# 1NC

## Off

### 1NC – T

#### Interpretation: appropriation involves permanent, exclusive use of land and resource extraction. The aff must defend that appropriation of outer space by private entities is unjust.

Stephen Gorove, Stephen Gorove (1917-2001) was a space law education pioneer. He served as a professor of space law and director of space studies and policy, from 1991-1998, at the University of Mississippi., 1969 " Interpreting Article II of the Outer Space Treaty" Fordham Law Review, https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1966&context=flr

With respect to the concept of appropriation the basic question is **what constitutes "appropriation,"** as used in the Treaty, especially in contradistinction to casual or temporary use. The term "appropriation" is used most frequently to denote the taking of property for one's own or exclusive use with a sense of permanence. Under such interpretation the establishment of a permanent settlement or the carrying out of commercial activities by nationals of a country on a celestial body may constitute national appropriation if the activities take place under the supreme authority (sovereignty) of the state. Short of this, if the state wields no exclusive authority or jurisdiction in relation to the area in question, the answer would seem to be in the negative, unless, the nationals also use their individual appropriations as cover-ups for their state's activities.5 In this connection, it should be emphasized that the word "appropriation" indicates a taking which involves something more than just a casual use. Thus a temporary occupation of a landing site or other area, just like the **temporary or nonexclusive use of property, would not constitute appropriation**. By the same token, any use involving consumption or **taking with intention of keeping for one's own exclusive use would amount to appropriation.**

#### Violation – application of PTD to space isn’t permanent, it’s context dependent and depends on cost benefit analysis

**WEF n.d.** -- (“Public Trust Doctrine.” Water Education Foundation, The Water Education Foundation is a nonprofit organization whose goal is to provide unbiased, balanced information on water issues in California and the Southwestern United States. The Foundation's mission, since its founding in 1977, has been "to create a better understanding of water resources and foster public understanding and resolution of water resource issues through facilitation, education and outreach,” <https://www.watereducation.org/aquapedia/public-trust-doctrine>, HKR-AS)

Rooted in Roman law, the public trust doctrine recognizes the public right to many natural resources including “the air, running water, the sea and its shore.”

The public trust doctrine requires the sovereign, or state, to hold in trust designated resources for the benefit of the people. Traditionally, the public trust applied to commerce and fishing in navigable waters, but its uses were expanded in California in 1971 to include fish, wildlife, habitat and recreation.

At that time, the California Supreme Court in Marks v. Whitney broadened the definition of public trust because “public trust uses are sufficiently flexible to **encompass changing public needs**.” This definition would be first applied in a legal case in the 1980s (see below). [See also California water rights.]

Mono Lake Case

In California, public trust was most notably invoked in a landmark case involving water use at Mono Lake.

In a landmark case filed to protect the Mono Lake Basin from 40 years of water diversions by the city of Los Angeles, California’s Supreme Court ruled in 1983 that reasonable and beneficial uses of water **must be interpreted in accordance with public trust needs**. This was the first case in California where the public trust doctrine was applied.

Significantly, the Mono Lake decision held that the state retains jurisdiction over these rights and may reconsider the impact on public trust, which in addition to the traditional commerce, navigation and fishing, includes wildlife habitat. The necessity of protecting the public trust was to be determined by balancing the value and cost of instream water needs against the benefits and costs of diversions. [Purchase the Layperson’s Guide to Water Rights to learn more about public trust.]

#### Plan text in a vacuum bad for fairness because it allows for incongruency between 99% of the aff and 1% of the aff – the worst version of their model is that the plan text is different from the advantage, so it makes no sense – hold them to reading a plan text defined contextually with the advantage

#### Vote neg –

#### 1] Ground – allowing affs to not defend permanent appropriation kills negative ground – we can’t read the innovation DA, since they can say innovative appropriation efforts are allowed, we can’t read asteroid mining or disads to specific types of appropriation since they can defend an exemption for that, etc. – Since the government gets to interpret whether or not the PTD applies to appropriation in specific instances, the negative can’t reasonably predict what the aff defends restricting and what it doesn’t. Ground controls the internal link to clash and fairness since the aff makes being neg impossible.

#### 2] Predictable limits – topic lit assumes a permanent ban of specific types of appropriation and allowing the aff to shift what they defend banning in the 1AR makes generating case negs and 1NCs impossible.

