# 1NC

## 1NC---Shell

### 1NC---General [Text/Solvency]

#### CP Text - The United States Congress ought to [revoke a national emergency by joint resolution pursuant to the National Emergencies Act to compel the executive of the United States to end all sanctions on the [Islamic Republic of Iran, Democratic People’s Republic of Korea, Bolivarian Republic of Venezuela] except for [smart sanctions]. The United States Congress ought to exercise its Article I Powers to to increase [smart sanctions] on the [Islamic Republic of Iran, Democratic People’s Republic of Korea, Bolivarian Republic of Venezuela] and secondary sanctions on the Russian Federation and the People’s Republic of China.

#### It solves. Congress can terminate sanctions by joint resolution or Article I of the constitution.

Collins-Chase 23 [Edward J. Collins-Chase is an Analyst in Foreign Policy working at the Congressional Research Service. The Congressional Research Service is a public policy research institute of the United States Congress. Operating within the Library of Congress, it works primarily and directly for members of Congress and their committees and staff on a confidential, nonpartisan basis. “Sanctions Primer: How the United States Uses Restrictive Mechanisms to Advance Foreign Policy or National Security Objectives,” Congressional Research Service. pg. 13-5. 11-6-2023. https://crsreports.congress.gov/product/pdf/R/R47829#:~:text=Congress%20and%20the%20executive%20branch,commonly%20referred%20to%20as%20sanctions. |Accessed:7-17-24|c] TDI

Congress’s Role in Sanctions

Legislative Authorization

Congress can enact legislation to authorize or require sanctions, even if the President already has authority to do so under emergency authorities. In enacting legislation authorizing sanctions related to specified actors and/or activities, Congress may seek to maximize its role in shaping (1) the foreign policy or national security objectives the sanctions seek to achieve; (2) the context in which sanctions are implemented as part of the broader slate of foreign policy tools; (3) the discretion and flexibility granted to the office of the President to impose and enforce sanctions; (4) the content, frequency, and purpose of executive reporting to Congress on sanctions implementation; (5) the criteria by which sanctions may be imposed, removed, or relaxed; and (6) the situations in which exemptions for sanctions may be established. Congress has previously used all of these mechanisms in legislation.

Congress may also legislate sanctions programs that the President initiated using emergency powers in the NEA and IEEPA. By enacting a sanctions program, Congress may take a greater role in determining how that program is implemented. Conversely, Congress may revoke a national emergency by joint resolution pursuant to the NEA, thereby terminating sanctions imposed under IEEPA authority in relation to that emergency.

Although Congress can legislate sanctions programs established by the President’s emergency authority to gain a greater voice in how those programs are implemented, doing so may curtail the President’s flexibility in responding to changing conditions or strategic interests related to those programs. When considering sanctions legislation, Members might weigh, on a case-by-case basis, whether U.S. interests are best served by expanding Congress’s role in sanctions implementation and whether maximizing oversight or flexibility is more advantageous.

Oversight

Congress can engage in oversight of sanctions implementation with or without authorizing or codifying sanctions programs through legislation. In enacting legislation authorizing the imposition of sanctions, Congress often requires the President to report to Congress on the implementation of those sanctions. Such reporting can include annual summaries of actions taken and the impact of sanctions, certifications that certain conditions have been met before removing or expanding sanctions restrictions, domestic economic burdens and costs, and reporting on how sanctions continue to form a part of a broader foreign policy or national security strategy. Congress can also request or compel executive officials to testify before Congress on matters related to the use of sanctions.

Congress may also enact reporting or testimony requirements for sanctions programs established by the President using national emergency authority.

Constitutional Considerations

Certain sanctions legislation may raise constitutional concerns. Congress may consider such concerns, and whether the potential for legal challenge warrants the exclusion of such provisions with unresolved legal status.

Members, for example, have sought to require the President to impose sanctions on named individuals and entities. Such provisions, if enacted, could be challenged under Article I, Section 9, Clause 3, of the Constitution, which states, “No Bill of Attainder or ex post facto Law shall be passed.” The Supreme Court has described a bill of attainder as “a legislative act which inflicts punishment without a judicial trial.”89 Previous interpretations of this clause may indicate that legislation enacted to impose sanctions on a named individual or entity might be subject to a legal challenge, though it is unclear whether such a challenge would be successful. In certain instances, Congress has enacted legislation that used alternative means to require or compel the President to impose sanctions on discrete subsets of foreign actors. To date, however, there have been no instances where Congress sought to require the President to impose sanctions on specific foreign actors and the President explicitly refused to do so. Lacking a direct legal precedent, it remains uncertain whether Congress can “require” specific sanctions determinations for named individuals, and how “mandatory” sanctions prescribed through legislation can be.

In addition, Congress has introduced legislating seeking to compel the President to render determinations on the official recognition of foreign governments. The Supreme Court has ruled that Article II of the Constitution grants the President the exclusive power to recognize foreign governments, nominate U.S. ambassadors to foreign countries, and receive foreign ambassadors into the United States. If Members of Congress enact legislation requiring the President to make determinations on the aforementioned functions, the executive branch may decline to abide by such provisions, and that legislation may face judicial challenge or be ruled unconstitutional.

#### \*\*\*\*INSERT SOLVENCY\*\*\*\*

### 1NC---Iran [Text]

#### CP Text: The United States Congress ought to revoke a national emergency by joint resolution pursuant to the National Emergencies Act to compel the executive of the United States to end all sanctions on the [Islamic Republic of Iran]. The United States Congress ought to exercise its Article I Powers to to increase [sanctions on the Sea Route Ship Management FZE] on the [Islamic Republic of Iran] and secondary sanctions on the Russian Federation and the People’s Republic of China.

### 1NC---North Korea [Text]

#### CP Text: The United States Congress ought to revoke a national emergency by joint resolution pursuant to the National Emergencies Act to compel the executive of the United States to end all sanctions on the [Democratic People’s Republic of Korea] except for [sanctions on protection & indemnity insurance, and uranium mining and refining and other nuclear related activities]. The United States Congress ought to exercise its Article I Powers to to increase [sanctions on protection & indemnity insurance, and uranium mining and refining and other nuclear related activities] on the [Democratic People’s Republic of Korea] and secondary sanctions on the Russian Federation and the People’s Republic of China.

### 1NC---Venezuela [Text]

#### The United States Congress ought to revoke a national emergency by joint resolution pursuant to the National Emergencies Act to compel the executive of the United States to end all sanctions on [the Bolivarian Republic of Venezuela] and increase [individualized sanctions imposed on middle- and high-ranking government officials and military officers of the Bolivarian Republic of Venezuela]. The United States Congress ought to exercise its Article I Powers to increase [individualized sanctions imposed on middle- and high-ranking government officials and military officers of the Bolivarian Republic of Venezuela] and secondary sanctions on the Russian Federation and the People’s Republic of China.

### 1NC---Net Benefit

#### Congress can no longer terminate ineffective sanctions due to executive intrusion on war powers

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For the U.S. government, sanctions are an attractive response to a wide range of foreign policy problems. Support for international terrorism? Sanctions. Interference in U.S. elections? Sanctions. Narcotics trafficking? Sanctions. As Deputy Secretary Treasury Wally Adeyemo recently admitted, sanctions have become America’s “tool of first resort.”

But as the use of sanctions has increased, so, too, have questions about U.S. reliance on them. To be sure, sanctions tend to be less costly in both money and lives than military action, but that doesn’t mean that they are cost-free on either count. Over the past two decades, it has become increasingly clear that sanctions can cause significant damage both at home and abroad — often with little countervailing benefit to U.S. interests.

Moreover, Congress’s broad delegation of sanctions authority to the president makes it nearly impossible for lawmakers to terminate sanctions regimes that are ill-conceived or ineffective. A principled sanctions policy will require significant changes in the law to mitigate harms to innocent civilians abroad, protect constitutional rights at home, and recalibrate the balance of power between Congress and the executive.

IEEPA: Congressional intent versus reality

Most U.S. sanctions regimes are imposed by the president, not by Congress, under the International Emergency Economic Powers Act (IEEPA). Even when Congress creates sanctions programs, it generally does so by directing the president to take action under IEEPA. This law allows the president to declare a national emergency with respect to any “unusual or extraordinary threat” to national security, foreign policy, or the economy, as long as that threat has its source in “substantial part” from overseas. The government can then take sweeping economic action to address that threat. When it designates someone as a target of IEEPA sanctions, the government can freeze any assets of the target that come within U.S. jurisdiction, and it can prohibit any person or entity under U.S. jurisdiction from transacting with the target.

When Congress passed IEEPA in 1977, it was with the expectation that national emergencies requiring peacetime sanctions programs would be “rare and brief” and would not be “equated with normal ongoing problems.” The precipitating events would be ones that truly represented a threat to the United States. The president would report regularly to Congress on the use of sanctions, and if Congress felt that the executive branch was misusing the statute’s powers, it could terminate the emergency declaration and any sanctions by legislative veto — a law that goes into effect without the president’s signature.

None of this holds true today. IEEPA has become a routine instrument of foreign policy, invoked 65 times since the law’s enactment. Sanctions programs regularly last for years or even decades. The president’s reports to Congress are cursory, pro forma documents that give Congress no meaningful basis to evaluate the sanctions’ effectiveness. And in 1983, the Supreme Court held that legislative vetoes are unconstitutional; to terminate sanctions, Congress must pass a law that the president signs — or muster a supermajority to override the president’s veto. Today, the United States has over two dozen sanctions regimes in place, with thousands of people and entities targeted under them.

#### Sanctions are Congress’s path back to foreign policy relevance.

**Alter 18** [Benjamin Alter, Benjamin Alter is a J.D. candidate at Yale Law School. In 2014–15, he was a special adviser to the Treasury undersecretary for terrorism and financial intelligence. 3-27-2018, "Sanctions Are Congress’s Path Back to Foreign Policy Relevance", Default, <https://www.lawfaremedia.org/article/sanctions-are-congresss-path-back-foreign-policy-relevance> Accessed 7-18-24]

On March 15, the Treasury Department [issued its first sanctions](https://home.treasury.gov/news/press-releases/sm0312) under a sweeping law signed by President Trump last August. The department both reiterated previous U.S. sanctions against two Russian intelligence agencies and targeted a number of Russian cyber officials. Additionally, pursuant to [Executive Order 13694](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cyber_eo.pdf), the administration designated the sixteen Russian malfeasants indicted last month by Special Counsel Robert Mueller for interfering in the 2016 election.

This month’s sanctions ended months of suspense over the Trump administration’s approach to the [Countering America’s Adversaries Through Sanctions Act](https://www.congress.gov/bill/115th-congress/house-bill/3364/text). The law, passed by veto-proof majorities in both houses of Congress, both required new sanctions against Russia for its malicious cyber activities and placed unprecedented restrictions on the president’s discretion to implement and lift those sanctions.

The president had made no secret of his distaste for the law, calling it “[significantly flawed](https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-signing-h-r-3364/)” and promising that he could “[make far better deals](https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-signing-countering-americas-adversaries-sanctions-act/) with foreign countries than Congress.” Then, for several months, the White House blew past deadlines to implement the sanctions, claiming they [were not needed](https://www.politico.com/story/2018/01/29/russia-sanctions-white-house-congress-376813) because the very existence of the law on the books was deterring Russian interference.

Trump’s decision to finally implement the sanctions seemed like a return to normalcy—a delayed acknowledgement by the president of his constitutional responsibility to enforce statutes duly enacted by Congress. But the extent to which Congress forced Trump’s hand in imposing even these modest sanctions is actually quite unusual. It is rare for Congress to compel the president to implement a foreign policy program with which he fundamentally disagrees, much less one that bolsters the legitimacy of a federal investigation into his campaign.

**This episode sheds light on an important fact: Sanctions are a foreign policy tool uniquely entrusted to Congress by the Constitution, which provides that Congress shall “**[**regulate commerce with foreign nations**](https://www.law.cornell.edu/constitution/articlei#section8)**.”** **Unlike the other major levers of U.S. foreign policy—diplomacy and military force, over which the Constitution divides control between Congress and the executive—the president has no inherent power to impose sanctions or to refuse to implement congressionally mandated sanctions. As sanctions continue to grow in importance, becoming the default U.S. policy response to a range of international crises, Congress will enjoy newfound** **potential to shape U.S. foreign policy in ways that have eluded it for decades.**

When Congress passes laws that contravene the executive branch’s foreign policy priorities, the president often seeks a constitutional escape hatch. Presidents’ lawyers regularly urge them to disregard statutes that the executive understands to infringe on its inherent military and diplomatic powers.

Every administration does this. President George H.W. Bush [declined to follow a statute](http://www.presidency.ucsb.edu/ws/index.php?pid=17877) that would have capped the number of U.S. military personnel deployed in Europe. President Bill Clinton’s Justice Department advised the president to [disregard a statute](https://www.justice.gov/file/20051/download) that would limit his ability to place U.S. forces under United Nations command. In 2002, when Congress passed a law effectively requiring the State Department to recognize Israeli sovereignty over Jerusalem, President George W. Bush [refused to implement it](http://www.presidency.ucsb.edu/ws/?pid=63928), arguing that the law would “interfere with the President's constitutional authority to … speak for the Nation in international affairs and determine the terms on which recognition is given to foreign states.” President Barack Obama [ignored a law](https://www.justice.gov/olc/opinion/constitutionality-section-7054-fiscal-year-2009-foreign-appropriations-act) that tried to stop U.S. diplomats from attending U.N. meetings chaired by state sponsors of terrorism.

Of course, not every refusal to follow a law passed by Congress is unconstitutional. The Supreme Court has acknowledged, most recently in [Zivotofsky v. Kerry](https://www.oyez.org/cases/2014/13-628), that a president should prevail over the contrary will of Congress if the executive’s constitutional powers are “both exclusive and conclusive on the issue.” As commander in chief and America’s top diplomat, the president enjoys certain constitutional powers that cannot be defeated by Congress. For example, Congress cannot directly compel the president to negotiate a treaty, recognize a foreign nation, or send military forces into battle.

**But sanctions are different. From a policy perspective, presidents might reasonably see sanctions as an alternative to diplomacy and military force**—as just another tool at their disposal. The constitution begs to differ. Whereas the Constitution divides responsibility for war and diplomacy between the two branches, it vests Congress with the exclusive authority to regulate foreign commerce.

**Congress has always had this constitutional power, and the president has always been without it. In practice, however, Congress has tended to recognize the benefits of giving the president leeway to impose sanctions in response to foreign threats. As a result, throughout U.S. history, Congress has broadly delegated to the president control over America’s tools of economic coercion.** Laws like the World War I-era Trading With the Enemy Act and the International Emergency Economic Powers Act of 1977 handed the president practically unlimited discretion to impose sanctions for national security purposes, in wartime and peacetime alike.

But any power that Congress may give, it may also take away. And in recent years—skeptical first of the Obama administration’s approach to Iran and then of the Trump administration’s approach to Russia—**Congress has begun taking back the reins of sanctions policy. It has done so by mandating that specific sanctions be imposed and by limiting the executive branch’s ability to lift existing sanctions.**

**In 2011, for example, unsatisfied with the Obama administration’s pressure campaign against Iran, Congress sought to restrict Iranian oil exports through sanctions on foreign banks that processed oil transactions with the Central Bank of Iran. Administration officials publicly**[**lobbied against the proposal**](http://foreignpolicy.com/2011/12/01/menendez-livid-at-obama-teams-push-to-shelve-iran-sanctions-amendment/)**, worried that it would disrupt their diplomatic efforts and cause a spike in oil prices that could benefit Iran. Congress persisted, Obama relented, and the sanctions were codified in Section 1245 of the**[**2012 National Defense Authorization Act**](https://www.congress.gov/bill/112th-congress/house-bill/1540/text)**. These sanctions—which could be waived for any jurisdiction that significantly reduced its purchases of Iranian oil—helped**[**cut Iran’s exports in half**](https://www.foreign.senate.gov/imo/media/doc/Cohen_Testimony1.pdf)**between 2012 and 2015 and are as responsible as anything else for bringing Iran to the negotiating table.**

What all this means is that there is now a major lever of U.S. power—economic coercion—that is far less subject to presidential control than the traditional foreign policy tools of diplomacy or military force. At the same time, the United States is increasingly relying on economic coercion to advance its interests. In the last decade, successive presidents have turned to sanctions to achieve some of their most important goals, including constraining Iran’s nuclear program, punishing Russia’s annexation of Crimea and preventing the financing of terrorist organizations.

Sanctions, then, offer Congress a path back to foreign policy relevance after years of abdicating responsibility to the executive. Members of Congress seem to understand this. Sen. Bob Corker, the chairman of the Foreign Relations Committee, applauded the Senate’s passage of the 2017 sanctions legislation by [noting](https://www.foreign.senate.gov/press/chair/release/senate-overwhelmingly-passes-iran-and-russia-sanctions), “For decades, Congress has slowly and irresponsibly ceded its authorities to the executive branch, particularly as it relates to foreign policy. Today marks a significant shift of power back to the American people’s representatives.”

**The rise of sanctions as a foreign policy tool uniquely suited to congressional control has its benefits. A Congress that is trigger-happy when it comes to sanctions can enhance the U.S. bargaining position**. **This was the case in the lead-up to the Iran nuclear deal, when the Obama administration played the good cop to Congress’s bad cop. The Iran deal also showed that Congress can use leverage it gains from its control over sanctions to have a greater say in U.S. international agreements and—to the extent that diplomacy and economic pressure are seen as an alternative to war—debates over the use of military force. At bottom, wielding sanctions gives Congress an opportunity to restore the executive-legislative balance in foreign relations.**

But in its zeal to assert control, Congress should avoid two important pitfalls. First, sanctions shouldn’t be used to score cheap political points. The [near-unanimous](https://en.wikipedia.org/wiki/Comprehensive_Iran_Sanctions,_Accountability,_and_Divestment_Act_of_2010) [vote](https://www.nbcnews.com/news/us-news/senate-joins-house-overwhelmingly-passing-new-russian-sanctions-n787291) [tallies](https://www.reuters.com/article/us-northkorea-usa-sanctions/senate-unanimously-backs-tougher-north-korea-sanctions-idUSKCN0VJ2OS) in landmark sanctions bills of the last decade reveal the extent to which imposing sanctions is irresistibly good domestic politics. Sanctions are a win-win for members of Congress: They can tell their constituents that they are doing something about a foreign threat and register a disagreement with the president without risking unpopular or ill advised military action. But sanctions are not merely symbolic political acts; they are powerful financial weapons that can upend international politics. Congress should use this tool judiciously.

Second, even when Congress mistrusts the president’s foreign policy priorities, it should not deny the president all flexibility in the enforcement of sanctions. Congress often includes waiver provisions in its mandatory sanctions legislation, allowing the president to lift sanctions when the national interest requires it. Preserving some wiggle room is good policy. **When the United States imposes sanctions in order to change an adversary’s behavior, the implicit deal being offered is that the sanctions will be lifted when the behavior changes. But those adversaries will hesitate to change their behavior if they doubt that the sanctions relief will be forthcoming because of U.S. domestic politics**. Foreign governments may not trust Congress to act in good faith, or to respond quickly to changes on the ground.

Perhaps this is what Trump had in mind when he boasted that he could “make far better deals” than Congress. But when the president’s proposed deal involves ignoring Russia’s attack on American democracy, Congress ought to be skeptical. The president may have the right to speak for the nation, but thanks to sanctions, Congress will have its say too.

#### It spills over—the CP stakes out broader role for congressional oversight – now is key

Kaine & Young 21 [Tim Kaine is a U.S. Senator from Virginia, former Lecturer at the University of Richmond School of Law, J.D. from Harvard Law School; Todd Young is a U.S. Senator from Indiana, J.D. from the Indiana University Robert H. McKinney School of Law, M.A. in American Politics from the University of London Institute of United States Studies, “War, Diplomacy, and Congressional Involvement,” *Harvard Journal on Legislation*. Vol. 58, Summer 2021. Pg. 218-220 https://journals.law.harvard.edu/jol/wp-content/uploads/sites/86/2021/06/201\_Kaine-Young.pdf |Accessed:7-22-24|c] TDI

In May of 1995, former Secretary of Defense Robert McNamara addressed an audience in San Diego about the contents of his book, In Retrospect: The Tragedy and Lessons of Vietnam.110 The address aimed to outline the lessons he had taken from the Vietnam conflict, including that “we failed to draw Congress and the American people into a full and frank discussion and debate of the pros and cons of a large-scale U.S. military involvement in southeast Asia.”111 Secretary McNamara said of the Gulf of Tonkin Resolution, “The problem wasn't with the formalities; the problem was the substance. Neither the Congress nor the President intended that that those words would be used as we used them.”112 Nearly twenty years later, future Secretary of Defense James Mattis would respond to a question about Middle East policy by saying, “We've been somewhat in a strategy-free environment for quite some time. It didn't start with this administration. And so, we've been wandering. We have policies that go on and come off.”113 His statement was not the only one implying that U.S. military plans were not tied to any larger \*219 objective; in a private meeting with one of the authors of this Essay, another senior military official confessed, “We have O-plans but no strategy.”114

For too long, Congress has looked solely to the Executive Branch for the next “grand strategy” to lead us in the twenty-first century, only to be frustrated by the inconsistency of policy in everything from troop strength in the Middle East to nuclear non-proliferation efforts in North Korea and Iran. At issue is not just the capricious nature of the Executive to craft policy for political purposes but also the inability of Congress to provide a “stable institution”115 in establishing U.S. policy beyond a single presidential administration. We hope to remedy this dysfunctional situation by restoring Congress to its rightful, constitutional role in crafting sound policy for defending the nation and ensuring its security now and for generations to come.

We invite President Biden, once a leading voice in defense of congressional war powers,116 to join with us in restoring the legislature to its proper constitutional role on questions of war and peace. He is now our commander-in-chief, and we share with him an unflinching determination to protect our country and its fine people. His assumption of the presidency after authoring the Use of Force Act117 signals that now is a ripe opportunity to have a conversation about restoring Congress to its rightful role in the constitutional order. We look forward to that conversation and at the same time will work to guarantee that President Biden has clear legislative backing to address any national security threat our adversaries may pose. The American people deserve nothing less.

We know our goal is ambitious and will require close cooperation with the President and our congressional colleagues. There will be political problems rising from the debates that accompany the crafting and passage of legislation the likes of which we have proposed here. What discretion should a President have to launch military operations in the absence of advance congressional authorization? How do we craft legislation that empowers the \*220 commander-in-chief to deal with terrorist threats but prevents the kind of creeping justifications we have witnessed over the past two decades? These are tough questions and would trigger robust debate in Congress. The Executive Branch would voice strong opinions that affected the congressional debate, but these questions lie at the heart of our international strategy. Congress must rise to the occasion. We pledge our leadership and good faith.

#### Executive unilateralism causes institutional dysfunction and militarism---collapses democracy.

Koh 23 [Harold Hongju; Sterling Professor of International Law at Yale Law School. He is the State Department’s Legal Adviser and Assistant Secretary of State for the Bureau of Democracy; “The 21st Century National Security Constitution”; https://openyls.law.yale.edu/handle/20.500.13051/18390; December 2023]

I. Synergistic Institutional Dysfunction

Today, more than two decades after September 11, 2001, and nearly two decades into the Roberts Court, the 21st Century National Security Constitution has taken on a strikingly unbalanced cast. More than three decades ago, in The National Security Constitution, I made both descriptive and normative claims.[[1]](#footnote-1) As a descriptive matter, I argued that since the beginning of the republic, a package of constitutional and subconstitutional norms has evolved within the United States Constitution to protect the operation of checks and balances in foreign affairs and national security policy.2 The Constitution’s text and associated norms strongly support a common understanding that powers in national security and foreign affairs are to be divided and shared among the branches.[[2]](#footnote-2)

Yet at the same time, my book identified the recurrent patterns of executive activism, congressional passivity, and judicial tolerance that push Presidents to press the limits of law in foreign affairs. As Vietnam and the Iran-Contra Affair illustrated in the 20th century, our national security decisionmaking process has degenerated into one that forces the President to react to perceived crises, that permits Congress to acquiesce in and avoid accountability for important foreign policy decisions, and that encourages the courts to condone these political decisions, either on the merits or by avoiding judicial review. It is this synergy among institutional incentives, not the motives of any single branch, that best explains the recurring pattern of executive unilateralism in American postwar foreign policy. Because the President reacts, Congress acquiesces, and the courts defer, the resulting process has created unbalanced institutional participation in foreign affairs decisionmaking. This continuing dysfunction gives too much freedom to the President, while allowing Congress and the courts too easily to avoid constructive participation in important foreign policy decisions.

As a normative matter, I argued that the constitutional vision to which foreign relations decisionmaking should aspire is the model of shared power and balanced institutional participation described by Justice Jackson’s landmark concurrence in Youngstown Sheet & Tube Co. v. Sawyer.4 As a constitutional matter, Justice Jackson famously wrote, “[p]residential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress,” while the legality of executive action is reviewable by the courts.5 As a policy matter, balanced institutional participation in foreign policymaking is not only more faithful to the Constitution’s core principles of checks and balances and separation of powers, but better supports democracy, avoids authoritarian capture, and lowers the risks of catastrophic outcomes and militarism caused by unchecked unilateralism.[[3]](#footnote-3)[[4]](#footnote-4)

But throughout our country’s history, this vision of balanced institutional participation has come under constant challenge from the unilateralist constitutional vision of Justice Sutherland’s famous 1936 decision in United States v. Curtiss-Wright Export Corporation.7 Justice Sutherland’s much-criticized dicta referred to a “plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress.”[[5]](#footnote-5) From the beginning, this was an overbroad assertion that later executive branch lawyers have dubbed, tongue-in-cheek, the “Curtiss-Wright, so I’m right, cite.”[[6]](#footnote-6) The interactive synergy among institutional incentives described above explains the steady migration from a Youngstown toward a Curtiss-Wright vision of executive unilateralism in postwar foreign policy.

Even after the Cold War, during the George H.W. Bush Administration, the Youngstown vision of checks and balances still held sway, as both a descriptive and normative matter. But today’s National Security Constitution looks dramatically different even from its Cold War predecessor. As I elaborate below, 21st Century national security threats give weak and strong Presidents alike institutional incentives to monopolize the foreign policy response; a polarized Congress even greater incentives to acquiesce; and the courts continuing reason to defer or rubberstamp.[[7]](#footnote-7) These trends have fostered an interactive dysfunction that disrupts the constitutional norm that U.S. national security policymaking should be a power shared.

As my new book, The National Security Constitution in the 21st Century, chronicles, I have personally witnessed this transformation over five decades. I have watched this dysfunction affect all three branches of the federal government: while working in the federal courts and the Reagan Department of Justice (“DOJ”) during the early 1980s, then upon returning to the State Department from 1998 until 2001, again from 2009 until 2013, and most recently in 2021, during the first year of the Biden Administration. On each return stint, I have observed how foreign policy power has shifted further and further away from Congress toward the executive branch as a whole. Even within the executive branch, national security bureaucracies have grown steadily richer, more powerful, and opaque relative to their diplomatic and justice counterparts.

Over the two decades since September 11, 2001, the military and intelligence budgets have swelled as if for years only one arm muscle had been given steroids. Those agencies’ resources increasingly dwarf that of the State Department, so that there are now “about as many members of the armed forces marching bands as there are American diplomats.”[[8]](#footnote-8) The 9/11 mentality has reshaped the foreign relations bureaucracy, with each agency replicating subunits that mirror and multiply an insistent focus on foreign counterterrorism. The national security bureaucracy has transformed into an unwieldy behemoth that now approaches what Michael Glennon has called “double government”: “a bifurcated system . . . in which even the President now exercises little substantive control over the overall direction of U.S. national security policy,” evolving “toward greater centralization, less accountability, and emergent autocracy.”12

The resulting bureaucratic structure too often resists new priorities in favor of combatting more familiar threats. At interagency meetings, military and security interests are regularly double-counted and “kinetic” solutions privileged over diplomatic ones. Throughout 2021— just after an angry domestic mob had attacked the U.S. Capitol seeking to undo a presidential election, and when thousands of Americans were dying from COVID-19 and feeling the ever-greater impact of climate change—countless hours were still being spent contemplating the continued detention of a few dozen aging detainees at Guantánamo and potential terrorist threats originating in distant theaters. This institutional fixation on past threats has resisted the Biden Administration’s efforts to turn the page to address newly pressing challenges. So, when new urgent threats mount—such as Hamas’s 2023 attack on Israel, Russia’s 2022 invasion of Ukraine, China’s threat to Taiwan, climate change, and a global health crisis—bureaucratic inertia has tempered the Biden Administration’s aspirations to fulfill older promises, such as ending the Forever War, closing Guantánamo, and repealing obsolete 20th century Authorizations for the Use of Military Force (“AUMFs”).

While most recent Republican administrations have unabashedly seized power, successive Democratic administrations with slim legislative majorities have seriously undercorrected for past executive overreach. Although the Reagan and G.W. Bush Administrations trumpeted executive power as a defining feature of their constitutional vision, the George H.W. Bush, Clinton, Obama, and Biden presidencies—all afflicted by weak legislative support—also resorted to ad hoc unilateralism to respond to particular national security crises. Under Donald Trump’s presidency, this interactive **institutional dysfunction** and executive unilateralism reached crisis levels. Until Trump, those who believed in constitutional government could assume that a President would have some internalized limit where a sense of public duty or shame would dictate self-restraint. But Trump displayed no such limit, expressing unique contempt not just for the Youngstown vision of the Constitution, but for legal constraints of any kind.[[9]](#footnote-9)[[10]](#footnote-10)

Trump’s unilateralist project fostered disarray within his own branch and fed on the eagerness of the Republican Congress to apologize for and normalize his behavior. He relied on the Supreme Court—on which he filled three seats—to defer to overstated claims of national security necessity. This interactive institutional dysfunction reached new heights, driven by the President’s extreme contempt for the rule of law and determination to discard past policies; Congress’s extreme willingness to cover for Trump’s aberrant behavior; and the Supreme Court’s extreme readiness—exemplified by its decision in Trump v. Hawaii14 upholding Travel Ban 3.0—to defer to fabricated presidential motives when taking actions based on claimed national security necessity. That pattern predictably spawned new claims by Trump of national security emergency as a basis for unilateral executive action in such traditional areas of congressional authority as immigration,[[11]](#footnote-11) declaring war,[[12]](#footnote-12) international trade,17 international agreements,18 regulation of cross- border investments,[[13]](#footnote-13) and the power of the purse.[[14]](#footnote-14)

In foreign affairs, the President now operates almost entirely by **executive order** or national security directive and rarely proposes national security **legislation** unless it involves appropriations. The White House has virtually given up on congressional-executive agreements or supermajority ratification of Article II treaties as ways of concluding international agreements.[[15]](#footnote-15) Yet during the Trump era and before, Presidents have claimed the power to terminate even longstanding international arrangements at will, without even paying lip service to interbranch consultation.[[16]](#footnote-16) The President now regularly imposes crushing trade and **economic sanctions** based on previously delegated statutory authorities.[[17]](#footnote-17) He wields broad diplomatic tools based on expansive readings of the recognition and foreign affairs powers. Trump in particular usurped Congress’s power of the purse by invoking emergency powers to build a border wall using funds that Congress had expressly withheld.[[18]](#footnote-18) By weaponizing artificial intelligence, cyberconflict, and special forces, executive war making has proceeded based on classified policy memoranda, with **minimal congressional oversight**, under broad readings of Article II and twenty-year-old legislative authorizations for the use of military force.25

Congress’s general response to these presidential initiatives has been institutional passivity and focus on extraneous issues. The congressional process for **international lawmaking** has virtually broken down. As one long-serving Congressman put it a decade ago, “Taxpayers are hiring mediocre talent, candidates who think their job is to ignore policy in order to get elected and reelected.”[[19]](#footnote-19) Foreign policy compromise has become a dirty word, as once-bipartisan issues have become deeply politicized. On the House side, starting in 1995, Newt Gingrich centralized power in a politicized office of the Speaker of the House, which he merged with the majority leader’s and whip’s offices, effectively gutting the role of committee chairs.[[20]](#footnote-20) Opposition legislators began to see their role not as making bipartisan foreign policy, but as waging total war against the other party’s President, even shutting down the government when expedient to score political points. As a departing Member described it,

Objective information sources such as the Democratic Study Group were banned. Leadership told members how to vote on most issues and force-fed talking points so that everyone could stay “on message.” . . . All major floor votes became partisan steamrollers with one big “yes” or “no” vote at the end of debate[, with n]o coherent alternatives . . . allowed to be considered, only approval of party doctrine. Instead of limited legislative freedom, a member’s only choice was between being a teammate or a traitor.[[21]](#footnote-21)

The Senate divide has become even more polarized, paralyzed, and zero sum. Senate electoral outcomes now closely track presidential outcomes, creating greater pressure for senators to vote with their party’s President and less incentive to make deals across party lines.[[22]](#footnote-22) Each party has been able to assemble a strong Senate majority only once in the last twenty years.[[23]](#footnote-23)[[24]](#footnote-24) Yet because the minority can always envision gaining legislative control in the next election, minority senators have become far less inclined to give bipartisan approaches any perceived victories. With a few exceptions,31 votes across the aisle have largely given way to lockstep minority opposition, hamstringing the majority from winning any opposition votes for any key initiatives by the other party’s President.32 The majority can therefore legislate only with near-total unity within their own party. This gives a tiny number of “swing senators” disproportionate leverage to block or dampen their own party’s legislative ambitions, but not enough leverage to ensure that the opposition party will join their initiatives.33 But there are not enough of those swing senators to build regular or reliable bipartisan coalitions that can overcome the sixty-vote threshold to end a filibuster.34 Finally, as America’s population concentrates in the largest states, states representing a shrinking percentage of the national population have become even more overrepresented in the Senate, so that smaller segments of the electorate control more Senate seats.35 This has led to what one experienced congressional observer called “a distortion that is so great it puts into question the entire legitimacy of the Senate as a governing body.”36 The overall result is far less foreign policy legislation, and even less that truly represents the will of the people.

