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#### The aff is not topical --- introducing armed forces only refers to human troops, not weapons systems such as nuclear weapons

Lorber 13 – Eric Lorber, J.D. Candidate, University of Pennsylvania Law School, Ph.D Candidate, Duke University Department of Political Science. January 2013, "Executive Warmaking Authority and Offensive Cyber Operations: Can Existing Legislation Successfully Constrain Presidential Power?" University of Pennsylvania Journal of Contsitutional Law, 15 U. Pa. J. Const. L. 961, lexis nexis

As is **evident from a** textual analysis, n177 an examination of the legislative history, n178 and **the broad** policy purposes behind the creation of the Act, n179 [\*990] "armed forces" refers to U.S. soldiers and members of the armed forces, not weapon systems or capabilities such as offensive cyber weapons. Section 1547 does not specifically define "armed forces," but it states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government." n180 While this definition pertains to the broader phrase "introduction of armed forces," the clear implication is that **only members of the armed forces count for the purposes of the definition under the WPR.** Though not dispositive, **the term "member" connotes a human individual who is part of an organization.** n181 Thus, it appears that the term "armed forces" means human members of the United States armed forces. However, there exist two potential complications with this reading. First, the language of the statute states that "the term "introduction of United States Armed Forces' includes the assignment of members of such armed forces." n182 By using inclusionary - as opposed to exclusionary - language, one might argue that the term "armed forces" could include more than members. This argument is unconvincing however, given that a core principle of statutory interpretation, expressio unius, suggests that **expression of one thing (i.e., members) implies the exclusion of others (**such as non-members **constituting armed forces)**. n183 Second, the term "member" does not explicitly reference "humans," and so could arguably refer to individual units and beings that are part of a larger whole (e.g., wolves can be members of a pack). As a result, though a textual analysis suggests that "armed forces" refers to human members of the armed forces, such a conclusion is not determinative.¶ **An examination of the legislative history also suggests that Congress clearly conceptualized "armed forces" as human members of the armed forces**. For example, disputes over the term "armed forces" revolved around who could be considered members of the armed forces, not what constituted a member. Senator Thomas Eagleton, one of the Resolution's architects, proposed an amendment during the process providing that the Resolution cover military officers on loan to a civilian agency (such as the Central [\*991] Intelligence Agency). n184 This amendment was dropped after encountering pushback, n185 but the debate revolved around whether those military individuals on loan to the civilian agency were still members of the armed forces for the purposes of the WPR, suggesting that Congress considered the term to apply only to soldiers in the armed forces. Further, during the congressional hearings, the question of deployment of "armed forces" centered primarily on past U.S. deployment of troops to combat zones, n186 suggesting that **Congress conceptualized "armed forces" to mean U.S. combat troops.**¶ **The broad purpose of the Resolution aimed to prevent the large-scale but unauthorized deployments of U.S. troops into hostilities**. n187 While examining the broad purpose of a legislative act is increasingly relied upon only after examining the text and legislative history, here it provides further support for those two alternate interpretive sources. n188 As one scholar has noted, "the War Powers Resolution, for example, is concerned with sending U.S. troops into harm's way." n189 The historical context of the War Powers Resolution is also important in determining its broad purpose; as the resolutions submitted during the Vietnam War and in the lead-up to the passage of the WPR suggest, Congress was concerned about its ability to effectively regulate the President's deployments of large numbers of U.S. troops to Southeast Asia, n190 as well as prevent the President from authorizing troop incursions into countries in that region. n191 The WPR was a reaction to the President's continued deployments of these troops into combat zones, and as such suggests that Congress's broad purpose was to prevent the unconstrained deployment of U.S. personnel, not weapons, into hostilities.¶ This analysis suggests that, when defining the term "armed forces," Congress meant members of the armed forces who would be placed in [\*992] harm's way (i.e., into hostilities or imminent hostilities). **Applied to offensive cyber operations, such a definition leads to the conclusion that the** W**ar** P**owers** R**esolution likely does not cover such activities**. Worms, viruses, and kill switches are clearly not U.S. troops. Therefore, the key question regarding whether the WPR can govern cyber operations is not whether the operation is conducted independently or as part of a kinetic military operation. Rather, the key question is the delivery mechanism. For example, if military forces were deployed to launch the cyberattack, such an activity, if it were related to imminent hostilities with a foreign country, could trigger the WPR. This seems unlikely, however, for two reasons. First, it is unclear whether small-scale deployments where the soldiers are not participating or under threat of harm constitute the introduction of armed forces into hostilities under the War Powers Resolution. n192 Thus, **individual operators deployed to plant viruses in particular enemy systems may not constitute armed forces introduced into hostilities or imminent hostilities.** Second, such a tactical approach seems unlikely. If the target system is remote access, the military can attack it without placing personnel in harm's way. n193 If it is close access, there exist many other effective ways to target such systems. n194 As a result, unless U.S. troops are introduced into hostilities or imminent hostilities while deploying offensive cyber capabilities - which is highly unlikely - such operations will not trigger the War Powers Resolution.

#### Vote negative for predictable limits --- nuclear weapons is a whole topic on its own --- requires research into a whole separate literature base --- undermines preparedness for all debates.

### DA

#### Court interference decks the Executive flexibility necessary to solve crisis escalation---link threshold is low

Robert Blomquist 10, Professor of Law, Valparaiso University School of Law, THE JURISPRUDENCE OF AMERICAN NATIONAL SECURITY PRESIPRUDENCE, 44 Val. U.L. Rev. 881

Supreme Court Justices--along with legal advocates--need to conceptualize and prioritize big theoretical matters of institutional design and form and function in the American national security tripartite constitutional system. By way of an excellent introduction to these vital issues of legal theory, the Justices should pull down from the library shelf of the sumptuous Supreme Court Library in Washington, D.C. (or more likely have a clerk do this chore) the old chestnut, The Legal Process: Basic Problems in the Making and Application of Law by the late Harvard University law professors Henry M. Hart and Albert M. Sacks. n7 Among the rich insights on institutional design coupled with form and function in the American legal system that are germane to the Court's interpretation of national security law-making and decision-making by the President are several pertinent points. First, "Hart and Sacks' intellectual starting point was the interconnectedness of human beings, and the usefulness of law in helping us coexist peacefully together." n8 By implication, therefore, the Court should be mindful of the unique [\*883] constitutional role played by the POTUS in preserving peace and should prevent imprudent judicial actions that would undermine American national security. Second, Hart and Sacks, continuing their broad insights of social theory, noted that legal communities establish "institutionalized[] procedures for the settlement of questions of group concern" n9 and regularize "different procedures and personnel of different qualifications . . . appropriate for deciding different kinds of questions" n10 because "every modern society differentiates among social questions, accepting one mode of decision for one kind and other modes for others-e.g., courts for 'judicial' decisions and legislatures for 'legislative' decisions" n11 and, extending their conceptualization, an executive for "executive" decisions. n12 Third, Professors Hart and Sacks made seminal theoretical distinctions between rules, standards, principles, and policies. n13 While all four are part of "legal arrangements [\*884] in an organized society," n14 and all four of these arrangements are potentially relevant in judicial review of presidential national security decisions, principles and policies n15 are of special concern because of the sprawling, inchoate, and rapidly changing nature of national security threats and the imperative of hyper-energy in the Executive branch in responding to these threats. n16

The Justices should also consult Professor Robert S. Summers's masterful elaboration and amplification of the Hart and Sacks project on enhancing a flourishing legal system: the 2006 opus, Form and Function in a Legal System: A General Study. n17 The most important points that [\*885] Summers makes that are relevant to judicial review of American national security presiprudence are three key considerations. First, a "conception of the overall form of the whole of a functional [legal] unit is needed to serve the founding purpose of defining, specifying, and organizing the makeup of such a unit so that it can be brought into being and can fulfill its own distinctive role" n18 in synergy with other legal units to serve overarching sovereign purposes for a polity. The American constitutional system of national security law and policy should be appreciated for its genius in making the POTUS the national security sentinel with vast, but not unlimited, powers to protect the Nation from hostile, potentially catastrophic, threats. Second, "a conception of the overall form of the whole is needed for the purpose of organizing the internal unity of relations between various formal features of a functional [legal] unit and between each formal feature and the complementary components of the whole unit." n19 Thus, Supreme Court Justices should have a thick understanding of the form of national security decision-making conceived by the Founders to center in the POTUS; the ways the POTUS and Congress historically organized the processing of national security through institutions like the National Security Council and the House and Senate intelligence committees; and the ways the POTUS has structured national security process through such specific legal forms as Presidential Directives, National Security Decision Directives, National Security Presidential Decision Directives, Presidential Decision Directives, and National Security Policy Directives in classified, secret documents along with typically public Executive Orders. n20 Third, according to Summers, "a conception of the overall form of the whole functional [legal] unit is needed to organize further the mode of operation and the instrumental capacity of the [legal] unit." n21 So, the Supreme Court should be aware that tinkering with national security decisions of the POTUS--unless clearly necessary to counterbalance an indubitable violation of the text of the Constitution--may lead to unforeseen negative second-order consequences in the ability of the POTUS (with or without the help of Congress) to preserve, protect, and defend the Nation. n22

[\*886] B. Geopolitical Strategic Considerations Bearing on Judicial Interpretation

Before the United States Supreme Court Justices form an opinion on the legality of national security decisions by the POTUS, they should immerse themselves in judicially-noticeable facts concerning what national security expert, Bruce Berkowitz, in the subtitle of his recent book, calls the "challengers, competitors, and threats to America's future." n23 Not that the Justices need to become experts in national security affairs, n24 but every Supreme Court Justice should be aware of the following five basic national security facts and conceptions before sitting in judgment on presiprudential national security determinations.

(1) "National security policy . . . is harder today because the issues that are involved are more numerous and varied. The problem of the day can change at a moment's notice." n25 While "[y]esterday, it might have been proliferation; today, terrorism; tomorrow, hostile regional powers" n26, the twenty-first century reality is that "[t]hreats are also more likely to be intertwined--proliferators use the same networks as narco-traffickers, narco-traffickers support terrorists, and terrorists align themselves with regional powers." n27

(2) "Yet, as worrisome as these immediate concerns may be, the long-term challenges are even harder to deal with, and the stakes are higher. Whereas the main Cold War threat--the Soviet Union--was brittle, most of the potential adversaries and challengers America now faces are resilient." n28

(3) "The most important task for U.S. national security today is simply to retain the strategic advantage. This term, from the world of military doctrine, refers to the overall ability of a nation to control, or at least influence, the course of events." n29 Importantly, "[w]hen you hold [\*887] the strategic advantage, situations unfold in your favor, and each round ends so that you are in an advantageous position for the next. When you do not hold the strategic advantage, they do not." n30

(4) While "keeping the strategic advantage may not have the idealistic ring of making the world safe for democracy and does not sound as decisively macho as maintaining American hegemony," n31 maintaining the American "strategic advantage is critical, because it is essential for just about everything else America hopes to achieve--promoting freedom, protecting the homeland, defending its values, preserving peace, and so on." n32

(5) The United States requires national security "agility." n33 It not only needs "to refocus its resources repeatedly; it needs to do this faster than an adversary can focus its own resources." n34

[\*888] As further serious preparation for engaging in the jurisprudence of American national security presiprudence in hotly contested cases and controversies that may end up on their docket, our Supreme Court Justices should understand that, as Walter Russell Mead pointed out in an important essay a few years ago, n35 the average American can be understood as a Jacksonian pragmatist on national security issues. n36 "Americans are determined to keep the world at a distance, while not isolating ourselves from it completely. If we need to take action abroad, we want to do it on our terms." n37 Thus, recent social science survey data paints "a picture of a country whose practical people take a practical approach to knowledge about national security. Americans do not bother with the details most of the time because, for most Americans, the details do not matter most the time." n38 Indeed, since the American people "do know the outlines of the big picture and what we need to worry about [in national security affairs] so we know when we need to pay greater attention and what is at stake. This is the kind of knowledge suited to a Jacksonian." n39

Turning to how the Supreme Court should view and interpret American presidential measures to oversee national security law and policy, our Justices should consider a number of important points. First, given the robust text, tradition, intellectual history, and evolution of the institution of the POTUS as the American national security sentinel, n40 and the unprecedented dangers to the United States national security after 9/11, n41 national security presiprudence should be accorded wide latitude by the Court in the adjustment (and tradeoffs) of trading liberty and security. n42 Second, Justices should be aware that different presidents [\*889] institute changes in national security presiprudence given their unique perspective and knowledge of threats to the Nation. n43 Third, Justices should be restrained in second-guessing the POTUS and his subordinate national security experts concerning both the existence and duration of national security emergencies and necessary measures to rectify them. "During emergencies, the institutional advantages of the executive are enhanced", n44 moreover, "[b]ecause of the importance of secrecy, speed, and flexibility, courts, which are slow, open, and rigid, have less to contribute to the formulation of national policy than they do during normal times." n45 Fourth, Supreme Court Justices, of course, should not give the POTUS a blank check--even during times of claimed national emergency; but, how much deference to be accorded by the Court is "always a hard question" and should be a function of "the scale and type of the emergency." n46 Fifth, the Court should be extraordinarily deferential to the POTUS and his executive subordinates regarding questions of executive determinations of the international laws of war and military tactics. As cogently explained by Professors Eric Posner and Adrian Vermeule, n47 "the United States should comply with the laws of war in its battle against Al Qaeda"--and I would argue, other lawless terrorist groups like the Taliban--"only to the extent these laws are beneficial to the United States, taking into account the likely response of [\*890] other states and of al Qaeda and other terrorist organizations," n48 as determined by the POTUS and his national security executive subordinates.

### DA

#### The U.S. has nuclear primacy now against every potential rival---it’s a deliberate policy choice

Also answers cuts UQ because cuts have affected Russia MORE, which boosts U.S. primacy

Carl Osgood 13 and Rachel Douglas, Executive Intelligence Review, 3/15/13, “U.S. Moves Toward

Nuclear First Strike Capability,” http://www.larouchepub.com/other/2013/4011nuke\_first\_strike.html

On March 1, the Strategic Studies Quarterly, a journal published by the U.S. Air Force's Air University, published an article admitting what both Lyndon LaRouche and EIR, and the Russians, have long been warning against: that U.S. strategic policy under the Obama Administration is seeking to create the capability to launch a first strike against Russia and/or China, without fear of nuclear retaliation, and that this is making nuclear war more, not less, likely.

While the two authors, Keir A. Leiber, associate professor at the Edmund A. Walsh School of Foreign Service at Georgetown University, and Daryl G. Press, an associate professor of government at Dartmouth University, have been warning against this danger since at least 2006, this is the first time one of their articles has appeared in a U.S. military publication, a tacit admission, perhaps, that their argument has merit, and must be considered.

The Strategic Studies article comes on the heels of a report from Moscow, by the Izborsk Club, an association of high-level Russian intellectuals who characterize themselves as "patriotic and anti-liberal," warning of the same danger of an emerging "counterforce" threat to Russia's strategic deterrent, and laying out the steps that Russia must take, militarily, to defend against it.

Since Barack Obama ascended to the office of the Presidency, he has expanded the Bush-Cheney policy of strategic confrontation with Russia, most notably, with respect to Iran and Syria. In Syria, the U.S. policy is one of regime change, a policy strongly opposed by Russia. At the same time, the U.S. has been ringing Russia with missile defenses, including land-based sites in Poland and Romania, and moving forward with a plan to forward-base four Aegis missile defense destroyers in Rota, Spain.

On May 3, 2012, then-Chief of the Russian Armed Forces General Staff Gen. Nikolai Makarov declared that further advances in the deployment of a BMD system by the United States and NATO in Europe would so greatly threaten Russia's security, as to necessitate a pre-emptive attack on such installations: The outbreak of military hostilities between the U.S.A. and Russia would mean nuclear war. "Considering the destabilizing nature of the BMDS," Makarov told an audience including U.S. officials, "specifically the creation of the illusion of being able to inflict a disarming first strike without retaliation, a decision on the pre-emptive use of available offensive weapons will be taken during the period of an escalating situation" (emphasis added).

What Makarov was pointing out is that ostensibly defensive systems can be used in offensive warfare—in this case, to enable the West to launch a pre-emptive first strike without fear of a retaliatory response. Just two weeks later, at a conference in Virginia, former U.S. Vice Chairman of the Joint Chiefs of Staff Gen. James Cartwright acknowledged that "there's the potential that you could, in fact, generate a scenario where, in a bolt from the blue, we launch a pre-emptive attack and then use missile defense to weed out" Russia's remaining missiles launched in response. "We're going to have to think our way out of this," he said. "We're going to have to figure out how we're going to do this."

If the alleged threat from Iran, which is used to justify the missile defense deployment in Europe, is so great, then why not cooperate with Russia on missile defense? Indeed, Russia has been proposing such cooperation since 2007, when then-President Vladimir Putin traveled to Kennebunkport, Maine, to propose to then-President George W. Bush, cooperation with the U.S. and NATO on missile defense. Bush never accepted the proposal, and neither has Obama.

If the U.S.-NATO European system is not aimed at Russia, then the U.S. ought to be able to provide guarantees that that's the case, as Russia has been demanding, but this is dismissed by the U.S. and NATO as "unnecessary." The Russians have repeatedly warned that the U.S.-NATO plan upsets the strategic balance and increases the risk of war, and have acted accordingly, even as they have made numerous proposals that would avoid such a confrontation. The U.S. refusal to acknowledge Russian concerns, in concert with its regime-change policies in Syria and Iran, is setting the stage for that confrontation.

U.S. Seeks Strategic Primacy

In their March 1 article, "The New Era of Nuclear Weapons, Deterrence, and Conflict," Leiber and Press posit that, number one, "technological innovation has dramatically improved the ability of states to launch 'counterforce' attacks—that is, military strikes aimed at disarming an adversary by destroying its nuclear weapons." Number two, they argue, is that "in the coming decades, deterring the use of nuclear weapons during conventional wars will be much harder than most analysts believe."

The basis of the authors' first argument is that: "Very accurate delivery systems, new reconnaissance technologies, and the downsizing of arsenals from Cold War levels have made both conventional and nuclear counterforce strikes against nuclear arsenals much more feasible than ever before." During the Cold War, they note, neither the U.S. nor the Soviet Union could launch a disarming first strike against the other because each side had so many weapons deliverable by different modes, that an attempted counterforce strike could not prevent a retaliatory reply. This is no longer the case. The reduction of nuclear arsenals on both sides means there are now fewer targets to hit, especially on the Russian side.

