# fmps wave 2 -- uniqueness counterplans

# cp – leahy law

## leahy law cp

### 1nc – leahy vetting uq cp

#### The United States Supreme Court should prohibit [the plan] on the grounds that cooperation with the North Atlantic Treaty Organization violates Leahy Law restrictions on cooperation due to probable cause of human rights violations by Turkey. [do the plan with (every other country)].

#### Counterplan closes loopholes in security cooperation HR restrictions

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While U.S. laws technically prohibit providing security assistance to units found to violate human rights—the Leahy laws—the provisions are riddled with loopholes and are too weak to effectively prioritize human rights in U.S. security assistance.71 Offices and agencies responsible for elevating human rights in U.S. foreign policy, such as the State Department’s Bureau of Democracy, Human Rights, and Labor, are too often cut out of the decision-making process for security assistance programs—especially those run out of the Pentagon. At the same time, the Pentagon maintains its own security assistance accounts, such as Section 127e, that are not required to conduct human rights vetting and operate with little transparency—furthering opportunities to militarize foreign policy.72 And often, such as in the case of Egypt, security assistance is accompanied by paltry amounts of democracy, human rights, and governance funding (DRG), or certifications on human rights are waived entirely, to make providing arms more palatable.73 These small DRG funds or certification stops do little to change the underlying political challenges or are sometimes even hampered by the regime the United States is funding.

#### The “credible information” standard of proof to substantiate violations is vague, inconsistent, AND subjective, causing overbreadth or non-enforcement – BOTH of which are detrimental to the effectiveness of Leahy Law broadly – shifting to probable cause is key

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III. Issue 1: Credibly Informed - Clarifying the Standard of Proof in Leahy Cases

As a Leahy practitioner working in a U.S. embassy or military headquarters, you are tasked with deciding whether a recent allegation of a gross violation of human rights is sufficient to Leahy-bar the security force unit that supposedly committed it. The at-issue unit is critically important to both U.S. and the host-nation's defense strategy and relies heavily on U.S. security assistance, funding, and support. The allegation, made by a well-respected non-governmental organization ("NGO"), consists of the vague statements of a handful of undisclosed sources. You now have to decide; does this meet the Leahy standard? Should the U.S. cease all support? The implications of this decision are huge, but as you look at your existing guidance and Standard Operating Procedures (SOPs), you find yourself in an incredibly difficult position; how do you make the call?

Currently, the standard of proof necessary to substantiate a Leahy violation is "credible information" that a gross violation of human rights occurred. However, this wasn't always the case. The current standard was created in 2011. Before that, Leahy laws used the standard created in the early counter-narcotic days which required "credible evidence" instead. The change from "evidence" to "information" was made to address confusion in the practitioner community. Practitioners were reading the term "evidence" and assuming that it invoked the types of evidentiary protections afforded in a court proceeding. This was never the intent of Leahy's drafters. In a 1999 conference report for the Omnibus Consolidated Emergency Supplemental, the conferees clarified that "by "credible evidence' [we] do not intend that the evidence must be admissible in a court of law." 73The term "evidence" was never intended to be used in the same sense as the Federal Rules of Evidence, but that intent was lost on many practitioners.

Practitioners continued to assume evidentiary considerations existed in the law. Perhaps due to the appearance of evidence law in Leahy determinations, Congress acted to cure the confusion. In 2012 the term "evidence" was removed and replaced with the modern standard: "credible information." The rationale for this change was explicitly stated in the conference report for the Consolidated Appropriations Act of 2012: "[The Act] substituted "credible information' for "credible evidence' in order to clarify that the information need not be admissible in a court of law to be credible and to conform to similar wording in a comparable provision 74in the Defense Appropriations Act." 75

A. What is the Standard?

With the 2012 amendment, the problem of deciphering "evidence" was solved. It is likely that those drafting the amendment believed there would no longer be any problem in deciphering the standard of proof in Leahy cases. "Credible information," the new standard, would make it easier for practitioners to make more uniform, predictable determinations. Yet despite Congress's good intentions, there remained a glaring issue, no one has any idea what "credible information" actually means.

In a 2017 RAND Corporation study, a number of interviews were conducted with DoD and DoS Leahy practitioners to acquire a more precise picture of how Leahy functions in the field. 76One of the concerns documented in the report was that many of the interviewees were unsure how to determine the meaning of "credible information." 77There is no official Department of Defense definition for the term in law or in any supplemental guidance that has been released. 78The DoS has recently released guidance which includes a definition of the term, 79but practitioners continually express confusion and the DoD has expressly stated that it will not use the same definition provided by DoS. 80The RAND study found that out of 16 DoS Leahy vetting Standard Operating Procedures ("SOPs") they collected, only one included a definition. 81One interviewee requested clarification from the Department of State headquarters, and was told it was up to the post to decide the meaning. 82Interviewees reported significant differences between their interpretation of the standard, and the interpretation used at the DoS headquarters. 83

The Department of Defense Inspector General ("DODIG"), found the same thing; there is no formal standard. In a November 2017 report, 84DODIG interviewed one official, who stated, "the credibility of information is determined on a case-by-case basis and the knowledge of doing so is gained through doing the job and having experience." Another official called the standard "very subjective." According to the DODIG report, the Office of the Under Secretary of Defense for Policy ("OUSD(P)"), the office responsible for managing the DoD's Leahy portfolio, was "unable to articulate the methodology used...to determine whether the information was credible. They simply stated that [representatives] always reach a consensus and that it was a judgement call decided on a case-by-case basis." 85DODIG concluded that "there is no record of the reasoning behind any credible information determinations, and there is no specific guidance or criteria for making these decisions... As a result, there is a risk of inconsistency, and the OUSD(P)'s process could be deficient in identifying credible information to comply with DoD Leahy Law." 86

In addition to issues defining the standard, there is also great concern with the reliability of the information that is actually used. 87The reliability of source information was an issue that came up multiple times in the RAND study. 88One DoS official noted that the evidentiary threshold for credible information was relatively low but that information from questionable sources was weighed and valued differently at different stages of the vetting process. 89One interviewee described a "hierarchy of information sources" wherein he weighed "official reporting as "reliable,' other media as "mixed,' and social media as "very fuzzy 90.'" 91The RAND study concluded the discussion on the topic by stating: "stakeholders perceived final determinations on information credibility to be opaque and inconsistent. This was frustrating not only for DoD officials implementing assistance programs but also for partners themselves. As one [Combatant Command] official noted: "Failure to apply appropriate rigor to adjudication prior to the suspension of assistance may negatively impact bilateral relationships and partner nation willingness to investigate and address legitimate allegations." 92

Clearly, the standard used in Leahy cases, "credible information," is vague, often misunderstood, and subject to disparate treatment. This is an obvious impediment to practitioner confidence and uniform application of a standard across the Federal Government, but the problem extends even further.

B. Effects of Poor Interpretation

As detailed above, there are abundant difficulties in assessing what information should be relied upon in making credibility determinations, and how to properly weigh them. Without clarity, there is a high probability that determinations can be overly narrow or overly broad and ultimately affect units that have done nothing wrong. The study conducted by the RAND Corporation uncovered a number of cautionary tales that clearly illustrate this concern. 93In one situation, a well-known human rights advocacy organization made allegations that a partner nation security force had committed gross violations of human rights. 94The local Leahy-vetting officials at the embassy were able to work extensively with the partner nation and other NGOs in the area to provide enough background information to refute the allegations; but without extensive efforts by the embassy staff, that unit could have been barred from U.S. assistance based on false information. 95It is easy to see how this can be a problem for U.S. bilateral relations; just one false report from an NGO and the U.S. completely shuts down security assistance. Guilty until proven innocent.

It can also be difficult to explain the Leahy process to partner nations. "Too often, partners see Leahy merely as a bureaucratic impediment and have little understanding of their role in creating a smooth process." 96This is exasperated by the relatively amorphous nature of the "credible information" standard. To many partner nations, this can simply look like a convoluted way of disguising capricious intent on the part of the United States. A disgruntled partner nation may believe: "The U.S. doesn't want to support us so they came up with this nonsense to justify their actions."

C. Difficulties of Interpretation

The previous section detailed an example of false information being relied upon in Leahy vetting. This is a problem that has been documented in multiple countries and with multiple partner nations. 97It is not, however, the only example of over-breath in application. There have also been allegations that some of the "derogatory information" relied upon in Leahy-vetting credibility determinations had nothing to do with human rights abuses. The RAND Corporation study found incidents of units being Leahy-barred due to an individual having a driving under the influence charge. 98These are all indicative of a larger issue, the "credible information" standard is hard to apply to real cases.

One example of this difficulty was experienced by the author during a recent deployment to Afghanistan. In April of 2017, The United Nations Assistance Mission in Afghanistan ("UNAMA") released a report on the treatment of conflict-related detainees. 99The report consists of interviews conducted with 469 conflict-related detainees in 62 detention facilities in 29 provinces across Afghanistan. 100It concluded that 39 percent of detainees gave "credible and reliable accounts of having experienced torture or other forms of inhuman or degrading treatment whilst in the custody of [the Afghan National Defense and Security Forces (ANDSF)]." 101Clearly, this is unacceptable, and if true, it constitutes the precise type of human rights abuses that Leahy aims to address. This would have been a perfect time to invoke Leahy if not for a single serious problem, the report didn't provide any information about the actual incidents. In reading the report, there are broad references to a number of torture-related incidents taking place by organizations in certain areas, 102but the particulars of specific cases were never released.

This creates a frustrating Leahy-vetting issue: Did these reports constitute "credible information" of gross violations of human rights committed by the units in these areas? Potentially. There was enough information to identify the area and organization that was responsible, but there was no information about the specific incidents of torture. In trusting the highly-respected United Nations agency, the U.S. could make a credibility determination on the word of the UNAMA report alone, but there would still be an overbreadth problem. If only one police station, military unit, or other organization was at fault, it would be unnecessarily damaging to the Afghan National Security and U.S.-Afghan relations to Leahy-bar entire swaths of units based on the report. And there remained the issue of whether these incidents, if examined individually by U.S. personnel, would meet the Leahy standard. It is no wonder then, that the DoD and DoS came to opposite conclusions in this case. The DoS chose to believe UNAMA and find the allegations credible while the DoD stated that "in order to consider that information credible, it would need a corroborating source or additional evidence from UNAMA, beyond the statement in its report." 103

This issue is compounded when incidents receive national attention. In July 2017, an article was released in The Washington Post entitled, "Afghan soldiers are using boys as sex slaves, and the U.S. is looking the other way." 104The article details the author's experience with an unnamed Afghan police commander showing off his prized Bacha Bazi boy. Bacha Bazi is a terrible practice that exists in some parts of Afghanistan involving wealthy men "acquiring" dancing slave boys and forcing them to dance for their guests, and occasionally perform sexual favors. 105The practice has been condemned by the United Nations 106and is also clearly the type of behavior that should invoke Leahy. The Washington Post article criticizes the U.S. for not doing enough to stop the practice and even invokes the Leahy Law by name: "[ignoring] ~~turning a blind eye to~~ crimes such as Bacha Bazi amounts to a serious contravention of America's Leahy amendment, which bans U.S. assistance or training to foreign military units that fail to honor basic human rights." 107The article, which garnered hundreds of comments and thousands of shares on social media, presented difficulties for Leahy practitioners: despite the overwhelming pressure to respond to the incident detailed in the article, how do you address it without more specific information? And, if you don't invoke Leahy, what ground can you stand on when responding to the public outcry?

Without a clearly defined standard of proof, or review, it is difficult to provide a clear answer about the "correct" actions in any of these cases. The U.S. risks damaging relationships and tainting innocent units if it applies the standard too broadly, and risks failing the "front page test" in the Washington Post for not applying the standard strictly enough. Further, in either instance, there is not a lot of legal ground to stand on in justifying the position. The practitioners cannot point to the "credible information" standard for explanation because the standard is poorly understood and too inconsistently applied. The solution, then, is to change the standard to something that can more easily be understood and applied by practitioners, and better explain decisions to the press, partner nations, and the American public. Which brings us to the first suggested change presented by this Article: change "credible information" to "probable cause."

#### The CP solves US HR credibility – checks foreign democratic backsliding – increasing Congressional application AND Court enforcement is key to compliance AND deterrence

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The United States often claims to be a beacon of freedom and democratic government. 263 Much of its moral legitimacy in foreign affairs is based upon its efforts to ensure freedom and democracy around the world. When its allies are found to commit human rights violations - with the acquiescence or encouragement of U.S. officials - it undermines this moral legitimacy. And, where the human rights violations are enabled even in part by U.S. funding and training, the United States limits its own access to the moral high ground.

The Leahy Law is an attempt to enhance U.S. moral legitimacy in foreign affairs. As the law stands, however, it does a poor job. Without considerable changes in the language of the legislation, the Leahy Law will still be vulnerable to executive pushback against congressional influence. Since history suggests that pushback is inevitable, it is up to Congress to create a stronger law.

One way for Congress to strengthen the Leahy Law would be to make larger segments of the recipient military ineligible for military aid. While this would deprive the Executive of some operational flexibility, it sends a much stronger message in favor of human rights. To deny a recipient country all military aid would greatly improve the deterrence effect of the Leahy Law. It would also effectively counter the problem of arms being a fungible commodity. Even if the law were to define unit at the division or corps level, it would more effectively secure compliance with human rights norms.

Congress should also eliminate the disparity in language between the Defense and Foreign Aid Appropriations Bills. Without violating the Leahy Law, the Executive can arm questionable units if Congress approves the funding under the Defense Appropriations Bill. If the law is not changed, the United States will continue to claim that it cannot arm those who have committed human rights violations while doing just that.

The Judiciary needs a defined role in enforcing the Leahy Law, and without congressional action this is impossible. Given the courts' reluctance to become involved in foreign affairs, Congress should clearly articulate the boundaries of any potential cause of action. If those who have been victimized by units receiving U.S. funding can sue in federal court, it is much less likely that units will commit human rights violations or that the Executive will fund units that could commit human rights violations.

Involving the Judiciary does raise the potential for a defendant to force either the United States or the recipient government to disclose damaging secrets in court. However, narrowing the scope of inquiry could alleviate concerns with graymail: did the United States provide funding to a unit that committed a human rights violation? Either an injunction or a verdict with damages attached would substantially disincentivize funding units that could conceivably commit human rights violations.

Lastly, foreign military financing should be more transparent. In addition to seeing which country receives funding, the public should see how and on whom that money is spent. End-use monitoring should be required and publicized. After all, if the goal of the legislation is to prevent U.S. tax dollars from funding those who commit human rights violations, U.S. taxpayers should be able to see that the objective is accomplished. And if the goal of the Leahy Law is to show the world that the United States pays more than lip services to human rights, the world should be able to see that the United States is willing to stand by that commitment.

The Leahy Law is a well-intentioned piece of legislation that could be drastically improved. Instead of being the latest casualty in the long-running dispute between the Executive and Congress in foreign policy decision-making, or a sop to the consciences of concerned citizens, it should be strengthened and enforced. It could be an important tool to enforce human rights, direct congressional influence in foreign policy, and increase U.S. moral legitimacy. And it might save a few lives.

#### Democracy solves extinction

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There is an intimate and neglected relationship between existential risk and democracy. Democracy must be central to efforts to prevent and mitigate catastrophic risks. It is also an antidote to many of the problems manifest in the TUA. Do those who study the future of humanity have good grounds to ignore the visions, desires, and values of the very people whose future they are trying to protect? Choosing which risks to take must be a democratic endeavour.

We understand democracy here in accordance with Landemore as the rule of the cognitively diverse many who are entitled to equal decision-making power and partake in a democratic procedure that includes both a deliberative element and one of preference aggregation (such as majority voting)45,115. Decision-making procedures are not either democratic or non- democratic, but instead lie on a spectrum. They can be more or less democratic, inclusive, and diverse.

We posit three reasons for why we should democratise research and decision-making in existential risk: the nature of collective decision-making about human futures, the superiority of democratic reason, and democratic fail-safe mechanisms.

Avoiding human extinction, or crafting a desirable long-term future, is a communal project. Scholars of existential risk who take an interest in the future of Homo sapiens are choosing to consider the species in its entirety. If certain views are excluded, the arguments for doing so must be compelling.

Democracy will improve our judgments in both the governance and the study of existential risks. Asking how our actions today influence the long-term future is one of the most difficult intellectual tasks to unravel, and if there is a right path, democratic procedures will have the best shot at finding it. Hong and Page116,117 demonstrate both theoretically and computationally that a diverse group of problem-solving agents will show greater accuracy than a less diverse group, even if the individual members of the diverse group were each less accurate. Accuracy gains from diversity trump gains from improving individual accuracy. Landemore115, builds on this work to advance a probabilistic argument that inclusive democracies will, in expectation, make epistemically superior choices to oligarchies or even the wise few. This is supported by promising results in inclusive, deliberative democratic experiments from around the world 118. In the long run, democracies should commit fewer mistakes than alternative decision-making procedures. If this is true, it should improve the accuracy of research efforts and decision-making. We are more likely to make accurate predictions about the mechanisms of extinction, probable futures, and risk prevention if the field invites cognitive diversity, builds flat institutional structures, and avoids conflicts of interest.

Thereare many ways to consider the interests of the many. Democratic assemblies could allow global citizens to deliberate about the futures they prefer, citizens could be surveyed, and the field of ERS itself could be diversified. At the moment, the field is, as many academic disciplines are, unrepresentative of humanity at large and variably homogenous in respect to income, class, ideology, age, ethnicity, gender, nationality, religion, and professional background. The latter issue is particularly true of existential risk, which, despite being an inherently interdisciplinary endeavour, is at the highest levels dominated by analytic moral philosophers. We need to be vigilant to what perspectives are not represented in the study of existential risk. An awareness of bias will go some way towards mitigating its negative effects. To get close to replicating the cognitive diversity found among humans, we must begin by inviting different thinkers with different values and beliefs into the field.

Democracies can limit harms. Any approach to mitigating existential threats could create response risks, and the TUA seems particularly vulnerable to this. Despite good intentions and curiosity-driven research, it could justify violence, dangerous technological developments, or drastically constrain freedom in favour of (perceived) security. If we hope to explore ideas but minimise harms, democracies can be used to moderate the measures taken in response to harmful ideas. It seems, for example, vanishingly unlikely that a diverse group of thinkers or even ordinary citizens would entertain the idea of sacrificing 1 billion living, breathing beings for an infinitesimal improvement in reaching an intergalactic techno-utopia. In contrast, the TUA could recommend this trade-off.

The democratic constraint of extreme measures may simply be a form of collective selfinterest. Voters are unlikely to tolerate global catastrophic risks (GCRs), which incur the death of a sizeable portion of the electorate, if they know they themselves could be affected. We expect that scholars who do not support sacrificing current lives in the name of abstract calculations, but would still like to explore the use of expected value theory in existential risk, will be in support of democratic fail-safe mechanisms.

Empirically, this fail-safe mechanism seems to work. Even deeply imperfect democracies, like the ones we inhabit now, often avert detrimental outcomes. Democracies prevent famines 119 (although not malnutrition)120. They make war — a significant driver of GCRs — less likely 121. The inclusion of diverse preferences in democracies, such as those achieved through women’s suffrage, further decreases the likelihood of violent conflict 122. Citizens often show a significant risk aversion in comparison to their government. While surveys are notoriously difficult to collect and interpret, existing data suggest that the public has little support for nuclear weapons use 123–125, but strong support for action against climate catastrophe 126–128. We can further show that when citizens deliberately engage with the subject at hand, their concern and readiness for action often increases 118. For example, citizen assemblies on climate change have recommended widespread policy-changes across sectors, amendments to incentive structures and laws against ecocide to reach emissions targets 129. Indeed, many lament that when it comes to genetically modified organisms and nuclear power, citizens are far too riskaverse130 . The problem is not that the public is riddled with cognitive biases that make them unconcerned about global catastrophes.

Democratic debate cannot be an afterthought. Navigating humanity through crises will involve many value-laden decisions under deep uncertainty. Democratic procedures can deal with such hard choices. Greater cognitive diversity should be represented amongst scholars of ERS. Recommendations on policies that would reduce risk should be passed through deliberative assemblies and await the approval of a wider pool of ordinary citizens, as they will be the ones who will bear this risk. A homogenous group of experts attempting to directly influence powerful decision-makers is not a fair or safe way of traversing the precipice.

### 2nc – solvency

#### Adjusting the standard to “probable cause” increases uniformity of application through legal precedent based on established case law – increasing the credibility of Leahy law AND legitimacy of the vetting process broadly

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D. Probable Cause

"Of the amounts made available to the Department of Defense, none may be used for any training, equipment, or other assistance for a unit of a foreign security force if the Secretary of Defense has probable cause to believe that the unit has committed a gross violation of human rights."

The solution proposed by this Article is to change the standard of proof in Leahy to mirror an established legal standard from elsewhere in American jurisprudence. There are two primary benefits to this approach. First, you provide the practitioner community, partner nations, and the American public, with a familiar requirement that has been analyzed and scrutinized in countless cases over the course of the last 200 years. Second, you provide practitioners with the entirety of American jurisprudence to assist them when difficult cases emerge.

The justification provided above could support the use of any established legal standard from "reasonable suspicion" through "beyond a reasonable doubt." The decision about which standard to choose is subject to debate, and ultimately comes down to a policy decision to be made by Congress. However, given what we know about the original intent of Leahy, this Article believes that "probable cause" would be best. Upon first glance, it appears to be the closest in effect to "credible information," and it is a standard that should be very familiar to legal experts and [laypeople] ~~laymen~~ alike. For the sake of ease and demonstration, the following analysis will assume probable cause is selected as the new standard and then better explain why, although others may be viable, it is the proper choice.

1. In Favor of an Established Standard

As stated above, there are two primary reasons to support a change from "credible information" to a more established standard of proof in Leahy cases. The first is the familiarity of the standard, and the second is the ease of application. Turning back to the study conducted by the RAND Corporation, practitioners repeatedly expressed their concerns with the actual degree of scrutiny being applied, the degree of credibility and hierarchy to assign information sources, and the amount of information necessary to substantiate an allegation. 108These issues all disappear when the law is changed from "credible information" to "probable cause." Probable cause has been defined in a number of different ways, but for the sake of this Article, we will use the definition set forth by the Supreme Court (with a few adjustments to better suit our subject matter): "where the facts and circumstances within the [deciding official's] knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a belief by a person of reasonable caution that a [gross violation of human rights] has been committed." 109

Familiarity, the first benefit, is something that can be realized immediately and simply by the implementation of the change. Knowing that there is established standard will likely increase a practitioner's faith that the Leahy standard is being enforced uniformly. This in turn will allow them to focus on a fair application, rather than feeling tempted to warp the standard to fit what they believe to be a proper outcome as determined by political or public demand.

This standard would also sound better when explained to the American public or partner nations. Without a well-established standard of proof, it may appear to some that there is no standard at all. "Credible information" as officially defined by Leahy vetting SOPs can very easily be confused with "credible information" in the common sense: information that someone, somewhere, found credible, for some reason. In contrast, announcing that "there was insufficient information to establish probable cause that a unit engaged in violations of human rights" carries with it a weight that the public has ascribed to the well-known standard of probable cause. 110

Far more importantly than appearances and familiarity, it will actually work better. This brings us to the second reason to support a change to an established legal standard: ease of application. Over the course of American history, there have been hundreds of court cases that have interpreted the probable cause standard as it applies to different situations. Practitioners, armed with this expansive jurisprudence, will be far better equipped to make credibility determinations. In order to demonstrate how this could work, we will first need to indulge a brief history lesson.

In the preeminent cases of United States v. Spinelli 111and Aguilar v. Texas, 112the U.S. Supreme Court was tasked with determining whether there was probable cause when warrants were heavily based on the statements of confidential informants. 113In Aguilar they held that there was no probable cause to search when the only information supporting a warrant was an affidavit of police officers who swore that they had "received reliable information form a credible person and do believe" that narcotics were present. 114The court held that there was insufficient information to allow the magistrate who issued the warrant to determine the credibility of the informants statements and that "the magistrate must be informed of some of the underlying circumstances relied on by the person providing the information and some of the underlying circumstances from which the affiant concluded that the informant, whose identity was not disclosed, was credible or his information reliable." 115The Court in Spinelli further clarified that the magistrate must be informed of the "underlying circumstances from which the informant had concluded" that a crime was committed. 116The result of these cases came to be known as the Aguilar-Spinelli test, that probable cause cannot be established on the basis of a confidential informant without facts showing that (1) the informant is reliable and credible and (2) establishing some of the underlying circumstances relied upon by the person providing the information. 117

The two-prong test was later overruled in favor of a totality-of-the circumstances approach in Illinois v. Gates, 118but the "veracity" and "basis of knowledge" factors are still considered to be relevant considerations in the determination of probable cause, 119and some states still use the test for probable cause determinations under their own constitutions. 120

Now, given the quick guidance from these cases and our new definition, one can make a determination in the Leahy context. Focus on the UNAMA report from earlier that contained allegations that members of the Afghan Local Police had been torturing detainees. Under the totality of the circumstances, are the facts and circumstances, as known to the deciding official, sufficient in themselves to warrant a belief by a person of reasonable caution that a gross violation of human rights has been committed? 121

On first thought, one may believe that there is obviously enough to meet the standard. After all, UNAMA, an agent of the United Nations, said that it happened. However, upon further reflection a practitioner may ask: where did they get their information? In this case, the source of the information was from undisclosed combat-related detainees; 122which could just as easily be called confidential criminal informants. The Leahy practitioner should not be attempting to determine UNAMA's credibility any more than a court would focus on the credibility of a police affiant. Instead, the practitioner should focus on the credibility of the informants UNAMA interviewed. So, what is known about them?

If one were to apply what he's learned of Aguilar and Spinelli, he may ask: what can be said about the veracity of the source? In this case, nothing. There is no information available about the individual answering UNAMA's questions, their reliability, or their credibility. UNAMA says they are credible, but that is no different than the police officers in Aguilar and their warrant based on "reliable information from a credible person." 123

What about the second prong, the basis of knowledge for the information? The practitioner knows that the detainees are experiencing what they perceive to be torture, but nothing of the underlying circumstances, what has been done to them, who is doing it, or in what fashion it was done. This is almost identical to the situation in Aguilar, wherein the magistrate had no information about the basis for the informant's knowledge. As such, a Leahy practitioner can come to the conclusion that these incidents do not establish probable cause.

In doing so, [they] ~~he~~ can demonstrate [their] ~~his~~ reasoning based on established case law, and provide others a basis for challenging [their] ~~his~~ decision with further legal analysis. The rationale for [their] ~~his~~ determination can be held out to the public, to Congress, and to the partner nation, and demonstrate consistency in application of the law.

2. In Favor of Probable Cause

Neither of the two reasons to move away from "credible information" would be affected if the standard of proof applied was "clear and convincing evidence," "reasonable suspicion," or any other established standard of proof. The analysis and the case law would change, the definitions would change, but the rationale would remain. You'd still provide practitioners, the public, and partner-nations with a more easily understandable, and more familiar standard, and you'd still arm decision makers with a well-developed jurisprudence to inform their decisions. Yet despite the fact that other standards may work, it is the opinion of this Article that probable cause works best, and most closely resembles the intent of Leahy's existing "credible information" standard.

One thing that has been made clear is that the original intent for the Leahy standard of proof was that the information it was based on did not have to be admissible in court; 124that it did not need to be admissible "evidence." Probable cause meets this criterion. Information does not need to meet the requirements of admissibility in a court in order to be used in a probable cause determination. As discussed above, information from confidential informants, which would be barred from admission in court due to the Sixth Amendment right to confrontation, 125is permissible when determining probable cause. 126The same is true with hearsay evidence, which can be used as the basis probable cause when obtaining a warrant. 127The Federal Rules of Criminal Procedure expressly state that at preliminary hearings, in which magistrates determine probable cause, the defendant is not allowed to "object to evidence on the ground that it was unlawfully acquired." 128Privileged evidence is also often relied upon in Probable Cause hearings as evidenced by a number of cases where probable cause was determined by the statements of a spouse, seemingly in violation of spousal privileges. 129The law in this area is best summed up by Justice Black in addressing whether the of rules of evidence should apply in Grand Jury proceedings: "It would run counter to the whole history of the grand jury institution, in which [laypeople] ~~laymen~~ conduct their inquiries unfettered by technical rules. Neither justice nor the concept of a fair trial requires such a change." 130Probable cause meets Leahy's intent and quashes the fear that the U.S. would continue to fund human rights abusers due to the tyranny of such "technical rules." As such, it is the ideal choice. 131

E. Summation

The current standard of proof in Leahy vetting is confusing, poorly applied, and subject to an inappropriate degree of subjective interpretation. This causes great difficulties for the practitioner community, and risks U.S. relations with partner nations. In order to improve application of the Leahy laws, and to further its intent, the standard should be changed from "credible information" to "probable cause." Changing to an existing and recognized legal standard provides Leahy practitioners with the benefit of American jurisprudence, and the guidance that it offers, and it lends more legitimacy to the Leahy-vetting process. Once the decision to switch to an established standard is made, probable cause is the best choice. It meets the intent of Leahy's drafters and as such, would likely strike the desirable balance between reliability of information and protection against over-application of Leahy sanctions.

#### United States CHRMs are key to global human rights governance – influencing the interpretation and application of international human rights law through conditions on foreign aid

--CHRMs: congressional human rights mandates

Margaret E. McGuinness 21, Professor of Law and Co-Director of the Center for International and Comparative Law, St. John's University School of Law. "Article: Human Rights Reporting as Human Rights Governance." Columbia Journal of Transnational Law, 59, 364, pp. 366-368, 2021, Lexis, nihara

Despite its general rejection of full membership in human rights treaties, the United States has played a leading role in international human rights governance through congressionally mandated human rights diplomacy. Since the adoption of the first congressional human rights mandates ("CHRMs") in the mid-1970s, congressional requirements to monitor and report on global human rights practices have served to integrate international human rights law and norms into U.S. foreign policy. While these CHRMs have drifted from their original purpose to constrain executive branch discretion over the allocation of foreign aid, the mandates have effectively embedded international human rights norms and law into congressional decision-making and the operations of the State Department and other executive branch agencies. The annual Country Reports on Human Rights ("Country Reports") required by the mandates have grown to become a leading international source of human rights fact-finding, influencing the ways in which domestic and international courts, NGOs, and human rights institutions interpret and apply human rights law. In this respect, congressional human rights reporting mandates - not congressional human rights treaty policy - have evolved as a central driver of U.S. engagement with and interpretation of the protections of international human rights law. What was designed as unilateral policy to regulate the human rights practices of aid-recipient states has constructed the U.S. human rights identity within the international system and influenced the operation of the international human rights system itself. Together with congressional and executive sanctions practices, the human rights reporting mandates form the legal basis for the active and influential participation of the United States in international human rights governance. 1

Congress has been viewed by many scholars as the central obstacle to full U.S. participation in the post-World War II international human rights treaty system. 2And indeed, it is true that Congress has been reluctant to subject U.S. domestic human rights behavior to international oversight through treaty membership; Congress even threatened a constitutional amendment to keep the United States out of human rights treaties. 3Yet, since the 1970s, Congress has been keenly interested in the human rights behavior of foreign states, particularly those which receive financial and military aid from the United States. This interest in external human rights behavior, coupled with a desire to constrain presidential foreign policy prerogatives in the wake of the Vietnam War, led Congress to condition foreign military and humanitarian appropriations on respect for human rights. In the language of the original statute, assistance would be prohibited to countries that engaged "in a consistent pattern of gross violations of internationally recognized human rights," unless the President requested a waiver. 4Congress sought to extend robust oversight of this provision, which would claim for Congress a more direct role in presidential human rights policy, by requiring the State Department to report annually on human rights conditions in aid-recipient states. Preparation of the report required U.S. diplomats around the world to gather information on whether and how foreign state behavior meets international human rights standards.

The CHRMs have endured. Through them, the United States continues to play an important role in international human rights governance in ways that tends to smooth differences between presidential administrations. 5Since the 1970s, Congress has expanded the breadth of the annual reporting requirements to include reports on human rights conditions in all foreign states, not just those receiving U.S. aid. 6And it has expanded the depth and scope of human rights practices covered by the reports to include a long list of rights that reflect the growth of international human rights law over the past decades. 7In addition to the annual Country Reports, the State Department is also now required to prepare separate annual reports on religious freedom, sex trafficking, and democracy promotion programs. 8Congress has steadily added reporting requirements; it has never eliminated or reduced them. 9Over a time period that witnessed the broadening and deepening of the international human rights system, CHRMs have enmeshed the United States within international human rights governance - even as the United States remains formally outside the jurisdiction of the central human rights treaties.

#### Enhanced compliance with Congressional reporting requirements develops cyclical coordination with NGOs – CPs unilateral policy expands the scope of international HR law AND shapes governance via *opinio juris* – BUT, retreating from commitment to human rights only decks credibility

Margaret E. McGuinness 21, Professor of Law and Co-Director of the Center for International and Comparative Law, St. John's University School of Law. "Article: Human Rights Reporting as Human Rights Governance." Columbia Journal of Transnational Law, 59, 364, pp. 370-374, 2021, Lexis, nihara

Perhaps more important than their effect on congressional-presidential debates over the direction of foreign policy, the congressional human rights mandates have entrenched the norms and institutions of international human rights law and governance within the executive branch. International human rights governance is a series of decentralized processes of norm creation, elaboration, and enforcement. It is made up of interconnected political and legal institutions, treaty bodies, courts, and commissions, which interact with states, NGOs, corporations, and individuals in polycentric processes. 20The polycentric nature of human rights governance allows multiple entry points for official U.S. federal government participation - through the executive branch, the courts, and Congress - in the full range of international human rights governance. The process of compliance with CHRMs has fundamentally altered the methods through which the executive branch carries out diplomacy, expanding the work of diplomats to include coordination and cooperation with human rights NGOs and other members of civil society, and with courts and other consumers of human rights reporting. The CHRM process has, therefore, created a dynamic policy feedback cycle among the State Department, Congress, and civil society, which has informed the continual expansion of the breadth and depth of human rights reporting requirements. 21This process serves as an alternative mechanism to treaty membership. 22Through the CHRM process, the U.S. influences, and is influenced by, the development of international human rights law in regional and international human rights systems.

In more recent years, international human rights institutions - particularly the UN Human Rights Council - have expanded self-reporting requirements for member states, including by those, like the United States, that are not party to international human rights treaty adjudicatory mechanisms. 23In these "self-reports" on domestic human rights practices prepared by the executive branch, we can see the influence of these embedded human rights norms, as the U.S. government mediates between the language of American constitutional human rights exceptionalism and international human rights. 24The internalization of human rights norms was evident even in the Trump administration, whose policy was to de-emphasize human rights in its foreign policy rhetoric and behavior. 25

Significantly, the content of the human rights reports has affected the ways in which agencies, courts, other human rights institutions, and members of civil society have assessed and adjudicated human rights claims and elaborated the scope and subject matter of international human rights law. 26Taken together, these trends demonstrate how the embedding of international human rights norms in the federal government, through dynamic congressional control of executive branch human rights reporting, has brought the United States inside the cathedral of human rights as a major driver of international human rights governance.

This Article provides a positive theory of U.S. participation in international human rights governance through human rights diplomacy. It focuses on the monitoring and reporting requirements of the CHRMs and the dissemination of the annual Country Reports as the central processes through which that diplomacy is carried out. The Article draws on primary sources, including: diplomatic cables and discussions with senior State Department officials; reported caselaw in U.S., foreign, and international courts; opinions of international human rights treaty bodies and institutions; and reporting of human rights NGOs. It draws on these empirical data to illustrate the ways in which the mechanisms of U.S. human rights diplomacy influence legal processes and determinations of human rights claims in a variety of adjudicatory and non-adjudicatory settings. In this way, this Article seeks to contribute to the empirical turn in international law scholarship, which is concerned with "the conditions under which international law is formed and has effects" 27and examines how international law is created by "specific forces and factors" 28and "accomplishes its ends under particular conditions." 29

This examination of U.S. human rights reporting contributes to our understandings of sources of international human rights law, both treaties and customary international law. It illustrates the dynamic process through which human rights monitoring and reporting applies and interprets the foundational non-binding declarations and treaties that construct international human rights law. It further illustrates that monitoring and reporting serve as a form of state practice and expression of opinio juris for purposes of determining customary international human rights law. The Article demonstrates that, under certain institutional conditions, what is frequently dismissed as a state's unilateral human rights policy operates as a form of international human rights governance. Therefore, this Article also contributes to the burgeoning cross-disciplinary literature in political science and law that seeks to understand how and under what circumstances states engage or reject engagement with the international human rights system. 30

This Article proceeds as follows: Part II describes the legislative architecture of the human rights reporting mandates and explains the ways in which Congress exercised its appropriations power to create U.S. human rights diplomacy and incorporate emerging international human rights standards into U.S. law. Part III draws on primary sources to assess the effects of human rights reporting on human rights law and governance. It argues that widespread citation to the Country Reports in adjudication before domestic agencies and courts, before foreign courts, and in UN and NGO reporting, demonstrates the transformation of internal foreign policy oversight statutes into global human rights monitoring and reporting with influence on the interpretation and elaboration of human rights law. Part IV examines why the CHRMs have endured, draws some preliminary conclusions about the future of the congressional reporting mandates, and suggests avenues of future research at the intersection of human rights law and diplomacy that might enrich our understanding of how human rights governance works.

The viability of the international human rights system is threatened when states retreat from the rhetorical, normative, and legal commitments to human rights. While this Article focuses on the congressional mandates and the Country Reports, U.S. participation in human rights governance is influenced by other factors, including U.S. membership in international human rights institutions (including, yes, human rights treaties), unilateral and multilateral sanctions practices, and engagement with international human rights norms integrated into other areas of international law.

The Trump administration's retreat from human rights diplomacy, together with the rise of other nationalist challenges to international human rights governance, has prompted fundamental reassessment of the future of the human rights project and the United States' role in it. This Article suggests that any discussions of reform or re-conception of the international human rights system - and the future of the United States in that system - must take into account the role of human rights monitoring and diplomacy in human rights governance.

#### HR reporting AND monitoring positions the US directly within the international human rights movement creating a feedback loop between NGOs and institutions as a focal point for norm elaboration AND interpretation – restrictions on aid are key

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A. Monitoring and Reporting as Human Rights Fact-Finding

The preparation of the human rights reports requires State Department officials - both those in the field serving as embassy "human rights officers" and those in the DRL Bureau - to engage in year-long data collection of rights practices. The data collection takes place in many different forms, and is coordinated by DRL through instructions to overseas U.S. missions that include categories of human rights, definitions, and advice on sources. 154The process includes: close scrutiny of news and social media reporting on political, civil and social rights; direct conversations with members of the government engaged in law enforcement and judicial administration; meetings with political parties, dissidents, and members of the opposition to government; conversations with members of civil society groups (e.g. academics, rights activists, lawyers, and journalists); review of official and unofficial reporting of international and regional human rights institutions and of international and local human rights NGOs; meeting with investigators associated with international and local human rights NGOs; and, in countries that restrict access to the forgoing channels, review of information available from NGOs and other sources outside the state. 155

In gathering facts to prepare the reports, executive branch officials thus communicate and cooperate with particular groups and institutions, many of which are wholly outside the formal channels of traditional bilateral diplomacy between foreign ministries and offices of the heads of state. This process of engagement places the State Department within the human rights movement, reporting on conditions side-by-side with civil society and international and regional human rights institutions, which are also monitoring and reporting on human rights conditions. One consequence of the State Department working from inside the human rights movement is its reliance on human rights journalists, activists, and NGOs to provide the information needed for the annual reports, and a reciprocal reliance by those same journalists, activists, and NGOs on the State Department reports for their own work. It represents a normative feedback loop between these actors and also serves as an important coordinating mechanism and focal point for U.S. engagement in international human rights governance outside the formal treaty bodies.

Over the years, the institutionalization of human rights fact-finding within the State Department has also proved quite useful to Congress. While the general default statutory provisions of the FAA and ISA were never invoked to cut off aid automatically, the content of the reports proved useful in pushing for the targeted legislation that conditioned aid on specific benchmarks. The reports highlight problems in particular countries, which Congress can then point to as justification for further restrictions on the executive's prerogatives to award aid packages in targeted countries and to crafting individual sanctions legislation. 156The State Department may present the reports as the considered and "objective" view of the U.S. government of a particular state's rights practices for strategic purposes in diplomatic negotiations.

In addition to this particular use in diplomacy, the reports are relied upon by many official and unofficial actors outside of Congress and have come to serve as a valuable reference guide in many other policy making contexts. 157For example, human rights NGOs, which in the early days of the Country Reports used them as a foil for critiquing how U.S. reporting and policy fell short of universal human rights ideals, use the reporting to corroborate their own work. The process and institutionalization of human rights within the State Department has provided an institutional focal point for lobbying in the executive branch, evidenced, perhaps, by the fact that several assistant secretaries for Human Rights came from careers in human rights advocacy. 158The multiplicity of ways in which the U.S. government takes part in norm elaboration and interpretation as it engages in the processes of monitoring and reporting form a kind of state practice.

#### The counterplan sets *opinio juris* – BOTH Supreme Court jurisprudence AND executive HR monitoring shapes norms for development of customary international human rights law

Margaret E. McGuinness 21, Professor of Law and Co-Director of the Center for International and Comparative Law, St. John's University School of Law. "Article: Human Rights Reporting as Human Rights Governance." Columbia Journal of Transnational Law, 59, 364, pp. 400-401, 2021, Lexis, nihara

B. Human Rights Monitoring and Reporting as Opinio Juris

To understand how the reporting process affects U.S. actors and institutions, we need to examine not just the costs of the reports as shaming "talk," but their value as "legal talk" as well. As Chimene Keitner has explained in the context of the jurisprudence of the U.S. Supreme Court, any practice in which states describe behavioral expectations about the content of human rights law might, in fact, represent opinio juris for the purpose of customary international law. 159Similarly, Kate Shaw has explored how presidential foreign policy statements may represent opinio juris. 160Here, the statements about the content of international human rights norms are being made by the executive branch, in a process overseen by Congress, which supports a conclusion that these reports may constitute U.S. opinio juris regarding the content of customary international human rights law. 161

The reports themselves describe facts on the ground in particular countries. They require framing these facts within a sub-heading or category. Some categories reflect direct statutory mandates. 162For example, in the early years of the mandates, Congress was concerned with acts of "torture or other cruel, inhuman and degrading treatment." 163Under the category of "torture, or other cruel, inhuman and degrading treatment," the State Department would then be required to place sections of its report dealing with the practices engaged in by the state being examined. 164By engaging in the factual identification of what constitutes "torture," the State Department makes a categorical assessment of what kinds of behavior fall within the international definition of torture in the ICCPR and CAT. This "talk" of torture becomes a statement of what the United States believes the standard to be - even in areas where it has, as a matter of treaty law, not consented to having its own actions be bound by international standards. This statement of what the State Department believes international law to require is analogous to the kinds of statements made by courts and other government actors that have been recognized as constituting opinio juris. 165

#### CP is key to solve circumvention of Leahy Law vetting and increase compliance with HR restrictions

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Elevate the role of human rights in security assistance decision-making and policymaking

Currently, human rights considerations are rarely given significant weight in decisions about who to support and when with U.S. security assistance. In moving resources to the State Department, officials should conduct a full review of a partner’s capability, capacity, and political will to protect civilians and abide by human rights requirements before approving future U.S. assistance.92 These reviews, conducted at the outset of U.S. security relationships, could ensure that a partner is unlikely to abuse U.S. aid. Additionally, to counter the sizeable influence of regional bureaus, the Bureau of Democracy, Human Rights, and Labor should be required to review and concur on security assistance projects that involve countries found to have a history or pattern of human rights abuses in the conduct of its security forces or security policy. This determination should be informed by the State Department’s own annual human rights reporting in addition to information from civil society groups.

Human rights vetting should also be reformed. Under the current system, partners who purchase U.S. assistance and equipment circumvent Leahy law vetting, and aid that flows directly to ministries of defense, rather than individual units, is not subject to the same human rights restrictions.93 Closing these loopholes would not only bring all U.S. assistance in accordance with existing U.S. law, but it would also make for smarter policy. Researchers have found that when partners commit human rights abuses with known U.S. support, civilians on the ground are more likely to blame American foreign policy.94 Prioritizing partners that are willing to abide by international human rights standards would protect American interests and civilians on the ground. The Bureau of Political-Military Affairs, in collaboration with the Bureau of Democracy, Human Rights, and Labor, should jointly increase the human rights vetting of arms transfers.

Finally, the State Department should develop a framework of triggers and indicators on human rights and civilian protection that would require a reevaluation or termination of a security partnership. When partners commit abuses or refuse to abide by international law, the United States must be willing to cut off assistance. This would ensure that the United States is not complicit in abusive behavior and could incentivize partners to clean up security force conduct. This internal trigger should also automatically alert Congress to ensure that proper remediation is done by the executive branch.

### 2nc – colombia nb

#### Leahy Law vetting’s failing in Colombia now – human rights violations are exacerbated by the standard of “credible information”

Nathanael Tenorio Miller 12, J.D. Candidate, Cornell Law School, 2013. "Note: The Leahy Law: Congressional Failure, Executive Overreach, and the Consequences." Cornell International Law Journal, 45, 667, pp. 683-686, Fall, 2012, Lexis, nihara

V. The Effectiveness of the Leahy Law in Colombia

Like the Philippines, Colombia has a long history of U.S. military involvement, and U.S. military aid increased dramatically after 2001. 170 Unlike the Philippines, the majority of funding for Colombia is funneled through the International Narcotics and Law Enforcement/Andean Counterdrug Initiative (INCLE). 171 For FY 2012, the Obama Administration requested $ 160 million for INCLE and $ 44 million for FMF. 172 Up until at least 2009, the State Department published a report on the end-use of the funds provided through INCLE. 173 As for the remainder of the funding, since at least 2011, lists of units vetted for compliance with the Leahy Law are "classified to protect the operational capacity of Colombian military units." 174

Also like the Philippines, NGOs and the State Department have accused the Colombian military of committing a myriad of human rights violations. 175 In its 2011 report on Colombia, the State Department said that "political and unlawful killings remained an extremely serious problem, and there were some reports that members of the security forces committed extrajudicial killings … ." 176 A July 2010 report by the Fellowship of Reconciliation (FOR) reported "alarming links between Colombian military units that receive U.S. assistance and civilian killings committed by the army." 177

The FOR study, "Military Assistance and Human Rights," was thorough and damning. 178 Over a period of two years, the FOR examined more than three thousand extra-judicial killings and the roughly five hundred Colombian military units receiving U.S. military aid and training. 179 In 2007, twenty-three out of twenty-five brigade jurisdictions were accused of extra-judicial killings. 180 One hundred forty-two reported killings have been directly attributed to fourteen different mobile brigades, eleven of which were vetted to receive assistance. 181 Of the 3,014 killings reviewed by the FOR, more than 1,500 were under investigation by the Colombian Attorney General's office, but only 43 had reached a verdict. 182 On average, the FOR report found that "extrajudicial killings increased on average in areas after the United States increased assistance to units in those areas." 183 In the sixteen largest jurisdictions where military aid was increased, the number of reported executions averaged an increase of 56%. 184 The inverse was also true: in years when the United States most reduced the military assistance to a region, the number of reported executions fell by 56%. 185 Even after November 2008, where the number of reported military extra-judicial killings dropped significantly because of institutional practices designed to reduce the frequency of murder by the military, the drop was accompanied by a steep climb in the number of reported civilian killings by paramilitary groups. 186 While there are several explanations for these increases, including higher levels of violence in some areas than others, 187 an increased number of soldiers in assisted units, changes in population in jurisdiction of assigned units, possible differences in reporting killings by assisted units, and differing attitudes of U.S. officials, 188 the data suggests an almost categorical failure of the Leahy Law in Colombia.

Another source of conflict between the human rights goals of the Leahy Law and foreign military training is the Western Hemisphere Institute for Security Cooperation (WHINSEC), formerly known as the School of the Americas (SOA). Since its establishment in 1946, WHINSEC-SOA has trained over 60,000 members of Central and South American armed forces, 189 including over 9,500 Colombian soldiers. 190 Colombia holds over 60% of the seats available for students at WHINSEC-SOA. 191 Some of these troops are alleged to have forced children to march in front of military columns to detonate landmines or spring ambushes. 192 The Colombian soldiers have also been accused of mass-murder, disappearances, torture, and extrajudicial killings, including that of Archbishop Isaias Duarte. 193 In addition to Colombia, soldiers trained at the SOA have committed human rights violations in Bolivia, Chile, El Salvador, Guatemala, Honduras, and Paraguay. 194

Many of these human rights abuses were part of the SOA's curriculum. In 1996, the Pentagon admitted that seven training manuals used at the SOA were designed to advocate the systemic use of torture, blackmail, and executions to neutralize dissidents. 195 The manuals identified potential targets as "'religious workers, labor organizers, student groups and others in sympathy with the cause of the poor." 196

In 2000, the House of Representatives narrowly voted down an attempt to close the SOA. 197 Instead, the SOA was renamed WHINSEC. 198 In 2007, WHINSEC survived another vote to close the school by six votes in the House of Representatives. 199 A month before the vote, Salvatore Mancuso, the former commander of the paramilitary organization United Self-Defense Forces of Colombia, testified in a closed hearing in Medellin, Colombia. 200 In his testimony, he said that he and other paramilitaries, which the U.S. State Department labeled "foreign terrorist organizations," were a creation of state policy and collaborated with Colombian military and government officials who had been trained and served as instructors at WHINSEC-SOA. 201

The FOR posits two reasons for the failure of the Leahy Law in Colombia: the first is the inadequate information and a difference in bureaucratic priorities between the State Department, which had knowledge of human rights abuse; and the second is the other branches of the Executive, which prioritized arming Colombian allies. 202 While both reasons are plausible, the relatively high levels of human rights abuse documentation in Colombia and the relatively low threshold of "credible information" suggests that the latter, rather than the former, is more likely.

#### Colombia is increasing global cooperation through proxy with U.S. support AND funding – that’s key to Colombian power projection AND Latin American stability – exporting counternarcotics, anti-corruption, international law, countering organized crime AND governance failures – HR credibility through vetting is key

Arlene B. Tickner 14, Professor of International Relations, Political Science Department, Universidad de los Andes, Bogotá., 18 March 2014, Washington Office on Latin America Advocacy for Human Rights in the Americas, <https://www.wola.org/analysis/colombia-the-united-states-and-security-cooperation-by-proxy/#1>, nihara

U.S. aid to Colombia has declined considerably since 2008. Counternarcotics and counterinsurgency activities, in which Washington has been heavily involved since Plan Colombia’s inception in 2000, have been steadily “Colombianized.” Now, Colombia is stepping up efforts to export its “know-how” to countries in Central America, the Caribbean, and beyond the Western Hemisphere affected by drug-related crime and violence, largely via South-South cooperation and triangulated efforts with U.S. support. This report explores what seems to be an emerging international security cooperation model in which both Colombia and the United States play key roles. [2]

Although Colombian training of security personnel in third countries is an established and growing practice, we know little about who is being trained, by whom, what is being taught, and who is providing the funding. The lack of publicly available information raises a number of important concerns:

Is this security cooperation model truly replicating Colombia’s successes without also copying its failures, especially in the realm of corruption, human rights, and impunity?

Why is it so difficult to obtain information about Colombia’s specific activities—far more so than in the case of regular U.S. security assistance—beyond the optimistic but vague language of official press releases?

How strong is civilian control and oversight of these programs, including human rights vetting of both trainers and trainees?

To what extent is Colombian training based on an outdated and largely discredited “drug war” logic that prioritizes numbers arrested, acres eradicated, and tons interdicted over good governance and economic prosperity?

Exporting Colombian security: How we got here

As the twentieth century came to a close, the chronic weakness of the Colombian state had brought the country to what many analysts feared was the brink of collapse. Presidents Andrés Pastrana (1998-2002) and Alvaro Uribe (2002-2010) actively courted their American counterparts, encouraging them to move beyond a narrow focus on counternarcotics to become more involved in the internal conflict. This “intervention by invitation” strategy (Tickner 2007) entailed acceptance of the U.S. counternarcotics agenda in exchange for sorely needed military, technical, and socio-economic support from Washington. Foreign aid sought to expand, professionalize, and modernize the armed forces, combat armed insurgents, increase territorial control, and later, during the Plan Colombia Consolidation Phase (2007-2013), extend the rule of law and pursue economic and social development.

Between 2000 and 2008, U.S. military and economic aid to Colombia exceeded $6 billion, making it the largest recipient of American assistance in Latin America and one of the top ten worldwide. In what has been described invariably as an “extraordinary transformation,” Colombia’s security situation improved during the second term of President Álvaro Uribe’s government (2006-2010), and has continued to do so during that of Juan Manuel Santos (2010-2014). The state has achieved greater control over the countryside, thousands of paramilitary fighters have demobilized, punishing defeats have been delivered to the guerrillas, and large numbers of rebels have voluntarily surrendered. Key indicators of violence, including kidnappings, homicides, disappearances, and forced displacement, have also declined. Arguably, the “war on drugs” too has resulted in relative gains as measured by illicit crop acreage and total cocaine production in Colombia, although these are largely offset by the migration of drug cultivation, production, trafficking and violence elsewhere in the region, most notably Peru, Mexico, Central America, and the Caribbean.

Such trends are the raw materials for a “success story” that the Santos government has put to strategic use to reposition Colombia, both regionally and internationally. One of the country’s main exportable assets is its security forces, widely considered to be among the world’s most seasoned in counternarcotics and counterinsurgency, in no small measure due to prolonged U.S. training.

Since the mid-2000s Colombia has received increasing numbers of requests for security cooperation from governments of distinct ideological stripes throughout Latin America and beyond. The International Affairs Office of the Colombian National Police (CNP) reports that between 2009 and 2013, it provided police and military training to 21,949 individuals from 47 different countries in such skills as ground, air, maritime, and river interdiction, police testimony, explosives, intelligence operations, psychological operations, and Comando JUNGLA, the U.S.- designed signature elite counternarcotics police program (Jenzen Jones 2011). 87 percent of this training was provided by the CNP. Notwithstanding the range of nationalities trained, Colombia has focused largely on a cluster of countries where distinct drug-related problems have migrated, including Mexico (which accounts for nearly half of the total number of trainees), Panama, Honduras, Guatemala, Peru, El Salvador, and Costa Rica (See Table 1). Some of this training was U.S. funded, although Colombia carried out many activities using its own resources, or that of other donors such as Canada.

**[TABLE 1 OMITTED]**

**[TABLE 2 OMITTED]**

its eagerness to assure that diminishing U.S. assistance did not translate into reduced bilateral ties and even less aid, the Colombian government set out to convince Washington to deepen its commitment to cooperation efforts in third countries. Police training for Afghanistan provided an initial testing ground in 2007, but it was not deemed much of a success given the limited applicability of the Colombian case, among other factors. In 2009, however, Colombia’s participation in the Mérida Initiative aid package for Mexico, in activities related to law enforcement and judicial strengthening, changed perspectives in policymaking circles. Colombia’s role appeared to be, all at once, an effective way to meet Mexico’s security needs, to satisfy Colombia’s desire to expand its training portfolio, and to mitigate fiscal limitations in the United States. In this view Colombia, with U.S. backing, could provide other countries with security cooperation at a greatly reduced economic expense, and without the political costs associated with an enlarged U.S. military presence. This new reading of the bilateral relation reflected the philosophy that “as we help Colombia, Colombia will help us help others”, and largely paralleled changes in American security and defense policy, in which “leading from behind” became a key feature.

Leading from behind

In the post-Iraq, post-Afghanistan, post-financial crisis era, the importance of “light footprint” approaches has grown in tandem with U.S. public opinion’s adversity to costly, direct military involvement in contexts not perceived as directly threatening vital security interests. In a 2010 Foreign Affairs article, former secretary of Defense Robert M. Gates laid out the initial blueprint for this strategy by calling on the United States to “help others help themselves” through institutional and human capacity building, and through steady and long-term security assistance (Gates 2010).

Increasingly, Colombia is portrayed as an emblematic case of this “light footprint” (see, for example, Luján 2013; Robinson 2013; and Jayamaha, Brady, Fitzgerald and Fritz 2010). However, equally important from the vantage of current U.S. security and defense policy (U.S. Department of Defense 2012), Colombia is unique due to its long-standing and mature bilateral military partnership, especially with Special Operations Forces, whose presence in the country spans half a century (Thomas and Dougherty 2013; Special Warfare 2012).

As Robert D. Kaplan (2006) observes somewhat forebodingly, Colombia became a test case for tactics that the United States would employ to manage messy global problems. According to a retired Army general Kaplan interviewed, in order to police the world, “you produce a product and let him loose.” What emerged from Colombia was exactly this: a security cooperation model designed not only to improve that country’s own internal security, but also applicable to changing U.S. security objectives in the Western Hemisphere and elsewhere.

Indigenous partners are the “strategic linchpin” (Lujan 2013: 1) of this “light footprint” model. Working “by, with and through” them (a saying repeated often by U.S. officials and military analysts) allows for results at a lesser material and political cost. Moreover, the use of third-party “proxies” creates “plausible deniability” (Thomas and Dougherty 2013: xiii): denial of knowledge of or responsibility for unpopular or illegal activities. Cooperation by proxy rests upon an esprit de corps cultivated through prolonged, iterated engagement with foreign counterparts, the existence of personal, first-name relations, the creation of liaison elements to ensure connectivity, and support for host country objectives in order to develop commonality of purpose (Luján 2013; Special Warfare 2012; Thomas and Dougherty 2013). As capacity-building proceeds and partnership matures the “cream of the crop” of local militaries and police can be graduated from internal functions to regional or global security providers.

According (2013: 85) to Thomas and Dougherty, “Colombia is … a ‘net security exporter’, providing counternarcotics training to numerous countries in Latin America, the Caribbean and West Africa”, and thus a key node of an emerging global Special Operations Forces network. This view is echoed (Petraeus and O’Hanlon 2013) by former military commander and CIA director David Petraeus, who considers Colombia to be one of Washington’s strongest allies in the world, one better poised than the United States to help regions such as Central America.

Colombia helping others

Until the mid-2000s, external requests for Colombian security cooperation were dealt with in an ad-hoc and piecemeal fashion. Although the final years of the Uribe government saw attempts to make more systematic use of armed forces’ security know-how, few governments wanted to be seen working openly with the Colombian President, given his hard-line anti-terrorist discourse. Juan Manuel Santos´ election in 2010 provided a prime opportunity to move this effort forward. Santos set out to switch prevalent narratives about Colombia as a failing state with a weak human rights record and deficient democratic institutions. In tandem with this shift in official discourse, Santos placed security cooperation at the center of foreign policy.

The Santos administration christened this program the “International Integral Security Cooperation Strategy,” and tasked the Colombian Ministry of Foreign Relations (MFR) as its civilian spokesperson, responsible for interacting with foreign governments and coordinating specific cooperation efforts with the Ministry of Defense, the CNP, and the Presidential Agency for International Cooperation (APC). According to the MFR’s brochure, the program offers a portfolio of a la carte services in seven areas: organizational development, counternarcotics, organized crime, citizen security, anti-corruption, human rights and international humanitarian law, and operational capacities. It tailors cooperation to each country’s needs through a four-stage process, consisting of an initial security and institutional capacity diagnosis; planning and fund-raising; implementation; and follow-up and evaluation. Specific information on individual cooperation initiatives is not publicly available.

With the onset of peace negotiations between the Colombian government and the FARC guerrillas in November 2012, the country’s “security diplomacy”, as the Defense Ministry calls it (2013a), acquired additional urgency. As Colombia has the second largest military and police force in Latin America (after Brazil), numbering over 450,000 personnel, some downsizing is inevitable under most post-conflict scenarios. The 2013 Ministry of Defense report to Congress lays out the Santos government’s game plan for putting this surplus capacity to effective use abroad. In addition to upping international security cooperation, in June 2013 Colombia signed an agreement with NATO, the first of its kind with a Latin American country, with an eye to increasing its participation in peacekeeping operations.

Parallel to Colombia’s own efforts to become a security exporter, in February 2012 it began a Strategic High Level Security Dialogue (HLSSD) with the United States. Several months later, at the Summit of the Americas meeting in Cartagena, presidents Santos and Obama announced an Action Plan on Regional Security Cooperation to support capacity-building in Central America, the Caribbean, and eventually West Africa. A Coordination Group on Security Cooperation (SCCG) was subsequently tasked to develop specific aspects of the Action Plan.

The recent creation of an International Cooperation Division at the U.S. Embassy in Bogotá, a line item of US$15 million in the Narcotics Affairs Section’s (NAS) 2014 budget, strongly suggests that triangulated security cooperation is not a passing fad. This Division is charged with liaison between American diplomatic missions in third countries, third country state representatives (civilian and military), and Colombian actors, mainly the Ministry of Defense and CNP. The fact that its staff includes a retired Colombian police colonel, an active Colombian police sergeant, and two Colombian civilians also points to an unprecedented degree of bilateral embeddedness and trust.

Officials from both countries maintain that joint security efforts abroad play a key role in achieving their respective objectives: for Colombia, projecting leadership regionally and globally and planning for the post-conflict, and for the United States, interrupting the flow of illegal drugs across its borders and combating violence and state weakness in Central America and the Caribbean. However, they also recognize Colombia’s political and strategic value as a U.S. proxy, and that the use of Colombian facilities and trainers can be up to four times less expensive than the use of U.S. assets.

#### BUT, ineffective vetting procedures and lack of transparency prevent achieving objectives of cooperation

Arlene B. Tickner 14, Professor of International Relations, Political Science Department, Universidad de los Andes, Bogotá., 18 March 2014, Washington Office on Latin America Advocacy for Human Rights in the Americas, <https://www.wola.org/analysis/colombia-the-united-states-and-security-cooperation-by-proxy/#1>, nihara

More questions than answers

Despite both governments’ enthusiasm, which includes viewing Colombia-U.S. international security cooperation as deployable elsewhere, this model poses more questions than answers.

a. Is Colombia truly a success story?

Colombian Ministry of Defense (2013b) figures indicate that between 2000 and 2013, homicides in Colombia dropped 43 percent, kidnappings 95 percent and terrorist attacks 47 percent. No less impressive, unemployment was reduced by half and poverty levels dropped from 50 percent to 34 percent. Notwithstanding such improvements, the jury is still out in terms of how to weight Colombia’s success and failures. As WOLA’s Adam Isacson warned in 2010, security gains are “partial…and weighed down by ‘collateral damage.’”

While Colombia’s progress is encouraging, its homicide rate remains above 30 per 100,000, worse than Mexico and about the same as Guatemala. Other indicators of violence, including members of the security forces killed in combat, extortion of businesses, and attacks on infrastructure, remain stubbornly high or have even increased. And both guerrillas and “new” paramilitary groups, while weaker than a decade ago, continue to be some of the largest insurgent and illegal groupings in the history of Latin America.

According to the National Center for Historical Memory (2013), the number of displaced persons in Colombia is a horrific 5,700,000, equivalent to 15 percent of the national population. The 2013 report of the UN High Commissioner for Human Rights praises government policies such as the 2011 Victims and Land Restitution Law, but highlights significant deficiencies in their implementation, while identifying other severe human rights problems. Among these, continued killings and threats against human rights activists, journalists, and community leaders, and low conviction rates for human rights abuses committed by the security forces, most notably the “false positives” scandal, involving over 3,000 armed forces extrajudicial killings. Judicial sluggishness in investigating and sentencing approximately 700 elected and appointed public officials accused of collusion with paramilitary groups points more generally to the problem of impunity in Colombia.

While poverty has indeed decreased, National Administrative Department of Statistics (DANE) data indicate that in the countryside it reached 46.8 percent in 2012, suggesting a rise in the gap between urban and rural areas. Inequality, too, has remained stubbornly high during the past decade; Colombia continues to be one of the most unequal countries in the world with the 12th highest income GINI coefficient among 101 countries measured by the UN Development Program (UNDP 2013: 152-5). No less significant, throughout the national territory bureaucratic capacity and infrastructure, indispensable for the proper functioning of state institutions, are still sorely lacking (García and Espinosa 2012).

b. What is being exported, by whom, to whom and with what effect?

The lack of public knowledge about both Colombian unilateral and Colombia-U.S. triangulated security cooperation in third countries severely constrains the possibility for independent citizen oversight. Beyond official advertisements of the strategy and occasional, anecdotal press reports, little information is available about the extent and nature of Colombia’s training. While foreign aid law requires the United States to report to Congress in some detail about its own overseas training, these reports include no mention of U.S.-funded activities carried out by Colombian forces. This distorts U.S. reporting to congressional overseers. When training performed by Colombians is removed from the picture, the training of thousands of personnel within the Mérida Initiative and Central American Regional Security Initiative frameworks becomes invisible to the public.

During 2013, the U.S.-Colombia Action Plan on Regional Security Cooperation identified a set of training priorities in Honduras, El Salvador, Guatemala and Panama, including: financial crimes and assets forfeiture, intelligence activities, counter-drug laboratories, judicial and prosecutor protection, basic riverine operations, small boat operations, tactical response, polygraph administration, ground interdiction, fixed and rotary wing pilots, management of informants, air assault, police testimony, citizen security, and civil affairs operations. [3] However, the names of the police (and military) units providing and receiving training in each country, the title and contents of different training courses, the sources of trainee funding, and the total cost of training remain undisclosed.

Additionally, evaluation mechanisms for measuring this security cooperation’s impact are weak. Colombian officials concede that few concrete indicators are in place for evaluating their success or failure. The effectiveness of U.S. security cooperation too has been the target of intense debate during the past several years (see Ribando and Finklea 2013; Adams and Williams 2011; and Moroney et. al. 2009). In order to increase its efficiency and sustainability, responsible officials have placed emphasis on improving coordination between donors and recipients; aligning cooperation with the recipient countries’ objectives and capacities; enhancing local capacity-building; involving citizens in cooperation efforts; and improving evaluation mechanisms.

Although success is normally measured through quantitative indicators such as price/purity of narcotics, number of drug arrests and drug seizures, number of personnel trained, and homicide rates, such statistics are increasingly being acknowledged as poor gauges of security cooperation’s impact. Even worse, certain indicators, such as “enemy” casualties, have prompted illegal practices such as “false positives” in Colombia (and, to some extent, Honduras).

c. Civilian control is weak

Although billed as a civilian-run security cooperation program, in practice the Colombian Ministry of Defense, the Colombian National Police, and to a lesser degree, other branches of the armed forces are clearly at the helm. Beyond its formal role as a liaison between the Colombian government and others, including the United States, the Ministry of Foreign Relations lacks the bandwidth for direct involvement in the planning and day-to-day operation of specific initiatives. Although its key advisor is a former police chief, Gen (Ret.) Rosso José Serrano, this official’s long-standing, direct and close ties with numerous U.S. and Latin American security agencies make it reasonable to assume that the Ministry’s own institutional voice is quite small. Indeed, the CNP and the Defense Ministry, not Foreign Relations, are the program’s main interlocutors at NAS, at the U.S. Embassy in Bogotá.

As for human rights, Colombian officials assert that all of their international training programs use the same protocols employed within the Colombian armed forces. Colombia lacks the wherewithal to apply human rights vetting, which screens potential recipients of assistance to ensure that known abusers will not benefit. The United States claims to carry this out for all received cooperation requests, although the lack of transparency surrounding the program has made this impossible to verify. While U.S. officials interviewed claim that potential recipients of Colombian training, funded either by the United States or others, are vetted, it is less clear whether the Colombian trainers themselves are subject to vetting. Also, few mechanisms other than human rights vetting seem to be in place to guarantee that “worst” practices, such as corruption and impunity, are not transferred by Colombian trainers along with “best” ones.

d. The nuts and bolts of the “drug war” are being reproduced

Calls to rethink the prohibitionist and militarist bent of current drug policy have emerged from myriad corners of the Western Hemisphere, including the United States (Isacson, et. al. 2013). It is no small irony that Juan Manuel Santos, the first sitting president in the world to make a public plea for an informed and sincere debate on the benefits and shortcomings of existing strategies, is also exporting, hand in hand with the United States, some of the very nuts and bolts of the policies that he says deserve closer scrutiny. It remains debatable whether existing counternarcotics training programs can be accommodated to the citizen security needs of those countries receiving Colombian-U.S. cooperation, without reproducing the discredited, and often destructive, logic of the “drug war.”

Policy Recommendations

Greater transparency. Regular and detailed reporting to Congress and the public in the United States, Colombia, and third countries where security training is being provided should be standard practice. In addition to information on the sources and amounts of funding provided by the United States and others (such as Canada) for third country training, formal scrutiny of Colombian trainers, third country trainees, and course curricula should be facilitated.

Stronger human rights controls. There is some risk that international cooperation by proxy, as currently being practiced by the United States and Colombia, may evade existing human rights vetting procedures. The Department of State must ensure that the U.S. embassy in Colombia vets Colombian trainers, and that the U.S. embassy in the recipient country vets training candidates, in order to ensure that members of units that stand credibly accused of gross human rights violations are excluded from training.

Better evaluation and follow-up. Colombian security cooperation currently lacks adequate procedures for evaluating the short, medium, and long-term impact of the training provided in third countries. Appropriate measures of success, rooted in local capacity-building and citizen security, should be identified by distinct country participants in coordination with civil society actors. Accountability and follow-up mechanisms should also be created in order to reinforce transparency.

#### Latin American instability causes existential CBRN deployment

Lawrence James King 19, Service Academy Research Associate Program, USAFA, 7-9-19, “The Radiological and WMD Threat Posed to National Security By Hezbollah in Latin America,” <https://permalink.lanl.gov/object/tr?what=info:lanl-repo/lareport/LA-UR-19-26442>

Non-State Acquisition of Nuclear Material and WMD Before the developmental stage of radiological dispersal devices (RDD), also known as ‘dirty bombs,’ or other WMD, acquisition of the necessary nuclear material proves the most daunting part for any non-state entity, such as Hezbollah. Overall, RDDs perform exactly as the name suggests. They combine conventional high explosives with some kind of radioactive material to contaminate an area and induce chaos.12 WMDs, to include biological, chemical, and nuclear means, follow the same principle but on a larger scale. A simple threat analysis suggests that global and regional black markets offer the best chance at acquiring restricted nuclear material. Hezbollah’s monetary and international standing as a recognized terrorist organization would provide ample assurance to reserve restricted resources. While highly impractical, a nuclear-enabled nation-state could theoretically supply a non-state actor with material from its own facilities. The most logical combination would be Iran and Hezbollah. According to the US State Department, Iran holds the dubious label as a state sponsor of terrorism, as it supplies Hezbollah with money and arms against its archrival Israel. Iran also maintains a problematic nuclear program. Moreover, both actors have publicly made known their contempt for the United States. However, this phenomenon is highly unlikely for several reasons: stockpiles are heavily monitored, non-state actors are not trustworthy and could use the material on a whim without fear of its powers, and nation-states ultimately fear retribution from other nation-states for the transfer in the first place. Simply put, the inherent risk is too big for any nation-state to assume. As a result of the Joint Comprehensive Plan of Action of 2015 (JCPOA), commonly referred to as the Iran nuclear deal, the Islamic Republic of Iran is not looking to tarnish its image and open itself to retribution from Western powers. The avenues of acquisition do not end with Iran. Black markets provide another way to obtain restricted nuclear and WMD material. In the modern age, the international community has taken steps to ensure the accountability of nuclear materials through numerous treaties and bodies. Chief among these steps include the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and IAEA. The responsibility that comes with state-ownership of nuclear material by itself is enormous. For those that maintain weapons-grade nuclear material, thermo-nuclear weapons, and other WMD, the responsibility is that much greater. However, even with all these safeguards in place, material and equipment fall into the wrong hands. Currently, Brazil, Mexico, and Argentina possess LatinAmerica’s largest and only nuclear energy programs for means of power production. 13 While these facilities are closely monitored, the threat of material being stolen still exists. Infiltration by means of disguise or force stands as a legitimate obstacle to safety and security. Incidents range from the temporary misplacement of a gauge to a stolen piece of nuclear material or equipment. Latin America specifically has a worrisome history involving these incidents. The CNS database details that between 2013 and 2018 approximately thirty-five (35) incidents have been reported.14 While this number may seem minute in comparison to that of the United States with over 600 incidents, the descriptions of said events raise concerns. The United States also has stricter reporting procedures than all IAEA ITDB-abiding (Incident and Trafficking Database) nations in Latin America and houses significantly more material in its borders, resulting in a higher margin of reports.15 Most the thirty-six Latin American cases involve lost, stolen and unauthorized possession of nuclear material and equipment, with many still unaccounted for to this day. The majority of incidents are not connected to nefarious intent. Take for example a truck carrying radioactive sources in Mexico in 2004. A group of men stole the truck, but shortly abandoned it a distance away, most likely after noticing its contents. They had no intent of actually stealing the restricted material. Although small in number, incidents of nefarious intent have been recorded. A quick glance at these past events informs future threats and worries. In 2015, a 58 year-old male was arrested in Engativa, Colombia for illegally stockpiling and selling nuclear material, such asIridium-192 and depleted uranium.16 More recently on March 19, 2019, armed men attacked a Brazilian nuclear plant uranium convoy in Rio de Janeiro.17 No material was compromised. In the instance of a convoy being attacked, nefarious and deliberate intent becomes likely. These are only two instances of dangerous activity involving nuclear material in Latin America. There very well could be other serious cases that have not been documented. While the aforementioned cases could very well be anomalies, they still occur. After a couple or few of these seemingly isolated incidents, terrorists and other non-state actors have the capacity to begin constructing a RDD or WMD. Additional requirements, such as subject matter experts, expert scientists, and instructions, are relatively easy to acquire. Hezbollah and its regional partners could very well solicit help or threaten malice against private or public subject matter experts in order to obtain talent. Even then, countless resources are available online and on the dark web to aid its efforts. One phenomenon that has yet to be explored is the involvement of regional cartels and paramilitary groups in such operations. It is highly unlikely that Latin American cartels or paramilitary factions would ever use RDDs or WMDs against their targets. The very premise behind a cartel is stealth and to remain out of the public limelight and away from law enforcement. The nature of trafficking weapons, drugs, and persons demands isolation and secrecy. Cartels will only strike if they feel threatened or attacked in the first place. If prompted to lash out against an interrupting force, cartels almost always use conventional weapons, such as small arms. It makes perfect sense that an organization with such modus operandi would shy away from using RDDs or WMDs. Likewise, paramilitary groups, such as the ELN and PCC, also strive to operate in relative secrecy and with surprise. However, different from cartels, their objective to strike out against government targets unprompted. Take for example the actions of the Fuerzas Armadas Revolucionarias de Colombia (FARC) in Colombia. Being a paramilitary group, it operated out of remote, crude bases in the uninhabitable portions of the country, while assassinating and kidnapping government officials. While the FARC utilized guerilla tactics, paramilitary factions primarily espouse the use of conventional weapons and explosives to achieve their desired objectives. While it is unlikely that cartels and paramilitary organizations would use RDDs or WMDs, the United States and its regional partners should recognize the potential role of these parties in trafficking nuclear and WMD material and equipment for financial gain. With their given skill in moving illicit cargoes, Latin American non-state actors are ideal outlets for terrorist organizations, such as Hezbollah, to acquire and move high-profile restricted material across borders. Since they are not bound to follow international laws, these regional partnerships would provide lucrative deals for both sides. The hefty payout of trafficking dangerous materials could certainly attract attention from cartels and other organizations looking to make a quick profit. Delivery of Radiological Material and WMD Provided that Hezbollah or other non-state organizations have the necessary material, the most feared stage of the RDD and WMD process is the system’s implementation. The international community would be correct not to expect a thermo-nuclear weapon on-par with that of the United States or nuclear weapons states of the IAEA. Dynamic and mobile terrorist cells do not have the resources, time or capacity to manufacture and store a legitimate nuclear weapon. However, this likelihood does not guarantee full security in light of ‘dirty bombs’ or biological and chemical systems. While the size, mechanics, range and lethality of radiological and WMD devices vary across a large spectrum depending upon the target, the main problem is they still pose a threat. With the right isotope, RDDs can temporarily contaminate large areas for long amounts of time. Even with the advent of more stringent security measures at the US-Mexican border, there are concurrent loopholes in air, land, sea, and cyberspace that leave the US vulnerable. At more porous borders been Latin American countries, the possibility is quadrupled. While the prospect of trafficking nuclear and radiological material across sovereign borders looms, perhaps the most readily available and effective means of attack for an organization like Hezbollah is biological. WMDs provide an effective avenue of attack for an organization such as Hezbollah. The examples of the Ghaddafi and Assad regimes in Libya and Syria respectively and their abilities to develop covert biological and chemical weapons still loom in the Western psyche. With the right tools, Hezbollah could do the same, if they are not closely surveilled. The failed state of Venezuela provides Hezbollah with a sanctuary to operate out of in Latin America. In fact, regular flights connect Caracas and Teheran, making it easy for operatives to transit to and from South America. Separately, over the past year, the Bolivarian republic has seen millions of its citizens move to neighboring countries in one of our time’s greatest humanitarian crises. The US intelligence community designated Venezuela a displacement hotspot in 2019, citing the strong probability of infectious disease outbreaks.18 Many of these displaced persons settle in Colombia, Brazil, Chile, and Peru. From there they disperse around the Western Hemisphere. An infected operative could very well blend in as a refugee and spread a deadly, infectious disease around a densely-populated area of a neighboring country. By the time authorities notice the epidemic, it is already too late to contain in light of the rudimentary medical facilities available. Like human-borne suicide bombings, this form of biological attack is relatively inexpensive in Hezbollah’s view, amounting to a follower’s life, little money, and biological agent capable of being harnessed. History teaches us that most terrorist organizations prefer a variety of delivery methods, from person-based suicide to car-based to pressure-cooker to improvised explosive device (IED) bombings and so on. In other words, they are very hard to track and prevent. Historically, Hezbollah has utilized suicide (body-based), rocket-based and vehicle-based bombing tactics, as evident in Lebanon, Syria, Israel, and Argentina. As detection technology has advanced over the years to expose more threats, so has the adversary’s ability to disguise their explosives and products. The simplest explosive device fueled by fertilizer or nitrogenous compounds might not be detectable except by the human eye. Today, gel-based explosives and more minute IEDs stand as the foremost obstacle to detection and explosive ordinance disposal (EOD) teams. Counterterrorism measures to prevent these catastrophes from occurring include: cutting-edge airport and border monitoring technology able to detect gel-like and composite explosives, new, discrete systems for detecting radiation, special municipal and federal law enforcement units dedicated to inspecting vehicles (within the shell and under the carriage), and collaboration between national agencies and departments. If Hezbollah or another terrorist organization were to strike in Latin America, the next logical question to ask would be ‘Where?’ There are hundreds of eligible targets in the Americas, such as embassies, consulates, shared operating bases for the US military, foreign nuclear plants, foreign military bases, the Panama Canal, and urban and cultural centers. Looking at past Hezbollah activity in the Middle East, it is reasonable to surmise the organization would first target the Brazilian or Argentinian Jewish community, Israel, and the United States. Seeing as how Hezbollah has already targeted the heart of the Jewish community in Buenos Aires, the next closest and largest communities would be the ones in São Paulo and Rio de Janeiro, Brazil (±500 and 700 miles away from the TBA respectively). The closest Israeli consulates are in São Paulo and Rio de Janeiro. American consulates are located nearby in the same two Brazilian cities, in addition to the US Embassy in Asunción, Paraguay. The group also boasts an affinity for military targets. Any arrival of US forces into South America could also prompt an attack.

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#### Exporting the Colombian-US security cooperation model solves transnational organized crime, AND drug trafficking

Senator Roy Blunt & Cardin 19 (R-MO) Task Force Co-Chair Senator Ben Cardin (D-MD) Task Force Co-Chair, 9-26-2019, "The Untapped Potential of the US-Colombia Partnership," Atlantic Council, <https://www.atlanticcouncil.org/in-depth-research-reports/report/untapped-potential-us-colombia-partnership/#blueprint>, nihara

Over the past decades, Colombia and the United States have consolidated a mutually beneficial partnership that has successfully safeguarded both nations’ security interests. Under Plan Colombia, the country became an increasingly peaceful and prosperous democracy and, together, the United States and Colombia effectively reduced transnational organized crime, violence, coca cultivation, and drug trafficking. Now, with Colombia’s improved security situation, strengthened economy, and increased leadership in the region, the bilateral relationship calls for a renewed partnership.

Instability in neighboring states and interference of extra-hemispheric powers in the region further reinforce the need for a deepened and modernized US-Colombia partnership. After rigorous consultations and discussions, the Atlantic Council’s US-Colombia Task Force identified three major areas that will serve as the foundation for the bilateral relationship going forward: economic development; rule of law, rural development, and the fight against drugs; and joint leadership in the region.

The interests of Colombia and the United States are more intertwined than ever before. The new US-Colombia partnership should recognize this reality, and capitalize on the opportunities that this represents. The partnership will be further solidified as the United States supports Colombia’s efforts to stabilize territories, foster rural development, and bring about a sustainable democratic transition in Venezuela. Economic and diplomatic ties will also be strengthened as both countries work together for the eventual reconstruction of Venezuela and the promotion of stability in other parts of the region, particularly in Central America.

### 2nc – at: egypt

#### We just cut aid to Egypt over human rights – AND have consistently suspended aid due to HR concerns – it’s indistinguishable – thumps AND empirically denies their impact – BUT, does NOT solve

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WASHINGTON — Citing human rights concerns, the United States will not give Egypt $130 million in annual security assistance, officials said on Friday, even as the Biden administration continues to approve billions of dollars in military sales to the Middle Eastern ally.

The financial aid was temporarily frozen in the fall as the State Department demanded that Egypt do more to protect the rights of political critics, journalists, women and members of civil society. It was the first time that a secretary of state did not issue a formal national security waiver to provide the aid, and was aimed at pressuring officials in Cairo to release political prisoners and stop persecuting critics.

Since then, Egypt has failed to convince the Biden administration that steps the country has taken were enough to protect human rights — and, in turn, preserve the funding.

“It sends the important message abroad that we will back up our commitment to human rights with action, and gone are the days where dictators receive blank checks from America,” Senator Christopher S. Murphy, Democrat of Connecticut, said in a statement on Friday.

Secretary of State Antony J. Blinken spoke by phone with Foreign Minister Sameh Shoukry of Egypt on Thursday, but the State Department had not made a final decision on whether to withhold the assistance as of Friday afternoon, said Jalina Porter, a department spokeswoman. But other department officials, who spoke to reporters on condition that they not be named in keeping with department protocols, said Mr. Blinken was expected to divert the funding to other national security priorities — and away from Egypt.

The Egyptian government has not officially responded. President Donald J. Trump also froze military aid to Egypt in 2017, but released it the following year.

Mr. Murphy said the Biden administration had outlined a “list of narrow and wholly achievable human rights conditions” for Egypt to meet to receive the financial assistance before a Jan. 31 deadline. Other officials said the precise requirements were classified but included the overturning of guidelines that had allowed for the unjust detention and harassment of Egyptian and foreign human rights activists.

An annual State Department report on Egypt’s human rights record, released in March, cited numerous examples of abuse by government security forces, including extrajudicial killings, abductions and torture. It also found that free and political speech was inhibited, including by restricting the news media, and that gay, lesbian, bisexual, transgender and intersex people were targeted with violence.

According to the Committee to Protect Journalists, Egypt has consistently ranked among the world’s top jailers of journalists since President Abdel Fattah el-Sisi was elected in 2014.

Last fall, Mr. el-Sisi announced a new strategy to protect human rights and in the months since has released some political prisoners.

But activists and American officials said it did not go far enough.

In November, five Egyptian activists and politicians, including a former member of Parliament, were sentenced from three to five years in prison on charges of spreading false news and using their social media accounts to undermine national security.

In December, an Egyptian court sentenced three prominent human rights figures to several years in prison, also on charges of spreading false news.

“Of course the Egyptian government is saying things have improved, but the reality on the ground is dark and vicious,” said Gamal Eid, who ran an independent human rights organization in Egypt for 18 years before announcing this month that he would end its operations, citing security threats and police intimidation.

Mr. Eid, who was the executive director of the Arabic Network for Human Rights Information, is embroiled in a criminal case against a number of nongovernmental organizations, and dozens of their members, that the authorities have accused of receiving foreign funding illegally. He has been banned from travel since 2016, and his assets have been frozen. Two of his team members, a lawyer and a researcher, are in jail.

The blocked funding is just a fraction of an estimated $1.3 billion in aid the United States generally gives Egypt each year. Only a small amount of the assistance is conditioned on the country’s human rights record, under requirements set by Congress, and officials at the State Department said $130 million was the maximum they could withhold in a single fiscal year.

But Egypt has continued to buy billions of dollars worth of military airplanes, ships and other equipment — including $2.5 billion in C-130 cargo jets and radar that was announced this week alone.

The State Department officials described military sales as unrelated to the financial assistance that the United States provides Egypt annually. They also said the military equipment most recently sold to Cairo would further American security interests; the jets, in particular, would replace older planes Egypt had used to distribute humanitarian aid and coronavirus relief supplies.

“Our relationship with Egypt is multifaceted, and Egypt is a valuable partner across many fronts,” said Ned Price, the State Department spokesman. “The United States remains committed to engaging with Egypt on human rights issues.”

After taking office a year ago, the Biden administration issued a statement promising to put “human rights at the center of U.S. foreign policy.” It has since sought to walk a line between enforcing American standards of human rights and alienating strategically located foreign partners who do not adhere to those standards.

Egypt is a key partner with the United States in negotiating peace between Israel and Hamas, and providing stability in the Gaza Strip. But it also was not invited to a meeting of more than 100 countries that President Biden hosted in December to rally the world’s democracies against authoritarian governments.

Amr Magdi, a senior Middle East researcher at Human Rights Watch, said the recent military sales showed that the Biden administration was still willing to provide diplomatic and military support to Mr. el-Sisi, despite the abuses.

“That sends a signal to the Egyptian government that they can definitely get what they want with time, and that they don’t really have to meet any concrete benchmarks, and that the release of just a few activists can serve as the fig leaf to the Biden administration and others who want to continue doing business as usual,” Mr. Magdi said.

#### Reprogramming of FMF thumps the turn – BUT, doesn’t solve the net benefit – credible enforcement of Leahy is key

Human Rights Watch 22, 2-1-2022, "Joint Statement – Biden Administration’s Decision to Reprogram Military Aid to Egypt Is Necessary but Insufficient," <https://www.hrw.org/news/2022/02/01/joint-statement-biden-administrations-decision-reprogram-military-aid-egypt>, \*[signatories list condensed], nihara

Following the January 30 deadline, the Biden administration decided that it will reprogram $130 million in Fiscal Year (FY) 2020 Foreign Military Financing (FMF) originally intended for the brutal government of Egyptian President Abdel Fattah al-Sisi. The United States had withheld this military aid since mid-September of last year pending the Egyptian government’s fulfillment of two modest human rights conditions: ending the unjust detentions of or dropping the charges against 16 Egyptians politically targeted by al-Sisi’s government and completely closing the decade-old Case 173 targeting independent civil society.

In light of the Egyptian government’s abject failure to meet the minimal conditions specified by the administration, the undersigned organizations welcome the Biden administration’s decision to reprogram this assistance in full. Upholding the conditions on the aid signals the importance of human rights in the bilateral relationship. But by moving forward with billions of dollars’ worth of security assistance just days before the decision, the strong message that could have been sent by reprogramming assistance has been undermined.

Notably, since September, Egyptian authorities have released a few prominent political prisoners, demonstrating that U.S. pressure can be effective. Yet simultaneously, as civil society forewarned, the Egyptian government has continued perpetrating egregious human rights violations: relentlessly targeting independent media and journalists, cracking down on civil society, repressing political opponents, strong-arming private businesses, and prohibiting protests and free expression. Despite ending the state of emergency on October 25, parliament quickly passed several amendments permanently consolidating the president’s and military’s emergency powers. Trials in front of emergency courts continued, most notably in the case of prominent activist and author Alaa Abdel Fattah, human rights lawyer Mohamed El-Baqer, and blogger Mohamed “Oxygen” Ibrahim, who were handed lengthy, unappealable prison sentences on bogus charges of spreading “fake news” in December.

Reprogramming the withheld funds could have built important leverage to pressure the Egyptian government to meet basic human rights standards; instead, the Biden administration spectacularly undercut its decision by announcing, just days earlier, more than $2.5 billion in arms sales to Egypt and obligating $1 billion in FY2021 FMF. Denying the ruthless government of President al-Sisi $130 million while moving forward with weapons deals and military aid worth nearly thirty times as much undermines the very purpose of reprogramming the funds. In doing so, the administration also squandered what could have been a meaningful step toward fulfilling its promise to “center” human rights in its relationship with Egypt.