As important, public perception has come to treat this reality as the new normal. In most foreign policy situations, everyone now expects Congress to do nothing. Members never want to vote on war when such visible votes are among the only acts sufficient to get legislators ousted at the polls. In our sharply polarized polity, the legislature has become so narrowly divided that it has become nearly impossible to quickly compose legislative majorities capable of overcoming a filibuster, much less confirm executive officials for key Senate-confirmed foreign policy posts.37 Individual senators and individual staffers have been afforded extraordinary power to hold up nominees for no good reason.38 So when a crisis arises in the world, the public, the Congress, the allies, and the media all now demand executive action. This universal expectation has only furthered centralization of foreign policy power and initiative in the White House and the National Security Council. At the same time, it has dampened the incentives for political appointees to consult with a Congress to whom they do not owe confirmation, or by whom their confirmation was unconscionably delayed. Even executive branch officials with instincts to consult or cooperate more with legislators increasingly find themselves facing a binary choice between unilateral action or no action. Because the Executive is punished politically for passivity, not surprisingly, it usually opts for the former.

The judiciary has only modestly moderated these trends. As the Executive has populated the courts, with a few visible exceptions,39 judges of both parties have with striking frequency either rubber-stamped executive actions or dismissed individual challenges to them on preliminary grounds. To be sure, the Supreme Court responded to the excesses of the George W. Bush Administration by holding against the executive branch in a famous string of Guantánamo cases.40 But inside the government, these cases have had surprisingly little real impact in checking the steady migration toward **executive unilateralism**.41 After Boumediene v. Bush,42 the Supreme Court has not taken another Guantánamo case, even though the D[[25]](#footnote-25).C. Circuit visibly diluted the reach of Boumediene in subsequent Guantánamo habeas litigation.43

Academic commentators have read great meaning into such cases as Zivotofsky v. Clinton (“Zivotofsky I”),44 where the Supreme Court declined to apply the political question doctrine to bar review of the President’s actions in the face of a contrary congressional statute,[[26]](#footnote-26)[[27]](#footnote-27) and Bond v. United States (“Bond I”),46 which found that a criminal defendant had civil standing to challenge, on Tenth Amendment grounds, a statute that implemented a major multinational treaty.[[28]](#footnote-28) But these decisions notwithstanding, the courts of appeals have generally continued to rely on expansive understandings of justiciability doctrines, procedural obstacles, or immunity defenses to avoid reaching the merits of any civil dispute that arguably touches on national security.[[29]](#footnote-29) In military contractor cases, for example, lower courts have continued to invoke the political question doctrine to throw out ordinary tort suits.49 In others, the lower courts have shifted their focus from justiciability to dismissals for failure to state a claim, upholding statutes that strip jurisdiction from the federal courts to hear certain kinds of foreign policy claims[[30]](#footnote-30) or that displace state law in the name of unspecified “foreign policy” interests.[[31]](#footnote-31)[[32]](#footnote-32)

Nor have commentators fully acknowledged the extent to which the courts now go to rule in favor of the Executive on the merits. Two theories have emerged to uphold Executive action in foreign affairs at the merits stage. First, as in Zivotofsky v. Kerry (“Zivotofsky II”),52 the courts may apply a “Youngstown Category Three” theory to find a legislative enactment unenforceable, because it unconstitutionally invades the President’s exclusive constitutional powers.[[33]](#footnote-33) Second, under a “statutory Curtiss-Wright” theory of delegation, a court may conclude that Congress has conferred a greater degree of discretion on the President through foreign affairs-related statutes because, as Curtiss-Wright suggested, the delegated statutory authority overlaps with or complements the President’s own constitutional foreign affairs powers.[[34]](#footnote-34) This broad theory of statutory delegation apparently now enjoys support from at least five members of today’s Supreme Court.[[35]](#footnote-35) This approach would effectively enshrine Curtiss-Wright’s dicta into holding. It would empower the President to operate virtually alone in such traditionally congressional fields as immigration and trade, invoking expansive claims not of constitutional power, but of broadly delegated statutory authority. Citing the Executive’s claimed functional monopoly of foreign policy judgment, numerous circuit-level decisions have doubled-down on granting the Executive special deference to make foreign policy through self-serving interpretations of foreign relations statutes.56

In short, all three branches have contributed to the persistent unilateral exercise of foreign affairs power by the executive. As yet, these practices have not resulted in a permanent redistribution of constitutional authority, given that the establishment of historical practice must be assessed on a case-by-case basis and must meet the rigorous standards for constitutional acquiescence set forth in Justice Frankfurter’s separate opinion in Youngstown.57 But the trend is clear: unless we all recognize and address this serious problem, in 21st Century foreign relations law, presidential unilateralism will supplant shared power as the constitutional default.

## Solvency

### 1NC---Smart Sanctions Good

#### Smart sanctions avoid the consequences of comprehensive sanctions

Boyle 21 [Andrew Boyle was counsel in the Liberty & National Security Program, where, among other matters, he focused on emergency powers. He has held fellowships with the Truman National Security Project, the National Endowment for Democracy, and the Carnegie Council for Ethics in International Affairs. "Reining in the President’s Sanctions Powers", Brennan Center for Justice. 8-4-2021 <https://www.brennancenter.org/our-work/analysis-opinion/reining-presidents-sanctions-powers>] TDI Kevin

Nonetheless, viewing sanctions as a low-cost alternative to warfare is misguided. There is a growing body of evidence that sanctions can impose severe humanitarian costs on innocent civilian populations overseas. Studies show that sanctions have wreaked significant harm in Cuba, Venezuela, Iran, and Syria, leading to adverse health impacts like malnutrition and increased infant mortality. Targeted sanctions, such as those imposed on human rights offenders under the Global Magnitsky Act, more easily avoid such collateral damage. But comprehensive sanctions programs—those that target entire countries or governments—can be devastating; some have labeled them “financial carpet bombing.” By one estimate, there have been tens of thousands of deaths due to sanctions.

The U.S. government often grants licenses to enable the provision of humanitarian aid to areas affected by sanctions. But these licenses can be narrow in their conception of humanitarian assistance — for instance, by not including civilian energy infrastructure — and delayed in implementation. Moreover, because the penalties for violating sanctions are so immense, the private sector routinely “over-complies” with sanctions and shies away from transacting with targets even when a license is granted. A recent U.S. Government Accountability Office report on Venezuela sanctions found that all nine of the U.S. Agency for International Development implementing partners in that country had banks close their accounts or reject transactions, despite being permitted to deliver humanitarian aid.

#### All other options have failed. The implementation of smart sanctions solves

**Drezner ’03** [(Daniel W. , Department of Political Science, University of Chicago.) “How Smart are Smart Sanctions” http://danieldrezner.com/research/smartsanctions.pdf International Studies Review, University of Chicago] TDI

For over a decade, the comprehensive trade sanctions against Iraq have hung like a millstone around the practice of economic statecraft. Scholars and policymakers alike recognize that the sanctions have had a devastating humanitarian impact on the Iraqi population. Yet the sanctions have failed to coerce the Iraqi regime into full compliance with the requisite UN Security Council resolutions. At the same time, the United Nations has relied heavily on this tool of statecraft over the past decade, imposing sanctions fourteen times since 1990. In his 2002 Nobel lecture, Jimmy Carter said that nations must ‘‘strive to correct the injustice of economicsanctions that seek to penalize abusive leaders but all too often inflict punishment on those who are already suffering from the abuse.’’ This presents a challenge: is there any way to accommodate the rising demand for multilateral sanctions while minimizing the humanitarian costs such policies create?

Enter David Cortright and George Lopez. Under the auspices of the University of Notre Dame’s Fourth Freedom Forum, Cortright and Lopez are responsible for a healthy fraction of the recent scholarly work on economic sanctions (Cortright and Lopez 1995, 2000, 2002). Their latest effort, Smart Sanctions: Targeting Economic Statecraft, examines the prospect of smart sanctions: measures that are tailored to maximize the target regime’s costs of noncompliance while minimizing the target population’s suffering. In its eleven chapters, this edited volume reviews the various types of smart sanctions and their implementation by the United Nations, the United States, and the European Union. It will likely serve as the definitive resource on the subject for some time.

The logic behind smart sanctions is that for economic coercion to work properly, it is necessary to understand the domestic political economy of the targeted state. Most of the sanctions literature argues that as the costs imposed on the target economy increase, so will the likelihood of success. However, some scholars (Kaempfer and Lowenberg 1992; Kirshner 1997) argue that this formulation is too simplistic. What matters is not the target’s gross economic damage, but whether the target government and its key domestic constituencies feel significant economic pain from noncompliance. Smart sanctions are designed to raise the target regime’s costs of noncompliance while avoiding the general suffering that comprehensive sanctions often create. Like precision-guided munitions, smart sanctions target responsible parties while minimizing collateral damage. Examples include asset freezes, travel bans, and arms embargoes measures that stand in stark contrast to the comprehensive trade ban against Iraq.

Are smart sanctions more efficient? At first glance, the answer seems to be ‘‘no.’’ Cortright and Lopez’s introductory chapter reviews the fourteen UN sanctions episodes since 1990. They note ‘‘even with this small number of cases, the obvious conclusion is that comprehensive sanctions are more effective than targeted or selective measures. Where economic and social impact have been greatest, political effects have also been most significant’’ (p. 8). Kimberly Elliott, in her chapter on the effects of smart sanctions, is equally glum: ‘‘With the exception of Libya, the results of UN targeted sanctions have been disappointing’’ (p. 171). Nor does the exemplar case of smart sanctions those imposed on Yugoslavia between 1998 and 2000Ffill one with confidence. The 1999 NATO bombing of Serbia probably had more to do with Milosevic’s ouster than any use of economic statecraft.

Perhaps such a quick dismissal of this policy innovation would be premature, however. The main chapters of Smart Sanctions make it clear that one reason targeted economic statecraft failed in the 1990s is that most states and international organizations lacked both the experience and the institutions necessary to properly implement smart sanctions. R. Richard Newcombe’s chapter bluntly points out that most other countries, including the rest of the G-7, have neither the statutory authority nor the bureaucratic resources to effectively implement financial sanctions. As the head of the US Office of Foreign Assets Control, the government agency tasked with implementing financial sanctions for the United States, Newcombe is clearly speaking from experience. Multilateral sanctions are only as strong as their weakest link. If other countries and international organizations implement the necessary reforms, perhaps smart sanctions can come into their own.

Limited grounds for optimism emerge as one reads farther. Four scholars affiliated with Brown University’s Watson Institute, in their chapter on financial sanctions, cannily point to the effective G-7 effort to punish countries tolerant of money laundering as a harbinger of what effective smart sanctions can accomplish. Likewise, Anthonius W. de Vries, in his chapter on EU sanctions against Yugoslavia, highlights the European Union’s learning experience, and the institutional steps it has taken over the past decade to implement targeted sanctions.

The United Nations has also moved up the learning curve in an effort to impose smarter sanctions. In the case of arms embargoes, special investigative panels were put in place to name and shame actors that violated the sanctions put in place against Rwanda in 1994 and against the UNITA faction in Angola. These panels were unusually candid in their judgments, helping raise awareness about the arms embargoes. Richard Conroy’s chapter on travel sanctions points out that when the Security Council threatened a flight ban on Sudan in 1996, it was ‘‘the first instance in which the Security Council attempted to assess the likely impact of sanctions before imposing them’’ (p. 160). Most of the contributors to the book proffer suggestions for further reforms.

### 1NC---Solves Human Rights

#### Smart sanctions solve human rights impacts

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Targeted sanctions—often referred to as “smart sanctions”—began in large measure as a response to the UN Security Council sanctions imposed on Iraq in 1990 and 1991, after its invasion of Kuwait. By 1991 it was clear that the sanctions on Iraq, initially welcomed by antiwar activists as a peaceful alternative to military action, were different from any sanctions seen before. Combined with the destruction from the bombing campaign of the Gulf War, they were devastating to the Iraq economy and infrastructure, resulting in widespread malnutrition, epidemics of water-borne diseases, and the collapse of every system necessary to ensure human well-being in a modern society. As the sanctions seemed to have no end in sight, there was considerable “sanctions fatigue” within the United Nations, as well as a growing body of literature that questioned whether sanctions were effective at obtaining compliance by the target state, even when there was considerable impact on its economy.

In the wake of these concerns, there were efforts in many venues to design sanctions that would not have the humanitarian impact of broad trade sanctions, and that would also be more effective by putting direct pressure on individual national policy-makers. These targeted sanctions included arms embargoes, financial sanctions on the assets of individuals and companies, travel restrictions on the leaders of a sanctioned state, and trade sanctions on particular goods. Many viewed targeted sanctions as an especially promising tool for foreign policy and international governance, and many still see targeted sanctions as a natural and obvious solution to a broad array of difficult situations. But there are considerable difficulties with each type of targeted sanction, with regard to implementation, humanitarian impact, and, in some cases, due process rights. Some of these difficulties may be resolved as these measures continue to be refined. Others are rooted in fundamental conflicts between competing interests or intractable logistical challenges.

#### Smart sanctions target the elite and promote change

**SHAGABUTDINOVA & BEREJIKIAN, 07**" Deploying Sanctions while Protecting Human Rights: Are Humanitarian “Smart” Sanctions Effective?", No Publication, <https://www.ucdc.edu/sites/default/files/uploads/documents/Academic/Courses/V12SB/smartsanctions.pd>

Critics of traditional sanctions have thus argued that sanctions tend to disproportionately damage innocent populations and because such populations often have little capacity to affect their government’s policies, sanctions are by definition unlikely to meet with success. In order to be effective, sanctions must impose costs on the target’s ruling elite. To be humane, they must avoid damage to innocent civilians.

In response, sanctions advocates have offered the concept of smart sanctions. The term is analogous to smart bombs: conventional explosives intended to concentrate military damage on select targets while avoiding collateral damage. The goal of smart sanctions is similar, and intended to overcome what we now know to be the failures of conventional sanctions. 62 Ella Shagabutdinova and Jeffrey Berejikian Advocates argue that the value of smart sanctions “lies in the fact that they would sharply focus [pressure] on the targeted leadership or group, with little or any negative impact on civilian populations and third states” (United Nations Secretariat 2000). Proponents argue that this produces several concrete benefits including; the protection of innocent groups, exclusive targeting of political elites who have the capacity—directly or through political pressure—to alter government policy and, therefore, greater overall effectiveness. The approach is designed to “hit the real perpetrators harder and to spare potential innocent victims, leading to speedier change of sanctionee behavior” (Tostensen and Bull 2002).

Which Sanctions are “Smart”? Typically, economic sanctions involve either trade or financial restrictions and sometimes both.2 Trade sanctions ban target exports and restrict targets imports. The goal of trade action is to disrupt the flow of goods and services in the target economy and thereby, reduce overall economic activity. By contrast, financial sanctions seek to restrict elite access to financial and monetary resources and may take many forms including reduction in aid, denial of loans, and the seizure or freezing of individual and organizational accounts. Of the two approaches, trade restrictions are least likely to serve the humanitarian purposes of smart sanctions. Trade action, in the form of embargos or export restrictions, is a blunt instrument that affects the target economy as a whole. It tends, therefore, to impose economic pain disproportionately on poor and middle class populations by depriving them of essential goods and services for which they are not economically positioned to secure substitutes. Wealthy elites are typically less affected because they have the economic resources and international contacts to secure substitute goods or to circumvent the restrictions via black or gray markets.

By contrast financial sanctions focus economic pressure and are therefore possibly more effective than trade restrictions (Elliott 1999). Because the pain of trade action is diffused, elites have little incentive to concede to the demands of sender governments. Moreover, as noted above diffusion across domestic groups can be turned to political advantage by elites who can claim that outsiders are responsible for the terrible plight of civilians. This inoculates the target regime against a critique of its own failures and provides a convenient scapegoat for societal ills that would otherwise be pinned to the existing government (Tostensen and Bull 2002). Financial restrictions, on the other hand, target elites directly, thereby creating incentives for compliance within the groups that can actually alter government policy. For example, individual and government assets can be frozen, and this squarely targets policy makers. Elite access to off-shore accounts can also be severed. While such measures place costs directly on the ruling regime and associated elites, they also minimize collateral damage to the general population. Financial restrictions are also less public, and thus hold the potential to reduce elite capacity to capitalize on “rally around the flag” effects (Olson 1979).

Smart sanctions advocates, therefore, see financial restrictions as the best way to mitigate the pernicious aspects of traditional trade sanctions. Financial restrictions focus economic pain on the true targets—government officials and associated elites—while minimizing damage to innocent populations. For this reason, financial sanctions are both more effective and humane than trade sanctions, and as a result, hold the greatest potential to constitute both an effective and humane alternative to war.

#### Smart sanctions promote compliance while sparing civilians

**Kanji 16** "Moving targets: the evolution and future of smart sanctions", Harvard International Review(Vol. 37, Issue 4), <https://go.gale.com/ps/i.do?id=GALE%7CA473844760&sid=googleScholar&v=2.1&it=r&linkaccess=abs&issn=07391854&p=AONE&sw=w&userGroupName=calstate&aty=ip>

The phrase "modern warfare" brings to mind high-tech weapons, pervasive surveillance, and murky borders--not necessarily economic policy. However, as the weapons, strategies, and key players in global conflicts have evolved, so too have coercive diplomatic tactics. Over the past two decades, various nations as well as the United Nations have implemented new sanctions policies, meant to modernize and improve upon old-fashioned, all-encompassing bans. These new policies, known as "smart" or "targeted" sanctions, aim to avoid the total economic collapse that comprehensive sanctions can cause. Yet, it remains unclear whether this goal has been achieved. Sanctions' consequences for human rights and the legitimacy of multilateral organizations mean that this debate must be resolved sooner rather than later. Economic sanctions and the rise of targeted sanctions are extremely complex issues; however, it is possible to

identify trends in how different sanction types, purposes, and effectiveness can affect the results of these policies. An exploration of the history, mechanisms, and consequences of smart sanctions suggests that the bulls-eye for these targeted policies is currently too broad. Still, smart sanctions should not be discarded altogether and may prove a much more effective diplomatic tool in the future.

The Rise of Smart Sanctions

In the mid-1990s, the world was shaken by humanitarian crises and wracked with guilt. Following Saddam Hussein's 1990 invasion of Kuwait, the United Nations Security Council (UNSC) imposed comprehensive sanctions on Iraq. This supposedly non-violent alternative to military force resulted in a humanitarian catastrophe, according to the Global Policy Forum. The Security Council's highly restrictive policies, coupled with a bombing campaign, choked Iraq's economy. Food shortages, malnutrition, cholera, and typhoid riddled the nation, disproportionately and counterproductively harming Iraq's most vulnerable and poorest citizens, who held no political power. People were forced to focus all of their attention on day-to-day survival.

Moreover, Iraq's Ministry of Trade, which doled out food rations, was perceived as the poorest citizens' savior; the United Nations and the United States were viewed as agents of starvation, turning public opinion against the West. Thus, the comprehensive sanctions backfired, leaving a legacy of death, disease, and resentment rather than positive change.

The chaos in Iraq served as the final straw for a growing movement of concern about comprehensive sanctions. Leaders of the United Nations concluded that general economic sanctions disproportionately harmed powerless citizens and should be greatly avoided. Meanwhile, the terms "smart" and "targeted," rich with connotations of precision, modernity, and effectiveness, gained traction on the world stage. As a result, beginning in 1994, "smart sanctions" became the United Nations' reigning sanction policy. These sanctions are theoretically meant to maximize the target regime's costs of noncompliance, while minimizing the general population's suffering. They must hit the target government and its key domestic constituencies the hardest, while ideally sparing economic sectors that affect the population as a whole.

#### Smart sanctions are more effective and minimize humanitarian concerns

**State, 09**, "Smart Sanctions: Confronting Security Threats with Economic Statecraft", U.S. Department of State, <https://2009-2017.state.gov/e/eb/rls/rm/2012/196875.htm>

* Targeted
* Used to reprimand bad behavior
* More effective when many companies participate

Smart Sanctions

When we discuss smart sanctions, the first question is: “What is our goal?” What are we trying to achieve? Sanctions are generally invoked for one of three purposes: 1) to change a government’s or private actor’s unacceptable behavior; 2) to constrain such behavior going forward; and/or 3) to expose behavior through censure. The goal is to raise the economic cost of unacceptable behavior and denying the resources that make it possible.

Given these goals, what are our available tools? Well, as we ratchet up pressure, sanctions increase and change. At the most basic level, we withhold U.S. government cooperation, such as by prohibiting development assistance. But, this only gets us so far, because most of the bad actors in this world don’t get a lot of assistance. As we move to a higher level, we look to freeze the assets of individuals and governments and restrict their access to the U.S. market or prevent them from receiving visas. Finally, we might also ban exports or imports from countries for certain activities, as in the case of Iran for refusing to address the international community’s concerns about its nuclear program.

An even more aggressive approach involves the use of “secondary sanctions.” These measures act against companies in third countries who do business with a U.S.-sanctioned target, thereby indirectly supporting the behavior of the bad actor. Ultimately, making that institution choose between doing business with a rogue country or operating in the United States.

But at the same time that we consider the optimum sanctions for a given objective, an important element for consideration is how to ensure that sanctions are structured to achieve the desired outcome, while minimizing collateral damage to U.S. and other interests.

This unwanted collateral damage includes investments, economic and trade relations that we want to maintain, and protecting innocent citizens in the targeted country. For example, in Iran, the door is still open for the sale of agriculture products and medicine. Approval was given for NGOs working to empower Iranian women, support heart surgery for children, for consultants on a telecom fiber optic ring, for a lawyer’s association providing legal training, and for a media company that filmed an Iranian election. So our smart sanctions are targeted.

Effective diplomatic leadership is also crucial to effective sanctions. Sanctions are more likely to have an impact when many countries participate. The more global leaders are on board in imposing sanctions, the more powerful the message that certain behavior is unacceptable in today’s world.

So, let’s look at a few recent cases – Iran, Syria, Burma, and Libya – and review our sanctions policy.

#### Targeted sanctions prevent future humanitarian abuses

**United 18** [United, 5-30-2018, "Q&A: North Korea, Sanctions, and Human Rights", Human Rights Watch, <https://www.hrw.org/news/2018/05/30/qa-north-korea-sanctions-and-human-rights> Accessed 7-22-24

What is Human Rights Watch’s position on non-proliferation and human rights sanctions?

**Human Rights Watch supports**[**“humanitarian disarmament,**](https://www.hrw.org/news/2017/07/07/treaty-banning-nuclear-weapons-adopted)**” which seeks to strengthen international humanitarian law and protect civilians from weapons that cause unacceptable harm, including weapons that are invariably indiscriminate. We also oppose cyberattacks that violate international human rights or humanitarian law. However, we have not taken a position on sanctions relating to non-proliferation or cyberattacks that are not primarily based on human rights considerations.**

Human Rights Watch supports certain types of **targeted sanctions (also known as “smart sanctions”) imposed on North Korean officials implicated in serious human rights abuses that restrict their military, trade, financial, economic, and other relations, as well as travel restrictions. We support individual sanctions as a way to focus directly on the individuals believed to be most responsible for abuses, while minimizing any negative impact or damage on the North Korean people themselves, who already suffer tremendously under the North Korean government.**

**Targeted sanctions emphasize the need for individual accountability by singling out those considered most responsible for the commission of serious human rights abuses. Targeted human rights sanctions place pressure on those responsible to end abuses, hold those responsible accountable, and deter future abuses. Such sanctions may also deter other countries, foreign actors, companies, and others from committing or becoming complicit in the abuses being perpetrated by the target government, especially when combined with efforts to investigate individual criminal responsibility for human rights violations.**

**As a general matter, Human Rights Watch believes that targeted sanctions are most effective and legitimate when they are imposed multilaterally (by groups of states, such as the Security Council).** In its 2014 report, [the UN Commission of Inquiry](http://www.ohchr.org/EN/HRBodies/HRC/CoIDPRK/Pages/CommissionInquiryonHRinDPRK.aspx) (COI) on human rights in North Korea expressed this view, urging the Security Council to impose targeted sanctions on those considered responsible for alleged crimes against humanity. Because of opposition from China and Russia, the council did not act on those recommendations.

In cases where multilateral action is not feasible or not the most effective option, Human Rights Watch has often supported unilateral targeted sanctions. In the case of North Korea, we have urged individual countries, including the US, South Korea, China, Canada, Japan, and EU member states, to impose their own targeted sanctions on North Korean government officials.

### 1NC---Solves Smuggling

#### Smart sanctions is empirically successful and solves smuggling – Russia proves

**Huish**, 20**22** [Associate Professor in International Development Studies, Dalhousie University "Smart sanctions for a stupid war: The West finally gets clever about Russia", Conversation, <https://theconversation.com/smart-sanctions-for-a-stupid-war-the-west-finally-gets-clever-about-russia-196105>] GH

The European Union and the United States are now targeting maritime protection and indemnity (P&I) insurance clubs to limit Russian shipping capacity and cap the price of its oil, meaning we’re finally beginning to see some smart sanctions for a stupid war. P&I clubs are maritime insurance groups that specialize in open-ended, large-risk claims. P&I insurance is a requirement for all heavy cargo and container vessels. Under the new sanctions, European P&I clubs can no longer offer insurance to a vessel carrying Russian oil at a price higher than $60 a barrel. Since February 2022, governments and the private sector have been imposing piecemeal sanctions against Moscow, including taking aim at the luxury items of oligarchs and Russian President Vladimir Putin’s inner circle. Yachts and jets were highly symbolic, but sanctions against them weren’t really useful. Russia then lost access to the global SWIFT payment system. Only after some trade deals with India and China did Russia’s currency somewhat stabilize. Then targeted sanctions were imposed on Russian companies and individuals. Roughly 537 firms, 276 legal entities, 1,637 organizations and 3,369 people faced some sort of coercive economic measure between February 2022 and June 2022. Going easy on shipping capacity Only 113 of 3,300 Russian maritime vessels, however, were subject to official sanctions. Going easy on Russia’s maritime capacity was a blunder for U.S. President Joe Biden’s administration and its European counterparts. Ships can smuggle all sorts of trouble, even amid legitimate cargo. For example, bananas are locally sourced from cocaine-producing countries, and since the fruit expires quickly, customs officials want to move shipments through borders as fast as possible. Eight tonnes of cocaine worth over US$207 million was recently discovered in a banana shipment to Belgium. If Russia needs something illicit for its war in Ukraine, it likely arrives by sea. With coercive economic measures on only three per cent of Russia’s entire merchant fleet in the first months of the war, these sanctions were sloppy at best and harmful at worst. Within days of sanctions being imposed on those 113 Russian-flagged vessels, 18 of them switched to “flags of convenience” by registering the ships in the Marshall Islands and St. Kitts. This is nothing new for merchant fleets. Ship owners regularly register their vessels in countries that charge little tax and overlook poor labour conditions in exchange for payments to register a vessel under their flag. This is why countries like Panama, Liberia and the Marshall Islands ship so much more cargo than countries like the United States and Canada. Most of the world’s cargo and crude are shipped under flags of convenience, making targeted sanctions on national vessels difficult and often futile. Into the shipping shadows The direct sanctions against a small number of Russian vessels just encouraged nationally flagged ships to go deeper into the shadows and join their buddies under flags of convenience. Should sanctions be levied at Liberia and the Marshall Islands? Doing so would put the brakes on hundreds of millions of tonnes of seaborne cargo. The global economy couldn’t handle that, and it would require enormous scrutiny to enforce these measures on guilty vessels. This is why the latest round of sanctions targeting maritime protection and indemnity insurance companies is clever. P&I insurance is **required** for **every ship** to enter ports to offload goods. The insurance covers the worst calamities, such as loss of life, dock damage and oil spills. The insured vessel pays into the risk-pooling clubs that can move hundreds of millions of dollars quickly to any country in order to cover the costs of the disaster. Thanks to modern tech, steady tug boats and good harbour pilots, claims on P&I pools are low. Still, every ship must have it, and the insurance entails massive, collective pots of money. If a sanctioned vessel is in the club, everyone in the club is at risk. The clubs can also identify disingenuous vessels that might be hiding in their ranks. Data showing the history of flagging and ownership of any vessel is **widely available**. This allows the clubs to eject the questionable vessel **immediately**. Putin is scrambling to purchase a “shadow fleet” of about 100 vintage end-of-life tankers to try to get Russian oil to market. That won’t be enough to carry the Russian economy, but it could expose inroads to smuggling markets involving ports that overlook P&I insurance. Keeping the $60 price cap on Russian oil is risky. Tempting Putin to sell oil under $60 will encourage oil smuggling in the shadows. A full P&I ban on all vessels thought to be Russian, however, would be **devastating** to Moscow. Just like how tax evasion brought down Al Capone, it may be this insurance requirement that delivers a crushing economic blow to Putin. It illustrates why governments and the private sector need to think smarter about sanctions. Don’t sanction the target. Sanction the environment in which they operate.

### 1NC---Negotiations

#### Sanctions lead to negotiations, worked before in Sudan

**Hudson 24** [Cameron Hudson, Senior fellow in the Africa Program at the Center for Strategic and International Studies (CSIS) 7-11-2024, "Washington Is Becoming Irrelevant in Sudan. A Sanctions Strategy Could Change That.", No Publication, <https://www.csis.org/analysis/washington-becoming-irrelevant-sudan-sanctions-strategy-could-change> Accessed 7-18-24]

**The crisis in Sudan, now 15 months in the making, is worsening at an accelerating pace. More than half the population is in desperate need of humanitarian aid, while increased fighting has only worsened the toll on civilians, creating massive new numbers of internally displaced people already weakened by restrictions on food and medical aid. By the end of the year, some**[**projections**](https://www.clingendael.org/publication/sudan-hunger-death)**estimate that more than 2 million people could die from famine, dwarfing the number of battlefield deaths.**

Against this backdrop**, the prospects for a lull in fighting, let alone peace talks, appear increasingly remote. Sudan’s recalcitrant army leader, General Mohammed Fattah al-Burhan, rejects any suggestion of negotiating with his rival, Rapid Support Forces (RSF) general Mohammed Hamdan “Hemedti” Dagalo, who he believes to be both a bad faith negotiator but also aided by deep-pocketed and politically connected backers in the United Arab Emirates (UAE). The most prominent civilian leader, former prime minister Abdallah Hamdok, long associated with powerful UAE backers, has tried to assemble a civilian coalition that offers an alternative to military rule and war, but his more recent**[**exculpation**](https://www.thenationalnews.com/news/mena/2024/06/26/hamdok-warns-more-people-could-die-from-starvation-than-bullets-in-sudan/)**of the UAE for any responsibility in promoting war in Sudan** is likely the final indignity to an already moribund political career.

Meanwhile, **Washington’s peripatetic special envoy for Sudan, former congressman Tom Perriello, has been crisscrossing the region trying to cobble together a coalition of stakeholders to pressure the parties to, if not make peace, refrain from expanding the war front in ways that worsen the already dire situation for civilians.** But he has been dealt a weak hand by a State Department seemingly content to see him flounder with little staff and high-level U.S. leadership more interested in advancing hard geopolitical interests in Ukraine and Gaza than saving lives in Sudan, a country at best on the periphery of U.S. national security concerns.

**Congress has remained involved, though only marginally effective, making genocide**[**declarations**](https://www.congress.gov/bill/118th-congress/senate-resolution/559/text)**and**[**calling**](https://james.house.gov/news/documentsingle.aspx?DocumentID=196)**for a more robust diplomatic effort from the Biden team, including a comprehensive strategy for dealing with Sudan’s implosion and better utilization of the tools available to leverage what is left of U.S. power and influence in the region.**

Congressional leaders have rightly pointed out that at moments of crisis, there is a formula for developing and managing a U.S. government response that begins by clearly identifying the United States’ near and long-term interests and tasking the intelligence community to assess various scenarios from worst case to most likely. **But most important is the effort to take inventory of the variety of tools and points of leverage the United States has for advancing its interests. Such a process necessarily entails judging potential costs and tradeoffs and adjudicating where interests compete, as they almost always do**.

This overall process is managed by the National Security Council staff and is approved by a Deputies Committee or National Security Council Principals Committee. Ultimately, if a decision is taken, for example, to pressure the UAE over its military support to General Hemedti’s RSF, it’s the deputies and principals who must decide it, with full understanding and after weighing the potential trade-offs to other U.S. interests.