In 2006, Leiber and Press modeled a hypothetical U.S. first strike against Russia. "The same models that were used during the Cold War to demonstrate the inescapability of stalemate—the condition of 'mutual assured destruction,' or MAD—now suggested that even the large Russian arsenal could be destroyed in a disarming strike." Their point was to demonstrate that the Cold War axioms of mutual and assured destruction and deterrence no longer apply.

But the authors go further to argue that the U.S. is knowingly pursuing a strategy of strategic primacy against potential adversaries, "meaning that Washington seeks the ability to defeat enemy nuclear forces (as well as other WMD) but that U.S. nuclear weapons are but one dimension of that effort. In fact, the effort to neutralize adversary strategic forces—that is, achieve strategic primacy—spans nearly every realm of warfare: for example, ballistic missile defense, antisubmarine warfare, intelligence, surveillance-and-reconnaissance systems, offensive cyber warfare, conventional precision strike, and long-range precision strike, in addition to nuclear strike capabilities."

Rather than pointing out the obvious—that the U.S. is building a first-strike capability against any potential adversary, including Russia and China—they ask, instead: "How is deterrence likely to work when nuclear use does not automatically imply suicide and mass slaughter?

#### New statutory restrictions collapse crisis response

John Yoo 8/30/13, Emanuel S. Heller Professor of Law @ UC-Berkeley Law, visiting scholar @ the American Enterprise Institute, former Fulbright Distinguished Chair in Law @ the University of Trento, served as a deputy assistant attorney general in the Office of Legal Council at the U.S. Department of Justice between 2001 and 2003, received his J.D. from Yale and his undergraduate degree from Harvard, “Like it or not, Constitution allows Obama to strike Syria without Congressional approval,” Fox News, <http://www.foxnews.com/opinion/2013/08/30/constitution-allows-obama-to-strike-syria-without-congressional-approval/>

The most important of the president’s powers are commander-in-chief and chief executive.¶ As Alexander Hamilton wrote in Federalist 74, “The direction of war implies the direction of the common strength, and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority.”¶ Presidents should conduct war, he wrote, because they could act with “decision, activity, secrecy, and dispatch.” In perhaps his most famous words, Hamilton wrote: “Energy in the executive is a leading character in the definition of good government. . . It is essential to the protection of the community against foreign attacks.”¶ The Framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand swift, decisive action, sometimes under pressured or even emergency circumstances, that are best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. ¶ Congress is too large and unwieldy to take the swift and decisive action required in wartime. ¶ Our Framers replaced the Articles of Confederation, which had failed in the management of foreign relations because it had no single executive, with the Constitution’s single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, Congress’s loose, decentralized structure would paralyze American policy while foreign threats grow. ¶ Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure.¶ Congress's track record when it has opposed presidential leadership has not been a happy one.¶ Perhaps the most telling example was the Senate's rejection of the Treaty of Versailles at the end of World War I. Congress's isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed Neutrality Acts designed to keep the United States out of the conflict.¶ President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president's foreign adventurism, the real threat to our national security may come from inaction and isolationism.¶ Many point to the Vietnam War as an example of the faults of the “imperial presidency.” Vietnam, however, could not have continued without the consistent support of Congress in raising a large military and paying for hostilities. And Vietnam ushered in a period of congressional dominance that witnessed American setbacks in the Cold War, and the passage of the ineffectual War Powers Resolution. Congress passed the Resolution in 1973 over President Nixon's veto, and no president, Republican or Democrat, George W. Bush or Obama, has ever accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it.¶ Despite the record of practice and the Constitution’s institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to “declare War.” But these observers read the eighteenth-century constitutional text through a modern lens by interpreting “declare War” to mean “start war.” ¶ When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with launching hostilities. In the century before the Constitution, for example, Great Britain – where the Framers got the idea of the declare-war power – fought numerous major conflicts but declared war only once beforehand.¶ Our Constitution sets out specific procedures for passing laws, appointing officers, and making treaties. There are none for waging war, because the Framers expected the president and Congress to struggle over war through the national political process.¶ In fact, other parts of the Constitution, properly read, support this reading. Article I, Section 10, for example, declares that the states shall not “engage” in war “without the consent of Congress” unless “actually invaded, or in such imminent Danger as will not admit of delay.” ¶ This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. If the Framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive.¶ Presidents, of course, do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy, if it wants to. ¶ Only Congress can raise the military, which gives it the power to block, delay, or modify war plans.¶ Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army to fight it. ¶ Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. ¶ If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military.¶ Congress’s check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse.¶ If Congress feels it has been misled in authorizing war, or it disagrees with the president's decisions, all it need do is cut off funds, either all at once or gradually.¶ It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action.¶ Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. ¶ Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation.¶ The Framers expected Congress's power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: “The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist.” Congress ended America’s involvement in Vietnam by cutting off all funds for the war.¶ Our Constitution has succeeded because it favors swift presidential action in war, later checked by Congress’s funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo, or Korea, it is only because Congress has chosen not to exercise its easy check.¶ We should not confuse a desire to escape political responsibility for a defect in the Constitution. A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security.¶ In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility.¶ It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which leads only to passivity and isolation and not smarter decisions, will come at the price of speed and secrecy.¶ The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security.¶ Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the Framers left war to politics.¶ As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

#### Congressional restrictions cause adversaries to doubt the credibility of our threats --- causes crisis escalation

Matthew Waxman 8/25/13, Professor of Law @ Columbia and Adjunct Senior Fellow for Law and Foreign Policy @ CFR, “The Constitutional Power to Threaten War,” Forthcoming in Yale Law Journal, vol. 123, August 25, 2013, SSRN

A claim previously advanced from a presidentialist perspective is that stronger legislative checks on war powers is harmful to coercive and deterrent strategies, because it establishes easily-visible impediments to the President’s authority to follow through on threats. This was a common policy argument during the War Powers Resolution debates in the early 1970s. Eugene Rostow, an advocate inside and outside the government for executive primacy, remarked during consideration of legislative drafts that any serious restrictions on presidential use of force would mean in practice that “no President could make a credible threat to use force as an instrument of deterrent diplomacy, even to head off explosive confrontations.”178 He continued:¶ In the tense and cautious diplomacy of our present relations with the Soviet Union, as they have developed over the last twenty-five years, the authority of the President to set clear and silent limits in advance is perhaps the most important of all the powers in our constitutional armory to prevent confrontations that could carry nuclear implications. … [I]t is the diplomatic power the President needs most under the circumstance of modern life—the power to make a credible threat to use force in order to prevent a confrontation which might escalate.179

#### Conventional wars against nuclear-armed adversaries require primacy to control escalation---otherwise adversaries will use nuclear weapons first

Lieber and Press 10 – Keir A. Lieber, Assistant Professor of Political Science at the University of Notre Dame, and Daryl G. Press, Associate Professor of Political Science at Dartmouth College, March/April 2010, “Second Strike: Is the U.S. Nuclear Arsenal Outmoded?,” Foreign Affairs

Nuclear weapons are a boon for vulnerable states. During the Cold War, the United States deployed them in Europe to defend NATO because Soviet conventional forces seemed overwhelming. Now, the tables are turned: the United States' potential adversaries see nuclear weapons as a vital tool to counter U.S. conventional military superiority. Facing defeat on the battlefield, adversaries would have powerful incentives to use nuclear forces coercively, just as NATO planned to do during the Cold War. The fates of Manuel Noriega, Slobodan Milosevic, Radovan Karadzic, and Saddam Hussein have taught a grim lesson: use every weapon at your disposal to prevent defeat.

When Jan Lodal and James Acton call for the elimination or devaluation of nuclear weapons, they assume that U.S. adversaries can be convinced to accept perpetual vulnerability. The Soviet Union could not talk NATO into surrendering its nuclear arsenal during the Cold War, nor can the United States dupe its adversaries into disarming today. The challenge is to grapple with the problem of deterring nuclear escalation during conventional wars, when U.S. adversaries will have every incentive to use their nuclear arsenals to compel a cease-fire. Toward this end, Washington must retain a range of counterforce capabilities, including conventional and low-casualty nuclear weapons.

Hans Kristensen, Matthew McKinzie, and Ivan Oelrich raise several technical objections concerning the United States' ability to launch a successful counterforce strike. They dispute whether 3,000 pounds per square inch (PSI) of overpressure produced by low-yield airbursts would be enough to wreck Chinese silos. The use of 3,000 PSI in our model, however, is conservative. Many analysts believe that U.S. Cold War estimates exaggerated the hardness of enemy silos, and analysts with considerable technical expertise on this matter believe that our estimated requirement of 3,000 PSI probably overstates the hardness of China's silos. Most important, our results are not sensitive to moderate changes in assumptions about silo hardness. The United States could conduct a low-casualty nuclear strike--producing fewer than 1,000 fatalities--against all 20 Chinese silos even if they were built to withstand 5,000 PSI.

Kristensen, McKinzie, and Oelrich also contend that airbursts alone cannot destroy missile silos. This is incorrect. Airbursts can produce sufficient overpressure to crush the caps that protect missiles in the ground. In fact, the Pentagon assigns "vulnerability numbers" to silos on the basis of their resistance to overpressure. And McKinzie co-authored a 2001 Natural Resources Defense Council report that contradicts the claims that he, Kristensen, and Oelrich make here. The report listed the overpressures required to destroy various Russian missile silos, and it argued that even Russia's silos--which are probably much more robust than China's--are highly vulnerable to a U.S. airburst attack.

Our critics further suggest that the existence of mobile missiles obviates our analysis. If the launchers can be located, the argument goes, conventional weapons are sufficient to destroy them; if the launchers cannot be found, even nuclear weapons are useless. But the greatest challenge of targeting mobile missiles is not locating them momentarily; it is continuously tracking them and identifying where they have stopped. Hitting mobile launchers with conventional weapons requires near-perfect real-time intelligence--locating them within a few dozen yards. Even low-yield nuclear warheads would significantly reduce the targeting problem; locating the launchers within about half a mile would suffice if a five-kiloton warhead were used.

Kristensen, McKinzie, and Oelrich also note that the U.S. military's current delivery systems are not optimized for a counterforce mission: the most accurate systems (bombs and cruise missiles) are not prompt, and the most prompt systems (ballistic missiles) are not the most accurate. This is true. But current U.S. delivery systems are adequate given the weakness of the adversaries the United States now faces. If Washington wishes to retain effective low-casualty counterforce options, the next generation of nuclear delivery systems should further combine prompt delivery with high accuracy.

Lodal tries to link our discussion of counterforce options with the views held by senior officials in the George W. Bush administration. The fact of the matter is that nuclear counterforce options have been a core element of U.S. deterrence doctrine during every administration since Harry Truman's. U.S. strategic planners have understood that for deterrence to be credible, the president needs retaliatory options that he might actually use. Especially today, low-yield nuclear counterforce strikes are a better retaliatory option than high-yield nuclear strikes that, regardless of their target, would kill millions of civilians. The latter would be a disproportionate response to many possible enemy uses of nuclear weapons.

Critics of our policy prescriptions must confront two core issues. First, nuclear weapons have fundamentally changed since the Cold War. They once produced stalemate, and nuclear war once meant mass slaughter. For good or ill, that has changed. The revolution in accuracy means that enemy arsenals can be destroyed, and in ways that produce few civilian casualties. Theories of deterrence and beliefs about strategic stability and nuclear force requirements must be reevaluated accordingly.

#### Nuclear primacy’s key to hegemony---makes unipolarity durable and deters great power competition

Craig 9 – Campbell Craig, Professor of International Relations at the University of Southampton, 2009, “American power preponderance and the nuclear revolution,” Review of International Studies, Vol. 35, p. 35-36

As Keir Lieber and Daryl Press have suggested, the US may be on the verge of acquiring a first-strike nuclear capability, which, combined with an effective system of anti-ballistic missile defence, could allow the US to destroy a rival’s nuclear capabilities and intercept any remaining retaliatory missiles before they hit American cities. While this possibility clearly reduces the likelihood of other states seeking to match American power with the aim of fighting and winning a nuclear war, and, if their argument becomes widely accepted, could lead American policy-makers to reject the logic of the nuclear revolution and consider pre-emptive nuclear strikes against large nuclear rivals, it clearly is less germane to the question of small-state deterrence.33 Lieber and Press contend that the US may have the capability to destroy the entire nuclear arsenal of another large nuclear state lest that state use it on America first for the purposes of winning a great war. That, as they say, would mean the end of Mutual Assured Destruction as it existed during the Cold War. However, Washington would have much less reason to use its new first-strike capability against a nation that cannot threaten to destroy the US, and has no ambition to defeat America in a war, but only possesses a second-strike minimum deterrent. Such an attack would turn much of the world against a US willing to use nuclear weapons and kill hundreds of thousands or millions in order to defeat a nation that did not threaten its survival. Perhaps more to the point, an attack like this would be tremendously risky. Even after a perfect first strike some retaliation might get through, which could mean the nuclear destruction of an American city or perhaps the city of an American ally. At the very least, survivors of the attacked state and their allies would seek to unleash destruction upon the US in other ways, including an unconventional delivery of a nuclear, chemical, or biological weapon. An imperfect first strike, or, even worse, a failure of the US anti-missile system, would constitute a total disaster for the US: not only would it incur the world’s wrath and suffer the destruction of one or more of its cities, but such a failure would also expose America as both a brutal and vulnerable state, surely encouraging other states to acquire nuclear weapons or otherwise defy it. The US might have reason to launch a first strike against a large rival that deployed a major arsenal and appeared ready to attack America, as implausible as this scenario is. It would have little reason to do so against a small nation with a second-strike minimum deterrent arsenal.

The nuclear revolution delivers a clear message to any large state considering major war with a powerful nuclear rival. The message is that such a war is likely to escalate to total nuclear exchange, and that in this event a large percentage of its citizenry will be killed or injured, its ability to govern what remains of the nation will be weakened or destroyed, and its power relative to other states that stayed out of the war will be radically diminished. It also delivers a message to any advanced small state eager to obtain security from the possible predation of large ones. The message is that if the small state possesses, or can quickly get its hands on, a few invulnerable and deliverable nuclear weapons, any large state contemplating invading it will have to weigh the benefits of invasion against a new kind of cost – not just a difficult or stalemated conventional war, such as the US faced in Vietnam and faces in Iraq, but the destruction of perhaps one, three, or five of its cities, and the death and injury of millions of its citizens. Unless it is able to obtain an absolutely fool-proof defence against any kind of nuclear retaliation, the choice that any large state is going to make when faced with this new circumstance is so likely to be peace that the small nuclear state can feel confident that it will be safe from conquest.34

The general relevance of these messages to American unipolar preponderance is clear. At the ‘great power’ level, rising states are unlikely to regard major war as a suitable means for overturning the international system and overthrowing American preponderance. The classic means of systemic change – hegemonic war – will not be an attractive option to any state hoping to survive, and the very existence of nuclear arsenals will make all states cautious about provoking conflict with nuclear rivals, especially the heavily armed US.35 Moreover, advanced smaller states know that they can provide for their own security, if they come to believe that it is endangered, not by embarking on large military build-ups or forming alliances with larger states, but by developing a small and invulnerable nuclear arsenal, or at least preparing the way to obtain such an arsenal quickly. This means that small states have a far greater ability to defend themselves from, and therefore be less afraid of, American predation today than comparable states facing dominant powers in previous eras.36

The main effects of the nuclear revolution, then, bolster the general claim of Power Preponderance that unipolarity is enduring. To support their claim, Brooks and Wohlforth specify three factors that dissuade would-be rivals to the US from balancing against it in traditional military terms: the effect of America’s relative geographical isolation from these potential rivals; the fact that American preponderance happened as a fait accompli about which no other nation could do anything; and the vast and growing ‘power gap’ between the US and all other rivals. The next section will describe each factor, and show how the nuclear revolution specifically reinforces each of them.

#### Taiwan war inevitable and draws in the U.S.---we’d win the conventional war---China will abandon their NFU

Zhang 8 - Baohui Zhang, Associate Professor of Political Science, Lingnan University, Hong Kong, March 2008, “The Taiwan Strait and the Future of China's No-First-Use Nuclear Policy,” Comparative Strategy, Vol. 27, No. 2, p. 164-182

For the above reasons the no-first-use principle remained unchallenged until the 1990s, when a series of new issues began to force some in China to rethink its nuclear principles. These include the ascendance of the Taiwan issue as the central security challenge for China (and, as a result, the increased likelihood of American military intervention in the Taiwan Strait), and the revolution in military affairs (RMA) that has given the United States vast conventional advantage over China.

According to John Wilson Lewis and Xue Litai, during the 1990s Taiwan's tendency to move toward de jure independence led to an increasingly pessimistic view inside China that the Taiwan issue could not be peacefully resolved. More and more Chinese analysts believed that, due to the internal political dynamics of a democratic Taiwan and the rise of Taiwanese identity among its people, peaceful reunification between Taiwan and the mainland has become increasingly hopeless.13 In fact, Jiang Zemin made the famous remark that “a war across the Taiwan Strait is unavoidable.”14 As a result, Taiwan has become the number-one security issue for China, and preparing for a war to prevent Taiwan's independence has become an obsession of the Chinese leadership and military.