Congress had placed conditions on $300 million in FY2020 FMF. The Biden administration’s decision to bypass those conditions and withhold only $130 million, a move similar to one taken by the Trump administration in 2017, has proved insufficient. Unfortunately, the administration’s recent steps have again failed to adequately respond to the severity of the human rights crisis in Egypt. It is therefore imperative for Congress to step up and make clear that continued U.S. military support for Egypt’s government is contingent on drastic improvements to their human rights record.

Signatories: Belady An Island for Humanity (BIH) Cairo Institute for Human Rights Studies (CIHRS) Committee For Justice (CFJ) Committee to Protect Journalists Democracy for the Arab World Now (DAWN) Egyptian Front for Human Rights (EFHR) Egyptian Human Rights Forum Freedom House The Freedom Initiative Human Rights First Human Rights Watch International Federation for Human Rights (FIDH) International Service for Human Rights (ISHR) MENA Rights Group PEN America Project on Middle East Democracy (POMED) Reporters Without Borders (RSF) Robert F. Kennedy Human Rights World Organisation Against Torture (OMCT)

### --- at: suez canal !

#### No Suez Canal impact

Todd C. Lopez 21, 3-29-2021, "Military Using Alternatives to Suez Canal In Middle East," U.S. Department of Defense, <https://www.defense.gov/News/News-Stories/Article/Article/2553768/military-using-alternatives-to-suez-canal-in-middle-east/>, nihara

Last week, the container ship "Ever Given" became lodged in the Suez Canal, the 120-mile long man-made waterway that runs through Egypt and connects the Red Sea with the Mediterranean Sea. The waterway allows commercial vessels to travel more quickly between the Far East and Europe. The route is also used by military ships, including those of the United States Navy. The blockage is not a show stopper for the U.S. military, however.

"Because we've long recognized the fact that narrow waterways like this are maritime chokepoints, we always make sure that we have alternate capabilities to meet mission requirements," Pentagon Press Secretary John F. Kirby said during a briefing Monday afternoon. "We have recognized the fact that chokepoints like the Suez Canal could suffer blockages like this, and it's factored into just normal operational planning."

Beyond that, Kirby said, the temporary shutdown of the Suez Canal has not caused the U.S. military to rethink its posture in the Middle East or its mission requirements there, because there are already other plans in place for such situations.

"In any circumstance around the world, the U.S. military has ... at its disposal any number of alternate ways of achieving mission success and meeting our mission requirement," he said.

Kirby also commended the Egyptian government for its work so far in getting the ship freed from the canal and its efforts to re-open the canal to maritime traffic.

"I would also say that we want to commend Egyptian authorities for — the only way to put it is — a Herculean effort to get this ship free," Kirby said. "Clearly they have done just amazing work getting that freighter off the ... canal bank, and back in the middle of it again ... I think they deserve a lot of credit for that."

## aff answers

### 2ac – at: courts ban the plan

#### CP’s struck down – Leahy Law suits are virtually impossible – sovereign immunity, political question, OR standing doctrine causes dismissal OR non-enforcement – NO spillover

Nathanael Tenorio Miller 12, J.D. Candidate, Cornell Law School, 2013. "Note: The Leahy Law: Congressional Failure, Executive Overreach, and the Consequences." Cornell International Law Journal, 45, 667, pp. 692-694, Fall, 2012, Lexis, nihara

VIII. Judicial Barriers to Enforcement

In a series of decisions, the Supreme Court has made it virtually impossible for anyone to sue to enforce the Leahy Law. Any challenge to the Leahy Law is likely to fail because of sovereign immunity, 249 because enforcement is a political question, 250 or because any conceivable plaintiffs would lack standing. 251

Iran-Contra presents a good indication of what would happen if foreign citizens tried challenging the Leahy Law. In Sanchez-Espinoza v. Reagan, when twelve citizens of Nicaragua sued for redress of injuries to themselves by the Contras, then-Circuit Judge Antonin Scalia barred the complaint on sovereign immunity grounds. 252 Scalia said:

It would make a mockery of the doctrine of sovereign immunity if federal courts were authorized to sanction or enjoin, by judgments nominally against present or former Executive officers, actions that are, concededly and as a jurisdictional necessity, official actions of the United States. Such judgments would necessarily "interfere with the public administration," or "restrain the government from acting, or … compel it to act." These consequences are tolerated when the officer's action is unauthorized because contrary to statutory or constitutional prescription, but we think that exception can have no application when the basis for jurisdiction requires action authorized by the sovereign as opposed to private wrongdoing… .

… The support for military operations that we are asked to terminate has, if the allegations in the complaint are accepted as true, received the attention and approval of the President, the Secretary of State, the Secretary of Defense, and the Director of the CIA, and involves the conduct of our diplomatic relations with at least four foreign states … . 253

More recently, in Arar v. Ashcroft, the Second Circuit said that it "has recognized 'the generally accepted view that foreign policy was the province and responsibility of the Executive … . Thus, unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs.'" 254

Moreover, in Goldwater v. Carter, the Supreme Court ruled that the authority to terminate treaties is a political question and therefore non-justiciable. 255 In his concurrence, Justice Powell said "the Judicial Branch should not decide issues affecting the allocation of power between the President and Congress until the political branches reach a constitutional impasse." 256 While there have been systemic flaws that lead to the lack of enforcement of the Leahy Law, given the deference to the Executive on matters of foreign policy, it is highly unlikely to lead to a constitutional impasse.

Nor do Members of Congress have standing to sue. In Raines v. Byrd, the Supreme Court denied Members of Congress the ability to challenge laws based upon a diminution of congressional power. 257 The Court said that, "appellees have alleged no injury to themselves as individuals, the institutional injury they allege is wholly abstract and widely dispersed, and their attempt to litigate this dispute at this time and in this form is contrary to historical experience." 258

With respect to the Leahy Law itself, a District Court gave two reasons in denying Representative Kucinich's suit to stop U.S. military action in Libya that cut against any congressional suits to enforce the Leahy Law. The first was the ability of the legislators to seek a legislative remedy, 259 and the second was congressional action, 260 in this case voting against de-funding the Libyan intervention. Since a legislative remedy to a lack of enforcement of the Leahy Law is theoretically available and there have been successive appropriations bills passed that have had the effect of funding the military units at issue, it is highly unlikely that a suit brought by Members of Congress will survive a challenge.

Due to the difficulty in tracking FMF to a particular unit, and therefore the impossibility of demonstrating that the U.S. arms and training were the cause of a specific injury, it is similarly unlikely that other groups of plaintiffs will have standing to sue. The Supreme Court ruled, in Schlesinger v. Reservists Committee to Stop the War, that unless a citizen has been personally injured "standing to sue may not be predicated upon an interest … which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share." 261 Further, in United States v. Richardson, the Supreme Court ruled that taxpayers did not have standing to sue because "to invoke judicial power the claimant must have a 'personal stake in the outcome,' or a 'particular, concrete injury,' or 'a direct injury,' in short, something more than 'generalized grievances.'" 262 However, the possibility of any plaintiff meeting these requirements is de minimis.

Due to sovereign immunity and the political question and standing doctrines, the Judiciary cannot check presidential violations of the Leahy Law. Without Congress clearly articulating a cause of action, the courts will continue to bar any potential plaintiffs from seeking a judicial remedy. It is up to Congress, not the courts, to give strength to the Leahy Law.

### 2ac – at: nb – squo solves

#### Status quo solves the internal net benefit

Alexander Ward 7/12, Jonathan Lemire and Quint Forgey, Alex Ward is a national security reporter and anchor of “National Security Daily.” Before joining POLITICO, Ward was the White House and national security reporter at Vox. He was also an associate director in the Atlantic Council's Brent Scowcroft Center on International Security where he worked on military issues and U.S. foreign policy. And he previously wrote the #NatSec2016 newsletter for War on the Rocks where he covered the 2016 presidential election and the candidates' views on national security. Jonathan Lemire is POLITICO's White House Bureau Chief. Quint is a breaking news reporter for POLITICO. Quint previously worked as a digital producer and editorial intern for POLITICO, a freelancer and news intern for The Wall Street Journal, an associate producer for Louisiana Public Broadcasting, a reporting intern for The News Journal in Delaware, and a national reporting fellow for the Carnegie-Knight News21 program. Quint graduated from Louisiana State University, where he served as editor in chief of the student newspaper, The Daily Reveille. 07/12/2022, "Jet-lagged dinners and Biden's gift to the Middle East," POLITICO, <https://www.politico.com/newsletters/national-security-daily/2022/07/12/jet-lagged-dinners-and-bidens-gift-to-the-middle-east-00045331>, nihara

FIRST IN NATSEC DAILY — LEAHY LAW LOOPHOLE: Rep. SARA JACOBS (D-Calif.) and Sen. CHRIS VAN HOLLEN (D-Md.) have introduced the “Upholding Human Rights Abroad Act” to close a gap in the Leahy Law — which prohibits the Defense Department and the State Department from providing military assistance to foreign security forces that violate human rights.

Specifically, the bill by Jacobs and Van Hollen would require human rights vetting for a pair of the Pentagon’s security cooperation programs — “Section 127e” and “Section 1202” — that have drawn scrutiny in open-source reporting by the Intercept and other media outlets.

“Human rights vetting is an essential part of how we engage with other countries, but over the last two decades Section 127e and Section 1202 have skirted these vetting requirements and, in some cases, been used with partners who have consistently violated human rights,” Jacobs said in a statement. “United States support for unvetted human rights abusers is not only deeply immoral and irresponsible, it is also counterproductive, leading to more unrest, instability, and terrorist activity.”

Van Hollen added in his own statement: “[F]or too long, legal loopholes have allowed the Department of Defense to bypass proper vetting, reporting, and oversight protocols when providing other nations or groups with certain types of military assistance.”

Sen. PATRICK LEAHY (D-Vt.), for whom the Leahy Law is named, said in a statement that the Pentagon “should have closed this loophole on its own initiative. The Upholding Human Rights Abroad Act will ensure that the Leahy Law is applied uniformly, so foreign partners are vetted and those who violate human rights are excluded from these programs.”

### 2ac – leahy law bad – egypt turn

#### Egypt violates human rights – the CP would decisively cut aid – OR, it doesn’t solve the net benefit

Ibrahim Ali 20, Fall 2020, “Note: Beyond Credible Fear: Enforcement of the Leahy Law and the Role the Asylum System Should Play,” Georgetown Immigration Law Journal, 35, 235, pp. 241-244, Lexis, nihara

A. Egypt

Despite its human rights record, Egypt is one of the biggest recipients of U.S. aid. A lower middle-income country, Egypt received $ 1.25 billion in U.S. foreign assistance in FY2018. 40Of that amount, $ 1 billion went towards foreign military financing. 41Over the last 70 years, it has received over $ 80 billion in U.S. foreign assistance, 42and it has requested $ 1.38 billion for FY 2020. 43While it remains a key foreign aid recipient, Egypt's human rights record is disturbing. 44

The Egyptian state has tortured suspects, implemented mass trials against children, and executed detainees. In January 2002, Mr. Ahmad El-Maati, a falsely accused terrorist suspect, was tortured by Egyptian security officials:

[a]n electric prod was used on [El-Maati's] hands, legs and genitals during interrogations. His hands were cuffed so tightly that his wrists bled. . . . He was kept blindfolded and handcuffed in a hallway with other prisoners for what he estimates was about two weeks. It was during this time, Mr. El-Maati says, that he developed anal bleeding. Canadian doctors later diagnosed an anal fissure requiring surgery. 45

Since 2013, the Egyptian government's use of mass trials and death sentences against children have skyrocketed; these include death sentences issued by military courts 46-- the same military that has received billions of dollars in assistance from the U.S. government. 47The U.S.-based human rights organization, Belady, puts the number of children arrested by the current regime for political reasons at over 2,000. 48Since former General el-Sisi assumed office, Egypt has been among the ten countries with the highest numbers of executions per year. 49At an Arab-EU summit in 2019, el-Sisi stood by his government's actions, arguing that executing detainees is part of "our humanity," distinguishing it from "your [European] humanity." 50Yet, Article 2 of the Egyptian Constitution states that Islam is the official state religion and that the primary source of legislation is Sharia law. 51The Quran forbids unjust killing, including judicially mandated death sentences that lack due process. 52El-Sisi's use of "our humanity" as justification for mass trials, death sentences in absentia, and sham military trials should sound the alarms for a White House that claims to be sending aid to "those who respect us." 53

In April 2019, the Egyptian Constitution was amended to lengthen el-Sisi's term from four to six years and to allow him to run for an additional term, solidifying his ability to remain in power until 2030; it also gave him far greater control over the judicial branch. 54The fairness of the referendum on these amendments was widely criticized. Websites that encouraged people to vote "no" were blocked by the government, and Egyptian citizens living abroad were given very little notice to travel to a consulate to vote. 55

Between 2017 and 2019, the Egyptian government blocked over 600 news, political, and human rights websites without judicial authorization. 56It was also among the four worst countries for journalists in 2018, with twenty-five journalists arrested that year, nineteen of which detained for "spreading false news." 57In August 2020, Egypt's "special counterterrorism courts" sentenced in absentia Bahey eldin Hassan, a prominent human rights activist, to fifteen years in prison for criticizing President Sissi's regime on Twitter. 58

In May 2015, the State Department informed Congress that it was in the national interest to continue assisting Egypt, but it also highlighted many of the country's violations that year, writing: "Government forces have committed arbitrary or otherwise unlawful killings during dispersal of demonstrators, of persons in custody, and during military operations in the northern Sinai Peninsula." 59This was not an isolated incident. Public Law 115-141 states that of the $ 1.3 billion in assistance to Egypt, $ 300 million must be withheld until the Secretary of State certifies that Egypt is taking effective steps on various human rights. 60However, it also states that the Secretary may waive the certification requirement if he or she determines that doing so is important to the national security interest of the U.S. 61In August 2019, a year full of gross violations of human rights by the Egyptian government, Secretary Pompeo invoked the national security interest waiver. 62Judging by the broad power vested in the Secretary of State by the statute, it is fairly straightforward for the Secretary to override the recommendations of DRL officials and investigators on the ground at U.S. embassies abroad; he or she merely has to declare that it is in the national security interest of the U.S. to do so. 63

Despite Egypt's troubling track record (these are only a few examples), the Trump administration has been outspoken in its support of the Egyptian dictatorship. 64On April 3, 2017, President Trump welcomed Egyptian President Abdel Fattah el-Sisi to the White House. 65During an interview in the Oval Office, President Trump spoke highly of his Egyptian counterpart: "We are very much behind President el-Sisi. He's done a fantastic job . . . And I just want to say to you, Mr. President, that you have a great friend and ally in the United States and in me." 66Just eighteen days later, on April 21, 2017, President Trump welcomed to the White House Ms. Aya Hijazi, an Egyptian-American humanitarian worker who was incarcerated by el-Sisi's regime for three years without a trial. 67During the televised meeting, no mention was made of the Egyptian government's treatment of Ms. Hijazi, and the President refused to take any questions. 68Ironically, while in the Oval Office, she sat in the same chair that was occupied by her authoritarian persecutor eighteen days earlier. 69Furthermore, at the G7 Summit in France in September 2019, President Trump notoriously called out, "Where's my favorite dictator?" while awaiting a meeting with his Egyptian counterpart. 70"Egypt has a great leader, he's highly respected, he's brought order," President Trump said at a meeting with el-Sisi during the UN General Assembly in September 2019. 71That same week, el-Sisi's regime arrested more than 2,000 peaceful protesters throughout the country. 72

#### US-Egypt cooperation and funding of Suez canal maritime chokepoint operations is key to naval power projection AND crises response – AND, trade – collapses European, Asian, AND US economy – empowers China to imperil war reserves and cause naval crises

Brent Sadler 21, Brent D. Sadler is a senior fellow for Naval Warfare and Advanced Technology in The Heritage Foundation’s Center for National Defense, 4-12-2021, "What the Closing of the Suez Canal Says About U.S. Maritime Security," National Interest, <https://nationalinterest.org/feature/what-closing-suez-canal-says-about-us-maritime-security-182571>, nihara

The Ever Given wasn’t the first ship to block the Suez Canal. A multi-ship pile-up in 2018 snarled maritime traffic there for two days. But the sheer size and bulk of the Ever Given was a much greater challenge—one that took 11 days to solve.

As container ships grow ever more massive, it becomes increasingly difficult to clear accidents quickly in strategic waterways. This simple reality has troubling economic and military implications.

If a strategic maritime chokepoint such as the Suez Canal is closed, then how long can this be endured before the U.S. economy suffers serious damage? And is the Navy appropriately positioned and sized to contend with such closures?

When the Ever Given grounded on March 23, regional tensions had been high for months due to an undeclared tanker war between Iran and Israel. There were also mounting concerns over Russian military forces massing in Crimea and on Ukraine’s Eastern borders. To move forces quickly between the Arabian Gulf and the Mediterranean, the U.S. Navy must have access to the Suez Canal. Without it, naval forces must circumnavigate Africa, taking over a week to arrive at a flashpoint.

On the day before Ever Given’s grounding, the Eisenhower carrier strike group (CSG) was in the Eastern Mediterranean conducting operations against ISIS (Islamic State in Syria and Iraq), while the Makin Island amphibious ready group was in the Arabian Sea. Had tensions turned to conflict in Ukraine while the canal was blocked, the nearest significant naval carrier strike force (the Theodore Roosevelt CSG) would have had to make a circuitous transit from the Indian Ocean—a danger acknowledged publicly by the Pentagon.

The Suez Canal closure created a 360-ship traffic jam and disrupted almost 13 percent of global maritime trade. In addition to creating added costs for shippers, the blockage is anticipated to cause downstream backlogs as delayed ships surge into and overwhelm ports and losses in global trade of up to $10 billion. The United States is less reliant on the Suez Canal than European and Asian economies, but had the Panama Canal been similarly blocked, it could severely impact the U.S. economy, according to a 2010 U.S government study.

The Ever Given episode proves that ever-larger container ships transiting strategic chokepoints pose a challenge for modern tugs and salvage ships to quickly clear. It would take weeks for global supply chains to adjust to a prolonged disruption of the Panama or Suez Canals. Consider that, had this disruption occurred during the early stages of the coronavirus pandemic, medical supplies would have been delayed with high human costs.

To mitigate such disruptions, the Navy must ensure a distributed forward naval presence. On April 2 the Eisenhower CSG exited the Suez Canal heading south, leaving no naval strike group supporting operations in the Mediterranean.

Additionally, the Navy—in cooperation with the State Department—should seek to ensure that canal operators have adequate resources to clear the largest of vessels, grounded or intentionally sunk. This would be in Cairo’s financial interest as well as ours. The Suez Canal generates annual revenues of $5.6 billion, providing Egypt with critical foreign currency and making up almost two percent of its economy. Similarly, the Panama Canal generates $3.4 billion in annual revenues and accounts for 40 percent of that nation’s economy.

Nonetheless, the nation needs to look to procuring the capacity to unilaterally re-open strategic chokepoints should the need arise in a conflict. In the case of Ever Given, it required a special suction dredger able to remove two thousand cubic meters of soil an hour and special heavy capacity salvage tugs, like the Dutch ALP Guard which took five days to arrive.

Additionally, a third party with controlling stock of chokepoints, notably China in the Panama Canal, can imperil transit of critical war reserves or naval vessels in crisis. On this more action is needed.

With the Biden administration seeking a multi-trillion dollar “infrastructure” bill, it would be wise to consider investments that harden the U.S. economy to such disruptions. After all, in 2011, the U.S. relied on maritime shipping to receive 53 percent of its imports and send 38 percent of its exports and remains much the same today.

Ever Given’s grounding comes at a time when more and more political leaders and naval thinkers are turning to the precepts of America’s revered maritime visionary—Alfred Thayer Mahan—to answer the core question: “What is a Navy for?” The sight of hundreds of ships backed up around the Suez Canal as tensions rose from the Taiwan Straits to the Black Sea should be instructive.

#### Trade solves global crises

Ian Bremmer 19, PhD, Professor, Applied Geopolitics, Columbia University's School of International and Public Affairs, President, Eurasia Group, , editor-at-large at Time, 11/18/19, "The End of the American International Order: What Comes Next?", Time, https://time.com/5730849/end-american-order-what-next/

China has made its decision. Beijing is building a separate system of Chinese technology—its own standards, infrastructure, and supply chains—to compete with the West. Make no mistake: this is the single most consequential geopolitical decision taken in the last three decades. It’s also the greatest threat to globalization since the end of World War II. It wasn’t supposed to be like this. Globalization has lifted billions of people from poverty around the world. We now live longer, healthier, and more productive lives than ever before. We are better educated and better informed than at any time in history. There has never been a better place and a better time to be alive than right here, right now. So why are so many people so angry, and why is globalization under unprecedented threat? Why are citizens in country after country bitterly casting aside both governing and opposition parties in favor of political disruptors? At this moment in history, why is there so much alarm? Because this IS a moment of transformation, and uncertainty. In much of the world, the lightning-fast, cross-border flows of ideas, information, people, money, goods and services—the same forces that have created so much opportunity and prosperity—also generate fear. Fear that the world now becomes more complicated and more dangerous in real time. Fear that the world we knew is gone for good, and fear that no one is willing and able to do anything about it. I want to talk with you today about why all this is happening, and why it’s so vitally important that we’re having this conversation at this moment—and in the heart of this great country. Japan is both blessed and burdened by its unique place in this G-Zero world. Japan has the political stability, the foresight, and the technological talent to help lead the world into a brighter future than the one we currently face. We all have reason to hope that Japan’s leaders, its companies, its political will, and its people will help lead the transition toward a new order, one in which human ingenuity, moral imagination, and courage can help all of us meet the challenges to come. The Geopolitical Recession When I started Eurasia Group in 1998, our clients were interested almost exclusively in the so-called emerging-markets countries, those that presented both big growth opportunities and unfamiliar political challenges. I defined an emerging market as “any country where politics matters at least as much as economic fundamentals for market outcomes.” Countries like Japan, the United States, Canada, and the leading nations of Western Europe offered a much more stable and predictable political landscape, but more modest opportunities for growth. Those days are gone. The financial crisis of 2008 and the turmoil that followed have brought politics directly into the performance of economies and markets in even the world’s richest countries. We also face a growing number of transnational threats. The U.S.-led global order is finished. So many of the dark clouds now hanging over us—from climate change to cyber-conflict, from terrorism to the post-industrial revolution—move unchecked across borders, leaving national governments much less able to meet the needs of their citizens. Today, it is not economics but geopolitics that has become the main driver of global economic uncertainty. The world has entered a “geopolitical recession,” a bust cycle for the international system and relations among governments. It’s a time when alliances, institutions, and the values that bind them together are all coming apart. From an historical perspective, geopolitical recessions are both rarer than economic recessions and longer-lasting. We’ll be living in this geopolitical recession for at least a decade to come. How did we get here? Economists tell us that the process of “creative destruction” fuels the engine of growth that builds the future, and history says that’s true. But lives and livelihoods are destroyed in the process, and growing numbers of people say their government is either powerless to help them manage or doesn’t care what happens to them. Resentment of elites is on the rise in every region of the world. The system is rigged against them, they believe; it’s increasingly hard to argue they’re wrong. This creates opportunities for a new breed of populist who offers scapegoats and promises of protection. These politicians did not invent this problem. They’re just profiting from it. And the greatest worry is this: All this anger is building in good economic times. What happens when economies start to slow? History shows that governments that are unpopular at home are more likely to make trouble abroad, especially with their neighbors, to rally public support and divert attention from domestic troubles. That breeds less trust among governments. The risk of misunderstanding rises. Accidents are more likely—and more likely to escalate toward conflict. There are three implications to consider… The first centers on “tail risks,” the low-likelihood-but-high-impact events that have become commonplace in a world reshaped by China’s rise, Middle East turmoil, populist Europe, revanchist Russia, divided America, a world-record 71 million displaced people, and the destabilizing effects of technological and climate changes. Imagine a military accident in the South China Sea, at a time when the U.S. and Chinese presidents are locked in a war of wills over trade and technology, and determined to project strength at home, that spirals out of control. Turn to the Middle East—the U.S. has confronted Iran. Since President Trump withdrew the U.S. from the Iran nuclear deal and then re-imposed sanctions, Iran has taken bold military action—including a strike on the heart of Saudi Arabia’s oil infrastructure. Washington responded by sending troops to Saudi Arabia, a move which, you might recall, sharply increased the risk of terrorism in the U.S. a generation ago. What if President Trump is defeated for re-election next year, and North Korea’s Kim Jong-un discovers the next U.S. president won’t accept his phone calls? What provocative action might he take? What accidents might he risk? What if a debt crisis hits Italy, created when a future Italian government defies EU budget rules and inadvertently creates a financial crisis too large for lenders to manage? Or a miscalculation in Ukraine pulls Russia into a shooting war? Or a US-Russia cyber confrontation hits critical infrastructure, creating a humanitarian crisis inside an American city? The lack of coordinated leadership in today’s world, our G-zero world, makes all of these crises both more likely to happen and more difficult to manage when they do. Individually, they are long-shots. Collectively, they pose unprecedented danger. The second implication of the geopolitical recession is the breakdown of international institutions. The tens of millions of displaced people around the world today create one of the most urgent and expensive problems that the United Nations has to cope with. Yet, even as national governments are less willing to welcome big numbers of refugees, even fewer are willing to invest more to support the UN Refugee Agency. We also see fragmentation of European institutions as voters send growing numbers of anti-EU politicians to serve in the European parliament. There is no longer consensus among Europeans on the free movement of EU citizens across borders, on how to manage immigrants from outside the EU, or on important questions like how best to manage relations with Russia. The Trump administration has threatened the coherence of NATO, the most successful military alliance in history (French President Macron certainly seems to agree), and has withdrawn the US from the Trans-Pacific Partnership trade deal, the Intermediate-Range Nuclear Forces treaty with Russia, the UN Human Rights Council, and the Paris Climate Accord, to name only a few. The inevitable consequence of all this is a world that has become more unpredictable and much less safe. There is little chance in this environment to establish new agreements and new institutions to help manage tomorrow’s crises. Instead, individual governments will adopt their own rules in an attempt to contain challenges that don’t respect borders. They will threaten economic penalties and military retaliation in a world with fewer institutions able to enforce generally accepted rules and practices. The last implication of the geopolitical recession: The weakness of today’s international system not only leaves the world more vulnerable to crisis, but less resilient when crisis comes. In recent years, we’ve avoided a major international crisis. We’ve seen Brexit, the election of Donald Trump, the growth of populism across Europe, Russia’s bid to undermine Ukraine’s independence, Xi Jinping’s consolidation of power in China, a meltdown in Venezuela, and plenty of individual fires in the Middle East and in democracies across the world. But we have not yet experienced anything during this period that poses a challenge to the entire international system, and the global economy has remained relatively strong. Our luck can’t last.

#### Naval power solves nuclear war

Cropsey and McGrath, 18—Director AND Deputy Director, Center for American Seapower (Seth and Bryan, “Maritime Strategy in a New Era of Great Power Competition,” <https://s3.amazonaws.com/media.hudson.org/files/publications/HudsonMaritimeStrategy.pdf>, dml)

As a maritime nation, naval power is the U.S.’s most useful means of responding to distant crises, preventing them from harming our security or that of our allies and partners, and keeping geographically remote threats from metastasizing into conflicts that could approach our borders. A maritime defense demands a maritime strategy. As national resources are increasingly strained the need exists for a strategy that makes deliberate choices to connect ends (security) with means (money and the fleet it builds). This paper examines the need for a maritime strategy, discusses options, and offers recommendations for policy makers.

After several decades of unchallenged world leadership, the United States once again faces great power competition, this time featuring two other world powers. China and Russia increasingly bristle under the constraints of the post-World War II systems of global trade, finance, and governance largely created by the United States and its allies, systems that the United States has protected and sustained to the economic and security benefit of its citizens and the citizens of other nations. Both China and Russia are demonstrably improving the quality of their armed forces while simultaneously acting aggressively toward neighboring countries, some of which are US treaty allies. Additionally, both nations are turning their attention to naval operations far from their own coasts, operations designed to advance national interests that are often in tension with those of the United States.1

For the past several decades, US national security strategy has not had to contend with great powers. Instead, it has concerned itself primarily with building alliances designed to manage regional security more efficiently by proxy, while devoting increasingly more resources to homeland defense and intelligence aimed at stemming acts of terror by Islamic radical organizations and their followers. To the extent that the US position of leadership in the world was not threatened, this strategy was reasonable, if imperfectly pursued. Such a strategy will no longer suffice in a world of great power competition, especially one in which powers of considerable—but unequal—strength are opposed. Unbalanced multi-polarity is an especially unstable condition, and the United States is not effectively postured to manage that instability. Henry Kissinger divides the concept of world order into two parts: a normative system that defines acceptable action, and a ‘balance of power’ arrangement that punishes the breach of such conventions2. As the underlying balance of forces shifts, states with different ideas of international order gain the power to reshape the system. Thucydides’ ancient insight holds true – the rise in power of one actor threatens all others. Where such threat exists and if the balance of power between states or coalitions approaches equilibrium, a “Cold War” between competing ideological camps occurs. In an unbalanced system, the stronger side is tempted to strike its weaker opponent while the balance of forces is favorable. Unbridled competition for supremacy defined Europe during its bloodiest periods. Europe’s 16th and 17th century religious wars between Catholics and Protestants and the global 20th century struggles between totalitarian ideologies and democracy both represent the natural end-state of unbalanced multipolar systems. Without norms to restrain states and force to uphold these norms, violence is very likely.

Today’s international system is moving toward unbalanced multi-polarity. Unfortunately, the United States is not currently prepared to manage such an international environment. If Americans want to preserve their nation’s secure and prosperous position as the world’s great power, the United States must begin now to prepare strategically for what it will inevitably face. Otherwise, it will ultimately be forced into an increasingly limited number of unattractive options to sustain its position of leadership.

There is little evidence that the people of the United States wish to see our position in the world diminished. The 2016 Presidential Election raised important questions about the degree to which globalization has served the interests of everyday Americans (and their perceptions thereof), while the two dominant US political parties have moved toward more protectionist policies, at least as articulated by their nominees. Opinion polling indicates the divided nature of the American public on issues like free trade and sustained foreign commitments.3 However, Americans remain cognizant of threats to the United States, and favor maintaining America’s position as a great power by sustaining a strong military.4 Moreover, it would be difficult to identify meaningful numbers of Americans who would sacrifice national security in favor of increased social spending, despite the continuing rise in non-discretionary spending in the federal budget. Americans understand that the US position of world leadership benefits the nation’s economy, its security, its allies, and the international order that has been the object of US foreign and defense policy for over a century. They know that their lives would be diminished if this position of global leadership were surrendered to an adversary or group of them. The paradox of the American experience is that the US is not simply a great power – it is an exceptional power, for which ideals count as much as strength. The American public, despite its aversion to foreign commitments, can rise to the occasion and respond to clear threats, as it has in both World Wars, the Cold War, and after September 11th. The job of the policymaker, therefore, is to ensure America remains a great power, so that when the occasion arises, it can act as an exceptional power.

It is critical then, for US political leaders to begin thinking more strategically about protecting and advancing America's position in the face of growing great power competition. This monograph asserts that a strategy to support such a goal would necessarily be maritime in nature, leveraging this nation’s great geographical advantages in the service of its national power. Sharing land borders with only two nations—both of whom are friendly to the United States—and separated from other great powers by vast oceans, the United States enjoys a security position quite unlike that of any other nation. For over a century, it has been the unspoken (but doggedly pursued) national security aim of the United States to ensure that no power rise to prominence in Asia or Europe so as to occupy a position there as dominant as the United States’ position in the Western Hemisphere. Were this to occur, not only could that nation then lock the United States out of the resources and activity of that region, but it could also then eventually turn its attention to challenging our position in the Western Hemisphere.5

Underlying this approach is the reality that most the world’s activity does not occur in our own hemisphere, but in Asia and Europe. American interests in these regions— political, diplomatic, economic, and military—are considerable and growing. Protecting and sustaining those interests must remain a priority of American policy, and maritime strategy is an effective tool in doing so.

Maritime strategy is a subset of grand strategy, and the relationship between the two is ably defined by Professor John B. Hattendorf of the Naval War College: “In its broadest sense, grand strategy is the comprehensive direction of power to achieve particular national goals. Within those terms, maritime strategy is the direction of all aspects of national power that relate to a nation’s interests at sea. The navy serves this purpose, but maritime strategy is not purely a naval preserve. Maritime strategy involves the other functions of state power that include diplomacy; the safety and defence of merchant trade at sea; fishing; the exploitation, conservation, regulation and defence of the exclusive economic zone at sea; coastal defence; security of national borders; the protection of offshore islands; as well as participation in regional and world-wide concerns relating to the use of oceans, the skies over the oceans and the land under the seas.6 It is wholly appropriate for the world’s dominant naval power—separated from its widely-flung interests by thousands of miles of open ocean—to develop and execute coherent maritime strategy. In a time of re-emerging great power competition, it is essential. The nation’s current maritime strategy7 is, unfortunately, not up to the task. It focuses insufficiently on great power competition; it does not recognize the rise in importance of conventional forces in deterring great power war; it does not provide a theory of conventional deterrence appropriate to great powers and their likely objectives; it does not suggest a posture for naval forces that acts as an effective deterrent; its derived force structure is too small and short on effective logistic support; it does not place sufficient value on naval partnerships with geographically important nations which may not be traditional partners; and it is silent on the need for the nation to invest in a maritime industrial base that can enable an appropriate strategy. This monograph urges new thinking about maritime strategy, a strategy compatible with the United States’ responsibilities as the leader of the free world, as well as the world’s premier political, military, economic, and diplomatic power. Such a strategy would seek to protect and sustain those leadership positions in the face of renewed great power competition, competition that largely subsumes other, lesser security concerns. There will be those who view this approach as a return to “Cold War” strategic thinking, and we do not shy from this comparison. The United States acted for decades as a coherent strategic actor when faced with expansionist Soviet totalitarianism, and it must act with equal coherence and resolve to contest China and Russia’s brands of aggressive mercantilism, regional expansion, and contempt for established global order. There will be those who evaluate our suggestions in this paper and conclude that the nation cannot afford it, that the expense associated with moving to a maritime grand strategy would imbalance the traditional “ends, ways, means” approach to the making of strategy. And while the ends, ways, means approach is generally relevant to military and operational strategy, it is unsuited to the making of grand strategy for one very important reason. Unlike subordinate levels of strategy, grand strategy re-allocates, realigns, and re-orients a nation’s “means” to serve strategic “ends”. Military strategy starts with the proposition that there is a certain resource level available to pursue its ends. Grand strategy starts with the sum of the nation’s output capacity, and then determines how it can most effectively be allocated to the achievement of strategic goals.

Short of war itself, there is nothing in American history that causes strategic realignment more reliably than a change in Administration, and we wish to be part of that dialogue. We argue here for a new theory of deterrence, one that revises the Cold War approach in which the Soviet Union was deterred from large-scale conventional attack by the threat of nuclear escalation. Under that rubric, one could justifiably say that America’s conventional deterrent was dependent on its strategic deterrent. Today, the decapitating “bolt from the blue” strike is even more remote than it was in the Cold War, and to the extent that nuclear exchange between great powers is conceivable, it is far more likely to flow from conventional conflict that has gone awry. Therefore, to deter nuclear war, we must deter conventional war. No aspect of American military power will be more critical to deterring either nuclear or conventional super-power war than seapower.

### 2ac – egypt-israel sceanrio

#### Aid’s resilient – regardless of HR violations – cuts are symbolic – it’s untouchable compensation for maintaining peace between Egypt AND Israel

Farah Najjar 17, Farah Najjar is an online news and features writer with Al Jazeera English. She covers war and conflict, politics and development in the Middle East region. She has reported from Lebanon, Turkey, Jordan and the Gaza Strip amongst others, 10-3-2017, "Why US aid to Egypt is never under threat," Al Jazeera, <https://www.aljazeera.com/news/2017/10/3/why-us-aid-to-egypt-is-never-under-threat>, nihara

Egyptian businessmen ordered more than 30,000 rocket-propelled grenades from US rival North Korea in a secret deal last year, the Washington Post reported on Sunday. The United Nations described it as the “largest seizure of ammunition in the history of sanctions against the Democratic People’s Republic of Korea”.

The UN revealed that the business executives sought to buy weapons for the Egyptian military. The report prompted US criticism, while the Egyptian embassy in Washington pointed to Egypt’s willingness to cooperate with UN officials in “finding and destroying the contraband”.

The Post reported that the North Korea incident was among a number of factors that led US President Donald Trump’s administration to freeze nearly $300m in military aid to Egypt in August.

Egypt also remains unaccountable for human rights violations.

Over the past several years, there have been many concerns over human rights abuses, including suppressing freedom of speech and the implementation of laws that limit the operations of civil society groups.

Does Egypt’s human rights record really matter?

The US has not taken any substantial punitive measures against Egypt, even as organisations such as Human Rights Watch describe Egypt’s current human rights crisis as the worst “in the country’s modern history”.

Egypt will likely continue to receive assistance regardless of legal provisions it might be violating, said James Gelvin, a professor of Middle East history at the University of California, noting that human rights-based restrictions are almost “routinely ignored when committed by a government the US wishes to support”.

Along with Israel and Afghanistan, Egypt is one of the three biggest recipients of US funding and weapons.

How much aid does the US provide to Egypt?

Since 1979, Egypt has been receiving uninterrupted aid at an average of $1.6bn a year, the bulk of which goes to the military.

Military support has come in the form of arms distribution and military training services. A biennial series of joint military exercises led by Egyptian and US troops in Egypt commenced in 1980.

Referred to as Operation Bright Star, the coalition training is designed to strengthen ties between the two country’s forces and to assist the United States in solidifying its strategic alliances in the Middle East.

In August, the US cut tens of millions in aid from Egypt, citing the country’s failure to make progress on human rights and democratic norms – but experts described these cuts as largely symbolic.

Why does Egypt get US aid?

For a country to become an eligible recipient of US aid, it must align itself with American interests and foreign policy, analysts say.

In the case of Egypt, US aid granted since the signing of the 1978 Camp David Accords was “untouchable compensation” for maintaining peace with Israel. This deal is considered a cornerstone of US-Egyptian relations.

Robert Springborg, a Middle East expert and non-resident fellow at the Italian Institute of International Affairs, told Al Jazeera that US economic support was intended to stabilise Anwar Sadat’s [former Egyptian president] government and succeeding ones.

How does the US benefit?

The primary benefit is the “cessation of hostilities against Israel” by Egypt and “other Arab states that could not wage war against Israel in the absence of Egyptian participation”, Springborg said.

In addition to Egyptian support for American “counterterrorism and counterinsurgency” campaigns, Springborg says the US also enjoys marginal benefits, including access to Egyptian airspace and the prioritisation of US naval vessels through the Suez Canal.

The high amount of military aid, in particular, has also helped to create jobs and to reduce unemployment in the US. More than 1.3 million Americans work in manufacturing weaponry for defence companies, and more than three million others support the industry indirectly.

The US is among the world’s top five arms producers and distributors, according to the Stockholm International Peace Research Institute.

“The United States does not give money to Egypt for military equipment; it gives the Egyptian military a list of equipment the American government will purchase on its behalf in the United States,” Gelvin told Al Jazeera.

What about economic aid?

Economic assistance, or American “investments” in Egypt, are a relatively small part of the package, analysts say.

Economic aid now stands at less than $200m annually, compared with more than $1bn from the early 1980s through the early 2000s, Springborg said.

Egypt’s domestic stability is important to the US, and so there is a sustained interest in its local economy. If the Egyptian economy collapses, it will render the region unstable, Gelvin said. And since the Egyptian military controls up to 60 percent of the Egyptian economy, it is unlikely that it will relinquish economic control to other institutions or factions in Egypt.

According to Gelvin, this was part of the Camp David package: “Since the army was not going to fight its main enemy of 30 years, it had to have some reason for being, and being so large.”

Aid stream for Egypt continuing despite violations

There are both political and legal conditions that must be met by countries on the US foreign aid list.

In 2012, US Congress made aid to Egypt conditional on the secretary of state certifying that the country was supporting human rights and democratic values. This came in response to an Egyptian crackdown on American NGO workers.

The amendment also required the secretary of state to ensure that Egypt was upholding its commitments to the Egypt-Israel peace treaty.

Yet these provisions have not affected the aid stream to Egypt, a country infamous for its human rights abuses.

In 2012, then-Secretary of State Hillary Clinton waived the certification requirements after the Obama administration claimed that there was no way of ensuring such provisions were met.

In 2013, a military takeover that led to the removal of Egypt’s first democratically elected president, Mohamed Morsi, struck “concern” among top White House officials, but they fell short of calling it a coup, which would have prohibited them from providing Egypt with military equipment.

#### The CP would decisively cut aid to Egypt – OR, it doesn’t solve the net benefit

Ibrahim Ali 20, Fall 2020, “Note: Beyond Credible Fear: Enforcement of the Leahy Law and the Role the Asylum System Should Play,” Georgetown Immigration Law Journal, 35, 235, pp. 241-244, Lexis, nihara

A. Egypt

Despite its human rights record, Egypt is one of the biggest recipients of U.S. aid. A lower middle-income country, Egypt received $ 1.25 billion in U.S. foreign assistance in FY2018. 40Of that amount, $ 1 billion went towards foreign military financing. 41Over the last 70 years, it has received over $ 80 billion in U.S. foreign assistance, 42and it has requested $ 1.38 billion for FY 2020. 43While it remains a key foreign aid recipient, Egypt's human rights record is disturbing. 44

The Egyptian state has tortured suspects, implemented mass trials against children, and executed detainees. In January 2002, Mr. Ahmad El-Maati, a falsely accused terrorist suspect, was tortured by Egyptian security officials:

[a]n electric prod was used on [El-Maati's] hands, legs and genitals during interrogations. His hands were cuffed so tightly that his wrists bled. . . . He was kept blindfolded and handcuffed in a hallway with other prisoners for what he estimates was about two weeks. It was during this time, Mr. El-Maati says, that he developed anal bleeding. Canadian doctors later diagnosed an anal fissure requiring surgery. 45

Since 2013, the Egyptian government's use of mass trials and death sentences against children have skyrocketed; these include death sentences issued by military courts 46-- the same military that has received billions of dollars in assistance from the U.S. government. 47The U.S.-based human rights organization, Belady, puts the number of children arrested by the current regime for political reasons at over 2,000. 48Since former General el-Sisi assumed office, Egypt has been among the ten countries with the highest numbers of executions per year. 49At an Arab-EU summit in 2019, el-Sisi stood by his government's actions, arguing that executing detainees is part of "our humanity," distinguishing it from "your [European] humanity." 50Yet, Article 2 of the Egyptian Constitution states that Islam is the official state religion and that the primary source of legislation is Sharia law. 51The Quran forbids unjust killing, including judicially mandated death sentences that lack due process. 52El-Sisi's use of "our humanity" as justification for mass trials, death sentences in absentia, and sham military trials should sound the alarms for a White House that claims to be sending aid to "those who respect us." 53

In April 2019, the Egyptian Constitution was amended to lengthen el-Sisi's term from four to six years and to allow him to run for an additional term, solidifying his ability to remain in power until 2030; it also gave him far greater control over the judicial branch. 54The fairness of the referendum on these amendments was widely criticized. Websites that encouraged people to vote "no" were blocked by the government, and Egyptian citizens living abroad were given very little notice to travel to a consulate to vote. 55

Between 2017 and 2019, the Egyptian government blocked over 600 news, political, and human rights websites without judicial authorization. 56It was also among the four worst countries for journalists in 2018, with twenty-five journalists arrested that year, nineteen of which detained for "spreading false news." 57In August 2020, Egypt's "special counterterrorism courts" sentenced in absentia Bahey eldin Hassan, a prominent human rights activist, to fifteen years in prison for criticizing President Sissi's regime on Twitter. 58

In May 2015, the State Department informed Congress that it was in the national interest to continue assisting Egypt, but it also highlighted many of the country's violations that year, writing: "Government forces have committed arbitrary or otherwise unlawful killings during dispersal of demonstrators, of persons in custody, and during military operations in the northern Sinai Peninsula." 59This was not an isolated incident. Public Law 115-141 states that of the $ 1.3 billion in assistance to Egypt, $ 300 million must be withheld until the Secretary of State certifies that Egypt is taking effective steps on various human rights. 60However, it also states that the Secretary may waive the certification requirement if he or she determines that doing so is important to the national security interest of the U.S. 61In August 2019, a year full of gross violations of human rights by the Egyptian government, Secretary Pompeo invoked the national security interest waiver. 62Judging by the broad power vested in the Secretary of State by the statute, it is fairly straightforward for the Secretary to override the recommendations of DRL officials and investigators on the ground at U.S. embassies abroad; he or she merely has to declare that it is in the national security interest of the U.S. to do so. 63

Despite Egypt's troubling track record (these are only a few examples), the Trump administration has been outspoken in its support of the Egyptian dictatorship. 64On April 3, 2017, President Trump welcomed Egyptian President Abdel Fattah el-Sisi to the White House. 65During an interview in the Oval Office, President Trump spoke highly of his Egyptian counterpart: "We are very much behind President el-Sisi. He's done a fantastic job . . . And I just want to say to you, Mr. President, that you have a great friend and ally in the United States and in me." 66Just eighteen days later, on April 21, 2017, President Trump welcomed to the White House Ms. Aya Hijazi, an Egyptian-American humanitarian worker who was incarcerated by el-Sisi's regime for three years without a trial. 67During the televised meeting, no mention was made of the Egyptian government's treatment of Ms. Hijazi, and the President refused to take any questions. 68Ironically, while in the Oval Office, she sat in the same chair that was occupied by her authoritarian persecutor eighteen days earlier. 69Furthermore, at the G7 Summit in France in September 2019, President Trump notoriously called out, "Where's my favorite dictator?" while awaiting a meeting with his Egyptian counterpart. 70"Egypt has a great leader, he's highly respected, he's brought order," President Trump said at a meeting with el-Sisi during the UN General Assembly in September 2019. 71That same week, el-Sisi's regime arrested more than 2,000 peaceful protesters throughout the country. 72

#### Egypt-Israel conflict goes nuclear

Robert Farley 19, Visiting Professor at the United States Army War College. 1-15-2019, "Israel’s Nuclear Weapons: The Worst-Kept Military Secret on the Planet," National Interest, <https://nationalinterest.org/blog/buzz/israel%E2%80%99s-nuclear-weapons-worst-kept-military-secret-planet-41672>, nihara

Conventional Defeat

The idea that Israel might lose a conventional war seems ridiculous now, but the origins of the Israeli nuclear program lay in the fear that the Arab states would develop a decisive military advantage that they could use to inflict battlefield defeats. This came close to happening during the 1973 Yom Kippur War, as the Egyptian Army seized the Suez Canal and the Syrian Arab Army advanced into the Golan Heights. Accounts on how seriously Israel debated using nukes during that war remain murky, but there is no question that Israel could consider using its most powerful weapons if the conventional balance tipped decisively out of its favor.

How might that happen? We can imagine a few scenarios, most of which involve an increase in hostility between Israel and its more tolerant neighbors. Another revolution in Egypt could easily rewrite the security equation on Israel’s southern border; while the friendship of Saudi Arabia seems secure, political instability could change that; even Turkish policy might shift in a negative direction. Israel currently has overwhelming conventional military advantages, but these advantages depend to some extent on a favorable regional strategic environment. Political shifts could leave Israel diplomatically isolated, and vulnerable once again to conventional attack. In such a situation, nuclear weapons would remain part of the toolkit for ensuring the survival of the nation.

### ---1ar – uq

#### US-Egypt cooperation now AND increasing

Ahmed Ali 7/6, 7-06-2022, "Egyptian, US forces carry out joint training exercise," Arab News, <https://www.arabnews.com/node/2117781/middle-east>, nihara

CAIRO: The air forces of the US and Egypt have carried out a joint training exercise at a base in the North African country, strengthening military cooperation between the two countries.

An Egyptian military spokesman announced that the exercise involved a series of lectures on unifying combat concepts and exchanging training experiences, and saw a number of multitask combat aircraft deployed by the US Air Force and Egyptian Air Force for training flights on operational missions and mid-air refueling in the air both during the day and at night.

The training flights demonstrated the extent to which the Egyptian Air Force has reached a high level of professionalism that qualifies its fighter pilots to carry out all tasks entrusted to them.

The exercise comes in light of the growing partnership and military cooperation between Cairo and Washington.

### ---1ar – link

#### Aid to Egypt is on the brink – BUT, Biden’s continuing it, despite HR concerns – the CP entrenches suspension – it’s the lynchpin of credibility for the net benefit

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The Biden administration recently authorized $2.5 billion in arms sales to Egypt. The weapons were military planes and air defense radar systems. This follows a $170 million military aid authorization in September. It also precedes the suspension of $130 million of military aid. This suspension occurred because Cairo did not meet standards about basic human rights conditions.

Egypt has been the second highest recipient of U.S. military aid worldwide. They receive $1.3 billion per year, most of which is foreign military financing. This aid is earmarked to buy U.S. weapons, equipment, and training. The Biden administration notes that this aid is going to a country that violates U.S. Leahy Law practices. These are the rules that intend to prevent human rights abuses from U.S. security aid. This acknowledgement happened both in 2020 and when it canceled the most recent suspended aid delivery.

Thus, the $2.5 billion sale is an example of a risky sale that the administration should avoid. According to the recently released 2021 Arms Sales Risk Index, Egypt ranks as the eighteenth most risky recipient of arms sales. The government is corrupt, undemocratic, commits human rights abuses, and inspires terrorism. Sending Egypt billions of dollars of U.S. weapons may seem like aiding an ally. Instead, this means that the U.S. needs to choose better allies.

Before, U.S. weapons have financed the Egyptian military. Between 2009 and 2020, the U.S. has sent Egypt $3.2 billion in fighter aircrafts, $2.3 billion in rotary aircrafts, $1.58 billion in support, $1.3 billion in tanks and armored vehicles, $240 million in naval craft, and over $1.4 billion in missiles, munitions, and radar.

The history and current administration’s policy on arms sales to Egypt make little sense. These weapons are not going to causes like improving human rights. From a data perspective, its score in the human rights components of the Cato Institute’s Arms Sales Risk Index have worsened every year.

Beyond the data, over the last five years, Egypt has waged a proxy conflict against Turkey in Libya, is home to around 1,000 ISIS militants, has forced human rights groups to shut down, uses advanced technology to track and target citizens, institutes a prison system that has led to increasing recruits for ISIS and al-​Qaeda, and used a draconian counterterrorism campaign to murder 755 people – many of whom are simple political opposition, not terrorists. The military-​led government and military itself commit these crimes.

Overall, U.S. weapons in Egypt fund a government whose draconian policies lead to arguments with other Middle Eastern countries and inspire and enable terrorist groups. These weapons help the Egyptian government commit some of the worst human rights abuses occurring in the world.

By definition, transferring weapons to human rights abusers does not help fight human rights abuse. Yet, the Biden administration continues to tout a foreign policy supposedly based on human rights.

The administration cannot have it both ways. It can choose to either support or fight global human rights abuses. Weapons sales to Egypt clearly support human rights abuses, which undermines the stated goals of Biden’s foreign policy.

### ---1ar – turns the nb

#### Aid to Egypt turns the net benefit – it’s key to human rights outcomes – health programs, declined mortality, clean water, sanitation, education, electricity, economic development – AND, democratic transition

Wilson Center 12, 9-10-2012, "U.S. Assistance to Egypt, Tunisia and Libya," <https://www.wilsoncenter.org/article/us-assistance-to-egypt-tunisia-and-libya>, nihara

The United States has maintained its $1.3 billion military aid package, based on the 1978 Camp David Accords. The Obama administration has also tried to promote private investment by U.S. multinational corporations. More than 100 American executives from dozens of top U.S. companies visited Egypt in September 2012. But Washington has also tried to come up with new resources through international institutions and agreements, such as the Deauville Partnership.

The U.S. Government will support Egypt and the Egyptian people with their needs for economic recovery, free and fair elections, and overall stability. In the short-term, our assistance efforts will leverage existing funding to produce quick, concrete results and have a tangible impact in support of Egypt’s economic recovery and democratic transition. We recognize that a prosperous and democratic Egypt, buoyed by economic growth and a strong private sector, can be an anchor of stability for the Middle East and North Africa.

Long-term Partnership with the Egyptian People: Working together over the years, we are particularly gratified that we have been able to help Egyptians in practical ways. We are proud of over thirty years of U.S. assistance to Egypt, in which the United States has:

Contributed massive resources to one of the most successful and renowned health programs worldwide, resulting in a 15-year extension of the lifespan of Egyptians, a decrease in the maternal mortality rate by over 50% and the child mortality rate by over 70%, and the eradication of polio;

Provided clean drinking water and sanitation to the city of Cairo and other metropolitan areas where no such service was previously available (the sewer system we constructed in Cairo constitutes the largest construction project in the world);

Built more than 2,000 schools and stocked 39,000 school libraries, and helped Egypt double literacy levels;

Sent thousands of Egyptians to the United States for advanced university studies;

Invested $1.8 billion in power sector projects accounting for roughly one-third of total present capacity; and

Invested billions in technical and financial assistance to modernize Egypt’s economy to create new jobs in fields like high-technology and manufacturing. This has directly contributed to Egypt’s status as a top ten country in the World Bank Doing Business report four out of the last five years.

### ---1ar – xt: suez i/l

#### Geopolitical access is key to access the Suez Canal – BOTH for trade AND military assets – that’s why NO administration has cut ties

Ibrahim Ali 20, Fall 2020, “Note: Beyond Credible Fear: Enforcement of the Leahy Law and the Role the Asylum System Should Play,” Georgetown Immigration Law Journal, 35, 235, pp. 252-253, Lexis, nihara

A. Geopolitical Considerations with Respect to Egypt

A key consideration that makes Egypt a crucial player in world politics is geography. Stretching 120 miles, the Suez Canal is an essential link between Europe and Asia. 135It connects the Mediterranean and the Red Seas, separating Africa from Asia, making it one of the most frequented shipping lanes in the world. 136For decades, Egypt has been crucial for moving American military assets through the region, as it gives the U.S. preferential passage through the canal. 137Geography also empowers Egypt with respect to its proximity to Israel. 138The eastern border of the Egyptian Sinai Peninsula borders Israel. One city in particular, Rafah, borders the Gaza Strip, making it the only operational border crossing between Egypt and the Palestinian territories. 139Because of the longstanding relationship between the U.S., Egypt, and Israel, the three countries have historically come to agreement on how "operational" that border crossing is. 140For example, the Agreement on Movement and Access (AMA): Agreed Principles for Rafah Crossing allows EU monitors to be present and Israeli officials to oversee the crossing via video surveillance. 141Moreover, Egypt and Israel cooperate in fighting terrorism in the Sinai Peninsula, which benefits U.S. counterterrorism efforts in the Middle East. 142Finally, Egypt's deployment of troops to Kuwait during the First Gulf War served as a "pan-Arab blessing for the [U.S.-led] operation," which did not go unnoticed by the Bush administration (41), marking one of the high points of the two countries' relationship. 143These considerations would certainly make it challenging for any U.S. administration to turn its back on Egypt.

### 2ac – at: hr nb

#### CP decks foreign policy – cooperation with authoritarian countries is inevitable – ONLY flips the net benefit and makes the counterplan’s threat uncredible – NO modelling – BUT, it’s key to oil, reducing gas prices, AND cooperation with China

Fred Kaplan 6/15, 6-15-2022, "The Misguided Foreign Policy Promise That’s Now Making Joe Biden Look Like a Hypocrite," Slate Magazine, <https://slate.com/news-and-politics/2022/07/joe-bidens-saudi-trip-highlights-one-of-his-administrations-big-foreign-policy-blunders.html>, nihara

Americans are not enthusiastic about President Biden’s upcoming trip to the Middle East, his first since winning the White House. In a recent poll, just a quarter of those surveyed liked the idea of the visit; a third disliked it. (Presumably the other 40 percent or so don’t care one way or the other.) The main reason for the high negatives: His stop-off in Saudi Arabia.

During the 2020 election, Biden promised to regard Saudi as a “pariah” nation in stark contrast to President Trump, who treated the royal family as beloved relatives and waved away its assassination of Jamal Khashoggi, an American resident, as an irrelevancy in the face of lucrative arms purchases. Secretary of State Antony Blinken, in his first major speech, one month into Biden’s term, pledged that the administration’s foreign policy would be “centered on the defense of democracy and the protection of human rights.”

Yet Biden flies off to Riyadh this month, and, whatever nobler reasons have been conjured for the visit, the real one is to ask the Royals to open their oil spigots, in order to reduce gas prices (and thus reduce inflation) while allowing the West to maintain its ban on crude from Russia.

The situation is reminiscent of Biden’s relationship with China. Early in his term, the president said he would hold Beijing “accountable” for its gross human-rights violations. Yet last week, in a five-hour meeting, Blinken urged China’s foreign minister to join America’s side in defending Ukraine from Russia’s aggression.

The point here is not to play gotcha games. Nor is it to argue that the U.S. foreign policy should be based on lofty ideals or hard-headed interests but not both. However, Biden and Blinken erred in declaring that their foreign policy would be “centered” on democracy and human rights—a choice that was bound to make life more difficult as they inevitably sought cooperation with authoritarian regimes.

There are four reasons why indulging in that rhetoric was a mistake.

First, they must have known that, at some point, they would have to saddle up with disreputable leaders—if just to choose the lesser of two evils—and that, by doing so, they would be accused of hypocrisy.

There are often very good reasons for allying with bad people. During World War II, Franklin D. Roosevelt and Winston Churchill formed a powerful alliance with Josef Stalin in order to beat Adolf Hitler; if they hadn’t, on the grounds that Stalin was also evil, then Nazi Germany would have conquered all of Europe.

In less extreme circumstances, world leaders have often contained rivals while cooperating with them where their interests converge. During the Cold War, the U.S. and the Soviet Union engaged in an arms race and proxy wars while also negotiating arms-control treaties, keeping nuclear weapons out of other countries’ hands, and jointly developing a smallpox vaccine, among other good deeds. Questions of democracy and anti-democracy had nothing to do with any of it.

Second, highlighting our differences with authoritarian countries, much less underlining those differences as the core of our foreign policy, may have made cooperation—when it’s possible and where it matters—harder to achieve. Would China’s Xi Jinping be more amenable to ditching Russia and helping Ukraine if he didn’t think that sticking by Vladimir Putin would hurt the U.S.? And would he be less keen on hurting the U.S. if Biden hadn’t declared the very nature of China’s government to be a threat? I don’t know the answers—but these seem like a reasonable questions.

Meanwhile, by denouncing Saudi Arabia as “pariah” state (however justifiably), has Biden made it harder for the royal family to supply more oil? Has he given the Saudis more leverage in demanding returns for the favor?

The third problem with declaring that human rights will be the centerpiece of your foreign policy is that, once we side with an authoritarian who violates them on some issue, our criticisms of some other violator won’t be taken seriously. And after that, much of what we say about foreign policy will be regarded with suspicion, if not cynicism. Biden has said he plans to talk sternly to his Saudi hosts about human rights. He will no doubt be sincere, but it’s unlikely that his hosts will take a word of it seriously.

Finally, centering our foreign policy—staking our global standing—on the triumph of democracy and human rights may not be a winning strategy these days. According to Freedom House, just 20 percent of the world’s population is living in a “free country.” Can we form an effective alliance against the other 80 percent?

Besides, the U.S. isn’t quite the beacon of democracy that it once was. Several times since entering office, Biden has declared that, in its competition with authoritarianism (especially China), the U.S. has to show that democratic governments can “do big things.” Yet Congress is so deadlocked, the Supreme Court is so at odds with public opinion, and politics and society are so out of alignment on so many issues that we’re on the verge of showing that we can’t do much after all. To the extent that democracy is still valued in the world, the United States is no longer widely seen as a model to emulate.

This is key. In 1994, on his 90th birthday, George Kennan, the architect of America’s Cold War containment policy, said in a speech looking back on his life and career, “It is primarily by example, never by precept, that a country such as ours exerts its most useful influence beyond its borders.” As if on cue, late last year, after Biden assembled a fairly useless Summit for Democracy, the editors of Politico asked 18 activists in endangered democracies, from Iraq to Poland to India, what Biden should do to help democracy in their countries. The majority replied, essentially: Don’t lecture us; clean up your own problems; become a role model again.

So, should Biden be traveling to Saudi Arabia? Trump made a huge mistake in dismissing Khashoggi’s murder as a trifle—not just as a moral matter but for reasons that any viewer of The Godfather would understand: No prince in a foreign family can be allowed to get away with killing one of our own. Trump should have turned on the pressure, cut off oil imports (when we were in a position to do so), stepped up intel ops against Crown Prince Mohammed bin Salman (who, according to a U.S. intelligence report, personally approved the murder)—everything possible to make sure that everyone saw this as unacceptable.

Alas, it’s a bit late for that now. MBS is more deeply ensconced in Riyadh’s power structure, our leverage on energy supplies is diminished, and so is our leverage in the new Middle Eastern politics, where the Sunni nations—Saudi Arabia, Oman, the United Arab Emirates, Bahrain, and Kuwait—have formed a coalition with Israel, for the common containment of Iran, quite apart from any involvement, much less leadership, from Washington.

None of this should be read as a defense of ultra-Realpolitik thinking. Our interests mean little without the underlying strength of our values. Our foreign policy should focus, whenever possible, on making the world safer for democracy. It should stand with democratic countries in every forum and conflict. It should speak out on behalf of democratic causes around the world. However, it is impractical—in some instances, it has been and would be counterproductive—to place democratic values at the center of foreign policy, to make a country’s democratic practices the measure of whether we should side with that country on any issue.

Sometimes we don’t have the power to insist that a country follow our example. And sometimes, these days, our example doesn’t have the power to inspire anyone to follow us. That’s what we truly need to focus on.

### 2ac – at: dpt

#### Democratic peace is statistically disproven---it’s conflict driving

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The democratic peace—the observation that democracies are less likely to fight each other than are other pairings of states—is one of the most widely acknowledged empirical regularities in international relations. Prominent scholars have even characterized the relationship as an empirical law (Levy 1988; Gleditsch 1992). The discovery of a special peace in liberal dyads stimulated enormous scholarly debate and led to, or reinforced, a number of policy initiatives by various governments and international organizations. Although a broad consensus has emerged among researchers regarding the empirical correlation between joint democracy and peace, disagreement remains as to its logical foundations. Numerous theories have been proposed to account for how democracy produces peace, if only dyadically (e.g., Russett 1993; Rummel 1996; Doyle 1997; Schultz 2001).

At the same time, peace appears likely to foster or maintain democracy (Thompson 1996; James, Solberg, andWolfson 1999). A vast swath of research in political science and economics proposes explanations for the origins of liberal government involving variables such as economic development (Lipset 1959; Burkhart and Lewis-Beck 1994; Przeworski et al. 2000; Acemoglu and Robinson 2006; Epstein et al. 2006) and inequality (Boix 2003), political interests (Downs 1957; Bueno de Mesquita et al. 2003), power hierarchies (Moore 1966; Lake 2009), third party inducements (Pevehouse 2005) or impositions (Peceny 1995; Meernik 1996), geography (Gleditsch 2002b), and natural resource endowments (Ross 2001), to list just a few examples. Each of these putative causes of democracy is also associated with various explanations for international conflict. Indeed, some as yet poorly defined set of canonical factors may contribute both to democracy and to peace, making it look as if the two variables are directly related, even if possibly they are not.

We seek to contribute to this literature, not by proposing yet another theory to explain how democracy vanquishes war, but by estimating the causal effect of joint democracy on the probability of militarized disputes using a quasi-experimental research design. We begin by noting that some of the common causes of democracy and peace may be unobservable, generating an endogenous relationship between the two. Theories of democracy and explanations for peace are at a formative state; it is not possible to utilize detailed, validated and widely accepted models of each of these processes to assess their interaction. Indeed, to a remarkable degree democracy and peace each remain poorly understood and weakly accounted for empirically, despite their central roles in international politics. We address the risk of spurious correlation by applying an instrumental variables approach. Having taken into account possible endogeneity between democracy and peace, we find that joint democracy does not have an independent pacifying effect on interstate conflict. Instead, our findings show that democratic countries are more likely to attack other democracies than are non-democracies. Our results call into question the large body of theory that has been proposed to account for the apparent pacifism of democratic dyads.

### 2ac – democracy bad – nigeria

#### Democracy causes Nigerian state collapse and civil war

Dr. Moses E. Ochonu 19, Cornelius Vanderbilt Chair in History and Professor of African History at Vanderbilt University, PhD and MA in African History from the University of Michigan, BA in History from Bayero University, Graduate Certificate in Conflict Management from Liscomb University, “Why Liberal Democracy is a Threat to Nigeria’s Stability”, Logos: A Journal of Modern Society & Culture, May 2019, http://logosjournal.com/2019/liberal-democracy-is-a-threat-to-nigerias-stability/

In 2015, Nigeria, a country of about 190 million, spent $625 million to conduct federal and local elections. By comparison, India, with a population of 1.2 billion, spent $600 million on its 2015 election, according to figures released by the Electoral Commission of India (ECI).[1]

In 2019, the election budget of Nigeria’s Independent Electoral Commission (INEC) rose to $670 million. This represents about 2.5 percent of Nigeria’s $28.8 billion budget for 2019, a portion of which is being financed through borrowing. To put the electoral spending in context, more than half of the country subsists on about a dollar a day, and the country recently acquired the dubious distinction of being named the poverty capital of the world, with more people living in extreme poverty there than in any other country.[2] Key infrastructures and services such as roads, railway, electricity, water supply, healthcare, and education are severely inadequate, requiring urgent investments and interventions.

Election-related expenditure is expected to rise in the near future as INEC implements a wider slate of digital technologies to combat manipulation and improve the integrity of the electoral process. For comparison, Nigeria typically devotes about 7 percent of its budget to education. And yet Nigeria continues to maintain a four-year election cycle, with smaller by-elections occurring in between. This electoral calendar guarantees that about $1 billion is spent on elections every four years. As the electoral price tag has grown, democratic dividends have plummeted.

Nigeria’s predicament is a microcosm of the phenomenon of rising financial costs of elections in Africa and diminishing returns on democracy. Across the continent, the cost of electoral democracy is increasing and threatens the delivery of social goods. As African countries battle myriad socioeconomic challenges, the question needs to posed: is it wise for these countries to continue to spend a large percentage of their revenue every four or five years on a political ritual with fewer and fewer positive socioeconomic consequences for their populations? Is this expensive, periodic democratic ritual called election worth its price?

It is not only the monetary cost of elections that now threatens to defeat their purpose and engender disillusionment and, along with disillusionment, the erosion of trust in the state and its ability to produce and distribute public goods. The social cost of periodic elections has been arguably greater, depleting, with each election cycle, the residual stability of the state and the credibility of its institutions.

Elections conducted in Nigeria since the return of civilian rule in 1999 have brought with them anxiety, tension, death, violence, and dangerous rhetoric that, taken together, have frayed the national political and social fabric. Elections have widened fissures and intensified preexisting primordial cleavages.

I can recall no electoral cycle since at least 2003 that was not been accompanied by fears of Nigeria’s disintegration or at the very least the acceleration of its demise. In 2007 and 2011, post-election violence claimed hundreds of lives in Northern Nigeria as supporters of then candidate Muhammadu Buhari rioted after his loss. In the 2019 presidential and national assembly elections, at least 46 people were reported to have died from election-related violence. In the state assembly and governorship elections two weeks later on March 9, 2019, another 10 people died across five states in what the Sunday Tribune newspaper described in its headline as “another bloody election.”[3]

Two riders below the same Sunday Tribune headline encapsulate the turbulent character of Nigerian elections. One was “Thugs, vote buyers, arsonists take over on election day”; the other was “Nigerians condemn militarization of elections in Rivers, Bayelsa, Kwara, Akwa Ibom, Benue,” a reference to the government’s deployment of soldiers and other military assets to opposition strongholds before and during the election. The involvement of soldiers and other military personnel in the election was a brazen violation of Nigeria’s Electoral Act, an action which many observers interpreted as the incumbent administration’s effort to use its might to manipulate the election in states held by the opposition.

Every election cycle in Nigeria sees massive, fear-induced demographic mobility as members of different ethnic groups and religions relocate to areas considered dominated by their kinsmen and co-religionists to await the conclusion of elections that often degenerate into communal clashes especially in the volatile north of the country.

Periodic national elections have thus worsened Nigeria’s notoriously frail union and caused apathy and discontent. The Nigerian people, the major stakeholders in Nigeria’s democracy, have grown weary of being periodically endangered and rendered pawns in an elaborate elite ritual with little or no consequence for their lives.

Electoral aftermaths have not improved economic conditions or strengthened the capacity of citizens to hold elected leaders accountable. Moreover, as I shall discuss shortly, the familiar abstract freedoms that democracy, lubricated by periodic elections, can confer on citizens who participate in such exercises, have eluded Nigerians.

The result has been noticeable apathy represented most poignantly by voter turnout, which declined from a peak of 69.1 percent in 2003 to 46.3 percent in 2015 and to about 35 percent in 2019. In the same 2019 election cycle, turnout declined to less than 20 percent in the governorship and state assembly elections, with many Nigerians on social media stating that they had lost faith in the electoral process and that the official results of the presidential elections two weeks earlier had shown that their votes would not count towards the declared outcome.

Voter apathy alone is not an indication of democratic disillusionment but it can portend or indicate something more devastating: diminishing trust in the state, its institutions, and its processes.

Such a trust deficit exists already and it predated the return of civilian rule in 1999 after about two decades of military dictatorship. However, by all theoretical formulations, such a cumulative loss of confidence in the transactional sociopolitical contract between the state and citizens should be corrected by the democratic ideals of voting, representation, and accountability. This has not happened in Nigeria. In fact, the opposite scenario is visible: a negative correlation between successive electoral cycles and citizens’ trust in the Nigerian state. Therein lay the paradoxical consequences of democratic practice in Nigeria.

If elections are increasingly burdensome as they have become in Nigeria, the corrective potential of democracy, broadly speaking, is lost. Citizens consequently lose faith in the state and resort to self-help, including criminal self-help. That is how states collapse. Nigeria is not far off this possibility.

In Nigeria, recent political realities reveal a blind spot of pro-democracy advocacy: without the modulating effect of decentralization, sustained economic growth, a growing, secure middle class, and a literate, hopeful poor, liberal democracy can do and has done more damage than good. Liberal democracy has ironically become both an incubator and protector of mediocrity, corruption, and bad governance. The overarching casualty has been Nigeria’s very stability.

#### Nigerian instability escalates to global great power war

Charles A. Ray 21, Member of the Board of Trustees and Chair of the Africa Program at the Foreign Policy Research Institute, Former U.S. Ambassador to the Kingdom of Cambodia and the Republic of Zimbabwe, “Does Africa Matter to the United States?”, Foreign Policy Research Institute, 1/11/2021, https://www.fpri.org/article/2021/01/does-africa-matter-to-the-united-states/

Africa matters in terms of size, population, and rate of population growth. It is the continent currently most affected by climate change but is also a continent that can have a devastating impact on climate change globally because of the importance of the Congo Basin rainforest, which is the second-largest absorber of heat after the Amazon rainforest. The destruction of this important ecosystem could further accelerate global warming. As residents of the region come into increasing contact with the animals of the rainforest, this region could be the origin of the world’s next viral pandemic. Violent extremism and terrorism are increasing in Africa, and while now mostly localized, the danger has the potential to spread beyond the continent. Crises—natural and man-made—cause massive relocations of populations, both on the continent and abroad, which can have negative economic, social, and political impacts.

Why Africa Matters

The African continent is the world’s second-largest, with the second-fastest growth rate after Asia. With 54 sovereign countries, four territories, and two de facto independent states with little international recognition, the continent has a current population of 1.3 billion. By 2050, the continent’s population is predicted to rise to 2.4 billion. By 2100, Nigeria, Africa’s most populous country, will have a population of one billion, and half the world’s population growth will be in Africa by then.

The population of African countries is also overwhelmingly young. Approximately 40% of Africans are under 15, and, in some countries, over 50% is under 25. By 2050, two of every five children born in the world will be in Africa, and the continent’s population is expected to triple. These developments have positive and negative potential impacts on the United States and the rest of the world. Young Africans have, for the most part, completely skipped the analog age and gone directly digital. Comfortable with technology, they form a huge potential consumer and labor market. If, on the other hand, the countries of Africa fail to develop economically and do not create gainful employment for this young population, then there is the risk that they will become a huge potential source of recruits to extremist and terrorist movements, which currently target disadvantaged and disenchanted youth.

Lack of economic opportunity, increased urbanization, and climate-fueled disasters will also contribute to movement of people seeking better lives, which will impact economies and security not only on the continent of Africa, but also the economic and security situations around the world. Nations, lacking adequate critical infrastructure, education, and job opportunities are ripe for internal unrest and radicalization. In particular, inadequate health delivery systems, when coupled with natural disasters, such as droughts or floods that limit food production, cause famine and mass movements of populations.

The Challenges for U.S. Policy

Prior to World War II, the U.S. policy towards Africa was not as active as it was toward Europe, Asia, or Latin America. During the Cold War, Africa policy was primarily viewed from a perspective of super-power competition. The end of the Cold War and the rise of international terrorism introduced this as a major component in U.S. Africa policy along with competition with a rising China and increased Chinese engagement in Africa.

Before his first official trip to Kenya, U.S. President Barack Obama said, “Africa had become an idea more than an actual place . . . with the benefit of distance, we engaged Africa in a selective embrace.” This is probably an apt description of U.S. policy towards African nations despite the bipartisan nature of that policy. The United States, with the many domestic and international issues it has to cope with, can ill afford to continue to ignore Africa. Going forward, U.S. policy must include a hard-headed look at where Africa fits in policy priorities.

The incoming Biden administration will face a number of important issues and challenges as it develops its Africa policy. The most pressing issues are the following:

Climate Change: Climate change is an existential problem that affects the entire globe, but Africa has probably suffered more from the effects of climate change than other continents—and the problem will only get worse with time. In an October 2020 article, World Meteorological Organization (WMO) Secretary-General Petteri Taalas said,

Climate change is having a growing impact on the African continent, hitting the most vulnerable hardest, and contributing to food insecurity, population displacement and stress on water resources. In recent months we have seen devastating floods, an invasion of desert locusts and now face the looming specter of drought because of a La Nina event. The human and economic toll has been aggravated by the COVID-19 pandemic.

Climate change impacts water quality and availability, and millions in Africa will likely face persistent increased water stress due to these impacts. A multi-year drought in parts of South Africa, for instance, threatened total water failure in several small towns and had livestock farmers facing financial ruin. Another pressing climate-change issue is the need for protection of the Congo Basin rainforest. This 178-million-hectare rainforest is the world’s second largest after the Amazon and is currently threatened by agricultural activities in Cameroon, Central African Republic, Democratic Republic of Congo, Republic of the Congo, Equatorial Guinea, and Gabon. Countries in the Congo Basin need to address the preservation issue, while also enabling sustainable agricultural activities to ensure food security for the region’s population. In addition to the impact on global climate caused by destruction of the rainforest, such destruction also brings human populations into closer contact with the region’s animals, creating the risk of future animal-to-human transmission of new and possibly more virulent viruses similar to COVID-19, which will have a global impact. In a January 2021 CNN report, Dr. Jean-Jacques Muyembe Tamfum, who as a researcher helped discover the Ebola virus in 1976, warned of possible new pathogens that could be as infectious as COVID-19 and as virulent as Ebola.

Rule of Law/Mitigation of Corruption: A key to African development, given the increasing urbanization, population increases, and youthfulness of the continent’s population, will be an increase in domestic and international investment to build the industries that can provide meaningful employment and improved standards of living. In order for this to be successful, African nations will need to address the issues of rule of law and corruption. Investors will not risk money if the business climate comes with a level of political risk that is too high. Government leaders throughout Africa need to establish legislation that provides an acceptable level of security for investments and take action to curb the endemic corruption that currently discourages investment. Corruption in Africa ranges from wholesale political corruption on the scale of General Sani Abachi’s looting of $3-5 billion of state money during his five years as Nigeria’s military ruler to the bribes paid by businessmen to police and customs officials. The “tradition” of having to pay bribes, or “sweeteners,” drives away domestic investment and scares away foreign investment, leaving many countries mired in poverty.

Violent Extremism and Terrorism: A number of African nations are currently plagued with rising extremist movements. While primarily a domestic issue, the mass movement of people fleeing violence and the disruption of economic activity have the potential to negatively impact the rest of the world. African nations need regional responses to curb extremist and terrorist organizations, many of which are supported by international terrorist organizations, such as ISIS and al Qaeda. In addition, the underlying conditions that helped to create these movements must be addressed. Terrorist groups in Africa range from relatively large and dangerous groups, such as Boko Haram, a group in Nigeria that has received support from al Qaeda and that aims to implement sharia law in the country; Al-Shabab, an al Qaeda affiliate aiming to overthrow the government in Somalia and to punish neighboring countries for their support of the Somali regime; and Uganda’s Lord’s Resistance Army, a fundamentalist Christian group. Terrorist groups in the fragile political climate of Libya also pose a threat to sub-Saharan Africa.

Great Power Competition: As the world’s second-largest economy, and with its increasing participation in international activities, China will continue to be a factor in Africa for the foreseeable future. This, however, is more a problem for the nations of Africa than it is for the rest of the world. The West can compete best by outperforming China in areas of strength by providing those goods and services that are unquestionably superior, and let African governments decide how to deal with China and its often-predatory lending practices and the Chinese tendency to import Chinese workers for its projects and investments rather than hiring locals. At the same time, Russia, which did not completely turn away from Africa at the end of the Cold War as many in the West sometimes believe, must still be considered a significant factor on the African landscape. In an effort to compensate for Western sanctions and to counter U.S. and Western influence, Russia is once again increasing its presence on the continent. Russian mercenaries, in exchange for diamond mining rights, have trained military forces in the Central African Republic, raising concerns about human rights abuses. Of particular concern is the presence of the Wagner Group, a private military company associated with Yevgeny Progozhin, a Russian oligarch with close ties to Vladimir Putin, who was indicted in the United States for trying to disrupt the 2016 U.S. elections. To date, Russia has, in addition to seeking basing rights, signed military cooperation agreements with 28 African nations. Russian activity is a combination of military and commercial, with Progozhin at the center of both. From 2010 to 2018, Russia nearly tripled its trade with African countries. While the activities of both Russia and China in Africa are of concern, and should be closely monitored, neither is of critical importance to U.S. national security.

With climate change, disease outbreaks, famine, extremism, and inter-ethnic violence, Africa will still experience crises in the foreseeable future that will be beyond the capacity of most nations on the continent to deal with. Climate change is probably the greatest cause of humanitarian crises in Africa, but mainstream media outside the continent either fail to notice or under-report them. Some of the crises, like Ebola or the next viral infection, can impact the rest of the world. These crises will cause starvation, mass movement of people, and increase internal and regional instability. Africa matters to the United States and the rest of the world. Its impacts can be felt far beyond the continent’s borders, but if approached as a partner rather than as a patron—with a focus on assisting African nations to improve governance, build critical infrastructure, boost domestic economies, and provide essential services to all—then Africa can be a positive contributor on the global stage.

### 2ac – democracy bad – disease

#### Democracy makes disease control impossible

Zhifa Zhou 21, Associate Professor at the Institute of African Studies at Zhejiang Normal University and Pan Qu, Postgraduate at the Institute of African Studies at Zhejiang Normal University, “The Root Cause of the Failure of American COVID-19 Governance Based on the Criticism of Liberal Democracy From Error-Tolerant Democracy”, Philosophy Study, Volume 11, Number 7, July 2021, https://www.davidpublisher.com/Public/uploads/Contribute/60ff9cfb4589c.pdf

Introduction

Whether liberal democracy contributed to the COVID-19 governance was a hot topic in 2020 (“Democracy and Rise of Authoritarianism in COVID-19 World”, 2020). At the end of January, 2020, when COVID-19 witnessed the lockdown of Wuhan City, the West generally agreed that China lacked freedom of speech and the inertia of a rigid bureaucratic structure, and the national censorship system kept the whistle blower Dr. Wenliang Li silent, which led to the disease out of control (Mérieau, 2020). Democracies’ confidence mainly came from Amartya Sen’s research on the famine. Sen (1999) has claimed that no substantial famine has ever occurred in any independent and democratic country with a relatively free press and there is no exception to this rule. Citizens in democracies can expect governments to be more candid, transparent, and responsible in dealing with all kinds of crises, which authoritarian countries usually cannot (Berengaut, 2020; Bollyky & Kickbusch, 2020). So Steve Bloomfield (2020) has regarded that if China had a free press and transparent government, the pandemic could be brought under control before the outbreak. In conclusion, freedom plus democracy equals the COVID-19 antidote according to Western standards, although Wilson and Wisongye have found that social media rumors can exploit the right to freedom of speech and erode people’s health benefits (New York Times, 2021; Bollyky & Kickbusch, 2020). However, since March, 2020, with Western democracies seriously affected by COVID-19, their superiority of the political system has begun to expose its untrue and fatal defects. Especially when Wuhan began to lift its blockade on April 8, 2020 (People.cn, 2020), scholars and journalists began to question whether democracies had the ability to deal with the crisis better than China (Mérieau, 2020). Liberal democracy in the United States has not proved that it is more conducive to the COVID-19 governance than authoritarianism since 2020. From a global perspective, not only do most democracies fail to contain the spread of COVID-19, but almost all of the 10 most affected countries are liberal democracies (Coronavirus Resource Center, 2021). Their policy responses have a poor effect in reducing the death toll in early stages of the crisis, as shown that democratic political institutions may be at a disadvantage in responding quickly to COVID-19 (Cepaluni, Dorsch, & Branyiczki, 2020). More surprising is that the COVID-19 pandemic is so serious in the United States, yet no government officials have been removed from office because of their inactivity in fighting against the corona-virus. People doubt whether American accountability mechanism is still working. However, two impeachments against President Trump indicate that it seems to function quite well (Valenta & Valenta, 2017; Herb, Raju, Fox, & Mattingly, 2021). The direct loss to the United States caused by Russiagate and incitement of insurrection is far less than the pain caused by the failure of the COVID-19 governance, but no any official in the United States is responsible for it. If it again faces infectious diseases similar to COVID-19, will it repeat this unprecedented tragedy? Can liberal democracy and the separation and balance of powers push American president to act more aggressively? Error-tolerantism explains that the fundamental reason for the failure of American COVID-19 governance is a serious misunderstanding of the concept of freedom (Zhou, 2018; 2019; Zhou, Tan, & Liu, 2020). Liberalism has witnessed a rare scene: In the context of COVID-19, the president, governors, magistrates, and the public (Emery, Schwebke, & Park, 2020; Sullum, 2020; Behrmann, 2020; Kenton, 2020; Strano, 2020) have severe misunderstanding of freedom that cost more than American 600,000 lives (Coronavirus Resource Center, 2021).

In response to the above phenomenon, error-tolerantism as the development of liberalism defines liberty from a new perspective and shows a stronger explanatory power than liberalism (Zhou et al., 2020). The right paradigm of error-tolerantism, the right to be wrong (right to trial and error) as an original right and mutual empowerment theory, instead of natural rights theory and social contract theory, divides liberty into the right to liberty in innovative fields, right to be wrong as an original right, and the right to be right in non-innovative fields as sub-rights. The lockdown of Wuhan means that Chinese government has excised the power to be wrong as an original power, but the West criticized it with the right to liberty at the level of sub-rights, which is the first error in understanding liberty during American COVID-19 governance; after Wuhan effectively controlled COVID-19, its governance has transformed from an innovative field to a non-innovative one. Then, liberties in non-innovative fields as the sub-rights level, such as wearing face masks, keeping social distancing, showing health codes, are formed definitely (Zhou et al., 2020). However, wearing masks has been regarded as a sign of political oppression rather than a simple hygienic measure by the United States (Kahanel, 2021). Since liberalism has a major misunderstanding of the concept of liberty, liberal democracy based on the philosophy of liberalism should be deeply reflected or even reconstructed, and it is very reasonable for error-tolerant democracy constructed based on error-tolerantism to explore the defects of liberal democracy in American COVID-19 governance. Therefore, we first review scholars’ relevant research on American democracy and the COVID-19 governance, and then based on the theory of error-tolerant democracy, discuss the defects of liberal democracy and American political system that are unable to cope with the crisis of the century.

#### Future pandemics are inevitable---extinction

Dr. Matt Boyd 21, Research Director at Adapt Research Ltd, PhD in Philosophy of Evolution & Cognition from the Victoria University of Wellington, BA from Massey University, and Nick Wilson, Research Professor in the Department of Public Health at the University of Otago, “Optimizing Island Refuges Against global Catastrophic and Existential Biological Threats: Priorities and Preparations”, Risk Analysis: An International Journal, Wiley Online Library

1 INTRODUCTION

Our world is vulnerable to global catastrophic risks (GCRs) or existential risks (Bostrom, 2019; Ord, 2020). GCRs are so disastrous because they affect one or more systems critical to humanity, and spread to affect the entire planet (Avin et al., 2018). Existential risks threaten to eliminate humanity or permanently curtail its potential (Ord, 2020). Some of these risks are natural, for example asteroid or comet impact, supervolcanic eruption, naturally occurring pandemic, or various cosmic events (Bostrom & Cirkovic, 2008; Ord, 2020). Many others are the result of human activities, for example nuclear war, anthropogenic climate change, nonaligned artificial intelligence, engineered biological threats, geoengineering, or inescapable totalitarianism (Bostrom & Cirkovic, 2008; Ord, 2020).

There are three phases to an existential catastrophe: origin, scale up, and reaching every last human (Cotton-Barratt, Daniel, & Sandberg, 2020). Following any near miss, there would be a period where recovery of humanity's long-term potential may or may not be realized (Baum et al., 2019). Failure to anticipate or mitigate these threats risks undesirable trajectories for human civilization (Baum et al., 2019).

In addition to the present generation's obvious self-interest in continuing to exist, the perspective of long-termism suggests that humanity ought to mitigate these risks due to the potential immense value of future human generations (Beckstead, 2013), a desire to see aspects of the human project continue across time and perhaps the universe (Bostrom, 2003; Scheffler, 2013), and the potential cosmic significance of preserving intelligent life on Earth (Ord, 2020). A number of philosophical defenses of long-termism have been published (Beckstead, 2013; Greaves & MacAskill, 2019). Importantly, these long-term outcomes are largely under human control because most of the risk is probably anthropogenic (Beard & Torres, 2020; Ord, 2020).

1.1 Mitigating Existential Threats

It is too simplistic to think of existential risks as mere causes that are followed by a sequence of effects. We should think of risks as the product of hazards, vulnerabilities, and exposures (Liu, Lauta, & Maas, 2018). Hazards are the precipitating cause of a catastrophe, vulnerabilities are the inability of critical systems to withstand hazards, and exposures are the features of human society that turn this system damage into harm to populations (Beard & Torres, 2020). Mitigation of existential threats involves preventing their emergence, responding if the threat spreads, and building resilience so the threat does not lead to the death of every last human or leave humanity with permanently curtailed prospects (Cotton-Barratt et al., 2020). After a threat has passed, there may also be a series of limiters that might prevent the reemergence of a flourishing humanity (Baum et al., 2019). One such limiting factor could be the loss of technological society and know-how.

In order to achieve immunity from existential threat, humanity will need a period where it preserves its potential and protects itself from risks (Ord, 2020). Various methods have been proposed to address vulnerabilities and hence shift the probability of existential risk. These suggestions include: improved international focus, governance, and cooperation such as through the United Nations (Boyd & Wilson, 2020), imitating existing frameworks such as the Sendai framework for disaster risk reduction (Avin et al., 2018), achieving the United Nations Sustainable Development Goals (Cernev & Fenner, 2020), or extreme surveillance for threats (Bostrom, 2019). Toby Ord lists 38 specific measures across eight existential threats, and an additional 12 avenues to explore that address risks in general terms (Ord, 2020).