Such processes can be arduous, time consuming, and surface substantial differences in approach and priority across a host of regional and functional divides within the U.S. national security apparatus. That was the case more than a decade ago when **the Obama administration launched a highly**[**publicized**](https://www.washingtonpost.com/archive/national/2009/10/17/in-shift-for-obama-us-settles-on-modulated-policy-for-sudan/47bdcbfe-fda3-4a3b-89bb-12c91907eee8/)**strategy review to determine how best to achieve the seemingly competing objectives of pressuring Sudan’s government to end the genocide in Darfur while incentivizing that same regime to implement the final stages of the country’s Comprehensive Peace Agreement, which ultimately paved the way for South Sudan’s independence. As painful as that process was, it produced a strategy that served as a roadmap for multiple U.S. Envoys to successfully advance both our interests and our values.**

**Sadly, there is no outward suggestion that such a process is taking place today.** Recently, an unnamed, former Biden administration official [told](https://www.ft.com/content/388e1690-223f-41a8-a5f2-0c971dbfe6f0) the Financial Times, “in Africa, [the UAE is] both investing in positive ways and acting in destabilizing ways at the same time,” the kind of equivocation in the face of ongoing genocide and the dissolution of the third-largest country in Africa that suggests both a betrayal of U.S. values and its strategic interests on the altar of political expediency. Fortunately, not all current officials feel this way.

Washington’s UN ambassador, Linda Thomas Greenfield, along with Special Envoy Perriello, have repeatedly [called out](https://www.reuters.com/world/africa/us-appeals-uae-others-stop-support-sudans-warring-parties-2024-04-29/) Abu Dhabi for their nefarious endgame in Sudan. That others openly [note](https://www.ft.com/content/063e4b92-753a-4c9a-bbd4-e1ed40d20c62) the UAE’s important contributions to a potential peacekeeping mission inside Gaza while also contributing to eventual reconstruction efforts there only further underscores the demand for a strategic planning process to arbitrate between these conflicting values and interests.

Absent a process to adjudicate these policy differences, Biden‘s national security team should, at a minimum, better empower its Sudan policy with the necessary tools to make a difference, if not at least be taken seriously. If it doesn’t, Washington’s dwindling leverage is sure to evaporate entirely, leaving it on the sidelines as Sudan’s neighbors and regional states decide the country’s fate with no input from Washington. Already, a host of mediation processes led separately by the United Nations, African Union, Egypt, and Saudi Arabia have had little to no substantive input from the United States.

**The quickest and most effective way of adding muscle to the United States’ diplomatic engagement would be to develop a proper sanctions strategy that is both calibrated to facts on the ground and reflective of how sanctions have been used in Sudan in the past to drive outcomes.**

**Since the start of the war in Sudan, U.S. sanctions have been ad hoc and episodic at best, seemingly intended to punish individual criminal acts, like with the**[**recent**](https://home.treasury.gov/news/press-releases/jy2340)**targeting of mid-level RSF commanders, but remaining largely divorced from driving toward any stated strategic objectives. Indeed**, five separate rounds of U.S. sanctions since the start of the war have barely registered with either of the parties, save for the targeting of Hemedti’s [brother](https://home.treasury.gov/news/press-releases/jy1712) Abdulrahim Dagalo. Instead, this “steady drumbeat” approach appears more intended to only signal that “Washington remains engaged” rather than to deliver the message that “Washington is serious.” U.S. Treasury officials, who are responsible for the design and implementation of sanctions, are fond of [saying](https://reliefweb.int/report/sudan/effectiveness-us-economic-sanctions-respect-sudan-report-congress-jan-2009) that “the ultimate objective of sanctions is behavioral change.” Sadly, U.S. sanctions look neither serious nor engaged and have not brought about the intended behavioral change from the warring sides.

One reason for this anemic approach to sanctions has purportedly been the administration’s “near obsession” with reconvening a peace process in Jeddah, Saudi Arabia, according to one European diplomat, and the fear that sanctioning the most senior leaders of either the Sudanese Armed Forces or the RSF would deter them from attending and quash the only firm objective Washington has.

But leaving aside the high and growing unlikeliness of peace talks ever reconvening in Jeddah, with one senior Sudanese official [saying](https://sudantribune.com/article286314/) that “going to Jeddah will only happen over our dead bodies**,” the history of sanctions in Sudan shows that they have in fact brought recalcitrant actors to the table when they have been resistant and opened new channels of dialogue when none existed. Indeed, sanctioning General Hemedti or General Burhan could well open new direct communications channels to them where none currently exist and increase Washington’s leverage over a situation where it has allowed itself to become sidelined. Central to that is viewing sanctions as a motivator for future steps and not a punishment for past transgressions. Rather than threatening their imposition, we should be negotiating their removal—then we will see how quickly the sides are prepared to come to the negotiating table.**

A 2009 [report](https://reliefweb.int/report/sudan/effectiveness-us-economic-sanctions-respect-sudan-report-congress-jan-2009) to Congress by the Treasury Department entitled “Effectiveness of U.S. Economic Sanctions with Respect to Sudan” provides an important historical lens that illustrates this approach. The report details how in response to ongoing genocide in Darfur, the Treasury implemented sanctions against three high-level Sudanese leaders and 31 Sudanese companies in May 2007, focusing on the changes those sanctions, announced by the president himself, made in the bilateral relationship and in the Sudanese’s own behavior.

As the report noted,

"A week after the May 2007 designations, the Sudanese National Assembly convened a special session to discuss these latest sanctions and issued a parliamentary decree denouncing them . . . Two weeks later, in June 2007, President Bashir announced that Sudan would agree to a deployment of a joint African Union-United Nations peacekeeping force in Darfur, after a lengthy period of resisting this step."

It also noted the following:

"According to senior U.S. officials, high-level GOS [Government of Sudan] representatives have repeatedly expressed strong concern in meetings over the impacts of U.S. sanctions . . . In a noteworthy example, at a 2007 meeting with U.S. officials, a cabinet member in the Sudanese government [traveled to Washington to complain] that U.S. sanctions were causing daily harm to Sudan."

The report went on to conclude that

"**In the past year, economic sanctions have assumed a more prominent role in the bilateral dialogue between the United States and the GOS. For example, during the most recent negotiations in the spring of 2008 on bilateral relations, the GOS delegation presented a timeframe for the lifting of sanctions as well a list of “urgent measures” that the GOS wants the U.S. government to undertake. All of these urgent measures related to U.S. economic sanctions, placing sanctions at the center of the talks . . . the GOS’s pointed objections to sanctions indicates the meaningful burden that sanctions continue to impose . . . This report concludes that U.S. sanctions against Sudan have applied constructive pressure that has affected key Sudanese officials’ decision-making calculi."**

B**efore sanctions, Sudan was resistant to any bilateral engagement with the United States. After sanctions, it sought out those engagements because they allowed it to plead its case for sanctions removal. Along the way, Washington was able to press its case for advancing its interests in Darfur. The same can be true again. But Washington’s strategy cannot be couched in the same nuanced and ad hoc manner that current U.S. sanctions have been.**

To be effective, they need to be nested in an overall strategic approach—one that is announced by the president or cabinet officials in a way that demonstrates a renewed commitment to leading an international response to end the war—and be tied to specific asks within the context of a strategic roadmap, specifically attendance at peace talks and the lifting of blocks to humanitarian access. Only when those asks are sufficiently met should sanctions be removed.

**Sudan is home to the largest**[**humanitarian**](https://abcnews.go.com/International/sudan-now-1-worst-humanitarian-crises-recent-memory/story?id=108338545)**crisis, the largest**[**food security**](https://www.theguardian.com/world/2024/apr/24/sudan-extreme-food-shortages-2023-food-insecurity)**crisis, and the largest**[**displacement**](https://www.iom.int/news/sudan-faces-worlds-largest-internal-displacement-crisis)**crisis in the world today. And it could soon present a strategic crisis for Washington as the centrifugal forces of ethnic violence, political instability, and terror gripping the country radiate outward from the collapsing Sudanese state. Only a month into his mandate, Special Envoy Perriello**[**remarked**](https://www.reuters.com/world/us-pushes-peace-talks-avert-point-no-return-sudan-2024-03-21/)**that the Sudan crisis was “barreling towards a point of no return.” Now is the time for the Biden administration to mount a serious response.**

#### Sanctions lead to negotations, worked before in Iraq

**Cortright and Lopez 2002** [David Cortright and George A. Lopez, 9-1-2002, "Smart Sanctions: Targeting Economic Statecraft", Foreign Affairs, [https://www.foreignaffairs.com/reviews/capsule-review/2002-09-01/smart-sanctions-targeting-economic-statecraft Accessed 7-18-24](https://www.foreignaffairs.com/reviews/capsule-review/2002-09-01/smart-sanctions-targeting-economic-statecraft%20Accessed%207-18-24)]

During the 1990s, **economic sanctions became an increasingly favored tool of diplomacy.** In the aftermath of September 11, **the use of targeted sanctions has only increased in importance.** Yet their effectiveness remains in question. This book focuses on "smart sanctions" -- selective penalties devised to put pressure on specific groups and avoid the unintended suffering caused by general embargoes**. In examining 14 cases of un-mandated sanctions in the 1990s, the authors find that the measures fail more often than they succeed. In some instances, however, they do achieve modest goals. In Iraq, sanctions produced concessions in 1993 and 1994. In Libya, they helped trigger negotiations that brought suspected terrorists to trial.** In Angola, **sanctions and military pressure eventually helped to undercut the rebel movement.** In Cambodia, they helped to isolate and weaken the Khmer Rouge. But in conflicts in Sudan, Liberia, Rwanda, Yugoslavia, Afghanistan, and Ethiopia and Eritrea, they had little impact. Another conclusion: the effectiveness of sanctions depends less on whether they are comprehensive or targeted and more on whether they are seriously enforced. Concerted international action is therefore the key to success.

#### Targeted Sanctions work and fare better in the international system

Drezner 11  Daniel W. Drezner – The Fletcher School, Tufts University, International Studies Review, Vol. 13, No. 1 (March 2011), “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice” pp. 96-108, JSTOR] TDI Kevin

This research trend dovetailed nicely with the evolution in policymaking on sanctions (Cortright and Lopez 2002a,b; Brzoska 2003). Smart sanctions could raise the target regime's costs of noncompliance while avoiding the collateral damage that comes with comprehensive trade embargoes. The most prominent country-wide examples included financial sanctions, asset freezes, travel bans, restrictions on luxury goods, and arms embargoes. Furthermore, instead of sanctioning an entire country, smart sanctions advocates advocated the targeting of individuals, restrictions corporations or holding companies associated with the target government's leadership. Targeted sanctions would hamper the ability of leaders to offer crucial supporters rent-seeking opportunities.

Smart sanctions were an idea that created a useful focal point of agreement among key stakeholders in the international system (Garrett and Weingast 1993).5 U.N. Security Council members Russia, China, and France grew frustrated by their inability to alter the sanctions regime once the initial measures were approved. At the same time, the United States and United Kingdom wanted to keep sanctions in the policy tool kit. For recalcitrant members of the Security Council, smart sanctions offered the opportunity to cooperate with the hegemonic actor in the international system. At the same time, smart sanctions would not impose excessive humanitarian costs or threaten lucrative trading relationships with target countries. For the United States and the United Kingdom, the targeted sanctions framework seemed like a more precise policy tool. For humanitarian and human rights activists, smart sanctions seemed the best way to enforce norms in the global system without imposing needless costs on the most powerless members in target societies.

### 1NC---North Korea

#### Targeted sanctions are particularly effective against Kim---vessels.

Huish 18 [Robert; Associate Professor of International Development Studies at Dalhousie University in Canada; “Making Sanctions Smart Again: Why Maritime Sanctions Have Worked against North Korea”; National Bureau of Asian Research; <https://www.jstor.org/stable/26497788>; July, 2018] JH

Following a period of escalating tension between the United States and the Democratic People’s Republic of Korea (DPRK), in which the Kim regime conducted a series of ballistic missile and nuclear tests and the Trump administration pursued a policy of maximum pressure, Donald Trump and Kim Jong-un met for a historic summit in Singapore on June 12. What changed to bring the two leaders together?

The main reason North Korea sat down at the bargaining table was not sports diplomacy at the Winter Olympics or Trump’s Twitter barrages. It was that the country is out of resources as a result of the international maritime sanctions.*1* These sanctions have worked, and worked well, by targeting the environment on which the Kim regime depended to **acquire belligerent materials**. The 2017 maritime sanctions against North Korea, particularly U.S. Executive Order 13810 and UN Security Resolution 2397, worked for three reasons.*2* First, owing to its unique geography, North Korea was almost **entirely dependent on illicit** maritime trade for its weapons programs, which stands in contrast to long-held claims that most military hardware came overland from China.*3* Second, some argue that North Korea’s already hollowed-out, authoritarian economy created an “inner isolation” among most of the country’s nearly 26 million inhabitants.*4* Sanctions are often responsible for increased suffering; however, most North Koreans survive through limited self-sufficiency or black markets that are often unaffected

by formal sanctions or the country’s international economic environment. Third, sanctions that targeted foreign companies, in particular maritime insurance companies that may have provided protection and indemnity (P&I) insurance to North Korean vessels, provoked a swift reaction by the insurers to absolve themselves from dealings with North Korea.

The important message of the sanctions imposed in 2017 is that this focus on pressuring the maritime industry led to a noticeable behavioral change in North Korea. The remainder of this essay examines what lessons about the efficacy of smart sanctions can be drawn from the case of maritime sanctions against North Korea. The next section will describe the 2017 sanctions from a maritime standpoint and analyze why they worked. The essay concludes by considering the potential to effectively apply similar sanctions to other targets.

*Have You Been to Sea?*

To understand why maritime sanctions worked so well against North Korea, two issues must be discussed. First, what are effective sanctions? And second, what role does China play in enabling North Korea to outsmart sanctions? For years, the international community made two major errors in dealing with North Korea. Many experts believed, first, that any sort of sanction would be a good measure against the Kim dynasty and, second, that China is the sole provider of resources, including military resources, to North Korea. Both of these claims are problematic.

Sanctions aim to encourage a behavioral change of a target nation or its leadership. Traditional, or “dumb,” sanctions either prohibit the target from any financial dealings with the issuer’s market or seize the target’s assets in the issuer’s territory. Such ham-fisted sanctions often do more to further the suffering of the population than apply pressure on the leadership. In the 1990s, then secretary-general of the United Nations Kofi Annan encouraged the use of “smart” sanctions in order to overcome such blunders. Speaking in hindsight of the tragedies in Iraq, the Balkans, and East Africa, Annan argued that economic policy could be crafted so that despotic leaders are pushed toward behavioral change given that their own personal assets were at risk.*[[36]](#footnote-36)* In the 1990s this logic made sense because many dictators had offshore assets that could be directly targeted. Even so, many tyrants, including members of the Kim dynasty, managed to acquire luxury goods and odious resources through shady networks involving fake currency production, narcotics trafficking, weapons smuggling, and insurance scams.Moreover, sanctions did not deter the Kims from pursuing nuclear tests or overseeing brutal human rights violations.

One of the faultiest assumptions about North Korea in the international relations literature was that North Korea and China enjoyed a comfortable, mutually beneficial relationship. In the early 2000s, trade did quite well between the two countries, even to the point of North Korea establishing a casino in Pyongyang for Chinese tourists, sending thousands of temporary contract workers to China, and overseeing the construction of the Chilbosan Hotel in Shenyang.*[[37]](#footnote-37)* The hotel closed in January 2018 as a result of a UN blacklist that named the Chinese shareholders of Liaoning Hongxiang Group connected to the hotel. Yet long before this happened, relations between China and North Korea had grown cold. Several reports emerged between 2012 and 2014 of the North Korean military organizing smuggling and pillaging runs into Chinese border towns, with some claiming that North Korea even used cell-phone-blocking technology to prevent a swift response from the Chinese authorities.*[[38]](#footnote-38)*

For China, the Kim regime’s belligerence was problematic. Missile launches and nuclear tests gave license for more U.S., South Korean, and Japanese surveillance and a greater maritime presence in Northeast Asia. Simply put, a hostile North Korea is not in China’s interest. Thus, the idea that China would actively supply North Korea with missile hardware or nuclear devices across its land border is naive at best. But neither is an economically failing regime in China’s interest. In late 2017, China turned sod in preparation for refugee camps along the 880-mile border with North Korea in the event that the regime collapsed.*[[39]](#footnote-39)*

How, then, was North Korea getting access to military resources? North Korea is economically isolated, and the Kim regime has little capacity to produce weapons materials domestically, as satellite images show that the country is almost entirely blacked out at night from a lack of power and infrastructure. The answer lies at sea, especially in the two main ports of Sinpo and Nampo. For years North Korea relied on shipping traffic, using either its own nationally flagged ships or ships flying under flags of convenience, to acquire resources. A famous case took place in 2014 when a North Korean ship, the *Chong Chon Gang*, a vessel with a long track record of smuggling, was intercepted leaving the Panama Canal.*[[40]](#footnote-40)* When authorities boarded the vessel, they discovered a missile shaft buried in the hull below crates of Cuban sugar. Another vessel was seized by Australian authorities for smuggling in heroin in 2003.*[[41]](#footnote-41)* If North Korea succeeded at gaining access to markets and resources, albeit shady ones, through the seas, how could sanctions be more effective?

Between May 2016 and January 2018, I collected data to explore this question by scanning maritime traffic entering North Korean waters.*[[42]](#footnote-42)* Relying on automatic identification software, a tool used in the maritime industry to monitor and identify ships over a certain length and weight, I tracked the vessels entering North Korean waters and gathered information on their previous destinations, flags, owners, managers, and insurance providers. Other North Korea watchers and various government agencies also used this method to build a sense of what was going in and out of North Korea.

Maritime traffic into North Korea revealed three important findings. First, most ships entering North Korea either were DPRK-flagged or were North Korean vessels sailing under flags of convenience that were often managed by shell companies based in Hong Kong, Singapore, or various offshore tax havens. Second, vessels entering North Korean waters would often practice deceptive tactics, such as blacking out their transmitters, setting fake destination ports, or falsifying previous destinations. Third, almost all North Korean vessels claimed to have P&I certificates from legitimate insurance companies, many operating in Europe. The first two factors are common tactics that smugglers use in the maritime industry; as a result, there is extensive expertise on how to avoid authorities. However, the use of legitimate insurance companies to certify vessels opens an important pressure point against the Kim regime.

Every vessel over a certain weight and length needs P&I insurance to protect against open-ended risk and catastrophic loss, and it is required by most harbors in order to load and offload materials. It is issued through what are essentially not-for-profit clubs where all members (that is, the owners and managers of vessels) contribute annual “calls,” which are large financial buy-ins each year into a community pot. If a member experiences loss, it draws from the pot, and the following year its call is often inflated if it is welcomed back. The pots can reach sums in the hundreds of millions. Because such large sums of money are at stake, most P&I clubs are located near financial hubs in Europe or Asia.

If a particular vessel management company is operating without P&I insurance, it will be blocked from entering most international ports. Likewise, because P&I clubs have communal assets, if a member violates sanctions or various laws, its assets in the P&I club could be subject to seizure, which would be incredibly complicated as the funds are held collectively. This would only occur if sanctions specifically targeted the insurance provision of vessels, which is exactly what U.S. Executive Order 13810 and UN Security Resolution 2397 do. As a result, P&I insurance companies took drastic steps in 2017 and 2018 to ensure that their clubs were not insuring North Korean vessels, even those under flags of convenience. Previously, sanctions had blacklisted particular vessels from doing business in the issuers’ territory, but the role of P&I clubs remained ambiguous. The 2017 sanctions specifically included clauses against insurers of North Korean vessels, which forced the industry to acknowledge its role and respond. Legitimate P&I firms in the United Kingdom, Norway, and the Netherlands did due diligence to ensure that they had no connections to North Korean vessels, even to the point of contacting the automatic identification software databases to verify that their records were up to date. However, many P&I insurer websites continue to post information for claimant contacts in Pyongyang, suggesting that the relationship has not entirely been severed. Local agents would be responsible for channeling funds in the event of a claim, and this raises questions about whether financial linkages persist between North Korea and some of the P&I clubs.

**Targeted sanctions against insurance providers** were **incredibly effective**. Because the sanctions denied P&I certificates to North Korean vessels, the DPRK’s commercial fleet was prohibited from almost every port in the world. The European Union employed a similar strategy against Iranian tankers in 2005, when sanctions prohibited European insurers from covering those vessels. These sanctions stopped Iranian energy exports to Europe within hours. When the 2017 sanctions took effect, North Korea lost almost all of its capacity for international trade, aside from some small-vessel traffic into Chinese waters. The Kim regime complained that the sanctions were overbearing, and shortly thereafter talks began about a joint Team Korea delegation for the 2018 Winter Olympics.

Even with stronger sanctions against North Korea’s trading environment, the regime continued attempts to evade the pressure. In one case, it managed to actually export coal to South Korea by using a midway dumping station in Russia.*[[43]](#footnote-43)* But this was largely an exception to the increasing isolation of the Kim regime. In early 2018, U.S., French, and Canadian military surveillance revealed that to avoid scrutiny at foreign ports, North Korean vessels were loading and offloading goods through high-risk sea-to-sea transfers.*[[44]](#footnote-44)* This kind of operation is dangerous, as the weather conditions must be nearly calm and crane operators must be highly skilled, while the volume of cargo that can be offloaded is minimal. Whereas a vessel in dock can offload thousands of tons of goods, at sea it can only transfer hundreds of tons. Thus, while this tactic may supply some material to the regime, it is hardly sufficient to match the quantities that were previously imported.

*Second Time Lucky?*

Could the maritime sanctions placed on North Korea be applied to other targets? Invoking smart sanctions is tough. Despotic leaders have extensive financial networks to avoid any direct pain from sanctions, while poor and marginalized populations often suffer greatly when food and medicine imports dry up. North Korea is one of the most unique geopolitical quagmires in the world. Completely isolated on its southern border, the country was also partially ostracized on its northern border with China, leaving it dependent on maritime trade and illicit trafficking by sea and a handful of functioning DPRK ports. In addition, some argue that the authoritarian economy left many North Koreans disconnected from any imports from the outside world, meaning that tighter sanctions did not significantly worsen their already miserable state of poverty and suffering.

The 2017 sanctions have thus far showed potency against North Korea, with maritime sanctions choking Kim’s financial networks to the point that he was forced to change his tune from bellicose isolation to engaged diplomacy. From this experience, there is a lesson for designing effective sanctions that apply pressure to the target’s environment rather than the target directly. How such **sanctions are designed and executed matters** a great deal, although, depending on the size of the target and the regional geography, they may be difficult to enforce.

To say that maritime sanctions that target P&I clubs are the definitive solution for smart sanctions is too broad. Because of North Korea’s unique dependence on maritime trade, they proved effective, but a landlocked country, or a country with open land borders or a sizeable navy, would easily be able to skirt such sanctions. Moreover, blanket pressure on P&I clubs may cause serious disruption to international maritime trade. Indeed, there are already questions about the legitimacy of some P&I clubs and how money is stored, invested, and transferred. However, given that all major vessels rely on this form of unlimited liability protection, overbearing pressure could result in less transparency, underhanded practices, or complete chaos within the industry. Furthermore, considering that the maritime industry is laden with deceptive practices—from falsifying registries and flying flags of convenience to deceptive navigation practices—the P&I insurance clubs serve as a universal medium to ensure accountability. As such, governments should be wary of direct interference with the clubs or needless scrutiny. The case of North Korea demonstrates their tremendous capacity to self-regulate against sanctioned regimes.

Sanctions outsmarted Kim Jong-un. They also gave President Trump a unique opportunity to directly engage with Kim to attempt to change the regime’s behavior. Whether the U.S. president will be able to take advantage of this opportunity is yet to be seen. Can sanctions be effective against other hostile targets? Indeed they can, as long as careful attention is paid to the economic and social geography in which the target operates. There may be better opportunities within maritime sanctions to scrutinize arms and drug trafficking through P&I insurance than to actually change the behavior of undesirable heads of state. But in this case at least, sanctions led to a strong victory through clever policy. 

### 1NC---Venezuela

#### Expand target sanctions in Venezuela.

**Bahar 18** [Dany Bahar, 5-29-2018, "US sanctions must be precise in order to spare innocent Venezuelans", Brookings, <https://www.brookings.edu/articles/us-sanctions-must-be-precise-in-order-to-spare-innocent-venezuelans/> Accessed 7-22-24]

One of the first acts of Maduro after being (allegedly) re-elected as president of Venezuela was to expel the most senior U.S. diplomat from the country. This came after the U.S. enacted further financial sanctions aimed at closing remaining loopholes that would help the Venezuelan government issue more debt.

It seems like we will still see more reactions from the U.S. administration. Vice President Mike Pence tweeted that “[t]his provocation will be met with a swift response. We will continue to pressure Venezuela’s illegitimate regime until democracy is restored.”

Imposing financial sanctions is the right thing to do, even if by now they don’t make a big difference. This is not because the Venezuela government has other ways to issue debt, but rather because it doesn’t even in the absence of sanctions: No investor in his or her right mind would lend a penny to a broken government that has already fallen into selected default and shows no willingness nor ability to fix the economy.

**The less targeted [sanctions] are, the more likely they might hurt the Venezuelan people who are already living under one of the worst humanitarian crises the hemisphere has seen.**

**Imposing broader sanctions to Venezuela might be a proper response, though it is important to be extremely careful when designing them. The less targeted they are, the more likely they might hurt the Venezuelan people who are already living under one of the worst humanitarian crises the hemisphere has seen.**

In light of this, I believe there are two main avenues worth exploring for the U.S. administration when designing a comprehensive response to the Venezuelan dictatorship, which has become a threat not only to its people, but to the entire region.

**First, while some**[**personalized sanctions**](https://www.reuters.com/article/us-usa-oas-pence-sanctions/u-s-imposes-fresh-sanctions-on-venezuela-pence-calls-for-more-action-idUSKBN1I81S1)**have been put in place targeting members of the Venezuelan regime, there is still a lot of room for expanding these sanctions targeted toward particular individuals.**

**Individualized sanctions should be imposed on middle- and high-ranking government officials and military officers who have effectively hijacked and abused the system in order to stay in power forever while enriching themselves through corruption and illegal activities.**

**These sanctions should also be expanded toward first-degree family members when evidence of foreign assets and bank accounts under their names is available. To increase effectiveness, President Trump and his administration should coordinate these personalized sanctions with other countries in Europe, Latin America and the Caribbean.**

Sanctions could range from freezing bank accounts and other assets to declare these people “personae non gratae” in other countries.

**This last step would ban them from visiting other nations,** which they frequently do for tourism or even to visit family members living abroad—where they enjoy a lifestyle that could not be afforded by the vast majority of Venezuelans.

#### [NOT HL] Smart sanctions are crucial to take down Maduro’s dictatorship.

Rendon and Price 19. [Moises Rendon, Former Senior Associate (Non-resident), Americas Program and Max Price. “Are Sanctions Working in Venezuela?” Center for Strategic and International Studies, 9-3-2019, <https://www.csis.org/analysis/are-sanctions-working-venezuela>] TDI

There is significant evidence of the impact of sanctions on Maduro’s power. Not only have targeted economic sanctions limited his ability to finance his regime’s antidemocratic activities and human rights abuses by reducing oil and illegal mining earnings, but they have also strained his inner circle. His control over state institutions and assets is slipping along with public confidence in his regime. The United States has instituted a strategy of risk; the current administration’s interminable threat to impose further sanctions leaves Maduro and his accomplices unsure as to how far it will go, forcing them to fear the worst.

Most recently, sanctions have increased leverage for democratic forces within Venezuela. Maduro recently agreed to send a delegation to Barbados to reopen talks with the opposition after dialogues stalled earlier this year. The increased pressure of sanctions was a key factor in his decision to negotiate with political adversaries, as he and his inner circle are more limited than ever in their capacity to travel and engage with financial assets.

That said, there are areas for improvement in sanctions strategy. The first important step is to encourage multilateral adoption of currently targeted sanctions. Unilateral sanctions, even from the most powerful economy in the world, have limited results. In addition to incorporating allied neighbors Colombia and Brazil, the United States should take advantage of the Lima Group, which has recently taken a strong stance on Maduro’s crusade against democracy. If this is successfully achieved, the strategy can be extended outward to the Organization of American States and perhaps even the United Nations (although Chinese and Russian veto power on the Security Council would make this difficult).

The United States and its allies must use sanctions deliberately as a tool to shut down Maduro’s criminal activities. By closing off criminal sources of revenue for him and his cohorts in Venezuela, Maduro’s relative exit costs can be lowered, which will in turn increase the likelihood of a peaceful transition. While barriers to exiting power are always high, sanctions can isolate Maduro to the point where resigning is a welcome alternative.

Another method could be the reallocation of assets recovered from sanctioned officials in the Venezuelan government and military. These assets could be forfeited to nongovernmental organizations helping the most deprived Venezuelans. While such a process requires cutting through significant red tape, the legitimate government led by Guaidó would be well served to ensure that the victims of malevolence in Venezuela are compensated in some manner.

Lastly, the international community can integrate innovative ideas for sanctioning businesses, especially those that are paramount to U.S. economic interests in the region. Several U.S. companies, most notably Chevron, currently operate in the Venezuelan oil sector and in turn must navigate sanctions. One past example is that Citgo, a subsidiary of PdVSA, was wrested from Maduro’s control and made responsive to Guaidó’s administration. The same strategy could be applied to Venezuela’s financial sector, specifically its centralized and semiprivate/state-owned banks. The United States should distinguish between institutions that are operating in sole service of Maduro’s regime and those that can play a role in providing an economic future for the country. This will require creativity as well as flexibility. It is also necessary to retract sanctions placed on state entities once they are proven to be legitimately controlled.

### 1NC---Iran

#### Sanctions are VITAL to bringing Iran to the negotiating table

**Fernandez ’12** [(Jose W., Assistant Secretary, Bureau of Economic and Business Affairs) “Smart Sanctions: Confronting Security Threats with Economic Statecraft” <https://2009-2017.state.gov/e/eb/rls/rm/2012/196875.htm> U.S. Department of State, 07/25/12] TDI

When we discuss smart sanctions, the first question is: “What is our goal?” What are we trying to achieve? Sanctions are generally invoked for one of three purposes: 1) to change a government’s or private actor’s unacceptable behavior; 2) to constrain such behavior going forward; and/or 3) to expose behavior through censure. The goal is to raise the economic cost of unacceptable behavior and denying the resources that make it possible.

Given these goals, what are our available tools? Well, as we ratchet up pressure, sanctions increase and change. At the most basic level, we withhold U.S. government cooperation, such as by prohibiting development assistance. But, this only gets us so far, because most of the bad actors in this world don’t get a lot of assistance. As we move to a higher level, we look to freeze the assets of individuals and governments and restrict their access to the U.S. market or prevent them from receiving visas. Finally, we might also ban exports or imports from countries for certain activities, as in the case of Iran for refusing to address the international community’s concerns about its nuclear program

An even more aggressive approach involves the use of “secondary sanctions.” These measures act against companies in third countries who do business with a U.S.-sanctioned target, thereby indirectly supporting the behavior of the bad actor. Ultimately, making that institution choose between doing business with a rogue country or operating in the United States.

But at the same time that we consider the optimum sanctions for a given objective, an important element for consideration is how to ensure that sanctions are structured to achieve the desired outcome, while minimizing collateral damage to U.S. and other interests.

This unwanted collateral damage includes investments, economic and trade relations that we want to maintain, and protecting innocent citizens in the targeted country. For example, in Iran,. the door is still open for the sale of agriculture products and medicine Approval was given for NGOs working to empower Iranian women, support heart surgery for children, for consultants on a telecom fiber optic ring, for a lawyer’s association providing legal training, and for a media company that filmed an Iranian election. So our smart sanctions are targeted.

Effective diplomatic leadership is also crucial to effective sanctions. Sanctions are more likely to have an impact when many countries participate. The more global leaders are on board in imposing sanctions, the more powerful the message that certain behavior is unacceptable in today’s world.

Iran’s destabilizing actions speak for themselves: refusal to address international concerns about its nuclear program; defiance of UN Security Council resolutions; support for terrorism, and efforts to stir regional unrest, all present a grave threat to international peace and security. Iran remains one of our top foreign policy and international security priorities.

Smart sanctions have played a prominent role in the success of the Administration’s dual-track policy of pressure and engagement to compel Tehran to address the concerns of the international community over its nuclear program. In fact, senior Iranian officials, including President Ahmadinejad have acknowledged the negative impact of sanctions. The macroeconomic indicators tell the story: the Iranian rial has lost nearly half of its value in nine months, oil exports and revenues are down significantly, and inflation is rampant throughout the economy.

The Administration’s recent actions on sanctions include:

An Executive Order targeting development of Iran’s upstream oil and gas industry and petrochemical sector. This order expands existing sanctions by authorizing asset freezes on persons who knowingly support Iran’s ability to develop its petroleum and petrochemical sector, which is one of Iran’s primary sources of funding for public projects like uranium enrichment.

President Obama also enacted legislation targeting the Central Bank and Iran’s oil revenues. Section 1245 of the 2012 National Defense Authorization Act (NDAA) places sanctions on foreign financial institutions for significant transactions related to the Central Bank of Iran (CBI) and designated Iranian financial institutions. As a measure of the successful implementation of the legislation, some 20 countries have qualified for banking exceptions under the NDAA because they significantly reduced their purchase of Iranian crude oil.

In addition, the 27-member European Union implemented a full embargo on Iranian crude oil effective July 1.