The problem for China is that it also increasingly believes that American military intervention can be expected in the event of war in the Taiwan Strait. Inside the Chinese military, due to “America's proclaimed geostrategic interests and recent military actions the prevailing opinion was that U.S. forces would undoubtedly intervene.”15 This scenario presents an extremely daunting challenge: how to defeat the world's most powerful military. This task is particularly daunting since the Chinese military recognizes that the revolution in military affairs has given the United States vast advantages over China. According to military observers, the 1991 Gulf War and the 1999 NATO war against Serbia demonstrated the revolutionary change in warfare through the use of precision-guided weapons linked to information technologies in areas such as intelligence, command and control, and weapon guidance. The Chinese military was keenly aware of the new trend and organized systematic studies of how the American military conducted its operations in this new kind of war.16

In fact, the Chinese military was awed by the American dominance in conventional warfare. As observed by General Wang Baocun, a prominent strategist at the PLA Academy of Military Sciences, the U.S. revolution in military affairs has resulted in a new kind of gap with other countries. Previously, the gap was merely generational. This time, there is a “time gap” in that the U.S. military and others are fighting as if they were from different historical periods. According to Wang, “The time gap in military technologies allows the superior side to possess an absolute advantage while leaving the other side in a position of absolute disadvantage. … The time gap makes it impossible for developing countries to overcome their military disadvantage in confrontations with the United States.” Wang thus reaches a gloomy conclusion: “The military time gap results in serious threats to the national and military security of developing countries. In fact, they are almost in a defenseless situation.”17

Major General Xu Hezhen, who is the Commandant of PLA Army Command Academy in Shijiazhuang, suggests that the RMA allows the U.S. to conduct “no-contact combat” against other militaries through beyond visual range sensor technologies and precision-strike weapons. This revolution in combat “creates a battlefield situation where 'I can see you and hit you but you can't see me and hit back. The situation leaves the weaker side in a position of perpetual disadvantage until it loses the will of resistance.”18

The RMA thus presents a serious problem for China's military planners: how to defeat a technologically far superior enemy such as the United States. In fact, China is no longer confident it can defeat such an enemy due to the vast gap with the United States in conventional military technologies. As Lewis and Xue observe, “As senior PLA planners dissected the American strategy from the Gulf War of 1991 to the lightening war against Iraq in 2003, it was to become painfully evident that no war with the United States could be won or even brought to a reasonable draw.”19

This bleak assessment by Chinese officers of the U.S. conventional dominance in the Taiwan Strait is echoed by American analysis. In a research project for the U.S. Department of Defense, the Rand Corporation analyzed how China may choose to conduct a war against the American military. According to Rand, in the coming decades the U.S. will possess “even greater military advantages over Chinese forces than it currently enjoys.”20 Therefore, if the China intends to fight the U.S. through conventional military modernization, “this option, taken alone, potentially condemns the PLA to evolving relative obsolescence.”21

How to prevent a disastrous defeat in the Taiwan Strait led some in China to question the separation of conventional and nuclear doctrines in Chinese military thinking. While the no-first-use policy can prevent a nuclear attack against China, it cannot deter a large-scale conventional war by a technologically superior enemy. Some believe that the policy can no longer protect China's core national interests, such as preventing de jure independence of Taiwan. According to Alastair Iain Johnston, who was the first Western analyst to notice this trend in the 1990s, some Chinese strategists began to argue that China should develop a nuclear doctrine “suitable for economically and technologically weak states.”22

#### U.S. first-strike is key to prevent or limit the damage of U.S.-China nuclear war

Lieber and Press 7 – Keir Lieber, Assistant Professor of Political Science at the University of Notre Dame, and Daryl Press, Associate Professor of Government at Dartmouth College, July/August 2007, “Superiority Complex,” The Atlantic, http://www.theatlantic.com/doc/200707/china-nukes

From a military perspective, this modernization has paid off: A U.S. nuclear first strike could quickly destroy China’s strategic nuclear arsenal. Whether launched in peacetime or during a crisis, a preemptive strike would likely leave China with no means of nuclear retaliation against American territory. And given the trends in both arsenals, China may live under the shadow of U.S. nuclear primacy for years to come.

This assessment is based on unclassified information, standard targeting principles, and formulas that defense analysts have used for decades. (And we systematically chose conservative estimates for key unknowns, meaning that our analysis understates U.S. counterforce capabilities.) The simplest version of an American preemptive strike would have nuclear-armed submarines in the Pacific launch Trident II missiles at the Chinese ICBM field in Henan province. The Navy keeps at least two of these submarines on “hard alert” in the Pacific at all times, meaning they’re ready to fire within 15 minutes of a launch order. Since each submarine carries 24 nuclear-tipped missiles with an average of six warheads per missile, commanders have almost 300 warheads ready for immediate use. This is more than enough to assign multiple warheads to each of the 18 Chinese silos. Chinese leaders would have little or no warning of the attack.

During the Cold War, U.S. submarines posed little danger to China’s silos, or to any other hardened targets. Each warhead on the Trident I missiles had little chance—roughly 12 percent—of success. Not only were those missiles inaccurate, their warheads had a relatively small yield. (Similarly, until the late 1980s, U.S. ICBMs lacked the accuracy to carry out a reliable disarming attack against China.) But the Navy’s new warheads and missiles are far more lethal. A Trident II missile is so accurate, and the newer W88 warhead so powerful, that if the warhead and missile function normally, the destruction of the silo is virtually assured (the likelihood is calculated as greater than 99 percent).

In reality, American planners could not assume such near-perfect results. Some missiles or warheads could malfunction: One missile’s rockets might fail to ignite; another’s guidance system might be defective. So a realistic counterforce plan might assign four warheads to each silo. The U.S. would “cross-target” the missiles, meaning that the warheads on each missile would each go to different silos, so that a silo would be spared only if many missiles malfunctioned. Even assuming that 20 percent of missiles malfunctioned—the standard, conservative assumption typically used by nuclear analysts—there is a 97 percent chance that every Chinese DF-5 silo would be destroyed in a 4-on-1 attack. (By comparison, a similar attack using Cold War–era Trident I missiles would have produced less than a 1 percent chance of success. The leap in American counterforce capabilities since the end of the Cold War is staggering.)

Beyond bolstering the ability to conduct a first strike, the improvements to U.S. counterforce weapons also allow war planners to design nuclear options that will make the weapons more “usable” during high-stakes crises. Nuclear planners face many choices when they consider striking a given target. First, they must choose a warhead yield. The American arsenal includes low-yield weapons such as the B-61 bomb, which can detonate with as little explosive force as 0.3 kilotons (one-fiftieth the power of the bomb that destroyed Hiroshima), and high-yield weapons such as the B-83 bomb, which can yield 1,200 kilotons (80 times the strength of the Hiroshima bomb). For a military planner, high-yield weapons are attractive because they’re very likely to destroy the target—even if the weapon misses by some distance. Low-yield warheads, on the other hand, can be more discriminating, if planners want to minimize civilian casualties.

A second key decision for war planners is whether to set the weapon to detonate at ground level or in the air above the target. A groundburst creates enormous overpressure and ground shock, ideal for destroying a hardened target. But groundbursts also create a lot of radioactive fallout. Dirt and other matter is sucked up into the mushroom cloud, mixes with radioactive material, and, after being carried by the wind, falls to earth in the hours after the blast, spreading lethal radiation.

Airbursts create smaller zones of extremely high overpressure, but they also generate very little fallout. If the detonation occurs above a threshold altitude (which depends on the weapon yield), virtually no heavy particles from the ground mix with the radioactive material in the fireball. The radioactive material rises into the high atmosphere and then falls to earth over the course of several weeks in a far less dangerous state and over a very wide area, greatly reducing the harm to civilians.

In the past, a nuclear attack on China’s arsenal would have had horrific humanitarian consequences. The weapons were less accurate, so an effective strike would have required multiple high-yield warheads, detonating on the ground, against each target. The Federation of American Scientists and the Natural Resources Defense Council modeled the consequences of such an attack—similar to the submarine attack described above—and published their findings in 2006. The results were sobering. Although China’s long-range missiles are deployed in a lightly populated region, lethal fallout from an attack would travel hundreds of miles and kill more than 3 million Chinese civilians. American leaders might have contemplated such a strike, but only in the most dire circumstances.

But things are changing radically. Improved accuracy now allows war planners to target hardened sites with low-yield warheads and even airbursts. And the United States is pushing its breakthroughs in accuracy even further. For example, for many years America has used global-positioning systems in conjunction with onboard inertial-guidance systems to improve the accuracy of its conventionally armed (that is, nonnuclear) cruise missiles. Although an adversary may jam the GPS signal near likely targets, the cruise missiles use GPS along their flight route and then—if they lose the signal—use their backup inertial-guidance system for the final few kilometers. This approach has dramatically improved a cruise missile’s accuracy and could be applied to nuclear-armed cruise missiles as well. The United States is deploying jam- resistant GPS receivers on other weapons, experimenting with GPS on its nuclear-armed ballistic missiles, and planning to deploy a new generation of GPS satellites—with higher-powered signals to complicate jamming.

The payoff for equipping cruise missiles (or nuclear bombs) with GPS is clear when one estimates the civilian casualties from a lower-yield, airburst attack. We asked Matthew McKinzie, a scientific consultant to the Natural Resources Defense Council and coauthor of the 2006 study, to rerun the analysis using low-yield detonations compatible with nuclear weapons currently in the U.S. arsenal. Using three warheads per target to increase the odds of destroying every silo, the model predicts fewer than 1,000 Chinese casualties from fallout. In some low-yield scenarios, fewer than 100 Chinese would be killed or injured from fallout. The model is better suited to predicting fallout casualties than to forecasting deaths from the blast and fire, but given the low population in the rural region where the silos are, Chinese fatalities would be fewer than 6,000 in even the most destructive scenario we modeled. And in the future, there may be reliable nonnuclear options for destroying Chinese silos. Freed from the burden of killing millions, a U.S. president staring at the threat of a Chinese nuclear attack on U.S. forces, allies, or territory might be more inclined to choose preemptive action.

Strategic Implications of the Nuclear Imbalance

The most plausible flash point for a serious U.S.-China conflict is Taiwan. Suppose Taiwan declared independence. China has repeatedly warned that such a move would provoke an attack, probably a major air and naval campaign to shatter Taiwan’s defenses and leave the island vulnerable to conquest. If the United States decided to defend Taiwan, American forces would likely thwart China’s offensive, since aerial and naval warfare are strengths of the U.S. military. But looming defeat would place great pressure on China’s leaders. Losing the war might mean permanently losing Taiwan. This would undermine the domestic legitimacy of the Chinese Communist Party, which increasingly relies on the appeal of nationalism to justify its rule. A crippling defeat would also strain relations between political leaders in Beijing and the Chinese military. To stave off a regime-threatening disaster, the political leaders might decide to raise the stakes by placing part of the Chinese nuclear force on alert in hopes of coercing the United States into accepting a negotiated solution (for example, a return to Taiwan’s pre-declaration status).

By putting its nuclear forces on alert, however, China’s leaders would compel a U.S. president to make a very difficult decision: to accede to blackmail (by agreeing to a cease-fire and pressuring the Taiwanese to renounce independence), to assume that the threat is a bluff (a dangerous proposition, given that each Chinese ICBM carries a city-busting 4,000-kiloton warhead), or to strike the Chinese missiles before they could be launched.

How do America’s growing counterforce capabilities affect this scenario? First, American nuclear primacy may prevent such a war in the first place. China’s leaders understand that their military now has little hope of defeating U.S. air and naval forces. If they also recognize that their nuclear arsenal is vulnerable—and that placing it on alert might trigger a preemptive strike—the leaders may conclude that war is a no-win proposition.

Second, if a war over Taiwan started anyway, U.S. nuclear primacy might help contain the fighting at the conventional level. Early in the crisis, Washington could quietly convey to Beijing that the United States would act decisively if China put its vulnerable nuclear arsenal on alert.

Finally, if China threatened to launch nuclear attacks against America’s allies, its territory, or its forces in Asia, nuclear primacy would make a preemptive first strike more palatable to U.S. leaders. Any decision to attack China’s ICBM force, though, would be fraught with danger. A missile silo might have escaped detection. Furthermore, a strike on China’s 18 ICBMs would leave Beijing with roughly 60 shorter-range nuclear missiles with which to retaliate against U.S. forces and allies in the region. However, in the aftermath of a “clean” disarming strike—one that killed relatively few Chinese—American leaders could credibly warn that a Chinese nuclear response would trigger truly devastating consequences, meaning nuclear attacks against a broader target set, including military, government, and possibly even urban centers. In light of warnings from Chinese defense analysts and from within China’s military that it might use nuclear weapons to avoid losing Taiwan, an American president might feel compelled to strike first. In this terrible circumstance, he or she would reap the benefits of the past decade’s counterforce upgrades.

### CP

#### The United States federal judiciary should restrict the war powers authority of the President of the United States to retaliate to terrorist WMD strikes against the United States without Congressional approval.

### Adv 1

#### No risk of irrational presidential launch---if presidents suffering illness, exhaustion, anger, etc have never made this mistake in the past then that suggests it’s highly unlikely in the future---their evidence is just speculative

#### They’re factually wrong about unilateral launch---two-man rule solves

Fritz 9 Jason, Former Captain of the U.S. Army, July, Hacking Nuclear Command and Control, www.icnnd.org/Documents/Jason\_Fritz\_Hacking\_NC2.doc

The US uses the two-man rule to achieve a higher level of security in nuclear affairs. Under this rule two authorized personnel must be present and in agreement during critical stages of nuclear command and control. The President must jointly issue a launch order with the Secretary of Defense; Minuteman missile operators must agree that the launch order is valid; and on a submarine, both the commanding officer and executive officer must agree that the order to launch is valid. In the US, in order to execute a nuclear launch, an Emergency Action Message (EAM) is needed. This is a preformatted message that directs nuclear forces to execute a specific attack. The contents of an EAM change daily and consist of a complex code read by a human voice. Regular monitoring by shortwave listeners and videos posted to YouTube provide insight into how these work. These are issued from the NMCC, or in the event of destruction, from the designated hierarchy of command and control centres. Once a command centre has confirmed the EAM, using the two-man rule, the Permissive Action Link (PAL) codes are entered to arm the weapons and the message is sent out. These messages are sent in digital format via the secure Automatic Digital Network and then relayed to aircraft via single-sideband radio transmitters of the High Frequency Global Communications System, and, at least in the past, sent to nuclear capable submarines via Very Low Frequency (Greenemeier 2008, Hardisty 1985).

#### More ev---two-man rule

Robert Tilford 12, former soldier and Infantryman US Army who is a graduate of the US Army Infantry School at Ft. Benning, Georgia, 5/15/2012, “ The power to destroy the entire world fits into a black leather covered metallic Halliburton suitcase,” http://groundreport.com/the-power-to-destroy-the-entire-world-fits-into-a-black-leather-covered-metallic-halliburton-suitcas/

Note: The U.S. has the two man rule in place. Meaning that only the President can launch nukes, if confirmed by the Secretary of Defense, who is also in possession of secret codes.

#### No accidents---US is not on hair trigger, but maintaining quick-launch capability is key to deterrence

Ford 8 (Dr. Christopher A. Ford, Senior Fellow and Director of the Center for Technology and Global Security at the Hudson Institute in Washington. D.C., previously served as U.S. Special Representative for Nuclear Nonproliferation, and as a Principal Deputy Assistant Secretary of State, 10/7/08, Dilemmas of Nuclear Force “De-Alerting,” Presented to the International Peace Institute Policy Forum, New York)

Debating the “Hair Trigger” This argument seems somewhat less compelling, however, when one realizes that it is based upon a confusion: U.S. and Russian nuclear postures apparently do not actually assume that launch orders will be given upon warning of attack. In fact, though the United States has always refused absolutely to rule out a launch-on- warning posture, apparently believing that ambiguity on this score complicates Russian planning scenarios and enhances thus deterrence 10 – and although U.S. alert forces could launch on such short notice if the President actually gave the order – U.S. strategic planners appear **never to have adopted such a position.** Indeed, the United States has spent many billions of dollars to build and maintain an extremely capable ballistic missile submarine (SSBN) force as the backbone of its deterrent posture, precisely because of the presumed invulnerability to preemptive attack of deployed U.S. submarines on “deterrent patrol.” 11 Having such a survivable force available for retaliatory strikes necessarily means that when confronted with what appears to be an incoming Russian attack, U.S. leaders would not necessarily face irresistible “use it or lose it” pressures to launch immediately. Since the end of the Cold War, moreover, the U.S. force posture has evolved further away from maintaining a rapid reaction capability and high alert levels, and today few of the operationally deployed U.S. nuclear forces are maintained on a ready alert status capable of immediate launch even if this were American policy. The United States carefully maintains the ability to respond promptly to any attack in order to complicate any adversary’s planning and thereby enhance deterrence, but it **does not assume LOW.** (Nor, however, does it ever discuss precisely what its actual alert status is. No nuclear weapons state does. 12 ) As the U.S. Ambassador to the CD quipped at one point, in response to a request that the United States abandon its “hair- trigger” alert policy, “Frankly, in order to take action to comply with this request, we would first have to put our weapons on ‘hair-trigger alert,’ so we could then de-alert them. The fact is that U.S. nuclear forces **are not and have never been on ‘hair-trigger alert.’”** 13

#### No US accidents---multiple safeguards check

Slocombe 9 (The Honorable Walter B. Slocombe, Caplin & Drysdale Attorneys and Former Under Secretary of Defense for Policy, 6/21/09, De-Alerting: Diagnoses, Prescriptions, and Side-Effects, East West Institute Seminar, http://www.ewi.info/system/files/Slocombe.pdf)

Let’s start with Technical Failure – the focus of a great deal of the advocacy, or at least of stress on past incidents of failures of safety and control mechanisms.4 Much of the “de-alerting” literature points to a succession of failures to follow proper procedures and draw from that history the inference that a relatively simple procedural failure could produce a nuclear detonation. The argument is essentially that nuclear weapons systems are sufficiently susceptible of pure accident (including human error or failure at operational/field level) that it is essential to take measures that have the effect of making it necessary to undertake a prolonged reconfiguration of the elements of the nuclear weapons force for a launch or detonation to be physically possible. Specific measures said to serve this objective include separating the weapons from their launchers, burying silo doors, removal of fuzing or launching mechanisms, deliberate avoidance of maintenance measures need to permit rapid firing, and the like. . My view is that this line of action is unnecessary in its own terms and highly problematic from the point of view of other aspects of the problem and that there is a far better option that is largely already in place, at least in the US force – the requirement of external information – a code not held by the operators -- to arm the weapons. Advocates of other, more “physical,” measures often describe the current arrangement as nuclear weapons being on a “hair trigger.” That is – at least with respect to US weapons – a highly misleading characterization. The “hair trigger” figure of speech confuses “alert” status – readiness to act quickly on orders -- with susceptibility to inadvertent action. The “hair trigger” image implies that a minor mistake – akin to jostling a gun – will fire the weapon. The US StratCom commander had a more accurate metaphor when he recently said that US nuclear weapons are less a pistol with a hair trigger than like a pistol in a holster with the safety turned on – and he might have added that in the case of nuclear weapons the “safety” is locked in place by a combination lock that can only be opened and firing made possible if the soldier carrying the pistol receives a message from his chain of command giving him the combination. Whatever other problems the current nuclear posture of the US nuclear force may present, it cannot reasonably be said to be on a “hair trigger.” Since the 1960s the US has taken a series of measures to insure that US nuclear weapons cannot be detonated without the receipt of both external information and properly authenticated authorization to use that information. These devices – generically Permissive Action Links or “PALs” – are in effect combination locks that keep the weapons locked and incapable of detonation unless and until the weapons’ firing mechanisms have been unlocked following receipt of a series of numbers communicated to the operators from higher authority. Equally important in the context of a military organization, launch of nuclear weapons (including insertion of the combinations) is permitted only where properly authorized by an authenticated order. This combination of reliance on discipline and procedure and on receipt of an unlocking code not held by the military personnel in charge of the launch operation is designed to insure that the system is “fail safe,” i.e., that **whatever mistakes occur, the result will not be a nuclear explosion**.