#### T is a voting issue that should be evaluated through competing interps – it tells the negative what to prepare for and reasonability invites judge intervention

### 1NC – DA

#### Appropriations pass now but floor time and bipartisanship are key

Bolton 1/13 [Alexander, staff reporter for The Hill, “Negotiators report progress toward 2022 spending deal” https://thehill.com/policy/finance/589599-negotiators-report-progress-on-reaching-2022-spending-deal]

Senate and House negotiators say they are getting closer to a deal on setting the top-line spending number for an appropriations package to fund government past Feb. 18 and avoid a shutdown.

The top Democrats and Republicans on the Senate and House Appropriations Committees met Thursday morning to chart a path for reaching agreement on a fiscal year 2022 omnibus government funding bill and said they would meet again soon.

Negotiators in the so-called “Four Corners” say they’re optimistic about reaching an agreement.

“I think of we have a good chance coming together on this,” Rep. Kay Granger (Texas), the top-ranking Republican on the House Appropriations Committee, told reporters as she headed into the meeting.

One Democratic senator said he had been told that Senate Appropriations Committee Chairman Pat Leahy (D-Vt.) and Sen. Richard Shelby (Ala.), the top-ranking Republican on the Senate panel, already have a tentative deal on the parameters of the legislation and now need to bring their House counterparts on board.

Leahy told The Hill before the meeting that “we’re trying to” get an agreement between Senate and House negotiators wrapped up soon.

“We realize time is running out,” he said.

Leahy, however, declined to comment on any understandings he has with Shelby or on the negotiating dynamics between the Senate and House.

Shelby told reporters after the meeting that Congress’s top-four appropriators had laid out the path for the talks, something they hadn’t done before.

“The four of us had constructive talks of where we go and how we get there and how we start,” he said. “We hadn’t worked that out yet.”

“We’ll continue to talk and meet,” he said, adding that Leahy and House Appropriations Committee Chairwoman Rosa DeLauro (D-Conn.) will reconvene the group soon to resume negotiations.

Shelby warned that another stopgap funding measures is “looming” if they fail to hammer out a deal by early next month.

Leahy described the meeting as a “worthwhile discussion” and said he hoped to get a deal done in the next few weeks.

Leahy and Shelby met with Senate Majority Leader Charles Schumer (D-N.Y.) and Minority Leader Mitch McConnell (R-Ky.) Wednesday to discuss the parameters of the spending package, which is weeks behind schedule.

The 2021 fiscal year ended at the end of September and lawmakers uncharacteristically left Washington for Christmas without passing the annual appropriations bills because Democrats were focused on finishing work on President Biden’s sweeping climate and social spending bill, Build Back Better, which remains stalled in the Senate.

The Senate is scheduled to be in recess next week in observance of Martin Luther King Jr. Day but DeLauro said the group would meet again soon in order to have a better chance of reaching a deal by Feb. 18.

“That’s my goal,” she said. “We’re going to continue speaking.”

Asked if she feels more hopeful after the meeting, she said “I’m hopeful always.”

#### Large President-led national space policies incite immense partisan backlash that spills over to kill the entire political agenda

Dreier 16 [Casey Dreier, Chief Advocate & Senior Space Policy Adviser for The Planetary Society, April 13, 2016. “Does Presidential Intervention Undermine Consensus for NASA?” https://www.planetary.org/blogs/casey-dreier/2016/0413-does-a-strong-president-help-or-hurt-consensus-on-NASA.html]