The possibility of sanctions has persuaded many firms to discontinue their business with Iran - Total, Shell, Statoil (Norway), Edison International (Italy), and many, many others. In fact, an Iranian official recently admitted that sanctions have led, according to their estimates, to a 20-30 percent reduction in sales of Iranian crude oil. This translates into almost $8 billion in lost revenue every quarter.

Our efforts aren’t limited to oil: as a result of U.S. and multilateral sanctions, major shipping lines have ceased servicing Iranian ports. The Islamic Republic of Iran Shipping Lines (IRISL), Iran’s major shipping line, and the National Iranian Tanker Company, Iran’s tanker fleet, have had increasing difficulty in receiving flagging, insurance, and other shipping services from reputable providers. This further decreases Iran’s ability to gain revenue.

As we continue to seek progress on the negotiating front, we will maintain unrelenting pressure on Tehran. We know the pressure we are bringing to bear has been vital to getting Iran to the negotiating table. We all have a stake in resolving the international community’s concerns about Iran’s nuclear program through diplomacy if we can, and so we will continue our work with countries around the world to keep pressure on Tehran.

#### Balanced sanctions regime prevent prolif and strong military

**McCormack and Pascoe 15** [McCormack, D., & Pascoe, H. (2015) War Prevention Initiative - peacebuilding to resolve global conflicts, xx-xx-xxxx, "Sanctions as a Tool for Peace", <https://warpreventioninitiative.org/peace-science-digest/sanctions-as-a-tool-for-peace/> Accessed 7-20-24]

Talking Points

Moderate sanctions lower the chance of war, but weak or overly destructive sanctions can increase the chance of war.

Sanctions can lead countries to diplomatic negotiations, which in turn contribute to future cooperation.

Sanctioning governments convey strength and solidarity through shared condemnation.

Summary

**Sanctions have the capacity to severely hinder a country’s economic growth and their ability to maintain a strong military presence. This** article provides further insight into the important role sanctions play in international politics, especially when used as a tool for military containment.

In this study, the research team creates a war game scenario pining two conflicting countries against each other to test if sanctions, or the threat of sanctions, would have an effect on the likelihood of violent conflict. In this war game, the countries are able to decide whether to impose sanctions or not, and chose to go to war or accept the other country’s terms – depending on the severity of the sanctions. The war game requires the fictitious sanctions to possess two qualities:

they must hurt economic consumption in both the sanctioned country and the country conducting the sanctions; and,

they must shift military power to the country conducting the sanctions.

This study illustrated how sanctions can vary in severity and time, which directly influences their impact on containing the military power of the country being sanctioned. The severity of sanctions is based on how interdependent the involved countries are and their economic dependence on imports and exports. Based on these variables, sanctions can be too weak and therefore fail to disrupt the military power balance, or they can be too severe and force the sanctioned country to rapidly increase their military power, or even preemptively attack, in an attempt to prevent the pending sanctions. **However, when moderately severe sanctions are applied to avoid the “too weak/too severe dilemma”, the research team found a drastic decrease in the probability of violent conflict and a reduction of the sanctioned country’s military capabilities.**

**The study also examined past sanction regimes to compare the results of the war game to historical knowledge. One of the examples used were the U.S. sanctions against Iran during the Iran-Iraq war. The sanction balance was strong enough to affect Iranian military power, but not too strong so that Iran would attack to escape the sanctions.** The study showed that in the period leading up to the sanctions, Iran’s defense budget and armed forces increased dramatically.

**Iran’s former dependence on Western weapons and parts was a major factor in the success of the sanctions. When the sanctioning countries halted trade, Iran had to turn to poor-quality replacement parts that rendered many of their war machines inoperable. By the end of the war, Iran had only 12 operational helicopters from the original 500. The economic effects of the sanctions carried over long after the end of the war as well; resupply orders were cut or canceled, leaving Iran with only 184 of the 1,500 tanks they ordered before the war and less than a quarter of the aircraft originally budgeted for.**

**The Iranian sanctions provide a good example of the specific outcomes a balanced sanctioning regime can cause to a threatening military presence. This research shows that thoughtful sanction regimes can truly change the outcome or likelihood of war without having to pay the high human and economic costs of military campaigns.**

Contemporary Relevance

The channels of communication created during sanction campaigns and in negotiating their end, can lead to more effective paths to conflict resolution in the future. As an example, the agreements made during the nuclear weapons deal between the US and Iran have led to additional cooperation during the recent imprisonment of U.S. Navy personnel arrested off the shore of Iran. This shows that negotiated pathways – which were partially made possible through sanctions – create channels of trust and cooperation when handling potentially volatile situations.

When examining the recent European Union/United States sanctions against Russia, some may suggest the sanctions failed considering Russia is not totally contained in Eastern Europe. However, others would argue the sanctions were successful due to their role in slowing Russia’s advance into Crimea, as well as any further Western military mobilization as a response. The balance of severity in the sanctions, as well as the unified message of support from the sanctioning countries, have so far been successful in preventing a large escalation of violence in the regional conflict.

Practical Implications

**Sanctions are a tool of diplomacy that provide governments with a nonviolent method to reduce another country’s military power.** The parties involved in conducting and receiving sanctions, as well as those observing the sanction campaign from the outside, benefit from an effective nonviolent method to address conflict. With time, these methods can bring the conflicting parties to the negotiating table. As David Cortright states, “[sanctions] are useful for persuading an adversary to come to the bargaining table, but they must be accompanied by meaningful incentives for cooperation”(\*1). Once a successful process of cooperation has begun, it is more likely that agreements and further cooperation can be achieved.

It is important to observe the success of a sanction regime though a wide lens, and not just by the immediately observable results**. Just because a country or group of countries failed to meet all of the objectives set before sanctioning does not mean that the sanctions failed. Rather, success should be weighed against the sanctions’ ability to balance power and the human and economic costs from a war that the sanctions may have helped prevent – not the potential hardships that come during a sanction regime.**

“Sanctions are means of applying pressure, but their effectiveness depends on offering to lift sanctions as an incentive for reaching a negotiated settlement”. (David Cortright, Peace Scientist)

#### Crackdown on oil is key to deter Iran – forces renegotiation

**Yaron**, 20**18** [Israeli Journalist for worldcrunch, “American Sanctions Are Back On Iran — Will It Work?”, WorldCrunch, https://www.worldcrunch.com/opinion-analysis/american-sanctions-are-back-on-iran-will-it-work-1]GH

Thousands of students marched through Tehran last weekend, and state television broadcast the protest march live. The crowd burned U.S. flags and pictures of President Donald Trump in front of the building of the former U.S. embassy. And, yes, they chanted: "Death to America." After the U.S. withdrawal from the nuclear treaty in May, the second round of sanctions against Iran started this month. The purchase of oil and petrochemical products from Iran's national oil company and other corporations in the country is now prohibited. The oil industry, of course, is **central** to the Iranian economy. But while Israeli Prime Minister Benjamin Netanyahu praised the new round of sanctions as a "historic step," the European Union made its displeasure clear. The EU's Foreign Affairs Commissioner, Federica Mogherini, expressed her regret at the return of sanctions, along with the foreign ministers of France, Germany and Britain, who had also signed the agreement in 2015. The countries want to save the deal, under which Iran renounced the development of nuclear weapons. The question is: What have the sanctions achieved so far, and what will new sanctions bring? One thing is certain: The first round of sanctions, which came into force at the beginning of August and bans Iran from buying and selling U.S. dollars, and from trading in precious metals, has serious consequences for the country. The Iranian currency lost 70% of its value last year. According to the Iranian central bank, food prices have risen 46.5% since September 2017. Numerous international corporations have stopped doing business in Iran for fear of American penalties. Oil exports, from which the government finances **half** of its entire budget, fell from 2.5 to 1.5 million barrels per day. Since half of Iranians depend on social assistance the International Monetary Fund expects a recession next year, while a study by the Iranian parliament predicts a decline in economic output of up to 5%. This economic pressure should "fundamentally change Iran's destabilizing behavior," U.S. Secretary of State Mike Pompeo declared. He has drawn up a list of 12 demands, including the end of the proliferation of ballistic missiles, an end of Tehran's support to terrorist organizations and of its military involvement in Syria. Washington also wants to renegotiate the nuclear treaty with Iran. Tehran is the main adversary of the U.S. and its allies in the region and has repeatedly threatened Israel with extinction. Washington's calculation is simple: the involvement of the Revolutionary Guards abroad is expensive. According to estimates by Western secret services, the Lebanese militia Hezbollah alone receives more than $700 million a year from Tehran. Yet "the population actually needs this money," says Professor Uzi Rabi, Director of the Moshe Dayan Center for Middle Eastern and African Studies at Tel Aviv University. It is generally accepted that it was the sanctions that led Iran's political leaders to make significant compromises within the framework of the 2015 nuclear deal, the same one that Trump has withdrawn from in order to bring the regime back to compromise. So far, Tehran has remained tough. It's said that the treaty will not be renegotiated or subjected to new conditions. The regime claims that it's well prepared for the new sanctions. According to media reports, India wants to invest $500 million in Iranian ports. Russia and China are considering establishing alternative trade routes via Iran to bypass the Suez Canal. At the same time, Tehran is expected to temporarily store large quantities of oil in Asia so that it can participate in Asian markets. In addition, the U.S. is allowing eight countries to continue sourcing oil from Iran, including India and Iraq. The EU plans to set up a mechanism that will allow European companies to bypass U.S. sanctions. Nevertheless, Iran expert Uzi Rabi believes that "Nobody can compensate for the U.S. sanctions, neither the EU, Russia nor China." In any case, the U.S. sanctions have had an impact on Iran's domestic policy. In large cities like Isfahan, Shiraz, Mashhad, and Tehran, there were summer protests against poverty . Thousands of demonstrators have blamed the regime's aggressive foreign policy for their plight. But the level of discontent has not yet reached a critical mass. Iran's Supreme Leader Ayatollah Ali Khamenei recently declared that the risk of the regime being destabilized to be small: "America's goal has been to reestablish the domination it had (before 1979) but it has failed. America has been defeated by the Islamic Republic over the past 40 years." Uzi Rabi sees it differently. "Tehran will change its policy if and when sanctions actually threaten the rule of those in power."

#### Monitoring Iranian evasion trends key.

**Torres**, **4-7**-2024, [Albert Torres is program manager of global policy at the George W. Bush Institute"Iran and Russia evade oil sanctions. Here's how to stop them.", Houston Chronicle, https://www.houstonchronicle.com/opinion/outlook/article/iran-russia-evade-oil-sanctions-19388021.php]GH

After the Oct. 7 attacks on Israel by Iran-backed Hamas, the Biden administration proudly touted its retaliatory crackdown on Iran’s oil revenue. Since 2023, however, Iran has made billions of dollars from its oil industry, using U.S. services and evading U.S. sanctions. And it’s not alone. The methods used to avoid detection and keep Tehran’s oil export profits consistent aren’t a secret. Front and shell companies hide oil tankers’ true owners; shippers turn to older and defective vessels that don’t use identification systems; ship-to-ship cargo transfers take place in unmonitored zones; and tankers’ locations are disguised by false trade routes. Russia resorts to similar systems to steer clear of sanctions on its oil trade and hide any connection the cargoes have to Moscow. Since the start of Russia’s full-scale invasion of Ukraine two years ago, several companies have popped up in India, Gabon, Laos and the United Arab Emirates that allow Russian tankers to register in different countries. The result is an armada that trades millions of barrels of oil a day without repercussions. Washington and the international community must tackle these challenges to sanctions’ effectiveness. It is critical we keep illicit funds generated from the black-market energy trade out of the hands of authoritarians and bad actors in places such as Iran and Russia. These efforts must start at home because Western companies have become service providers facilitating the transportation of forbidden oil products. This is often inadvertently because of the secrecy and difficulty in connecting oil exports to sanctioned countries. A recent New York Times investigation found that a U.S.-based insurance provider, the American Club, was involved in trading over 59 million barrels of Iranian oil in 2023. Similarly, a U.K.-based insurer had links to approximately 33% of all Russian oil exports between the early phases of the invasion of Ukraine and November 2023. Maritime insurance is essential to oil-exporting countries since most ports require ships to provide proof of coverage before conducting business trade. The strategy behind enforcement makes the problem more challenging for sanctioning countries. Rather than empowering the appropriate sanctions-supervising bureau, governments largely rely on the private sector to ensure that no targeted actors violate existing controls. This allows companies attracted by the oil industry’s profit potential to circumvent sanctions through willful negligence, or blindness to the red flags that signal sanctions evasion. The U.S. Treasury has only publicly enforced sanctions on the American Club once in the past 20 years, after the office discovered several transactions involving Cuba, Sudan and Iran. The company settled with the government for a $348,000 fine — significantly less than the original penalty of $1.7 million. Furthermore, the mechanisms Western countries use to help enforce sanctions could be more effective. For instance, there’s a $60 price cap on Russian oil, but no verification process. Only a simple attestation from people involved in Russian oil transactions is required. The price cap hasn’t been as productive as Western governments had hoped, with Russian oil consistently selling above the threshold. The existing loopholes have fragmented the global oil market, where shadow trade and economic partnerships between political allies have taken center stage. The current landscape benefits China, India and Turkey, which can purchase sanctioned oil at prices significantly below market value, according to a recent report by the American Enterprise Institute. Sanctioned outcasts have also strengthened their dependence on other markets in the Global South, as well as other isolated countries such as Libya, Cuba and Venezuela. The latter uses similar methods to avoid oil sanctions. There are several ways the West should reevaluate its sanctions strategy to bolster enforcement and restore traditional trade practices. Bureaus responsible for enforcing sanctions need greater resources. The U.S. Office of Foreign Assets Control, for example, should receive the funding required to create a branch to investigate liable companies’ sanctions compliance. The United States and all sanctioning countries should also develop a mechanism to share surveillance data on evasion trends. This can be done through the Egmont Group, an international organization that facilitates intelligence sharing between financial intelligence units. Governments should also begin to levy heavier and more appropriate penalties for those who assist targeted actors in avoiding sanctions. That will increase the risks associated with doing business with sanctioned entities and disincentivize private companies from prioritizing profit over compliance with Western policies. Lastly, Western governments should establish maritime monitoring zones in evasion hubs that will make it more difficult for sanctioned trade to occur. This should be coupled with appropriate customs agencies overseeing oil transactions to ensure traders are complying with sanctions. Sanctions are currently a symbolic tool that generates lackluster results. It’s time for Washington — and the West — to give them some teeth to maintain global security.

### 1NC---Secondary Sanctions Solve

#### Secondary Sanctions stop China Russia relations

**France 24**, ["US sanctions test China's 'no limits' friendship with Russia", France 24, <https://www.france24.com/en/live-news/20240513-us-sanctions-test-china-s-no-limits-friendship-with-russia>, 5-13-2024] TDI

**China's trade with Russia has hit record highs in recent years, drawing accusations that it is helping buoy its longtime ally's economy, with President Vladimir Putin due to visit Beijing in May.**

But Washington's recent vow to go after financial institutions that help Moscow fund the conflict has tested the boundaries of Beijing's bonhomie -- and left its banks fearful of getting cut off themselves.

**An executive order by President Joe Biden in December permits secondary sanctions on foreign banks that deal with Russia's war machine, allowing the US Treasury to cut them out of the dollar-led global financial system.**

**Since then, several Chinese banks have halted or slowed transactions with Russian clients, according to eight people from both countries involved in cross-border trade.**

"At the moment, it's tough to get money in from Russia," said one Chinese clothing wholesaler as he sat outside his store at a cavernous trade centre in downtown Beijing this week.

**"The banks don't give a reason... but it's probably due to the threat (of sanctions) from America,"** he said, as a handful of Russian visitors browsed shelves of Chinese electronics, leather bags and tea.

**Traders said banks are imposing extra checks on cross-border settlements to rule out any risk of exposure to sanctions -- screening that can take months and has jacked up costs, sparking cash flow crises at smaller import-export businesses.**

Another business owner told AFP on condition of anonymity they had been forced to close their China operations and return to Russia as they "cannot get any money from customers".

**The traders declined to be identified due to the sensitivity of discussing Beijing and Moscow's trading relationship.**

The payment hold-ups have coincided with a fall in Chinese exports to Russia during March and April, down from a surge early in the year.

"Even though the sanctions were imposed to (hinder) the export of certain items from China, they have some impact on ordinary trade," Pavel Bazhanov, a lawyer serving Russian businesses in China, told AFP.

The slowdown in payment processing contrasts "starkly" with the rapid handling of yuan-denominated transactions in the past, he said.

**'Better safe than sorry'**

**Trade between China and Russia has boomed since the Ukraine invasion and hit $240 billion in 2023, according to Beijing's customs figures.**

**But reports that Russian companies were struggling to clear payments with Chinese banks first emerged in the Russian media at the start of the year.**

The Kremlin admitted the problem in February, with spokesperson Dmitry Peskov later slamming "unprecedented" US pressure on China.

Beijing has not publicly acknowledged the delays but its foreign ministry told AFP it opposed "unilateral and illegal US sanctions".

Behind the scenes, however, Chinese banks are ensuring they do not put targets on their backs, analysts said.

"Finding out whether the payments are related to the Russian military-industrial complex... is creating a considerable challenge for Chinese companies and banks," said Alexander Gabuev, director of the Carnegie Russia Eurasia Center in Berlin.

"They are operating on better-be-safe-than-sorry principles, which reduces the volume of transactions," he told AFP.

Mending US ties

President Xi Jinping and Putin have made much of their countries' "no limits" friendship, and the Russian leader told a business forum last month a visit to China had been planned for May.

But slowing domestic growth in China has created incentives for Beijing not to invite further damage to its economy, the Wilson Center's William Pomeranz said.

Other experts said the banks' newfound caution reflected Beijing's desire to manage its rivalry with the United States ahead of this year's election.

Ties between the world's two largest economies have steadied in recent months after years-long spats over trade, technology and other issues.

Chinese officials may have directed banks to scrutinise Russia payments to ensure they not create "a wedge issue in the US election", said Wang Yiwei, head of the Institute of International Affairs at Renmin University of China.

"China would not be stupid enough" to let a major bank fund Russia's war, Shanghai-based international relations scholar Shen Dingli said.

"(They) won't give the US the option to impose full sanctions."

No greenbacks

Part of the solution could be a move long touted by countries keen to shield themselves from US sanctions: financial systems independent of the US dollar, experts said.

#### Smart Sanctions can target third party actors

**Stankeiciute 23** [Gabija StankevičIūTė, 4-6-2023, "The Complete Sanctions Screening Guide [Updated 2024]", iDenfy, <https://www.idenfy.com/blog/sanctions-screening-guide/> Accessed 7-22-24]

What are the Main Types of Screening Controls?

Typically, companies use two key screening controls:

Customer screening is designed to detect sanctioned individuals, entities, or organizations during the onboarding process and other stages of the customer relationship.

Transaction screening is programmed to spot transactions that are linked to sanctions on individuals, entities, and organizations.

Despite that, sanctions are complex and come in different forms**. While economic embargoes ban all transactions and activities involving a specific country, list-based or smart sanctions target specific individuals, entities, and organizations.**

**In contrast, secondary sanctions target third-party actors that engage in business with a specific regime, person, or organization. For instance, some Ukraine-related programs focus on Russia’s financial and energy sectors. This implies that entities not on a sanctions list but connected with a sanctioned entity can pose a risk to the related business.**

#### Smart sanctions weaken Russia

**Kennedy 22** [Opinion By Craig Kennedy, 4-26-2022, "Opinion", POLITICO, <https://www.politico.com/news/magazine/2022/04/26/sanction-russian-oil-without-hurting-west-00027478>] TDI

**When it comes to its oil exports to the West, Russia faces limits on its ability to redirect or reduce these volumes. These constraints arise from the sheer scale and inherent inflexibility in Russia’s system of production and transportation. Such limitations have been largely overlooked in recent sanction debates. But, if properly leveraged, they enable the West to design smart sanctions that could slash Russia’s oil revenues while also averting an oil price shock. What’s more, they could also fund reparations to Ukraine at Russia’s expense.**

**The first of these vulnerabilities is Russia’s limited ability to redirect its Western export volumes to other markets. A glance at the map reveals that Russia’s export infrastructure of pipelines, railways and sea terminals skews heavily to the West. This is not surprising, since Russia has been exporting oil to Europe since the 1870s. The West today is by far Russia’s largest customer, absorbing some 6 million barrels a day of Russian oil — over half Russia’s total output. By contrast, Russia’s export infrastructure to Asia is relatively modest. The first and only pipeline to China and the Pacific wasn’t completed until 2019 and carries less than 15 percent of Russia’s total output.**

So, what would happen to those 6 million barrels a day if the West stopped buying? Russian officials have threatened to send it “elsewhere,” while the media have focused on stories of stepped-up sales to China and India. But this threat of a redirection to Asia is a paper tiger.

To begin with, Russia’s pipeline capacity to Asia is already full. **This means the redirected oil would need to travel by sea from terminals on the Black Sea and the Baltic. To move that much oil over such a long distance would require some 230 supertankers — 30 percent of the global fleet — operating day in and day out. Such a massive seaborne flotilla (if it could even be chartered in the first place) would require a small army of third-party enablers: marine insurers, bankers, commodities traders, vessel owners, etc. Some of these third parties have already been avoiding the Russia oil trade, fearful of current sanctions. If the West imposes a full, coordinated embargo on Russian exports, including sanctions on third parties enabling the trade, most ships in the flotilla would never set sail. The sanctions risk would be too great. Instead, the volumes previously flowing West would end up “stranded” on Russian shores.**

Which begs the question: What would Russia do with all that stranded oil? The answer highlights Russian oil’s second strategic vulnerability. Russia lacks large-scale storage capacity, so the only option would be to leave all this oil in the ground — that is, not to produce it in the first place. Known as “shutting in production,” this scenario would be severely damaging to Moscow for several reasons, some self-evident others less so.

Most obvious would be the loss of vital export revenues. Less evident, however, is the extensive damage a prolonged, large-scale shut-in could do to Russia’s upstream production capacity. Russia is not like Saudi Arabia, where advantageous geology and advanced infrastructure create immense swing capacity — the ability to vary production levels quickly and efficiently. Most Russian oil wells have meager flow rates and poor economics. A prolonged, large-scale shut-in would mean laboriously closing tens of thousands of these marginal wells, many of which could never return to profit. It could also compromise complex pressure maintenance programs critical to field profitability.

Restoring lost production capacity at marginal fields after a long shut-in would be a very slow and costly process — if it is possible at all. When Russia suffered a major drop in production in the early 1990s, it took over a decade, along with large amounts of Western capital and technology, to restore production to its previous levels.

Beyond operational consequences, there would be still other negative consequences of a shut-in. It would weaken support for Putin in Russia’s important oil producing regions. It would erode Russia’s standing in the OPEC+ cartel, and it would put Russia’s export market share at risk. Finally, it would deprive Putin of the key source of economic rents used to maintain his authoritarian rule.

**With diversion to Asia a chimera and shutting-in a catastrophic risk, Russia turns out to be far more reliant on the West to absorb its oil than many Western policymakers may realize. And this dependency gives the West the leverage needed to impose smart oil sanctions that can achieve Western objectives while minimizing self-harm**.

**How would such sanctions work? Western governments would start by announcing a full embargo on all Russian oil exports. This should include secondary sanctions on third parties, thus stranding large amounts of export oil in Russia. But the embargo would include provisions that allow Russia to resume exporting its stranded oil, provided it sells through a special Western-administered sanctions regime that severely limits the proceeds sent back to the Kremlin.**

**Under this regime, Russian producers would sell their exported oil at normal market prices. But they wouldn’t receive the full market price for the sale. Instead, the sanctions administrator would pay them a reduced price only sufficient to cover their production costs, excluding any amounts for Russian taxes**. In Russia, average production costs run around $20 a barrel, before taxes. The difference between this $20 of “cost-only” proceeds and the actual market price would go into a special fund for Ukraine reparations.

For example, if oil is selling at $80 a barrel, the Russian seller would get a “cost-only” payment of $20, while the remaining $60 would go to fund Ukraine reparations. Compare that to what currently happens: The Russian seller gets the full $80 a barrel, $55 of which gets passed on to the Russian government as taxes. In effect, the cost Russia must pay to avoid a painful shut-in is to surrender all its oil profits (including taxes) to rebuild Ukraine.

Kremlin revenues slashed, a supply shock averted and a half-billion dollars a day for Ukraine reparations — there must be a catch. The catch is that Russia can’t be forced to export its stranded oil. Selling would clearly be in Russia’s economic self-interest: It receives just enough to keep its most strategic industry afloat while avoiding a crippling shut-in. But it wouldn’t be at all surprising if Russia opted — at least initially — to shut in production in hopes of roiling global markets and breaking Western resolve. The Kremlin could also pursue sanctions of its own; in fact, the EU is already hard at work trying to prepare for the possibility of restricted gas exports to Europe.

But the longer Russia chose to shut in its oil, the more severe the consequences, both economically and geologically. Putin has already lost one flagship in this war. He may think twice before scuttling his most strategic industry.

## Internal Link

### 1NC---Congressional Authority I/L

#### Sanctions Are Congress’s Path Back to Foreign Policy Relevance

**Alter 18** [Benjamin Alter, Benjamin Alter is a J.D. candidate at Yale Law School. In 2014–15, he was a special adviser to the Treasury undersecretary for terrorism and financial intelligence. 3-27-2018, "Sanctions Are Congress’s Path Back to Foreign Policy Relevance", Default, <https://www.lawfaremedia.org/article/sanctions-are-congresss-path-back-foreign-policy-relevance> Accessed 7-18-24]

On March 15, the Treasury Department [issued its first sanctions](https://home.treasury.gov/news/press-releases/sm0312) under a sweeping law signed by President Trump last August. The department both reiterated previous U.S. sanctions against two Russian intelligence agencies and targeted a number of Russian cyber officials. Additionally, pursuant to [Executive Order 13694](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/cyber_eo.pdf), the administration designated the sixteen Russian malfeasants indicted last month by Special Counsel Robert Mueller for interfering in the 2016 election.

This month’s sanctions ended months of suspense over the Trump administration’s approach to the [Countering America’s Adversaries Through Sanctions Act](https://www.congress.gov/bill/115th-congress/house-bill/3364/text). The law, passed by veto-proof majorities in both houses of Congress, both required new sanctions against Russia for its malicious cyber activities and placed unprecedented restrictions on the president’s discretion to implement and lift those sanctions.

The president had made no secret of his distaste for the law, calling it “[significantly flawed](https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-signing-h-r-3364/)” and promising that he could “[make far better deals](https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-signing-countering-americas-adversaries-sanctions-act/) with foreign countries than Congress.” Then, for several months, the White House blew past deadlines to implement the sanctions, claiming they [were not needed](https://www.politico.com/story/2018/01/29/russia-sanctions-white-house-congress-376813) because the very existence of the law on the books was deterring Russian interference.

Trump’s decision to finally implement the sanctions seemed like a return to normalcy—a delayed acknowledgement by the president of his constitutional responsibility to enforce statutes duly enacted by Congress. But the extent to which Congress forced Trump’s hand in imposing even these modest sanctions is actually quite unusual. It is rare for Congress to compel the president to implement a foreign policy program with which he fundamentally disagrees, much less one that bolsters the legitimacy of a federal investigation into his campaign.

**This episode sheds light on an important fact: Sanctions are a foreign policy tool uniquely entrusted to Congress by the Constitution, which provides that Congress shall “**[**regulate commerce with foreign nations**](https://www.law.cornell.edu/constitution/articlei#section8)**.”** **Unlike the other major levers of U.S. foreign policy—diplomacy and military force, over which the Constitution divides control between Congress and the executive—the president has no inherent power to impose sanctions or to refuse to implement congressionally mandated sanctions. As sanctions continue to grow in importance, becoming the default U.S. policy response to a range of international crises, Congress will enjoy newfound** **potential to shape U.S. foreign policy in ways that have eluded it for decades.**

When Congress passes laws that contravene the executive branch’s foreign policy priorities, the president often seeks a constitutional escape hatch. Presidents’ lawyers regularly urge them to disregard statutes that the executive understands to infringe on its inherent military and diplomatic powers.

Every administration does this. President George H.W. Bush [declined to follow a statute](http://www.presidency.ucsb.edu/ws/index.php?pid=17877) that would have capped the number of U.S. military personnel deployed in Europe. President Bill Clinton’s Justice Department advised the president to [disregard a statute](https://www.justice.gov/file/20051/download) that would limit his ability to place U.S. forces under United Nations command. In 2002, when Congress passed a law effectively requiring the State Department to recognize Israeli sovereignty over Jerusalem, President George W. Bush [refused to implement it](http://www.presidency.ucsb.edu/ws/?pid=63928), arguing that the law would “interfere with the President's constitutional authority to … speak for the Nation in international affairs and determine the terms on which recognition is given to foreign states.” President Barack Obama [ignored a law](https://www.justice.gov/olc/opinion/constitutionality-section-7054-fiscal-year-2009-foreign-appropriations-act) that tried to stop U.S. diplomats from attending U.N. meetings chaired by state sponsors of terrorism.

Of course, not every refusal to follow a law passed by Congress is unconstitutional. The Supreme Court has acknowledged, most recently in [Zivotofsky v. Kerry](https://www.oyez.org/cases/2014/13-628), that a president should prevail over the contrary will of Congress if the executive’s constitutional powers are “both exclusive and conclusive on the issue.” As commander in chief and America’s top diplomat, the president enjoys certain constitutional powers that cannot be defeated by Congress. For example, Congress cannot directly compel the president to negotiate a treaty, recognize a foreign nation, or send military forces into battle.

**But sanctions are different. From a policy perspective, presidents might reasonably see sanctions as an alternative to diplomacy and military force**—as just another tool at their disposal. The constitution begs to differ. Whereas the Constitution divides responsibility for war and diplomacy between the two branches, it vests Congress with the exclusive authority to regulate foreign commerce.

**Congress has always had this constitutional power, and the president has always been without it. In practice, however, Congress has tended to recognize the benefits of giving the president leeway to impose sanctions in response to foreign threats. As a result, throughout U.S. history, Congress has broadly delegated to the president control over America’s tools of economic coercion.** Laws like the World War I-era Trading With the Enemy Act and the International Emergency Economic Powers Act of 1977 handed the president practically unlimited discretion to impose sanctions for national security purposes, in wartime and peacetime alike.

But any power that Congress may give, it may also take away. And in recent years—skeptical first of the Obama administration’s approach to Iran and then of the Trump administration’s approach to Russia—**Congress has begun taking back the reins of sanctions policy. It has done so by mandating that specific sanctions be imposed and by limiting the executive branch’s ability to lift existing sanctions.**

**In 2011, for example, unsatisfied with the Obama administration’s pressure campaign against Iran, Congress sought to restrict Iranian oil exports through sanctions on foreign banks that processed oil transactions with the Central Bank of Iran. Administration officials publicly**[**lobbied against the proposal**](http://foreignpolicy.com/2011/12/01/menendez-livid-at-obama-teams-push-to-shelve-iran-sanctions-amendment/)**, worried that it would disrupt their diplomatic efforts and cause a spike in oil prices that could benefit Iran. Congress persisted, Obama relented, and the sanctions were codified in Section 1245 of the**[**2012 National Defense Authorization Act**](https://www.congress.gov/bill/112th-congress/house-bill/1540/text)**. These sanctions—which could be waived for any jurisdiction that significantly reduced its purchases of Iranian oil—helped**[**cut Iran’s exports in half**](https://www.foreign.senate.gov/imo/media/doc/Cohen_Testimony1.pdf)**between 2012 and 2015 and are as responsible as anything else for bringing Iran to the negotiating table.**

What all this means is that there is now a major lever of U.S. power—economic coercion—that is far less subject to presidential control than the traditional foreign policy tools of diplomacy or military force. At the same time, the United States is increasingly relying on economic coercion to advance its interests. In the last decade, successive presidents have turned to sanctions to achieve some of their most important goals, including constraining Iran’s nuclear program, punishing Russia’s annexation of Crimea and preventing the financing of terrorist organizations.

Sanctions, then, offer Congress a path back to foreign policy relevance after years of abdicating responsibility to the executive. Members of Congress seem to understand this. Sen. Bob Corker, the chairman of the Foreign Relations Committee, applauded the Senate’s passage of the 2017 sanctions legislation by [noting](https://www.foreign.senate.gov/press/chair/release/senate-overwhelmingly-passes-iran-and-russia-sanctions), “For decades, Congress has slowly and irresponsibly ceded its authorities to the executive branch, particularly as it relates to foreign policy. Today marks a significant shift of power back to the American people’s representatives.”

**The rise of sanctions as a foreign policy tool uniquely suited to congressional control has its benefits. A Congress that is trigger-happy when it comes to sanctions can enhance the U.S. bargaining position**. **This was the case in the lead-up to the Iran nuclear deal, when the Obama administration played the good cop to Congress’s bad cop. The Iran deal also showed that Congress can use leverage it gains from its control over sanctions to have a greater say in U.S. international agreements and—to the extent that diplomacy and economic pressure are seen as an alternative to war—debates over the use of military force. At bottom, wielding sanctions gives Congress an opportunity to restore the executive-legislative balance in foreign relations.**

But in its zeal to assert control, Congress should avoid two important pitfalls. First, sanctions shouldn’t be used to score cheap political points. The [near-unanimous](https://en.wikipedia.org/wiki/Comprehensive_Iran_Sanctions,_Accountability,_and_Divestment_Act_of_2010) [vote](https://www.nbcnews.com/news/us-news/senate-joins-house-overwhelmingly-passing-new-russian-sanctions-n787291) [tallies](https://www.reuters.com/article/us-northkorea-usa-sanctions/senate-unanimously-backs-tougher-north-korea-sanctions-idUSKCN0VJ2OS) in landmark sanctions bills of the last decade reveal the extent to which imposing sanctions is irresistibly good domestic politics. Sanctions are a win-win for members of Congress: They can tell their constituents that they are doing something about a foreign threat and register a disagreement with the president without risking unpopular or ill advised military action. But sanctions are not merely symbolic political acts; they are powerful financial weapons that can upend international politics. Congress should use this tool judiciously.