1.2 Biological Threats

Pandemic viruses with high case fatality could potentially infect a majority of the population. Deliberate biological events (DBEs) have occurred before (Millet & Snyder-Beattie, 2017a), will likely occur again, and could pose a threat to humans as great as nuclear war (Kosal, 2020). New technologies such as artificial intelligence could amplify biothreats in a number of ways (O'Brien & Nelson, 2020). These risks are increased because the Biological Weapons Convention (BWC) has no verification system (Dando, 2016), and has been violated in the past (Gronvall, 2018). It would only take one unanticipated or accidental event for a bioweapon (or laboratory accident) to become a catastrophic threat. The U.S. National Academies of Sciences specifically warns against synthetic biology and xenobiology (Gomez-Tatay & Hernandez-Andreu, 2019) and it is argued that a state-sponsored bioweapon attack is the greatest current threat (Sandberg & Nelson, 2020). See the Supporting Information for further details on biological threats. Global preparedness through the One Health approach, global health security projects, and the need to integrate health and the GCR field (Millet & Snyder-Beattie, 2017b) are important. But as the COVID-19 pandemic has shown, there may be important overlooked aspects or misunderstood risks that could make any suite of general preparation inadequate. Therefore, last lines of defense may be required, such as refuges.

### 2ac – democracy bad – warming

#### Existential warming is inevitable AND causes a collapse into extreme authoritarianism---only transitioning from democracy solves

Dr. Chien-Yi Lu 21, PhD and MA in Government from the University of Texas, Austin, Visiting Scholar at Harvard University, Associate Research Fellow at the Institute of European and American Studies of Academia Sinica, Surviving Democracy: Mitigating Climate Change in a Neoliberalized World, Paperback Edition, 12/13/2021, p. 1-2

The fact that the scientific knowledge on the human contribution to climate change entered human society through the most advanced democratic societies should have been a cause for celebration. Given the congruence of climate mitigation and public interests, the problem of climate change should have been considered solved decades ago. Several decades of inaction later, however, arguments are proliferating that democracy is exactly the reason for inaction.

In The Collapse of Western Civilization, historians Naomi Oreskes and Erik Conway travel to the future to look back and offer a forensic analysis on the climate-induced Great Collapse of Western Civilization of 2074 (2014: 63). The future historians’ forensic report states that “[a]s the devastating effects of the Great Collapse began to appear, the nation-states with democratic governments… were at first unwilling and then unable” to deal with the crisis. These democratic governments realized that they had no “infrastructure and organizational ability to quarantine and relocate people” as “food shortages and disease outbreaks spread and sea level[s] rose.” In China, where there was centralized government, the crisis was handled much more adequately, leading to survival rates exceeding 80%, a development that “vindicated the necessity of centralized government” (2014: 51–2). The gist of The Collapse of Western Civilization is not about critiquing democracy per se but a warning against the stubborn inaction mandated by market fundamentalism that has hijacked Western democracies.1 In their previous book, Merchants of Doubt, Oreskes and Conway documented the way that climate deniers sowed the seeds of doubt about climate change and successfully staved off implementations of mitigation measures. For the authors, the anticommunist ideology that had kept actors vigilant about government encroachment in the marketplace occupied a central place in climate denial (2014: 69). Ironically, this sort of ideology-informed calculation meant that preventative action was blocked, increasing the risk that disruptive climate disasters would eventually necessitate the suspension of democracy and legitimating the sort of heavy-handed authoritarian interventions that the conservatives most abhorred (2014: 52; 69).

An appeal to suspend democracy for the sake of survival can be found in The Climate Change Challenge and the Failure of Democracy, where Shearman and Smith argue that liberal democracy is incompatible with the urgent necessity to prevent catastrophic climate change. The vested interests of politicians, corporations, and media lie in continuing with business as usual and in keeping the public ignorant. Instead of bottom-up reforms to improve democracy and bring about sensible climate policies, Shearman and Smith see a transformation into authoritarian regimes as the only responsible way forward when faced with the extreme ecological stress of climate change. They point out that, as Plato foresaw, those in power in a democracy are seldom able to resist the demands of the populace for long, but as a mass, the populace is seldom able to focus on complex problems and to perceive threats that lie over the horizon. Hence, those able to see further—scientists, experts, and the knowledgeable— should be entrusted with steering the course while there is still time to avoid disaster. It is only under a benign authoritarian rule of the knowledgeable that a saner, fairer, and more rational means of weighing social goods against evils can be introduced (Shearman and Smith, 2007).

#### The public is an idiocracy. ‘Pressure’ cannot be productive.

Dr. Stuart Parker 20, Philosopher and Former Teacher who Lectured on Philosophy and Education at London's Institute of Education, South Bank University, Author of Reflective Teaching in the Postmodern World, “The Problem With Democracy — It's You”, The Article, 10/5/2020, https://www.thearticle.com/the-problem-with-democracy-its-you

So why is our democracy so unfit for purpose? Why is it that we can elect leaders who are little more than self-serving schemers, whose contempt for the electorate renders them incapable of giving straight, honest answers to even the most straightforward, reasonable questions? It’s not as if any of these qualities have been smuggled in under our noses. They are paraded before our eyes every single day. Nobody voting for Johnson or Trump could ~~be blind to the fact~~ [ignore] that they are serial liars. And yet they voted all the same. Why?

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Mencken was on to something when suggesting that the leaders we get, the leaders we deserve, closely represent something dark in the inner soul of the people. There’s no easy way to put this — the problem with democracy is the voters. The voters simply aren’t good enough to support a healthy democracy. They’re not up to the job. Now I know some will think: a snowflake-remainer-lefty-loser will always blame the voters just as a bad workman always blames his tools. But these tools are shot.

Consider this: a poll in 2005 found that 21 per cent of Americans believe in witches and 9 per cent that spirits can take control of a person. In 1999, 18 per cent believed the sun revolves around the earth — so much for “the science” — and in 2000, 31 per cent believed in ghosts, and increase of 20 percentage points since 1978.

By 2019, the year before Trump’s re-election attempt, significant numbers believed in the illuminati, Big-foot and a flat earth. Ghost-belief had risen to 45 per cent, as had the belief in demons. Belief in vampires stood at a fangtastic 13 per cent.

Britain has nothing to be proud of. While 33 per cent of us believe in ghosts and 18 per cent in demonic possession, a whopping 52 per cent of us believe that you can magically make a false claim true simply by writing it on the side of a bus.

In elective dictatorships where small margins have huge consequences we’d better get used to the fact that (possibly small) groups with stupid ideas and a lack of relevant knowledge and skills can have a disproportionate effect on the lives of the rest of us.

### --- 1ar – xt: no dpt / causes war

#### This is true in all scenarios, including against other democracies

Dr. Daina Chiba 21, Associate Professor of Political Science in the Department of Government and Public Administration at the University of Macau, Ph.D. in Political Science from Rice University, LL.M in Jurisprudence and International Relations from Hitotsubashi University, and Dr. Erik Gartzke, Professor of Political Science at the University of California, San Diego, PhD in Political Science from the University of Iowa, “Make Two Democracies and Call Me in the Morning: Endogenous Regime Type and the Democratic Peace”, 2/19/2021, https://dainachiba.github.io/research/make2dem/Make2Dem.pdf

We now turn to the results from the outcome stage, where militarized conflict initiation is regressed on democracy measures and other covariates. The univariate clog-log model 32 that ignores the endogeneity, shown in column (1) in Table 1, successfully replicates the standard, dyadic democratic peace finding that democracies are peaceful, though only toward other democracies. Note that, while individual democracy measures have either a positive or insignificant coefficient, joint democracy has a negative coefficient that overwhelms the positive coefficients of individual democracy measures in the univariate model. As a result, the univariate model produces a result that, while democracy may increase conflict against a non-democracy, it decreases conflict against a democracy.

To illustrate this, we calculate the average treatment effect of joint democracy for the challenger and for the target based on the univariate model. These effects are calculated by comparing the predicted probabilities of conflict initiation when changing the regime type of self (challenger or target) from non-democracy to democracy, holding constant the regime type of the other (target or challenger) as democracy. 33 Gray, hollow circles in Figure 4 show the treatment effects of challenger’s and target’s democracy. We can see that both effects are negative and statistically significant at the 95% confidence level.

Once we correct the endogeneity, however, the data no longer support such conclusions. In column (2) in Table 1, the negative coefficient for joint democracy no longer overwhelms the positive coefficient of challenger’s democracy. Challenger’s democracy now appears to increase conflict even against a democratic target. Red, solid circles in Figure 4 show the average treatment effects of challenger’s and target’s democracy, calculated from the trivariate model. The effect is positive and statistically significant for challenger’s democracy, although the effect is indistinguishable from zero for target’s democracy.

Whether we correct for endogeneity thus makes a significant difference in our estimates of the effect of joint democracy on conflict. The key to understanding why these changes occur lies in the estimated correlations between the error terms for different equations. The estimated error correlation between equations for conflict and challenger’s democracy, 12, is negative and statistically significant. This suggests that unobservable or unmeasured determinants of a country’s democracy make it less likely for that country to attack another country. A failure to control for such factors would generate a negative omitted variable bias, making it look as if challenger’s democracy has a pacifying effect on conflict behavior. On the other hand, the estimated error correlation between conflict and target’s democracy equations, 13, is indistinguishable from zero, suggesting that the endogeneity problem does not seem to operate for target’s regime type.

#### It's an empirical question, answered by statistical methods---failing to code based on exogenous variables corrupts their evidence

Dr. Daina Chiba 21, Associate Professor of Political Science in the Department of Government and Public Administration at the University of Macau, Ph.D. in Political Science from Rice University, LL.M in Jurisprudence and International Relations from Hitotsubashi University, and Dr. Erik Gartzke, Professor of Political Science at the University of California, San Diego, PhD in Political Science from the University of Iowa, “Make Two Democracies and Call Me in the Morning: Endogenous Regime Type and the Democratic Peace”, 2/19/2021, https://dainachiba.github.io/research/make2dem/Make2Dem.pdf

Before we review our approach in detail, it may be useful to explain why this type of analysis has not been pursued successfully in the past and what makes our effort different from other, broadly related projects. We are not the first to apply an IV framework (more specifically) or multi-equation models (more broadly) to the democratic peace. However, previous attempts suffer from two major problems. First, previous studies have typically used a dyad (country pair) as the unit of observation in analyzing conflict, which requires some summary measure(s) of democracy for a pair of countries rather than the state-level (monadic) democracy measure. 6 Use of a dyadic aggregate to represent regime type creates a discrepancy between the first stage regression (predicting democracy at the country level) and the outcome stage regression (predicting conflict at the dyad level). 7 We avoid this problem by using the directed dyad as the unit of observation in predicting conflict, distinguishing between the potential challenger and target in a dispute. This allows us to connect the first stage equations (predicting the challenger’s and target’s regime types) and the outcome stage equation seamlessly. Doing so has several benefits: the outcome stage model could directly include country-level covariates (such as challenger’s and target’s democracy) without having to convert them to a dyadic summary. This also allows us to estimate the system of equations jointly rather than relying on the “forbidden regression.” 8

Second, a more daunting challenge in applying an IV approach to democratic peace research is the difficulty of finding a plausible instrument for regime type — a variable that is strongly correlated with regime type but is unrelated to war. This is the challenge that has plagued empirical researchers in many fields. For example, a recent study of the effect of regime type on economic growth uses a diffusion-based measure of democracy (i.e., average value of democracies in a given region) as an instrument for democracy (Acemoglu et al. 2019). However, diffusion-based instruments such as this are unlikely to be a valid instrument, due to spatial spill-over, interdependence, and, most importantly, simultaneity (Betz, Cook, and Hollenbach 2018). Recognizing problems with spatial instruments, McDonald (2015) seeks to exploit the very discrepancy between country-level and dyad-level designs as the source of identification. His discussion, however, lacks a clear explanation as to why some determinants of regime type do not influence conflict. 9

We turn to a demographic variable — average female fertility rate in a given country — as a source of variation in regime type that is exogenous to international conflict. As we will argue below, a lower fertility rate is a strong driver of democratization. We will also present theoretical arguments and a series of falsification tests that support the claim that average national fertility rate does not directly influence international conflict.

### --- 1ar – transition wars

#### The move to democracy doubles the risk of quick conflict AND goes nuclear

Dr. Edward Mansfield 22, Hum Rosen Professor of Political Science and Director of the Christopher H. Browne Center for International Politics at the University of Pennsylvania, B.A., M.A., and Ph.D. from the University of Pennsylvania, and Dr. Jack Snyder, Robert and Renee Belfer Professor of International Relations in the Political Science Department and the Saltzman Institute of War and Peace Studies at Columbia University, Ph.D. in Political Science from Columbia University, BA in Government from Harvard University, Conflict After the Cold War: Arguments on Causes of War and Peace, Sixth Edition, Ed. Betts, p. 331-332

DANGERS OF TRANSITION

The idea that democracies never fight wars against each other has become an axiom for many scholars. It is, as one scholar puts it, “as close as anything we have to an empirical law in international relations.” This “law” is invoked by American statesmen to justify a foreign policy that encourages democratization abroad. In his 1994 State of the Union address, President Clinton asserted that no two democracies had ever gone to war with each other, thus explaining why promoting democracy abroad was a pillar of his foreign policy.

It is probably true that a world in which more countries were mature, stable democracies would be safer and preferable for the United States. But countries do not become mature democracies overnight. They usually go through a rocky transition, where mass politics mixes with authoritarian elite politics in a volatile way. Statistical evidence covering the past two centuries shows that in this transitional phase of democratization, countries become more aggressive and war-prone, not less, and they do fight wars with democratic states. In fact, formerly authoritarian states where democratic participation is on the rise are more likely to fight wars than are stable democracies or autocracies. States that make the biggest leap, from total autocracy to extensive mass democracy—like contemporary Russia—are about twice as likely to fight wars in the decade after democratization as are states that remain autocracies.

This historical pattern of democratization, belligerent nationalism, and war is already emerging in some of today’s new or partial democracies, especially some formerly communist states. Two pairs of states—Serbia and Croatia, and Armenia and Azerbaijan—have found themselves at war while experimenting with varying degrees of electoral democracy. The electorate of Russia’s partial democracy cast nearly a quarter of its votes for the party of radical nationalist Vladimir Zhirinovsky. Even mainstream Russian politicians have adopted an imperial tone in their dealings with neighboring former Soviet republics, and military force has been used ruthlessly in Chechnya.

The following evidence should raise questions about the Clinton administration’s policy of promoting peace by promoting democratization. The expectation that the spread of democracy will probably contribute to peace in the long run, once new democracies mature, provides little comfort to those who might face a heightened risk of war in the short run. Pushing nuclear-armed great powers like Russia or China toward democratization is like spinning a roulette wheel: many of the outcomes are undesirable. Of course, in most cases the initial steps on the road to democratization will not be produced by any conscious policy of the United States. The roulette wheel is already spinning for Russia and perhaps will be soon for China. Washington and the international community need to think not so much about encouraging or discouraging democratization as about helping to smooth the transition in ways that minimize its risks.

### --- 1ar – xt: nigeria link

#### Spending on elections diverts from public services and locks in wealth inequality

Dr. Aloysius-Michaels Okolie 21, Professor in the Department of Political Science at the University of Nigeria, PhD in Political Science and MSc from the University of Nigeria, et al., “Does Liberal Democracy Promote Economic Development? Interrogating Electoral Cost and Development Trade-Off in Nigeria’s Fourth Republic”, Cogent Social Sciences, Volume 7, Issue 1, 4/28/2021, Taylor & Francis Online

PUBLIC INTEREST STATEMENT

The debate on the suitability of liberal democracy in supporting economic development in post-colonial African states has unabatedly continued to remain at the centre of current intellectual discourses and conversations. Although scholars seem to be focused on the endogenous constraints to the capacity of liberal democracy in generating the expected development outcome, specific attention is yet to be paid on how exorbitant spending on elections undermines human development in Nigeria. This study therefore argues that the electoral timetable of a 4-year tenure system renewable only once, which sustains exorbitant public expenditure on elections is antithetical to the human development drive of the Nigerian state. It diverts public spending, incapacitates the state from addressing the economic priority needs of the people, and deepens the gap between the rich and poor. Redesigning and retuning the content of liberal democracy in line with the demands, peculiarities and realities of the Nigerian state are highly recommended in the study.

#### That creates a time bomb that’ll inevitably implode stability---abandoning democracy’s key

Moses E. Ochonu 19, Cornelius Vanderbilt Chair in History and Professor of African History at Vanderbilt University, PhD and MA in African History from the University of Michigan, BA in History from Bayero University, Graduate Certificate in Conflict Management from Liscomb University, “Why Liberal Democracy is a Threat to Nigeria’s Stability”, Logos: A Journal of Modern Society & Culture, May 2019, <http://logosjournal.com/2019/liberal-democracy-is-a-threat-to-nigerias-stability/> [language modified]

The Real Cost of Democracy

Aside from the aforementioned financial cost of elections and patronage, other expenditures bring the recurring cost of the Nigeria’s 20-year democratic project into tens of billions of dollars, an expense that will sooner or later ~~cripple~~ [ruin] the country financially. Let me expatiate. A recent report confirmed what many Nigerians have long suspected about the remunerations of their elected executive and legislative leaders: Nigerian elected public office holders at all levels of government are the highest paid in the world.[5] Together with their string of assistants and advisors (who sometimes have their own paid advisors), Nigeria’s public officers gobble up at least half of the nation’s revenue and budgetary appropriations in legitimate rewards.

This prohibitive democratic overhead has left the country with a smaller pool of funds than ever to invest in the things that matter to Nigerians: roads, healthcare, schools, water, electricity, and food production. This odd reality of low returns on democratic investment is unsustainable. Something has to give.

What is being eroded is the very stability of the state, along with any trust that citizens still have in it. This is a proverbial ticking time bomb that will implode or explode if the trend continues, if this democracy endures. Twenty years since the return of civilian rule, it is not an exaggeration to say that not only has democracy not paid off for Nigeria but that it is now a threat to its stability and survival. This is a radical shift that has occurred stealthily and has thus been missed by the Western governmental and non-governmental actors that encouraged and funded democratic advocacy in the 1990s.

#### The two-party system creates polarization, social violence, and instability

Dr. Aloysius-Michaels Okolie 21, Professor in the Department of Political Science at the University of Nigeria, PhD in Political Science and MSc from the University of Nigeria, et al., “Does Liberal Democracy Promote Economic Development? Interrogating Electoral Cost and Development Trade-Off in Nigeria’s Fourth Republic”, Cogent Social Sciences, Volume 7, Issue 1, 4/28/2021, Taylor & Francis Online

The hitches and abnormalities characterising Nigeria’s electoral democracy are, no doubt, intrinsically linked to the institutionalised two-tenure renewable system. This tenure system was externally supported by the purveyors of liberal democracy and domesticated by the local accomplices solely for self-interest. In Nigeria, the winner-takes-all mentality as well as the high stakes usually associated with political offices heightens electoral contestations among the competing, polarised and distrusted ethnic nationalities who perceive political power as a means of advancing their peculiar economic interests. The struggle is usually intensified when it is obvious that access to state power guarantees an unfettered gateway to huge petro-dollar revenue. Indeed, the incumbent’s penchant for re-election often reinforces the tendency for divisiveness, violence, rancour and instability. For instance, the re-election bid of the then President Goodluck Jonathan in 2015 accounted for the deaths of 106 people while the election-related conflict in 2011 led to the deaths of 800 people and the displacement of 65,000 (Birch & Muchlinski, 2018; Harwood, 2019). The two-tenure system affects governance and policy responses since incumbent officials seeking re-election often devote a substantial part of their time and energy in politicking and grandstanding for a favourable outcome. This manifested in the 2015 and 2019 re-elections of Goodluck Jonathan and Muhammadu Buhari, respectively, in Nigeria when both leaders abandoned their jobs for campaigns. Also, given the monetised and winner-takes-all approach of Nigerian politics, incumbent candidates ruthlessly divert public funds for re-election campaigns. It drains the national treasury and redirects public expenditure to campaign funding rather than to human and capital development. A classic example is the ongoing investigation into the Office of the National Security Adviser which, at the interim, has revealed that the sum of 2.1 USD billion appropriated for procurement of military equipments was diverted and used to prosecute the 2015 general elections for the Peoples Democratic Party.

#### That implodes the country---autocracy solves

Dr. Moses E. Ochonu 20, Cornelius Vanderbilt Chair in History and Professor of African History at Vanderbilt University, PhD and MA in African History from the University of Michigan, BA in History from Bayero University, Graduate Certificate in Conflict Management from Liscomb University, “Liberal Democracy Has Failed in Nigeria”, Africa Is a Country, 2/7/2020, <https://africasacountry.com/2020/02/liberal-democracy-has-failed-in-nigeria> [language modified]

Liberal democracy’s capstone ritual, zero-sum elections, endow winners with all the rewards of victory—millions of dollars in licit and illicit earnings, local and international political visibility, and power. The loser, conversely, gets nothing. The result is a high-stakes version of what is called FOMO, or the fear of missing out, in American popular lingo. This fear of political exclusion in turn catalyzes desperation, which consistently and predictably produces messy, violent, and compromised elections.

In addition, since its return to civilian rule in 1999, liberal democracy has been an unacceptably costly enterprise for Nigeria. In 2019, the country spent about $670 million on a general election widely condemned as a sham. With budget financing increasingly steeped in external and internal debt, and given the fungibility of state funds, there is a depressing possibility that Nigeria is borrowing to fund elections and to finance its fledgling democratic institutions and processes. It’s a hefty price tag in a country where most people subsist on less than $2 a day. When this financial outlay is added to Nigeria’s notoriety for having some of the highest paid legislators in the world and for spending the national fortune to maintain a large army of elected and appointed civilian officials, the unsustainability of this “democratic” trajectory emerges in full relief.

It is not just the fiscal cost of elections and civilian administration that threatens to ~~cripple~~ [destroy] Nigeria. The social cost of this “democratic” adventure poses the most potent threat to the country. Plural, adversarial, and zero-sum elections have frayed the social fabric and undermined the cohesion of a notoriously fragile country. As mentioned previously, elections have been marked—and marred—by killings, displacement, scorched earth violence, and malicious manipulations. Electoral contests are little more than political warfare between factions of Nigeria’s political elite for access to the country’s resources.

The result of this charade has been a steady trend of voter apathy, represented by declining voter turnout, which stood at 35 percent in 2019. Nigerians are communicating their disillusionment with this iteration of democracy. Without urgent, profound reforms, the current path may destroy the country. It is no longer enough to argue that the current challenges are mere setbacks on the path to democratic maturity, or that escalating “democratic” tyranny is an aberration.

### --- 1ar – xt: nigeria impact

#### It spills into the Middle East and South Asia---nuclear war

Walter Mead 13, James Clarke Chace Professor of Foreign Affairs and Humanities at Bard College, “Peace in The Congo? Why the World Should Care”, The American Interest, 12/15/2013, <https://www.the-american-interest.com/2013/12/15/peace-in-the-congo-why-the-world-should-care/>

The problem is that these wars spread. They may start in places that we don’t care much about (most Americans didn’t give a rat’s patootie about whether Germany controlled the Sudetenland in 1938 or Danzig in 1939) but they tend to spread to places that we do care very much about. This can be because a revisionist great power like Germany in 1938-39 needs to overturn the balance of power in Europe to achieve its goals, or it can be because instability in a very remote place triggers problems in places that we care about very much. Out of Afghanistan in 2001 came both 9/11 and the waves of insurgency and instability that threaten to rip nuclear-armed Pakistan apart or with trigger wider conflict India. Out of the mess in Syria a witches’ brew of terrorism and religious conflict looks set to complicate the security of our allies in Europe and the Middle East and even the security of the oil supply on which the world economy so profoundly depends.

Africa, and the potential for upheaval there, is of more importance to American security than many people may understand. The line between Africa and the Middle East is a soft one. The weak states that straddle the southern approaches of the Sahara are ideal petri dishes for Al Qaeda type groups to form and attract local support. There are networks of funding and religious contact that give groups in these countries potential access to funds, fighters, training and weapons from the Middle East. A war in the eastern Congo might not directly trigger these other conflicts, but it helps to create the swirling underworld of arms trading, money transfers, illegal commerce and the rise of a generation of young men who become experienced fighters—and know no other way to make a living. It destabilizes the environment for neighboring states (like Uganda and Kenya) that play much more direct role in potential crises of greater concern to us.

#### Boko Haram will get CBRNs---extinction

Dr. Bernard B. Fyanka 20, Ph.D. in History and Strategic Studies from the University of Lagos, Akoka Lagos Nigeria, "Chemical, Biological, Radiological and Nuclear (CBRN) Terrorism: Rethinking Nigeria’s Counterterrorism Strategy", African Security Review, Volume 28, Issue 3-4, 2/17/2020, Taylor & Francis Online

The end of the Cold War might have represented the end of mutually assured destruction (MAD), but it did not necessarily dispel the dangers of the nuclear age – in fact, to some extent the globalised proliferation of non-conventional weapons has instead escalated the possibilities for a nuclear attack being carried out. During the Cold War, the belligerents of any nuclear conflict would have been easily identifiable; however, in the post-Cold-War era, non-state actors and terrorist groups like Boko Haram have emerged as potential players in a new variety of nuclear conflicts that would entirely be based on terrorist models. The ominous possibilities for this new kind of warfare are indeed terrifying, and the rise in terrorist attacks around the globe enhances the likelihood of such an occurrence. Since 9/11, the body of academic literature on the threat posed by terrorists regarding weapons of mass destruction (WMDs) and chemical, biological, radiological and nuclear (CBRN) devices has increased. In Gary Ackerman and Jeremy Tamsett’s edited volume, Jihadists and Weapons of Mass Destruction, there is disagreement as to whether this threat is overestimated or underestimated.1 In recent times, however, ample ideological incentive for the use of CBRN devices has been provided by the likes of Abu Mus‘ab al-Suri – author of the ‘Global Islamic Resistance Call’ – who has stated that ‘[t]he aim of carrying out resistance missions and individual jihad terrorism “jihad al-irhabi al-fardi” is to inflict the largest human and material casualties possible on American interests and its allied countries’.2 This echoes the previous call of Grand Ayatollah Ahmad Husayni al-Baghdadi, who maintained:

If the objective and subjective conditions materialize, and there are soldiers, weapons, and money – even if this means using biological, chemical, and bacterial weapons – we will conquer the world, so that ‘There is no God but Allah, and Muhammad is His Prophet’ will be triumphant over the domes of Moscow, Washington, and Paris.3

For Boko Haram and other groups, there definitely exists a strong motivation for the use of WMDs, and the global reach of this thinking is not in doubt:

The globalization of the jihadist struggle has also led to an increased emphasis on Islamic identity. In combination with the ideological theme of revenge, the global struggle for Islamic identity has the potential to create a new jihadist cultic worldview in which its endorsers seek out WMDs because they represent the only means to significantly transform reality.4

Contextual scenarios in Nigeria strongly suggest that Boko Haram is one such group which has embraced the jihadist world view that endorses the use of WMDs. In this regard, the strengthened affiliation of Boko Haram’s splinter group – the Islamic State West Africa Province (ISWAP) – with the Islamic State of Iraq and Syria (ISIS) confirms their ideological persuasions. The motivation for Boko Haram to use such weapons is thus grounded in the recent use of chemical weapons by ISIS in both Iraq and Syria against both military and civilian targets.5 If ISIS is claiming ownership of a faction of Boko Haram as its West African province, it is likely to extend its tactics to its African allies.

In the light of the above, the use of WMDs by terrorists cannot be explained within the framework of orthodox terrorism theories. With this in mind, what Russell Worth Parker refers to as the ‘Islamic just war theory’ suitably anchors a discourse on terrorism and advanced weapons of war.6 Most theorists do not support a subjective theory of ‘just war’, but rather the traditional version that relies on Western ideas of morality and proportionality, as well as on motives for waging war.7 On the other hand, jihadist traditions reinterpret just war’s key tenet of proportionality to suit Islamists’ conflict rationale. According to the Western form of just war theory, wherein discrimination proves strategically impossible, any response should be proportionate to the action that compels it – hence, proportionality dictates that a military operation should not cause greater harm than the act that it was designed to counter or prevent.8 This proportionality argument is exemplified in the use of nuclear weapons in the Second World War; since casualty estimates for an invasion of Japan exceeded one million Allied lives, with similar estimates for Japanese military and civilians, a nuclear attack was preferable. Eventually, the actual casualties suffered from the bombing of Hiroshima and Nagasaki reached 200,000, which represents 10% of the casualties that would likely have been incurred if Japan had been invaded (see https://avalon.law.yale.edu/). In the light of this argument, justification for the use of WMDs by terrorist groups would rest on their interpretation of the extent of the damage caused by the military aggression and long-term imperialism of Western powers.

Fighting faceless enemies in a CBRN conflict, whether in West Africa or the Middle East, is hard to imagine. Enemies who can easily blend into the crowd and take on the face of ordinary civilians represent a nightmare scenario for security strategists all around the world. The risk of WMDs falling into the hands of terrorist groups is largely dependent on their ability to obtain weapons-grade nuclear material like uranium and plutonium, combined with gaining the capability to build and deploy weapons which make use of them. The global proliferation of nuclear material has made this possible today.

Global proliferation of fissile material

The collapse of the Soviet military-industrial complex ushered in a period of uncertainty regarding the security of nuclear material. Consequently, the risk of fissile material falling into the hands of terrorist groups – or into the hands of states that sympathise with or harbour such groups – increased considerably. Lax security at former Soviet nuclear facilities was widespread, making the theft of nuclear material possible. In the chaos that followed the Soviet collapse in the early 1990s, radioactive material was frequently stolen from poorly guarded reactors and nuclear facilities in Russia and its former satellite states. Police operations have intercepted shipments of Soviet nuclear material in cities as far away as Munich and Prague, and experts believe that large batches are still unaccounted for and most likely accessible to well-connected traders on the black market.9

Over 1800 metric tons of nuclear material is still stored in facilities belonging to more than 25 countries all around the world.10 Not all of this material is located in military stockpiles – in fact, most countries maintain civil stockpiles of plutonium for use in nuclear power reactors. The civil stockpiles in the United Kingdom (UK), India, Belgium, France, Germany, Japan and Russia add up to over 230 metric tons of plutonium. In spite of these enormous quantities, the UK, India, France, Japan and Russia have not yet reduced the reprocessing of plutonium for civil use. Although civil plutonium is not weapons-grade, it remains viable as a raw material that can be transformed through an enrichment process for use in a bomb. The United States (US) on the other hand has a comparatively small amount of civil plutonium because of its 1970 policy to suspend the separation of plutonium from spent nuclear fuel.11

About 25 kg of highly enriched uranium (HEU) is required to build a bomb – an insignificant amount in comparison to the global stockpile, which is in excess of 1.6 million kg. On the other hand, about 8 kg of plutonium is needed to build a bomb – a tiny fraction of the 500,000 kg global stockpile.12 Nuclear facilities that are relics of the Cold War era, especially those located in Eastern Europe, represent a high security risk. More than 130 nuclear reactors powered by HEU are operational in over 40 countries – the fallout of an early Cold-War-era programme in which the US and the Soviet Union helped their allies to obtain nuclear technology. Several other reactors have been shut down but may still contain nuclear fuel on site. In total, the world’s research reactors contain 22 tons of HEU – enough to build hundreds of nuclear bombs. The problem is that research reactor fuel tends to be stored under notoriously light security, making it a very vulnerable target for terrorists.13

In 2004, the US Government Accountability Office (GAO) published a report that details security lapses at civilian nuclear installations, citing a case in which the fences surrounding an unnamed foreign research reactor were in very poor condition and there were no guards securing the reactor building itself. In this report, Harvard expert Matthew Bunn explains that unlike the bulky and extremely radioactive fuel rods used in commercial nuclear power plants, research reactor fuel consists of small pellets that weigh only a few pounds each and moreover are easier to handle –a simple backpack can conceal several pellets.14 Naturally, civilian stockpiles are at greater risk of theft than those held in military installations. Consequently, the possibilities of such dangerous material falling into the hands of terrorists groups have become increasingly plausible.

Regarding military stockpiles, Russia and the US possess the largest amounts of weapons-grade plutonium – 100 and 150 metric tons, respectively. Diplomatic attempts aimed at reducing these stockpiles have resulted in an agreement for the two countries to dispose of 34 metric tons each via the method of turning the weapons-grade plutonium into fuel for nuclear power reactors. Although this agreement has not been effected yet, it is obvious given the above that the process may expose the material to greater risk of theft rather than securing it.15 On the other hand, in 2005 the US Congress eliminated the long-standing restrictions that were placed on the exporting of HEU to other countries for the purpose of manufacturing medical isotopes, which has also created new avenues for the proliferation of nuclear material through civilian use.16

Although the civilian use of nuclear material has increased the risk of its proliferation, the military facilities currently holding nuclear material around the world – especially in Russia – are also not well secured. Thousands of Cold-War-era tactical weapons are stored at very poorly guarded military installations, and most of these weapons are small and do not have electronic locks that prevent unauthorised usage.17 Since the collapse of the Soviet Union there has been no viable security strategy for securing the nuclear material contained in many of the former empire’s cities. During the Cold War era, the citizens of these cities had access to these facilities – and they still do, a problem further compounded by the fact that a strict inventory of the nuclear material contained in these facilities is not maintained.18

The likes of infamous arms dealer Leonid Minin (who was found guilty in a court of law for supplying weapons to non-state actors in African conflicts) are all too willing to do business with terrorists.19, 20 Arms dealers and smugglers all over the world are always seeking lucrative opportunities, and it is almost certain that some nuclear material has already been acquired by dangerous fanatics.

Several incidents in recent decades give every reason to believe that this is the case. In 1993, Kazakhstani authorities discovered HEU capable of arming 20 bombs in a building that was poorly secured.21 In 2006, Russian citizen Oleg Khinsagov was arrested in Georgia for carrying 100 g of HEU and attempting to find a buyer for what he claimed was many additional kilograms.22 In 2011, six men with 4 g of uranium were arrested by security forces in Moldova. Upon questioning, they claimed that the 4 g represented a sample of the product they were ready to market. They claimed to possess an additional 9kg, which represents one third of the quantity needed to create a nuclear weapon. The leader of this group and the North African buyer escaped.23 Four years before this incident, gunmen raided a facility in Pelindaba, South Africa; the details of the event are still shrouded in mystery.24

Efforts by terrorist organisations to purchase and use nuclear weapons continue unabated. The most high profile of these known efforts is that of Osama bin Laden, who in 2001 attempted to purchase a canister of uranium in Sudan for US$1.5 million. Intelligence reports claim that he also met with two Pakistani nuclear scientists, and sketches of nuclear weapons were found at an al-Qaeda training camp.25

From the foregoing, it is clear that there exists a robust and thriving black market in fissile material that seems to be tailor-made for use by terrorists groups. The International Atomic Energy Agency (IAEA) as at December 2015 had recorded in its trafficking database a total of 2889 incidents involving losses, thefts and/or attempts to traffic fissile material across international borders.26 This is an incredibly high rate of security lapses considering the security priority that nuclear facilities are supposed to possess. More pressing is the fact that the agency does not inspect every nuclear facility globally, and as such is not in a position to comprehensively enforce strict security and safety regulations. As a consequence of this, fissile material often goes missing and subsequently appears on the black market without being reported to the agency. Furthermore, several nations which maintain nuclear facilities do not possess the requisite resources to subject employees to the kind of extensive background checks that can ensure their trustworthiness for working at such high-security sites. In the absence of this screening, the likelihood of people with terrorist ties applying for jobs at nuclear facilities for the purpose of obtaining nuclear material is very high.

There is mounting evidence worldwide that increasing amounts of fissile material are being stolen and traded. Although the Russian government refuses to admit that it has lost any nuclear weapons, at least four Russian nuclear submarines have sunk, and it is believed that the warheads on board are yet to be recovered. The US on the other hand has admitted to losing a staggering 11 nuclear weapons.27

How can Boko Haram obtain nuclear material?

Boko Haram is one of the deadliest terrorist groups in the world. Since 2009, it has engaged with the Nigerian state in a lethal terrorism campaign aimed at toppling the secular structure and replacing it with an Islamist state. By May 2014 over 12,000 Nigerians had been killed in the insurgency,28 while one in five persons from Borno, Yobe and Adamawa states had been internally displaced. According to the 2017 Global Terrorism Index, Boko Haram ranks as the second deadliest terrorist group in the world, with an all-time high death toll of over 6000 in 2014 alone.29

With known ties to al-Qaeda, Boko Haram has an estimated annual income in excess of US$25 million.30 By 2017, Boko Haram had been forced to retreat from the large areas it had previously occupied in the north-east of Nigeria, driven back by the joint international military efforts of several countries in West and Central Africa. This created the need for them to reassert themselves. The likelihood of this group re-strategising and reconsolidating is high. Consequently, their acquisition of fissile material for the development and deployment of radiological ‘dirty bombs’ has increased in probability. The availability of this material on the continent and within Nigeria itself presents ominous opportunities for the group. Apart from large deposits of uranium ore found in Africa, several countries including South Africa, Morocco, Libya, Ghana, Egypt, the Democratic Republic of Congo (DRC) and Nigeria itself presently possess nuclear research reactors.31

The IAEA has reported no less than 12 incidents of natural uranium smuggling between 1995 and 2005 in Africa alone. In fact, illegal uranium mining at the Shinkolobwe mine in Katanga, DRC is presently a source of great concern. More importantly, this is where the source material for the Hiroshima and Nagasaki bombs was obtained.32 The proliferation of fissile material across the continent heightens the possibility of non-state actors like Boko Haram gaining access to it. Although there has only been one recorded theft of eight uranium fuel rods from a Kinshasa research reactor in 1997, the disturbing fact about this is that seven of the rods were never recovered.33

Within Nigeria itself, opportunities abound for terrorist groups like Boko Haram and other militant organisations to obtain fissile material for use in nuclear devices or dirty bombs. In 2004, Nigeria commissioned a 30-kW miniature neutron source reactor (NIRR-1) for the purpose of nuclear energy research.34 This nuclear facility is located at the Centre for Energy Research and Training at Ahmadu Bello University Zaria in the north of the country, where terrorist activities and Islamist extremism have been going on for centuries. The possibility of Islamist extremists infiltrating nuclear facilities and smuggling out fissile material has been an ongoing security concern for a number of years. An outright attack on a lightly secured facility is a second possibility that actually played out in 2007, when a nuclear research facility in Pelindaba, South Africa was raided by armed assailants, who breached its security perimeter and gained entry.35 Another concern is unsecured radioactive waste – namely 234 legacy sources presently located at the Ajaokuta Steel Company in Kogi State – that has not been disposed of and could easily be obtained by Boko Haram.36 To complicate matters further, the construction of a low to medium radioactive waste management facility at Nigeria’s Nuclear Technology Centre has been abandoned.37

Can Boko Haram build and use non-conventional weapons?

The poor state of nuclear security combined with the tenacity of Boko Haram makes Nigeria a prime location for the advent of nuclear terrorism. Knowhow on building a nuclear device is widely available, as is the key component, HEU, which can be found all over the world in dozens of military and civilian nuclear facilities – like the one at Ahmadu Bello University. Once Boko Haram has obtained enough HEU, a choice can be made between two types of nuclear device. The first is the gun-type mechanism, in which the HEU is smashed together to produce an explosion. The second type, which is more advanced, requires a chamber in which the HEU is compressed in a highly symmetrical manner in order to create an implosion. The gun-type mechanism is the more likely option for terrorist groups because it is simpler.38

In order to use the gun-type mechanism to activate a nuclear device, Boko Haram operatives would need to assemble a crude cannon that can smash HEU together – and the more highly enriched the uranium, the less advanced the weaponry that is needed. The viability of any terrorist group accomplishing such a task has been tested by US senator Joe Biden. In 2004 he asked scientists at three national laboratories to see if they could assemble the mechanical components of a gun-type bomb with commercially available equipment alone. A few months later, they reported back that they had succeeded.39 With over US$25 million in annual income, Boko Haram has the resources to obtain both the scientific knowhow and the materials needed to build and deploy a gun-type nuclear weapon.

Radiological dirty bombs

The threat of non-conventional weapons proliferation and terrorism goes beyond nuclear weapons – it also encompasses radiological dirty bombs. The raw materials used to create nuclear weapons are very dangerous; they contain highly radioactive substances that would pose a serious health hazard if dispersed in human populations using a detonation device. Plutonium and uranium could thus be weaponised in the form of a radiological dirty bomb, also known as a radiological dispersal device (RDD), which would cause widespread fatalities and cost billions of dollars in clean-up, evacuation and relocation operations.40

Terrorist groups like Boko Haram could easily build and use an RDD, given the widespread proliferation of fissile material – and more importantly given the dual-use materials that can produce the same radiological effects as fissile material from nuclear installations. Radiological dual-use materials from smoke alarms and medical services are among the most easily accessible; highly radioactive isotopes are in fact used in life-saving blood transfusions and cancer treatments in hospitals all around the world, including several in Nigeria. These isotopes include cesium-137, cobalt-60 and iridium-192, which can easily be used as base materials for a bomb or an RDD.41 The challenge is that most of the medical, commercial and industrial groups that handle these materials are not adequately equipped to provide the security needed to prevent them from being stolen. On the other hand, the lack of regulatory controls in many countries has led to thousands of instances of missing or stolen radiological material that cannot be accounted for. Recently, the James Martin Center for Nonproliferation Studies found in an alarming study that 170 incidents where nuclear or radiological material was lost, stolen or outside regulatory control occurred in 2014 alone.42

RDDs are viable weapons for terrorist groups like Boko Haram to pursue – and terrorist states have also attempted to obtain them. On 28 March 2002, Abu Zubaydah – a key al-Qaeda operative – was captured in Pakistan. He is widely believed to have told US investigators that al-Qaeda was ‘interested’ in building or obtaining a dirty bomb. Further evidence emerged on 8 May 2002, when Federal Bureau of Investigation (FBI) agents arrested Abdullah al Muhajir on charges of planning a radiological attack in the US at the direction of al-Qaeda operatives.

States that sponsor and support terrorist groups are likely to pass on fissile and radiological material to them. Iraq under Saddam Hussein is known to have sought radiological material for this purpose. In 1987, Iraq tested a bomb weighing 1400 kg that carried radioactive particles derived from irradiated impurities in zirconium oxide. A further 100 prototypes were designed from the casings of Muthanna-3 aerial chemical bombs, which were then modified to a 400-kg weight so that aircraft could carry more of them. It is likely that only 25 of these prototypes were destroyed, and that the other 75 were sent to the Al Qa Qaa State Establishment, a massive Iraqi weapons facility; their current status and whereabouts remain unknown.43

Chemical and biological weapons

The most commonly used non-conventional weapons are chemical or biological in nature. The long history of chemical and biological weapons usage dates as far back as 600 BC when, during a siege, Solon of Athens poisoned the drinking water of the city of Kirrha.44 More recently – starting with the use of mustard gas during the First World War – nations have acquired chemical and biological weapons easily, deploying them against enemies and their own citizens alike. For terrorist groups like Boko Haram, chemical and biological weapons are uniquely suited to their agenda and as such present very attractive alternatives to nuclear; they are extremely difficult to detect, cost effective and easy to deploy. Aerosols of biological agents are invisible to the naked eye, silent, odourless, tasteless and relatively easily dispersed. Most importantly they are 600 to 2000 times cheaper than other WMDs. Recent estimates place the cost of biological weapons at about 0.05% of the cost of a conventional weapon which could produce similar numbers of mass casualties per square kilometre.45

The proliferation of chemical and biological weapons has proved to be very fluid over the past century due to advancements in technology. Production is comparatively easy via the commonplace technology that is used in the manufacturing of antibiotics, vaccines, foods and beverages, while delivery systems such as spray devices deployed from airplane, boat or car are widely available. Another advantage of biological agents is the natural lead time provided by the organism’s incubation period (three to seven days in most cases), allowing the terrorists to deploy the agent and then escape before an investigation by law enforcement and intelligence agencies can even begin. Furthermore, not only would the use of an endemic infectious agent likely cause initial confusion because of the difficulty of differentiating between a biological warfare attack and a natural epidemic, but with some agents the potential also exists for secondary or tertiary transmission from person to person or via natural vectors.46

Unlike their nuclear and radiological counterparts, biological and chemical weapons have been used for terrorism by both state and non-state actors. The challenges faced in preventing the use of these weapons through international control mechanisms include the increasing availability of larger quantities of substances, ease of use and most especially advanced technological deployment facilities that portend a high risk factor to larger populations. Table 1 catalogues the use of biochemical weapons in warfare and by terrorists and other groups or individuals over the past century, offering concrete historical precedent and empirical grounds for the potential future actions of Boko Haram. The data shows consistent recourse to the use of these weapons, in spite of the chemical and biological weapons conventions outlawing them. It can be seen that from the 1970s onwards there has been an increase in the use of biochemical weapons by religious cults and terrorist groups in pursuit of their agendas. The rise of Boko Haram and its ISIS affiliation could lead to a future where the use of biochemical weapons is the norm rather than the exception.

As stated previously, the contextual scenarios in Nigeria that validate this prognosis regarding Boko Haram’s possible actions are strongly supported by their ideological persuasions. The fact that Boko Haram embraces a jihadist world view which endorses the use of WMDs is strengthened not only by its affiliation to ISIS through ISWAP but also by the similarities in its strategic modus operandi. Like ISIS, Boko Haram both believes in the slaughter of other Muslims who are deemed to be in cahoots with infidels, and advocates for the destruction of civilian populations – whether Muslim or otherwise – that are regarded as obstructing the advancement or creation of their caliphate.47 This was practically demonstrated by ISIS in Syria and Iraq when they used chemical weapons against both civilian and military populations, as shown in Table 1.48

Nigeria’s counterterrorism strategy

The central control measure for preventing nuclear terrorism is to ensure at the international level that nuclear material does not fall into the hands of terrorist groups like Boko Haram and other non-state actors in the first place. This is very difficult to achieve, given the lax security measures found at nuclear installations all over the world. Recognising the danger, the US under the Obama administration committed in 2010 at a nuclear security summit in Washington DC to securing all nuclear material within four years in an effort to prevent nuclear terrorism.49 Nigeria was a participant of this summit and is also committed to implementing the agreements that were reached. These attempts by the Obama administration followed up on the efforts embedded in the landmark 1987 Convention on the Physical Protection of Nuclear Material (CPPNM), which was meant to prevent nuclear material from being obtained by terrorists. The provisions of this convention were amended in 2005, and by 2010 the Washington summit had created the needed sense of urgency regarding the security of fissile material.50 Negotiations around the CPPNM started in 1979,51 and over the decades the growing proliferation of fissile material has combined with the increase in global terrorism to raise the profile of the issue of fissile material security. As of 2016, a total of 93 states including Nigeria had ratified the CPPNM, resulting in tighter security around the world at nuclear installations and border controls.

Nigeria has been engaged for decades in international efforts to control nuclear proliferation and terrorism. The country has ratified and acceded to over a dozen international instruments since 1963, including the Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963), the CPPNM (1987), the Amendment to the CPPNM (2006) and the International Convention for the Suppression of Acts of Nuclear Terrorism (2007).52 At the level of global collective security, Nigeria is involved in implementing the United Nations (UN) Global Counter-Terrorism Strategy, which was adopted unanimously by the General Assembly in Resolution 60/288.53 At the regional and subregional levels, the counterterrorism strategies of the African Union (AU) and the Economic Community of West African States (ECOWAS) have been ratified and are in the process of being implemented. In pursuance of effecting these various international agreements, Nigeria has also instituted their National Counterterrorism Strategy (NACTEST), which was revised in 2016. Presently the country is also working with the UN Counter-Terrorism Implementation Task Force (CTITF) on projects designed to build community resilience against terrorism, enhance cooperation among law enforcement agencies and strengthen judicial institutions.54

Towards an integrated chemical, biological, radiological and nuclear (CBRN) counterterrorism protocol

The CBRN terrorism threat in Nigeria is both real and present. The country has one of the highest rates of terrorist activities in the world; in fact, according to the 2016 Global Terrorism Index, Nigeria ranked third among 163 countries, with a terrorism death rate of 16.8% of the global total.55 Although attacks declined in 2017, Nigeria still retained third place on the Global Terrorism Index.56 Recently, Boko Haram has initiated a comeback that has seen renewed attacks and the abduction of more girls from schools in the north-east of the country. Security forces have continued to engage the group on the frontlines in their forest bases; with the assistance of local and international joint task forces, much of the conflict has been shifted to more remote areas in the north-east. Although the government security forces have gained the upper hand in their frontal clashes with Boko Haram forces, by January 2018 the group had successfully carried out several brutal assaults, including one on UN and Doctors Without Borders staff, shifting their strategy back to traditional hit-and-run guerrilla tactics. During Easter of the same year, a single attack utilising 5 suicide bombers resulted in over 29 dead and 84 wounded.57

The likelihood that Boko Haram may begin to use CBRN weapons is increasing, and biological and chemical terrorism is potentially more difficult to prevent than conventional terrorist attacks. Since the latter part of the twentieth century, the Internet has contributed to the spread of chemical and biological weapons knowhow, thereby increasing the likelihood of Boko Haram being able to obtain not only the ingredients needed to create biochemical weapons but also the information needed to build and successfully deploy them. Some of the base materials for such weapons even occur naturally, like castor beans, which can be processed to produce the dangerous toxin ricin and deployed against unsuspecting populations. Furthermore, live strains of very dangerous viruses like Ebola can be found in high-tech research labs, like those at the African Centre of Excellence for Genomics and Infectious Diseases (ACEGID) at the Redeemer’s University Ede in Osun State. If Boko Haram were to secure this virus and weaponise it, the age of biowarfare would arrive in Nigeria – with deadly consequences. More importantly, the materials that are needed to create most chemical weapons exist in large quantities as dual-use materials that can be purchased on the open market and ferried into the country via forged end-user certificates.

The chemical and biological weapons conventions represent control structures geared towards the containment of these non-conventional weapons, and to a large extent state signatories like Nigeria have implemented a good level of the instruments contained in them; however, some nations still maintain secret stockpiles and have used them in recent conflicts, like Iraq against Iran and Kurdish dissidents in the 1980s and 1990s, and the Syrian government, which is presently using them against its civilian population.

On the whole, the counterterrorism measures put in place to deal with the aftermath of a chemical or biological attack have gained more credibility in the international community. Although there is no dedicated international inter-agency mechanism for coordinating the response to terrorism involving the release of toxic chemicals or biological agents, there are mechanisms that have evolved in the context of humanitarian assistance and emergency response after natural catastrophes, such as earthquakes; these include the Global Outbreak Alert and Response Network (GOARN), the World Health Organization (WHO), the Global Early Warning System (GLEWS), the Global Framework for the Progressive Control of Transboundary Animal Diseases (GF-TAD) and the International Food Safety Authorities Network (INFOSAN). The primary inter-agency mechanism that coordinates responses to emergencies involving the agencies mentioned above is the UN Disaster Assessment and Coordination (UNDAC).58 To further strengthen inter-agency coordination in the wake of a terrorist attack of catastrophic proportions, the UN CTITF is also focusing on planning for such an eventuality.

At the local level, several key aspects of Nigeria’s NACTEST are presently being utilised. The strategy is divided into five work streams:

* Forestall: Prevent terrorism in Nigeria by engaging the public through sustained enlightenment and sensitisation campaigns and deradicalisation programmes.
* Secure: Ensure the protection of life, property and key national infrastructure and public services, including Nigerian interests around the world.
* Identify: Ensure that all terrorist acts are properly investigated, and that terrorists and their sponsors are brought to justice.
* Prepare: Prepare the populace so that the consequences of terrorist incidents can be mitigated.
* Implement: Devise a framework to effectively mobilise and sustain a coordinated, cross-governmental, population-centred effort.59

Presently, the first three aspects of these work streams are receiving full attention. However, in regard to WMDs, the counterterrorism strategy is lacking a well-integrated CBRN protocol for engaging with the work streams for preparation and implementation. Nigeria currently handles issues relating to nuclear and radiological matters through two institutions: the Nigerian Atomic Energy Agency (NAEC) and the Nigerian Nuclear Regulatory Authority (NNRA). It is therefore expected that, given the growing CBRN threat level in the country, these agencies will collaborate with the Office of the Security Adviser to the President in order to initiate a proper CBRN counterterrorism protocol.

The NACTEST does not currently include a dedicated protocol for handling CBRN threats; Nigeria is however involved in nuclear security at the international level, which has primarily provided for capacity-building and human resources development. Activities in these areas include the gradual process of converting the miniature neutron source reactor in Zaria from using HEU to low enriched uranium (LEU), partnerships for nuclear and radiological security with the US Department of Defence (DoD) and the IAEA, establishing a nuclear security support centre in the country, reviewing the 2012 design basis threat (DBT) for protecting nuclear and radiological material, the development of a programme for locating and securing orphan legacy radioactive sources, training security officers, the installation of a radiation portal monitor at the Murtala Muhammed International Airport in Lagos in 2008 and the acquisition of three more monitors for other international airports in the country.60

An integrated CBRN protocol would fall under the preparation and implementation work streams of the NACTEST. The protocol should include a strategy for detecting CBRN agents in the wake of terrorist events, followed by disaster response and countermeasure initiatives to be carried out by security, medical and disaster response teams. Given the availability of advanced technology, the integrated CBRN counterterrorism protocol should also include the deployment of handheld radiological and biochemical detectors to high-risk areas, and security forces and disaster response teams should be trained in their usage. Embedding a standard protocol in the NACTEST on how to prepare for and respond to CBRN events is essential for repositioning counterterrorist activities in the country to meet the present threat level. The US and Canada along with the UK and most other European countries facing CBRN threats have already repositioned accordingly in order to accommodate this new reality.

Conclusion

Any terrorist attack involving WMDs is the ultimate nightmare scenario. Fortunately, at least some of these potential attacks are preventable. If and when the nuclear security summit achieves its goals, the possibility of a nuclear terrorist attack in Nigeria will be immensely reduced. Unfortunately, the likelihood of radiological, chemical and biological attacks is more difficult to regress, making it all the more vital to integrate a CBRN protocol into Nigeria’s counterterrorism strategy.

Preventing such a tragic event from occurring will require very close ongoing monitoring of the strategic manoeuvrings of Boko Haram. From its inception to the present day, the organisation has depended on the looting of military armouries to source most of its heavy weapons and equipment. It has built up an impressive arsenal in this manner and there is no indication that the group will stop using this highly profitable strategy, which could be further employed to obtain advanced CBRN weaponry from facilities that are vulnerable to being raided. The civilian facilities mentioned in this paper are at high risk of being targeted in this fashion; hence, the recalibration of Nigeria’s CBRN counterterrorism protocols should include a security framework that provides military security for facilities like the ACEGID in Osun State and the Centre for Energy Research and Training at Ahmadu Bello University Zaria. Lastly, although the IAEA has assisted in the conversion of Nigeria’s reactor from HEU to LEU,61 the availability of fissile material at the facility means that the risk of radioactive dirty bombs being created from looted material is still present.

### --- 1ar – xt: warming link

#### Freedom to pollute and rights to consume guarantee overshoot

Dr. Chien-Yi Lu 21, PhD and MA in Government from the University of Texas, Austin, Visiting Scholar at Harvard University, Associate Research Fellow at the Institute of European and American Studies of Academia Sinica, Surviving Democracy: Mitigating Climate Change in a Neoliberalized World, Paperback Edition, 12/13/2021, p. 3-4

This pessimism stems from the unavoidable transition of capitalism from its expanding form to a stationary one under severe scarcity of resources, as “whether we are unable to sustain growth or unable to tolerate it…,it seems beyond dispute that the present orientation of society must change” (1980: 110, original emphasis). Social tensions will inevitably rise when scarcity-propelled stationary or even slow-growing capitalism renders infeasible the usual method of appeasing the lower and middle classes by further deepening the grab into the nature to improve their economic positions, leaving the diminishing of the incomes of the upper echelons of society the only option (1980: 102). Given the widespread belief that “centralized authority will cope with crisis and unrest more ‘successfully’ than less authoritarian structures” and the historic pattern in democracies where “the pressure of political movement in times of war, civil commotion, or general anxiety pushes *in the direction of authority*, not away from it,” (1980: 128–9, original emphasis) Heilbroner concluded that intolerable socioeconomic strains will eventually exceed the capabilities of representative democracy, leading governments of these societies to resort to authoritarian measures (1980: 106).

Similarly, Ophuls contended that under conditions of ecological scarcity, if individuals are allowed to pursue their self-interest “unrestrained by a common authority,” the result is bound to be “common environmental ruin” (1977: 151). Accordingly:

the individualistic basis of society, the concept of inalienable rights, the purely self-defined pursuit of happiness, liberty as maximum freedom of action, and laissez faire itself all become problematic, requiring major modification or perhaps even abandonment if we wish to avert inexorable environmental degradation and eventual extinction as a civilization. (1977: 152)

To him, the only solution is “a sufficient measure of coercion;” and “democracy as we know it cannot conceivably survive” (1977: 151–2).

In the same vein, Ophuls and Boyan (1992) talked about the crucial role that “ecological mandarins” must play under resource scarcity. Concurring with Robert Dahl’spoint that “a reasonable man will want the most competent people to have authority over the matters on which they are most competent” (Dahl, 1970: 58), Ophuls and Boyan emphasized that “under certain circumstances democracy *must* give way to elite rule,” and “the more closely one’s situation resembles a perilous sea voyage, the stronger the rationale for placing power and authority in the hands of the few who know how to run the ship” (Ophuls and Boyan, 1992: 209, original emphasis). Given that ecology is esoteric and that only those with talents and training are qualified as specialists, “a class of ecological mandarins who possess the esoteric knowledge” is required to run the “ecologically complex steady-state society” well. Such a society

will not only be ostensibly more authoritarian and less democratic than the industrial societies of today (the necessity of coping with the tragedy of the commons would alone ensure that), but it may also be more oligarchic as well, with full participation in the political process restricted to those who possess the ecological and other competencies necessary to make prudent decisions. (1992: 215)

#### Deep mitigation will never have popular support AND democracies have to be perfect across every country because pollution is trans-boundary---it’s try-or-die for a global political transition

Dr. Chien-Yi Lu 21, PhD and MA in Government from the University of Texas, Austin, Visiting Scholar at Harvard University, Associate Research Fellow at the Institute of European and American Studies of Academia Sinica, Surviving Democracy: Mitigating Climate Change in a Neoliberalized World, Paperback Edition, 12/13/2021, p. 2-3 [language modified]

The doubt about the ability of democracy to handle climate challenges is palpable from the intellectual Left as well. Eric Hobsbawm offered a threefold explanation for his pessimism. To begin with, many of the strategies needed to avoid climate change would be extremely unpopular and therefore difficult to implement in a democracy. As a result, even as “the impact of human action on nature and the globe has become a force of geological proportions,” “no support will be found by counting votes” for measures required for mitigating these problems. Moreover, given that nature is border-blind, even if voters of some democratic states were sensible, the political mechanisms available to human kind in the 21th century are “effectively confined within the borders of nation-states” and “dramatically ill-suited” to deal with problems lying beyond their range of operation (2007: 113). Finally, democratic national governments are not the only relevant organizational entities that can have an effect on an increasingly globalized and transnational world. “A growing part of human life now occurs beyond the influence of voters, in transnational public and private entities that have no electorates, or at least no democratic ones.” Thus, “[d]emocracy, however desirable, is not an effective device for solving global or transnational problems”(2007: 118).

This wave of academic literature that questions the compatibility of democracy with timely and effective climate mitigation resonates with works dating back to the 1970s that focused on the role of democracy in environmental conservation. In An Inquiry into the Human Prospect, Heilbroner set to answer, in a world plagued by problems such as rapid environmental degradation, “is there hope for man?” Writing in 1974, he highlighted that:

the amount of CO2 in the air is expected to double by the year 2020… sufficient to raise surface temperatures on earth by some 1.5o to 3.0o … bring[ing] sea levels above the level of the land in the populous delta areas of Asia, the coastal areas of Europe, and much of Florida. Long before that it is feared that the rise in temperature would have irreversibly altered rainfall patterns, with grave potential effects. (1980 [1974]: 72)

With the approaching of the depletion of natural resources, Heilbroner expressed deep doubt about the ability of the democratic form of government in ensuring the survival of [hu]mankind.

[C]andor compels me to suggest that the passage through the gantlet ahead may be possible only under governments capable of rallying obedience far more effectively than would be possible in a democratic setting. If the issue for [hu]mankind is survival, such governments may be unavoidable, even necessary. (1980: 130)

### --- 1ar – xt: warming impact

#### It’s fast, causes extinction, and turns all other impacts---transitioning from democracy is key

Samuel Malm 20, Master’s Degree from Uppsala University, Disciplinary Domain of Humanities and Social Sciences, Faculty of Arts, Department of Philosophy, “Does Climate Change Justify a Global Epistocracy?”, Digitala Vetenskapliga Arkivet, 8/11/2020, https://www.diva-portal.org/smash/record.jsf?pid=diva2%3A1448606&dswid=8040

Climate change’s negative impact on humans is hardly something up for questioning. The World Health Organization believes that between 2030 and 2050 the effects of climate change will be an additional of 250 000 deaths every year; due to diarrhoea, malaria, heat stress and malnutrition.1 Accordingly, we can expect millions of deaths to occur, and the increased frequency of natural disasters will push the expected death toll even further. Additionally, the rising sea levels, and other environmental consequences, will cause an unprecedented flow of climate refugees towards areas that still are unaffected by the change. If we thought the impact was huge from the people fleeing the Syrian civil war, or the present corona pandemic, we should expect the climate disaster to be countless times larger. The pressure on societies and intergovernmental organisations will become tremendous, and we would be naïve if we did not expect this pressure to create additional suffering and death. What is then the cause of climate change? It is the result of anthropogenic acts, i.e., it is our current way of living that is causing the heating of the planet. Like a greenhouse, our planet is becoming hotter by the way that carbon dioxide traps more heat in the atmosphere, and by consequent increase the global average temperature. Additionally, it sets off other reactions that add positive feedback to the warming, e.g., creation of water vapour or the reduction of ice caps.

Now, this paper does not intend to demonstrate the truth of these claims, and if the reader is still sceptical about climate change, and its anthropogenic cause, numerous sources can justify and explain these facts better, for instance, rapports from IPCC. 2 Accordingly, I will assume these facts to be true, and that climate change will cause a state of affairs that contains a great deal of suffering and death; besides the possibility of civilisational destruction or human extinction. Thus, the circumstances are dire. So, let us summarise these detrimental effects into a single claim. Here it is:

State Of Affairs No Reduction: A state of affairs where climate change causes tens of millions of deaths, countless instances of additional human suffering, and the possibility of causing a collapse of human life as we know it.

This is what I will take as the effect of doing nothing to halt climate change. This then begs the question: If our current behaviour has such terrible consequences, why have we not implemented policies that prevent climate change?

1.2 What is the nature of the problem?

There are two ways to answer this question: we can give a historical description of how the issue has been misconstrued by interests that have a lot to gain from the status quo or, that we are dealing with a special type of problem that is particularly difficult for us to confront.3 In this paper I will only deal with the second dimension. Additionally, we can divide this dimension into two groups: first, we can describe how humans, by their very nature, are poorly endowed to deal with such problems as climate change, secondly, that the problem of climate change is what sociologists call a “wicked problem”. I will discuss the first aspect later on when describing psychological barriers. Now, I want to address characterising climate change as a wicked problem.

During the ozone depletion, discovered in the late seventies, the world’s states quickly came together and implemented the Wien protocol in 1985; a protocol that set down some policies for protecting the ozone layer. Subsequently, in 1987 the Montreal Protocol was implemented, that resulted in the complete removal of the chemical substances that created the ozone depletion.4 Why have we not seen the same collective action towards climate change? Well, first, we must clarify that in the case of the ozone depletion, the solution was much easier to implement; it took the removal of a few ozone-depleting substances. However, solving the problem of climate change is much more wicked (supposedly) and is said to fall under a specific type of problem posited by Horst Rittel in the late 1960s; wicked problems.5 These are deep problems that do not present you with a clear solution. Now, my initial definition of the problem seems to fly against this deepness, i.e., I have claimed there is a clear solution. However, those that see it as a wicked problem would contend that my definition is only one way to conceptualise the problem, and that there is a spectrum of definitions that seem more or less correct. What does this mean? Dale Jameison describes this well:

“There are many different ways of conceptualising the problem of climate change, each of which finds different resources relevant to its solution and counts different response as success and failures. If the problem is fundamentally one of global governance, then new agreements and institutions are what are needed. If the problem is market failure, then carbon taxes or a cap and trade system is what is required. If the problem is primarily a technological failure, then we need an Apollo program for clean energy or perhaps geoengineering. If climate change is just the latest way for the global rich to exploit the global poor, then the time has come for a global struggle for justice. This problem of multiple frames is characteristic of what are called “wicked problems.” And wicked problems are extremely difficult for political systems to address successfully.”6

I understand the appeal to find all these different ways to conceptualise the problem of climate change. However, I do believe we are doing ourselves a disfavour if we explain the lack of action in preventing climate change, and by consequent justify this inaction, by appealing to this problem of multiple frames. We should ask why it is of benefit to consider all these multiple frames when trying to stop climate change? I take it that the answer to this is our desire for finding the most accurate conceptualisation of the problem so that we can implement the most optimal solution. I believe this is wrong. At its core, we know the solution to the problem (reduce greenhouse gases) and we should accept the risk that we will implement a sub-optimal solution. Waiting around for the most accurate conceptualisation of the problem is counterintuitive, especially when we contemplate the risk it entails. The goal should not be too solve this problem of multiple frames by, for instance, taking steps to secure a unanimous acceptance of some particular framing of the problem, and by consequent enact the most optimal solution to climate change. Setting this as our aim is just to promote even more inaction; we need to accept a sub-optimal solution. I believe this desire to find the optimal solution which does not entail people having to accept a reduction in their current standard (no one gets elected by promising to reduce economic growth and causing other detrimental effects on their electorate) better explains our inaction then characterising climate change as a wicked problem. As Broome writes: “the economics and politics of climate change has concentrated on finding the best solution to the problem of climate change.”7 Meaning that we are looking for a solution without sacrifice — and by consequent choose business as usual.

Nevertheless, I believe we should not put too much importance on the wickedness of the problem. We know what it takes, and our technological achievements are well-equipped to deal with the problem (since it also has created the problem). Implementing some policies that reduce greenhouse gases is better, even if they are sub-optimal, then postponing taking any preventive measures.

Nevertheless, before closing this section, there is one more aspect of the problem of climate change that we ought to face; the need for immediate action. This aspect is of high importance, and we should not take it lightly; even though it fills a short space in this paper. Climate change has been going on for a long time, and year by year we increase the yearly outpour of greenhouse gases into the atmosphere, e.g., the last year (2019) we increase the outpour even more.8 Additionally, we are taking a risk when we do not know what positive feedback we are potentially setting off by not reducing the outpour. Accordingly, we need to accept the fact that the problem of climate change has the character of demanding our immediate action.

1.3 Clarifications

Before turning to the argumentation for this paper’s thesis, some clarifications are necessary. One of these is the role of “political authority”. When I argue that we have good reasons to prefer an epistocracy, I am arguing that we ought to accept the epistocratic method as the political authority and that this authority is legitimate, i.e., it has some moral justification for establishing a normative relation between it (political authority) and the subjects. There are several conceptual accounts of “political authority”, and I will use the right to rule account. This account portrays a more morally robust account of the relation between an authority and a subject. It essentially describes a kind of ideal political community where a deeper moral connection is present. 9 I believe this is what we think of when trying to evaluate the legitimacy that a political system, as in a state, have in coercing a population, and the subjects have a moral duty to obey the authority. This will be the conceptual definition of political authority. It has a moral right to rule and coerce people into obeying its political system of institutions that regulate the behaviour of its subjects and set out the course for where the political entity is heading, i.e., which state of affairs we realise in the future.

2. INTRODUCING THE SOLUTION

In this section, I will demonstrate why we ought to accept The Solution as a true normative claim, i.e., why we ought to take political action to prevent State Of Affairs No Reduction from coming into existence.10 Here is the claim:

The Solution: Reduce the global outpour of greenhouse gases to a level that has an excellent chance of causing the avoidance of State Of Affairs No Reduction.

One helpful way to characterise the normativity of The Solution is as a navigational problem. Where do we want our global society to be heading? I believe we can characterise the possible directions as a binary choice between The Solution and Not-The Solution. The second option I describe as follows:

Not-The Solution: Continue the outpour of greenhouse gases with the consequences that State Of Affairs No Reduction has an excellent chance of being actualised.

Now, even though The Solution contains multiple ways to get implemented, they all share the same normative content of causing a reduction of greenhouse gases in the atmosphere.11 Accordingly, it is this goal, and how it dictates the changes needed in our global institutions that are of such vital importance. By contrast, Not-The Solution shares the same normative content of taking no action that will prevent State Of Affairs No Reduction. Given this binary choice, I believe our intuition tells us that we ought to choose The Solution. What could speak in favour of Not-The Solution? Is there some option of Not-The Solution that we have a better reason to prefer? Maybe someone would contend that the uncertainty that surrounds climate change gives us good reasons to postpone taking any action, or, that other goals are much more important. Now, before addressing these concerns, perhaps our intuition becomes stronger (that we ought to choose The Solution) if I provide some scenario that could work as an intuition pump. Here is such a scenario:

*The Bus Ride*: So, picture, if you will, a bus that is on a direct course towards a large tree that will cause a great deal of suffering and death upon impact. Inside, the people are busy doing whatever they see fit, spending their time to make the bus ride as comfortable and meaningful as possible. However, there is a group of scientists that have analysed and investigated the devastating effect of this course, and that they need to perform some necessary action to avoid the tree. Perhaps they all need to drop what they are doing and give up some of their time jolting the bus enough so that the bus will miss the tree.

Accordingly, the world is the bus, the people on the bus is the world’s population, and the jolting of the bus is The Solution.12 I believe our intuition tells us that we ought to perform the necessary actions in order to prevent the bus from hitting the tree. What could possibly be more pressing? Do we have good reasons to do something else? Is the uncertainty of how bad the impact will be, and when it will occur, good reasons to not start jolting the bus?

Weighing different values against each other is tricky, and there are many scenarios where it is contentious if we should promote, for instance, equality or liberty. Some could argue that we ought to increase economic prosperity since it will maximise well-being for all humans; others will argue that securing peace takes priority; social justice; or environmental concerns. However, whatever we see as the road to the common good the implementation of The Solution is superior in its importance, because it secures that there will be a ground to put the road on. We will certainly not have social harmony in a state of affairs where climate disaster is present; the economy will suffer the consequences of the climatic impact on everything from production to transfer, and we have good reasons to believe conflict and tension will arise when the situation gets worse.

Now, perhaps some could say that it is immoral to demand that people make sacrifices to reduce greenhouse gases. I believe this is wrong. The implementation of The Solution will not demand a tremendous amount of hardship for the effect world population.13 Like Peter Singer’s case where we should sacrifice our clothes in order to save a child from drowning in a pond, we ought to sacrifice some niceties in order to save ourselves, and future generation from State Of Affairs No Reduction.14 Accordingly, the sacrifices necessary do not entail some morally questionable acts, i.e., reduce the level of greenhouse gases by killing off a portion of humans. I am talking about, for example, having to reduce flying to a necessary minimum, or, pay more in taxes so we can develop, and build, the technology that reduces the outpour of greenhouse gases, e.g., solar panels. Furthermore, it is the affluent world that will have to bear the biggest load of these necessary sacrifices. Especially, since the cause of climate change comes from the increased material standard enjoyed by people in affluent countries. They should, by consequent, accept the moral responsibility to combat the harm this wealth is causing, and going to cause. Or, put differently, the economic prosperity that has created this wealth is the cause of the climatic change, and the cost of emitting greenhouse gases has been an externality unaccounted for by either the consumers or the producers (a Pareto sub-optimal state of affairs). Additionally, it is common-sensical that if one group have very few resources, and another group has an abundance of resources, we should not solve a common problem by removing the few resources from the first group. The harm created by the amount of resources in the prosperous group should yield a good reason for them, bearing the bigger load.

Additionally, we should also accept that since anthropogenic acts cause State Of Affairs No Reduction, it leaves us with an additional moral reason to implement The Solution (leaving aside just the badness of State Of Affairs No Reduction). We bear the responsibilities of our actions, and these actions will harm countless future human beings.15 Even if we do not bear the responsibility of stopping climate change individually, we should not prevent our institutions from being reshaped in a way that solves the problem of climate change. I would even contend, if we are living in a democracy, we have a moral duty to use our political power (vote), so we take the necessary steps to implement something like The Solution.16 (Perhaps, this could also be interpreted as a reason for restricting universal suffrage (the democratic process) and justify an global epistocracy.) Possibly, in a counterfactual world where a non-anthropogenic event will cause a similar type of harm (for instance an impact by a meteorite), it could be argued that we have no responsibility to prevent this event since we are not the actors that create this event. I believe this is a weak argument for not preventing the impact from the meteorite. However, in the case of climate change that argumentation is not available since we are responsible for it.

One final thing is that The Solution is hardly a discriminatory or biased policy. Certainly, different groups will be affected differentially by the policy, and, as have been said, the affluent part of the world should bear the biggest load. However, the policy itself places no higher importance on any person or group. Satisfying, what Vandamme calls, a quality of (substantive) impartiality: “understood in a moral and substantive sense, as a property of public policies and of a political order, can be simply defined as not favouring some groups or individuals over others for morally arbitrary reasons.”17

2.1 Uncertainty of Climate Change

What then about uncertainty and the effect it has on the normativity of The Solution? Perhaps, someone would argue that since there is still uncertainty in the range of negative impact that climate change will have, and the lack of knowledge when things will start to get truly harmful, we can delay making any decision until the facts are in. I believe this is wrong. As Broome writes: “If you can costlessly delay a decision till all the information is in, you should delay it. But when delay itself is risky, it is not a sensible remark.”18 Choosing Not-The Solution and thus gamble in the hope that it will not have the consequence of suffering and death in order to avoid making a sub-optimal decision, that in hindsight is evaluated as unnecessary is, I believe, immoral and irrational.19 Accordingly, in the same way that it is rational to invest in a fire extinguisher, in case a fire starts in your house, it is rational to invest in the removal of the possibility of a climate disaster in the future. Why is this? I believe that Expected Value Theory is a good guide to adopt when facing uncertainty. Broome summarises this theory nicely:

“When the quantitative outcome of some process is uncertain, the expectation of the outcome is calculated as follows. Take each of the possible values of the outcome and multiply each by the probability of its occurring. Add up all of these products. The sum is the expectation. It is just a weighted average outcome, where the weights are the probabilities.”20

Even if it is a very small probability that climate change will have civilisational ending results, the great badness that this state of affairs constitutes should warrant our immediate action to avoid this scenario. Perhaps, there could be a case for not implementing The Solution if it would demand a large number of sacrifices, and by delaying this implementation we could remove additional uncertainty. For instance, what if people in The Bus Ride had to kill fifty per cent of the passengers, by throwing them off the bus, in order to avoid the tree. Certainly, given this tremendous sacrifice an argument could be had why we should delay implementing necessary precautions. However, even though the aggregation, of the small sacrifices every individual has to make, could become large, it does not constitute this tremendous sacrifice in The Bus Ride. The small sacrifices everyone have to make is easily overshadowed by the badness of State Of Affairs No Reduction. Accordingly, I still take it that we have better reasons to prefer The Solution than Not-The Solution even though climate change will always be immersed in uncertainty. We only have one opportunity to run this experiment, so we should not gamble with the outcome.

Nevertheless, I will not try and persuade the reader more of the badness of State Of Affairs No Reduction and that we ought to implement the Solution. Possibly, the discussion of the next section will bear some support for the accuracy of The Solution.

3. THE ANSWER

What we then must ask ourselves is: Which process for collective decision-making do we have reasons to believe will successfully implement The Solution? We could start with an unhelpful answer: The method that has the best chance to implement The Solution. Which method is this then? Here we get to the core of this paper’s thesis. I will call the answer to this question simply: The Answer. Here it is:

The Answer: Given that we ought to implement The Solution, and by consequent avoid State Of Affairs No Reduction, we have better reasons to prefer some form of global epistocracy, than a global democracy.

#### It’s the only existential risk

Samuel Miller-McDonald 19, PhD Candidate in Geography and the Environment at the University of Oxford, “Deathly Salvation”, The Trouble, 1/4/2019, https://www.the-trouble.com/content/2019/1/4/deathly-salvation

A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices.

An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive.

In the near term, emissions would almost certainly rise as militaries are some of the world’s largest emitters. Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less suicidal civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows?

What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is.

# cp – apa

## apa cp

### 1nc – apa cp

#### The United States Supreme Court should prohibit [plan] on the grounds that it violates the Administrative Procedure Act.

#### Expanding APA applicability to encompass the DoD’s international operations is key to increase civilian control of the military – Courts solve

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C. THE TWO-MILITARY'S THIRD LEGACY: ADMINISTRATIVE LAW AND THE ADMINISTRATIVE PROCEDURE ACTS'S (APA) UNEVEN APPLICATION TO THE TWO MILITARIES

While the judiciary has historically been the least influential of the three branches in ensuring civilian control over the military, judicial review via the APA remains an important vehicle in ensuring accountability over all federal agencies, and the DoD is no exception. 293Indeed, citizen suits - particularly in environmental law - ensure a continual level of accountability between the military and the citizenry. 294The APA provides that connective tissue between the citizenry and the military (via the judiciary). 295In light of the DoD's unique mission, and the two-military divide, a fundamental question arises: Should administrative law and the APA treat the operational military differently from the administrative military?

Despite the DoD's size, budget, and idiosyncratic mission, administrative law scholarship has "generally passed over the study of the military in favor of the domestic agencies." 296Indeed, very little legal scholarship has addressed the APA's applicability to the DoD (despite its status as the largest federal agency). 297

The APA (passed in 1946, just one year before the National Security Act) provides for judicial review over agency actions and sets out procedures that agencies must follow when promulgating rules and adjudicating conflicts. 298The APA has been described as a "mini-Constitution" and widely praised as a mechanism to help ensure democratic accountability and oversight over federal agencies. 299But the APA was designed for a far different time and does not adequately take into account: (1) the DoD's existing legal architecture and two-military divide; and (2) the complexity of modern military operations to include the numerous military activities that take place overseas outside of war. The APA was better suited to regulate military activities, but it has not kept pace with changes to the massive military organization and the nature of modern warfare. This results in a disconnect between the APA's text and its ongoing applicability to the modern military organization.

#### Genuine consultation avoids politics and is key to CMR—solves global threats.

Golby and Feaver, 21—senior fellow at the Clements Center for National Security at the University of Texas at Austin AND professor of political science and public policy and director of the American Grand Strategy Program at Duke University (Jim and Peter, “BIDEN INHERITS A CHALLENGING CIVIL-MILITARY LEGACY,” <https://warontherocks.com/2021/01/biden-inherits-a-challenging-civil-military-legacy/>, dml)

To be sure, the new Biden team will not be a carbon copy of the Obama team and even those that return will do so with new perspective and their own lessons learned in the interval. However, they would be wise to recognize that a rapid shift in leadership styles now may create a sort of civil-military whiplash. The Biden team almost certainly will want to reestablish processes that provide greater civilian direction for war plans, budgeting, and global priorities. After four years of relative autonomy for the Joint Staff and combatant commands, combined with reduced daily civilian oversight due to under-filled political positions in the Pentagon, a micromanagement narrative could almost write itself. Biden and his team will need to be attuned to these dynamics and look for early opportunities to establish trust and clarify their expectations about the civil-military relationship while also providing senior military officers a real voice in the policy process that makes them feel respected and heard.

The Institutional Context

Biden’s team will have to manage these challenges with a toolbox that is under severe fiscal constraint and with military leaders who already believe they are strapped thin. Trump did manage to increase defense spending trends and slightly decrease the number of American military personnel deployed abroad, resulting in a meaningful reinvestment in defense capabilities and a moderate decrease in operational tempo. But future defense budgets will be under severe pressure, perhaps rivaling in the aggregate the kinds of cuts imposed by the Budget Control Act, though hopefully with more flexibility and predictability to manage them in more sensible ways than the threat of a sequester straitjacket permitted. Moreover, the decline in foreign deployments was matched, and in some cases exceeded, by a decline in “permanent” foreign basing. The result is that the strains of military deployments on military personnel and their families are as great as in earlier periods, when a larger number and a greater scale of deployments were supported by more robust foreign basing infrastructure. To pick just one example: A shorter NATO rotation to Germany or Poland without family accompanying (and without combat pay as a sweetener) could impose more strain on morale than a longer rotation with family. There are few signs that civilian and military leaders fully understand these challenges or that they are willing to make difficult tradeoffs.

In the meantime, the last four years have seen a failure to make the needed investments in the other tools of statecraft, particularly diplomacy and development. While morale in the foreign policy and national security ranks will likely improve, at least initially, with the return of something resembling establishment values, the damage caused by deferred or dysfunctional approaches to human capital will hobble the Biden team for some time to come and will, in particular, make it hard to quickly rebuild the capacity of civilian services to match advances in the uniformed ranks — especially in the face of the prolonged resource fights to come. The Trump team was especially vigorous in burrowing in some of its most partisan and suspect appointments into civil service positions and on bipartisan boards within the national security establishment. An early challenge for the Biden team will be deciding — likely on a case-by-case basis — whether the restoration of the “above-partisan-politics” norm in these areas requires engaging in the seemingly partisan practice of cleaning house, or whether the norm would be made stronger through greater forbearance. None of these choices will be straightforward.

In terms of the institutional environment, legislative changes and four years of weak civilian control mean that Biden will face a much stronger chairman of the Joint Chiefs and associated Joint Staff than he faced barely four years ago. The 2017 National Defense Authorization Act granted the chairman additional responsibilities for global integration, technically expanding only his advisory role. In practice, these powers have become more expansive, with the chairman of the Joint Chiefs of Staff taking on some roles that traditionally had fallen to the Office of the Secretary of Defense. Trump administration officials also changed some of the procedures for war plan reviews and political guidance, reducing the number of interactions between military leaders and mid-level political appointees that previously had provided the civilian Office of the Secretary of Defense more opportunities to play an active oversight role. Trump’s unorthodox and tumultuous personnel policies also shifted practical authority to the Joint Staff. Long nomination delays and unfilled civilian posts resulting from Trump administration infighting weakened that office further, leaving Mattis and his successors more beholden to the advice and influence of the better-staffed and more efficient Joint Staff. Trump’s first chairman, Gen. Joe Dunford, enjoyed an unusually close and trusting relationship with Mattis, whom Dunford had served under as a marine. A similar dynamic also existed between Milley and Secretary of Defense Mark Esper, who had led the Army as chief of staff and secretary, respectively, during the early days of the Trump administration.

The appointment of Austin risks exacerbating this unbalance, unless he takes pains to develop and empower a capable team of civilians in his immediate office and within the larger Office of the Secretary of Defense — a point that has already been emphasized. The initial signs on this front are encouraging. The announcement that the Biden administration will nominate Kathleen Hicks as the first female deputy secretary of defense and Colin Kahl as the undersecretary of defense for policy ensure that strong, experienced civilian leaders who take civil-military issues seriously will hold key roles in the Pentagon assuming the Senate confirms their appointments, as we fully expect. The unofficial reports that Austin will pick Kelly Magsamen as his chief of staff, likewise puts a well-connected civilian with political experience in a key position. We both know all these individuals well, and one of us has worked for Hicks (who oversaw Golby’s work on the “Thank You for Your Service” podcast) and Kahl (who was Golby’s direct supervisor on Vice President Biden’s national security staff).

Even with these capable selections, the civil-military dynamics awaiting the new secretary of defense and his team in the Pentagon will be daunting. Because of the policy and personnel dynamics during the Trump administration, the Joint Staff and the combatant commanders have become accustomed to a greater degree of autonomy and influence. Biden’s political appointees, sitting at the head of the table and asking detailed questions, will immediately cause some friction between these groups. They also will find themselves with smaller staffs, fewer resources, and a shorter institutional memory than their military counterparts. Some of the savviest members of the Biden team will recognize in these challenges echoes of the challenges political appointees faced late in the Obama years. But their intensity in combined form will stretch Biden and members of his team in new ways. They must not let their well-intentioned — and much needed — desire to reestablish processes of civilian oversight undermine the trust necessary for effective civil-military cooperation.

At the same time, senior military officers on the Joint Staff and at the combatant commands should prepare their staffs for increased expectations of public transparency, civilian interaction, and intrusive questioning than that to which they have become accustomed in recent years. A culture that pronounces micromanagement at the first sign of tough questioning can also undermine the trust required for effective civil-military communication. Iterative discussion and questioning are an essential part of the process of aligning military ways and means with political ends. More developed process and predictability can benefit the military, too, but there will be conflict and misunderstanding as these institutional muscles learn to flex again. However, the Biden team will bear the primary burden of demonstrating that its goal is not civilian control for the sake of control, but rather civil-military trust and cooperation geared toward the shared goal of effective national security policies.

The Societal Setting

Perhaps the aspect that will take the Biden team the longest to adjust to is the new societal context — the social milieu in which these civil-military dynamics take place. In a nutshell, the Biden administration must adjust to deeper political polarization and changing attitudes about the appropriate role of serving and retired military officers in foreign policy and national security debates.

Two survey comparisons underscore this challenge: a 2014 YouGov survey — the closest thing we have to a comparable survey from the time Biden was in the White House — and nationally-representative surveys of 4,500 Americans that the National Opinion Research Center conducted on our behalf in 2019 and 2020 (and that are proprietary until we finish a book on this topic) that reflect the environment today. We do not have enough active duty military in these samples to offer statistically meaningful descriptions of the attitudes of the actual personnel who will constitute the “military” in civil-military policymaking, but previous surveys have shown that the attitudes of veterans, particularly of recent veterans, is a satisfactory proxy that can guide our understanding. While some civil-military gaps we explored in both surveys are overstated because they are driven primarily by demographic differences, others have grown and will create sharper civil-military challenges for the Biden administration. We also have found several areas where civilian and veteran respondents largely agree, but in ways that undermine civilian control over policy processes.

Among the most striking findings from the 2014 snapshot was a “familiarity gap” tied to the lack of public knowledge about the military. Despite numerous ongoing American troop deployments, many civilian respondents — often as many as a quarter or a third — would not even venture to answer basic questions about the military. Civilian and veteran respondents also expressed very different views about whether and how to use military force. In general, veterans were more reluctant to express support for the use of military force than civilian respondents, but civilians were more likely to favor troop limits or other restrictions when troops were deployed. Both civilian and veteran respondents expressed growing support for various forms of military resistance to unwise civilian orders. With respect to traditional civil-military norms and best practices, these findings — including that majorities of nearly all subgroups supported the idea of military resignation in protest — were somewhat troubling. In part, these civil-military trends were likely the result of broader societal trends reflecting lost public confidence in elected officials. In 2014, nearly 80 percent of all respondents reported that political leaders do not share the public’s values. In contrast, nearly three-quarters of Americans expressed confidence in the military, with only small differences between civilian and veteran populations. These attitudes extended and intensified long-standing patterns seen in other surveys during the post-Cold War Era.

Today, this dynamic persists and is intensified still further. In 2020, approximately 69 percent of Americans express “a great deal” or “quite a lot” of confidence in the military, down slightly from 74 percent in 2019 and 2014. Even at 69 percent, esteem for the military is higher than it is for any other national institution, and indeed far higher than it is for Congress, the Supreme Court, or the presidency. The public’s confidence in the military is highly conditioned on partisanship, with 82 percent of Republicans expressing confidence in the military compared to just 60 percent of Democrats, reflecting a five-point larger difference between parties than in 2014. Biden’s slice of the electorate in 2020 also contains large groups that harbor serious concerns about the military. Only 53 percent of self-identified liberals express confidence in the military, with confidence dropping below 49 percent for both women liberals and non-white liberals. Our research suggests even these numbers may overstate the public’s true confidence in the military by as much as 20 percentage points due to social pressure, however. Yet, the fact that many Americans feel this pressure is itself a sign of the military’s influence in American society and politics.

The five-point drop in confidence from 2019 to 2020 may, in part, be due to the military’s involvement in a number of controversies related to the Black Lives Matter protests during the summer of 2020. Although Trump ultimately decided against invoking the Insurrection Act to use active duty troops in support of law enforcement on domestic soil, members of the National Guard did back up federal law enforcement in Washington, D.C. on June 1, when they cleared Lafayette Square prior to Trump’s photo op at St. John’s church. We did find differences between civilian and military attitudes about the use of the Insurrection Act, however. As many as 57 percent of veterans told us they would support the use of active duty troops if protests continued compared to only 41 percent of civilians. We also primed a subset of respondents with reports suggesting the chairman of the Joint Chiefs of Staff opposed the use of active duty troops. The views of civilians who received this prompt did not change at all, but support among veterans who received this prompt dropped 8 points to 49 percent. While pundits and national journalists focused on the electoral implications of retired generals’ comments, our survey suggests their statements were likely more influential in shaping the attitudes of veterans and service members on this narrow issue.

