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### 1nc debt ceiling da

#### Obama’s pressuring the GOP with a strong display of Presidential strength and staying on message – the GOP will blink

**Dovere, 10/1/13** (Edward, Politico, “Government shutdown: President Obama holds the line”

<http://www.politico.com/story/2013/10/government-shutdown-president-obama-holds-the-line-97646.html?hp=f3>)

President Barack Obama started September in an agonizing, extended display of how little sway he had in Congress. He ended the month with a display of resolve and strength that could redefine his presidency. All it took was a government shutdown. This was less a White House strategy than simply staying in the corner the House GOP had painted them into — to the White House’s surprise, Obama was forced to do what he so rarely has as president: he said no, and he didn’t stop saying no. For two weeks ahead of Monday night’s deadline, Obama and aides rebuffed the efforts to kill Obamacare with the kind of firm, narrow sales pitch they struggled with in three years of trying to convince people the law should exist in the first place. There was no litany of doomsday scenarios that didn’t quite come true, like in the run-up to the fiscal cliff and the sequester. No leaked plans or musings in front of the cameras about Democratic priorities he might sacrifice to score a deal. After five years of what’s often seen as Obama’s desperation to negotiate — to the fury of his liberal base and the frustration of party leaders who argue that he negotiates against himself. Even his signature health care law came with significant compromises in Congress. Instead, over and over and over again, Obama delivered the simple line: Republicans want to repeal a law that was passed and upheld by the Supreme Court — to give people health insurance — or they’ll do something that everyone outside the GOP caucus meetings, including Wall Street bankers, seems to agree would be a ridiculous risk. “If we lock these Americans out of affordable health care for one more year,” Obama said Monday afternoon as he listed examples of people who would enjoy better treatment under Obamacare, “if we sacrifice the health care of millions of Americans — then they’ll fund the government for a couple more months. Does anybody truly believe that we won’t have this fight again in a couple more months? Even at Christmas?” The president and his advisers weren’t expecting this level of Republican melee, a White House official said. Only during Sen. Ted Cruz’s (R-Texas) 21-hour floor speech last week did the realization roll through the West Wing that they wouldn’t be negotiating because they couldn’t figure out anymore whom to negotiate with. And even then, they didn’t believe the shutdown was really going to happen until Saturday night, when the House voted again to strip Obamacare funding. This wasn’t a credible position, Obama said again Monday afternoon, but rather, bowing to “extraneous and controversial demands” which are “all to save face after making some impossible promises to the extreme right wing of their political party.” Obama and aides have said repeatedly that they’re not thinking about the shutdown in terms of political gain, but the situation’s is taking shape for them. Congress’s approval on dealing with the shutdown was at 10 percent even before the shutters started coming down on Monday according to a new CNN/ORC poll, with 69 percent of people saying the House Republicans are acting like “spoiled children.” “The Republicans are making themselves so radioactive that the president and Democrats can win this debate in the court of public opinion” by waiting them out, said Jim Manley, a Democratic strategist and former aide to Senate Majority Leader Harry Reid who has previously been critical of Obama’s tactics. Democratic pollster Stan Greenberg said the Obama White House learned from the 2011 debt ceiling standoff, when it demoralized fellow Democrats, deflated Obama’s approval ratings and got nothing substantive from the negotiations. “They didn’t gain anything from that approach,” Greenberg said. “I think that there’s a lot they learned from what happened the last time they ran up against the debt ceiling.” While the Republicans have been at war with each other, the White House has proceeded calmly — a breakthrough phone call with Iranian President Hassan Rouhani Friday that showed him getting things done (with the conveniently implied juxtaposition that Tehran is easier to negotiate with than the GOP conference), his regular golf game Saturday and a cordial meeting Monday with his old sparring partner Israeli Prime Minister Benjamin Netanyahu. White House press secretary Jay Carney said Monday that the shutdown wasn’t really affecting much of anything. “It’s busy, but it’s always busy here,” Carney said. “It’s busy for most of you covering this White House, any White House. We’re very much focused on making sure that the implementation of the Affordable Care Act continues.” Obama called all four congressional leaders Monday evening — including Boehner, whose staff spent Friday needling reporters to point out that the president hadn’t called for a week. According to both the White House and Boehner’s office, the call was an exchange of well-worn talking points, and changed nothing. Manley advised Obama to make sure people continue to see Boehner and the House Republicans as the problem and not rush into any more negotiations until public outrage forces them to bend. “He may want to do a little outreach, but not until the House drives the country over the cliff,” Manley said Monday, before the shutdown. “Once the House has driven the country over the cliff and failed to fund the government, then it might be time to make a move.” The White House believes Obama will take less than half the blame for a shutdown – with the rest heaped on congressional Republicans. The divide is clear in a Gallup poll also out Monday: over 70 percent of self-identifying Republicans and Democrats each say their guys are the ones acting responsibly, while just 9 percent for both say the other side is. If Obama is able to turn public opinion against Republicans, the GOP won’t be able to turn the blame back on Obama, Greenberg said. “Things only get worse once things begin to move in a particular direction,” he said. “They don’t suddenly start going the other way as people rethink this.”

#### **Having to defend authority derails the current agenda**

Kriner 10 Douglas L. Kriner (assistant professor of political science at Boston University) “After the Rubicon: Congress, Presidents, and the Politics of Waging War”, University of Chicago Press, Dec 1, 2010, page 68-69.

While congressional support leaves the president’s reserve of political capital intact, congressional criticism saps energy from other initiatives on the home front by forcing the president to expend energy and effort defending his international agenda. Political capital spent shoring up support for a president’s foreign policies is capital that is unavailable for his future policy initiatives. Moreover, any weakening in the president’s political clout may have immediate ramifications for his reelection prospects, as well as indirect consequences for congressional races.59 Indeed, Democratic efforts to tie congressional Republican incumbents to President George W. Bush and his war policies paid immediate political dividends in the 2006 midterms, particularly in states, districts, and counties that had suffered the highest casualty rates in the Iraq War. 60 In addition to boding ill for the president’s perceived political capital and reputation, such partisan losses in Congress only further imperil his programmatic agenda, both international and domestic. Scholars have long noted that President Lyndon Johnson’s dream of a Great Society also perished in the rice paddies of Vietnam. Lacking the requisite funds in a war-depleted treasury and the political capital needed to sustain his legislative vision, Johnson gradually let his domestic goals slip away as he hunkered down in an effort first to win and then to end the Vietnam War. In the same way, many of President Bush’s highest second-term domestic proprieties, such as Social Security and immigration reform, failed perhaps in large part because the administration had to expend so much energy and effort waging a rear-guard action against congressional critics of the war in Iraq.61 When making their cost-benefit calculations, presidents surely consider these wider political costs of congressional opposition to their military policies. If congressional opposition in the military arena stands to derail other elements of his agenda, all else being equal, the president will be more likely to judge the benefits of military action insufficient to its costs than if Congress stood behind him in the international arena.

#### That takes Obama off-message – it undermines his constant pressure on the GOP

**Milbank, 9/27/13** – Washington Post Opinion Writer (Dana, “Obama should pivot to Dubya’s playbook” Washington Post, <http://www.washingtonpost.com/opinions/dana-milbank-obama-should-try-pivoting-to-george-bushs-playbook/2013/09/27/c72469f0-278a-11e3-ad0d-b7c8d2a594b9_story.html>)

If President Obama can stick to his guns, he will win his October standoff with Republicans. That’s an awfully big “if.” This president has been consistently inconsistent, predictably unpredictable and reliably erratic. Consider the events of Thursday morning: Obama gave a rousing speech in suburban Washington, in defense of Obamacare, on the eve of its implementation. “We’re now only five days away from finishing the job,” he told the crowd. But before he had even left the room, his administration let slip that it was delaying by a month the sign-up for the health-care exchanges for small businesses. It wasn’t a huge deal, but it was enough to trample on the message the president had just delivered. Throughout his presidency, Obama has had great difficulty delivering a consistent message. Supporters plead for him to take a position — any position — and stick with it. His shifting policy on confronting Syria was the most prominent of his vacillations, but his allies have seen a similar approach to the Guantanamo Bay prison, counterterrorism and climate change. Even on issues such as gun control and immigration where his views have been consistent, Obama has been inconsistent in promoting his message. Allies are reluctant to take risky stands, because they fear that Obama will change his mind and leave them standing alone. Now come the budget showdowns, which could define the rest of his presidency. Republican leaders are trying to shift the party’s emphasis from the fight over a government shutdown to the fight over the debt-limit increase, where they have more support. A new Bloomberg poll found that Americans, by a 2-to-1 margin, disagree with Obama’s view that Congress should raise the debt limit without any conditions. But Obama has a path to victory. That poll also found that Americans think lawmakers should stop trying to repeal Obamacare. And that was before House Republicans dramatically overplayed their hand by suggesting that they’ll allow the nation to default if Obama doesn’t agree to their laundry list of demands, including suspending Obamacare, repealing banking reforms, building a new oil pipeline, easing environmental regulations, limiting malpractice lawsuits and restricting access to Medicare. To beat the Republicans, Obama might follow the example of a Republican, George W. Bush. Whatever you think of what he did, he knew how to get it done: by simplifying his message and repeating it, ad nauseam, until he got the result he was after. Obama instead tends to give a speech and move along to the next topic. This is why he is forever making “pivots” back to the economy, or to health care. But the way to pressure Congress is to be President One Note. In the debt-limit fight, Obama already has his note: He will not negotiate over the full faith and credit of the United States. That’s as good a theme as any; it matters less what the message is than that he delivers it consistently. The idea, White House officials explained to me, is to avoid getting into a back-and-forth over taxes, spending and entitlement programs. “We’re right on the merits, but I don’t think we want to argue on the merits,” one said. “Our argument is not that our argument is better than theirs; it’s that theirs is stupid.” This is a clean message: Republicans are threatening to tank the economy — through a shutdown or, more likely, through a default on the debt — and Obama isn’t going to negotiate with these hostage-takers. Happily for Obama, Republicans are helping him to make the case by being publicly belligerent. After this week’s 21-hour speech on the Senate floor by Sen. Ted Cruz (R-Tex.), the publicity-seeking Texan and Sen. Mike Lee (R-Utah) objected to a bipartisan request to move a vote from Friday to Thursday to give House Republicans more time to craft legislation avoiding a shutdown. On the Senate floor, Sen. Bob Corker (R-Tenn.) accused them of objecting because they had sent out e-mails encouraging their supporters to tune in to the vote on Friday. The Post’s Ed O’Keefe caught Cruz “appearing to snicker” as his colleague spoke — more smug teenager than legislator. Even if his opponents are making things easier for him, Obama still needs to stick to his message. As in Syria, the president has drawn a “red line” by saying he won’t negotiate with those who would put the United States into default. If he retreats, he will embolden his opponents and demoralize his supporters.

#### It consumes his capital, undermines Dem unity and breaches debt ceiling

**Lillis, 9/7/13** (Mike, The Hill, “Fears of wounding Obama weigh heavily on Democrats ahead of vote”

Read more: http://thehill.com/homenews/house/320829-fears-of-wounding-obama-weigh-heavily-on-democrats#ixzz2gWiT9H8u

The prospect of wounding President Obama is weighing heavily on Democratic lawmakers as they decide their votes on Syria. Obama needs all the political capital he can muster heading into bruising battles with the GOP over fiscal spending and the debt ceiling. Democrats want Obama to use his popularity to reverse automatic spending cuts already in effect and pay for new economic stimulus measures through higher taxes on the wealthy and on multinational companies. But if the request for authorization for Syria military strikes is rebuffed, some fear it could limit Obama's power in those high-stakes fights. That has left Democrats with an agonizing decision: vote "no" on Syria and possibly encourage more chemical attacks while weakening their president, or vote "yes" and risk another war in the Middle East. “I’m sure a lot of people are focused on the political ramifications,” a House Democratic aide said. Rep. Jim Moran (D-Va.), a veteran appropriator, said the failure of the Syria resolution would diminish Obama's leverage in the fiscal battles. "It doesn't help him," Moran said Friday by phone. "We need a maximally strong president to get us through this fiscal thicket. These are going to be very difficult votes."

#### Economic collapse

**Davidson, 9/10/13** – co-founder of NPR’s Planet Money (Adam, “Our Debt to Society” New York Times, <http://www.nytimes.com/2013/09/15/magazine/our-debt-to-society.html?pagewanted=all>)

If the debt ceiling isn’t lifted again this fall, some serious financial decisions will have to be made. Perhaps the government can skimp on its foreign aid or furlough all of NASA, but eventually the big-ticket items, like Social Security and Medicare, will have to be cut. At some point, the government won’t be able to pay interest on its bonds and will enter what’s known as sovereign default, the ultimate national financial disaster achieved by countries like Zimbabwe, Ecuador and Argentina (and now Greece). In the case of the United States, though, it won’t be an isolated national crisis. If the American government can’t stand behind the dollar, the world’s benchmark currency, then the global financial system will very likely enter a new era in which there is much less trade and much less economic growth. It would be, by most accounts, the largest self-imposed financial disaster in history. Nearly everyone involved predicts that someone will blink before this disaster occurs. Yet a small number of House Republicans (one political analyst told me it’s no more than 20) appear willing to see what happens if the debt ceiling isn’t raised — at least for a bit. This could be used as leverage to force Democrats to drastically cut government spending and eliminate President Obama’s signature health-care-reform plan. In fact, Representative Tom Price, a Georgia Republican, told me that the whole problem could be avoided if the president agreed to drastically cut spending and lower taxes. Still, it is hard to put this act of game theory into historic context. Plenty of countries — and some cities, like Detroit — have defaulted on their financial obligations, but only because their governments ran out of money to pay their bills. No wealthy country has ever voluntarily decided — in the middle of an economic recovery, no less — to default. And there’s certainly no record of that happening to the country that controls the global reserve currency. Like many, I assumed a self-imposed U.S. debt crisis might unfold like most involuntary ones. If the debt ceiling isn’t raised by X-Day, I figured, the world’s investors would begin to see America as an unstable investment and rush to sell their Treasury bonds. The U.S. government, desperate to hold on to investment, would then raise interest rates far higher, hurtling up rates on credit cards, student loans, mortgages and corporate borrowing — which would effectively put a clamp on all trade and spending. The U.S. economy would collapse far worse than anything we’ve seen in the past several years.

#### Nuclear war

**Friedberg and Schoenfeld 8**

[Aaron, Prof. Politics. And IR @ Princeton’s Woodrow Wilson School and Visiting Scholar @ Witherspoon Institute, and Gabriel, Senior Editor of Commentary and Wall Street Journal, “The Dangers of a Diminished America”, 10-28, <http://online.wsj.com/article/SB122455074012352571.html>]

Then there are the dolorous consequences of a potential collapse of the world's financial architecture. For decades now, Americans have enjoyed the advantages of being at the center of that system. The worldwide use of the dollar, and the stability of our economy, among other things, made it easier for us to run huge budget deficits, as we counted on foreigners to pick up the tab by buying dollar-denominated assets as a safe haven. Will this be possible in the future? Meanwhile, traditional foreign-policy challenges are multiplying. The threat from al Qaeda and Islamic terrorist affiliates has not been extinguished. Iran and North Korea are continuing on their bellicose paths, while Pakistan and Afghanistan are progressing smartly down the road to chaos. Russia's new militancy and China's seemingly relentless rise also give cause for concern. If America now tries to pull back from the world stage, it will leave a dangerous power vacuum. The stabilizing effects of our presence in Asia, our continuing commitment to Europe, and our position as defender of last resort for Middle East energy sources and supply lines could all be placed at risk. In such a scenario there are shades of the 1930s, when global trade and finance ground nearly to a halt, the peaceful democracies failed to cooperate, and aggressive powers led by the remorseless fanatics who rose up on the crest of economic disaster exploited their divisions. Today we run the risk that rogue states may choose to become ever more reckless with their nuclear toys, just at our moment of maximum vulnerability. The aftershocks of the financial crisis will almost certainly rock our principal strategic competitors even harder than they will rock us. The dramatic free fall of the Russian stock market has demonstrated the fragility of a state whose economic performance hinges on high oil prices, now driven down by the global slowdown. China is perhaps even more fragile, its economic growth depending heavily on foreign investment and access to foreign markets. Both will now be constricted, inflicting economic pain and perhaps even sparking unrest in a country where political legitimacy rests on progress in the long march to prosperity. None of this is good news if the authoritarian leaders of these countries seek to divert attention from internal travails with external adventures.

### 1nc Iran

#### Iran is looking to compromise on its nuclear program – Obama’s perceived flexibility is key to negotiations

**Benen, 9/20/**13 - producer for "The Rachel Maddow Show," a blogger at Maddow Blog, and an MSNBC political contributor (Steve, “When crises become opportunities,” <http://maddowblog.msnbc.com/_news/2013/09/20/20599445-when-crises-become-opportunities?lite>)

When it comes to the Middle East, progress has never moved in a straight line. There are fits and starts, ebbs and flows. There are heartening breakthroughs and crushing disappointments, occasionally at the same time.

That said, while the domestic political establishment's attention seems focused elsewhere, there's reason to believe new opportunities are materializing in the region in ways that were hard to even imagine up until very recently.

This morning, for example, the Organization for the Prohibition of Chemical Weapons (OPCW) announced that Syria has taken its first steps towards detailing its stockpiles. Michael Luhan, a spokesperson for the Hague-based chemical weapons regulator, said in a statement, "The OPCW has received an initial disclosure from the Syrian Government of its chemical weapons programme, which is now being examined by the Technical Secretariat of the Organisation."

Meanwhile, Iranian President Hasan Rouhani has a new op-ed in the Washington Post arguing that the United States and the rest of the world "must work together to end the unhealthy rivalries and interferences that fuel violence and drive us apart" through a policy of "constructive engagement."

The New York Times added that Iranian leaders, "seizing on perceived flexibility in a private letter from President Obama, have decided to gamble on forging a swift agreement over their nuclear program with the goal of ending crippling sanctions."

David Sanger summarized the bigger picture nicely.

Only two weeks after Washington and the nation were debating a unilateral military strike on Syria that was also intended as a forceful warning to Iran about its nuclear program, President Obama finds himself at the opening stages of two unexpected diplomatic initiatives with America's biggest adversaries in the Middle East, each fraught with opportunity and danger.

Without much warning, diplomacy is suddenly alive again after a decade of debilitating war in the region. After years of increasing tension with Iran, there is talk of finding a way for it to maintain a face-saving capacity to produce a very limited amount of nuclear fuel while allaying fears in the United States and Israel that it could race for a bomb.

The surprising progress has come so suddenly that a senior American diplomat described this week's developments as "head spinning."

So what happens next?

The consensus among many foreign policy observers is that developments in Syria and Iran are linked in ways that may or may not be helpful to the United States. Max Fisher explained well yesterday that President Obama's pragmatism "has sent exactly the right signals to Iran, particularly at this very sensitive moment."

Obama has been consistently clear, even if some members of his administration were not, that his big overriding goal is for Syrian leader Bashar al-Assad to stop using chemical weapons. First he was going to do that with strikes, meant to coerce Assad. Then, in response to the Russian proposal, Obama signaled he would back off the strikes if Assad gave up his chemical weapons, which is exactly what Obama has always said he wants. He's been consistent as well as flexible, which gave Assad big incentives to cooperate when he might have otherwise dug in his heels.

There are some awfully significant -- and promising -- parallels here with the U.S. standoff with Iran. Obama has been clear that he wants Iran to give up its rogue uranium-enrichment program and submit to the kind of rigorous inspections that would guarantee that its nuclear program is peaceful. He's also been clear that the United States is using severe economic sanctions to coerce Tehran to cooperate and that it would use military force if necessary. The implicit (and sometimes explicit) message to Iran has been: If you abandon your enrichment program, we'll make it worth your while by easing off.

Here's where the parallel with Syria is really important: Iranian leaders distrust the United States deeply and fear that Obama would betray them by not holding up his end of the bargain. That's been a major hurdle to any U.S.-Iran nuclear deal. But seeing Assad's deal with Obama work out (so far) sends the message to Iran that it can trust the United States. It also sends the message that making concessions to the United States can pay off. Iran's supreme leader has been talking a lot lately about flexibility and diplomacy toward the West. So it's an ideal moment for Obama to be demonstrating flexibility and diplomacy toward the Middle East.

#### Uncertainty over war powers keeps Iran at the table. Obama needs to be perceived as having independent authority to both strike and back down

**Zeisberg, 9/25/13** - associate professor of political science at the University of Michigan (Mariah, “Debate over War Powers may yield positive outcome”

<http://blog.constitutioncenter.org/2013/09/debate-over-war-powers-resolution-may-yield-positive-outcome/>)

Uncertainty about what the Constitution requires is thick: even as President Obama called for legislative authorization to bolster the legitimacy of strikes, and even as he now appeals to the UN for a resolution authorizing military sanctions if Syria does not comply with the U.S.-Russia agreement for destroying its chemical weapons, the president nevertheless maintains that he has the authority to commit the U.S. to hostilities in Syria without Congressional (or UN) authorization.

Robert Gates criticized the president for running a risk of looking “weak” if Congress did not authorize military action, and agreed with Leon Panetta that the president obviously has all power needed for strikes in Syria.

On the other hand, constitutional scholars Louis Fisher, Stephen Griffin, and Sandy Levinson have argued that Obama’s constitutional grounding for independent strikes is either non-existent or extremely weak. Congress itself has been divided over whether authorization is necessary for a presidential strike in Syria.

While the Constitution tells us that Congress has the power to “declare war,” the text nowhere defines what kinds of hostilities count as war – which has enabled some opportunism in the Obama administration, and in many other presidential administrations too.

Even the War Powers Resolution restricts “hostilities” without defining the term, and there, too, Obama has been willing to press language to (or beyond) its absolute limit.

Constitutional and statutory text that does not define the meaning of the key words that separate one institution’s authority from another necessarily insert some measure of uncertainty into the branches’ war powers regime.

What to make of these tensions and ambiguities? Has the Constitution failed in its task to provide a definitive legal framework that can guide decision-makers about important questions such as which institution has the power to take the country to war? Isn’t the point of a Constitution to resolve this kind of conflict? If it is so pervasively difficult to read our political culture and know which branch has war authority, then does that mean that the Constitution has failed to do its job – or worse, that we are witnessing an epidemic of reckless infidelity to the Constitution’s mandates?

In fact, I think that uncertainty as to the meaning of the Constitution’s war powers regime in Syria is not catastrophic but may actually carry benefits.

As diplomacy around Syria unfolds, I want to draw attention to a few of the intersections between domestic constitutional debates and the conditions for effective international action.

First, it is arguably the threat of intervention which moved Russia into high gear in negotiations with Syria. But President Obama needed a plausible claim of independent presidential empowerment for such a claim to be credible.

At the same time, such a claim, unresisted, raises the specter of undefined aims, mission creep, costly wars without broad public support, unconsidered policy complexities, and troubling bellicose precedent that are a hallmark of presidentialism in war. This is, in part, why congressional mobilization to defend its institutional prerogatives has been so welcomed by some prominent war powers scholars.

Obama’s subsequent willingness to back down, to accommodate claims to legislative empowerment – derided by many as a weak or vacillating choice — seems in turn to have created time and space for a diplomatic process to unfold in the place of a military one.

Recent developments in that process include not only a Russian-brokered plan to confiscate all chemical weapons from the Assad regime but also statements by the Ayatollah Khamenei signaling openness to diplomacy and by President Rouhani that Iran would not develop a nuclear weapon.

And now Obama is moving this technique of vacillating red lines up to the level of global institutions.

On the one hand he is pressing the UN to back up the U.S.-Russia agreement with sanctions, but at the same time says that he reserves the power to act outside the UN, and has argued that “without a credible military threat, the Security Council had demonstrated no inclination to act at all.”

We have yet to see what kind of domestic or international push-back would await him if he tried to translate this rhetorical willingness to act outside the UN into concrete action.

Obama’s constitutional “vacillations” may end up being productive in sundering the Assad regime from its chemical weapons. Only time will tell.