Second, even when Congress mistrusts the president’s foreign policy priorities, it should not deny the president all flexibility in the enforcement of sanctions. Congress often includes waiver provisions in its mandatory sanctions legislation, allowing the president to lift sanctions when the national interest requires it. Preserving some wiggle room is good policy. **When the United States imposes sanctions in order to change an adversary’s behavior, the implicit deal being offered is that the sanctions will be lifted when the behavior changes. But those adversaries will hesitate to change their behavior if they doubt that the sanctions relief will be forthcoming because of U.S. domestic politics**. Foreign governments may not trust Congress to act in good faith, or to respond quickly to changes on the ground.

Perhaps this is what Trump had in mind when he boasted that he could “make far better deals” than Congress. But when the president’s proposed deal involves ignoring Russia’s attack on American democracy, Congress ought to be skeptical. The president may have the right to speak for the nation, but thanks to sanctions, Congress will have its say too.

## Net Benefit

### 1NC---Executive Power Bad

#### Congressional power declining---democratic backsliding and executive aggrandizement.

**Williamson 23** [Vanessa Williamson; senior fellow in Governance Studies at Brookings, and a senior fellow at the Urban-Brookings Tax Policy Center; “Understanding democratic decline in the United States”; Brookings; https://www.brookings.edu/articles/understanding-democratic-decline-in-the-united-states/; October 17, 2023] TDI

Experts agree that the health of U.S. democracy has declined in recent years—but what does that mean? The United States is experiencing two major forms of democratic erosion in its governing institutions: election manipulation and executive overreach. Most obviously, after the 2020 election, the sitting president, despite admitting privately that he had lost, attempted to subvert the results and remain in office. But democratic erosion in the United States is not synonymous with Donald Trump. Since 2010, state legislatures have instituted laws intended to reduce voters’ access to the ballot, politicize election administration, and foreclose electoral competition via extreme gerrymandering. The United States has also seen substantial expansions of executive power and serious efforts to erode the independence of the civil service. Against these pressures, the **gridlocked** and **hyperpartisan** Congress is poorly equipped to provide unbiased oversight and accountability of the executive, and there are serious questions about the impartiality of the judiciary. What is democratic decline? Globally, it is increasingly rare for an authoritarian to come to power via a coup.1 Instead, democracies in decline usually experience a slow but steady erosion. The process is often incremental and episodic. Each step is only partial. There can be intermediate moments of apparent stability or equilibrium.2 In the words of political scientists Daniel Ziblatt and Steven Levitsky: “The electoral road to breakdown is dangerously deceptive… People still vote. Elected autocrats maintain a veneer of democracy while eviscerating its substance. Many government efforts to subvert democracy are ‘legal,’ in the sense that they are approved by the legislature or accepted by the courts.”3 Political scientists use a variety of terms to describe this phenomenon, including “democratic erosion,” “democratic backsliding,” “democratic regression,” and “autocratization.” Whatever the terminology, democratic decline has ramifications throughout society. It is associated with certain changes in public attitudes, including vilification of members of the opposing party and widespread misinformation. There tends to be a decline in non-governmental institutions critical to a healthy public sphere, such as an independent media, a vibrant education system, and an engaged civil society. All these symptoms of decline are present in the United States.4 This report, however, focuses on democratic decline in the government itself because democratic backsliding tends to be driven by the choices of political leaders, not a sudden groundswell of authoritarianism in the general populace.5 The United States is experiencing two major forms of democratic erosion in its governing institutions:6 Strategic manipulation of elections. Distinct from “voter fraud,” which is almost non-existent in the United States, election manipulation has become increasingly common and increasingly extreme. Examples include election procedures that make it harder to vote (like inadequate polling facilities) or that reduce the opposing party’s representation (like gerrymandering). **Executive aggrandizement**. Even a legitimately elected leader can undermine democracy if they eliminate governmental “checks and balances” or consolidate power in unaccountable institutions. The United States has seen substantial expansions of executive power and serious efforts to erode the independence of the civil service. In addition, there are serious questions about the impartiality of the judiciary. Before we examine democratic decline in the United States in the 21st century, it is important to recognize the historical context. Many longstanding aspects of America’s governing institutions can reasonably be criticized as anti-democratic or a danger to civil liberties. The Senate and Electoral College are part of the Constitution; the filibuster7 and the doctrine of “judicial supremacy” date back to the 19th century. The United States has always relied on winner-takes-all geographically based representation, which can result in substantial misrepresentation when partisans are segregated—even absent intentional gerrymandering.8 In addition, though the nation’s founders saw a standing army and strong executive as dangers to the republic, the power of the presidency has steadily increased over time and the American military has for decades been by far the most expensive in the world. Most significantly, the United States only achieved nearly universal suffrage after 1965, when the federal government finally protected the voting rights of Black Americans in the South. The period since universal suffrage has seen massive expansions in policing and incarceration.9 The pathologies that beset American governance today are a part of the long backlash to the successes of the Civil Rights Movement.10 The idiosyncrasies of American government and the nation’s long history of race-based political exclusion create specific susceptibilities to democratic erosion, but the United States is far from alone in seeing its democracy erode. Democracy is in decline around the world. For the first time in decades, there are more closed autocracies than liberal democracies11 in the world. Experts downgrade U.S. democracy In 2020, then-President Trump, knowing that he had failed to win re-election, refused to concede and instead sought to subvert the vote counting and certification process. On January 6th, with President Trump’s encouragement, his supporters stormed the Capitol. The House Select Committee that investigated the January 6th attack concluded that the president had engaged in a “multi-part conspiracy to overturn the lawful results of the 2020 Presidential election.” But 2020 does not mark the beginning of democratic decline in the United States. Precise quantitative measures of democracy are difficult to develop—there are, for example, multiple metrics used just to define gerrymandering.12 But to measure the core elements of democracy between countries and over time, social scientists have developed a robust toolkit of indices that track and aggregate indicators of electoral processes, political participation, government functioning, and civil liberties. These indices vary somewhat in their measurement strategies, but across the board, they demonstrate substantial erosion of democratic functioning in the United States for years before President Trump’s 2020 election subversion attempt. According to the Economist, the United States now ranks not among the world’s “full democracies” (such as Canada, Japan, and most of Western Europe) but among the “flawed democracies” (such as Greece, Israel, Poland, and Brazil). Experts agree that U.S. democracy is in decline Figure 1 summarizes the ratings the United States has received since 2008 in the Economist’s Democracy Index, Freedom House’s measure of Freedom in the World, and the “V-Dem” index from the Varieties of Democracy Institute at the University of Gothenburg.13 These indices come to a consistent conclusion: Freedom and democracy in the United States is in decline. According to the Economist, the United States now ranks not among the world’s “full democracies” (such as Canada, Japan, and most of Western Europe) but among the “flawed democracies” (such as Greece, Israel, Poland, and Brazil). What is driving these shifts? As early as 2018, the researchers at the Varieties of Democracy Institute identified concerns about inadequate checks on executive power and the freedom and fairness of elections,14 issues that also feature in Freedom House and Economist analyses.15 Strategic manipulation of elections The American states have diverged substantially in their commitment to democratic practices. While some states have expanded voter access and strengthened impartial election administration, other states have moved in the opposite direction.16 Political scientist Jake Grumbach has developed the most comprehensive and rigorous measure of state-level electoral democracy, the State Democracy Index (SDI), which takes account of factors like polling place wait times, red tape voter registration procedures, and gerrymandering.17 The SDI quantifies the divergence occurring between U.S. states. In 2018, 17 states had a higher SDI than they did during the period from 2000 to 2010, indicating a stronger democracy in those states. The other states, however, have seen their SDI decline—some by a very substantial margin. Figure 2 shows the 12 states at the bottom of the SDI.18 Almost all the states scoring poorly in 2018 have seen very large declines since 2010; these weak-democracy states have weakened recently and drastically. Figure depicting democratic erosion across U.S. states At least as important as the magnitude of the decline is the reason for this erosion of electoral democracy. Grumbach finds that partisan polarization has a “minimal role” in explaining the states’ democratic backsliding, but that Republican control of state government “dramatically reduces states’ democratic performance.”19 Grumbach’s finding confirms earlier research identifying the association between GOP control and the adoption of measures to restrict access to the ballot.20 The declining commitment to democracy is occurring both at an elite level and in the base of the party; survey research demonstrates that “ethnic antagonism” has eroded “Republicans’ commitment to democracy.”21 What has happened since 2020? Since 2020, there have been promising signs for American democracy. For one, those who participated in the 2020 election subversion effort have faced investigation and, in some cases, prosecutions; these processes bode well for the continuance of the rule of law. In addition, the 2022 elections occurred without major incident. However, we have not seen a change in the fundamental political dynamics that led to the erosion of U.S. democracy. As long as a major political party remains uncommitted to accepting legitimate electoral defeat, democracy cannot be reasonably described as secure. Crucially, there have been legal consequences for those who participated in the events on January 6th and for others who attempted to subvert the 2020 election. Over 1,000 participants in the January 6th invasion of the Capitol have been charged, and over 600 have pled guilty.22 For his attempted election subversion, Trump has been indicted on federal conspiracy charges and on racketeering charges in the state of Georgia. Given the weakness of democracy in many American states and the attempted election subversion that occurred in 2020, there were reasonable worries about the 2022 elections. It was not clear whether defeated candidates would follow the election subversion playbook laid out by former President Trump. In addition, there were “election-denying”23 candidates running for state positions that would have given them substantial authority over election administration. On both fronts, the results were reassuring. Candidates generally conceded defeat soon after it was clear they had lost. The election-denying candidates running for major state positions in battleground states did not win. That said, the politicization of election administration has not ceased. Until recently, election administration was demonstrably nonpartisan,24 but in many states it has now become a partisan issue. Since 2020, state legislatures have passed dozens of laws to increase partisan control over election administration and vote counting procedures.25 Politicization also continues at the local level, with many veteran election administrators retiring and in some cases being replaced with election deniers.26 It is not at all obvious that the GOP rank and file will accept legitimate defeats in 2024, or that all prominent party leaders will validate free and fair election outcomes unless they are Republican victories. More broadly, there is no longer a bipartisan consensus on the set of rules that govern the transfer of power. Trump remains the front-runner in the 2024 Republican presidential primary, and most of his opponents for the nomination have vowed to support him even if he is convicted of election-related crimes. The other leading contender for the GOP nomination, Florida Governor Ron DeSantis, for years refused to say whether he thought the 2020 election result was legitimate, and has campaigned for many prominent election deniers. The Republican National Committee described the attempted election subversion as “legitimate political discourse.” There are a larger number of election deniers in Congress today than in 2021. About two-thirds of Republican voters still deny that Biden legitimately won the 2020 election. It is not at all obvious that the GOP rank and file will accept legitimate defeats in 2024, or that all prominent party leaders will validate free and fair election outcomes unless they are Republican victories. Executive aggrandizement Democratic erosion can occur between elections. Even a legitimately elected leader can become an autocrat through executive aggrandizement: consolidating power by reducing the independence of the civil service and by undermining the “checks and balances” provided by the legislature and judicial system. The civil service is essential to good governance, but it is also a critical component of modern democratic practice. For one, government agencies collect and release vitally important data that citizens use to assess whether politicians are doing a good job. It is critical, therefore, that government agencies in charge of reporting politically salient information (like unemployment rates or government spending figures) are not corrupted by partisan considerations. Voters need access to unbiased information. In addition, election integrity is threatened if incumbents can weaponize the provision of government services or government jobs for partisan ends—as anyone familiar with the history of machine politics in Chicago or New York can attest. Would-be autocrats commonly seek to mobilize the powers of the state to undercut political opposition and tighten their grasp on power both between and during elections.27 State institutions are either debilitated or become bulwarks of the ruling party. To an unprecedented degree, the Trump administration and its allies sought to delegitimize, incapacitate, and politicize the independent civil service.28 Throughout his term and as part of his attempted election subversion, President Trump pressured and fired senior officials in the Justice Department.29 During the COVID-19 pandemic, the Trump administration interfered with the health reports provided by the Centers for Disease Control.30 Civil servants at every level of government experienced retaliation when their work did not comport with the claims or preferences of the administration. Entire offices were relocated to distant cities, forcing employees to uproot their families or quit. Attacks on the honesty of individual election officials, health officials, and others became commonplace, in some cases provoking threats of violence against them.31 Shortly before the 2020 election, President Trump released an executive order, “Schedule F,” intended to give him the authority to fire as many as 50,000 career civil servants. Preparations are underway to continue this process of power consolidation under a future Republican president, whether or not that president is Trump.32 Unfortunately, **dysfunction in Congress** leaves the legislature poorly positioned to check expansions of executive authority. At times, legislators have taken active steps that have contributed to democratic erosion. In 2016, Senate Republicans chose to leave a Supreme Court vacancy open for a year, rather than consider a nomination from President Barack Obama—an unprecedented move that increased the partisan skew of the judiciary. More recently, Republicans in Congress, with a few notable exceptions,33 have tolerated or supported President Trump’s election subversion efforts.34 But even more than its hyperpartisanship, the gridlock and inertia of the legislature make the first branch of government unable to provide the appropriate checks and balances on the executive or judiciary. Congress is slow to act, and even with united party control, often fails to make headway on policy items purported to be at the top of the party agenda.35 What about the courts? Unlike the legislature, the Supreme Court’s power has grown substantially over time. An independent judiciary can provide a strong check on attempted election manipulation and executive aggrandizement; would-be autocrats commonly seek to curtail the powers of the judiciary or to put the courts under the control of loyalists.36 An important question, then, is the impartiality of the judiciary and the commitment of the courts to preserving democratic processes. The contemporary Supreme Court’s record is far from reassuring. What is more, the contemporary Court seems very comfortable expanding the scope of its authority; to the extent judicial decision-making approaches legislating, it violates democratic standards that put the power to make laws in the hands of an elected body. Today, most Americans —including most Democrats and most Republicans—believe the Court is motivated primarily by politics, rather than by the law. Judicial decision-making has never met the ideal of perfect impartiality,37 but the Supreme Court has become exceptionally conservative and partisan in recent years,38 while bypassing standard procedures, precedents, and norms that had previously governed the Court.39 President Trump was able to nominate three members to the Supreme Court, as well as an unusually high number of appeals court judges. Justice Clarence Thomas has come under scrutiny for his connections to the Trump team that attempted to overturn the 2020 election.40 Today, most Americans —including most Democrats and most Republicans—believe the Court is motivated primarily by politics, rather than by the law. On questions of executive aggrandizement, the courts, including many very conservative judges, issued a long string of defeats to the Trump administration. On matters of administrative law, Trump lost nearly 80% of the time. But this was, legal observers agree, in large part because the administration evinced a startling disregard for even basic aspects of legal and administrative process. It is not obvious that Trump’s pattern of defeat would be repeated under a more procedurally competent administration. Scholars have suggested that the Supreme Court under John Roberts seems inclined to approve a much broader scope of presidential authority over the civil service.41 In addition, conservative members of the Court seem poised to roll back the federal bureaucracy’s longstanding regulatory functions.42 The Supreme Court has also narrowed the scope of voting rights protections and expanded its interventions in elections as they occur. Starting in 2013, the Court began cutting back the 1965 Voting Rights Act (VRA) that **outlawed racially discriminatory** voting practices,43 allowing states to implement procedures previously barred as discriminatory. In 2020, the Supreme Court intervened to block several emergency efforts intended to make voting easier during the COVID-19 pandemic. In 2022, the Court took the unusual step of staying an injunction against Alabama’s redistricting map that a lower court found discriminatory, effectively ensuring that the map would be in place for the election.44 In addition, the Supreme Court has expanded its authority in the adjudication of disputed elections.45 In 2000, the Supreme Court overturned a lower court ruling in the 2000 election case, Bush v. Gore, stopping a recount of votes in Florida and ensuring the election of President George W. Bush. This ruling was at the time seen as anomalous, and the majority opinion itself included limiting language suggesting that the case should not be used as precedent.46 Today, however, three participants in the Bush 2000 legal effort are now on the Supreme Court,47 and Justice Kavanaugh has cited Bush v. Gore in a 2020 election case. The recent decision in Moore v. Harper reinforced the role of the court system, and particularly the Supreme Court, in settling election disputes. Conclusion The effort by President Trump to subvert the 2020 election is the most obvious, but far from the only, example of democratic backsliding in the United States. State legislatures under GOP control have moved to reduce voters’ access to the ballot and to politicize election administration. President Trump also engaged in unprecedented efforts to undermine the independent civil service. The Supreme Court has increased its authority over election adjudication, narrowed the scope of voting rights protections, and seems inclined to support some **politicization of executive** branch administration. Hyperpartisanship and gridlock leave Congress poorly positioned to provide checks on executive and judicial power.

#### Executive unilateralism causes institutional dysfunction and militarism---collapses democracy.

Koh 23 [Harold Hongju; Sterling Professor of International Law at Yale Law School. He is the State Department’s Legal Adviser and Assistant Secretary of State for the Bureau of Democracy; “The 21st Century National Security Constitution”; https://openyls.law.yale.edu/handle/20.500.13051/18390; December 2023]

I. Synergistic Institutional Dysfunction

Today, more than two decades after September 11, 2001, and nearly two decades into the Roberts Court, the 21st Century National Security Constitution has taken on a strikingly unbalanced cast. More than three decades ago, in The National Security Constitution, I made both descriptive and normative claims.[[45]](#footnote-45) As a descriptive matter, I argued that since the beginning of the republic, a package of constitutional and subconstitutional norms has evolved within the United States Constitution to protect the operation of checks and balances in foreign affairs and national security policy.2 The Constitution’s text and associated norms strongly support a common understanding that powers in national security and foreign affairs are to be divided and shared among the branches.[[46]](#footnote-46)

Yet at the same time, my book identified the recurrent patterns of executive activism, congressional passivity, and judicial tolerance that push Presidents to press the limits of law in foreign affairs. As Vietnam and the Iran-Contra Affair illustrated in the 20th century, our national security decisionmaking process has degenerated into one that forces the President to react to perceived crises, that permits Congress to acquiesce in and avoid accountability for important foreign policy decisions, and that encourages the courts to condone these political decisions, either on the merits or by avoiding judicial review. It is this synergy among institutional incentives, not the motives of any single branch, that best explains the recurring pattern of executive unilateralism in American postwar foreign policy. Because the President reacts, Congress acquiesces, and the courts defer, the resulting process has created unbalanced institutional participation in foreign affairs decisionmaking. This continuing dysfunction gives too much freedom to the President, while allowing Congress and the courts too easily to avoid constructive participation in important foreign policy decisions.

As a normative matter, I argued that the constitutional vision to which foreign relations decisionmaking should aspire is the model of shared power and balanced institutional participation described by Justice Jackson’s landmark concurrence in Youngstown Sheet & Tube Co. v. Sawyer.4 As a constitutional matter, Justice Jackson famously wrote, “[p]residential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress,” while the legality of executive action is reviewable by the courts.5 As a policy matter, balanced institutional participation in foreign policymaking is not only more faithful to the Constitution’s core principles of checks and balances and separation of powers, but better supports democracy, avoids authoritarian capture, and lowers the risks of catastrophic outcomes and militarism caused by unchecked unilateralism.[[47]](#footnote-47)[[48]](#footnote-48)

But throughout our country’s history, this vision of balanced institutional participation has come under constant challenge from the unilateralist constitutional vision of Justice Sutherland’s famous 1936 decision in United States v. Curtiss-Wright Export Corporation.7 Justice Sutherland’s much-criticized dicta referred to a “plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress.”[[49]](#footnote-49) From the beginning, this was an overbroad assertion that later executive branch lawyers have dubbed, tongue-in-cheek, the “Curtiss-Wright, so I’m right, cite.”[[50]](#footnote-50) The interactive synergy among institutional incentives described above explains the steady migration from a Youngstown toward a Curtiss-Wright vision of executive unilateralism in postwar foreign policy.

Even after the Cold War, during the George H.W. Bush Administration, the Youngstown vision of checks and balances still held sway, as both a descriptive and normative matter. But today’s National Security Constitution looks dramatically different even from its Cold War predecessor. As I elaborate below, 21st Century national security threats give weak and strong Presidents alike institutional incentives to monopolize the foreign policy response; a polarized Congress even greater incentives to acquiesce; and the courts continuing reason to defer or rubberstamp.[[51]](#footnote-51) These trends have fostered an interactive dysfunction that disrupts the constitutional norm that U.S. national security policymaking should be a power shared.

As my new book, The National Security Constitution in the 21st Century, chronicles, I have personally witnessed this transformation over five decades. I have watched this dysfunction affect all three branches of the federal government: while working in the federal courts and the Reagan Department of Justice (“DOJ”) during the early 1980s, then upon returning to the State Department from 1998 until 2001, again from 2009 until 2013, and most recently in 2021, during the first year of the Biden Administration. On each return stint, I have observed how foreign policy power has shifted further and further away from Congress toward the executive branch as a whole. Even within the executive branch, national security bureaucracies have grown steadily richer, more powerful, and opaque relative to their diplomatic and justice counterparts.

Over the two decades since September 11, 2001, the military and intelligence budgets have swelled as if for years only one arm muscle had been given steroids. Those agencies’ resources increasingly dwarf that of the State Department, so that there are now “about as many members of the armed forces marching bands as there are American diplomats.”[[52]](#footnote-52) The 9/11 mentality has reshaped the foreign relations bureaucracy, with each agency replicating subunits that mirror and multiply an insistent focus on foreign counterterrorism. The national security bureaucracy has transformed into an unwieldy behemoth that now approaches what Michael Glennon has called “double government”: “a bifurcated system . . . in which even the President now exercises little substantive control over the overall direction of U.S. national security policy,” evolving “toward greater centralization, less accountability, and emergent autocracy.”12

The resulting bureaucratic structure too often resists new priorities in favor of combatting more familiar threats. At interagency meetings, military and security interests are regularly double-counted and “kinetic” solutions privileged over diplomatic ones. Throughout 2021— just after an angry domestic mob had attacked the U.S. Capitol seeking to undo a presidential election, and when thousands of Americans were dying from COVID-19 and feeling the ever-greater impact of climate change—countless hours were still being spent contemplating the continued detention of a few dozen aging detainees at Guantánamo and potential terrorist threats originating in distant theaters. This institutional fixation on past threats has resisted the Biden Administration’s efforts to turn the page to address newly pressing challenges. So, when new urgent threats mount—such as Hamas’s 2023 attack on Israel, Russia’s 2022 invasion of Ukraine, China’s threat to Taiwan, climate change, and a global health crisis—bureaucratic inertia has tempered the Biden Administration’s aspirations to fulfill older promises, such as ending the Forever War, closing Guantánamo, and repealing obsolete 20th century Authorizations for the Use of Military Force (“AUMFs”).

While most recent Republican administrations have unabashedly seized power, successive Democratic administrations with slim legislative majorities have seriously undercorrected for past executive overreach. Although the Reagan and G.W. Bush Administrations trumpeted executive power as a defining feature of their constitutional vision, the George H.W. Bush, Clinton, Obama, and Biden presidencies—all afflicted by weak legislative support—also resorted to ad hoc unilateralism to respond to particular national security crises. Under Donald Trump’s presidency, this interactive **institutional dysfunction** and executive unilateralism reached crisis levels. Until Trump, those who believed in constitutional government could assume that a President would have some internalized limit where a sense of public duty or shame would dictate self-restraint. But Trump displayed no such limit, expressing unique contempt not just for the Youngstown vision of the Constitution, but for legal constraints of any kind.[[53]](#footnote-53)[[54]](#footnote-54)

Trump’s unilateralist project fostered disarray within his own branch and fed on the eagerness of the Republican Congress to apologize for and normalize his behavior. He relied on the Supreme Court—on which he filled three seats—to defer to overstated claims of national security necessity. This interactive institutional dysfunction reached new heights, driven by the President’s extreme contempt for the rule of law and determination to discard past policies; Congress’s extreme willingness to cover for Trump’s aberrant behavior; and the Supreme Court’s extreme readiness—exemplified by its decision in Trump v. Hawaii14 upholding Travel Ban 3.0—to defer to fabricated presidential motives when taking actions based on claimed national security necessity. That pattern predictably spawned new claims by Trump of national security emergency as a basis for unilateral executive action in such traditional areas of congressional authority as immigration,[[55]](#footnote-55) declaring war,[[56]](#footnote-56) international trade,17 international agreements,18 regulation of cross- border investments,[[57]](#footnote-57) and the power of the purse.[[58]](#footnote-58)

In foreign affairs, the President now operates almost entirely by **executive order** or national security directive and rarely proposes national security **legislation** unless it involves appropriations. The White House has virtually given up on congressional-executive agreements or supermajority ratification of Article II treaties as ways of concluding international agreements.[[59]](#footnote-59) Yet during the Trump era and before, Presidents have claimed the power to terminate even longstanding international arrangements at will, without even paying lip service to interbranch consultation.[[60]](#footnote-60) The President now regularly imposes crushing trade and **economic sanctions** based on previously delegated statutory authorities.[[61]](#footnote-61) He wields broad diplomatic tools based on expansive readings of the recognition and foreign affairs powers. Trump in particular usurped Congress’s power of the purse by invoking emergency powers to build a border wall using funds that Congress had expressly withheld.[[62]](#footnote-62) By weaponizing artificial intelligence, cyberconflict, and special forces, executive war making has proceeded based on classified policy memoranda, with **minimal congressional oversight**, under broad readings of Article II and twenty-year-old legislative authorizations for the use of military force.25

Congress’s general response to these presidential initiatives has been institutional passivity and focus on extraneous issues. The congressional process for **international lawmaking** has virtually broken down. As one long-serving Congressman put it a decade ago, “Taxpayers are hiring mediocre talent, candidates who think their job is to ignore policy in order to get elected and reelected.”[[63]](#footnote-63) Foreign policy compromise has become a dirty word, as once-bipartisan issues have become deeply politicized. On the House side, starting in 1995, Newt Gingrich centralized power in a politicized office of the Speaker of the House, which he merged with the majority leader’s and whip’s offices, effectively gutting the role of committee chairs.[[64]](#footnote-64) Opposition legislators began to see their role not as making bipartisan foreign policy, but as waging total war against the other party’s President, even shutting down the government when expedient to score political points. As a departing Member described it,

Objective information sources such as the Democratic Study Group were banned. Leadership told members how to vote on most issues and force-fed talking points so that everyone could stay “on message.” . . . All major floor votes became partisan steamrollers with one big “yes” or “no” vote at the end of debate[, with n]o coherent alternatives . . . allowed to be considered, only approval of party doctrine. Instead of limited legislative freedom, a member’s only choice was between being a teammate or a traitor.[[65]](#footnote-65)

The Senate divide has become even more polarized, paralyzed, and zero sum. Senate electoral outcomes now closely track presidential outcomes, creating greater pressure for senators to vote with their party’s President and less incentive to make deals across party lines.[[66]](#footnote-66) Each party has been able to assemble a strong Senate majority only once in the last twenty years.[[67]](#footnote-67)[[68]](#footnote-68) Yet because the minority can always envision gaining legislative control in the next election, minority senators have become far less inclined to give bipartisan approaches any perceived victories. With a few exceptions,31 votes across the aisle have largely given way to lockstep minority opposition, hamstringing the majority from winning any opposition votes for any key initiatives by the other party’s President.32 The majority can therefore legislate only with near-total unity within their own party. This gives a tiny number of “swing senators” disproportionate leverage to block or dampen their own party’s legislative ambitions, but not enough leverage to ensure that the opposition party will join their initiatives.33 But there are not enough of those swing senators to build regular or reliable bipartisan coalitions that can overcome the sixty-vote threshold to end a filibuster.34 Finally, as America’s population concentrates in the largest states, states representing a shrinking percentage of the national population have become even more overrepresented in the Senate, so that smaller segments of the electorate control more Senate seats.35 This has led to what one experienced congressional observer called “a distortion that is so great it puts into question the entire legitimacy of the Senate as a governing body.”36 The overall result is far less foreign policy legislation, and even less that truly represents the will of the people.

As important, public perception has come to treat this reality as the new normal. In most foreign policy situations, everyone now expects Congress to do nothing. Members never want to vote on war when such visible votes are among the only acts sufficient to get legislators ousted at the polls. In our sharply polarized polity, the legislature has become so narrowly divided that it has become nearly impossible to quickly compose legislative majorities capable of overcoming a filibuster, much less confirm executive officials for key Senate-confirmed foreign policy posts.37 Individual senators and individual staffers have been afforded extraordinary power to hold up nominees for no good reason.38 So when a crisis arises in the world, the public, the Congress, the allies, and the media all now demand executive action. This universal expectation has only furthered centralization of foreign policy power and initiative in the White House and the National Security Council. At the same time, it has dampened the incentives for political appointees to consult with a Congress to whom they do not owe confirmation, or by whom their confirmation was unconscionably delayed. Even executive branch officials with instincts to consult or cooperate more with legislators increasingly find themselves facing a binary choice between unilateral action or no action. Because the Executive is punished politically for passivity, not surprisingly, it usually opts for the former.

The judiciary has only modestly moderated these trends. As the Executive has populated the courts, with a few visible exceptions,39 judges of both parties have with striking frequency either rubber-stamped executive actions or dismissed individual challenges to them on preliminary grounds. To be sure, the Supreme Court responded to the excesses of the George W. Bush Administration by holding against the executive branch in a famous string of Guantánamo cases.40 But inside the government, these cases have had surprisingly little real impact in checking the steady migration toward **executive unilateralism**.41 After Boumediene v. Bush,42 the Supreme Court has not taken another Guantánamo case, even though the D[[69]](#footnote-69).C. Circuit visibly diluted the reach of Boumediene in subsequent Guantánamo habeas litigation.43

Academic commentators have read great meaning into such cases as Zivotofsky v. Clinton (“Zivotofsky I”),44 where the Supreme Court declined to apply the political question doctrine to bar review of the President’s actions in the face of a contrary congressional statute,[[70]](#footnote-70)[[71]](#footnote-71) and Bond v. United States (“Bond I”),46 which found that a criminal defendant had civil standing to challenge, on Tenth Amendment grounds, a statute that implemented a major multinational treaty.[[72]](#footnote-72) But these decisions notwithstanding, the courts of appeals have generally continued to rely on expansive understandings of justiciability doctrines, procedural obstacles, or immunity defenses to avoid reaching the merits of any civil dispute that arguably touches on national security.[[73]](#footnote-73) In military contractor cases, for example, lower courts have continued to invoke the political question doctrine to throw out ordinary tort suits.49 In others, the lower courts have shifted their focus from justiciability to dismissals for failure to state a claim, upholding statutes that strip jurisdiction from the federal courts to hear certain kinds of foreign policy claims[[74]](#footnote-74) or that displace state law in the name of unspecified “foreign policy” interests.[[75]](#footnote-75)[[76]](#footnote-76)

Nor have commentators fully acknowledged the extent to which the courts now go to rule in favor of the Executive on the merits. Two theories have emerged to uphold Executive action in foreign affairs at the merits stage. First, as in Zivotofsky v. Kerry (“Zivotofsky II”),52 the courts may apply a “Youngstown Category Three” theory to find a legislative enactment unenforceable, because it unconstitutionally invades the President’s exclusive constitutional powers.[[77]](#footnote-77) Second, under a “statutory Curtiss-Wright” theory of delegation, a court may conclude that Congress has conferred a greater degree of discretion on the President through foreign affairs-related statutes because, as Curtiss-Wright suggested, the delegated statutory authority overlaps with or complements the President’s own constitutional foreign affairs powers.[[78]](#footnote-78) This broad theory of statutory delegation apparently now enjoys support from at least five members of today’s Supreme Court.[[79]](#footnote-79) This approach would effectively enshrine Curtiss-Wright’s dicta into holding. It would empower the President to operate virtually alone in such traditionally congressional fields as immigration and trade, invoking expansive claims not of constitutional power, but of broadly delegated statutory authority. Citing the Executive’s claimed functional monopoly of foreign policy judgment, numerous circuit-level decisions have doubled-down on granting the Executive special deference to make foreign policy through self-serving interpretations of foreign relations statutes.56

In short, all three branches have contributed to the persistent unilateral exercise of foreign affairs power by the executive. As yet, these practices have not resulted in a permanent redistribution of constitutional authority, given that the establishment of historical practice must be assessed on a case-by-case basis and must meet the rigorous standards for constitutional acquiescence set forth in Justice Frankfurter’s separate opinion in Youngstown.57 But the trend is clear: unless we all recognize and address this serious problem, in 21st Century foreign relations law, presidential unilateralism will supplant shared power as the constitutional default.