#### No modelling---other countries have distinct nuclear strategies

#### No impact – launch would hit the ocean

Slocombe 9 [Walter B. Slocombe, former director of national security and defense in the Coalition Provisional Authority, the U.S. organization charged with overseeing Iraq's reconstruction, and former under-secretary of defense for Policy, June 2009, “De-Alerting: Diagnoses, Prescriptions, and Side-Effects,” <http://www.ewi.info/system/files/Slocombe.pdf>]

Moreover, in recent years, both the US and Russia, as well as Britain and China, have modified their procedures so that even if a nuclear-armed missile were launched, it would go not to a “real” target in another country but – at least in the US 6 case - to empty ocean. In addition to the basic advantage of insuring against a nuclear detonation in a populated area, the fact that a missile launched in error would be on flight path that diverged from a plausible attacking trajectory should be detectable by either the US or the Russian warning systems, reducing the possibility of the accident being perceived as a deliberate attack. De-targeting, therefore, provides a significant protection against technical error. 5

These arrangements – PALs and their equivalents coupled with continued observance of the agreement made in the mid-90s on “de-targeting” – do not eliminate the possibility of technical or operator-level failures, but they come very close to providing absolute assurance that such errors cannot lead to a nuclear explosion or be interpreted as the start of a deliberate nuclear attack. 6 The advantage of such requirements for external information to activate weapons is of course that the weapons remain available for authorized use but not susceptible of appropriation or mistaken use. The drawback from a deterrence and operational point of view is, of course, that the system for transmitting the information must not be susceptible of interruption – that is, there must be assurance that an authorized decision maker will be able to act and have the decision – and the accompanying authenticated orders and unlock combinations – communicated to and received by the operators of the weapon systems. Accordingly, a system of combination-locked safeties requires a highly survivable network for decision and communication with the operators. Otherwise there would be pressures for early transmission of the codes, with their insertion subject to a later execute order or even more dangerous, pre-delegation of authority to issue the execute orders. In this, as in other aspects of measures to meet the “never” requirement, a highly capable and highly survivable command and control system is essential

#### No scenario for nuclear terror---consensus of experts

Matt Fay ‘13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

#### Terrorists aren’t pursuing

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If one were to read the most recent unclassified report to Congress on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions, it does have a section on CBRN terrorism (note, not WMD terrorism). The intelligence community has a very toned down statement that says “several terrorist groups … probably remain interested in [CBRN] capabilities, but not necessarily in all four of those capabilities. … mostly focusing on low-level chemicals and toxins.” They’re talking about terrorists getting industrial chemicals and making ricin toxin, not nuclear weapons. And yes, Ms. Squassoni, it is primarily al Qaeda that the U.S. government worries about, no one else. The trend of worldwide terrorism continues to remain in the realm of conventional attacks. In 2010, there were more than 11,500 terrorist attacks, affecting about 50,000 victims including almost 13,200 deaths. None of them were caused by CBRN hazards. Of the 11,000 terrorist attacks in 2009, none were caused by CBRN hazards. Of the 11,800 terrorist attacks in 2008, none were caused by CBRN hazards.

#### Obama won’t use nukes to fight terrorism

**AP 7** – 8-2-07, http://www.msnbc.msn.com/id/20093852/

WASHINGTON - Democratic presidential hopeful Barack **Obama said** Thursday **he would not use nuclear weapons "**in any circumstance" **to fight terrorism** in Afghanistan and Pakistan.

"I think it would be a profound mistake for us to use nuclear weapons in any circumstance," Obama said, with a pause, "involving civilians." Then he quickly added, "Let me scratch that. There's been no discussion of nuclear weapons. That's not on the table."

### Adv 2

#### The Court’s pursuing an incremental strategy in regards to War Powers now---the plan causes massive backlash and executive non-acquiescence

Neavl Devins 10, Goodrich Professor of Law and Professor of Government, College of William & Mary., Talk Loudly and Carry a Small Stick: The Supreme Court and Enemy Combatants, 12 U. Pa. J. Const. L. 491

Congress, the President, and the Court. Throughout the enemy combatant litigation, Congress signaled to the Court that it would go along with whatever ruling the Court made in these cases. In other words, contrary to the portrayal by academics and the news media of the Supreme Court's willingness to stand up to Congress and the executive branch, lawmakers repeatedly stood behind Court rulings limiting elected branch power. At the same time, as I will detail in the next Part, the Court pursued an incremental strategy - declining to test the boundaries of lawmaker acquiescence and, instead, issuing decisions that it knew would be acceptable to lawmakers. n85¶ The 2004 rulings in Hamdi and Rasul triggered anything but a backlash. In the days following the decisions, no lawmaker spoke on the House or Senate floor about the decision, and only a handful issued [\*508] press releases about the cases. n86 And while eight members of Congress signed onto amicus briefs backing administration policy, n87 Congress did not seriously pursue legislative reform on this issue until the Supreme Court had agreed to hear the Hamdan case. n88¶ When Congress enacted the Detainee Treatment Act (DTA) in December 2005, "lawmakers made clear that they did not see the DTA as an attack on either the Court or an independent judiciary." n89 Most significant, even though the DTA placed limits on federal court consideration of enemy combatant habeas petitions, lawmakers nevertheless anticipated that the Supreme Court would decide the fate of the President's military tribunal initiative. Lawmakers deleted language in the original bill precluding federal court review of Hamdan and other pending cases. n90 Lawmakers, moreover, depicted themselves as working collegially with the Court; several Senators, for example, contended that the "Supreme Court has been shouting to us in Congress: Get involved," n91 and thereby depicted Rasul as a challenge [\*509] to Congress, n92 "asking the Senate and the House, do you intend for ... enemy combatants ... to challenge their detention [in federal courts] as if they were American citizens?" n93 Lawmakers also spoke of detainee habeas petitions as an "abuse[]" n94 of the federal courts, and warned that such petitions might unduly clog the courts, n95 thus "swamping the system" n96 with frivolous complaints. n97 Under this view, the DTA's cabining of federal court jurisdiction "respects" the Court's independence and its role in the detainee process. n98¶ Following Hamdan, lawmakers likewise did not challenge the Court's conclusions that the DTA did not retrospectively bar the Hamdan litigation and that the President could not unilaterally pursue his military tribunal policy. n99 Even though the Military Commissions Act (MCA) eliminates federal court jurisdiction over enemy combatant habeas petitions, lawmakers depicted themselves as working in tandem with the Court. Representative Duncan Hunter (R. Cal.), who introduced the legislation on the House floor, said during the debates that the bill was a response to the "mandate of the Supreme Court that Congress involve itself in producing this new structure to prosecute terrorists." n100 And DTA sponsor Lindsey Graham stated: "The Supreme Court has set the rules of the road and the [\*510] Congress and the president can drive to the destination together." n101 Even lawmakers who expressed disappointment in the Court's ruling did not criticize the Court. Senator Sessions (R. Ala.), for example, blamed Hamdan's lawyers for misleading the Court about the legislative history of the DTA. n102¶ Debates over the MCA habeas provision, moreover, reveal that lawmakers thought that the Supreme Court was responsible for assessing the reach of habeas protections. Fifty-one Senators (fifty Republicans and one Democrat) voted against a proposed amendment to provide habeas protections to Guantanamo detainees. Arguing that enemy combatants possessed no constitutional habeas rights, n103 these lawmakers contended that they could eliminate habeas claims without undermining judicial authority. One of the principal architects of the MCA, Senator Lindsey Graham, put it this way: Enemy combatants have "a statutory right of habeas ... . And if [the Supreme Court finds] there is a constitutional right of habeas corpus given to enemy combatants, that is ... totally different ... and it would change in many ways what I have said." n104 Forty-eight Senators (forty-three Democrats, four Republicans, and one Independent) argued that the habeas-stripping provision was unconstitutional, that the courts would "clean it up," n105 and that Congress therefore should fulfill its responsibility to protect "that great writ." n106¶ When the Supreme Court agreed to rule on the constitutionality of the MCA, the Congress no longer supported the MCA's habeas-stripping provisions. Democrats had gained control of both Houses of Congress. Not surprisingly, there was next-to-no lawmaker criticism of Boumediene. In the week following the decision, no member [\*511] of the House, and only two Senators, made critical comments about the decision on the House or the Senate floor. n107¶ \* \* \* Supreme Court enemy combatant decisions were not out-of-step with prevailing social and political forces. Academics (including prominent conservatives), the media (again including conservative newspapers), former judges, and bar groups had all lined up against the administration. Interest groups too opposed the administration (including some conservative groups). Over the course of the enemy combatant litigation, the American people increasingly opposed the Bush administration. This opposition, in part, was tied to policy missteps (some of which implicated enemy combatant policy-making). These missteps were highly visible and contributed to widespread opposition to the Bush administration. For its part, Congress did not question the Court's role in policing the administration's enemy combatant initiative. By the time the Court decided Boumediene, voter disapproval of the President had translated into widespread opposition to the administration's enemy combatant initiative; a Democratic Congress supported habeas protections for enemy combatants and presidential candidates John McCain and Barack Obama called for the closing of Guantanamo Bay.¶ In the next part of this Essay, I will discuss the incremental nature of the Court's decision making. This discussion will provide additional support for the claims made in this section. Specifically, I will show that each of the Court's decisions was in sync with changing attitudes towards the Bush administration. More than that, Part II will belie the myth that Court enemy combatant decisions were especially consequential. Unlike newspaper and academic commentary about these cases, Court decision making had only a modest impact. Correspondingly, the Court never issued a decision that risked its institutional capital; the Court knew that its decisions would be followed by elected officials and that its decisions would not ask elected officials to take actions that posed some national security risk. [\*512] ¶ II. Judicial Modesty or Judicial Hubris: Making Sense of the Enemy Combatant Cases ¶ From 1952 (when the Supreme Court slapped down President Truman's war-time seizure of the steel mills) n108 until 2004 (when the Court reasserted itself in the first wave of enemy combatant cases), the judiciary largely steered clear of war powers disputes. n109 In part, the Court deferred to presidential desires and expertise. The President sees the "rights of governance in the foreign affairs and war powers areas" as core executive powers. n110 Correspondingly, the President has strong incentives to expand his war-making prerogatives. n111 For its part, the Court has limited expertise in this area, and, as such, is extremely reluctant to stake out positions that may pose significant national security risks. n112 The Court, moreover, is extremely reluctant to risk elected branch opprobrium. Lacking the powers of purse and sword, the Court cannot ignore the risks of elected branch non-acquiescence. n113¶ Against this backdrop, the Court's repudiation of the Bush administration's enemy combatant initiative appears a dramatic break from past practice. Academic and newspaper commentary back up this claim - with these decisions being labeled "stunning" (Harold [\*513] Koh), n114 "unprecedented" (John Yoo), n115 "breathtaking" (Charles Krauthammer), n116 "astounding" (Neal Katyal), n117 "sweeping and categorical" (New York Times), n118 and "historic" (Washington Post and Wall Street Journal). n119 Upon closer inspection, however, the Court's decisions are anything but a dramatic break from past practice. Part I detailed how Court rulings tracked larger social and political forces. In this Part, I will show how the Court risked neither the nation's security nor elected branch non-acquiescence. n120 The Court's initial rulings placed few meaningful checks on the executive; over time, the Court - reflecting increasing public disapproval of the President - imposed additional constraints but never issued a ruling that was out-of-sync with elected government preferences. Separate and apart from reflecting growing public and elected government disapproval of Bush administration policies, the Court had strong incentives to intervene in these cases. The Bush administration had challenged the Court's authority to play any role in national security matters. n121 This frontal assault on judicial power prompted the Court to stand up for its authority to "say what the law is." In Part III, I will talk about the Court's interest in protecting its turf - especially in cases implicating individual rights.¶ [\*514] Small Steps: Hamdi and Rasul. These decisions were a minimalist opening volley in Court efforts to place judicial limits on the Bush administration. While rejecting claims of executive branch unilateralism in national security matters, the Court said next-to-nothing about how it would police the President's enemy combatant initiative. Rasul simply held that Guantanamo Bay was a "territory over which the United States exercises exclusive jurisdiction and control," and, consequently, that the President's enemy combatant initiative is subject to existing habeas corpus legislation. n122 This ruling "avoided any constitutional judgment" and offered no guidance on "what further proceedings may become necessary" after enemy combatants filed habeas corpus petitions. n123 Hamdi, although ruling that United States citizens have a constitutional right to challenge their detention as an enemy combatant, placed few meaningful limits on executive branch detentions. Noting that "enemy-combatant proceedings may be tailored to alleviate their uncommon potential to burden the Executive," the Court ruled both that hearsay evidence was admissible, and that "the Constitution would not be offended by a presumption in favor of the Government's evidence." n124¶ The Bush administration, as John Yoo put it, saw the limited reach of Hamdi and Rasul as creating an "opportunity" for the administration to regain control over its detention policy. n125 In particular, the administration asked Congress to enact legislation that would limit federal court review of enemy combatant claims. The administration also launched Combatant Status Review Tribunals (CSRT) as a more formal substitute for unilateral executive determinations of a detainee's enemy combatant status. n126 Capitalizing on Rasul's failure to consider the constitutional dimensions of enemy combatant claims, CSRTs largely operated as a rubber stamp of administration determinations. In 2006, ninety-nine out of 102 detainees brought before CSRTs were designated as enemy combatants. n127 The Justice Department reconvened CSRTs to reconsider the remaining three cases [\*515] and, ultimately, the remaining three were determined to be enemy combatants. n128¶ Hamdi and Rasul were both "narrow, incompletely theorized [minimalist] decisions." n129 And while newspapers and academics focused their attention on the Court's open-ended declaration that "a state of war is not a blank check for the President," n130 the decisions did not meaningfully limit the executive. Well aware that Congress and the American people supported the President's military commission initiative, n131 the Court understood that a sweeping denunciation of administration policies might trigger a fierce backlash. n132 Moreover, by ruling that Congress had authorized the President's power to detain enemy combatants (through its post-9/11 Authorization for the Use of Military Force Resolution), and by suggesting that the Court would make use of pro-government presumptions when reviewing military commission decision making, the Court formally took national security interests into account. n133 Actions taken by the executive in response to these rulings underscore that the Court's de minimis demands neither risked national security nor executive branch non-acquiescence.¶ None of this is to say that the 2004 decisions were without impact. Following Rasul, for example, the administration understood that it needed to make use of some type of military court review - a requirement that may have impacted the military's handling of enemy combatants. At the same time, the Court did not issue a potentially debilitating blow to the Bush administration by decisively and resoundingly rejecting key elements of the administration's legal policy. n134 Instead, the Court simply carved out space for itself to review administration policy-making - without setting meaningful boundaries on what the administration could or could not do.

#### Court involvement in national security causes massive blowback that crushes judicial legitimacy

Robert M. Chesney 9, Professor, University of Texas School of Law, NATIONAL SECURITY FACT DEFERENCE, 95 Va. L. Rev. 1361

Judicial involvement in national security litigation, as noted at the outset, poses unusual risks for the judiciary as an institution. Such cases are more likely than most to involve claims of special, or even exclusive, executive branch authority. They are more likely than most to involve a perception - on the part of the public, the government, or judges themselves - of unusually high stakes. They are more likely than most to be in the media spotlight and hence in view of the public in a meaningful sense. These cases are, as a result of all this, especially salient as a political matter. And therein lies the danger for the courts. Because of these elements, an inappropriate judicial intervention in national security litigation is unusually likely to generate a response from the other branches or the public at large that might harm the institutional interests of the judiciary, either by undermining its prestige and authority or perhaps even by triggering some form of concrete political response.

#### The Courts have willingly developed institutional checks that lock them into deference

Daniel Abebe & Eric A. Posner 11, Assistant Professor and Kirkland & Ellis Professor, University of Chicago Law School, The Flaws of Foreign Affairs Legalism, 51 Va. J. Int'l L. 507

Executive primacy means that courts give greater deference to executive interpretations of international law and foreign relations law than they do to executive interpretations of other areas of the law. This stance goes back to the founding generation, when proponents of executive primacy, such as Alexander Hamilton, argued that the executive needs freedom of action in foreign affairs because of the fluidity of relations among states and the ever-present danger of war. n3 Secrecy, speed, and decisiveness are at a premium, and these are characteristics of the executive, n4 not of the courts, which are slow and decentralized.

Courts have largely, though not always, accepted this argument. They have provided a substantial level of deference to executive determinations on a number of foreign affairs questions and on issues related to international law, including treaty interpretation n5 and treaty termination. n6 [\*510] Courts also consider the executive's views on the meaning of customary international law (CIL) n7 and generally defer to the executive on the application of head of state immunity. n8 Further, they have permitted the executive to evade the onerous supermajority requirements in the Article II treaty process by entering congressional-executive and executive agreements, n9 and they have developed avoidance doctrines - including the political question doctrine, the act of state doctrine, international comity rules, and state secrecy rules - to limit their own capacity to adjudicate foreign affairs cases. n10

#### Deference inevitable---it’s institutionally locked in, the judiciary wants it, \* and the aff doesn’t clarify multiple constitutional issues

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To be sure, the Supreme Court has decided some well-known national security cases. Among them are the Steel Seizure case, Youngstown Sheet & Tube Co. v. Sawyer; n2 the Pentagon Papers case, New York Times Co. v. United States; n3 the Iranian hostage case, Dames & Moore v. Regan; n4 and some notable First Amendment cases arising out of World War I, such as Schenck v. United States n5 and Abrams v. United States. n6 Then there are the Japanese internment decisions during World War II, notably Korematsu v. United States, n7 as well as Ex parte Quirin, n8 which upheld the use of military commissions to try German agents who landed in the United States as part of a sabotage mission. Most recently, the Supreme Court has addressed questions arising from the government's response to the attacks of September 11, 2001, in such cases as Hamdi v. Rumsfeld, n9 Hamdan v. Rumsfeld, n10 and Boumediene v. Bush. n11 These cases do matter, but they have not clearly resolved the constitutional and other legal issues that pervade the debate about presidential power and foreign affairs.

