oversight that OLC engage in a deliberative process, including making express findings that become part of an opinion, when such circumstances prevail.

#### Presumptively binding opinions maintain OLC credibility without hurting flexibility

**Morrison 2011** – Professor of Law, Columbia University (Trevor W., Harvard Law Review, ““Hostilities,” the Office of Legal Counsel, and the Process of Executive Branch Legal Interpretation”, 124 HARV. L. REV.F. 62, http://web.law.columbia.edu/sites/default/files/microsites/constitutional-governance/files/Libya-Hostilities-Office-of-Legal-Counsel.pdf)

Once OLC arrived at its conclusion, it should have been clearly conveyed to the relevant parties, ideally in writing. Reducing an opinion to writing is not always possible when time is short, but where it is feasible it helps clarify the precise terms and bounds of OLC’s position. The recipients of OLC’s opinion (whether written or oral) should have regarded it as the presumptively final word on the “hostilities” question. The President certainly retains the authority to overrule OLC, but the traditions of executive branch legal interpretation do not contemplate routine relitigation before the President. Still, on matters of grave consequence where affected agencies strongly disagree with OLC’s analysis, there is nothing categorically inappropriate in their seeking presidential review. Importantly, any such presidential review should proceed on the understanding that OLC’s analysis should be adhered to in all but the most extreme circumstances. Presidential overruling should be rare because it can carry serious costs. To start, it can undermine OLC’s ability to produce legal opinions consistent with its best view of the law. Agency general counsels and the White House Counsel’s Office may approach legal questions not with the goal of seeking the best view of the law, but with the aim of finding the best, professionally responsible legal defense of their client’s preferred policy position. There is nothing wrong with that. But if the President routinely favors legal views of that sort over OLC’s conclusions, the traditional rationale for having an OLC at all will be undermined. OLC’s work product is significant today in large part because of the time-honored understanding that its conclusions are presumptively binding within the executive branch. Routine presidential overruling would weaken the presumption, which in turn would diminish the significance of OLC’s work and reduce its clients’ incentive to seek its views. To remain relevant, OLC would likely start intentionally tilting its analysis in favor of its clients’ (here, the President’s) preferred policies. Put another way, the strong presumption in favor of the authoritativeness of OLC’s analysis provides OLC with the institutional space and cover to provide answers based on its best view of the law. If the former is weakened, the latter is jeopardized.

### 1nc 4

#### Plan prevents NATO collapse – resolves WP disputes

**Parker 12** Tom Parker, formerly policy director for Terrorism, Counterterrorism and Human Rights at Amnesty International USA. He is also a former officer in the British Security Service, “U.S. Tactics Threaten NATO” 9-17-12, <http://nationalinterest.org/commentary/us-tactics-threaten-nato-7461>

The United States conducts such operations under the legal theory that it is in an international armed conflict with Al Qaeda and its affiliates that can be pursued **anywhere on the globe** where armed force may be required. But **not one other member of NATO shares this legal analysis**, which flies in the face of established international legal norms. The United States may have taken issue with the traditional idea that wars are fought between states and not between states and criminal gangs, but its allies have not. The heads of Britain’s foreign and domestic intelligence services have been surprisingly open about the “inhibitions” that this growing divergence has caused the transatlantic special relationship, telling Parliament that it has become an obstacle to intelligence sharing. **European attitudes are not going to change**—the European Court of Human Rights is now deeply embedded in European life, and individual European governments cannot escape its oversight no matter how well disposed they are to assist the United States. The United States has bet heavily on the efficacy of a new array of **counterterrorism powers** as the answer to Al Qaeda. In doing so it has evolved a concept of operations that has much more in common with the approach to terrorist threats taken by Israel and Russia than by its European partners. There has been little consideration of the wider strategic cost of these tactics, even as the Obama administration doubles down and extends their use. Meanwhile, some of America’s oldest and closest allies are beginning to place more and more constraints on working with U.S. forces. NATO cannot conduct military operations under two competing legal regimes for long. **Something has to give—and it may just be the Atlantic alliance.**

#### NATO free-riding causes great power wars

**Posen, 13** – Barry R., Ford International Professor of Political Science and Director of the Security Studies Program at the Massachusetts Institute of Technology (“Pull Back,” Foreign Affairs, Jan/Feb 2013, Print)**Red**

FRIENDS WITHOUT BENEFITS Another problematic response to the United States' grand strategy comes from its friends: **free-riding.** The Cold War alliances that the country has worked so hard to maintain -- namely, **NATO** and the U.S.-Japanese security agreement -- have provided U.S. partners in Europe and Asia with such a high level of insurance that they have been able to steadily shrink their militaries and outsource their defense to Washington. European nations have cut their military spending by roughly 15 percent in real terms since the end of the Cold War, with the exception of the United Kingdom, which will soon join the rest as it carries out its austerity policy. Depending on how one counts, Japanese defense spending has been cut, or at best has remained stable, over the past decade. The government has unwisely devoted too much spending to ground forces, even as its leaders have expressed alarm at the rise of Chinese military power -- an air, missile, and naval threat. Although these regions have avoided major wars, the United States has had to bear more and more of the burden of keeping the peace. It now spends **4.6 percent of its GDP on defense**, whereas its European NATO allies collectively spend **1.6 percent** and Japan spends 1.0 percent. With their high per capita GDPs, these allies can afford to devote more money to their militaries, yet they have **no incentive** to do so. And so while the U.S. government considers draconian cuts in social spending to restore the United States' fiscal health, it continues to subsidize the security of Germany and Japan. This is welfare for the rich. U.S. security guarantees also encourage plucky allies to **challenge more powerful states**, confident that Washington will save them in the end -- a classic case of moral hazard. This phenomenon has caused the United States to incur political costs, **antagonizing powers great and small for no gain** and encouraging them to seek opportunities to provoke the United States in return. So far, the United States has escaped getting sucked into unnecessary wars, although Washington dodged a bullet in Taiwan when the Democratic Progressive Party of Chen Shui-bian governed the island, from 2000 to 2008. His frequent allusions to independence, which ran counter to U.S. policy but which some Bush administration officials reportedly encouraged, unnecessarily provoked the Chinese government; had he proceeded, he would have surely triggered a dangerous crisis. Chen would never have entertained such reckless rhetoric absent the long-standing backing of the U.S. government. The Philippines and Vietnam (the latter of which has no formal defense treaty with Washington) also seem to have figured out that they can needle China over maritime boundary disputes and then seek shelter under the U.S. umbrella when China inevitably reacts. Not only do **these disputes make it harder for Washington to cooperate** with Beijing on issues of global importance; they also risk **roping the U**nited **S**tates **into conflicts** over strategically marginal territory. Georgia is another state that has played this game to the United States' detriment. Overly confident of Washington's affection for it, the tiny republic **deliberately challenged Russia** over control of the disputed region of South Ossetia in August 2008. Regardless of how exactly the fighting began, Georgia acted far too adventurously given its size, proximity to Russia, and distance from any plausible source of military help. This needless war ironically made Russia look tough and the United States unreliable. This dynamic is at play in the Middle East, too. Although U.S. officials have communicated time and again to leaders in Jerusalem their discomfort with Israeli settlements on the territory occupied during the 1967 war, Israel regularly increases the population and dimensions of those settlements. The United States' military largess and regular affirmations of support for Israel have convinced Israeli hawks that they will suffer no consequences for ignoring U.S. advice. It takes two to make peace in the Israeli-Palestinian conflict, but the creation of humiliating facts on the ground will not bring a negotiated settlement any closer. And Israel's policies toward the Palestinians are a serious impediment to improved U.S. relations with the Arab world.

## Case

### No Loose Nukes

#### No loose nukes

**Zenko and Cohen, 12** - \*Micah, Fellow in the Center for Preventive Action at the Council on Foreign Relations, and \*\*Michael A., Fellow at the Century Foundation (“Clear and Present Safety: The United States Is More Secure Than Washington Thinks,” Foreign Affairs, March/April 2012)**Red**

In the past decade, Cheney and other one-percenters have frequently warned of the danger posed by loose nukes or uncontrolled fissile material. In fact, the threat of a nuclear device ending up in the hands of a terrorist group has **diminished markedly** since the early 1990s, when the Soviet Union’s nuclear arsenal was dispersed across all of Russia’s 11 time zones, all 15 former Soviet republics, and much of eastern Europe. Since then, cooperative U.S.-Russian efforts have resulted in the substantial consolidation of those weapons at far fewer sites and in **comprehensive security upgrades** at almost all the facilities that still possess nuclear material or warheads, making the possibility of theft or diversion unlikely. Moreover, the lessons learned from securing Russia’s nuclear arsenal are **now being applied in other countries**, under the framework of Obama’s April 2010 Nuclear Security Summit, which produced a global plan to secure all nuclear materials within four years. Since then, participants in the plan, including Chile, Mexico, Ukraine, and Vietnam, have fulfilled more than 70 percent of the commitments they made at the summit. Pakistan represents another potential source of loose nukes. The United States’ military strategy in Afghanistan, with its reliance on drone strikes and cross-border raids, has actually contributed to instability in Pakistan, worsened U.S. relations with Islamabad, and potentially increased the possibility of a weapon falling into the wrong hands. Indeed, Pakistani fears of a U.S. raid on its nuclear arsenal have reportedly led Islamabad to disperse its weapons to multiple sites, transporting them in unsecured civilian vehicles. But even in Pakistan, the chances of a terrorist organization procuring a nuclear weapon are infinitesimally small. The U.S. Department of Energy has provided assistance to improve the security of Pakistan’s nuclear arsenal, and successive senior U.S. government officials have repeated what former Secretary of Defense Robert Gates said in January 2010: that the United States is “very comfortable with the security of Pakistan’s nuclear weapons.”

### No Terrorism – General

#### Their impact is hype – terrorists suck at what they do

**Mueller and Stewart, 12** – John, Senior Research Scientist at the Mershon Center for International Security Studies and Adjunct Professor in the Department of Political Science, both at Ohio State University, and Senior Fellow at the Cato Institute and Mark G., Australian Research Council Professorial Fellow and Professor and Director at the Centre for Infrastructure Performance and Reliability at the University of Newcastle in Australia (“The Terrorism Delusion,” International Security, vol. 37, no. 1, Summer 2012, Muse //Red)