#### Unchecked executive power decreases ex-risk mitigation, makes climate change inevitable, and causes existential nuclear war.

Mihalakas 19 [Nasos; Visiting Research Associate with the Athens Institute for Education & Research (ATINER), and a Global Professor of Practice in Law at the University of Arizona College of Law; “The Need for Governance Reform – Symptoms vs. Cause”; https://the-federalism-project.org/2019/05/21/the-need-for-governance-reform-symptoms-vs-cause/; May 21, 2019] TDI

There is no doubt that we live in “challenging” times.  We face ‘social challenges,’ from racial discrimination to gender inequality, women’s rights (reproductive or otherwise) that will have to be addressed, LGBTQ issues (recognition of gay marriage), a gun violence epidemic due to both inadequate gun control laws but also excessive violence in our society, etc.  We also face ‘economic challenges,’ like stagnant salaries and low wages, job insecurity (due to automation or outsourcing), taxes that are too high for some and not high enough for others, mounting student debt, and yes massive income inequality.  And, of course, we do face ‘external challenges’, from nuclear proliferation in the Korean peninsula, to ISIS and religiously motivated global terrorism, to global warming and climate change!

Yet, most of these issues are but symptoms of a greater cause.  Their existence, or our inability to overcome them, is being caused by a much greater problem in our society that unless we address soon we risk permanent societal failures within the next 20 to 30 years.

This greater cause is our very own failing system of governance!!!

Though brilliant in its original construction by the founding fathers, our Federal system of governance (separation of powers, check and balances, separate Federal and State governments) is grossly off track and highly unbalanced.  During the past 200 years, we witnessed a steady transfer of power away from the States and into the Federal government, and within the Federal government we saw a similar steady concentration of power in the hands of the Executive (the singular President), and to a certain extend the Supreme Court (due to Congressional acquiescence).

This did not happen due to some conspiracy by the ‘powerful elite’ or through interference by foreign powers.  It happened gradually (almost naturally), as a response to major failures at the State level: in dealing with slavery and racial discrimination (see Civil War and Jim Crow laws in the south), in dealing with market failures and the need to regulate business and provide a safety net (see Great Depression, The New Deal and the Great Society), in fighting a Cold War with the Soviet Union (see expansion of military and intelligence services to advance US foreign policy).

Today, power and authority to deal with issues and solve problems is highly concentrated at the Federal level, away from ordinary people and their ability to monitor let alone influence elected politicians.

There is so much power concentrated at the Federal level, and in particular in the hands of one person (the President) that it makes Washington politicians constant targets of special interests and lobbying organizations, makes negotiations for compromise impossible because there is so much at stake, and it has created a highly unbalanced system (where “checks and balances” are not fully implemented and more often can’t work effectively).

Washington gridlock, dysfunction, polarization, and partisanship have led to the inability to pass a budget (balanced or otherwise), or address the need for immigration reform, or provide for adequate healthcare coverage and affordable prescription drugs, or even implement proper tax reform.  Therefore, unless we address these ‘systemic’ failures of our system of governance, unless we implement institutional changes and fix the process, we will never get lasting solutions to our current and future societal challenges.

Unfortunately, there is no one thing we can do, no ‘magic bullet’ that can fix the dysfunction of our Federal system of governance (because it’s not just ‘the Federal government’ that needs reform, but also/primarily Congress and the Judiciary).  Rather, there are several things (from specific process changes through laws/regulations to Constitutional amendments) that we will have to changes now, in order to see improvement in the function of our system of governance in the next 20 to 30 years.

There is a parallel example to this system of governance failures, and it’s that of ‘global warming.’  Global temperatures have been rising, due to greenhouse gases (caused by human activity – burning fossil fuels like coal and oil), presenting an existential threat to our planet and our way of life.  However, fossil fuels are not inherently evil, used by certain people bent on the destruction of humanity!  Energy from fossil fuels was instrumental in facilitating the industrial revolution, which brought progress and technological innovations during the past 150 years, that helped the whole world to advance, prosper, and better connect.  It was not until recently that we realized that the constantly expanding use of fossil fuels by humans is contributing to rising temperatures, and if we don’t do something now to ‘bent the curve’, then in 20 to 30 years from now temperatures will rise to levels that can be devastating to the planets ecosystem, and by extension us humans.

Concentration of power at the Federal level, over the past 200 years, though not inherently evil (downright necessary and proper during some critical periods), has reached a point of pure dysfunction.  The proof of the unsustainable nature of our current system (like rising temperatures are a proof of global warming) is income inequality.  During the past 50 years, we have witnessed a steady concentration of wealth at the hands of the top 10% (and primarily the top 1%).

And although one can look at our society today statically and say: “things are still ok: there are rich people and poor people, and we are still the most powerful and wealthy nation in the world – so what’s the problem?”… the trend keeps going upwards: currently over 70% of our national wealth is concentrated at the hands for the top 10%.  When do we need to do something to stop this trend?  When it gets to 80%, or 90%?

Democrats and Republicans (now thanks to Donald Trump) both agree on the existence of a ‘powerful elite, in cahoots with the political establishment, bent on exploiting the middle class’… yet both party’s solution is the same: win political power and cut or raise taxes, regulate more or less, appoint some type of judges… in essence, deal with the symptoms and not the underlying cause!

If we want to address the underlying cause of income inequality (and outsourcing of jobs, health-care failures, racial tensions, education funding, women’s rights, public housing, etc.), then we need to reform our system of governance, before we can consider specific policy priorities.  By fixing the legislative process, restoring proper checks, correcting the imbalance within the government branches and returning powers back to the States… we can get on a path where we see real results within the next 20 to 30 years.

Otherwise, gridlock and dysfunction at the Federal level will only get worse!

#### Unchecked executive power causes extinction.

Lesser 20 [Max Lesser is a JD Candidate at Georgetown University Law Center, MA from Hunter College, BA in Political Science from George Washington University, Former Law Clerk for the United States Senate Committee on the Judiciary, “Part 3 (of 3): A President or a King?”, Medium, 1-22-2020, https://medium.com/@maxles1206/part-3-of-3-a-president-or-a-king-651a81e4cadc |Accessed:7-22-24|c] TDI

Second, the modern “imperial presidency” has become drastically more powerful than intended by our constitutional design. Through a combination of congressional abdication and delegation, the modern Presidency has become a leviathan of unmatched size and global power. The modern commander in chief today leads an administrative workforce of over 14 million,[5] “a military of 2 million armed with weapons that can eradicate human civilization,”[6] and possesses nearly unmatched authority in foreign affairs. Alexander Hamilton wrote that impeachable offenses “relate chiefly to injuries done immediately to society itself,” and given the vastly increased powers of the modern American presidency, the severity of the “injury” a modern president can inflict has correspondingly become far more serious. Furthermore, while the concerns of the founders may have concentrated on our vulnerable young republic being manipulated by more powerful foreign countries, we are now in a position where the immense powers of the “imperial presidency” place the commander in chief in a position to (1) coerce foreign governments to interfere in our elections for his personal gain or (2) severely weaken our national defenses against ongoing foreign interference efforts through negligence and abdication of duty.

The twin dynamics of increasing foreign interference in American politics and growing power in the Office of the President — have come to a head in the Trump administration. Two examples highlight the danger of the confluence of these trends: Russian election interference in 2016 and the Ukrainian extortion campaign that is the center of the current impeachment inquiry. First, the article will analyze the role of the Trump campaign in furthering the Russian interference campaign in 2016, as well as President Trump’s role in obstructing special counsel Robert Mueller’s investigation into Russian interference. These cases involved a more reactionary approach to foreign influence which nonetheless strongly signaled the President’s receptivity to foreign assistance, his willingness to encourage foreign influence campaigns, and his obstruction of subsequent government investigation. Second, the article will study President Trump’s extortion campaign against the government of Ukraine, in terms of releasing congressionally appropriated military aid in exchange for politically charged investigations of the President’s political opponents and the Democratic party. This case involves a proactive solicitation of foreign influence in our elections using the powers of the state, making it a more clear-cut case of treacherous abuse of power in foreign relations that violates the public trust. Furthermore, congressional investigation of this foreign influence campaign has been entirely obstructed by the President, which continues to the present day.

George Washington was right to describe the unique threat of foreign influence to American democracy as “insidious.” Foreign interference in our politics compromises our sovereignty and control of our national destiny, corrodes the perceived legitimacy of our leaders, and seeds public mistrust and division. A president who conspires with a foreign power to manipulate elections for his personal benefit “goes to the question of whether or not the person serving as President of the United States put their own interests, their personal interests, ahead of public service.”[9] This standard for impeachable conduct was set by none other than the President’s very own Vice-President, Mike Pence, while he served in the House of Representatives. Removal of the President for violating this standard would help counter the continuing aggregation of power in the Office of the Presidency, deter future Presidential treachery in foreign relations, and re-assert the proper constitutional balance among our branches of government. If, on the other hand, the President is permitted to brazenly violate this standard without applying the accountability intended by our Constitution, we will be in uncharted territory. An acquittal will saw through the “muscle” of our checks and balances (congressional oversight, impeachment, and an increasingly overwhelmed judiciary) and begin to hit “bone” — the very structure of our constitutional system. And it will mean that the 2020 election will provide the only remaining institutional check on Presidential power…with the reality that that election will operate in a space where the President will likely be emboldened to further weaponize his office to secure re-election and where sophisticated foreign influence campaigns will continue to seek to influence the result.

II. The Growth of Presidential Power, New Threats of Foreign Influence, and the Dangers of their Confluence

The power and authority of the Office of the Presidency has increased drastically in the modern era. To put things in perspective, in 1787 the United States had no standing army, and many delegates to the Constitutional Convention opposed the creation of one because of the danger such an institution might pose for liberty — preferring instead state militias whose first allegiance was to their home state.[1] Furthermore, “the presidential powers actually enumerated in the constitution were few and, until augmented by time and custom, almost pitifully weak.”[2] When George Washington became president he only had roughly 1,000 civilian federal employees — most of whom were post workers and customs officers — and his authority to directly order these officials was constitutionally debatable.[3] With a few significant historical exceptions, the White House continued to be a “weak”[4] institution with limited staffing for most of the 19th century, and “the president’s job was to execute policy, rarely to make it.”[5] Even in the area of foreign affairs, where Presidential power has traditionally been considered to be at its zenith, the constitution placed an abundance of structural limitations on the executive branch and granted a “largely managerial and defensive”[6] level of authority:

“He [the President] can command the Army and the Navy, should Congress pass the necessary appropriations, and he can lead the Army and Navy into battle, should Congress choose to declare war. As first General of the United States, in Hamilton‘s phrase, the president has an important role, but generals do not have the power to decide whether and when we go to war. In no part of the constitution is more wisdom to be found, Madison wrote, than in the clause which confides the question of war or peace to the legislature, and not to the executive department. Beside the objection to such a mixture of heterogeneous powers: the trust and the temptation would be too great for any one man.[7]”

Despite the checks and balances in our constitution’s design, however, the presidency has played an increasingly singular role in foreign affairs since World War II. Historian Arthur Shlesinger argues that the growth of the “Imperial Presidency” was “as much a matter of congressional abdication as of presidential usurpation,”[8] as Congress continually delegated authority or acquiesced to executive agencies and the administrative state. Furthermore, Historian Benjamin Ginsberg points out that the asymmetric relationship between congressional and presidential power contributes to this dynamic, given the fact that “every time Congress legislates it empowers the executive to do something, thereby contributing, albeit inadvertently, to the onward march of executive power.”[9] As a result, federal spending, adjusted for inflation, has quintupled since 1960,[10] and there are an estimated 14 million people who work for the federal government, for-profit contractors, or federally funded state and local government and non-profit employees.[11] And in contrast with the founder’s concerns with the danger of standing armies, the president today commands “a force of 2 million armed with weapons that can eradicate human civilization.”[12] The legislative branch, by comparison, only employs slightly over 20,000 people,[13] and the body’s authority in foreign affairs has essentially “collapse[d].”[14]Presidents Barack Obama and Donald Trump have both utilized Congress’ Authorizations for the Use of Military Force (AUMF) that were passed after 9/11 as the legal basis for military involvement in Iraq and Syria against ISIS, despite the authorization’s intended utilization against the regime of Saddam Hussein and this terrorist organization not existing at the time of passage.[15] Nonetheless, Congress has proven unable to repeal either AUMF, which Senator Tim Kaine believes runs “the risk of future abuse by the President, and help[s] keep our nation at permanent war.”[16] Furthermore, Congress has had extreme difficulty in exercising oversight of Presidential conduct of foreign policy. For example, Congress has been unable to stop President Trump’s trade war with China[17] despite bi-partisan and vocal concerns with the unilateral campaign and the Constitution’s express direction that Congress has the power to “regulate Commerce with foreign nations.”[18] Congress has also struggled with ensuring implementation of its legislative enactments by the President with fidelity as exemplified by administration slow-walking on sanctions against Russia for their interference in the 2016 election,[19] using emergency powers to re-appropriate military funding for border wall construction,[20] and the inappropriate utilization of congressionally appropriated military aid to Ukraine that is now at the center of the current impeachment inquiry.[21]

The drastic increase in the powers of the presidency pose several key issues for the impeachment power. Alexander Hamilton famously stated in the Federalist papers that impeachment is based upon “those offenses which proceed from the misconduct of public men, or, in other words from the abuse or violation of some public trust…as they relate chiefly to injuries done immediately to society itself.”[22] The reality is that the staggering size and unilateral authority of the Executive branch makes it capable of inflicting far more severe “injuries” against society than whatever could have been imagined possible by the founders. It is no exaggeration to state that the modern presidency literally possesses the power to end life on earth as we know it with the office’s enormous war-making authority. As glibly summarized by Gene Healey, those who argue for a circumscribed impeachment power have managed to convince themselves “that the one job in America where you have to commit a felony to get fired is the one where you actually get nuclear weapons.”[23] Thus, the drastic increase in the power of the “imperial presidency,” and its correspondingly increased capability for inflicting the social “injuries” the founders intended impeachment for, suggests the need for a broader conception of the impeachment power in foreign relations.

#### Oversight is possible even if difficult.

ICG 22 [The International Crisis Group is an independent, non-profit, non-governmental organization committed to preventing and resolving deadly conflict. “Stop Fighting Blind: Better Use-of-Force Oversight in the U.S. Congress,” International Crisis Group. 10-26-2022. https://www.crisisgroup.org/united-states/006-stop-fighting-blind-better-use-force-oversight-us-congress |Accessed:7-22-24|c] TDI

The executive branch has expanded both the war on terror and (more generally) its war powers through its own overreach, but with a helping hand from congressional “underreach”. All too often, Congress has acquiesced to the executive’s arrogation of war-making power to itself. Further, even when given the opportunity, it has not devoted sustained attention to scrutinising the executive branch’s war-making activities. In recent years, Congress has shown renewed interest in asserting its war powers, but it seems unlikely to muster the political will to enact major reforms for the moment. Still, there are other ways in which it can make progress. The practical steps described above, most of which do not require new legislation, would enhance the ability of members of Congress and staffers to extract the information they need to conduct proper war powers oversight now, and better position them to develop meaningful structural reforms in the future.

That does not mean that even minor reforms will be easy. There could well be significant impediments in the coming period. For the last two years, President Biden’s Democratic party has run the two houses of Congress, but come November’s mid-term elections, its opponents in the Republican party could capture one or both of them. Should that happen, Congress will likely become preoccupied with investigations and political score settling as Republicans seek to weaken the Democratic administration in advance of the 2024 presidential election. At a moment of pitched partisanship, it may seem unrealistic to suggest that members of Congress make space for serious war powers oversight among the other politically motivated priorities that are likely to be their preponderant focus as 2024 draws near.

Lowering expectations, however, is not the right approach. Both the Democratic and Republican caucuses include legislators who have shown a strong interest in reinvigorating meaningful oversight as a step toward restoring congressional war powers. Whoever comes out on top in the mid-terms, proponents of war powers reform in civil society, academia and on Capitol Hill should continue to push these members of Congress to take the lead in making small reforms and laying the groundwork for bigger ones. Decades of congressional passivity have helped create a system for governing matters of war and peace that is marred by secrecy, unaccountability and sometimes reckless unilateral decision-making. It may take decades of pressure to reverse the trend. Now is no time to let up.

#### Yes Spillover. The CP stakes out broader role for congressional oversight – now is key

Kaine & Young 21 [Tim Kaine is a U.S. Senator from Virginia, former Lecturer at the University of Richmond School of Law, J.D. from Harvard Law School; Todd Young is a U.S. Senator from Indiana, J.D. from the Indiana University Robert H. McKinney School of Law, M.A. in American Politics from the University of London Institute of United States Studies, “War, Diplomacy, and Congressional Involvement,” *Harvard Journal on Legislation*. Vol. 58, Summer 2021. Pg. 218-220 https://journals.law.harvard.edu/jol/wp-content/uploads/sites/86/2021/06/201\_Kaine-Young.pdf |Accessed:7-22-24|c] TDI

In May of 1995, former Secretary of Defense Robert McNamara addressed an audience in San Diego about the contents of his book, In Retrospect: The Tragedy and Lessons of Vietnam.110 The address aimed to outline the lessons he had taken from the Vietnam conflict, including that “we failed to draw Congress and the American people into a full and frank discussion and debate of the pros and cons of a large-scale U.S. military involvement in southeast Asia.”111 Secretary McNamara said of the Gulf of Tonkin Resolution, “The problem wasn't with the formalities; the problem was the substance. Neither the Congress nor the President intended that that those words would be used as we used them.”112 Nearly twenty years later, future Secretary of Defense James Mattis would respond to a question about Middle East policy by saying, “We've been somewhat in a strategy-free environment for quite some time. It didn't start with this administration. And so, we've been wandering. We have policies that go on and come off.”113 His statement was not the only one implying that U.S. military plans were not tied to any larger \*219 objective; in a private meeting with one of the authors of this Essay, another senior military official confessed, “We have O-plans but no strategy.”114

For too long, Congress has looked solely to the Executive Branch for the next “grand strategy” to lead us in the twenty-first century, only to be frustrated by the inconsistency of policy in everything from troop strength in the Middle East to nuclear non-proliferation efforts in North Korea and Iran. At issue is not just the capricious nature of the Executive to craft policy for political purposes but also the inability of Congress to provide a “stable institution”115 in establishing U.S. policy beyond a single presidential administration. We hope to remedy this dysfunctional situation by restoring Congress to its rightful, constitutional role in crafting sound policy for defending the nation and ensuring its security now and for generations to come.

We invite President Biden, once a leading voice in defense of congressional war powers,116 to join with us in restoring the legislature to its proper constitutional role on questions of war and peace. He is now our commander-in-chief, and we share with him an unflinching determination to protect our country and its fine people. His assumption of the presidency after authoring the Use of Force Act117 signals that now is a ripe opportunity to have a conversation about restoring Congress to its rightful role in the constitutional order. We look forward to that conversation and at the same time will work to guarantee that President Biden has clear legislative backing to address any national security threat our adversaries may pose. The American people deserve nothing less.

We know our goal is ambitious and will require close cooperation with the President and our congressional colleagues. There will be political problems rising from the debates that accompany the crafting and passage of legislation the likes of which we have proposed here. What discretion should a President have to launch military operations in the absence of advance congressional authorization? How do we craft legislation that empowers the \*220 commander-in-chief to deal with terrorist threats but prevents the kind of creeping justifications we have witnessed over the past two decades? These are tough questions and would trigger robust debate in Congress. The Executive Branch would voice strong opinions that affected the congressional debate, but these questions lie at the heart of our international strategy. Congress must rise to the occasion. We pledge our leadership and good faith.

#### Executive flexibility is unsustainable – it causes mass military overstretch and a collapse of the international system, resulting in endless conflict – external constraints are key to reign it in.

**Thorpe 18** [Rebecca Thorpe is an Associate Professor of Political Science at the University of Washington, “US Empire in the Age of Trump”, 2018. <https://digitalcommons.fiu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1114&context=classracecorporatepower> |Accessed:7-21-24|c] TDI

The 2016 American presidential election has fueled ongoing speculation about the viability of liberal democracy and the post-World War II global order. For more than a half century, Washington has held the moral high ground in its discourse about democratic norms, transparency and human rights. Meanwhile, American statecraft has been governed by a prevailing rationality to maintain economic and political hegemony and shape the global order by exercising hard and soft power throughout the world. However, the US faces increasing challenges making other states comply with its agenda, and it has declined precipitously in its international standing. NATO members are shaken by the US president’s reluctance to affirm a pledge of reciprocal defense. US exit from the Paris accords on climate change, rejection of a nuclear pact with Iran, and the president’s refusal to condemn (or admit) Russian interference in the 2016 election have ruptured the international system and eroded faith in global stability, democracy and elections throughout the world. Meanwhile, pundits, scholars and others have expressed alarm about the weakening of traditional international alliances, the abuse of ethics in government, lack of fidelity to the rule of law and celebration of authoritarian behavior.

The trends provoke fears that the waning US hegemon is destroying the international system that has kept the world more stable since 1945, while catapulting the plight of racial, ethnic and religious minorities into particularly sharp focus. Yet, while the US has withdrawn from multilateral institutions and endorsed isolationist (“America first”) rhetoric, the Pentagon’s military footprint remains outstretched in every corner of the globe. The US is still engaged in decades-long wars in Iraq and Afghanistan. Meanwhile, in 2016, the president ordered a cruise missile attack on Syrian government forces without congressional approval or legal justification; continued support for the Saudi-led coalition’s war in Yemen that has fueled one of the world’s worst humanitarian crises; and issued threats of “fire and fury” against North Korea raising the alarming prospect of nuclear war. Cold War-era arrangements empowering presidents to identify and eliminate threats by deploying the nation’s vast military arsenals, its invasive intelligence apparatus and even its nuclear stockpiles have faced little meaningful or sustained challenge from either political party.

While the 2016 election has hastened and highlighted the erosion of liberal democratic norms, this slippage is not simply the result of a particular election, administration, policy or program. Rather, US presidents since World War II have promoted democracy, open markets and free trade by wielding gargantuan military arsenals and undertaking widespread surveillance of ordinary citizens. Many historians and legal scholars argue that the Cold War era gave rise to a permanent “state of executive exception” to the normal constitutional order—thus signifying the nation’s sustained deviation from the rule of law, civil liberties and human rights in national security realms. What is unprecedented today, then, is not so much the betrayal of liberal norms, but rather the degree to which liberal discourse has yielded to tacit and explicit support for authoritarian tactics and the extent to which liberal democratic principles, institutions and values are simultaneously being abandoned by large parts of the American population.

To reflect on the decline of American influence in the geopolitical sphere, its internal fracturing and polarization, atrophying commitment to liberal democratic values and persistent tendency to confront global conflicts with military solutions raises crucial questions about whether American empire is sustainable, and whether it is in fact worth sustaining. First, how is it that a nation founded on liberal principles such as checks and balances, limited powers and individual rights has come to embrace its opposite—that is, virtually unbounded executive authority to stamp out security threats without regard for legal and ethical limitations? Second, what does an executive monopoly on a militarized national security state portend for liberal democratic institutions in an increasingly polarized, fragmented and unstable political climate?

In The American Warfare State, I argue that the nation’s unprecedented military mobilization during World War II created new political and economic interests in military spending and war that constitutional framers did not anticipate. I found that, in subsequent decades, large defense budgets were not only a response to heightened national security concerns, but also an integral component of many local and regional economies—particularly in geographically remote areas that lack diverse economies. Meanwhile, the public burdens historically associated with large military establishments and warfare shifted onto a small minority of military volunteers, future generations of taxpayers who will inherit the nation’s war debts and foreign populations where US wars take place. These new arrangements encourage legislators to support large defense budgets, while freeing presidents to launch military actions without congressional authorization or democratic deliberation—an outcome that the constitutional framers feared and tried to prevent.

In this essay I build on the argument advanced in The American Warfare State: I suggest that a constitutional framework built on liberal principles like separation of powers and democratic accountability has failed to reliably limit power or uphold the rule of law—and that evidence of the tilt toward a more authoritarian alternative has been apparent for many decades. Although previous administrations upheld verbal affirmations of liberal democratic norms, neither discourse nor institutional procedures alone guarantee fidelity to human rights and legal imperatives—at least not without a more robust commitment to these ideals and a political environment where “law is valued as principle rather than tactic.”

To make this case, I document patterns of executive lawlessness in the conduct of national security policy, with a particular emphasis on military interrogations and targeted killings in the George W. Bush and Barack Obama administrations. Though I emphasize twenty-first century practices, these precedents are not new. Rather, since Congress authorized a national security apparatus in 1947 and provided new financial incentives to maintain a permanent military-industrial base, both real and perceived security threats have rationalized the use of force and relaxed moral and legal standards that may otherwise constrain executive conduct. Moreover, the rise of a national security state equipped to kill suspects anywhere in the world and cipher intelligence through extra-legal channels developed democratically and with little coherent resistance. Far from “ambition… counteracting ambition,” the different branches and levels of government have come to perceive mutually overlapping interests in expanding the national security state, swelling executive prerogative, and pursuing foreign policy through martial means.

As a result, an executive monopoly over a heavily militarized, clandestine national security establishment is routinely deployed without regard for human rights, civil liberties or nation-state sovereignty. The consequences today, in an especially fraught and fragile political climate, are two-fold: First, this arrangement allows presidents—however volatile, intemperate, or characteristically unfit— to pursue their military and intelligence policies as they please, while the most violent and degrading consequences are borne by ethnic or religious minorities and foreign populations in countries where US security operations take place. Second, these practices also systematically weaken America’s democratic institutions, norms and values, rendering the regime more vulnerable to authoritarian challenges.

### 2NR---AT: Circumvention

#### Congress retains Constitutional Authority over sanctions.

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Presidential Power President-elect Trump has promised to reform many of his predecessors' foreign policies. In particular, Mr. Trump has criticized President Obama's handling of the Joint Comprehensive Plan of Action (JCPOA) with Iran and his restoring of diplomatic relations with Cuba. Trump has also signaled a desire for rapprochement with Russia with respect to Crimea and Syria. Although Mr. Trump's true policy intentions have yet to crystallize, presidential action in any of these areas would likely involve changes to economic sanctions, whether by terminating existing rules or adopting new ones. Theoretically, the president-elect could upend any existing sanctions program immediately upon taking office by issuing or revoking one or more executive orders. For example, should Mr. Trump wish to end the U.S. embargo against Crimea, he may do so with a stroke of his pen by terminating the provisions of Executive Order 13685, issued by President Obama in December 2014. Similarly, Mr. Trump could direct the Treasury Secretary to cancel any of the general licenses issued by OFAC since January 2015 which have permitted U.S. persons to engage in limited activities involving Cuba. This gives Mr. Trump tremendous power to reshape U.S. economic sanctions and, with them, U.S. foreign policy. But Wait . . . Under Article II of the Constitution, the president has broad authority to conduct foreign relations. However, most U.S. economic sanctions do not derive from the president's foreign relations powers. Instead, they are authorized under Article I, which gives Congress the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." From time to time, Congress has delegated authority to the president to regulate trade under laws such as the Trading with the Enemy Act of 1917, the United Nations Participation Act of 1945, and the International Emergency Economic Powers Act of 1977 (IEEPA). The vast majority of existing U.S. economic sanctions have been adopted under IEEPA, which gives the president broad authority to regulate trade, but only after making a declaration of a national emergency in response to an "unusual and extraordinary threat" to U.S. interests. Under the National Emergencies Act (NEA), the president must renew each emergency declaration on an annual basis. Checks and Balances Under IEEPA, the president has wide latitude to craft sanctions in response to new and emerging threats. Examples include partial or total trade embargoes, freezing of property, prohibitions on investments or the provision of financial services, and controls on the export of U.S.-origin goods. At the same time, Congress retains the ultimate authority to regulate interstate and foreign commerce. In addition to the limitations contained in the NEA, Congress has never shied from exercising its authority to shape sanctions. Here are a few examples: Under the 1988 Berman Amendment to IEEPA, as amended in 1994, the president may not use his delegated powers to regulate the exchange of information or informational materials such as publications, films, news feeds, and other data, including electronic data. Under the 1996 Cuba Liberty and Democratic Solidarity Act (the Helms-Burton Act), Congress mandated certain sanctions against Cuba and established conditions that must be met before the president can fully terminate the Cuba embargo. Under the Iran Sanctions Act of 1996 and subsequent laws Congress mandated certain sanctions against Iran and established conditions that must be met before the president can fully terminate sanctions against Iran. Under the 2003 Burmese Freedom and Democracy Act and 2008 JADE Act, Congress mandated certain sanctions against the Burmese government and established criteria for terminating the sanctions. Under the 2012 Magnitsky Act, Congress adopted sanctions against Russian officials involved in the death of lawyer Sergei Magnitsky and certain human rights abuses in Russia. Looking Forward As with past presidents, President-Elect Trump will need to consider Congress' views before taking any action to modify existing U.S. sanctions. Failing to do so could lead Congress to take action to further constrain the president's power under IEEPA or to back-stop existing sanctions, as it has done with Cuba and Iran. Congress could also take action if Mr. Trump allowed any of the current national emergencies to expire -- perhaps in the case of Russia. While Mr. Trump has a talent for making headlines, sanctions experts should pay equal attention to the news from Capitol Hill.

### 2NR—Turns case

#### Turns case---executive-legislative coordination is needed to adapt US foreign policy to the modern era of conflict

Waxman 14 [Matthew C. Waxman is a Liviu Librescu Professor of Law at Columbia Law School, Adjunct Senior Fellow for Law & Foreign Policy at the Council on Foreign Relations, J.D. from Yale Law School, “The Power to Threaten War,” Yale Law Journal, Vol. 123, April 2014. https://www.yalelawjournal.org/article/the-power-to-threaten-war |Accessed:7-23-24|recut.c] TDI

It is also important to see this analysis, however, as showing a more complex dependency of presidential powers on Congress with respect to setting and sustaining American grand strategy. Philip Bobbitt was quite correct when he decried lawyers' undue emphasis on the Declare War Clause and the commencement of armed hostilities as the critical legal events in thinking about constitutional allocations and U.S. security policy:

Wars rarely start as unexpected ambushes; they are usually the culmination of a long period of policy decisions… . If we think of the declaration of war as a commencing act - which it almost never is and which the Framers did not expect it to be - we will not scrutinize those [\*1685] steps that bring us to war, steps that are in the main statutory in nature. Moreover, we will be inclined to pretend … that Congress really has played no role in formulating and funding very specific foreign and security policies. 209

The foreign and security policies to which Bobbitt refers include coercive and deterrent strategies.

Indeed, it is important to remember that the heavy reliance on threatened force, especially after World War II, has itself been a strategic choice by the United States - not a predestined one - and one that could only be made and continued with sustained congressional support. Since the beginning of the Cold War period, the reliance on deterrence and coercive diplomacy became so deeply ingrained in U.S. foreign policy that it is easy to forget that the United States had other strategic options open to it. One option was war. Some senior policy-makers during the early phases of the Cold War believed that conflict with the Soviet Union was inevitable, so better to seize the initiative and strike while the United States held some advantages in the balance of strength. 210 Another option was isolation. The United States could have retracted its security commitments to its own borders or hemisphere, as it did after World War I, ceding influence to the Soviet bloc or other political forces. 211 These may have been very bad alternatives, but they were real ones and were rejected in favor of a combination of standing threats of force and discrete threats of force - sometimes followed up with demonstrative uses of force - that was only possible with congressional buy-in. That buy-in came in the form of military funding for the standing forces and foreign deployments needed to maintain the credibility of U.S. threats, as well as in Senate support for defense pacts with allies. 212 While a strategy of deterrent and coercive force has involved significant unilateral discretion as to how and when specifically to threaten military action in specific crises and incidents, the overall strategy rested on a foundation of executive-congressional collaboration and dialogue that played out over decades.

[\*1686] Looking to the future, the importance of threatened force relative to other foreign policy instruments will inevitably shift again - and so, therefore, will the balance of powers between the President and Congress. U.S. grand strategy in the coming decades will be shaped by conditions of fiscal austerity and war weariness, for example, which may mean cutting back on some security commitments or reorienting doctrine for defending them toward greater reliance on less-expensive means (such as, perhaps, a shift from large-scale military forces to smaller ones, or greater reliance on high-technology, or even revised doctrines of nuclear deterrence). 213

One possible geostrategic outlook is that the United States will retain its singular military supremacy, and that it will continue to play a global policing role. Another outlook, though, is that U.S. military dominance will be eclipsed by other rising powers and diminished U.S. resources, political will, and influence. 214 The latter scenario might mean that international relations will be less influenced by credible threats of U.S. intervention, and perhaps more so by the actions of regional powers and political bodies, or by institutions of global governance like the U.N. Security Council. 215 These possibilities could entail a practical rebalancing of powers wielded by each branch of government, including the power to threaten force and other foreign policy tools.

Were the United States to retreat from underwriting its allies' security and some elements of the global order with strong coercive and deterrent threats, one should expect different patterns of executive-congressional behavior with respect to threatening and using force, because wars and threats of wars will come about in different ways: less often as a breakdown of U.S. hegemonic commitments, for example. A hypothesis for further consideration is that reduced requirements of maintaining credible U.S. threats would also likely reduce pressure on the President to protect prerogatives to threaten force and to make good on those threats. A foreign policy strategy of more selective and reserved military engagement may be one more accommodating to case-by- [\*1687] case, joint executive-legislative deliberation as to the threat or use of U.S. military might, insofar as U.S. strategy would self-consciously avoid cultivating foreign reliance on U.S. power.