To see how this happens, I recommend reading the book “[Beyond Ideology](http://smile.amazon.com/Beyond-Ideology-Politics-Principles-Partisanship/dp/0226470768/ref=smi_www_rco2_go_smi_g2243582042?_encoding=UTF8&*Version*=1&*entries*=0&ie=UTF8)” by Frances Lee. The author’s larger premise is that issues having no intrinsic relation to stated party ideology have become increasingly polarized in recent years. This is a function of the two party nature of our political system. If your party coalition wins, the other one loses. It’s [It is] zero-sum. Your party can win in one of two ways: you can make a better pitch to voters by demonstrating the superiority of your agenda; or you can undermine and stymie the agenda of the opposition party, making them unpopular with voters, and pick up the seats that they lose. Since you’re the only other political party, you gain in either scenario. I’m not sure if you’ve noticed, but the “undermine and stymie” approach has been popular for quite some time now in the U.S. Congress. Given this situation, the President and their policies naturally become the symbolic target of the opposition party. Anything promoted by the President effectively induces opposition by association. Lee demonstrates the magnitude of this induced polarization on various types of issues. For highly polarized issues like the role of government in the economy, or social issues, the impact is minimal—the opposition has already been clearly defined and generally falls into clearly defined ideologies of the Republican and Democratic parties. But for issues that do not fit readily into a predefined political ideology—like space—the induced polarization by the President can be significant. In fact, Lee showed that space, science, and technology issues incur the greatest increase in partisanship based on their inclusion in the Presidential agenda. One need only look to at the responses by political operatives of the opposing party to the strong human spaceflight proposals by [Barack Obama in 2010](http://www.shelby.senate.gov/public/index.cfm/mobile/newsreleases?ID=25F3AD2E-802A-23AD-4960-F512B9E205D2), [George W. Bush in 2004](http://www.nbcnews.com/id/3950099/ns/technology_and_science-space/t/bush-sets-new-course-moon-beyond/#.Vw3UMRMrKHo), and [George H.W. Bush in 1989](http://www.nytimes.com/1989/07/21/us/president-calls-for-mars-mission-and-a-moon-base.html) to see this reflected in recent history. This isn’t to say that Presidents can’t have a significant impact on the space program. Clearly they can. But the broad consensus needed for stability after their departure from office may be undermined by the very priority they gave it during their tenure. It what amounts to a mixed blessing for NASA, the U.S. space program does have an unusually strong bipartisan group of politicians who support the program due to NASA centers in a variety of states throughout the union. Berger notes this throughout his article, and it does, in a way, act as force that is resistant to change for good and bad. This mitigates somewhat the pure polarization seen on other science and technology issues. But for a Journey to Mars—a major effort that would, at best, require stability and significant funding over many Presidential administrations—that may not be enough. Perhaps the solution is for the next President to maintain a light touch on space. Maybe they should speak softly through the budget process, and avoid the Kennedyesque speeches and declarations to Congress that induce the types of partisanship we so dearly need to avoid.

#### Yearlong CR ruins UAVs for decades—that undermines strategic competition

Wynne 1/14 [Brian Wynne, Federal Aviation Administration’s Drone Advisory Committee and Management Advisory Council, "A yearlong continuing resolution will hinder unmanned systems integration", 1/14/22, https://www.defensenews.com/opinion/commentary/2022/01/14/a-yearlong-continuing-resolution-will-hinder-unmanned-systems-integration/]

With fiscal 2022 well underway and the current continuing resolution set to expire without congressional consensus on a way forward on appropriations, the U.S. Department of Defense is preparing for the possibility of operations under a full-year CR stopgap measure. Let’s be clear: That will hinder the continued integration of unmanned systems into the U.S. military and ultimately harm our preparedness for strategic competition.

During a hearing this week of the House Appropriations Committee’s Defense Subcommittee, appropriators rightly acknowledged that a full-year CR would make our military less agile and curtail our ability to prepare for current security challenges. Members of Congress must also realize that failure to pass funding bills will create a domino effect that will harm U.S. national security for years to come by damaging the growing unmanned systems industry.

As the Pentagon moves resources and dollars to address this new era of strategic competition, unmanned systems — in the air, in space, in the sea and on land — will be the tip of the sword for our sailors, Marines, soldiers and airmen against rising geopolitical threats.

Launched last year, the Navy’s Unmanned Campaign Plan and related task force are two examples that demonstrate the extent to which DoD leaders understand the unparalleled value uncrewed systems will provide in achieving the vision presented in the National Defense Strategy.

However, the new normal of cycles of CRs results in real-dollar budget reductions and program delays that threaten the progress of this vision — and these losses harm both U.S. strategic competitiveness and the defense-industrial base. As Adm. Mike Gilday stated during the House Appropriations Committee hearing: “Every day matters in this critical decade.”

Appropriators must understand that the importance of full funding for the research, development, test and evaluation as well as the procurement of uncrewed systems at this moment cannot be overstated.