The Biden administration’s commitment to restoring normal processes may give it an initial civil-military honeymoon, but it should not expect that to translate automatically into deference or an easy civil-military relationship. In our 2020 survey, 62 percent of all veterans and 66 percent of post-9/11 veterans agreed with the statement, “Civilians who have not been to war should not question those who have.” In contrast, 42 percent of civilians agreed with the statement while only 30 percent disagreed, suggesting that pressure for civilian leaders to defer to military officers emanates from both groups. Post-9/11 veterans — who volunteered to serve in America’s all-volunteer force during America’s longest military conflicts with no full-time mobilization of society — also expressed some open contempt in our survey for those who did not volunteer. A full 60 percent of post-9/11 veterans “agreed” or “strongly agreed” that the eligible Americans who did not volunteer to serve during wartime should feel guilty compared to just 43 percent of older veterans and 22 percent of civilians. Given perceptions that the Biden team will be prone to micromanagement, members of the Joint Staff may find it easy to fall back into those familiar narratives when new political appointees enter the Defense Department prepared to reestablish oversight and processes that have laid somewhat dormant since the Obama years.

The Biden team should also expect some normal points of civil-military friction on policy and missions to emerge. In general, veteran and military respondents in our survey are more likely to believe the military’s most important role is to compete with great powers like China and Russia, especially when compared to Democratic respondents. Veteran respondents are also more hawkish on Iran than civilian respondents. They also tend to be more optimistic, though only slightly so, on the success of military operations in the wars in Iraq and Afghanistan. Although only 13 percent of all civilians and 10 percent of Democrats agreed that these operations have been “very successful,” 24 percent of post-9/11 veterans said the same. Veterans were also particularly optimistic on progress in Afghanistan, though there are notable generational divides: 44 percent of post-9/11 veterans “agree” or “strongly agree” that the United States has accomplished its goals in Afghanistan while 39 percent “disagree” or “strongly disagree.” Older veterans and civilians break 30-47 and 21-39, respectively. Post-9/11 veterans are also particularly supportive of troop reductions in the context of the deal with the Taliban with 54 percent in support and only 29 percent against. While there is some civilian support among civilians for troop reductions as part of a deal with the Taliban, a 40 percent plurality of civilians chose “no opinion” when asked about both troop reductions and military success in Afghanistan. Most Americans simply are not paying much attention.

Conclusion

Civil-military relationships are not an end in themselves. These relationships exist only to provide effective national security policies in a given geopolitical environment in the context of democratic accountability. Unfortunately, the environment is not benign. As they sort through the civil-military and institutional baggage — the items they bring with them and the items they inherit — Biden’s team must also navigate intensified great-power conflict, persistent instability in the broader Middle East, strained ties with key allies, and little progress on all of the other stubborn problems that have bedeviled leaders in the post-Cold War era, including: the proliferation of weapons of mass destruction, transnational networks of terrorism, failed states, and ethnic rivalries. And, of course, Biden must still lead the country out of the worst pandemic in a century while recovering from all of the associated economic upheaval. There will be no strategic holiday during which the Biden team can painstakingly sort through its civil-military affairs.

The new commander-in-chief starts with the enormous advantage of being “not Trump.” He will need all of that advantage — and will need to have learned from Obama-era missteps — in order to navigate through the tricky civil-military waters we have described above. Members of the Biden team come in as seasoned professionals, but we hope that leads them to caution and humility rather than unwariness and hubris as they conduct national security policy. If Lloyd Austin wins over the critics and proves himself to be both fully sensitive to these civil-military realities and savvy in how he seeks to overcome them, he may yet emerge as the successful and strong secretary of defense the Department of Defense so desperately needs. The early slate of civilian nominees named for key roles is a welcome sign. The initial weeks after the inauguration will be of particular importance in setting the tone, especially after the tumultuous and stressful transition. Even so, the norm of civilian management of the Defense Department will be more difficult to reestablish, like so many other civil-military norms that have weakened in recent years, if Congress does grant another recently-retired general legal permission to serve as secretary of defense. Biden, and Austin, will need all the top civilian defense talent they can get.

Notwithstanding all of the other urgent priorities vying for his attention, neglect of the civil-military file would likely impose intolerable costs on Biden down the road — a price that would be vividly evident, sooner or later, when an urgent national security crisis takes center stage. The only prudent course is for the Biden team to attend to both policy and process at the same time — to move out quickly on the pandemic and the economy, while also setting the national security establishment on the path to healthier civil-military relations. Problems in the civil-military foundations of an administration must be fixed before a crisis lays bare the rot that may lie just out of view.

### 2nc – solvency – t/l

#### Applying APA jurisdiction to combatant commands by encompassing operational foreign affairs activities is key to effective CMR

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B. REFORMING THE ADMINISTRATIVE PROCEDURE ACT TO BETTER REFLECT MILITARY ORGANIZATIONAL REALITIES

As discussed in Part IV, the APA is no longer aligned with the organizational realities of the two-military state. The APA was passed just one year before the National Security Act and forty years prior to Goldwater-Nichols and remains antiquated as applied to the modern military. 492As a general matter, most administrative military actions that occur within the United States remain subject to the APA while most operational military actions taken by combatant commands are not subject to the APA. 493

First, the definition of "agency" should be updated. Specifically, the APA is silent on how administrative law should address actions taken by combatant commanders. Both the Secretaries of the military departments and combatant commands are one step below the Secretary of Defense in the DoD hierarchy, but only the Secretaries of the military departments are "agencies" within the plain meaning of the APA. 494

Second, the APA exemptions should be reformed to eliminate "the time of war" exemption to more precisely address the military activities that take place in peace and the expanding menu of actions short of war. For example, the operational military does conduct certain "gray area" activities that are neither purely administrative nor operational. 495Both the United States Navy and Coast Guard conduct a wide range of activities on the high seas and outside the United States that may be fairly described as "readiness" activities that are hard to clearly define and are not purely wartime activities. 496As operational activities, however, they currently fall outside the APA's jurisdiction.

The military function exception should also be updated and defined more precisely. Rulemaking and adjudications that involve "the conduct of military or foreign affairs functions" are exempt. 497Notice of a proposed rule, opportunity for public comment, and publication of the final rule are central to administrative law. Courts have struggled to determine what, exactly, is a military function, applying the military function exemption to the creation of temporary security zones 498and to the determination of death of a service member because it involved military affairs and public benefits. 499

Of course, any attempt to reconcile the APA with the modern military organization may run against significant headwinds within the DoD. And they will likely assert that this will only harm military readiness by exposing an increased number of activities to judicial review. But the APA has had an enormous impact in making governmental activity "more open, accountable, and responsive to the public than in any other country" 500and can play a powerful role in ensuring civilian control of the military. 501

#### Operational military commands are approved de facto exemptions from APA authority due to ambiguity over applicability – especially for international actions – AND, previous Court precedent does NOT clarify reviewability of EUCOM or combatant commander actions broadly

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1. The APA's Definition of Agency Clearly Applies to the Administrative Military but Lacks a Clear Application to the Operational Military

The APA broadly defines "agency" as "each authority of the Government of the United States, whether or not it is within or subject to review by another agency." 300Congress, courts, and governments of the United States are specifically exempt from the agency definition. 301While the President is not specifically exempt, courts have routinely held that the President is not an agency within the APA's meaning. 302This is of particular importance for military matters due to the President's role as Commander in Chief.

However, "agency" includes the Secretary of Defense and the civilian Secretaries of the military departments who remain subject to suit under the APA. This conclusion is reaffirmed by the text of the APA's Freedom of Information Act (FOIA) section, which specifically applies to any executive department or military department. 303And the Secretary of Defense and civilian Secretaries of the military departments are routinely sued. 304Because the APA "agency" definition clearly applies to the civilian heads of the administrative military, it follows that APA litigation is focused on administrative military functions via lawsuits against the Secretary of Defense or civilian Secretaries of military departments. For example, the Secretaries of Defense and military departments were the defendants in numerous lawsuits challenging the forthcoming change in transgender service policy. 305

It is less clear whether the heads of the operational military (combatant commands and joint task force commands) are an "authority of the Government of the United States" within the APA's agency definition. 306Although the operational military is not specifically exempt from judicial review, it remains unclear how the APA applies to the operational military. No lawsuit to date has held that an agency includes a combatant commander or subordinate operational commander, although a suit against the Secretary of Defense as the head of the operational military remains possible. 307

In addition, much of the operational military's decision-making (particularly by the geographic combatant commanders) takes place outside the United States, where it is not clearly subject to the APA's reach, which lacks a clear extraterritorial application. 308Finally, for an APA suit to come forward, actual knowledge of an agency action is required; a particular problem for operational military matters that occur outside the United States, are out of sight, and are often classified. 309Secrecy is itself a form of regulation, bypassing traditional forms of judicial review or civilian control. 310

Daugherty v. United States, a non-precedential opinion, remains the one federal case addressing the peculiarities of the APA and the Goldwater-Nichols two-military divide. 311In Daugherty a service member attached to an operational military command in Spain filed a tort claim against the Secretary of Defense and Navy (among others). 312He asserted that the Goldwater-Nichols Act divested the Navy of any type of authority over him. 313The Tenth Circuit rejected that argument, focusing instead on the Act's establishment of the administrative chain of command that served as an umbilical cord between the Navy and the service member. 314This administrative chain of command, as discussed in Part III, runs from the military member to the Secretary of the Navy and the Secretary of Defense. The court did not specifically address the combatant commander's role; the judgment focused solely on administrative functions that could be traced back to the Secretaries of the military departments. 315There was no discussion of the operational chain of command, or on whether the European Commander and the operational military leadership are subject to suit. 316

#### Court deference to APA exemptions are broad – immunizing DoD from reviewability AND civilian oversight

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2. APA Military Exemptions and Military Deference as Applied to the Operational and Administrative Militaries

Since its passage in the aftermath of World War II, the APA has specifically exempted certain military activities based upon when they are occurring and what they do. 322Despite repeated calls to address or reform the APA's military exemptions, they persist and are virtually unchanged from their original form. 323These express exemptions include "military authority exercised in the field in the time of war or in occupied territory" and "military or foreign affairs functions of the United States." 324They amount to APA "black holes" where military activities occur outside the constraints of judicial review. 325

The terms "military authority" and "in the field in the time of war" lack a clear definition (and we have not had a formal declaration of war since 1942). 326As this provision has not been modified since 1946, courts have struggled to apply this exemption to modern conflicts. 327As a fundamental matter, modern military activities cannot be neatly placed in clear legal categories. The division between war and peace remains murky.

The APA's rulemaking and adjudications section exempts "military or foreign affairs functions of the United States." 328The term "military function" is of central importance but it, too, lacks a clear statutory definition. 329Despite this exemption's broad implications as applied to DoD, it has not been the subject of much legal scholarship; nor have judicial decisions provided helpful guidance on its precise meaning. 330The APA also broadly excludes from review agency action "committed to agency discretion by law." 331This catchall exclusion has been used to preclude review in national security contexts. 332

Perhaps not surprisingly, the DoD has often sought a broad interpretation of these APA exemptions. 333This is somewhat understandable; it seems absurd to subject critical war making and tactical decision-making to judicial review. 334In addition, courts will always afford a certain amount of deference to the DoD in reviewing its actions, regardless of its activity. 335

The question remains, what level of deference should be afforded to the expanding menu of military actions performed by an operational military commander outside of an armed conflict such as training, engagement, or routine administrative functions (FOIA, hiring and firing, etc.) embedded within the command? It is unclear what level of deference a court can or should afford to the operational military vis-a-vis the administrative military and how to weigh the relevant factors in determining the deference afforded. 336And rules regulating military functions as applied to military contractors are exempt from following the APA rulemaking process. 337

Doe v. Sullivan may offer some guidance. 338In Doe, a service member used the APA to challenge the HHS Secretary's decision to allow DoD to use an unapproved drug in the event of a chemical nerve gas attack. 339In dismissing the service member's complaint, the court refused to apply the "military authority" exception, not seeing this decision as part of a military exigency. 340Nevertheless, the court hinted in dicta of a more generalized Commander-in-Chief exemption that if applied broadly would eliminate an enormous swath of operational military decisions from examination under the APA (as opposed to statutory delegation based on other constitutional provisions). 341This would appear to "immunize administrative actions that rely upon the President's constitutional Commander-in-Chief power," 342an authority wholly independent of APA oversight with an outsized effect on operational military matters:

Plaintiffs seek review under the Administrative Procedure Act ... of a rule published in the Federal Register by the Secretary of HHS, who is not part of any military chain of command ...when he adopted the rule, [the Secretary] did not purport to be exercising the President's powers as Commander in Chief ... . 343

Courts have struggled mightily to apply a consistent and uniform standard when determining the level of deference to afford to the military. For example, in Gilligan v. Morgan,the Court stated:

It is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially military judgments, subject always to the civilian control of the Legislative and Executive Branches. 344

The military deference doctrine is premised on both the Executive and Legislative Branches exercising some modicum of control. 345But there has been a continual derogation of civilian control over operational military matters. 346How should administrative law account for this?

And for the first time in modern history, the Supreme Court lacks active-duty veteran representation among its members. 347While it still remains unclear what impact this will have on the Court's application of the military deference doctrine, the Court's firsthand wartime military knowledge has disappeared for the time being. 348Further complicating matters, military deference standards are flexible and prone to manipulation in the national security context: "federal courts manipulate flexible legal standards to accord heightened deference to federal agencies during national crises, transforming standards such as "reasonableness' and "good cause' into "grey holes.'" 349

3. Secrecy as Self-Regulation350

Finally, a significant number of military actions occur without the knowledge of the American public and are afforded what amounts to blanket military deference. 351This further shields the operational military from civilian and administrative law oversight. Compounding matters, while much of the administrative military's actions and regulations are open, easily accessible, and unclassified, much of the operational military's internal regulations and decision-making are outside the public domain and hidden. 352

Within the DoD, over-classification of documents and material that do not merit classification remains a continual problem. 353Indeed, citizen suits and judicial review are predicated on actual knowledge of the underlying regulation and some degree of familiarity to understand the regulation and its practical impact. This is particularly difficult for operational military matters that occur outside the United States. 354After all, how can the public make a determination whether an agency properly interpreted its internal guidance if it is classified or otherwise not easily accessible to the public? 355

Finally, in the national security context, courts will often ascertain whether there is an affirmative legal obligation when determining if an agency action is even reviewable. 356The operational military has considerably more discretion in its actions as compared to the administrative military; this adds a final level of deference in determining whether their action is reviewable. For example, a federal court that recently considered the National Security Agency's program for warrantless electronic surveillance of suspected terrorists stated (in dicta) that the terrorist surveillance program was not an "agency action" covered by the APA as there was no legal obligation to conduct the surveillance. 357

### 2nc – nb – cmr

#### Turns and controls every other impact

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In the twenty-first century, the United States faces an increasingly complex and dynamic strategic environment. Contested international borders, emerging powers, economic inequality, political instability, societal upheaval, sectarian conflict, ecological changes, and the proliferation of weapons of mass destruction will all affect U.S. national security. In contrast to the Cold War era, most of these challenges can not be addressed through economic and security alliances, with the military providing nuclear and conventional deterrence. As the 2015 National Security Strategy notes, “The challenges we face require … the pursuit of a comprehensive agenda that draws on all elements of our national strength.”1 While the need is clear, efforts to implement a “whole-of government” approach to national security have been episodic and ultimately unsuccessful. Although there has been much discussion, frustration, and angst about the lack of cooperation and coordination between and among U.S. government agencies and departments, there has been very little progress in establishing mechanisms to coordinate disparate and diverse organizations, each with their own leadership, culture, and authorities. The result is a disjointed and often ineffective foreign policy. While it will take national leadership to change this at the strategic level, there are measures that can be taken to mitigate challenges at the operational and tactical levels. Although a whole-of-government approach may seem a daunting task, one of the most effective ways to encourage coordination and collaboration is to bring representatives from interagency entities together for realistic training with their military counterparts before they are forced to work together in a crisis. Recognizing the importance of “training as you fight,” the Army’s Joint Multinational Readiness Center (JMRC) in Hohenfels, Germany, integrates interagency personnel into its exercises. They include mission rehearsal exercises, noncombatant evacuation operations, and brigade readiness exercises with NATO allies and multinational partners. This experience provides soldiers and other interagency participants the opportunity to work with, and learn from, the other entities they may encounter during a deployment. Integrated training also helps build the relationships and develop the trust required to effectively implement national security policy. The Need for Development of Interagency Lines of Effort In 2002, the first post-9/11 National Security Strategy dramatically changed the focus of how national security policy was implemented.2 For the first time, international development was included as an essential component. Since then, every national security strategy has noted the importance of a “Three D” (defense, diplomacy, and development), whole-of-government approach to national security. The Department of Defense (DOD), Department of State (DOS), and U.S. Agency for International Development (USAID) are tasked to work together to foster peace and long-term stability. While there are numerous challenges that have limited the implementation of this guidance, two stand out: the lack of stability and civil-military operations education and integrated, interagency training. As part of its effort to fulfill this new national security emphasis, USAID established a small cadre of foreign service officers specialized in crisis, stabilization, and governance in 2003. Known as Backstop 76ers, these officers are charged with planning and implementing humanitarian, transitional, and governance activities in unstable or politically volatile areas. However, they have had limited impact where interagency coordination and joint planning and implementation are crucial for success. This is the result of a number of factors including little or no interagency education, very low-risk tolerance, the predilection of promotion boards to favor traditionally developed officers over those with experience in conflict zones, and a siloed approach to programming in unstable areas. In 2004, the DOS established a similar capability when it created the Office of the Coordinator for Reconstruction and Stabilization.3 It managed to recruit over 130 direct-hire deployable specialists under the Crisis Response Corps. However, this initiative ended in 2011 when funding cuts caused the Crisis Response Corps to disband. It is worth noting that neither entity included stability or civil-military operations education as a regular requirement in their programs. The growth of violent extremism, increased frequency of humanitarian disasters, global health crises (e.g., Ebola), and increased migration mean that U.S. government officials will continue to operate in unstable environments across the globe. While the DOD has the capability and capacity to respond to crises anywhere, it often lacks the subject-matter expertise to identify and mitigate nonmilitary challenges that directly affect political end states. In contrast, joint, interagency, intergovernmental and multinational entities have the subject-matter experts but often lack the capability and capacity to quickly deploy them. Therefore, it is imperative that these entities understand and leverage each other’s capabilities and capacities. Mission success requires military and civilian personnel to work seamlessly with each other as well as with allies and partners, international organizations, and nongovernmental organizations (NGOs); each with overlapping mandates and often divergent objectives. Even though the DOD, DOS, USAID, and other agencies are colocated in our embassies, they are not adequately trained in crisis response, often causing unnecessary delays and potential mission failure as interagency personnel have to learn “on the job” about one another’s roles, resources, and expertise. To foster effective collaboration and deconfliction of activities, these entities must be educated in stability and civil-military operations and train together before a crisis. These are significant challenges, as there is no interagency stability or civil-military operations education or training, nor is there policy guidance mandating it.

#### Civil-military coordination prevents global system collapse – aggravates every existential risk

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The operating environment is changing fast. By 2015 the large scale civil-military experiences in Afghanistan and Iraq already felt like distant memories. Military and civilian leaders talk of volatility that is out of control, the “worst they’ve seen it in forty years” (Odierno in Sterman 2015; Guterres 2013). Pushed by rapidly evolving communication and other technologies the line between war and “not war” continues to blur (Rosa Brooks in Sterman 2015) underscoring Mary Kaldor’s earlier warnings about the “new” wars with their perpetually chaotic environments and no clear winners, losers, or negotiated settlements. No longer fought within national boundaries wars would evolve into regions of chronic insecurity where cyclical violence and recurring civil wars would facilitate the formation of new militias, gangs, and financial networks linking transnational criminal activities with terrorist networks in mutually beneficial arrangements. Fast moving conflicts would become the new normal and with the advent of sophisticated social media and communication technology users capable of launching disruptions and violence at any time in any place throughout the world (Kaldor 2012; see Chapter 4). The recent humanitarian crisis caused by the violent mass displacement of Syrian civilians is just the tip of the iceberg. As personal dangers for civilians increase UNHCR’s High Commissioner Antonio Guterres has warned about unparalleled humanitarian crises erupting on a global scale in a world where international power relationships are unpredictable and the international community is unable to stop conflicts (World Development Report 2011; Guterres 2013).

This chapter describes the importance of monitoring areas of potential trouble and why identifying and understanding potential causes of complex crises is crucial in an era when random events and technologies can combine with natural and other disasters to instigate unpredictable disruptions and violence at any time, any place throughout the world. This chapter sets the stage for Chapters 7 and 8 by describing current “new” war scenarios and anticipated challenges that will form future conflict environments and cascading crises, which will in turn shape international responses by local populations and their communities, civilian aid and development organizations, and military forces. Building upon earlier chapters, current research and analysis it defines trans-border regions of violence that can be supported and shaped by long simmering conflicts, forgotten trouble spots and rapid urbanization. It describes the potential for accelerated destabilization of these fragile areas through a random combination of natural disasters, environment and climate change, complex infectious health crises and pandemics, and the merging of natural disasters with technological developments to impact critical infrastructure and systems. These unpredictable combinations can be used by non-state actors and criminal networks to take advantage of these situations to synchronize and/or propel regional conflicts onto the global stage for political or financial gain. This chapter concludes by outlining challenges that these complex risks present to civilian organizations and military forces and describing how these new war scenarios will demand resetting attitudes and developing a new more resilient civil-military mindset that will support increased bottom-up development of aid, development, and security policies by affected individuals and communities described as in Chapter 7 and renegotiating more effective civil-military models discussed in the final Chapter 8.

Cross-border violence

There is very little contemporary violence contained within international borders. Instead it masses within regions that threaten to engulf more territory if the right combination of timing and circumstances converge. These regions of violence can be defined as geographic territory that crosses legal borders. They can be controlled by governments and/or armed groups who almost always target civilians and govern by fear. Their borders may be diplomatically recognized as is the case with Syria and Iraq but in reality they can also be redrawn and redefined by the group in power. This has been the case with the newly formed caliphate combining northern Syria with northwestern Iraq declared by the Islamic State (IS, formerly ISIL or ISIS). Boko Haram, a group aspiring to establish a similar territorial caliphate in northern Nigeria and neighboring countries proclaimed their allegiance to IS in March 2015. Announced via social media this statement is as strategic and purposeful as any formal diplomatic maneuver made by an established nation state. It is meant to convey an image of Boko Haram’s rising regional and global power, an illusion of legitimacy, and to use the reputation of IS to spread fear among their enemies (Wooldridge 2015). Both IS, Boko Haram, and other emerging terrorist and insurgent groups are seeking to establish themselves as legitimate states. This raises two questions for the international community. What constitutes a nation state? What role can violence play in shaping it? While these questions often elicit exhaustive and elusive discussions they are worth briefly considering in this context.

The Montevideo Convention attempted to define a state in the 1930s by listing four requirements: a permanent population; a defined territory; a government; and the capacity to enter into relations with other states. Strictly speaking the self-declared Caliphate of the Islamic State in Syria and Iraq fits that description; however, the international community has added a moral and political dimension to this definition that decrees violence and terror cannot be rewarded. This ignores the fact that North Korea, which regularly targets its civilians, is a full member of the UN and that Taiwan, which has treated its citizens well under peacefully elected governments, is not a UN member having been sidelined due to its longstanding dispute with mainland China and is only formally recognized by a few countries (Boyle 2015).

Joe Boyles compares three contemporary strategies in which regions can officially become states in his BBC article “Islamic State and the idea of statehood.” One is to get UN membership, which requires the support of the Security Council and two-thirds of the General Assembly. If attempts to achieve UN membership fail then the next best option is to gain official recognition by as many other countries as possible while functioning as a de facto state. Regions that aspire to be states can begin by initiating trading and developing business deals with other states with which they have formed alliances. If successful, they may receive official recognition or that type of approval may no longer be necessary if they have highly developed unofficial networks (Boyle 2015). He maintains that there is no universal definition of a state demonstrated by three simultaneous and differing interpretations of statehood that have emerged from the Syria, Iraq and IS situation in 2015. One is where Syria as a UN member with internationally recognized borders, partial control of land, has a government disliked by western powers who have appeared to bypass Syria’s right to protect its own territory. The other is Iraq, also a UN member with defined borders but with only partial control of their territory. It enjoys both political and military support of the West, especially the US, who having recently ended the long and mostly unsuccessful Iraq War began resending military advisors joined by other NATO allies after IS overran Mosul and other areas in northwestern Iraq. The third major interpretation reinforced by combining captured sophisticated military weapons with medieval era military tactics is IS, which has declared itself a caliphate despite a lack of international recognition of its borders and partial control of its territory with no legal right to protect it (Boyle 2015). These subjective geopolitical interpretations of what constitutes a nation gives armed insurgent and terrorist groups such as IS, Boko Haram, and others who make declarations reinforced by developing governance and other infrastructure in territory they hold a stronger claim that they are being victimized by the international system (Boyle 2015).

Modern violence carried out by IS and Boko Haram is descended from a thousand year lineage that includes war, revolution, and terrorism used to conquer territory, establish statehood, and solidify power. (Ginsberg 2013: B7) In a different century their actions might have been viewed as a legitimate part of the process of establishing colonies and consolidating empires on behalf of powerful distant kingdoms aspiring to be world powers. Indiscriminate violence with little or no regard for what would later be called human rights determined which nations would exist, how their boundaries would be drawn, and which groups would ascend to political power within them. It has been claimed that the composition of the ruling elite within every country has been shaped by some form of violence incorporated into their laws, legal processes and systems that structurally reinforces what has been called “law-making violence” (Walter Benjamin quoted in Ginsberg 2013: B7). Peaceful acquisition of territory and creation of new countries are rare. Most modern western powers have a long legacy of some variation of unrestrained violence that has shaped their borders and directly influenced their institutions. This is borne out by the formation of the United States, one of the world’s most successful democracies that emerged from a long and violent history.

Established governments and terrorist groups in contemporary regions of violence such as Syria, Iraq, northern Nigeria are once again using an old strategy that Hugo Slim calls “limitless war” to justify and solidify the dominant group’s position. These “winners” view violence as a positive “cleansing and creative” agent of change that displaces or kills all designated “undesirable” individuals and groups while consolidating the victors’ political and military power (Slim 2008: 25-8; see Chapter 4). Destroying a population’s culture and heritage by attacking their revered historic sites and symbols is intended to extend a limitless war strategy beyond physical killing of designated enemies to eliminating all physical evidence of their identity as a group and civilization in ways that deny their existence for future generations.

In its latest manifestations these acts of killing and desecration are staged to be captured by digital cameras that technology savvy IS members can quickly upload as images and video that are transmitted via social media networks and communication platforms. They have developed a similar strategy for instilling and manipulating fears and anxieties held by individuals and groups in regions of the world they cannot physically invade. Particularly skilled in targeting and provoking reactions from major western powers, especially the US (societies with which a number of IS members are familiar), they have also mastered the art of using these and other images to recruit potential followers inside these countries and to inspire others to carry out internal acts of violence on their behalf. This has extended what can only be described as psychological operations designed to increase fear, anxiety, and feelings of vulnerability among their enemies by raising the possibility of random attacks by IS proxies inside their home countries. Once again IS had discovered another means of extending their reach. IS held the type of momentum that gave them an ephemeral but undeniable psychological military advantage that inspired admirers among similar groups in areas of the Middle East and North Africa including Egypt, Yemen, Libya. Their proteges in Boko Haram, Al Quaeda and other terrorist organizations were taking notes.

The problem for opposing countries and military forces has been the undeniable and unanticipated success of IS, which has created greater problems for their enemies. Once ignited violence flowed into vulnerable communities like leaking water and spread like burning oil. A clear demonstration for a classic case study on “new” war scenarios these strategies and tactics are intended to synchronize local and international political and criminal violence, infiltrate local conflicts, social protests, gang violence, and organized crime and terrorism networks to cross and minimize borders while simultaneously threatening a range of countries with similar or different incomes, identities, religions, and ideologies (Kaldor 2012; World Development Report 2011).

The irony is that many of these operations are rooted in textbook military strategies and tactics as basic as divide and conquer. Aside from acquiring US weapons after overrunning Mosul, IS demonstrated the type of clear cut military victory that can be established by combining the right technological skills with sophisticated information and psychological operations and military tactics (in the case of IS borrowed from earlier centuries) that the US and international military forces had never managed to accomplish after over a decade in Afghanistan and Iraq (TRADOC Pamphlet 525-3-1 2014: 14).

In September 2014 then US Secretary of Defense Chuck Hagel stated that US enemies were also developing anti-ship, anti-air, counter-space, cyber, electronic warfare, and special operations capabilities with goals to counter and neutralize traditional US military advantages, especially the “Army’s ability to project power” (TRADOC Pamphlet 525-3-1 2014: 49, 11). By early 2015 US Army Chief of Staff, Ray Odierno acknowledged the success of IS (aka ISIL) while discussing a new army operating concept stating that while “our enemy creates multiple dilemmas for us, we don’t create multiple dilemmas for them” (Yergun 2015). A 2014 US Army Training and Doctrine Command (TRADOC) paper “Win in a Complex World, 2020-2040” outlined these challenges and the success of IS (aka ISIL) in using a range of strategies and tactics to create and dominate their operating environment (TRADOC Pamphlet 525-3-1 2014). It described how IS used a strategy of murder and brutality against civilians while forming alliances of convenience to organize people, money, and weapons that allowed them to take advantage of the opportunities offered by regional conflicts and weak governance to consolidate their gains and to further intimidate and marginalize competing insurgent groups. By declaring a caliphate IS (ISIL) provided their followers with a type of sanctuary and “strategic depth” that would allow them to launch a broader regional and ultimately global campaign that reinforced their image of invincibility(TRADOC Pamphlet 525-3-1 2014: 14). Terrorist and insurgent groups can easily access weapons equal to those used by international military forces.

For the first time the new army operating concept focused on all three levels of fighting wars—strategic, operational, and tactical, while declaring that the future operating environment is composed of a series of unknowns. The enemy is unknown, the location is unknown and the answer to questions of who, what, where of involved coalitions is unknown (TRADOC Pamphlet 525-3-1 2014: iii). While indicating the necessity for land forces to defeat determined enemies who operate among civilian populations they control, the US Army acknowledged that the challenges presented by “ISIL” also highlighted the need to “extend efforts” beyond physical battlegrounds to “other contested spaces such as public perception and political subversion” (TRADOC Pamphlet 525-3-1 2014: 14). A growing challenge for international civilian humanitarian, aid, development organizations and military forces is to successfully identify areas of chronic and potential destabilization where the “right” circumstances can rapidly transform a random combination of risk factors, vulnerabilities, and catalytic events into “unexpected synergies” between otherwise independent risks that evolve into larger cross-border regions of violence that support the formation of “new” war scenarios and magnify their consequences (Gamper 2014: 4). This requires a deeper understanding of the characteristics of contemporary complex, interconnected risks.

Understanding complex risks

Complex risks, also known as compound risks, interdependent or interconnected risks, and hyper-risks, can be generally described as a rapid set of events with severely disruptive consequences that cross administrative and national borders with the ability to produce ripple effects on both local and global infrastructure networks, economic sectors, and international civil-military operations (OECD in Gamper 2014: 4). Compound disasters have been described as events causing extensive damage that multiplies the effect of the original cause to prolong recovery. Hyper-risks describe an event or process that triggers another single or series of unpredictable effects and events with the potential to cross borders. All of these are usually shaped by a rapid clustering of what previously appeared to be mutually exclusive causes that combine to trigger “cascading” or domino effects, also described as cascading disasters and failures in infrastructure systems and interdependent networks. In contrast to traditional risk management techniques where assessments have focused separately on each risk, these encompass a range of natural, social, technological, natural and human-caused risks that merge a combination of “drivers” that overlap and intersect to create a larger disaster (Gamper 2014: 5). These drivers include forgotten crises that form areas of chronic violence, urbanization, complex infectious diseases, environment, and the impact of technological developments on critical infrastructure and systemic risks (Gamper 2014).

Forgotten crises

Identifying potential regions of future violence requires that international focus be redirected away from highly publicized conflicts toward quieter but no less potentially violent areas. Many of these regions have been relegated to a lower priority status by the international community when compared to highly visible complex crises and emergencies that demand an immediate response. However recent history has clearly demonstrated how quickly the “right” set of circumstances can merge to link and interact with international 98 Part III: Looking ahead The “new war” challenge 99 causes to suddenly erupt into large scale regional violence. Sidelined by the international community these “forgotten,” overlooked potential “trouble” areas experiencing unresolved, chronic local conflicts offer opportunities for insurgents, terrorists, and criminal networks to hone their skills, develop financial links, and establish human and arms trafficking networks away from public scrutiny (UN Department of Economic and Social Affairs 2014: 7).

The 2014 European Commission’s Department of Humanitarian Aid and Civil Protection (ECHO) Forgotten Crisis Index regularly publishes a list of indicators for future regional problems. This index has consistently demonstrated a large disparity between countries receiving a high level of international attention and the location of countries that have repeatedly appeared on the index since 2004. The Central African Republic with an ongoing armed conflict that has caused a range of humanitarian crises, Algeria which is home to the longstanding Sahrawi Crisis, and Columbia with its long term unresolved and continuing armed conflict are all top of the index. Other countries appearing on the index six to nine times within the previous 10 years include Nepal, which has Bhutanese refugee issues, Bangladesh with Chittagong Hill Tracts and Rohingyas disputes, Mynanmar with conflict in the Rakhine and Kachin States and Myanmar refugees in Thailand, Thailand in the Myanmar border area, India in the Naxalite affected regions, Jamma and Kashmir and the North East India conflicts, and Yemen (Global Humanitarian Assistance Team 2014: Annex I).

Those that have appeared one to three times in the same decade are Georgia, Abkhazia, the Russian Federation in Chechnya, Sudan with humanitarian crises caused by armed conflict, the western Sahara on the Algeria border, Haiti, Guinea, Chad, Uganda with ongoing armed conflict, and the Democratic Republic of Congo affected by conflict caused humanitarian crises. Somalia, Kenya which has a Somali refugee crisis, Tanzania, Sri Lanka undergoing the impact of returning internally displaced persons, Indonesia, the Philippines with its longstanding Mindanao insurgency and Papua New Guinea are also included on the list (Global Humanitarian Assistance Team 2014: Annex I).

Placed on ECHO’S high risk list for most of the last decade Yemen began fragmenting into a highly unstable phase in late January 2015 when western-backed President Abed-Rabbo Mansour Hadi and the Prime Minister resigned following the capture of the presidential palace and control of the capital by the militarily dominant Huthi fighters. This was triggered by a dispute between the Huthis, a mostly Zaydi/Shiite movement also known as Ansar Allah, and the President over a constitution that divided the country into six federal regions and used language that the Huthis found objectionable. They suspected the President’s advisor, who they had kidnapped earlier in January, of trying to push through the constitution without their consent. While there were few external actors other than Saudi Arabia and Iran to influence the outcome, Yemen’s location is in proximity to Al-Qaeda in the Arabian Peninsula and there is the potential for internal violent opposition from the Shafai (Sunni) areas and southern separatists. Al-Qaeda in the Arabian Peninsula is the group that claimed responsibility for the 7th January attacks on the satirical magazine Charlie Hebdo in Paris and Yemen’s police academy, which was bombed the same day. Yemenis have been faced with the choice of either compromising and forming an inclusive political settlement or undergoing a violent break up of the country, which would mirror a Libyan type of scenario. The longer the crisis continues the greater the potential for external interference, both positive and negative (ICG 2015b: Syria Calling; ICG 2015c: Yemen Conflict Alert).

In 2015 the International Crisis Group (ICG) identified Central Asia, including Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan as a region with potential for future destabilization. This is linked to the growing numbers of men and women travelling to the Middle East from countries in the region to support and fight with IS. ICG estimates between 2,000 and 4,000 joined in the 3 years prior to 2015 for a range of political, social, and economic reasons, attracted by the prospect of combat experience and a more devout religious life. If significant numbers of these IS recruits return to Central Asia they have the potential to destabilize not only their own countries but the entire region, which shares borders with Russia, Afghanistan, Iran, and China. Ethnic Uzbeks, including Uzbekistan citizens make up the greatest numbers of IS recruits and are primarily coming from southern Kyrgyzstan, a country that borders Afghanistan, where the Uzbek community was alienated by targeted ethnic violence in Osh in 2010. Kyrgyz, Kazakhs, Turkmen, and Tajiks recruits are also numerous. They are all coming from secular countries plagued by poor governance, corruption, and criminal networks. None of these nations have the resources or skills to cope with the expected return of battle hardened and politically experienced radical Islamists. Instead of attempting to promote religious freedom, safeguard secular institutions, and support European style attempts to rehabilitate jihadis these countries have reacted to these potential threats by implementing laws that increase restriction of religion and sending badly trained police who enforce them by carrying out heavy handed crackdowns that further exacerbate the problem (ICG 2015b, Syria Calling: 1-2).

Urbanization

Global urbanization, increasing at a pace that threatens to overwhelm local and national infrastructure, is another important potential contributor to creating regions of violence as socioeconomic inequality rises both inside cities and in surrounding areas (UN Department of Economic and Social Affairs 2014: 7). Due to unprecedented urbanization over the past 60 years more people now live in urban than in rural areas. This is in stark contrast to 1950 when over 70 percent of the world’s population lived in rural areas. Most of the world’s largest urban areas were previously located in the more developed regions, but large cities are now clustered in the less developed “global South.” In 2014 54 percent of the global population was urbanized, with expectations that will increase to 66 percent by 2050. India, China, and Nigeria are expected to account for 37 percent of the global urban population between 2014 and 2050 (UN Department of Economic and Social Affairs 2014: 1, 7). The potential for these regions to evolve and connect into regions of violence is high.

Much of the world’s future population growth is projected to occur in highly vulnerable, less developed countries where many of these dense urban areas are home to densely concentrated and interdependent populations, buildings and services. They are often located along coastal areas threatened by climate change and weather-related emergencies. Many individuals who voluntarily relocated to cities in search of employment find that the only available housing they can afford is structures built on illegal sites from discarded materials and mud without access to public services. Making up a large proportion of growing cities these impoverished and over-populated sites have been generally ignored by local governments who have not integrated them into their planning or public infrastructure strategies. Inadequate construction materials, garbage disposal and sewage systems increase the potential for regional destabilization by leaving them vulnerable to growing pressures on the availability and safety of food supplies, water, energy sources, and the possibility of new health-related risks. With no growth restrictions these urban centers often expand onto lands prone to geographic hazards such as landslides and environmental problems such as toxic waste disposal sites. Increased flows of legal and illegal migrants fleeing other areas, along with internally displaced populations and refugees fleeing conflicts, accelerate this undisciplined urban growth that increases the likelihood that these cities will become incubators for disease and violence (Gamper 2014: 8-9; Patel and Burke 2009: 741; Mancini 2014). This has resulted in a chaotic and disorganized urban landscape where expectations for a better quality of life have not been met.

International concerns about destabilization in North and South East Asia have increased as these areas become more vulnerable to combined risks of urbanization, new and rapidly transmitted diseases, and climate related disasters that put large segments of their population at risk. Asia, likely to be home to fifteen of the top global cities by 2070, is especially at risk from future (2030-40) coastal and urban flooding that would cause widespread destruction to infrastructure, livelihoods, and settlements (Peters 2014: 2-3). Countries at greatest risk in this region include Lao PDR, Myanmar, Thailand, Vietnam, China, Japan, Philippines, Indonesia, Cambodia, Malaysia, and Timor-Leste. It is worth noting that more than 71 million people were displaced in North and South East Asia between 2008 and 2012, and that a number of these countries were listed on the Forgotten Crisis Index, with several others experiencing recent violent conflicts (Peters 2014: 9, 4).

Similar to forgotten crises these areas of chaotic urbanization are ideal for incubating illegal gangs and activities that provide safe havens and support home base environments for dangerous criminals, terrorists, and insurgents who can easily operate undetected by the police and military forces. If local and national governments continue to fail to provide adequate security, employment, infrastructure and services to their urban constituents they leave these populations open to recruitment and exploitation by these armed groups. Cities have also become ideal stages for carrying out politically motivated attacks against innocent civilians. The 2013 Boston Bombing and the 2014 attacks on coffee shop customers in Sydney, Australia are two examples. US and international military forces are especially concerned about terrorists and other criminal groups using uncontrolled urbanized environments to launch long range missiles and other powerful weapons that could threaten external populations (TRADOC Pamphlet 525-3-1 2014: 12).

To successfully meet the challenge of future complex crises the international civilian organizations and military forces will need to develop a deeper understanding of the ways in which urbanization creates its own urban “fabric,” ecosystem, climate, society, culture, economy, and governance systems. These urban systems influence and interact within their own geographic boundaries of urban territory, sociocultural activities, and politics to assume characteristics of mega city-states, that have more in common with other giant urban metropolises than with the national governance structure of the country where they are located (Warmsler and Brink 2014, 11). The United Nations has stated that the battle for future sustainable development will be won or lost in urban areas. Their projects are beginning to focus on cities, especially those located in the lower-middle-income countries experiencing rapid urbanization. City and regional governments will need to review their governance strategies to integrate human, national and international security into their policies (Patel and Burke 2009, 741: Mancini 2014).

Successfully meeting challenges posed by these urban areas requires developing better strategies to identify and anticipate the evolution of complex risks specifically linked to these urban areas that are independent from the countries in which they are located (Warmsler and Brink 2014: 11). Operating in congested and restrictive urban terrain will require that international military forces understand the specific political, geographic, technological, and military challenges posed by these and similar urban environments that are either located within or have themselves turned into regions of violence. Both civilian and military responders will need to develop broader more flexible urban focused approaches to humanitarian aid, development and security to be effective when conflicts and emergencies occur in these environments (TRADOC Pamphlet 525-3-1 2014: 12; UN Department of Economic and Social Affairs 2014: 1).

Complex, infectious diseases

The destabilizing potential of infectious disease on vulnerable regions that have recently emerged from long term conflict was clearly demonstrated during the 2014 Ebola crisis. First the crisis began in Guinea, Liberia, and Sierra Leone, countries that had only recently emerged from long term regions of violence and conflict, which had destroyed their basic health infrastructure. This left these countries with a ratio of one or two doctors per 100,000 people (compared to Spain with 370 and US with 245 doctors) and a young adult population who had little or no education or knowledge about how diseases spread. Initially misdiagnosed as cholera then Lassa fever, the Ebola virus was not correctly identified until it had been circulating in Guinea for 3 months. Once it had taken root it decimated the already small number of health care workers in these countries. Having been considered a rare disease unlikely to appear in well developed countries there were no vaccines and the only controls, early detection, isolation, infection control and quarantine dated back to the Middle Ages. By the beginning of 2015 almost 24,000 cases and 10,000 deaths were reported inside Guinea, Liberia, and Sierra Leone. (Chan 2015; GHA Crisis Briefing 2015).

The drivers behind the spread of infectious diseases share characteristics similar to complex risks in urban environments but they are further complicated by the rapid pace of global mobility and transport networks that extend their impact throughout interconnected systems (Gamper 2014: 14-15). Warning flags and scares about the potential catastrophic effects caused by large scale pandemics had been raised for years prior to the Ebola crisis, but as long as diseases were treatable, eventually contained and for the most part had little or no effect on populations living inside western developed countries few outside of the health field took serious note. Earlier outbreaks such as Dengue and Chikungunya fever in the 1990s had been spread by the global trade in used tires but more recently diseases have spread faster and farther through interlinking networks of tourism, energy, transportation and agriculture that have resulted in a wider range of international consequences. The world health community made pre-Ebola assumptions that “exotic” pathogens, which caused problems in the developing world, would not be a threat to wealthier more developed countries with their higher standards of living and sophisticated health systems. This theory was seriously challenged by the 2002 and 2003 severe acute respiratory syndrome outbreak that began in wildlife markets and restaurants in southern China and quickly spread by air travel to urban areas in Hong Kong, Vietnam, Taiwan, Singapore, Toronto, Thailand, and the US. The international health community also erroneously assumed that future health threats could be predicted. While many were focused on the 2009 H5N1 avian influenza pandemic in Asia along with African forests and Asian cities as the most likely sources of the next pandemic, the 2012 Middle East respiratory syndrome suddenly emerged from the arid desert environment of Saudi Arabia where camels, not chickens were the source of disease (Gamper 2014: 14-15; Chan 2015). The appearance, spread, and adaptability of the Ebola virus in 2014 broke through all previous assumptions and rules.

Three key lessons learned by the international health community about stopping the spread of global health risks following the Ebola outbreak were outlined by the World Health Organization’s Director Dr Margaret Chan in a March 2015 speech to the London School of Hygiene and Tropical Medicine. The first is that competent functioning health systems need to be in place before a health crisis occurs. This requires developing a system that is designed to identify early warning signs of unusual disease events, establishing response teams that can track and investigate cases, and designating capable laboratory services to support these outbreaks. Another lesson has been to expect the unexpected (Chan 2015). Do not assume a virus will behave in the same way as previous outbreaks when introduced into a new setting. Ebola emerged at a time when the WHO and other global health experts were focused on acute respiratory infections as the leading global cause of sickness and death (WHO 2014). While Ebola had been a known entity for 40 years it mutated in an entirely new way during 2014. The spread of the disease also highlighted the important role of community engagement and the necessity of establishing trust while seeking their cooperation. Distrust of authorities prompted many communities to hide patients, conduct secret and unsafe burials, and refuse to cooperate with those attempting to track the virus. In 2015 the World Health Organization collaborated with the World Food Programme to bring WHO teams of social anthropologists and epidemiologists to isolated villages to assist in establishing trust with communities in an effort to track down the remaining Ebola patients until all cases were resolved (WHO/WFP 2015). A third lesson is the importance of creating incentives for research and development of medical vaccines and other interventions for diseases mostly associated with impoverished populations. Ebola demonstrated how easily and quickly a sidelined disease could jump socioeconomic groups and global barriers (Chan 2015).

More public health spending on general health care, vaccines, antivirals, and antibiotics has the potential to reverse overall vulnerability to pandemics (Gamper 2014: 14-15). In many ways Ebola was an international wake-up call about the destabilizing potential of infectious diseases that begin in distant locations. It points out the dangers of weak health infrastructure in areas recently emerging from or currently experiencing long term chronic violence and their connection to global systems. It also highlights the link between environment and the spread of infectious diseases. Changes in the global environment and land use for agriculture, irrigation, hunting, and deforestation have directly contributed to an increase in the spread of zoonotics (animal diseases that can be transmitted to humans), food, and water-borne diseases. Migration and climate change have eased the transmission of vector-borne diseases such as malaria, transmitted by mosquitoes. Changes in social and demographic factors such as aging, migration, unemployment, displacement can also contribute to disease outbreaks. These risks are further aggravated in areas where there are persistent socioeconomic inequalities, where resources are lacking and where disasters and conflicts have occurred (Gamper 2014: 14-15). Developing integrated global strategies and interventions to identify and counter future outbreaks of infectious disease and having functional health systems in place that can withstand future shocks whether from climate change or unchecked viruses is the only way they will be slowed or stopped (Chan 2015).

Environment and climate change

Environment and climate change are widely considered to be interwoven into and underpinning almost all complex risks. While the impact of the environment and climate change on reshaping everyday lives has been widely discussed in the context of disastrous weather events and forced migration of populations due to degradation of land and availability of water, it is more recently considered to be the factor driving an increased frequency and intensity of future complex risks.

Increased rainfall causes flood; accelerating wind speeds can cause hurricanes, cyclones, tornadoes and similar destructive storms. More frequent and longer periods of warm weather can lead to intense heat waves and droughts that are associated with a rise in sea levels, and rapid melting of glaciers and permafrost that destabilize hillsides and increase coastal flooding. Flood risk has been estimated to be the greatest natural catastrophic risk to the largest number of global inhabitants as most of the world’s cities are located on coastlines, rivers, and other bodies of water. This includes world financial centers like London and New York (Gamper 2014: 14-15).

Climate change has been progressively pressuring cities into a vicious cycle of cause and effect between themselves and complex disasters. Massive urban areas have been increasingly viewed not only at risk to climate change but also the cause of additional climate-related risks through interconnected systems that combine geographic and spatial, environmental, sociocultural, economic and political institutions. These include urban sprawl, lack and inefficient delivery of services, unsafe construction, traffic, paving over earth and overcrowded informal settlements. Sustainability of urban environments is challenged by a lack of green areas, biodiversity, pollution, scarce water sources, waste and wastewater contamination, and radiation. Sociocultural challenges include a lack of security, segregation, aging populations, loss of cultural and historic heritage, unequal access to services, disease, traffic accidents. Economic issues are poverty, inflation, unemployment. Political challenges are a lack of access to political power that controls economic, social, and legal institutions that shape policy affecting urban populations.

This sets up a feedback loop that is caused by the impact of climate change on shaping climate-related disasters, the influence of the resulting disasters on climate change, the impact of inadequate urban development on climate change, and the reciprocating impact of climate change on inadequate urban development (Wamsler and Brink 2014: 5, 25, 26).

This indicates that a timely and adequate response to one disaster may be the key to preventing another meaning that the “right” response to each environmental and climate-caused disaster is the key to preventing another and should include actions that diffuse or stop a potential chain of cascading effects. There have been suggestions that the nuclear power plant disaster in Japan that followed the 2011 tsunami triggered by the Great East Japan Earthquake could have been better controlled or contained if there had been a more flexible response that combined experience, better understanding of the range of potential disaster scenarios, and a willingness for responders to anticipate, react, and improvise to the unfolding situation. The type of cross-sector engagement and collaboration that was necessary to address this crisis included disaster management, environment, energy, public health, and local economic, industrial, and international relations. Averting future crises of this type will necessitate that previously specialized agencies broaden their scope to develop multi-sector policies and coordination processes (Gamper 2014: 22).

Impact of technological developments on critical infrastructure and systemic risks

The impact that sophisticated users of information and communication technologies can have on civil-military relationships and the operating environment has been explored in Chapters 3, 4 and 5. Technological improvements in information, communication, space, and transport networks that facilitate global economic development and cooperation can conversely act as drivers of complex risks. Their interconnectedness fostered by the rapid expansion of users and accompanied by dependence on the internet leaves core systems vulnerable to cyber attacks. This poses significant threats to international financial and infrastructure systems as many remain relatively easy to hack and capable of causing widespread damage. However recent international analysis has also focused on ways in which the presence of technology itself can facilitate and accelerate risks (Gamper 2014: 13).

Aside from the potential for inciting violence and spreading panic, an equal if not greater and less predictable threat is posed by natural disasters that trigger technological disasters (also known as NATECHs), as witnessed in the 2011 destruction of the Fukushima nuclear power plant in Japan. When a devastating earthquake hit Japan on 11 March 2011, it caused a massive tsunami that killed more than 15,844 people, destroyed homes and businesses and set off a chain of nuclear accidents that resulted in the meltdown of three nuclear reactors in the Fukushima Daiichi Njuclear Power Plant. This nuclear meltdown resulted in widespread contamination of water, food, plants, animals, and fish on the Japanese mainland up to 200 miles away from the nuclear plant and directly caused over 150,000 people to be displaced. The total economic loss has been estimated at between $250 and $500 billion and seen as responsible for a slowdown or elimination of plans to build new nuclear power plants in many countries that in turn affected the global energy market (Ray-Bennett et al 2014: 14).

This merging of a natural disaster with vulnerabilities in technological systems has given rise to a new concept of hyper-risks and the threats and costs that their interdependent social/ecological/physical/economic/political networks pose to local, national, and global systems. Tied to more than single events these hyper-risks can also be tied to processes that set up conditions for a series of unpredictable events that are likely to cross borders setting off another series of cascading effects (Ray-Bennett et al 2014: 7).

### 2nc – nb – turns environment

#### CMR averts environmental systems risks – extinction

Simon Reich and Peter Dombrowski 18, January 15, 2018, Professor in the Division of Global Affairs at Rutgers University; Professor of Strategy in the Strategic and Operational Research Department at the U.S. Naval War College, Cornell University Press, “The End of Grand Strategy: US Maritime Operations in the Twenty-First Century,” vol. 95

Second, each challenge has both domestic and international constituencies seeking to raise the profile of the threat—from climate change and human trafficking to regional conflicts and nuclear war. And in each case, policymakers seek to enlist the extraordinary capabilities of the American military to combat the threat.

Third, some threats do remain directly rooted in human conflict. Others may be at least partly caused by human malfeasance but—like climate change and ensuing natural disasters—are the product of anthropogenic phenomena.3,4 These threats have no tangible "enemy" at all. Chinese and Indian emissions of high volumes of hydrocarbons unevenly distribute the costs. Bangladesh, for example, will suffer disproportionately if extreme weather—such as stronger typhoons—becomes more common. New challenges result, such as the creating of "environmental refugees" as well as the prospect of conflict over food, water, and natural resources. In response, advocates insist the US military should apply its unique capabilities to provide humanitarian and disaster relief, or to build levees to protect American cities like New Orleans, even if such missions detract from traditional deterrence and war fighting.

Finally, there are naturogenic threats—those having no human source. These are advertised as new but they are not. Ebola, for example, is terrifying. The Zika virus could change all our best expectations about demographic projections.34 But the Spanish flu, for which there was no vaccine, killed an estimated 675,000 Americans in 1918-19, and between 30 to 50 million people worldwide.40 Americans are well aware of these threats, as a Pew public opinion survey conducted in the midst of West Africa's Fbola outbreak made clear.41 Again, the armed forces were employed, not just to provide security but also to construct facilities and treat patients.

Yet regardless of whether these nontraditional threats are new or have just taken on new form, two things have changed. The first is the speed at which disease and the effects of ecological disaster can diffuse has increased. The transfer to a global population—as SARs, MERS, Ebola, and Zika have all vividly illustrated—is facilitated by the greater volume of people with access to travel by land, sea, and air. A modern pandemic could do far greater damage than the Spanish flu did in 1918-19. The US Centers for Disease Control and Prevention estimated in 2014, for example, that the number of new Ebola cases in West Africa alone could have doubled every twenty days without stringent quarantine regulations and adequate medical resources.42 Reinforcing the notion that pandemics have a new scope and scale is the fact that the very term global health is relatively new to the American lexicon, largely displacing the more traditional notion of "public" or even "international" health.43

The second thing to have changed is that US policymakers have broadened the working definition of national security to include more threats. The maritime services—the Navy, Marine Corps, and Coast Guard—have adjusted their top-end strategic documents to reflect this new emphasis. The 2007 vision statement, A Cooperative Strategy for 21st Century Sea power (CS21), for example, included humanitarian assistance and disaster relief (HA/DR) among its most important missions.41 This shift has been reflected in operations, both during crises and on a day-to-day basis—albeit with a significant amount of criticism from within the ranks.45 In a 2014 interview, for example, President Obama stated:

There's a reason why the quadrennial defense review—[which] the secretary of defense and the Joints Chiefs of Staff work on—identified climate change as one of our wont significant national security problems (italics added). It's not just the actual disasters that might arise; it is the accumulating stresses that are placed on a lot of different countries and the possibility of war, conflict, refugees, displacement that arise from a changing climate.46

The Department of Defense is thus preparing to cope with the consequences of climate change,47 while the armed forces provide manpower, equipment, and technical expertise for disaster relief and humanitarian operations.

Some critics argue that many of the new threats incorporated into major policy documents are marginal to core US national security.48 Vet, undeniably, more is expected of the American military', adding to the military's planning, training, and operating. Layering new responsibilities on top of old ones has created an unprecedented number of tasks that consume time and resources. Specialized training, equipment, and exercises have been developed, despite concerns that the military's suitability for particular tasks is not always self-evident.

This expansion of functions may partly be explained by the fact that military units are available, adaptable, and willing to undertake complex missions. These considerations often override questions about appropriateness—a propensity demonstrated by then president Obama's dispatching of more than twenty-eight hundred US troops to "combat" the Ebola epidemic. In significant ways that operation was a departure from, if not in conflict with, the military's core mission of safeguarding US national security.49 But while some civilian medical professionals were willing to volunteer to work with patients, few were willing to volunteer for the complementary logistical tasks performed by the military.

Famously, candidate George VV. Bush suggested in 2000 that the US military does not and should not "nation build." He favored reducing America's military involvement in all sorts of noncombat activities, from peacekeeping to humanitarian operations. Eventual National Security Advisor Condoleezza Rice argued that "the president must remember that the military is a special instrument. It is lethal, and it is meant to be. It is not a civilian police force. It is not a political referee. And it is most certainly not designed to build a civilian society."511 Just as famously, the Bush administration reversed its position after 9/11 with its global counterterrorism campaign and invasions of Iraq and Afghanistan. The US military embarked on a process of nation building, and assumed the greatest variety of political, diplomatic, and economic responsibilities since the Vietnam War. The "military instrument" became a universal solvent.

Afghanistan and Iraq were sometimes characterized as exceptions, or only the province of ground troops. Yet in the same period the Navy also engaged in helping other nations develop the ability to provide for local and regional "Global Maritime Partnerships" and a range of counterterrorism and counterpiracy task forces (described in chapter 5) that had more to do with capacity building than with deterrence or war fighting.31 Domestic critics often focus on increases in the military budget.52 They might also focus on increases in the military's roles and missions—and how these increased functions cohere around any single grand strategy.

Our central point is that the responsibilities of the US armed forces have drastically expanded. It is no longer enough to defend the nation against invasion or project power against adversaries; the armed forces are now the nation's first line of defense against threats ranging from cyberattacks to nuclear proliferation, climate change, pandemics, and natural disasters. And like it or not, they are sometimes called on to rebuild societies torn apart by war or support those simply unable to perform security functions like policing the maritime commons.

### 2nc – nb – turns grey-zone

#### CMR enables synergies that cap gray zone conflicts

Leon Whyte 14, Fletcher school of Law and Diplomacy. 12-15-2014. "Civil-Military Relations Theory for the Modern World." Small Crowded World. https://smallcrowdedworld.wordpress.com/2014/12/15/civil-military-relations-theory-for-the-modern-world/

While Huntington’s theory of objective control still provides an important foundation for thinking about civil-military relations, it does not adequately deal with modern situations where military officers have to take on roles beyond managing violence. For example, in Iraq and Afghanistan the U.S. military had to perform roles related to nation building and development traditionally left to the State Department or USAID. The inability of the and military to successfully manage interagency cooperation, or to perform roles outside of the management of violence, contributed to the deteriorating situation in both countries, and was one of the most important lessons of the early years in both conflicts.[3] This is not a new problem, but was analyzed in depth by R.W. Komer in his RAND study of the Vietnam conflict, “Bureaucracy Does its Thing.” In Komer’s analysis, he explains how large organizations, the military included, tend to be slow to depart from established beliefs and ways of doing things, and to reward conformity rather than creative thinking. In the Vietnam War, the U.S. military relied on a traditional war mindset that resulted in an overly conventional and militaristic response when a more political counterinsurgency response was needed. Komer recognized that the civilian bureaucracies were just as stuck in their traditional mindsets in the Vietnam War as the U.S. military. In particular, Komer points out that the State Department deferred to traditional thinking on civil-military relations and focused on diplomatic relations with the South Vietnam government rather than becoming involved with ground operations, despite the political nature of counterinsurgency missions. In insurgencies, the military simply has more logistical capacity and manpower to carry out nation building and development projects than civilian agencies, and in many theaters it is too dangerous for civilians to carry out this work. However, even as traditional war becomes less and less common, there is still a lag as agencies are unable and unwilling to change how they think of themselves that results in inefficiencies that learning organizations like insurgencies can exploit, despite their smaller traditional capacity. This is an especially salient point considering that the U.S. military and foreign policy bureaucracies have proven to have a short organizational memory when it comes to non-traditional operations that fall out of the scope of what these organizations consider to be their traditional roles. In order to understand modern civil-military relations, it is important to consider the role of the national security bureaucrats who increasingly control national security policy more than elected political leaders. According to Michael Glennon, this has resulted in a double government where the “dignified,” institutions like the Congress and the Presidency are a façade for the real decision making power wielded by career national security professionals. This double government did not emerge from conscious effort, but emerged overtime because of systemic and legal incentives baked in the national security structures of the United States. Glennon dubs this class of national security officials and influencers an “efficient” class due to the relative quickness they are able to work compared to the elected officials publically thought to be in charge of national security policy. This efficiency is especially important now that national security covers a wide range of non-traditional threats like terrorism, piracy, and cyber attack that require quick action and a wide range of expertise that elected officials cannot match. Glennon points out that despite running on a platform dedicated to changing the national security policies of the Bush Administration, President Obama has continued most of the same policies. The United States is a democracy, and as the head of the executive branch, the American public expects the President to set the national security agenda, so this double government has subverted U.S. civil-military relations, even if the façade of Presidential leadership remains. Another way that this situation has effected civil-military relations is that some members of this efficient class are even taking over the traditional military role of organizing violence. The best case in point is the use of UAV strikes in counter-terror operations carried out by the CIA. Under President Obama, the CIA has increased the number of UAV strikes and covert operations, carrying out what should be military operations.[4] As the security environment has evolved and become more complex, theories about civil-military relations are vital to understand the complexity of these relationships. Many older theories still form a relevant core, such as Huntington’s ideas about military professionalism and objective civilian control, but are no longer adequate to cover the evolving roles of both the civilians and the military. As Komer has shown, large organizations like the military or the State Department are slow to change their conceptions of themselves, and have difficulty in adapting to the new roles that modern “grey area” warfare demand. Even though these large institutions have a hard time adapting to new challenges, there is a class of national security officials who operate efficiently, and as shown by Glennon, are increasingly monopolizing national security decision making, and in some cases the actual management of violence itself. Situations as complex as these require robust theories and frameworks to analyze successfully, and require looking both to traditional theorists as well as more modern ones, and even theorists who are not writing explicitly about civil-military relations itself.

### 2nc – turns emerging tech / nuclear stability

#### CMR stabilizes nuclear first strikes AND halts extinction from future tech deployment.

Stephen Cimbala 12, 2012, Professor of Political Science at the University of Pennsylvania State; Civil-Military Relations in Perspective: Strategy, Structure and Policy, “Cyberwar and Nuclear Crisis Management: Implications for Civil-Military Relations,” Routledge

Other Implications

The outcome of a nuclear crisis management scenario influenced by information operations may not be a favorable one. Despite the best efforts of crisis participants, the dispute may degenerate into a nuclear first use or first strike by one side and retaliation by the other. In that situation, information operations by either, or both, sides might make it more difficult to limit the war and bring it to a conclusion before catastrophic destruction and loss of life had taken place. Although there are no such things as “small” nuclear wars, compared to conventional wars, there can be different kinds of “nuclear” wars, in terms of their proximate causes and consequences.20 Possibilities include: a nuclear attack from an unknown source; an ambiguous case of possible, but not proved, nuclear first use; a nuclear “test” detonation intended to intimidate but with no immediate destruction; or, a conventional strike mistaken at least initially for a nuclear one.21

The dominant scenario of a general nuclear war between the United States and the Soviet Union preoccupied Cold War policy makers and, under that assumption, concerns about escalation control and war termination were swamped by apocalyptic visions of the end of days. The second nuclear age, roughly coinciding with the end of the Cold War and the demise of the Soviet Union, offers a more complicated menu of nuclear possibilities and responses.22 Interest in the threat or use of nuclear weapons by rogue states, by aspiring regional hegemons or by terrorists, abetted by the possible spread of nuclear weapons among currently nonnuclear weapons states, stretches the ingenuity of military planners and fiction writers.

In addition to the world’s worst characters engaged in nuclear threat or first use, there is also the possibility of backsliding in political conditions as between the United States and Russia, or Russia and China, or China and India (among current nuclear weapons states). The nuclear “establishment” or P-5 thus includes cases of current debellicism or pacification that depend upon the continuation of favorable political auguries in regional or global politics. Politically unthinkable conflicts of one decade have a way of evolving into the politically unavoidable wars of another—World War I is instructive in this regard. The war between Russia and Georgia in August, 2008 was a reminder that local conflicts on regional fault lines between blocs or major powers have the potential to expand into worse. So, too, were the Balkan wars of Yugoslav succession in the 1990s. In these cases, Russia’s one-sided military advantage relative to Georgia in 2008, and NATO’s military power relative to that of Bosnians of all stripes in 1995 and Serbia in 1999, contributed to war termination without further international escalation.

Escalation of a conventional war into nuclear first use remains possible where operational or tactical nuclear weapons have been deployed with national or coalition armed forces. In allied NATO territory, the U.S. deploys several hundred sub-strategic, air-delivered nuclear weapons among bases in Belgium, Germany, Italy, the Netherlands, and Turkey.23 Russia probably retains several thousands of operational or tactical nuclear weapons, including significant numbers deployed in western Russia.24 The New START agreement, once ratified, establishes a notional parity between the U.S. and Russia in nuclear systems of intercontinental range.25 But U.S. and allied NATO superiority in advanced technology, information-based conventional military power leaves Russia heavily reliant on tactical nukes as compensation for comparative weakness in non-nuclear forces. NATO’s capitals breathed a sigh of relief when Russia’s officially approved Military Doctrine of 2010 did not seem to lower the bar for nuclear first use, compared to previous editions.26

Russia’s military doctrine indicates a willingness to engage in nuclear first use in situations of extreme urgency for Russia, as defined by its political leadership.27 And, despite evident superiority in conventional forces relative to those of Russia, neither the United States nor NATO is necessarily eager to get rid of their remaining sub-strategic nukes deployed among American NATO allies. An expert panel convened by NATO to set the stage for its 2010 review of the alliance’s military doctrine was carefully ambivalent on the issue of the alliance’s forward deployed nuclear weapons. The issue of negotiating away these weapons in return for parallel concessions from Russia was left open for further discussion. On the other hand, the NATO expert report underscored the present majority sentiment of governments that these weapons provided a necessary link in the chain of alliance deterrence options.28

Imagine now the unfolding of a nuclear crisis or the taking of a decision for nuclear first use, under the conditions of both NATO and Russian campaigns employing strategic disinformation and information operations intended to disrupt opposed command-control, communications and warning systems. Disruptive information operations against enemy systems on the threshold of nuclear first use, or shortly thereafter, could increase the already substantial difficulty of bringing fighting to a halt before a Europe-wide theater conflict or a strategic nuclear war. All of the previously cited difficulties in crisis management under the shadow of nuclear deterrence pending a decision for first use would be compounded by additional uncertainty and friction after the nuclear threshold had been crossed.

Conclusion

Optimistic expectations about the use of information warfare to defeat or disrupt opponents on the conventional, high-technology battlefield—in cases where nuclear complications do not figure—may be justified. On the other hand, where the shadow of possible nuclear deterrence failure hangs over the decision-making process between or among states in conflict, the infowarriors’ efforts to obtain dominant battlespace knowledge may provoke the opponent instead of deterring it. As scholars and policy analysts Keir A. Lieber and Daryl G. Press, have noted, with respect to U.S. superior performance at the sharp end of the conventional RMA: “A central strategic puzzle of modern war is that the tactics best suited to dominating the conventional battlefield are the same ones most likely to trigger nuclear escalation.”29

The objective of infowar in conventional warfare is to deny enemy forces battlespace awareness and to obtain dominant awareness for oneself, as the United States largely was able to do in the Gulf War of 1991.30 In a crisis with nuclear weapons available to the side against which infowar is used, crippling the foe’s intelligence and command and control systems is an objective possibly at variance with controlling conflict and prevailing at an acceptable cost. And under some conditions of nuclear crisis management, crippling the C4ISR of the foe may be self-defeating. Deterrence, whether it is based on the credible threat of denial or retaliation, must be successfully communicated to—and believed by—the other side.31 Whether nuclear or other deterrence can work in a particular context is more dependent upon political, as opposed to military, variables.32

As Mackubin Thomas Owens has emphasized, the essential problematique of U.S. civil-military relations is to combine the requirement for military subordination to civil authority with the need for military preparedness for conflict and effectiveness in combat.33 The literature of civil-military relations, as in the case of other academic and policy studies, is mostly based in a pre-cyber world in which decision time and military operations moved more slowly than currently, and prospectively. In addition, cyber technology and information related concepts are becoming the critical enablers for everything else related to deterrence, war and preparations for war. Future warriors and political decision-makers will have to ensure that their military cyber experts are, as is sometimes asked of high powered lawyers, on tap, but never on top. Keep this point in mind as we move into a future of automated decision systems, artificial intelligence, UAVs, long range precision strike weapons, nanotechnologies, and improving capabilities for military exploitation of space.

### 2nc – peacekeeping operations

#### Heightened CMR in security cooperation’s key to effective conflict stabilization operations

Kevin Melton et al. 18, Peter Quaranto, Patrick Quirk, Sara Reckless and Kelly Uribe, The authors were among the lead architects of the Stabilization Assistance Review (SAR). Melton is the Senior Civil-Military Transition Advisor in USAID’s Office of Transition Initiatives. Quaranto is a Senior Policy Advisor for the Department of State’s Office of Foreign Assistance. Quirk is a Senior Advisor for the Department of State’s Bureau of Conflict and Stabilization Operations. Reckless is a Senior Transition Advisor in USAID’s Office of Transition Initiatives. Uribe is a Senior Policy Advisor in the Office of the Deputy Assistant Secretary of Defense for Stability and Humanitarian Affairs. 10-22-2018, "A New U.S. Framework for Stabilization: Opportunities for Civil Affairs," Small Wars Journal, <https://smallwarsjournal.com/jrnl/art/new-us-framework-stabilization-opportunities-civil-affairs>, nihara

What have we learned from sixteen years of trying to consolidate hard-won battlefield gains and stabilize conflict-affected areas? How can we apply those lessons to better support our defense, diplomatic, and development officials on the frontlines in the future? And how can we show a better return on investment for U.S. taxpayers back at home who are understandably skeptical? Those were the questions that guided the Department of Defense (DoD), Department of State (State), and U.S. Agency for International Development (USAID) to undertake the Stabilization Assistance Review (SAR) in the summer of 2017. The incoming U.S. Administration made clear that it wanted a new approach to how the United States engages in conflict-affected areas. They wanted more discipline in how we use our resources and they expected our partners to share more of the burden.

The SAR resulted in a new policy framework, entitled “A Framework for Maximizing the Effectiveness of U.S. Government Efforts to Stabilize Conflict-Affected Areas,” which was endorsed by the Secretary of Defense, Secretary of State, and USAID Administrator as well as the National Security Council staff in mid-2018. The SAR framework has also been hailed by wide-ranging audiences from the Government Accountability Office to the Special Inspector General for Afghanistan Reconstruction to the Alliance for Peacebuilding. Perhaps most importantly, it has garnered support from key Congressional committees. In the Fiscal Year 2019 State and USAID appropriations bill, the Senate Appropriations Committee – for the first time – directed specific funding for “stabilization assistance” and stipulated that assistance should be used for programs and activities in line with the SAR framework.

Secretary Mattis, Secretary Pompeo, and Administrator Green have directed DoD, State, and USAID to work on implementing the SAR framework and mainstreaming the core principles into policy and practice. Accordingly, we are working to ensure that the strategies and assistance plans for priority conflict-affected countries and regions – such as Iraq, Libya, and Somalia – reflect the SAR’s principles. We are also working to ensure that our U.S. embassies, country teams, and military units deployed in those places have the tools and support they need to apply the SAR framework.

The momentum created by the SAR presents a significant opportunity for especially civil affairs as it works to elevate its profile and renew its capabilities. However, seizing this opportunity will require fundamental new ways of thinking about how civil affairs and other DoD elements work alongside State, USAID, and other civilian partners; how DoD structures security cooperation with host-nation security partners; and how the U.S. government ultimately measures and defines success.

Why Stabilization is a Strategic Imperative

The National Security Strategy (2017) highlights that the United States continues to face threats from weak and failing states. Despite global gains in prosperity, armed conflicts in many parts of the world – particularly internationalized and non-state conflicts – have increased and become more complex over the past decade. U.S. and partnered forces have struggled to consolidate battlefield gains against ISIS and other transnational terrorist groups amidst persistent levels of conflict and instability.

The human and financial costs of these conflicts are staggering. More people today are displaced due to conflict than any time since World War II. Over the past five years alone, overall international humanitarian funding requirements have increased by an estimated 70 percent. At the same time, international peacekeeping costs have also surged. A significant proportion of the U.S. and international foreign assistance budget continues to be dedicated toward these conflict-prone areas; although, according to a recent OECD report, less than 10 percent of that funding is devoted to conflict mitigation and peacebuilding.

This status quo is untenable on several levels. More focus is needed on resolving conflicts and restoring peace and stability, vice responding to crises. And yet this must be done in a more cost-efficient way. There is declining public appetite in the United States and broader international community to intervene and engage in industrial-scale reconstruction efforts. Taxpayers in the United States and other parts of the world are understandably wary of open-ended commitments. New ways of thinking about these challenges are needed.

In its initial months, the current U.S. Administration convened a policy planning process to rethink U.S. efforts to address fragility and instability. This process quickly affirmed the imperative for stabilization to consolidate security gains, particularly in ISIS-affected areas. However, the process acknowledged the need for a new, leaner approach to stabilization focused on defined outcomes and increased international burden-sharing. In this context, DoD, State, and USAID initiated the SAR to mobilize lessons learned and formulate such an approach.

The SAR: Something Old, Something New

The SAR identified ten core lessons for effective stabilization (see below). Many of the lessons are not new. They are drawn from countless DoD studies (i.e., the Chairman of Joint Chiefs’ Decade of War study from 2012), multiple Inspector General lessons learned reports from Afghanistan and Iraq, and a wide body of peacebuilding literature. As we reviewed the vast volumes of reports and talked to hundreds of conflict experts for the SAR, we were struck by the overwhelming consensus about the core principles of effective stabilization: focusing on the political dynamics driving conflict, targeting and layering assistance to bolster legitimate authorities, cultivating host-nation partner ownership, and fostering unity of effort, especially across civilian and military actors.

SAR’s Ten Lessons for Effective Stabilization

1. Set realistic, analytically backed political goals.

2. Establish a division of labor and burden-sharing among international donors that optimizes the strengths of each.

3. Use data and evaluation systems to assess strategic progress and hold partners accountable.

4. Forward deploy U.S. Government and partnered civilians and establish local mechanisms that enable continuous engagement, negotiation, targeted assistance, and monitoring.

5. Start with small, short-term assistance projects and scale up cautiously.

6. Prioritize, layer, and sequence foreign assistance to advance stabilization goals.

7. Link subnational engagements with national diplomacy to advance stabilization.

8. Reinforce pockets of citizen security and purposefully engage with security actors.

9. Seek unity of purpose across all lines of effort.

10. Employ strategic patience and plan beyond stabilization for self-reliance.

What quickly became clear during the SAR is that while these principles have been widely studied, they have not been systematically applied and institutionalized in practice. In this regard, process matters. Secretary Mattis once said, “If you take good people and good ideas and you match them with bad processes, the bad processes will win nine of out of ten times.” Accordingly, the SAR framework focuses less on what stabilization entails and more on how we pursue it as an interagency team.

Our first step was to ensure that our Departments and Agencies have a shared vision of what we are trying to accomplish with stabilization and a clear sense of our roles and responsibilities. For the first time, the SAR framework establishes an agreed U.S. government definition of stabilization: a political endeavor involving an integrated civilian-military process to create conditions where locally legitimate authorities and systems can peaceably manage conflict and prevent a resurgence of violence. Transitional in nature, stabilization may include efforts to establish civil security, provide access to dispute resolution, deliver targeted basic services, and establish a foundation for the return of displaced people and longer-term development. The SAR framework also defines State as the overall lead federal agency for U.S. stabilization efforts; USAID as the lead implementing agency for non-security U.S. stabilization assistance; and, DoD as a supporting element, to include providing requisite security and reinforcing civilian efforts where appropriate.

The SAR’s clear articulation of DoD as a supporting element is a significant new development and reflects the evolving thinking in the Pentagon following the Biennial Review of Stability Operations last year. There is an ongoing effort to update DoD Instruction 3000.05 to reflect this new “defense support to stabilization” approach and to elevate it to a DoD Directive. The draft Directive states clearly, “Stabilization must be incorporated into planning across all lines of effort for military operations as early as possible to shape operational design and strategic decisions.” The Directive further states, “DoD’s core responsibility during stabilization is to support and reinforce the civilian efforts of the USG lead agencies consistent with available statutory authorities…”

Meanwhile, State and USAID are taking initial steps to evaluate and upgrade their capabilities to perform leadership roles in stabilization efforts. State’s Bureau of Conflict and Stabilization Operations is convening stakeholders to establish planning guidelines and tools for U.S. embassies in conflict-affected areas. As part of an agency transformation, USAID is proposing to establish a new Bureau of Conflict Prevention and Stabilization, which will incorporate and elevate the important role played by the Office of Transition Initiatives. USAID will work to mainstream certain core principles into how it works across fragile and conflict-affected areas.

Integrating Civil Affairs with State and DoD to Advance Stabilization

At the heart of the SAR’s stabilization definition is the recognition that stabilization must involve an “integrated civilian-military process” at the strategic, operational and tactical levels. While DoD plays a supporting role during stabilization, it is imperative that all elements of national power – both military and civilian – are synchronized during these complex crises. These civil-military connections are well-honed in the humanitarian assistance space, but integrating stabilization efforts remains ad hoc and unrefined. This imperative requires new capabilities, authorities and approaches.

As the SAR continues to integrate through the Doctrine, Organization, Training, Materiel, Leadership, Personnel, Facilities and Policy (DOTMLPF-P) process, civil affairs has a key role from the strategic to the tactical levels in enabling collaborative interagency and inter-organizational structures and processes necessary to support more effective and efficient stabilization endeavors. The integration of the SAR principles into DoD’s new Stabilization Directive 3000.05 combined with the new release of the Army Civil Affairs Operations manual (FM 3-57) provides an opportunity to develop DoD’s support to civilian stabilization efforts, and to strengthen civil-military engagement across State, USAID, and DoD.

Although the United States attempted to create a unified stabilization strategy in Iraq and Afghanistan that would sequence and transition security, governance, and development lines of efforts, there remain abundant challenges to ensuring a “whole of government” approach across different conflict and contingency environments. DoD’s “shape, clear, hold, and build” counter-insurgency framework recognized the importance of sequencing necessary to drive security objectives and create space for governance and economic development. Yet, interagency integration of sequenced objectives and resourcing at the local levels was less clear and often not linked across security, governance, and development gains. There is a need for more coordinated planning and operations that better align civilian and military efforts around bottom-up, locally-owned approaches to ensure host government accountability and citizen participation.

As the national strategic capability for civil-military transition and conflict management within DoD, civil affairs is the natural partner for State and USAID civilian stabilization efforts. As emphasized at Civil Affairs Association symposia we have participated in, CA is an indispensable strategic conflict management capability for U.S. interagency, Joint, and Army missions across the full range of operations. For the Army in particular, it is an essential capability in each of the Army’s four strategic roles (shape, prevent, prevail in large scale combat operations, and consolidate gains).

Among its critical roles in interagency stabilization is civil-military integration. Civil affairs forces regularly cross the civilian-military divide at the operational and tactical levels. Their capabilities and access both into commands and locally on the ground can provide a unifying civil-military platform for strengthened communication, coordination, and collaboration between security, development, and diplomatic efforts. However, this integration needs to be standardized through integrated civil-military training and exercises, standard operating procedures, and new doctrine. Strengthened joint and synchronized civil-military capabilities are required across the strategic, operational, and tactical levels to deepen coordinated planning, align resources, build a common operating picture, and enable interoperability.

Synchronization of civil-military efforts necessitates a careful review of civil affairs core competencies and how they can reinforce comparative advantages and minimize overlapping functions with State and USAID capabilities. In line with the new DoD Directive 3000.05, civil affairs should work to ensure mechanisms are in place to enable civilians to be engaged and integrated into civil affairs operations during every stage of planning and implementing stability operations. At the same time, State and USAID need to ensure that civil affairs planners are incorporated into country-level stabilization planning processes from the outset to align with overarching political outcomes, identify common theories of change, and to sequence diplomatic, development, and security activities.

During execution, SAR principles highlight the importance of an integrated approach that can monitor both the desired political outcomes and whether desired theories of change impact those outcomes. Increasing civil-military interoperability for knowledge management, co-deployment, and information sharing will prove to be a key operational and tactical challenge. Merging Civil Information Management (CIM) capabilities and functions, especially to ensure information is available on unclassified systems, will play a critical role in building a common operating picture. Furthermore, the SAR provides recognition that it is critical to have civilian experts on the ground working alongside our military colleagues to enable a unified, civilian-led approach that can appropriately layer and sequence security and non-security assistance. Working alongside civil affairs teams will enable State and USAID access and visibility for difficult to reach areas critical to adequately plan, monitor, and assess local conditions vital to furthering stabilization objectives.

The Syria Transition Assistance Response Team – Forward (START-FWD) provides a good model for future endeavors. Recognizing the necessity to co-deploy State and USAID civilians with military forces to plan and monitor stabilization, humanitarian assistance and diplomacy activities with local partners, the Civil Military Support Element (CMSE) provided critical administrative and operational support to the Special Operations Joint Task Force – Operation Inherent Resolve (SOJTF-OIR) for START-FWD. To address differences between State and USAID authorities and mandates for START-FWD versus those that governed Iraq and Afghanistan Provincial Reconstruction Teams, the CMSE helped develop innovative solutions that allowed DoD to provide security and life support requirements under both Title X and Title XXII authorities. This produced an operational blueprint that is now feeding into an interagency process to standardize co-deployment of civilians alongside DoD elements in non- and semi-permissive environments.

To reinforce and facilitate this integrated approach, the Office of the Secretary of Defense is pursuing a new legislative proposal in Fiscal Year 2020 that would establish a targeted authority for the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the USAID Administrator, to support designated U.S. Government stabilization efforts by providing logistic support, supplies, services, and training to other U.S. departments and agencies. It would also allow the Secretary of Defense to conduct transitional stabilization activities in the interest of U.S. national security with the concurrence of the Secretary of State and in consultation with the USAID Administrator. DoD’s existing humanitarian assistance authorities enable civil-military collaboration to address humanitarian needs in contingency environments but cannot fund crucial stabilization activities such as minor repairs to electrical, water or sewage lines, supporting local councils or removing rubble so that long-term development efforts can begin. This new authority – if approved by Congress – would change that.

New Models for Security Cooperation in Conflict-Affected Areas

The provision of security and justice – and how that is perceived – is at the heart of many of the conflicts that we see today. The SAR report highlights that the U.S. government and international community continues to devote substantial amounts of security sector training and assistance to some of the most conflict-prone countries. For example, over the past four years, the top fifteen bilateral recipients of U.S. security sector assistance have included at least nine countries where we have been engaged in stabilization in recent years. This includes - in no particular order: Afghanistan, Colombia, Iraq, Lebanon, Pakistan, the Philippines, Somalia, Syria, and Ukraine. However, the SAR report notes that security sector assistance programs in many of these countries are often disconnected from political stabilization strategies and do not address the primary drivers of conflict.

The SAR calls for more programs to focus on the civil-military aspects required for transitional public and citizen security. Civil affairs has significant expertise in this regard, which needs to be elevated in ongoing security cooperation plans and programs. In some cases, this could mean incorporating civil affairs perspectives and capabilities into existing training and mentoring programs. In other cases, it could mean dedicated programs to help partner nation forces to develop their own civil-military operations capabilities. The UN has developed some capacity in this regard, but their efforts are limited to those places where peacekeeping missions are actively deployed. Many of these efforts also require greater engagement with non-military elements providing civilian security, such as local law enforcement. In those cases, it’s important that DoD coordinate more closely with State and USAID actors who are leading engagement with these non-military elements. Civil affairs can provide a critical bridge in this respect.

The FY 2017 National Defense Authorization Act initiated major changes in how DoD, in partnership with State, undertakes security cooperation activities. This included consolidating and expanding several funding authorities, elevating the importance of defense institution building, and establishing new requirements for DoD to develop a dedicated security cooperation workforce. Efforts are underway, led by the Defense Security Cooperation Agency, to implement these reforms. As the new security cooperation processes and frameworks are put into place, it is critical that they institutionalize lessons learned for conflict-sensitive approaches. More focus needs to be placed on how we can help security forces to secure population centers and restore trust with local communities.

Rethinking Stabilization Success

At its core, the SAR calls for rethinking the way the U.S. government measures success in stabilization environments. It is not enough to just count completion of projects, number of people engaged, and other output-based indicators. If stabilization is a fundamentally political endeavor, we need to think rigorously about how our collective efforts are making progress toward defined political end states. This requires better metrics, indicators, and analytics to assess on a routine basis how the political economy is changing in conflict-affected areas. It also requires better indicators to assess the level of commitment and buy-in from our partners. The SAR makes clear that the United States will expect our host-nation partners to take greater ownership over these efforts and our international partners to share more of the burden. Civil affairs can play an important role in helping to develop these metrics and to incorporate them into ongoing operations.

One of the things we heard over and over again as we conducted the review is that we need to be more realistic about what success looks like in places like Afghanistan or Somalia. Rather than focusing on broad state-building efforts, the U.S. government, host nation, and other partners should target those dynamics that are fundamental to establishing basic peace and stability. The goal of stabilization is not to remake societies, but to help those with legitimacy to peaceably manage conflict. This approach requires more humility and more realism as we work to understand the dynamics in places where we are operating and how we can influence them.

Conclusion

As we completed the SAR, far more than breaking new intellectual ground, we were more interested in breaking bureaucratic barriers. The lessons learned from stabilization efforts have been widely studied and written about, including among civil affairs forces. The challenge remains how to apply and institutionalize those lessons within our organizational structures and ways of doing business. We need to create more incentives for strategic discipline, integration, and accountability in how we work together across the U.S. government and with our partners in conflict-affected areas. We need new mindsets and ways of thinking about success.

The SAR has garnered significant interest and enthusiasm from key elements across the U.S. Administration, Congress, and non-governmental communities. Now comes the hard part of trying to translate that momentum into lasting reforms. As this process moves forward, the civil affairs regiment can lead the way by integrating new approaches at the strategic, operational, and tactical levels. Working together, we can reinforce the importance of civil affairs and position the United States to “secure the victory” in the years ahead.