On September 11, 2001, a tiny group of deluded men—members of al-Qaida, a fringe group of a fringe group with grandiose visions of its own importance—managed, again largely because of luck, to pull off a risky, if clever and carefully planned, terrorist act that became by far the most destructive in history. As with the assassination of President Kennedy, there has been great reluctance to maintain that such a monumental event—however counterproductive to al-Qaida’s purpose—could have been carried out by a fundamentally trivial group, and there has been a consequent tendency to inflate al-Qaida’s importance and effectiveness. At the extreme, the remnants of this tiny group have even been held to present an “existential” threat to the very survival of the United States.1 In the wake of September 11, recalls Rudy Giuliani, mayor of New York at the time of the attacks, “[a]nybody, any one of these security experts, including myself, would have told you on September 11, 2001, we’re looking at dozens and dozens and multiyears of attacks like this.” Journalist Jane Mayer observes that “the only certainty shared by virtually the entire American intelligence community” in the months after September 11 “was that a second wave of even more devastating terrorist attacks on America was imminent.”2 Under the prevailing circumstances, this sort of alarm was understandable, but it does not excuse the experts from dismissing an alternative hypothesis—that the attacks that occurred on that day were an aberration.3 Finally, on May 1, 2012, nearly ten years after the September 2001 terrorist attacks, the most costly and determined manhunt in history culminated in Pakistan when a team of U.S. Navy Seals killed Osama bin Laden, a chief author of the attacks and one of history’s most storied and cartooned villains. Taken away with bin Laden’s bullet-shattered body were written documents and masses of information stored on five computers, ten hard drives, and one hundred or more thumb drives, DVDs, and CD-ROMs. This, it was promised, represented a “treasure trove” of information about al-Qaida—“the mother lode,” said one U.S. official eagerly—that might contain plans for pending attacks.4 Poring through the material with great dispatch, however, a task force soon discovered that al-Qaida’s members were primarily occupied with dodging drone missile attacks, complaining about the lack of funds, and watching a lot of pornography.5 Although bin Laden has been exposed mostly as a thing of smoke and mirrors, and although there has been no terrorist destruction that remotely rivals that inflicted on September 11, the terrorism/counterterrorism saga persists determinedly, doggedly, and anticlimactically onward, and **the initial alarmed perspective has been internalized.** In the process, suggests Glenn Carle, a twenty-three-year veteran of the Central Intelligence Agency where he was deputy national intelligence officer for transnational threats, Americans have become “victims of delusion,” displaying a quality defined as “a persistent false belief in the face of strong contradictory evidence.”6 This condition shows no sign of abating as trillions of dollars have been expended and tens of thousands of lives have been snuffed out in distant wars in a frantic, ill-conceived effort to react to an event that, however tragic and dramatic in the first instance, should have been seen, at least after a few years had passed, to be of limited significance. This article is a set of ruminations on the post–September 11 years of delusion. It reflects, first, on the exaggerations of the threat presented by terrorism and then on the distortions of perspective these exaggerations have inspired—distortions that have in turn inspired a determined and expensive quest to ferret out, and even to create, **the nearly nonexistent.** It also supplies a quantitative assessment of the costs of the terrorism delusion and concludes with a discussion of how anxieties about terrorism persist despite exceedingly limited evidence that much fear is justified. Delusions about the Terrorist “Adversary” People such as Giuliani and a whole raft of “security experts” have **massively exaggerated** the capacities and the dangers presented by what they have often called “the universal adversary” both in its domestic and in its international form. The Domestic Adversary To assess the danger presented by terrorists seeking to attack the United States, we examined the fifty cases of Islamist extremist terrorism that have come to light since the September 11 attacks, whether based in the United States or abroad, in which the United States was, or apparently was, targeted. These cases make up (or generate) the chief terrorism fear for Americans. Table 1 presents a capsule summary of each case, and the case numbers given throughout this article refer to this table and to the free web book from which it derives.7 In 2009, the U.S. Department of Homeland Security (DHS) issued a lengthy report on protecting the homeland. Key to achieving such an objective should be a careful assessment of the character, capacities, and desires of potential terrorists targeting that homeland. Although the report contains a section dealing with what its authors call “the nature of the terrorist adversary,” the section devotes only two sentences to assessing that nature: “The number and high profile of international and domestic terrorist attacks and disrupted plots during the last two decades underscore the determination and persistence of terrorist organizations. Terrorists have proven to be relentless, patient, opportunistic, and flexible, learning from experience and modifying tactics and targets to exploit perceived vulnerabilities and avoid observed strengths.”8 This description may apply to some terrorists somewhere, including at least a few of those involved in the September 11 attacks. Yet, it scarcely describes the vast majority of those individuals picked up on terrorism charges in the United States since those attacks. The inability of the DHS to consider this fact [End Page 87] even parenthetically in its fleeting discussion is not only amazing but perhaps delusional in its single-minded preoccupation with the extreme. In sharp contrast, the authors of the case studies, with remarkably few exceptions, describe their subjects with such words as **incompetent, ineffective, unintelligent**, idiotic, ignorant, inadequate, **unorganized**, misguided, muddled, **amateurish**, dopey, unrealistic, moronic, irrational, and foolish.9 And in nearly all of the cases where an operative from the police or from the Federal Bureau of Investigation was at work (almost half of the total), the most appropriate descriptor would be “gullible.” In all, as Shikha Dalmia has put it, would-be terrorists need to be “radicalized enough to die for their cause; Westernized enough to move around without raising red flags; ingenious enough to exploit loopholes in the security apparatus; meticulous enough to attend to the myriad logistical details that could torpedo the operation; self-sufficient enough to make all the preparations without enlisting outsiders who might give them away; disciplined enough to maintain complete secrecy; and—above all—psychologically tough enough to keep functioning at a high level without cracking in the face of their own impending death.”10 The case studies examined in this article certainly do not abound with people with such characteristics. In the eleven years since the September 11 attacks, no terrorist has been able to detonate even a primitive bomb in the United States, and except for the four explosions in the London transportation system in 2005, neither has any in the United Kingdom. Indeed, the only method by which Islamist terrorists have managed to kill anyone in the United States since September 11 has been with gunfire—inflicting a total of perhaps sixteen deaths over the period (cases 4, 26, 32).11 This limited capacity is impressive because, at one time, small-scale terrorists in the United States were quite successful in setting off bombs. Noting that the scale of the September 11 attacks has “tended to obliterate America’s memory of pre-9/11 terrorism,” Brian Jenkins reminds us (and we clearly do need reminding) that the 1970s witnessed sixty to seventy terrorist incidents, mostly bombings, on U.S. soil every year.12 The situation seems scarcely different in Europe and other Western locales. Michael Kenney, who has interviewed dozens of government officials and intelligence agents and analyzed court documents, has found that, in sharp contrast with the boilerplate characterizations favored by the DHS and with the imperatives listed by Dalmia, Islamist militants in those locations are **operationally unsophisticated, short on know-how, prone to making mistakes**, poor at planning, and limited in their capacity to learn.13 Another study documents the difficulties of network coordination that continually threaten the terrorists’ operational unity, trust, cohesion, and ability to act collectively.14 In addition, although some of the plotters in the cases targeting the United States harbored visions of toppling large buildings, destroying airports, setting off dirty bombs, or bringing down the Brooklyn Bridge (cases 2, 8, 12, 19, 23, 30, 42), all were nothing more than wild fantasies, **far beyond the plotters’ capacities** however much they may have been encouraged in some instances by FBI operatives. Indeed, in many of the cases, target selection is effectively a random process, lacking guile and careful planning. Often, it seems, targets have been chosen almost capriciously and simply for their convenience. For example, a would-be bomber targeted a mall in Rockford, Illinois, because it was nearby (case 21). Terrorist plotters in Los Angeles in 2005 drew up a list of targets that were all within a 20-mile radius of their shared apartment, some of which did not even exist (case 15). In Norway, a neo-Nazi terrorist on his way to bomb a synagogue took a tram going the wrong way and dynamited a mosque instead.15 Although the efforts of would-be terrorists have often seemed pathetic, even comical or absurd, the comedy remains a dark one. Left to their own devices, at least a few of these often inept and almost always self-deluded individuals could eventually have committed some serious, if small-scale, damage.16 The Foreign Adversary As noted, the September 11 terrorist attacks were by far the most destructive in history—no terrorist act before or since has killed more than a few hundred people—and the tragic event seems increasingly to **stand as an aberration, not as a harbinger.** Accordingly, it is surely time to consider that, as Russell Seitz put it in 2004, “9/11 could join the Trojan Horse and Pearl Harbor among stratagems so uniquely surprising that their very success precludes their repetition,” and, accordingly, that “al-Qaeda’s best shot may have been exactly that.”17 In fact, it is unclear whether al-Qaida central, now holed up in Pakistan and under sustained attack, has done much of anything since September 11 except issue videos filled with empty, self-infatuated, and essentially delusional threats. For example, it was in October 2002 that Osama bin Laden proclaimed, “Understand the lesson of New York and Washington raids, which came in response to some of your previous crimes. . . . God is my witness, the youth of Islam are preparing things that will fill your hearts with fear. They will target key sectors of your economy until you stop your injustice and aggression or until the more short-lived of us die.” And in January 2006, he insisted that the “delay” in carrying out operations in the United States “was not due to failure to breach your security measures,” and that “operations are under preparation, and you will see them on your own ground once they are finished, God willing.”18 Bin Laden’s tiny group of 100 or so followers does appear to have served as something of an inspiration to some Muslim extremists, may have done some training, has contributed a bit to the Taliban’s far larger insurgency in Afghanistan, and may have participated in a few terrorist acts in Pakistan.19 In his examination of the major terrorist plots against the West since September 11, Mitchell Silber finds only two (cases 1 and 20) that could be said to be under the “command and control” of al-Qaida central (as opposed to ones suggested, endorsed, or inspired by the organization), and there are questions about how full its control was even in these two instances.20 This highly limited record suggests that Carle was right in 2008 when he warned, “We must not take fright at the specter our leaders have exaggerated. In fact, we must see jihadists for the small, lethal, disjointed and miserable opponents that they are.” Al-Qaida “has only a handful of individuals capable of planning, organizing and leading a terrorist organization,” and although it has threatened attacks, “its capabilities are far inferior to its desires.”21 Impressively, bin Laden appears to have remained in a state of self-delusion even to his brutal and abrupt end. He continued to cling to the belief that another attack such as September 11 might force the United States out of the Middle East, and he was unfazed that the first such effort had proven to be spectacularly counterproductive in this respect by triggering a deadly invasion of his base in Afghanistan and an equally deadly pursuit of his operatives.22 Other terrorist groups around the world affiliated or aligned or otherwise connected to al-Qaida may be able to do intermittent damage to people and infrastructure, but **nothing that is very sustained or focused.** In all, extremist Islamist terrorism—whether associated with al-Qaida or not—has claimed 200 to 400 lives yearly worldwide outside war zones. That is 200 to 400 too many, of course, but it is **about the same number as bathtub drownings every year in the U**nited **S**tates.23

### 1nc Readiness Turn

**Drone reliance trades-off with other military capability**

**Cronin, 13** – Audrey Kurth, Professor of Public Policy at George Mason University (“Why Drones Fail,” Foreign Affairs, July/August 2013, http://www.foreignaffairs.com/articles/139454/audrey-kurth-cronin/why-drones-fail?page=show //Red)

In this environment, it is understandable that Americans and the politicians they elect are drawn to drone strikes. But as with the fight against al Qaeda and the conservation of enemies, drones are undermining U.S. strategic goals as much as they are advancing them. For starters, devoting a large percentage of U.S. military and intelligence resources to the drone campaign **carries an opportunity cost.** The U.S. Air Force trained 350 drone pilots in 2011, compared with only 250 conventional fighter and bomber pilots trained that year. There are 16 drone operating and training sites across the United States, and a 17th is being planned. There are also 12 U.S. drone bases stationed abroad, often in politically sensitive areas. In an era of austerity, spending more time and money on drones means spending less on other capabilities -- **and drones are not well suited for certain emerging threats.** Very easy to shoot down, drones require clear airspace in which to operate and would be nearly useless against enemies such as Iran or North Korea. They also rely on cyber-connections that are increasingly vulnerable. Take into account their high crash rates and extensive maintenance requirements, and drones start to look not much more cost effective than conventional aircraft.

**The perception of collapsing capability ensures deterrence failure and war**

**Spencer 2000** [Jack Spencer – Senior Research Fellow for The Heritage Foundation, September 15, 2000, “The Facts About Military Readiness”, <http://www.heritage.org/research/reports/2000/09/bg1394-the-facts-about-military-readiness>]

U.S. military readiness cannot be gauged by comparing America's armed forces with other nations' militaries. Instead, the capability of U.S. forces to support America's national security requirements should be the measure of U.S. military readiness. Such a standard is necessary because America may confront threats from many different nations at once.¶ America's national security requirements dictate that the armed forces must be prepared to defeat groups of adversaries in a given war. America, as the sole remaining superpower, has many enemies. Because attacking America or its interests alone would surely end in defeat for a single nation, these enemies are likely to form alliances. Therefore, basing readiness on American military superiority over any single nation has little saliency.¶ The evidence indicates that the U.S. armed forces are not ready to support America's national security requirements. Moreover, regarding the broader capability to defeat groups of enemies, military readiness has been declining. The National Security Strategy, the U.S. official statement of national security objectives,3 concludes that the United States "must have the capability to deter and, if deterrence fails, defeat large-scale, cross-border aggression in two distant theaters in overlapping time frames."4According to some of the military's highest-ranking officials, however, the United States cannot achieve this goal. Commandant of the Marine Corps General James Jones, former Chief of Naval Operations Admiral Jay Johnson, and Air Force Chief of Staff General Michael Ryan have all expressed serious concerns about their respective services' ability to carry out a two major theater war strategy.5 Recently retired Generals Anthony Zinni of the U.S. Marine Corps and George Joulwan of the U.S. Army have even questioned America's ability to conduct one major theater war the size of the 1991 Gulf War.6¶ Military readiness is vital because declines in America's military readiness signal to the rest of the world that the United States is not prepared to defend its interests. Therefore, potentially hostile nations will be more likely to lash out against American allies and interests, inevitably leading to U.S. involvement in combat. A high state of military readiness is more likely to deter potentially hostile nations from acting aggressively in regions of vital national interest, thereby preserving peace.