A full-year CR will prevent critical, new uncrewed systems programs from being initiated. This includes authorization of $57 million for the Marine Corps’ Group 5 UAS development project; projects totaling $52.5 million for the development of counter-small UAS capabilities; and $57.6 million dedicated to the maturation of technologies under the AFWERX prime project. By operating at FY21 funding levels, the program for small unmanned undersea vehicles will see only a third of its FY22 authorized budget.

These cuts represent significant losses of time and capital that the unmanned systems industry has spent in preparing systems for field action. The defense-industrial base has made investments in the technology, supply base, workforce, supply chain and infrastructure based on the DoD’s vision for the future.

Companies working to advance the front lines of innovation already face a “procurement trough” caused by delays and gaps in new programs. A full-year CR would set off an irreversible ripple effect that would deepen this trough for years to come.

Simply put, saddling companies nationwide with long-standing Capital Beltway problems prevents the development and adoption of critical tools. Smaller and midsized companies feel the impacts of these delays most, and continued delays will force them to move their investments away from unmanned systems to other, more predictable markets.

Until Congress puts American warfighters before political concerns, the U.S. will fall behind in the development, fielding and adoption of modern tools that support a full range of missions.

The time is now to make the DoD’s strategic visions reality by accelerating investments in air, surface and subsurface platforms. Congressional leaders must immediately work to build consensus in support of stable funding that enables the development and integration of uncrewed systems. The country is looking for assertive congressional leadership — now is the time to step up.

#### That causes nuclear war with Russia and china

Kroenig & Gopalaswamy 18, \*Associate Professor of Government and Foreign Service at Georgetown University and Deputy Director for Strategy in the Scowcroft Center for Strategy and Security at the Atlantic Council. \*\*Director of the South Asia Center at the Atlantic Council. He holds a PhD in mechanical engineering with a specialization in numerical acoustics from Trinity College, Dublin. (Matthew & Bharath, 11-12-2018, "Will disruptive technology cause nuclear war?", *Bulletin of the Atomic Scientists*, https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/)

Rather, we should think more broadly about how new technology might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies rapid shifts in the balance of power as a primary cause of conflict.

International politics often presents states with conflicts that they can settle through peaceful bargaining, but when bargaining breaks down, war results. Shifts in the balance of power are problematic because they undermine effective bargaining. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the military balance of power can contribute to peace. (Why start a war you are likely to lose?) But shifts in the balance of power muddy understandings of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially destabilizing shifts in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become more assertive in the region, claiming contested territory in the South China Sea. And the results of Russia’s military modernization have been on full display in its ongoing intervention in Ukraine.

Moreover, China may have the lead over the United States in emerging technologies that could be decisive for the future of military acquisitions and warfare, including 3D printing, hypersonic missiles, quantum computing, 5G wireless connectivity, and artificial intelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to incorporate new technologies into their militaries before the United States, then this could lead to the kind of rapid shift in the balance of power that often causes war.

If Beijing believes emerging technologies provide it with a newfound, local military advantage over the United States, for example, it may be more willing than previously to initiate conflict over Taiwan. And if Putin thinks new tech has strengthened his hand, he may be more tempted to launch a Ukraine-style invasion of a NATO member.

Either scenario could bring these nuclear powers into direct conflict with the United States, and once nuclear armed states are at war, there is an inherent risk of nuclear conflict through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to preserve prevailing power balances more broadly.

### 1NC – DA

#### The plan upends local control over ocean zoning—national interests expedite offshore renewables, local opposition prevents it

Ganong 11, (J.D. Candidate at William & Mary Law School, The Slippery Shelf: Ceding the Public Trust to Administrative Ambivalence in Offshore Development, scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1535&context=wmelpr)