#### Effective peacekeeping prevents extinction

Lund 9 (Michael S. Lund, Senior Specialist for Conflict and Peacebuilding, Management Systems International, Consulting Program Manager, Woodrow Wilson International Center for Scholars, taught at Cornell, UCLA, the University of Maryland, George Mason University’s Institute for Conflict Analysis and Resolution, and Johns Hopkins School of Advanced International Affairs, Ph.D. Political Science, University of Chicago, B.D., Yale University, “15 Conflict Prevention: Theory in Pursuit of Policy and Practice,” in *Handbook of Conflict Resolution*, eds. Zartman, Berkovitch, and Kremenyck, Sage, 2009, p.287-290, <https://www.wilsoncenter.org/sites/default/files/Conflict%20Prevention-%20Theory%20in%20Pursuit%20of%20Policy%20and%20Practice.pdf> DOA 7-14-2018)KMM

The world seems to be getting more dangerous. Terrorism and the ‘war on terrorism’ are straining relations between Muslims and the West. Despite interstate wars being in decline, five attacks by a state on another have occurred in the new century. Competition for oil and other essential natural resources makes inter-state wars over territory, viewed as a thing of the past (John Mueller, 1989), more imaginable. Confrontations over nuclear weapons have arisen with North Korea and Iran. Longstanding arms control regimes are unraveling. Further intra-state conflicts could erupt, as closed regimes face violent oppositions; fledgling democracies destabilize; and post-conflict countries fall back into war (Gurr and Marshall, 2005). Trends such as environmental degradation, climate change, population growth, chronic poverty, globalization, and increasing inequality risk future conflicts (e.g., CNA, 2007). Facing such threats, governments and international bodies could be pursuing how to prevent escalation of emerging tensions into wars, thus avoiding the immense human suffering and problems that wars always cause, both for the countries involved and the rest of the world. 1 Compared to the huge costs of war, the costs of preventing it are dramatically less. 2 Many people are convinced the horrific human costs of the current Iraq War were avoidable. Statistical research on third-party diplomacy also supports the belief that acting before high levels of conflict intensity is better than trying to end them (Miall, 1992: 126; Berkovitch, 1986, 1991, 1993). 3 To try to head off more future conflicts seems possible, moreover, for armed conflict has declined since the end of the Cold War, in part because of an ‘extraordinary upsurge of activism by the international community that has been directed to conflict prevention, peacemaking, and peacebuilding’ (Human Security Report, 2005: 155). 4 Indeed, conflict prevention is now official policy in the UN, the EU, the G-8, and many states (Moolak, 2005: G-8). It has been tried in places where the risk of conflict was present but they were averted, such as SouthAfrica, Macedonia, the Baltics, Crimea, and the South China Sea. 5 In short, prevention is not simply a high ideal, but a prudent option that sometimes works (cf. Jentelson, 1996; Zartman, 2001: 305f; Miall, 2007: 7,16,17). Given the evidence that inaction is wasteful and preventive labors can bear fruit, international actors could be collecting and applying what has been learned from recent experience to manage the tensions around the world from which future conflicts will emerge: mitigating sources of terrorism and extremism; averting genocides and other mass atrocities; buttressing fragile governments; reducing weapons of mass destruction; alleviating competition over oil and water; and defusing inter-state rivalries such as China– Taiwan and among the major powers. Yet these actors show little interest in building on recent accomplishments to reduce the current risks (e.g., the deterioration of Zimbabwe and possible renewed war between Ethiopia and Eritrea). 6 Why this apparent gap exists between the promise of conflict prevention and its more deliberate pursuit is the puzzle this chapter seeks to unravel. 7 The following sections seek to get beyond conventional answers by examining three facets of conflict prevention that define its current status: concepts, activities, and impacts. The conclusion sums up the state of the art and offers ideas to advance it. WHAT IS CONFLICT PREVENTION? A DISTINCT PERSPECTIVE As the idea has come into vogue, ‘conflict prevention’ and synonyms such as ‘preventive diplomacy’ and ‘crisis prevention’ are bandied about more loosely. New government units and non-governmental organizations have sprung up that tout the term in their logos. To be au courant, established organizations add it to mission statements. But though ‘conflict prevention’ may now be heard more often than the previously dominant ‘conflict resolution,’ it is not clear whether the activities carried out under this new rubric are actually new. Despite the ambiguity due to the idea’s rise to fame, however, close analysts have hammered out a core definition. Knowledge can cumulate when people use the same terms for inquiry. Conflict prevention applies to peaceful situations where substantial physical violence is possible, based on typical indicators of rising hostilities. Everyday spates where no blood is spilled, or public controversies that get so rancorous that social groups stop communicating are socially unhealthy, but much less grievous than states or groups about to kill each other with deadly weapons. 8 A coup d’etat is less grave than the genocide of hundreds of thousands of people. 9 Though thus narrowed to conflicts with potentially wide lethality (hereafter ‘conflicts’ for short), specialists’ definitions have varied in two main respects: a) the stage or phase during the emergence of violence when prevention comes into play; and b) its methods of engagement, which are geared to the differing drivers of potential conflicts that preventive efforts address. 10 Moments for prevention Conflict prevention has been distinguished from other approaches to conflict mainly by when it comes into play during a conflict, not how it is done. When UN Secretary General Hammerskjold first coined ‘preventive diplomacy’ in 1960, he had in mind the UN keeping superpower proxy wars in thirdworld countries from escalating into global confrontations. When the end of the Cold War brought unexpected intra-state wars such as in Yugoslavia, UN Secretary General Boutros- Ghali extended Hammerskjold’s term in an upstream direction to mean not simply keeping regional conflicts from going global, but from starting in the first place (UN, 1992). This conceptual breakthrough shifted the moment for taking action back to stages when non-violent disputes were emerging but had not escalated into significant violence or armed conflict. Just how far back in the etiology of conflicts might preventive action go to work? Leaving the pre-violent period open to a possible infinite regress might extend it to to causes as primordial as original sin or as dispersed as child-rearing practices, thus dooming the concept to impracticality. 11 To mark a beginning point when preemptive actions first become practicable, Peck (1995) usefully delineated early and late prevention. The former seeks to improve the relationship of parties or states that are not actively fighting but deeply estranged. Left unaddressed, such latent animosities might revert to the use of force as soon as a crisis arose. 12 Late prevention pertains to when fighting among specific parties appears imminent. Boutros-Ghali also extended conflict prevention downstream to actions to keep violent conflicts from spreading to more places. But because such ‘horizontal’ escalation seemed to go beyond averting the rise to violence (‘vertical’ escalation) and thus to include containing open warfare, some analysts worried that it implied suppressing physical violence at any subsequent stage in an armed conflict. This would conflate it too easily with actions in the middle of wars (even though Boutros-Ghali offered the separate term ‘peacemaking’ for those). Bringing prevention into the realm of active wars would eclipse its proactive nature behind the conventional interventions that occur late in conflicts, for which terms like conflict management, peace enforcement or peacekeeping were more fitting. This merging would vitiate the pre-emptive uniqueness of prevention compared to those other concepts (cf. Lund, 1996). It would forego the opportunity to test the central premise that had animated this new post-Cold War notion: that acting before violent conflicts fully breaks out is likely to be more effective than acting on a war in progress. To think of prevention as occurring while wars are already waging not only disregards most people’s connotation of ‘prevention,’ but would relegate the international community to remediating costly war after costly war in a perpetual game of catchup, foregoing the chance to ever get ahead of the game. While some analysts continued to apply prevention to any subsequent level of violent conflict (Leatherman et al. 1999), most now confine it to actions to avoid the eruption of social and political disputes into substantial violence, keeping the emphasis squarely on stages before, rather than during violent conflicts. In particular, the focus of this chapter is ‘primary prevention’ of prospective new or ‘virgin’ conflicts, where a peaceful equilibrium has prevailed for some years, but fundamental social and/or global forces are producing new controversies, tensions and disputes. 13 However, imperative later interventions are for minimizing loss of life, they are less humane and likely more difficult because the antagonists are organized, armed, and deeply invested in destroying each other. 14 Graph 15.1 locates this particular moment in conditions of unstable peace and distinguishes it from actions at other conflict stages. Methods of prevention Notions of prevention have also varied with regard to the means of engagement, but here too a consensus has emerged. The tools used depend on which causes of conflict are targeted, and thus which providers of tools get involved. Boutros-Ghali listed early warning, mediation, confidencebuilding measures, fact-finding, preventive deployment, and peace zones. But subsequent UN policy papers of the 1990s (e.g., ‘Agenda for Development’) greatly expanded preventive measures to a panoply of policies that address the institutional, socio-economic, and global environment within which conflicting actors operate – as diverse as humanitarian aid, arms control, social welfare, military deployment, and media. 15 It can now involve almost any policy sector, whether labeled conflict prevention or not. Recent UN usage of ‘preventive action’ (e.g., Rubin, 2004) is better suited to this range of potentially useful modalities. Direct and structural instruments To classify its array of methods, intercessory initiatives aimed at particular actors in manifest conflicts are distinguished from efforts to shape underlying socio-economic conditions and political institutions and processes. The former ‘direct,’ ‘operational,’ or ‘light’ prevention (Miall, 2004) is more time-sensitive and actor- or event-focused – for example, diplomatic demarches, mediation, training in non-violence, or military deterrence – and seeks to keep divisive expressions of manifest conflicts from escalating, and thus it targets specific parties and the issues between them. 16 Integral also is ‘structural’ or ‘deep’ prevention, meaning actions or policies that address deeper societal conditions that generate conflicts between interests and/or the institutional, procedural and policy deficits or capacities that determine whether competing interests are channeled and mutually adjusted peacefully. These more basic factors make up the environment within which contending actors operate and thus policies toward them can create constraints or opportunities that shape what the actors do. Diverse examples are reducing gross regional disparities in living standards, reforming exploitative agricultural policies, and building effective governing institutions. 17 These structural targets make prevention more than simply avoiding violence, or ‘negative peace,’ but rather aspiring to positive peace. In pragmatic terms, it means being able to meet the inevitable arrival of disruptive social and global forces with the ability to bring about change peaceably (cf. Miall, 2007). In recent years, for example, it conflict prevention has been integral to the larger post-Cold War agenda of creating peaceful democratic states out of societies in transition from authoritarianism and patrimonialism (Lund, 2006).

### 2nc – at: leaks

#### Leaks don’t undermine intel, damage diplomacy, or cause enduring harm to relations

Mark Fenster 17, Stephen C. O'Connell Chair at the Levin College of Law, “8 The Disappointment of Megaleaks,” The Transparency Fix: Secrets, Leaks, and Uncontrollable Government Information, Stanford Law Books, an imprint of Stanford University Press, 2017, pp. 174–192

In the aftermath of the disclosures, U.S. military officials concluded that they had both a legal and moral duty to reach out to the informants who had been outed. As a result, the military conducted operations to notify the informants that their covers had been compromised.25 These operations often raised suspicion about the informant and compelled substantial alteration or termination of the informant’s mission.26 Additionally, the disclosures caused backlash against U.S. anti-proliferation efforts in Pakistan.27 Pakistani officials had previously cooperated with U.S. officers to reclaim enriched uranium from Pakistan, but they were less willing to do so after Pakistani citizens and groups criticized their government for collaborating with the United States.28

But these damages were limited. No corroborated incident has come to light demonstrating that a document that WikiLeaks released caused significant physical damage to the U.S. military or directly and significantly damaged the diplomatic efforts of the United States.29 The prosecution did not present evidence at Manning’s court martial that anyone had died in reprisal following the disclosures.30 Defense Secretary Robert Gates, who had complained in July 2010 that WikiLeaks would have “potentially dramatic and grievously harmful consequences,” 31 concluded less than three months later that the disclosures did not reveal any sensitive intelligence methods or sources.32 Although Gates continued to warn about attacks against individuals named in the documents, a NATO official interviewed at the same time denied that any such attacks happened.33

Doubts that WikiLeaks’ disclosures would directly affect military operations and individual lives cannot alleviate the fear that such effects occurred later or could occur in the future; but they do suggest that the assumption that such effects would necessarily follow—an assumption made by military officials and conservative political figures—was unwarranted. Although it is difficult to assess the significance of such threats without access to intelligence stating otherwise, WikiLeaks’ disclosures and their aftermath at least suggest that the risk of disclosure is just that—a risk that does not constitute a necessary and essential effect of disclosure.34

However, the indirect effects of the WikiLeaks’ disclosures on military operations are more certain. The leaks required the Pentagon and intelligence analysts to assess the potential harm of the documents WikiLeaks released and to mitigate them as much as possible. At Chelsea Manning’s court martial, a military analyst testifying for the prosecution stated that her unit was forced to spend nearly 1,000 man-hours, at a cost of $200,000, to assess and analyze the impact of the released documents, diverting resources from other activities in Afghanistan.35 Other military and intelligence bureaucracies undoubtedly also expended resources to review the disclosures, as the enormous organizational machinery of which Manning was a part reacted to the release of the information it had produced.36 The disclosure’s adverse effects on the U.S. military’s reputation abroad likely also had material effects on the security of troops stationed in Iraq and elsewhere, raising the costs of those military engagements.

WikiLeaks’ Direct and Indirect Effects on Diplomatic Relations

The claim that disclosures would affect the State Department and U.S. diplomatic relations exhibits a similar dynamic. On the eve of the release of the diplomatic cables, Harold Koh, the State Department’s legal advisor, warned Assange in a letter made public that WikiLeaks’ planned disclosure violated U.S. law; Koh complained of the certain increased danger that the disclosure of diplomatic cables would create for innocent civilians named in the documents, for ongoing military operations, and for cooperation and relations between the United States and other nations.37 The State Department also warned hundreds of human rights activists, officials of foreign governments, and businesspeople who were identified in the diplomatic cables of the threats their identification might create for them.38

Again, however, no clear evidence has come to light of any direct ill effects the disclosures have caused, and while it may have, in Koh’s words, “endanger[ed] the lives of countless individuals,” it seems not to have caused any deaths. Administration officials did not publicly identify any additional harassment that its sources experienced as a result of the WikiLeaks’ disclosures.39 The U.S. ambassador to Mexico was forced to resign after the release of cables in which he criticized the Mexican government’s efforts to fight drug trafficking,40 and the ambassador to Ecuador was expelled after the release of her cable complaining of widespread corruption among that country’s police force.41 The ambassadors were punished for accurately reporting to Washington open secrets about the nations where they were stationed—that is, for being exposed doing their jobs. But no direct harm was traced to the cables. The disclosures did not seem to permanently damage U.S.–Mexico relations, and the cable’s disclosure did not permanently damage the already-strained relationship between the United States and Ecuador, as the countries reestablished diplomatic relations within five months of the initial explusion.42

#### Leaks don’t cause any intelligence failures

Mark Fenster 17, Stephen C. O'Connell Chair at the Levin College of Law, “8 The Disappointment of Megaleaks,” The Transparency Fix: Secrets, Leaks, and Uncontrollable Government Information, Stanford Law Books, an imprint of Stanford University Press, 2017, pp. 174–192

If the case for a positive “Snowden effect” therefore is stronger than the one for Chelsea Manning and WikiLeaks, critics claim that it also created significant dangers in the fight against terror. The NSA and White House warned about the Snowden leaks immediately after they began. Senator Dianne Feinstein, a Democrat from the reliably liberal and tech-friendly state of California, even called Snowden’s actions treasonous.111 In a February 2015 news conference, NSA Director Admiral Mike Rodgers claimed that the leak “has had a material impact on our ability to generate insights as to what terrorist groups around the world are doing. . . . Anyone [who] thinks this has not had an impact . . . doesn’t know what they are talking about.”112 Stewart Baker, formerly a high-ranking Homeland Security official and General Counsel of the NSA, was one of Snowden’s most publicly vocal critics, alleging that Snowden might have been in the employ of a foreign intelligence service and that his disclosures significantly impaired the country’s ability to defend itself, especially given the specific details about the NSA’s programs that Snowden disclosed.113

As with Cablegate and the Iraq War Logs disclosures, critics offered little in the way of specific proof of the costs of the disclosures, besides the direct costs of the time that personnel had to spend to assess and mitigate the damage and the costs of changing the disclosed programs, if possible or necessary. As time passed, the warnings appeared to dissipate. Director of National Intelligence James Clapper conceded in a June 2014 interview that “it doesn’t look like [Snowden] took as much” as initially feared. The same article quoted an anonymous senior intelligence official who conceded that the disclosures’ greatest impact would be the “damage in foreign relations” they caused as well as the extent to which the leaks had “poisoned” the NSA’s relations with commercial providers.114

But Snowden’s disclosures continue to offer a ready excuse for intelligence failures, as CIA Director John Brennan appeared to blame Snowden for the difficulty in stopping the terrorist attacks in Paris in November 2015, complaining that the leaks had made “our ability collectively, internationally, to find these terrorists much more challenging.”115 Clapper’s vague claim only illustrates the difficult of assigning causation to complex events. Even if the Paris terrorists used encryption to keep their plans secure from surveillance, it is still nearly impossible to prove, or even conclude with any confidence, that French intelligence, military, and police authorities would have thwarted the attack but for Snowden’s disclosures.116 Indeed, prior to the attacks, private security firms and media outlets had offered conflicting accounts of how much and how well terrorist groups in the Middle East have responded to the leaks.117 It is likely that the NSA has found it more difficult to gather intelligence on future terrorist threats due to the leaks and the political response to them. It is possible that some future attack will occur that might have been preventable but for the relinquished intelligence sources. But the public cannot and likely will not learn of the relationship between the disclosures and any past or future terrorist action— and it is also quite possible that the intelligence community would not be able to prove a connection between the two.

#### Redaction failures routinely reveal secret information

Mark Fenster 17, Stephen C. O'Connell Chair at the Levin College of Law, “7 The Implausibility of Information Control,” The Transparency Fix: Secrets, Leaks, and Uncontrollable Government Information, Stanford Law Books, an imprint of Stanford University Press, 2017, pp. 153–173

When it releases documents from which text has been “redacted” (that is, obscured with a black mark or erased) for security purposes, the executive branch simultaneously discloses information and quite explicitly and clearly keeps it secret. The public can see the document; it just cannot see every word—or perhaps any word at all, if the entire document or page has been redacted. An agency sometimes redacts a document that it is otherwise required to release under a legal mandate; alternatively, an agency may not have been obliged to release a redacted document but decided to declassify or make it available in an effort to meet public expectations or enhance public understanding of an issue. As a surgical removal of privileged information, redaction constitutes a compromise, a second-best alternative to complete secrecy that is better than no disclosure at all. But by making visible that which is kept secret, redaction reveals secrecy’s machinery in ways that the flat refusal to release a document does not. Paradoxically, redactions allow citizens to see precisely what the state has decided they cannot know.

This section demonstrates that understanding redaction as selective but complete censorship proves to be only partially correct, given the myriad ways in which redaction can fail. It begins with a discussion of how laws enable govern ment to use redactions as a strategy to retain control over information, then it illustrates the ways that redaction has failed in recent high-profile cases. It ends by demonstrating how even redaction’s textual erasure still produces meaning. Information Control and Release in Redaction Law

Government agencies redact information most frequently in response to FOIA requests. The Freedom of Information Act requires federal agencies to provide “[a]ny reasonably segregable portion of a record” of documents when they rely upon one of FOIA’s exemptions to deny a document request.52 Agencies must make their redactions explicit and obvious by indicating the amount of deleted information, the exemption that authorized the deletion, and, when possible, where in the document the deletion occurred.53 Courts occasionally play an active role in the redaction process, and they will sometimes review the precision with which an agency segregates information that cannot be withheld and the reasoning the agency uses when it redacts.54 Judicial review of agency redaction is notably variable, with different courts reaching different conclusions about similar redactions or about how much they should defer to government decisions to redact.

Intelligence agencies also redact, or demand redaction, in the pre- publication review process that they use for the public writings of their current and former employees.55 The CIA has long required employees to sign secrecy agreements as a condition of employment.56 These agreements include provisions that require the employees to submit written manuscripts they plan to publish prior to publication.57 The CIA delegates manuscript review to its Publications Review Board (PRB), which must respond to the author within thirty days with proposed deletions.58 Although the PRB’s approach has varied over time as different agency directors use their discretion to set their secrecy policy preferences, 59 some authors and critics of the CIA have argued that the PRB overredacts information, especially when it supports criticism of CIA performance and policy.60 Frustrated employees have challenged agency efforts to enforce the secrecy agreements on First Amendment grounds,61 as well as on the grounds that the redacted information is in fact unclassified,62 or had been officially disclosed previously,63 or had been improperly classified.64 Rarely do such challenges prevail.

Redaction’s legal authorities thus assume the following. Disclosure is appropriate, within reason, as is secrecy. The two can be reconciled through an agency’s precise control of information, down to the page, line, and word whose redaction will keep dangerous content secret. Wielding its black pen, eraser, or software code, the government can limit what it views as disclosure’s ill effects.

How Redaction Fails

Redaction can and does fail in a variety of ways, however. The information that it tries to suppress might already be in the public domain. The information can also subsequently leak out or can be inferred from the document or the context in which the redaction appears.65 The redactions might not successfully suppress information—either due to bureaucratic conflict or due to a technical error.66 Agencies cannot extend the redaction that they are authorized to make to documents outside their control. Despite its status as an explicit form of information control, then, redaction often reveals secrecy’s malfunction.

### 2nc – at: civil control bad / impact turns

#### Civilian control is a relic that prevents effective response to existential threats.

Brooks, 3-2-21—Scott K. Ginsberg Professor of Law and Policy at Georgetown University Law Center (Rosa, “Are US Civil-Military Relations in Crisis?,” Parameters 51(1), Spring 2021, dml)

More than anything, our ongoing preoccupation with civil-military crises may reflect our increasing uncertainty about the overall purpose of the military and our growing inability to define the role of the armed forces—or the distinction between the political and military realms—in any coherent way. Considering today’s complex, hybrid challenges such as terrorism, epidemic disease, climate change, cyber threats, Russian information warfare, and expanding Chinese global influence, it is impossible to draw neat distinctions between the role of the military and the role of diplomacy, development, and trade policy—or for that matter, between foreign and domestic issues and threats.29 But with the lines between war and not war, foreign and domestic, and military and civilian growing ever blurrier, it is less clear what we mean when we talk about crises in civil-military affairs.

Of course, the categories we rely upon to structure and give meaning to our world—war, peace, foreign, domestic, military, civilian, and so on—are categories we have created. These categories are neither sacred nor stable, and if they no longer serve a useful analytic purpose—if they are beginning to obscure more than they clarify—then we must develop new ways of thinking about power, force, control, and the institutions and rules we need.

This is an urgent challenge. Indeed, it could be our continued fondness for civil-military jeremiads risks diverting attention away from different but just as insidious threats to American democracy— threats that may have more to do with other forms of state capture and democratic dysfunction than with a crisis in civil-military relations or civilian control of the military.

The Founders cared deeply about civil-military relations and civilian control of the military. But they cared about this relationship for quite pragmatic reasons—in the late eighteenth century, those who controlled organized militaries had a unique ability to control the state and its resources. The founders of the fledgling American republic crafted a representative democracy in which, they hoped, the will of the people would always prevail and not be hijacked by force of arms.

The commitment of the framers of the Constitution to civilian control of the military stemmed from their deep mistrust of concentrated power. The US Constitution represents a comprehensive effort to break up concentrations of power, to ensure no one branch of government can outmuscle the others, and to ensure no one individual, region, party, faction, or group can permanently capture the state. In 1789 organized militaries were the sole actors with the ability to cause mass destruction of life and property; they consequently possessed a unique ability to capture, coerce, and control other would-be political actors. A general commitment to diluting concentrations of power, then, translated into a specific commitment to ensuring that the military, in particular, would be subject to multiple checks and balances.

Moreover these Constitutional checks and balances relating to the use of military force took many different forms. The Constitution established a system in which the military was subordinated to the elected representatives of the people, and for good measure they also divided control over the use of military force between Congress and the president. The framers’ normative goal was to prevent concentrations of power that could displace or distort the will of the people, and civilian control of the military was valued because (and only because) it was one of several overlapping mechanisms to ensure that the will of the people would prevail over the will of the powerful.

Today, these core normative goals are as relevant as they were in 1789, for to believe in democracy is to believe that the political legitimacy of a government derives from the free and informed consent of the governed. Most of us believe that the choices of the American people— constrained by our constitutional commitment to individual rights and due process, but otherwise uncoerced and unmanipulated—should guide our foreign and domestic policies.

But a formalistic commitment to civilian control of the military no longer achieves what it promised to achieve more than two centuries ago. For one thing, the US military today is nothing like the redcoats of King George III, and nothing like the ragtag militias hastily assembled under General George Washington. Instead, the US military now has elaborate internal checks and balances and a deeply ingrained respect for democracy and the rule of law.30 Most critically, the ability to destroy— and hence to coerce and control—is no longer in the exclusive possession of those with military forces and weapons.

Unlike in 1789, nonstate actors—even lone individuals—can now cause death and destruction on a mass scale, and increasingly both states and nonstate actors also have a range of nonkinetic means of coercion at their disposal, from cyberattacks and bioengineered viruses to the deliberate global spread of disinformation and fake news. All over the world coercive power has become simultaneously more diffuse and more concentrated. Individual billionaires, multinational corporations, hackers, and nonstate terrorist groups can increasingly compete with state militaries in their ability to control the behavior of both ordinary people and political actors.31

At the same time, as noted earlier, the lines between military and civilian tasks have grown increasingly indistinct. In today’s murky world of grayzone conflicts and persistent shaping operations, uniformed military personnel train judges, eavesdrop on electronic communications, vaccinate cows, and develop microfinance programs—and civilian Intelligence Community employees and contractors conduct raids, plan drone strikes, and execute offensive cyber operations. Both military and civilian actors engage in information and influence operations.

In this blurry world, we need to ask ourselves a serious question: what work, if any, is the concept of civilian control of the military doing today? When we say it was dangerous for Trump to offer too many senior administration positions to retired generals, or discourage President Biden from doing the same, what exactly do we mean? What specific negative consequences do we imagine would be more likely to happen if retired generals make up half the president’s cabinet—and what positive outcomes could result if we keep retired generals out of a president’s inner circle? When we say we do not want retired military officials to make partisan statements, why not? Similarly, when we worry about military involvement in domestic politics, or about military obedience to civilian commands, we would do well to define the harms with greater specificity.

Conclusion

The notion of civilian control of the military in America today has come unmoored from its original purpose and arguably is no longer an effective means to achieve the normative ends we still rightly value. Instead it is at risk of becoming a rule of aesthetics, not ethics, and its invocation is at risk of becoming a soothing ritual without accomplishing anything of value.

Going further, in today’s world a purely formalistic conception of civilian control of the military carries with it potential dangers. If we focus on formalistic rules at the expense of substantive normative ends, we may persuade ourselves that if we can just keep the generals inside the Pentagon and away from the campaign trail and the White House, we will have accomplished something meaningful—even as we blind ourselves to the frightening new forms of power and coercion that increasingly distort our democracy and destabilize our world.

## aff answers

### 2ac – at: nb – no spillover

### 2ac – judicial oversight bad – top level

#### Congressional oversight solves – Courts are the worst of all worlds – judicial scrutiny of foreign affairs undermines effective responses to terrorism, climate change, disease, and democratic backsliding

Martin 15 (David A; Warner-Booker Distinguished Professor of International Law Emeritus at the University of Virginia, former principal deputy general counsel of the Department of Homeland Security, member of the Homeland Security Advisory Council, J.D. from Yale Law School; 2015; “Why Immigration’s Plenary Power Doctrine Endures”; <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1013&context=olr>; Oklahoma Law Review, Vol. 68, No. 1; accessed 6/26/18; TV)

Justice Field, of course, does wind up treating the political branch’s conclusions, in this particular setting, as conclusive on the judiciary — but he does not rest that outcome on the idea that immigration control is a sovereign power outside the reach of the Constitution. Instead, he offers a statement about institutional roles seen as appropriate for the respective branches of government in this specific domain. In the foreign arena, he writes, as a matter of “self-preservation,”34 the government has the “highest duty” to “preserve . . . independence, and give security against foreign aggression and encroachment.”35 To achieve these ends, the government is clothed with authority to determine the occasion on which the powers shall be called forth; and its determinations, so far as the subjects affected are concerned, are necessarily conclusive upon all its departments and officers. . . . The existence of war would render the necessity of the proceeding only more obvious and pressing. The same necessity, in a less pressing degree, may arise when war does not exist, and the same authority which adjudges the necessity in one case must also determine it in the other. In both cases its determination is conclusive upon the judiciary.36 In other words, in 1888, the political branches judged necessary the application of a new absolute rule excluding Chinese laborers, in order to achieve security against what Congress deemed a type of foreign encroachment.37 Even with misgivings about the justice or fairness of the action, the courts will not second-guess that judgment of necessity. In realms touching upon foreign relations and potential national self-preservation, Field indicates, the nation must speak with one voice, and it is not for the courts to introduce a discordant sound. B. Complexity, Prophecy, and Experimentation in Foreign Affairs Decisionmaking Some critics of the plenary power doctrine question this asserted linkage between immigration and foreign affairs. Chinese exclusion was not a foreign affairs decision, they assert, but one driven by domestic political considerations — and in fact it worsened our relations with China.38 The invocation of foreign affairs is seen as a pretext covering up uglier motives, and the plenary power doctrine prevents courts from looking behind the mask.39 Therefore, some assert that courts should simply provide the ordinary measure of constitutional scrutiny — to smoke out invidious motives or at least to provide an appropriate evaluation of the weight of the governmental interest in light of the individual stake.40 This kind of pre-textual invocation certainly can occur. But here is the difficulty: We should not assume that pretexts in the foreign affairs arena are readily identifiable. As Justice Breyer observed in a recent political question case: Decisionmaking in [the foreign affairs] area typically is highly political. It is “delicate” and “complex.” It often rests upon information readily available to the Executive Branch and to the intelligence committees of Congress, but not readily available to the courts. It frequently is highly dependent upon what Justice Jackson called “prophecy.” And the creation of wise foreign policy typically lies well beyond the experience or professional capacity of a judge. At the same time, where foreign affairs is at issue, the practical need for the United States to speak “with one voice and ac[t] as one,” is particularly important.41 Many of the nation’s policy tools in the foreign arena are crude and imprecise, with uncertain impact. This very uncertainty may require trial-and-error application, with a need for quick policy changes, especially in times of crisis. Therefore, deference to the political branches is called for, not because we can always be sure that their motives are pure and nondiscriminatory — we cannot — but because subjecting these measures to detailed litigation would interfere with the flexibility often necessary to act beyond our borders. A too-ready judicial interference would also impair our ability to deploy uncertain tools — deriving from immigration control, trade regulation, or other components of our international relations — according to a single unified strategy.42 C. An Example: The Contrast to Domestic Measures Consider the seizure of U.S. diplomats by militants in Tehran in 1978. After the embassy invasion was ratified and defended by the new Iranian government, the U.S. government turned to a disparate variety of countermeasures to try to win release of the American hostages, including the seizure of billions of dollars in assets of Iran and of its companies and nationals, litigation in the International Court of Justice, an ill-fated military rescue attempt after Iran defied the International Court, diplomatic overtures through Algeria, and certain immigration-law-based restrictions imposed on Iranian nationals in the United States.43 There were even proposals at the time to use immigration or other powers to intern large numbers of Iranian nationals so they could perhaps be part of an exchange that would bring the diplomats home.44 Thankfully, such internment was never put into motion. Contrast the trial-and-error use of these generally crude and scattershot measures with how the government would respond to a domestic kidnapping and potential hostage situation. The police could deploy quickly to investigate who seized the victims and where they were currently located. In that process the authorities could use judicial search warrants to facilitate the inquiry, plus arrest warrants and compulsory grand jury subpoenas as appropriate. They could call on a wide range of assistance and technical support from a host of fully empowered domestic agencies, state and federal. Once the kidnappers were located, the police would establish perimeter control around the hostage site. No hostile militias would stand in the way (or if such appeared, other governmental power, including the National Guard, could be deployed). In a protracted standoff, judicially issued search warrants might help legitimate a forcible rescue operation. And the full weight of criminal punishment, imposed through efficiently functioning courts, could be expected for the kidnappers or hostage takers. This comparison helps reveal why courts are positioned to apply close constitutional scrutiny of official domestic action, whenever it is credibly challenged, but properly feel more constrained in the international arena. In the international arena, U.S. actors generally cannot invoke compulsory process or other reliable coercive means under their own government’s control. Moreover, the stakes are typically higher, as is the number of people potentially affected — not only by the immediate outcome but also by downstream effects, as the resolution either deters similar adverse actions in the future or instead stimulates them because the U.S. effort failed. With a domestic operation, judges can be confident that the government will still have plenty of capacity to deal with public safety threats, even in the presence of robust judicial review. One cannot have such confidence about the efficacy of alternative policy tools in the global arena if domestic judicial action begins to prevent or second-guess or slow down the use of those initially chosen by the political branches. Another difference between the two settings is relevant. In the domestic arena, we do not tolerate individuals using tit-for-tat responses to remedy wrongful behavior. I cannot justify seizing and carrying away my neighbor’s television on the ground that he borrowed my riding mower months ago and never returned it. But this prohibition on messy self-help obtains precisely because efficient hierarchical legal mechanisms, involving professional police and a developed court system, stand available to redress my neighbor’s wrongful act. In recent decades, the world has taken limited but hopeful steps toward investing transnational institutions with comparable powers, but progress remains quite uneven across different policy domains. The plenary power doctrine manifests the Supreme Court’s judgment that the kind of detailed constitutional scrutiny appropriate for the mature and developed domestic public order is not workable in the more primitive international legal system, marked primarily by horizontal action-and-response to try to rectify breaches. D. The Nongovernmental Component of Foreign Affairs Decisionmaking Foreign affairs are involved in immigration decisionmaking for another, more entangling reason, even when there is no clear effort to retaliate against or to influence a foreign government. Most high-level immigration decisions — by Congress or by the executive branch — are designed, at least in part, to influence or shape behavior overseas by individuals and nonstate actors, including both prospective immigrants (contemplating either legal or illegal channels) and smuggling organizations. For example, the decision (part of Operation Streamline45) to prosecute a high percentage of simple entrants without inspection caught along the southern border, causing them to spend some time in jail or prison before being repatriated, has been criticized as disproportionate to the inherent nature of this misdemeanor offense.46 But this critique misunderstands the policy decision. Operation Streamline is primarily meant to send a deterrent message to others contemplating a future clandestine crossing.47 The same is true of decisions to repatriate violators to a distant part of the land border rather than back to the border town from which they entered and where their coyote may be waiting to help them try again to enter.48 To take another example, in 1994, the Clinton administration decided to decouple the grant of work authorization from the simple act of filing for asylum, as had been provided under earlier regulations, though this change would mean that many applicants would be without a means of support, other than private or family charity, for as long as 180 days. This austere step was taken, in significant part, to discourage people planning to come to the United States to file an ill-founded claim that previously would have secured several years of residence and lawful work while they awaited a hearing.49 Changes to the treatment or opportunities of noncitizens in the United States, whether in the direction of restriction or liberalization, almost inevitably affect the decisions of people and organizations abroad who are thinking about organizing or participating in migration to the United States. Smuggling organizations, in fact, often build their business plans around finding and exploiting weak spots in immigration laws or processes.50 As a result, some U.S. government measures take on a more severe or restrictive aspect than might initially seem to be warranted by the acts of the individuals most immediately affected. This is because the policymakers mean the action not just for those who are the direct object of enforcement on U.S. soil but also for the message sent to others they want to deter. This dynamic appears to explain, in significant part, the Obama administration’s decisions to respond to the southwest border migration surge in summer of 2014 with a surprisingly severe set of measures, including sustained detention, even though the subjects were mainly children traveling with a mother or other relative. The executive branch also implemented accelerated removal processing where the law permitted such action, and assured substantial publicity for the flight whenever recent migrants were deported by airplane to their home country.51 Despite sharp criticism, these practices persisted, and they seem to have had much of the desired deterrent impact in the foreign nations at issue. In fact, monthly arrivals of unaccompanied minors from these countries declined from 10,631 in June 2014 to 2,432 in September.52 This kind of deterrence-based action, focused on overseas individuals and nongovernmental players, is also an aspect of foreign affairs, even though it falls below the plane of high-level geopolitics. It likewise may need to take the form of rough-hewn trial-and-error, like the more traditional foreign-relations actions directed at governments. The Supreme Court’s case law over the years appears to consider such policy choices equally worthy of foreign-affairs deference.53 This analysis is not meant as advocacy for the quick or expansive use of immigration restrictions to respond to objectionable or unwelcome actions of foreign governments or nonstate actors. For reasons of both policy and proportion, immigration sanctions of this type should be sparingly deployed. But the Court’s doctrine of deference in Chae Chan Ping and later cases is based on the recognition that even for relatively liberal foreign-affairs decisionmakers, rough-hewn actions that initially seem outsized or individually unfair might need to be in the mix to respond to, or to help shape, actions that others are taking abroad.54 III. Why the Court Resists Even Moderate Proposals for a More Active Judicial Role A more nuanced branch of the Chae Chan Ping criticism accepts that foreign affairs considerations may well be at stake in some immigration decisions, but would modify the doctrine to allow for a carefully structured closer judicial look.55 The courts, such observers contend, should not take political branch assertions as controlling, but instead should perform an initial judicial probe of the asserted reasons, to decide whether the challenged immigration restriction rests on a significant foreign affairs foundation. If the answer is yes, then the reviewing court should treat the political branches’ decision as dispositive — essentially, as a political question not subject to judicial review. But if not, then the court should apply ordinary modes of constitutional review, which might well bring a form of heightened scrutiny. At first glance, this kind of proposal would seem to offer an attractive middle ground to the Supreme Court. Yet the Court in practice has manifested great resistance to these scholarly invitations. Why? In my view, a majority of the Justices harbor a deep skepticism that lower courts can be trusted to give sufficient weight to foreign policy concerns in making any such threshold assessment. The very nature of immigration litigation in the courts of appeals, with an actual and often sympathetic human being front and center, makes a reviewing judge far more likely to overvalue the individual interests at stake and undervalue the more subtle and complex reasons why a particular measure may be needed for system stability or to influence behavior beyond our borders — connections that often would not become fully apparent until broader damage is manifested months or years after an interventionist judicial decision.56 Anna Law’s book, The Immigration Battle in American Courts, documents this disparity in outlook between the Supreme Court and the lower courts quite revealingly. She describes “how [lower court] judges can disregard congressional edicts limiting their scope of review in order to reach a desired result,”57 and can usually get away with it because the Supreme Court can review only a tiny fraction of their decisions.58 Professor Law regards this stance by the courts of appeals as a virtue, but the Supreme Court doubtless views it otherwise. Keeping the plenary power doctrine categorical gives the Supreme Court greater assurance that lower courts will preserve the space needed for government actions to meet real foreign affairs imperatives (even if this stance inevitably also leaves room for some ill-motivated actions adopted by the political branches). If this symposium were being held at the time of Chae Chan Ping’s centennial, in 1989, we might have had greater reason to expect some softening by the Supreme Court regarding the deference doctrine in the foreign affairs arena. Exactly twenty-five years before the week when this symposium convened in Norman, Oklahoma, the Berlin Wall fell, signaling that the Soviet bloc was coming apart, about to be replaced, in many instances, by democratic governments. Lengthy wars were ending in Latin America, and dictators were being forced from office. It appeared we were on the cusp of a far more benign world order — one that might permit the rapid flowering of more protective international legal institutions and thereby reduce reliance on crude action-and-response in the international arena. Today’s global scene is far more grim. Not only has the United States experienced the trauma of al Qaeda’s September 11 attacks, which revealed a genuine need for more vigilant immigration screening, but democratic nations are also facing new global threats from other nongovernmental actors who actually glorify the use of beheadings, crucifixion, and slavery, in addition to other players using more old-fashioned forms of terrorism directed at civilians. Failed states are more common, and well-armed insurgencies have proliferated. The march of democracy has slowed and, in several countries, reversed. Climate change and even plague-like diseases presage more complicated foreign policy challenges, many of which will have a migration dimension. The risks to the United States, if our government’s foreign-policy-linked initiatives are unsuccessful, now seem far higher than in 1989. Thus, I do not foresee the Supreme Court retreating significantly from the strong deference doctrines derived from Chae Chan Ping. 59

### 2ac – judicial oversight bad – leaks

#### No spillover – Congressional exemptions circumvent AND Courts won’t oversee intel gathering procedures – OR, causes leaks – wrecks ISR capabilities to avoid compromising sources

Elizabeth Rindskopf-Parker & Pate 7, Bryan Pate, 2007, “Rethinking Judicial Oversight of Intelligence,” in Reforming Intelligence: Obstacles to Democratic Control and Effectiveness, <https://www.academia.edu/13052951/Reforming_Intelligence>, nihara

To function effectively, all democratic governments must subject their actions to open public debate, review, discussion, and response. These are the essential ingredients of oversight and accountability. Yet, to survive in an often hostile world, these same governments must also be able to collect, analyze, and use foreign and domestic intelligence—information of ongoing value only insofar as its methods of collection and secrecy can be maintained. This is the paradox of intelligence oversight: the need to achieve open review of secret materials and activities without destroying their value.

In the United States, there are many established mechanisms of oversight and accountability, both inside and outside the government. Under the U.S. Constitution, the three separate branches of the federal government—executive, legislative, and judiciary—share power through a system of checks and balances. Each has the obligation and authority to ensure that the other two branches perform their assigned functions appropriately. This tripartite division naturally encourages oversight and accountability between the branches. In addition, each arm of the government provides its own unique internal oversight. Within the executive branch, management reviews are conducted by numerous offices, each of which typically includes an inspector general and a general counsel to ensure that it is complying with the law.

Congressional oversight occurs through the appropriations process, congressional audits, and statutory reporting requirements. Judicial review of the legality of actions taken by the two political branches occurs frequently, with judgments rendered on a case-by-case basis. Outside the government, the actions of each branch are subjected to scrutiny by an independent and active press and are ultimately adjudged by the electorate through the democratic process.

Yet, for the national intelligence system, these traditional oversight mechanisms are an awkward fit. Perhaps this is part of the reason why, historically, oversight of intelligence has been uneven in its success. Often, the importance of maintaining secrecy to protect the sources and methods of the intelligence capabilities appears directly opposed to the effective functioning of the existing oversight structures. Moreover, the secrecy surrounding intelligence activities seems to limit the role of the press to reporting on periodic scandals—some real, some not. Some critics argue that the broader goals of oversight—the effectiveness of the overall intelligence system—are inadequately served by the current system.1

Secrecy concerns have also restricted the judiciary’s role in reviewing intelligence activities. For good reason, court procedures in a democracy do not easily accommodate secrecy. Uncomfortable with secret procedures, the judiciary has been reluctant to engage issues arising from intelligence activities, even when such matters are properly presented to them.2 There is an important corollary to the concerns of the judiciary: judicial openness is commonly seen by all branches of government as a threat to effective intelligence gathering. Thus, because revealing individual secret facts can threaten the underlying ‘‘sources and methods’’ by which substantial amounts of intelligence are produced, legislated exceptions to public legal review are common where intelligence information is involved. Most notable in this regard is the exception for foreign intelligence contained in the Freedom of Information Act—the primary statute providing accountability through citizen access to government information.3

In a few of the areas where intelligence issues inevitably come under the purview of the judiciary, Congress has stepped in to strike the balance between competing concerns. For example, to facilitate the adjudication of criminal trials that involve critical evidence that cannot be made publicly available, Congress has established the Classified Information Procedures Act (CIPA).4 CIPA is modeled on earlier protective orders fashioned by the judiciary to handle such problems and provides a procedure for the courts to follow in handling classified evidence during a public trial. It is the means Congress has chosen to achieve the dual objectives of protecting national security and ensuring defendants a fair trial.

Procedural provisions like CIPA, however, have not alleviated the fundamental impediment to greater judicial involvement in the review of intelligence activities: an overriding reluctance on the part of the judiciary to become involved with foreign affairs and national security concerns. Is this resistance inevitable and unavoidable? Or are there structures that exist now, or could be devised, that would allow greater oversight by the courts in the overall process of collecting, analyzing, and using intelligence?

These questions are particularly timely as terrorism places the national security structures under increasing pressure to respond in new ways both at home and abroad. With headlines exposing abused detainees, ‘‘torture memos,’’ race-based ‘‘no-fly lists,’’ and ‘‘illegal wiretapping,’’ it is evident that the traditional balance between national security and individual liberty is being challenged, making even more important the courts’ role in ensuring that responses to terrorism do not fundamentally degrade personal freedoms and liberties.What role should the courts have in intelligence oversight in a time of terrorism? Before considering this question, we will first review the origins of existing oversight structures; then we will examine the basis for the judiciary’s reluctance to participate in national security matters; and finally, we will consider one example of active judicial oversight that may presage future approaches, especially if terrorism continues to pose a credible threat beyond the foreseeable future.

#### Independently, miscalc from ISR failure escalates to full-scale nuclear war – nothing checks

Dr. Bruce G. Blair 20, Research Scholar in the Program on Science and Global Security at Princeton University, PhD in Operations Research from Yale University, “Loose Cannons: The President and US Nuclear Posture”, Bulletin of the Atomic Scientists, Volume 76, Issue 1 [language modified; abbreviation in brackets]

The fog of nuclear conflict will prove all the thicker because leaders and planners lack adequate knowledge about their adversaries’ mind-set, resolve, wartime aims, and game plans. For instance, de-classified Soviet documents show clearly that the US strategy of “escalation dominance” was completely out of sync with Soviet nuclear strategy and that escalation to full-scale nuclear war was virtually inevitable if the United States struck first.13 After many decades of scholarly research, it is still not known what leaders in Moscow and Beijing were thinking during Cold War crises involving US attempts to threaten nuclear violence to coerce them.14 Today it would be foolhardy in the extreme to presume we would know Putin’s, Xi’s, and Kim’s minds and behavior in wartime. A prudent leader would not only refrain from initiating the actual use of nuclear weapons because of the danger of escalation; that leader would also refrain from brandishing them at all during a confrontation. The fear of an adversary striking first is the leading textbook cause of crisis instability. To stabilize a military crisis situation, what is actually needed is predictability and reassurance that first use is not on the table. For many strategists, however, taking options off the table looks like weakness. Retired Gen. James Mattis (the recent defense secretary) has a favorite military maxim: “Never tell the enemy what you are not going to do.” Strategists weaned on Thomas Schelling’s classic game theory arguments believe threatening, manipulating risk, and blackmailing are the currency of savvy crisis diplomacy. And it is certainly true that past US presidents have regularly played nuclear brinks~~man~~ship with the Soviets and Chinese and displayed incautious risk-taking in their crisis maneuvering. This was in fact the playbook of the Nixon advisors who ordered the world-wide nuclear alert that my crewmate and I helped implement in 1973. This alert sent a provocative message to the Soviets: The United States was prepared to play nuclear roulette to gets its way.15 Nuclear roulette begins at the outset of a crisis as the belligerents intensify their [ISR] intelligence, surveillance, and reconnaissance operations. The aim is to maintain “situation awareness,” but the activities lend themselves to the worst-case interpretation that the adversary is updating its targeting in preparing to strike. Similarly, nuclear forces and command structures are programmed to go to higher readiness to prepare for war if the adversary will not back down. Although the motives may be defensive, these activities may appear to be precursors of a first strike and provoke an action-reaction spiral that spins out of control. Certainly, if even a single nuclear weapon were used, the strategic nuclear forces on both sides would move rapidly to a maximum war footing and project credible mutual threats of large-scale preemptive attack. In sum, a nuclear posture gearing up for a possible enemy first strike risks becoming a self-fulfilling prophecy. From the perspective of presidential decision making, the first-use contingency could easily accelerate escalation to the point of causing mental duress. This contingency is also notable for its absence of guardrails and the ease with which a misguided or rattled president could order it. The launch protocol described earlier for launch on warning applies equally to first use. Although the timeline could be extended greatly, the president could choose at any time to end the discussion and order a strike. During the Cold War, I seldom practiced executing a first strike, and today there are no foreseeable scenarios that would justify transgressing the nuclear taboo of first use. Nevertheless, a first nuclear strike remains the default contingency of the US posture, owing to the huge uncertainties surrounding the alternatives – second-strike retaliation and launch on warning. A crisis that brings the belligerents to the brink of nuclear war would compel consideration of first use. Nuclear warfighters who reject the adage that a nuclear war cannot be won and must never be fought may well brief and tout the purported warfighting advantages of going first. Even though first use runs counter to and undermines the entire framework of the global nuclear order, in which nuclear weapons exist only to deter, leaders may waver if it seems the least fraught choice at the moment of truth. An impulsive president may be drawn to it. Wiser advisors may counsel restraint, but nothing would stand in the way of the president ordering a first strike. The likely if not inevitable consequence of attacking a nuclear adversary with nuclear weapons is nuclear retaliation and uncontrolled escalation that crosses the threshold of acceptable damage to this nation. First use runs an existential risk to the United States and the world. It carries a huge risk of triggering a nuclear exchange of cataclysmic proportions with massive casualties to all the belligerent parties and beyond.

### 1ar – xt: leaks undermine intel

#### Leaks lead intelligence agencies to self-deter to avoid compromising sources

Edward **Lucas 14**, Senior editor at the Economist, former foreign correspondent with 30 years' experience in Russian and east European affairs, is the author of, among other publications, Deception (2011), which deals with east-west espionage, and The New Cold War (2008), which gave warning of the threat posed by Vladimir Putin's Russia, nonresident fellow at CEPA, a think-tank in Washington, DC, “The Snowden Operation: Inside the West’s Greatest Intelligence Disaster,” Kindle, 2014, p 37-62

Chapter Three: Damage Control The mere whiff of a breach acts like nerve poison on intelligence agencies. If you lose even a single document, or believe an unauthorised person has had access to it, assumptions must be of worst-case scenarios. Assume that the Russians learn that an outwardly boring Irish insurance broker in the Ukrainian capital Kiev, for example, is actually an undercover officer of Britain's Secret Intelligence Service. What will they be able to do with that information? Will he be in danger? Will they able to find what agents he is running? If so, they must be brought out: they risk arrest. Maybe the agents are safe, but the operation cannot continue: in that case everyone involved must be stood down inconspicuously. What about colleagues? Safe houses? Dead-letter boxes? Another question is when the breach occurred. Can one be sure that this was the first instance? How solid is the 'product' (the intelligence obtained from the compromised network or individual)? Should it be assessed or analysed differently? Is it possible that the adversary used the breach to feed misleading information and then monitor the results? The answers to these questions may be 'no'. But an experienced team of counter-intelligence officers must ask them, find the answers, check and double-check. The taint of even a minor breach must be analysed, contained and cleaned. If a single breach is a serious problem, two make a nightmare— particularly if the missing material comes from different bits of the organisation. Documents which may on their own be quite anodyne can be gravely damaging if they are combined. Revealing an intelligence officer's cover name may be no big deal. But combined with his previous travel, it could be the clue that gives the adversary details of an operation. Multiple breaches increase the problem exponentially. Each bit of compromised information must be assessed not only on its own, but in relation to every other piece of data. As the numbers mount, the maths becomes formidable. Four bits of information have 24 possible combinations. Seven have 5,040. Ten have more than three million. If Snowden has taken a million documents, the permutations that—in theory—need to be examined exceed the number of atoms in the universe.

### 2ac – leaks – democracy !

#### Leaks wreck US democracy promotion efforts

Margaret B. Kwoka 14, Assistant Professor, University of Denver Sturm College of Law, “Leaking and Legitimacy,” SSRN Scholarly Paper, ID 2494375, Social Science Research Network, 09/10/2014, papers.ssrn.com, doi:10.2139/ssrn.2494375

The effect of most leaked information, however, is not nearly so clear as these extreme hypotheticals. Pozen recently argued that the government has deliberately chosen not to punish leakers because while individual leaks may be harmful to government interests, leaks as a whole are more beneficial than detrimental.92 A permissive attitude toward leaks allows the government to credibly “plant” information in the press, and promotes the public’s belief in the legitimacy of the government, compensating for an overbroad classification system.93 The focus of Pozen’s analysis, however, is the much more common, everyday leaks of higher-level government officials, and Pozen acknowledges that some leaks can be truly harmful.94 Citing Chelsea Manning’s disclosures to WikiLeaks as a “rare undeniable leak”95 of the unauthorized nature, Pozen concedes that even a permissive approach to leakiness “cannot tolerate the proliferation of internal dissenters who seek to impeach the entire secrecy and national security system.”96 Pozen’s account of the costs and benefits of leaking thus does not fully account for the deluge leak.

1. Past Harms

Are deluge leaks, then, the leaks that may cause so much harm that they cannot be tolerated? Certainly, government officials have been harsh in their condemnation of past deluge leaks. For example, highlevel officials declared that Assange, and his source of Afghanistan war documents (then unknown) “might already have on their hands the blood of some young soldier or that of an Afghan family,”97 \*\*\*FOOTNOTE BEGINS\*\*\* 97 Greg Jaffe & Joshua Partlow, Joint Chiefs Chairman Mullen: WikiLeaks Release Endangers Troops, Afghans, WASH. POST, July 30, 2010, at A4 (quoting the Chairman of the Joint Chiefs of Staff). President Obama also made early comments about WikiLeaks disclosures: “I’m concerned about disclosure of sensitive information from the battlefield that could potentially jeopardize individuals or operations.” Obama on WikiLeaks: ‘I’m Concerned,’ ABC NEWS (July 27, 2010), http://abcnews.go.com/Politics/ video/obama-wikileaks-im-concerned-11260389. \*\*\*FOOTNOTE ENDS\*\*\* that Manning’s leak of State Department cables “put at risk our diplomats, intelligence professionals and people around the world who come to the United States for assistance in promoting democracy and open government,”98 \*\*\*FOOTNOTE BEGINS\*\*\* 98 Key Reactions to Wikileaks Cables Revelations, BBC (Nov. 29, 2010, 5:28 PM), http://www.bbc.co.uk/news/world-us-canada-11866220 (quoting a White House statement). U.S. Representative Peter Hoekstra, the senior Republican on the House Intelligence Committee, also stated that “[m]any other countries — allies and foes alike — are likely to ask ‘Can the United States be trusted? Can the United States keep a secret?’” Id. \*\*\*FOOTNOTE ENDS\*\*\* and that the records leaked by Snowden were “putting at risk our national security and some very vital ways that we are able to get intelligence that we need to secure the country.”99

#### Shoring up the democratic model cascades and prevents a global erosion to authoritarianism that causes nuclear war

Dr. Larry Diamond 19, Professor of Political Science and Sociology at Stanford University, Senior Fellow at the Hoover Institution, Senior Fellow at the Freeman Spogli Institute for International Studies, PhD in Sociology from Stanford University, Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition, and American Complacency, p. 199-202

The most obvious response to the ill winds blowing from the world’s autocracies is to help the winds of freedom blowing in the other direction. The democracies of the West cannot save themselves if they do not stand with democrats around the world.

This is truer now than ever, for several reasons. We live in a globalized world, one in which models, trends, and ideas cascade across borders. Any wind of change may gather quickly and blow with gale force. People everywhere form ideas about how to govern—or simply about which forms of government and sources of power may be irresistible—based on what they see happening elsewhere. We are now immersed in a fierce global contest of ideas, information, and norms. In the digital age, that contest is moving at lightning speed, shaping how people think about their political systems and the way the world runs. As doubts about and threats to democracy are mounting in the West, this is not a contest that the democracies can afford to lose.

Globalization, with its flows of trade and information, raises the stakes for us in another way. Authoritarian and badly governed regimes increasingly pose a direct threat to popular sovereignty and the rule of law in our own democracies. Covert flows of money and influence are subverting and corrupting our democratic processes and institutions. They will not stop just because Americans and others pretend that we have no stake in the future of freedom in the world. If we want to defend the core principles of self-government, transparency, and accountability in our own democracies, we have no choice but to promote them globally.

It is not enough to say that dictatorship is bad and that democracy, however flawed, is still better. Popular enthusiasm for a lesser evil cannot be sustained indefinitely. People need the inspiration of a positive vision. Democracy must demonstrate that it is a just and fair political system that advances humane values and the common good.

To make our republics more perfect, established democracies must not only adopt reforms to more fully include and empower their own citizens. They must also support people, groups, and institutions struggling to achieve democratic values elsewhere. The best way to counter Russian rage and Chinese ambition is to show that Moscow and Beijing are on the wrong side of history; that people everywhere yearn to be free; and that they can make freedom work to achieve a more just, sustainable, and prosperous society.

In our networked age, both idealism and the harder imperatives of global power and security argue for more democracy, not less. For one thing, if we do not worry about the quality of governance in lower-income countries, we will face more and more troubled and failing states. Famine and genocide are the curse of authoritarian states, not democratic ones. Outright state collapse is the ultimate, bitter fruit of tyranny. When countries like Syria, Libya, and Afghanistan descend into civil war; when poor states in Africa cannot generate jobs and improve their citizens’ lives due to rule by corrupt and callous strongmen; when Central American societies are held hostage by brutal gangs and kleptocratic rulers, people flee—and wash up on the shores of the democracies. Europe and the United States cannot withstand the rising pressures of immigration unless they work to support better, more stable and accountable government in troubled countries. The world has simply grown too small, too flat, and too fast to wall off rotten states and pretend they are on some other planet.

Hard security interests are at stake. As even the Trump administration’s 2017 National Security Strategy makes clear, the main threats to U.S. national security all stem from authoritarianism, whether in the form of tyrannies from Russia and China to Iran and North Korea or in the guise of antidemocratic terrorist movements such as ISIS.1 By supporting the development of democracy around the world, we can deny these authoritarian adversaries the geopolitical running room they seek. Just as Russia, China, and Iran are trying to undermine democracies to bend other countries to their will, so too can we contain these autocrats’ ambitions by helping other countries build effective, resilient democracies that can withstand the dictators’ malevolence.

Of course, democratically elected governments with open societies will not support the American line on every issue. But no free society wants to mortgage its future to another country. The American national interest would best be secured by a pluralistic world of free countries—one in which autocrats can no longer use corruption and coercion to gobble up resources, alliances, and territory.

If you look back over our history to see who has posed a threat to the United States and our allies, it has always been authoritarian regimes and empires. As political scientists have long noted, no two democracies have ever gone to war with each other—ever. It is not the democracies of the world that are supporting international terrorism, proliferating weapons of mass destruction, or threatening the territory of their neighbors.

For all these reasons, we need a new global campaign for freedom. Everything I am proposing in this book plays a role in that campaign, but in this chapter, I am concerned more narrowly with the ways that we can directly advance democracy, human rights, and the rule of law in the twenty-first-century world.

As with any policy area, many of the challenges can be somewhat technical, requiring smart design and the careful management of programs and institutions. Those operational debates I leave for another venue. Here, I make a more basic case for four imperatives. First, we must support the democrats of the world—the people and organizations struggling to create and improve free and accountable government. Second, we must support struggling and developing democracies, helping them to grow their economies and strengthen their institutions. Third, we must pressure authoritarian regimes to stop abusing the rights and stealing the resources of their citizens, including by imposing sanctions on dictators to make them think hard about their choices and separate them from both their supporters and the people at large. Finally, we need to reboot our public diplomacy—our global networks of information and ideas—for today’s fast-paced age of information and disinformation. For the sake of both our interests and our values, we need a foreign policy that puts a high priority on democracy, human rights, and the rule of law.

### 2ac – deterrence !

#### Leaks wreck nuclear deterrence

Rachel Elizabeth Whitlark 19, Political scientist and assistant professor of international affairs at the Georgia Institute of Technology, “5. Should Presidential Command Over Nuclear Launch Have Limitations? In A Word, No.,” Texas National Security Review, 7-2-2019, https://tnsr.org/roundtable/policy-roundtable-nuclear-first-use-and-presidential-authority/

While passing a law to require congressional or military-legal approval before a nuclear launch could take place may seek to address fears of an unjustified attack, taking such steps would be misguided. Specifically, it would introduce complexity and dangerous time delays that would, as an unintended consequence, undermine deterrence, the quintessential purpose of nuclear weapons in the United States. That said, there are ways to build more oversight of the president’s nuclear authority while still maintaining the critical deterrence mission.

Presidential Authority

From the moment consideration begins, a president can launch nuclear weapons in mere minutes. To initiate the process, the president discusses the situation with key members of the defense establishment, including the secretary of defense, the head of U.S. Strategic Command (responsible for strategic nuclear weapons in the U.S. arsenal), and the combatant commanders whose geographical jurisdictions might be relevant to the mission at hand. As a group, these individuals are critical for discussing attack plans and targeting, as well as for offering advice and counsel to the president, who alone must make the eventual determination for how to proceed. Embedded in the deliberations are legal considerations, as the military personnel are bound by the Law of Armed Conflict,89 which demands necessity, distinction (between civilian and military targets), and proportionality for any use of force. As such, legal expertise is woven into military activities, including nuclear missions, from the planning stage to the execution. From the initial deliberation, if an order is given, it is verified by the Department of Defense and communicated to the relevant launch crews, who carry it out.90

Two sets of actors seem to be missing from or lacking formal roles in this process. The first is Congress. For foreign and military matters, the U.S. Constitution deliberately enshrined a system of shared powers between the executive and legislative branches.91 Article I gives Congress the power to declare war, raise and support armies, and provide and maintain navies. Article II reserves the role of commander-in-chief of the Army and the Navy for the office of the president. While only Congress can declare war, presidents have repeatedly ordered forces into action without congressional approval. Likewise, although the Constitution is silent on nuclear matters for obvious reasons, the president’s commander-in-chief authority has extended to control over nuclear use. One key motivation for this policy follows from the founders’ desire to enshrine civilian control over the military. Nuclear authority specifically derives from World War II, when the president’s commander-in-chief authority extended, by default, to Harry Truman’s nuclear launch decision in 1945.92 Since then, when issues have arisen regarding which war powers of the president are beyond congressional control, little has been resolved, perhaps because the judiciary has been wary of wading too far into this debate.93

In light of this lack of a formal role for Congress in nuclear command authority, on Jan. 29, 2019, Sen. Ed Markey and Rep. Ted W. Lieu reintroduced a bill first brought forward during the Obama administration that seeks to prevent the president from launching a nuclear first strike without congressional approval.94 There are 82 House co-sponsors and 13 in the Senate. Functionally, the bills seek to legally prohibit the president from using nuclear weapons without first determining that an enemy has launched a nuclear attack against the United States. Absent such a determination, the launch of nuclear weapons must be preceded by a congressional declaration of war that explicitly authorizes nuclear use.

The second set of actors without a formal role in the process is the secretary of defense and the attorney general. In light of this, a second proposal, authored by Columbia University professors Richard Betts and Matthew Waxman, supports requiring additional authentication of a presidential order to use nuclear weapons,95 and does so by formalizing a role for the defense and legal leadership. Betts and Waxman advocate two added layers of verification. First, the defense secretary, or her/his designee, would certify that the order to launch nuclear weapons was valid, i.e., that it was actually from the commander-in-chief. Second, the attorney general, or her/his designee, would certify the order was legal. Through these measures, the defense and legal authorities would have a formal role beyond their current advisory capacity.

Dangerous Limitations

Beyond constitutional concerns, there are substantive reasons to be skeptical of limiting presidential authority in this arena. Specifically, from a national security perspective, it is useful to have the ability to conduct war in the hands of a single person because of the relative speed with which one actor can mobilize when compared to the speed of 535 people. When threats manifest, it is often the case that speed and secrecy are paramount considerations for a state deciding how to respond. To that end, national security decisions like mobilizing for war could suffer — through leaks and lengthy discussion and debate — if they must occur within the halls of Congress. Speed, stealth, and nimble deliberations can be incredibly important for executing foreign policy and military operations. This remains the case both for consideration of nuclear strikes as well as for conventional scenarios, as these features are central to deterrence. Any changes to the existing system that could undermine deterrence should be avoided.

#### Extinction

Michaela Dodge & Adam Lowther 16, Dodge is a Senior Policy Analyst for Defense and Strategic Policy at The Heritage Foundation; Lowther, Ph.D., is a Director of the School for Advanced Nuclear Deterrence Studies, “A No-First-Use Policy Would Make the United States Less Secure,” E-International Relations, 10/4/2016, https://www.e-ir.info/2016/10/04/a-no-first-use-policy-would-make-the-united-states-less-secure/

The very term “no-first-use” is misleading. While a nuclear weapon has not been used in anger for over 70 years, nuclear weapons are used every single day to deter large-scale conventional and nuclear attacks. Former Air Force Chief of Staff General Larry Welch points out that “we have used the nuclear forces every second of every day for 50 years.” Moreover, during those 50 years, humankind has experienced the most peaceful period in its history as measured by the number of conflict-related casualties as a proportion of the world’s population. This is due in large part to the devastating risks that nuclear weapons pose to any society that is attacked with them. For the United States and the Soviet Union, a large-scale nuclear exchange meant the end of society as Americans and Russians had known it. That risk led American and Soviet leaders to exercise a level of caution and restraint that was not exercised by German, Japanese, and other world leaders in the years leading up to World War II.

If the United States were to adopt a no-first-use policy, the perceived threat of nuclear conflict admittedly would decline. While a decline in the perceived threat of nuclear weapons use may seem like a good thing, however, it is actually dangerous because it is that very perceived threat that gives leaders who may be contemplating the use of force the chance for second thoughts that can prevent great-power war. This is an important point. Opening the door to great-power conflict, even if ever so slightly, is obviously a step in the wrong direction.

Nor are great-power conflicts the only dangerous challenge that nuclear weapons deter. Biological, chemical, and even well-organized and targeted cyber-attacks can be as devastating as nuclear attacks. Some proponents may claim that the combination of a no-first-use policy and American conventional superiority plays to America’s strength, but recent history suggests that simply using our conventional forces rarely achieves our political objectives. It is also worth noting that the U.S. military is overstretched and on the verge of a readiness crisis. In the European theater, for example, North Atlantic Treaty Organization (NATO) forces are judged by many to be insufficient to counter  a Russian military advance into the Baltics. Most important, the point of deterrence is to prevent a war from happening, which is frequently preferable to becoming engaged in a war even if one wins at the end of the day.

### --- extra ev

#### **Eroding deterrence causes escalation of conflicts in every region to global war**

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In Russia, China, India, Pakistan, North Korea or Israel, the relevance of nuclear deterrence is hardly questioned. However, in Western countries, nuclear deterrence has been the target of criticism on strategic, legal and moral grounds since 1945. In the past decade, the renewed debate on nuclear disarmament has been accompanied by an increase in such criticism. Efforts led by four US statesmen, or the more radical Global Zero movement, as well as various diplomatic initiatives, have been accompanied by a flurry of new, serious academic studies questioning the legitimacy of nuclear weapons. More than ever, nuclear deterrence is attacked by many, both on the Left and on the Right. To the traditional arguments related to the credibility of nuclear deterrence are now added two other factors. First, nuclear weapons, it is argued, have limited value vis-à-vis proliferation and terrorism, and such risks bolster the case for nuclear disarmament. Second, alternatives such as high-precision conventional means and missile defense are said to now be much more effective than they were in the past. This paper refutes these arguments on the grounds that nuclear deterrence has proven to be an effective war prevention instrument, that it is cost-effective, and that today’s challenges confirm its relevance.

Nuclear Weapons Have Been Effective War-Prevention Tools

It is by definition impossible to prove that deterrence has worked, and correlation is not causality. But History gives us solid arguments in support of the positive role played by nuclear weapons, especially since our “database” now covers nearly 70 years.

Firstly, no major power conflict has taken place in nearly 70 years. The role of nuclear deterrence to explain this historical anomaly has been highlighted by leading historians and authors such as John Lewis Gaddis, Kenneth Waltz, and Michael Quinlan.3 No comparable period of time has ever existed in the history of States. There were two dozen conflicts among major powers in the equivalent amount of time following the Treaties of Westphalia (1648), and several after the Vienna Congress (1815).4

Secondly, there has never been a direct military conflict between two nuclear States. Beyond this mere observation, two studies have shown that the possession of nuclear weapons by two countries significantly reduced the likelihood of war between them (Pasley, 2008; Rauchhaus, 2009). Events in Asia since 1949 provide an interesting test case. China and India fought a war in 1962, but have refrained from resorting to arms against each other ever since. There were three India-Pakistan wars (1962, 1965 and 1971) before both countries became nuclear; but since the late 1980s (when the two countries acquired a minimum nuclear capability), none of the two has launched any significant air or land operations against the other.

*Thirdly, no nuclear-armed country has ever been invaded*. This proposition too can be tested by the evolution of regional crises. Israel had been invaded in 1948, on the day of its independence. But in 1973, Arab States deliberately limited their operations to disputed territories (the Sinai and the Golan Heights).7 It is thus incorrect to take the example of the Yom Kippur war as a “proof” of the failure of nuclear deterrence. Likewise, India refrained from penetrating Pakistani territory at the occasion of the crises of 1990, 1999, 2002 and 2008, whereas it had done so in 1965 and 1971. Another example is sometimes mistakenly counted as a failure of nuclear deterrence: the Falklands War (1982). But this was a British Dependent Territory for which nothing indicated that it was covered by nuclear deterrence. Furthermore, it would be erroneous to take these two events as evidence that extended deterrence does not make sense, as some authors have done (“if nuclear weapons cannot protect part of the national territory, how could they protect a foreign country?”8). Extended deterrence is meant to cover interests that are much more important to the protector than nonessential territories; for instance, during the Cold war Germany was much more “vital” to the United States than, say, Puerto Rico.

*Fourthly, no country covered by a nuclear guarantee has ever been the target of a major State attack*. Here again evidence is hard to give, but can be found a contrario. The United States refrained from invading Cuba in 1962, for instance, but did not hesitate in invading Grenada, Panama or Iraq. The Soviet Union invaded Hungary, Czechoslovakia and Afghanistan, but not a single US ally. China has refrained from invading Taiwan, which benefits from a US defense commitment. North Korea invaded its southern neighbor in 1950 after Washington had excluded it from its “defensive perimeter”, but has refrained from doing so since Seoul has been covered with a nuclear guarantee. Neither South Vietnam nor Kuwait were under the US nuclear umbrella. Russia could afford to invade Georgia because its country was not a NATO member. A partial exception is the shelling of Yeongpyeong island (2011); but the limited character of the attack and its location (in a maritime area not recognized by Pyongyang as being part of South Korean territory) make it hard to count it as a major failure of extended deterrence.

Alternative Explanations Are Not Satisfying

Some have suggested alternative explanations which all rest, to some extent, on the idea that international society has undergone major transformations since 1945: the development of international institutions, the progress of democracy, the rise of global trade, etc., to which is often added the memories of the Second World War. Thus for authors such as John Mueller, nuclear weapons played a marginal – non-necessary – role in the preservation of peace.9 The Soviet Union, it is also argued, was a status quo power in Europe which would not have taken the risk of a major war on the continent.

But such explanations are not satisfying. The rise of international trade from 1870 onwards did not prevent the First World War: Norman Angell’s “Great Illusion” was a fallacy. The construction of a new global order based on the League of Nations did not prevent the Second.10 Kenneth Waltz reminds us that “in a conventional world even forceful and tragic lessons have proved to be exceedingly difficult for states to learn”.11 In the same vein, Elbridge Colby holds that such cultural argumentation “markedly overestimates the durability of historically contingent value systems while seriously downplaying the enduring centrality of competition, fear, uncertainty and power”.12 Major powers have continued to use military force in deadly conflicts, especially in the two decades after 1945: “war fatigue” is a limited and rather recent phenomenon. As for democratization, it is obviously a red herring: during the Cold war, the risk of major war was between pro-Western (not all of them democratic until at least the late 1970s) and totalitarian regimes.

No one knows how a “non-nuclear cold war” would have unfolded in Europe. However, without nuclear weapons, Washington might have hesitated to guarantee the security in Europe (“no nukes, no troops”), and might have returned to isolationism; and without US protection, the temptation for Moscow to grab territory in Western Europe would have been stronger. And as Michael Quinlan puts it, in order to claim that nuclear deterrence was key in the preservation of peace, one does not need to postulate a Soviet desire for expansionist aggression: it is enough to argue that “had armed conflict not been so manifestly intolerable the ebb and flow of friction might have managed with less caution, and a slide sooner or later into major war, on the pattern of 1914 or 1939, might have been less unlikely”.14

Alternative explanations might not even suffice to explain the absence of conflict among European countries: the integration process which began in 1957 and culminated with the creation of the European Union in 1991 might have been much more difficult without the US umbrella.15 Neither are they satisfying regarding regional powers. It is hard to believe that the political, economic and cultural factors mentioned above are enough to explain the absence of a major conventional war involving Israel, India or Pakistan since these countries have become nuclear powers.16

Deterrence has limited the scope and intensity of conflict among the major States. If crises in Europe, as well as wars in Asia and the Middle East, did not turn into global conflicts, it is probably due largely to nuclear weapons. The fear of nuclear war and the precautions taken by decisionmakers during the Cold war to reduce the risks of direct conflict have been made clear by a collective study that contradicts Mueller’s thesis (Gaddis, Gordon, May and Rosenberg, 1999).3

A former Russian official even writes:

I dare claim and am ready to prove that nuclear weapons were the greatest ‘civilizing tool’ for these elites. They cleansed their ranks of all radicals and ideologues, and they strengthened the pragmatists who saw their main goal in averting a nuclear war or the clashes that had the potential to escalate to a nuclear conflict. 18

One could go as far as saying that the international stability obtained thanks to nuclear deterrence (in its national and extended forms) has been a form of “global common good”. For all non-nuclear weapons States benefitted from it during the past 65-plus years – even though some of them suffered from the indirect conflicts made possible by the stability-instability paradox. Without it, for instance, it is dubious that Asia would have known the peace and stability that allowed for its massive transformation and development, leading to hundreds of millions of human beings being lifted out of poverty. Patrick Morgan adds that nuclear weapons may even have hastened the end of the Cold war, by giving confidence to Soviet leaders that the country’s survival would be assured even after the loss of the Eastern European *glacis*.19

#### Ongoing conflict in Korea, Taiwan, the Middle East, and Europe will escalate to great power nuclear war without deterrence

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In light of recent geostrategic developments, some former U.S. defense experts are calling for the United States dramatically to curtail its nuclear deterrent.

These experts assume that the deterrent value of nuclear weapons is waning and that since the it spends far more on overall defense than do other nations, the U.S. can afford to cut back in this area.[2]

But are such recommendations unwise? Absolutely.

A former U.S. Chief of Naval Operations produced a chart some years ago showing annual deaths per capita prior to the nuclear age, in an era when only conventional deterrence existed. Surprisingly, after the atomic bombs were dropped on Hiroshima and Nagasaki, the worldwide per capita death toll from armed conflict during the next half-century dropped 80%, and during the next seventy years, by more than 90%.[3]

In the half-century before 1945, two conventional world wars were fought, which included the use of chemical weapons and the fire-bombing of cities. Add to that devastation the deaths from the Nazi Holocaust and the mass murders committed in the USSR by Stalin and his successors, and it is clear that hostile behavior by states was the norm even before the nuclear age.

Retired General Brent Scowcroft, National Security Advisor to two U.S. Presidents, once remarked that the two world wars were a testament to the fragility of traditional conventional deterrence.[4]

Since 1945, however, large-scale war between nuclear-armed powers has been avoided. That is not to say that there have been no conflicts between states. The fight between totalitarianism and freedom took the form of a cross-border war in Korea, subversion and guerilla warfare in Vietnam, and state-sponsored terrorism in Africa, Central America and the Middle East, to name just a few. The fight continues today, in the post-Cold War era, despite the "end of history" narrative that promised armed conflict would pretty much end.[5]

Potential major conflicts, however, still are prevented by the U.S. nuclear deterrent: on the Korean peninsula; between China and Taiwan; in the Middle East and in Eastern Europe.

Conflict continues, of course, in the form of Iranian and North Korean terrorist activity, Chinese aggression in the South China Sea, continued Russian subversion in Ukraine and elsewhere, and in various terrorist activities in Africa and the Middle East. Those conflicts have not been prevented even by conventional capabilities, let alone U.S. nuclear deterrent forces. Nevertheless, is the prudent response to jettison a significant portion of U.S. nuclear capability?

The new post-Cold War era still requires the prevention of any number of possible crises from escalating into armed conflict between any of the nine nuclear-armed nations. The era also requires stopping existing conflicts from becoming wholesale nuclear wars.

It is always important to avoid what Israeli missile defense expert Uzi Rubin calls "fortune cookie analysis" -- the claim that the need for nuclear deterrence is over because "it didn't stop 9-11" or today's conflicts.[6]

Terrorist attacks, such as 9-11, were also not prevented by non-nuclear capabilities such as the FBI, Coast Guard, Border Patrol, the military, or intelligence agencies. But the U.S. nuclear deterrent is not there just for today. Any future deterrent needs to be robust and flexible enough to anticipate technological surprise. There can also be sudden changes in regimes and regimes' intentions; these must also be taken into account.

In addition, emerging technological threats such as cyber-attacks, the advanced capabilities of long-range conventional strikes, and the threat of electromagnetic pulse (EMP) attacks are changing the pattern of deterrence among various countries, according to Andrew Krepinevich, president of the Center for Strategic and Budgetary Assessments (CSBA).[7] Even so, as he underscores the need for new deterrent capabilities, he does not minimize the need for a continued powerful nuclear deterrent.

It is not enough to claim that a much smaller, even minimalist, nuclear deterrent, will suffice for today. "Less" does not automatically mean "better." Nor is it enough simply to add up what other countries spend on defense, compare it to what the United States spends, and declare that the two sides need only be relatively equal in defense expenditure for deterrence to be effective.

Deterrence is not about guaranteeing to your adversaries that you will only spend what the adversary deems acceptable to enable a "fair fight." It is important to spend whatever is needed to ensure a credible, capable force. It would be reckless to adopt some arbitrary figure based on what others might spend, or unilaterally to accept sentimental notions about what is "fair."

Unfortunately, there have been a number of recent calls for the U.S. to reduce its nuclear arsenal unilaterally by 85% and to keep no more than 250 nuclear warheads. This low number would roughly equal the warheads fielded by Pakistan and India combined.

What is the basis for such a proposal? Apparently such advocates start with the assumption that a U.S. president will be deterred from taking military action if, in a conflict, upward of 250 enemy warheads were targeted in retaliation on American cities. This logic assumes that one's enemies think the same way as oneself, and consequently, that a small American arsenal of 250 nuclear warheads would suffice to deter would-be adversaries.

But do adversaries really think this way? Ironically, even the advocates of such a minimal nuclear deterrent do not appear to believe their own rhetorical assumptions. Most of the advocates of a minimal nuclear deterrent claim that 400 Minuteman silo-based missiles, spread out over tens of thousands of square miles in five U.S. western states, would be vulnerable to attack by the same enemies who are supposedly interested in attacking only cities. Why would Russia or China target U.S. missile silos and other military assets when presumably all they would need to do to maintain deterrence against the U.S. is hold a few dozen American cities for ransom?

If one is to believe the advocates of minimum deterrence, Russia has plans to attack 400 U.S. missile silos and nearly 50 associated launch control centers. This assault would require Russia to maintain at least 900 warheads, attacking each American ICBM with at least two warheads to ensure a high chance of destroying all of those targets.

But a Russia that had at least 900 warheads would not be balanced by the United States that had only 250.

Deterrence simply does not work the way advocates of minimum deterrent assert.

When a U.S. president orders military commanders to provide deterrence against the country's enemies, this strategy must be measured against what it takes to implement deterrence, and not against a nice round number of nuclear warheads that appears "reasonable."

Further, is a U.S. president comfortable with only the option of striking back at an adversary's cities? Would threatening to incinerate millions even be a moral or workable deterrent strategy? With 250 warheads in total, and perhaps just half of them available for retaliation, the only targets a U.S. president could sufficiently threaten would be an adversary's cities, but not an adversary's military assets -- not to mention if other countries were to pile on, such as Russia, China, North Korea and Iran.

The minimalists argue that destroying a nation's cities would certainly deter any sane national leader. Yet, as Keith Payne, president of the National Institute of Public Policy, explains, many nations have not been deterred from aggression, even by the prospect of losing millions of their own citizens.[8] In efforts to achieve their political objectives, the Soviet Union, Iran, Cambodia, China and North Korea, to mention the most obvious, have slaughtered tens of millions of their own people. In communist nations alone, the number exceeds 95 million.[9] Nazi Germany and Imperial Japan killed and maimed millions of their own people by going to war and continuing the conflict even when their defeat was clearly imminent.

Would the U.S. seek to deter ISIS and Hezbollah this way? Or Iran or North Korea, for that matter?

The weapons or military assets of one's adversaries -- the weapons one would need to hold at risk or target -- are precisely the instruments of state power on which these enemies rely for their status as global or regional powers and prestige. Holding such assets at risk gives the U.S. president the ultimate "stick" with which to threaten to take away the adversary's power: his military assets.

Today, non-state terrorist organizations also have such assets, as seen from fighting ISIS, Al Qaeda, Hamas Hezbollah, the FMLN and FARC.

Thus, holding at risk, or being able to destroy a significant number of, say, Russian submarines, missile silos, bomber bases, and other instruments of military power, thereby leaving Russia unable to act as a major power, is not an attempt to "go first" in a crisis or "get the jump" on one's enemies. Instead, it merely places at risk all the instruments of state power -- consisting of hundreds of militarily critical targets -- upon which, for instance, a Russian or Chinese head of state relies for world power status.

This plan requires a nuclear deterrent capable of striking back at an enemy with sufficient surviving nuclear warheads, even after absorbing an enemy's initial strike against one's own military assets.

A deterrent strategy such as the U.S. has today leaves nuclear-armed adversaries with only one sound choice in a crisis. Either they risk "Armageddon" and use all their nuclear weapons early in a crisis, to avoid seeing any of their military assets destroyed by the U.S. in a subsequent retaliatory strike; or they stand down, not launching their nuclear weaponry, and instead seek to end any crisis through diplomatically. This is the essence of deterrence. It is one that the late American diplomat Paul Nitze described as the "Not Today, Comrade" option.[10] Today it would be, "Not Today, Jihadi."

Such a deterrent strategy, as advocated here and reflected in America's current nuclear modernization plans, stands the test of logic. If an adversary used all its nuclear forces against the U.S. in a first strike, such an attack would invite a massive retaliatory strike from the U.S. that would leave an attacker completely destroyed.

But that, of course, requires a survivable U.S. deterrent force to begin with; not one subject to being eliminated by an enemy's first strike because the U.S. deterrent was so small that it was no deterrent at all.

According to the Obama administration, to guarantee maximum flexibility in a crisis so that a president can be confident he has a survivable deterrent, a robust deployment of 1550 warheads is required, on a mixture of 12 submarines, 400 ICBMs and 40-60 bombers. Fortunately, this is the number the U.S. can field under the 2010 New Start Treaty with Russia.

Having a nuclear deterrent strategically dispersed among over 500 nuclear assets -- submarines, land-based missiles, and bombers -- means that any enemy attempt to destroy the U.S. nuclear arsenal before the U.S. could use it, would require an unambiguous attack. If an adversary, such as Russia, were to deploy its entire arsenal against the United States, the attack would involve over fifteen hundred warheads.

The U.S. would know from where most of the warheads would be coming: ICBMs flying over the North Pole could easily be seen by U.S. early-warning satellites.

U.S. allies also would see preparations, such as weapons platforms moved, for such a strike. Enemy forces would have to be moved from a day-to-day alert status to heightened alert if there were plans to destroy U.S. nuclear forces in their entirety. That is why the U.S. has, and is planning to keep, more than 500 nuclear assets, including submarines, bombers, and silo-based missiles capable of surviving even the most massive strike.

Deploying only 250 warheads, however -- all of them on submarines, as many minimal deterrent advocates have proposed -- would make such a secure retaliatory force impossible to maintain. It would also so minimize the size of the U.S. deterrent forces -- to fewer than 10 targets -- as possibly to invite an attack.

By contrast, a flexible U.S. nuclear deterrent policy, based on keeping a large deployment of day-to-day survivable forces -- numbering over 500 missiles, submarines and bombers -- leaves the president options. There is no need to act rashly. An enemy could then be informed that any attack, no matter how large, would invite such a massive retaliation that no benefit whatsoever would accrue to the attacker. Such a force also would allow the president, during a crisis, to make the U.S. deterrent even more survivable over time, by putting more U.S. submarines to sea and placing U.S. bombers on alert or in the air.

Such a new nuclear force of submarines, bombers and ICBMs, which the U.S. is now beginning to produce (albeit after much delay), would allow the U.S. to threaten the entire range of an adversary's military assets, and not be limited only to striking back at an enemy's cities. These twin capabilities -- having a survivable force day-to-day and an even more highly survivable force over time -- would avoid putting all one's nuclear eggs in one minimalist leaky basket.

The U.S. nuclear "Triad" consists of nuclear warheads mounted on platforms based at sea, in the air and on land.

The strategy is called "crisis stability": giving no nuclear power the incentive to strike first, and providing the world with the stability it needs to avoid Armageddon.

For 70 years, this strategy has kept the nuclear peace. This strategy even allowed the U.S. and the USSR, (subsequently Russia) carefully and logically to reduce the number of strategic, long-range nuclear weapons by nearly 90%, while maintaining strategic stability.

In short, nuclear deterrence still matters. If the U.S. deterrent is even more survivable, flexible, and robust, while maintained at lower levels than during the Cold War, such modernization as the U.S. is now planning provides America's leaders with the leverage in a crisis to keep a major armed conflict from breaking out. And it keeps the United States and its allies safe.

### 2ac – leaks – prolif impact

#### Leaks degrade quick nonprolif sanctions

James B. Bruce 16, senior political scientist at the RAND Corporation, retired from the CIA in 2005 as a senior executive officer after nearly 24 years, “Keeping U.S. National Security Secrets: Why Is This So Hard?,” Journal of U.S. Intelligence Studies, Vol. 22, No. 2, Fall 2016, https://www.afio.com/publications/BRUCE\_James\_Keeping\_US\_National\_Security\_Secrets\_from\_AFIO\_INTEL\_FALL2016\_Vol22\_no2\_FINAL.pdf

• Imagery: Surprise Indian Nuclear Tests. Both authorized and unauthorized disclosures about intelligence techniques can be damaging. In this case, classified imagery had been used to support a diplomatic démarche asking India to stand down from its plans to test nuclear weapons in 1995, and was also the topic of press coverage based on leaked intelligence. The 1995 intelligence and diplomatic success backfired in May 1998 when the Indians employed countermeasures learned from these earlier disclosures. They prevented satellite imagery from detecting the signatures of their nuclear test preparations, which caught the United States by surprise.25

• Imagery—Missile Tests in Pakistan. In the mid1990s, dozens of press articles covered whether Chinese M-11 missiles had been covertly transferred to Pakistan. If such missiles had been acquired, Pakistan could be found in violation of the Missile Technology Control Regime (MTCR) to which it was a signatory. Under the National Defense Authorization Act, US law mandated sanctions against proven MTCR violators. Press reports claimed that US intelligence had found missiles in Pakistan but “spy satellites” were unable to “confirm” such missiles. Readers of both the Washington Times and the Washington Post learned that intelligence had failed to convince the Department of State of the missiles’ presence in Pakistan. The message from the press coverage was, in effect, that any nation could avert US sanctions if they neutralized intelligence by shielding missiles from satellite observation. These articles not only suggested to Pakistan and China that some key denial measures were succeeding, but also spelled out specific countermeasures that other potential violators could take to prevent US intelligence from satisfying the standards needed for sanctions under the MTCR.

• Technical Recovery Operation: The Glomar Explorer. The Los Angeles Times published a story on February 7, 1975 that the CIA had mounted an operation to recover a sunken Soviet submarine, its nuclear weapons and cryptographic equipment, from three miles deep on the Pacific Ocean f loor. The New York Times ran its own version of the story the next day. Jack Anderson further publicized the secret operation on national television on March 18. In his memoir, former DCI William Colby wrote: “There was not a chance that we could send the Glomar [Explorer] out again on an intelligence project without risking the lives of our crew and inciting a major international incident…. The Glomar project stopped because it was exposed.”26

Unlike spies, most of whom are eventually caught; leakers of classified information are infrequently identified. The dramatic cases of Snowden (who identified himself) and Manning are notable exceptions. Most leakers remain hidden, and only a handful have ever been prosecuted. The record is dismal. During the four-year period 2009-2013, intelligence agencies filed 153 crimes reports about classified leaks to the press with the Department of Justice. But only 24 were investigated; only half of these were identified, and not a single indictment was issued.27 The scorecard reads: Leakers 153; Intelligence Community 0. In general, our legal system is ill equipped to deal with leakers.28 And the culture that strongly supports First Amendment press freedoms often seems conflicted about whether leakers are really law-breakers and is skeptical that press leaks of intelligence actually do much damage. Perhaps the greatest damage to national security from press leaks, as with espionage, is opportunity costs: The intelligence that will never be collected or used for the nation’s decision advantage because of the damage to or even the loss of classified collection sources and methods compromised by press leaks.

Conclusions

Importantly, American spies and government employees who leak classified information to the press have recently become a national priority for a concerted program to counter the threats they pose to national security. On November 21, 2012, the White House issued a Presidential Memorandum establishing a new Insider Threat Program. It aims to deter, detect, and mitigate such actions by government employees as espionage and unauthorized disclosures of classified information, including “vast amounts of classified data available on interconnected United States Government computer networks and systems.”29 While a notably important initiative, it falls dramatically short of the comprehensive steps really needed.

Until the United States makes game-changing improvements in the way it protects its sensitive and classified information, it cannot expect a fully performing intelligence community, military, or diplomatic corps. Poor performance in keeping secrets correlates directly with diminished capabilities of the major instruments of national power—and thus, a diminution of American power. The relationship is causal. A comprehensive, zero-based, review of how the nation keeps its secrets – and how to get better at it – is long overdue.