**These conflicts escalate and go nuclear without US military superiority to cap escalation**

**Bosco, 06** (David, senior editor at Foreign Policy magazine, Los Angeles Times, “Could This Be the Start of World War III?”, 7/23, <http://www.latimes.com/news/opinion/commentary/la-op-bosco23jul23,0,7807202.story?coll=la-opinion-center>)

IT WAS LATE JUNE in Sarajevo when Gavrilo Princip shot Archduke Franz Ferdinand and his wife. After emptying his revolver, the young Serb nationalist jumped into the shallow river that runs through the city and was quickly seized. But the events he set in motion could not be so easily restrained. Two months later, Europe was at war. The understanding that small but violent acts can spark global conflagration is etched into the world's consciousness. The reverberations from Princip's shots in the summer of 1914 ultimately took the lives of more than 10 million people, shattered four empires and dragged more than two dozen countries into war. This hot summer, as the world watches the violence in the Middle East, the awareness of peace's fragility is particularly acute. The bloodshed in Lebanon appears to be part of a broader upsurge in unrest. Iraq is suffering through one of its bloodiest months since the U.S.-led invasion in 2003. Taliban militants are burning schools and attacking villages in southern Afghanistan as the United States and NATO struggle to defend that country's fragile government. Nuclear-armed India is still cleaning up the wreckage from a large terrorist attack in which it suspects militants from rival Pakistan. The world is awash in weapons, North Korea and Iran are developing nuclear capabilities, and long-range missile technology is spreading like a virus. Some see the start of a global conflict. "We're in the early stages of what I would describe as the Third World War," former House Speaker Newt Gingrich said last week. Certain religious websites are abuzz with talk of Armageddon. There may be as much hyperbole as prophecy in the forecasts for world war. But it's not hard to conjure ways that today's hot spots could ignite. Consider the following scenarios: • Targeting Iran: As Israeli troops seek out and destroy Hezbollah forces in southern Lebanon, intelligence officials spot a shipment of longer-range Iranian missiles heading for Lebanon. The Israeli government decides to strike the convoy and Iranian nuclear facilities simultaneously. After Iran has recovered from the shock, Revolutionary Guards surging across the border into Iraq, bent on striking Israel's American allies. Governments in Syria, Jordan, Egypt and Saudi Arabia face violent street protests demanding retribution against Israel — and they eventually yield, triggering a major regional war. • Missiles away: With the world's eyes on the Middle East, North Korea's Kim Jong Il decides to continue the fireworks show he began earlier this month. But this time his brinksmanship pushes events over the brink. A missile designed to fall into the sea near Japan goes astray and hits Tokyo, killing a dozen civilians. Incensed, the United States, Japan's treaty ally, bombs North Korean missile and nuclear sites. North Korean artillery batteries fire on Seoul, and South Korean and U.S. troops respond. Meanwhile, Chinese troops cross the border from the north to stem the flow of desperate refugees just as U.S. troops advance from the south. Suddenly, the world's superpower and the newest great power are nose to nose. • Loose nukes: Al Qaeda has had Pakistani President Pervez Musharraf in its sights for years, and the organization finally gets its man. Pakistan descends into chaos as militants roam the streets and the army struggles to restore order. India decides to exploit the vacuum and punish the Kashmir-based militants it blames for the recent Mumbai railway bombings. Meanwhile, U.S. special operations forces sent to secure Pakistani nuclear facilities face off against an angry mob. • The empire strikes back: Pressure for democratic reform erupts in autocratic Belarus. As protesters mass outside the parliament in Minsk, president Alexander Lukashenko requests Russian support. After protesters are beaten and killed, they appeal for help, and neighboring Poland — a NATO member with bitter memories of Soviet repression — launches a humanitarian mission to shelter the regime's opponents. Polish and Russian troops clash, and a confrontation with NATO looms. As in the run-up to other wars, there is today more than enough tinder lying around to spark a great power conflict. The critical question is how effective the major powers have become at managing regional conflicts and **preventing** them from **escalating**. After two world wars and the decades-long Cold War, what has the world learned about managing conflict? The end of the Cold War had the salutary effect of dialing down many regional conflicts. In the 1960s and 1970s, every crisis in the Middle East had the potential to draw in the superpowers in defense of their respective client states. The rest of the world was also part of the Cold War chessboard. Compare the almost invisible U.N. peacekeeping mission in Congo today to the deeply controversial mission there in the early 1960s. (The Soviets were convinced that the U.N. mission was supporting a U.S. puppet, and Russian diplomats stormed out of several Security Council meetings in protest.) From Angola to Afghanistan, nearly every Cold War conflict was a proxy war. Now, many local crises can be handed off to the humanitarians or simply ignored. But the end of the bipolar world has a downside. In the old days, the two competing superpowers sometimes reined in bellicose client states out of fear that regional conflicts would escalate. Which of the major powers today can claim to have such influence over Tehran or Pyongyang? Today's world has one great advantage: None of the leading powers appears determined to reorder international affairs as Germany was before both world wars and as Japan was in the years before World War II. True, China is a rapidly rising power — an often destabilizing phenomenon in international relations — but it appears inclined to focus on economic growth rather than military conquest (with the possible exception of Taiwan). Russia is resentful about its fall from superpower status, but it also seems reconciled to U.S. military dominance and more interested in tapping its massive oil and gas reserves than in rebuilding its decrepit military. Indeed, U.S. military superiority seems to be a key to global stability. Some theories of international relations predict that other major powers will eventually band together to challenge American might, but it's hard to find much evidence of such behavior. The United States, after all, invaded Iraq without U.N. approval and yet there was not even a hint that France, Russia or China would respond militarily.

### 1nc Air Force Turn

#### Drones are unnecessary and trade off with other key capabilities

**AP, 13** (“Military weighs cutbacks, shifts in drone programs,” AP, 2/11/13, <http://www.usatoday.com/story/news/nation/2013/02/11/military-cutbacks-drone-programs/1910463/> //Red)

LANGLEY AIR FORCE BASE, Va. (AP) — The Pentagon for the first time is considering scaling back the massive buildup of drones it has overseen in the past few years, both to save money and to adapt to changing security threats and an increased focus on Asia as the Afghanistan war winds down. Air Force leaders are saying the military may already have enough unmanned aircraft systems to wage the wars of the future. And the Pentagon's shift to Asia will require a new mix of drones and other aircraft because countries in that region are better able to detect unmanned versions and shoot them down. If the Pentagon does slow the huge building and deployment program, which was ordered several years ago by then-Defense Secretary Robert Gates, it won't affect the CIA drone strikes in Pakistan, Yemen and elsewhere against terror suspects. Those strikes were brought center stage last week during the confirmation hearing for White House counterterror chief John Brennan, President Barack Obama's pick to lead the CIA. Gen. Mike Hostage, commander of Air Combat Command, said senior leaders are analyzing the military's drone needs and discussions are beginning. But he said **the current number patrolling the skies overseas may already be more than the service can afford to maintain.** Overall, Pentagon spending on unmanned aircraft has jumped from $284 million in 2000 to nearly $4 billion in the past fiscal year, while the number of drones owned by the Pentagon has rocketed from less than 200 in 2002 to at least 7,500 now. The bulk of those drones are small, shoulder-launched Ravens owned by the Army. The discussions may trigger heated debate because drones have become so important to the military. They can provide 24-hour patrols over hotspots, gather intelligence by pulling in millions of terabytes of data and hours of video feeds, and they can also launch precisely targeted airstrikes without putting a U.S. pilot at risk. The analysis began before Brennan's confirmation hearings, where he was questioned sharply about the CIA's use of drones to kill terror suspects, including American citizens overseas. The CIA gets its attack drones from the Air Force fleet, but any decision to stop building them would be unlikely to have any effect on that program. The Air Force discussions are focused more on whether the military's drone fleet is the right size and composition for future conflicts. There has been a seemingly insatiable appetite within the military for the unmanned hunter/killers, particularly among top combat commanders around the world who have been clamoring for the drones but have seen most resources go to the wars in Iraq and Afghanistan. "We are trying to do the analysis and engage in the discussion to say at some point the downturn in operations and the upsurge in capabilities has got to meet," Hostage said. Hostage, interviewed in his office at Langley Air Force Base in Hampton, Va., amid the intermittent roar of fighter jets overhead, said the military's new focus on the Asia-Pacific region will require a different mix of drones and other aircraft. Unlike in Afghanistan, where the U.S. can operate largely without fear of the drones being shot down, there are a number of countries in the Pacific that could face off against American aircraft — either manned or unmanned. Right now, Predator and Reaper drones that pilots fly remotely from thousands of miles away are completing 59 24-hour combat air patrols a day, mostly in Afghanistan, Pakistan and areas around Yemen and the Africa coast. The standing order is for the Air Force to increase that number of air patrols to 65 a day by May 2014, although officials say that is an arbitrary number not based on an analysis of future combat requirements. The staffing demands for that increase have **put a strain on the Air Force**, as they would require nearly 1,700 drone pilots and 1,200 sensor operators. Currently there are fewer than 1,400 pilots and about 950 sensor operators. Lt. Gen. Larry D. James, the Air Force deputy chief of staff for intelligence, said no recommendations for changes to the projected drone fleet have been sent yet to Pentagon leaders. A key part of the decision will involve what types of drones and other aircraft will be needed as the military focuses greater concentration on the Pacific. While Predators and Reapers have logged more than 1 million hours of combat patrols in the skies over Afghanistan and Iraq, where insurgents don't have the ability to shoot them down, they would be likely to face challenges in the more contested airspace over the Pacific. Countries with significant air power or the ability to shoot down aircraft are scattered across the region, including China, Russia and North Korea — as well as key U.S. allies such as Japan and Australia. America's pivot to the Pacific reflects a growing strategic concern over China's rise as a military power, amid simmering disputes over Taiwan and contested islands in the south and east China seas. Hostage said the Predators and Reapers can be used in the Pacific region "but not in a highly contested environment. We may be able to use them on the fringes and on the edges and in small locales, but we're much more likely to lose them if somebody decides to challenge us for that space." James said the Air Force is evaluating how much to continue to invest in drones like the Reapers that can be used for counterterrorism missions in more so-called permissive environments, versus how much investment should be shifted to other aircraft. The Air Force uses an array of aircraft, such as the U-2 spy plane, the high-altitude Global Hawk drone or satellites and systems that can gather intelligence from space. David Deptula, a retired Air Force three-star general who was deputy chief of staff for intelligence, said the military needs to measure its drone requirements by the amount of data and intelligence needed by troops to accomplish their mission. The focus should not be on the number of drone patrols but on how well the information is being received and analyzed. As technologies advance, he said, the Pentagon can reduce the number of drones in orbit, while still increasing the video, data and other information being transmitted. "**There are smarter ways to deliver** the **capabilities that are more cost effective**" **than** just building more **drones**, he said.

#### Air power’s key to check war in Asia as well as the Persian Gulf

**Khalilzad and Lesser 2001** – \*PhD from the University of Chicago, counselor at CSIS, permanent representative to the UN, \*\*Senior Transatlantic Fellow at the US German Marshall Fund, former Vice President and Director of Studies at the Pacific Council on International Policy (Zalmay and Ian, RAND, “Sources of Conflict in the 21st Century”, p.164-5, http://www.rand.org/pubs/monograph\_reports/MR897/MR897.chap3.pdf)

This subsection attempts to synthesize some of the key operational implications distilled from the analyses relating to the rise of Asia and the potential for conflict in each of its constituent regions. The first key implication derived from the analysis of trends in Asia suggests that American air and space power will continue to remain critical for conventional and unconventional deterrence in Asia. This argument is justified by the fact that several subregions of the continent still harbor the potential for full-scale conventional war. This potential is most conspicuous on the Korean peninsula and, to a lesser degree, in South Asia, the Persian Gulf, and the South China Sea. In some of these areas, such as Korea and the Persian Gulf, the United States has clear treaty obligations and, therefore, has preplanned the use of air power should contingencies arise. U.S. Air Force assets could also be called upon for operations in some of these other areas. In almost all these cases, U.S. air power would be at the forefront of an American politico-military response because (a) of the vast distances on the Asian continent; (b) the diverse range of operational platforms available to the U.S. Air Force, a capability unmatched by any other country or service; (c) the possible unavailability of naval assets in close proximity, particularly in the context of surprise contingencies; and (d) the heavy payload that can be carried by U.S. Air Force platforms. These platforms can exploit speed, reach, and high operating tempos to sustain continual operations until the political objectives are secured. The entire range of warfighting capability—fighters, bombers, electronic warfare (EW), suppression of enemy air defense (SEAD), combat support platforms such as AWACS and J-STARS, and tankers—are relevant in the Asia-Pacific region, because many of the regional contingencies will involve armed operations against large, fairly modern, conventional forces, most of which are built around large land armies, as is the case in Korea, China-Taiwan, India-Pakistan, and the Persian Gulf.

### Legal Regimes

#### Plan doesn’t spill over to broader LOAC -

**LOAC flexibility checks collapse**

**Stewart 11** (Darren, Colonel, British Army; Director, Military Department, International Institute of Humanitarian Law, “New Technology and the Law of Armed Conflict,” International Law Studies Vol. 87)

Useful processes, such as those forming part of the AP I Article 36 weapons review, seem purpose designed not only to act as initial control valves to ensure that military methods and means can advance in a coherent and effective manner but also to act as red flags to possible LOAC issues associated with the employment of new technology. It is unfortunate that too few States engage actively in the weapons review process, an area where greater effort to comply with the law should occur. Generally the existing LOAC rules would seem sufficiently flexible to adapt to the deployment of new technology on the battlefield. In many respects new technology has greatly aided the application of LOAC and contributed to an increase in the protection of civilians. In this sense, the story is a good news one. The extant LOAC paradigm has responded in a flexible manner, benefiting from the positive synergies afforded by technological advances. The virtue of such a system, however, comes with compliance rather than the creation of new standards or responsibilities, such as CDRs, or use of the capabilities afforded by new technology to argue that a human rights paradigm is more appropriate. Armed conflict continues to be an unpredictable, often base affair, where significant ambiguity prevails, notwithstanding the employment of considerable technological capability. The benefits afforded by new technology in such circumstances are significant if they can ameliorate even some of the suffering caused by armed conflict, but they are by no means a panacea.