For constitutional scholars, it is worth noting the positive role that uncertainty and textual ambiguity can create in generating good international outcomes.

#### Giving Congress the ability to say no will tank negotiations by emboldening hardliners – this triggers Israeli strikes

**Ross, 9/9/13** - a counselor at the Washington Institute for Near East Policy, was a senior Middle East adviser to President Obama from 2009 to 2011, Director of Policy Planning for the State Department under George H.W. Bush, the Special Middle East coordinator under Clinton (Dennis, “Blocking action on Syria makes an attack on Iran more likely” Washington Post, <http://www.washingtonpost.com/opinions/blocking-action-on-syria-makes-an-attack-on-iran-more-likely/2013/09/09/dd655466-1963-11e3-8685-5021e0c41964_story.html>)

Still, for the opponents of authorization, these arguments are portrayed as abstractions. Only threats that are immediate and directly affect us should produce U.S. military strikes. Leaving aside the argument that when the threats become immediate, we will be far more likely to have to use our military in a bigger way and under worse conditions, there is another argument to consider: should opponents block authorization and should the president then feel he cannot employ military strikes against Syria, this will almost certainly guarantee that there will be no diplomatic outcome to our conflict with Iran over its nuclear weapons.

I say this for two reasons. First, Iran’s President Rouhani, who continues to send signals that he wants to make a deal on the nuclear program, will inevitably be weakened once it becomes clear that the U.S. cannot use force against Syria. At that point, paradoxically, the hard-liners in the Iranian Revolutionary Guard Corps and around the Supreme Leader will be able to claim that there is only an economic cost to pursuing nuclear weapons but no military danger. Their argument will be: Once Iran has nuclear weapons, it will build its leverage in the region; its deterrent will be enhanced; and, most importantly, the rest of the world will see that sanctions have failed, and that it is time to come to terms with Iran.

Under those circumstances, the sanctions will wither. What will Rouhani argue? That the risk is too high? That the economic costs could threaten regime stability? Today, those arguments may have some effect on the Ayatollah Ali Khamenei precisely because there is also the threat that all U.S. options are on the table and the president has said he will not permit Iran to acquire nuclear weapons. Should he be blocked from using force against Syria, it will be clear that all options are not on the table and that regardless of what we say, we are prepared to live with an Iran that has nuclear arms.

Israel, however, is not prepared to accept such an eventuality, and that is the second reason that not authorizing strikes against Syria will likely result in the use of force against Iran. Indeed, Israel will feel that it has no reason to wait, no reason to give diplomacy a chance and no reason to believe that the United States will take care of the problem. Prime Minister Benjamin Netanyahu sees Iran with nuclear weapons as an existential threat and, in his eyes, he must not allow there to be a second Holocaust against the Jewish people. As long as he believes that President Obama is determined to deal with the Iranian threat, he can justify deferring to us. That will soon end if opponents get their way on Syria.

Ironically, if these opponent succeed, they may prevent a conflict that President Obama has been determined to keep limited and has the means to do so. After all, even after Israel acted militarily to enforce its red line and prevent Syria’s transfer of advanced weapons to Hezbollah in Lebanon, Assad, Iran and Hezbollah have been careful to avoid responding. They have little interest in provoking Israeli attacks that would weaken Syrian forces and make them vulnerable to the opposition.

For all the tough talk about what would happen if the United States struck targets in Syria, the Syrian and Iranian interest in an escalation with the United States is also limited. Can the same be said if Israel feels that it has no choice but to attack the Iranian nuclear infrastructure? Maybe the Iranians will seek to keep that conflict limited; maybe they won’t. Maybe an Israeli strike against the Iranian nuclear program will not inevitably involve the United States, but maybe it will — and maybe it should.

#### 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.

#### Iran prolif causes nuclear war

**Edelman, 11 -** Distinguished Fellow at the Center for Strategic and Budgetary Assessments; he was U.S. Undersecretary of Defense for Policy in 2005-9 (Eric, “The Dangers of a Nuclear Iran,” Foreign Affairs, Jan/Feb, proquest)

The reports of the Congressional Commission on the Strategic Posture of the United States and the Commission on the Prevention ofWeapons of Mass Destruction Proliferation and Terrorism, as well as other analyses, have highlighted the risk that a nuclear-armed Iran could trigger additional nuclear proliferation in the Middle East, even if Israel does not declare its own nuclear arsenal. Notably, Algeria, Bahrain, Egypt, Jordan, Saudi Arabia, Turkey, and the United Arab Emirates- all signatories to the Nuclear Nonproliferation Treaty (npt)-have recently announced or initiated nuclear energy programs. Although some of these states have legitimate economic rationales for pursuing nuclear power and although the low-enriched fuel used for power reactors cannot be used in nuclear weapons, these moves have been widely interpreted as hedges against a nuclear-armed Iran. The npt does not bar states from developing the sensitive technology required to produce nuclear fuel on their own, that is, the capability to enrich natural uranium and separate plutonium from spent nuclear fuel.Yet enrichment and reprocessing can also be used to accumulate weapons-grade enriched uranium and plutonium-the very loophole that Iran has apparently exploited in pursuing a nuclear weapons capability.

Developing nuclear weapons remains a slow, expensive, and difficult process, even for states with considerable economic resources, and especially if other nations try to constrain aspiring nuclear states' access to critical materials and technology. Without external support, it is unlikely that any of these aspirants could develop a nuclear weapons capability within a decade.

There is, however, at least one state that could receive significant outside support: Saudi Arabia. And if it did, proliferation could accelerate throughout the region. Iran and Saudi Arabia have long been geopolitical and ideological rivals. Riyadh would face tremendous pressure to respond in some form to a nuclear-armed Iran, not only to deter Iranian coercion and subversion but also to preserve its sense that Saudi Arabia is the leading nation in the Muslim world. The Saudi government is already pursuing a nuclear power capability, which could be the first step along a slow road to nuclear weapons development. And concerns persist that it might be able to accelerate its progress by exploiting its close ties to Pakistan. During the 1980s, in response to the use of missiles during the Iran-Iraq War and their growing proliferation throughout the region, Saudi Arabia acquired several dozen css-2 intermediate-range ballistic missiles from China. The Pakistani government reportedly brokered the deal, and it may have also offered to sell Saudi Arabia nuclear warheads for the css-2s, which are not accurate enough to deliver conventional warheads effectively.

There are still rumors that Riyadh and Islamabad have had discussions involving nuclear weapons, nuclear technology, or security guarantees. This "Islamabad option" could develop in one of several different ways. Pakistan could sell operational nuclear weapons and delivery systems to Saudi Arabia, or it could provide the Saudis with the infrastructure, material, and technical support they need to produce nuclear weapons themselves within a matter of years, as opposed to a decade or longer.Not only has Pakistan provided such support in the past, but it is currently building two more heavy-water reactors for plutonium production and a second chemical reprocessing facility to extract plutonium from spent nuclear fuel. In other words, it might accumulate more fissile material than it needs to maintain even a substantially expanded arsenal of its own.

Alternatively, Pakistan might offer an extended deterrent guarantee to Saudi Arabia and deploy nuclear weapons, delivery systems, and troops on Saudi territory, a practice that the United States has employed for decades with its allies. This arrangement could be particularly appealing to both Saudi Arabia and Pakistan. It would allow the Saudis to argue that they are not violating the npt since they would not be acquiring their own nuclear weapons. And an extended deterrent from Pakistan might be preferable to one from the United States because stationing foreign Muslim forces on Saudi territory would not trigger the kind of popular opposition that would accompany the deployment of U.S. troops. Pakistan, for its part, would gain financial benefits and international clout by deploying nuclear weapons in Saudi Arabia, as well as strategic depth against its chief rival, India.

The Islamabad option raises a host of difficult issues, perhaps the most worrisome being how India would respond. Would it target Pakistan's weapons in Saudi Arabia with its own conventional or nuclear weapons? How would this expanded nuclear competition influence stability during a crisis in either the Middle East or South Asia? Regardless of India's reaction, any decision by the Saudi government to seek out nuclear weapons, by whatever means, would be highly destabilizing. It would increase the incentives of other nations in the Middle East to pursue nuclear weapons of their own. And it could increase their ability to do so by eroding the remaining barriers to nuclear proliferation: each additional state that acquires nuclear weapons weakens the nonproliferation regime, even if its particular method of acquisition only circumvents, rather than violates, the npt.

N-PLAYER COMPETITION

Were Saudi Arabia to acquire nuclear weapons, the Middle East would count three nuclear-armed states, and perhaps more before long. It is unclear how such an n-player competition would unfold because most analyses of nuclear deterrence are based on the U.S.- Soviet rivalry during the Cold War. It seems likely, however, that the interaction among three or more nuclear-armed powers would be more prone to miscalculation and escalation than a bipolar competition. During the Cold War, the United States and the Soviet Union only needed to concern themselves with an attack from the other. Multipolar systems are generally considered to be less stable than bipolar systems because coalitions can shift quickly, upsetting the balance of power and creating incentives for an attack.

More important, emerging nuclear powers in the Middle East might not take the costly steps necessary to preserve regional stability and avoid a nuclear exchange. For nuclear-armed states, the bedrock of deterrence is the knowledge that each side has a secure second-strike capability, so that no state can launch an attack with the expectation that it can wipe out its opponents' forces and avoid a devastating retaliation. However, emerging nuclear powers might not invest in expensive but survivable capabilities such as hardened missile silos or submarinebased nuclear forces. Given this likely vulnerability, the close proximity of states in the Middle East, and the very short flight times of ballistic missiles in the region, any new nuclear powers might be compelled to "launch on warning" of an attack or even, during a crisis, to use their nuclear forces preemptively. Their governments might also delegate launch authority to lower-level commanders, heightening the possibility of miscalculation and escalation. Moreover, if early warning systems were not integrated into robust command-and-control systems, the risk of an unauthorized or accidental launch would increase further still. And without sophisticated early warning systems, a nuclear attack might be unattributable or attributed incorrectly. That is, assuming that the leadership of a targeted state survived a first strike, it might not be able to accurately determine which nation was responsible. And this uncertainty, when combined with the pressure to respond quickly, would create a significant risk that it would retaliate against the wrong party, potentially triggering a regional nuclear war.

### 1nc executive cp

#### 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 to initiate military action, unless to repel attacks on the United States.

#### The Department of Justice officials should counsel against doing so without prior Congressional authorization.

#### The Executive Order should also require written publication of Office of Legal Counsel opinions.

#### Executive pre-commitment to DOJ advice solves the aff

**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.

#### It has the effect of the aff but doesn’t jeopardize crisis flex

**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.

#### That's key to Presidential effectiveness—keeping authority is key—the impact is extinction

**Baker, 7 -** Chief Judge to the United States Court of Appeals for the Armed Forces, former Special Assistant to the President and Legal Advisor to the National Security Council (James, IN THE COMMON DEFENSE: NATIONAL SECURITY LAW FOR PERILOUS TIMES, p. 307-309)

This book has considered national security law and process in the context of four security threats. First is the threat of attack by nonstate and statesponsored or supported actors using terrorist means. Overseas, this threat is realized on a daily basis. Within the United States the threat is continuous, but intermittent. The threat of high-explosive attack, like car and truck bombs, targeted suicide bombings, or the sabotage of aircraft, is most likely to materialize. The threat of catastrophic attack with nuclear weapons has the greatest potential impact on our way of life and in terms of human cost. It is in relation to this threat in particular that we need to evaluate and test national security law and process, both because of the potential consequence and because of the focus the enemy has placed on this means of attack. Second, U.S. constitutional values may ebb and wane in an endless conflict against state and nonstate actors engaged in acts of terrorism or posing the threat of terrorism. In light of the interminable nature of this threat, assertions of presidential authority made in extremis may become embedded in U.S. practice and law without a corresponding application of checks and balances. Left outside the reach of effective and independent mechanisms of appraisal, broad assertions of executive authority may in time diminish both the principles of law that define American life as well as the physical security at which they are directed. Third, sincere policy differences, as well as those that are politically inspired, regarding the nature of the terrorist threat and the corresponding measure of response may result in a zero-sum compromise; that is, a diminution of security or a diminution of law, rather than contextual formulas that advance both at once. If the executive needs broad and rapid authority to engage in intelligence collection – as it does – the better course is not to limit the authority, for fear of misuse, but to increase the opportunities for meaningful internal and external appraisal. Such appraisal will deter misuse, but as importantly, encourage effective use. In this enduring conflict we may exhaust our resources or our principles in a manner that leaves us unwilling or unable to effectively address this century’s other certain crises, including the proliferation of weapons of mass destruction to unreliable state actors, the advent of pandemic disease, and environmental degradation and change. This book has focused on the threat of terrorist attack because this is the threat that today drives the legal debate about the president’s constitutional authority. More generally, it drives the purpose and meaning of national security law. It will continue to do so. It is also the threat with the greatest potential to transform U.S. national security, in both a physical and a values sense. The importance of addressing other issues, such as conflict in the Middle East, totalitarian regimes, or pandemic disease, must not be overlooked. Each bears the potential to spiral beyond control resulting in catastrophe at home and overseas. Each of these issues warrants full consideration of the national security instruments and processes described in this book. In each context, law and national security lawyers may contribute to national security in multiple ways. First, the law provides an array of positive or substantive instruments the president may wield to provide for security. Second, the law provides procedural mechanisms offering opportunities to consider, validate, appraise, and improve policy, as well as ensure its lawful execution. These mechanisms include the horizontal separation of constitutional powers at the federal level, and the vertical separation of powers between the federal government and state government. They are found as well in statute and in internal executive directive. The most effective means of appraisal are often found through informal practice. Informal contact allows participants to speak with a freedom not permitted or not often found when bearing the institutional mantle of an office or branch of government. Consider the difference in reaction between the counsel that sits down with the policymaker for a discussion and the counsel who requests the policymaker to put down in a memorandum everything that occurred. With informal practice the role of personality and friendship can serve to facilitate information exchange and the frank exchange of views. Third, in the international context, law provides mechanisms to achieve U.S. national security objectives. This is evident in the context of maritime security, where U.S. law is pegged to an international framework, and effective security requires international as well as domestic participation. In the area of intelligence integration, bilateral and multilateral agreements, like the PSI and bilateral aviation agreements, provide essential mechanisms for identifying intelligence, sharing intelligence, and acting on intelligence. Fourth, the law reflects and projects American values of democracy and liberty. Values are silent force multipliers as well as positive national security tools. As Lawrence Wright, the author of The Looming Tower, and others argue, jihadists like Osama Bin Laden offer no programs or policies for governance, no alternative to Western democracy. They offer only the opportunity for revenge. Rule of law is the West’s alternative to jihadist terrorism. Law, and respect for law, offers the structure of democracy, the opportunity for individual fulfillment regardless of sex, race, or creed, and a process for the impartial administration of justice. Sustained commitment to the rule of law in practice and perception will serve as a positive national security tool in curtailing recruitment of the next wave and generation of jihadists. But law, like homeland security, is an incremental endeavor. It is dependent on sustained action, not rhetoric, and perceptions can be swept aside in a few ill-chosen moments. Law, like this conflict, requires sustained sacrifice and sustained support. Thus, divisive legal arguments should be eschewed, unless they are essential to security and there are no alternative means to accomplish the same necessary security end.

### 1nc unsc pic

#### COUNTERPLAN: The United States Federal Government require Congressional authorization prior to initiating non-UN approved military action, unless to repel attacks on the United States.

#### It’s competitive—the counterplan requires less than the plan. We bypass prior approval for offensive Security Council actions. Pure textual competition makes no sense for negative resrictions.

#### The net benefit—requiring Congress destroys UN operations and de-legitimizes the international order. The plan is an obsolete response to Vietnam-era fears—turns every 1ac impact

Kahn 2k—Professor of Law and Humanities at Yale Law School, graduate of the University of Chicago and the Yale Law School, holds a doctorate in philosophy from Yale (Paul W., November 2000, THE SEVENTH ANNUAL FRITZ B. BURNS LECLTURE THE WAR POWERS RESOLUTION AND KOSOVO: WAR POWERS AND THE MILLENNIUM, 34 Loy. L.A. L. Rev. 11, RBatra)

The international law of human rights, which owes its very existence to an institutional situation in which it was not and could not be effective, has suddenly become the **normative core** of a new post-Cold War global order. The gross violations of human rights in Haiti, West Africa, the states of the former Yugoslavia, Cambodia, Somalia, and Rwanda have prompted international responses. Those responses have often been inadequate, and there have been numerous failures to respond, but that there should be a response is now accepted. That there can be a response comes well within the range of the ordinary political imagination. Increasingly, it is **the failure to intervene**, not intervention that requires explanation. We saw this most dramatically, for example, in the recent intervention in East Timor.

We are, of course, far less certain about the relative ordering of human rights and state sovereignty norms when we deal with China and Russia than when we deal with states of Africa, Southeast Asia, and Latin America. Yet the change is undeniable: the relentless discourse - academic, popular, and official - on the emerging global order continually holds up a vision of international human rights. The Cold War is a receding memory; the only deployments of force that we imagine in the short and medium term are those that would enforce human rights norms. n93 Even those we cast as "enemies" - for example, the regimes of Iraq, Serbia, or perhaps North Korea - [\*42] we understand, within a human rights framework: it is not the people of the state, but the regime that we oppose. The people, we believe, suffer from the human rights abuses of their governments. They too are victims. These are not enemy states, but "rogue" regimes. Intervention is seen as a matter of enforcing human rights norms, even if it is the case that innocent people suffer the consequences of the intervention.

The pressing question today is not "what is the distribution of foreign affairs power between Congress and the president?" but rather, "what is the institutional mechanism through which the United States will assume its role in the emerging global order?" Too often, American constitutional lawyers see the issue here as one that rests merely on differences of political belief: is the U.S. role one of forceful, international leadership or is it one of withdrawal from entanglements abroad? Following Holmes's dictum that the Constitution is made for people of widely different views on issues of policy, n94 there is a tendency to believe that interpretation of the war powers provisions must proceed in a way that is independent of such policy considerations. But this distinction between law and policy disables the debate from the beginning. The deep and complex issue here involves the manner in which two different conceptions of the rule of law will intersect in the next generation.

V. Changing Interpretations of Congressional War Powers

Every interpretation of the constitutional distribution of war powers occurs against a sense of the imaginable uses of force - the kinds of force that can be used and the ends for which it would be used. This was true at the time of the drafting, and it remains true today. A reading that renders the United States unable to defend itself or to pursue its vital interests fails a test of minimal plausibility. n95 Equally, however, an interpretation develops against a perception of the possible abuses of power, which a constitutional structure should be designed to mitigate. The authority to deploy force, like every other constitutional power, is simultaneously the power to pursue [\*43] national interests and to commit abuses - indeed, particularly dangerous abuses. Arguments often occur because where one interpreter sees vital national interests, another sees an abuse of power.

Whether a deployment of force is perceived as necessary or abusive depends, in substantial part, on the way in which one perceives American interests to align or fail to align with the norms of the international order. Those norms, however, do not remain stable. The world of 1900 - at least the developed world - was still largely structured by the Peace of Westphalia, while today's norms increasingly express a global order of human rights. In between, we experienced the rise of ideological politics, leading first to the Second World War, and then to the Cold War. To think that the vision of United States v. Curtis-Wright Export Corp., n96 let alone the drafters' vision of 1787, is particularly relevant to the American position in this new world order is to come to the debate with a wholly inadequate set of intellectual tools, unless one is so deeply committed to an idea of American exceptionalism that nothing that actually happens in the world can make any difference. Our problem today is that scholars of constitutional law too often maintain an interpretive framework appropriate for the Cold War, insensitive to the new law of human rights.

The modern history of interpretation of the constitutional distribution of war powers begins with the war in Vietnam, and its secret extension to Cambodia and Laos. The American legal scholar of the Vietnam-war era understood the problem of the use of force abroad within a broader Cold War framework. n97 He or she saw military intervention in Southeast Asia as yet another form of legal abuse brought about by the passions of ideological confrontation. n98 Just as the fear of communism led to McCarthyism and the violation of First Amendment rights at home - as well as to domestic uses of internal [\*44] police forces in violation of constitutional norms - that same fear led to coercive interventions abroad. There was a single continuum of illegal behavior brought about by an ideologically induced panic. That behavior might be wiretapping at home or subversive activity abroad. Beyond subversion of political institutions abroad - for example in Guatemala, Iran, and the early years of Vietnam n99 - was the actual commitment of American forces. Thus, the Pentagon Papers case n100 appeared as the domestic side of a single phenomenon, the outward manifestation of which was the war in Vietnam. n101

For the legal scholar of the Vietnam era, there was an easy assumption that international law and domestic constitutional law worked in the same alignment. They had to because law represented principled commitments above the short-term fray of political battles here and abroad. Law represented the appeal to reason as the source of social order, and the aspiration of reason is always universal. If law expresses universal principles, there must be fundamental agreement between the norms of domestic and of international law. n102 The task of the scholar-lawyer, then, was to affirm the norms [\*45] of law in order to bring the nation back to its core principles. In doing so, law would protect those suffering from the abuses of governmental power at home and abroad.

Military intervention was viewed as a problem of power slipping out of the control of law: domestic and international. Both the domestic and the international legal orders established institutional, procedural checks on the threat of military action. Just as the Constitution set up the check of congressional approval on executive adventurism, n103 so the Charter set up the check of Security Council approval. n104 Domestically, force is only legitimate if approved by Congress; internationally, force is only legitimate if approved by the Security Council. Of course, the Security Council was not a particularly democratic institution. Nevertheless, agreement among its members would represent consensus across widely divergent systems of political beliefs: a task at least as difficult as obtaining a consensus across the different beliefs and factions represented in Congress.

Institutionally, at both the national and the international level, there were built-in biases against the use of force. Agreement to use force would always be exceptional. This mind-set produced much of the legal scholarship on the use of force beginning with Vietnam and going right through the end of the Cold War. Scholars wrote about "foreign affairs law," by which they meant that mix of international and constitutional law that restrained the use of force. n105 In checking presidential uses of force, Congress would simultaneously affirm the international legal norm prohibiting the use of force. The legal scholar was speaking to one audience when he or she insisted on adherence to both the constitutional norm of congressional responsibility and the international legal norm of Security Council approval. Neither Congress nor the Security Council was likely to be enthusiastic about the use of force in situations short of self-defense. Ironically, in just that situation of self-defense, affirmative action was required of neither institution.

[\*46] In the face of a Cold War militarization of foreign policy both here and abroad, legal scholars generally found themselves arguing for an increasingly formalist view of the law of the Charter, as well as of the war-declaring power of Congress. Article 2(4)'s prohibition on the use of force was just that: a strict ban on any and all use of force outside of the mechanisms of Chapter Seven. n106 Similarly, the congressional war-declaring power was a ban on the use of force without congressional approval. Both were subject to a single exception: self-defense in response to armed attack. n107

This straightforward appeal to text as the limit of legal interpretation had a similar effect in both dimensions of law: throughout this period there was a growing division between the law of academics and political reality. Arguments about the legal prohibition on the use of force under the Charter regime had the same air of unreality as arguments in the 1930s to the effect that the Kellog-Briand Pact had made recourse to war illegal. n108 The Cold War was an era of militarization on both the macro-level of superpower conflict and the micro-level of post-colonial regimes. Similarly, there was no relationship between the claim that only Congress could commit American forces and the actual deployments of American forces throughout the Cold War. In many places around the world, the Cold War was a hot war, and in all of those places it was the president who committed American forces. Congress rarely objected and with very few exceptions continued to fund those deployments. n109 Nor did the War Powers Resolution, which every president declared unconstitutional, [\*47] shift the domestic balance of power with respect to the use of force. n110 Just as there were no international institutions able to enforce Article 2(4)'s prohibition on the use of force, there were no domestic institutions willing and able to pursue the congressional power to declare war as an enforceable rule of law. Courts steadfastly refused to get involved in this dispute. n111 Nevertheless, the more war slipped the bonds of law, the more the legal scholars insisted on their formal approach to law's requirements. n112

The first serious assault on the idea of a symmetry of constitutional and international law occurred with the Gulf War. n113 The academic argument over the Gulf War was not commensurate with the underlying issue of that conflict. After all, Iraq had invaded and annexed Kuwait. Nothing quite like this had occurred in the postwar era. The action fell squarely under Article 2(4)'s prohibition on the use of force, just as the use of force in response fell squarely within the norm of collective self-defense. Procedurally as well, the war met the academics' conditions of legitimacy - it was approved by both the Security Council and by Congress. n114

[\*48] Nevertheless, the war occasioned a substantial debate over the relationship of these institutions. **Could the president commit** **American forces to a Security Council approved action in the absence of congressional approval?** Did the constitutional requirement of a congressional declaration of war extend to American participation in multilateral enforcement actions authorized by the Security Council? The reason for the debate was not hard to find: this was the first post-Cold War war. The stalemate in the Security Council had been breached, and this raised entirely new possibilities. To realize these possibilities, however, required confronting the asymmetry between the constitutional order and the emerging order of international law.