Beyond the limitations of the Supreme Court rulings, the judiciary probably will not contribute very much to the debate. Various procedural and jurisdictional obstacles make it difficult for courts to address the merits of disputes about war powers and foreign affairs. Even if those obstacles can be surmounted, those who decry what they view as presidential excess should note that the judiciary typically has taken a deferential role in reviewing challenges to executive action.

#### No impact to heg

Maher 11---adjunct prof of pol sci, Brown. PhD expected in 2011 in pol sci, Brown (Richard, The Paradox of American Unipolarity: Why the United States May Be Better Off in a Post-Unipolar World, Orbis 55;1)

At the same time, preeminence creates burdens and facilitates imprudent behavior. Indeed, because of America’s unique political ideology, which sees its own domestic values and ideals as universal, and the relative openness of the foreign policymaking process, the United States is particularly susceptible to both the temptations and burdens of preponderance. For decades, perhaps since its very founding, the United States has viewed what is good for itself as good for the world. During its period of preeminence, the United States has both tried to maintain its position at the top and to transform world politics in fundamental ways, combining elements of realpolitik and liberal universalism (democratic government, free trade, basic human rights). At times, these desires have conflicted with each other but they also capture the enduring tensions of America’s role in the world. The absence of constraints and America’s overestimation of its own ability to shape outcomes has served to weaken its overall position. And because foreign policy is not the reserved and exclusive domain of the president---who presumably calculates strategy according to the pursuit of the state’s enduring national interests---the policymaking process is open to special interests and outside influences and, thus, susceptible to the cultivation of misperceptions, miscalculations, and misunderstandings. Five features in particular, each a consequence of how America has used its power in the unipolar era, have worked to diminish America’s long-term material and strategic position. Overextension. During its period of preeminence, the United States has found it difficult to stand aloof from threats (real or imagined) to its security, interests, and values. Most states are concerned with what happens in their immediate neighborhoods. The United States has interests that span virtually the entire globe, from its own Western Hemisphere, to Europe, the Middle East, Persian Gulf, South Asia, and East Asia. As its preeminence enters its third decade, the United States continues to define its interests in increasingly expansive terms. This has been facilitated by the massive forward presence of the American military, even when excluding the tens of thousands of troops stationed in Iraq and Afghanistan. The U.S. military has permanent bases in over 30 countries and maintains a troop presence in dozens more.13 There are two logics that lead a preeminent state to overextend, and these logics of overextension lead to goals and policies that exceed even the considerable capabilities of a superpower. First, by definition, preeminent states face few external constraints. Unlike in bipolar or multipolar systems, there are no other states that can serve to reliably check or counterbalance the power and influence of a single hegemon. This gives preeminent states a staggering freedom of action and provides a tempting opportunity to shape world politics in fundamental ways. Rather than pursuing its own narrow interests, preeminence provides an opportunity to mix ideology, values, and normative beliefs with foreign policy. The United States has been susceptible to this temptation, going to great lengths to slay dragons abroad, and even to remake whole societies in its own (liberal democratic) image.14 The costs and risks of taking such bold action or pursuing transformative foreign policies often seem manageable or even remote. We know from both theory and history that external powers can impose important checks on calculated risk-taking and serve as a moderating influence. The bipolar system of the Cold War forced policymakers in both the United States and the Soviet Union to exercise extreme caution and prudence. One wrong move could have led to a crisis that quickly spiraled out of policymakers’ control. Second, preeminent states have a strong incentive to seek to maintain their preeminence in the international system. Being number one has clear strategic, political, and psychological benefits. Preeminent states may, therefore, overestimate the intensity and immediacy of threats, or to fundamentally redefine what constitutes an acceptable level of threat to live with. To protect itself from emerging or even future threats, preeminent states may be more likely to take unilateral action, particularly compared to when power is distributed more evenly in the international system. Preeminence has not only made it possible for the United States to overestimate its power, but also to overestimate the degree to which other states and societies see American power as legitimate and even as worthy of emulation. There is almost a belief in historical determinism, or the feeling that one was destined to stand atop world politics as a colossus, and this preeminence gives one a special prerogative for one’s role and purpose in world politics. The security doctrine that the George W. Bush administration adopted took an aggressive approach to maintaining American preeminence and eliminating threats to American security, including waging preventive war. The invasion of Iraq, based on claims that Saddam Hussein possessed weapons of mass destruction (WMD) and had ties to al Qaeda, both of which turned out to be false, produced huge costs for the United States---in political, material, and human terms. After seven years of war, tens of thousands of American military personnel remain in Iraq. Estimates of its long-term cost are in the trillions of dollars.15 At the same time, the United States has fought a parallel conflict in Afghanistan. While the Obama administration looks to dramatically reduce the American military presence in Iraq, President Obama has committed tens of thousands of additional U.S. troops to Afghanistan. Distraction. Preeminent states have a tendency to seek to shape world politics in fundamental ways, which can lead to conflicting priorities and unnecessary diversions. As resources, attention, and prestige are devoted to one issue or set of issues, others are necessarily disregarded or given reduced importance. There are always trade-offs and opportunity costs in international politics, even for a state as powerful as the United States. Most states are required to define their priorities in highly specific terms. Because the preeminent state has such a large stake in world politics, it feels the need to be vigilant against any changes that could impact its short-, medium-, or longterm interests. The result is taking on commitments on an expansive number of issues all over the globe. The United States has been very active in its ambition to shape the postCold War world. It has expanded NATO to Russia’s doorstep; waged war in Bosnia, Kosovo, Iraq, and Afghanistan; sought to export its own democratic principles and institutions around the world; assembled an international coalition against transnational terrorism; imposed sanctions on North Korea and Iran for their nuclear programs; undertaken ‘‘nation building’’ in Iraq and Afghanistan; announced plans for a missile defense system to be stationed in Poland and the Czech Republic; and, with the United Kingdom, led the response to the recent global financial and economic crisis. By being so involved in so many parts of the world, there often emerges ambiguity over priorities. The United States defines its interests and obligations in global terms, and defending all of them simultaneously is beyond the pale even for a superpower like the United States. Issues that may have received benign neglect during the Cold War, for example, when U.S. attention and resources were almost exclusively devoted to its strategic competition with the Soviet Union, are now viewed as central to U.S. interests. Bearing Disproportionate Costs of Maintaining the Status Quo. As the preeminent power, the United States has the largest stake in maintaining the status quo. The world the United States took the lead in creating---one based on open markets and free trade, democratic norms and institutions, private property rights and the rule of law---has created enormous benefits for the United States. This is true both in terms of reaching unprecedented levels of domestic prosperity and in institutionalizing U.S. preferences, norms, and values globally. But at the same time, this system has proven costly to maintain. Smaller, less powerful states have a strong incentive to free ride, meaning that preeminent states bear a disproportionate share of the costs of maintaining the basic rules and institutions that give world politics order, stability, and predictability. While this might be frustrating to U.S. policymakers, it is perfectly understandable. Other countries know that the United States will continue to provide these goods out of its own self-interest, so there is little incentive for these other states to contribute significant resources to help maintain these public goods.16 The U.S. Navy patrols the oceans keeping vital sea lanes open. During financial crises around the globe---such as in Asia in 1997-1998, Mexico in 1994, or the global financial and economic crisis that began in October 2008--- the U.S. Treasury rather than the IMF takes the lead in setting out and implementing a plan to stabilize global financial markets. The United States has spent massive amounts on defense in part to prevent great power war. The United States, therefore, provides an indisputable collective good---a world, particularly compared to past eras, that is marked by order, stability, and predictability. A number of countries---in Europe, the Middle East, and East Asia---continue to rely on the American security guarantee for their own security. Rather than devoting more resources to defense, they are able to finance generous social welfare programs. To maintain these commitments, the United States has accumulated staggering budget deficits and national debt. As the sole superpower, the United States bears an additional though different kind of weight. From the Israeli-Palestinian dispute to the India Pakistan rivalry over Kashmir, the United States is expected to assert leadership to bring these disagreements to a peaceful resolution. The United States puts its reputation on the line, and as years and decades pass without lasting settlements, U.S. prestige and influence is further eroded. The only way to get other states to contribute more to the provision of public goods is if the United States dramatically decreases its share. At the same time, the United States would have to give other states an expanded role and greater responsibility given the proportionate increase in paying for public goods. This is a political decision for the United States---maintain predominant control over the provision of collective goods or reduce its burden but lose influence in how these public goods are used. Creation of Feelings of Enmity and Anti-Americanism. It is not necessary that everyone admire the United States or accept its ideals, values, and goals. Indeed, such dramatic imbalances of power that characterize world politics today almost always produce in others feelings of mistrust, resentment, and outright hostility. At the same time, it is easier for the United States to realize its own goals and values when these are shared by others, and are viewed as legitimate and in the common interest. As a result of both its vast power but also some of the decisions it has made, particularly over the past eight years, feelings of resentment and hostility toward the United States have grown, and perceptions of the legitimacy of its role and place in the world have correspondingly declined. Multiple factors give rise toanti-American sentiment, and anti-Americanism takes different shapes and forms.17 It emerges partly as a response to the vast disparity in power the United States enjoys over other states. Taking satisfaction in themissteps and indiscretions of the imposing Gulliver is a natural reaction. In societies that globalization (which in many parts of the world is interpreted as equivalent to Americanization) has largely passed over, resentment and alienation are felt when comparing one’s own impoverished, ill-governed, unstable society with the wealth, stability, and influence enjoyed by the United States.18 Anti-Americanism also emerges as a consequence of specific American actions and certain values and principles to which the United States ascribes. Opinion polls showed that a dramatic rise in anti-American sentiment followed the perceived unilateral decision to invade Iraq (under pretences that failed to convince much of the rest of the world) and to depose Saddam Hussein and his government and replace itwith a governmentmuchmore friendly to the United States. To many, this appeared as an arrogant and completely unilateral decision by a single state to decide for itselfwhen---and under what conditions---military force could be used. A number of other policy decisions by not just the George W. Bush but also the Clinton and Obama administrations have provoked feelings of anti-American sentiment. However, it seemed that a large portion of theworld had a particular animus for GeorgeW. Bush and a number of policy decisions of his administration, from voiding the U.S. signature on the International Criminal Court (ICC), resisting a global climate change treaty, detainee abuse at Abu Ghraib in Iraq and at Guantanamo Bay in Cuba, and what many viewed as a simplistic worldview that declared a ‘‘war’’ on terrorism and the division of theworld between goodand evil.Withpopulations around theworld mobilized and politicized to a degree never before seen---let alone barely contemplated---such feelings of anti-American sentiment makes it more difficult for the United States to convince other governments that the U.S.’ own preferences and priorities are legitimate and worthy of emulation. Decreased Allied Dependence. It is counterintuitive to think that America’s unprecedented power decreases its allies’ dependence on it. During the Cold War, for example, America’s allies were highly dependent on the United States for their own security. The security relationship that the United States had with Western Europe and Japan allowed these societies to rebuild and reach a stunning level of economic prosperity in the decades following World War II. Now that the United States is the sole superpower and the threat posed by the Soviet Union no longer exists, these countries have charted more autonomous courses in foreign and security policy. A reversion to a bipolar or multipolar system could change that, making these allies more dependent on the United States for their security. Russia’s reemergence could unnerve America’s European allies, just as China’s continued ascent could provoke unease in Japan. Either possibility would disrupt the equilibrium in Europe and East Asia that the United States has cultivated over the past several decades. New geopolitical rivalries could serve to create incentives for America’s allies to reduce the disagreements they have with Washington and to reinforce their security relationships with the United States.

#### Legitimacy is resilient—it’s not key to leadership / coop inev

Wohlforth 9—Daniel Webster Professor of Government, Dartmouth. BA in IR, MA in IR and MPhil and PhD in pol sci, Yale (William and Stephen Brooks, Reshaping the World Order, March / April 2009, Foreign Affairs Vol. 88, Iss. 2; pg. 49, 15 pgs)

FOR ANALYSTS such as Zbigniew Brzezinski and Henry Kissinger, the key reason for skepticism about the United States' ability to spearhead global institutional change is not a lack of power but a lack of legitimacy. Other states may simply refuse to follow a leader whose legitimacy has been squandered under the Bush administration; in this view, the legitimacy to lead is a fixed resource that can be obtained only under special circumstances. The political scientist G.John Ikenberry argues in After Victory that states have been well positioned to reshape the institutional order only after emerging victorious from some titanic struggle, such as the French Revolution, the Napoleonic Wars, or World War I or II. For the neoconservative Robert Kagan, the legitimacy to lead came naturally to the United States during the Cold War, when it was providing the signal service of balancing the Soviet Union. The implication is that today, in the absence of such salient sources of legitimacy, the wellsprings of support for U.S. leadership have dried up for good. But **this view is mistaken**. For one thing, it overstates how accepted U.S. leadership was during the Cold War: anyone who recalls the Euromissile crisis of the 1980s, for example, will recognize that mass opposition to U.S. policy (in that case, over stationing intermediaterange nuclear missiles in Europe) is not a recent phenomenon. For another, it understates how dynamic and malleable legitimacy is. Legitimacy is based on the belief that an action, an actor, or a political order is proper, acceptable, or natural. An action - such as the Vietnam War or the invasion of Iraq - may come to be seen as illegitimate without sparking an irreversible crisis of legitimacy for the actor or the order. When the actor concerned has disproportionately more material resources than other states, the sources of its legitimacy can be refreshed repeatedly. After all, this is hardly the first time Americans have worried about a crisis of legitimacy. Tides of skepticism concerning U.S. leadership arguably rose as high or higher after the fall of Saigon in 1975 and during Ronald Reagan's first term, when he called the Soviet Union an "evil empire." Even George W. Bush, a globally unpopular U.S. president with deeply controversial policies, oversaw a marked improvement in relations with France, Germany, and India in recent years - even before the elections of Chancellor Angela Merkel in Germany and President Nicolas Sarkozy in France. Of course, the ability of the United States to weather such crises of legitimacy in the past hardly guarantees that it can lead the system in the future. But there are reasons for optimism. Some of the apparent damage to U.S. legitimacy might merely be the result of the Bush administration's approach to diplomacy and international institutions. Key underlying conditions remain particularly favorable for sustaining and even enhancing U.S. legitimacy in the years ahead. The United States continues to have a far larger share of the human and material resources for shaping global perceptions than any other state, as well as the unrivaled wherewithal to produce public goods that reinforce the benefits of its global role. No other state has any claim to leadership commensurate with Washington's. And largely because of the power position the United States still occupies, there is no prospect of a counterbalancing coalition emerging anytime soon to challenge it. In the end, the legitimacy of a system's leader hinges on whether the system's members see the leader as acceptable or at least preferable to realistic alternatives. Legitimacy is not necessarily about normative approval: one may dislike the United States but think its leadership is natural under the circumstances or the best that can be expected. Moreover, history provides abundant evidence that past leading states - such as Spain, France, and the United Kingdom - were able to revise the international institutions of their day without the special circumstances Ikenberry and Kagan cite. Spain fashioned both normative and positive laws to legitimize its conquest of indigenous Americans in the early seventeenth century; France instituted modern concepts of state borders to meet its needs as Europe's preeminent land power in the eighteenth century; and the United Kingdom fostered rules on piracy, neutral shipping, and colonialism to suit its interests as a developing maritime empire in the nineteenth century. As Wilhelm Grewe documents in his magisterial The Epochs of International Law, these states accomplished such feats partly through the unsubtle use of power: bribes, coercion, and the allure oflucrative long-term cooperation. Less obvious but often more important, the bargaining hands of the leading states were often strengthened by the general perception that they could pursue their interests in even less palatable ways - notably, through the naked use of force. Invariably, too, leading states have had the power to set the international agenda, indirectly affecting the development of new rules by defining the problems they were developed to address. Given its naval primacy and global trading interests, the United Kingdom was able to propel the slave trade to the forefront of the world's agenda for several decades after it had itself abolished slavery at home, in 1833. The bottom line is that the United States today has the necessary legitimacy to shepherd reform of the international system.