#### No causal link between U.S. drone doctrine and other’ countries choices---means can’t set a precedent

Kenneth Anderson 11, Professor of International Law at American University, 10/9/11, “What Kind of Drones Arms Race Is Coming?,” <http://www.volokh.com/2011/10/09/what-kind-of-drones-arms-race-is-coming/#more-51516>

New York Times national security correspondent Scott Shane has an opinion piece in today’s Sunday Times predicting an “arms race” in military drones. The methodology essentially looks at the US as the leader, followed by Israel – countries that have built, deployed and used drones in both surveillance and as weapons platforms. It then looks at the list of other countries that are following fast in US footsteps to both build and deploy, as well as purchase or sell the technology – noting, correctly, that the list is a long one, starting with China. The predicament is put this way:

Eventually, the United States will face a military adversary or terrorist group armed with drones, military analysts say. But what the short-run hazard experts foresee is not an attack on the United States, which faces no enemies with significant combat drone capabilities, but the political and legal challenges posed when another country follows the American example. The Bush administration, and even more aggressively the Obama administration, embraced an extraordinary principle: that the United States can send this robotic weapon over borders to kill perceived enemies, even American citizens, who are viewed as a threat.

“Is this the world we want to live in?” asks Micah Zenko, a fellow at the Council on Foreign Relations. “Because we’re creating it.”

By asserting that “we’re” creating it, this is a claim that there is an arms race among states over military drones, and that it is a consequence of the US creating the technology and deploying it – and then, beyond the technology, changing the normative legal and moral rules in the international community about using it across borders. In effect, the combination of those two, technological and normative, forces other countries in strategic competition with the US to follow suit. (The other unstated premise underlying the whole opinion piece is a studiously neutral moral relativism signaled by that otherwise unexamined phrase “perceived enemies.” Does it matter if they are not merely our “perceived” but are our actual enemies? Irrespective of what one might be entitled to do to them, is it so very difficult to conclude, even in the New York Times, that Anwar al-Awlaki was, in objective terms, our enemy?)

It sounds like it must be true. But is it? There are a number of reasons to doubt that moves by other countries are an arms race in the sense that the US “created” it or could have stopped it, or that something different would have happened had the US not pursued the technology or not used it in the ways it has against non-state terrorist actors. Here are a couple of quick reasons why I don’t find this thesis very persuasive, and what I think the real “arms race” surrounding drones will be.

Unmanned aerial vehicles have clearly got a big push from the US military in the way of research, development, and deployment. But the reality today is that the technology will transform civil aviation, in many of the same ways and for the same reasons that another robotic technology, driverless cars (which Google is busily plying up and down the streets of San Francisco, but which started as a DARPA project). UAVs will eventually move into many roles in ordinary aviation, because it is cheaper, relatively safer, more reliable – and it will eventually include cargo planes, crop dusting, border patrol, forest fire patrols, and many other tasks. There is a reason for this – the avionics involved are simply not so complicated as to be beyond the abilities of many, many states. Military applications will carry drones many different directions, from next-generation unmanned fighter aircraft able to operate against other craft at much higher G stresses to tiny surveillance drones. But the flying-around technology for aircraft that are generally sizes flown today is not that difficult, and any substantial state that feels like developing them will be able to do so.

But the point is that this was happening anyway, and the technology was already available. The US might have been first, but it hasn’t sparked an arms race in any sense that absent the US push, no one would have done this. That’s just a fantasy reading of where the technology in general aviation was already going; Zenko’s ‘original sin’ attribution of this to the US opening Pandora’s box is not a credible understanding of the development and applications of the technology. Had the US not moved on this, the result would have been a US playing catch-up to someone else. For that matter, the off-the-shelf technology for small, hobbyist UAVs is simple enough and available enough that terrorists will eventually try to do their own amateur version, putting some kind of bomb on it.

Moving on from the avionics, weaponizing the craft is also not difficult. The US stuck an anti-tank missile on a Predator; this is also not rocket science. Many states can build drones, many states can operate them, and crudely weaponizing them is also not rocket science. The US didn’t spark an arms race; this would occur to any state with a drone. To the extent that there is real development here, it lies in the development of specialized weapons that enable vastly more discriminating targeting. The details are sketchy, but there are indications from DangerRoom and other observers (including some comments from military officials off the record) that US military budgets include amounts for much smaller missiles designed not as anti-tank weapons, but to penetrate and kill persons inside a car without blowing it to bits, for example. This is genuinely harder to do – but still not all that difficult for a major state, whether leading NATO states, China, Russia, or India. The question is whether it would be a bad thing to have states competing to come up with weapons technologies that are … more discriminating.

#### International law is dead – tons of alt-causes they can’t solve

**Acharya 12** [Winter, 2011 / Spring, 2012, Denver Journal of International Law & Policy, 40 Denv. J. Int'l L. & Pol'y 144, “International Lawlessness, International Politics and the Problem of Terrorism: A Conundrum of International Law and U.S. Foreign Policy”, Upendra D. Acharya, Assistant Professor, Gonzaga University School of Law]

With the analysis made above, we can arguably come to the conclusion that there are two approaches to address the problem of terrorism - first, the legal approach and second, the political approach. Both approaches have been utilized to address terrorism because the legal approach has a minimal role within the scope of the realist theory, where power politics is the primary element in addressing the problem of terrorism and where law and legal elements have a limited supporting role, being applied only when they serve the interests of power. The global war on terror from Afghanistan to Iraq, Pakistan, Yemen, and Somalia, and its techniques - indefinite detention, irregular rendition, torture, and detention without charges - have killed international law. n97 The cause of death was that, historically, [\*165] international law was not believed to produce a legal solution to international problems, including terrorism. The role of international law is within the domain of international relations theory. It has been used for ex post facto justification of political decisions for the purpose of serving national interests and power politics. n98 This is the very reason why international governance and institutional processes under the UN structure lack democratic methods. Therefore, the existing system of international governance does not have complete faith in democracy and rule of law. n99 On the one hand, it neither supports a formal majority ruling nor establishes a process for governance by majority. On the other, treaties related to terrorism are designed to exclude terrorist activities conducted by powerful nations. International politics either dictates that weaker nations submit their loyalty to powerful nations or confront the consequences, or requires nations to cooperate when the interests are shared. This way, international law and institutions confirm that powerful nations' activities are legitimate and civilized. n100 It does carry some value (peace, security, equality, justice etc.) in its linguistic formality, but does not really bother with the question of whether those values can be achieved. When these conditions remain intact regarding the application of international law, the world is not as safe as we hope it to be. If United States foreign policy dealing with the problem of terrorism continues disregarding the principles of international law, basing its policy on international relations theory (the realist approach) and if American international legal scholars continue to embrace the approach that international law is a subsystem in a broader system of a realist approach of international relations theory, neither the problem of terrorism is resolved nor will U.S. foreign policy be uplifted. The 21st century may well become a post-American world where the United States will lose its appetite for global leadership. The international power dynamics is a zero-sum game (contrary to what Obama stated during his first visit to [\*166] China) n101 if it is exercised without reference to the standards of international rule of law.

### Bioweapons

#### No impact to bioweapons

O’Neill 4O’Neill 8/19/2004 [Brendan, “Weapons of Minimum Destruction” http://www.spiked-online.com/Articles/0000000CA694.htm]

David C Rapoport, professor of political science at University of California, Los Angeles and editor of the Journal of Terrorism and Political Violence, has examined what he calls 'easily available evidence' relating to the historic use of chemical and biological weapons. He found something surprising - such weapons do not cause mass destruction. Indeed, whether used by states, terror groups or dispersed in industrial accidents, they tend to be far less destructive than conventional weapons. 'If we stopped speculating about things that might happen in the future and looked instead at what has happened in the past, we'd see that our fears about WMD are misplaced', he says. Yet such fears remain widespread. Post-9/11, American and British leaders have issued dire warnings about terrorists getting hold of WMD and causing mass murder and mayhem. President George W Bush has spoken of terrorists who, 'if they ever gained weapons of mass destruction', would 'kill hundreds of thousands, without hesitation and without mercy' (1). The British government has spent £28million on stockpiling millions of smallpox vaccines, even though there's no evidence that terrorists have got access to smallpox, which was eradicated as a natural disease in the 1970s and now exists only in two high-security labs in America and Russia (2). In 2002, British nurses became the first in the world to get training in how to deal with the victims of bioterrorism (3). The UK Home Office's 22-page pamphlet on how to survive a terror attack, published last month, included tips on what to do in the event of a 'chemical, biological or radiological attack' ('Move away from the immediate source of danger', it usefully advised). Spine-chilling books such as Plague Wars: A True Story of Biological Warfare, The New Face of Terrorism: Threats From Weapons of Mass Destruction and The Survival Guide: What to Do in a Biological, Chemical or Nuclear Emergency speculate over what kind of horrors WMD might wreak. TV docudramas, meanwhile, explore how Britain might cope with a smallpox assault and what would happen if London were 'dirty nuked' (4). The term 'weapons of mass destruction' refers to three types of weapons: nuclear, chemical and biological. A chemical weapon is any weapon that uses a manufactured chemical, such as sarin, mustard gas or hydrogen cyanide, to kill or injure. A biological weapon uses bacteria or viruses, such as smallpox or anthrax, to cause destruction - inducing sickness and disease as a means of undermining enemy forces or inflicting civilian casualties. We find such weapons repulsive, because of the horrible way in which the victims convulse and die - but they appear to be less 'destructive' than conventional weapons. 'We know that nukes are massively destructive, there is a lot of evidence for that', says Rapoport. But when it comes to chemical and biological weapons, 'the evidence suggests that we should call them "weapons of minimum destruction", not mass destruction', he says. Chemical weapons have most commonly been used by states, in military warfare. Rapoport explored various state uses of chemicals over the past hundred years: both sides used them in the First World War; Italy deployed chemicals against the Ethiopians in the 1930s; the Japanese used chemicals against the Chinese in the 1930s and again in the Second World War; Egypt and Libya used them in the Yemen and Chad in the postwar period; most recently, Saddam Hussein's Iraq used chemical weapons, first in the war against Iran (1980-1988) and then against its own Kurdish population at the tail-end of the Iran-Iraq war. In each instance, says Rapoport, chemical weapons were used more in desperation than from a position of strength or a desire to cause mass destruction. 'The evidence is that states rarely use them even when they have them', he has written. 'Only when a military stalemate has developed, which belligerents who have become desperate want to break, are they used.' (5) As to whether such use of chemicals was effective, Rapoport says that at best it blunted an offensive - but this very rarely, if ever, translated into a decisive strategic shift in the war, because the original stalemate continued after the chemical weapons had been deployed. He points to the example of Iraq. The Baathists used chemicals against Iran when that nasty trench-fought war had reached yet another stalemate. As Efraim Karsh argues in his paper 'The Iran-Iraq War: A Military Analysis': 'Iraq employed [chemical weapons] only in vital segments of the front and only when it saw no other way to check Iranian offensives. Chemical weapons had a negligible impact on the war, limited to tactical rather than strategic [effects].' (6) According to Rapoport, this 'negligible' impact of chemical weapons on the direction of a war is reflected in the disparity between the numbers of casualties caused by chemicals and the numbers caused by conventional weapons. It is estimated that the use of gas in the Iran-Iraq war killed 5,000 - but the Iranian side suffered around 600,000 dead in total, meaning that gas killed less than one per cent. The deadliest use of gas occurred in the First World War but, as Rapoport points out, it still only accounted for five per cent of casualties. Studying the amount of gas used by both sides from1914-1918 relative to the number of fatalities gas caused, Rapoport has written: 'It took a ton of gas in that war to achieve a single enemy fatality. Wind and sun regularly dissipated the lethality of the gases. Furthermore, those gassed were 10 to 12 times as likely to recover than those casualties produced by traditional weapons.' (7) Indeed, Rapoport discovered that some earlier documenters of the First World War had a vastly different assessment of chemical weapons than we have today - they considered the use of such weapons to be preferable to bombs and guns, because chemicals caused fewer fatalities. One wrote: 'Instead of being the most horrible form of warfare, it is the most humane, because it disables far more than it kills, ie, it has a low fatality ratio.' (8) 'Imagine that', says Rapoport, 'WMD being referred to as more humane'. He says that the contrast between such assessments and today's fears shows that actually looking at the evidence has benefits, allowing 'you to see things more rationally'. According to Rapoport, even Saddam's use of gas against the Kurds of Halabja in 1988 - the most recent use by a state of chemical weapons and the most commonly cited as evidence of the dangers of 'rogue states' getting their hands on WMD - does not show that unconventional weapons are more destructive than conventional ones. Of course the attack on Halabja was horrific, but he points out that the circumstances surrounding the assault remain unclear. 'The estimates of how many were killed vary greatly', he tells me. 'Some say 400, others say 5,000, others say more than 5,000. The fighter planes that attacked the civilians used conventional as well as unconventional weapons; I have seen no study which explores how many were killed by chemicals and how many were killed by firepower. We all find these attacks repulsive, but the death toll may actually have been greater if conventional bombs only were used. We know that conventional weapons can be more destructive.' Rapoport says that terrorist use of chemical and biological weapons is similar to state use - in that it is rare and, in terms of causing mass destruction, not very effective. He cites the work of journalist and author John Parachini, who says that over the past 25 years only four significant attempts by terrorists to use WMD have been recorded. The most effective WMD-attack by a non-state group, from a military perspective, was carried out by the Tamil Tigers of Sri Lanka in 1990. They used chlorine gas against Sri Lankan soldiers guarding a fort, injuring over 60 soldiers but killing none. The Tamil Tigers' use of chemicals angered their support base, when some of the chlorine drifted back into Tamil territory - confirming Rapoport's view that one problem with using unpredictable and unwieldy chemical and biological weapons over conventional weapons is that the cost can be as great 'to the attacker as to the attacked'. The Tigers have not used WMD since.