One of the unanticipated benefits of the Cold War had been the dramatic development of a formal law of human rights. n115 If the Security Council were to take up these contemporary international law norms as the ground for a post-Cold War agenda, there would be a radical reconstruction of the ideas of state sovereignty, government autonomy, domestic jurisdiction, and indeed of the very nature of an international rule of law. Suddenly, international law scholars could imagine a Security Council pursuing an agenda informed by a truly transnational perspective. The center of gravity of the international legal order was shifting from Article 2(4)'s prohibition on the use of force to a regime of international human rights.

[\*49] Were the Council to adopt such a program of enforcing an international law of human rights, an emphasis on Congress's war-declaring power could amount to a serious, and possibly fatal, institutional barrier. It would impose on the Council the burden of the American division of power between Congress and president. The president would be disabled from committing the United States to participate in "enforcement actions." Without the United States, the Security Council was likely to do little. Holding Security Council action hostage to the United States Congress would be a **prescription for failure** of the emerging vision of an enforceable, transnational order of human rights.

By 1991, there was substantial reason to believe that the Security Council might become an enthusiastic supporter of such international norms. Indeed, through the following years this is exactly what we have seen. The Security Council has repeatedly intervened in order to protect human rights. It intervened to manage transitions away from authoritarian regimes in Haiti, El Salvador, Angola, and Cambodia. n116 It deployed forces, or authorized such deployments, in Bosnia, Croatia, Rwanda, Haiti, Somalia, and Iraq. n117 The reason for these interventions has not been the protection of states from violations of Article 2(4). Rather, these have been actions to defend the human rights of citizens against repressive domestic regimes. These interventions would have been inconceivable a generation earlier, either because the sites of intervention fell within the spheres of influence of the superpowers, or because the situations would have been actively contested by the superpowers.

During this same period, i.e., up until the intervention in Kosovo, no American ground forces were placed at serious military risk outside of such Security Council authorized actions. n118 There [\*50] could not have been a sharper sign of the end of the Cold War. American forces were effectively becoming an element - the most important element - of a multilateral approach, acting under the authority of the Security Council and pursuing a human rights agenda.

During the 1990s, a practice developed of American participation in such UN approved missions. Most obviously, there has been a substantial deployment of American military forces in Bosnia as a result of the Dayton Peace agreements, and there has been a continuing deployment of American forces "policing" the Iraqi no-fly zones. n119 American troops participated disastrously in Somalia and with mixed success in Haiti. Despite party differences, Congress allowed the President to take the political responsibility for these policies. Its typical action has been neither to support nor to prohibit the policy, but to declare its support for American forces and to provide appropriations. n120

The emerging rule of the 1990s seemed to be that the president could commit American forces to participate in duly authorized enforcement actions by the Security Council. n121 Congress did not act to prevent such engagements; it did not insist on **prior approval**, and it did not press claims under the War Powers Resolution. Congressional acquiescence to American participation in such enforcement actions signified a shift in the constitutional baseline from which the use of force was measured. It was no longer plausible to argue that [\*51] every substantial use of force fell within Congress's war-declaring authority. The War Powers Resolution was dying a quiet death.

As of 1998, arguably there had been an adjustment of constitutional magnitude in the manner in which American political institutions intersected with the global regime of law. United States forces were now regular elements in international police forces deployed under the authority of the Security Council. Such deployments did not fall within the traditional category of war, and were, therefore, not subject to **a requirement of prior congressional authorization**. n122 The president's duty to execute the law had expanded to include the international legal order. n123 That order was no longer about the protection of state sovereignty, but about the advancement of human rights. The effective check on the abuse of force would come from the Security Council, not Congress. Congress, of course, retains an ultimate authority to prohibit American participation in such police actions. It can deny funding and it has the power to issue regulations on the use of the armed forces.

The intervention in Kosovo, however, went well beyond this emerging institutional practice. The military action in Kosovo was not an enforcement action approved by the Security Council; it was not a police action under Chapter Seven of the Charter. Nor did it fit within the traditional norm of collective self-defense, which applies to cross-border transgressions. This was a humanitarian intervention by NATO, acting under the leadership of the United States. This was not just another post-Cold War UN authorized action; it was effectively the first post-Charter action. In this sense, it burst the parameters of the balance of domestic and international institutions that had been reached in the course of the 1990s. While Congress may have adjusted to a situation in which its war declaring functions were no longer applicable to police actions pursuant to Security Council authorizations, there were no grounds to believe it had acquiesced to executive decisions to deploy force outside of the UN framework. n124

[\*52] For those international law scholars that grew up in the era of Vietnam, Cambodia, Nicaragua, Grenada, and Panama, the intervention in Kosovo fit into a familiar pattern. Once again, the United States was intervening militarily in the domestic politics of a sovereign state. Once again, the U.S. intervention lacked the approval of the Security Council, and once again the intervention was fundamentally an Executive decision - that is, Congress had not passed a declaration of war. Indeed, the effort to pass a resolution supporting the action failed on a tie vote in the House. n125 Instead of American prestige and power being at stake in Latin America or Southeast Asia, it was now at stake in Eastern Europe. That this area was now incorporated into our zone of vital national interests was a function of Cold War developments, i.e., the dissolution of the Soviet Empire. Yet, the pattern was as old as the Monroe Doctrine: we were once again setting out to control political developments within our unilaterally declared sphere of influence. As in the past, we had the support of reluctant allies, providing a patina of internationalism for what was essentially a United States' action.

Judged by the postwar standards of Charter law, these scholars were right to see the Kosovo intervention as illegal. Previous unilateral claims of humanitarian intervention, when pursued beyond short-term rescue missions, had met with skepticism. n126 If illegal under international law, there could be little argument that the president had the power to commit American forces without congressional approval - and surely he could have no such power after the "grace period" of the War Powers Resolution had run.

Nevertheless, the legal rhetoric from the Cold War was strikingly out of place in the discussion of the Kosovo intervention. The [\*53] threat to the international order could not reasonably be seen as arising from the NATO intervention, unless one had an inordinate fear of the Russian response. Rather, the threat came from the policies of the Milosevic regime. Cold War categories no longer described the reality of the politics of intervention, and therefore those categories did not offer any obvious direction for legal analysis.

There is little doubt that the intervention in Kosovo had as its basis a concern for human rights. There was no good reason for the intervention from the perspective of national self-interest. It represented a substantial political risk, with little direct domestic benefit. Of course, arguments can be made that the defense of human rights and regional political stability are in the long-term interests of the United States. But if those are the national interests, then the Cold War is quite dead and national security interests are now aligned with global human rights interests. The difficulty for the critics, then, was that the human rights motives of this intervention were visible on their face; it was not credible to argue that they were a pretext for some other set of motives. To apply the Cold War law on the use of force now appeared to be a kind of category mistake. This was not an extension of the Reagan Doctrine to Eastern Europe, and it was not a "humanitarian" intervention like that of India in East Pakistan.

This does not mean that the reasons for the intervention were simply the advancement of human rights, as if military interventions can now be expected wherever human rights are challenged. How NATO got to the position of intervening to defend these interests in this case is a different story. That is a complex history of previous failures in Bosnia, of diplomatic frustration, and of the forces of public opinion generated by media access. We should not, however, confuse this account of "why here" with the separate question of the end for which intervention occurred. That domestic politics supports an international human rights end does not somehow "taint" the end.

Neither does it challenge that end to argue that the outcome has been deficient when measured against those same rights: the returning Kosovars have committed their own violations of the rights of the Serbs. But the lack of success in this respect does not suggest that the end of the intervention was "really" the same as the ends of those who benefited from the intervention. NATO intervened to [\*54] protect the human rights of those who had a political agenda that the interveners did not support: independence for Kosovo. This disagreement has continued with mixed policy results. n127 Yet it is a familiar lesson from domestic civil rights law that human rights often count the most when we act to protect the rights of those with whom we disagree.

In just ten years, we have learned that the institutional structure of the Charter is not adequate for the advancement of this new, substantive, international legal order of human rights. We find ourselves with a Cold War structure in a post-Cold War world. This mismatch between institutions and law was bound to come to a crisis point when the global regime of human rights intersected too closely with the remnants of the Cold War system of alliances and spheres of influence. This is what happened in Kosovo. NATO intervened without seeking Security Council approval because there was no possibility that such approval would be forthcoming. Russia, a traditional ally of the Serbs, would have vetoed any such effort. That the United States was willing to risk its relationship with Russia through such an intervention deep into its traditional sphere of influence - and unexpectedly risk its relationship to China as well - is just another mark of how far we have come from the Cold War.

Kosovo, however, did not become a Russian Cuban Missile Crisis. **Intervention in the defense of human rights does not pose the same sort of threat as the Cold War interventions**. International law no longer serves to protect state sovereignty as if that is the only barrier to an anarchical return to a state of nature. Contemporary international law mitigates claims of state sovereignty by marking the point at which those outside the community have a right to express concern and even a responsibility to take action to assure that the human rights of individuals are respected.

By the time of the Gulf War, the war declaring power of Congress was effectively being challenged by an emerging global legal order in which the use of force was managed by the Security Council. [\*55] By the time of Kosovo, the emerging law of human rights had become sufficiently strong to stand on its own. That law could now serve as a standard by which to measure the performance of international, as well as domestic, institutions. By that standard, the Security Council had failed in Kosovo. n128 The NATO intervention was, in this sense, corrective: it remedied not just the substantive violation of law by the Milosevic regime, but also the institutional failure of the Security Council.

That this corrective action was effective is suggested by the subsequent adoption of responsibility for administering and policing the situation in Kosovo by the Security Council. n129 That the corrective may have had some lasting effect became clear in the Council's relatively rapid reaction to the situation in East Timor, following the vote for independence. n130 While the Council was arguably negligent in failing to anticipate the possibility of a violent reaction to the referendum, it was able to respond forcefully to the situation as it developed. This is undoubtedly a legacy of Kosovo.

The Security Council structure represents an antiquated distribution of power. Nevertheless, it is not likely to change any time soon: the Charter amendment procedure poses too many obstacles. n131 Thus, we find ourselves with a mismatch between a global [\*56] order of international human rights that has developed in the last generation, and an institution designed to deal with an international legal order in which state sovereignty was central. That this mismatch did not wholly stymie the development of a law of human rights was itself remarkable: more a matter of luck than design. n132 Nevertheless, we should expect more occasions in which the institution and the law simply do not match.

The best the law can do in such situations is nothing at all. There is no reason to defend a partially antiquated institution at a substantial cost to individuals and groups. The institution of the Security Council is not a good in itself; neither, for that matter, is Congress. Each must be measured in terms of the ends of a legal order, which now include both human rights and democratic legitimacy. By these measures, neither the Security Council nor Congress always comes out well.

Just as we should not fetishize our institutions, we should not freely encourage independent enforcement action by states when there is still a danger of pretextual claims. The global order of human rights has hardly displaced traditional state interests across the board. We are only at the beginning of such a world of rights. There is no rule to be formulated because every situation will call forth different kinds of reactions. Just as Congress has frequently authorized presidential deployments of force after the fact, the same may be true of the Security Council. Post-hoc authorization may be the best measure we have of the legality of a humanitarian intervention.

In the end, we must decide for ourselves whether a use of force is really dedicated to the pursuit of a global order of human rights or is only a military intervention of the old style in pursuit of national interests. If it is the latter, it deserves to be condemned. But it should be condemned for what it is substantively, not for a failure to follow an antiquated arrangement or to subordinate normative ends [\*57] to an international institutional arrangement that is itself of questionable legitimacy.

The real problem today is not a surfeit of questionable humanitarian interventions, but the failure to take up this task in many places in the world. This has been the story, most evidently, in much of Africa. In the face of gross violations of human rights around the world, I can think of no reason to set law against any effort that promises substantial amelioration. While the law alone cannot stop states from the military pursuit of their vital national interests - as they understand them - it can have some effect on a state's willingness to pursue genuine humanitarian interventions. States reluctantly intervene on such grounds; to be told it is illegal would only increase the burden.

VI. Conclusion

The great project at the beginning of the new millennium is the dissolution of the state system and the emergence of a global order of law founded on the idea of human rights. This is a most uncertain project normatively and institutionally. The age of states was only in part a disaster: along with endless wars, it brought us a system of ultimate meanings by which generations defined a life project. Whether a vision of human rights can provide ultimate meanings is an open question. For the United States, in particular, transition to a new age of a global regime of rights will be the hardest of all.

Americans understand the rule of law as the political order established by the Constitution and maintained by domestic courts. The Constitution expresses the will of the popular sovereign, and the courts speak in the voice of the people even when they declare popularly supported legislation to be unconstitutional. n133 But the rest of the world increasingly understands the rule of law as a global order of human rights. The existence of these legal rights is quite independent of the idea of popular sovereignty. For us, sovereignty is the source of law; for others, law precedes and limits sovereignty. Because we locate law within a functional account of popular sovereignty, we are by instinct extremely reluctant to recognize any "legal" space for a nondomestic court. For us, law is not a matter for [\*58] "neutral" experts; rather, it is deeply political. Political not in the sense of factional, but in the sense that it is constitutive of a national identity. International law, perhaps for us alone in the Western world, threatens our deepest sense of political identity.

The American conception of law's rule fit well within the international law of the Cold War. The international law of state sovereignty protected every national political community from forceful intervention by others. State sovereignty and self-determination under international law were understood primarily in a territorial fashion: within its borders, each state was substantially free to work out its own political identity. Our identity has been linked to our conception of law, but it is a fundamental mistake to think that our domestic deification of law's rule should make us receptive to an international rule of human rights law.

The United States was the first modern state, forming itself under a constitutional ideal of democracy and law. It is the country most deeply committed to an idea of itself as a sovereign entity under law. And it is the most spectacularly successful state in all of modern history. Only in the United States is the view deeply held that we have no need of the new global order of law: we have no such need because our nationalism has been a nationalism of rights under law for 200 years. This view puts American lawyers, judges, politicians, and academics outside of the most important global project of law. Americans are increasingly bystanders in an emerging discourse of international human rights. Only in the United States is this discourse of international human rights marginalized in our political institutions. Only in our domestic courts are there so few places at which the international law of human rights can even get a foothold from which to make cognizable arguments. n134

We confront two different legal orders today, one constitutional and one international. Both are actually in great flux as they try to adjust to each other. Every political instinct that we have will work [\*59] against participation in a new global order of law. Ironically, our substantive understanding of law - of the rights a liberal legal regime must protect - is not significantly out of step with the emerging global order. There is no reason why it should be, since the United States has often served as the model of a successful regime under law. But our understanding of the sources of law is deeply inconsistent with this emerging order. It is not likely that we will soon substitute the international Covenant for Civil and Political Rights for the Bill of Rights. That the American adjudication of rights would care deeply about the views of the Framers, who have been gone for 200 years, and not at all about international covenants to which the United States is a party, is not just a deeply puzzling position to judges and academics elsewhere - to them it is simply irrational.

**To attempt to reinvigorate Congress's war declaring role** would only exacerbate this problem of incongruity. It would be an act of international irresponsibility framed as a matter of constitutional responsibility. Here, the courts have paved the way for a quiet abandonment. Congress's war powers have not been judicially enforceable; it would be a disaster were they to become so. We do not need eighteenth century solutions to twenty-first century problems.

### 1nc solvency

#### Status quo solves and disproves their authors. Even though Obama claimed authority on Syria, the fact that he asked for authorization sets a sufficient precedent

Peter M. Shane 9-2-2013; Author, 'Connecting Democracy' and 'Madison's Nightmare'; Law professor, “Rebalancing War Powers: President Obama's Momentous Decision”

<http://www.huffingtonpost.com/peter-m-shane/rebalancing-war-powers-pr_b_3853232.html>

But seeking authorization for a military strike against Syria marks the first time that a modern-day president has taken the initiative to elicit legislative approval for a military action that, by the President's own reckoning, will neither be a prolonged, nor a boots-on-the-ground operation. In announcing his decision, President Obama, like both Presidents Bush, declared that he possessed the constitutional authority to act unilaterally. He said he does not need Congress' approval in order to proceed. But historical precedents have consequences. Whatever their formal legal views, the Bushes' decisions helped cement a consistent pattern: With the exception of Korea, the United States has never engaged in a massive or prolonged military deployment without some form of explicit congressional sanction. A President acting unilaterally to start what is sometimes called "a real war" henceforth would probably be courting impeachment.

#### Congressional restrictions fail—everyone sucks

Gene Healy 2009 (vice president at the Cato Institute) “Reclaiming the War Power” http://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2009/9/hb111-10.pdf

Each of these proposals has the merit of demanding that Congress carry the burden the Constitution places upon it: responsibility for the decision to go to war. The Gelb-Slaughter plan shows particular promise. Although Congress hasn’t declared war since 1942, reviving the formal declaration would make it harder for legislators to punt that decision to the president, as they did in Vietnam and Iraq. Hawks should see merit in making declarations mandatory, since a declaration commits those who voted for it to support the president and provide the resources he needs to prosecute the war successfully. Doves too should find much to applaud in the idea: forcing Congress to take a stand might concentrate the mind wonderfully and reduce the chances that we will find ourselves spending blood and treasure in conflicts that were not carefully examined at the outset. But we should be clear about the difficulties that comprehensive war powers reform entails. Each of these reforms presupposes a Congress eager to be held accountable for its decisions, a judiciary with a stomach for interbranch struggles, and a voting public that rewards political actors who fight to put the presidency in its place. Representative Jones’s Consti- tutional War Powers Resolution, which seeks to draw the judiciary into the struggle to constrain executive war making, ignores the Court’s resistance to congressional standing, as well as the 30-year history of litigation under the War Powers Resolution, a history that shows how adept the federal judiciary is at constructing rationales that allow it to avoid picking sides in battles between Congress and the president. Even if Jones’s Constitutional War Powers Resolution or Ely’s Combat Authorization Act could be passed today, and even if the courts, defying most past practice, grew bold enough to rule on whether hostilities were imminent, there would be still another difficulty; as Ely put it: ‘‘When we got down to cases and a court remanded the issue to Congress, would Congress actually be able to follow through and face the issue whether the war in question should be permitted to proceed? Admittedly, the matter is not entirely free from doubt.’’ It’s worth thinking about how best to tie Ulysses to the mast. But the problem with legislative schemes designed to force Congress to ‘‘do the right thing’’ is that Congress seems always to have one hand free. **Statutory schemes** designed to precommit legislators to particular procedures do not have a terribly promising track record. Historically, many such schemes have proved little more effective than a dieter’s note on the refrigerator. **No mere statute** can truly bind a future Congress, and in areas ranging from agricultural policy to balanced budgets, Congress has rarely hesitated to undo past agreements in the pursuit of short-term political advantage. A : 14431$CH10 11-11-08 14:18:58 Page 113 Layout: 14431 : Odd 113 C ATO H ANDBOOK FOR P OLICYMAKERS If checks on executive power are to be restored, we will need far less Red Team–Blue Team politicking—and many more legislators than we currently have who are willing to put the Constitution ahead of party loyalty. That in turn will depend on a public willing to hold legislators accountable for ducking war powers fights and ceding vast authority to the president. Congressional courage of the kind needed to reclaim the war power will not be forthcoming unless and until American citizens demand it.

#### The executive will arbitrarily define words, they don’t care

Pollack, 13 -- MSU Guggenheim Fellow and professor of history emeritus [Norman, "Drones, Israel, and the Eclipse of Democracy," Counterpunch, 2-5-13, www.counterpunch.org/2013/02/05/drones-israel-and-the-eclipse-of-democracy/, accessed 9-1-13, mss]

Bisharat first addresses the transmogrification of international law by Israel’s military lawyers. We might call this damage control, were it not more serious. When the Palestinians first sought to join the I.C.C., and then, to receive the UN’s conferral of nonmember status on them, Israel raised fierce opposition. Why? He writes: “Israel’s frantic opposition to the elevation of Palestine’s status at the United Nations was motivated precisely by the fear that it would soon lead to I.C.C. jurisdiction over Palestinian claims of war crimes. Israeli leaders are unnerved for good reason. The I.C.C. could prosecute major international crimes committed on Palestinian soil anytime after the court’s founding on July 1, 2002.” In response to the threat, we see the deliberate reshaping of the law: Since 2000, “the Israel Defense Forces, guided by its military lawyers, have attempted to **remake the laws** of war by consciously violating them and then **creating new legal concepts to provide juridical cover** for their misdeeds.” (Italics, mine) In other words, habituate the law to the existence of atrocities; in the US‘s case, targeted assassination, repeated often enough, seems permissible, indeed clever and wise, as pressure is steadily applied to the laws of war. Even then, “collateral damage” is seen as unintentional, regrettable, but hardly prosecutable, and in the current atmosphere of complicity and desensitization, never a war crime. (**Obama is hardly a novice at** this game of **stretching the law to suit the convenience of**, shall we say, the **national interest**? In order to ensure the distortion in counting civilian casualties, which would bring the number down, as Brennan with a straight face claimed, was “zero,” the Big Lie if ever there was one, placing him in distinguished European company, Obama **redefined the meaning** of “combatant” status to be any male of military age throughout the area (which we) declared a combat zone, which noticeably led to a higher incidence of sadism, because it allowed for “second strikes” on funerals—the assumption that anyone attending must be a terrorist—and first responders, those who went to the aid of the wounded and dying, themselves also certainly terrorists because of their rescue attempts.) These guys play hardball, perhaps no more than in using—by report—the proverbial baseball cards to designate who would be next on the kill list. But funerals and first responders—verified by accredited witnesses–seems overly much, and not a murmur from an adoring public.

### 1nc intervention

#### No groupthink—Congress wouldn’t help

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian, Terror in the Balance: Security, Liberty, and the Courts p. 46-47)

The idea that Congress will, on net, weed out bad policies rests on an institutional comparison. The president is elected by a national constituency on a winner-take-all basis (barring the remote chance that the Electoral College will matter), whereas Congress is a summation of local constituencies and thus affords more voice to political and racial minorities. At the level of political psychology, decisionmaking within the executive is prone to group polarization and other forms of groupthink or irrational panic,51 whereas the internal diversity of legislative deliberation checks these forces. At the level of political structure, Congress contains internal veto gates and chokepoints—consider the committee system and the fi libuster rule—that provide minorities an opportunity to block harmful policies, whereas executive decisionmaking is relatively centralized and unitary.

The contrast is drawn too sharply, because in practice the executive is a they, not an it. Presidential oversight is incapable of fully unifying executive branch policies, which means that disagreement flourishes within the executive as well, dampening panic and groupthink and providing minorities with political redoubts.52 Where a national majority is internally divided, the structure of presidential politics creates chokepoints that can give racial or ideological minorities disproportionate influence, just as the legislative process does. Consider the influence of Arab Americans in Michigan, often a swing state in presidential elections.

It is not obvious, then, that statutory authorization makes any difference at all. One possibility is that a large national majority dominates both Congress and the presidency and enacts panicky policies, oppresses minorities, or increases security in ways that have ratchet effects that are costly to reverse. If this is the case, a requirement of statutory authorization does not help. Another possibility is that there are internal institutional checks, within both the executive branch and Congress, on the adoption of panicky or oppressive policies and that democratic minorities have real infl uence in both arenas. If this is the case, then a requirement of authorization is not necessary and does no good. Authorization only makes a difference in the unlikely case where the executive is thoroughly panicky, or oppressively majoritarian, while Congress resists the stampede toward bad policies and safeguards the interests of oppressed minorities.