Besides shifting geostrategic visions, ranging from a global policing role to receding commitments, the set of tools available to Presidents for projecting power will evolve, too, as will the nature of security threats, and this will produce readjustments of the relative importance of constitutional powers and inter-branch relations. Transnational terrorist threats, for example, are sometimes thought to be impervious to deterrent threats, whether because they may hold nihilistic agendas or lack tangible assets that can be held at risk. 216 Technologies like unmanned weapon systems may make possible the application of military violence with fewer risks and less public visibility than in the past. 217 While discussion of these developments as revolutionary is in vogue, they are more evolutionary and incremental; their purported effects are matters of degree. Such developments will, however, retune strategies for brandishing and exercising military capabilities and the politics of using them. As an initial hypothesis, these factors may reduce the influence of congressional politics on the President's strategic decision-making if he views foreign perceptions of American public resolve as less important to successful military strategies.

Whatever the future of U.S. power, my analysis points toward a revised agenda for thinking about war powers and their reform. If legal discourse of war powers is too narrowly focused on actual wars and forceful military engagements to the exclusion of threats of them, then so too is discussion of reforms too narrowly focused on congressional involvement at the end stages of coercive diplomacy - often long after threats have been issued and responded to, positively or negatively - rather than at earlier ones.

A more productive reform agenda (and by no means a mutually exclusive one) would focus on strengthening Congress's role in shaping U.S. grand strategy more broadly. Rather than devoting its institutional energy to reasserting its control over decisions to engage the enemy with military force in particular circumstances, Congress would work to engage the executive branch more seriously and continually with regard to the general policy circumstances [\*1688] under which force might be contemplated. This would require Congress to do something it is not disposed to do, namely, use its other powers - such as hearings, control of funds, and statutory delegations of bounded policy discretion - to engage the executive branch on strategic questions about the way force may be wielded in advance of, or at the earliest stages of, crises. Proposals to restructure congressional national security committees include the idea of creating more consolidated, joint House-Senate national security committees, which would have greater leverage, expertise, and oversight responsibility and which would tie together the elements of U.S. power more effectively. 218 These proposals should be viewed not simply as means for Congress to consult with the Executive once large-scale military intervention is imminent, but also as mechanisms enabling Congress to coordinate with the Executive on the matching of foreign policy means and ends well in advance of crises.

#### Otherwise, ineffective foreign policy causes extinction

Mead 15 [Dr. Walter Russell Mead is a Professor of Foreign Affairs and the Humanities at Bard College, Distinguished Scholar in American Strategy and Statesmanship at the Hudson Institute, “Global Challenges, U.S. National Security Strategy, and Defense Organization”, Testimony Before the U.S. Senate Committee on Armed Services, 10-22-2015. http://www.hudson.org/research/11818-global-challenges-u-s-national-security-strategy-and-defense-organization |Accessed:7-23-24|recut.c] TDI

Filled with opportunity as it is, the new century also contains threats: conventional threats like classic geopolitical rivals struggling against the world order favored by the United States and its allies, unconventional threats like terror movements spurred by jihadi ideology, regional crises like the implosion of much of the Middle East and a proliferation of failed and failing states, emerging threats like the danger of cyber war, and systemic problems like the crises in some of the major institutions on which the global order depends — NATO, the EU, and the UN for example. The United States government itself is not exempt from this problem; whether one looks at the Pentagon, the Department of Homeland Security or the State Department one sees organizations seeking to carry out 21st-century missions with 20th or even 19th-century bureaucratic structures and practices.

Additionally, the United States faces a challenge of strategy. While the United States has enough resources to advance its vital interests in world affairs, it does not have the money, the military power, the know how or the willpower to address every problem, intervene in every dispute, or to dissipate its energies in futile pursuits.

The United States faces an array of conventional and unconventional threats, as well as several systemic dangers. Our three principal conventional challengers are China, Russia, and Iran. All aim to revise the current global geopolitical order to some extent. In the years to come, we must expect that revisionist powers will continue to challenge the existing status quo in various ways. Moreover, the continuing development of “second generation” nuclear weapons states like Pakistan ensures that geopolitical competition between regional powers can trigger global crises.

Meanwhile, we are also confronted by an array of unconventional threats. Despite the fondest hopes of many Americans, Sunni jihadism has not proven to be a passing phase or fringe movement. Al-Qaeda was more resourceful and ambitious than the previous generation of radical salafi groups; its Mesopotamian offshoot (AQIM) was still more effective; today, ISIS has leaped ahead to develop capabilities and nourish ambitions that earlier jihadi groups saw only in their dreams. Unfortunately, the radical movements have lost inhibitions as they gained capacities. Wholesale slaughter, enslavement, barbaric and spectacular forms of execution: these testify to a movement that becomes more depraved, more lost in the pornography of violence, even as it acquires more resources and more fighters. This movement could become significantly more dangerous before it begins to burn out.

Yet radical jihadis may well prove to be less of a threat than the emerging dangers of the cybersphere. Cyber conflict is a new arena of action, one in which non-state, quasi-state and state actors are all present. With almost every day bringing stories of utterly lamentable failures of American cyber security, it must be clearly said that the U.S. government has allowed itself to be made into a global laughingstock even as some of our most vital national security (and corporate and personal) information is captured by adversaries with, apparently, impunity.

But problems like these are pinpricks compared to the damage that cyber war can cause. Not only can industrial sabotage disrupt vital systems, including military command and control systems as well as, for example, the utilities on which millions of Americans depend for their daily necessities, cyberwar can be waged anonymously. Threats of retaliation lose their deterrent power when the attacker is unknown. Worse, the potential for destabilizing first strikes by cyber-attacks will complicate the delicate balance of terror, and leaders could find themselves propelled into conflict. Cyber war could accelerate the diplomatic timetable of the 21st century much as railroad schedules and mobilization timetables forced the hands of diplomats in 1914.

Beyond that, one can dimly grasp the possibility of biologically based weapons as a new frontier in human conflict. It is far too soon to know what these will be like or how they will be used; nevertheless one must postulate the steady arrival of new kinds of weapons, both offensive and defensive, as the acceleration of human scientific understanding gives us greater access to the wonders of the life sciences.

Finally, there are systemic or generic threats, which is to say, dangers that are not created by hostile design, but emerge as byproducts from existing and otherwise benign trends that are likely to pose significant challenges to the United States’ interests and security in coming decades. We do not usually think of these as security problems, but they can create or exacerbate security threats and they can degrade our abilities to respond effectively.

For all its promise, the tech revolution entails an accelerating rate of change in human communities that has destabilizing effects. In the U.S., and especially in Europe, these take the relatively benign, but still problematic, form of the breakdown of what I have called the “blue social model”—a tightly integrated economic-social model built during the 21st century that linked lifetime employment and fixed pensions into a socio-economic safety net. Now, the structures that were designed to secure prosperity and economic safety in the 20th century are often constraining it in the 21st.

But elsewhere, the strains of the modern economy may yet be worse, and produce more malign results. In the Middle East and North Africa, government institutions and systems of belief are overwhelmed by the onslaught of modernity. For better or worse, the pressures of modernity will increase on societies all around the world as we move deeper into the 21st century. To date, the United States has demonstrated very little ability to help failed or failing states find their feet. Failing states provide a fertile environment for ethnic and religious conflict, the rise of terrorist ideologies, and mass migration. The United States will need to be ready to deal with the fallout – fallout that in some cases could be more than metaphorical.

Finally, the United States and its allies must recognize and overcome a crisis of confidence. The West’s indecision, weak responses, mirror imaging of strategic competitors who do not share our values, and our tendency to rely upon process-oriented “solutions” in the face of growing, violent threats have encouraged a paradox: our enemies and challengers have become more emboldened, and disruptive to the world order, exploiting the opportunities that the open order supported by the United States and its allies provides.

Western societies have turned inward, susceptible to “there’s nothing we can do” and “it’s not our problem” political rhetoric. As history shows, the combination can carry a very high cost and take many years to unwind. Grand strategy has to take this into account: American leadership is critical to highlighting and thwarting problems that may fester into major global threats. Even the best strategic planning and the best procurement of equipment to meet serious strategic threats is insufficient should current Western leaders lack the wit to recognize and the will to meet challenges as they arise.

Recommendations

What can the United States Congress and the armed services do to prepare the country for the strategic challenges of the future? The Committee invited me to look beyond the day to day problems and to take a longer view. Here are some thoughts:

1. Invest in the future.

The apparently inexorable acceleration of technological and social change has many implications for the armed services of the United States. It is not just that weapons and weapon platforms must change with the times, and that we must continue to invest in the research and development that will enable the United States to field the most advanced and effective forces in the world. Technological change drives social change, and conflict is above all a social activity. Military forces must develop new ways of organizing themselves, learn to operate in different dimensions, understand rapidly-changing cultural and political forces and generally remain innovative and outward focused.

New tech does not just mean new equipment on the battlefield. As tech moves into civil life, the structure of societies change. Insurgencies mutate as new forms of communication and social organization transform the ways that people interact and communicate.

The need for flexibility is heightened by the diversity of the world in which the Armed Forces of the United States, given our country’s global interests, must operate. American forces must be ready to work with Nigerian allies against Boko Haram, maintain a base presence in Okinawa while minimizing friction with the locals, operate effectively in the institutional and bureaucratic culture of the European alliance system, while killing ruthless enemies in the world’s badlands. Our combat troops must work in a high tech electronic battlefield of the utmost sophistication even as they work to win the hearts and minds of illiterate villagers. The armed services must continue to reinvent themselves to fit changing times and changing missions, and they must be given the resources and the flexibility necessary to evolve with the world around them. The bureaucratic routines of Pentagon business as usual will be poorly adapted the kind of world that is growing up around us. A focus on re-imagining and re-engineering bureaucratic institutions is part of investing in the future. Private business has often moved more quickly than government bureaucracy to develop new staffing and management patterns for a more flexible and rapidly changing environment. Government generally, and the Pentagon in particular, will need aggressive prodding from Congress to adapt new methods of management and organization. Investment in better management and organizational reform will be vital.

2. Address the interstitial spaces and the invisible realms.

The United States, like Great Britain, is a power that flourishes in the ‘spaces between’. In the 18th century, think of sea power and the world markets that sea power guaranteed. Britain rose to world power by mastering the ‘spaces between’ the world’s major economic zones. In the 19th century Britain added telegraph and cable communications to its portfolio, developing and defending the world’s most extensive network of instantaneous communications. Similarly, the British build a global financial system around the gold standard, the pound, and the Bank of England. Again, the focus was less on dominating and ruling large land masses than on facilitating trade, communications and investment among them.

In the 20th century, the nature of this space changed again: air power, radio and television broadcasting, satellites and, in the century’s closing years, the internet created new zones of communication. The United States was able to retain a unique place in world affairs in large part because it moved quickly and effectively to gain a commanding position in the development and civil and military use of these forms of communication. Whether it is the movement of goods or of information or of both, Anglo-American power for more than three centuries has been less about controlling large theaters of land than about securing and expediting trade and communication in the ‘spaces between’.

This type of power, most evidently present today in the world of cyberspace, remains key not only to American power but to prosperity and security in the world. Information is becoming the decisive building block of both economic and military power.

American defense policy must remain riveted on the developments in communications and information processing that are creating the contemporary equivalent of the sea lanes of the 18th century and the cable lines of the 19th. The recent series of high profile hacker attacks against key American government and corporate targets suggests that we have lost ground in one of the most vital arenas of international competition.

This needs to change; cyber security is national security today and at the moment, we don’t have it.

3. Establish a Congressional Office of Strategic Assessment.

In order to perform its oversight functions more effectively, the Congress should consider establishing a professional, nonpartisan agency that can be a source for independent strategic research and advice, and which can evaluate executive branch policies in a more systematic and thorough way than current resources allow. Similar in some ways to the CBO, a COSA would provide in-depth analysis and other resources to members and staff. Such an office would ideally be able to analyze anything from the strategic consequences of a given trade agreement to the utility of a proposed weapons system. This office would also allow a much more sustained and effective form of Congressional oversight, restoring a better balance to the relationship between the Executive and Legislative branches of government.

The intersection of military, political, social, technological and economic issues in our world is constantly creating a more complex environment for both military and political strategic policy and thought. Even the most dedicated members with the hardest working staff cannot fully keep up with the range of problems around the world and their impact on American interests and policy. Yet effective Congressional oversight is necessary if the American system of government is to reach its full potential in the vital field of national security policy.

A non-partisan office under Congressional control that had a strong staff and the ability to engage the best minds in the country on questions of national strategy would help Congress fulfill its responsibilities in this new and challenging environment.

## Competition

### 2NR—PDCP

#### Resolved requires the plan be certain.

Webster’s Revised Dictionary 96 [Webster’s Revised Dictionary; “Resolved.” 1996]

((1.) RESOLVED MEANS “HAVING A FIXED PURPOSE; DETERMINED; RESOLUTE”)

#### Ought means certain.

Merriam-Webster ND [Merriam-Webster Dictionary; “Ought.”; <https://www.merriam-webster.com/dictionary/ought>; accessed 12/15/23]

used to express obligation

ought to pay our debts

#### Should doesn’t mean certain.

Encarta 5 [Encarta World English Dictionary. 2005. http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861735294]

expressing conditions or consequences: used to express the conditionality of an occurrence and suggest it is not a given, or to indicate the consequence of something that might happen ( used in conditional clauses )

#### Most recent example of sanction removal was executive action.

OFAC 4/16 [Office of Foreign Assets Control is a part of Treasury’s office of terrorism and financial intelligence. “Publication of Final Rule to Remove the Zimbabwe Sanctions Regulations.” U.S. Department of Treasury. 4-16-2024. https://ofac.treasury.gov/recent-actions/20240416 |Accessed:7-23-24|c] TDI

The Office of Foreign Assets Control (OFAC) is issuing a final rule to remove the Zimbabwe Sanctions Regulations, 31 CFR part 541, from the Code of Federal Regulations. OFAC is taking this action because the national emergency on which part 541 was based was terminated by the President on March 4, 2024. The rule is currently available for public inspection with the Federal Register and will take effect upon publication in the Federal Register on April 17, 2024.

#### **Normal means is the executive branch.**

Dentons 3/5 [Dentons is a global law firm driven to provide you with the competitive edge in an increasingly complex and interconnected marketplace.“US terminates Zimbabwe sanctions program, transitions certain designations to GLOMAG,” Dentons. 3-5-2024. https://www.dentons.com/en/insights/alerts/2024/march/5/us-terminates-zimbabwe-sanctions-program-transitions-certain-designations-to-glomag |Accessed:7-23-24|c] TDI

On March 4, 2024, President Biden terminated the US Zimbabwe sanctions program, unblocking all individuals, entities and property that had been blocked under that authority. Concurrently, the US imposed Global Magnitsky sanctions on 11 individuals and three entities that had been blocked under the now-repealed Zimbabwe program. In doing so, OFAC also made clear that it would continue with investigations or enforcement actions for apparent violations of the Zimbabwe sanctions while they were in effect.

#### “The United States” is all three branches.

Arthur Miller 86. Distinguished Visiting Professor of Law – Emory University. Summer 1986. “Congress, the Constitution, and First Use of Nuclear Weapons.” Review of Politics. Vol. 48, No. 3.

Three other points merit mention in this discussion of collective decision-making. First, both the formal and the secret constitutions allocate power over foreign relations and defense to the central government, to, that is, the United States of America visualized as a single entity. What, however, is "the" United States? The question has never been definitively answered; and indeed has seldom been asked in judicial opinion or scholarly discourse.42 Asked another way, the question is this: Where does sovereignty lie in the American polity? The formal constitution is supposedly based on popular sovereignty, with ultimate power resting in the people. That, however, is far from accurate. Proof positive that sovereignty lies in the "state" came when General Robert E. Lee surrendered at Appomattox: "the people" of the South were not to be permitted to exercise their "sovereignty." The powers of the national government are supposedly only those delegated to it, either expressly or impliedly. But that is scarcely accurate, as 200 years of constitutional development attest. The Framers of the formal constitution established a governmental system that, as Justice Robert Jackson commented, would ensure that the dispersed powers of the federal government would be integrated into a workable government. "Separateness but interdependence, autonomy but reciprocity" was the constitutional command.43 The meaning is unmistakable: "the" United States is a single metaphysical entity, encompassing state, society, and government in one artificial being. These terms are not synonymous. The state is the fundamental entity; government its apparatus; and society is composed of the individuals and groups governed. Much like the business corporation, the state-"the" United States-is an artificial construct, more a method than a thing. It exists in constitutional theory-in, for example, the state secrets privilege in litigation-even though judges and commentators alike often confuse the term with government and with society. A legal fiction that by itself can do no act, speak no work, and think no thought, the state (like the corporation) has "no anatomical parts to be kicked or consigned to the calaboose; no soul for whose salvation the parson may struggle; no body to be roasted in hell or purged for celestial enjoyment." 44 Despite loose language to the contrary from executive branch lawyers and even the Supreme Court, "the" state or "the" government-or "the" United States-is not to be equated with the executive branch. Nor with any one branch, for that matter; each branch is part of an indivisible whole.

### 2NR—PDB

#### Plausible deniability---it lets Presidents claim acquiescence was comity, not submission to authority---nullifying precedent.

Posner 7 [Eric A. Posner is a Professor of Law at the University of Chicago and Adrian Vermeule, Professor of Law at Harvard Law School. “Constitutional Showdowns” *Chicago Unbound*. University of Chicago Law School. 2007. https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1073&context=public\_law\_and\_legal\_theory |Accessed:7-23-24|c] TDI

In many historical cases, Congress and the president agree about the policy outcome but disagree about lines of authority. For example, suppose that the executive branch has made a controversial decision, and a suspicious Congress wants the relevant executive officials to testify about their role in that decision. The president believes that Congress has no right to compel the officials to testify, whereas Congress believes that it has such a right. However, the president, in fact, does not mind if the officials testify because he believes that their testimony will reveal that the decision was made in good faith and for good reasons.

The president’s problem is that if he allows the officials to testify, Congress and the public might interpret his acquiescence as recognition that Congress has the power to force executive officials to testify. If he refuses to allow the officials to testify, then he preserves his claim of executive privilege but loses the opportunity to show that the decision was made in good faith. In addition, he risks provoking a constitutional impasse in which Congress could eventually prevail—if, as we have discussed, public constitutional sentiment turns out to reject executive privilege in these circumstances. Congress faces similar dilemmas, for example, when it approves of officials nominated by the president for an agency or commission but wants to assert the power in general to impose restrictions on appointments.

Political agents have long relied on a middle way to avoid the two extremes of acquiescence, on the one hand, and impasse, on the other. They acquiesce in the decision made by the other agent while claiming that their acquiescence does not establish a precedent. Or, equivalently, they argue that their acquiescence was a matter of comity rather than submission to authority. Are such claims credible? Can one avoid the precedential effect of an action by declaring that it does not establish a precedent—in effect, engaging in “ambiguous acquiescence”?

The answer to this question is affirmative as long as, in fact, the alternative explanation for the action is credible. If, for example, observers agree that the president benefits from the testimony of executive officials, then his acquiescence in a congressional subpoena has two equally plausible explanations: that he independently benefits from the testimony, and that he believes that public constitutional sentiment rejects executive privilege. The response is thus ambiguous, and Congress may be no wiser about what will happen in the future, when the president does not wish to permit officials to testify because their testimony would harm him or executive branch processes. If so, the ambiguous nature of the action does not establish a focal point that avoids an impasse in the future.

On the other hand, if the president’s claim that he benefits from the testimony is obviously false, then his authority will be accordingly diminished. This is why ambiguous acquiescence is not a credible strategy when the president and Congress disagree about the policy outcome. If the president thinks the war should continue, Congress thinks the war should end, and the president acquiesces to a statute that terminates the war, then he can hardly argue that he is acting out of comity. He could only be acting because he lacks power. But an agent can lack authority in more complicated settings where no serious policy conflict exists. If the president makes officials available for testimony every time Congress asks for such testimony, and if the testimony usually or always damages the president, then his claim to be acting out of comity rather than lack of authority eventually loses its credibility. Repeated ambiguous acquiescence to repeated claims over time will eventually be taken as unambiguous acquiescence and hence a loss of authority. For this reason, a president who cares about maintaining his constitutional powers will need to refuse to allow people to testify even when testimony would be in his short-term interest.

# 1AR

## Solvency

### 1AR---Smart Sanctions Fail

#### Smart sanctions empirically fails

**Hufbauer** and **Oegg**, **2000**[Gary Clyde Hufbauer, nonresident senior fellow, was the Institute's Reginald Jones Senior Fellow from 1992 to January 2018. He was previously the Maurice Greenberg Chair and Director of Studies at the Council on Foreign Relations (1996–98), the Marcus Wallenberg Professor of International Finance Diplomacy at Georgetown University (1985–92), senior fellow at the Institute (1981–85), deputy director of the International Law Institute at Georgetown University (1979–81); deputy assistant secretary for international trade and investment policy of the US Treasury (1977–79); and director of the international tax staff at the Treasury (1974–76) Barbara Oegg is a consultant to the Peterson Institute for International Economics. She was a research associate at the Institute from 1998 to 2004. She has coauthored numerous articles on economic sanctions, including The Impact of Economic Sanctions on US Trade: Andrew Rose's Gravity Model (2003), Capital-Market Access: New Frontier in the Sanctions Debate (2002), and Using Sanctions to Fight Terrorism (2001). She is coauthor of Economic Sanctions Reconsidered, 3rd edition (2007) "Targeted Sanctions: A Policy Alternative?", PIIE, https://www.piie.com/commentary/speeches-papers/targeted-sanctions-policy-alternative]GH

In his 1997 report on the work of the United Nations, Secretary General Kofi Annan stressed the importance of economic sanctions: the Security Council's tool to bring pressure without recourse to force. At the same time Annan worried about the harm that sanctions inflict on vulnerable civilian groups, and their collateral damage to third states. He acknowledged that "[i]t is increasingly accepted that the design and implementation of sanctions mandated by the Security Council need to be improved, and their humanitarian costs to civilian populations reduced as far as possible."1

Widely shared concerns about humanitarian and third country effects can undermine the political unity required for the effective implementation of multilateral sanctions. The case of Iraq stands as Exhibit A. With the erosion of support for the embargo against Iraq, it is becoming clear that the effectiveness of a sanctions regime partly depends on how it addresses humanitarian issues. Although virtually all sanctions regimes launched during the 1990s allow trade in humanitarian goods, the "blunt weapon" of comprehensive embargo inevitably hurts those at the bottom of the economic heap. Given the poor track record of sanctions in achieving their foreign policy goals, the conventional wisdom that civilian pain leads to political gain is being questioned. Many ask whether the costs of sanctions are worth the results. In response to these concerns, practitioners and scholars alike have been seeking for ways to fine-tune sanctions to direct their force against the those in power.

"Targeted sanctions" or "smart sanctions", like "smart bombs", are meant to focus their impact on leaders, political elites and segments of society believed responsible for objectionable behavior, while reducing collateral damage to the general population and third countries. Growing emphasis on the individual accountability of those in power for the unlawful acts of states (highlighted by the Pinochet case and the Bosnian war crimes trials), has made the concept of targeted sanctions all the more attractive.

Before taking a closer look at certain measures, it may be useful to draw a distinction between "targeted" and "selective" sanctions. "Selective" sanctions, which are less broad than comprehensive embargoes, involve restrictions on particular products or financial flows. "Targeted" sanctions focus on certain groups or individuals in the target country and aim to directly impact these groups.2 Obviously the two concepts overlap.

Targeted Measures: Arms Embargoes, Travel Bans and Asset Freezes

Arms embargoes are targeted in the sense that their purpose is to bend military and political leaders by denying them access to weapons and other military equipment, while sparing the civilian population. Arms embargoes seek to reduce violent conflict by reducing access to weapons. In addition, arms embargoes help identify and stigmatize those who violate international norms.

Since 1990 the UN Security Council has imposed ten arms embargoes in an effort to limit local conflicts.3 Yet the effectiveness of arms embargoes in ending conflicts remains elusive. Only the use of force convinced the warring factions in Sierra Leone to lay down their arms, and seven years after the Angolan arms embargo, civil war remains in full swing. Weak enforcement, poor monitoring, and dire conditions in bordering countries all work to undermine arms embargoes.

Trafficking in small arms pays high profits even in normal times. Profits increase further with the imposition of an embargo, creating lucrative markets for illicit trade. These profits enrich precisely those the embargo is aimed to hurt, creating a financial interest in prolonged conflict. This is particularly true when the targeted group controls valuable natural resources. Angola illustrates the problem. Realizing that UNITA rebels use diamond profits to finance their weapons purchases, the UN Security Council imposed an embargo on uncertified diamond exports from Angola. This episode suggests that, as a stand-alone policy, arms embargoes are unlikely to curtail local conflicts.

Travel or aviation bans fall into two categories: restrictions on all air travel to and from a target country, and restrictions on the travel of targeted individuals, groups or entities. In the case of restrictions on air travel to and from a target country, or areas under control of targeted groups (such as UNITA), the assumption is that the flight ban will affect people in power substantially more than the general population.

The assumption that flight bans exert minimal humanitarian impact may not hold. In August 1996, the Security Council voted to impose a flight ban on the government of Sudan for its suspected support of international terrorism. Implementation of the ban was delayed, however, and the UN Department of Humanitarian Affairs subsequently issued a report on its possible humanitarian effects. The report showed that even a selective flight ban could cause humanitarian **suffering**. Since the Sudanese airline relies on international airports for its aircraft maintenance, a selective ban might have grounded the **entire** airline. This in turn would have created **severe** problems for relief organizations that rely on the airline to reach remote areas of the country. Taking these considerations into account, the UN Security Council never implemented the flight ban.

Travel bans and visa restrictions against individuals not only avoid the possible humanitarian impacts of broader travel restrictions, but also are useful in denying legitimacy to political leaders, military officials and their supporters. An interesting case study is the European Union "blacklist" of Serbian President Milosevic's supporters. The 600 individuals on the blacklist are prohibited from traveling in Europe and their assets in European banks are frozen. While Milosevic and his supporters benefited from the Serbian trade embargo by controlling the profitable black market, they do seem to mind personal international isolation. They find themselves hobbled in conducting business abroad: the travel ban cuts them off from their companies and bank accounts.4

With the exception of the EU blacklist and possibly the flight ban imposed on Libya in response to the bombing of Pan Am 103, travel bans seem to have had limited results. In the case of Libya, one needs to remember that Qaddafi handed over the Pan Am 103 suspects to an international court only after the UN travel ban was falling apart. The ban was crumbling because the Organization of African Unity called on its members and others to suspend compliance with the ban. This sequence suggests that the travel ban at most had a minor impact on Qaddafi's decision to comply with the UN Security Council demands.

Overall, travel sanctions seem to be primarily symbolic measures. While the enforcement of travel bans is easier than enforcement of an arms embargo, some challenges remain. False passports and visas may allow targeted individuals to circumvent the sanctions. It is often hard to identify the appropriate group or individuals that should be targeted. Deep knowledge of the country, the individuals and power structure is needed to enforce even travel bans.

Recent studies have taken a closer look at the effectiveness of targeted sanctions such as limiting access to financial markets, restricting economic assistance, or prohibiting new investment. Financial sanctions in general have a less immediate impact on trade flows and therefore cause less suffering. Empirical evidence also suggests that financial sanctions may be somewhat more likely to achieve a policy change in the target country. Based on economic sanctions cases analyzed in the second edition of Economic Sanctions Reconsidered (1990), financial sanctions used alone contributed partially to the achievement of foreign policy goals in 41 percent of the cases, compared to only 24 percent for trade sanctions alone.5 However, financial sanctions have not typically been used as targeted measures. Historically asset freezes were imposed in episodes of severe hostility, often at the outbreak of war, and were part of a more comprehensive embargo (the archetypes being North Korea and Cuba).

In recent years, however, we have observed a few instances of targeted financial sanctions. These include measures such as a freeze on foreign assets of specifically designated individuals, state-owned companies and governments. Selective asset freezes were imposed on Haiti, Serbia-Montenegro, the Bosnian Serbs, and UNITA. The primary challenge facing these asset freezes is the identification of funds belonging to the individuals, governments and companies targeted. Although the means of tracking financial assets have greatly improved, so have the means of deception. Even when individual funds can be identified, secrecy and speed are critical to prevent targets from moving assets to numbered accounts in off-shore banking centers. Secrecy and speed are not easily reconciled with the need to build consensus among sender countries or within the UN Security Council. This point was illustrated by the recent UN sanctions imposed against the Taliban in Afghanistan. The UN Security Council threatened to block Taliban's assets if its demands were not met within one month, giving the Taliban ample time to avoid the sanctions.

Support for the effectiveness of targeted measures

The concept of targeted sanctions as an alternative to comprehensive trade embargoes is relatively new. Historically, asset freezes and travel bans were imposed in the context of broader economic sanctions. A survey of sanctions cases in the twentieth century shows that only in 20 cases were targeted sanctions (such as arms embargoes, asset freezes and travel sanctions) imposed outside the framework of comprehensive embargoes. Even in these 20 cases targeted sanctions were almost always imposed in combination with selective export restrictions or aid suspensions. The record indicates that targeted sanctions have been used either as a "warm-up" for broader measures or as the supposed "knock-out" punch. The sanctions episode against Haiti illustrates the "knock-out" approach. Initial trade sanctions by the Organization of American States were followed by more comprehensive sanctions imposed by the UN Security Council. Only after these sanctions failed to bring change were targeted measures aimed directly at the Haitian military imposed. UK and UN sanctions against Rhodesia illustrate the "warm-up" approach. An asset freeze, arms embargo and selective export bans did not persuade Ian Smith to allow majority rule in Rhodesia. By 1968 the UN Security Council resorted to a comprehensive embargo. In neither Haiti nor Rhodesia were the targeted measures successful.

The success rate of targeted sanctions, in the 20 cases where they were imposed outside of comprehensive embargoes, is relatively low. Only 5 of the 20 cases can be judged partially successful, a rate of about 25 percent. This is slightly below than the success rate of 34 percent for economic sanctions in general during the twentieth century. In two of the success cases (Libya, Egypt) the goal was relatively limited and well-defined. AS a general proposition, targeted measures might have the most success when modest goals are sought.

On the other hand, the recent EU proposal to lift the general flight ban on Serbia while at the same time tightening sanctions against the supporters of Serbian President Milosevic illustrates a new use of targeted sanctions. As support for broader sanctions wanes, alternative measures targeted on the political elite offer a way to continue pressure while reducing the impact on the general population. During the long hostilities involving Serbia, the EU has been able to identify entities and individuals linked to President Milosevic, thus increasing the accuracy of targeted measure. The EU proposal represents a compromise between the US opposition to lifting any sanctions, and the more accommodating EU stance. In other words, targeted sanctions allow the coalition to remain united. Sanctions diplomacy in Serbia may be a prelude to developments in Iraq, North Korea and Cuba. Comprehensive sanctions may be gradually replaced by targeted measure. Just recently, UN Secretary General Kofi Annan suggested a move in this direction for Iraq.6

To summarize, targeted sanctions may satisfy the need in sender states to "do something", they may slake humanitarian concerns, and they may serve to unify fraying coalitions. But they are not a magic bullet for achieving foreign policy goals. Again quoting UN Secretary General: "The international community should be under no illusion: these humanitarian and human rights policy goals cannot easily be reconciled with those of a sanctions regime. It cannot be too strongly emphasized that sanctions are a tool of enforcement and, like other methods of enforcement, they will do harm. This should be borne in mind when the decision to impose them is taken, and when the results are subsequently evaluated."

#### Targeted sanctions fail.

Jasper Hamann 20. [Political analyst and writer living in Rabat, Morocco,“Sanctions Are Violent, Cause Starvation and Death in the Middle East”, MLWN, <https://www.moroccoworldnews.com/2020/09/317200/sanctions-are-violent-cause-starvation-and-death-in-the-middle-east>, 7/22/24] TDI//idp

Sanctions in practice

The **US** and the EU **dole out sanctions** with **casual abandon**. In the last few months they have considered sanctions on Belarus, **China**, Iran, Lebanon, North Korea, Russia, Syria, and Zimbabwe. The casual use of these measures has become such a norm that the US today sanctions on the International Criminal Court for investigating US soldiers. It further threatened sanctions on a small German port city to the completion of a pipeline that imports Russian gas.