### Defense

#### International human rights regimes fail – even if they work, they’re too slow

**Hafner-Burton and Tsutsui, 07** – Emilie, Woodrow Wilson School of Public and International Afairs and Department of Politics, Princeton University and Kiyoteru, University of Michigan, Ann Arbor (“Justice Lost! The Failure of International Human,” Journal of Peace Research, vol. 44, no. 4, http://irps3.ucsd.edu/ehafner/pdfs/justice\_lost.pdf //Red)

Despite recent skepticism, scholars of international relations, law, and sociology havelong argued that laws canmake a difference, and hope for improvement is common (Landman, 2005;see Hafner-Burton & Ron, 2006). Many politicians and nongovernmental activists also believe that human rights laws initiate processes and dialogues that involve learning over time and, through learning, the eventual change in belief about rational or appropriate actions (Abbott & Snidal, 2000). They provide rules and organizational structures that constrain national sovereignty, serving as justification and a forum for action that can shape governments’ political interests and belief about appropriate actions(Chayes&Chayes, 1998; Franck, 1988; Lutz & Sikkink, 2000). And persuasive accounts argue that governments ratify human rights treaties, not always as symbolic acts, but also as expressions of preference for reform (Simmons, 2006). **By almost all such accounts, if human rights laws matter for political reform, they will take time to be of importance**, as belief change and capacity-building for implementation are unlikely to be easy or immediate and may well happen in fits and starts (Chayes & Chayes, 1993). **Theories of compliance, however, are** to Some extent **divorced from research.** Current findings largely emphasize that treaties work insome cases–democracies. But these studies largely ignore the dynamics of compliance. This is troubling because the human rights Regime was created precisely to stop outbreaks of extreme violence among the world’s worst abusers, and its founders knew this process would take time. Perhaps researchers are finding that treaties matter most on the margins because studies are not taking the dynamics of compliance seriously. Maybe repressive autocrats simply need more time to come under the sway of international laws and build capacity than other, more democratic, states. Consider first what we know about effectiveness. In the face of widespread confidence that laws matter, Hathaway’s (2002) path breaking article shook scholarly faith in human rights treaties, arguing that **they do little to ensure better behaviors**. Since this provocative study, other scholars have been notably more optimistic. Simmons (2006) argues that international legal commitments do matter; they have their most important consequences for states that have experienced democratic accountability and refuse to allow their governments to turn back. Hafner-Burton & Tsutsui (2005) demonstrate that linkage to international civil society often encourages reform in cases where international law alone is unsuccessful. Neumayer (2005) extends both arguments to show that commitment to international law often does improve respect for human rights, primarily for states with democratically accountable governments or strong civil society. The optimism, however, is narrow in scope, as current scholarship implies that human rights **laws matter least among governments that were the primary targets of the legal regime** – terribly repressive, autocratic states without internal advocates for reform. Consider next what we know about the dynamics of treaty compliance. Conformity with international law is a domestic political process. Implementing human rights laws requires not only the political will at home, but also the political capacity. **Both probably will be hardest to build in repressive non-democracies**, and conformity with international human rights laws will almost certainly take longer to stick in these cases. The burgeoning empirical literature on human rights compliance has yet to effectively consider whether treaty effectiveness fluctuates over time. For instance, Neumayer (2005) and Keith (1999)consider whether several global and regional human rights treaties make a difference in human rights behaviors the very same year as ratification. Not surprisingly, they find no direct empirical relationship. Hafner-Burton (2005) examines whether any of the core UN human rights laws encourage protection of people from political terror one year after ratification and also finds no significant association. All unreservedly overlook basic theoretical arguments suggesting that soft laws generally take time to be successfully implemented, and that human rights laws in particular are likely to be effective only after substantial learning and capacity-building have taken place–features of international human rights law that ‘may be seen as an extreme case of the time lag between undertaking and performance’ (Chayes & Chayes, 1998: 16). Other empirical research acknowledges that ‘human rights treaties, if they have effects on country practices, do so relatively slowly’ (Hathaway, 2002: 1990). To consider these dynamics, both Hathaway (2002) and Hafner Burton & Tsutsui (2005) analyze the relationship between the duration in years since ratification of the core UN human rights laws and compliance behavior. In so doing, they test the proposition that, as the years go on, human rights laws should be more and more effective in producing results. They find no evidence. Yet neither study is a good test of dynamic theories of international law. Treaties may certainly take time to influence behaviors, but, in the realm of human rights, it is unlikely that learning or capacity-building takes place at a steady or uniform pace over time. Compliance with international human rights laws, if it takes place at all, may well happen sporadically and in fits and starts. If so, these duration variables are a weak test of important theories on the matter. Does this methodological problem explain the discouraging results about compliance? Maybe human rights laws do protect the people most in danger of violations, but only in fits and starts and only long after ratification, when leaders’ minds can be swayed and national capacities for reform built. Perhaps democracy is not the only answer. In the following pages, we advance four propositions about repressive governments’ compliance with international human rights law. First, advocates are correct: an impressive cascade of norms has taken place in the realm of international justice. Governments, including repressive ones, easily and frequently make legal commitments to international human rights treaties, subscribing to recognized norms of protection and creating opportunities for socialization, learning, and capacity-building processes necessary for lasting reforms. Second, the problem is not only methodological; treaty commitments to the pursuit of justice have **no clear or independent effects on most very repressive states’ behaviors,** either immediately or, more importantly, long into the future. Either most repressive governments have failed to learn that the protection of human rights is essential or they lack the capacity necessary to implement policies of protection. As a result, recent statistical confidence about the treaty regime implies a broader problem – that the regime is actually **failing in countries where reformis most urgently needed** and that more time for learning and capacity-building is unlikely alone to solve the problem. Third, recent findings that treaty effectiveness is conditional on democracy and civil society do not explain the behavior of the world’s serious repressors. Fourth, most **realistic institutional reforms are unlikely to help** much; so far, deeper delegation of legal authority to the international regime does not make reforms much more likely, even overtime.

# 2nc

## CP

### 2nc theory block

#### The counterplan is a rational policy choice based in topic lit

**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

### 2nc solicitor general solves

#### Solicitor General positions are binding—constrains the executive, even if courts and Congress fail—our mechanism solves

**Pillard 2005** – JD from Harvard, Faculty Director of Supreme Court Institute at Georgetown University Law Center, former Deputy Assistant Attorney General in the DOJ (February, Cornelia T., Michigan Law Review, 103.4, “The Unfulfilled Promise of the Constitution in Executive Hands”, 103 Mich. L. Rev. 676-758, http://scholarship.law.georgetown.edu/facpub/189/)

\*NOTE: gendered language in this card is in reference to Paul D. Clement, who was SG in 2005

The SG is assisted by a small legal and administrative staff operating within a relatively flat office hierarchy. Only two of the office's lawyers - the SG and one of his four Deputies - are political appointees; all of the others, including the three other Deputies and all of the Assistants to the SG, who research and draft the office's briefs, are "career" employees with civil-service protection.95 The office's functional separation from policymaking is further shown by the pattern of hiring lawyers for their general skill at legal analysis and appellate advocacy, rather than for any particular area of substantive expertise. Consistent with that pattern, SGs routinely hire lawyers from the Justice Department's appellate divisions, but rarely hire from client agencies.

The work flow in the SG's Office typically follows a bottom-up path that reflects an assumption that skilled, dispassionate legal analysis by career lawyers will unearth constitutional issues relevant to the litigating position proposed by an agency or a component of the Justice Department. The SG and his Deputies assign each matter to an Assistant who completes the research and drafting. Sometimes the assigning Deputy will discuss the merits of a new assignment briefly with the Assistant, but more often the Deputy has no advance conversation with the Assistant. The Assistant typically learns of the assignment once it is deposited in his or her in-box by an office courier, and the Assistant independently develops a draft.96 Thus, the SG's Office's work is not a collaborative political-legal enterprise, promoting "all-things-considered" judgments,97 but is quite formally doctrinal. Only occasionally do executive agency officials - i.e. those who are responsible for executive branch policy decisions - even meet with the Solicitor General or his staff. Those patterns reflect the office's focus on legal, rather than policy-oriented or political, analysis.

3. Client-Checking

The SG is **not merely a mouthpiece** for his federal clients. Although he seeks to advocate (or authorize other government lawyers to advocate) the positions and interests of the client entities, lawyers in the SG's Office critically evaluate the input they get from the government's policymaking agencies. Departments and agencies seek the SG's approval for hundreds of petitions each year, but he typically authorizes less than ten to twenty percent of them.9 " He also turns down a sizeable fraction of requests for authorization to appeal, and the overwhelming majority of requests for authorization to seek rehearing en banc.

The SG often declines to make particular arguments in briefing and may even confess error, abandoning the government's victory in a lower court.99 If the SG's own analysis disagrees with the judgment of the lower court that sustained the government's position, he can choose not to defend the favorable decision against the opposing party's appeal or effort to obtain Supreme Court review. Giving up a victory already in hand is virtually unheard of in the private bar, but it is an established practice by the SG, occurring on average two to three times per year.100

Each of these ways through which the SG checks client initiatives - rejecting requests to appeal or petition, declining to make certain proposed arguments in briefs to the courts, and even confessing error - might be thought to illustrate the law's capacity to constrain politics within the executive branch. OLC, the other centralized source of executive constitutional interpretation, can also play a checking role.

### 2nc disclosure solves

#### Disclosure reform solves notification without hampering decisionmaking

**Cluchey 2011** – JD Harvard (7/1, Daniel, The Cornell Policy Review, “Transparency in OLC Statutory Interpretation: Finding a Middle Ground”, http://blogs.cornell.edu/policyreview/2011/07/01/transparency-in-olc-statutory-interpretation-finding-a-middle-ground/)

From a transparency standpoint, the problem with requiring the disclosure of opinions only at the moment of program implementation, of course, is that such a system would leave Congress with no time to question the Executive Branch’s interpretation or intervene in the program before it begins. This can be remedied, however, by making the trigger a retroactive device. Under this system, when the Executive Branch chooses to implement a program that relies on an OLC opinion for its legality, it must disclose the opinion 30 days prior to the commencement of the program for the opinion (and therefore the policy) to be considered lawful by Congress.

The decision to execute a new policy would remain the event that triggers mandatory disclosure, but the policy would not enjoy legal support unless and until the OLC opinion had been available to Congress for 30 days, giving lawmakers an appropriate amount of time to review the legal rationale and react accordingly. In essence, this would change the reporting requirement from a disclosure mandate into a rule prohibiting policy programs that rely on undisclosed opinions. The basic standard would then be that no Executive Branch program, the legality of which rests on an OLC opinion concluding for any reason that the Executive Branch is not bound by a congressional statute, can be implemented until 30 days after the disclosure to Congress of the OLC opinion from which it derives its legal rationale.