Even if that condition obtains, however, the argument for authorization goes wrong by failing to consider both sides of the normative ledger. As for majoritarian oppression, the multiplicity of veto gates within Congress may allow minorities to block harmful discrimination, but it also allows minorities to block policies and laws which, although targeted, are nonetheless good. As for panic and irrationality, if Congress is more deliberative, one result will be to prevent groupthink and slow down stampedes toward bad policies, but another result will be to delay necessary emergency measures and **slow down stampedes toward good policies**. Proponents of the authorization requirement sometimes assume that quick action, even panicky action, **always** produces bad policies. But there is no necessary connection between these two things; expedited action is sometimes good, and panicky crowds can stampede either in the wrong direction or in the right direction. Slowing down the adoption of new policies through congressional oversight retards the adoption not only of bad policies, but also of good policies that need to be adopted quickly if they are to be effective.

#### No escalation—executives will be responsible

**Weiner 2007**

Michael Anthony, J.D. Candidate, Vanderbilt School of Law, 2007, “A Paper Tiger with Bite: A Defense of the War Powers Resolution,” http://www.vanderbilt.edu/jotl/manage/wp-content/uploads/Weiner.pdf

IV. CONCLUSION: THE EXONERATED WPR AND THE WOLF IN SHEEP'S CLOTHING The WPR is an effective piece of war powers legislation. As Part III made clear, no presidential unilateral use of force since 1973 has developed into a conflict that in any way resembles the WPR's impetus, Vietnam. Rather, the great majority of these conflicts have been characterized by their brevity, safety, and downright success. Yes, there have been tragic outcomes in Lebanon and Somalia; but what happened in response to those tragedies? In Lebanon, President Reagan actually submitted to being Congress's "messengerboy," 203 asking for its permission, per the WPR, to continue the operation. And in Somalia, at the first sight of a looming disaster, it was President Clinton who cut short the operation. Thus, from 1973 on, it is easy to argue that sitting Executives have made responsible use of their power to act unilaterally in the foreign affairs realm. The WPR has even contributed to a congressional resurgence in the foreign affairs arena. In many of these conflicts, we have seen Congress conducting numerous votes on whether and how it should respond to a unilaterally warring Executive. In some of the conflicts, Congress has come close to invoking the WPR against rather impetuous Executives. 20 4 In Lebanon, Congress actually succeeded in the task.20 5 It is this Note's contention, though, that even when Congress failed to legally invoke the WPR, these votes had normative effects on the Executives in power. Such votes demonstrate that Congress desires to be, and will try to be, a player in foreign affairs decisions. So, perhaps the enactment of the WPR, the rise of Congress (at least in the normative sense) and the successful string of unilateral presidential uses of force are just a series of coincidences. This Note, however, with common sense as its companion, contends that they are not. Rather, it is self-evident that the WPR has played a significant role in improving the implementation of presidential unilateral uses of force.

#### They don’t solve spoofing:

#### A) They’ll just bait OTHER countries to intervene

#### B) Congress wouldn’t be able to know any better

### 1nc warfighting

#### Obama’s not Bush—no backlash to liberal order

Aziz 13 (Omer, graduate student at Cambridge University, is a researcher at the Center for International and Defense Policy at Queen’s University, “The Obama Doctrine's Second Term,” Project Syndicate, 2-5, <http://www.project-syndicate.org/blog/the-obama-doctrine-s-second-term--by-omer-aziz>)

The Obama Doctrine’s first term has been a remarkable success. After the $3 trillion boondoggle in Iraq, a failed nation-building mission in Afghanistan, and the incessant saber-rattling of the **previous Administration**, President Obama was able to reorient U.S. foreign policy in a more restrained and realistic direction.

He did this in a number of ways. First, an end to large ground wars. As Defense Secretary Robert Gates put it in February 2011, anyone who advised future presidents to conduct massive ground operations ought “to have [their] head examined.” Second, a reliance on Secret Operations and drones to go after both members of al Qaeda and other terrorist outfits in Pakistan as well as East Africa. Third, a rebalancing of U.S. foreign policy towards the Asia-Pacific — a region neglected during George W. Bush's terms but one that possesses a majority of the world’s nuclear powers, half the world’s GDP, and tomorrow’s potential threats. Finally, under Obama's leadership, the United States has finally begun to ask allies to pick up the tab on some of their security costs. With the U.S. fiscal situation necessitating retrenchment, coupled with a lack of appetite on the part of the American public for foreign policy adventurism, Obama has begun the arduous process of burden-sharing necessary to maintain American strength at home and abroad.

What this amounted to over the past four years was a vigorous and unilateral pursuit of narrow national interests and a multilateral pursuit of interests only indirectly affecting the United States.

Turkey, a Western ally, is now leading the campaign against Bashar al-Assad’s regime in Syria. Japan, Korea, India, the Philippines, Myanmar, and Australia all now act as de facto balancers of an increasingly assertive China. With the withdrawal of two troop brigades from the continent, Europe is being asked to start looking after its own security. In other words, the days of free security and therefore, free riding, are now over.

The results of a more restrained foreign policy are plentiful. Obama was able to assemble a diverse coalition of states to execute regime-change in Libya where there is now a moderate democratic government in place. Libya remains a democracy in transition, but the possibilities of self-government are ripe. What’s more, the United States was able to do it on the cheap. Iran’s enrichment program has been hampered by the clandestine cyber program codenamed Olympic Games. While Mullah Omar remains at large, al Qaeda’s leadership in Afghanistan and Pakistan has been virtually decimated. With China, the United States has maintained a policy of engagement and explicitly rejected a containment strategy, though there is now something resembling a cool war — not yet a cold war — as Noah Feldman of Harvard Law School puts it, between the two economic giants.

The phrase that best describes the Obama Doctrine is one that was used by an anonymous Administration official during the Libya campaign and then picked up by Republicans as a talking point: Leading From Behind. The origin of the term dates not to weak-kneed Democratic orthodoxy but to Nelson Mandela, who wrote in his autobiography that true leadership often required navigating and dictating aims ‘from behind.’ The term, when applied to U.S. foreign policy, has a degree of metaphorical verity to it: Obama has led from behind the scenes in pursuing terrorists and militants, is shifting some of the prodigious expenses of international security to others, and has begun the U.S. pivot to the Asia-Pacific region. The Iraq War may seem to be a distant memory to many in North America, but its after-effects in the Middle East and Asia tarnished the United States' image abroad and rendered claims to moral superiority risible. Leading From Behind is the final nail in the coffin of the neoconservatives' failed imperial policies.

#### Soft power fails - empirics

Drezner 11

Daniel W. Drezner, Professor of International Politics at the Fletcher School of Law and Diplomacy at Tufts University, Foreign Affairs, July/August 2011, "Does Obama Have a Grand Strategy?", <http://www.foreignaffairs.com/print/67869>

What went wrong? The administration, and many others, erred in believing that improved standing would give the United States greater policy leverage. The United States' standing among foreign publics and elites did rebound. But this shift did not translate into an appreciable increase in the United States' soft power. Bargaining in the G-20 and the UN Security Council did not get any easier. Soft power, it turns out, cannot accomplish much in the absence of a willingness to use hard power. The other problem was that China, Russia, and other aspiring great powers did not view themselves as partners of the United States. Even allies saw the Obama administration's supposed modesty as a cover for shifting the burden of providing global public goods from the United States to the rest of the world. The administration's grand strategy was therefore perceived as promoting narrow U.S. interests rather than global public goods.

#### ANY alt cause takes out the aff

**Gray ’11** [Colin S, Professor of International Politics and Strategic Studies at the University of Reading, England, and Founder of the National Institute for Public Policy, “Hard Power And Soft Power: The Utility Of Military Force as An Instrument Of Policy In The 21st Century,” April, http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1059]

It bears repeating because it passes unnoticed that culture, and indeed civilization itself, are dynamic, not static phenomena. They are what they are for good and sufficient local geographical and historical reasons, and cannot easily be adapted to fit changing political and strategic needs. For an obvious example, the dominant American strategic culture, though allowing exceptions, still retains its principal features, the exploitation of technology and mass.45 These features can be pathological when circumstances are not narrowly conducive to their exploitation. Much as it was feared only a very few years ago that, in reaction to the neglect of culture for decades previously, the cultural turn in strategic studies was too sharp, so today there is a danger that the critique of strategic culturalism is proceeding too far.46 The error lies in the search for, and inevitable finding of, “golden keys” and “silver bullets” to resolve current versions of enduring problems. Soft-power salesmen have a potent product-mix to sell, but they fail to appreciate the reality that American soft power is a product essentially **unalterable** over a short span of years. As a country with a cultural or civilizational brand that is unique and mainly rooted in deep historical, geographical, and ideational roots, America is not at liberty to emulate a major car manufacturer and advertise an extensive and varied model range of persuasive soft-power profiles. Of course, some elements of soft power can be emphasized purposefully in tailored word and deed. However, foreign perceptions of the United States are no more developed from a blank page than the American past can be retooled and fine-tuned for contemporary advantage. Frustrating though it may be, **a country cannot easily escape legacies from its past**.

### 1nc sop

#### SOP resilient

Rosman 96 [Michael E. Rosman (General Counsel @ Center for Individual Rights; JD from Yale); Review of “FIGHTING WORDS: INDIVIDUALS, COMMUNITIES AND LIBERTIES OF SPEECH”; Constitutional Commentary 96 (Winter, p. 343-345)]

Of course, the other branches also shove at the boundaries of branch power--FDR's Court-packing plan being one notable example of this practice. Sometimes the law of unintended consequences grabs hold. Perhaps the Court-packing plan concentrated the Justices' minds on finding ways to hold New Deal legislation constitutional, but it also blew up in FDR's face politically.

At least for the last two hundred years, however, no branch has managed to expand its power to the point of delivering an obvious knock-out blow to another branch. Seen from this broader perspective, cases such as Morrison,(33) Bowsher v. Synar,(34) and Mistretta v. United States(35) surely alter the balance of branch power at a given historical moment, but do not change the fundamental and brute fact that the Constitution puts three institutional heavyweights into a ring where they are free to bash each other.

Judicialocentrism tends to obscure this obvious point because it causes people to dwell on the hard cases that reach the Supreme Court. The power of separation of powers, however, largely resides in its ability to keep the easy cases from ever occurring. For instance, Congress, although it tries to weaken the President from time to time, has not tried to reduce the President to a ceremonial figurehead a la the Queen of England. Similarly, Congress does not make a habit of trying cases that have been heard by the courts. This list could be continued indefinitely.

The Supreme Court has had two hundred years to muck about with separation-of-powers doctrine. Over that time, scores of Justices--each with his or her own somewhat idiosyncratic view of the law--have sat on the bench. Scholars have denounced separation-of-powers jurisprudence as a mess. But the Republic endures, at least more or less. These historical facts tend to indicate that the Court need not rush to change its approach to separation of powers to prevent a slide into tyranny.

#### No reverse causal—countries won’t magically clean up their act

**Chodosh 03** (Hiram, Professor of Law, Director of the Frederick K. Cox International Law Center, Case Western Reserve University School of Law, 38 Tex. Int'l L.J. 587, lexis)

Exposure to foreign systems is helpful but seldom sufficient for effective reform design. Reform models are more likely to be successful if they are not merely copied or transplanted into the system. The argument that transplants are easy and common (though based on substantial historical evidence) profoundly undervalues the relationship between law and external social objectives.

103 Furthermore, reforms conceived as blunt negations of [\*606] the status quo are not likely to be successful. 104 Reform proposals based on foreign systems or in reaction to (or as a negation of) recent domestic experience require careful adaptation to local circumstances and conditions. However, most communities are not familiar with the tools of adaptation and tend to think of foreign models as package deals to accept or reject (but rarely to alter), and alterations tend to graft one institution onto another without comprehensive consideration of the system as a whole. 105

## 2nc

### 2nc cp = goldilocks

#### The President can wait on Congress voluntarily without sacrificing war powers

Tampa Bay Tribune 2011

(http://www.politifact.com/truth-o-meter/statements/2011/apr/05/charles-rangel/charlie-rangel-says-last-president-seek-congressio/)

• Each president has been careful about the phrasing of his request to Congress. Even as presidents ask for Congress’ support -- something seen as politically useful, even necessary -- they always take pains to note that they are doing so voluntarily, without ceding any presidential prerogatives. So when Rangel says that "Franklin Roosevelt (was) the last president to come to the Congress to ask for permission" to go to war, he has a point. No president since Roosevelt has come to seek "permission" from Congress for military action. However, presidents have repeatedly come to Congress to seek "support" for military action. • What is the definition of "war"? Of the seven post-War Powers Resolution examples listed above, one came at the end of a genuine war (the fall of Saigon) and three involved more limited peacekeeping or humanitarian missions (Sinai, Lebanon and Somalia). None of these would be solid examples of a president seeking congressional backing to engage in "war" by its strictest definition. However, we think most people would consider the other three cases -- the Persian Gulf War, Afghanistan and Iraq -- genuine wars. And in each of those cases, the president sought congressional support (reluctantly or otherwise) before initiating hostilities and ultimately received it (with varying degrees of unanimity). So where does this leave us? Rangel is right that Roosevelt is the last president, strictly speaking, "to come to the Congress to ask for permission to engage into war." But at least two presidents -- both George Bushes -- have waited to launch wars until they had an official vote from Congress backing them up. On balance, we rate Rangel’s statement Half True.

### 2nc doj cp overview

#### Lobel advocates the counterplan

**Lobel 9** – Jules Lobel, Professor of Law at the University of Pittsburgh. "Restore. Protect. Expand. Amend the War Powers Resolution". Center for Constitutional Rights White Paper, http://ccrjustice.org files CCR\_White\_WarPowers.pdf

President Obama must pledge to help restore the balance of power and work with Congress to support a reform and revision of the War Powers Resolution. As a matter of constitutional integrity, all executive acts of war must be prohibited without Congressional authorization, and must comply with international law. President Obama must also end the wars launched, illegally, by the Bush administration.

#### Needs to be initiated by the President

**Lobel 9** – Jules Lobel, Professor of Law at the University of Pittsburgh. "Restore. Protect. Expand. Amend the War Powers Resolution". Center for Constitutional Rights White Paper, http://ccrjustice.org files CCR\_White\_WarPowers.pdf

Reforming the War Powers Resolution is a project that will require **leadership from the President** and the political will of Congress, working together in the service and preservation of the Constitution. In light of the abuses that have taken place under the Bush administration, it is the **responsibility of a new administration** to insist on transparency in the drafting of new legislation.

There is a long history of attempts to revise the War Powers Resolution. As new legislation is drafted, 7 though, it will be important to focus on the central constitutional issues. Much time has been spent in debating how to address contingencies. It will be impossible to write into law any comprehensive formula for every conceivable situation, though; much more important will be establishing the fundamental principles of reform:

**[MSU EVIDENCE BEGINS]**

The War Powers Resolution should explicitly prohibit executive acts of war without previous Congressional authorization. The only exception should be the executive’s power in an emergency to use short-term force to repel sudden attacks on US territories, troops or citizens.

#### Their Sloane evidence is CP sufficiency evidence—(and its about preventive vs. preemptive war, not the aff…\_)

Sloane 8 – Sloane, Associate Professor of Law, Boston University School of Law, 2008 (Robert, Boston University Law Review, April, 88 B.U.L. Rev. 341, Lexis)

There is a great deal more constitutional history that arguably bears on the scope of the executive power in the twenty-first century. But it is vital to appreciate that the scope of the executive power, particularly in the twenty-first century, is not only a constitutional or historical issue. As an international lawyer rather than a constitutionalist, I want to stress briefly that these debates and their concrete manifestations in U.S. law and policy potentially **exert a profound effect on the shape of international law**. Justice Sutherland’s sweeping dicta in United States v. Curtiss-Wright Export Corp., that the President enjoys a “very delicate, plenary and exclusive power . . . as the sole organ of the federal government in the field of international relations – a power which does not require as a basis for its exercise an act of Congress,”52 has been (correctly, in my view) criticized on a host of grounds.53 But in practice, in part for institutional and structural reasons,54 it **accurately reflects the general preeminence of the President in the realm of U.S. foreign affairs**. Because of the nature of the international legal and political system, what U.S. Presidents do and say often establish precedents that strongly influence what other states do and say **– with potentially dramatic consequences for the shape of customary international law.** The paradigmatic example is the establishment of customary international law on the continental shelf following the Truman Proclamation of September 28, 1945,55 which produced an echo of similar claims and counterclaims, culminating in a whole new corpus of the international law of the sea for what had previously been understood only as a geological term of art.56 Many states took note, for example, when in the 2002 National Security Strategy of the United States (“NSS”), President Bush asserted that the United States had the right under international law to engage in **preventive wars of self-defense.**57 While, contrary to popular belief, the United States **never** in fact **formally relied on that doctrine in practice,** many would argue that President Bush de facto exercised this purported right when he initiated an armed conflict with Iraq based on claims, which have since proved unfounded, about its incipient programs to develop catastrophic weapons. The 2006 NSS notably retreats from the 2002 NSS’s robust claims of a right to engage in preventive wars of self-defense.58 Yet **even within this brief, four-year period, an astonishing number of other states have asserted a comparable right to engage in preventive self-defense. These include** not only states that the United States has described as “rogue states,” such as **North Korea** and **Iran**, but **Australia, Japan, the United Kingdom, China, India, Iran, Israel, Russia, and** (though technically not a state) **Taiwan**.59 **I doubt we will welcome the consequences of this pattern for the evolving jus ad bellum of the twenty-first century**. Equally, after President Bush’s decision to declare a global war on terror or terrorism – rather than, for example, the Taliban, al-Qaeda, and their immediate allies – virtually every insurgency or disaffected minority around the world, including peoples suffering under repressive regimes and seeking to assert legitimate rights to liberty and self-determination, has been recharacterized by opportunistic state elites as part of the enemy in this global war.60 **The techniques employed and justified by the United States**, including the resurrection of rationalized torture as an “enhanced interrogation technique,”61 likewise **have emerged – and will continue to emerge – in the practice of other states. Because of customary international law’s acute sensitivity to authoritative assertions of power, the widespread repetition of claims and practices initiated by the U.S. executive may well shape international law in ways the United States ultimately finds disagreeable in the future**. So as we debate the scope of the executive power in the twenty-first century, the stakes, as several panelists point out, could not be higher. They include more than national issues such as the potential for executive branch officials to be prosecuted or impeached for exceeding the legal scope of their authority or violating valid statutes.62 **They** also **include international issues like the potential use of catastrophic weapons by a rogue regime asserting a right to engage in** preventive war**; the deterioration of international human rights norms** against practices like torture, norms **which took years to establish; and the atrophy of genuine U.S. power in the international arena, which**, as diplomats, statesmen, and international relations theorists of all political persuasions appreciate, **demands far more than the largest and most technologically advanced military arsenal**. In short, **what Presidents do, internationally as well as domestically –** the precedents they establish– may **affect not only the technical scope of the executive power, as a matter of constitutional law, but the practical ability of future Presidents to exercise that power both at home and abroad**. We should candidly debate whether terrorism or other perceived crises require an expanded scope of executive power in the twenty-first century. But it is dangerous to cloak the true stakes of that debate with the expedient of a new – and, in the view of most, indefensible – “monarchical executive” theory, which claims to be coextensive with the defensible, if controversial, original Unitary Executive theory.63 We should also weigh the costs and benefits of an expanded scope of executive power. But it is vital to appreciate that there are costs. They include not only short-term, acute consequences but long-term, systemic consequences that may not become fully apparent for years. In fact, the exorbitant exercise of broad, supposedly inherent, executive powers may well – as in the aftermath of the Nixon administration – culminate in precisely the sort of reactive statutory constraints and de facto diplomatic obstacles that proponents of a robust executive regard as misguided and a threat to U.S. national security in the twenty-first century.

#### Err neg—the whole basis for their speculation about Bush Doctrine 2.0 is LEGAL MEMOS used as justification by the administration—that's where the signal is coming from

**Feaver 2013** – PhD Harvard, Professor of Political Science at Duke (2/5, Peter, Foreign Policy, “Obama's embrace of the Bush doctrine and the meaning of 'imminence'”, http://shadow.foreignpolicy.com/posts/2013/02/05/obamas\_embrace\_of\_the\_bush\_doctrine\_and\_the\_meaning\_of\_imminence)

The Obama Administration has embraced the Bush doctrine, or at least the preemption part of the Bush doctrine. According to news reports about the Justice Department's memo on drone strikes, the Obama Administration bases its policy on an expansive interpretation of the laws of war, which allow countries to act to head off imminent attack. In particular, according to the reporter who broke the story, the Obama Administration bases its legal reasoning by interpreting "imminence" in a flexible way:

### 2nc at: override/future admin

#### XOs are binding on future administrations and cause follow-on

Duncan, Associate Professor of Law at Florida A&M, Winter 2010

(John C., “A Critical Consideration of Executive Orders,” 35 Vt. L. Rev. 333, Lexis)

**Executive orders** can serve the purpose of allowing the President to generate favorable publicity, such as when President Clinton signed an executive order on ethics, n493 and when President George W. Bush signed the first of a series of executive orders to launch his Faith-Based and Community Initiatives. n494 While these orders pay off political debts and thus may seem trivial, they nevertheless **create both infrastructural and regulatory precedents for future administrations**. Hence, they create an avenue for key constituencies of each administration to influence the executive structure as a whole without necessarily permitting that influence to extend to arenas of reserved for Congress. That is, while the President can act more swiftly and precisely to satisfy political commitments, the impact of his action will fall considerably short of analogous congressional action. This in turn serves to satisfy selected constituencies without giving them undue power via the presidency.

Executive orders have even served to create presidential commissions to investigate and research problems, and have been instrumental in solving remedial issues. n495 **Commission reports** that result from such orders can in [\*398] turn **put pressure on Congress to** enact legislation to respond to those problems. President Franklin Roosevelt pursued this process when he issued a report of the Committee on Economic Security studying financial insecurity due to "unemployment, old age, disability, and health." n496 This report led to the Social Security Act. n497

#### Executives rely on OLC too much to be flippant

**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)

The White House is one of the main beneficiaries of that reputation. When OLC concludes that a government action is lawful, its conclusion carries a legitimacy that other executive offices cannot so readily provide. That legitimacy is a function of OLC’s deep traditions and unique place within the executive branch. Other executive offices — be they agency general counsels or the White House Counsel’s Office — do not have decades-long traditions of providing legal advice based on their best view of the law after fully considering the competing positions; they have not generated bodies of authoritative precedents to inform and constrain their work; and they do not issue legal opinions that, whether or not they favor the President, are treated as presumptively binding within the executive branch. (Nor should those other offices mimic OLC; that is not their job.) Because the value of a favorable legal opinion from OLC is tied inextricably to these aspects of its work, each successive presidential administration has a strong incentive to respect and preserve them.

### 2nc theory block

#### The counterplan is a logical policy choice grounded in topic lit

Sinnar, assistant professor of law at Stanford Law School, May 2013

(Shirin, “Protecting Rights from Within? Inspectors General and National Security Oversight,” 65 Stan. L. Rev. 1027, Lexis)

More than a decade after September 11, 2001, the debate over which institutions of government are best suited to resolve competing liberty and national security concerns continues unabated. While the Bush Administration's unilateralism in detaining suspected terrorists and authorizing secret surveillance initially raised separation of powers concerns, the Obama Administration's aggressive use of drone strikes to target suspected terrorists, with little oversight, demonstrates how salient these questions remain. Congress frequently lacks the [\*1029] information or incentive to oversee executive national security actions that implicate individual rights. Meanwhile, courts often decline to review counterterrorism practices challenged as violations of constitutional rights out of concern for state secrets or institutional competence. n1 These limitations on traditional external checks on the executive - Congress and the courts - have led to increased academic interest in potential checks within the executive branch. Many legal scholars have argued that executive branch institutions supply, or ought to supply, an alternative constraint on executive national security power. Some argue that these institutions have comparative advantages over courts or Congress in addressing rights concerns; others characterize them as a second-best option necessitated by congressional enfeeblement and judicial abdication.