#### Nuclear war---sanctions informed by timely notification through intel are key.

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WHAT MAY GO WRONG

As already noted, a fashionable rejoinder to such broodings is to insist that all of these states will be mutually deterred. Any intelligent state, it is argued, should know that using nuclear weapons is militarily self-defeating and that these weapons’ only legitimate mission is to deter military threats. According to this view, fretting about nuclear use and proliferation is mistaken or overwrought.18

But is it? Can states deter military threats with nuclear weapons if their actual use is universally viewed as being self-defeating? Which nuclear-armed states, if any, actually believe they are militarily useless? As noted earlier, the Russians and Pakistanis clearly do not. Just the opposite, they have gone out of their way to develop battlefield nuclear weapons and plan to use them first to deter and defeat opposing advanced conventional forces. As for the United States, France, and the United Kingdom, all have studiously refused to renounce first use. Israel, meanwhile, insists that, while it will not be first to introduce nuclear weapons in the Middle East, it will not be second. This leaves North Korea—a wild card—and India and China, whose declared no first use policies are either unclear or under reconsideration.19

However, are the days of highly destructive wars— nuclear or nonnuclear—not behind us? Certainly, with the events surrounding September 11, 2001 (9/11), this view has gained increasing support from a number of U.S. and allied military analysts and pundits.20 Reflecting this outlook, the United States and its European allies have turned several Cold War nuclear “survival” bunkers into private real estate offerings or historical tourist sites.21

The problem is that at least two states have not done so. U.S. intelligence agencies have determined that Russia invested over US$6 billion to expand a 400-square-mile underground nuclear complex at Yamantau, a full decade after the fall of the Berlin Wall. This complex is burrowed deep enough to withstand a nuclear attack, and is large enough and provisioned sufficiently to house 60,000 people for months. U.S. intelligence officials believe it is one of a system of as many as 200 Russian nuclear bunkers (see figure 3-7).22

[[FIGURE 3.7 OMITTED]]

China’s nuclear passive defense is no less impressive. In 2009, China’s strategic missile command, the 2nd Artillery Brigade, revealed that it had completed 3,000 miles of dispersed, deep, underground tunnels for the deployment of its nuclear-capable cruise and ballistic missile forces. China spent enormous sums to build this system and is still expanding the complex, known as the Underground Great Wall. The system is said to be designed and provisioned to house thousands of military staff during a nuclear exchange (see figure 3-8).24

[[FIGURE 3.8 OMITTED]]

GOING BALLISTIC

All of this suggests that several nuclear-armed states still believe they may have to endure or engage in nuclear exchanges. Fortifying this suspicion is the increasing capacity states have to deliver both nuclear and nonnuclear payloads quickly against one another. Back in 1962, only the United States and Russia had nuclear-capable missile systems—i.e., cruise or ballistic missile systems capable of delivering a first-generation nuclear warhead (weighing 500 kilograms) 300 kilometers or farther.26 Now, no fewer than 24 countries have perfected or acquired such systems, and nine can launch a satellite into orbit—i.e., have mastered all that is needed to deploy an intercontinental ballistic missile (ICBM). In addition, the United States, China, Iran, South Korea, Israel, and key NATO states are all working on precision conventional missiles capable of knocking out large military bases and major naval surface combatants that, only a few decades ago, were difficult or impossible to destroy without using nuclear weapons.27 More nuclear-capable missile states are likely to emerge (see figure 3-9).

[[FIGURE 3.9 OMITTED]]

The strategic uncertainties these missile trends can generate are difficult to exaggerate. First, the proliferation of long-range missiles allows many more countries to play in any given regional dispute. One way to measure a state’s diplomatic potential to influence others militarily is simply to map out the range arcs of its deployed missiles. Today, increasingly, these arcs and the diplomatic-political “power” shadows they cast overlap. Consider Iran: its missiles now target Israel, Egypt, the United Arab Emirates (UAE), Russia, Pakistan, France, Saudi Arabia, China, and the United Kingdom.

This is a very different world than that of a half-century ago. In 1962, when alliance loyalties within the Communist and Free World Blocs were at their height, only Russia and America had missiles aimed at each other. Now, there is no Communist Bloc, what remains of the Free World alliance system (e.g., NATO; Australia, New Zealand, the United States Security Treaty [ANZUS]; etc.) is relatively weak, and nuclear-capable missiles in hotspots like the Persian Gulf could be fired from any number of states—both near and far. For nuclear-armed states, this situation places a premium on protecting their nuclear weapons-related systems against surprise attack.29 It also raises first-order questions about nuclear escalation, which brings us to the second reason more missiles in more hands is a major worry: these missiles also can act as conventional catalysts for nuclear wars.

Increasingly, with precision guidance and advanced munitions technologies, it is possible to destroy targets that once required nuclear weapons—e.g., large air strips and air fields, command centers, naval ports, and even large, moving surface ships—with a handful of precise, conventionally-armed missiles instead. This has raised the prospect of states being able to knock out a significant portion of an opponent’s key military forces without having to use nuclear weapons.30

The good news is that this should make the initial use of nuclear weapons less likely. The bad news is that with enough precision guidance capabilities, a state might be tempted to initiate combat in the expectation of winning without ever having to go nuclear and end up miscalculating badly.

WAR SCENARIOS

A real-world case, much discussed by Pakistani security analysts, is the mid-term prospect of an Indian conventional missile decapitation of Pakistani nuclear strategic command and control centers. The Indians, in this scenario, would use precise, offensive, longrange missiles to destroy these centers. Then, New Delhi could deter any remaining Pakistani retaliatory nuclear strike with India’s much larger nuclear forces and with Indian nonnuclear missile defenses. Finally, India could prevail against Pakistani armor and artillery, with superior Indian military conventional forces.

To hedge against this prospect, Pakistan ramped up its nuclear arms production and is deploying its nuclear weapons in ways designed to complicate Indian efforts to destroy them (e.g., delegation of launch authority under certain circumstances, forward deployment, dispersal, mobility, etc.). All of these methods only increase the prospects for nuclear use and have goaded India to develop new nuclear options of its own.

Beyond this, advanced conventional weapons might ignite a nuclear conflict directly. Again, consider India and Pakistan. After being targeted by so many Pakistani-backed terrorist attacks, the Indian Government has developed a conventional counterstrategy known as “Cold Start.” Under this approach, India would respond to Pakistan-backed terrorist attacks by quickly seizing a limited amount of Pakistani territory with quick alert, forward deployed Indian forces (i.e., that could launch from what Indian military planners call a “cold start”). The idea here would be to threaten to take a limited amount of territory that Pakistan holds dear, but not enough to prompt Pakistan to attack India with its nuclear weapons.

Unfortunately, India’s adoption of its Cold Start plan has had nearly the reverse effect. Shortly after New Delhi broached this strategy, Pakistani military officials announced their intent to use tactical nuclear weapons against any invading Indian force and deployed new, short-range nuclear-capable tactical missiles along the Pakistani-Indian border precisely for this purpose. India has responded by deploying tactical missiles of its own. It is unclear just how serious either India or Pakistan are about carrying out these war plans, but this uncertainty is itself a worry.31

Of course, relying on nuclear weapons to counter conventional threats is not unique to Pakistan. Moscow, faced with advanced Chinese and NATO conventional forces, has also chosen to increase its reliance on tactical nuclear weapons. For Russia, employing these weapons is far less stressful economically than trying to field advanced conventional forces and is militarily pragmatic, given Russia’s shrinking cohort of eligible military servicemen. China, in response, may be toying with deploying additional tactical nuclear systems of its own.32

CHINA AND THE NUCLEAR RIVALRIES AHEAD

All of these trends are challenging. They also suggest what the next strategic arms competition might look like. First, if the United States and Russia maintain or reduce their current level of nuclear weapons deployments, it is possible that at least one other nuclear weapons state may be tempted to close the gap. Of course, in the short- and even mid-term, Pakistan, Israel, and India could not hope to catch up. For these states, getting ahead of the two superpowers would take great effort and at least one to three decades of continuous, flat-out military nuclear production. It is quite clear, moreover, that none of these states have set out to meet or beat the United States or Russia as a national goal.

China, however, is a different matter. It clearly sees the United States as a key military competitor in the Western Pacific and in Northeast Asia. China also has had border disputes with India and historically has been at odds with Russia as well. It is not surprising, then, that China has actively been modernizing its nuclear-capable missiles to target key U.S. and Indian military air and sea bases with advanced conventional missiles, and is developing missiles that are even more advanced to threaten U.S. carrier task forces on the open seas. In support of such operations, China is also modernizing its military space assets, which include military communications, command, surveillance, and imagery satellites and an emerging antisatellite capability.33

Then there is China’s nuclear arsenal. For nearly 30 years, most respected Western security analysts have estimated the number of deployed Chinese nuclear warheads to be between 190 and 300.34 Yet, by any account, China has produced enough weapons-usable plutonium and uranium to make up to four times this number of weapons. Why, then, have Chinese nuclear deployments been judged to be so low?

First, China has experienced first-hand what might happen if its nuclear weapons fell into the wrong hands. During the Cultural Revolution, one of its nuclear weapons laboratories test fired a nuclear-armed medium-range missile over heavily populated regions of China and exploded the device. Not long after, Mao Zedong ordered a major consolidation of China’s nuclear warheads and had them placed under much tighter centralized control. Arguably, the fewer nuclear warheads China has, the easier it is for its officials to maintain control over them.35

Second, and possibly related, is China’s declared nuclear weapons strategy. In all of its official military white papers since 2006 and in other forums, Chinese officials insist that Beijing would never be first to use nuclear weapons and would never use them against any nonnuclear weapons state. China also supports a doctrine that calls for a nuclear retaliatory response that is no more than what is “minimally” required for its defense. Most Western Chinese security experts have interpreted these statements to mean that Beijing is interested in holding only a handful of opponents’ cities at risk. This, in turn, has encouraged Western officials to settle uncertainties regarding Chinese nuclear warhead numbers toward the low end.36

What China’s actual nuclear use policies might be, though, is open to debate. As one analyst quipped, with America’s first use of nuclear weapons against Japan in 1945, it is literally impossible for any country other than the United States to be first in using these weapons. More important, Chinese officials have emphasized that Taiwan is not an independent state and that under certain circumstances, it may be necessary for China to use nuclear weapons against this island “province.” In addition, there are the notso-veiled nuclear threats that senior Chinese generals have made against the United States if it should use conventional weapons against China in response to a Chinese attack against Taiwan (including the observation that the United States would not be willing to risk Los Angeles to save Taipei).37

Finally, as China deploys more land-mobile and submarine-based nuclear missile systems, there will be increased technical and bureaucratic pressures to delegate more launch authority to each of China’s military services. China’s ballistic missile submarines already have complete nuclear systems under the command of their respective submarine captains. As China deploys ever more advanced road-mobile nuclear missiles, their commanders may want to have similar authority. Historically, in the United States and Russia, such delegation of launch authority came with increased nuclear weapons requirements.38

The second cause for conservatism in assessing China’s arsenal is the extent to which estimates of the number of Chinese warheads have been tied to the observed number of Chinese nuclear weapons missile launchers. So far, the number of these launchers that have been seen has been relatively low. Moreover, few, if any, missile reloads are assumed for each of these missile launchers and it is presumed only a handful of China’s missiles have multiple warheads. The numbers of battlefield nuclear weapons, such as nuclear artillery, are also presumed to be low or nonexistent.

All of this may be right, but there are reasons to wonder. The Chinese, after all, claim that they have built 3,000 miles of tunnels to hide China’s nuclear-capable missile forces and related warheads and that China continues to build such tunnels. Employing missile reloads for mobile missile systems has been standard practice for Russia and the United States. It would be odd if it were not also a Chinese practice, particularly given China’s growing number of land-mobile solid-fueled rocket and cruise missile systems. With China’s recent development of the DF-41, a massive, mobile, nuclear-armed ICBM, and its deployment of multiple independently targetable re-entry vehicles (MIRVs) on its silo-based DF-5s, U.S. authorities believe China is deploying a new generation of MIRV missiles.39 As already noted, several experts believe China may be considering battlefield artillery for the delivery of tactical nuclear shells.

Precisely how large is China’s nuclear arsenal, then? The answer is unclear. The Chinese say they are increasing the size of their nuclear weapons arsenal “appropriately.”40 They have not yet said by how much. General Viktor Yesin, the former chief of Russia’s strategic rocket forces, told U.S. security experts in 2012 that China may have more than 900 deployed nuclear weapons and another 900 nuclear weapons stored in reserve.41 This estimate, which is roughly seven times greater than most analysts believe Beijing possesses, would give China roughly as many warheads as the United States currently has deployed.42 Putting aside how accurate this Russian projection might be, the first problem it and other larger estimates present is how sound long-term U.S. and Russian strategic plans might be. It hardly is in Washington’s or Moscow’s interest to let Beijing believe it could threaten Taiwanese, Japanese, American, Indian, or Russian targets conventionally because China’s nuclear forces were so large Beijing could assume they would deter any of these states from ever responding militarily (see figure 3-10).

[[FIGURE 3.10 OMITTED]]

Yet another question that a much larger Chinese nuclear strategic force would raise is how it might affect future U.S.-Russian strategic arms negotiations. As China has increased its deployments of highly precise, nuclear-capable missile systems, Moscow has chaffed at the missile limits that the Intermediate-Range Nuclear Forces (INF) Treaty imposes on its fielding similar systems. Since the conclusion of New START in 2011, Moscow has balked at making any further cuts unless China is included in the negotiations. Shortly after several U.S. security analysts and Members of Congress spotlighted Russian moves to break out of the INF Treaty,44 the State Department announced that Russia, in fact, had violated the treaty.45 American hawks, meanwhile, have warned against the United States making further nuclear cuts lest other states, like China, quickly ramp up their force levels to meet or exceed ours. Yet, U.S. President Donald Trump has voiced a desire to do so.46 All of this suggests the imperative for Washington and Moscow to factor China into their arms control and strategic modernization calculations. The question is how.

OTHER INTERESTED PARTIES

Unfortunately, getting a sound answer to this question is not possible without first considering the security concerns of states other than the United States, Russia, and China. Japan, for one, is an interested party. It already has roughly 2,000 weapons’ worth of separated plutonium on its soil. This plutonium was supposed to fuel Japan’s light water and fast reactors, a fleet that, before the accident at Fukushima, consisted of 54 reactors. After the accident, Japan shut down all of these plants, decided to reduce its reliance on nuclear power as much as possible, and is projected in the mid-term to bring no more than one-third of its light water reactor fleet back online.47 Meanwhile, Japan’s fast reactor program has been effectively frozen since the 1990s due to a series of accidents. Japan, the United States, and France plan on cooperating on a renewed effort, but it is unlikely that a new fast reactor will be operating in Japan for decades.48

A related and immediate operational question is whether Japan will bring a US$20-billion-plus commercial nuclear spent-fuel reprocessing plant capable of producing roughly 1,500 bombs’ worth of plutonium a year at Rokkasho online sometime in the spring of 2021. This plutonium recycling effort has been controversial. The original decision to proceed with it was made by former Prime Minister Yasuhiro Nakasone and can be tied to Japanese considerations of developing a plutonium nuclear weapons option. Although this plant is not necessary for the management of Japan’s spent fuel, the forward costs of operating it could run as high as US$100 billion. It is expected to produce 8 tons of weapons-usable plutonium annually—enough to produce nearly as many first-generation nuclear weapons as is contained in America’s entire deployed nuclear force (see figure 3-11).49

[[FIGURE 3.11 OMITTED]]

In light of the questionable technical and economic benefits of operating Rokkasho, it would be difficult for Tokyo to justify proceeding with this plant’s operation unless it wanted to develop an option to build a large nuclear weapons arsenal.51 Given Japan currently retains nearly 11 tons of mostly reactor-grade plutonium on its soil, enough to make roughly 2,000 first-generation nuclear warheads, there is no immediate need to bring Rokkasho online to assure a military nuclear option.

However, Japan says it is committed to eliminating this surplus plutonium stockpile and recently surrendered roughly 800 kilograms of weapons-grade plutonium and uranium to the United States in pursuance of this stated goal.52 In this context, keeping Rokkasho on the ready could be seen as a national security insurance policy. Some leading Japanese figures clearly see it in this light,53 and technically, there is little question that the plutonium could be used to make effective weapons.54 In this regard, even under a much less nationalistic, pro-nuclear government than the one now in office, Japan’s National Diet in the fall of 2012 felt compelled to clarify in law that the purpose of the country’s atomic energy program included supporting Japan’s “national security.”55 Many nuclear observers outside of Japan saw this as a not-so-veiled reference to Japan’s “civilian” plutonium-fuel cycle program.

Certainly, South Korean and Chinese officials and commentators spotlighted this prospect with concern.56 Their apprehensions, then, raise the questions: What might happen if Japan ever decided to open Rokkasho? How could this avoid stoking South Korean ambitions to make their own nuclear fuels? What of China’s longterm efforts to modernize its own nuclear weapons systems and its “peaceful” scheme of building a copy of Rokkasho itself? Would starting up Rokkasho not catalyze these efforts? What if Japan’s startup of Rokkasho came after some Chinese or North Korean military provocation? Might this not trigger an additional round of Chinese, North Korean, and South Korean military and nuclear hedging actions?57

Yet another “peaceful” East Asian nuclear activity that bears watching is the substantial plans both Japan and China have to enrich uranium. Both countries justify these efforts as being necessary to fuel their light water reactor fleets. There are several difficulties with this argument, though. First, both countries already have access to foreign uranium enrichment services that are more than sufficient to supply current demand. Second, any effort to become commercially self-sufficient in enriching uranium in the name of “energy independence” is questionable for Japan and China, given their lack of economic, domestic sources of highgrade uranium ore.

Even assuming China could stop importing enrichment services, as it now does from URENCO of Europe and Minatom/Tenex of Russia, then it still would want to import much of its uranium ore from overseas. Of course, operating a commercial enrichment capacity could afford a bargaining advantage to secure cheaper foreign enrichment service contracts. In China’s case (and Japan’s and South Korea’s cases as well), such advantage can be had at enrichment capacities far below those they have or want to acquire. Again, both uranium ore and enrichment services are readily available globally at reasonable prices and are projected to remain so. Uranium yellowcake spot prices are currently at historic lows. As for enrichment services, the world’s current surplus of enrichment capacity is projected to persist at least through 2035.58 In short, there is no lack of enrichment services internationally and, given China’s access to Russian and European enrichers, there is little or no immediate economic imperative for building more.

China, however, sees things differently. It currently has enough capacity to fuel a dozen large reactors and is building more than enough centrifuges to fuel 58 gigawatts of nuclear capacity, optimistically projected to be online by 2020.59 Some of this projected capacity may be set aside for possible reactor exports beyond those China is making to Pakistan. Yet, again given the foreign enrichment services glut, none of this enrichment expansion makes economic sense. What is all too clear, however, is just how much of a military option this enrichment capacity affords. By 2020, China’s planned enrichment capacity could fuel all of its planned civilian reactors and still produce additional material sufficient for more than 1,500 nuclear weapons a year.60

Japan’s enrichment plans differ only in scale. Like China, it too lacks economic, domestic sources of highgrade uranium ore. As for Tokyo’s current enrichment capacity, it can fuel about eight reactors a year. If Japan used all of this enrichment capacity for military purposes, it could make roughly 4,500 kilograms of weapons-grade uranium annually—enough to make at least 200 first-generation nuclear weapons.61 Japan plans to upgrade its uranium enrichment centrifuges. The question, in light of the global surplus of commercial uranium enrichment capacity, though, is why (see figure 3-12).

[[FIGURE 3.12 OMITTED]]

As noted, China or South Korea agree with none of these Japanese nuclear fuel-making activities and plans. Seoul, in a not so well-disguised security hedge, began to press Washington in 2009 for permission to separate “peaceful” plutonium from U.S.-origin spent fuel and to enrich U.S.-origin uranium in South Korea.

These requests coincided with several other South Korean security-related demands. The first came after North Korea’s sinking of the Cheonan and the bombardment of Yeonpyeong Island. South Korean Parliamentarians asked the United States to redeploy U.S. tactical nuclear weapons on South Korean soil. Washington refused.63 Then Seoul pushed Washington to extend the range of its nuclear-capable missiles from 300 to 800 kilometers, and be practically freed from range limits on its cruise missile and space satellite launchers. Washington relented.64 As for South Korea’s nuclear demands, Seoul is likely to continue to press its case.65

The question is what is next? Will Japan start Rokkasho as planned in 2021? What commercial nuclear fuel making activities, if any, might Washington allow South Korea and China to engage in?66 Will North Korea or China continue to engage in provocations that will increase Japanese or South Korean demands for more strategic military independence from their American security alliance partner?

The two popular rejoinders to these questions are that there is no reason to worry. Most experts insist that neither Japan nor South Korea would ever acquire nuclear weapons. The reasons, they argue, are simple. It would not only undermine the nuclear nonproliferation regime that they have sworn to uphold and strengthen, but it would also risk their continued security ties with their most important ally, the United States.

Perhaps; but when South Korea first doubted its American security guarantees in the 1970s, it tried to get nuclear weapons.67 Those doubts continue today as North Korea builds up its nuclear and nonnuclear forces against the South.68 On May 29, 2014, South Korea’s president noted that, if North Korea tested another nuclear weapon, it would be difficult “to prevent a nuclear domino from occurring in this area.” This would be a clear warning to not only North Korea, but also the United States and China, that, if they fail to prevent Pyongyang from further perfecting its nuclear force, Japan and South Korea might well acquire nuclear weapons of their own.69 After Pyongyang conducted its fourth nuclear test on January 6, 2016, South Korean and Japanese politicians commented on the legality and desirability of developing nuclear weapons options.70 They repeated these points when Pyongyang tested its fifth device later in 2016.71

Yet another optimistic view argues that it may actually be in Washington’s interest to let Japan and South Korea go nuclear. Letting them arm might actually tighten U.S. relations with these key allies, while reducing what the United States would otherwise have to spend for their protection. Implicit to this argument is the hope that neither Seoul nor Tokyo would feel compelled to acquire many weapons—i.e., that like the United Kingdom, they would eagerly integrate their modest nuclear forces with that of America’s larger force, share their target lists with Washington, and that Washington would do likewise with them (as Washington already has with London).72

Again, this is plausible. However, it is worth noting that Japan and South Korea are not the United Kingdom. Early on, the United Kingdom understood its nuclear weapons efforts would ultimately be subordinate to and in the service of maintaining its “special relationship” with Washington (and scaled down its nuclear efforts accordingly). With the Japanese and South Koreans, though, their nuclear efforts would unavoidably be seen as a vote of no confidence in Washington’s nuclear security guarantees. As such, these efforts would have to deal with demands by nationalists eager to build a truly independent nuclear force of much more ambitious dimensions.73 More important (and more likely), even if Japanese and South Korean officials wanted to keep their forces subordinate to those of the United States, they might still be driven to acquire larger nuclear forces of their own to deal with the likely military reactions of China, North Korea, and other nuclear states.74

Consider the action-reaction dynamic that Seoul or Tokyo going nuclear might set into motion with Beijing and Pyongyang. Presumably, in all cases (China included), each state would try to protect its strategic forces against possible attacks by building more passive defenses (hardening, mobilizing, tunneling, etc.). They also would focus on building up their offensive forces (both nuclear and nonnuclear) so they might eliminate as much of each other’s strategic forces at sea and on land as soon as any war began (this to limit the damage they would otherwise suffer). Finally, they would increase the number of nuclear weapons assets, missile portals, and other strategic aim points to prevent any of their adversaries from thinking they could “knock out” their retaliatory forces. This, roughly, is what unfolded during the Cold War rivalry between Washington and the Soviet Union. As was the case for Russia and the United States then, maintaining one’s relative nuclear position could easily drive up East Asian nuclear weapons requirements well beyond scores or even hundreds of weapons.75

Potentially catalyzing this rivalry further are the actions China’s immediate nuclear neighbors might take. As has already been noted, the Russians are unlikely to reduce their nuclear weapons deployments if the Chinese increase theirs. As for India, it already has roughly 100 nuclear weapons and many hundreds of bombs’ worth of separated reactor-grade plutonium it claims it can fashion into nuclear weapons. It is hedging its nuclear bets even further with plans to build six unsafeguarded plutonium-producing breeder reactors by 2030 and an enrichment plant that may double its production of weapons-grade uranium.76 Late in 2011, India announced it was working with Russia to develop a terminally guided ICBM in response to Chinese medium-range ballistic missile deployments near India’s borders.77

New Delhi has also pushed the development of a nuclear submarine force, submarine-launched ballistic missiles (SLBM), missile defenses, long-range cruise missiles, and improved strategic command and control and intelligence systems. India is not yet competing with China weapon-for-weapon. However, if China were to increase its nuclear weapons deployments significantly, Indian leaders might argue that they had no other choice but to increase their own nuclear holdings.

This then brings us back to Pakistan. It has done all it can to keep up with India militarily. Since Islamabad is already producing as much plutonium and highly enriched uranium as it can, it would likely seek further technical assistance from China and financial help from its close ally, Saudi Arabia. Islamabad may do this to hedge against India, whether China or India build their nuclear arms up or not. There is also good reason to believe that Saudi Arabia may want to cooperate on nuclear weapons-related activities with Pakistan or China to help Saudi Arabia hedge against Iran’s growing nuclear weapons capabilities. It is unclear if either China or Pakistan would actually transfer nuclear weapons directly to Saudi Arabia or choose instead to help it merely develop aspects of a “peaceful” nuclear program, including reprocessing and enrichment. They might do both.78

In this regard, Saudi Arabia has made it known that it intends to build up its “peaceful” nuclear energy capabilities and will not forswear its “right” to enrich uranium or to reprocess plutonium.79 This would constitute one of the most lucrative, best financed near and mid-term nuclear power markets in the world. The reactors Saudi Arabia might build also could serve as the basis for development of a major nuclear weapons option. As Saudi Arabia’s former head of intelligence told NATO ministers, the kingdom would have to get nuclear weapons if Iran did.80 Further underscoring this point, during a March 2018 visit to Washington, Saudi Crown Prince Mohammed bin Salman stated that if Iran acquires a nuclear weapon, Saudi Arabia would do so as well “as soon as possible.”81

Saudi Arabia is not the only Muslim state to be pursuing a nuclear future. Turkey also announced an ambitious “peaceful” atomic power program shortly after Iran’s nuclear enrichment efforts were revealed in 2002, and expressed an interest in 2008 in enriching its own uranium.82 Given Turkish qualms about Iran acquiring nuclear weapons, the possibility of Ankara developing a nuclear weapons option (as it previously toyed with doing in the late 1970s)83 must be taken seriously. In addition, Algeria and Egypt (political rivals) and Syria (a historical ally of Iran) all have either attempted to develop nuclear weapons options or refused to forswear making nuclear fuel, a process that can bring them within weeks of acquiring a bomb. Algeria now has enough plutonium and the skills to separate it from spent fuel to make several bombs’ worth.84 Egypt, which has long complained about Israeli nuclear weapons and previously attempted to get nuclear weapons, has signed a deal with Russia to construct its first large power reactor.85 Israel, meanwhile, continues to make nuclear weapons materials at Dimona, and all of these states have nuclear-capable missile systems (see figure 3-13).86

[[FIGURE 3-13 OMITTED]]

Very little of this rhymes with the world a halfcentury ago. In the early 1960s, the only countries with civilian nuclear power reactors were the United States, the United Kingdom, and Russia. There are now 31 states. Most of these are in Eastern and Western Europe, but as figure 3-13 shows, other states in far less stable regions are hoping to bring their first nuclear power plants online before 2035. This trend, particularly in the Far and Middle East, has strategic implications.87

As already noted, each of these plants—even the most proliferation-resistant light water reactor types— can be regarded as a “nuclear bomb starter kit.” Although the nuclear industry has consistently promoted the mistaken idea that the plutonium power reactors produce is unsuitable to make bombs, these reactors can be operated not only to produce large amounts of reactor-grade plutonium that can be made into bombs, but also large amounts of weapons-grade and near-weapons-grade plutonium as well.88 In fact, in their first 12-18 months of normal power production operation, these reactors can produce roughly 50 bombs’ worth of near-weapons-grade plutonium. If refueled every 10 months, they can produce roughly 30 bombs’ worth of weapons-grade plutonium.89 The plants can and have been used as covers to acquire weapons related technology, hardware, and training.90 Finally, the massive amounts of low-enriched fresh fuel stored at these reactors for safety reasons can afford a source of low-enriched uranium (LEU) to jumpstart a uranium enrichment weapons option.91 That is why efforts are made to control the export of these plants and why they are routinely inspected to guard against military diversions.92

As for declared nuclear fuel making plants—uranium hexafluoride and enrichment facilities, plutonium separation and fuel fabrication plants, etc.—a deeper problem occurs that relates to the limits of International Atomic Energy Agency (IAEA) safeguards themselves. Even under ideal circumstances, the agency allows that, with commercial-sized plants, it can lose track of special nuclear material. The margins of statistical error associated with the inspection of these plants are egregiously large. Consider the reprocessing plant Japan wants to operate at Rokkasho. In this case, the agency can be expected to lose track of roughly 250 kilograms (i.e., roughly 50 first-generation bombs’ worth) a year. This means that nearly 50 bombs’ worth of weapons-usable plutonium could possibly go missing from Rokkasho without setting off any international inspection alarms at all.93

Will the world be able to cope with the further spread of such “peaceful” nuclear facilities? Given the additional noted missile, fissile, and weapons trends, what, if anything, can be done to avoid their military diversions or worse—more widespread nuclear weapons competitions and, far worse, a possible accidental or intentional use of nuclear weapons?

[[CHAPTER 3 ENDNOTES OMITTED]]

CHAPTER 4. WHAT MIGHT HELP

These trends invite disorder. How much depends on how well the United States, Russia, China, and other key states deal with them.

Despite Washington’s strained relations with Moscow, U.S. President Donald Trump is still interested in negotiating more nuclear constraints with Russia.1 The United States has encouraged all countries to protect civilian and military nuclear facilities and stores of weapons-usable nuclear materials against theft or sabotage. The United States has tried to persuade non-weapons states to forgo civilian reprocessing or enrichment.

These U.S. nuclear control initiatives, even if successful, still leave much to be done. Several related areas cry out for greater attention: nuclear and missile developments in China and East Asia, the global spread of “peaceful” nuclear technology, and the continued failure to develop a consistent, broad approach to preventing nuclear proliferation. This suggests three recommendations.

RECOMMENDATION 1

Clarify China’s strategic military capabilities and promote nonproliferation and arms control measures that limit strategic weapons in Asia. Most current nuclear arms control initiatives (e.g., the Limited Test Ban Treaty [LTBT], the Comprehensive Nuclear-TestBan Treaty [CTBT], the Fissile Material Cut-off Treaty [FMCT], limits on missile defenses, Strategic Arms Limitation Talks [SALT], Strategic Arms Reduction Treaty [START], and Intermediate-Range Nuclear Forces Treaty [INF]) were originally designed to limit arms competitions between the United States and Russia. The Nuclear Nonproliferation Treaty (NPT) was initially designed to reduce the prospects of nuclear proliferation mostly in Europe. As the world’s economic and strategic center of gravity shifts toward Asia, though, it would make sense to tailor more of our control efforts toward this region.

Wither Beijing?

This means, first, clarifying China’s strategic capabilities. Beijing’s revelations that it has built 3,000 miles of deep tunnels to protect and hide its dual-capable missiles and related nuclear warhead systems, suggest the need to reassess estimates of China’s nuclear-capable missile and nuclear weapons holdings and plans. Are Beijing’s revelations disinformation designed to intimidate? Is it hiding more military assets than we currently assess it has? What is it planning to acquire and deploy? How much military fissile material—plutonium and highly enriched uranium (HEU)—does China currently have on hand? How likely is it that China has or will militarize or expand its fissile material holdings? How might China militarize its civilian nuclear infrastructure? How many different types of nuclear weapons does it have or intend to deploy? How much fissile material does each type require? How many missile reloads does China currently have; how many is it planning to acquire? How extensive are Chinese deployments of multiple warheads for the country’s missiles, and how much further might China expand these deployments? For which missile types and in what numbers? How many nuclear and advanced conventional warheads is China deploying on its missiles, bombers, submarines, and artillery? What are its plans for using these forces? How might these plans relate to China’s emerging space, missile defense, and anti-satellite capabilities? All of these questions, and more, deserve review within the U.S. Government, with America’s allies, and, to the extent possible, in cooperation with India, Russia, as well as China itself.

As a part of this review, it also would be helpful to game alternative war and military crisis scenarios that feature China’s possible use of these forces. These games should be conducted at senior political levels in American and allied governments. Conducting such games should also inform U.S. and allied arms control policies and military planning. With regard to the latter, a key focus would have to be how one might defend, deter, and limit the damage that Chinese nuclear and nonnuclear missile systems might otherwise inflict against the United States, its bases in the Western Pacific, America’s friends and allies, and Russia.

This could entail not only the further development and deployment of active missile defenses, but also of better passive defenses (e.g., base hardening and improving the capacity to restore operations at bases after attacks; hardened command, control, and communication systems; etc.) and possibly new offensive forces—more capable, long-range conventional strike systems to help neutralize possible offensive Chinese operations.

Yet another focus for such gaming would be to clarify the likely consequences of Japanese or South Korean acquisition of nuclear weapons. These games should be held routinely, bilaterally, and multilaterally with our allies and friends and, at times, with all of the key states, including China, represented by informed experts and officials. The aim of such games would not only be to understand just how risky Japanese and South Korean nuclear proliferation might be, but to clarify the risks China and North Korea will run if they continue to build up their missile and nuclear forces.

Controlling Nuclear Missiles

Such gaming should also encourage a review of Washington’s current arms control agenda. Here several specific ideas, which are particularly relevant to Asia, deserve attention. First among these is talks with China, Russia, and other states about limiting groundbased, dual-capable ballistic and cruise missiles. China possesses more of these systems than any other state. Counting American, Russian, Indian, Pakistani, North Korean, South Korean, and Chinese ground-based missiles, Asia is targeted by more such missiles than any other region.

Unlike air- and sea-based missiles, groundlaunched systems can be securely communicated with and fired instantly upon command. As such, they are ideal for use in a first strike. These accurate, dual-capable missiles also can inflict strategic harm against major bases and naval operations when carrying conventional warheads.

Former U.S. President Ronald Reagan referred to these weapons as “nuclear missiles,” and looked forward to their eventual elimination. Toward this end, he concluded the INF Treaty agreement, which eliminated an entire class of ground-based nuclear-capable missiles, and negotiated the Missile Technology Control Regime (MTCR), which was designed to block the further proliferation of nuclear-capable missiles (i.e., rockets and unmanned air-breathing systems capable of lifting over 500 kilograms for a distance of at least 300 kilometers). With the promotion of space-based missile defenses, President Reagan hoped to eliminate enough of such ground-based missiles to eliminate credible nuclear first strike threats.2

Which states have an incentive to eliminate these missiles? The United States eliminated all of its intermediate ground-launched missiles under the INF Treaty. Most of America’s shorter-range missiles are either air-launched or below MTCR range-payload limits. As for U.S. ground-based intercontinental ballistic missiles (ICBMs), they are all based in fixed silos. To avoid being knocked out in any major future nuclear exchange, these missiles may have to be launched on warning. Russia, on the other hand, has a large, road-mobile ICBM force. At the same time, it is worried about growing numbers of long-range, precision missiles that both the United States and China are developing against which it cannot easily defend.3

India and Pakistan have ground-launched ballistic missiles, but some of their most seasoned military experts have called for the elimination of short-range missiles, arguing that these weapons are only likely to escalate border disputes.4 As for China, it has much to gain by deploying more ground-launched missiles, unless, of course, such deployment causes India, Russia, and the United States to react militarily. The United States has been developing hypersonic boost glide systems that could provide it with prompt global strike options. It could base these systems either in the continental United States or in forward bases in the Western Pacific.5 It also has hundreds of silo-based ICBMs that it could convert to deliver advanced nonnuclear payloads, including hypersonic boost glide systems.6 Provoking an uncontrolled competition on the development of these weapons between the United States, China, and Russia would not be in anyone’s long-term interest. Talks about reducing longrange, nuclear-capable ground-based missile systems and preventing the further spread of advanced missile technologies (e.g., hypersonic boost glide technology7 ) to other states should be explored.8

Limiting Forward Nuclear Deployments

Another arms restriction that should be considered is keeping the world’s nuclear-armed states from deploying any additional nuclear weapons in peacetime on the soil of states that lack such weapons. An immediate concern is Saudi Arabia, rumored to be interested in buying nuclear weapons either from China or Pakistan, or in getting either nation to deploy several of their warheads there. Under the NPT, it is permissible for nuclear weapons states to deploy their weapons in states that lack such weapons so long as these weapons stay under the “control” of the donor nuclear weapons state. This provision in the NPT was crafted in the 1960s to allow the United States to continue to deploy tactical nuclear weapons to North Atlantic Treaty Organization (NATO) countries and East Asia, and for the Soviet Union to do so in Warsaw Pact countries.

Although the United States continues to forward base some of its weapons in Europe, long-range bombers and missile systems have made it possible to remove all of the forward deployed U.S. tactical nuclear systems from East Asia. Given that Washington is unlikely to reintroduce them or to increase existing deployments, it may be possible to broker some understanding to forbid any further deployments in exchange for Chinese and Pakistani pledges not to deploy any of their nuclear arms beyond their soil.

With the turmoil in the Persian Gulf region, brokering such an understanding would be timely. It also would have the immediate advantage of engaging Pakistan, a non-NPT member, in some form of nuclear arms restraint. This is something that should be encouraged more generally with nuclear weapons-armed non-NPT members. Pakistan recently announced its willingness to forgo nuclear testing unilaterally.9 Given Pakistan’s rivalry with India, perhaps New Delhi could be persuaded to consider adopting such limits as well. Beyond this, other limits, including on nuclear fissile production, might be sought by not only Pakistan and India, but Israel as well. In this manner, one could begin to view states that are now outside the NPT as being instead potential NPT members in noncompliance—i.e., as states, which by taking steps toward nuclear restraint, might improve their current noncompliant NPT status. Additional nuclear restraints ought also to be promoted among the nuclear weapons armed states. Although, there is no clear legally binding obligation for the nuclear-armed states to disarm, the NPT encourages all states to make good faith efforts to do so.10

Fissile Limits, Starting with China

If the United States could get other states to reduce their nuclear weapons capabilities in a verifiable fashion, it should be open to continuing to do so. Reaching new treaty agreements, though, ought not to be the only measure of progress. Although it may not be possible to conclude a fissile material cutoff treaty anytime soon, all of the other permanent members of the United Nations Security Council (UNSC) should press China to follow their lead in unilaterally forswearing making fissile material for weapons. This, in turn, could be helpful in pressing for moratoriums on “peaceful” nuclear fuel making of uneconomical nuclear weapons-usable fuels as well.11

In this regard, an informal pause on the commercial production, stockpiling, and recycling of plutonium would make sense. A good place to begin would be in East Asia and the Pacific, starting with China, the United States, Japan, and South Korea.12 Here, it is worth noting that the 2012 report of the U.S. Blue Ribbon Commission on America’s Nuclear Future determined that dry cask storage would make more economic sense for the United States to pursue in the management of waste and economic production of nuclear electricity than commercial plutonium recycling in the near and mid-term.13 Meanwhile, America’s efforts to convert weapons plutonium into commercial mixed oxide fuel (MOX) are likely to be terminated.14 As for Japan’s planned plutonium reprocessing and fast reactor programs, Tokyo will have trouble implementing them given its reduced reliance on nuclear power and its termination of its only demonstration sized breeder at Monju. South Korea wants to recycle plutonium in a prototype integrated fast reactor, but this program may well get pushed back considerably. Its planned first fuel loading will be low-enriched uranium (LEU), not plutonium-based fuel.15

China is working with AREVA to build a commercial reprocessing plant nearly identical to the Rokkasho plant in Japan. A sticking point, though, is siting. So far, Beijing has been unable to select a site its public can accept. According to nuclear analysts, Beijing might build this large commercial reprocessing plant by 2030, have it separate plutonium for 10 to 20 years, and stockpile this material to fuel a fleet of commercial breeder reactors.16 This view, in turn, is driven by the expectation that uranium yellowcake will be unavailable after 2050 for anything less than US$130 (current) per pound (i.e., 300 percent more than the price today).17

This uranium price projection is speculative and rebuttable. What is not is the potential military utility of China’s civilian plutonium program. As already noted, the commercial-sized reprocessing plant the Chinese nuclear establishment may decide to build could produce enough plutonium for roughly 1,500 first-generation bombs annually. Assuming China’s first breeder reactor came online by 2040, its first fueling with plutonium would come only after China had amassed well over 15,000 weapons’ worth of plutonium.

Of course, if any of the three East Asian states begins to reprocess plutonium commercially, the other two would almost certainly follow, as much as a security hedge against each other as for any civilian purpose. At a minimum, the United States, France, and Russia should refrain from promoting reprocessing and large fast reactors in the region.18 For similar reasons, China, Japan, and South Korea are each interested in significantly expanding their capacity to enrich uranium even though there is a surfeit of uranium enrichment capacity worldwide. South Korea also is interested in developing naval reactors, which would require enriched uranium fuel.19 This raises the question of how naval reactor fuels might be inspected and controlled by the International Atomic Energy Agency (IAEA), not just in South Korea but also in Brazil, Iran, and Pakistan―states that have also expressed an interest in developing naval reactors.20 To head this off, it would be helpful to call for a freeze on the deployment of any additional commercial uranium enrichment capacity in China, Japan, and South Korea (and North Korea, if possible).21

As already noted, the United States and Russia maintain surplus nuclear weapons and nuclear weapons materials stockpiles, and India, Israel, Pakistan, China, Japan, France, and the United Kingdom hold significant amounts of nuclear explosive plutonium and uranium. This fissile material overhang increases security uncertainties as to how many nuclear weapons these states might have or could fashion relatively quickly. Given the verification difficulties with a proposed fissile material cutoff treaty and the improbabilities of such a treaty being brought into force, it would be useful to consider control alternatives.22

One idea, backed by several analysts and former officials, is a voluntary initiative known as the Fissile Material Control Initiative (FMCI).23 It would call on nuclear weapons-usable material producing states to set aside whatever fissile materials they have in excess of their immediate military or civilian requirements for either final disposition or internationally verified safekeeping. Russia and the United States have already agreed to dispose of 34 tons of weapons-grade plutonium, and have blended down 683 tons of weapons-grade uranium for use in civilian reactors. Much more could be done to dispose of, and end production of, such weapons-usable nuclear materials, not only in the United States and Russia, but also in other fissile-producing states, including those in Asia.24

RECOMMENDATION 2

Encourage nuclear supplier states to condition their further export of civilian nuclear plants upon the recipients forswearing reprocessing spent reactor fuel and enriching uranium and press the IAEA to be more candid about what it can safeguard. Will Iran’s pursuit of “peaceful” nuclear energy serve as a model for Saudi Arabia (which says it wants to build 16 large power reactors before 2035), Turkey (which says it plans to build 20), Egypt (4), and Algeria (3)? When asked, none of these countries’ officials has been willing to forgo making nuclear fuel. So far, only Turkey and the United Arab Emirates (UAE) have ratified the IAEA’s tougher nuclear inspection regime under the Additional Protocol. There also is the outstanding issue of whether the United States will eventually authorize South Korea to recycle U.S.-origin nuclear materials.

All of this should be a worry, since, as already noted, the IAEA cannot find covert enrichment or reprocessing facilities or reactor plants with much confidence (compare to recent history regarding nuclear plants in Iran, Iraq, North Korea, and Syria). Once a large reactor operates in a country, fresh LEU becomes available and raises the possibility that it could be seized for possible further enrichment to weapons grade in a covert or declared enrichment plant. Alternatively, the reactor’s plutonium-laden spent fuel could be reprocessed to produce many bombs’ worth of plutonium. Unfortunately, IAEA inspections at declared commercial-sized uranium hexafluoride and enrichment plants, plutonium separation facilities, and plutonium fuel production plants could lose track of several scores of bombs’ worth of nuclear explosive material annually.

The Gold Standard

Given these points and recognizing that the authority to inspect anywhere at any time without notice is not yet available to the IAEA (even when it operates under the Additional Protocol), any state’s pledge not to conduct reprocessing or enrichment could not be fully verified in a timely manner. Still, securing such a legal pledge would have some value: it would put a violating country on the wrong side of international law if or when it was found out, and would make such action sanctionable. This may not be as much as one wants or needs, but it is far more of a deterrent to nuclear misbehavior than what current nonproliferation limits afford.

Other than the United States, no nuclear supplier state (i.e., Russia, France, Japan, China, or South Korea) has yet required any of its prospective customers to foreswear enriching uranium or reprocessing spent fuel to extract plutonium, or committing to ratify the Additional Protocol. It is unclear how far the United States will push states to do so (i.e., demanding what is called the nonproliferation gold standard for civil nuclear cooperation agreements).25

There is some support in the U.S. Congress for making it more difficult to finalize any future U.S. nuclear cooperative agreements with nonnuclear weapons states like Saudi Arabia unless they agree to the U.S.-UAE nuclear cooperative conditions.26 These congressional representatives believe that by taking the lead on imposing such nonproliferation conditions, the United States would be in a much better position to persuade other nuclear supplier states to do the same.

With the Japanese and South Koreans, close U.S. nuclear cooperation and security guarantees could be leveraged to secure these countries’ agreement to such conditions on their nuclear exports. They and the Chinese want to export reactors based on U.S. designs. It is unclear whether they can do so legally to states that do not have a nuclear cooperative agreement with the United States. China, meanwhile, needs all the help it can get from the United States to complete the Westinghouse-designed reactors it is building and the Chinese variant on which it is basing much of its nuclear future. Moreover, France may have difficulty exporting reactors without significant Asian support.27 With Russia as well as China, the United States should be more candid about the safety issues that the construction and operation of their reactors present and offer to renew or expand nuclear cooperation to help resolve these concerns in exchange for upgrading the nonproliferation conditions on these countries’ nuclear exports.28 Finally, the United States should approach URENCO about requiring recipients of uranium exports not to enrich or reprocess these materials without URENCO’s consent.

Timely Detection

It also would be helpful if the IAEA was more honest about what kinds of nuclear activities and material holdings it can actually safeguard effectively—i.e., which ones it can inspect so as to detect military diversions in a timely fashion and which ones it cannot. As it is, the IAEA is unwilling to make public its assessments of the agency’s ability to meet its own timeliness detection goals (which are hardly strict). Meanwhile, no state, including the United States, has yet done such an assessment of the effectiveness of the agency’s safeguards.29

In the 1960s, 1970s, 1980s, and 1990s, when only a handful of states lacking nuclear weapons were interested in enriching uranium or separating plutonium from spent reactor fuel, this lax approach may have been tolerable. Today, however, Japan, South Korea, Argentina, Brazil, South Africa, Egypt, Turkey, Saudi Arabia, Iran, Vietnam, and Jordan are all either making enriched uranium, reprocessing spent reactor fuels, or reserving their “right” to do so. All of these states are members of the NPT and have pledged not to acquire nuclear weapons. Should we assume that none of them would ever cheat? What confidence should we have that the IAEA would be able to detect possible diversions early enough for the other NPT members to intervene to prevent them from producing nuclear weapons?

Currently, the IAEA’s own nuclear safeguard guidelines set routine inspection intervals to approximate the time the agency estimates is needed to convert certain special nuclear materials into bomb cores. The IAEA’s ability to verify production figures at large uranium hexafluoride (reprocessing, uranium enrichment, and plutonium and mixed oxide fuel fabrication) plants though, is limited. Not only does the agency have difficulty detecting abrupt diversions in a timely fashion (i.e., it may only be able to learn of diversions after they have occurred), but the margins of error associated with the IAEA’s ability to detect small, incremental diversions are equivalent to many bombs’ worth every year. In either case, once a state has enough fissile material to make a bomb, it could break out well before the IAEA or other states could intervene to prevent nuclear weapons from being built.

These facts are troubling. What makes them doubly so is that the IAEA has yet to share these specifics publicly in any detail. Worse, it continues to claim that it can safeguard these materials and plants (i.e., provide “timely detection” of possible military nuclear diversions), when, in fact, in many cases, it cannot.

It is essential that inspectors and diplomats distinguish between what inspectors can merely monitor (i.e., inspect to provide confidence that major diversions have not taken place sometime in the past) from what they can actually safeguard (i.e., inspect to assure detection of military diversions early enough so outside parties have sufficient time to block actual bomb making). If this distinction were made clear, governments could fully appreciate and, perhaps restrict, nuclear activities and holdings that are not able to be safeguarded and hence are dangerous.30 This, in turn, would make promoting tougher nonproliferation standards, like the Gold Standard, much easier.

RECOMMENDATION 3

Anticipate and ward off nuclear proliferation developments before recognized redlines have been clearly violated. One of the regrettable legacies of the Cold War is the habit U.S. and allied government officials have acquired of waiting for irrefutable evidence of undesirable, foreign nuclear weapons developments before taking action. This must change.

After the Soviet Union first acquired nuclear weapons in 1949, the West’s aim in competing against it was not so much to prevent Russia from acquiring more strategic weapons as it was to prevent it from gaining strategic superiority. For this purpose, it was sufficient that Western military forces remained more modern and sufficiently numerous to deter Soviet offensive capabilities—i.e., that Russia’s strategic technology stayed roughly one or more generations behind ours so that its strategic deployments could never change the relative balance of power. If Russia deployed a new strategic nuclear rocket, Washington would focus on what the Soviets had built and build a bigger or better U.S. version, or develop some new passive or active defenses, or build counter offensive forces that could neutralize the new Soviet weapon system.

After the United States and Russia ratified a number of strategic arms limitation agreements, any Russian strategic nuclear deployment that exceeded agreed limits became a matter for diplomatic adjudication. In either case, U.S. or allied action turned on detecting and verifying the violation of agreed or implicit redlines. Fortunately, in this competition, the Soviets ultimately failed to keep up with the United States and its allies. Moscow’s failed attempts to do so only helped bankrupt it financially and politically.31

Competitive Strategies

That was the Cold War. In our current efforts to prevent horizontal proliferation, the objective is quite different. Instead of merely trying to stay ahead of a proliferating state militarily, our aim must be to prevent it from acquiring certain weapons altogether. Being able to detect states’ possible violations of pledges not to acquire these weapons is necessary.

The problem is that verifying such detections is much more awkward than detecting and verifying Soviet strategic weapons developments. Whereas detecting Soviet arms developments was often deemed an intelligence success and frequently prompted policy or military actions, detecting nuclear proliferation today is bad news—it only confirms that our nuclear nonproliferation policies have failed. More often than not, by the time one verifies a nonproliferation violation, it is too late to roll it back unless one takes relatively extreme diplomatic or military measures. It is not surprising, then, that in more than a few proliferation cases—e.g., with Israel, Pakistan, North Korea, South Africa, and India—U.S. officials often averted their gaze from, denied, or downplayed intelligence that these states had acquired or tested nuclear weapons.32

In some cases, though, the United States and its allies succeeded in preventing nuclear proliferation. The most prominent cases included getting Taiwan, South Korea, South Africa, Argentina, Brazil, Ukraine, and Libya to give up their nuclear weapons programs. In these cases, the United States and its allies had a long-term regimen of nonproliferation sanctions and export controls in place well before the state in question ever acquired nuclear weapons (e.g., in the cases of Libya and South Africa) or acted well before there was clear proof that nuclear weapons were in hand or were going to be retained (e.g., with Taiwan, South Africa, South Korea, and Ukraine).33

What these and other less well-known nonproliferation successes suggest is the desirability of creating long-term, country-specific strategies that initially eschew dramatic actions. These strategies could be developed along several lines. In the case of Libya and South Africa, the West relied heavily on long-term, bureaucratically institutionalized economic sanctions and export controls as well as a vigilant proliferation intelligence watch on each country’s nuclear weapons-related programs and timely political interventions.

### 2ac – leaks – russia impact

#### Leaks empower Russian aggression that destroys the LIO

Constantine A. **Pagedas 17**, Executive vice president at International Technology and Trade Associates, Inc, “Returning to Relevance: the Russian Challenge to Geopolitical Stability,” Japan Spotlight, March/April 2017, http://www.itta.com/sites/default/files/files/pagedas\_russian\_challenge\_to\_geopolitical\_stability.pdf

Today, aggressive Russian behavior on the world stage and a similar neurotic worldview poses serious risks to the geopolitical stability of the United States and Europe. As a former KGB intelligence officer in East Germany who saw firsthand the decline of Soviet influence within the Warsaw Pact, since coming to power in late 1999 Russian President Vladimir Putin has been a strong proponent of restoring Russian power and prestige in the world and diminishing the political, economic, and geostrategic foundations of the transatlantic partnership. Over the past few years, however, the Russian president has shown himself to be increasingly like some of his predecessors as the US and Europe have been preoccupied with costly wars in Iraq and Afghanistan, the rise of international terrorist organizations such as al-Qaeda and the Islamic State, the Syrian civil war and the refugee crisis it created, the eurozone debt crisis, and the rise of China as a geostrategic competitor. Under Putin’s direction, Russia has engaged in a series of important actions that have not only advanced Russian interests worldwide, but have also threatened to undermine the foundations of the geopolitical order that have existed since the end of World War II.

Putin’s “Strong Man” Politics

From its origins as the Grand Duchy of Moscow that grew to become the Russian Empire, evolved into the Soviet Union, and finally into today’s modern authoritarian state, Russia has depended on strong, centralized government control to preside over its vast geographic territory and its multi-ethnic population. Over the centuries, Russian nationalism and cold-blooded rule from Moscow or St. Petersburg became ingrained in the leadership of Russian political calculation and combined with what Kennan called the “traditional and instinctive Russian sense of insecurity … [because] Russian rulers have invariably sensed that their rule was relatively archaic in form, fragile and artificial in its psychological foundation, unable to stand comparison or contact with political systems of western countries.”

Indeed, Putin has followed in varying degrees the blueprints of previous strong men who have led Russia such as Peter the Great, Emperor Nicholas I, and of course, Stalin. Whenever opportunities presented themselves, Moscow advanced its geopolitical position either directly through military aggression or, as Kennan wrote, Russian diplomacy would focus on “inhibiting or diluting the power of others”. As such, Putin’s two overarching geostrategic goals since coming to power have been the restoration of Russia’s previous status as a global superpower, to include rebuilding the Russian armed forces and regaining or controlling some of the territories in Russia’s “near abroad” in Eastern Europe and the Black Sea region lost after the end of the Cold War, and distancing the North Atlantic Treaty Organization (NATO) countries from Eastern Europe and from each other.

Russian history has shown that callous and ruthless control of Russia’s domestic politics is a prerequisite for any successful Russian foreign and national security policy. From 2000 until 2008, Putin radically amended the 1993 Russian constitution to make an already strong presidency even stronger. Overall, Putin’s time in office so far has been marked by the growth of authoritarian rule coupled with a corrupt bureaucracy that favors a few oligarchs who control the country’s critical infrastructure and key industries and who primarily answer only to the Russian president. Initially limited to two four-year terms as president, Putin then served as prime minister from 2008 until 2012, only to return as president to begin a six-year term in March 2012 through what were widely perceived to be unfair elections.

In addition, Putin has been responsible for significantly curbing democratic freedoms and for the repression of domestic political dissent. Under Putin’s leadership, Russia has also implemented several restrictive laws against minority groups, harassed, intimidated, and imprisoned political activists, and cracked down on critics in the Russian media who contradict or oppose the government’s line. The international watchdog group Freedom House rates Russia very poorly in terms of government openness and political liberty, noting especially that “Decisions are adopted behind closed doors by a small group of individuals — led by Putin — whose identities are not often clear, and announced to the population after the fact. Corruption in the government and business world is pervasive, and a growing lack of accountability enables bureaucrats to act with impunity.” Putin will be up for re-election in 2018 for another six-year term while his United Russia party has strongly benefited from recent changes to national, regional, and local election laws to ensure continuity of Putin’s political control of Russia for some time to come.

Russia’s Military Buildup under Putin

One of the primary ways in which Russia is trying to elevate its geopolitical power is with respect to the Russian armed forces, where Putin has prioritized the country’s largest military buildup since the Cold War. According to SIPRI’s Military Expenditure Database, Russia’s total military spending in current US dollars grew from approximately $11.7 billion in 2001 and peaked at $88.4 billion in 2014, representing over a seven-fold increase in military spending. In addition, many news outlets have claimed that this does not include a significant number of unreported programs, making the growth of Russia’s military spending higher still. Some organizations such as the International Monetary Fund have even estimated that the unreported share of Russia’s military budget in 2016 may be nearly 25% more than what the Russian government has officially claimed.

In 2010, Russia embarked on a 10-year program to increase the size of its military as well as modernize, update, or replace approximately 70% of its aging and obsolete military equipment by 2020. The number of Russians serving active duty in its military has also significantly grown to an estimated 850,000 in 2014 at a time when the number of troops in almost every Western country has been dropping (Photo 2).

At the same time, the Russian government’s rearmament program is seeing a technologically much improved force taking shape, which according to IHS Jane’s includes plans calling for more than 600 fixed-wing aircraft, more than 1,000 helicopters, over 4,600 heavily armored tracked vehicles and 17,000 lighter military vehicles, 50 surface ships, 28 ballistic missile and attack submarines, as well as improvements to various short-, medium-, and long-range missiles and mobile missile systems. Russia is currently positioning its upgraded military force in various key geostrategic locations around the country and its near abroad to potentially challenge NATO forces in Eastern Europe, to consolidate its existing military gains in Ukraine, and to project Russian power in the Black Sea region and beyond in the Middle East.

Nowhere is Russia’s growing military capability on full display to NATO and the rest of the world than in the Russian enclave of Kaliningrad, located on the Baltic Sea and nestled between Poland and Lithuania. Kaliningrad is the home of Russia’s Baltic Fleet (Photo 3), which according to publicly available data comprises approximately 50 different vessels, including diesel-powered submarines, one Sovremenny-class destroyer, eight Steregushchyand Nanuchka-class missile corvettes, two Neustrashimy-class guided missile frigates, six Paschim-class anti-submarine warfare vessels, and a few dozen smaller vessels and landing ships, together with one brigade of naval infantry and two regiments of coastal defense artillery, along with a garrison with an estimated 200,000 military personnel — despite official Russian numbers claiming only 100,000. Other significant upgrades to Kaliningrad’s military infrastructure have occurred in the past couple of years, including the reconstruction and enlargement of the airfield at Chkalovsk to accommodate large military aircraft, as well as the refurbishment of an abandoned Soviet-era airfield for hydroplanes on the Baltic Spit.

In early October 2016, significant East-West tensions were raised when Moscow deployed Iskander-M mobile systems to Kaliningrad (Photo 4). First introduced to the Russian military in 2013, the Iskander-M is able to target enemy missile systems, rocket launchers, long-range artillery, and command posts, as well as aircraft and helicopters at a distance of up to 320 miles — threatening much of eastern Poland and all of Lithuania. Tensions were further raised later in the month when Russia sent to the Baltic Sea two Buyan-M class corvettes armed with nuclear-capable Kalibr cruise missiles which have a range of 930 miles. According to Russian news sources, there are also plans for Russia’s Baltic Fleet to receive three additional such warships armed with Kalibr missiles by the end of 2020 along with enhanced coastal defenses including Bastion and Bal land-based antiship missile systems. Russia’s current and planned military buildup of Kaliningrad is protected by its existing long-range radar and its S-400 Triumf air defense system which has a 250-mile range and provides the surrounding region with a fairly sophisticated anti-access/area denial capability for the Russian military.

Hybrid Warfare & Power Projection

As highlighted in a previous issue of this magazine (July/August 2014), a resurgent Russia under Putin has also seen Russian aggression successfully used to secure Russia’s “near abroad” — most notably against Ukraine. Beginning in March 2014, Russia annexed the Crimean peninsula and its key naval base at Sevastopol. Russia then divided the eastern, ethnically Russian, and highly industrialized areas of its neighbor from the western, ethnically Ukrainian, and mostly agricultural areas. Moscow not only accomplished this by arming and supplying local separatists, but also by utilizing a provocative propaganda campaign to create political unrest with hacked information that included the broadcast of an intercepted February 2014 telephone call between US Assistant Secretary of State Victoria Nuland and US Ambassador to Ukraine Geoffrey Pyatt describing US brokering of a political deal among Ukrainian government officials who were then negotiating the formation of a new Western-leaning government. The disclosure of this conversation seemed to prove American involvement in the local politics of a country bordering Russia and that the US was working directly against Russian interests.

Other Russian actions in Ukraine included spreading “fake news” stories, interrupting energy flows, and even sending in Spetsnaz special forces units, the masked and unmarked camouflage-wearing “Little Green Men”, whose mission was to take control of key strategic locations in the country such as military bases, airports, and government buildings in eastern Ukraine (Photo 5). Out of the success of Russia’s barely disguised aggression against its neighbor, experts have come up with the term “hybrid warfare” which has come to describe these “gray areas” of Russian military and paramilitary activities to support favorable political outcomes. Indeed, recent Russian activities with respect to Ukraine harken back to the early Cold War period when Stalin’s government was similarly able to pressure, undermine, and ultimately control most of Eastern Europe.

Beyond its immediate border regions, Russia has also actively supported the regime of Bashar al-Assad since the beginning of the Syrian civil war in 2011. As longtime allies dating to the early Cold War period, Russia initially resisted Western calls in the United Nations Security Council for Assad to step down from power or to implement UN sanctions against Syria. As the crisis intensified, Russia provided Syrian government forces with military aid to suppress the rebel opposition, specifically the US-supported Free Syrian Army (FSA) trying to overthrow the government in Damascus. Since September 2015, however, Russia has engaged in direct military operations to not only secure Assad’s regime and to defeat the FSA and other rebel forces, but also to overthrow the self-declared Islamic State straddling northwestern Syria and northern Iraq.

Russian forces have been primarily operating out of the airbase near Latakia and the port of Tartus, as well as from an aircraft carrier battlegroup in the Eastern Mediterranean, conducting significant and sustained Russian airstrikes on key rebel towns and villages (up to 60 per day) for the better part of two years. It should be highlighted, however, that the Russian military involvement in Syria has not been completely void of international incident. In November 2015, Turkey’s air force shot down a Russian Sukhoi Su-24 strike aircraft for allegedly violating Turkish airspace, temporarily resulting in increased regional tensions. Moreover, Russia has come under strong political condemnation from the international community for airstrikes that are believed to have deliberately struck civilian targets such as hospitals, schools, and homes, especially in and around the destroyed city of Aleppo — the epicenter of the Syrian crisis. From a military perspective, however, the projection of Russian military power in support of the regime in Damascus is widely seen to have successfully turned the tide of the Syrian civil war in Assad’s favor and helped Syrian government forces recapture large areas of lost territory. It is the first time since the Cold War that Russia has engaged in sustained military operations beyond its immediate borders, and is another sign of Russia’s intent to overturn the post1991 geopolitical order.

Hybrid Politics & Kompromat

The famous dictum by the military theorist Carl von Clausewitz that “war is a mere continuation of politics by other means” certainly holds true today. In today’s technologically advanced global environment, however, Putin also appears to be turning this famous line on its head — that influencing politics may also be a mere continuation of war by other means. In this era dominated by mass communication through smartphones and social media, along with the relative ease and low cost of cyberwarfare, democratic political processes — particularly those of open, Western societies whose governments do not restrict their citizens’ access to the Internet — are vulnerable to Russian influence campaigns. Indeed, as much as Russia’s hybrid warfare can be seen as a success in destabilizing Ukraine and annexing Crimea, this era may also be one characterized by hybrid politics, whereby democratic institutions or processes can be manipulated or undermined through the release of intelligence, disinformation, or compromising information (known in Russian as kompromat) that has been hacked or otherwise acquired to tarnish the reputation, or question the legitimacy, of an intended political target, and thus used to achieve a political outcome favorable to the Kremlin. The main idea behind kompromat is to create plausible truths about intended political victims, while also allowing Russian leadership plausible denial regarding the origin of the leaked information.

Certainly, Putin’s background, training, and experiences in intelligence, deception, and misinformation for the KGB and its successor, the FSB, are important puzzle pieces in the development of Russian hybrid politics. First, as a young major in the Soviet secret police who spent the late 1980s working closely with the East German Stasi in Dresden and recruiting people trained in “wireless communications” to steal Western technology and NATO secrets, and then in the late 1990s as FSB director, Putin reportedly became not only expert in blatant disregard for the truth about Russian military activities and casualty rates during the war in Chechnya, but also more than capable of inventing and distributing self-serving lies and inaccurate information to sow confusion among political opponents and ultimately to control them.

Another reason for the growth of Russian hybrid politics is the current environment in which Western governments operate. With vast amounts of government documents and data now being stored electronically, the ease with which this information can be transferred almost instantaneously is greater than ever. Moreover, the increased use over the past two decades of private sector firms that support key national security organizations such as the Department of Defense, the National Security Agency, the Central Intelligence Agency, and others presents a security challenge which in some respects is unique to the US. Outside contractors — private US citizens who work alongside government employees with many of the same clearances and therefore access to the same classified government information — today provide countless additional potential exit points for government information to be leaked.

Indeed, Russia appears to be connected to a massive information-gathering effort on potential political targets focused on the US and Europe. Most famously, in June 2013 the outside contractor Edward Snowden who was working for the NSA released classified documents to various journalists and newspapers around the world revealing information on US government surveillance programs against other countries, including US allies. Snowden fled the US and eventually sought political asylum in the waiting arms of Moscow (Photo 6). The US, UK, and French intelligence services also all believe there is a direct connection between the Russian government and the international open government organization Wikileaks, whose founder Julian Assange has been responsible over the past several years for releasing compromising documents about both the US government and the Democratic presidential candidate Hillary Clinton.

Finally, Russian hybrid politics is to some extent dependent upon willing political targets. The Kremlin’s attempt to influence the 2016 US presidential election as alleged by the US intelligence community involved the acquisition and release of compromising information on Clinton, the opponent of Russia’s preferred candidate Donald Trump. For his part, both on the campaign trail and following his election, Trump expressed an unusually strong affinity for Putin and Russia, at various times taking to Twitter to praise the Russian leader as “very smart”, to call upon Russia to release damaging information on Clinton (which some claimed was treasonous), and even to deflect public attention on himself, claiming that “Clinton’s close ties to Putin deserve scrutiny.”

As was the case, Trump won the election in one of the largest upsets in US political history. Although it is impossible to measure the effect of Russia’s influence on the 2016 US election, Trump cannot condemn Russia too strongly without casting doubt on the legitimacy of his own electoral success. Nevertheless, he has been reluctant to assign any blame to Russia and has dismissed the US intelligence community’s post-election analysis despite overwhelming evidence to the contrary — going so far as to fault US intelligence for leaking an unverified political report alleging financial improprieties and embarrassing salacious personal behavior about himself (Photo 7). “If Putin likes Donald Trump,” he told a crowd of journalists at a January 2017 press conference, “guess what, folks, that’s called an asset not a liability.”

Putin’s Annus Mirabilis

Today it is worth remembering that Kennan’s Long Telegram concluded with a stark warning: “We must have the courage and self-confidence to cling to our own methods and conceptions of human society. After all, the greatest danger that can befall us in coping with this problem of [Russia], is that we shall allow ourselves to become like those with whom we are coping.”

The year 2016 may be considered an annus mirabilis for Putin’s long-held plan to restore Russia — challenging not only the global order created by the end of the Cold War, but perhaps also overturning the very foundations of the postwar international security structure. Under President Barak Obama, the US largely only took symbolic gestures to confront the buildup of Russia’s military capabilities and its aggression in Ukraine, sending token forces to the region and imposing sanctions, albeit in coordination with its European allies and with some economically crippling effects. From the Russian point of view, however, the election of Trump has already had its intended effect — to create political confusion and generate divisions within the US and among the members of the Western Alliance, to divert Washington’s attention away from Russia’s growing military and intelligence capabilities, and to sow doubt in the US political system and its democratic institutions.

The year 2017 looks even brighter for Russia and Putin. It appears he may be gaining a useful political ally in Trump, who indicated he might even be willing to lift the sanctions on Russia in exchange for Russian help in the fight against terrorism. In an unmistakable reference to Russia in his inaugural address, Trump noted that the US would “reinforce old alliances and form new ones — and unite the civilized world against radical Islamic terrorism.” Moreover, Trump’s enthusiasm for NATO is low. Just prior to assuming office, he labeled the organization “obsolete” and is likely to approach European capitals early in his term with a demand they pay more towards their own security. As the United Kingdom appears set to trigger negotiations to exit the European Union, while both France and Germany are facing national elections with rightwing parties rising in popularity, and as the new era in Washington begins with strong mutual distrust between Trump and his own intelligence community, Russia is in a strong position to shape the geopolitical environment to more closely align with its core national interests and continue its return to great power status and growing global relevance.

#### The liberal order prevents extinction from nuclear war, warming, and rogue tech development

Yuval Noah Harari 18, Professor of History at Hebrew University of Jerusalem, 9/26/18, “We need a post-liberal order now,” The Economist, <https://www.economist.com/open-future/2018/09/26/we-need-a-post-liberal-order-now>

For several generations, the world has been governed by what today we call “the global liberal order”. Behind these lofty words is the idea that all humans share some core experiences, values and interests, and that no human group is inherently superior to all others. Cooperation is therefore more sensible than conflict. All humans should work together to protect their common values and advance their common interests. And the best way to foster such cooperation is to ease the movement of ideas, goods, money and people across the globe.

Though the global liberal order has many faults and problems, it has proved superior to all alternatives. The liberal world of the early 21st century is more prosperous, healthy and peaceful than ever before. For the first time in human history, starvation kills fewer people than obesity; plagues kill fewer people than old age; and violence kills fewer people than accidents. When I was six months old I didn’t die in an epidemic, thanks to medicines discovered by foreign scientists in distant lands. When I was three I didn’t starve to death, thanks to wheat grown by foreign farmers thousands of kilometers away. And when I was eleven I wasn’t obliterated in a nuclear war, thanks to agreements signed by foreign leaders on the other side of the planet. If you think we should go back to some pre-liberal golden age, please name the year in which humankind was in better shape than in the early 21st century. Was it 1918? 1718? 1218?

Nevertheless, people all over the world are now losing faith in the liberal order. Nationalist and religious views that privilege one human group over all others are back in vogue. Governments are increasingly restricting the flow of ideas, goods, money and people. Walls are popping up everywhere, both on the ground and in cyberspace. Immigration is out, tariffs are in.

If the liberal order is collapsing, what new kind of global order might replace it? So far, those who challenge the liberal order do so mainly on a national level. They have many ideas about how to advance the interests of their particular country, but they don’t have a viable vision for how the world as a whole should function. For example, Russian nationalism can be a reasonable guide for running the affairs of Russia, but Russian nationalism has no plan for the rest of humanity. Unless, of course, nationalism morphs into imperialism, and calls for one nation to conquer and rule the entire world. A century ago, several nationalist movements indeed harboured such imperialist fantasies. Today’s nationalists, whether in Russia, Turkey, Italy or China, so far refrain from advocating global conquest.

In place of violently establishing a global empire, some nationalists such as Steve Bannon, Viktor Orban, the Northern League in Italy and the British Brexiteers dream about a peaceful “Nationalist International”. They argue that all nations today face the same enemies. The bogeymen of globalism, multiculturalism and immigration are threatening to destroy the traditions and identities of all nations. Therefore nationalists across the world should make common cause in opposing these global forces. Hungarians, Italians, Turks and Israelis should build walls, erect fences and slow down the movement of people, goods, money and ideas.

The world will then be divided into distinct nation-states, each with its own sacred identity and traditions. Based on mutual respect for these differing identities, all nation-states could cooperate and trade peacefully with one another. Hungary will be Hungarian, Turkey will be Turkish, Israel will be Israeli, and everyone will know who they are and what is their proper place in the world. It will be a world without immigration, without universal values, without multiculturalism, and without a global elite—but with peaceful international relations and some trade. In a word, the “Nationalist International” envisions the world as a network of walled-but-friendly fortresses.

Many people would think this is quite a reasonable vision. Why isn’t it a viable alternative to the liberal order? Two things should be noted about it. First, it is still a comparatively liberal vision. It assumes that no human group is superior to all others, that no nation should dominate its peers, and that international cooperation is better than conflict. In fact, liberalism and nationalism were originally closely aligned with one another. The 19th century liberal nationalists, such as Giuseppe Garibaldi and Giuseppe Mazzini in Italy, and Adam Mickiewicz in Poland, dreamt about precisely such an international liberal order of peacefully-coexisting nations.

The second thing to note about this vision of friendly fortresses is that it has been tried—and it failed spectacularly. All attempts to divide the world into clear-cut nations have so far resulted in war and genocide. When the heirs of Garibaldi, Mazzini and Mickiewicz managed to overthrow the multi-ethnic Habsburg Empire, it proved impossible to find a clear line dividing Italians from Slovenes or Poles from Ukrainians.

This had set the stage for the second world war. The key problem with the network of fortresses is that each national fortress wants a bit more land, security and prosperity for itself at the expense of the neighbors, and without the help of universal values and global organisations, rival fortresses cannot agree on any common rules. Walled fortresses are seldom friendly.

But if you happen to live inside a particularly strong fortress, such as America or Russia, why should you care? Some nationalists indeed adopt a more extreme isolationist position. They don’t believe in either a global empire or in a global network of fortresses. Instead, they deny the necessity of any global order whatsoever. “Our fortress should just raise the drawbridges,” they say, “and the rest of the world can go to hell. We should refuse entry to foreign people, foreign ideas and foreign goods, and as long as our walls are stout and the guards are loyal, who cares what happens to the foreigners?”

Such extreme isolationism, however, is completely divorced from economic realities. Without a global trade network, all existing national economies will collapse—including that of North Korea. Many countries will not be able even to feed themselves without imports, and prices of almost all products will skyrocket. The made-in-China shirt I am wearing cost me about $5. If it had been produced by Israeli workers from Israeli-grown cotton using Israeli-made machines powered by non-existing Israeli oil, it may well have cost ten times as much. Nationalist leaders from Donald Trump to Vladimir Putin may therefore heap abuse on the global trade network, but none thinks seriously of taking their country completely out of that network. And we cannot have a global trade network without some global order that sets the rules of the game.

Even more importantly, whether people like it or not, humankind today faces three common problems that make a mockery of all national borders, and that can only be solved through global cooperation. These are nuclear war, climate change and technological disruption. You cannot build a wall against nuclear winter or against global warming, and no nation can regulate artificial intelligence (AI) or bioengineering single-handedly. It won’t be enough if only the European Union forbids producing killer robots or only America bans genetically-engineering human babies. Due to the immense potential of such disruptive technologies, if even one country decides to pursue these high-risk high-gain paths, other countries will be forced to follow its dangerous lead for fear of being left behind.

An AI arms race or a biotechnological arms race almost guarantees the worst outcome. Whoever wins the arms race, the loser will likely be humanity itself. For in an arms race, all regulations will collapse. Consider, for example, conducting genetic-engineering experiments on human babies. Every country will say: “We don’t want to conduct such experiments—we are the good guys. But how do we know our rivals are not doing it? We cannot afford to remain behind. So we must do it before them.”

Similarly, consider developing autonomous-weapon systems, that can decide for themselves whether to shoot and kill people. Again, every country will say: “This is a very dangerous technology, and it should be regulated carefully. But we don’t trust our rivals to regulate it, so we must develop it first”.

The only thing that can prevent such destructive arms races is greater trust between countries. This is not an impossible mission. If today the Germans promise the French: “Trust us, we aren’t developing killer robots in a secret laboratory under the Bavarian Alps,” the French are likely to believe the Germans, despite the terrible history of these two countries. We need to build such trust globally. We need to reach a point when Americans and Chinese can trust one another like the French and Germans.

Similarly, we need to create a global safety-net to protect humans against the economic shocks that AI is likely to cause. Automation will create immense new wealth in high-tech hubs such as Silicon Valley, while the worst effects will be felt in developing countries whose economies depend on cheap manual labor. There will be more jobs to software engineers in California, but fewer jobs to Mexican factory workers and truck drivers. We now have a global economy, but politics is still very national. Unless we find solutions on a global level to the disruptions caused by AI, entire countries might collapse, and the resulting chaos, violence and waves of immigration will destabilise the entire world.

This is the proper perspective to look at recent developments such as Brexit. In itself, Brexit isn’t necessarily a bad idea. But is this what Britain and the EU should be dealing with right now? How does Brexit help prevent nuclear war? How does Brexit help prevent climate change? How does Brexit help regulate artificial intelligence and bioengineering? Instead of helping, Brexit makes it harder to solve all of these problems. Every minute that Britain and the EU spend on Brexit is one less minute they spend on preventing climate change and on regulating AI.

In order to survive and flourish in the 21st century, humankind needs effective global cooperation, and so far the only viable blueprint for such cooperation is offered by liberalism. Nevertheless, governments all over the world are undermining the foundations of the liberal order, and the world is turning into a network of fortresses. The first to feel the impact are the weakest members of humanity, who find themselves without any fortress willing to protect them: refugees, illegal migrants, persecuted minorities. But if the walls keep rising, eventually the whole of humankind will feel the squeeze.

# cp – secret arrangements

## top level

### 1nc – secret cp

#### The United States federal government should enter into a covert secret arrangement with the North Atlantic Treaty Organization [in plan area].

#### Secret security cooperation structuring defense partnerships solve AND increase allied certainty about commitments

Ashley S. Deeks 18, Associate Professor, University of Virginia Law School. 2018, “Symposium: The Forefront of International Law: A (Qualified) Defense of Secret Agreements,” Arizona State Law Journal, 49, 713, pp. 744-746, Lexis, nihara

2. Military Cooperation

Another significant category of secret commitments creates and regulates defense relations between states, including by structuring defensive partnerships, military cooperation, training, and basing. The United States has concluded many of these commitments, as have other states. As one scholar put it:

As we came to learn only in the 1970s, the United States and presumably the Soviet Union made agreements throughout the Cold War with foreign friends, backed by the promise to use force if necessary. Some of these arrangements were concluded by Executive Agreement, open or secret; others were simply off the record. Some agreements allowed for American bases on the ally's territory, some even for positioning nuclear weapons there. 143

As discussed further in section B, the United States and its partners may employ secrecy in these contexts to increase the certainty each state has about the other's support during a future attack or threat of armed conflict, and to diminish the perception of an infringement on sovereignty that might arise when foreign troops are present on the host's soil.

The United States has concluded a number of classified "status of forces agreements" ("SOFAs") with other states. 144 The U.S.-Spanish SOFA, for example, apparently contains a secret annex limiting how the United States may use its Spanish bases. 145 Likewise, a secret U.S.-UAE basing agreement limits U.S. activities from the base to defending the UAE from an attack, though that limit may be softening. 146 Other secret defense agreements authorize military operations by one or both of the parties. For example, the U-2 aircraft piloted by Gary Powers in 1960 lifted off from Peshawar, Pakistan, and was scheduled to land in Bodo, Norway (before the U.S.S.R. shot it down). 147 This indicates the presence of advance, secret arrangements between the United States and Pakistan, as well as the United States and Norway. In a more recent example, the United States and Afghanistan concluded a classified arrangement in 2014 giving the United States permission to engage in direct combat against the Taliban, the Haqqani networks, and al Qaeda in Afghanistan. 148

Foreign examples exist as well. In 1954, France and Cambodia concluded an agreement by which 720 French military instructors would train Cambodian armed forces. 149 In the early 1980s, Grenadian Prime Minister Maurice Bishop entered into five secret agreements with the Soviet Union, Cuba, and North Korea, pursuant to which those states would make large shipments of military equipment to Grenada, help train soldiers, and base military advisers on Grenada. 150 In one of the more troubling secret defense cooperation agreements that has come to light in the post-Charter era, Israel concluded a secret agreement with Britain and France in 1956. In the socalled Protocol of Sèvres, the three states planned to invade Egypt in response to President Nasser's decision to nationalize the Suez Canal. 151 In reliance on the Protocol, Israel attacked Egypt and occupied Sinai and the Gaza Strip, and France and the United Kingdom invaded Egypt to secure the Canal. 152 Other states undoubtedly have concluded secret defense pacts that have not come to light.

### 2nc – solvency – top level

#### The CP’s secret arrangement is NOT legally binding – which establishes competition – BUT, solves the case – states comply – AND signals an increased commitment to NATO

--at: non-enforcement, non-compliance

--at: allied perception deficits

Ashley S. Deeks 18, Associate Professor, University of Virginia Law School. 2018, “Symposium: The Forefront of International Law: A (Qualified) Defense of Secret Agreements,” Arizona State Law Journal, 49, 713, pp. 728-729, Lexis, nihara

2. Potency of Political Arrangements

One obvious difference between secret executive agreements and secret political arrangements is that the former carry with them binding international legal obligations and the latter do not. For that reason, one might argue that this article should exclude the latter from consideration because there is little reason to expect that political arrangements reflect anything but time-limited expectations between states about how their arrangement partners will behave and do little to govern the behavior of states that have crafted the arrangement. However, more so than in the non-secret context, the distinction between legally binding commitments and political arrangements is narrow.

On the one hand, secret international agreements are harder for a state to enforce than public international agreements. A secret international agreement will rarely contain a dispute resolution mechanism that involves third party adjudicators, which is one means by which states give their legal commitments teeth. 52 Likewise, states may choose to comply with public international agreements to preserve their reputation (both with its treaty partner and with other states in the international community) as law-compliant, even if they would have preferred not to comply in a particular instance. 53 When the international agreement at issue is secret, the reputational costs of violating that agreement are reduced, because only the state or states that are parties to the agreement will be aware of the violation. If we assume that states comply more consistently with public agreements than public arrangements, the impact of choosing between secret agreements and arrangements may be somewhat smaller than the impact of choosing between public agreements and arrangements.

On the other hand, there are several reasons to think that states tend to comply with their secret political commitments, and that in many cases those commitments fairly predict the behavior of both states. In some cases, the United States has employed political arrangements to establish relatively intricate relationships with foreign states, and has invested significantly in foreign bases and foreign intelligence centers in reliance on those secret arrangements. 54 Congress itself has expressed concern about the Executive's

political commitments . . .which were not and could not be legally binding at all, but which effectively pledge the faith and 'credit' of the United States nonetheless . . . . [T]hough Presidents as well as foreign governments know the difference between political commitments and legal obligations, and are well aware of the braking powers of Congress, they know, too, that in the end, Senates and Congresses, theoretically free to disown such commitments, cannot do so lightly. 55

If the United States took its secret political commitments lightly, Congress would have no reason to worry.

Further, whether the goal is to conclude an agreement or arrangement, negotiating a document that ultimately will remain secret increases transaction costs, because it requires particularly complicated logistics. Many negotiations, even for agreements that eventually will become public, take place out of public view. But negotiating secret commitments can only occur in a limited number of places (such as secure facilities), and among a limited set of actors (such as those who have certain security clearances). Therefore, concluding a secret arrangement may signal a high level of commitment to the underlying relationship. 56 (On the other hand, the Executive usually does not share secret arrangements with Congress, which might reduce the level of care and detail put into the arrangements and thus lower the costs of concluding them.) In view of the quantity and range of secret arrangements in U.S. practice and their apparent ability to affect state behavior, this article includes secret political arrangements in its analysis of secret commitments in today's international ecosystem.

#### CP solves – secret political arrangements between the DoD and a foreign military agency allow intel-sharing – BUT, have a lower threshold for inter-agency review & approval – AND, are NOT perceived Congressionally OR publicly

--shields ptx/elections

--OCOs aff – MoUs can be done secretly

--space aff – solves satellite imagery exchange

Ashley S. Deeks 18, Associate Professor, University of Virginia Law School. 2018, “Symposium: The Forefront of International Law: A (Qualified) Defense of Secret Agreements,” Arizona State Law Journal, 49, 713, pp. 725-727, Lexis, nihara

1. Secret Political Arrangements in U.S. Law

Section A identified a group of agreements that meet the definition of "treaty" found in the VCLT. But there are almost certainly many more secret arrangements that states do not intend to be governed by international law. 35 In common parlance, these are political arrangements that happen to be secret. Some of these arrangements, which set out rules or modes of operation to be followed in one or more interactions between or among states, are surprisingly detailed. A paradigmatic example would be a secret memorandum of understanding (MOU) between the U.S. Defense Department and a foreign military agency to guide specific types of intelligence interactions. 36 Other examples include arrangements between the CIA and its foreign counterparts and oral or tacit arrangements between the United States and foreign states, the legal status of which may be ambiguous. Pakistan's reported consent to the U.S. use of armed drones to target individual members of al Qaeda in the Federally Administered Tribal Areas may reflect such a secret tacit arrangement. 37 Some of these secret arrangements explicitly state that the parties do not intend them to create legally binding obligations. 38

Compared to secret agreements (at least those to which the United States is a party), secret arrangements often are seen and approved by fewer people because the Executive has no statutory obligation to transmit them to Congress. 39 The Case Act establishes a mechanism by which the Department of State (DOS) should be informed of these arrangements, so that the DOS can determine whether the arrangement is or is not an international agreement. 40 However, it is not clear that each agency actually shares every one of its arrangements with the DOS. Some arrangements may be highly classified, which might make the initiating agency reluctant to share the arrangement's contents. Alternatively, agencies may have worked out a modus vivendi with the DOS, whereby the DOS determines that certain categories of arrangements do not represent international agreements and thus effectively blesses another agency's conclusion of such arrangements without DOS involvement.

The fact that only a limited number of people and a limited category of people are aware of these arrangements means several things. First, the arrangements constitute what Professor David Pozen has referred to as "deep secrets." 41 That is, these arrangements are often "unknown unknowns," where the public is generally unaware that the arrangements even exist. 42 (In contrast, an agreement is a shallow secret when the public knows that a particular secret agreement exists, but does not know the content of the agreement.) Less is known about these arrangements because there are fewer players in a position within either government to leak them to the press or the public. Second, the arrangements almost surely contain narrower national undertakings than do secret agreements (of which Congress and the DOS, as well as the originating agency, at a minimum, are aware). If only a single agency--or a limited set of actors within an agency--knows of the arrangement, its implementation by definition cannot require the involvement of large numbers of government officials.

Compared to secret agreements, it is even more difficult to estimate the number of secret arrangements between the United States and other states. This is because many of them are negotiated by intelligence agencies, which tend to be the best secret-keepers within governments. Jeffrey Richelson and Desmond Ball assert that over 1,000 intelligence arrangements exist among the five states that are parties to the Five Eyes agreement (the United States, United Kingdom, Canada, Australia, and New Zealand). 43 Richelson describes some of them, including arrangements regarding defense intelligence analysis, 44 ocean surveillance, 45 and satellite imagery exchanges. 46 Secret arrangements also exist between various U.S. and Israeli intelligence agencies. 47 The U.S. CIA reportedly has established connections with more than 400 foreign agencies, which almost certainly entails concluding secret arrangements with some of those agencies. 48 Likewise, the CIA's Canadian equivalent has more than 250 intelligence-sharing arrangements with foreign intelligence entities. 49 These arrangements may take the form of memoranda of understanding or even oral agreements between intelligence officials. 50 Defense agencies also seem to conclude a wide variety of secret cooperative arrangements. 51

### 2nc – comparative solvency

#### Counterplan solves better:

#### 1 – legitimacy – secret commitments heighten adversarial uncertainty, raising the costs of deterrence due to doubts regarding allied capabilities – it’s able to establish security cooperation

Ashley S. Deeks 18, Associate Professor, University of Virginia Law School. 2018, “Symposium: The Forefront of International Law: A (Qualified) Defense of Secret Agreements,” Arizona State Law Journal, 49, 713, pp. 751-753, Lexis, nihara

B. Reasons for Secrecy

As this article has shown, states today keep some of their international commitments secret. Because there has been scant attention paid to the existence of the commitments, there has been little scholarly analysis of why states resort to secrecy in their commitments. This section undertakes such an analysis. There are at least five reasons why states employ secrecy when concluding international commitments. Some of these reasons are readily justified under international law and longstanding expectations of state behavior; others are more difficult to justify.

1. Publicity Would Defeat Commitment's Legitimate Purpose

States keep a variety of commitments secret because the information they contain is properly classified under the domestic law of one or more of the states parties and its disclosure would defeat the purpose of the commitment. Consider, for example, a commitment to share intelligence collected using classified capabilities. Concluding that commitment in unclassified form would reveal the very existence of the capabilities that states sought to keep secret under their domestic laws. A similar need for secrecy attaches to commitments that advance non-proliferation goals. A secret nuclear agreement between the United States and the U.S.S.R. in 1974 included details about how each side would dismantle replacement missiles. 176 If the information were made public, it would have revealed very sensitive information that might help non-nuclear weapons states develop nuclear weapons and thus hinder widely-held non-proliferation goals. 177

The need for secrecy in the area of military operations and plans is well-accepted by states. States have a long history of keeping secret those commitments that establish and structure military coordination, training, or plans to preserve advantages over current or future enemies. As Myers McDougal and Asher Lans put it in the context of World War II,

No person concerned with the security of this continent could reasonably expect that the details of the military arrangements [contained in a 1940 secret agreement between the United States and Canada] should have been publicized for the edification of the German and Japanese general staffs. Similarly, it would be unreasonable to expect that armistice or other military agreements made with regard to active war zones during the continuance of combat should be publicly disclosed. 178

Jeremy Bentham, who pled generally for publicity in the conduct of government activity, deemed secrecy acceptable "if publicity favors the projects of an enemy." 179 Even philosopher Sissela Bok, who is generally skeptical about the use of secrecy because of its ability to corrupt, notes that military secrecy may be necessary to implement "certain plans, to provide the crucial element of surprise." 180 Bok recognizes the close link between military secrecy and a state's right of self-defense, which she describes as self-evident and sacred. 181

Using secrecy in military contexts such as these reduces uncertainty for the states that are parties to the commitments, while sustaining uncertainty for those who are not parties. 182 In the context of weapons sales, the parties might opt for secrecy because the states seek to reduce uncertainty between themselves about how the purchaser may use the weapon, while leaving external players uncertain about what restrictions might exist on the purchaser's military operations.

It is no surprise that commitments implicating information of the type that is commonly classified in domestic systems endure in secret. And where the substantive purpose of those commitments is consistent with generally accepted norms of military and intelligence cooperation, the secrecy of the commitments is not troubling.