A regime that required disclosure of OLC opinions 30 days prior to the implementation of a potentially controversial program would effectively address a number of the concerns raised by both Feingold in the interest of Executive Branch transparency and Mukasey in the interest of protecting OLC candor and Executive communications more generally. Even the most fervent proponent of transparency would recognize that it is the implementation of a legally spurious program, and not the opinion rationalizing it, that is the true malfeasance to be guarded against. An OLC opinion that does not instigate a program, no matter how errant its analysis may be, cannot be said to rise to the level of secret law so long as it remains nothing more than the germ of potential secret law — that is to say, a secret opinion declaring that a law does not apply to the Executive Branch can do little harm until it is actually used to justify a secret policy.22

The D.C. Circuit has spoken to this distinction with regard to the Executive Branch, noting in Sterling Drug, Inc. v. FTC that “to prevent the development of secret law within the [Federal Trade Commission], we must require it to disclose orders and interpretations which it actually applies in cases before it” (emphasis added).23 While a semantic argument could be made that the opinions themselves constitute secret law, insofar as they are indeed interpretations of law that bind the Executive Branch,24 the true danger spoken of when the concept of secret law is invoked is its application in a practice, policy, or program — an unenforced ‘law’ is no threat until and unless the specter of its enforcement emerges.

A reporting trigger tied retroactively to program implementation would protect the institution of OLC even as it increased transparency of the office’s most controversial and consequential opinions. Mukasey’s chief policy concerns with the OLC Reporting Act were that it would deter candid deliberation among Executive Branch lawyers, “chill” the Department of Justice from providing thorough analysis of potentially extralegal policy programs (particularly with regard to the usage of those canons of construction25 specifically contemplated in the bill), discourage actors in charge of decision making from requisitioning OLC when disclosure would be especially unwanted, and, as an overall consequence thereof, “degrade the quality of the resulting legal advice and, thus, the integrity of the government decisionmaking [sic] to which it pertains.” 26

Beginning with the issue of thoroughness, an implementation-triggered reporting regime would not distinguish between rationales employed by OLC personnel — disclosure would occur only if an accompanying program was to be implemented, regardless of whether a conclusion of non-applicability was reached by way of the avenues of constitutional avoidance, commander-in-chief powers, a presumption against the application of a statute to the Executive, etc. By tying the reporting trigger to the policy decisions of those Executive Branch officials charged with implementing programs rather than to the legal decisions of lawyers within OLC, the methodology of those lawyers in preparing opinions would be less apt to become contaminated by political concerns over which species of legal reasoning would or would not mandate disclosure. If a conclusion has been reached that the Executive Branch is not bound by a particular statute, OLC personnel will thus have no reason not to provide a thorough analysis or refrain from the use of appropriate canons of construction under a regime where their legal reasoning has no bearing on the disclosure of their opinions.

### solves executive cred

#### Respecting the OLC makes the executive credible

**Morrison 2011** – Professor of Law, Columbia University (Trevor W., Harvard Law Review, ““Hostilities,” the Office of Legal Counsel, and the Process of Executive Branch Legal Interpretation”, 124 HARV. L. REV.F. 62, http://web.law.columbia.edu/sites/default/files/microsites/constitutional-governance/files/Libya-Hostilities-Office-of-Legal-Counsel.pdf)

In a recent book, Professors Eric Posner and Adrian Vermeule call this sort of thing “executive self-binding, whereby executives commit themselves to a course of action that would impose higher costs on ill-motivated actors.”7 Admittedly, Posner and Vermeule do not appear to recognize that treating OLC’s advice as presumptively binding is a form of executive self-binding. Indeed, as described below, they do not think OLC advice warrants any such treatment. Yet signaling and maintaining a willingness to treat OLC’s legal advice as presumptively binding enhances the credibility of a president’s claims of good faith and respect for the law, which in turn can help generate public support for his actions. That is precisely the point of executive self-binding: to foster credibility in circumstances where, “[f]or presidents, credibility is power.” 8

### solves precedent

#### We solve precedent by invoking constitutional limits

**Atkinson 2013** – JD NYU, National Security Division, Department of Justice (L. Rush, Vanderbilt Law Review, forthcoming issue, “The Fourth Amendment’s National Security Exception”, http://ssrn.com/abstract=2226404)

When identifying constitutional parameters for the executive, it is particularly instructive to look at historical moments when the executive is restrained. When congressional prohibition draws executive power to its “ebb,” for example, one can identify the executive’s core inextinguishable powers.47 Constitutional boundaries are similarly discernible in some cases where the executive branch **limits its own** conduct. Specifically, the executive’s self-restraint is precedential when it stems from a sense of constitutional obligation.48 Such fealty towards the Constitution might be **unprompted by judicial command or legislative action**, and there may be no record as obvious as a judicial opinion or legislative bill. Nevertheless, where a discernible opinio juris has shaped executive action, such legal opinion should be considered both for its persuasive power and a historical understanding about what protections the Constitution establishes.49

### at: inconsistent with current law

#### Our authors advocate including non-legal advice because it’s part of the institutional consequence of legal decisions

**Marguiles 2012** – Professor of Law, Roger Williams University (10/26, Peter, Maryland Law Review, Volume 8, Issue 1, Article 3, “True Believers at Law: National Security Agendas, the Regulation of Lawyers, and the Separation of Powers”, http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3381&context=mlr)

\*NOTE: Marguiles not to be confused with Margolis, who worked in the DOJ after John Yoo

Legal advisers should also consider the institutional consequences of particular decisions. As I have discussed, decisions have spillover effects. The rules of legal ethics encourage lawyers to offer advice that goes beyond doctrine, to assess such non-legal ramifications.381 Because lawyers often represent repeat players, they are well situated to grasp how a legal regime will affect institutions. Prudent legal advice should point out not only the benefits if a proposed action is successful, but the consequences of failure. If the risk of failure is high, this advice may be thoroughly unwelcome to the client. Dialogic equipoise works, however, only when lawyers have the gumption to give clients bad news about both legal and non-legal risks. A rule requiring, not merely permitting, such advice in the national security area would counteract issue entrepreneurship.

**obama good**

**PC is a net benefit**

**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”)

The utility functions of government officials famously include a wide range of values.15 As relevant here, senior policymakers in the executive branch will seek to maximize at least three things. Above all, they will want to maximize their chances of keeping their jobs. First-term Presidents want to be reelected; members of the cabinet and the White House staff want their boss to stay in office and they want to retain his confidence.16 Second, policymakers will want to maximize their political capital, which they can use to promote their domestic and international policy agendas. A President who wants Congress to enact desired legislation is more likely to attain that goal if he has high public approval ratings and is able to call in favors on Capitol Hill than if he is unpopular with voters and lacks congressional allies.17 Third, taking a longer view, policymakers will want to burnish their legacies. Presidents want to be on the “right side of history”; they want future generations to approve of the policy choices they make while in power.18

This quest for job security, political capital, and legacy will lead policymakers to pursue two specific goods in the national security context. First, operational success. Policymakers will want a given military or intelligence operation to accomplish the objective that it is meant to achieve. If a President leads a war that quickly topples the enemy, he is likely to enjoy improved public approval ratings, weaker resistance from political opponents, and the prospect of favorable treatment in the history books.19 A President who leads the nation into a quagmire can expect the opposite outcomes. Second, policymakers seek legal compliance. They will want a given operation to accomplish its goals in a way that does not offend any applicable principle of domestic or international law. This is so because the costs of such violations can be significant.20 All things being equal, a wartime President would prefer to vanquish an enemy by complying with the law of war than to gain victory by, say, deliberately bombing protected civilians. Policymakers commission two different sets of agents to pursue these goals. Operators are responsible for the first – mission success. Reviewers are responsible for the second – legal compliance. Neither agent receives a comprehensive commission to act as the principals’ surrogate. Instead, responsibility for achieving policymakers’ twin objectives is divided.

**Self-restraint generates polcap and shields blame**

**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”)

My use of this analytical framework is not intended to deny the validity ¶ of other possible explanations for self-restraint. For instance, Eric Posner ¶ and Adrian Vermeule argue that Presidents have an incentive to engage in ¶ “self binding,” because it will enhance their credibility and “generate ¶ support from the public and other members of the government.”45 Elizabeth ¶ Magill likewise argues that bureaucrats sometimes find it advantageous to ¶ “self-regulate” – i.e., “limit their options when no source of authority ¶ requires them to do so” – as a means of controlling subordinates, inducing ¶ reliance by outside parties, and entrenching today’s policy choices.46 Still ¶ more accounts emerge if we widen the analytical lens beyond public choice ¶ principles. One might explain self-restraints by consulting theories of ¶ bounded rationality – the notion that imperfect information, cognitive ¶ failures, and other factors prevent bureaucratic players from accurately ¶ measuring the expected costs and benefits of a given action.47 Or one might ¶ look to new institutionalism – the notion that bureaucratic outputs are ¶ determined in large part by organizations’ cultures, histories, and ¶ structures.48 And, of course, there are the public interest explanations: ¶ Officials might embrace a particular restraint because they believe in good ¶ faith that it represents sound public policy. The public interest framework ¶ may actually complement, not contradict, this article’s public choice story. ¶ One of the reasons officials might build their bureaucratic empires is ¶ because **they calculate that doing so will position them to achieve desirable** ¶ **policy outcomes**. In any event, the point of this article is to generate ¶ hypotheses that can account for the occasional tendency of national security ¶ figures to restrain themselves. Other frameworks are likely to yield equally ¶ plausible alternative hypotheses.

#### No Asian drone wars

**Zhou 12** (Dillon Zhou, graduate of the International Relations Program at the University of Massachusetts Boston, “China Drones Prompts Fears of a Drone Race With the US,” Policymic, December 2012, http://www.policymic.com/articles/19753/china-drones-prompt-fears-of-a-drone-race-with-the-us)

There are several facts that provide some solace to the U.S. as China's drones are far from being a real challenge to the American drone program. First, the Chinese drones are nowhere as sophisticated as U.S. drones in their range and proper hardware for optic systems and motors to power the "dragons." The DSB report notes that the U.S. technical systems are almost unrivaled at present. Second, China lacks the manpower to properly support their new fleet of drones. Whereas the U.S. has been training and honing a large force of UAV pilots, technicians and operation managers for 15 years. Finally, the U.S. drone program is about 20 years ahead of the Chinese program. The current models on show are considered to be prototypes and not finished products. The Chinese also have not had a chance to gain real experience with their drones during real operation.

## Case

### No Bioterror

#### **Bioterrorists will gravitate towards low tech options – risk of mass casualties is low**

**Biederbick, et al, 11** – Walter, federal Information Center for Biological Security, Robert Koch Institute, Berlin, Germany, with Iris Hunger, Heinrich Maidhof, Julia Sasse, Jan C. Semenza and Jonathan E. Suk (“Dual-use research and technological diffusion: reconsidering the bioterrorism threat spectrum,” PLoS Pathogens, vol. 7, no. 1, January 2011, OneFile //Red)

The overall ranking provides an indication of the threat spectrum related to the ability ofbioterrorists to exploit life science research (Table 1), and it suggests that "low tech" activities may be especially attractive to bioterrorists. This opposes the tendency of biosecurity discussions to be rather more focused on "high tech" research: typically, the potential negative consequences of research falling into the wrong hands are accentuated while the **likelihood of this occurring is inadequately considered.** Is the availability of material, methodologies, and high-level expertise, none of which should be taken for granted, even adequate for the development of a sophisticated bioweapon? Technology is much more than the sum of its material and informational aspects. Social contingencies and tacit knowledge, serendipity and unpredictability, institutional memory, and many other factors are essential to the successful design and deployment of any given technology, including (if not **especially**) **biological weapons** [27,28]. Interviews with the Wimmer group about the poliovirus synthesis [9], for example, highlight that replicating the experiment is a very challenging and time-consuming procedure even for virologists familiar with the experimental system [29]. It is not obvious that extrapolating the methods from this work for other purposes--or to another laboratory--would have been successful. **The challenge is surely even greater when resource, time, or other constraints** (**such as the need to be clandestine**) **are involved.** The recent history of bioterrorism also suggests that more attention should be allotted to low tech threats [30]. An extensive review of biocrimes in the 20th century argued that although bioterrorists might acquire some capabilities, there is "**reason to doubt the ease with which such groups could cause mass casualties**" [31]. Aum Shinrikyo, for example, was not successful in procuring, producing, or dispersing anthrax and botulinum toxin in the 1990s, while Al Qaeda is believed to have failed to obtain and work with pathogens by the early 2000s [32], and this likely remains the case. In comparison, the contamination of food and water, and direct injection/application of a pathogen, all have much lower technical hurdles and might be expected to be rather more successfully deployed [31]. The best-known example is the contamination of salad bars with Salmonella by the Rajneeshee cult in 1984, which led to roughly 751 illnesses and 45 hospitalizations [33]. It remains the only known incident in which a terrorist organization, rather than an individual, deployed a biological agent in the US [31]. We do not suggest that high tech bioterrorism threats do not exist--rather, that their likelihoods should be re-evaluated. Biosecurity policy discussions could gain more nuance and credibility by adopting more sophisticated notions about the challenges inherent in conducting and replicating advanced research. The life sciences community has an obvious self-interest in this, and might best achieve it by emphasizing the oft-unacknowledged factors inherent to successful high tech research, including those related to social contingencies and tacit knowledge. Thus far, when life scientists have entered the fray, they have tended to reinforce the "high-tech" perspective, even if their objectives have been to argue against strict biosecurity controls and/or to encourage the life sciences to engage in debates about the risks and benefits of its research [34-36].