### sop

#### Congress not key

**Kalb, 13** – Marvin, Edward R. Murrow Professor of Practice (Emeritus), Kennedy School of Government, Harvard University (*The Road To War,* Brookings Institution Press, pp. 6-7 //Red)

Words have consequence. Spoken by a president, they can often become American policy, **with or without congressional approval.** When a president "commits" the United States to a controversial course of action, he may be setting the nation on the road to war or on a road to reconciliation. **In matters of national security, his powers have become awesome-his word decisive.** Who decides when we go to war? The president decides. As former national security adviser Zbigniew Brzezinski told me, it "all depends" on the president. "It's his call.” Likewise, it is his decision when and whether, and under what conditions, to support a friendly nation.

#### Restraint on constitutional grounds captures the precedent—comparative ev

**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

### prevention

#### OLC can prevent transgressions

**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/)

At the same time, OLC review is routine, rather than dependent on the client's behest, in the case of constitutional comments on bills, executive orders, and those regulations calling for Attorney General review. In those areas, the office exerts exclusive authority over constitutional interpretation more akin to the SG's Office's exclusive control over constitutional questions arising in the government's appellate and Supreme Court litigation. Notably, the vast majority of individual-rights issues that OLC deals with arise within the routine rather than the client-initiated practice areas, suggesting that executive-branch clients either do not perceive individual-rights problems, or do not bring them to OLC for resolution.

3. Client-Checking

In one very important way, the OLC has an advantage over the SG with regard to checking constitutional violations. Whereas the SG is a litigator who necessarily examines potential constitutional problems only after challenged government action is already a fait accompli, the Assistant Attorney General for OLC can weigh in before federal initiatives are undertaken to nip constitutional problems in the bud.119 Assume, for example, that the SG and OLC preliminarily held the same view about an issue, such as the constitutionality of federal funding for religious as well as nonreligious instruction.120 The fact that the SG would face the issue only after the government had given such aid would create incentives for the SG to interpret the Constitution to permit it, in order to facilitate his defense of the conduct in court - incentives that OLC would not face when considering the issue in advance of any commitment to such aid. OLC thus, at least in theory, has opportunities, which the SG lacks, to prevent unconstitutional action from occurring in the first place.121

### at: barron

#### Their Barron ev is based on “ratcheting” theory—that's false

**Posner and Vermeule, 7** – \*Kirkland and Ellis Professor of Law at the University of Chicago Law School AND \*\*professor at Harvard Law School (Eric and Adrian,Terror in the Balance: Security, Liberty, and the Courts p. 107-108)

Some theorists emphasize the worry that officials, particularly executive officials, will seize on an emergency to implement policies that were blocked by political constraints before the emergency. Thus, Mark Tushnet argues that “emergencies may matter because they alter the constraints under which decisionmakers operate,”18 although the emergency does not necessarily alter the preferences or evaluations of decisionmakers. Consider again the 9/11 attacks. Prior to those attacks, most decisionmakers knew that foreign terrorists posed a threat to Americans on American soil, and although they did not anticipate the form of the 9/11 attacks, they did have equally horrific, indeed more horrific, possibilities in mind, such as the use of biological or chemical weapons, which could kill tens of thousands of people. At the same time, these decisionmakers also might have valued civil liberties less than most Americans do: they simply did not think that dissent and privacy are preeminent values. Prior to 9/11, they could not implement their policy preferences because many or most Americans would not tolerate them, and it is always hard to change the status quo. After 9/11, they took advantage of the more fluid political environment in order to enact their preferences as law. Tushnet seems implicitly to be supposing here that the relevant officials will seize upon the emergency to implement policies that the public does not want. This is an account based on agency slack between voters and officials, rather than majoritarian oppression; as such, it is vulnerable to all of the problems with agency failure accounts of executive opportunism that we discussed in chapter 1 and above. During emergencies, the executive receives more discretion from the legislature and the voters, but this may just be because the legislature and the voters think that this is the best way to respond to the emergency, and tolerate or even welcome the shift of policies toward the executive’s preferences. Partisan politics constrain the executive even during emergencies; although the opposition will initially rally around the flag, this effect is short-lived, and political criticism will be all the more fierce as the policy stakes increase. Indeed, in some respects, the political constraints on executive action during emergencies may be tighter than during normal times. Some policies adopted during emergencies are more visible to engaged publics, including officials from the opposing political party, journalists, civil libertarians, and watchdog groups, than are policies churned out by bureaucrats who fly below the public radar during normal times. We return to this point below. Moreover, Tushnet’s normative assumptions are obscure. Suppose Tushnet is right that during emergencies the boundaries of the politically possible change. Are the changes for good or for ill? Tushnet emphasizes the downside risks, suggesting that in the more fluid environment created by an emergency, politicians will exploit cognitive biases among the populace in order to “achieve their policy goals in the face of opposition.”19 Tushnet does not explicitly say that these policy goals are bad, as do the theorists of panic we critiqued in chapter 2, but his emphasis on the cognitively disreputable genesis of the new policies suggests that he is suspicious of their merits. Tushnet, that is, shares with the panic theorists an ingrained pessimism about politics during emergencies. Against this, there are two points. First, as we emphasized in chapter 1, even granting Tushnet’s premises, the executive abuses produced by increased agency slack during emergencies are just a cost. That cost must be weighed against the security benefits of affording executive officials increased discretion during emergencies; in any given case, the security benefits may outweigh the harms to civil liberties. Tushnet here falls into the civil libertarian assumption that executive abuses should be minimized and, if possible, eliminated, rather than optimized. If abuses are the inevitable by-product of increased discretion that is desirable on other grounds and produces net benefits overall, however, then this is a mistake. Second, consider a more optimistic contrary view: emergencies and war spur nations to high achievements and progressive social change. Consider the two greatest emergencies in American history: the Civil War and the period extending from 1929 to 1945, encompassing the Great Depression and World War II. To the emergency policies implemented during the Civil War, we owe the emancipation of the slaves and the Civil War amendments to which it led; the modernization of the U.S. Army; the beginnings of centralized monetary policy; and the first glimmer of federally operated social welfare agencies (the Freedmen’s Bureau, Civil War pensions, and so forth). To the policies implemented in the wake of the Great Depression, we owe Social Security, Medicare, labor regulation, and the administrative state. If we consider World War I an emergency, we can add the creation of the income tax during that war and the enfranchisement of women in its wake. We might even call the founding period an emergency and attribute all of our constitutional institutions to policies created while the nation was in political crisis.

### 2nc squo solves

#### Extend Shane—you should ask yourself which 1ac authors would have predicted Obama’s behavior on Syria based on their aff cards—it invalidates the doomsaying and shows the aff is unnecessary. Even if you think there's a dangerous trend, no need to vote aff

Shapiro, columnist for Yahoo and lecturer at Yale, 9/1/2013

(Walter, http://news.yahoo.com/obama-s-history-defying-decision-to-seek-congressional-approval-on-syria-143201825.html)

Virtually no one in politics, the press or the academic community expected Obama to go to Congress for approval. That isn’t the way the presidential power works in the modern era. It is a sad truth that whoever occupies the Oval Office invariably expands rather than trims back the Imperial presidency. Obama himself has reflected this pattern with his aggressive enhancement of the National Security Agency’s efforts to monitor electronic communications. For more than six decades, the war-making powers of Congress have been eviscerated by presidents of both parties. Which brings us back to Truman, who in 1950 balked at asking a Congress weary after World War II for approval to militarily respond to the Communist attack on South Korea. Dean Acheson, Truman’s secretary of state, claimed in his memoirs that a congressional debate over the Korean War “would hardly be calculated to support the shaken morale of the troops or the unity that, for the moment, prevailed at home.” Acheson may not have remembered that military morale and national unity are not mentioned in the Constitution. But the war-marking powers of Congress are at the heart of the nation’s founding document. It was as if the sign on Truman’s desk read, “The Buck Stops Here — And This Is Also Where the Constitution Is Twisted.” The plain-spoken Truman resorted to weaselly words to claim that Korea was a United Nations-sponsored “police action” rather than a war. No other American “police action” has ever led to 54,246 wartime deaths. Truman’s assertion of vast executive power as commander in chief set a template for future presidents. Even when presidents have gone to Congress for approval of major military engagements, these blank-check authorizations have often been based on deceptive arguments. Lyndon Johnson premised the entire Vietnam War on the 1964 Gulf of Tonkin Resolution, which was designed to permit a limited response to two minor and maybe mythical naval skirmishes with North Vietnam. Similarly hyperbolic were George W. Bush’s claims about Saddam Hussein’s nonexistent arsenal of weapons of mass destruction. Even more legally dubious were all the times a president sent troops and planes into combat without anything more than desultory briefings of the congressional leadership. Ronald Reagan dispatched the Marines into Grenada in 1983 under the preposterous rationale that he was only protecting endangered American medical students. Bill Clinton skirted congressional approval for the 1999 airborne attacks to halt Serbia’s ethnic cleansing of Kosovo on the shaky grounds that this was a NATO operation. And Obama himself was even on flimsier footing when he justified America’s participation in the 2011 bombing campaign over Libya based on a United Nations resolution. But Syria did not provide Obama with any of these fig-leaf justifications. No American lives are in danger and the national security threat is hard to identify. Not only is NATO not participating, but also neither are the Brits, the United State’s closest diplomatic ally. With Russia serving as Assad’s enabler, there will be no Security Council resolution or U.N. mandate. Every time a president employs questionable legal arguments to wage war, it becomes a valuable tool for the next commander in chief impatient with the constitutional requirement to work through Congress. That’s why it would have been so dangerous for Obama to go forward in Syria without a congressional vote or the support of the U.N. or NATO. It is as much of a slippery slope argument as the contention that Iran, say, would be emboldened with its nuclear program if America did not punish Assad’s chemical attacks. Assuming Obama wins congressional approval, America’s coming attack on Syria is designed to set a lasting precedent: No government can ever again use chemical, biological — let alone nuclear — weapons without facing devastating consequences. As Obama asked rhetorically in his Saturday Rose Garden statement, “What message will we send if a dictator can gas hundreds of children to death in plain sight and pay no price?” But Obama’s decision to seek congressional approval may prove to be an even more important precedent. Future presidents — as they consider unilateral military action without American security hanging in the balance — will have to answer, “Why didn’t you go to Congress like Obama did over Syria?” Confronted with a series of wrenching choices over Syria, Obama chose the course that best reflects fidelity to the Constitution as written. Hopefully, in the days ahead, taking that less traveled road by presidents will make all the difference.

#### And, they also conceded the 1nc warrant that fear of impeachment checks adventurism and SOP breakdown.

#### Vote on presumption—policy will be moderate and not arbitrarily sink the ship

Lederman, law professor at Georgetown, former Deputy Assistant Attorney General, 9/1/2013

(Marty, “Syria Insta-Symposium: Marty Lederman Part I–The Constitution, the Charter, and Their Intersection,” http://opiniojuris.org/2013/09/01/syria-insta-symposium-marty-lederman-part-constitution-charter-intersection/)

In the past two generations, there have been three principal schools of thought on the question of the President’s power to initiate the use of force unilaterally, i.e., without congressional authorization:

a. The traditional view, perhaps best articulated in Chapter One of John Hart Ely’s War and Responsibility, is that except in a small category of cases where the President does not have time to wait for Congress before acting to interdict an attack on the United States, the President must always obtain ex ante congressional authorization, for any use of military force abroad. That view has numerous adherents, and a rich historical pedigree. But whatever its merits, it has not carried the day for many decades in terms of U.S. practice.

b. At the other extreme is the view articulated at pages 7-9 of the October 2003 OLC opinion on war in Iraq, signed by Jay Bybee (which was based upon earlier memos written by his Deputy, John Yoo). The Bybee/Yoo position is that there are virtually no limits whatsoever: The President can take the Nation into full-fledged, extended war without congressional approval, as President Truman did in Korea, as long as he does so in order to advance the “national security interests of the United States.” With the possible exception of Korea itself, this theory has never reflected U.S. practice. (Indeed, even before that OLC opinion was issued, President Bush sought and obtained congressional authorization for the war in Iraq.) Notably, it was even rejected by William Rehnquist when he was head of OLC in 1970 (see the opinion beginning at page 321 here).

c. Between these two categorical views is what I like to call the Clinton/Obama “third way”—a theory that has in effect governed, or at least described, U.S. practice for the past several decades. It is best articulated in Walter Dellinger’s OLC opinions on Haiti and Bosnia, and in Caroline Krass’s 2011 OLC opinion on Libya. The gist of this middle-ground view (this is my characterization of it) is that the President can act unilaterally if two conditions are met: (i) the use of force must serve significant national interests that have historically supported such unilateral actions—of which self-defense and protection of U.S. nationals have been the most commonly invoked; and (ii) the operation cannot be anticipated to be “sufficiently extensive in ‘nature, scope, and duration’ to constitute a ‘war’ requiring prior specific congressional approval under the Declaration of War Clause,” a standard that generally will be satisfied “only by prolonged and substantial military engagements, typically involving exposure of U.S. military personnel to significant risk over a substantial period” (quoting from the Libya opinion). Largely for reasons explained by my colleague and Dean, Bill Treanor, I am partial to this “third way,” at least in contrast to the two more categorical views described above. (I do not subscribe to every detail of the Dellinger and Krass opinions—in particular, I’m wary of resort to the interest in “regional stability,” which has never been used as a stand-alone justification for unilateral executive action—but I concur in the broad outlines sketched out above.) Regardless of whether Dean Treanor and I—and Presidents Clinton and Obama—are right or wrong about that, however, what’s important for present purposes is that U.S. practice after World War II (with the possible exception of Korea and Kosovo) reflects, and is consistent with, this “third way” view: When a prolonged campaign has been anticipated, with great risk to U.S. blood and treasure, congressional authorization has been necessary—and has, in fact been secured (think Vietnam, both Gulf Wars, and the conflict with al Qaeda). Otherwise, the President has considered himself free to act unilaterally, in support of important interests that have historically justified such unilateral action—subject, however, to any statutory limitations, including the time limits imposed by the War Powers Resolution. See, e.g., Libya (twice, 1986 and 2011), Panama (1989), Somalia (1992), Haiti (twice, 1994 and 2004), and Bosnia (1995). Assuming this “third way” view is correct—or, in any event, that it establishes the relevant historical baseline against which to measure the case of Syria—Peter Spiro makes a valid point about the second of the two criteria. As he puts it, “[a]t no point in the last half century . . . has a president requested advance congressional authorization for anything less than the full-scale use of force.” But that does not mean that the President’s turn to Congress yesterday is a “watershed,” for Peter overlooks the important first condition. All of the examples of unilateral presidential use of force since 1986 that he implicitly invokes (with the possible exception of Kosovo, discussed below) have been in the service of significant national interests that have historically supported such unilateral actions—such as self-defense, protection of U.S. nationals, and/or support of U.N. peacekeeping or other Security Council-approved endeavors and mandates (e.g., Bosnia and Libya). The Syria operation, however, would have had no significant precedent in unilateral executive practice; it would not have been been supported by one of those historically sufficient national interests. That’s not to say that that operation would not be in the service of a very important national interest. For almost a century the U.S. has worked assiduously, with many other nations, to eliminate the scourge of chemical weapons. If Syria’s use of such weapons were to remain unaddressed, that might seriously compromise the international community’s hard-won success in establishing the norm that such weapons are categorically forbidden, and should not even be contemplated as instruments of war. As Max Fisher has written, “it’s about every war that comes after, about what kind of warfare the world is willing to allow, about preserving the small but crucial gains we’ve made over the last century in constraining warfare in its most terrible forms.” Preventing that degradation of the strong international norm against use of chemical weapons is, indeed, an important national (and international) interest of the first order. (To be clear: I am not remotely qualified to opine on whether and to what extent the contemplated action would advance that interest—my point is only that the interest is undoubtedly an important one.) And perhaps that should be enough to justify discrete, unilateral presidential action short of “war in the constitutional sense.” But if so, it would nevertheless be an unprecedented basis for unilateral executive action, and it would open up a whole new category of uses of force that Presidents might order without congressional approval, even where such actions could have profound, longstanding consequences: Most obviously, think, for example, of possible strikes on Iran in order to degrade its nuclear capabilities. Is Peter so sure that that’s the sort of thing that a President should be able to do without obtaining congressional approval? At a minimum, it’s a profound, and heretofore unresolved, question, one that any President should be wary of raising. But there’s yet another reason why unilateral action in Syria would have been especially troubling—a reason that hasn’t received the attention it warrants in recent days. As I discuss in my next post, I agree with the majority of OJ commentators that the Syrian operation would violate Article 2(4) of the U.N. Charter. Indeed, it’s not really a close question. But this is not merely a point about international law. The Charter is a treaty of the United States. It is therefore the “supreme Law” of the land under Article VI of the Constitution, and the President has a constitutional obligation (under Article II) to take care that it is faithfully executed. Unless and until Congress passes a “later in time” statute, under what authority can the President deliberately put the U.S. in breach of the Charter? That is to say: Whatever one’s views might be on the scope of the President’s authority to unilaterally use force abroad—whether you subscribe to the traditional view, the Bybee/Yoo view, or the Clinton/Obama “third way” (or any variant in between)—what is the possible justification for a unilateral presidential decision to violate a treaty that is binding as a matter of domestic law? This is, I think, the most troubling thing about the 1999 Kosovo precedent. The Clinton Administration virtually conceded that the operation was in breach of the Charter. Of course, as a matter of domestic law, Congress can pass a statute authorizing violation of the Nation’s treaty obligation. And OLC concluded that Congress effectively authorized the Kosovo operation eight weeks after it began. But why did President Clinton have the authority, without congressional authorization, to order the operation, and to breach Article 2(4), during those first eight weeks? The notion that the President may unilaterally cause the U.S. to breach a treaty raises deep and unresolved questions of constitutional law: Just as Presidents Obama and Clinton were correct to assume that their unilateral uses of force (in Kosovo and Libya, respectively) were subject to the constraints of the War Powers Resolution, so, too, should the President act within the constraints of binding treaty obligations. The Clinton Administration never did address this problem in connection with Kosovo. (I should note that in 1989, OLC reasoned that because Article 2(4) of the Charter is non-self-executing, in the sense that it does not establish a rule for court adjudication, it is “not legally binding on the political branches,” and thus “as a matter of domestic law, the Executive has the power to authorize actions inconsistent with Article 2(4) of the U.N. Charter.” 13 Op. O.L.C. 163, 179. In my view, this understanding of the effect of a “non-self-executing” treaty is importantly mistaken—but that’s a much broader topic, for another day. I am not aware of any indication that the Clinton Administration adopted this position.) For these reasons, I think that President Obama’s decision to ask Congress for authorization for the use of force in Syria is to be commended, and welcomed. Moreover, I agree with Jack Goldsmith that this decision will not result in any “surrender” of existing executive authority: When in the future the two “third way” criteria for unilateral action articulated in the Haiti, Bosnia and Libya OLC opinions are satisfied, and where the use of force does not violate the Charter, Presidents will certainly continue to assert the power to act unilaterally, subject to statutory and international law constraints. But if and when a President wishes to act for a reason that has not previously been the basis for unilateral action (such as to degrade another nation’s ability to use certain weapons), and/or in a manner that violates a U.S. treaty obligation, past practice will support obtaining congressional authorization, even as the question of the President’s unilateral authority in such circumstances remains untested and unresolved.

### --2nc congress fails

#### Extend Healy. The aff is doomed because it assumes a Congress willing to use its statutes as anything more than “a note on the fridge.” There are no electoral incentives to hold the President accountable.

#### The aff is just an ex ante version of the WPR—it will fail for all the same reasons

**Druck ‘12** [Judah A. Druck, law associate at Sullivan & Cromwell LLP, Cornell Law School graduate, magna cum laude graduate from Brandeis University, “Droning On: The War Powers Resolution and the Numbing Effect of Technology-Driven Warfare,” <http://www.lawschool.cornell.edu/research/cornell-law-review/upload/Druck-final.pdf>]

Of course, despite these various suits, Congress has received¶ much of the blame for the WPR’s treatment and failures. For example, Congress has been criticized for doing little to enforce the WPR¶ in using other Article I tools, such as the “power of the purse,”76 or by¶ closing the loopholes frequently used by presidents to avoid the WPR in the first place.77 Furthermore, in those situations where Congress¶ has decided to act, it has done so in such a disjointed manner as to¶ render any possible check on the President useless. For example, during President Reagan’s invasion of Grenada, Congress failed to reach¶ an agreement to declare the WPR’s sixty-day clock operative,78 and¶ later faced similar “deadlock” in deciding how best to respond to President Reagan’s actions in the Persian Gulf, eventually settling for a bill¶ that reflected congressional “ambivalence.”79 Thus, between the **lack**¶ **of a “backbone**” to check rogue presidential action and **general ineptitude** when it actually decides to act, Congress has demonstrated its¶ inability to remedy WPR violations.¶ Worse yet, much of Congress’s interest in the WPR is politically¶ motivated, leading to inconsistent review of presidential military decisions filled with post-hoc rationalizations. Given the political risk associated with wartime decisions,81 Congress **lacks any incentive to act**¶ unless and until it can gauge public reaction—a process that often¶ occurs after the fact.82 As a result, missions deemed successful by the¶ public will rarely provoke “serious congressional concern” about presidential compliance with the WPR, while failures will draw scrutiny.83¶ For example, in the case of the Mayaguez, “liberals in the Congress¶ generally praised [President Gerald Ford’s] performance” despite the¶ constitutional questions surrounding the conflict, simply because the public deemed it a success.84 Thus, even if Congress was effective at¶ checking potentially unconstitutional presidential action, it would only act when politically safe to do so. This result should be unsurprising: making a wartime decision provides little advantage for politicians, especially if the resulting action succeeds.85 Consequently,¶ Congress itself has taken a role in the continued disregard for WPR¶ enforcement.¶ The current WPR framework is broken: presidents avoid it, courts¶ will not rule on it, and Congress will not enforce it. This cycle has¶ culminated in President Obama’s recent use of force in Libya, which¶ created little, if any, controversy,86 and it provides a clear pass to future presidents, judges, and congresspersons looking to continue the¶ system of passivity and deferment.

### --2nc vagueness/circumvention

#### Extend Pollack—no matter what restrictions are in place, Obama will redefine terms to support his authority—this is empirically proven by every past legal controversy. Solvency dies at the next White House press conference.

#### Punish them for reading a really general plan text

Sitkowski 6 (Andrzej, Independent Researcher and Consultant – United Nations, UN Peacekeeping: Myth and Reality, p. 14)

**Non-use of force except in self-defense** is the sole principle directly related to armed contingents and is the most ambiguous. According to the UN interpretation, self-defense includes armed response to forceful actions of the warring parties preventing the peacekeepers from discharging their mandate. It boils down to nothing less than a blanket authorization to use force in defense of the mandates, thus. But as if an effort to offset such a conclusion, the Secretariat pronounces every use of force other than in self-defense to constitute peace enforcement which is inconsistent with peacekeeping and should be avoided at any costs: "The logic of peacekeeping Hows from premises that are quite distinct from enforcement and the dynamics of the latter are incompatible with the political process that peacekeeping is intended to facilitate. To blur the distinction between the two can undermine the viability of peacekeeping operation and endanger its personnel."4 The distinction looks good **as long it is not exposed to the logic of war**, the only logic to which the warring parties normally subscribe. Is removing by force of an illegal roadblock to enable the progress of a UN convoy an act of self-defense against an obstruction in discharging a peacekeeping mandate or an offensive action in peace enforcement? The UN distinction between the defensive and offensive use of force is blurred at the outset.