Still, the Act garnered praise as a step in the right direction towards more cohesive management of the nation’s sea resources, as called for by a 2003 Pew Ocean Commission report,136 which provides part of a possible solution to allowing adjacent coastal states to command a response to negative impacts of projects in federal waters off their shores.137 The report calls for the federal government to revamp federal ocean laws to better protect ocean resources in the face of increasing ocean development.138 The report noted that “[t]he principal laws to protect our coastal zones, endangered marine mammals, ocean waters, and fisheries were enacted thirty years ago, on a crisis-by-crisis, sector-by-sector basis.”139 The result has rendered chaos for ocean management: “[p]lagued with systemic problems, U.S. ocean governance is in disarray.”140 The current state of affairs prompted the Commission to call for reformation of the federal government’s relationship to ocean resources, with the report noting, “[m]ost importantly, we must treat our oceans as a public trust.”141 The report advocates implementing ocean zoning guided by a National Ocean Policy Act and administered by regional authorities.142 Implementing the Pew Ocean Commission’s recommendations would aggrandize the Massachusetts Ocean Act of 2008 by installing a comprehensive ocean management policy and consequent zoning,143 administered through regional councils.144 While the plan calls for participation from various government officials and a broad range of stakeholders,145 it creates new governmental bodies146 at the expense of bypassing existing governmental zoning structures rooted in the American tradition of local land use governance.147 This is perhaps detrimental to states’ roles as public trust guardians when local governments, who traditionally hold such zoning authority,148 are situated nearest the project and, resultantly, may be best attuned to the negative externalities of offshore projects and most cognizant of the public’s interest in those resources affected by a particular offshore project.149 As discussed below, and as illustrated by the Cape Wind conflict, shifting ocean zoning authority to a new federal agency, even one peppered with local stakeholders, might aggravate existing tensions between offshore development, national policy considerations, and an American tradition of local control. IV. SITING THE POWER AS KEY TO SITING WIND FARMS AND OTHER OFFSHORE PROJECTS Perhaps contributing to the Cape Wind conflict is the dissonance between the presupposition of local land use controls and national policy advancement. The latent tension between local land use control and national policy objectives could be mitigated by a cohesive national oceanic policy and consequent zoning, as suggested by the Pew Commission report.150 A national ocean policy that heeds the traditional structure of American zoning governance may both chill paralyzing conflict and elevate discourse regarding appropriate offshore development.151 The concept of local control over what space is used for what purpose has deep-seated origins in local governance: as Rosenberg suggests, “[t]he practice of state and local government supremacy over direct land utilization has strong support in American concepts of federalism and enacting federal preemption would interfere with traditional land use control authority and would likely be very politically unpopular in many parts of the United States.”152 Clearly, the Cape Wind project has illustrated how unpopular removing local control from significant development can be.153 Perhaps the resistance to surrendering local control comes with good reason. Zoning powers were delegated to states, which in turn delegated such powers to municipalities and counties,154 due to federalism’s assumption that decision-making should occur at the most local level with capacity to solve the problem at issue.155 Whether local governments have the “capacity” to exhaustively analyze the impacts of an offshore wind farm might be arguable given that their perspective is often limited to localized concerns156 at the expense of broader concerns, like a national interest in encouraging renewable energy generation.157

#### Local PTD obstructs offshore wind now – increasing federal power over-rides this because of vast energy benefits – OSW undermines ocean biodiversity

Ganong 11, (J.D. Candidate at William & Mary Law School, The Slippery Shelf: Ceding the Public Trust to Administrative Ambivalence in Offshore Development, scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1535&context=wmelpr)