### 2nc Link

#### Drone over-reliance kills air force capability

**Reed, 13** – John, reports on the frontiers of cyber war and the latest in military technology (“Predator Drones 'Useless' in Most Wars, Top Air Force General Says,” FP, 9/19/13, <http://killerapps.foreignpolicy.com/posts/2013/09/19/predator_drones_useless_in_most_wars_top_air_force_general_says> //Red)

The drones that have proved so useful at hunting al Qaeda are "useless" in nearly every other battlefield scenario, says a top Air Force general. So, for the first time, the Air Force is proposing culling the fleet of little, propeller-driven MQ-1 Predator and MQ-9 Reaper drones in favor of stealthier, faster aircraft. This is because the slow, low-flying drones that killed terrorists in the last decade's wars have little chance of surviving against an enemy armed with even basic air defenses. Faced with declining defense budgets, Air Force officials want to retire many of the low-tech drones. "Predators and Reapers are useless in a contested environment," said Gen. Mike Hostage, chief of the air service's Air Combat Command, during the Air Force Association's annual conference outside of Washington. "Today … I couldn't put [a Predator or Reaper] into the Strait of Hormuz without having to put airplanes there to protect it," said the four-star general. This week, the Air Force's chief of staff, Gen. Mark Welsh, revealed that an F-22 -- the planet's most sophisticated stealth fighter -- intercepted Iranian F-4 Phantom jets that were closing in on a U.S. Predator drone over the strait last March. In November 2012, Iranian Su-25 ground attack jets fired on, and missed, an American Predator over the strait. In 2011, the Pentagon ordered the Air Force to have enough MQ-1s and MQ-9s to fly up to 65 combat air patrols (CAPs) around the world by this year. Each CAP consists of up to four drones. Even as the service worked to make this happen, it questioned the order, saying there was no official requirement stating the military's need for what many in the air service believe are little more than flying lawn mowers. "We're trying to convince [the Office of the Secretary of Defense] that the 65 challenge -- while made sense to the people who gave it to us when it was given, and we dutifully went after it -- is not the force structure the nation needs or can afford in an anti-access, area-denial environment," said Hostage. "Anti-access, area-denial" is the military's term for enemies armed with advanced radars, missiles, fighter jets, and electronic warfare systems meant to keep American aircraft, missiles, and ships far from their borders. U.S. military planners expect the Air Force's ability to "stare" at targets 24/7 using its drone fleet to be there in future conflicts, said Hostage. "But they want it in a contested environment, and we can't do it currently." MQ-1s and MQ-9s "have limited capability" **against even basic air defenses**, said Hostage. "We're not talking deep over mainland China; we're talking any contested airspace. Pick the smallest, weakest country with the most minimal air force -- [**it**] **can deal with a Predator.**" To keep its ability to stare at targets, the Air Force will have to buy stealthier, faster reconnaissance planes or figure out a way to look at an enemy from beyond the reach of its defenses. The Air Force's top spy, Lt. Gen. Bob Otto, echoed Hostage's comments, saying that after the war in Afghanistan ends, he wants the Air Force to get rid of a number of Predators and Reapers and replace them with stealthier spy planes. "My argument would be, we can't afford to keep all of this capability, so we're going to have to bring some of it down," said Otto while discussing the 65 Predator and Reaper CAPs after a speech at the same conference.

### 2nc Avoidance Inev

#### Syria proves the administration will disregard i-law anyway

**Shank, 9/11/13** – Michael, Adjunct Professor and Board Member at George Mason University's School for Conflict Analysis and Resolution ( “A Callous Disregard for the Law,” US News, http://www.usnews.com/opinion/blogs/world-report/2013/09/11/obamas-syria-strike-would-break-international-law //Red)

One of the most disturbing dynamics about President Barack Obama's speech to the American people and what's gone down in the last week in Washington – vis-à-vis military strikes in Syria – is the **Obama administration's willingness to break constitutional and international law** to, ostensibly, uphold the law on chemical weapons and the morality enshrouding that law. Senator Rand Paul, R-Ky., in his response to the president's speech, rightly called out the Obama administration on this point exactly. The fact that Obama buried the lede (i.e. that Syria is now willing to sign the Chemical Weapons Treaty and turn over its chemical stockpiles to the international community) and led, instead, with an emotional appeal for a military strike and an assertion that the executive branch has the supreme authority on the military front, not the legislative branch, shows how wrong he is – legally speaking – and how right Paul was with his post-speech counter. The White House, and its pro-invasion advocates in Congress, believes that as long as the military action is not deemed a "war," the endeavor can escape the strictures secured by both America's founding fathers and the international community after World War II. This is wrong-headed. Irrespective of Congress's now-delayed vote on whether or not to authorize the use of military force in Syria, the president's public statement that Congressional approval is an unnecessary prerequisite **shows just how little regard the White House has for legal precedents and precepts. This is a dangerous and slippery slope for the executive branch.** Remember, President Obama and Vice President Joe Biden were very much against the breaking of constitutional law when Congressional approval is not present for a president's war of choice (i.e. when not in self-defense). Serving as senators at the time, Biden and Obama commented, unequivocally, on the Constitution's categorical role, with Biden going furthest in his opposition, saying that the founding fathers were "profoundly right," and that "if the president takes us to [war] without Congressional approval, I will call for his impeachment … the Constitution is clear. And so am I." Then-Senator Obama was no less clear, noting that the U.S. president "does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation." As senators, they were correct. According to Thomas Jefferson, in 1801, the president is, in fact, "unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defense." Jefferson pulled directly from the Constitution. Article I, Section 8, Clause 11 of the Constitution reads: "[Congress shall have Power...] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." Moreover, Jefferson was not alone in insisting this point. As James Madison wrote to Jefferson: "The constitution supposes, what the history of all governments demonstrates, that the executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war in the legislature." Madison recognized the proclivity and propensity of presidential powers to go above and beyond what was prudent. Those who claim, then, that the president is commander in chief and thus the commencer of all wars, are incorrect. What the founders intended with Article II, Section 2 of the Constitution, which refers to the president as the "commander-in-chief of the army and navy of the United States" is that – as Tenth Amendment Center founder Michael Boldin has noted – "once war was declared, it would then be the responsibility of the President, as the commander-in-chief, to direct the war". One wonders why the White House is so willing to flout American constitutional law, let alone international law, the latter of which requires a vote by the United Nations Security Council, according to the U.N. Charter of 1945, on par with what the U.S. government facilitated with Libya. The Libya resolution passed the U.N. Security Council by a vote of 10 in favor, with five abstentions (Brazil, China, Germany, India and Russia), authorizing member states "to take all necessary measure to protect civilians under threat of attack in the country." The first lesson from Libya is that, even if China and Russia have played, in the past, recalcitrant negotiators within the council, they can always abstain and fail to obfuscate a vote. In this case, however, ideally the U.S. would court the council for an indictment through the International Criminal Court, which is the optimal venue for reaffirming and reinforcing international law. Several members of Congress are now pursuing legislation along these lines. The second lesson from Libya is that after raining down 7,700 missiles and bombs to rid the country of Col. Moammar Gaddhafi, and after supplying much money and munitions to myriad rebel groups, we have not left the country better off. The problem of arms trafficking is still rife in the region, rebel groups remain splintered, the government is still fractious and stability and security issues are still prevalent. Syria poses many of the same problems, with the potential for regional arms trafficking, fractious government and perpetual rebel warfare ever-present. The conviction, then, by the White House to still prosecute this invasion is confounding. Remember, there is no direct threat to American national security (and we can think of plenty others deserving the White House's full-throttled attention, like the national debt), despite how much Secretary of State John Kerry or Barack Obama has claimed that our allies on the ground will be threatened. The truth here is that these allies will be under greater threat if we invade. Blowback is certain. There is no clear strategy for post-invasion, including the securing of any additional existing chemical weapons, the prevention of massive casualties associated with chemical explosions in the attack and the potential for serious regional and international blowback by allies of the Syria government. There is not even a plan for installing a ceasefire or a transitional government. [See a collection of political cartoons on Congress.] There is no accurate cost calculation for this invasion. While Secretary of Defense Chuck Hagel noted in a House Foreign Affairs Committee hearing that it'd run in the "tens of millions" this not dissimilar from pre-Iraq war advocates who claimed that the invasion in Baghdad would cost a similar low amount. We learned quickly how that was utter spin and absolute misrepresentation. There is no American support for this invasion. Constituents have not changed their mind in the past few weeks, no matter how many times the White House has communicated the case. While the American people are deeply saddened by the deaths of Syrians, they recognize that we should not incur further Syrian deaths by inflicting more violence on an already violence-ridden landscape. We are not, nor should we be, the world's policeman. It is about time we realized that, not only because the world doesn't want us to play that role, but also because we cannot afford to finance that position. Upholding law and order is essential, but it is equally critical that we uphold the law while trying to enforce the law. Anything else sets a bad precedent for those who want to do bad things in the world. It is about time we lead by example.

#### No Asian drone wars

**Zhou 12** (Dillon Zhou, graduate of the International Relations Program at the University of Massachusetts Boston, “China Drones Prompts Fears of a Drone Race With the US,” Policymic, December 2012, http://www.policymic.com/articles/19753/china-drones-prompt-fears-of-a-drone-race-with-the-us)

There are several facts that provide some solace to the U.S. as China's drones are far from being a real challenge to the American drone program. First, the Chinese drones are nowhere as sophisticated as U.S. drones in their range and proper hardware for optic systems and motors to power the "dragons." The DSB report notes that the U.S. technical systems are almost unrivaled at present. Second, China lacks the manpower to properly support their new fleet of drones. Whereas the U.S. has been training and honing a large force of UAV pilots, technicians and operation managers for 15 years. Finally, the U.S. drone program is about 20 years ahead of the Chinese program. The current models on show are considered to be prototypes and not finished products. The Chinese also have not had a chance to gain real experience with their drones during real operation.

# 1nr

## Politics

### 2nc impact overview

#### Turns the entire case – it sets a precedent to delegate war powers authority to Israel – drawing the US into war

**Richman, 12/29/13** (Sheldon, Counterpunch, “AIPAC's Stranglehold Congress Must Not Cede Its War Power to Israel”, <http://www.counterpunch.org/2013/12/27/congress-must-not-cede-its-war-power-to-israel/>)

The American people should know that pending right now in Congress is a bipartisan bill that would virtually commit the United States to go to war against Iran if Israel attacks the Islamic Republic. “The bill outsources any decision about resort to military action to the government of Israel,” Columbia University Iran expert Gary Sick wrote to Sen. Chuck Schumer (D-NY) in protest, one of the bill’s principal sponsors.

The mind boggles at the thought that Congress would let a foreign government decide when America goes to war, so here is the language (PDF):

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.

This section is legally nonbinding, but given the clout of the bill’s chief supporter outside of Congress — the American-Israel Public Affairs Committee (AIPAC [PDF]), leader of the pro-Israel lobby — that is a mere formality.

Since AIPAC wants this bill passed, it follows that so does the government of Israeli Prime Minister Benjamin Netanyahu, who opposes American negotiations with Iran and has repeatedly threatened to attack the Islamic Republic. Against all evidence, Netanyahu insists the purpose of Iran’s nuclear program is to build a weapon with which to attack Israel. Iran says its facilities, which are routinely inspected, are for peaceful civilian purposes: the generation of electricity and the production of medical isotopes.

The bill, whose other principal sponsors are Sen. Robert Menendez (D-NJ) and Sen. Mark Kirk (R-IL), has a total of 26 Senate cosponsors. If it passes when the Senate reconvenes in January, it could provoke a historic conflict between Congress and President Obama, whose administration is engaged in negotiations with Iran at this time. Aside from declaring that the U.S. government should assist Israel if it attacks Iran, the bill would also impose new economic sanctions on the Iranian people. Obama has asked the Senate not to impose additional sanctions while his administration and five other governments are negotiating with Iran on a permanent settlement of the nuclear issue.

A six-month interim agreement is now in force, one provision of which prohibits new sanctions on Iran. “The [Menendez-Schumer-Kirk] bill allows Obama to waive the new sanctions during the current talks by certifying every 30 days that Iran is complying with the Geneva deal and negotiating in good faith on a final agreement,” Ali Gharib writes at Foreign Policy magazine. That would effectively give Congress the power to undermine negotiations. As Iran’s foreign minister, Javad Zarif, told Time magazine, if Congress imposes new sanctions, even if they are delayed for six months, “The entire deal is dead. We do not like to negotiate under duress.”

Clearly, the bill is designed to destroy the talks with Iran, which is bending over backward to demonstrate that its nuclear program has no military aims.