#### The US will act on this ambiguity

Neack 7 (Laura, Professor of Political Science – Miami University (Ohio), *Security: States First, People Last*, p. 106)

Although our discussion has been about the use of military force, we still are on the topic of defense and deterrence rather than on the **offensive use of force**. It is, though, in some sense **hard to dispute the old axiom** that what appear as defensive measures to some appear as offensive and therefore threatening measures to others. This is part of the dilemma in the security dilemma. Sometimes countries embrace this ambiguity to enhance the danger of underestimating them, and sometimes countries attempt to dispel this ambiguity by adopting policies that are overtly transparent and nonthreatening.

#### Honey badger don’t care

**Kumar 13** [Anita, White House correspondent for McClatchy Newspapers, former writer for The Washington Post, covering Virginia politics and government, and spent a decade at the St. Petersburg Times, writing about local, state and federal government both in Florida and Washington, “Obama turning to executive power to get what he wants,” 3/19 <http://www.mcclatchydc.com/2013/03/19/186309/obama-turning-to-executive-power.html#.Ue18CdK1FSE>]

“The expectation is that they all do this,” said Ken Mayer, a political science professor at the University of Wisconsin-Madison who wrote “With the Stroke of a Pen: Executive Orders and Presidential Power.” “That is the typical way of doing things.”¶ But, experts say, Obama’s actions are more noticeable because as a candidate he was critical of Bush’s use of power. In particular, he singled out his predecessor’s use of signing statements, documents issued when a president signs a bill that clarifies his understanding of the law.¶ “These last few years we’ve seen an unacceptable abuse of power at home,” Obama said in an October 2007 speech.. “We’ve paid a heavy price for having a president whose priority is expanding his own power.”¶ Yet Obama’s use of power echoes that of his predecessors. For example, he signed 145 executive orders in his first term, putting him on track to issue as many as the 291 that Bush did in two terms.¶ John Yoo, who wrote the legal opinions that supported an expansion of presidential power after the 2001 terrorist attacks, including harsh interrogation methods that some called torture, said he thought that executive orders were sometimes appropriate – when conducting internal management and implementing power given to the president by Congress or the Constitution – but he thinks that Obama has gone too far.¶ “I think President Obama has been as equally aggressive as President Bush, and in fact he has sometimes used the very same language to suggest that he would not obey congressional laws that intrude on his commander-in-chief power,” said Yoo, who’s now a law professor at the University of California at Berkeley. “This is utterly hypocritical, both when compared to his campaign stances and the position of his supporters in Congress, who have suddenly discovered the virtues of silence.”¶ Most of Obama’s actions are written statements aimed at federal agencies that are published everywhere from the White House website to the Federal Register. Some are classified and hidden from public view.¶ “It seems to be more calculated to prod Congress,” said Phillip J. Cooper, the author of “By Order of the President: The Use and Abuse of Executive Direct Action.” “I can’t remember a president being that consistent, direct and public.”¶ Bush was criticized for many of his actions on surveillance and interrogation techniques, but attention has focused on Obama’s use of actions mostly about domestic issues.¶ In his first two years in the White House, when fellow Democrats controlled Capitol Hill, Obama largely worked through the regular legislative process to try to achieve his domestic agenda. His biggest achievements – including a federal health care overhaul and a stimulus package designed to boost the economy –came about with little or no Republican support.¶ But Republicans took control of the House of Representatives in 2010, making the task of passing legislation all the more difficult for a man with a detached personality who doesn’t relish schmoozing with lawmakers. By the next year, Obama wasn’t shy about his reasons for flexing his presidential power.¶ In fall 2011, he launched the “We Can’t Wait” campaign, unveiling dozens of policies through executive orders – creating jobs for veterans, adopting fuel efficiency standards and stopping drug shortages – that came straight from his jobs bills that faltered in Congress.¶ “We’re not waiting for Congress,” Obama said in Denver that year when he announced a plan to reduce college costs. “I intend to do everything in my power right now to act on behalf of the American people, with or without Congress. We can’t wait for Congress to do its job. So where they won’t act, I will.”¶ When Congress killed legislation aimed at curbing the emissions that cause global warming, Obama directed the Environmental Protection Agency to write regulations on its own incorporating some parts of the bill.¶ When Congress defeated pro-union legislation, he had the National Labor Relations Board and the Labor Department issue rules incorporating some parts of the bill.¶ “The president looks more and more like a king that the Constitution was designed to replace,” Sen. Charles Grassley, R-Iowa, said on the Senate floor last year.¶ While Republicans complain that Obama’s actions cross a line, experts say some of them are less aggressive than they appear.¶ After the mass shooting in Newtown, Conn., in December, the White House boasted of implementing 23 executive actions to curb gun control. In reality, Obama issued a trio of modest directives that instructed federal agencies to trace guns and send information for background checks to a database.¶ In his State of the Union address last month, Obama instructed businesses to improve the security of computers to help prevent hacking. But he doesn’t have the legal authority to force private companies to act.¶ “The executive order can be a useful tool but there are only certain things he can do,” said Melanie Teplinsky, an American University law professor who’s spoken extensively on cyber-law.¶ Executive actions often are fleeting. They generally don’t settle a political debate, and the next president, Congress or a court may overturn them.¶ Consider the so-called Mexico City policy. With it, Reagan banned federal money from going to international family-planning groups that provide abortions. Clinton rescinded the policy. George W. Bush reinstated it, and Obama reversed course again.¶ But congressional and legal action are rare. In 1952, the Supreme Court threw out Harry Truman’s order authorizing the seizure of steel mills during a series of strikes. In 1996, the District of Columbia Court of Appeals dismissed an order by Clinton that banned the government from contracting with companies that hire workers despite an ongoing strike.¶ Obama has seen some pushback.¶ Congress prohibited him from spending money to move inmates from the Guantanamo Bay U.S. naval base in Cuba after he signed an order that said it would close. A Chinese company sued Obama for killing its wind farm projects by executive order after he said they were too close to a military training site. A federal appeals court recently ruled that he’d exceeded his constitutional powers when he named several people to the National Labor Relations Board while the Senate was in recess.¶ But Obama appears to be undaunted.¶ “If Congress won’t act soon to protect future generations,” he told Congress last month, “I will.”

### at: lobel

#### MSU is wrong on Lobel—Lobel thinks the “appropriations authority” and “court enforcement” claims are bogus

**Lobel 8** – Jules Lobel, Professor at University of Pittsburgh Law School, "War Powers for the 21st Century: The Constitutional Perspective", Testimony Before the Subcommittee on International Organizations, Human Rights and Oversight Committee on Foreign Affairs U.S. House of Representatives, 4-10, http://democrats.foreignaffairs.house.gov/110/lob041008.htm

From this constitutional perspective, section 3 of the Constitutional War Powers Amendments of 2007 correctly provides that the initiation of hostilities by the armed forces may only occur when authorized by Congress or in order to repel an armed attack upon the United States or its armed forces and citizens located outside the united States. I am troubled, however, by the language in Section 3(a), (3) and (4) that provides the President with the authority to use force “to the extent necessary” to repel such attacks. I realize that the probable intent of that language is to limit the President’s use of armed force to only that force which is essential to repel an attack, but the phrase “to the extent necessary” seems vague, and could be read by future Presidents to justify a preventive use of force where he or she believes it necessary to repel or prevent a future attack on the United States or troops. That is not what the drafters of this statute intended, but the language could be subject to misinterpretation. As then congressman Abraham Lincoln argued in 1848,

Allow the President to invade a neighboring nation, whenever he shall deem it necessary to repell an invasion . . . and you allow him to make war at pleasure. Study to see if you can fix any limit to his power in this respect.22

**[MSU CARD ENDS]**

I would therefore remove the words, “to the extent necessary,” and substitute “to repel an armed attack or such an imminent attack that the President has no time to obtain congressional authorization.”23 I would also remove 3(B) which permits the President to take necessary and appropriate retaliatory actions in the event of such an attack. This provision, which seems to me a Cold War vestige contained in the original Senate War Powers Bill, is not necessary because the President can use force to actually respond to an attack and Congress should fairly quickly authorize whatever force is necessary to defend against an ongoing attack and respond to the aggressor.

I would also like to comment on the enforcement measures contained in the bill. Sections 3(b) and 6(c) prohibit the use of appropriated funds for any executive use of force that is unauthorized under the statute is a welcome strengthening of current law. Nonetheless, a President who claimed that the statute was unconstitutional and initiated hostilities in disregard of the statute would undoubtedly use appropriated funds to do so, forcing Congress into the difficult position of having to decide whether to authorize funds for troops engaged in combat.

The bill also tries to reverse the judiciary’s past refusal to intervene to prevent presidential unilateral war making by providing that members of Congress have standing to challenge a violation of the law in federal court. I am doubtful that this provision will accomplish its objective. In Raines v. Byrd, the Supreme Court held that members of Congress suffer no concrete injury sufficient to confer Article III standing in federal courts when they claim injuries not in any private capacity but solely because they are members of Congress.24 The Court so held despite a provision in the statute at issue that specifically provided that any member of Congress could bring an action in federal court. The Court noted that although Congress’s decision to grant a particular plaintiff the right to challenge an act’s constitutionality eliminates any prudential standing limitations, Congress cannot erase Article III’s core, constitutional standing requirement that a plaintiff have suffered a concrete, particularized, personal injury.25 The Court did suggest that a narrow exception might exist allowing congressional standing when a member of Congress’s vote is totally nullified, but the D.C. Circuit Court of Appeals seems to have foreclosed even that exception in Campbell v. Clinton.

### 2nc groupthink

#### No realistic scenario for groupthink

Pillar, 13 -- Brookings Foreign Policy Senior Fellow

[Paul, "The Danger of Groupthink," The National Interest, 2-26-13, webcache.googleusercontent.com/search?q=cache:6rnyjYlVKY0J:www.brookings.edu/research/opinions/2013/02/26-danger-groupthink-pillar+&cd=3&hl=en&ct=clnk&gl=us, accessed9-21-13, mss]

David Ignatius has an interesting take on national security decision-making in the Obama administration in the wake of the reshuffle of senior positions taking place during these early weeks of the president's second term. Ignatius perceives certain patterns that he believes reinforce each other in what could be a worrying way. One is that the new team does not have as much “independent power” as such first-term figures as Clinton, Gates, Panetta and Petraeus. Another is that the administration has “centralized national security policy to an unusual extent” in the White House. With a corps of Obama loyalists, the substantive thinking may, Ignatius fears, run too uniformly in the same direction. He concludes his column by stating that “by assembling a team where all the top players are going in the same direction, he [Obama] is perilously close to groupthink.” We are dealing here with tendencies to which the executive branch of the U.S. government is more vulnerable than many other advanced democracies, where leading political figures with a standing independent of the head of government are more likely to wind up in a cabinet. This is especially true of, but not limited to, coalition governments. Single-party governments in Britain have varied in the degree to which the prime minister exercises control, but generally room is made in the cabinet for those the British call “big beasts”: leading figures in different wings or tendencies in the governing party who are not beholden to the prime minister for the power and standing they have attained. Ignatius overstates his case in a couple of respects. Although he acknowledges that Obama is “better than most” in handling open debate, he could have gone farther and noted that there have been egregious examples in the past of administrations enforcing a national security orthodoxy, and that the Obama administration does not even come close to these examples. There was Lyndon Johnson in the time of the Vietnam War, when policy was made around the president's Tuesday lunch table and even someone with the stature of the indefatigable Robert McNamara was ejected when he strayed from orthodoxy. Then there was, as the most extreme case, the George W. Bush administration, in which there was no policy process and no internal debate at all in deciding to launch a war in Iraq and in which those who strayed from orthodoxy, ranging from Lawrence Lindsey to Eric Shinseki, were treated mercilessly. Obama's prolonged—to the point of inviting charges of dithering—internal debates on the Afghanistan War were the **polar opposite** of this. Ignatius also probably underestimates the contributions that will be made to internal debate by the two most important cabinet members in national security: the secretaries of state and defense. He says John Kerry “has the heft of a former presidential candidate, but he has been a loyal and discreet emissary for Obama and is likely to remain so.” The heft matters, and Kerry certainly qualifies as a big beast. Moreover, the discreet way in which a member of Congress would carry any of the administration's water, as Kerry sometimes did when still a senator, is not necessarily a good indication of the role he will assume in internal debates as secretary of state. As for Chuck Hagel, Ignatius states “he has been damaged by the confirmation process and will need White House cover.” But now that Hagel's nomination finally has been confirmed, what other “cover” will he need? It's not as if he ever will face another confirmation vote in the Senate. It was Hagel's very inclination to flout orthodoxy, to arrive at independent opinions and to voice those opinions freely that led to the fevered opposition to his nomination.

### 2nc at: spoofing

#### They don’t solve spoofing:

#### A) They’ll just bait OTHER countries to intervene

#### B) Congress wouldn’t be able to know any better

#### C) No lashout hysterics

**Mueller 5** (John, Professor of Political Science – Ohio State University, Reactions and Overreactions to Terrorism, http://polisci.osu.edu/faculty/jmueller/NB.PDF)

However, history clearly demonstrates that overreaction is not necessarily inevitable. Sometimes, in fact, leaders have been able to restrain their instinct to overreact. Even more important, **restrained reaction--or even capitulation to terrorist acts--has often proved to be entirely acceptable politically**. That is, there are many instances where leaders did nothing after a terrorist attack (or at least refrained from overreacting) and did not suffer politically or otherwise. Similarly, after an unacceptable loss of American lives in Somalia in 1993, Bill Clinton responded by withdrawing the troops without noticeable negative impact on his 1996 re-election bid. Although Clinton responded with (apparently counterproductive) military retaliations after the two U.S. embassies were bombed in Africa in 1998 as discussed earlier, his administration did not have a notable response to terrorist attacks on American targets in Saudi Arabia (Khobar Towers) in 1996 or to the bombing of the U.S.S. Cole in 2000, and these non-responses never caused it political pain. George W. Bush's response to the anthrax attacks of 2001 did include, as noted above, a costly and wasteful stocking-up of anthrax vaccine and enormous extra spending by the U.S. Post Office. However, beyond that, it was the same as Clinton's had been to the terrorist attacks against the World Trade Center in 1993 and in Oklahoma City in 1995 and the same as the one applied in Spain when terrorist bombed trains there in 2004 or in Britain after attacks in 2005: the dedicated application of police work to try to apprehend the perpetrators. This approach was politically acceptable even though the culprit in the anthrax case (unlike the other ones) has yet to be found. The demands for retaliation may be somewhat more problematic in the case of suicide terrorists since the direct perpetrators of the terrorist act are already dead, thus sometimes impelling a vengeful need to seek out other targets. Nonetheless, the attacks in Lebanon, Saudi Arabia, Great Britain, and against the Cole were all suicidal, yet no direct retaliatory action was taken. **Thus, despite short-term demands that some sort of action must be taken**, experience suggests politicians can often successfully ride out this demand after the obligatory (and inexpensive) expressions of outrage are prominently issued.

#### Blumrosen says Congress can’t solve – no resources or experts

Blumrosen 11 – Alfred W. Blumrosen, Professor Emeritus at the Rutgers School of Law and Steven M. Blumrosen, J.D., Quinnipiac University School of Law, "Restoring the Congressional Duty to Declare War", Rutgers Law Review, Winter, 63 Rutgers L. Rev. 407, Lexis

Professor Phillip Bobbit has focused on the difficulties of assigning ―blame‖ for a terrorist attack from an uncertain source, and the dangerous consequences of a rush to judgment.516 An attack against our water supply, electrical grid, or the transportation system, where the perpetrators plant phony evidence that the plot originated in Russia, China, or Iran could lead us to a nuclear response that would ―bomb us all‖ into the stone age. This would suit only those who believe that western civilization is an abomination.

**=====THEIR CARD ENDS=====**

Congress must be alert to determine what actions a President plans to take after a ―terrorist incident‖ against the United States, and satisfy itself and the public that the President has not ―rushed to judgment‖ about the culprits and their backers. The President‘s claim that time is of the essence, is rarely the case. In connection with the Second Iraq War, the President pressured Congress to act favorably just before the bi-annual election in 2002, then waited five months to commencee hostilities. The Gulf of Tonkin Resolution was rushed through on flimsy evidence in August, 1964. Johnson had no intention of using it until after the presidential elections in

November, so he could run for election on a policy of keeping our boys out of Vietnam.517 After his victory, he made the decision to deploy more than half a million troops to Vietnam.

Congress should gird itself for negotiations with the White House and for serious reviews of the facts, rather than the meaningless speechmaking that accompanied the 2002 AUMF against Iraq or the worry about the political consequences of a serious review of the Gulf of Tonkin Resolution. Congress has a problem of resources.518 The presidential staff consists of thousands of professionals in the Departments of Justice, Defense, State and the Intelligence agencies.519 Congress needs a stand-by committee of experts on both war and diplomacy to evaluate proposals for military action.520 While we believe that Presidents and Congresses will continue to rely on the AUMF because it simplifies life at both ends of Pennsylvania Avenue, we also believe that the AUMF has served the nation so badly that we cannot continue to rely on the Vietnam War cases. Congress may reform itself, but at the moment, hope lies with a judiciary that may yet absorb the significance of June 1, 1787.

### 2nc at: warfighting

#### No risk of alliance breakdowns

**Friedman and Logan 2012** – PhD Candidate in Political Science at MIT, research fellow in defense and homeland security studies at Cato, \*\*director of foreign policy studies at the Cato Institute (Spring, Benjamin and Justin, Published for the Foreign Policy Research Institute, “Why the U.S. Military Budget is ‘Foolish and Sustainable’”, http://www.cato.org/sites/cato.org/files/articles/logan-friendman-obis-spring-2012.pdf)

The larger problem with the idea that our alliances are justified by the¶ balancing they prevent is that **wars** generally **require more than the mutual fear**¶ **that arms competition provokes**. Namely, there is usually a territorial conflict or¶ a state bent on conflict. Historical examples of arms races alone causing wars¶ are few.11 This confusion probably results from misconstruing the causes of¶ World War I—seeing it as a consequence of mutual fear alone rather than fear¶ produced by the proximity of territorially ambitious states.12

Balances of power, as noted, are especially liable to be stable when¶ water separates would-be combatants, as in modern Asia. Japan would likely¶ increase defense spending if U.S. forces left it, and that would likely displease¶ China. But that **tension is very unlikely to provoke a regional conflagration**.¶ And even that remote scenario is far more likely than the Rube Goldberg¶ scenario needed to argue that peace in Europe requires U.S. forces stationed¶ there. It is not clear that European states would even increase military¶ spending should U.S. troops depart. If they did do so, **one struggles to**¶ **imagine a chain of misperceived hostility** sufficient to resurrect the bad old¶ days of European history.

#### They don’t get legitimacy impacts:

#### A. Ikenberry is about broader features of democracy—otherwise the last 60 years would take out the aff

#### B. Requires grand strategy overhaul—here’s the 1ac

Ikenberry 11 – G. John Ikenberry, Peter F. Krogh Professor of Global Justice at the School of Foreign Service at Georgetown University, “A World of Our Making”, Democracy: A Journal of Ideas, Issue #21, Summer, <http://www.democracyjournal.org/21/a-world-of-our-making-1.php?page=all>

Grand Strategy as Liberal Order Building

American dominance of the global system will eventually yield to the rise of other powerful states. The unipolar moment will pass. In facing this circumstance, American grand strategy should be informed by answers to this question: What sort of international order would we like to see in place in 2020 or 2030 when America is less powerful?

Grand strategy is a set of coordinated and sustained policies designed to address the long-term threats and opportunities that lie beyond the country’s shores. Given the great shifts in the global system and the crisis of liberal hegemonic order, how should the United States pursue grand strategy in the coming years? The answer is that the United States should work with others to rebuild and renew the institutional foundations of the liberal international order and along the way re-establish its own authority as a global leader. The United States is going to need to invest in alliances, partnerships, multilateral institutions, special relationships, great-power concerts, cooperative security pacts, and democratic security communities. That is, the United States will need to return to the great tasks of liberal order building.

It is useful to distinguish between two types of grand strategy: positional and milieu oriented. With a positional grand strategy, a great power seeks to diminish the power or threat embodied in a specific challenger state or group of states. Examples are Nazi Germany, Imperial Japan, the Soviet bloc, and perhaps—in the future—Greater China. With a milieu-oriented grand strategy, a great power does not target a specific state but seeks to structure its general international environment in ways that are congenial with its long-term security. This might entail building the infrastructure of international cooperation, promoting trade and democracy in various regions of the world, and establishing partnerships that might be useful for various contingencies. My point is that under conditions of unipolarity, in a world of diffuse threats, and with pervasive uncertainty over what the specific security challenges will be in the future, this milieu-based approach to grand strategy is necessary.

The United States does not face the sort of singular geopolitical threat that it did with the fascist and communist powers of the last century. Indeed, compared with the dark days of the 1930s or the Cold War, America lives in an extraordinarily benign security environment. Rather than a single overriding threat, the United States and other countries face a host of diffuse and evolving threats. Global warming, nuclear proliferation, jihadist terrorism, energy security, health pandemics—these and other dangers loom on the horizon. Any of these threats could endanger Americans’ lives and way of life either directly or indirectly by destabilizing the global system upon which American security and prosperity depends. What is more, these threats are interconnected—and it is their interactive effects that represent the most acute danger. And if several of these threats materialize at the same time and interact to generate greater violence and instability, then the global order itself, as well as the foundations of American national security, would be put at risk.

What unites these threats and challenges is that they are all manifestations of rising security interdependence. More and more of what goes on in other countries matters for the health and safety of the United States and the rest of the world. Many of the new dangers—such as health pandemics and transnational terrorist violence—stem from the weakness of states rather than their strength. At the same time, technologies of violence are evolving, providing opportunities for weak states or nonstate groups to threaten others at a greater distance. When states are in a situation of security interdependence, they cannot go it alone. They must negotiate and cooperate with other states and seek mutual restraints and protections. The United States can-not hide or protect itself from threats under conditions of rising security interdependence. It must get out in the world and work with other states to build frameworks of cooperation and leverage capacities for action against this unusually diverse, diffuse, and unpredictable array of threats and challenges.

This is why a milieu-based grand strategy is attractive. The objective is to shape the international environment to maximize your capacities to protect the nation from threats. To engage in liberal order building is to invest in international cooperative frameworks—that is, rules, institutions, partnerships, networks, standby capacities, social knowledge, etc.—in which the United States operates. To build international order is to increase the global stock of “social capital”—which is the term Pierre Bourdieu, Robert Putnam, and other social scientists have used to define the actual and potential resources and capacities within a political community, manifest in and through its networks of social relations, that are available for solving collective problems.

If American grand strategy is to be organized around liberal order building, what are the specific objectives and what is the policy agenda? There are five such objectives. First, the United States needs to lead in the building of an enhanced protective infrastructure that helps prevent the emergence of threats and limits the damage if they do materialize. Many of the threats mentioned above are manifest as socioeconomic backwardness and failure that cause regional and international instability and conflict. These are the sorts of threats that are likely to arise with the coming of global warming and epidemic disease. What is needed here is institutional cooperation to strengthen the capacity of governments and the international com-munity to prevent epidemics or food shortages or mass migrations that create global upheaval—and mitigate the effects of these upheavals if they occur. The international system already has a great deal of this protective infrastructure—institutions and networks that pro-mote cooperation over public health, refugees, and emergency aid. But as the scale and scope of potential problems grow in the twenty-first century, investments in these preventive and management capacities will also need to grow. Early warning systems, protocols for emergency operations, standby capacities, etc.—these safeguards are the stuff of a protective global infrastructure.

Second, the United States should recommit to and rebuild its security alliances. The idea is to update the old bargains that lie behind these security pacts. In NATO, but also in the East Asia bilateral partner-ships, the United States agrees to provide security protection to the other states and brings its partners into the process of decision-making over the use of force. In return, these partners agree to work with the United States—providing manpower, logistics, and other types of support—in wider theaters of action. The United States gives up some autonomy in strategic decision-making, although it is more an informal restraint than a legally binding one, and in exchange it gets cooperation and political support.