While these concerns are valid,161 the same rationale for seating decision-making power closest to those it affects would seem to suggest that communities can capably assess the particular project impacts affecting their shores, navigable waterways, and citizens, thereby supporting the assertion that local governments should have some command of how spaces surrounding them are used. For instance, local communities have staged complaints that radiation from wind turbines could pollute the water and that turbine supports could attract jellyfish populations that would cause a corresponding decrease in fish, thereby affecting local fishermen.162 Without local fishermen to raise these concerns impacting their livelihood, this negative impact, however small, to the biodiversity of the proposed project site might not be so zealously emphasized. Also, corollary to the proposition that community oversight of project impacts leads to parochial decision-making163 is that state and federal agencies may not make decisions in the best interests of individual communities in an effort to achieve broader policy goals. This is especially true when federal and state alternatives to local decision-making stand to receive significant revenues from the proposed projects. This is the case in the Cape Wind project, where a twenty-eight year lease for operating offshore wind turbines will generate $88,278 in annual federally assessed fees, more when the project becomes operational, twenty-seven percent of which will go to the Massachusetts commonwealth.164 In times of shrinking public budgets, such inducements might sway policy makers, even inadvertently, towards project approval while understating negative project impacts.165 Because those closest to the project may best be able to articulate negative policy impacts,166 local governments should play an active role in articulating negative externalities from offshore development projects as part of a state’s fulfillment of its role as guardian of the public trust. While local governments should play an active role by guiding development of projects in federal waters, national policy goals could be too easily thwarted if local communities, or even states, held veto power for offshore projects marginally impacting their shores, despite the fact that such projects promise renewable energy benefits to a much larger segment of the population than resides within their town lines.167 While understanding the Alliance dissent’s warning against polarizing the stewardship of ocean resources with furtherance of national energy policy goals,168 it is important to note that the public trust doctrine should not be commandeered in the name of many to serve the private desires of a few,169 a charge Cape Wind project opponents have encountered in their opposition to the project.170 Yet in cases where competing values stake a claim to public trust doctrine arguments, such policy tensions are perhaps best left to resolution by the people, to whom powers are reserved by the Constitution’s Ninth and Tenth Amendments.171 Resolving these overarching policy conflicts could well be done through a comprehensive revamping of ocean legislation as suggested by the Pew Commission172 and as recommended by the U.S. Commission on Ocean Policy.173 Given the need for federal policy to establish a comprehensive offshore wind power regulatory scheme,174 the siting of offshore projects located in federal territorial waters should well be the prerogative of federal administrative agencies.175 Yet, to best resolve the tension between the benefits and tradition of local oversight and the need for efficacy in implementing a comprehensive national policy,176 heed should be given to the state’s role in enforcing the public trust doctrine177 and, consequently, to negative externalities flagged by those trustees of the public trust as provided for by statutes like the Massachusetts Ocean Act of 2008.178 To achieve this framework of complete federal jurisdiction concordant with the state’s public trust role, Congress can act on the U.S. Commission on Ocean Policy’s recommendation to strengthen partnerships with nonfederal agencies, particularly states, to manage off shore development.179 How to do this raises another discussion.

#### Their solvency author explicitly flags oceans as an area where the doctrine would be applied

Babcock 19 [H., general counsel to the National Audubon Society from 1987-91 and as deputy general counsel and Director of Audubon’s Public Lands and Water Program from 1981-87. Previously, she was a partner with Blum, Nash & Railsback, where she focused on energy and environmental issues, and an associate at LeBoeuf, Lamb, Leiby & MacRae where she represented utilities in the nuclear licensing process. From 1977-79, she served as a Deputy Assistant Secretary of Energy and Minerals in the U.S. Department of the Interior. Professor Babcock has taught environmental and natural resources law as a visiting professor at Pace University Law School and as an adjunct at the University of Pennsylvania, Yale, Catholic University, and Antioch law schools. Professor Babcock was a member of the Standing Committee on Environmental Law of the American Bar Association 2019. THE PUBLIC TRUST DOCTRINE, OUTER SPACE, AND THE GLOBAL COMMONS: TIME TO CALL HOME ET. [online] Lawreview.syr.edu. p. 234-35 Available at: <https://lawreview.syr.edu/wp-content/uploads/2019/09/H-Babcock-Article-Final-Document-v2.pdf#page=67>]

The 1959 Antarctic Treaty343 established “the foundation for international space law.”344 Like outer space, Antarctica and the oceans “presented a dilemma regarding habitation and defense. No nation occupied these territories and no nation desired a ‘race to own’ without a guarantee of who would emerge victorious.”345 Both the Antarctic Treaty and the Deep Seabed Hard Mineral Resources Act (the “Deep Seabed Act”)346 eschewed the concept of private property as well as the rights of first possession, in part, because the riches of those areas might allow developing nations to share in those riches as opposed to remaining economically marginalized.347 The Deep Seabed Act provides a model for how to regulate activities in a commons, like outer space, which it manages to do without privatizing the marine resource.348 As a result, it is “customary and accepted legal reasoning” to analogize between private ownership rights outside of national sovereignty, like those the Deep Seabed Act granted, and a “land claims recognition law for celestial bodies.”349 “The oceans and Antarctica . . . have much in common with the moon. They can be harsh environments that are difficult to reach to extract minerals [and are resource rich]. They are also designated international areas in which no nation has a sovereign claim.”350 The history of the earth’s oceans is a progression from “the domain of conquering armadas and privateers, when good legal title required as little as arbitrary lines drawn on a map,” to the concept of a “free sea” open to all countries, where no single country could “obstruct the use of that privilege.”351 International space law built on that history of open passage and “free sea.”352 The roots of the idea of granting non-space faring nations right of access can also be found in the 1958 Geneva Convention on the High Seas, which granted “landlocked states the right to sail the oceans by requiring their coastal neighbors to grant free passage over land and through territorial waters.”353 The legal framework of UNCLOS united “a broad spectrum of national and private interests into a shared agreement on the possession and usage of a seemingly borderless area of the global commons,” setting another useful precedent for outer space.354 However, UNCLOS, as a model, is impractical in “the vast reaches of outer space”—space is simply too vast and unlimited.355