#### It risks global nuclear war through miscalculation and draws in every major nuclear power

**PressTV, 11/13/13** (“Global nuclear conflict between US, Russia, China likely if Iran talks fail,” <http://www.presstv.ir/detail/2013/11/13/334544/global-nuclear-war-likely-if-iran-talks-fail/>)

A global conflict between the US, Russia, and China is likely in the coming months should the world powers fail to reach a nuclear deal with Iran, an American analyst says.

“If the talks fail, if the agreements being pursued are not successfully carried forward and implemented, then there would be enormous international pressure to drive towards a conflict with Iran before [US President Barack] Obama leaves office and that’s a very great danger that no one can underestimate the importance of,” senior editor at the Executive Intelligence Review Jeff Steinberg told Press TV on Wednesday.

“The United States could find itself on one side and Russia and China on the other and those are the kinds of conditions that can lead to miscalculation and general roar,” Steinberg said.

“So the danger in this situation is that if these talks don’t go forward, we could be facing a global conflict in the coming months and years and that’s got to be avoided at all costs when you’ve got countries like the United States, Russia, and China with” their arsenals of “nuclear weapons,” he warned.

The warning came one day after the White House told Congress not to impose new sanctions against Tehran because failure in talks with Iran could lead to war.

### 2nc uniqueness wall

#### Obama is winning the Iran sanctions fight now – 1nc Merry says that even though the bill might pass, he’ll veto it and can rally the public against it to prevent a veto override – it will be a tough fight against the Israel lobby but with sustained pressure, he’ll win.

#### 2 framing issues to filter uniqueness:

#### First, the GOP doesn’t matter at all – they’re voting for Iran sanctions no matter what. 1nc Lobe says that the question is whether Obama can convince enough Democrats to support him instead of the Israel lobby – and that comes down to his personal influence with them. So general cards about Obama’s political capital or thumpers are irrelevant – because they’re about his ability to pass legislation over GOP opposition – not to call in favors with Democrats to block a veto override.

#### Second, err negative on the question of veto overrides – Lobe says it will be a tough fight but the dynamics of an override are tough – so as long as Obama doesn’t further harm his relations with Democrats, he’ll win the fight

**Lindsay, 11/25/13 -** Senior Vice President, Director of Studies, and Maurice R. Greenberg Chair at the Council on Foreign Relations(James, “Will Congress Overrule Obama’s Iran Nuclear Deal?” <http://blogs.cfr.org/lindsay/2013/11/25/will-congress-overrule-obamas-iran-nuclear-deal/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+jlindsay+%28James+M.+Lindsay%3A+The+Water%27s+Edge%29>)

Does this mean that Congress is going to take Iran policy out of Obama’s hands? Not quite. Any sanctions bill could be vetoed, something the president presumably would do to save his signature diplomatic initiative. The odds that sanctions proponents could override a veto aren’t good. Congress hasn’t overridden one in foreign policy since it imposed anti-apartheid sanctions on South Africa over Ronald Reagan’s objections back in 1986. In that respect, Obama is in a much stronger position than he was back in September when he sought to persuade Congress to authorize a military strike on Syria. Then the difficulties of passing legislation worked against him; now they work for him.

One reason Obama should be able to make a veto stick is party loyalty. Many congressional Democrats won’t see it in their interest to help Republicans rebuke him, and he only needs thirty-four senators to stand by him. Senator Reid has already begun to soften his commitment to holding a sanction vote. As Majority Leader he has considerable freedom to slow down bills and to keep them from being attached to must-pass legislation that would be politically hard for Obama to veto.

#### Menendez hasn’t been able to win enough Democrats because Obama’s outreach is working

**Tamari, 12/20/13** – Washington correspondent for the Philadelphia Inquirer (Jonathan, “Unsanctioned Fight”, <http://www.politico.com/magazine/story/2013/12/bob-menendezs-unsanctioned-fight-with-the-white-house-101396_Page3.html#.UsYRCfRDuYI>)

Menendez says the threat of sanctions will let the Iranians know that a hammer is poised to strike if they are simply stalling. “If this all falls apart, we don’t have months,” he told me.

Obama rejected that idea Friday. “It’s not going to be hard for us to turn the dials back or strengthen sanctions even further,” he said. “I'll work with members of Congress to put even more pressure on Iran, but there’s no reason to do it right now.”

Menendez’s plan faces a steep climb. Senate Majority Leader Harry Reid (D-Nev.) will determine if or when it gets a vote when Congress returns in January, and Menendez is facing pushback from fellow Democrats. Ten committee chairs wrote Reid this week urging him to keep the Senate from unilaterally advancing new sanctions and potentially scuttling negotiations.

#### Not enough support currently exists for a veto override

**Tobin, 12/24/13 -** Senior Online Editor of Commentary magazine(Jeffrey, Commentary Magazine, “Schumer’s Iran Sanctions Test” <http://www.commentarymagazine.com/2013/12/24/charles-schumers-iran-sanctions-test/>)

But our applause for Schumer’s stand needs to be tempered by the knowledge that his statements may be more for show than substance. So long as Reid and Johnson are backing Obama’s play on Iran, the odds are against getting a vote on the Menendez-Kirk bill. And if Obama is really determined to veto it, it is highly unlikely that there are 67 votes available for an override in the Senate (though there may well be a two-thirds majority for more sanctions in the Republican-controlled House of Representatives). Safe in the knowledge that the measure has no chance, all Schumer may be doing is a little grandstanding in order to shore up his reputation as a friend of Israel that was damaged by his support for Chuck Hagel last winter.

### AT: Plan codifies current policy

#### Current policy is ambiguous binding restrictions undermine Obama

**Corn, 13** ­– Professor Geoffrey Corn (South Texas College of Law) (“Corn Comments on the Costs of Shifting to a Pure Self-Defense Model” 6/2, <http://www.lawfareblog.com/2013/06/corn-comments-on-the-prospect-of-a-shift-to-a-pure-self-defense-model/>)

Professor Chesney’s post in response to the President’s speech at the National War College invited reactions. I want to focus a brief response to the end of the post, where Professor Chesney wrote:

Yesterday’s speech reinforces my conclusion, as it clarifies both that the long-term detention option is defunct and that we are using force within boundaries that will be no different postwar thanks to the flexibility of the pre-9/11 self-defense model. Put another way, it seems to me ever clearer that the current shadow war approach to counterterrorism doesn’t really require an armed-conflict predicate–or an AUMF, for that matter.

The President’s speech – like prior statements of other administration officials – certainly suggests that the inherent right of self-defense is defining the permissible scope of kinetic attacks against terrorists. I wonder, however, if this is more rhetoric than reality? I think only time will tell whether actual operational practice confirms that “we are using force within boundaries that will be no different postwar”. More significantly, if practice does confirm this de facto abandonment of AUMF targeting authority, I believe it will result in a loss of the type of operational and tactical flexibility that has been, according to the President, decisive in the degradation of al Qaeda to date. The inherent right of self-defense is undoubtedly a critical source of authority to disable imminent threats to the nation, but it simply fails to provide the scope of legal authority to employ military force against the al Qaeda (and associated force) threat that will provide an analogous decisive effect in the future.

### 2nc war powers spillover link

#### Fiating a hostile Congress by unilaterally restricting war powers spills over to Iran negotiations

**Alterman, 9/4/13 –** holds the Zbigniew Brzezinski Chair in Global Security and Geostrategy and directs the Middle East program at the Center for Strategic and International Studies (CSIS). Prior to joining CSIS in 2002, he served as a member of the Policy Planning staff at the US Department of State and as a special assistant to the assistant secretary of state for Near Eastern affairs. In addition to his policy work, he teaches Middle Eastern studies at the Johns Hopkins School of Advanced International Studies and George Washington University (Jon, “US-Iran Nuclear Deal Hinges On Syria Vote” http://www.al-monitor.com/pulse/originals/2013/09/us-iran-nuclear-deal-hinges-on-syria-vote.html)

To start, it is worth noting the extent to which foreign governments are sophisticated consumers of American political information. Decades of international cable news broadcasts and newspaper websites have brought intimate details of US politics into global capitals. Foreign ministers in the Middle East and beyond are US news junkies, and they seem increasingly distrustful of their embassies. For key US allies, the foreign minister often seems to have made him- or herself the US desk officer. Most can have a quite sophisticated discussion on congressional politics and their impact on US foreign relations.

The Iranian government is no exception. While former president Mahmoud Ahmedinejad was emotional and shrill in his opposition to the United States, there remains in Iran a cadre of Western-trained technocrats, fluent in English and nuanced in their understanding of the world. President Hassan Rouhani has surrounded himself with such people, and Supreme Leader Ayatollah Ali Khamenei has charged them with investigating a different relationship between Iran and the United States.

As they do so, they cannot help but be aware that on the eve of Rouhani’s inauguration, the US House of Representatives voted 400–20 to impose stiff additional sanctions on Iran. The House saw Rouhani’s electoral victory as a call for toughness, not potential compromise.

If Iran were to make concessions in a negotiation with the United States, they would surely seek sanctions relief and other actions requiring congressional approval. To make such concessions to Obama, they would need some confidence that he can deliver. A president who cannot bring around a hostile Congress is not a president with whom it is worth negotiating.

# 2nr

### 2nr Sanctions Fail

**New sanctions collapse negotiations**

**Gharib, 12/18/13** (Ali, The Cable – a Foreign Policy blog, “Exclusive: Top Senate Democrats Break with White House and Circulate New Iran Sanctions Bill” <http://thecable.foreignpolicy.com/posts/2013/12/18/exclusive_top_senate_democrats_break_with_white_house_and_circulate_new_iran_sancti>)

Critics of imposing new sanctions fear that the bill will violate either the spirit or the letter of the Joint Plan of Action signed in Geneva. The interim deal allows some flexibility, mandating that "the U.S. administration, acting consistent with the respective roles of the President and the Congress, will refrain from imposing new nuclear-related sanctions." Administration officials have mounted a so-far successful effort to stall new sanctions in the Senate. (The House overwhelmingly passed new sanctions in the summer.) Previous rumors of a bill in the Senate were said to contain a six-month delay that would prevent the legislation from taking effect while talks continued, but this iteration of the legislation doesn't contain that kind of fail-safe. Asked this month by Time what would happen if a bill, even with a delay, passed Congress, Iran's Foreign Minister Javad Zarif said, "The entire deal is dead."

"The law as written comes close to violating the letter [of the Geneva agreement] since the sanctions go into effect immediately unless the administration immediately waives them," said Colin Kahl, who stepped down in 2011\* as the Pentagon's top Mideast policy official. "There is no question the legislation violates the spirit of the Geneva agreement and it would undoubtedly be seen by the Iranians that way, giving ammunition to hard-liners and other spoilers looking to derail further progress."

Though a fact-sheet circulating with the new bill says it "does not violate the Joint Plan of Action," critics allege it would mark a defeat for the administration and the broader push for a diplomatic solution to the Iran crisis.

"It would kill the talks, invalidate the interim deal to freeze Iran's nuclear program, and pledge U.S. military and economic support for an Israel-led war on Iran," said Jamal Abdi, the policy director for the Washington-based National Iranian American Council, a group that supports diplomatic efforts to head off the Iranian nuclear crisis. "There is no better way to cut Iranian moderates down, empower hardliners who want to kill the talks, and **ensure that this standoff ends with war** instead of a deal."

The bill would in effect set up a direct confrontation with the White House, which is negotiating a final deal with Tehran that would allow for continued Iranian enrichment capabilities. According to the agreement, the comprehensive deal would "involve a mutually defined enrichment program" with strict curbs. In a forum this month at the Brookings Institution, Obama dismissed the possibility that Tehran would agree to a deal that eliminated Iran's entire nuclear program or its domestic enrichment capabilities.

"If we could create an option in which Iran eliminated every single nut and bolt of their nuclear program, and foreswore the possibility of ever having a nuclear program, and, for that matter, got rid of all its military capabilities, I would take it," Obama said. "That particular option is not available." Asked again about not allowing any Iranian enrichment, Obama quipped, to laughter from the audience, "One can envision an ideal world in which Iran said, 'We'll destroy every element and facility and you name it, it's all gone.' I can envision a world in which Congress passed every one of my bills that I put forward. I mean, there are a lot of things that I can envision that would be wonderful."

Alireza Nader, an Iran analyst at the RAND Corporation, agreed dismantling Iran's entire nuclear program would be "pretty unrealistic." He added such an aim would be moving "backward": "The Geneva agreement basically states that if Iran is more transparent regarding its nuclear program and intentions, then it can be met with sanctions relief. That's the goal: transparency."

Nader said that diplomacy required flexibility from both sides, something the legislation doesn't seem to contain. "When you have these kinds of bills, it shows that there are those in the U.S. who don't want to be flexible," he said.