Third, the United States should reform and create encompassing global institutions that foster and legitimate collective action. The first move here should be to reform the United Nations, starting with the expansion of the permanent membership on the Security Council. Several plans have been proposed. All of them entail adding new members—such as Germany, Japan, India, Brazil, South Africa, and others—and reforming the voting procedures. Almost all of the candidates for permanent membership are mature or rising democracies. The goal, of course, is to make them stakeholders in the United Nations and thereby strengthen the primacy of the UN as a vehicle for global collective action. There really is no substitute for the legitimacy that the United Nations can offer to emergency actions—humanitarian interventions, economic sanctions, uses of force against terrorists, and so forth. Public support in advanced democracies grows rapidly when their governments can stand behind a UN-sanctioned action.

Fourth, the United States should accommodate and institution-ally engage China. China will most likely be a dominant state, and the United States will need to yield to it in various ways. The United States should respond to the rise of China by strengthening the rules and institutions of the liberal international order—deepening their roots, integrating rising capitalist democracies, sharing authority and functional roles. The United States should also intensify cooperation with Europe and renew joint commitments to alliances and multilateral global governance. The more that China faces not just the United States but the entire world of capitalist democracies, the better. This is not to argue that China must face a grand counterbalancing alliance against it. Rather, it should face a complex and highly integrated global system—one that is so encompassing and deeply entrenched that it essentially has no choice but to join it and seek to prosper within it.

The United States should also be seeking to construct a regional security order in East Asia that can provide a framework for managing the coming shifts. The idea is not to block China’s entry into the regional order but to help shape its terms, looking for opportunities to strike strategic bargains at various moments along the shifting power trajectories and encroaching geopolitical spheres. The big bargain that the United States will want to strike is this: to accommodate a rising China by offering it status and position within the regional order in return for Beijing’s acceptance and accommodation of Washington’s core strategic interests, which include remaining a dominant security provider within East Asia. In striking this strategic bargain, the United States will also want to try to build multilateral institutional arrangements in East Asia that will tie China to the wider region.

Fifth, the United States should reclaim a liberal internationalist public philosophy. When American officials after World War II championed the building of a rule-based postwar order, they articulated a distinctive internationalist vision of order that has faded in recent decades. It was a vision that entailed a synthesis of liberal and realist ideas about economic and national security, and the sources of stable and peaceful order. These ideas—drawn from the experiences with the New Deal and the previous decades of war and depression—led American leaders to associate the national interest with the building of a managed and institutionalized global system. What is needed today is a renewed public philosophy of liberal internationalism—a shift away from neoliberal-ism—that can inform American elites as they make trade-offs between sovereignty and institutional cooperation.

Under this philosophy, the restraint and the commitment of American power went hand in hand. Global rules and institutions advanced America’s national interest rather than threatened it. The alternative public philosophies that have circulated in recent years—philosophies that champion American unilateralism and disentanglement from global rules and institutions—did not meet with great success. So an opening exists for America’s postwar vision of internationalism to be updated and rearticulated today.

The United States should embrace the tenets of this liberal public philosophy: Lead with rules rather than dominate with power; provide public goods and connect their provision to cooperative and accommodative policies of others; build and renew international rules and institutions that work to reinforce the capacities of states to govern and achieve security and economic success; keep the other liberal democracies close; and let the global system itself do the deep work of liberal modernization.

As it navigates this brave new world, the United States will find itself needing to share power and rely in part on others to ensure its security. It will not be able to depend on unipolar power or airtight borders. It will need, above all else, authority and respect as a global leader. The United States has lost some of that authority and respect in recent years. In committing itself to a grand strategy of liberal order building, it can begin the process of gaining it back.

#### Their impact is bogus

Azar **Gat**, July/August **2009**, is a researcher and author on military history, he was the Chair of the Department of Political Science at Tel Aviv University, Foreign Affairs, “Which Way Is History Marching?,”<http://www.foreignaffairs.com/articles/65162/azar-gat-daniel-deudney-and-g-john-ikenberry-and-ronald-inglehar/which-way-is-history-marching?page=show>

UNDILUTED OPTIMISM to the sweeping, blind forces of globalization. A message need not be formulated in universalistic terms to have a broader appea When it comes to the question of how to deal with a nondemocratic superpower China in the international arena, Deudney and Ikenberry, as well as Inglehart and Welzel, exhibit undiluted liberal internationalist optimism. China's free access to the global economy is fueling its massive growth, thereby strengthening the country as a potential rival to the United States -- a problem for the United States not unlike that encountered by the free-trading British Empire when it faced other industrializing great powers in the late nineteenth century. According to Inglehart and Welzel, there is little to worry about, because rapid development will only quicken China's democratization. But it was the United Kingdom's great fortune -- and liberal democracy's -- that its hegemonic status fell into the hands of another liberal democracy, the United States, rather than into those of nondemocratic Germany and Japan, whose future trajectories remained uncertain at best. The liberal democratic countries could have made China's access to the global economy conditional on democratization, but it is doubtful that such a linkage would have been feasible or desirable. After all, China's economic growth has benefited other nations and has made the developed countries -- and the United States in particular -- as dependent on China as China is dependent on them. Furthermore, economic development and interdependence in themselves -- in addition to democracy -- are a major force for peace. Democracies' ability to promote internal democratization in countries much smaller and weaker than China has been very limited, and putting pressure on China could backfire, souring relations with China and diverting its development to a more militant and hostile path. Deudney and Ikenberry suggest that China's admission into the institutions of the liberal international order established after World War II and the Cold War will oblige the country to transform and conform to that order. But large players are unlikely to accept the existing order as it is, and their entrance into the system is as likely to change it as to change them. The Universal Declaration of Human Rights provides a case in point. It was adopted by the United Nations in 1948, in the aftermath of the Nazi horrors and at the high point of liberal hegemony. Yet the UN Commission on Human Rights, and the Human Rights Council that replaced it, has long been dominated by China, Cuba, and Saudi Arabia and has a clear illiberal majority and record. Today, more countries vote with China than with the United States and Europe on human rights issues in the General Assembly of the United Nations. Critics argue that unlike liberalism, nondemocratic capitalist systems have no universal message to offer the world, nothing attractive to sell that people can aspire to, and hence no "soft power" for winning over hearts and minds. But there is a flip side to the universalist coin: many find liberal universalism dogmatic, intrusive, and even oppressive. Resistance to the unipolar world is a reaction not just to the power of the United States but also to the dominance of human rights liberalism. There is a deep and widespread resentment in non-Western societies of being lectured to by the West and of the need to justify themselves according to the standards of a hegemonic liberal morality that preaches individualism to societies that value community as a greater good. Compared to other historical regimes, the global liberal order is in many ways benign, welcoming, and based on mutual prosperity.

## 1nr

### mead—warfighting

#### Even if Obama is the new Bush, there’s no impact because he's much smarter—definitely solves all their alliance and backlash args

**Mead 2011** – James Clarke Chace Professor of Foreign Affairs and Humanities at Bard College and Editor-at-Large of The American Interest magazine, former Senior Fellow for U.S. Foreign Policy at the Council on Foreign Relations (8/22, Walter Russell, American Interest, “W Gets A Third Term In The Middle East”, http://blogs.the-american-interest.com/wrm/2011/08/22/w-gets-a-third-term-in-the-middle-east/)

The most irritating argument anyone could make in American politics is that President Obama, precisely because he seems so liberal, so vacillating, so nice, is a more effective neoconservative than President Bush. As is often the case, the argument is so irritating partly because it is so true.

President Obama is pushing a democracy agenda in the Middle East that is as aggressive as President Bush’s; he adopts regime change by violence if necessary as a core component of his regional approach and, to put it mildly, he is not afraid to bomb. But where President Bush’s tough guy posture (“Bring ‘Em On!”) alienated opinion abroad and among liberals at home, President Obama’s reluctant warrior stance makes it easier for others to work with him.

In some ways, President Obama’s Middle Eastern foreign policy does for President Bush’s democratization policy what President Eisenhower did for President Truman’s containment doctrine. In both cases, a necessary and useful foreign policy had become deeply unpopular; Eisenhower implemented containment but made the country feel better about it — partly by rhetorical shifts, partly by tweaking the execution. Obama is trying to do the same thing with Bush’s transformation agenda.

In many ways we are living through George W. Bush’s third term in the Middle East, and neither President Obama’s friends nor his enemies want to admit it. President Obama, in his own way and with his own twists, continues to follow the core Bush policy of nudging and sometimes pushing nasty regimes out of power, aligning the US with the wave of popular discontent in the region even as that popular sentiment continues to dislike, suspect and reject many aspects of American power and society. And that policy continues to achieve ambivalent successes: replacing old and crustily anti-American regimes, rooted deeply in the culture of terror and violence within and beyond their borders, with weaker, more open and — on some issues at least — more accommodating ones.

Additionally, the combination of tough military attacks on Al Qaeda and its affiliates wherever they rear their ugly heads and the opening of new political space in the Middle East continues to marginalize the acolytes of Bin Laden. There was a time when Bin Laden hoped to become the voice of Arab protest and resistance; the US had killed his dream long before Team Six got to his house.

Obama is better than Bush at building international coalitions and managing the appearance of American policy in a contentious world. In Libya, Obama faced a constraint not dissimilar to Bush’s situation in Iraq. Both presidents got something from the Security Council, but neither got enough. Bush responded by defying the body over the failed “second resolution” on Iraq; Obama simply ignored the gap between what the resolution allowed and what the US needed, stretching a humanitarian mandate to effect regime change.

Gratuitous snubs to global sensibilities were one of the Bush administration’s most expensive failings; when the WMD in Iraq did not appear and the occupation turned into a nightmare, an infuriated world (and many Americans) rejoiced at what they saw as a well deserved comeuppance. President Obama’s more conciliatory stance does nothing to win over America’s enemies — but it makes it harder for those enemies to mobilize world opinion on their side. He has also cut the legs off the anti-war movements at home by depriving it of a clear target. Nobody in America much likes all the wars we are fighting in so many obscure places — but the anti-war movement has been reduced to its irrelevant hard core.

Obama has plenty of faults of his own, and, like Bush’s, his mistakes can be costly. He has never understood the dynamics of the US-Israel relations or the Israeli-Palestinian issue. He clearly underestimated the conflict in Libya; we shall see whether he and the allies have underestimated the problems of reconstruction. The combination of a surge in Afghanistan with the naming of a date for withdrawal sent mixed signals and probably encouraged the Taliban to fight on.

But since the world hates Obama less than it hated Bush, the US and the global press are more forgiving of his errors, and pass lightly over shortcomings and contradictions that, if Bush were still in the White House, would be the mainstay of the nightly news. When was the last time you read something about Obama’s failure to close Guantanamo?

The result is that the advance of US power in the Middle East that began under Bush has continued and developed under Obama. Our worst enemies disappear; the Gulf monarchies are more dependent on us than ever; the coalition against Iran deepens and strengthens.

### 1nr sop adv

#### Alt cause: the rest of the war on terror

**Horowitz, 2/6**/12 - As co-founder of PolicyMic, Jake is managing the writing and editing process and trying to spark thoughtful debate on important political issues. He graduated from Stanford University (Jake, “Why is the U.S. Constitution Losing Influence Across the World?,”

http://www.policymic.com/articles/3975/why-is-the-u-s-constitution-losing-influence-across-the-world

But, my sense is that the Constitution is slipping because America has lost its power and prestige as a shining democracy due to over a decade of constitutional excess. In particular, the Bush administration's War on Terror policies which interpreted the Constitution to permit torture, deprive suspected terrorists of due process, sanction wire-tapping and domestic spying, and amass unprecedented power in the hands of the executive eroded the credibility of the document and undermined our democracy. After a decade of America's imprisoning and torturing Arab citizens under the guise of the Constitution, it is no wonder that it no longer holds any weight in newly emerging democracies like Egypt and Tunisia. Moreover, the decline in influence is also a reflection of the all-too-often forgotten fact that American liberal democracy is not for every country. The U.S. Constitution guarantees certain rights, like the separation of religion and state, which may not neatly fit into other countries' models of democracy. Stanford democracy expert Larry Diamond has written often about public opinion polling of the Arab world, which indicates that although the majority of Arabs want democracy, they also believe Islam should play a strong role in governing their society. The U.S. Constitution, then, provides little guidance for structuring newly emer ging democracies with more devout populations. Although the decline of the Constitution is likely to unnerve the bevy of IR theorists and pundits who routinely lament America's decline, this study is not necessarily cause for concern. Rather, that emerging democracies are adapting democracy to fit their context serves as a powerful reminder that liberal democracy cannot be imposed from the outside, something the U.S. learned well this past decade in Iraq. It should also serve as a stark warning to President Barack Obama, however, that the longer Guantanamo remains open, and the more the administration chips away at our civil liberties by signing bills like the NDAA, the more U.S. influence, leadership, and credibility will wane across the globe.

#### Everything about this advantage is long-term and vague

**Diamond, 00** (Larry Diamond, professor, lecturer, adviser, and author on foreign policy, foreign aid, and democracy. “Democracy Promotion for the Long Haul.” 11-30-00. http://www.stanford.edu/~ldiamond/papers/AIDpartners.pdf)

It will not do to promote free and fair elections if we do not effectively promote the other elements of democracy as well. And this is not a short-term agenda. A great danger in political assistance is the temptation to seek a big bang, a breakthrough election, and then phase out and walk way. If we want to be effective in promoting democracy, we have to be prepared to be engaged in countries for a long period of time, in a variety of sectors, and at multiple levels of governance. We have to stick with countries—at least with embattled civil societies—when things get grim, and we to sustain our efforts when a crisis subsides and democrats settle into the protracted, prosaic work of gradually building and reforming democratic institutions. We are swimming against long histories and huge odds. We cannot expect to be able to reverse decades of institutional deformity and decay and to transform deeply entrenched cultures and social structures in a few years. We need a strategic view of democracy promotion for the long term. Ten years on, in most of the countries where we work, we are still in the early stages of the struggle for liberal, accountable, legitimate, and sustainable democracy, in other words, for democratic consolidation.

### 2nc overview

#### DA outweighs – no terminal impact d to the claim that prolif or a strike escalates – draws in Russia, China and other great powers – causes miscalc which is an impact independent of theirs – the Reuveny ev says it magnifies every conflict which slays the case

#### Timeframe - negotiations are now or never – means the link comes before the turn, because waiting too long allows Iranian hardliners to scuttle negotiations

**Haass, 9/29/13** – president of the Council on Foreign Relations (Richard, “A Diplomatic Dance Will Be No Waltz for Either Iran or America” Financial Times,

<http://www.cfr.org/iran/diplomatic-dance-no-waltz-either-iran-america/p31517>)

We will know soon enough. Both sides are in a hurry. The new Iranian leaders worry that time is against them. They fear that conservatives defeated in the June elections will rally, while the public will grow impatient if the sanctions-battered economy does not improve.

Americans worry Iran is using time to get closer to creating an infrastructure able to produce fissile material, weaponise it and put warheads on missiles. Israeli officials do not hide their belief that under Mr Rouhani Iran will "smile its way to the bomb".

All of which means this diplomatic dance will be no waltz. Sooner rather than later – certainly before next year is out – we should know if we will be toasting success or managing a crisis.

### link turn/waxman

#### Three issues with the turn –

#### The plan can’t access it – no evidence suggests Congress would authorize force against Iran or that Obama will seek it

#### It doesn’t assume the Syria deal, which had the same effect as their turn – proves the current deal solves and boosts credibility

**Miller, 9/16/13** - vice president for new initiatives and a distinguished scholar at the Woodrow Wilson International Center for Scholars (Aaron, “The Tally”, <http://www.foreignpolicy.com/articles/2013/09/16/the_tally_winners_and_losers_syria?page=full>)

In the wake of this deal, will the president and his activist secretary of state be viewed as strategic geniuses, exquisite masters of the calibration of force and diplomacy? I don't think so. It's too late for that. Too many twists and turns, ups and downs, false starts and stops, and inconsistencies in language and tactics. But there's no doubt that the two are looking much better now than they have since the crisis began. After all, it was the president's willingness (however reluctantly) to put force on the table and his pivot to Congress (however weak it made him appear, particularly when he didn't have the votes) that opened up the space for Putin's seizing on an idea that had been raised before.

Let's also remember that the Syrian crisis has been a dog's lunch for the president from the get-go. Until now, Obama had three options on Syria, all of them bad: do nothing in the face of the largest single use of chemical weapons against civilians since Saddam Hussein used them against the Kurds; develop a comprehensive military strategy, including arming the rebels with serious weapons; or take the middle road of a limited strike. Now, the president has a fourth option: avoid military action and maybe get Assad's chemical weapons offline, weaken him, and perhaps, in cooperation with the Russians, initiate a broader process to end the civil war.

What's more, even if the follow-up proves fantastical, the new framework will be welcomed by the American public and by Congress, more so than a limited strike. If the administration doesn't try to oversell the deal or portray themselves as a bunch of Talleyrands, Gladstones, and Metternichs, it could get out of this crisis without any more damage to its image -- which has suffered from the Keystone Cops-style handling of the situation -- and with a fair share of the credit, too.

(5) Iran

For Iran, a diplomatic solution to the chemical weapons crisis is far preferable to a military strike. Whether or not congressional opposition to U.S. military action in Syria will encourage Iran to believe that Obama won't act against its nuclear program is impossible to say. But Tehran -- which is no fan of chemical weapons, given Iraq's use of gas against Iranians during the Iran-Iraq war -- has done much to preserve the military balance on the ground in Assad's favor. A political deal keeps their man in Damascus in power. Also, like the Russians, Iran probably fears the impact of repeated strikes. Once the glass ceiling on military action is broken, the pressure, and even expectations, for U.S. action might rise. For now, that's no longer a concern.

#### Obama would have lost the Syria vote and that would have shattered US cred with Iran. The thing that saved him was that the threat of force was credible enough to force a diplomatic settlement and Congress never got the opportunity to say no. Prefer our Iran-specific link evidence to their generic cred theory claims.

#### Waxman isn’t affirmative evidence – he thinks existing political constraints like voluntary authorization solve the turn and is undecided about formal legal constraint

**Waxman, 9/3/13** – professor of law at Columbia Law School (Matthew, “Constitutional Power to Threaten War: Three Points on Syria” Lawfare blog, http://www.lawfareblog.com/2013/09/constitutional-power-to-threaten-war-three-points-on-syria/)

First, a point about constraints on the President: Whatever one thinks about the President’s constitutional authority to make good on his threat against Syria with military force, I’ve not heard anyone question his authority to have unilaterally issued the threat to begin with – that is, his authority to draw a red line on chemical weapon use and imply that the United States would respond forcefully. Most would agree, though, the President has been politically constrained in what he’s communicated through words and actions to the Syrian government, U.S. allies, and others.

Some of that political constraint has probably come from Congress all along, and even if Congress were unlikely to wield formal legislative power to terminate or cut-off funds from a Syria operation that the President might launch on his own, Congress’s influence derives in part from its institutional position to make things difficult for the President, and even from influential members’ ability to speak out publicly in ways that might undermine the credibility of presidential threats. Law helps constitute the processes of political struggles in any area of public policy, but what is special here in the context of deterrent strategy is the added importance of foreign audiences – including adversaries and allies, alike – observing and reacting to those politics, too.

Second, while Congress’s political and legal powers have operated to constrain presidential threats, the President – by declaring the threat and taking actions to double down on it – has boxed Congress in to some degree. This is not Polk moving troops into territory with Mexico, and Congress may still buck him, especially because some members worry that the President’s proposed actions don’t go far enough to effective. But the President has unilaterally put U.S. credibility on the line with his many statements (pursuant to foreign relations powers) and movement of U.S. naval forces (pursuant to commander in chief powers), such that he can now argue to Congress that failure to approve action will undermine U.S. security not just in Syria but with respect to Iran and other possible foes.

There’s a legal corollary to that point, too. Legal analysis of presidential authority to use force is sometimes thought to turn partly on the U.S. security interests at stake (e.g. OLC concluded with regard to launching the 2011 Libya operations that the President had such legal authority “because he could reasonably determine that such use of force was in the national interest”). Such arguments often treat those interests as purely contextual and exogenous to U.S. decision-making and grand strategy. The interests at stake in crises like these, however, are altered dramatically if the President threatens force: doing so puts the credibility of U.S. threats at stake, which is important not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. actions. That is, the President’s power to threaten force means that he may unilaterally alter the costs and benefits of actually using force through his prior actions as a crisis unfolds.

My third point is a question I wrestle with in the paper, which is what does all this analysis of threats of war mean normatively for allocating powers of war and peace among the political branches. Most functional arguments about war powers focus on fighting wars or hostile engagements, with congressionalists who favor tight legal constraints on the President’s unilateral powers to use force arguing that such limits are needed to prevent costly and unnecessary wars. Drawing on arguments that date back to the Founding, they posit that the more flexibly the President can use military force, the more likely it is that the United States will find itself in wars; better, therefore, to clog decisions to make war with deliberative processes and substantive checks in Congress.

Those arguments about congressional checks may make sense if our approach to war-avoidance is slowly and carefully calculating the costs of entering ongoing conflicts or meeting an adversary’s hostile moves with military force. But what if our strategy is premised on deterring the adversary from making those hostile moves in the first place? The President has made very clear that he doesn’t want to intervene in Syria but feels he must act in ways now that deter future uses of WMD that threaten U.S. and allied interests. Which is better for communicating that threat credibly – a legally agile president or a legally constrained one? How does the process of seeking legislative authorization affect how signals are understood by adversaries as well as allies and partners?

On the one hand, one might intuitively expect that robust democratic checks would generally be ill-suited for coercive threats and negotiations – that institutional centralization and secrecy of decision-making might better equip non-democracies to wield threats of force. Sometimes threats are more powerful if the leader issuing them seems irrational or creates the possibility for inadvertent escalation (which seem like the opposite of the careful, open deliberation associated with congressionalist logic). On the other hand, some political scientists have recently called into question this view and concluded that the institutionalization of political contestation and some diffusion of decision-making power in democracies, especially to legislative bodies, make threats to use force rare but especially credible and effective in resolving international crises without actual resort to armed conflict.

This is a tough question, and I don’t yet answer it definitively in my paper. I’m hoping, though, that the Syria case provides a useful case study for thinking about this.

#### Prefer the link to the turn –

#### Empirically true -

**Turner, 5** – professor of law at the University of Virginia (Robert, “The War Powers Resolution: An Unnecessary, Unconstitutional Source of "Friendly Fire" in the War Against International Terrorism?”

<http://www.fed-soc.org/publications/detail/the-war-powers-resolution-an-unnecessary-unconstitutional-source-of-friendly-fire-in-the-war-against-international-terrorism>)

As Commander in Chief, the President is charged with so disposing of the resources placed under his command by Congress as in his judgment are most likely to protect American interests and maintain peace. While it may be argued that sending thousands of U.S. troops to South Korea at the request (or with the consent) of that country's government might ultimately lead to war-if, for example, China or North Korea were to decide to attack those forces-the reality is that virtually every movement of U.S. forces could encourage war. Indeed, it is absolutely clear that President Truman's decision to withdraw U.S. military personnel from South Korea in 1949 was a major factor in North Korea's decision to invade South Korea the following June.

Indeed, modern history strongly suggests that signs of American weakness and vacillation are far more likely to result in armed international aggression than signs of strength. And that is yet another major shortcoming of the War Powers Resolution. Above all else, the statute has served as an "insurance policy" for legislators who are terrified that any risk of hostilities will result in "another Vietnam."

Before Vietnam, Congress repeatedly stood tall and authorized the President to use military force to deal with threats to the peace. In 1955, when the People's Republic of China was sending signals it was contemplating an attack on Taiwan, Congress passed a strong resolution and the President sent U.S. naval forces to the region as a symbol of American resolve. The Chinese did not attack. Two years later, when things got tense in the Middle East, Congress passed another joint resolution authorizing the President to use military force, and again the situation was defused without casualties to the deployed U.S. forces. Then came the Cuban Missile Crisis, and Congress responded once again with a strong show of unity behind the President-and, once again, the "bad guys" backed down.