Over the last few decades **sanctions have hurt untold millions** in the Middle East. Sanctions on **Iraq alone** up to **one million children to starve** **to death** in the 1990s. While this might seem to be in a distant past, **history looks set to repeat itself.**

In the Middle East, sanctions are a tool to **“” enemies of the West**. In Syria, 9.3 million people are starvation after the US implemented a set of sanctions called the “Caesar Act.” The act gets its name from a brave photographer who smuggled evidence of Syrian torture out of the country. As usual, the sanctions are sold as righteous and targeted. **In reality they** **are set to** **create untold human misery.**

#### Smart sanctions are no better than comprehensive sanctions

**Park & Choi 22** [Jeonbuk National University, Republic of Korea, Kyung Hee University, Republic of Korea. “Are smart sanctions smart enough? An inquiry into when leaders oppress civilians under UN targeted sanctions” International Political Science Review, <https://journals.sagepub.com/doi/pdf/10.1177/0192512120931957>, 2022] TDI

However, even cleverly designed smart sanctions aiming at political elites can sometimes hurt those with less power. Consider the example of smart sanctions against the Ivory Coast during 2005 through 2016. In 2005, the UN imposed a series of sanctions on the Ivory Coast through Security Council Resolutions (UNSCR) 1572, 1584, 1632, and 1633. The primary goals of the sanctions were to enforce the implementation of the peace agreement signed in 2003 and to constrain all stakeholders in the conflict—the Ivorian government and rebel leaders—with an arms embargo. These sanctions, which included an arms imports embargo, asset freeze, and travel ban, were clearly aimed at the political elites who posed a threat to the ongoing peace process and engaged in serious human rights abuse. However, they were largely ineffective in constraining the elites (Biersteker et al., 2016: 282). Instead, they led to the consolidation of authoritarian rule and greater corruption in the state-controlled economy (Biersteker et al., 2016). The arms embargo did not improve the political situation. Alongside growing tension over the presidential and legislative elections, the amount of violence against civilians increased sharply between 2010 and 2012. The Armed Conflict Location and Event Data Project (ACLED) recorded 164 violent events targeting civilians during this period, resulting in 748 reported deaths. More than half of these violent acts were perpetrated by the Ivorian military force and pro-government militias (Raleigh et al., 2010).

Why do some smart sanctions cause collateral damage to the general population, while others minimize it? There has been surprisingly little research on this question, despite its practical and theoretical importance. In this article, we argue that the scope and the effectiveness of smart sanctions, as well as the political institutions of target countries, are critical determinants of adverse effects on human rights. Leaders who are targeted by sanctions with a broad scope will have a greater incentive to oppress people to cut off potential support for challengers. The degree to which they can carry out successful oppression, however, hinges upon the effectiveness of the implementation of sanctions. Furthermore, we expect that authoritarian systems with a small winning coalition, when targeted by sanctions, are more likely to encourage oppression than large-coalition systems.

#### Sanctions, even smart sanctions, have a history of failure

**Gordon 22** [Member of "Ethics & International Affairs" Editorial Board. “Russia, Ukraine, and the Demise of Smart Sanctions” THE JOURNAL OF CARNEGIE COUNCIL FOR ETHICS IN INTERNATIONAL AFFAIRS. <https://www.ethicsandinternationalaffairs.org/online-exclusives/russia-ukraine-and-the-demise-of-smart-sanctions>, 03/21/2024] TDI

There is no question that the invasion of Ukraine is both illegal and immoral, and there is an understandable desire to use every tool in our toolbox in countering Russia’s aggression. But there is a real question as to whether aspects of the sanctions that are hammering Russia’s economy, or major sectors of it, are ethically defensible. This question is even more pressing as we consider whether they are likely to succeed in forcing Russia’s withdrawal from Ukraine.

We know that sanctions have a questionable record of achieving their political objectives. Sanctions may be effective as a form of signaling, but they are not likely to succeed at getting the targeted state to comply with the demands made by the sanctioner. We know as well that when sanctions are imposed upon an authoritarian regime, we can expect to see increased state repression, worsening violations of human rights, greater corruption, worsening inequality, and growing hardship for the poor and marginalized. It is no surprise that this has been the case in the current situation with Russia.

At the same time, there is the risk that the sanctions will continue to escalate, and that ultimately the sanctioner cannot see a way to end them. When the sanctions do not result in what is demanded, the sanctioning state finds itself in a difficult position: either lift the sanctions, admitting defeat, or keep ramping them up and continue indefinitely, on the theory that eventually they might work. For the sanctioner, there is generally little cost to taking the latter route—the sanctioning country is typically far larger than the target country. According to Economic Sanctions Reconsidered, over the last century, in 80 percent of sanctions episodes, the sanctioner’s GNP was more than ten times greater than that of the country targeted, and in half the cases, it was more than one hundred times greater.2ed. (Washington, D.C.: Peterson Institute for International Economics, 2009), p.89. The sanctioner thus generally incurs little risk from imposing even broad, sectoral measures. The situation with Russia, of course, is the rare case where the sanctioning states have reason to be concerned that the measures they impose will be costly to them as well.

### 1AR---Shadow Fleet Sanctions Fail

#### Sanctioning shadow vessels will never work. Countries don’t have interest or authority.

Braw, 1-11-2024, Elisabeth Braw is a senior fellow at the Atlantic Council "Russia's growing dark fleet: Risks for the global maritime order", Atlantic Council, <https://www.atlanticcouncil.org/in-depth-research-reports/issue-brief/russias-growing-dark-fleet-risks-for-the-global-maritime-order/> TDI

Blocking shadow vessels from territorial waters or exclusive economic zones involves significant hurdles that make doing so unfeasible and even impossible. The United Nations Convention on the Law of the Sea (UNCLOS) grants vessels the right of innocent passage, which means the right to “freely navigate through territorial seas.”[23](javascript:void(0)) A country’s territorial waters comprise the twelve nautical miles adjacent to its coast. The journeys must truly be innocent, defined by UNCLOS as “(a) traversing that sea without entering internal waters calling at a roadstead or port facility outside internal waters; or (b) proceeding to or from internal waters or a call at such roadstead or port facility.” Vessels must also obey the laws of the country whose waters they traverse; those laws include the ship being in good repair and possessing proper insurance. Most countries, though, would consider it too risky to try to block shadow vessels and suspected shadow vessels on such grounds, especially since there is no internationally acknowledged registry of shadow vessels.

UNCLOS provides more significant rights to vessels traveling in countries’ exclusive economic zones (EEZs), which extend 200 nautical miles beyond the territorial waters. A country has the exclusive rights to natural resources within its EEZ as well as the exclusive rights to offshore installations there. It does not, however, have legal powers over the EEZ beyond the policing of those resources and installations.[24](javascript:void(0)) A country would thus struggle to ban shadow vessels from its EEZ. Retired Rear Adm. Nils Wang, a former chief of the Danish Navy (which is also responsible for most of Denmark’s coast guard functions), told me that “the whole construct of merchant shipping rests on very significant rights of free navigation. As long as you’re in the high seas, a country’s EEZ, or the outer edge of its territorial waters, you have the right to ‘innocent passage’. That means that if you’re not doing anything harmful to the environment or the seabed, the coastal country can’t impose any sanctions on you.”[25](javascript:void(0)) If the ship enters a port or passes through the inner territorial waters, the territorial state can block the ship, but that doesn’t help the many countries whose waters the shadow vessels simply pass through. Countries are also wary of detaining shadow vessels in their waters, even if they have strong suspicions the vessels are violating maritime rules. “Nobody is interested in taking the vessels into a port and arrest[ing] the crew, because then you’re stuck with the ship in your harbor. Everyone hopes that it will pass your waters without any damage,” Wang noted.[26](javascript:void(0))

## Net Benefit

### 1AR---Executive Power Good

#### Restricting sanctions collapse pres powers – fight spills over

Rosenberg 17 [Elizabeth Rosenberg is a senior fellow and director of the Energy, Economics, and Security Program at the Center for a New American Security. From 2009 to 2013, she served as a senior advisor at the U.S. Department of the Treasury, helping senior officials develop, implement, and enforce financial and energy sanctions. “The War Over Who Controls U.S. Foreign Policy Has Begun Sanctions on Russia are just the beginning” Foreign Policy, JULY 28, 2017, <https://foreignpolicy.com/2017/07/28/the-war-over-who-controls-u-s-foreign-policy-has-begun/>] TDI

The unprecedented, massive new sanctions bill that Congress sent to President Donald Trump on Thursday is a statement of outrage by legislators over the president’s failure to responsibly carry out foreign policy on Iran, North Korea, and Russia. Fundamentally, it is also an overt effort to seize the national security reins from the president.

Legislators are near unanimous in their support for a tougher U.S. policy stance on some of the gravest national security challenges. Many believe that Trump and former President Barack Obama have not acted strongly enough to check Iran’s ballistic missile program, support for terrorism, and efforts to destabilize the Middle East, as well as North Korea’s alarming race toward long-range nuclear weapons capabilities.

Lawmakers took matters into their own hands and wrote the new sanctions legislation to address these threats. But the real target and virulence of their bill is the set of financial measures aimed squarely at Russia. A raft of new sanctions are designed to hold Moscow to account for its meddling in U.S. democratic processes and its continued aggressive actions in Europe and the Middle East.

In practical terms, the new Russia measures lock into statute existing sanctions, preventing the president from throwing them out. And they go much further: New provisions will cut deeper into the profit-making and international engagement of Russia’s defense, intelligence, energy, banking, rail, mining, and metals sectors. They also target Russian cyberintrusions, and the country’s military support for the Syrian regime. Taken together, these new restrictions send an appropriately tough message to the Kremlin that the United States will not tolerate Russia’s election meddling and thuggery.

As tough as the legislation is, however, serving up venomous financial sanctions is nothing new. The truly remarkable and unprecedented element of this piece of law is an innocuously dubbed “congressional review” of sanctions. It handcuffs the president in his exercise of sanctions by creating elaborate mechanisms for scrutiny and blockade to prevent watering down of Russia policy. Congress wants the president on a very short leash.

This power grab is not dissimilar to Congress’s creation of the War Powers Resolution in 1973 to check the executive’s ability to engage in armed conflict without legislative consent. Now, as then, many legislators see the current state of affairs as dire, necessitating remarkable measures.

But there’s a very high price to pay for this assertion of legislative prerogative. Congress is taking an irreversible step to significantly undermine one of the most prominent nonmilitary foreign policy tools available to the United States. Sanctions will be less nimble, less available, and the country’s leverage to compel adversaries to change their threatening policies weakened.

Two factors explain why the Russia bill will curb the utility of sanctions as a tool of statecraft. First, Congress is ill-suited to tightly manage their implementation over a sustained period — it lacks the necessary intelligence assets, bureaucratic structure, and legal capabilities. Congress will slow down policy change and make sanctions more clumsy and punitive, and less flexible.

The other factor to undermine the utility of sanctions is that this law recasts them as less of a motivator for policy change. Congress, with its powerful hold over any diminution of Russia sanctions but cumbersome bureaucratic structure, will struggle to coordinate and act to give Russia relief from sanctions if political circumstances change. Russian President Vladimir Putin cannot practically negotiate on sanctions with the whole U.S. Congress. He will see no utility in making good on Minsk commitments. Even if he does, the sanctions appear locked in place.

The foreign policy consequences don’t end there. Congress will likely replicate in other bills this straightjacket approach to review of sanctions. And if it does, this could have the effect of limiting the ability of the executive branch to recalibrate sanctions in a myriad of other areas. The next president, and successors, will all be handcuffed on sanctions and have less flexibility to lead U.S. foreign policy.

In a world rife with security threats, it is dangerous to diminish our foreign policy flexibility and nonmilitary tools of statecraft. Some in Congress realize what a high-stakes move they are making and will try to address the consequences later. But the overwhelming support of legislators for the new sanctions bill makes clear the danger they see in leaving Russia policy up to the president.

This is only the first round of the fight. The administration will chafe at the congressional strictures and find ways to push back, including by failing to fully implementing the new sanctions. In turn, Congress can be expected to ferociously micromanage any administration action to alter and enforce Russia sanctions. We will probably see hearings on specific license requests and narrow use of waivers, and a showdown over what constitutes “significant” foreign policy toward Russia.

Congress has scored a victory in passing this bill despite the objections of the White House, but the fight over who controls the direction of U.S. foreign policy is far from over.

#### Limiting executive authority upends deterrence

Whitlark 19 Rachel Elizabeth Whitlark is a political scientist and assistant professor of international affairs at the Georgia Institute of Technology.; Texas National Security Review; August 1st, 2019 “Should Presidential Command Over Nuclear Launch Have Limitations? In a Word, No.”] TDI Kevin

In the United States, the president has sole authority to order the launch of nuclear weapons. This feature of the American foreign policy apparatus is unique, especially relative to other war powers, which are shared by the executive and legislative branches. While there are checks in place for procedural verification to be sure that orders from the president are carried out appropriately, there are few institutional regulations to certify that justification exists for a nuclear attack. This means that one individual — the president — has near total autonomy over what might be the most important element in national security. Though congressional calls to limit presidential authority over this power are not new,1 they have grown increasingly frequent since President Donald Trump’s election. Today, multiple proposals from politicians and scholars alike recommend imposing limitations on presidential authority to mitigate against potentially dangerous impulses.2 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,3 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.4 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.5 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 1945.6 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.7 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.8 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,9 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. Indeed, perhaps the most critical consideration is the need to ensure and promote the deterrence and assurance operations that are the principal goals of the nuclear mission. Deterrence functions by convincing a state’s adversary that the costs and risks of its threatened reaction to an attack outweigh any benefits an aggressor might stand to gain.10 The central paradox of the Cold War was that, in order to prevent nuclear use, America had to be prepared to use nuclear weapons.11 This paradox remains in place today and must stay front and center. Critical to this paradox is what academics describe as the always/never dilemma.12 This refers to the notion that the nuclear arsenal must always work as intended, but simultaneously never work by accident or via unauthorized use. For deterrence to work, both the possessor of the arsenal and its adversaries must believe this to be the case. If not, a commander-in-chief cannot be confident that the arsenal will work when needed. Such doubts could cause an adversary to launch a preemptive attack. Steps to undermine this balance paradoxically increase the risk of nuclear use and make the United States less safe. If, for example, the president orders a nuclear launch, but congressional dawdling fails to authorize the command (or fails to do so in a timely manner), then the “always” is undermined. As a consequence, adversaries will begin to doubt the readiness of the United States to fight to defend its interests and might seek to capitalize on this vulnerability. Beyond this core dilemma, there are many indirect ways in which nuclear deterrence is fundamental to U.S. national security. Protecting the American homeland is only the most obvious. The nuclear arsenal also protects against enemy coercion. Furthermore, it protects allies and interests beyond the homeland. Nuclear weapons, because of the immense dangers they pose in the context of escalation, also prevent conflicts spiraling out of control.13 The U.S. nuclear arsenal, moreover, prevents nuclear proliferation to new states, as the American arsenal is extended to allies through guarantees that the United States will use it to protect them from enemy (nuclear) attack. As candidate and later President Trump discovered,14 making statements perceived to undermine these guarantees can make allies very nervous and prod them into revisiting their own nuclear capabilities.15 Any steps taken to undermine the American deterrent will, therefore, have significant direct and indirect consequences. In short, limiting presidential authority could jeopardize U.S. security by exposing it to blackmail, raising the risk of escalation, undermining alliance commitments, and endangering nonproliferation goals.

#### Extinction - executive flexibility is key to respond to terror, rogue states, and prolif.

Yoo 17. [John Yoo, Professor of Law at the University of California, Berkeley, and a visiting scholar at the American Enterprise Institute. “Trump’s Syria Strike Was Constitutional.” National Review. 4/13/2017. <https://www.nationalreview.com/2017/04/trump-syria-strike-constitutional-presidents-have-broad-war-powers>]

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 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. A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. 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.

#### Bureaucratic oversight destroys nuclear deterrence.

Wittes and Hennessey 17. [Benjamin Wittes, Senior Fellow in Governance Studies at the Brookings Institution, Co-Director of the Harvard Law School–Brookings Project on Law and Security, Susan Hennessey, Fellow in National Security in Governance Studies at the Brookings Institution, Managing Editor of the Lawfare blog. “Can Anyone Stop Trump If He Decides to Start a Nuclear War?” *Foreign Policy*, <https://foreignpolicy.com/2017/08/24/can-anyone-stop-trump-if-he-decides-to-start-a-nuclear-war/>, 8-24-2017]

Here, it’s worth considering an arresting comment made a few years ago on a panel at American University by Brad Berenson, who served in the White House Counsel’s office under Bush. The presidency is an office, he said, of terrifying power — power that includes the authority to order a preemptive nuclear strike on Tehran. The only thing, Berenson said, scarier than a president who has such power in his sole command is a president who does not have that power. At least in some circumstances, Berenson is clearly right. Consider, for example, the circumstances in which a foreign country has actually launched nuclear weapons against the United States, and there are only minutes before an American city is destroyed. While there is an argument that submarine-based weapons ensure a U.S. retaliatory capability and there is thus no need any longer for an instant response, it is certainly unconstitutional to deprive the commander in chief of the power to respond to an ongoing military operation against the United States. Under these circumstances, where there is no time to go to Congress for approval, there simply has to be some degree of unreviewable presidential power to launch — just as there is unreviewable power to order the military to repel a foreign surprise attack of any other kind. Now consider circumstances just short of that — where the adversary’s missiles are not yet in the air but their launch is genuinely imminent. Under both domestic constitutional law and international law, a preemptive response is lawful under such circumstances. So to put restrictions on the president’s launch authority in this type of situation would, again, bureaucratize the nation’s defense under time-sensitive crisis conditions. If it did so effectively, it could gravely undermine American deterrence by sending a message to adversaries that the U.S. nuclear capacity is tied up with red tape — at least until someone launches a nuclear strike against the country. But there’s also reason to doubt that it would do so effectively. To whom, after all, could Congress give the power to stymie the president on a launch to whom the president could not issue an order and remove that person if he or she does not comply? Imagine if the Saturday Night Massacre took place not over the firing of a special prosecutor but over a nuclear launch order and you begin to see how difficult it would be to limit at least time-sensitive presidential launch orders. This aspect, at least, of the president’s power over the nuclear arsenal is almost certainly irremediable by Congress — that is, it inheres in the nature of the presidential office. A case in point is the recent bill proposed by Sen. Ed Markey (D-Mass.) and Rep. Ted Lieu (D-Calif.) that would forbid the president from using the U.S. military to “conduct a first-use nuclear strike unless such strike is conducted pursuant to a declaration of war by Congress that expressly authorizes such strike.” Even if Trump had real-time satellite imagery of North Korea arming an intercontinental ballistic missile with a nuclear warhead for launch toward California, this bill would prevent nuclear preemption in the absence of congressional action. Imagine dealing with the Cuban missile crisis under such a law. It’s easier to imagine restrictions in circumstances where conditions of imminent strike are not present. That is, Congress probably could pass a law preventing the president from, say, on his own ordering an unprovoked nuclear strike against Great Britain — or North Korea — because he felt like it in the absence of an imminent threat. But such a strike is already unlawful; under international law, it’s a resort to force not in self-defense. And under domestic constitutional law, it’s a nondefensive use of force without authorization from Congress. True, there is currently no procedural check on a president who wants to do it, and one could add one. But a president willing to behave unlawfully and order the strike in the first instance is probably willing to ride roughshod over the procedural check as well. The more realistic check here is the possibility that military officers might refuse to carry out the unlawful order, a possibility that already exists under current law and that Sarah Grant and Jack Goldsmith have explored in detail on Lawfare. The other check, unfortunately the main one, is presidential sanity — a condition not obviously in play right now. The point is that it’s not entirely clear what protections additional legal restrictions would add. Moreover, distinguishing between conditions of imminence and conditions short of imminence is tricky; the executive branch has interpreted the concept of imminence sufficiently expansively that it’s reasonable to expect that regulation of any plausible use of nuclear weapons would either impinge on the space the executive branch regards as its sole domain or would merely redundantly stand for the proposition that the president may not do that which he may not do.

### 1AR---AT: Net Benefit

#### Can’t solve the net benefit—Congress doesn’t care about foreign affairs.

**Drezner 20** [Daniel W. Drezner is a professor of international politics at the Fletcher School of Law and Diplomacy at Tufts University and a regular contributor to PostEverything."Perspective." Washington Post, https://www.washingtonpost.com/outlook/2021/08/30/why-congress-will-not-reengage-foreign-policy/, 3-12-2020]

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.

1. *See* Harold Hongju Koh, The National Security Constitution: Sharing Power After the Iran-Contra Affair (1990). 2 *See id.* at 4. [↑](#footnote-ref-1)
2. Although the constitutional allocation of powers in this arena has been the subject of scholarly debate for well over half a century, nearly all scholars agree that the overall conduct of foreign affairs is not committed, by text or historical practice, to the exclusive discretion of any one branch. *See, e.g.*, Edward S. Corwin, The President: Office and Powers 1787–1957 (1957); Arthur Bestor, *Separation of Powers in the Domain of Foreign Affairs: The Intent of the Constitution Historically Examined*, 5 Seton Hall L. Rev. 527 (1974); Abraham Sofaer, War, Foreign Affairs, and [↑](#footnote-ref-2)
3. For a fuller defense of this argument, see generally Harold Hongju Koh, The National Security Constitution in the 21st Century (Yale Univ. Press forthcoming 2024). [↑](#footnote-ref-3)
4. U.S. 304 (1936). [↑](#footnote-ref-4)
5. *Id.* at 320. For a detailed critique of this dicta, *see* Koh, *supra* note 1, at 93–100. [↑](#footnote-ref-5)
6. *Id.* at 94. [↑](#footnote-ref-6)
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9. Michael Brice-Saddler, *While Bemoaning Mueller Probe, Trump Falsely Says the Constitution Gives Him ‘the Right to Do Whatever I Want*,*’* Wash. Post (July 23, 2019, 9:46 AM), https://www.washingtonpost.com/politics/2019/07/23/trump-falsely-tells-auditorium-full-teensconstitution-gives-him-right-do-whatever-i-want/ [https://perma.cc/UVQ5-98A4] (statement of Donald Trump) (“I have an Article II, where I have to [sic] the right to do whatever I want as president.”). Even after declaring his candidacy to again take the oath to “support, protect, and defend, the Constitution,” Trump wrote on social media that his prior defeat constituted a “Massive Fraud of [a] type and magnitude [that] allows for the termination of all rules, regulations, and articles, even those found in the Constitution.” Donald J. Trump (@realDonaldTrump), TruthSocial (Dec. 3, 2022, 7:44 AM), https://truthsocial.com/@realDonaldTrump/posts/109449803240069864 [https://perma.cc/6NET-2GMJ]. [↑](#footnote-ref-9)
10. S. Ct. 2392, 2423 (2018) (narrowly upholding Trump’s third travel ban based on tenuous claims of national security necessity). [↑](#footnote-ref-10)
11. *See, e.g.*, Dara Lind, *The Trump Administration’s Separation of Families at the Border, Explained*, Vox (Aug. 14, 2018, 1:29 PM), https://www.vox.com/2018/6/11/17443198/ children-immigrant-familiesseparated-parents [https://perma.cc/6745-XKV4] (separating parents who enter the country illegally from their children in the name of national security). [↑](#footnote-ref-11)
12. Harold Hongju Koh, *Is Preemptive Assassination the New Trump Doctrine?*, Foreign Pol’y (Jan. 9, 2020, 7:01 PM), https://foreignpolicy.com/2020/01/09/preemptive-assassination- suleimani-new-trump-doctrine-legal/ [https://perma.cc/74XN-XLD3] . [↑](#footnote-ref-12)
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19. Jim Cooper, *Fixing Congress*, Bos. Rev. (May 2, 2011), https://bostonreview.net/forum/ cooper-fixing-congress/ [https://perma.cc/AUG2-3WFL]. [↑](#footnote-ref-19)
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21. Cooper, *supra* note 26. [↑](#footnote-ref-21)
22. Ronald Brownstein, *Why the Senate Doesn’t Work Anymore*, CNN (Oct. 5, 2021, 2:52 PM), https://www.cnn.com/2021/10/05/politics/senate-broken-biden-agenda/index.html [https://perma.

    cc/S2CH-BWFY]. [↑](#footnote-ref-22)
23. *Id.* [↑](#footnote-ref-23)
24. witnessed a few prominent foreign policy exceptions: the climate change bill, enacted on a party line basis based on negotiations between Majority Leader Chuck Schumer and holdout Senator Joe Manchin, H.R. 5376, 117th Cong. (2022); and the bipartisan votes on a bill to boost U.S. competitiveness with China, H.R. 4346, 117th Cong. (2022); and the resolution supporting Finland and Sweden’s admission to NATO, S. Res. 646, 117th Cong. (2022). Kevin Liptak, Manu Raju, Ella Nilsen & Alex Rogers, *How Secret Negotiations Revived Joe Biden’s Agenda and Shocked Washington*, CNN (July 28, 2022, 7:27 PM), https://www. cnn.com/2022/07/28/politics/manchin-schumer-biden-deal/index.html [https://perma.cc/L3MJWDM8]; Kevin Breuninger, *House Passes Bill to Boost U.S. Chip Production and China Competition, Sending It to Biden*,CNBC (July 28, 2022, 3:03 PM), https://www.cnbc.com/2022/07/28/ china-competitiveness-and-chip-bill-passes-house-goes-to-biden.html [https://perma.cc/NF2QVVHA]; Mychael Schnell, *House Approves Resolution Supporting Finland, Sweden Joining*

    *NATO; 18 Republicans Vote ‘No*,*’* The Hill (July 18, 2022, 8:47 PM), https://thehill.com/homenews/ [↑](#footnote-ref-24)
25. U.S. 189 (2012). [↑](#footnote-ref-25)
26. *Id.* at 201. Chief Justice Roberts’s *Zivotofsky I* opinion called the political question doctrine a “narrow exception” to the general rule that the judiciary has the “responsibility to decide cases properly before it,” reducing the six-factor political question test originally introduced in *Baker v. Carr*, 369 U.S. 186 (1962),to its first two “textual[]” elements: finding a political question exists only when [1] “there is ‘a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it.’” *Id.* at 194–95. *But see* Curtis Bradley & Eric A. Posner, *The Real Political Question Doctrine*, 75 Stan. L. Rev. 1031, 1034 (2023) (arguing that lower courts have nonetheless continued applying the political question doctrine). [↑](#footnote-ref-26)
27. U.S. 211 (2011). [↑](#footnote-ref-27)
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30. Janko v. Gates, 741 F.3d 136, 137 (D.C. Cir. 2014), *cert. denied*, 575 U.S. 902 (2015). [↑](#footnote-ref-30)
31. *See, e.g.*, *In re* Assicurazioni Generali, S.P.A., 592 F.3d 113, 115 (2d Cir. 2010), *cert. denied*, 562 U.S. 952 (2010); *see also* United States v. Husayn (Zubaydah), 142 S. Ct. 959, 971 (2022) (plurality) (ruling that the state secrets privilege required dismissal of the plaintiff’s claim). [↑](#footnote-ref-31)
32. U.S. 1 (2015). [↑](#footnote-ref-32)
33. *See id.* at 28–29. [↑](#footnote-ref-33)
34. *Id.* at 20;Note, *Nondelegation’s Unprincipled Foreign Affairs Exceptionalism*, 134 Harv. L. Rev. 1132, 1133 (2021). [↑](#footnote-ref-34)
35. The five are Chief Justice Roberts and Justices Thomas, Alito, Gorsuch, and Kavanaugh. *See* Gundy v. United States, 139 S. Ct. 2116, 2135–37 (2019) (Gorsuch, Roberts, and Thomas JJ., dissenting); *id.* at 2130–31 (Alito, J., concurring in the judgment); Paul v. United States, 140 S. Ct. 342, 342 (2019) (Kavanaugh, J., respecting the denial of certiorari); Dep’t of Transp. v. Ass’n of Am. R.Rs., 575 U.S. 43, 80 & n.5 (2015) (Thomas, J., concurring in the judgment); *see also* Note, *supra* note 54, at 1136. Yet in the domestic realm, ironically, largely the same justices, led by Justice Gorsuch in *Gundy*, are trying to revive the *non*delegation doctrine, while conspicuously taking the opposite approach when foreign affairs-related statutes are at issue. *See* *Gundy*, 139 S. Ct. at 2136–37 (Gorsuch, J., dissenting) (questioning the constitutionality of agency rulemaking about “private conduct,” but not so long as it overlaps with “authority the Constitution separately vests in another branch,” such as executive power over “foreign affairs”). Such an overly generous approach to delegation when foreign affairs are at issue threatens to treat *Curtiss-Wright*’s dicta as governing law, thereby unbalancing separation of powers in both foreign and domestic affairs. *Cf.* Nicholas R. Parrillo, *A Critical Assessment of the Originalist Case Against Administrative Regulatory Power: New Evidence from the Federal Tax on Private Real Estate in the 1790s*,130 Yale L.J. 1288, 1294 (2020) (“[N]ow, for the first time in nearly a century, the Supreme Court is poised [↑](#footnote-ref-35)
36. Joy Gordon, “Smart Sanctions Revisited,” *Ethics and International Affairs* 25, no. 3 (2011): 315–35. [↑](#footnote-ref-36)
37. Lee Kil-seong, “North Korean Hotel in China Forced to Close,” *Chosun Ilbo*, January 10, 2018 u http://english.chosun.com/site/data/html\_dir/2018/01/10/2018011001157.html. [↑](#footnote-ref-37)
38. Elizabeth Shim, “North Korea Blocks Mobile Phone Signals along China Border,” United Press International, September 22, 2015 u https://www.upi.com/Top\_News/World-News/2015/09/22/ North-Korea-blocks-mobile-phone-signals-along-China-border/5011442942128. [↑](#footnote-ref-38)
39. Tom Phillips, “China Building Network of Refugee Camps along Border with North Korea,” *Guardian*, December 12, 2017 u https://www.theguardian.com/world/2017/dec/12/ china-refugee-camps-border-north-korea. [↑](#footnote-ref-39)
40. “N. Korean Ship Seized with Cuban Weapons ‘Free to Leave’ Panama,” BBC, February 9, 2014 u https://www.bbc.com/news/world-latin-america-26103467. [↑](#footnote-ref-40)
41. “N Korean Heroin Ship Sunk by Jet,” BBC, March 23, 2006 u http://news.bbc.co.uk/2/hi/asiapacific/4837484.stm. [↑](#footnote-ref-41)
42. For more information on the research discussed in this section, see Huish, “How to Sink the Hermit

    Kingdom”; and Huish, “The Failure of Maritime Sanctions Enforcement against North Korea.” [↑](#footnote-ref-42)
43. Guy Faulconbridge, Jonathan Saul, and Polina Nikolskaya, “Exclusive: Despite Sanctions, North Korea Exported Coal to South, Japan via Russia—Intelligence Sources,” Reuters, January 25, 2018 u http://www.reuters.com/article/us-northkorea-missiles-coal-russia/exclusive-despite-sanctionsnorth-korea-to-south-japan-via-russia-intelligence-sources-idUSKBN1FE35N. [↑](#footnote-ref-43)
44. “Photos: North Korean Ship-to-Ship Fuel Transfer,” *Maritime Executive*, February 27, 2018 u https:// www.maritime-executive.com/article/photos-north-korean-ship-to-ship-fuel-transfer#gs.MSLN4oA. [↑](#footnote-ref-44)
45. *See* Harold Hongju Koh, The National Security Constitution: Sharing Power After the Iran-Contra Affair (1990). 2 *See id.* at 4. [↑](#footnote-ref-45)
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48. U.S. 304 (1936). [↑](#footnote-ref-48)
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53. Michael Brice-Saddler, *While Bemoaning Mueller Probe, Trump Falsely Says the Constitution Gives Him ‘the Right to Do Whatever I Want*,*’* Wash. Post (July 23, 2019, 9:46 AM), https://www.washingtonpost.com/politics/2019/07/23/trump-falsely-tells-auditorium-full-teensconstitution-gives-him-right-do-whatever-i-want/ [https://perma.cc/UVQ5-98A4] (statement of Donald Trump) (“I have an Article II, where I have to [sic] the right to do whatever I want as president.”). Even after declaring his candidacy to again take the oath to “support, protect, and defend, the Constitution,” Trump wrote on social media that his prior defeat constituted a “Massive Fraud of [a] type and magnitude [that] allows for the termination of all rules, regulations, and articles, even those found in the Constitution.” Donald J. Trump (@realDonaldTrump), TruthSocial (Dec. 3, 2022, 7:44 AM), https://truthsocial.com/@realDonaldTrump/posts/109449803240069864 [https://perma.cc/6NET-2GMJ]. [↑](#footnote-ref-53)
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65. Cooper, *supra* note 26. [↑](#footnote-ref-65)
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67. *Id.* [↑](#footnote-ref-67)
68. witnessed a few prominent foreign policy exceptions: the climate change bill, enacted on a party line basis based on negotiations between Majority Leader Chuck Schumer and holdout Senator Joe Manchin, H.R. 5376, 117th Cong. (2022); and the bipartisan votes on a bill to boost U.S. competitiveness with China, H.R. 4346, 117th Cong. (2022); and the resolution supporting Finland and Sweden’s admission to NATO, S. Res. 646, 117th Cong. (2022). Kevin Liptak, Manu Raju, Ella Nilsen & Alex Rogers, *How Secret Negotiations Revived Joe Biden’s Agenda and Shocked Washington*, CNN (July 28, 2022, 7:27 PM), https://www. cnn.com/2022/07/28/politics/manchin-schumer-biden-deal/index.html [https://perma.cc/L3MJWDM8]; Kevin Breuninger, *House Passes Bill to Boost U.S. Chip Production and China Competition, Sending It to Biden*,CNBC (July 28, 2022, 3:03 PM), https://www.cnbc.com/2022/07/28/ china-competitiveness-and-chip-bill-passes-house-goes-to-biden.html [https://perma.cc/NF2QVVHA]; Mychael Schnell, *House Approves Resolution Supporting Finland, Sweden Joining*

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76. U.S. 1 (2015). [↑](#footnote-ref-76)
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