#### 2 – transparency – secrecy increases assurances for info-sharing and enables communication that otherwise wouldn’t occur AND is key to effective diplomatic exchange – turns the case

Ashley S. Deeks 18, Associate Professor, University of Virginia Law School. 2018, “Symposium: The Forefront of International Law: A (Qualified) Defense of Secret Agreements,” Arizona State Law Journal, 49, 713, pp. 753-754, Lexis, nihara

2. Enhanced Transparency Behind the Veil

Secrecy in international commitments also can facilitate transparency among the states that hold discussions behind that veil. For example, Russia and the United States might only be willing to consider negotiating an agreement related to nuclear weapons if they can discuss in some detail the nature and number of those weapons. Each might be willing to share certain information with the other, but only with the other. Indeed, in 1974, Secretary of State Henry Kissinger signed an agreement with the Soviets to limit underground nuclear tests, which offered an example of "sharing of secrets of nuclear affairs among Soviet and American officials, but not publicly." 183 The secrecy of the setting facilitates the exchange of information between the United States and Russia about a sensitive issue at the core of the negotiation. Indeed, the U.S-Soviet/Russian agreements offer a paradigmatic example of using secrecy to enhance open exchanges behind the veil between players who are otherwise skeptical of each other's motives.

Diplomatic assurances offer another example. The United States has entered into a number of secret commitments with states into whose custody the United States seeks to transfer individuals. The transfers may occur in the context of extradition, immigration removals, military detention, or renditions. 184 In these assurances, the receiving state may commit to treat the individual humanely, provide a fair trial, and allow non-governmental observers to visit the individual in detention. A declaration produced by a State Department official during Guantanamo litigation explains how secrecy can further transparency:

If the Department were required to disclose outside appropriate Executive branch channels its communications with a foreign government relating to particular mistreatment or torture concerns, that government, as well as other governments, would likely be reluctant in the future to communicate frankly with the United States concerning such issues. I know from experience that the delicate diplomatic exchange that is often required in these contexts cannot occur effectively except in a confidential setting. 185

The idea that states employ secrecy in their commitments to enhance interstate transparency is supported by the appearance of the secrecy/transparency paradox in other contexts. For example, in the context of foreign surveillance, David Kris and Doug Wilson have written that the Foreign Intelligence Surveillance Act

encourages, and in some cases requires, the government to provide extensive disclosures to the [Foreign Intelligence Surveillance Court] . . . . The FISC needs that information, and candor from the government, to perform its essential function. But if the government entertains a fear that the FISC will release that information to the public, its incentive will be to reduce disclosures to their bare minimum. 186

Secrecy thus allows the Executive to be far more forthcoming to a body overseeing its actions. Similarly, in 2010 the executive branch began to include classified annexes in its War Powers Reports to Congress. Through the use of secrecy, the Executive was able to provide Congress with more details about executive military operations. Although the FISA and War Powers examples are not cases involving secret commitments, they help illustrate how the conclusions of commitments in secret can enable informational exchanges among relevant players. In particular, states that are not used to working with each other--and that may be in a publicly adversarial posture--may need to employ secrecy to be able to cooperate at all.

#### 3 – deference to sovereignty – otherwise, states say no

Ashley S. Deeks 18, Associate Professor, University of Virginia Law School. 2018, “Symposium: The Forefront of International Law: A (Qualified) Defense of Secret Agreements,” Arizona State Law Journal, 49, 713, pp. 754-756, Lexis, nihara

3. Deference to Sovereignty

Another reason that a state chooses to keep a commitment secret is out of deference to its partner's sovereignty or national pride. In some instances, the partner believes that the commitment, if made public, would signal an unwelcome surrender of its sovereignty or reveal military or political weakness. 187 The secrecy of U.S. diplomatic assurances exemplifies deference to the sovereignty of the state providing assurances. The United States has explained that it usually keeps secret its decisions to seek assurances and the content of the assurances themselves "in order to avoid the chilling effects of making such discussions public." 188 Some states presumably take offense at the request for assurances, because the request implies that the state has a reputation for mistreating people in its custody. Keeping the diplomatic assurances secret allows the United States to obtain the commitments it requires while minimizing the impact on the receiving state's dignity.

In a number of cases, the United States has kept secret its SOFAs, pursuant to which other states agree to allow the United States to operate bases and house military personnel inside their countries. 189 According to the State Department, one reason SOFAs may be classified is because of the "potentially damaging implications of making concessions on sovereignty to the United States. In a few cases, the reason appears to be sensitivity (sometimes felt by both the United States and the host) about the very idea that there are U.S. military personnel in the host country." 190 Keeping the SOFAs secret limits perceived damage to the host state's sovereignty and self-image as independent or militarily self-sufficient. A state may also seek to keep a military cooperation commitment secret to avoid positioning itself as a terrorist target. Recently Tunisia agreed to allow U.S. drones to fly out of a base in Tunisia, but reportedly wanted the commitment kept secret to avoid raising its profile as a target for ISIS. 191

Additionally, in the context of weapons sales, the United States and the purchasing states might choose to keep the use restrictions secret because the purchaser perceives the limitations as a challenge to its sovereignty. That is, the purchaser would prefer to be able to use the weapons it acquires in whatever way it sees fit, and may accept restrictions grudgingly, because the restrictions seem to encroach on its freedom of action as a sovereign state.

### 2nc – solvency – at: strikedown – i-law

#### 1 – international law does NOT ban secret arrangements – ONLY indicates they’re non-binding until registered – which doesn’t obviate the possibility of legal force

Ashley S. Deeks 18, Associate Professor, University of Virginia Law School. 2018, “Symposium: The Forefront of International Law: A (Qualified) Defense of Secret Agreements,” Arizona State Law Journal, 49, 713, pp. 737-738, Lexis, nihara

4. Seeds of Non-compliance

A variety of actors celebrated the enactment of these registration provisions, first in the Covenant and then in the Charter. Not least were international law scholars, who both vilified the substance of earlier secret agreements and anticipated advantages for international law generally in making all agreements public. Manley Hudson, for instance, who was a leading supporter of this development, expressed enthusiasm for the Covenant's approach not only because Article 18 advanced "open diplomacy" but also because it facilitated "the scientific study of the conventional law of nations." 107 Although states registered a large number of their agreements, they did not register all of them. 108 In the midst of the celebrations, there were clear signs that the norm against secret agreements was already on thin ground.

a. Textual Challenges

The challenges to developing a norm that would force states truly to abandon the use of secret agreements were apparent from the moment states concluded the Covenant. One challenge was textual. The Covenant itself did not literally ban the use of secret agreements; rather, it provided that international agreements and "engagements" would not be binding until registered. 109 This raised several interpretive questions. One was whether a secret agreement was void ab initio or, rather, voidable at the request of one of the parties. International law authority Charles Cheney Hyde adopted the latter view. 110 Another question related to the types of agreements that Article 18 covered. The United Kingdom argued that Article 18 was only intended to prohibit "secret aggressive treaties injurious to the peace of nations," even though the registration practice included "every" treaty and international agreement. 111

In addition, the Covenant applied to legally binding commitments, which invited the use of creative drafting to circumvent its application. As Megan Donaldson points out, "[A]lthough Article 18 [of the Covenant] was drafted with sweeping language to capture all manner of legal commitments regardless of nomenclature and form . . . foreign ministries drew on the same techniques of drafting evident in some of the prewar secret arrangements . . . to craft agreements with at least some claim to legal force, but which were not unambiguously legally binding--and thus escaped the reach of Article 18." 112 Creative lawyering thus facilitated the continuing use of secret commitments that did not clearly fall within Article 18's purview.

#### 2 – practically – the counterplan is NOT binding, so it doesn’t violate international sanctions – AND, secret diplomacy ensures the existence of secret agreements

Ashley S. Deeks 18, Associate Professor, University of Virginia Law School. 2018, “Symposium: The Forefront of International Law: A (Qualified) Defense of Secret Agreements,” Arizona State Law Journal, 49, 713, pp. 739-740, Lexis, nihara

b. Practical Challenges

Another challenge to the idea that states would surrender their use of secret agreements flowed from the realpolitik nature of international diplomacy. States will always insist on the need for secret diplomacy, and as long as there is secret diplomacy there is an obvious opportunity to conclude secret agreements. Even as President Wilson was proclaiming the first of his Fourteen Points ("open covenants of peace openly arrived at"), and even as states such as France and the United Kingdom publicly accepted that vision, those states continued to negotiate secret agreements during the Peace Conference. 113 Indeed, during Peace Conference discussions, states continued to consult with Italy how secretly to divide Turkey. 114 More broadly, the French and British governments remained interested in retaining the ability to craft secret binding agreements, at least on some subjects. 115 Immediately after the armistice was concluded, one commentator wrote, "I admire and appreciate the principles of President Wilson; but I cannot understand how any one who has his eyes open for a moment believes in their realization." 116

Those who advocated for forcing secret agreements into a non-binding or less binding form misperceived how states would respond to this sanction. As discussed supra, there is reason to believe that states have incentives to comply with secret arrangements, even when those arrangements are not legally binding. 117 Therefore, the modest sanctions built into the Covenant (and the even more modest sanctions built into the Charter) were unlikely to deter states from continuing to rely on the use of secret arrangements, whatever their formal legal status.

The short-lived nature of states' enthusiasm for Wilson's first Point (and for Article 18 of the Covenant) is further evidenced by the various secret treaties that states concluded before World War II. In 1925, for instance, Italy and Albania concluded a secret military pact in which Albania accepted an Italian protectorate over Albania. 118 In 1936 the Italians and Spanish concluded a secret agreement in which Italy promised to help Spain reestablish order within its territory, and in which both sides agreed to continue to trade with each other even if one state was drawn into war. 119 These states were members of the League of Nations when they concluded these agreements. 120 These examples illustrate that secret treaties retained their appeal in the Covenant period. Indeed, the agreements among Britain, the U.S.S.R., and the United States that emerged from the Yalta Conference in 1945--just months before states convened to create the United Nations--were largely kept secret. 121 Notwithstanding the common trope that secret agreements must be abandoned, states clearly were loath to give them up.

### 2nc – solvency – intel-sharing

#### Counterplan solves intel operations

Ashley S. Deeks 18, Associate Professor, University of Virginia Law School. 2018, “Symposium: The Forefront of International Law: A (Qualified) Defense of Secret Agreements,” Arizona State Law Journal, 49, 713, pp. 741-744, Lexis, nihara

1. Intelligence Cooperation

Given that states' intelligence activities are among the most secretive acts they perform, it is predictable that states seek to conceal from the public eye the intelligence-related commitments they conclude with other states. These commitments range in scope: some establish long-term, stable intelligence relationships, while other anticipate shorter-term, more discrete cooperation.

The United States is party to several intelligence agreements that have been in place for many decades. These durable agreements with close allies establish the modalities by which the United States and its partners undertake certain intelligence collection and exchanges. The Five Eyes agreement among the United States, United Kingdom, Canada, Australia, and New Zealand is the most famous long-standing secret intelligence agreement (though earlier versions of the agreement have been declassified). 124 The agreement allocates electronic surveillance collection among the five states and anticipates a high level of coordination and intelligence sharing. 125 The Five Eyes reportedly have added other states as "third parties," which have a formalized relationship with the Five Eyes but remain outside the core group. 126 The United States and Australia have concluded several secret agreements related to a joint defense facility at Pine Gap, Australia, from which the two states conduct electronic surveillance and monitor nuclear weapons development and testing, among other things. 127 In 1999, they renewed the Pine Gap agreement, which they first concluded in 1966. In 2008, the United States and Australia also secretly agreed to share classified geospatial intelligence from surveillance satellites and reconnaissance aircraft. 128 It appears that the United States may help Australia operate its surveillance satellite and have access to the imagery the satellite collects. 129

Secret commitments also help establish the rules of the road for joint intelligence operations. Two examples recently emerged. First, the Government of Mexico apparently concluded an arrangement with the U.S. Government that granted "high-flying U.S. spy planes access to Mexican airspace for the purpose of gathering intelligence" to suppress narcotics trafficking. 130 Mexican authorities retained operational control during the drone flights. 131 Second, in the wake of September 11, intelligence services of France, the United Kingdom, the United States, Germany, Canada, and Australia established Alliance Base, an operations center in Paris that planned and undertook joint counter-terrorism field operations. 132

The United States also has concluded intelligence agreements that help build and bolster other states' intelligence capacities. The National Geospatial-Intelligence Agency, which maintains U.S. satellites and collects geospatial intelligence to facilitate (among other things) national security policymaking, counter-terrorism, and warfighting, has entered into more than 400 agreements with over 120 countries to build their geospatial intelligence capacities, enabling international partners to "operate in coalition environments, transform and modernize their defense structures, and protect common interests." 133 Some of these agreements appear to be classified. 134 Similarly, in 1949 the CIA agreed to provide funding and equipment to Turkey's intelligence organization in exchange for the raw communications intelligence traffic that Turkey collected. 135 Later, the National Security Agency and the Turkish General Staff concluded a secret commitment pursuant to which the United States could operate signals intelligence sites on Turkish soil. 136 The United States enhances allies' capabilities in exchange for access to the information that the allies obtain with those more advanced capabilities.

Yet other secret intelligence commitments establish more discrete (and possibly shorter-term) modalities of cooperation. Consider two examples related to Israel. The United States reportedly sold F-16 jets to Israel under a secret agreement in which Israel agreed to use the F-16 jets for defensive purposes only. 137 International law generally forbids preemptive uses of force. 138 Bilateral cooperation also exists with Israel in the signals intelligence sphere. In 2013, Edward Snowden leaked a memorandum of understanding between the National Security Agency and the Israeli Signals Intelligence National Unit (ISNU). 139 Pursuant to the memorandum, NSA would share raw signals intelligence with the ISNU, which would handle that intelligence in accordance with U.S. law (including the requirement to minimize U.S. person information). 140 NSA appears to train Israeli personnel in the minimization process. 141 European states also seem to have established certain intelligence-sharing commitments in the wake of the 2015 Paris attack and 2016 Brussels attacks, though the scope and breadth of the commitments is unclear. 142

### 2nc – solvency – weapons commitments

#### Weapons agreements can be conducted secretly

Ashley S. Deeks 18, Associate Professor, University of Virginia Law School. 2018, “Symposium: The Forefront of International Law: A (Qualified) Defense of Secret Agreements,” Arizona State Law Journal, 49, 713, pp. 749-750, Lexis, nihara

4. Weapons-Related Commitments

The United States has concluded a variety of agreements that regulate how states that purchase U.S. weapons may employ those weapons. Many of those agreements are public, but in some cases the restrictions are secret. Perhaps the worst-kept secret agreement in this category is one between the United States and Israel limiting how Israel may use U.S.-manufactured cluster munitions. The agreement reportedly prohibits Israel's use of cluster munitions "in populated areas and against targets that are not clearly military." 168 (Using cluster munitions in civilian-populated areas is likely to result in civilian deaths during or after an armed conflict, by virtue of the way the munitions work.) In at least two cases, the United States has opened investigations into Israel's possible violation of that agreement, and in one case suspended sales of cluster munitions to Israel for six years. 169

The United States may have established similar classified restrictions on its sales of armed drones. In 2015, the Obama Administration announced that it would permit the export of armed drones, while establishing principles to which foreign state purchasers would need to adhere. 170 One such principle is that the purchasers would have to agree to use the drones for "national defense or other situations in which force is permitted by international law." 171 The U.S. policy governing sales remains classified, which suggests that the subsequent agreements between the United States and drone-purchasing states may also be classified.

### 2nc – competition – substantially

#### “Substantial” increases in cooperation cannot be concealed

Words and Phrases 64 (40W&P 759)

The words" outward, open, actual, visible, substantial, and exclusive," in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain: absolute: real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including, admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

#### “Substantially” excludes covert action.

Edwards ‘8 (Richard; 2008; Professor of Communication Studies at Baylor University, Ph.D. in Communication Studies from the University of Iowa; Competitive Debate: The Official Guide, “Policy Debate Final Round,” p. 227)

And, “substantial” means the increase must be definite. Potential future increases are not topical. Words and Phrases, 1964, accessed online: “Substantial means not concealed, denoting that which not merely can be, but is supposed to be, potential, certain, absolute, real at the present time.”

#### “Substantially” excludes covert action.

Shepard 98 (Justice Shepard on the Appellate Court of Illinois, First District; March 1, 1898; Westlaw, “Bass v. Pease,” 79 Ill. App. 308)

“Outward,” “open,” “actual,” “visible,” “substantial” and “exclusive” mean, in the connection that they are employed in the cases referred to, substantially the same thing. They mean “not concealed,” “not hidden, exposed to view,” “free from concealment, dissimulation, reserve or disguise;” “in full existence; denoting that which not merely can be, but is, opposed to potential, apparent, constructive and imaginary;” “veritable, genuine, certain, absolute;” “real, at present time, as a matter of fact;” “not merely nominal, opposed to form,” ““actually existing, true;” “not including, admitting or pertaining to any others; undivided, sole;” “opposed to inclusive.” Anderson's Law Dictionary and The Century Dictionary, under appropriate headings.

## aff answers

### 2ac – secrecy bad

#### Secrecy in US-NATO security cooperation enables violations of international law’s principles of proportionality AND distinction

Austin Nolen 21, J.D., Temple University Beasley School of Law, 2021; B.A., History, Temple University, 2017, "Article: Evading Accountability: How the Secrecy of International Organizations Harms Americans? Right to Know." Temple International & Comparative Law Journal, 35, 229 Summer 2021, pp. 230-232, Lexis, nihara

I. INTRODUCTION

The United States expends significant resources on what it calls efforts to preserve international peace and security. These costs are incurred both through U.S. agencies directly and through international organizations in which the United States plays a part. Both U.S. agencies and international organizations also have the capability to infringe on legally and normatively guaranteed rights of Americans and non-U.S. citizens. However, despite the sums expended by Americans and the potential infringements and abuses by international organizations, U.S. citizens have very few mechanisms to obtain information about these organizations. This is in contrast to the established regime of transparency required and practiced by U.S. agencies. Specifically, the existing transparency tools for citizen oversight of two international security organizations, the North Atlantic Treaty Organization (NATO) 1and the International Criminal Police Organisation (INTERPOL), 2are inadequate because they default to secrecy rather than balancing organizational needs against the requirement for public legitimacy.

A. Public Interest in NATO Operations

U.S. support to NATO takes two primary forms: indirect contributions in the form of American troops deployed on NATO missions and direct contributions in the form of American money provided for NATO's budget. 3In June 2008, the United States contributed 23,550 troops to NATO's International Security Assistance Force (ISAF) in Afghanistan, in addition to 19,000 forces operating independently of NATO in Afghanistan under Operation Enduring Freedom (OEF). 4In June 2019, the U.S. contribution to Resolute Support (RS), NATO's successor mission to ISAF, was 8,475 troops. 5In addition, the United States contributed about $ 570 million to NATO's headquarters in 2018 alone. 6

The U.S. Department of Defense accepts that its troops must, inter alia, plan and execute operations in Afghanistan 7in compliance with the law of war principles of proportionality and distinction. 8When U.S. troops commanded 9by NATO under the former ISAF and current RS mission engage in combat, they must follow certain rules of international law. 10One such rule, proportionality, requires military commanders to weigh the expected combat benefits of action against the incidental harms to the civilian population, and avoid combat where the incidental harms are excessive compared to the benefits of the legitimate military mission. 11Distinction, another law of war principle, mandates that commanders take care to differentiate between enemy forces, which can be targeted, and civilians, who cannot be intentionally targeted. 12

However, during non-international armed conflicts such as the one in Afghanistan, military authorities may experience greater difficulties distinguishing between enemy combatants and civilians. 13As a result, NATO and independent U.S. forces in Afghanistan have killed hundreds of civilians in airstrikes. 14Human rights groups have alleged these military forces failed to properly follow international law in the course of such attacks. 15Yet, as demonstrated below, the records of U.S. forces are presumptively open to civilian inspection, allowing Americans to assess the legality of the force used in our name and with our tax dollars, while the records of NATO forces are not. 16

Austin Nolen 21, J.D., Temple University Beasley School of Law, 2021; B.A., History, Temple University, 2017, "Article: Evading Accountability: How the Secrecy of International Organizations Harms Americans? Right to Know." Temple International & Comparative Law Journal, 35, 229 Summer 2021, pp. 239-246, Lexis, nihara

II. CASE STUDIES

Existing international organization transparency efforts fail to account for the public's interest in their actions and for the need for public legitimacy. 66This lack of transparency is borne out by two case studies of international organizations that perform public duties like those undertaken by comparable U.S. agencies, with similar risks to human rights, but without the same level of public transparency: (1) NATO troops made up of soldiers from the United States and other nations compared with U.S.-commanded troops in Afghanistan, and (2) INTERPOL Red Notices compared with domestic arrest warrants.

A. NATO Airstrikes in Afghanistan

Both NATO forces and U.S. forces in Afghanistan are funded by U.S. taxpayers, both help to implement U.S. security interests, and both have the potential to violate international laws and norms. However, for the reasons explained below, the actions of U.S. forces are far more transparent to the U.S. taxpayer than the actions of NATO forces.

1. Structure and Mission of NATO and U.S. Forces in Afghanistan

In order to understand the different levels of transparency applied to NATO and U.S. forces undertaking similar public duties in Afghanistan, it is first necessary to understand the basic organizational details and legal authorities of both institutions. Transparency itself depends on the entity from which the armed forces derive their authority and on the organizational arrangements used by those armed forces.

a. NATO Structure

The North Atlantic Treaty establishes only one NATO body, the North Atlantic Council. 67The Council contains representatives from each state party and has authority to "set up such subsidiary bodies as may be necessary." 68The North Atlantic Council has created a military hierarchy for its armed operations. 69The chief military authority is the Military Committee, which consists of the most senior military officer of each member country or his or her representative. 70The Committee is assisted by its International Military Staff. 71

Subordinate to the Military Committee is the military command structure, which is composed of two commands: Allied Command Operations and Allied Command Transformation. 72Allied Command Transformation is led by Supreme Allied Command Transformation and focuses on strategic planning and readiness. 73Allied Command Operations directs and executes all military operations and is led by the Supreme Allied Commander Europe (SACEUR) from the Supreme Headquarters Allied Powers Europe (SHAPE) in Belgium. 74Traditionally, SACEUR is also the U.S. military officer in charge of U.S. European Command. 75

The International Security Assistance Force (ISAF) was authorized by the U.N. Security Council to provide security in and near the Afghan capital, Kabul, in December 2001. 76NATO took control of the ISAF mission in August 2003. 77ISAF's authority was expanded to encompass the entire country in October 2003. 78ISAF was terminated in 2014 and replaced with the RS mission. 79The NATO commander in Afghanistan is subordinate to SACEUR/SHAPE. 80

b. U.S. Forces Structure

Separate and apart from U.S. troops operating in Afghanistan under the NATO banner, the U.S. military also commands troops in Afghanistan directly. 81The structure of those forces is the result of the evolution of American military organization in the twentieth century more broadly. 82Past the beginning of World War II, the Department of War and the Department of the Navy, the two extant departments of the American military, 83operated autonomously from one another. 84In response to the shortcomings of this approach, Congress and the executive branch took steps during and after World War II to increasingly remove the leadership of the military departments from any direct control over military operations. 85

In 1986, responding to concerns that the military departments still exercised too much informal control over operations, 86Congress officially removed the departments from any command over the operational elements. 87That reform, which still provides the basic framework for the American military structure, 88tasks the military departments 89with preparing their forces for combat. 90The military departments then assign their forces to the combatant commands, which have operational authority. 91The President is responsible for creating combatant commands and assigning their areas of operation or responsibilities. 92There are presently eleven active combatant commands, including U.S. Central Command (CENTCOM), 93the combatant command responsible for U.S. forces in Afghanistan and the Middle East more broadly. 94

Most U.S. troops in Afghanistan who are not assigned to the NATO mission are under the control of U.S. Forces-Afghanistan (USFOR-A), which in turn, is a component of CENTCOM. 95USFOR-A was created by the Department of Defense in 2008 to merge several different Afghanistan chains of command into one, and it commanded most soldiers assigned to OEF, which has subsequently been replaced by OFS. 96Since USFOR-A was created in 2008, its commander has always simultaneously commanded NATO troops in Afghanistan under the ISAF and then RS missions. 97

2. Alleged Abuses

Airstrikes carried out by both NATO and U.S. forces are a consistent source of civilian casualties in Afghanistan. Human Rights Watch has alleged that airstrikes by these two military organizations were responsible for 116 civilian deaths in 2006 and 321 in 2007. 98In 2018, the United Nations Assistance Mission to Afghanistan counted 393 civilian deaths and 239 civilian injuries caused by aerial operations by U.S. and NATO forces for a total of 632 civilian casualties. 99These figures are disputed by military officials. 100However, the issue with these casualties for the purpose of this comment is not so much their exact number, but the fact that they raise serious concerns about whether the United States and NATO are complying with relevant law of war standards. 101Human Rights Watch and the U.N. noted similar casualty trends across time in both reports. For instance, both organizations noted their concern about civilian casualties caused by relatively spontaneous airstrikes carried out in support of ground forces, as opposed to airstrikes planned well in advance. 102

3. Comparative Inability to Access NATO Records

Both the United States and NATO have transparency laws or policies. 103However, NATO's transparency policy is far weaker. As a result, there is no public right to access most NATO documents, even though their equivalents are public under U.S. law. Because the commander of NATO forces in Afghanistan is an American, 104and most NATO troops are contributed by the U.S., 105it is arguable that many NATO records should be accessible as records of one or more U.S. military agencies. However, the Department of Defense has concluded that NATO records in the possession of American personnel assigned to NATO are not records of U.S. agencies. 106

a. High-Level Policy Documents

In the United States, laws and quasi-legislative documents of the federal government must be made public, a requirement that falls under the legislative and judicial type of transparency. First, the U.S. Constitution itself requires public access to Congressional enactments. 107Second, provisions of the Freedom of Information Act require executive agencies to publish all general rules and policies. 108As a result, the public has access to a wealth of information about the law and policy governing the American armed forces. These include not only the law, 109but also voluminous quasi-law policy documents from the Department of Defense and the services branches, such as Department of Defense Directives, 110service regulations, 111and doctrinal publications. 112If an executive branch agency refuses to disclose such policy documents, any individual can seek a court order compelling their release. 113

In contrast, NATO's transparency policy is far more limited. First, unlike the Freedom of Information Act, NATO's policy is limited to historical documents--those thirty years or older, which NATO has determined for itself to have permanent historical significance. 114Even though the present war in Afghanistan is now nearly twenty years old, 115this transparency mandate does not extend to any policies enacted since NATO became involved in that conflict. 116Second, the policy provides no mechanism for outside enforcement. 117

b. Investigations into Alleged Abuses

The Freedom of Information Act is not limited to official policy documents. It also creates a presumption of access to unpublished internal government records, an example of executive type transparency. 118This presumption is qualified with several exceptions, including classified information and information that would compromise investigations. 119Even so, U.S. military agencies must at times release the results of their investigations into alleged human rights abuses. For instance, after a high-profile incident in which soldiers assigned to USFOR-A carried out an airstrike against a hospital operated by the charity Médecins Sans Frontières in Kunduz Province, CENTCOM released a redacted copy of the investigation report under the Freedom of Information Act. 120Agency failures to disclose records of these investigations are subject to judicial review. 121

When U.S. troops under either command allegedly carry out human rights abuses, both NATO and U.S. authorities may carry out investigations into such allegations. 122However, NATO appears to carry out more frequent investigations, while the United States undertakes relatively few civilian casualty investigations under its internal procedures. 123Under the NATO Public Disclosure Policy, none of the investigative results from NATO investigation processes are publicly available for at least thirty years. 124As a result, valuable information about compliance with the law of war is not available to the public.

#### Strong LOAC norms against civilian casualties prevent satellite attacks

Beard, 18—associate professor of law at the University of Nebraska-Lincoln (Jack, interviewed by Brandon McDermott, “Crafting The Manual For Warfare In Space,” <http://netnebraska.org/article/news/1163396/crafting-manual-warfare-space>, dml)

There's another factor here too, the growing commercialization of space. With more and more launches, with more and more satellites – the individual operators the individual companies – those are the responsibility of the states under the rules that are now in place in the Outer Space Treaty. You can see, as space becomes more congested and more competitive that there are going to be problems that are likely to occur between – for instance – space mining entities. Which is no longer a far-fetched idea. As competition for resources in space grows the likelihood of a conflict grows and so you'd like to try to interpret some of the terms that haven't been applied yet in space. Phrases like “interference,” or “due regard,” which are found in the treaties haven't ever been interpreted to this point in any real detail.

It would be nice to know what the appropriate response is to certain actions in space and things that are perceived as hostile in order to prevent as much damage as possible to civilian objects and to civilians. The law of armed conflict has as one of its central goals preventing unnecessary or excessive damage to the civilian population. There are satellites up there that are solely dedicated to all sorts of humanitarian purposes – weather satellites, satellites related to rescue and emergency – those sorts of things aren't appropriate targets in an armed conflict and should be treated with some special regard.

#### Satellite attacks cause nuclear war

Grego, 17—Senior Scientist, Global Security Program, with the Union of Concerned Scientists (Laura, “50 years after the Outer Space Treaty: How secure is space?,” <https://www.ucsusa.org/sites/default/files/attach/2017/12/50-Years-OST-article.pdf>, dml)

For the foreseeable future, military tensions among the United States, China, and Russia are likely to remain high, as are those between China and India. It is imperative to track investments and strategies that could escalate a crisis or lead actors to consider approaching or crossing the nuclear threshold. Attacks on satellites can create or escalate terrestrial crises in ways that are difficult to predict and which are particularly dangerous among nuclear powers.

While the OST prohibits nuclear weapons in space, it is less specific about other military activity, and states have different interpretations of “peaceful purposes.” Thus, the drift is toward a space regime that includes increasingly sophisticated anti-satellite technology, with very little mutual understanding about how actions in space are perceived and what constraints, if any, global governance provides.

States—and, increasingly, sub-state actors—have been developing technologies that can be used to interfere with satellites. Not all such technologies are equally dangerous, and it may be possible to prioritize appropriate limits. Signals jamming, for example, is relatively low-tech, but is also limited temporally and spatially in its effects; identification of the perpetrator is relatively straightforward, even if remedies for the interference are less so. More concerning are technologies with a strategic-sized capability, or which are stealthy and hard to attribute, or which make intent difficult to discern; these technologies can provide new and unpredictable paths to crisis escalation. The inventories of such weapons are growing and relevant technology is proliferating.

# cp – war powers resolution

## war powers resolution cp

### 1nc – war powers resolution cp

#### The United States federal government should prohibit [plan] due to violation of the War Powers Resolution’s requirements for Congressional authorization of hostilities.

#### CP sets a precedent that revives Congressional oversight over U.S. security cooperation globally by designating it as constitutive of “hostilities”

Matthew C. Weed 19, Specialist in Foreign Policy Legislation, March 8, 2019, “The War Powers Resolution: Concepts and Practice,” Congressional Research Service, <https://sgp.fas.org/crs/natsec/R42699.pdf>, nihara

Renewed Efforts in the 116th Congress

On January 30, 2019, Representative Khanna and 96 co-sponsors introduced H.J.Res. 37, which again would direct “the removal of United States Armed Forces from hostilities in the Republic of Yemen that have not been authorized by Congress.” The language in H.J.Res. 37 as introduced was identical to the amended version of S.J.Res. 54 that passed the Senate in the 115th Congress. The resolution was referred to the House Foreign Affairs Committee, which on February 6, 2019, considered the resolution at a markup session after a hearing of the full committee regarding U.S. policy in the Arabian peninsula. During markup, opponents of the measure argued that U.S. support operations related to the counter-Houthi campaign in Yemen were not “hostilities,” and that passage of H.J.Res. 37 would set a precedent under which any Member of Congress could force votes calling into question “all U.S. security cooperation agreements throughout the world.” Those in favor of the measure stated that U.S. actions in Yemen in this specific case involved direct involvement in an armed conflict, and that “support for ongoing hostilities by a third power and ally … qualify” as involvement of U.S. armed forces in hostilities.139 The committee voted 25-17 to report H.J.Res. 37 to the full House and recommend its passage.140

#### AND, increases Congressional ability to broadly interpret “hostilities” vis-à-vis the executive – that’s key to increase the efficacy of oversight across-the-board

Oona A. Hathaway et al. 21, Tobias Kuehne, Randi Michel & Nicole Ng, Gerard C. and Bernice Latrobe Smith Professor of Law, Yale Law School; J.D. (2021), Yale Law School & Ph.D. (2021), Yale University; J.D. Candidate, Yale Law School (2022); J.D. Candidate, Yale Law School (2022), respectively. "Article: Congressional Oversight of Modern Warfare: History, Pathology, and Proposals for Reform." William & Mary Law Review, 63, 137 October, 2021, pp. 150-154, Lexis, nihara

Foreign affairs have been subject to informal, ad hoc oversight by the House and Senate since the Founding. 37As the young Republic's diplomatic business grew steadily over the first few decades, both chambers soon created standing committees to oversee it: SFRC was established in 1816 38and HFAC followed in 1822. 39Although the precise jurisdictions of the foreign relations committees have shifted over the centuries, they have always been responsible for oversight of relations with other nations. 40In recent years, this has translated into jurisdiction over the State Department, including U.S. embassies abroad, and the U.S. Agency for International Development (USAID). 41

The committees have traditionally overseen decisions to declare war, authorize traditional military interventions, and shape relations with foreign nations. 42That jurisdiction has been deeply connected to the War Powers Resolution (WPR) 43since its passage in 1973. 44Enacted in response to concerns that the executive branch had abused its war powers in Southeast Asia, 45the WPR requires the President to notify and consult Congress regarding the introduction of armed forces into hostilities; 46provide periodic updates to Congress throughout the duration of involvement in hostilities; 47and withdraw armed forces from hostilities after sixty days unless otherwise authorized by Congress. 48WPR oversight, along with congressional decisions to authorize the use of military force (AUMF), fall under the jurisdiction of the foreign relations committees. 49The WPR's rigorous restraint provisions came under attack almost immediately after it was passed. Presidents since Nixon have questioned the constitutionality of the WPR, 50although they have generally complied with its reporting requirements by filing reports "consistent with the War Powers Resolution." 51The WPR's ambiguity and interpretive flexibility - especially regarding the term "hostilities" - has limited its scope and practical effect. 52The WPR does not define what constitutes "hostilities," and no legislation or court decisions have offered more specificity. 53Even though the WPR's legislative history suggests that Congress intended "hostilities" to be a broad term, 54Presidents have interpreted it narrowly to avoid reporting requirements and triggering its withdrawal provisions. 55In 2011, for example, as the WPR sixty-day termination date for U.S. military operations in Libya neared, the Obama administration concluded that U.S. military operations did not constitute "hostilities" within the meaning of the WPR even though the United States had already conducted an extensive bombing campaign. 56The Trump administration subsequently adopted a similar position on "limited" hostilities in Syria. 57And in Yemen, President Trump argued that U.S. military operations in support of the Saudi-led coalition did not amount to "hostilities," as U.S. troops served only in a noncombat support role, despite a resolution supported by both houses of Congress specifically labeling the operations "hostilities." 58

The executive branch's narrow interpretation of the WPR has cabined its scope and thus limited the foreign relations committees' ability to exercise their intended oversight role. As one congressional staffer explained, "The foreign relations committees never managed to have the hook they should have had through the War Powers Resolution. They used it as a rhetorical cudgel rather than as an operative means to have a seat at the decision-making table." 59As modern warfare tactics have increasingly fallen outside the WPR's scope, 60the foreign relations committees have been increasingly sidelined. As discussed in the next two Sections, much of that oversight authority has instead gone to the armed services and intelligence committees.

#### Biden flexibility causes extinction AND overstretch – it’s unsustainable – escalates global hotspots – the Middle East, Africa – AND, causes great power war with China AND Russia

Danny Sjursen 21, Danny Sjursen is a retired US Army officer, contributing editor at Antiwar.com, senior fellow at the Center for International Policy, and director of the soon-to-launch Eisenhower Media Network. His work has appeared in The New York Times, the Los Angeles Times, The Nation, HuffPost, The Hill, Salon, The American Conservative, Mother Jones, ScheerPost, and TomDispatch, among other publications. He served combat tours in Iraq and Afghanistan and later taught history at West Point. He is the author of a memoir and critical analysis of the Iraq War, Ghostriders of Baghdad: Soldiers, Civilians, and the Myth of the Surge and Patriotic Dissent: America in the Age of Endless War. 1-23-2021, "What Our Forever Wars Will Look Like Under Biden," Nation, <https://www.thenation.com/article/politics/biden-endless-war/>, nihara

Hard as it is to believe in this time of record pandemic deaths, insurrection, and an unprecedented encore impeachment, Joe Biden is now officially at the helm of the US war machine. He is, in other words, the fourth president to oversee America’s unending and unsuccessful post-9/11 military campaigns. In terms of active US combat, that’s only happened once before, in the Philippines, America’s second-longest (if often forgotten) overseas combat campaign.

Yet that conflict was limited to a single Pacific archipelago. Biden inherits a global war—and burgeoning new Cold War —spanning four continents and a military mired in active operations in dozens of countries, combat in some 14 of them, and bombing in at least seven. That sort of scope has been standard fare for American presidents for almost two decades now. Still, while this country’s post-9/11 war presidents have more in common than their partisan divisions might suggest, distinctions do matter, especially at a time when the White House almost unilaterally drives foreign policy.

So, what can we expect from Commander in Chief Biden? In other words, what’s the forecast for US service members who have invested their lives and limbs in future conflict, as well as for the speculators in the military-industrial complex and anxious foreigners in the countries still engulfed in America’s war on terror who usually stand to lose it all?

Many Trumpsters, and some libertarians, foresee disaster: that the man who, as a leading senator facilitated and cheered on the disastrous Iraq War, will surely escalate American adventurism abroad. On the other hand, establishment Democrats and most liberals, who are desperately (and understandably) relieved to see Donald Trump go, find that prediction preposterous. Clearly, Biden must have learned from past mistakes, changed his tune, and should responsibly bring US wars to a close, even if at a time still to be determined.

In a sense, both may prove right—and in another sense, both wrong. The guess of this long-time war-watcher (and one-time war fighter) reading the tea leaves: Expect Biden to both eschew big new wars and avoid fully ending existing ones. At the margins (think Iran), he may improve matters some; in certain rather risky areas (Russian relations, for instance), he could worsen them; but in most cases (the rest of the Greater Middle East, Africa, and China), he’s likely to remain squarely on the status-quo spectrum. And mind you, there’s nothing reassuring about that.

It hardly requires clairvoyance to offer such guesswork. That’s because Biden basically is who he says he is and who he’s always been, and the man’s simply never been transformational. One need look no further than his long and generally interventionist past record or the nature of his current national-security picks to know that the safe money is on more of the same. Whether the issues are war, race, crime, or economics, Uncle Joe has made a career of bending with the prevailing political winds and it’s unlikely this old dog can truly learn any new tricks. Furthermore, he’s filled his foreign policy squad with Obama-Clinton retreads, a number of whom were architects of—if not the initial Iraq and Afghan debacles—then disasters in Libya, Syria, West Africa, Yemen, and the Afghan surge of 2009. In other words, Biden is putting the former arsonists in charge of the forever-war fire brigade.

There’s further reason to fear that he may even reject Trump’s “If Obama was for it, I’m against it” brand of war-on-terror policy-making and thereby reverse The Donald’s very late, very modest troop withdrawals in Afghanistan, Iraq, and Somalia. Yet even if this new old hand of a president evades potentially existential escalation with nuclear Russia or China and offers only an Obama reboot when it comes to persistent low-intensity warfare, what he does will still matter—most of all to the global citizens who are too often its victims. So, here’s a brief region-by-region flyover tour of what Joe’s squad may have in store for both the world and the American military sent to police that world.

THE MIDDLE EAST: OLD PRESCRIPTIONS FOR OLD BUSINESS

It’s increasingly clear that Washington’s legacy wars in the Greater Middle East—Iraq and Afghanistan, in particular—are generally no longer on the public’s radar. Enter an elected old man who’s charged with handling old business that, at least to most civilians, is old news. Odds are that Biden’s ancient tricks will amount to safe bets in a region that past US policies essentially destroyed. Joe is likely to take a middle path in the region between large-scale military intervention of the Bush or Obama kind and more prudent full-scale withdrawal.

As a result, such wars will probably drag on just below the threshold of American public awareness, while avoiding Pentagon or partisan charges that his version of cutting-and-running endangered US security. The prospect of “victory” won’t even factor into the equation (after all, Biden’s squad members aren’t stupid), but political survival certainly will. Here’s what such a Biden-era future might then look like in a few such sub-theaters.

The war in Afghanistan is hopeless and has long been failing by every one of the US military’s own measurable metrics, so much so that the Pentagon and the Kabul government classified them all as secret information a few years back. Actually dealing with the Taliban and swiftly exiting a disastrous war likely to lead to a disastrous future with Washington’s tail between its legs is, in fact, the only remaining option. The question is when and how many more Americans will kill or be killed in that “graveyard of empires” before the United States accepts the inevitable. Toward the end of his tenure, Trump signaled a serious, if cynical, intent to so. And since Trump was by definition a monster and the other team’s monsters can’t even occasionally be right, a coalition of establishment Democrats and Lincoln-esque Republicans (and Pentagon officials) decided that the war must indeed go on. That culminated in last July’s obscenity in which Congress officially withheld the funds necessary to end it. As vice president, Biden was better than most in his Afghan War skepticism, but his incoming advisers weren’t, and Joe’s nothing if not politically malleable. Besides, since Trump didn’t pull enough troops out faintly fast enough or render the withdrawal irreversible over Pentagon objections, expect a trademark Biden hedge here.

Syria has always been a boondoggle, with the justifications for America’s peculiar military presence there constantly shifting from pressuring the regime of Bashar al-Assad, to fighting the Islamic State, to backing the Kurds, to balancing Iran and Russia in the region, to (in Trump’s case) securing that country’s meager oil supplies. As with so much else, there’s a troubling possibility that, in the Biden years, personnel once again may become destiny. Many of the new president’s advisers were bullish on Syrian intervention in the Obama years, even wanting to take it further and topple Assad. Furthermore, when it comes time for them to convince Biden to agree to stay put in Syria, there’s a dangerous existing mix of motives to do just that: the emotive sympathy for the Kurds of known gut-player Joe; his susceptibility to revived Islamic State (ISIS) fear-mongering; and perceptions of a toughness-testing proxy contest with Russia.

When it comes to Iran, expect Biden to be better than the Iran-phobic Trump administration, but to stay shackled “inside the box.” First of all, despite Joe’s long-expressed desire to reenter the Obama-era nuclear deal with Iran that Trump so disastrously pulled out of, doing so may prove harder than he thinks. After all, why should Tehran trust a political basket case of a negotiating partner prone to significant partisan policy-pendulum swings, especially given the way Washington has waged nearly 70 years of interventions against Iran’s politicians and people? In addition, Trump left Biden the Trojan horse of Tehran’s hardliners, empowered by dint of The Donald’s pugnacious policies. If the new president wishes to really undercut Iranian intransigence and fortify the moderates there, he should go big and be transformational—in other words, see Obama’s tension-thawing nuclear deal and raise it with the carrot of full-blown diplomatic and economic normalization. Unfortunately, status-quo Joe has never been a transformational type.

KEEP AN EYE ON AFRICA

Though it garners far less public interest than the US military’s long-favored Middle Eastern playground, Africa figures significantly in the minds of those at the Pentagon, in the Capitol, and in Washington’s influential think tanks. For interventionist hawks, including liberal ones, that continent has been both a petri dish and a proving ground for the development of a limited power-projection paradigm of drones, Special Operations forces, military advisers, local proxies, and clandestine intelligence missions.

It mattered little that over eight years of the Obama administration—from Libya to the West African Sahel to the Horn of East Africa—the war on terror proved, at best, problematic indeed, and even worse in the Trump years. There remains a worrisome possibility that the Biden posse might prove amenable yet again to the alarmism of US Africa Command (AFRICOM) about the rebirth of ISIS and the spread of other Al Qaeda–inked groups there, bolstered by fear-mongering nonsense masquerading as sophisticated scholarship from West Point’s Combating Terrorism Center, and the Pentagon’s perennial promises of low-investment, low-risk, and high-reward opportunities on the continent. So, a savvy betting man might place chips on a Biden escalation in West Africa’s Sahel and the Horn of East Africa, even if for different reasons.

American Special Forces and military advisors have been in and out of the remote borderlands between Mali and Niger since at least 2004 and these days seem there to stay. The French seized and suppressed sections of the Sahel region beginning in 1892, and, despite granting nominal independence to those countries in 1960, were back by 2013 and have been stuck in their own forever wars there ever since. American War on Terror(izing) and French neocolonizing have only inflamed regional resistance movements, increased violence, and lent local grievances an Islamist resonance. Recently, France’s lead role there has truly begun to disintegrate—with five of its troops killed in just the first few days of 2021 and allegations that it had bombed another wedding party. (Already such a War on Terror cliché!)

Don’t be surprised if French President Emmanuel Macron asks for help and Biden agrees to bail him out. Despite their obvious age gap, Joe and Emmanuel could prove the newest and best of chums. (What’s a few hundred extra troops between friends?)

Especially since Obama-era Secretary of State Hillary Clinton and her then-favored errand boy, incoming national security adviser Jake Sullivan, could be said to have founded the current coalition of jihadis in Mali and Niger. That’s because when the two of them championed a heavy-handed regime-change intervention against Libyan autocrat Moammar El-Gadhafi in 2011, thousands of his Tuareg fighters blew back into that region in a big way with more than just the clothes on their backs. They streamed from post-Gadhafi Libya into their Sahel homelands loaded with arms and anger. It’s no accident, in other words, that Mali’s latest round of insurgency kicked off in 2012. Now, Sullivan might push new boss Biden to attempt to clean up his old mess.

On the other side of the continent, in Somalia, where Trump began an eleventh-hour withdrawal of a long-failing and aimless US troop presence (sending most of those soldiers to neighboring countries), there’s a real risk that Biden could double-down in the region, adding soldiers, special operators, and drones. After all, if Trump was against it, even after exponentially increasing bombing in the area, then any good Democrat should be for it, especially since the Pentagon has, for some time now, been banging the drum about Somalia’s al-Shabaab Islamist outfit being the biggest threat to the homeland.

However, the real selling point for Biden might be the fantasy that Russia and China are flooding into the region. Ever since the 2018 National Defense Strategy decisively shifted the Pentagon’s focus from counterterrorism wars to “great power competition,” or GPC, AFRICOM has opportunistically altered its own campaign plan to align with the new threat of the moment, honing in on Russian and Chinese influence in the Horn region. As a result, AFRICOM’S come-back-to-the-Horn pitch could prove a relatively easy Biden sell.

TOUGHNESS TRAPS: POKING RUSSIAN BEARS, RAMMING CHINESE (SEA) DRAGONS

With that new GPC national security obsession likely to be one Trump-era policy that remains firmly in place, however ill-advised it may be, perhaps the biggest Biden risk is the possibility of stoking up a “new,” two-theater, 21st century version of the Cold War (with the possibility that, at any moment, it could turn into a hot one). After making everything all about Russia in the Trump years, the ascendant Democrats might just feel obliged to follow through and escalate tensions with Moscow that Trump himself already brought to the brink (of nuclear catastrophe). Here, too, personnel may prove a key policy-driver.

Biden’s nominee for secretary of state, Anthony Blinken, is a resident Russia hawk and was an early “arm Ukraine” enthusiast. Jake Sullivan already has a tendency to make mountains out of molehills on the subject, as when he described a minor road-rage incident as constituting “a Russian force in Syria aggressively attack[ing] an American force and actually injur[ing] American service members.” Then there’s the troubling signal of Victoria Nuland, the recent nominee for undersecretary of state for political affairs, a pick that itself should be considered a road-rage-style provocation. Nuland has a history of hawkish antagonism toward Moscow and is reportedly despised by Russian President Vladimir Putin. Her confirmation will surely serve as a conflict accelerant.

Nevertheless, China may be the lead antagonist in the Biden crew’s race to risk a foolhardy cataclysm. Throughout the election campaign, the new president seemed set on out-hawking Trump in the Western Pacific, explicitly writing about “getting tough” on China in a March 2020 piece he penned in Foreign Affairs. Joe had also previously called Chinese President Xi Jinping “a thug.” And while Michèle Flournoy may (mercifully) have been passed over for secretary of defense, her aggressive posture toward Beijing still infuses the thinking of her fellow Obama alums on Biden’s team.

As TomDispatch regular Andrew Bacevich pointed out last September, a Flournoy Foreign Affairs article illuminated the sort of absurdity she (along with assumedly various Biden appointees) thinks necessary to effectively deter China. She called for “enhancing U.S. military capabilities so that the United States can credibly threaten to sink all of China’s military vessels, submarines, and merchant ships in the South China Sea within 72 hours.” Consider that Dr. Strangelove-style strategizing retooled for an inbound urbane imperial presidency.

ENDGAME: WAR AS ABSTRACTION

Historically, foreign-policy paradigm shifts are exceedingly rare, especially when they tack toward peace. Such pivots appear almost impossible once the immense power of America’s military-industrial complex, invested in every way in endless war, as well as endless preparations for future Cold Wars, has reached today’s grotesque level. This is especially so when each and every one of Biden’s archetypal national security nominees has, metaphorically speaking, had his or her mortgage paid by some offshoot of that war industry. In other words, as the muckraking novelist Upton Sinclair used to say, “It is difficult to get a man to understand something when his salary depends upon his not understanding it!”

Count on tactics including drones, commandos, CIA spooks, and a mostly amenable media to help the Biden administration make war yet more invisible—at least to Americans. Most Trump-detesting and domestically focused citizens will find that just dandy, even if exhausted troopers, military families, and bombed or blockaded foreigners won’t. More than anything, Biden wishes to avoid overseas embarrassments like unexpected American casualties or scandalous volumes of foreign civilian deaths—anything, that is, that might derail his domestic agenda or hoped-for restorative leadership legacy.

That, unfortunately, may prove to be a pipe dream and leads me to two final predictions: Formulaic forever war will never cease boomeranging back home to rot our republican institutions, and neither a celestial God nor secular History will judge Biden the war president kindly.

### 1nc – nb – nuclear command

#### Executive flexibility causes rogue OR precipitous nuclear deployment – extinction – it’s NOT sustainable

Dakota S. Rudesill 21, Associate Professor, Moritz College of Law, and Senior Fellow, Mershon Center for International Security Studies, The Ohio State University, "ARTICLE: Nuclear Command and Statutory Control." Journal of National Security Law and Policy, 11, 365, pp. 376-381, 2021, Lexis, nihara

B. Nuclear Nightmares Two and Three: Rogue President, and Precipitous President

The current nuclear command and control system may be the best that can be crafted to deal with the classic nuclear nightmare of launch in the face of imminent or initiated adversary attack. That risk is resurgent thanks to the advancing nuclear capabilities of Russia, China, and North Korea, and their long-term trajectories of increasingly confrontational relations with the United States. 43The inherited system, however, creates serious hazards in the hands of a President intent on first use of nuclear weapons where adversary attack is not temporally imminent, and the necessity and otherwise legality of nuclear use have not been established. One variant of this nightmare is a Rogue President who orders nuclear use without evident factual predicate or legal basis. A second related but distinct risk - one where there is no imminent threat of adversary nuclear attack - is that of a Precipitous President. That is, a Commander in Chief who resorts to nuclear weapons where a crisis or conventional conflict is underway and U.S. nuclear use at some point might be necessary and legal, but nuclear use's implications, legality, or alternatives have not yet been carefully evaluated. A Precipitous President is an impulsive leader who reaches for "the button" too quickly.

The President would be able to rely neither on international law nor on Article II constitutional authority for a non-necessary use of force. Use of force is illegal if it is unnecessary, and under U.S. law any use of force rising to the level of "war" (which any nuclear strike certainly would due to its effects or escalation risk) that is not a response to an armed attack would require congressional authorization. 44Even where the United States is involved in an armed conflict that is authorized under international and U.S. law, particular uses of force are still illegal if they do not comply with the international law of armed conflict (LOAC) and its jus in bello principles of necessity, distinction, proportionality, and humanity. Compliance with LOAC requires careful analysis of intelligence and tailoring of the use of force in terms of target selection, choice of weapon, angle of attack, and other respects, a process that involves military personnel, lawyers, and sometimes national leadership. 45Ensuring the lawfulness of nuclear operations is especially challenging because the effects of nuclear weapons are so powerful (including heat, blast, and prompt radiation) and hard to contain (especially radioactive fallout and computer-destroying electromagnetic pulse (EMP)). 46The inherited nuclear command and control system structurally anticipates that presidential nuclear orders will be legal, however, and the President will never misuse the nation's nuclear loaded weapons.

As Professor and former NSC legal advisor James E. Baker observes, presidents get the process they choose "within the constitutional and statutory framework of decision-making." 47The Constitution and statute provide a general chain of command. 48However, there is no statute or publicly known executive order governing nuclear launch specifically. 49In a legitimate crisis the President may be content to consult the anticipated line-up of threat conference civilian and military leaders. The President could additionally involve other civilian officials, the Attorney General, or other lawyers. Or, an impulsive President could open the nuclear football and give an order without consulting anyone. 50As senators worried at the recent congressional hearing, the President could awaken senior civilian and military officials with a strike order, rather than their waking the President with a threat warning. 51

Senior officials have only bad options in the face of a Rogue President or Precipitous President. There is no legal rule or known framework of norms to apply short of asking whether a strike order is illegal under LOAC, and how that body of law is interpreted and applied by the United States. General Kehler testified that "the military does not [unwittingly] ~~blindly~~ follow orders" and executes only legal orders. 52Here, an impulsive presidential launch order might fall into a worrisome grey zone: ambiguously legal, potentially illegal if carefully analyzed, but in the moment perhaps not "clearly illegal" or "manifestly unlawful." 53Yet whether the President's order is legally ambiguous or clearly illegal, the complete list of recourses for the Secretary of Defense, the Commander of the U.S. Strategic Command, or subordinates in the chain of command is short. Their only options at that point would be verbal dissuasion of the President, refusal, or resignation. If the President persisted, General Kehler testified that "I do not know exactly" what happens. 54

While those in the chain of command would benefit from time to consult lawyers and analyze the legal issues and intelligence, the President in contrast could relieve an objecting official immediately. If an official tried to continue in office despite dismissal, the official could rely only on their knowledge of the nuclear command and control system and on their own power of persuasion with other personnel in a desperate, insubordinate attempt to thwart transmission of the President's order to the field. With nuclear war and countless lives in the balance, a rogue secretary or relieved general or admiral would bureaucratically battle a Rogue President or Precipitous President. The nation and world could get to this nightmarish point stunningly fast. 55

The only options remaining would be complicated, fraught processes provided by the Constitution: removal of the President by the Cabinet under the Constitution's 25th Amendment, or by Congress via impeachment by the House and trial and then conviction by the Senate. 56These processes involve a large number of officials who are typically scattered across the capital or country (or world) at any given moment, surely a considerable amount of informal process and politicking behind the scenes, and multiple formal process steps. Both removal efforts could be contested by the President and their most loyal aides and partisans. 57Accordingly, these removal processes could be expected to take at the very least many hours. Removal could also take days, weeks, or months. In contrast, a nuclear launch order can be executed in minutes. The Constitution's solutions for removing a Rogue or Precipitous President are, for this reason, probably best thought of in the nuclear context as ex post processes - as first steps along a long road of correction and national reflection on an atomic atrocity. The President can push "the button" faster than Executive or Legislative Branch officials can constitutionally oust the Commander in Chief.

### 2nc – solvency

#### Congressional expansion of “hostilities” under the WPR to include security cooperation with NATO rebalances constitutional authority and checks miscalculation – the counterplan’s statutory guidance is key – self-imposed executive limits do NOT solve AND only circumvent oversight

By Erica H. Ma 21, J.D., 2020, New York University School of Law; B.A., 2015, University of Pennsylvania, "Article: The War Powers Resolution and the Concept of Hostilities." Northeastern University Law Review, 13, 519, pp. 522-528, May, 2021, Lexis, nihara

INTRODUCTION

In February 2020, the Senate passed a resolution calling for an end to escalating military hostilities against Iran without congressional authorization. 1A month later, the House of Representatives passed the resolution as well, 2but in May 2020, the resolution landed on President Donald Trump's desk, where it was vetoed. 3The day after, Congress attempted to override the veto but lacked the necessary two-thirds majority. 4With only a handful of Republicans breaking ranks in both the House and Senate to vote for the resolution, it amounted to no more than a "legal slap on the wrist" 5for the Trump Administration.

Congress pushed for this resolution in response to the Trump Administration's series of strikes against Iran in late 2019 and the January 2, 2020, strike that killed Iranian general Qassem Soleimani. House Foreign Affairs Chairman Eliot Engel argued on the House floor that legislation curtailing President Trump's actions against Iran was necessary, and that "Congress's powers are not as narrow as the administration would like us to believe." 6

These steps that Congress took are significant. A provision of the War Powers Resolution of 1973 (WPR) allows Congress to direct the President to remove U.S. armed forces from "hostilities," 7and the Iran resolution marks only the second time in history that measures invoking the WPR to limit the President's authority to use force have passed both the House and Senate. The first instance occurred in April 2019, only a year prior, when the House and Senate passed resolutions calling for an end to U.S. support for the Saudi-led coalition in Yemen's bloody civil war. 8U.S. involvement at the time had included arms sales, 9military advisers, intelligence, and midair refueling of Saudi aircraft. 10The Trump Administration, maintaining that U.S. troops were not involved in "hostilities" in Yemen, argued that the WPR did not require the withdrawal of troops. 11Ultimately, Congress was unable to muster two-thirds majority support, and the resolution died after Trump's veto. 12

Congress's actions over Iran and Yemen represent an attempt to reassert its constitutional authority over U.S. military action. Importantly, these steps demonstrate that Congress "is both able and willing to take on the responsibility of articulating approaches to foreign policy independent of the executive branch." 13Despite the fact that the Obama Administration initiated U.S. involvement in Yemen without congressional authorization, Congress's recent actions attempt to rebalance constitutional war powers and engage in meaningful oversight over future uses of force. 14As Stephen Pomper has noted, executive overreach "does not mean Congress has to throw in the towel on its rights and responsibilities." 15

Questions of when and how the President can go to war or send U.S. armed forces abroad are deeply contested, and considerations of the balance of war powers are especially relevant now at a time when U.S. involvement in overseas conflicts is once again at the forefront of the national conversation. Political scientist Edward Corwin once famously observed that the Constitution is "an invitation to struggle for the privilege of directing American foreign policy." 16Under the Constitution, war powers are divided between the President and Congress. The President is Commander in Chief of the armed forces, 17and Congress has the power to declare war, among other related powers. 18The Founders believed that Congress was primarily responsible for authorizing uses of force, with narrow exceptions permitting the President to repel sudden armed attacks or rescue American nationals abroad. 19Over the course of U.S. history, there have been formal declarations of war across five wars, in addition to statutory authorizations for the use of force. 20However, since the time of the founding, the executive branch has steadily interpreted its war powers expansively, and with courts reluctant to adjudicate any sort of tug-of-war-powers between the President and Congress, the law in this area has been heavily based on historical practice. 21With a history of "under-motivated Congresses and over-reaching presidents," 22the conventional adage is that the President's war powers have become essentially unconstrained.

This Article joins the ranks of scholarly work arguing that presidential unilateralism, which risks "miscalculation and aggrandizement," 23is not normatively appealing and should not remain unconstrained. It argues that Congress should seek to reassert its role in regulating war powers in order to produce better military policy and to act as a check on the President's ever-expanding powers. Generally, views on war powers have favored either pro-Congress or pro-executive stances. The pro-Congress school believes that pursuant to the Article I power to declare war (among other Article I powers), war powers should primarily reside with Congress, with the President's unilateral ability to use force limited to narrow circumstances. 24 This school includes members of Congress; scholars such as John Hart Ely, Louis Henkin, and Michael Glennon; and, most notably, President Joseph Biden. 25In contrast, the pro-executive school, populated by scholars like John Yoo, believes that pursuant to the Article II Commander in Chief Clause and Vesting Clause, the Constitution places war powers squarely with the President. 26

This Article contends that the law in this area, informed by historical practice and the statutory language of the WPR, is not fully without content and can in fact constrain the President. However, the ability of the law to constrain has been threatened by the executive branch's existing practice of creating self-imposed limits that do not meaningfully limit presidential discretion. 27But based on Congress's recent resolutions invoking the WPR, there seems to be a way forward. After four years of the Trump Administration's eager exercise of executive branch unilateralism, and with a new administration helmed by President Biden, who has historically supported pro-Congress war powers reform, 28there may be political will within Congress to reexamine its ability to check the President. In particular, Congress may be motivated to strengthen an existing constraint on the President: the War Powers Resolution.

Today, as the President's war powers fall under renewed public scrutiny, the WPR has become a focal point of any discussion on the use of force. 29Passed in 1973 over President Nixon's veto, 30the WPR represents Congress's attempt to assert its authority to limit and oversee the President's engagement of U.S. forces in military operations abroad. Despite the expansion of presidential war powers since its enactment, and despite executive branch interpretations limiting its statutory reach, the WPR "remains the key statutory framework for regulating the relationship between the political branches with respect to the use of U.S. armed forces abroad." 31For purposes of this Article, the WPR's most important provision for congressional control is Section 5(b), which creates a sixty-day termination clock. If the President introduces armed forces into hostilities or imminent hostilities, then unless Congress declares war, otherwise authorizes military action to continue, or extends the period by law, the President must withdraw the forces within sixty days. 32However, since the enactment of the WPR, the executive branch has worked to limit the sixty-day clock's applicability to the President's use of force by narrowly interpreting the meaning of "hostilities." The current executive branch standard for what constitutes "hostilities" originated from State Department Legal Adviser Harold Koh's 2011 testimony on airstrikes in Libya, in which he concluded that a military operation limited in mission, exposure of armed forces, risk of escalation, and military means does not engage in hostilities as envisioned by the WPR. 33

This Article argues that although the WPR still serves as the best framework through which Congress can check presidential unilateralism, one flaw in the resolution is the elasticity of the term "hostilities," which has allowed the executive branch to raise colorable arguments that the WPR's withdrawal mandate does not apply to a wide range of military activities abroad. This Article proposes to clarify and reconceptualize the term "hostilities" under the WPR. It aims to provide clearer standards of what constitute engagements in "hostilities," so that Congress can raise the political costs of presenting weak legal justifications for deploying U.S. armed forces, as well as shape public opinion when the President's actions are inconsistent with the WPR, which may ultimately constrain presidential decision-making.

This Article makes two proposals: First, it argues that "hostilities" can still exist when the United States plays a supporting role in a "partner mission"--a mission at the express invitation of another state, pursuant to UN authorization, or with a coalition like NATO--and must be reframed to encompass not only situations where U.S. forces participate in active exchanges of fire, but in which they use or are subject to lethal force. In support of this argument, this Article clarifies that while U.S. participation in partner missions is an indicator that the mission is narrow in scope, such participation is not on its own sufficient to show that U.S. forces have avoided engagements in "hostilities."

Second, this Article proposes considering the following criteria in determining whether U.S. armed forces have been introduced into ongoing (rather than intermittent) hostilities: (1) whether there is a risk of harm to U.S. forces from exchanges of fire, taking into consideration the likelihood of sustained violence occurring over an extended period of time, as indicated by factors like internal rules of engagement; and (2) whether there is regular use of force by or against U.S. forces, taking into consideration additional troop deployments. This proposed reconceptualization of "hostilities" is motivated by the desire to create statutory guidance that would limit implausible executive branch interpretations that circumvent congressional oversight, and to provide clarity in order to allow Congress ways of channeling political sanctions and public opinion to constrain presidential overreach.

This Article is informed by and expands upon a rich literature proposing reforms to the WPR, including to the definition of "hostilities." 34Past reform proposals have aimed to strike a balance between providing the President flexibility in responding to a range of combat situations and providing guidance on when the President can use force without prior congressional authorization. This Article offers a novel contribution by proposing a reconceptualization of "hostilities" informed in part by executive branch practices that have in past instances acted as some limitation on presidential decision-making. 35Moreover, building off the balancing act in the literature, this Article aims to tip the balance away from presidential discretion and towards clearer standards on situations that constitute "hostilities" and trigger the sixty-day withdrawal requirement--standards that are required to curb unauthorized U.S. involvement in consequential military operations.

This Article proceeds in three parts. Part I provides the history of the division of war powers between Congress and the President and discusses how the WPR operates. This Part describes how the war power was initially envisioned and presents the problem of the executive branch's steady accretion of power. Part II argues that the law in this area, and not solely politics, can serve as a constraint on the President. It suggests that self-imposed constraints by the executive branch offer no meaningful limits, and that congressional checks like the WPR must be fortified. This Part explores the executive branch's erosion of the term "hostilities" in the WPR through two examples: the 2011 Libya operation and the 2020 Soleimani strike. Part III presents two proposals for reconceptualizing "hostilities" within the WPR, demonstrating that Congress can strike the right balance in curtailing presidential power while avoiding the pitfall of imposing a "'one size fits all' straitjacket" 36on the President's decisions to commit armed forces abroad.

#### Congressional oversight gaps in security cooperation turn the case – they limit accountability and the ability to plan, coordinate, and integrate comprehensive assistance

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1. The Rise of Modern Warfare and Its Oversight Challenges

These oversight challenges became particularly apparent in the wake of the 9/11 terrorist attacks. The 9/11 Commission, which was created to investigate the incident and recommend ways to prevent future attacks, stressed that executive branch reforms "will not work if congressional oversight does not change too. Unity of effort in executive management can be lost if it is fractured by divided congressional oversight." 108Calling oversight "dysfunctional," the Commission recommended either creating a joint intelligence committee or giving the existing intelligence committees both authorizing and appropriating authorities. 109In short, the Commission concluded, the outdated committee structure required reform to address contemporary cross-cutting national security challenges.

Despite these warnings, the problems the Commission identified only worsened in the years after 9/11. In particular, the convergence of Title 10 and Title 50 operations accelerated considerably. The DOD (whose operations are generally authorized under Title 10) continued to develop its clandestine capabilities for traditional military activities, while the CIA (whose operations are generally authorized under Title 50) acquired new lethal capabilities. 110This convergence was especially evident with respect to operations carried out by special forces and drones. After 9/11, Special Operations Forces (SOF) became a crucial counterterrorism force. Special Operations Command (SOCOM) has more than doubled in size since 2001 and has commandos deployed to nearly 150 countries. 111Likewise, lethal drone strikes have become a central element of the U.S. counterterrorism strategy, with one database cataloging over 14,000 strikes from 2010 to 2020. 112

Security cooperation efforts, including programs to train, equip, and otherwise assist foreign defense and security forces, have also expanded significantly since 9/11. 113Indeed, security cooperation formed the foundation of the U.S. counter-ISIS policy in Iraq and Syria, 114and the U.S. government spent over $ 200 billion on security assistance and security cooperation programs from 2006 to 2018. 115In 2017, Congress authorized security cooperation funds under Title 10 U.S.C. § 127e to support special operations to combat terrorism. 116One Green Beret explained, § 127e programs are "less, "We're helping you,' and more, "You're doing our bidding.'" 117In 2017, SOCOM reportedly expended nearly $ 80 million to resource twenty-one programs under the § 127e authority. 118

As the role of special forces, drones, and security cooperation has grown, the oversight gaps caused by the artificial Title 10-Title 50 distinction have become increasingly apparent. One scholar explained, "When the CIA and SOF operate together on the battlefield, the legal distinctions regarding operating authorities and procedures, and accountability, can become blurred." 119This can have far-reaching implications for oversight. 120For example, lethal operations can be carried out by either the DOD or CIA. 121When led by the DOD, the operation falls under Title 10 oversight by HASC and SASC. 122When led by the CIA, even with the same operators, the operation is typically undertaken as a "covert action" and subject to extensive but highly classified reporting to HPSCI and SSCI under 50 U.S.C. § 3093. 123For example, the raid that killed Osama bin Laden was executed by U.S. Navy Seals from Joint Special Operations Command (JSOC) in the DOD. 124However, it was classified as a Title 50 operation under the "command" of the CIA director. 125Because it was considered a CIA operation, only the Gang of Eight - which includes HPSCI and SSCI leadership as well as the House and Senate leadership - was informed. The armed services and foreign relations committees, however, were not. 126

Section 127e programs and activities present further oversight challenges. While § 127e includes reporting requirements, 127these operations often elude effective oversight. They are typically highly classified and briefed only to a narrow group of congressional members and staff. Former congressional staffer Tommy Ross explained, "Policymakers and congressional staffers who work in areas likely to be most affected by 127e operations - traditional foreign assistance and diplomacy activities, for example - are generally not included among those briefed ... . limiting accountability and profoundly challenging the government's ability to plan, coordinate, and integrate comprehensive assistance packages." 128Even within a single committee, only a few members are typically notified of sensitive operations, and staff are sometimes excluded altogether. 129

Moreover, similar and sometimes overlapping training and assistance programs can be operated by the CIA, which follows its own distinct reporting regime. 130For example, the CIA reportedly spent over $ 1 billion over four years on a covert action program to support Syrian rebels. 131This program reportedly operated alongside an overt DOD program authorized and overseen by HASC and SASC. 132The CIA programs would have been reported under Title 50 to HPSCI and SSCI alone, even though they may have directly overlapped, and even competed, with programs authorized by HASC and SASC. 133As one former staffer put it in an interview with us, "I saw in a couple of cases some of these programs that were not only duplicative, but competitive. The DOD and CIA were trying to displace one another from the same landscape." 134

Importantly, special operations, drone strikes, and security cooperation missions often fall outside of the oversight jurisdiction of HFAC and SFRC under the WPR. As discussed in Part I, 135the executive branch has often narrowly defined "hostilities" in the WPR to require "the presence of U.S. ground troops, U.S. casualties or a serious threat thereof." 136This definition "allows the President to escape the WPR whenever drones are relied upon - regardless of the extent of a military campaign involving drones." 137Under this contested interpretation of hostilities, the executive branch is not obligated to report special forces operations, including kill/capture missions, to Congress under the WPR. 138This interpretation has largely kept HFAC and SFRC in the dark on the vast majority of counterterrorism operations.

#### Statutory elasticity of WPR’s hostilities limit enables executive overreach through narrow interpretations that avoid authorization AND oversight requirements

By Erica H. Ma 21, J.D., 2020, New York University School of Law; B.A., 2015, University of Pennsylvania, "Article: The War Powers Resolution and the Concept of Hostilities," Northeastern University Law Review, 13, 519, pp. 549-552, May 2021, Lexis, nihara

C. The War Powers Resolution Framework and the Narrowing of "Hostilities"

While the WPR, as a congressional check on executive war powers, remains an important limit on the President, one particular flaw of the resolution is the elasticity of the term "hostilities." Under the resolution, only the introduction of U.S. armed forces into hostilities or imminent hostilities triggers the resolution's sixty-day termination clock. 159But "hostilities" lacks hard definitions, which means that Presidents have interpreted the term to avoid triggering any congressional oversight under the resolution. The consequence is that unless Congress can muster the votes to override a presidential veto of a resolution directing the President to terminate the use of force abroad, Congress "may be unable to stop military engagement abroad once it has begun using the mechanism of the WPR alone, so long as the president believes that the military engagement in question does not constitute 'hostilities.'" 160

The legislative history of the WPR reveals that the ambiguity in the meaning of "hostilities" was intentional. Senator Jacob Javits, one of the resolution's principal sponsors, noted that the drafters intended the resolution "to proceed in the kind of language which accepts a whole body of experience and precedent without endeavoring specifically to define it." 161But the term was still intended to be broad. The accompanying House report used the term "hostilities" instead of "armed conflict" because the former was considered broader in scope, as "hostilities" encompassed situations of "clear and present danger of armed conflict." 162

However, the meaning of "hostilities" under the WPR has been contested over the years. 163Harold Koh, as Legal Adviser to the State Department in the Obama Administration, argued that "the question whether a particular set of facts constitutes 'hostilities' for purposes of the Resolution has been determined more by interbranch practice than by a narrow parsing of dictionary definitions." 164This interbranch practice, however, like in other areas of war powers, has consisted primarily of the executive branch's assertions of its interpretation of "hostilities." Since the passage of the WPR, successive administrations have deviated from and narrowed Congress's conception of "hostilities." In 1975, the Ford Administration defined "hostilities" as situations "in which units of the U.S. armed forces are actively engaged in exchanges of fire with opposing units of hostile forces." 165A 1980 OLC opinion noted that the term "should not be read necessarily to include sporadic military or paramilitary attacks on our armed forces." 166In August of 1981, following an attack by two Libyan jet fighters on U.S. naval forces in the Gulf of Sidra, U.S. forces fired back and downed the Libyan aircraft. 167The Reagan Administration determined that this situation did not rise to the level of "hostilities" under the WPR--and thus did not trigger the resolution's countdown clock--because no further action by Libya was expected. 168Similarly, in June 1984, U.S. aircraft operating in Saudi airspace assisted Saudi aircraft in shooting down two Iranian aircraft in the Persian Gulf. 169The extent of U.S. involvement included providing the Saudis with target location and assisting with aircraft refueling. 170The Reagan Administration determined that this was a "one-time, unanticipated incident" 171and again argued that this did not rise to the level of "hostilities" within the meaning of the WPR.

Even when members of Congress have disagreed with executive branch characterizations of the meaning of "hostilities," Congress has had little incentive to maintain sustained pushback against the President when the term retains such flexibility, and eventually Congress acquiesces to the executive branch's interpretation. Political theorist John Rourke notes that "[s]ometimes the urge to achieve unity is so strong that any degree of dissent comes under suspicion," 172and Congress is especially sensitive to any public perception of hampering American military activity. For example, on August 24, 1982, with the United States participating in a multinational peacekeeping force in Lebanon, President Reagan transmitted a forty-eight-hour report detailing this activity to Congress. 173The report did not specify whether Section 4(a)(1) of the WPR (introduction of armed forces into "hostilities" or "imminent hostilities") or another prong had triggered the reporting requirement. 174By September 1983, with the situation in Lebanon intensifying, members of Congress publicly announced that they believed U.S. armed forces were engaged in hostilities and that the sixty-day clock had begun to run. 175At the time, there were "1,600 U.S. marines equipped for combat on a daily basis and roughly 2,000 more on ships and bases nearby; U.S. marine positions were attacked repeatedly; and four marines were killed and several dozen wounded in those attacks." 176But any further debate on the meaning of "hostilities" was forestalled when Congress began to consider a resolution authorizing retention of U.S. armed forces in Lebanon, 177ultimately granting authority for the mission in Lebanon to continue. 178As the next Section explains through two examples, the term "hostilities" has been narrowly interpreted by the executive branch in order to use unauthorized force in situations in which the drafters of the WPR would have intended the President to seek congressional authorization.

#### Reconceptualizing “hostilities” is key – raises political costs and sets clear threshold for violations of the WPR – executive “norm internalization” does NOT solve – NO textual guidance causes overreach

By Erica H. Ma 21, J.D., 2020, New York University School of Law; B.A., 2015, University of Pennsylvania, "Article: The War Powers Resolution and the Concept of Hostilities," Northeastern University Law Review, 13, 519, pp. 542-546, May 2021, Lexis, nihara

This Article supports the view that the law can constrain the President's war powers and argues that some mechanisms of legal constraint work better than others in limiting these powers. In considering Bradley and Morrison's mechanisms of constraint in reconceptualizing the meaning of "hostilities," this Article argues that the second and third of these mechanisms--external sanctions and public legal dialogue--operate most effectively in limiting presidential discretion on war powers. By proposing a definition to provide clearer standards of what constitutes an introduction of U.S. forces into "hostilities," this Article posits that Congress can raise the political costs of the President's precarious legal arguments, as well as more clearly identify potential violations of the WPR to temper executive branch discretion.

As the weakest mechanism for constraining the President on matters of war powers, norm internalization is the process by which an actor internalizes the normative force of a legal rule. 120Bradley and Morrison argue that OLC is able to internalize legal norms due to its tradition of adhering to its own precedents across administrations, which "give[s] it some distance and relative independence from the immediate political and policy preferences of its clients across the executive branch." 121OLC may not always act as a blank check for the President, as it "does not always say yes [to affirming the President's policies], and the absence of an OLC opinion in the President's favor likely makes it more difficult for him to pursue that course of action." 122For example, norm internalization may explain the Bush White House's position on a warrantless surveillance program. When the White House pushed to implement the program despite refusal from the Attorney General, Deputy Attorney General, and head of OLC to certify the legality of the program unless certain changes were made, these top officials threatened to resign, resulting in the White House subsequently making the changes. 123Bradley and Morrison describe this episode as Justice Department officials' internationalization of institutional norms "that not only takes law seriously as a constraint, but that insists on a degree of independence in determining what the law requires." 124

However, as the next Section details, norm internalization does not truly constrain the President's expanding war powers. This is perhaps due to the confluence of several factors: little textual guidance from the Constitution on the division of war powers and a subject matter (national security) with incentive for the President to overreach and Congress to abdicate decision-making to the President. 125A dearth of textual guidance on war powers from the Constitution resulted in OLC and other executive branch officials having an outsized role in developing norms in this area in the first instance, 126and Congress has been reluctant to exert its institutional power to challenge the President on questions fraught with political consequences. 127While these norms may on the surface seem to constrain presidential decisionmaking--for example, OLC advises the President to follow the law--the "law" here is the result of the executive branch's own interpretations. 128Successive presidential administrations have been consistently resolute in their understandings of the meaning of "hostilities" in the WPR, resulting in the entrenchment of executive branch interpretations of the law. 129For example, in the 2011 Libya operation, the administration relied on its own interpretation of "hostilities" to argue that it had no obligation to withdraw troops after sixty days. 130As this episode illustrates, war powers reform cannot rely solely on executive branch norm internalization to produce checks on presidential discretion.

Instead, imposing external sanctions for violations of norms would be more effective for bringing the law to bear on the President. According to Bradley and Morrison, external sanctions that constrain the President's actions do not have to be formal and can even exert pressure through the political process. 131Accusations of illegal conduct could "enable the President's congressional opponents to impose even greater costs on him through a variety of means, ranging from oversight hearings to, in the extreme case, threats of impeachment." 132The opposition party in Congress can attempt to impose these political costs by criticizing unilateral presidential authorizations of force in the media. As legal theorists like Fred Schauer have suggested, "law violation increases the political penalty for those official actions that are or turn out to be unacceptable on policy or political grounds." 133External sanctions work as a legal constraint when the costs of non-compliance with a norm outweigh the benefits. In some instances, partisan politics often exert the most pressure, with Congress's "institutional checks . . . operat[ing] to facilitate the constraining effect of law." 134External sanctions on norm violations, which can include "[c]riminal trials . . . lawyer scrutiny, reporting requirements, inspector general and congressional investigations, Accountability Board proceedings, prosecutorial and ethics investigations, civil trials, FOIA processing and disclosures, public criticism and calumny, and elections" can all impose "various forms of psychological, professional, reputational, financial, and political costs on those held accountable." 135

#### Historical practice shapes norms governing war powers – Congressional reluctance AND executive overreach results in a lack of meaningful legal checks – public opinion OR political calculus is NOT sufficient

By Erica H. Ma 21, J.D., 2020, New York University School of Law; B.A., 2015, University of Pennsylvania, "Article: The War Powers Resolution and the Concept of Hostilities," Northeastern University Law Review, 13, 519, pp. 539-542, May 2021, Lexis, \*[brackets in original], nihara

A. How the Law Constrains

This Section argues that law can constrain the President's discretion in authorizing uses of force, a view supported by Curtis Bradley and Trevor Morrison, among others. 102With limited guidance on the scope of the President's and Congress's war powers in the text of the Constitution, the development of the law in this area has been dictated by the push and pull of historical practice. This kind of law, informed by historical practice, can serve as a constraint on presidential powers. Justice Frankfurter famously observed in Youngstown that historical practice is part of the interpretation of presidential powers, 103and other scholars have similarly noted that it is "the 'court of history,' an accretion of interactions among the branches, that gives rise to basic norms governing the branches' behavior in the area." 104 However, the historical practice has been one-sided: Congress has often been reluctant to push back on the President's expanding powers, 105and courts have been reluctant to resolve war powers disputes between the political branches, meaning that it is the historical practice of the executive that has predominantly shaped the law of war powers.

One perhaps cynical view is that the President's war powers have been shaped solely by the political process. 106Scholars often lament the lack of genuine legal limits on the President and the fact that even supposedly politically-insulated offices like OLC offer no meaningful checks on presidential policymaking, as evidenced by the Bush-era OLC's torture memos. 107The absence of judicial review in this area certainly makes it easier to throw our hands up and say that the law fails to constrain. In fact, Bruce Ackerman warns that "politics and communications," "bureaucratic and military organization," and "executive constitutionalism" risk turning the role of Commander in Chief into "a vehicle for demagogic populism and lawlessness." 108Other scholars like Eric Posner and Adrian Vermeule argue that whatever constraints the President faces are purely non-legal, and that it is "politics and public opinion," rather than law, that check the President. 109They contend that any factors that ostensibly constrain presidential action lack status as norms, resulting in weak "normative justification for [their] continued existence if political or other extralegal factors pull in a different direction." 110In part, this kind of skepticism of "practice-based" law originates from "post-Watergate cynicism about the behavior of government officials, including the extent to which they are likely to act based on internalized norms" 111--a cynicism exacerbated in the last few years by the Trump Administration's disregard for such norms. 112

In contrast, Bradley and Morrison note that "the interrelationship of law and politics does not by itself negate the importance of law" and term the historical gloss in this area "practice-based constitutional law." 113Practice-based law may constrain the President's actions simply through a recognition that law is necessary to justify policy decisions and through public discourse on presidential power framed in legal terms. 114As Bradley and Morrison argue, the law acts as a constraint "when it exerts some force on decisionmaking because of its status as law." 115Moreover, the executive branch's justification of policy decisions in legal terms "might be puzzling if the law were not playing any constraining role." 116Specifically, Bradley and Morrison describe three mechanisms of legal constraint: norm internalization by executive branch actors, external sanctions for violations of norms, and the existence of public dialogue on the President's authority, framed in legal terms. 117While it is possible to determine instances of genuine, reasonable disagreement about the content of the law, 118any accusations, by Congress or the public, that the President is acting outside of constitutional or statutory bounds on questions of war powers is "virtually always contested" by executive branch actors. 119

#### Reconceptualizing hostilities and clarifying its scope via expansion is key to Congressional oversight that checks military adventurism

By Erica H. Ma 21, J.D., 2020, New York University School of Law; B.A., 2015, University of Pennsylvania, "Article: The War Powers Resolution and the Concept of Hostilities," Northeastern University Law Review, 13, 519, pp. 558-560, May 2021, Lexis, nihara

A. The Importance of New Definitions

As the key framework for regulating the balance of war powers between Congress and the President, the WPR serves as a source of constraint on the President. Yet the lack of clear parameters of what constitutes "hostilities" under the resolution has allowed the executive branch to put forth its own concept of "hostilities" that impedes Congress's involvement in regulating presidential uses of force. Clarifying and reconceptualizing "hostilities" under the WPR is crucial for "rejuvenat[ing] the resolution as a more effective institutional constraint." 217

Rethinking "hostilities" is important for several reasons. First, the term's ambiguity remains a key gap in the text of the resolution. A lack of clarity has led to several instances of public disagreement between the President and Congress about whether the President introduced U.S. armed forces into situations of active or imminent hostilities. 218When the WPR was first drafted, the exact meaning of "hostilities" was not contested--Congress intended for the definition of "hostilities" to be flexible in order to allow the President to respond to a range of situations into which U.S. armed forces could be introduced. 219But the original intent of Congress was not for the term to be interpreted as narrowly as the executive branch currently interprets it, as part of the reason for the original passage of the WPR was the Nixon Administration's bombing of Cambodia. 220Although those airstrikes did not involve "'sustained fighting or active exchanges of fire with hostile forces,' the presence of U.S. ground troops, or substantial U.S. casualties," the operation still engaged in the kind of hostilities the drafters of the WPR envisioned that Congress would have a role in authorizing. 221

However, since the passage of the resolution in 1973, Congress and the President have developed opposing definitions of the term "hostilities." 222Successive Presidents have taken a narrow view of the kinds of activity that constitute hostilities in order to avoid triggering the WPR's sixty-day withdrawal mandate, 223engaging in a wide range of military activity--often past the sixty (or ninety) day mark--without labeling these activities as "hostilities." 224These include operations in Lebanon in 1982-83, the 1983 invasion of Grenada, the 1986 Gulf of Sidra incident, the April 1986 bombing of Libya, the 1987-88 Persian Gulf Tanker War, and the 1989 invasion of Panama. 225More recently, the Obama Administration claimed that the 2011 Libya airstrikes did not constitute "hostilities" under the WPR despite the existence of "a naval force of 11 ships and engage[ment] in an extensive bombing campaign that included striking 100 targets in just 24 hours." 226In contrast, members of Congress have put forth a broader view of what constitutes "hostilities." For instance, the April 2019 House resolution invoking the WPR to withdraw U.S. participation in Yemen's civil war defined "hostilities" as the House understood it. 227The resolution noted that the term "includes in-flight refueling of non-United States aircraft conducting missions as part of the ongoing civil war in Yemen," and found that "[s]ince March 2015, members of the United States Armed Forces have been introduced into hostilities between the Saudi-led coalition and the Houthis, including providing to the Saudi-led coalition aerial targeting assistance, intelligence sharing, and mid-flight aerial refueling." 228If Congress wishes for its conception of "hostilities" to serve as the standard and act as a constraint on the President, it would be worth redefining the term as it exists in the WPR.

Second, redefining "hostilities" is important in order to realign the modern practice of presidential war powers with the original intent of the resolution, which was to ensure that Congress had a role in regulating decisions to commit U.S. armed forces abroad. 229Placing more oversight power with Congress, a larger deliberative body, would act as a constraint on rash decision-making. 230Reform of the WPR, with clearer legislative mandates, would "help to constrain military adventurism"--Congress is slower to act, more sensitive to costs, and faces more procedural hurdles. 231Moreover, congressional oversight may not simply produce slower decisions, but better-reasoned decisions. In other areas of law, the conventional wisdom is that interbranch deliberation is an advantage, as the process of consensus-building creates "consistent and sustainable security policy." 232

Thus, a better definition of "hostilities" would serve as a more robust check on the President's unilateral uses of force. For one, clearer language would allow Congress to more easily identify when the President's actions are inconsistent with the WPR's requirements and raise the political costs of making shaky legal arguments that stretch the meaning of "hostilities" to an unrecognizable degree. Moreover, clearer guidance on "hostilities" would allow Congress to more forcefully shape public dialogue over military policymaking. A more coherent definition of activities that constitute "hostilities"--and trigger the WPR's withdrawal mandate--would mean that in public debates, Congress would no longer have to defer to a meaning defined by decades of executive branch practice.