#### Congress won’t speak with one voice – instead partisan splits are inevitable and it’s the dispute that telegraphs weakness – all authorization looks like weakness

**Kahn, 2k** – professor of law and humanities at Yale (Paul, “THE SEVENTH ANNUAL FRITZ B. BURNS LECLTURE THE WAR POWERS RESOLUTION AND KOSOVO: WAR POWERS AND THE MILLENNIUM” 34 Loy. L.A. L. Rev. 11, lexis)

With respect to foreign affairs, however, these techniques of congressional decision-making work poorly. The differentiation that marks the parties as distinct and separate, and is domestically an initial step toward compromise, serves the same differentiating function in foreign policy, but there it tends to freeze party positions. Treaties come before the Senate too late in the process for compromise to be an option, particularly when they are multiparty covenants. n62 Moreover, compromises can look like concessions of U.S. interests to foreign states, rather than a distribution among competing elements of the polity. Nor is there a great deal of pressure to compromise. Rejecting foreign policy initiatives is a way of preserving the [\*30] status quo, and preserving the international status quo is rarely a policy for which one is held politically accountable. It is hard to make an issue out of a failure to change the conditions that prevail internationally, when the country is enjoying power, prestige, and wealth. Unable to compromise, the Senate can end up doing nothing, and then treaty ratification fails. Difference leads to stalemate, rather than to negotiation. The problem is greatly exacerbated by the two-thirds requirement for ratification. n63 This structural bias toward inaction accounts in part for the use of executive agreements in place of treaties. n64 These agreements make use of some of the tactical advantages of presidential initiative. Many of the structural problems remain, however, when executive agreements require subsequent congressional approval.

If the issue involves the use of force, compromise is particularly difficult. A compromise that produces a less substantial response to a foreign policy crisis can look like a lack of commitment. Disagreement now threatens to appear to offer an "exploitable weakness" to adversaries. Congress cannot simply give the president less of what he wants, when what he wants is a military deployment. There cannot easily be compromises on a range of unrelated issues in order to achieve support for a military deployment. While that may happen, it has the look of disregard for the national interests and of putting politics ahead of the public interest. Nor can Congress easily adopt the technique of the expert commission. n65 The timeframe of a crisis usually will not allow it. More importantly, the military - particularly in the form of the Joint Chiefs of Staff - has already preempted the claim of expertise, as well as the claim to be "apolitical." [\*31] Finally, there is little room for the private lobbyist with respect to these decisions.

Congress, in short, is not capable of acting because it only knows how to reach compromise across dissensus. When disagreement looks unpatriotic, and compromise appears dangerous, Congress is structurally disabled. This produces the double consequence for American foreign policy of a reluctance to participate in much of the global development of international law - outside of those trade and finance arrangements that are in our immediate self-interest - and a congressional abdication of use of force decisions to the president. The same structural incapacities are behind these seemingly contradictory results.

The vices of congressional decision-making in this area are balanced by the corresponding presidential virtues. The president can formulate a policy; the president need not compromise to act; the president can publicly claim responsibility for a position without having to distinguish his position from that of his political opponents; and the president almost inevitably can speak with the support of military experts. Because the president can do all of this, he is uniquely accountable for foreign policy decisions, especially on the use of force. n66

There is little doubt that the president believes he will be held politically accountable for American foreign policy decisions to use force. The recent loss of seventeen servicemen in Somalia deeply affected the methods of military deployment, precisely because of a fear that the public would not approve military losses outside of a narrow range of vital national interests. n67 The Clinton policy on the use of force, whatever else we may think about it, is directly responsive [\*32] to an assessment of what is politically acceptable. n68 This dynamic of public accountability is not likely to be improved by requiring congressional action.

If the president is publicly accountable, then it is not necessarily the case that Congress's failure has produced a sort of democracy deficit. Indeed, our most compelling problem today is not democratic accountability for the use of force, but Congress's structural weakness in assessing American participation in an emerging global order. To insist that the constitutional text requires congressional approval of any commitment of American military forces that places them at risk would put the war-declaring function in the same position as the treaty-making function. The consequence would be an effective withdrawal of American forces from an active international role.

One unfortunate consequence of our domestic, ideological wars of the '60s and the '70s, and particularly of our experience over Vietnam, is an academic tendency to argue for the further democratization of use of force decisions. This is the lens through which the war-declaring power of Congress is viewed. For the reasons sketched above, however, the political and institutional underpinnings for such a view are unrealistic. More importantly, we are already at a point at which there is too much "public accountability," given the ends for which force is deployed today. The democratization of the war powers is a Cold War agenda that no longer makes sense in a post-Cold War era. To understand this we have to investigate the changing character of the international legal order.

### AT: Congress Authorizes

#### This makes zero sense. Obama isn’t seeking Congressional authorization for a strike, so Congress won’t have a chance to do so. Our link evidence is about the establishment of ex ante rules and how those are perceived – it looks like Obama is much less flexible after the plan, even if he could still actually strike.

#### Troyan is horribly old, from two months ago – doesn’t say there will be a vote that involves all of congress – only about Graham which is a neg arg - the resolution proves no support

York, 9/18/13 (Byron, “Sen. Lindsey Graham to seek authorization for U.S. attack on Iran” Washington Examiner, <http://washingtonexaminer.com/sen.-lindsey-graham-to-seek-authorization-for-u.s.-attack-on-iran/article/2536040>)

Sen. Lindsey Graham is one of the strongest advocates of an American military strike against the Assad regime in Syria. He was unhappy when President Obama decided to seek congressional authorization for an attack, and then unhappy when his fellow lawmakers voiced disapproval of the president's plan. Graham believes the diplomatic path chosen by the administration will lead to a debacle.

Given all that, Graham now says he will work with a bipartisan group of senators to craft a resolution authorizing the president to use military force -- not against the Syrian regime but against Iran. In an appearance on Fox News' Huckabee program over the weekend, Graham argued that such a resolution is essential, because American inaction in Syria will encourage Iran to go forward with its nuclear weapon program, eventually leading toward a Mideast conflagration if the U.S. doesn't intervene.

"Look how we've handled the chemical weapons threat in Syria," Graham said. "If we duplicate that with the Iranians, they're going to march toward a nuclear weapon and dare Israel to attack them. So in the next six months, our friends in Israel are going to have to take the Iranians on, unless the United States can send a clear signal to Iran, unlike what we've sent to Syria.

"The mixed message and the debacle called Syria can't be repeated when it comes to Iran," Graham continued. "So here's what I’m going to do. I'm going to get a bipartisan coalition together. We're going to put together a use-of-force resolution allowing our country to use military force as a last resort to stop the Iranian nuclear program, to make sure they get a clear signal that all this debacle about Syria doesn't mean we're confused about Iran."

After Graham repeated his intention to draft a use-of-force resolution, Huckabee stepped in to make sure everyone understood. "Lindsey, I want to clarify," Huckabee said. "You actually are going to seek sort of a pre-emptive approval to give the president a loaded weapon so that he feels the absolute freedom and support of a bipartisan Congress to take whatever action, including military, against Iran to prevent them from having nuclear weapons?"

"That's exactly right," said Graham.

Graham knows that Congress, particularly the House, was moving strongly against authorizing Obama to use force in Syria. And that was after a chemical weapons attack that clearly violated the president's "red line" in the Syrian civil war. Given that, congressional authorization for an attack on Iran seems far-fetched at best -- a reality Graham seemed to acknowledge. "I'm going to need your help, Mike," Graham said. "I'm going to need your audience's help. Every friend of Israel needs to rally behind this endeavor. Israel feels abandoned after Syria, and I want to send a signal to Tehran and Jerusalem and Tel Aviv that we're not going to leave our friends in Israel behind. And to the ayatollahs: If you march toward a nuclear weapon, all options are on the table, including the military option."

### AT: ohanlon/syria

#### O’Hanlon says that congress needs to take up Iran, not that it will actually take up the issue or taking up the issue will be effective -- O’Hanlon is also from 6-23, doesn’t apply to the current political alliance

#### The plan establishes an ex ante restriction on the President’s ability to initiate the use of force – this makes the threat of force inherently less credible to both Iran and Israel.

#### Our Ross evidence says that if Obama had lost the Congressional authorization vote in Syria, Rouhani’s arguments to make concessions on the nuclear program would have been far less credible to Khamenei, who would have bought Revolutionary Guard arguments that there is no military cost to having the nuclear program. Ross says it’s the equivalent of formally removing the military option from the table – it tanks negotiations and causes Israel to take matters into their own hands.

#### Obama got lucky in Syria – but the plan is worse than even a ‘say no’ vote would have been. If Congress had said no, Obama still has a plausible claim to independent authority. The plan rewrites the boundaries of his authority, which would weaken his overall foreign policy stance

**Mataconis, 9/6/13** – DC attorney (Doug, “What Would Obama Do If Congress Says No On Syria?” <http://www.outsidethebeltway.com/what-would-obama-do-if-congress-says-no-on-syria/>)

To answer this question, we must examine what the President could do, what we think he would do, and, of course, what he should do, in the event he loses the vote.

The President is walking a tightrope here, obviously. If he were to come right out and say that he was inclined to strike regardless of what Congress said, then he would likely guarantee that he would end up losing the vote in the end simply because he annoyed Congress. At the same time, he can’t necessarily say that he would absolutely comply with Congress’s will, then he risks weakening his position on the foreign policy front and creating a precedent that could unduly bind future Presidents. Even Blinken’s statement is far more nuanced than most of the reports about it would have you believe. What Blinkin said was that it was not the President’s intention to act in defiance of Congressional will. That’s a far cry from saying that he would comply with that will. So, we’re left, somewhat intentionally, in an ambiguous world where we’re forced to speculate about how the President would react to the loss, and what that would mean for domestic politics and his relationship with Congress.

Legally, the situation here is also ambiguous. While many will be quick to draw an analogy between this Congressional vote and the vote in Parliament last week, after which British Prime Minister David Cameron announced that he would abide by the vote and that Britain would not be participating in an attack on Syria, that analogy fails. Unlike the American President, the powers when it comes to warmaking and the use of military force are far more constrained. By the terms of the Constitution, the President is Commander in Chief of America’s armed forces. The British Prime Minister does not hold a similar position. Instead, the C-in-C of British armed forces is, technically at least, Queen Elizabeth II. That authority, of course, has been vested in Parliament along with most other Royal powers, and Parliament further vests it in the Prime Minister and various other defense officials. If Parliament says that certain action cannot be taken, then the Prime Minister has to be consider him or herself bound by that decision or otherwise risk a vote of no confidence that results in their removal from office. The President’s authority, however, is far broader and over 200+ years of American history has been interpreted to permit him to commit American forces in a wide variety of circumstances. Whether those interpretations are correct is, of course, debatable, but the precedents do exist and Congress has done little to restrain such actions by previous Presidents (or, in the case of Libya, by this President.) Given all of this, a statement by President Obama that he would absolutely follow Congressional will in this matter would arguably constitute an historical rewriting of the relationship between the branches of government.

The fact that President Obama may be able to make a credible legal/historical case for acting without Congressional authority, though, is only half the equation. The other thing to consider if Congress votes down a Syria AUMF is what the political consequences would be if the President acted notwithstanding that result. Without question, it would further damage the relationship between the White House and the House and Senate GOP at a time when the Federal Government still has to deal with several immediate issues beyond Syria, such as the Fiscal Year 2014 Budget, and the impending Debt Ceiling vote. It would likely reinvigorate the Tea Party and other groups opposed to the President’s agenda. And, it would bring closer the point in his Second Term when President Obama would become a “lame duck.” It’s also likely that many House and Senate Democrats who opposed the AUMF would be upset at such a direct Presidential snub of Congressional prerogative. We might even see impeachment or censure proceedings in Congress. Candidates for 2014 and 2016 would be required to take a position on what the President did, and Washington would generally become even more of a mess than it already is. Given all of this, the political factors would seem to argue strongly that, if he loses the vote, the President should state that he will respect the vote while doing so in a manner that preserves traditional Presidential powers and reserving the right to return to the Syria issue if circumstances warrant. Any other option would seem to be political suicide.

#### Syria demonstrated uncertainty over the scope of war powers and didn’t resolve the Congress’s position on the use of force. Even if Congress would have said no – the fact it didn’t have the chance maintained that uncertainty – our 1nc Zeisberg evidence says the appearance of independent presidential power meant the threat was still credible.

### at: impact defense

**Israel has the technical capability to attack. The only question is will and political calculation**

Raas & Long 07- Research Analyst at the Center for Naval Analyses & Adjunct Researcher at the RAND Corporation. [Whitney Raas and Austin Long (Doctoral candidate in political science at the Massachusetts Institute of Technology and a member of the MIT Security Studies Program) “Osirak Redux?: Assessing Israeli Capabilities to Destroy Iranian Nuclear Facilities,” International Security, Vol. 31, No. 4 (Spring 2007), pp. 7–33]

The foregoing assessment is far from definitive in its evaluation of Israel’s military capability to destroy Iranian nuclear facilities. It does seem to indicate, however, that the IAF, after years of modernization, now possesses the capability to destroy even well-hardened targets in Iran with some degree of confidence. Leaving open the question of whether an attack is worth the resulting diplomatic consequences and Iranian response, it appears that the Israelis have three possible routes for an air strike against three of the critical nodes of the Iranian nuclear program. Although each of these routes presents political and operational difficulties, this article argues that the IAF could nevertheless attempt to use them.

The operation would appear to be no more risky than Israel’s 1981 attack on Iraq’s Osirak reactor, and it would provide at least as much benefit in terms of delaying Iranian development of nuclear weapons. This benefit might not be worth the operational risk and political cost. Nonetheless, this analysis demonstrates that Israeli leaders have access to the technical capability to carry out the attack with a reasonable chance of success. The question then becomes one of will and individual calculation.

**Israel has the long range bombers and bunker busters to strike Iran.**

Scarborough 06 [Rowan Scarborough, “Israel capable of air strike on Iran,” The Washitngon Times July 18, 2006, pg. http://www.globalsecurity.org/org/news/2006/060718-israel-iran.htm]

Israel is in the best position militarily in its history to mount air strikes against Iran, after a decade of buying U.S.-produced long-range aircraft, penetrating bombs and aerial refueling tankers.

Tel Aviv has ratcheted up the volume in attacking the hard-line Islamic regime as it fights the Iranian-backed Hezbollah in southern Lebanon. In the past, Israeli politicians have talked openly of attacking Iranian nuclear sites to prevent the U.S.-designated terror state from building atomic warheads.

Israel has purchased 25 $84 million F-15I (I for Israel) Ra'am, a special version of the U.S. F-15E long-range interdiction bomber. It also is buying 102 of another long-range tactical jet, the $45 million F-16I Sufa. About 60 have been delivered.

The Jewish state also is buying 500 U.S. BLU-109 "bunker buster" bombs that could penetrate the concrete protection around some of Iran's underground facilities, such as the uranium enrichment site at Natanz. The final piece of the enterprise is a fleet of B-707 air-to-air refuelers that could nurse strike aircraft as they made the 900-mile-plus trip inside Iran, dropped their bombs and returned to Israel.

"They have the capability to strike Iran," said retired Air Force Lt. Gen. Thomas G. McInerney, a former fighter pilot who has trained with Israelis. "It would be limited, though. They could do 30 to 40 'aim points' in the array. I'm not worried about them hitting the targets. They will suffer losses, but they are capable of doing it."

#### This is wrong

Trabanco, 09 – Independent researcher of geopoltical and military affairs (1/13/09, José Miguel Alonso Trabanco, “The Middle Eastern Powder Keg Can Explode at anytime,” \*\*http://www.globalresearch.ca/index.php?context=va&aid=11762\*\*)

In case of an Israeli and/or American attack against Iran, Ahmadinejad's government will certainly respond. A possible countermeasure would be to fire Persian ballistic missiles against Israel and maybe even against American military bases in the regions. Teheran will unquestionably resort to its proxies like Hamas or Hezbollah (or even some of its Shiite allies it has in Lebanon or Saudi Arabia) to carry out attacks against Israel, America and their allies, effectively setting in flames a large portion of the Middle East. The ultimate weapon at Iranian disposal is to block the Strait of Hormuz. If such chokepoint is indeed asphyxiated, that would dramatically increase the price of oil, this a very threatening retaliation because it will bring intense financial and economic havoc upon the West, which is already facing significant trouble in those respects. In short, the necessary conditions for **a major war** in the Middle East are given. Such conflict could rapidly spiral out of control and thus a relatively minor clash could quickly and dangerously escalate by engulfing the whole region and perhaps even beyond. There are many key players: the Israelis, the Palestinians, the Arabs, the Persians and their respective allies and some great powers could become involved in one way or another (America, Russia, Europe, China). Therefore, any miscalculation by any of the main protagonists can trigger something no one can stop. Taking into consideration that the stakes are too high, perhaps it is not wise to be playing with fire right in the middle of a powder keg.

## 2nr

### un section

the mere threat of this potential which will contribute to distrust of Western power and the erosion of great power stability. Unlike in the past, Western powers will no longer have a definitive upper hand in being able to deter alternative ideological agendas or foreign policies which challenge their own. As cases such as Iraq and Burma have shown us, the isolation of regimes through non-military means often binds them to foreign policies and internal policies which increase Western hostility to their continued existence. In the case of Burma and North Korea, the cumulative effect of those choices is also to draw them closer to powers such as China and thus transform them from mere humanitarian disasters to ongoing humanitarian disasters which are potential flashpoints for war. In other words, the implementation of R2P, even in the limited, circumscribed fashion that its more sober advocates argue for, puts into motion long-term changes which have a destabilizing result and increase the potential for internationalized civil war and the destabilization of great power relations

### 2nr iran prolif

#### Crossing the nuclear threshold causes unstable competition because of disparities in arsenal size and second strike capabilities – makes pressure to strike inevitable

**Edelman, 11 -** Distinguished Fellow at the Center for Strategic and Budgetary Assessments; he was U.S. Undersecretary of Defense for Policy in 2005-9 (Eric, “The Dangers of a Nuclear Iran,” Foreign Affairs, Jan/Feb, proquest)

Given Israel's status as an assumed but undeclared nuclear weapons state, the most immediate consequence of Iran's crossing the nuclear threshold would be the emergence of an unstable bipolar nuclear competition in the Middle East. Given Israel's enormous quantitative and qualitative advantage in nuclear weapons-its arsenal is estimated to consist of anywhere from 100 to more than 200 warheads, possibly including thermonuclear weapons-Tehran might fear a disarming preventive or preemptive strike. During a crisis, then, the Iranian leadership might face a "use them or lose them" dilemma with respect to its nuclear weapons and resolve it by attacking first.

For their part, Israeli leaders might also be willing to strike first, despite the enormous risks. Israel's small size means that even a few nuclear detonations on its soil would be devastating; Iran's former president Ali Akbar Hashemi Rafsanjani was exaggerating only slightly when he claimed that "even one nuclear bomb inside Israel will destroy everything." Iran's nuclear arsenal is likely to be small at first and perhaps vulnerable to a preventive attack. Moreover, even if current and future Israeli missile defenses could not stop a full-scale premeditated attack by ballistic missiles, they might be effective against any retaliation Iran might launch if it were hit first. And the willingness to execute a preventive or preemptive strike when confronting a serious threat is a deeply ingrained element of Israel's strategic culture, as Israel demonstrated in its attacks against Egypt in 1956 and 1967, against Iraq's nuclear program in 1981, and against a suspected Syrian nuclear site in 2007. On the one occasion that Israel absorbed the first blow, in 1973, it came perilously close to defeat. In short, the early stages of an Iranian-Israeli nuclear competition would be unstable.

### 2nr uniqueness

#### Syria was a win for Obama – even though Congress would have said no, it never got the chance and the perceived threat was credible. This drove Iran to negotiate over nuclear weapons because the Syria deal disavowed regime change as a goal in US policy

**Sorcher, 9/26**/13 – National Security Correspondent for the National Journal (Sara, “U.S. to Despots: Lose Your Weapons, Keep Your Job” National Journal,

<http://www.nationaljournal.com/magazine/u-s-to-despots-lose-your-weapons-keep-your-job-20130926>

President Obama called for military action in Syria and then stood down when strongman Bashar al-Assad promised to give up his chemical weapons. He did not use cruise missiles when Assad crossed his "red line." But this was not a sign of toothlessness telegraphed to Syria's patron, Iran—another state developing weapons of mass destruction—as some Monday-morning quarterbacks insist. Quite the opposite. Obama's narrow goal had always been to remove chemical weapons from the equation. The real message sent by diplomacy with Syria is that Washington is not secretly aiming for regime change. The move says to Tehran: Forgo your nuclear-weapon dreams and, while other unsavory behavior will be condemned, you will be left alone.

"If we get the chemical-weapons deal in Syria, and acknowledge tacitly [that] Assad will remain in power, that is a useful model for Iran," says Jon Wolfsthal, a former National Security Council director for nonproliferation. Of course, the new Iranian president, Hassan Rouhani, was elected with a mandate to solve his nation's economic woes, which is another impetus for negotiation with the West. But Obama helped his case by signaling that "they don't need weapons of mass destruction and nuclear deterrent. And by trading it away, they might get the legitimacy they crave," says Wolfsthal, now deputy director of the James Martin Center for Nonproliferation Studies.

This approach involved difficult policy trade-offs. The Syria deal sparked criticism from defense hawks who believe Obama let Assad escape military punishment for his crimes. Similarly, a deal with Iran may mean ignoring past violations and human-rights abuses. But the United States has often inked deals with rogue nations, prioritizing its national security over punishing bad behavior—with mostly positive results, especially when coupled with economic pressure and the threat of force, both still on the table in Syria and Iran.

In 2003, the U.S. invaded Iraq over its purported possession of weapons of mass destruction. Suddenly, Libya's Muammar el-Qaddafi wanted to rejoin the international community, apparently realizing his own arsenal and clandestine nuclear program were not worth the potential costs. "The U.S. willingness to negotiate sent the same signal the Syria deal did: 'We will not try to overthrow your regime; we're narrowing our demands,' " says Daniel Drezner, a professor at the Fletcher School of Law and Diplomacy at Tufts University. Qaddafi was implicitly allowed to continue his repressive dictatorship, and the model worked until he began slaughtering his own people during the Arab Spring.

Washington turned on him, which could worry rogue nations looking for security by giving up nonconventional arsenals. But realistically, American policymakers aren't exactly jonesing to use military force in support of humanitarian goals, especially in high-stakes countries such as Iran, North Korea, and Syria. "Washington tends to hold its nose and deal with regimes that it finds distasteful if those regimes are willing to abide by agreements that neutralize their most threatening behavior," says Charles Kupchan, a Georgetown University professor and the author of How Enemies Become Friends. War weariness at home also pushes a president to choose deals over principles.

Myanmar is another case in point. The military junta was working to acquire nuclear and missile technology at the same time it was repressing democracy, presenting the U.S. government with a serious proliferation concern, according to Wolfsthal. So when the country wanted its good standing back, Washington traded financial and diplomatic carrots for disarmament and political reform. Myanmar signed the Additional Protocol, the gold standard for nuclear inspections, after a short visit by Obama in 2012, and later the Comprehensive Nuclear Test Ban Treaty. The U.S. could have been a stickler and punished the junta for every illicit activity, but it compromised.

The same strategy can have beneficial results with allies. Some scientists in South Korea were discovered to be enriching uranium in 2000 in violation of the International Atomic Energy Agency safeguards system. Rather than seeking a U.N. Security Council resolution or condemning the country, Washington worked with Seoul to shut down the program. It did.

Military force can be more coercive in getting adversaries to comply when it's still just a threat. Despite Beltway dillydallying, Russia and Syria both appeared to believe that Washington would strike before agreeing to compromise. Bombing would not have stripped Assad of his chemical weapons or even his ability to use them. Similarly, it would not be easy for the U.S. to simply bomb Iran out of the nuke business without risk of retaliation. Even a Syria strike might have forced Iran (which also despises chemical weapons, dating back to the Iran-Iraq war) to abandon its recent outreach toward the United States.