#### There’s no chance the plan spills over---all federal courts are either siding with the executive’s terror policies through narrow rulings or declining to even hear the cases---the plan will just be distinguished away

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Although these procedural and jurisdictional barriers to judicial review can be overcome, those who seek to limit what they regard as executive excess in military and foreign affairs should not count on the judiciary to serve as a consistent ally. The Supreme Court has shown substantial deference to the president in national security cases. Even when the Court has rejected the executive's position, it generally has done so on relatively narrow grounds.¶ Consider the Espionage Act cases that arose during World War I. Schenck v. United States, n63 which is best known for Justice Holmes's [\*452] announcement of the clear and present danger test, upheld a conviction for obstructing military recruitment based on the defendant's having mailed a leaflet criticizing the military draft although there was no evidence that anyone had refused to submit to induction as a result. Justice Holmes almost offhandedly observed that "the document would not have been sent unless it had been intended to have some effect, and we do not see what effect it could be expected to have upon persons subject to the draft except to influence them to obstruct the carrying of it out." n64 The circumstances in which the speech took place affected the scope of First Amendment protection: "When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right." n65 A week later, without mentioning the clear and present danger test, the Court upheld the conviction of the publisher of a German-language newspaper for undermining the war effort n66 and of Eugene Debs for a speech denouncing the war. n67 Early in the following term, Justice Holmes refined his thinking about clear and present danger while introducing the marketplace theory of the First Amendment in Abrams v. United States, n68 but only Justice Brandeis agreed with his position. n69 The majority, however, summarily rejected the First Amendment defense on the basis of Holmes's opinions for the Court in the earlier cases. n70¶ Similarly, the Supreme Court rejected challenges to the government's war programs during World War II. For example, the Court rebuffed a challenge to the use of military commissions to try German saboteurs. n71 Congress had authorized the use of military tribunals in such cases, and the president had relied on that authorization in directing that the defendants be kept out of civilian courts. n72 In addition, the Court upheld the validity of the Japanese internment program. n73 Of course, the Court did limit the scope of the [\*453] program by holding that it did not apply to "concededly loyal" citizens. n74 But it took four decades for the judiciary to conclude that some of the convictions that the Supreme Court had upheld during wartime should be vacated. n75 Congress eventually passed legislation apologizing for the treatment of Japanese Americans and authorizing belated compensation to internees. n76¶ The Court never directly addressed the legality of the Vietnam War. The Pentagon Papers case, for example, did not address how the nation became militarily involved in Southeast Asia, only whether the government could prevent the publication of a Defense Department study of U.S. engagement in that region. n77 The lawfulness of orders to train military personnel bound for Vietnam gave rise to Parker v. Levy, n78 but the central issue in that case was the constitutionality of the provisions of the Uniform Code of Military Justice that were the basis of the court-martial of the Army physician who refused to train medics who would be sent to the war zone. n79 The few lower courts that addressed the merits of challenges to the legality of the Vietnam War consistently rejected those challenges. n80¶ The picture in the post-2001 era is less clear. In three different cases the Supreme Court has rejected the executive branch's position, but all of those rulings were narrow in scope. For example, Hamdi v. Rumsfeld n81 held that a U.S. citizen held as an enemy combatant must be given a meaningful opportunity to have a neutral decision-maker determine the factual basis for his detention. There was no majority opinion, however, so the implications of the ruling were ambiguous to say the least. Justice O'Connor's plurality opinion for four members of the Court concluded that Congress had authorized the president to detain enemy combatants by passing the Authorization for Use of Military Force n82 and that the AUMF satisfied the statutory requirement of congressional authorization for the detention of U.S. [\*454] citizens. n83 Justice Souter, joined by Justice Ginsburg, thought that the AUMF had not in fact authorized the detention of American citizens as required by the statute, n84 which suggested that Hamdi should be released. But the Court would have been deadlocked as to the remedy had he adhered to his view of how to proceed. This was because Justices Scalia and Stevens also believed that Hamdi's detention was unlawful and that he should be released on habeas corpus, n85 whereas Justice Thomas thought that the executive branch had acted within its authority and therefore would have denied relief. n86 This alignment left four justices in favor of a remand for more formal proceedings, four other justices in favor of releasing Hamdi, and one justice supporting the government's detention of Hamdi with no need for a more elaborate hearing. To avoid a deadlock, therefore, Justice Souter reluctantly joined the plurality's remand order. n87¶ Hamdi was atypical because that case involved a U.S. citizen who was detained. The vast majority of detainees have been foreign nationals. In Hamdan v. Rumsfeld, n88 the Supreme Court ruled that the military commissions that the executive branch had established in the wake of the September 11 attacks had not been authorized by Congress and therefore could not be used to try detainees. n89 A concurring opinion made clear that the president could seek authorization from Congress to use the type of military commissions that had been established unilaterally in this case. n90¶ Congress responded to that suggestion by enacting the Military Commissions Act of 2006, n91 which sought to endorse the executive's detainee policies and to restrict judicial review of detainee cases. In Boumediene v. Bush, n92 the Supreme Court again rejected the government's position. First, the statute did not suspend the writ of [\*455] habeas corpus. n93 Second, the statutory procedures for hearing cases involving detainees were constitutionally inadequate. n94 At the same time, the Court emphasized that the judiciary should afford some deference to the executive branch in dealing with the dangers of terrorism n95 and should respect the congressional decision to consolidate judicial review of detainee cases in the District of Columbia Circuit. n96¶ Detainees who have litigated in the lower federal courts in the District of Columbia have not found a sympathetic forum. The U.S. Court of Appeals for the D.C. Circuit has not upheld a single district court ruling that granted any sort of relief to detainees, and the Supreme Court has denied certiorari in every post-Boumediene detainee case in which review was sought. n97 In only one case involving a detainee has the D.C. Circuit granted relief, and that case came up from a military commission following procedural changes adopted in the wake of Boumediene. n98 About a month after this symposium took place, in Hamdan v. United States n99 the court overturned a conviction for providing material support for terrorism. The defendant was the same person who successfully challenged the original military commissions in Hamdan v. Rumsfeld. n100 This very recent ruling emphasized that the statute under which he was prosecuted did not apply to offenses committed before its enactment. n101 It remains to be seen how broadly the decision will apply. [\*456] ¶ Meanwhile, other challenges to post-2001 terrorism policies also have failed, and the Supreme Court has declined to review those rulings as well. For example, the lower courts have rebuffed claims asserted by foreign nationals who were subject to extraordinary rendition. In Arar v. Ashcroft, n102 the U.S. Court of Appeals for the Second Circuit affirmed the dismissal of constitutional and statutory challenges brought by a plaintiff holding dual citizenship in Canada and the United States. n103 And in Mohamed v. Jeppesen Dataplan, Inc., n104 the U.S. Court of Appeals for the Ninth Circuit held that the state-secrets privilege barred a separate challenge to extraordinary rendition brought by citizens of Egypt, Morocco, Ethiopia, Iraq, and Yemen. n105 Unlike Arar, in which the defendants were federal officials, n106 this case was filed against a private corporation that allegedly assisted in transporting the plaintiffs to overseas locations where they were subjected to torture. n107 Although at least four judges on the en banc courts dissented from both rulings, n108 the Supreme Court declined to review either case. n109

# 2NC

### AT: We Meet --- Armed Force Launches Nuke

#### The soldier who presses the button to launch the nuke isn’t in hostilities --- NDAA proves

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Atlantic Council, 2013, “Cyber Conflict and the War Powers

Resolution: Congressional Oversight

of Hostilities in the Fifth Domain,” jnslp.com/wp-content/uploads/2010/08/11\_Dycus.pdf‎

War Powers and Offensive Cyber Operations¶ In a report submitted to Congress in November 2011, pursuant to a mandate in section 934 of the National Defense Authorization Act for fiscal year 2011, the Pentagon, quoting the WPR’s operative language, stated that:8 **Cyber operations might not include the introduction of armed forces personnel into the area of hostilities.** Cyber operations may, however, be a component of larger operations that could trigger notification and reporting in accordance with the War Powers Resolution. The Department will continue to assess each of its actions in cyberspace to determine when the requirements of the War Powers Resolution may apply to those actions. With the focus on “personnel,” this passage makes clear that the WPR will typically not apply to exclusively cyber conflicts. With cyber warriors executing such operations from centers inside the United States, such as the CYBERCOM facility at Fort Meade, Maryland, at a significant distance from the systems they are attacking and well out of harm’s way. Thus, there is no relevant “introduction” of armed forces. Without such an “introduction,” even the reporting requirements are not triggered. ¶ The view that there can be no introduction of forces into cyberspace **follows naturally from the administration’s argument that the purpose of the WPR is simply to keep US service personnel out of harm’s way** unless authorized by Congress. If devastating unmanned missions do not fall under the scope of the resolution, it is reasonable to argue that a conflict conducted in cyberspace does not either.¶ Arguing the point, an administration lawyer might ask, rhetorically, what exactly do cyber operations “introduce”? On a literal, physical level, electrical currents are redirected; but nothing is physically added to—nor, for that matter, taken away from—the hostile system. To detect any “introduction” at all, we must descend into metaphor; and even there, all that is really introduced is lines of code, packets of data: in other words, information. At most, this information constitutes the cyber equivalent of a weapon. “Armed forces,” by contrast, consist traditionally of weapons plus the flesh and blood personnel who wield them. And that brings us back to our cyber-soldier who, without leaving leafy Maryland, can choreograph electrons in Chongqing. Finally, even if armed forces are being introduced, there are no relevant “hostilities” for the same reason: no boots on the ground, no active exchanges of fire, and no body bags.

### AT W/M Airforce

#### US Code excludes weapons from the airforce

US Code No Date – "10 USC § 8062 - Policy; composition; aircraft authorization" www.law.cornell.edu/uscode/text/10/8062

(a) It is the intent of Congress to provide an Air Force that is capable, in conjunction with the other armed forces, of—¶ (1) preserving the peace and security, and providing for the defense, of the United States, the Commonwealths and possessions, and any areas occupied by the United States;¶ (2) supporting the national policies;¶ (3) implementing the national objectives; and¶ (4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.¶ (b) There is a United States Air Force within the Department of the Air Force.¶ (c) In general, the Air Force includes aviation forces both combat and service not otherwise assigned. It shall be organized, trained, and equipped primarily for prompt and sustained offensive and defensive air operations. It is responsible for the preparation of the air forces necessary for the effective prosecution of war except as otherwise assigned and, in accordance with integrated joint mobilization plans, for the expansion of the peacetime components of the Air Force to meet the needs of war.¶ (d) The Air Force consists of—¶ (1) **the Regular Air Force, the Air National Guard of the United States, the Air National Guard while in the service of the United States, and the Air Force Reserve;**¶ (2) all persons appointed or enlisted in, or conscripted into, the Air Force without component; and¶ (3) all Air Force units and other Air Force organizations, with their installations and supporting and auxiliary combat, training, administrative, and logistic elements; and all members of the Air Force, including those not assigned to units; necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.¶ (e) Subject to subsection (f) of this section, chapter 831 of this title, and the strength authorized by law pursuant to section 115 of this title, the authorized strength of the Air Force is 70 Regular Air Force groups and such separate Regular Air Force squadrons, reserve groups, and supporting and auxiliary regular and reserve units as required.¶ (f) There are authorized for the Air Force 24,000 serviceable aircraft or 225,000 airframe tons of serviceable aircraft, whichever the Secretary of the Air Force considers appropriate to carry out this section. **This subsection does not apply to guided missiles.**¶ (g)¶ (1) Effective October 1, 2011, the Secretary of the Air Force shall maintain a total aircraft inventory of strategic airlift aircraft of not less than 301 aircraft. Effective on the date that is 45 days after the date on which the report under section 141(c)(3) of the National Defense Authorization Act for Fiscal Year 2013 is submitted to the congressional defense committees, the Secretary shall maintain a total aircraft inventory of strategic airlift aircraft of not less than 275 aircraft.¶ (2) In this subsection:¶ (A) The term “strategic airlift aircraft” means an aircraft—¶ (i) that has a cargo capacity of at least 150,000 pounds; and¶ (ii) that is capable of transporting outsized cargo an unrefueled range of at least 2,400 nautical miles.¶ (B) The term “outsized cargo” means any single item of equipment that exceeds 1,090 inches in length, 117 inches in width, or 105 inches in height.¶ (h)¶ (1) Beginning October 1, 2011, the Secretary of the Air Force may not retire more than six B–1 aircraft.¶ (2) The Secretary shall maintain in a common capability configuration not less than 36 B–1 aircraft as combat-coded aircraft.¶ (3) In this subsection, the term “combat-coded aircraft” means aircraft assigned to meet the primary.

### 2NC Nukes Not Hostilities

#### Hostilities implies units of US armed forces engaged in an active exchange of fire with opposing units --- weapons systems don’t count

David W. Opderbeck 13, Professor of Law, Seton Hall University School of Law, 8/2/13, “Drone Courts,” http://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2305315

The WPR does not indicate that Congress has any authority to oversee or control the President’s deployment of armed forces in circumstances other than those involving actual or immanent “hostilities.” Recently the Obama administration has interpreted what “hostilities” means in this context very narrowly in connection with U.S. military involvement in the revolution that overthrew Libyan leader Mohammar Quadaffi.176 As Harold Koh, Legal Advisor to the Department of State, testified before the Senate Committee on Foreign Relations in 2011, “as virtually every lawyer recognizes, the operative term, ‘hostilities,’ is an ambiguous standard, which is nowhere defined in the statute.”177 Koh further noted that “[a]pplication of these provisions often generates difficult issues of interpretation that must be addressed in light of a long history of military actions abroad, without guidance from the courts, involving a Resolution passed by a Congress that could not have envisioned many of the operations in which the United States has since become engaged.”178

In light of these ambiguities, Koh testified, the Executive branch, in league with Congress, has engaged in casuistic efforts to determine when a particular situation does or does not involve “hostilities.”179 Koh noted that a particularly influential effort to frame principles for application was developed in 1975 by his predecessor Monroe Leigh and Defense Department General Counsel Martin Hoffmann, in a letter that has become canonical in this context.180 The Leigh-Hoffmann letter states that “hostilities” implies “a situation in which units of the U.S. armed forces are actively engaged in exchanges of fire with opposing units of hostile forces.”181 As Koh interpreted the Leigh-Hoffman letter, if the mission, exposure of U.S. forces, and risk of elevation are each limited, the military forces are not engaged in “hostilities.”182 Koh therefore argued that the involvement of U.S. forces in airstrikes against Quaddafi’s forces did not constitute “hostilities.”

If the practice of previous administrations supplies guiding precedent, Koh’s argument was sound. As Koh noted, the WPR’s requirements for “hostilities” were not invoked for military operations in Grenada, Lebanon, El Salvador, Iraq (Operation Desert Storm), Kosovo, or Somalia.183 It seems that the use of combat drones for targeted strikes also would not ordinarily constitute “hostilities,” since there is usually no “exchange of fire” under such circumstances.

### 2NC Turns Case

#### Court stripping destroys judicial legitimacy and separation of powers---even unsuccessful backlash can put the entire edifice of judicial review in question

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But the large policy payoff in the constitutional cases. What does the ability of the President and Congress to attack through overrides or other means constitutional court decisions imply in terms of the cost of the justices bear? If an attack succeeds and the court does not back down, it effectively removes the court from the policy game and may seriously or, even irrevocably harm its reputation, credibility, and legitimacy. Indeed, such an attack would effectively remove the court from policy making, thus incurring an infinite cost. With no constitutional prescription for judicial review, this power is vulnerable, and would be severely damaged if congress and the president were effective in attack on the Court. But even if the attack is unsuccessful, the integrity of the court may be damaged, for the assault may compromise its ability to make future constitutional decisions and, thus, more long-lasting policy. One does not have to peer as far back as scott v. sandford to find examples; Bush v. Gore (2000, U.S.) may provide one. To be sure, the new President and Congress did not attack the decision, but other members of government did of course, unsuccessfully at least in terms of the ruling’s impact. Yet, there seems little doubt that the critics (not to mention the decision itself) caused some major damage to the reputation of the court, the effects of which the justices may feel in the not-so-distant future.

#### The Court has zero legitimacy in foreign affairs cases which means the plan will be ignored---backlash will prompt Congress to question judicial review on domestic issues---that’s obviously way worse for all their modeling advs

Jide Nzelibe 4, Bigelow Fellow and Lecturer in Law, University of Chicago Law School, March, “The Uniqueness of Foreign Affairs,” 89 Iowa L. Rev. 941, Lexis

In many contexts, the courts are reluctant to involve themselves in foreign affairs controversies because of the perceived lack of institutional authoritativeness or legitimacy. The notion that the courts may invoke the doctrine in order to avoid a confrontation with the political branches is not entirely new. Indeed, one of the rationales that Professor Bickel put forth in support of the political question doctrine involved what he described as "the anxiety, not so much that the judicial judgment will be ignored, as that perhaps that it should but will not be ... ." n200 It is worth noting, however, that very little of the commentary has focused on the specific relationship between the substantive nature of foreign affairs and the institutional authoritativeness of the courts.¶ Commentators have largely rejected the "institutional legitimacy" rationale even while acknowledging its explanatory power in certain political question doctrine cases. n201 In essence, most of these commentators argue that the basic fear of being ignored by the political branches cannot justify the abdication of the judicial function in "high stakes" or controversial cases. As explained by Professor Redish, "it is highly unlikely that the dangers of adherence to a decision would be so great as to justify the risk of political backlash that the government's disregard of a Supreme Court decision would entail." n202 If the courts' reluctance to adjudicate on foreign affairs issues were cast as a mere opportunistic retreat from a clash with the political branches, then Professor Redish's concerns would be justified. In the context of the judiciary's limitations in a system of separated powers, however, those concerns seem misplaced.¶ To critics of the political question doctrine, such as Professor Redish, the question is not so much whether the courts have the requisite institutional legitimacy to review foreign affairs matters, but whether they risk diminishing any legitimacy they already possess. n203 These commentators assume as given the judiciary's institutional authoritativeness to rule on any [\*988] legal matter that comes before it. n204 That assumption is wrong. Rather than presuppose the judiciary's legitimacy to exercise a particular function, the proper analysis should focus on the source of the courts' institutional legitimacy to engage in judicial review generally, and then to ask whether such institutional legitimacy extends to foreign affairs cases. As demonstrated below, one significant misgiving that the courts may have about reviewing cases involving foreign affairs is that they simply lack the requisite institutional legitimacy to address these foreign affairs issues.¶ For the past two decades, the Supreme Court and commentators have examined, in great detail, the basis of the institutional legitimacy of courts. Social scientists like Tom Tyler and Gregory Mitchell have drawn upon extensive empirical evidence to demonstrate that courts, like other political institutions, "[need] a mandate entitling [them] to undertake the resolution of a controversial public policy issue." n205 In the absence of such a mandate, these commentators conclude that the courts will lack the requisite authoritativeness that ensures public compliance with judicial decisions. n206 Walter Murphy and Joseph Tanenhaus have offered similar arguments, suggesting that public consensus is integral to the judiciary's legitimacy: "In a political system ostensibly based on consent, the Court's legitimacy ... must ultimately spring from public acceptance ... of its various roles." n207 In Planned Parenthood of Pennsylvania v. Casey, n208 a plurality of the Supreme Court explicitly endorsed this theory of its institutional legitimacy. "The Court's power lies ... in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands." n209¶ In the context of domestic affairs, the Court draws its legitimacy largely from its mandate to resolve issues related to protecting constitutional rights of individuals and underrepresented groups. n210 The Casey plurality concluded that the courts are able to sustain this legitimacy by "making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation." n211 In addition to general public support of the courts, the political branches also [\*989] have an incentive to acquiesce to the judiciary's institutional role of judicial review. Judicial review serves as an important legitimating function for the activities of the political branches. As Professor Choper explains, this legitimating function is "critically important for national unity; that public knowledge that an independent tribunal has approved political assumptions of authority adds dignity to the laws of the central government and inspires confidence that it is acting within its constitutional limited boundaries." n212 In any event, although the scope of such review may be subject to debate, the courts nonetheless enjoy a general presumption of legitimacy when they adjudicate on domestic constitutional questions. There is no reason to assume, however, that this presumption of legitimacy extends to foreign affairs cases.¶ In the context of foreign affairs, the political branches have little need for the judiciary's legitimating function. More importantly, the courts seem to understand their limited utility in constitutional foreign affairs disputes. One commentator has used the metaphor of a "faustian bargain" to describe this understanding between the courts and the political branches in foreign affairs. n213 In this bargain, the judiciary essentially ceded the power to review foreign affairs issues in return for an understanding that the political branches would consent to its authority to review domestic constitutional issues. n214 While the metaphor of a faustian bargain may seem like an overstatement, it nonetheless captures the underpinnings of the longstanding historical relationship between the political branches and the Supreme Court regarding the allocation of constitutional authority. n215 From an institutional perspective, the political branches do not seem to have much to gain by acquiescing to judicial oversight in foreign affairs. Unlike legal controversies in the domestic realm, the political branches do not seem to have any need for an impartial tribunal to dispense judgments regarding the scope of their foreign affairs activities. This observation is especially true when such activities take place in an international realm where nation states [\*990] do not always abide by the norms of international law and where there is no centralized decision-making authority. In that realm, the political branches may decide to act of a legal obligation in certain contexts, but not in others. Understandably, in many disputes involving foreign affairs issues, the government has usually asked the courts to abstain from reviewing any foreign affairs issue brought before them rather than request a particular outcome on the merits. n216¶ Unlike in domestic constitutional controversies, it is also doubtful that the judiciary can draw on the popular underpinnings of its legitimacy should the political branches ignore its foreign affairs determinations. As one commentator has explained, the public appetite for judicial involvement in international issues is not particularly strong. n217 The judiciary's lack of popular legitimacy in foreign affairs is particularly understandable when the relevant controversy touches on matters of national security. As demonstrated above, in matters involving the domestic operations of the government, the court plays an important role in legitimizing the activities of the other branches, as well as providing a reliable mechanism for the resolution of disputes between private individuals. When matters touch on the very existence of the state, however, such as when the state faces an external threat, the justifications for judicial involvement correspondingly diminish. n218 Thus, far from getting popular support in the event of a confrontation with the political branches, it is more likely that the courts will face public criticism for intervening improperly in foreign affairs or jeopardizing national security.¶ Interestingly, the judiciary's perceived lack of institutional authority to adjudicate foreign affairs controversies is not unique to the U.S. experience. As one commentator has observed, judicial timidity on foreign affairs issues is commonplace among other national legal systems. n219 This commentator correctly attributes this judicial apprehension to the fact that the political branches have no "incentive to bestow legitimacy on an international legal system, in which their state is only one actor among numerous actors, many of whom do not face judicial restrictions." n220