#### Prohibiting NATO security cooperation is key to overcome past precedent in favor of unliteral executive action through joint-coalitions

By Erica H. Ma 21, J.D., 2020, New York University School of Law; B.A., 2015, University of Pennsylvania, "Article: The War Powers Resolution and the Concept of Hostilities," Northeastern University Law Review, 13, 519, pp. 552-555, May 2021, Lexis, nihara

i. Libya and the Executive Branch Interpretation of "Hostilities"

In March 2011, the United States, along with a NATO coalition, began enforcing a no-fly zone over Libya in order to end the Gaddafi regime's attacks on Libyan civilians. 179Over the next several months, these forces launched a series of airstrikes over Libya. 180State Department Legal Adviser Harold Koh, testifying before Congress as to the legality of the Libyan operation, cited OLC precedent and presented a theory of limited engagement, which he argued barred the applicability of the "hostilities" trigger of the WPR's sixty-day clock. 181Despite internal disagreements within the Obama Administration about the legal arguments justifying the strikes, 182Koh claimed that situations in which the nature of a mission, exposure of U.S. armed forces, risk of escalation, and military means are limited do not constitute engagements in "hostilities." 183In a June 2011 report justifying the President's authority to use force in Libya, the Administration again argued that the operations were "distinct from the kind of 'hostilities' contemplated by the Resolution's 60 day termination provision" because the "U.S. operations [did] not involve sustained fighting or active exchanges of fire with hostile forces, nor [did] they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by these factors." 184Further, Koh noted that the nature of the mission in Libya was limited because "U.S. forces [were] playing a constrained and supporting role in a NATO-led multinational civilian protection operation." 185

However, there were several dissenting voices in Congress that contended "hostilities" had in fact triggered the WPR's sixty-day clock, characterizing the United States's role as anything but limited. House Speaker John Boehner said at the time: "They're spending $ 10 million a day, part of an effort to drop bombs on Gadhafi's compounds. It just doesn't pass the straight-face test in my view, that we're not in the midst of hostilities." 186Representative Brad Sherman argued that "when you're flying Air Force bombers over enemy territory, you are engaged in combat." 187Similarly, Senator Richard Lugar, during a congressional hearing on Libya, resisted Koh's notion that the United States merely played a supporting role in the operations, noting that "the broader range of airstrikes being carried out by other NATO forces depend on the essential support functions provided by the United States." 188Further, Senator Lugar rejected the argument that U.S. operations were not significant enough to constitute hostilities because NATO flew most of the missions, stating:

[t]he fact that we are leaving most of the shooting to other countries does not mean the United States is not involved in acts of war . . . . [T]he language of the War Powers Resolution clearly encompasses the kinds of operations U.S. military forces are performing in support of other NATO countries. 189

The situation on the ground supported the conclusions of Lugar and other members of Congress that the U.S.'s involvement meant that there was an engagement in "hostilities." At the time, the Supreme Allied Commander of NATO was Admiral James Stavridis, an American officer who commanded NATO forces from other countries to "engage[] on a much more sustained basis in 'exchanges of fire.'" 190Moreover, Ivo Daalder, U.S. Permanent Representative to NATO, observed that "the United States led in this operation . . . It led in the planning of the operation, it led in getting the mandate for the operation, and it led in the execution of the operation." 191Koh's reasoning that "a war without United States boots on the ground can proceed indefinitely without Congressional approval" simply stretched the meaning of "hostilities" too far, leading to the risk that "with drone warfare now expanding . . . national-security decision-making stands to become the sole province of the executive." 192Journalist Paul Starobin remarked at the time that Koh's interpretation of "hostilities" had him "stretched out on a legal limb so long and so thin that one can almost hear it cracking." 193

One conclusion we can draw from this episode is that regardless of Koh's thin legal grounding in interpreting "hostilities," this interpretation has become the accepted precedent for subsequent airstrikes. After the Libya operations, Congress did not mount much of an attempt to resist the Obama Administration's interpretation. 194In areas where practice-based law governs, the law changes based on executive branch practice, and "actions supported by minimally plausible legal defenses might over time be understood to exert a gravitational pull on the best understanding of the law." 195

The second conclusion is that this episode neatly illustrates Bradley and Morrison's theory of how the law can constrain the President through external sanctions and public legal dialogue. The Obama Administration relied on public justifications of legality, especially its interpretation of "hostilities" in the WPR, in order to defend U.S. involvement in Libya. 196 This is significant because if the law had no constraining power on the executive branch, it is unclear why the Administration relied on legal rather than "humanitarian or other policy or political grounds," especially as these legal arguments imposed costs and "exposed the Administration to criticism from those who disagreed with the analysis." 197With top officials like Koh publicly testifying to the legality of the operation, the Administration in fact went to "considerable lengths" to defend its actions on legal grounds. 198The law could have been even more significant in constraining the President's actions had "the potential illegality of the operation . . . increased its political costliness to the Obama Administration." 199If U.S. forces had become mired in Libya instead of executing limited strikes, the politics of publicly justifying the operations could have played an even greater role in the President's decisions. In Part III, this Article follows this thread and argues that redefining "hostilities" under the WPR would allow Congress to channel external sanctions and public legal dialogue in order to raise the political costs of the President's decisions to use force.

#### Encompassing US-NATO security cooperation within the definition of hostilities is key to reverse executive interpretations that circumvent limits on authority

By Erica H. Ma 21, J.D., 2020, New York University School of Law; B.A., 2015, University of Pennsylvania, "Article: The War Powers Resolution and the Concept of Hostilities," Northeastern University Law Review, 13, 519, pp. 564-569, May 2021, Lexis, nihara

i. Partner Missions and U.S. Armed Forces in Supporting Roles

Historically, the executive branch has cited participation in partner missions--missions at the express invitation of another state, pursuant to UN authorization, or in a coalition like NATO--as reason to believe that U.S. forces have not been introduced into "hostilities." Political scientists William Howell and Jon Pevehouse note that Presidents often cite obligations to international partners to bolster domestic legal justification for uses of force, as well as to rally public opinion. 251For instance, Truman cited UN obligations in initiating U.S. involvement in Korea, and Clinton cited NATO obligations in launching airstrikes in Kosovo. 252

There are two ways of interpreting the meaning of the executive branch's practice of citing to international authority as justification for uses of force. First, this practice could mean that the executive branch believes that partner missions, which provide international legal authority for uses of force, also provide the President domestic legal authority for engaging U.S. armed forces without congressional involvement. For example, past administrations have claimed that missions at the express invitation of another state do not fall within the "hostilities" contemplated by the WPR. In a 2004 opinion justifying the President's deployment of fifty Marines to protect the U.S. Embassy in Port-au-Prince, Haiti, from political unrest, OLC argued that whether the deployment was at the "express invitation of the government of Haiti" was relevant to the question of whether the situation was one of "involvement in hostilities." 253Similarly, Presidents have also claimed that missions authorized by the UN do not involve "hostilities." In a March 2011 forty-eight-hour report on Libya, President Obama excluded any mention of the introduction of U.S. forces into "hostilities," and noted that U.S. forces began operations as "authorized by the [UN] Security Council." 254

Both the "express invitation" and "UN authorization" rationales are exceptions under international law to the UN Charter's near-absolute prohibition against the use of force. 255This prohibition stems from Article 2(4) of the UN Charter, which bars "the threat or use of force against the territorial integrity or political independence of any state." 256One exception to this prohibition is the use of force in the territory of a state with the state's consent; 257another is the use of force pursuant to UN Security Council authorization. 258Does having a stronger international legal justification for the use of force affect whether U.S. armed forces are introduced into "hostilities" within the meaning of the WPR? This Article suggests that the answer is no. 259To be sure, having a stronger international legal justification for uses of force abroad addresses one concern with unilateral presidential action: rash policymaking. Coordination with another state or international organization could result in a consensus-building process that produces sounder missions. But justifications for the use of force under international law do not address the constitutional question that the drafters of the WPR intended to resolve--affirming Congress's role in regulating U.S. uses of force. 260Congress represents a reflection of American public opinion, regardless of what international partners think about policy, and the drafters' belief was that "the President should not engage in ventures that will lead to protracted conflicts that the Congress and the American people will not sufficiently support." 261

Instead, a better, alternative reading of the executive branch's reliance on international legal authority is that partner missions are proxies for narrow missions that the executive branch has traditionally claimed do not constitute "hostilities." During the Libya hearing, Koh argued that the United States played a "constrained and supporting role in a multinational civilian protection mission" in part because the operation was "authorized by a carefully tailored U.N. Security Council Resolution." 262However, he agreed that international legal justification alone was not sufficient to justify the legality of the Libya strikes, but rather, the "nature and degree of international support might bear on factors that are relevant to the War Powers analysis." 263

This Article agrees with this interpretation of executive branch practice and makes two contributions expanding on this idea. First, U.S. participation in partner missions does not automatically mean that U.S. armed forces have not been introduced into "hostilities." The President can in fact commit troops to a partner mission that constitutes introduction into hostilities if the mission is not sufficiently narrow. For example, in the Libya conflict, while the Administration extensively cited NATO leading the operation as part of the reason why the situation did not constitute active or imminent hostilities, 264U.S. involvement was not merely in a supporting role. The United States was in fact "doing most of the heavy lifting in the conflict short of pulling all the triggers." 265As discussed in Section II.D.i, the Supreme Allied Commander, in command of NATO military operations, was a U.S. Navy Admiral. 266Additionally, according to a U.S. Department of Defense memo, "[a]lthough it [was] working under NATO, the US [was] by far the largest contributor to [the] operation," supplying nearly a billion dollars in funding and "about 75% of reconnaissance and refueling missions." 267Moreover, during the Libya congressional hearing, Senator Lugar argued that characterizing the United States as playing a supporting role "underplays the centrality of the United States contributions to the NATO operations," noting that "United States war planes have reportedly struck Libya air defenses some 60 times since NATO assumed the lead role in the Libya campaign." 268

Second, this Article argues that situations in which U.S. armed forces play a noncombat supportive role and are not responsible for "pulling the trigger" can still constitute "hostilities" under the WPR. For example, in supporting Saudi Arabia in its coalition strikes in Yemen, the United States's role included "air-to-air refueling; certain intelligence support; and military advice." 269The Trump Administration insisted that U.S. forces were present in Saudi Arabia solely for support. 270Some senators, siding with the Administration, have similarly argued that the President's actions were consistent with the WPR because U.S. troops were not involved in "direct military action" against rebel Houthi forces. 271Other members of Congress have argued that U.S. activities in Yemen amounted to "hostilities," with one Senate resolution proposing to define "hostilities" to include "refueling of non-United States aircraft" in Yemen. 272

This Article proposes to reconceptualize "hostilities" to encompass situations not only where U.S. forces are participating in active exchanges of fire, but where they use or are subject to lethal force. As discussed in Section II.C, the executive branch has historically defined "hostilities" as "situation[s] in which units of U.S. armed forces are actively engaged in exchanges of fire with opposing units of hostile forces." 273In Yemen, the Trump Administration contended that U.S. support of the Saudi coalition did not constitute an introduction into "hostilities" because U.S. personnel were not actively engaged in exchanges of fire with hostile forces. 274However, this strays from Congress's original intent, which was that the WPR's withdrawal mandate would be triggered by circumstances in which no exchanges of fire have occurred but "where there is a clear and present danger of armed conflict." 275

This Article's proposed definition is more consistent with the original conception of "hostilities," which was intended to be much broader than how the executive branch has interpreted the term through the years. Situations where U.S. forces use or are subject to lethal force would encompass circumstances in which American soldiers face enemy forces and operate under the danger of exchanges of fire, or in which "U.S. armed forces are equipped for combat in a foreign country where an opposing military might be expected to take an adversarial stance at some point in the near future against such U.S. armed forces" (as in Yemen, for example). 276This definition envisions that there exist situations where U.S. armed forces serve non-combat support roles and yet are still considered to have been introduced into hostilities, triggering the WPR's countdown clock. Importantly, in clarifying the scope of "hostilities," this definition allows Congress and the public to more clearly identify instances of potential presidential actions inconsistent with the WPR, ultimately serving as a constraint on any attempts to skirt the WPR's requirements.

### 2nc – solvency – cyber

#### Congress will authorize future cybersecurity operations which solves – BUT, transparency AND oversight are key – otherwise, they’ll limit funding for future cyber operations – turns the case

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According to a congressional staff member involved in cyber oversight deliberations at the time, the armed services committees were initially concerned about preventing Cyber Command from exceeding its authorities and acting like a "bull in a china shop." 170However, these concerns turned out to be unwarranted. In the first few years of its existence, Cyber Command employed a highly cautious approach to cyber warfare. U.S. military cyber operations remained relatively limited to theaters of active combat, and fears that Cyber Command would assume an aggressive cyber posture without any legal or regulatory constraints did not materialize. 171For several years after Cyber Command's inception, oversight over cyber operations thus remained an "academic issue," the staff member recalled. 172The DOD's incomplete efforts at articulating a cyber strategy, limited proactive operations, and the rapid rise of cyber adversaries explain why Congress both empowered the DOD in cyberspace and simultaneously demanded more reporting.

Over the next several years, the armed services committees continued to build out the legal framework for cyber operations through the NDAA with two oversight goals in mind: first, ensuring that legislators were kept apprised of the executive branch's cyber operations; and second, compelling the DOD to articulate a robust cyber strategy and empowering it to act in cyberspace. Regarding the former objective, the armed services committees mandated the DOD disaggregate its reporting by geographic and functional command and include relevant legal authorities and limitations. 173As Cyber Command matured and the DOD assumed a more proactive cyber posture, particularly with the advent of its "Defend Forward" strategy, 174these reporting and notification requirements became essential to Congress's efforts to oversee the executive branch. As a staff member expressed, the NDAA has had the greatest impact in terms of enabling the DOD to take a more active role in defending against cyber intrusions." 175

Congress also leveraged the NDAA process to urge the DOD to increase engagement in cyberspace. Between 2013 and 2017, in the wake of a series of high-profile cyber incidents, HASC and SASC grew increasingly dissatisfied with the DOD's untransparent and uncoordinated efforts to deter cyber aggression by adversaries such as Russia, China, Iran, and North Korea. 176Amendments to the NDAA expressly required the executive branch to articulate its "policy to deter adversaries in cyberspace." 177During the FY 2017 NDAA drafting process, SASC expressed that DOD policy reports were delayed and inadequate. 178The next year, the FY 2018 NDAA imposed a spending restriction on DOD funds until submission of a national policy on cyberspace, cybersecurity, and cyber warfare. 179Importantly, the President was required to transmit this report - and a subsequent report required by the FY 2019 NDAA - not only to the armed services committees, but also to the foreign relations, judiciary, and homeland security committees. 180Congress also required the executive branch to conduct an interagency cyber posture review for the next five to ten years to "clarify" U.S. cyber deterrence "policy and strategy," 181which later became a quadrennial requirement. 182

### 2nc – solvency – at: exec solves

#### Internal executive checks do NOT solve – they’re empty and ineffective

By Erica H. Ma 21, J.D., 2020, New York University School of Law; B.A., 2015, University of Pennsylvania, "Article: The War Powers Resolution and the Concept of Hostilities," Northeastern University Law Review, 13, 519, pp. 546-549, May 2021, Lexis, nihara

B. Empty Executive Branch Constraints

Congressional action to reform the WPR is necessary because current self-imposed executive branch limits on war powers have not resulted in actual, meaningful limits on the President. When the President commits U.S. armed forces abroad, the initial inquiry of whether the President can do so pursuant to his Article II authority alone without congressional authorization stems from an Obama Administration OLC opinion on the March 2011 Libyan airstrikes. The opinion describes a two-part framework for analyzing whether a military intervention rises to the level of "'war' in the constitutional sense" that would require congressional authorization: (1) whether the military action is in "the national interest" and (2) what the "nature, scope and duration" of the conflict is like. 145

As scholars have noted, neither part of this test meaningfully constrains the President. The first part of the test is an inquiry into whether the President could "reasonably determine that such use of force was in the national interest." 146If so, then it is more likely that the military activity was within the President's constitutional powers. This reasoning echoes the rationale supplied in the first mention of a national interest test in a 1941 OLC opinion by Attorney General Robert Jackson. Jackson noted that pursuant to his constitutional authority, the President "has supreme command over the land and naval forces of the country and may order them to perform such military duties as, in his opinion, are necessary or appropriate for the defense of the United States." 147Moreover, the President may extend his authority "to the dispatch of armed forces outside of the United States . . . for the purpose of protecting American lives or property or American interests." 148Subsequent executive branch practice adopted this standard. 149According to OLC, the national interest is relevant because the President has "independent authority" and "unique responsibility" as Commander in Chief to take military action "'for the purpose of protecting important national interests,' even without specific prior authorization from Congress." 150In the case of the Libyan airstrikes, OLC found at least two national interests at stake: "preserving regional stability and supporting the UNSC's credibility and effectiveness." 151

As Curtis Bradley and Jack Goldsmith argue, this national interest test does not constrain presidential action in any meaningful way. 152In a 1992 opinion asserting the President's authority to provide humanitarian assistance in Somalia, OLC refers to historical practice and the "American interests" mentioned in Jackson's 1941 opinion to identify two national interests in Somalia: "protecting the lives of Americans overseas and upholding the recent United Nations resolutions regarding Somalia." 153However, OLC fails to provide in this opinion--or any subsequent opinion--criteria to determine which interests qualify as national interests sufficient to support presidential use of force. The national interest test, then, is no test at all. Any interest suggested by the President could satisfy the test, as "there is nothing at all in OLC's analysis that would permit it to reject an asserted interest by the president in using force." 154

The second prong of OLC's framework--the "anticipated nature, scope and duration" test--is also a weak constraint on the President. This test asks whether a use of force constitutes a "war" within the meaning of the Constitution, as judged by the mission's anticipated nature, scope, and duration. 155If a use of force does not rise to the level of "war," then the President may dispatch armed forces without prior congressional authorization. However, Bradley and Goldsmith note that the nature of modern war, conducted through airstrikes and drones, means that military engagements abroad will generally not rise to the level of war in the constitutional sense that requires prior authorization by Congress. 156For instance, OLC concluded that due to their natures, scopes, and durations, neither the Libyan nor Syrian airstrikes were "wars" that required congressional authorizations, and that in fact the Syrian operation fell "far short of the kinds of engagements approved by prior Presidents under Article II." 157This is despite the fact that both operations had significant consequences: The Libyan airstrikes "cost more than $ 1 billion, involved thousands of air sorties, and drove a foreign leader from power" and the Syrian airstrikes "threatened greater escalation" due to the presence of both U.S. and Russian troops in Syria. 158It certainly would have been more faithful to the Founders' conception of Congress's role in declaring war had Congress been involved in authorizing both operations.

As the next Sections illustrate, although an existing congressional check on the President--the WPR--allows Congress to regulate use of force decisions, this too has been subject to executive branch interpretations that have eroded its requirements.

### 2nc – link – AI / AWS

#### Autonomous weapons systems set a precedent for unilateral Executive expansion that causes global interventionism and escalation

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C. How Autonomous Weapon Systems Might Affect the War Power

U.S. military engagements take one of three forms: global wars, like World War II; so-called limited wars, like Vietnam or the recent Iraq War; and short-term military interventions, like Kosovo or Grenada.86 The possibility of employing autonomous weapon systems will have different implications for the war power depending on the type of engagement.

For practical and political reasons, a president will probably not take unilateral action with the intention of embroiling the United States in a global war without congressional support. Not only does congressional authorization constitute “insurance” against political risk should the war go badly, long-term engagements will require sufficient funding.87 Even when a president anticipates that a military engagement may be of a relatively limited form but will last for an extended period of time, the benefits of commencing it with congressional authorization will tend to outweigh acting unilaterally.88 Accordingly, autonomous weapon systems will likely not have much of an effect on the division of the war power for long-term military endeavors that remain within proscribed legislative limits.89

In contrast, autonomous weapon systems will further empower presidents to act unilaterally when engaging in short-term military interventions and in expanding limited wars beyond legislative boundaries. Because such weaponry reduces the need for combat boots on the ground, there will be fewer flag-draped coffins returning home. Accordingly, one of the remaining incentives for Congress to take action to check the Executive—popular outrage at the loss of American lives—will be diminished.90

Autonomous weapon systems will therefore likely have a twofold impact on the war power. First, autonomous weapon systems will allow a president to take unilateral action faster and with a lowered probability of a congressional check. Second, over time, these engagements will create precedent for future Executive unilateral action, regardless of whether those situations involve autonomous weapon systems. While a weapon may contribute to the ability to take a certain action or a lack of critique of that action, it may not be considered a relevant factor into later legal analyses.91 For example, President Clinton tested the limits of unilateral uses of force by ordering the U.S. military to continue air strikes in Kosovo after the War Powers Resolution’s sixty-day deadline had passed without a congressional authorization.92 Today, Kosovo is often cited as a precedent for the Executive’s war powers authority, usually without clarification that the precedent may only be relevant to aerial bombardment.93

Granted, the integration of autonomous weapon systems in U.S. armed forces will not result in a spectacular shift in the division of the war power. First, the Executive’s ability to unilaterally use military force for short-term engagements has already been generally accepted. 94 Indeed, some would argue that it has even been legislatively endorsed by the War Power Resolution’s sixty-day window, within which presidents can use force without congressional authorization.95 Second, drones and other new technologies already reduce the need for human soldiers on the ground; weapon systems with greater levels of autonomy may not drastically further reduce that number. That autonomous weapon systems will be incrementally integrated into the armed forces will further contribute to the gradual, rather than dramatic, nature of this shift.96 Finally, the potential risk to soldiers is hardly the only consideration in a president’s decision to use or expand the use of military force. Many factors council both for and against such actions, and when national security is on the line, this one will play only a minor role.97

That being said, any increase in the Executive’s freedom to unilaterally use or expand the use of U.S. military force is hardly insignificant. Presidents may intentionally induce a war, as President Polk arguably did when he had U.S. troops occupy land claimed by Mexico.98 Additionally, because new technology often inspires overconfidence, autonomous weapon systems may encourage presidents to underestimate the military commitment required to accomplish a foreign policy objective. As a result, even engagements intended to be minor may escalate into more extensive armed conflicts.99 Finally, the United States will engage in far more small-scale uses of force than extensive wars, which means there will be more opportunity for the Executive to foster a perception that its unilateral action is appropriate.

Prediction is always a risky business. But it seems likely that, as autonomous weapon systems reduce the need for combat boots on the ground, congressional incentives to check a president’s overreach will diminish—further concentrating the war power in the Executive’s hands.

#### Causes global overextension – AND, spills over to exempt humanitarian interventions from international law’s prohibitions on use or threat of force

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IV. Implications for the Doctrine of Humanitarian Intervention

New technology can affect international law in a variety of ways. A new development may raise novel legal questions100 or require resolving long-standing legal grey areas.101 Should new technology permit states to take previously impossible actions or render previous requirements ridiculous, new state practice may also cause international law to evolve in unanticipated ways.102 This section discusses one possible implication of U.S. presidents who are less restrained in using military force for short-term engagements due to increasingly autonomous weapon systems: the development of the doctrine of humanitarian intervention.

If U.S. presidents enjoy greater leeway in short-term military engagements, it is entirely possible that they will be more willing to engage in humanitarian interventions. Unlike other decisions to use military force, which will be grounded primarily in national security concerns, humanitarian interventions require a state to weigh the lives of its nationals against its willingness to aid another state’s civilians. Unsurprisingly, states are generally reluctant to engage in such actions unless the risk to their nationals is minimal (or unless an intervention is a fig leaf for accomplishing other objectives). Thus, to the extent autonomous weapon systems reduce risk to troops, U.S. presidents may be more willing to use military force to protect other states’ civilians.

To some degree, this is already occurring.103 As noted above, the Obama Administration relied heavily on the argument that there would be no “boots on the ground” to sell the American public on humanitarian interventions in Libya and Syria.104 Drones permit relatively riskless air strikes, but they do require considerable manpower for their operation. Weapon systems with greater levels of autonomy will allow militaries to do even more— in the air, at sea, on the ground, and in cyberspace—with less.

Should the United States engage in more humanitarian interventions, its actions will affect international law. Article 2(4) of the U.N. Charter provides: “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”105 There are two formal exceptions to this general prohibition: states may use force against another state pursuant to a Security Council resolution or in self-defense.106 The doctrine of humanitarian intervention, however, suggests that individual states may also unilaterally use force to stop an ongoing atrocity perpetuated by a state against its citizens, especially when the Security Council cannot or will not authorize a use of force.107 Some scholars argue that such a customary exception to Article 2(4) already exists.108 But these writers are in the minority. Due to both the sacrosanct nature of Article 2(4)’s prohibition and a lack of consistent state practice, the doctrine of humanitarian intervention is far from established customary international law.109

The United States, however, is a particularly influential international actor. Should it engage in unilateral humanitarian interventions more frequently, other states may be reluctant to criticize it—or they may also feel emboldened to engage in such actions. Over time, as certain justifications are accepted and others rejected by the international legal community, the doctrine of humanitarian intervention might evolve into a third, customary exception to Article 2(4)’s prohibition on the threat or use of force.

#### LAWs concentrate war powers in the hands of the Executive

Rebecca Crootof 15, PhD Candidate in Law, Yale Graduate School of Arts and Sciences; Resident Fellow, Yale Information Society Project. War, Responsibility, and Killer Robots, February 24, 2015, North Carolina Journal of International Law and Commercial Regulation, Vol. 40, No. 4, 2015, Available at SSRN: <https://ssrn.com/abstract=2569298>, nihara

I. Introduction

In War and Responsibility, John Hart Ely argues that Congress has willingly and cravenly surrendered its rightful role as the branch responsible for determining when and the extent to which the United States engages in armed conflicts.1 Since the publication of this seminal work on the war power, presidents have continued to commit troops to hostilities absent or outside of explicit congressional authorizations—and the legislature and the judiciary rarely challenge such actions.

Meanwhile, the United States is investing heavily in unmanned military weapon systems,2 and the U.S. Department of Defense has described increasing weapons’ autonomous capabilities as a “high priority.”3 In its annual “Unmanned Systems Integrated Roadmap,” the Department discusses its intended “continued development, production, test[ing], training, operation, and sustainment of unmanned systems technology across DoD” for the next twenty-five years.4 One of the ultimate goals is to “[t]ake the ‘man’ out of unmanned [systems].”5 How might increasingly autonomous weapon systems—also known as “killer robots”— affect the constitutional war power?

Drones, cyber operations, and other technological advances in weaponry already allow the United States to intervene militarily with minimal boots on the ground, and increased autonomy in weapon systems will further reduce risk to soldiers. As human troops are augmented and supplanted by robotic ones,6 one of the remaining incentives for Congress to check presidential warmongering—popular outrage at the loss of American lives— will diminish. By making it politically easier to justify the use of military force, autonomous weapon systems will contribute to the growing concentration of the war power in the hands of the Executive, with potential implications for the international doctrine of humanitarian intervention.

### 2nc – link – oco’s

#### OCOs circumvent Congressional oversight requirements – terminology is vague AND ambiguous – BUT, re-interpreting cyberspace “hostilities” to include the plan solves

Dr. Christopher E. Bailey 20, Summer 2020, Article: Offensive Cyberspace Operations: A Gray Area in Congressional Oversight, Boston University International Law Journal, 38, 240, Lexis, \*added [incapacitated], nihara

I. The Cyber Domain & the Future of 21st Century Conflict

Offensive cyberspace operations, 1including clandestine collection, exploitation and attack, are likely to remain an important means and method in international relations over the coming decades. Cyber warfare offers an attacker the important advantage of remote operations, leaving the victim with the problem of characterizing the event as a violation under domestic or international law, and with untangling the complex intelligence involving source attribution. In the case of technologically advanced states, such as the United States ("U.S.") or Israel, there are increased intelligence and planning requirements, but a reduced risk of friendly casualties (as compared to physical operations). Most importantly, if the victim cannot properly characterize the event or identify the perpetrators, then the attacker achieves discrete strategic objectives without risking a retaliatory response. Both clandestine and covert cyber actions can, therefore, perform a useful role in furthering U.S. national security interests, provided that such actions comply with relevant domestic law to include appropriate executive and congressional oversight, are conducted consistent with fundamental principles of international law, and fall below a certain level of severity based upon either the nature of the target or the degree of harm caused.

Several recent instances of cyber operations indicate that offensive cyberspace operations will likely be a staple in future international armed conflict. 2Examples include Israel's possible installation of a secretly kill-switch to destroy Syrian air defenses prior to its 2007 bombing of a nuclear reactor, 3Russia's likely deployment of a patriotic "cyber mob" for a 2007 attack on Estonia, 4the possible joint U.S.-Israeli use of a thumb drive to facilitate the 2010 Stuxnet attack against Iranian nuclear facilities, 5and the Russian interference in the 2016 U.S. general election. 6In fact, offensive cyberspace operations conducted under conditions of secrecy can be an useful force multiplier, for a government seeking either to avert conflict (e.g., anticipatory self-defense) or to facilitate operations during war. In this article, cyber operations are understood as military-intelligence operations using computers or computer networks either to target another or to use that other computer or computer network as a means by which damage or injury is caused to an adversary. 7Cyber operations, especially those that impair or degrade an adversary's systems, will likely remain a preferred method of attack against foreign adversaries because of problems that victims typically experience in characterizing an event and in attributing the attack to state-sponsorship. 8Offensive cyberspace operations raise important national security and foreign policy concerns that implicate U.S. and international law, especially as global political, defense, economic, and law enforcement activity increases its reliance on computer systems. 9

Offensive cyberspace operations range from the relatively benign exploitation of a zero day vulnerability, 10which enables a Distributed Denial of Service ("DDoS") 11attack (e.g., a shutdown of certain systems or services for a publicly observable effect), to a relatively more active operation involving the use of disinformation or propaganda to hide the attack's origin or to discredit a third country, 12and at the other end of the spectrum, a clear use of force operation of destructive acts a targeted country's nuclear power, SCADA, 13critical infrastructure, 14or air defense systems. Several recent examples, such as the February 2011 attacks by the Iranian Cyber Army against the Voice of America website 15and the 2014 power outages in North Korea that sent a powerful message to Pyongyang, 16illustrate how covert cyber actions conducted through the use of proxies could be used to warn an adversary about the risk of conducting a cyber-attack against the United States. 17White House and senior Russian leaders have also highlighted the gravity of the situation; both countries have expressed the need for stronger cyber defenses to protect against cyber-attacks from foreign state and non-state actors. 18Indeed, the likely Russian interference in the 2016 presidential elections demonstrate that the international community faces a pernicious security threat through the use of social media platforms by state-supported actors. 19

Accordingly, a 2018 comprehensive cyber strategy rolled out by the Trump Administration indicates that the United States will undertake offensive cyberspace operations against foreign adversaries. 20Initially, President Donald Trump signed the 2019 National Defense Authorization Act ("NDAA") into law on August 13, 2018. The 2019 NDAA further militarizes cyberspace by authorizing the Department of Defense ("DoD") to conduct a range of clandestine military cyber operations - including when such actions would fall short of hostilities or would occur in areas in which hostilities are not occurring 21- as a "traditional military activity" pursuant to the covert action statute. 22President Trump subsequently rescinded Presidential Policy Directive (PPD) 20, the interagency legal and policy process that had been initiated by President Barack Obama and used for "green-lighting" cyber-attacks. 23A House of Representatives conference report noted that the DoD had faced interagency problems in obtaining mission approval for cyber operations, and found that the DoD had been challenged by "the perceived ambiguity as to whether clandestine military activities and operations, even those short of cyber-attacks, qualify as traditional military activities as distinct from covert actions requiring a Presidential Finding." 24Senator Mike Rounds (D-SD), a member of the Senate Armed Services Committee and chairman of the Cybersecurity Subcommittee, later remarked that PPD-20 had "virtually [incapacitated] ~~paralyzed~~ the conduct of offensive operations by U.S. Cyber Command outside of armed conflict." 25To remedy this problem, Congress authorized an increased range of offensive cyberspace operations, no doubt "unleashing" U.S. Cyber Command ("U.S. CYBERCOM") from its defensive shackles to conduct a broader range of defensive and offensive operations. 26

This broad vesting of authority from Congress to the Secretary of Defense leaves many unanswered questions about the reach of its new operational authority as well as oversight by Congress and the Executive. 27First, one must distinguish among clandestine collection, cyber exploitation, sensitive military cyber operations, and covert operations. This problem, not clarified by the 2019 NDAA, cannot be overstated; many cyber activities elude characterization under the definitions that traditionally applied to physical activities. 28Initially, Congress granted the DoD broad authority to conduct activity for a broad range of purposes, as the statute's inclusion of DoD terminology such as "preparation of the environment" 29and "information operations" 30was vague and undefined in other statutes. In turn, this raises issues about how certain cyber activities should be viewed under domestic and international law, and raises a risk that a collection or an exploitation activity could be construed by an adversary as a threat of force or even a use of force in violation of the U.N. Charter.

In clandestine collection, traditional espionage involving a foreign agent (e.g., a spy), can occur through computer networks to collect foreign intelligence information regarding an adversary's computer, computer systems, or information or communications systems, as well as networks that may facilitate future operations. However, the term "clandestine" used in the 2019 NDAA is not defined by law. 31Such cyber collection may be even more effective than traditional espionage activity; remote cyber operations can extract large volumes of data without the assistance of an recruited spy or his American case officer. 32While there is no general prohibition under international law regarding espionage in peacetime, a collection activity could constitute a violation of foreign domestic (criminal) law 33or, more generally, incur state responsibility as an internationally wrongful act in violation of customary international law. 34The term "cyber exploitation," as used in this article, refers to network penetrations that enable future operations, such as the insertion of a trap door 35or malware 36that performs certain command functions. 37Cyber exploitation can involve intelligence collection as well as preparations a cyber-attacks. A cyber-attack "refers to deliberate actions to alter, disrupt, deceive, degrade, or destroy computer systems or networks or the information and/or programs resident in or transiting these systems or networks." 38Consequently, a cyber exploitation against foreign critical infrastructure, such as a missile development program or nuclear command and control systems, could be perceived by an adversary as escalatory in a crisis situation. 39

Cyber-attacks may range from an unacknowledged DDoS attack with temporary effects, such as the recent service outage in North Korea, 40to a broader, more destructive conduct as in the Stuxnet attack perpetrated against Iranian nuclear facilities. 41Cyber-attacks have the potential to constitute a use of force, 42a threat of force, 43or an armed attack 44under international law, depending on the circumstances of the attack. For instance, experts disagree on whether the 2010 Stuxnet attack was both a use of force 45and also an armed attack 46under the U.N. Charter. 47This lends itself to considerable ambiguity in the statutory meaning of the term "military activities in cyberspace short of hostilities ...." 48Presumably, such cyber-attacks could qualify as "sensitive military cyber operations" and come under the closer - albeit ex post facto - reporting requirements under 10 U.S. Code § 395, 49although the statute leaves considerable room for interpretation because it does not distinguish sensitive military operations from covert actions.

Dr. Christopher E. Bailey 20, Summer 2020, Article: Offensive Cyberspace Operations: A Gray Area in Congressional Oversight, Boston University International Law Journal, 38, 240, Lexis, added [incapacitated], nihara

Next, there are new questions about the nature of presidential and congressional oversight. The new statutory authorization allows for a range of offensive cyberspace operations that could be properly characterized as a covert action, but absent executive oversight required, such as is required for a presidential finding and Memorandum of Notification to the Congressional intelligence committees. 50The new language creates an important change in congressional reporting requirements; the statute provides that "[the Secretary of Defense] shall brief the congressional defense committees about any military activities or operations in cyberspace, including clandestine military activities or operations in cyberspace, occurring during the previous quarter during the quarterly briefing required by section 484 of this title." 51In other words, the DoD and U.S. CYBERCOM can conduct a broader range of offensive cyberspace operations, some which may be construed by an adversary as a hostile or wrongful act in violation of international law, but the Secretary of Defense is no longer constrained by the requirement of a presidential finding, 52prior or contemporaneous reporting to Congress, 53or even reporting to the senior congressional leadership. In one sense, the 2019 NDAA has a broader requirement for congressional reporting than the covert action statute; the 2019 NDAA does not include a provision that could be used to limit congressional reporting on sensitive military cyber operations to the "gang of eight." 54

The traditional controls on uses of force, whether involving covert actions or armed conflict, exist to ensure executive and congressional oversight, as well as political accountability through elections, in the conduct of U.S. foreign policy. 55There is a distinct difference between purely defensive actions, which are either responses against an on-going attack or the preparation of capabilities for prospective conflict, and offensive operations that could initiate or escalate a crisis. On one hand, it is true that the DoD experienced difficulties in obtaining mission approval within the executive branch for peacetime cyber operations that involved conduct beyond intelligence collection or a response to an on-going attack. That there has been disagreement over the propriety of certain activities is no doubt a reflection on the unique nature of certain cyber activities and the perhaps unknowable consequences that may result from them. Indeed, the United States has periodically faced intelligence crises resulting from ill-advised operations, such as the 1985-87 Iran-Contra affairs, that had been decided within a limited group of senior officials, without the benefit of interagency review and debate. 56Thus, the short-circuited approval process encapsulated in the 2019 NDAA - albeit to intended to facilitate timely responses to on-going attacks - is not necessarily a positive development.

However, strong presidential control and prior congressional notification perform an important function: they ensure that the United States uses unacknowledged force only in pursuit of "identifiable foreign policy objectives of the United States and is important to the national security of the United States." 57The need to inhibit unintended escalation with a foreign adversary mandates high quality intelligence to minimize the risk of misattribution and collateral damage, as well as tight political control. Now, however, the DoD can conduct a range of offensive cyberspace operations (i.e., "defend forward" through "persistent engagement" 58) independent of any explicit finding to that effect. The DoD has the authority to conduct a broad range of activities that it may consider "short of hostilities," 59but ones that an adversary may consider as a hostile or internationally wrongful act.

It is, therefore, important to consider how offensive cyberspace operations are regulated under domestic and international law - with special emphasis on how clandestine, sensitive, and covert cyber actions present special challenges for policymakers and practitioners alike. Arguably, the 2019 NDAA has clarified the relatively innocuous notion that military intelligence collection activities - whether styled as clandestine, preparation of the environment, or information operations - are exempted from the covert action statute as a TMA. 60Still, the 2019 NDAA fails to distinguish between cyber collection activities, sensitive military cyber operations, and cyber covert actions. 61In effect, the U.S. CYBERCOM is now preauthorized to commit internationally wrongful acts with an attendant risk to U.S. foreign policy objectives and national security interests, without prior interagency coordination or presidential approval, provided that such acts are "short of hostilities," according to the DoD. 62This lack of clarity is problematic with the ambiguity that is inherent in characterizing in cyber activities. In other words, offensive cyberspace operations, not intended by the United States as a hostile act, could be readily viewed as such by a foreign adversary and could, therefore, lead to unintended and unwanted consequences.

Effective regulation under this scheme, involving both presidential control and congressional oversight over military cyber operations, would help ensure that such actions serve as a viable foreign policy tool that advances U.S. national interests without the unnecessary risk of crisis escalation. First, the change in the characterization of clandestine military cyber operations as a "traditional military activity" is undoubtedly a useful one that reduces the need for unnecessary interagency coordination. 63Nonetheless, when such activities are conducted "in areas in which hostilities are not occurring," 64the DoD and the U.S. CYBERCOM should be obligated to inform the State Department, as well as the Director of National Intelligence, in advance of the proposed operation. In other words, the uncoordinated conduct of military cyber operations abroad risks conflict with U.S. relations with foreign countries and with other foreign intelligence collection activities.

Second, the statute should be amended to clarify the terminology involving the "preparation of the environment, information operations, force protection, and deterrence of hostilities, or counter-terrorism operations involving the Armed Forces of the United States." 65This language, undefined in the statute, is vague and overbroad; it not only authorizes a wide range of defensive activities, but also many offensive activities, from the insertion of "malware" to facilitate a possible future operation to an outright attack (i.e., otherwise indistinguishable from a covert action). On one hand, in the face of an on-going cyber-attack against the United States, the DoD should have the full legal authority to not only defend its own systems, but also to use timely and proportionate countermeasures against that adversary. Thus, the DoD should have the legal authority to conduct such defensive operations without the need for interagency coordination or even prior presidential approval. And, as applied to defensive activities, to include proportionate countermeasures, the post-operational briefings to the congressional defense committees for "any military activities or operations in cyberspace" 66or a "sensitive military cyber operation" 67are entirely appropriate. On the other hand, planned, offensive "military activities or operations in cyberspace short of hostilities ... or in areas in which hostilities are not occurring," 68should be subject to interagency coordination, presidential approval, and notification to Congress in the same manner as a covert action. 69

Finally, the statute should be clarified with respect to congressional reporting. Thus, conduct of military cyber operations - especially ones that may otherwise be indistinguishable from covert actions - should be reportable to both the congressional defense and intelligence committees. On a domestic level, offensive cyberspace operations raise a risk of complicating foreign relations and the unnecessarily escalation of a foreign crisis. On an international level, offensive cyberspace operations raise a risk of an internationally wrongful act, incurring state responsibility before an international court, as well as a possible violation of the U.N. Charter.

### 2nc – nb – at: biden solves / withdrawals now

#### Biden does NOT solve – “withdrawals” are a legal evasion for “advise-and-assist” positions that continue involvement AND increase escalation risk through strategic ambiguity in the Middle East AND North Africa

Jacob Silverman 21, Jacob Silverman is a staff writer at The New Republic and the author of Terms of Service: Social Media and the Price of Constant Connection, July 28, 2021, “The Forever Wars Aren’t Ending. They’re Just Being Rebranded.” The New Republic, <https://newrepublic.com/article/163088/forever-wars-arent-ending-theyre-just-rebranded>, nihara

After 18 years of illegal warfare, corruption, and untold numbers of innocent people killed or made into refugees, the U.S. combat mission in Iraq will be declared finished—for the third time. Sort of. This week, President Joe Biden said that the United States is “not going to be, by the end of the year, in a combat mission” in Iraq. The 2,500 U.S. soldiers officially staged there—almost certainly an undercount, as military leaders tend to fudge deployment numbers and reorganize troops under intelligence authorities or noncombat roles so as to disguise the scale of our overseas footprint—will be moving on.

But they won’t necessarily be going home, or even leaving the region. The change in status, while pleasing to anti-war advocates and to Iraqi Prime Minister Mustafa Al Kadhimi, who met with Biden this week, is mostly a distinction without a difference. The U.S. will be moving into an “advise-and-assist role,” as it’s euphemistically described, providing many of the same services it does now. According to ABC News, “the change in mission is more of a semantic one, and the number of U.S. troops in Iraq will not dramatically differ as they shift their emphasis to training and assisting.” U.S. soldiers will be doing “the exact same things they’re already doing, just fewer doing it,” said Wesley Morgan, author of a book about America’s war in Afghanistan.

The forever wars don’t seem to end, they just molt into their next iteration, as assets are shuffled around, missions rebranded, and local allies reassured that we are there to “advise and assist” for as long as is needed. Relying heavily on special forces, intelligence resources, contractors, and unmatched air power, the U.S. continues to be involved in conflicts in Syria, Somalia, Libya, Niger, and other undeclared war zones. In Africa alone, the U.S. has at least 29 military bases and participates in operations against Islamic State sympathizers and other jihadist groups in a number of countries, particularly in West Africa. Earlier this year, making good on a campaign promise, Biden claimed that the U.S. would stop providing “offensive assistance” to the vicious war prosecuted by Saudi Arabia and the United Arab Emirates—with British and American help—in Yemen. We still don’t know if anything has changed, and the U.S. continues to help enforce a devastating blockade of a key port in a country where millions face hunger.

Prolonging a process that was begun under Donald Trump, the U.S. hasn’t so much folded its cards in these conflicts as it has reshuffled the deck. Biden has positioned himself as a reluctant peacemaker—so reluctant that he sometimes brushes off questions about Afghanistan because they aren’t “happy.” But in practice, he appears to be a pliant imperial overseer. In moving to reestablish the relationships and treaties Trump trashed, while rebranding U.S. involvement in various conflicts, Biden’s foreign policy looks much like a return to the muscular liberalism of the Obama era, which gave us the Islamic State and humanitarian disasters in Yemen, Libya, and elsewhere. Any reports that the forever wars are ending miss what is really happening in U.S. foreign policy.

Consider America’s pullout from Afghanistan, which has featured quietly dramatic scenes of fleets of vehicles abandoned at Bagram Airbase and reports of the Taliban capturing district after district. Even in that conflict, there’s little sense that the U.S. is about to abandon its foundering efforts to create a functional democracy in a country wracked by generations of war and outside meddling. Rather than fully exit the region, the U.S. reportedly has been considering repositioning its military assets to surrounding Central Asian countries, including possibly leasing Russian military bases in places like Tajikistan. U.S. forces have also continued launching airstrikes against the Taliban to try to aid the teetering Afghan government and to provide cover for foreign forces set to leave the country. (The Taliban, for its part, promised “consequences” for the U.S. violating its agreement to pull out of Afghanistan fully by August 31.) The U.S. has similarly promised, in the words of Gen. Kenneth McKenzie Jr., to provide “intelligence sharing and advising and assisting through security consultations at the strategic level” to the Afghan government—for as long as that government lasts in the face of growing Taliban assaults.

American military operations seem to be continuing in Syria and Somalia, as well. Trump expressed interest in ending U.S. involvement in Somalia, but according to some reports, U.S. forces were mostly relocated to Kenya and other regional bases, essentially “commuting to work,” as described by Air Force Magazine. Following a six-month respite, the Biden administration resumed airstrikes in Somalia, leading several Democratic senators to demand an explanation. “I have received no information suggesting that these strikes are necessary to protect any U.S. personnel and would need to understand, if this is so, why they are occurring,” said Senator Tim Kaine. The same could be said about much of the last 20 years of America’s wars of choice.

In Syria, the U.S. has carved out a small “buffer zone” in the east of the country, where Green Berets train and assist Syrian Democratic Forces in their battle against remnants of the Islamic State, and other U.S. assets provide air support. Although their presence is probably illegal, and occurred without any congressional debate, the mission will go on. “I don’t anticipate any changes right now to the mission or the footprint in Syria,” an anonymous official told Politico on Tuesday. More detailed information about the U.S. mission in Syria, including photos, videos, and other friendly propaganda, can be found on Twitter, where a U.S. spokesman provides regular updates with the hashtag #defeatdaesh (Daesh being a derogatory Arabic term for the Islamic State). The U.S.-led coalition “is committed to supporting the #SDF to combat terrorism & ensure a long-term stability in NE Syria,” said spokesman Col. Wayne Marotto this week.

In both Iraq and Syria, U.S. officials say, American soldiers no longer participate in raids or kick down doors. They merely do everything else a long-term counterinsurgency campaign requires. This shift to more hazily described assistance roles is supposed to reflect a maturation and evolution of a global war on terror. But they’re also a way of keeping U.S. forces engaged in the region without visibly occupying it. This strategy also allows the U.S. to amp up involvement any time an Iranian-sponsored militia manages to lob some missiles a U.S. base in Iraq or Syria. As Marotto, the coalition spokesman, recently said, “The U.S./Coalition has the inherent right to self-defense. Force protection remains the highest priority of the @Coalition.”

It’s a measure of how distorted our forever-war logic has become. Why keep U.S. soldiers parked at regional bases without any combat role, just so they can be targets for militia drone strikes that may then demand an escalating response? These soldiers and contractors wouldn’t require force protection if they were returned home.

According to The Washington Post, President Biden is trying “to end the post-9/11 era.” From Afghanistan to Iraq to Guantánamo, where a prisoner was recently released after years of confinement and no criminal charges, Biden claims to be turning the page, reorienting toward security threats emanating from China and Russia.

This new eagerness to wave sabers in the general direction of Beijing would be concerning on its own. But it also highlights how ending America’s decades-long imperial drift will take far more than rearranging some military deployments. It will require a complete reimagining of how to engage with a world that has been cynically reduced to a global battlefield populated with endless threats. It requires admitting that we live in a country mostly safe from external enemies, with only a marginal risk of terrorism. For 20 years, our political and military leaders and foreign policy establishment have claimed otherwise. Judging by Biden’s latest decisions—as well as the hysterically overwrought reactions of old neocon hands like George W. Bush and Lindsey Graham, who would be content to occupy Afghanistan for another generation—our elites are still not ready to admit the obvious: We lost these wars, and the only way to expiate our failure is to go home.

## aff answers

### 2ac – exec flex good

#### Executive flexibility solves terror AND prolif – extinction – Congress is structurally incapable at crisis response

John Yoo 17, John Yoo is the Emanuel S. Heller Professor of Law at the University of California at Berkeley, a nonresident senior fellow at the American Enterprise Institute, and a visiting fellow at the Hoover Institution at Stanford University, 4-13-2017, "Trump’s Syria Strike Was Constitutional," National Review, <https://www.nationalreview.com/2017/04/trump-syria-strike-constitutional-presidents-have-broad-war-powers/>, \*added [undermine], nihara

The Framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by preexisting legislation. Instead, they can demand swift, decisive action — sometimes under pressured or even emergency circumstances — that is best carried out by a branch of government that does not suffer from multiple vetoes or that 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 they 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 [undermine] ~~paralyze~~ American policy while foreign threats grew.

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 is too large and unwieldy to take the swift and decisive action required in wartime.

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 the 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 could 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 Richard Nixon’s veto, and no president 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 that we should radically remake the American way of war. They typically base their claim on Congress’s power to “declare war.” But these observers read the 18th-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 declaring war — 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, 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, Congress 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 offense-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 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 can lead 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 presidents. 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.

#### Ukraine proves Congressional re-assertion in foreign affairs is occurring now – BUT, is only escalatory – AND, runs counter to executive restraint

Rachael Bade 22, Rachael Bade is a 10-year veteran of the congressional press corps, where her stories illuminated the power struggles and personal dynamics animating the major policy clashes of Capitol Hill. She spent the past two years covering House Democrats' oversight of the Trump Administration for The Washington Post, where she routinely broke news on the party's attempts to hold the president accountable as well as the historic impeachment effort. She is currently writing a book, "A Perfect Phone Call," for HarperCollins' William Morrow publishing house about how and why the move to oust Trump failed. Before joining the Post in early 2019, Rachael covered Congress for POLITICO, where she spent six years of her journalism career. From her vantage point on the Hill, she chronicled President Trump's remaking of the GOP, churning out stories with behind-the-scenes details about the struggle between pro-Trump lawmakers and those fearful of the new direction of the party. Rachael is a political analyst for CNN and has also appeared on CBS's "Face the Nation," ABC's "This Week" and Fox News' "Fox News Sunday." A small-town, Ohio-native, she graduated from the University of Dayton with degrees in political science and communication and is a former classical ballet dancer., 03/14/2022, "POLITICO Playbook: Something unusual is happening between Biden and Congress," <https://www.politico.com/newsletters/playbook/2022/03/14/something-unusual-is-happening-between-biden-and-congress-00016935>, nihara

PRESSURE POLITICS — Something quite striking has happened in Washington since Russia invaded Ukraine. Congress — which typically takes a back seat on foreign policy matters — has repeatedly driven the White House beyond its comfort zone with bipartisan demands for more assertive policies.

It started with calls for tougher sanctions, then escalated to an appeal for a larger military and humanitarian assistance package. Members of both parties then clamored for a U.S. ban on Russian oil, which the White House saw as politically risky given the effect on gas prices at home. And they insisted that the U.S. end permanent normal trade relations with Russia.

The tactics have worked. And this week, lawmakers will be at it again — this time nudging the Biden administration to go further than it wants in facilitating the transfer of fighter jets from Poland to Ukraine.

The White House POV: The Biden White House — worried about ratcheting up tensions with the Kremlin — has rejected Poland’s offer to move their Soviet-style planes. Indeed, Russia over the weekend warned that it would view any such delivery as an escalation, and signaled that any such convoys (even American-delivered ones) would be considered “legitimate targets.”

Alex Ward, who anchors POLITICO’s National Security Daily newsletter, noted Sunday that the administration has gone out of its way to avoid any moves that could trigger further conflict with Russia. It has even taken steps back to ease tensions, such as canceling special operations training and delaying missile tests. Our colleagues also scooped Sunday that a “Pentagon push to send more trainers to Ukraine was scrapped in December amid White House fears of provoking Russia.”

The supporters’ POV: Supporters of approving a transfer of fighter jets argue that Russia has drawn multiple lines that the West has already crossed — and that VLADIMIR PUTIN is the aggressor here. Sen. ROB PORTMAN (R-Ohio), speaking from the Ukraine-Poland border, noted on CNN’s “State of the Union” on Sunday that Putin had also called sanctions an “act of war” and warned the U.S. against providing stringers and helicopters.

“What we’ve heard directly from the Ukrainians is they want them badly,” Portman said of the planes. “They want the ability to have better control over the skies in order to give them a fighting chance. I don’t understand why we’re not doing it.”

The build-up: While Republicans led the charge calling for the transfer last week, over the weekend we saw some Hill Democrats join the fray. Ex-military Democratic Reps. JASON CROW (Colo.), JARED GOLDEN (Maine) and CHRISSY HOULAHAN (Pa.) and a couple of others signed a bipartisan letter backing the move, as we first reported in Playbook PM on Friday. By Sunday, the 58-member-strong bipartisan Problem Solvers Caucus — half Democrats — had joined them.

“With Russia’s alarming disregard for Ukrainian civilian casualties, the U.S. must … help supply more comprehensive air defense systems to defend Ukraine and its people,” the letter read.

Meanwhile, Sen. AMY KLOBUCHAR (D-Minn.) — who doesn’t break often with President JOE BIDEN — said the U.S. shouldn’t rule out making the transfer: “I have made clear to them — I spoke to the president himself about 10 days ago about this — I’d like to see the planes over there,” she said on “State of the Union,” floating the idea of other types of air defense assistance that could also work. “I still don’t rule out having planes at some point.”

So is it just a matter of time before the Biden White House flips and moves on the Poland transfer? Perhaps. What is clear is that Congress has had success with this type of vocal, bipartisan push before. WaPo’s Amy Wang has more on the bipartisan movement on the plane issue. (Read on for more on Ukraine below.)

#### Executive flexibility is inevitable – even if they’re right – Congress will NOT re-engage due to political incentives – AND, gridlock enables executive power grabs – NO spillover

Daniel W. Drezner 21, Daniel W. Drezner is a professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University, 8-30-2021, " Why Congress will not reengage on foreign policy," Washington Post, <https://www.washingtonpost.com/outlook/2021/08/30/why-congress-will-not-reengage-foreign-policy/>, nihara

As more information comes out about the proximate causes of the Taliban’s swift takeover of Afghanistan, AEI’s Kori Schake has a good op-ed in the New York Times reminding everyone (including Trump administration officials hoping for national amnesia) about the February 2020 deal that the Trump administration negotiated with the Taliban that set the table for the horrible meal we are all digesting now.

That agreement led to “the release of 5,000 combat and political Taliban prisoners” and bypassed the Afghan government entirely. As Schake writes, “For someone who prided himself on his abilities as a dealmaker and displayed an ‘I alone can fix it’ arrogance, the agreement he made with the Taliban is one of the most disgraceful diplomatic bargains on record.”

The deeper point to Schake’s op-ed, however, is that President Donald Trump’s debacle is simply the most recent and most prominent example of a U.S. president believing that personal diplomacy can solve everything. Instead, “presidents should return to the practice of persuading their fellow Americans of the merits of agreements with foreign powers.”

If they do not, Schake advises Congress to reclaim its powers over foreign affairs:

Congress can begin by reasserting its role in diplomacy and requiring specific authorizations for the use of military force rather than continuing to acquiesce to claims that existing executive authorizations can be endlessly expanded. It should refuse the shifting of funds previously authorized and appropriated for other purposes (Mr. Trump made such shifts to construct the border wall). It should reject foreign policy changes enacted by executive order rather than congressional approval, and it should force the Supreme Court to clarify the extent of the president’s war powers.

Agreements with foreign powers, whether states, international institutions or organizations like the Taliban, should be submitted to Congress for a vote. The best way to prevent catastrophic foreign policy mistakes is to require the 535 representatives of the American people to put their jobs on the line, become informed, and support, reject or modify a president’s program. Congress tried to slow or block Mr. Trump’s planned drawdown of U.S. forces. Members who supported the Taliban deal should be explaining why they thought the outcome would be different than the tragedy unfolding in Afghanistan now. Apathy and unaccountability are the real enemies of good foreign policy. Presidents get around oversight by offering unilateral policy actions or claiming international agreements aren’t formal treaties. Congress shouldn’t let a president from either party get away with that.

As an analyst, I agree wholeheartedly with Schake’s diagnosis of the problem. One of the running themes in my own long-form writing on American foreign policy — see here, here, here, here and here — has been that a variety of factors has led to everyone treating the president as the last adult in the room. This is a real problem when Americans elect a petulant child to occupy the Oval Office.

Nor is this argument original to me. It begins with Arthur Schlesinger’s “The Imperial Presidency,” continues with Andrew Rudalevige’s “The New Imperial Presidency,” proceeds with Linda Fowler’s “Watchdogs on the Hill” and so forth.

The diagnosis makes sense — but Schake’s proposed remedy does not, for two reasons. First, most members of Congress have little incentive to act responsibly on foreign affairs. As Helen Milner and Dustin Tingley note in “Sailing the Water’s Edge,” what motivates Congress is the distribution of concentrated costs and benefits. Foreign affairs, which is mostly about advancing the national interest, has very little of this outside of the defense budget.

As a result, most individual members of Congress do not care about foreign policy, except as an exercise in partisanship. Neither do their constituents. The result is that when Congress does get involved in foreign affairs, it is mostly through displays of self-sabotaging symbolism, such as passing JASTA or impulsively flying to Kabul in the middle of a rescue mission or, as I noted in Foreign Affairs, imposing economic sanctions so that they “can tell their constituents that they are doing something about a problem even if that something isn’t working.”

Now it could be argued that if Schake’s proposed reforms were enacted, the shared sense of responsibility would focus the mind of Congress, leaving lawmakers no choice but to act responsibly. Alas, that is highly unlikely, for two reasons. First, even if Congress was blamed collectively for inaction in foreign affairs, individual members would not be punished by their constituents. Ordinary Americans barely consider foreign policy when voting for the president, much less their House representative.

Second, when a foreign policy crisis does emerge, attention naturally gravitates toward 1600 Pennsylvania Avenue. Congress has 535 individual voices; the president is a singular voice. During a crisis, the president will always have the incentive to act using executive power in the face of congressional gridlock. Furthermore, that very gridlock will enable the president to get away with power grabs more often than not. So long as a president’s party provides backup, there is little that Congress can do as an institution to constrain executive power.

This is normally the point in the column when the hard-working staff here at Spoiler Alerts offers a better solution. This is a problem, however, that cannot necessarily be fixed given the current political incentives. The best I can offer is to try to further institutionalize consultations with congressional leadership in a manner akin to reading in the Gang of Eight on intelligence matters.

I grant that this is weak beer. The problem is structural. Presidents care about foreign policy because of the national interest and also because it’s the arena where presidents have the most latitude. Members of Congress do not care most of the time. And the reason they do not care is that their constituents really do not care. Until something changes in that last sentence, the status quo will persist.

#### AND, NO impact – Presidents pursue Congressional support to shield political criticisms – unilateral action only occurs for isolated, non-escalatory instances

Robert Farley 21, Dr. Robert Farley is a Senior Lecturer at the Patterson School at the University of Kentucky. Dr. Farley is the author of Grounded: The Case for Abolishing the United States Air Force (University Press of Kentucky, 2014), the Battleship Book (Wildside, 2016), and Patents for Power: Intellectual Property Law and the Diffusion of Military Technology (University of Chicago, 2020), November 23, 2021, “America’s Imperial Presidency Problem: Fact Or Fiction?” 19FortyFive, <https://www.19fortyfive.com/2021/11/americas-imperial-presidency-problem-fact-of-fiction/>, nihara

What does it mean to say that the United States suffers from an “Imperial Presidency Problem?” For at least the last fifty years, it has defined a line of critique of the Presidential power to make war without the consent of Congress.

The vast expansion of the standing military establishment in World War II meant that post-war Presidents had the means to wage war at the times and places of their choosing. The development of nuclear weapons meant that Presidents needed the authority to make decisions of war and peace immediately, without the advice and consent of Congress. To be sure, there is a long history of Presidents waging wars without Congressional intervention, but the advent of the Cold War raised the stakes immensely. In 1950, President Truman’s decision to intervene in the civil war on the Korean Peninsula seemed a harbinger of a vast expansion of Presidential power over war and peace.

The problem was seen as so serious at near the end of the Vietnam War that Congress passed the War Powers Resolution in 1973 in an effort to limit Presidential prerogative with respect to warmaking. Congressional critics of Presidential warmaking power have continued their efforts to restrain imperial Presidents down to the present day; a bipartisan coalition of lawmakers attempted to constrain President Trump’s support for the Saudi war in Yemen, albeit with little success. More recently, Senators Bernie Sanders, Mike Lee, and Chris Murphy proposed a sweeping overhaul of the national security prerogatives of the President that would significantly expand upon and clarify the War Powers Resolution.

But what if the Imperial Presidency is, at least partially, a myth?

Patrick Hulme, a Ph.D. candidate in political science at the University of California at San Diego, has work circulating about the importance of the precedent of the Korean War in Presidential thinking. As Hulme argues, “Truman’s successors took a specific lesson away from the Korean War: by failing to have members of Congress publicly commit to armed intervention via a formal vote ex ante, they left themselves vulnerable to highly damaging congressional action ex-post if the use of force did not end in victory.” Presidents don’t seek Congressional approval for every mission, but for interventions that may last a long time or have the potential to go badly, they want Congress on board.

We can see this with respect to President Obama’s decision not to strike Syria in 2013. Obama’s initial instinct, testified to by many with access to the deliberations, was to launch an attack on Syria as soon as possible. At the same time, it seems that Obama became less certain that US involvement could be limited to a few airstrikes. The Syrian government was weak but in no danger of imminent collapse, and Obama worried that initial strikes would require a follow-up if Assad continued to use chemical weapons. This makes sense in the context of Hulme’s model; a President who may be entirely willing to conduct a quick, one-off strike without Congressional approval will find it altogether less pleasant to launch a long-term military operation without bringing Congress on board.

The real danger would be for a President to decide upon war without consulting Congress and then earn public adulation for acting effectively as a lawless warlord, or assume that Congress will eventually be forced to support them. Presidents do not launch wars in anticipation that they will become more popular over time. The more engagement the conflict requires, the more a President wants to begin the war with clear Congressional support. In this sense, Congress provides the President with a degree of protection against critics in case a military operation goes bad.

The belief that launching and waging a war independently of Congress would result in popularity would be truly dangerous to both America and the world. Fortunately, Presidents don’t tend to act in this way. Rather, they see unilateral war, especially when the chance of a prolonged engagement is high, as too politically risky. Even when Presidents claim that they do not need Congressional authority to launch a war, they seek such authority because they want political protection. And in truth it is unclear that Congressional approval did much to protect Johnson from the verdict of Vietnam or George W. Bush from the verdict of Iraq; both Presidents bore the brunt of public criticism for the decision to go to war, notwithstanding the approval of Congress.

Thus, the problem is less that the “imperial” President launches wars without the authorization of Congress. The problem is that Congress has displayed all-too-much willingness to go along with even the worst wars that a President seeks to undertake. None of this means that reforming Presidential warmaking powers isn’t a good idea. In particular, giving Congress more control over presidential power at low levels of escalation (arms sales, for example) clearly seems to be a good idea. Moreover, we should not underestimate the ability of a President to control the public discourse, and especially to control the flow of intelligence. Both the Vietnam War and the Iraq War were launched with a faulty intelligence frame; the executive characterized and distorted existing intelligence to paint a picture favorable to war. But as always, resolving the problem requires careful analysis of the extent of the problem.

### 2ac – flex good – renewables

#### Biden’s using executive wartime powers to secure critical minerals to develop clean energy – broad national security flex is key

Josh Siegel et al. 22, Zack Colman, Jordan Wolman and Tanya Snyder, 03/30/2022, “Biden eyes using wartime powers for minerals needed in clean energy push,” POLITICO, <https://www.politico.com/news/2022/03/30/biden-expected-to-use-wartime-powers-for-minerals-needed-in-clean-energy-push-00021693>, nihara

The White House is weighing using wartime executive powers to boost U.S. battery production to help secure supplies for the growing market for electric vehicles and power storage on the electric grid, according to two people familiar with the Biden administration’s thinking.

President Joe Biden would use the Defense Production Act to help secure U.S. sources of critical minerals that are deemed key components of clean energy technology. While the U.S. possesses many of those minerals, industry and some lawmakers of both parties contend regulations have deterred development and forced the U.S. to rely on supplies from nations like China, Russia, South Africa and Australia.

“As we break our dependence on foreign sources of oil and natural gas, we must ensure that we secure the materials necessary for the clean energy economy in a way that holds to our strong environmental, labor, Tribal engagement standards and does not leave us reliant on unreliable and unsustainable foreign supply chains,” one of the people said.

The move to use an emergency national defense law dating to the Cold War comes as the prices of battery minerals like nickel, lithium and cobalt, have surged during Russia’s war in Ukraine. Russia is a leading producer of nickel, copper and other minerals. Prices were already rising before Russia’s invasion because of forecasts that global supply won’t keep up with surging demand expected from electrifying economies.

Influential lawmakers led by Democratic Sen. Joe Manchin (D-W. Va.), chair of the Energy Committee, and Sen. Lisa Murkowski (R-Alaska) called last month for the Biden administration to invoke the Defense Production Act to boost the production and processing of critical minerals, citing the ongoing supply chain crisis and the vulnerability of depending on Russian mineral supplies.

“It’s a nice start. If you are going to go whole hog on electric and you don’t have the minerals, you ought to do something,” Sen. Bill Cassidy (R-La.), who signed a letter with Manchin and Murkowski prodding the Biden administration to take the action, said in an interview. Several Democratic senators wrote to Biden two weeks later expressing concern over supply chain issues related to the Ukraine crisis, too.

Rich Nolan, CEO of the National Mining Association, said the Biden administration is sending a “strong signal” to the marketplace by taking action.

“It’s going to incentivize getting some of these materials to the marketplace right when we need it,” Nolan said in an interview.

The effort Biden is considering would not circumvent or speed up permitting and environmental reviews, one of the people familiar with the plan said, a likely nod to the fact that some Democrats and green groups are wary of expanding mining on U.S. soil.

Instead, the actions would act almost as an investment vehicle, the person said. Adding minerals like nickel, lithium, graphite, manganese and cobalt to a list of covered materials under the Defense Production Act’s Title III program could help companies secure money from a fund designed to ensure the U.S. maintains an industrial base for wartime capabilities. Those dollars would finance feasibility studies along with productivity and safety improvements rather than directly buying minerals.

A 2019 Congressional Research Service report found the U.S. relies wholly on imports for 14 critical minerals, including manganese, graphite and rare earths.

The move is in line with previous uses of the Defense Production Act, which explicitly grants the president authority to address the mining and production of minerals that are considered essential to the nation’s security. It was invoked in the 1950s to ensure an adequate supply of steel for use in the Korean War and again during the Cold War to establish domestic aluminum and titanium industries and reduce reliance on foreign sources.

“These are all things that the U.S. needs to help build up the U.S. mining industry into something that is capable of navigating the energy transition,” said Jordy Lee, a program manager at the Payne Institute for Public Policy at the Colorado School of Mines. “Demand estimates show 1000 percent increases in lithium demand, 200 percent increases in nickel demand, etc, and the U.S. mining industry is struggling.”

Efforts to expand domestic mining production have already hit roadblocks at the state and local level, as litigation, state mining laws and environmental opposition have stymied some projects. The Biden administration itself canceled the leases for a major proposed copper-nickel mine in Minnesota earlier this year.

#### Decarbonizing the grid is sufficient to mitigate the catastrophic effects of global warming -- top predictive studies conclude it’s the only way

Roberts 20 – journalist focusing on energy and climate change. (David, “How to drive fossil fuels out of the US economy, quickly.” Vox. August 6, 2020. DOA: September 2, 2021. https://www.vox.com/energy-and-environment/21349200/climate-change-fossil-fuels-rewiring-america-electrify)//MG

A similar mobilization will be necessary for the US to decarbonize its economy fast enough to avert the worst of climate change. To do its part in limiting global temperature rise to between 1.5° and 2° Celsius, the US must reach net-zero carbon emissions by 2050 at the latest. To achieve this, the full resources of the US economy must be bent toward manufacturing the needed clean-energy technology and infrastructure. FDR began with two questions. First, he asked not what was politically feasible but what was necessary to win the war. He also asked not how much funding was available in the federal budget but how much productive capacity was available in the economy — what was possible. Saul Griffith is trying to answer those same questions on climate change: what is necessary, given the trajectory of global warming, and what is possible, given the resources in the US economy. A physicist, engineer, researcher, inventor, serial entrepreneur, and MacArthur “genius” grant winner, Griffith’s recent work spans two organizations. First, he is founder and chief scientist at Otherlab, an independent research and design lab that has mapped the energy economy. And alongside Alex Laskey, co-founder of Opower, he recently started Rewiring America, which will develop and advocate for policies to rapidly decarbonize the US through electrification. (The organization is going to release a book called — be still my heart — Electrify Everything.) Last week, Rewiring America made its big debut with a jobs report showing that rapid decarbonization through electrification would create 15 million to 20 million jobs in the next decade, with 5 million permanent jobs after that. For the most part, the media covered it as just another jobs report, saying basically what other clean-energy jobs reports have said. But the jobs are, in many; ways, the least interesting part of the work. Much more interesting is Griffith’s larger project the model he’s built and its implications. In a nutshell, he has shown that it’s possible to eliminate 70 percent to 80 percent of US carbon emissions by 2035 through rapid deployment of existing electrification technologies, with little-to-no carbon capture and sequestration. Doing so would slash US energy demand by around half, save consumers money, and keep the country on a 1.5° pathway without requiring particular behavior changes. Everyone could still have their same cars and houses — they would just need to be electric. “The report reinforces a key finding,” says Leah Stokes, an environmental policy expert at the University of California Santa Barbara. “Cleaning up the electricity system solves the lion’s share of the problem. It allows us to electrify our transportation and building sectors and parts of heavy industry, which would address more than 70 percent of total emissions.” Some of Griffith’s conclusions run contrary to conventional wisdom in the energy space. And they are oddly optimistic. Despite the titanic effort it would take to decarbonize, the US doesn’t need any new technologies and it doesn’t require any grand national sacrifice. All it needs, in this view, is a serious commitment to building the necessary machines and creating a regulatory and policy environment that supports their rapid deployment. In this post, I will walk through the energy data he’s assembled, what the data reveals about the fastest way to decarbonize, how fast that decarbonization could be accomplished, why it’s doable, its political challenges, and its political promise. Griffith’s work is among the most interesting contributions to the climate discussion in ages. There’s a lot here, but it is worth your time. Let’s start with how he built the model. How energy is used in the US economy, explained In 2018, after applying for years, Otherlab was finally awarded a contract from the Department of Energy’s Advanced Research Projects Agency-Energy to assemble in one place, for the first time, all publicly available data on how energy is used in the US. As it happens, the US has great energy data. In response to the oil crisis of the 1970s, presidents created the Energy Information Administration, the Department of Energy, and the Environmental Protection Agency. Those agencies began gathering data on how energy is generated, transported, and used in various parts of the economy, and since have accumulated an enormous catalog. Oddly, all that data has never been gathered, harmonized, and put in a single database. So Griffith and colleagues spent years poring over agency output from the last 50 years — he ruefully cops to being “the only person on the planet who has read every footnote of every DOE report since 1971” — and assembling it in a massive dashboard, which you can view here. It tracks where every unit of energy enters the economy and how it is used as it passes through. This is not a model, per se, it’s just lots and lots of data visualized, a close-up “machine-level” view of energy flows in the US economy. But having the data in one place provides the raw material for Rewiring America to build a high-resolution model of what it would actually take to decarbonize — how many machines must be built, what kind, and how fast. “Where most studies look at decarbonization in specific individual sectors such as transportation, the electricity grid, or buildings — and mostly only on the supply side,” the Rewiring America report says, “we build a model of the interactions of all sectors, both supply and demand, in a rapid and total decarbonization.” The fastest way to decarbonize is to electrify everything Griffith begins with a core assumption: We need to make a plan to solve the problem with the tools available. It is unwise, for instance, to bet on a large amount of carbon capture and sequestration coming online in time to make a difference. The technologies are still in the early stage and there are strong arguments they will never pencil out. Griffith takes a “yes, and” approach. If carbon capture sequestration works out, great. If next-gen nuclear reactors work out, great. If hydrogen-based fuels work out, great. But we shouldn’t rely on any of them until they are real. We need to figure out how to do the job with the technology available. On that score, Griffith’s modeling reaches two key conclusions. First, it is still possible to reduce US greenhouse gas emissions in line with a 1.5°C pathway. Specifically, it is possible to reduce US emissions 70 percent to 80 percent by 2035 (and to zero by 2050) through rapid electrification, relying on five already well-developed technologies: wind and solar power plants, rooftop solar, electric vehicles, heat pumps, and batteries. Think of those technologies as the infrastructure of 21st century life. If everyone uses carbon-free energy to heat their homes and get around, the bulk of the problem will be solved. Second, to decarbonize in time, substitution of clean-energy technologies for their fossil-fuel counterparts must ramp up to 100 percent as fast as possible, after a brief period of industrial mobilization. Every time a gas or diesel car is replaced, it must be replaced with an EV; every time an oil or gas furnace is replaced, it must be replaced with a heat pump; every time a coal or gas power plant goes offline, it must be replaced with renewable energy. There is no room left in a 1.5° or 2° scenario for more fossil fuel infrastructure or machines. We need to radically ramp up production of electrification technologies and implement the policy and financing tools that will enable 100 percent substitution. Clocking the maximum feasible transition to clean energy Griffith and his colleagues set out to model a “maximum feasible transition” to carbon-free energy, limited only by the country’s production capacity. They describe it like this: The maximum feasible transition (MFT) involves two primary stages: (i) an aggressive WWII–style production ramp–up of 3–5 years, followed by (ii) an intensive deployment of decarbonized infrastructure and technology up to 2035. This includes supply–side generation technologies as well as demand–side technologies such as electric vehicles and building heat electrification. When it says production ramp-up, it’s no joke. Within three to five years, production of electric vehicles would have to increase four-fold, batteries 16-fold, wind turbines 12-fold, and solar modules 10-fold. Accommodating all those new electricity loads would also mean expanding the size of the grid by three- or four-fold. “Today, we deliver about 450 gigawatts constantly,” says Griffith. “In the model of the future — where everyone’s house is the same size, everyone’s car is the same size, but it’s all electrified — you need to deliver 1,500 to 2,000 gigawatts.” (To be clear, Griffith doesn’t necessarily think Americans should keep driving giant cars and living in giant houses. He supports urbanism and cycling and downsizing generally. He spent many years running a radical downsizing experiment on his own life. But he wants the public to know that changing their lifestyle is not necessary for decarbonization.) Almost all the heavy lifting in the maximum feasible transition is done by electrification, “the exception being 5-10 Quads of non–electrical energy sources coming from [biofuels]” the Rewiring America report says. “Hydrogen or other synthetic fuels (which are generated from electricity) are deployed for a few high–temperature applications. The scenario does not rely on any deployment of carbon capture and storage, and all primary energy sources are net zero.” In terms of generation, wind and solar do the bulk of the work, “along with a doubling of the current nuclear electricity fleet from 100GW to 200GW.” In particular, distributed energy (rooftop and community solar and batteries) plays a huge role, “accounting for around 25% of energy supply and a high degree of the storage capacity” would reduce the amount of energy the US needs by half. One key aspect of electrification makes this transformation possible, and it represents perhaps the most astonishing finding in Griffith’s modeling: Large-scale electrification would slash total US primary energy demand in half, from around 100 quads to about 45-50. This a huge deal — it means America only needs to produce about half the energy with renewables that it is currently producing with fossil fuels. And that massive drop in demand assumes no behavior change, no insulated buildings or double-glazed windows, no traditional “efficiency” measures of any kind. The transition from fossil fuel combustion to electricity, in and of itself, is the largest demand-side climate policy available. How is that possible? The simple answer comes down to the fact that electric motors are more efficient than fossil fueled motors at converting primary energy into useful work. The somewhat more complicated answer is this. You cut almost 10 percent off of energy demand right off the bat, says Griffith, because the Energy Information Administration has been overestimating, due to the way it accounts for nuclear and hydroelectric energy. (It’s too complicated to get into here.) Another 10 percent of energy used in today’s economy goes toward “finding, mining, refining, and transporting fossil fuels,” Griffith says, and that demand goes away in an electrified economy. So it’s down to 80 percent left to replace. Shifting from fossil fuel power plants to renewable energy saves another 15 percent, because carbon-free, non-thermal power sources rely on fewer energy conversions than thermoelectric sources. Electrifying transportation gets another 15 percent, because electric vehicles (EVs) are more efficient than internal combustion engine (ICE) vehicles. Electrifying buildings gets another 6 percent to 9 percent. To be clear, the US could reduce demand even more if it continued to better insulate buildings and other efficiency measures, if it downsized homes, drove less, and relied more on walking and electric cycling to get around. But it is worth emphasizing, again: The biggest demand-side policy by far is electrification, which could slash US energy demand by half. “You can’t efficiency your way to zero,” Griffith says. “You have to transform.” Industry is not as big a carbon problem as it appears The alleged difficulty of decarbonizing heavy industry has been a major topic in carbon circles lately. (I have written about it myself.) It is one of the reasons often offered for why large-scale negative emissions will be needed. Griffith disagrees. He points out that a big chunk of the carbon emissions attributed to industry are devoted to fossil fuels and will disappear as they do. For instance, 4 percent to 5 percent of US energy is used to turn oil into gasoline, a subcategory of industry that will decline along with ICE vehicles. As for the rest, “steel is tiny, and we can use hydrogen to make steel,” he says. “Aluminum traditionally makes a lot of CO2 because we use carbon electrodes for the smelting process; Alcoa and Rio Tinto already have carbonless electrodes for aluminum. Cement is still hard, but that’s only 1 percent. And the rest of industrial heat can mostly be done with induction for high-temperature heat or heat pumps for low-temperature heat.” In short, industry is a problem, but a relatively small one. “It’s the last 5 percent of emissions,” Griffith says. “It’s hardly the thing that should stop us.”

#### Warming causes extinction -- leads to severe weather conditions, ecosystem collapse, and armed conflict

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By 2050, there is broad scientific acceptance that system tipping-points for the West Antarctic Ice Sheet and a sea-ice-free Arctic summer were passed well before 1.5°C of warming, for the Greenland Ice Sheet well before 2°C, and for widespread permafrost loss and large-scale Amazon drought and dieback by 2.5°C. The “hothouse Earth” scenario has been realised, and Earth is headed for another degree or more of warming, especially since human greenhouse emissions are still significant.20 While sea levels have risen 0.5 metres by 2050, the increase may be 2–3 metres by 2100, and it is understood from historical analogues that seas may eventually rise by more than 25 metres. Thirty-five percent of the global land area, and 55 percent of the global population, are subject to more than 20 days a year of lethal heat conditions, beyond the threshold of human survivability. The destabilisation of the Jet Stream has very significantly affected the intensity and geographical distribution of the Asian and West African monsoons and, together with the further slowing of the Gulf Stream, is impinging on life support systems in Europe. North America suffers from devastating weather extremes including wildfires, heatwaves, drought and inundation. The summer monsoons in China have failed, and water flows into the great rivers of Asia are severely reduced by the loss of more than one-third of the Himalayan ice sheet. Glacial loss reaches 70 percent in the Andes, and rainfall in Mexico and central America falls by half. Semi-permanent El Nino conditions prevail. Aridification emerges over more than 30 percent of the world’s land surface. Desertification is severe in southern Africa, the southern Mediterranean, west Asia, the Middle East, inland Australia and across the south-western United States. Impacts: A number of ecosystems collapse, including coral reef systems, the Amazon rainforest and in the Arctic. Some poorer nations and regions, which lack capacity to provide artificially-cooled environments for their populations, become unviable. Deadly heat conditions persist for more than 100 days per year in West Africa, tropical South America, the Middle East and South-East Asia, which together with land degradation21 and rising sea levels contributes to perhaps a billion people being displaced. Water availability decreases sharply in the most affected regions at lower latitudes (dry tropics and subtropics), affecting about two billion people worldwide. Agriculture becomes nonviable in the dry subtropics. Most regions in the world see a significant drop in food production and increasing numbers of extreme weather events, including heat waves, floods and storms. Food production is inadequate to feed the global population and food prices skyrocket, as a consequence of a one-fifth decline in crop yields, a decline in the nutrition content of food crops, a catastrophic decline in insect populations, desertification, monsoon failure and chronic water shortages, and conditions too hot for human habitation in significant food-growing regions. The lower reaches of the agriculturally-important river deltas such as the Mekong, Ganges and Nile are inundated, and significant sectors of some of the world’s most populous cities — including Chennai, Mumbai, Jakarta, Guangzhou, Tianjin, Hong Kong, Ho Chi Minh City, Shanghai, Lagos, Bangkok and Manila — are abandoned. Some small islands become uninhabitable. Ten percent of Bangladesh is inundated, displacing 15 million people. According to the Global Challenges Foundation’s Global Catastrophic Risks 2018 report, even for 2°C of warming, more than a billion people may need to be relocated due to sea-level rise, and In high-end scenarios “the scale of destruction is beyond our capacity to model, with a high likelihood of human civilisation coming to an end”.22 National security consequences: For pragmatic reasons associated with providing only a sketch of this scenario, we take the conclusion of the ​Age of Consequences ‘Severe’ 3°C scenario developed by a group of senior US national-security figures in 2007 as appropriate for our scenario too: Massive nonlinear events in the global environment give rise to ​massive nonlinear societal events​. In this scenario, nations around the world will be ​overwhelmed by the scale of change and pernicious challenges, such as pandemic disease. The internal cohesion of nations will be under great stress, including in the United States, both as a result of a dramatic rise in migration and changes in agricultural patterns and water availability. The flooding of coastal communities around the world, especially in the Netherlands, the United States, South Asia, and China, has the potential to challenge regional and even national identities.​ Armed conflict between nations over resources, such as the Nile and its tributaries, is likely and nuclear war is possible. The social consequences range from increased religious fervor to ​outright chaos​. In this scenario, climate change provokes ​a permanent shift in the relationship of humankind to nature​’.23 (emphasis added)

### 2ac – strikedown

--if they say they fiat the courts ban the plan then this would also answer that

#### Counterplan’s struck down:

#### 1 – standing – Courts routinely dismiss suits for lacking

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Multiple parties have sought to litigate the War Powers Resolution. 59 The War Powers Resolution has proven resistant to litigation. 60 The first problem is standing discussed in Part II.B.1.a. 61 Beyond standing are other judicial doctrines barring litigation in Part II.B.1.b. 62

a. Standing for Plaintiff to a Lawsuit, whether member of Congress or not

Standing is a fundamental constitutional concept. 63 If plaintiffs lack standing, courts dismiss the lawsuit. 64 Standing means that plaintiffs can show particularized injury in their complaint, and does not include taxpayers. 65 Two types of plaintiffs have brought lawsuits over the War Powers Resolution and military force: (1) members of Congress and (2) everyone else. 66

Members of the military, part of the everyone-elses, can also bring suit like Captain Smith, whose complaint recited his injuries to show standing. 67 His presumed legal injuries, however, did not grant standing, and the courts have found other reasons to dismiss on standing for military members. 68 Therefore, standing is the initial constitutional hurdle that plaintiffs must overcome. 69

Member of Congress have also tried to litigate the War Powers Resolution. 70 Similarly, members of Congress must also have standing. 71 Likewise, the courts have dismissed Congressional members' suits for lacking standing, even claims of standing based on stewardship of taxpayer dollars. 72 Although often lacking standing and thereby access to the courts, members of Congress also have access to Congressional fora to disagree with military action which they should utilize rather than the courts. 73 Moreover, the courts will typically find that Congress cannot litigate the War Powers Resolution. 74

#### 2 – doctrinal – mootness, political question, Feres, AND court deference to the military lead to dismissal of suits – if they fiat through it, breaks the state secrets doctrine AND causes leaks

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b. Dismissal Unattached to Standing

Beyond standing, courts have other doctrinal reasons to dismiss any litigation involving the War Powers Resolution beyond simply standing. 75 One doctrine is mootness, and another is political question. 76 The courts also have a favored disposition toward the military and national security. 77 Finally, the Feres Doctrine bars civil suits against the military. 78 All of these doctrines lead to dismissal. 79

Mootness means that a controversy is no longer ripe, and a recurring injury does not counter mootness. 80 Even if plaintiffs had standing to bring a case, military action may move too swiftly for the courts to react. 81 In short, sometimes the military action has already achieved its purpose, removing the impetus for the lawsuit, hence the problem of mootness. 82

Certain controversies are, by their nature, outside of what the courts will entertain; as Justice Douglass noted "[u]sed to bar from the courts questions which . . . the Constitution . . . left to the other two coordinate Branches to resolve, viz., the so-called political question." 83 The political question doctrine is a narrow doctrine and relates to the enumerated powers of the various branches. 84 The War Powers are enumerated powers, and the courts have dismissed various lawsuits based on the political question doctrine. 85 For instance, the court noted the political question doctrine was an alternative reason to dismiss Captain Smith's suit. 86 Thus, the political question doctrine is also a bar to litigating the War Powers and War Powers Resolution. 87

One other ground for dismissal is general deference to the military and national security. 88 The state secrets doctrine is an evidentiary privilege which keeps information related to state secrets or national security out of the courts for fear of disclosure. 89 The states secrets doctrine also has an example of false invocation, such as United States v. Reynolds. 90 Moreover, in recent years the state's secrets doctrine has transformed from an evidentiary privilege to a dispositive privilege to dismiss suits. 91 Additionally, the courts have shown a degree of deference toward the military and military policy underscoring the President's authority as Commander-in-Chief. 92 One example is the Koramatsu decision, where the Court found that military necessity was an adequate reason for the internment of Japanese-Americans. 93 Taken together, state secrets and deference to the military are additional bars to litigation. 94

Finally, specific to military members, is the Feres Doctrine, which grants civil suit immunity to the military in a wide variety of causes of action. 95 The end result is that the courts dismiss these suits under the Feres Doctrine. 96 Because Captain Smith's suit is against the Commander-in-Chief, such a suit could also be barred under the Feres Doctrine, although the Feres Doctrine has primarily been a torts doctrine. 97 Thus, the Feres Doctrine could act as a bar to litigants. 98 In short, multiple judicial doctrines exist, such as standing, or mootness, or political questions, which bar litigation of the War Powers doctrine. 99

### 2ac – at: nb – congress fails

#### Congress fails to check the Executive

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2. Congressional Abdication

If the War Powers are truly a political question, as the courts maintain, then part of the blame lies with Congress. 183 Part of the problem is that Congress has only toyed with fixing the War Powers Resolution using its normal legislative capabilities, or considered outright repeal. 184 Other members of Congress have settled for incremental modification, requiring the President to consult Congress more frequently and return to a more consultative system for using military force, but without results. 185 Nor have Congressional-led lawsuits led to anything; moreover, many of these lawsuits have partisan roots. 186

Congress also deserves a degree of blame for the current AUMF status via continued funding of the use of military force. 187 Funding war is a Congressional power, one which Congress could potentially withhold and end some use of military force, even while troops are engaged. 188 Yet, to contend plausibly that Congress would cease funding with deployed troops in the field, for instance, utterly ignores the political problems of that choice and ignores the political costs associated with funding, making sole control of funding an ineffective check on the Executive Branch. 189 Moreover, Congress continues to vote for funding for military operations, tacitly approving the President's actions. 190 Between continuing to fund wars and lack of legislative initiative on the war powers, Congress has effectively abdicated its position, and has not adopted a way that would make the use of military force a more consultative act between Executive and Legislation, which this Note proposes. 191 Therefore, Congress' supine stance, partisanship, and other maladies do not auger that Congressional action will change the policy of perpetual war. 192

### 2ac – at: nb – exec circumvents / strikedown

---if the CP has congress ban the plan because of lack of authorization

#### Exec circumvents AND Courts strikedown the CP

By Erica H. Ma 21, J.D., 2020, New York University School of Law; B.A., 2015, University of Pennsylvania, "Article: The War Powers Resolution and the Concept of Hostilities," Northeastern University Law Review, 13, 519, pp. 535-537, May 2021, Lexis, nihara

In line with the purpose of the resolution, the Senate report of the WPR noted that Section 5(b) is the "heart and core" of the resolution and "represents, in an historic sense, a restoration of the constitution[al] balance which has been distorted by practice in our history." 87Executive branch officials, however, have challenged this provision in particular as an "unconstitutional infringement on the President's authority as Commander in Chief." 88Moreover, the executive branch has argued that this provision "interferes with successful action, signals a divided nation and lack of resolve, gives the enemy a basis for hoping that the President will be forced by domestic opponents to stop an action, and increases risk to U.S. forces in the field." 89While Section 5(c) of the WPR allows Congress, through a concurrent resolution, to direct the President to remove U.S. armed forces from situations of hostilities, the Supreme Court's 1983 decision INS v. Chadha, which struck down one-house legislative vetoes not presented to the President for signature, has cast doubt on the constitutionality of Section 5(c). 90

Because of the dispute over the constitutionality of Section 5(b), the meaning of "hostilities" under the WPR has become contested through the years, as the sixty-day termination clock is only triggered when U.S. armed forces are introduced "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." 91At the time of the WPR's passage, a report of the House Foreign Affairs Committee defined "hostilities" broadly: It noted that "hostilities" is "broader in scope" than an "armed conflict" (a term with legal meaning under international law), and that "hostilities" can include a "state of confrontation in which no shots have been fired." 92However, as Section II.C elaborates, subsequent presidential administrations--including the Ford Administration, the first to submit a forty-eight-hour report pursuant to the hostilities/imminent hostilities prong of the WPR--interpreted "hostilities" narrowly to encompass only situations where "units of the U.S. armed forces are actively engaged in exchanges of fire with opposing units of hostile forces." 93This narrow interpretation of "hostilities" has allowed Presidents through the years to claim that there is a greater range of situations into which he can send U.S. armed forces without triggering the WPR's withdrawal mandate.