### Legitimacy---Link O/W Turn

#### Courts can lose legitimacy at the drop of a hat, but only restore it slowly – the risk of the link outweighs the risk of a turn

Tom Tyler andGregory Mitchell 94 (Professor of Psychology, University of California at Berkeley, Clerk to Judge Thomas A. Wiseman, Jr., Middle District of Tennessee, 43 Duke L.J. 703, ln)

This statement indicates the Court's belief that public acceptance of the Court's role as interpreter of the Constitution--that is, the public belief in the Court's **institutional legitimacy**--enhances public acceptance of controversial Court decisions. This legitimacy is purchased by "making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be **accepted by the Nation**." n32 If the public views a decision as legitimate, the public will voluntarily obey it.

In addition to its concern about immediate acceptance of an opinion, the Court evinces concern for the effect of a current decision on its future perceived legitimacy: "To overrule under fire in the absence of the most compelling reason to reexamine a watershed decision would subvert the Court's legitimacy beyond any serious question." n33 This result would be harmful because, "like the character of an individual, the legitimacy of the Court must be earned over time." n34 Once diminished, "legitimacy may be restored, but only slowly." n35

### AT: No impact

#### Loss of legitimacy spills over to all facets of legitimacy

Jack M Balkin 1, night Prof of Constitutional Law and the First Amendment @ Yale Law School, June, 110 Yale L.J. 1407

If the American people like and accept George W. Bush, then they will tend to explain his election as legitimate because the election was effectively a tie. But if people dislike Bush, or lose trust and confidence in his abilities as President, then the opinion that he does not deserve to hold office will increase. That will increase the popular sense of frustration at the Court that put him in office. Although there is no reason logically why an unpopular or incompetent president should be regarded as having less of a right to hold office than a popular or competent one, the different forms of legitimacy do affect each other in practice, because **all of them** in one way or another concern people's psychological attitudes toward government officials. **Hence a loss in one** facet of legitimacy **tends to cause a loss in the others as well.** If Bush proves to be inefficacious, or if he cannot inspire confidence, people will begin to doubt the procedural legitimacy of his election and the moral legitimacy of his right to rule. And this loss of legitimacy will have ramifications for the Supreme Court.

#### Illegitimacy spillsover to all areas of law

Yuval Feldman 3, PhD candidate, Jurisprudence and Social Policy @ University of California, Berkeley; 2003 U. Ill. J.L. Tech. & Pol'y 105

**The loss of legitimacy could spill into areas of law that are currently in congruence with the norm.** **[124](http://www.lexis.com/research/retrieve?_m=7ce7b78213d23bccaad5e1b9ab3b7e45&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=4cd9495dedfb061f903c789f5ac3fad3&focBudTerms=&focBudSel=all" \l "n124" \t "_self)** Consequently, an employee could say, "If you forbid everything I will listen to nothing." [125](http://www.lexis.com/research/retrieve?_m=7ce7b78213d23bccaad5e1b9ab3b7e45&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=4cd9495dedfb061f903c789f5ac3fad3&focBudTerms=&focBudSel=all" \l "n125" \t "_self) Recent empirical findings back the notion of illegitimacy spillover in Nadler's work. [126](http://www.lexis.com/research/retrieve?_m=7ce7b78213d23bccaad5e1b9ab3b7e45&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=4cd9495dedfb061f903c789f5ac3fad3&focBudTerms=&focBudSel=all" \l "n126" \t "_self) Using experimental techniques, she demonstrates that people exposed to unjust laws were more likely to report a decrease in their general intention to obey laws unrelated to the unjust law they were told about. [127](http://www.lexis.com/research/retrieve?_m=7ce7b78213d23bccaad5e1b9ab3b7e45&docnum=4&_fmtstr=FULL&_startdoc=1&wchp=dGLzVlz-zSkAz&_md5=4cd9495dedfb061f903c789f5ac3fad3&focBudTerms=&focBudSel=all" \l "n127" \t "_self)

### Add-onn

#### Soft power not key to heg / coop inev

Joffe 9**—**Senior Fellow of Stanford's Freeman-Spogli Institute for International Studies. Fellow in International Relations at the Hoover Institutionand. Associate of the Olin Institute for Strategic Studies at Harvard University (Josef, The Default Power: The False Prophecy of America's Decline, Foreign Affairs Sep/Oct 2009. Vol. 88, Iss. 5; pg. 21, 15 pgs)

A PRINCE AND HIS KINGDOM THE UNITED STATES was far from universally loved under President George W. Bush. Many foreigners saw it as taking advantage of the "unipolar moment" by going to war twice and defying a slew of international agreements and institutions, from the Kyoto Protocol to the International Criminal Court. The United States' autonomy, ran the message of Gulliver Unbound, was not going to be curbed or controlled by the world at large. And yet, for all the anti-Americanism that has coursed through western Europe, the Islamic world, and Latin America in recent years, the United States has remained the world's dominant power. When it adopted a hands-off policy toward the Arab-Israeli conflict in the early years of the Bush administration, no other state could fill the vacuum. And when it decided to reengage in the peace process in Annapolis in 2007, everybody showed up; no other government could have mustered that much convening power. Nor could any other nation have harnessed the global coalition that has been fighting the Taliban in Afghanistan. The six-party talks with North Korea were orchestrated by the United States; on the other hand, the three-party talks with Iran - led by France, Germany, and the United Kingdom could not put a stop to Iran's nuclear ambitions. The moral is that either the United States takes care of the heavy lifting or nobody does. And this is the concise definition of a default power. Nor can the rest truly constrain U.S. might. France, Germany, and Russia tried to do so in the run-up to the second Iraq war, in 2003, but ultimately could not stop the U.S. behemoth. In a grudging homage to U.S. power, Germany Chancellor Gerhard Schröder helped the war effort by granting the United States basing and overflight rights and agreeing to guard U.S. installations in the country to free up U. S . forces for duty in Iraq. More recently, in 2008, it was the United Kingdom and the United States- rather than the G-20- that took the lead in battling the global financial crisis, massive stimulus measures and injections of liquidity. The speed with which Barack Obama captured hearts and minds around the world alter his election in November 2008 represented a rare moment in the annals of the great powers a moment of relief at having a U.S. president who made it possible for the world to love his country again. Of course, the United States will not get its way always or every- where, nor will worldwide affection for Obama translate into a surfeit of U.S. influence. The default power is still an Überpower, and other states will seek to balance against it. China and Russia, for example, protect Iran and North Korea from painful un sanctions. Meanwhile, China and the United States hold each other hostage in a state of M-MAD, or "monetary mutual assured destruction." China cannot unload hundreds of billions of dollars' worth of U.S. Treasury bills without destroying the dollar and its trade surplus, which created its hoard in the first place. Nor can Washington force Beijing to give up on its predatory trade and exchange-rate policies without suffering monetary retaliation. But financial deterrence does not a new default power make. The economic storm that hit the United States in 2008 has triggered a tsunami in China, which has cut its growth rate in half - although six percent is still a lot better than the negative growth suffered by much of the West. And like the world's other aspiring powers, China lacks the legitimacy that transforms muscle into leadership. The Obama administration grasps this enduring essence of world politics - it adds kindness to clout, amicability to hard assets. Take Obama's overtures to the Muslim world, outlined first in his inaugural address and then more fully in his speech in Cairo in June. Prince Obama needs no advice from Machiavelli, who famously counseled that it is best to be both loved and feared. By flattering the Islamic world and widening the distance between Israel and the United States, the Obama administration hopes to improve its chances of forging a Sunni Arab alliance against Iran. Forgoing the use of force against Iran's and North Korea's nuclear armaments may be more than just an act of prudence, especially when the costs of war say, retaliation by Iran against tanker traffic in the Persian Gulf or a North Korean attack on South Korea - loom larger than the risks of proliferation down the road. What cannot be averted might just as well be turned into a diplomatic advantage. Tehran's and Pyongyang's unchecked nuclear ambitions may well facilitate U. S. -led coalition building against them. A default power always gains stature when the demand for its services soars. The default power does what others cannot or will not do. It underwrites Europe's security against a resurgent Russia - which is why U.S. troops remain welcome there even 20 years after Moscow's capitulation in the Cold War. It helps the Europeans take care of local malefactors, such as former Serbian President Slobodan Milosevic. It chastises whoever reaches for mastery over the Middle East, thus the United States helped Iraq in its war against Iran between 1980 and 1988 and then defanged it in 1991 and again in 2003. Only the default power has the power to harness a coalition against Iran, the new pretender in the Middle East. It guarantees the survival of Israel, but at the same time, the Palestinians and the Saudis look to the United States for leverage against Jerusalem. Is it possible to imagine China, Europe, or Russia as a more persuasive mediator? No, because only the United States can insure both the Arabs and the Israelis against the consequences of misplaced credulity. In the new Great Game, the United States offers itself as a silent partner against Russian attempts to restore sway over its former satrapies, and it leads the renewed battle against the Taliban in Afghanistan and Pakistan, signaling ever so softly that it will sequester Pakistan's nuclear weapons if chaos widens into collapse. At the same time, only the United States can rein in both India and Pakistan and protect each against the other. The United States has drawn India into its orbit, and in doing so it has added to the informal balance against China. Dreams of Asia Rising must pay respect to a strategic reality centered on the United States as the underwriter of regional security. Whether Vietnam or Japan, South Korea or Australia - all of Asia counts on the United States to keep China on its best behavior and Japan from going nuclear.

#### Soft power resilient

Mead 7—Council of Foreign Relations Senior Fellow. Prof of foreign policy, Bard. BA from Yale. (Walter Russell, 10/22, Failing Upward, The New Republic, http://www.tnr.com/story\_print.html?id=bc641b19-51a1-4747-9af4-51e0ba57d500)

The Bush administration has certainly put America's resilience to the test. Rarely has the national and international consensus about the shortcomings of U. S. foreign policy been so wide or so bitter. Rarely has a U.S. administration promised so much and achieved so little--as if Babe Ruth had pointed to the centerfield bleachers and then struck out. With poll after poll showing the United States plumbing the depths of unpopularity in key parts of the world; with U.S. pressure for elections on the West Bank and Gaza resulting in a victory for Hamas and a Palestinian civil war; with WMD undiscovered in Iraq, Iran on a roll, and Osama bin Laden on the loose, few would use the words "Mission Accomplished" to describe the Bush administration's foreign policy. Yet we will survive this presidency and likely prosper afterward. True, Bush's successor will inherit an ugly war in the Middle East, and American credibility and popularity have been damaged. But America's alliances remain strong, and the tides of history continue to flow our way. God does indeed have a special providence for the United States of America--even when it is led by George W. Bush.

# 1NR

### Impact shit

#### China disad---taiwan crisis is inevitable, and China will have overwhelming incentives to abrogate NFU to hold off the US---only primacy lets us take out their weapons with minimal casualties

China will attack U.S. cities---causes massive firestorms

Kristensen et al 6 – Hans Kristensen, Director of the Nuclear Information Project at the Federation of American Scientists, Robert S. Norris, senior research associate with the NRDC nuclear program and director of the Nuclear Weapons Databook project, and Matthew G. McKinzie, scientific consultant to the Nuclear Program at the Natural Resources Defense Council, November 2006, “Chinese Nuclear Forces and U.S. Nuclear War Planning,” online: http://www.fas.org/nuke/guide/china/Book2006.pdf

China’s main nuclear deterrent against the United States has been described as a retaliatory minimum deterrent against countervalue targets with forces on very low or no alert. “Retaliatory” and “countervalue” refer to the fact that the Chinese nuclear doctrine is one of no-first-use, and consistent with that stated policy, the Chinese nuclear weapons capable of attacking the continental United States are not of a quantity or an accuracy that could threaten U.S. nuclear forces, but instead would be capable of targeting population centers. We calculated the effects of a Chinese strike against U.S. cities with warheads from the 20 DF-5A ICBMs that were hypothetical targets in the scenario discussed above. We did this analysis to better quantify China’s current deterrent against the U.S. homeland and examine different potential future Chinese nuclear force postures against the United States. We also explored parameters of the calculation, such as missile range, warhead yield, and warhead height-of-burst and targeting.

In Chapter 2 we quoted a range for China’s DF-5A ICBM of at least 8,000 miles (13,000 km). Assuming a circumpolar trajectory for the missile, Figure 92 illustrates which areas of the United States are within range assuming the DF-5A is launched from silos near the city of Luoning in China’s Henan Province. A range of at least 6.835 miles (11,000 km) is required to put cities at risk on the West Coast and in the north-central region of the United States. A range of 7,456 miles (12,000 km) puts cities on the East Coast at risk, including New York City and Washington, D.C. If the range of the DF-5A exceeds 8,000 miles (13,000 km) then all of the continental United States could be targeted. Note that a near-polar intercontinental ballistic missile trajectory toward the United States from Luoning is the shortest distance but would necessitate an overflight of Russia and possibly activate Russia’s early warning system. Missile trajectories from China to the continental United States which do not overfly Russia would require a range exceeding 10,560 miles (17,000 km).

The yield of the warhead mounted on the DF-5A is believed to be from 3 Mt to 5 Mt – a substantially higher-yield warhead than the U.S. W88 or W76. In HPAC, the effects of a nuclear explosion in the 3 Mt to 5 Mt range on a city are estimated from an extrapolation of the effects seen at Hiroshima and Nagasaki, but the damage due to fire storms from such a high-yield nuclear explosion may be more pervasive.497

It is unknown whether the Chinese warheads on the DF-5A can be fuzed to detonate as a ground burst. The U.S. nuclear weapons dropped on Hiroshima and Nagasaki at the end of World War II were fuzed to detonate at an altitude of approximately 1,640 feet (500 meters) to maximize the area exposed to the blast wave produced in the nuclear explosion. The DOD defines the “optimum height of burst” as: “For nuclear weapons and for a particular target (or area), the height at which it is estimated a weapon of a specified energy yield will produce a certain desired effect over the maximum possible area.” 498 In the case of the “Fat Man” and “Little Boy” nuclear weapons dropped on Japan, a height of burst of 1,640 feet (500 meters) maximized the area exposed to 10 pounds-per-square inch (psi) for nuclear explosive yields of about 15 kilotons, and the radius of a circle exposed to 10 psi or greater from these nuclear explosion is calculated to be about 0.62 miles (1 km). In the case of a 4 Mt weapon, the optimum height of burst to maximize an area exposed to 10 psi or greater is 9,840 feet (3,000 meters), and the radius to which 10 psi extends is 3.9 miles (6.2 km). Table 20 contrasts the effects of a Hiroshima nuclear bomb with that of the 4 Mt warhead on the Chinese DF-5A.

The calculated effects of a single 4 Mt nuclear airburst over a major U.S. city are staggering. Figure 93 illustrates the combined nuclear explosive effects of blast, thermal radiation and initial radiation in the form of an overall probability of being killed or injured while inside a building structure at the time of the explosion in New York City (top) or Los Angeles (bottom). An inner zone of near complete destruction (more than 90 percent casualties) would extend 16.2 miles (10 km) from ground zero, and blast and fire damage would extend as far as 21.8 miles (35 km) or more from the ground zero. A blast wave as strong or stronger than that directly under the Hiroshima explosion (35 psi) would cross the island of Manhattan. A firestorm could potentially engulf all of New York City or Los Angeles.

Using HPAC, we calculated the combined effects of 4 Mt nuclear detonations on 20 populous U.S. cities, including Washington, D.C. From 15.8 million to 26.1 million fatalities and 40.6 million to 41.3 million casualties would result. We found that varying the yield of the Chinese DF-5A nuclear weapon from 3 Mt to 5 Mt only changed the predicted casualties by 10 percent – any multi-megaton weapon threatens a large urban area. The results also were relatively insensitive to varying the commonly-estimated accuracy (Circular Error Probable, or CEP) of these weapons.

Figure 94 plots the numbers of casualties and fatalities from a Chinese strike as a function of the number of U.S. cities attacked. Using HPAC, we found that the average number fatalities per attacking weapon is about 800,000, and the average number of casualties per weapon is about two million for these nuclear airbursts. It is evident from this analysis that the threat of even a few weapons reaching the United States should serve as a robust deterrent. U.S. war planners would have to have complete confidence in the success of both a counterforce strike against the DF-5A launchers and the capabilities of a National Missile Defense (NMD) system, otherwise a huge toll would be exacted on the United States.

The U.S. would strike back against Chinese cities---silos would be empty

ISANW 99 – Indian Scientists Against Nuclear Weapons, 1999, “Facts About Nuclear Weapons,” online: http://www.nucleardarkness.org/nuclear/deterencedoctrineandstrategy/

If a nation is subjected to a nuclear attack, it is presumed that the initial targets would be its own nuclear weapons facilities. A second strike capability means that the nation should have enough weapons and have them deployed in a manner that enough of them survive the initial attack and can be used for a retaliatory attack.

Thus the weapons that make up the second strike capability could be missiles that are launched from mobile launchers that are constantly on the move. Or they could be missiles launched from nuclear submarines which can stay submerged for long periods of time and are therefore difficult to locate and destroy.

The targets of a second strike attack would not be the empty silos of the attacking side, rather they would be the cities and industrial infrastructure where most of the enemy population resides. Thus a second-strike attack, even if were comprised of a limited number of surviving missiles, would cause enormous damage and destruction. As mentioned before, the environmental consequences of such a war would likely prove fatal to most people on Earth.

Only city attacks get to nuclear winter---other strikes don’t

Robock 9 – Dr. Alan Robock, professor of climatology in the Department of Environmental Sciences at Rutgers University and the associate director of its Center for Environmental Prediction, January 6, 2009, “Nuclear Winter,” online: http://www.eoearth.org/article/Nuclear\_winter

A nuclear explosion is like bringing a piece of the Sun to the Earth's surface for a fraction of a second. Like a giant match, it causes cities and industrial areas to burn. Megacities have developed in India and Pakistan and other developing countries, providing tremendous amounts of fuel for potential fires. The direct effects of the nuclear weapons, blast, radioactivity, fires, and extensive pollution, would kill millions of people, but only those near the targets. However, the fires would have another effect. The massive amounts of dark smoke from the fires would be lofted into the upper troposphere, 10-15 kilometers (6-9 miles) above the Earth's surface, and then absorption of sunlight would further heat the smoke, lifting it into the stratosphere, a layer where the smoke would persist for years, with no rain to wash it out.

The climatic effects of smoke from fires started by nuclear war depend on the amount of smoke. Our new calculations show that for 50 nuclear weapons dropped on two countries, on the targets that would produce the maximum amount of smoke, about 5 megatons (Tg) of black smoke would be produced, accounting for the amount emitted from the fires and the amount immediately washed out in rain. As the smoke is lofted into the stratosphere, it would be transported around the world by the prevailing winds. We also did calculations for two scenarios of war between the two superpowers who still maintain large nuclear arsenals, the United States and Russia. In one scenario, 50 Tg of black smoke would be produced and in another, 150 Tg of black smoke would be produced. How many nuclear weapons would be required to produce this much smoke? It depends on the targets, but there are enough weapons in the current arsenals to produce either amount. In fact, there are only so many targets. Once they are all hit by weapons, additional weapons would not produce much more smoke at all. Even after the current nuclear weapons reduction treaty between these superpowers is played out in 2012, with each having about 2,000 weapons, 150 Tg of smoke could still be produced.

### Uq

Their uniqueness args don’t cut it---Obama’s disarm agenda doesn’t yet include any of the policy changes like declaratory policy, NFU, dealerting, ending counterforce that would erode nuclear primacy---adversaries still have to make strategic calculations based on U.S. primacyRT 9 – Russia Today, April 15, 2009, “Nuclear deterrent needs reform – US think tank,” online: http://russiatoday.com/Politics/2009-04-15/Nuclear\_deterrent\_needs\_reform\_\_\_US\_think\_tank.html

The 64-page report, entitled "From Counterforce to Minimal Deterrence – A New Nuclear Policy on the Path Toward Eliminating Nuclear Weapons," says the US must review its policy towards the use of nuclear weapons in order to achieve its stated goal of a “nuclear-free world,” as voiced by US President Barack Obama during a speech Sunday in Prague.

“The world must stand together to prevent the spread of these weapons,” Obama told the audience. “Now is the time for a strong international response.”

The report argues that with the end of ideological competition between the US and the Soviet Union, the very role of the nuclear weapons architecture has changed. But the current nuclear doctrine, “an artifact of the Cold War,” according to the American experts, fails to come to terms with the new realities.

From serving as a counterforce during the Cold War, nuclear weapons must be transformed into a limited instrument of “minimal deterrence,” and “not be assigned any mission for which they are less than indispensable,” the experts warn.

Nuclear forces are still on high alert prepared for a strike in a matter of minutes following an order. Today, American military maintain some 2,700 warheads operationally deployed with 900 on high alert, and 2,500 more are kept in reserve. The number is unnecessarily big, since there is no threat of a total war anymore.

The concept of “minimal deterrence” includes a radical reduction in the number of nuclear weapons, leaving but 500 by 2025. In the plan, submarine-based missiles and tactical nukes would be totally scrapped, leaving only intercontinental ballistic missiles and strategic bombers on duty. These weapons are to be used only in the case that nuclear weapons are used by an enemy.

The report also advises a reset on targeting policy. Given the new realities, the prime targets for nuclear weapons should be a handful of key infrastructure facilities, like oil refineries, power plants or transportation hubs, the experts advise. Optimally, these should be located in desolate areas in order to avoid unnecessary deaths.

This revised strategy is in opposition to the current approach where cities, command centers and missile silos are considered the priority targets for a massive nuclear strike.

The report details how a nuclear attack on 12 facilities in Russia would result in casualties ranging from 67,000 to almost 2 million people, depending on the yield of the warheads used. The result, according to the report, would cripple Russia’s economy in the event of a conflict. The paper calls the numbers “sobering,” and argues that the US nuclear arsenal is “vastly more powerful then needed.”

While it is difficult to paint a nuclear-war scenario in a positive light, the report shows a marked change of nuclear thinking from the former US administration of George W. Bush, which tended to place an emphasis on the nuclear advantage.

In the March/April 2006 issue of Foreign Affairs, the US political journal, Keir A. Lieber and Daryl G. Press argue in a highly provocative article (entitled “The Rise of Nuclear Primacy”) that “for the first time in 50 years, the United States stands on the verge of attaining nuclear primacy. It will probably soon be possible for the United States to destroy the long-range nuclear arsenals of Russia or China with a first strike.”

The writers argued that “Unless Washington’s policies change or Moscow and Beijing take steps to increase the size and readiness of their forces, Russia and China – and the rest of the world – will live in the shadow of U.S. nuclear primacy for many years to come.”

Obama’s NPR won’t move away from pursuit of primacy---small changes around the margins don’t eliminate the mission of first-strikes against potential great power competitors

McDonough 9 – David S. McDonough, Doctoral Fellow at the Centre for Foreign Policy Studies at Dalhousie University, March 2009, “Tailored Deterrence: The ‘New Triad’ and the Tailoring of Nuclear Superiority,” online: http://www.canadianinternationalcouncil.org/download/resourcece/archives/strategicd~2/sd\_no8\_200

Tailored deterrence may indeed be a construct that has been retroactively applied to past policies. It also could be seen as the most recent attempt to justify the Bush administration’s nuclear revisions on the clear grounds of deterrence, as it diverts attention from high-profile and controversial remarks on the need to defeat WMD capabilities. But the deterrence that is being tailored is based on obtaining strategic counterforce and damage limitation capabilities that would be able to deny an adversary’s own deterrent. As such, it represents a very unilateral understanding of deterrence that harkens back to the myth of the “golden age” of nuclear superiority.12

This type of strategic nuclear advantage, however, interacts with different types of actors with equally diverse capabilities. Nuclear superiority against weak rogue states entails the potential for military interventions and regime change campaigns, whereby American nuclear weapons would be so credible and usable as to deny the rogue’s own deterrent capability. Tailoring nuclear weapons in this scenario is centred on enabling conventional military campaigns. On the other hand, tailoring nuclear superiority against established nuclear powers implies first-strike capabilities that would, at least hypothetically, be able to successfully disarm either Russia or China. Any such superiority could be seen as potentially useful in any future crisis situation, given the long history of attempting to leverage nuclear superiority to gain concrete political gains. Strategic instability between the United States and other established nuclear powers may not be the intention of extending and tailoring the quest of grand strategic primacy into the nuclear weapons realm, but it may in fact be the long-term trade-off.

The Bush administration may have accelerated this process, and its departure may curtail some of the more ambitious elements of this approach. But these developments have percolated in the United States for many years and will likely be difficult for the new Obama administration to reverse. The Strategic Posture Commission and the upcoming 2009 NPR may make some rhetorical or semantic changes (i.e., avoiding the use of the New Triad), but it is unlikely to alter the fundamentals of this strategic approach.

Bombers and ICBMs are irrelevant to primacy over China---we’d only use Trident SLBMs in a first-strike

Kristensen et al 6 – Hans Kristensen, Director of the Nuclear Information Project at the Federation of American Scientists, Robert S. Norris, senior research associate with the NRDC nuclear program and director of the Nuclear Weapons Databook project, and Matthew G. McKinzie, scientific consultant to the Nuclear Program at the Natural Resources Defense Council, November 2006, “Chinese Nuclear Forces and U.S. Nuclear War Planning,” online: http://www.fas.org/nuke/guide/china/Book2006.pdf

In the first hypothetical nuclear attack scenario, U.S. ballistic missile submarines stationed in the Pacific Ocean fire Trident II D5 submarine launched ballistic missiles (SLBMs) at Chinese DF-5A missile silos. As discussed above the U.S. Trident force has evolved to become the main element in U.S. nuclear war plans against China. U.S. long-range bombers based in the Pacific region or flown from the United States would require a relatively long time to reach their targets and would have to penetrate China’s airspace. The U.S. ICBM force, based in silos in the upper Midwest, would have to over-fly Russia and risk triggering the remnants of the Soviet early-warning system, or worse. Since the end of the Cold War, U.S. nuclear forces have been shifted to the Pacific in the form of additional Trident SSBNs based at the Submarine Base at Bangor, Washington. For these reasons we developed a scenario involving a Trident strike against the DF-5A, the sole Chinese nuclear weapon system capable of hitting the continental United States (CONUS) and China’s primary deterrent against the United States.

U.S. Trident SSBNs based at the Naval Submarine Base Bangor in Washington deterrent patrols in the Pacific Ocean, and cover targets in China and in the Russian Siberian and Far East regions. The missiles on two submarines on Hard Alert are within range of their targets and ready for launch with short notice (on 15-minute launch readiness). Each submarine is loaded with 24 missiles with up to six warheads each for a total of as many as 288 warheads on patrol at a given time. Additional deployed submarines could be placed on Hard Alert within relatively short time.

### Not k2 deter

Conventional inferiority combined with high stakes in Taiwan make backsliding extremely likely

Zhang 8 - Baohui Zhang, Associate Professor of Political Science, Lingnan University, Hong Kong, March 2008, “The Taiwan Strait and the Future of China's No-First-Use Nuclear Policy,” Comparative Strategy, Vol. 27, No. 2, p. 164-182

This article examines whether China may modify its no-first-use policy in the future. It first discusses the origins of the no-first-use doctrine and its perceived weakness in defending China's core national interests. The greatest problem, according to its critics, is that the doctrine cannot deter a conventional war against China by the United States. Specifically, China vast conventional disadvantage against the United States will severely limit its ability to deter American military intervention in the Taiwan Strait.

The article will next explore whether it is likely China would modify the no-first-use policy because of military considerations. The central importance of Taiwan in Chinese strategic planning, China's vast conventional weakness compared to the United States, and its recent breakthroughs in nuclear capability all generate strong incentives for China to move toward a more robust deterrence strategy. However, the article suggests that, for a variety of political and strategic reasons, China is unlikely to renounce the no-first-use policy. Nonetheless, the possibility of China threatening first use of nuclear weapons should not be ruled out when a real crisis in the Taiwan Strait makes U.S military intervention seemingly unavoidable. The reason is that China must do everything to prevent a defeat by the United States and subsequent independence of Taiwan. Both of these outcomes jeopardize the most essential national interests of China. Thus, when a war in the Taiwan Strait looks imminent, China will be under tremendous pressure to rely on nuclear deterrence to prevent these worst case scenarios, which in fact could trigger a collapse of the regime.

### Lieber and press wrong

Even fast DF-31A and Jin-class deployment doesn’t give China a secure deterrent---they’re not developing any of the defensive or support capabilities necessary to ensure survivability

Brooks 9 – Ambassador Linton Brooks, independent national security consultant and former Director of the National Nuclear Security Administration, September 2009, “The Sino-American Nuclear Balance: Its Future and Implications,” in China’s Arrival: A Strategic Framework for a Global Relationship, ed. Abraham Denmark and Nirav Patel

Two recent developments have the potential to significantly improve China’s strategic deterrent. First, the deployment of the DF-31 and DF-31A solid-fueled road-mobile ICBM is a major improvement to the survivability of China’s strategic forces. Second, in addition to the operational forces described above, China has launched a more modern ballistic missile submarine, the Type-094 or Jinin-class, each capable of carrying 12 new JL-2 missiles. The Pentagon projects that up to five of these will be deployed, allowing China to maintain two ships continuously on patrol should it choose. 4 Doing so will give China a significant sea-based deterrent for the first time, presenting China’s leaders with new command and control issues and doctrinal options. While these numbers remain small, they represent rapid growth in both numbers and capability. The magnitude and speed of the growth can be seen by comparing the numbers of medium range ballistic missiles and launchers, especially those of the CSS-5, in the last several Pentagon annual reports on China.

It is reasonable to expect similar rapid growth in the ICBM force as additional DF-31 and DF-31A road-mobile ICBMs continue to be deployed. More impressive than the quantitative improvements, significant qualitative modernization has resulted in a strategic force with greater mobility and survivability. China is conducting research on ballistic missile defense countermeasures, including maneuvering re-entry vehicles, decoys, chaff, jamming, and thermal shielding. 6 Finally, although China does not admit to possessing tactical nuclear weapons and the Pentagon reports do not mention them, one U.S. government advisory body asserts in a 2008 draft report that China is developing and deploying “tactical nuclear arms, encompassing enhanced radiation weapons, nuclear artillery, and anti-ship weapons.” 7

In assessing the logic of China’s modernization, it is important to pay equal attention to what they are not doing. The Chinese force structure appears to place essentially no value on active damage limitation. There is no strategic defense, no early warning system (and thus no ability to launch on warning), limited launch readiness, and no counterforce capabilities against the United States. China does, however, maintain “a very ambitious civil defense program aimed at protecting national leadership and key capabilities in underground facilities.” 8

**US has nuclear primacy over China – improved counterforce and capabilities gap**

Keir A. **Lieber**, Assistant Professor of Political Science at the University of Notre Dame, and Daryl G. Press is Associate Professor of Government at Dartmouth, **2007,** Superiority Complex, http://www.theatlantic.com/doc/print/200707/china-nukes

In the 1990s, with the Cold War receding, nuclear weapons appeared to be relics. Russian and Chinese leaders apparently thought so. Russia allowed its arsenal to decline precipitously, and China showed little interest in modernizing its nuclear weapons. The small strategic force that China built and deployed in the 1970s and early 1980s is essentially the same one it has today.

But meanwhile, the United States steadily improved its “counterforce” capabilities—those nuclear weapons most effective at targeting an enemy’s nuclear arsenal. Even as it reduced the number of weapons in its nuclear arsenal, the U.S. made its remaining weapons more lethal and accurate. The result today is a global nuclear imbalance unseen in 50 years. And nowhere is U.S. nuclear primacy clearer—or potentially more important—than in the Sino-U.S. relationship.

China has approximately 80 operationally deployed nuclear warheads, but only a few of them—those assigned to single-warhead DF-5 intercontinental ballistic missiles (ICBMs)—can reach the continental United States. (There is no definitive, unclassified count of China’s DF-5 ICBMs, but official U.S. statements have put the number at 18.) China has neither modern nuclear ballistic-missile submarines nor long-range nuclear bombers. Moreover, China’s ICBMs can’t be quickly launched; the warheads are stored separately, and the missiles are kept unfueled. (Unlike the solid fuel used in U.S. missiles, the liquid fuel used to propel Chinese ICBMs is highly corrosive.) Finally, China lacks an advanced early-warning system that would give Beijing reliable notice of an incoming attack.

This small arsenal fulfilled China’s strategic requirements in the 20th century, but it is now obsolete. The current Chinese force was designed for a different era: when China was a poor nation with a limited role on the world stage, and when U.S. and Soviet missiles were too inaccurate to carry out a disarming strike—even against Beijing’s small force. But China’s international presence is expanding, and America’s counterforce capabilities have soared. Moreover, one of the biggest constraints that would deter American leaders from contemplating a disarming strike is fading away. In the past, a U.S. preemptive attack would have generated horrific civilian casualties, but that may soon cease to be the case.

How the United States achieved nuclear dominance after the Soviet Union collapsed is an open secret. The Navy refitted its entire fleet of nuclear-armed submarines with new, highly accurate Trident II missiles and replaced many of the 100-kiloton W76 warheads on these missiles with 455-kiloton W88 warheads. (One kiloton is the explosive energy released by 1,000 tons of TNT.) The result is an unprecedented combination of accuracy and destructive power, essential for an attack on hardened silos. The Navy also recently tested a GPS guidance system that would dramatically boost the accuracy, and thus lethality, of the submarine missile arsenal.

For its part, the Air Force has improved the guidance systems of land-based Minuteman III missiles. Many of these missiles are also being “retipped” with more-powerful warheads—and more-accurate reentry vehicles—taken from recently retired MX (“Peacekeeper”) missiles. The Air Force has also upgraded the avionics on B-2 bombers. These nuclear-mission-capable bombers are already “stealthy,” but the upgrades improve the planes’ ability to penetrate enemy airspace secretly, by flying very low and using the terrain to shield them from radar.