**New turbines lead to invasive species – collapse global biodiversity**

**Langhamer 12** – Research Professor @ Norwegian University of Science and Technology

(Olivia, “Artificial Reef Effect in relation to Offshore Renewable Energy Conversion: State of the Art,” The Scientific World Journal, doi: 10.1100/2012/386713)//BB

One mitigating effect of offshore renewable energy on the local biodiversity may occur due to colonization by invasive species. Ever since international shipping started, marine organisms have been distributed all over the world by ballast water or as fouling on boat hulls. This introduction of alien species has dramatic ecological effects, since **it can be a threat to global biodiversity** [52, 53] and lead to local extinctions and fishery collapses [53]. Artificial hard substrates offer habitats for a large number of invasive species normally attached to rocky reefs [54]. In general, artificial structures do not host exactly the same species as a natural hard substrate [55, 56]. The installation of offshore renewable energy parks may not only introduce hard substrata in otherwise sandy-dominated bottoms, but can also provide new habitats for invasive species. Different hydrodynamics, such as more shelter due to new structures may lead to colonization of organisms very different to those on nearby hard substrates and thereby establish and spread nonindigenous species [57]. On wind turbine constructions in the North Sea and in the Baltic Sea the presence of alien species has been recorded [58–60] and may provide stepping-stones for spread, which could facilitate the establishment of the new taxa in the recipient region.

#### BioD loss causes extinction and turns everything

Torres 16 (Phil, founder of the X-Risks Institute, an affiliate scholar at the Institute for Ethics and Emerging Technologies, and the author of The End: What Science and Religion Tell Us About the Apocalypse, "Biodiversity loss: An existential risk comparable to climate change," Bulletin of Atomic Scientists, 4/11, http://thebulletin.org/biodiversity-loss-existential-risk-comparable-climate-change9329)

But there is another existential threat that the Bulletin overlooked in its Doomsday Clock announcement: biodiversity loss. This phenomenon is often identified as one of the many consequences of climate change, and this is of course correct. But biodiversity loss is also a contributing factor behind climate change. For example, deforestation in the Amazon rainforest and elsewhere reduces the amount of carbon dioxide removed from the atmosphere by plants, a natural process that mitigates the effects of climate change. So the causal relation between climate change and biodiversity loss is bidirectional. Furthermore, there are myriad phenomena that are driving biodiversity loss in addition to climate change. Other causes include ecosystem fragmentation, invasive species, pollution, oxygen depletion caused by fertilizers running off into ponds and streams, overfishing, human overpopulation, and overconsumption. All of these phenomena have a direct impact on the health of the biosphere, and all would conceivably persist even if the problem of climate change were somehow immediately solved. Such considerations warrant decoupling biodiversity loss from climate change, because the former has been consistently subsumed by the latter as a mere effect. Biodiversity loss is a distinct environmental crisis with its own unique syndrome of causes, consequences, and solutions—such as restoring habitats, creating protected areas (“biodiversity parks”), and practicing sustainable agriculture. The sixth extinction. The repercussions of biodiversity loss are potentially as severe as those anticipated from climate change, or even a nuclear conflict. For example, according to a 2015 study published in Science Advances, the best available evidence reveals “an exceptionally rapid loss of biodiversity over the last few centuries, indicating that a sixth mass extinction is already under way.” This conclusion holds, even on the most optimistic assumptions about the background rate of species losses and the current rate of vertebrate extinctions. The group classified as “vertebrates” includes mammals, birds, reptiles, fish, and all other creatures with a backbone. The article argues that, using its conservative figures, the average loss of vertebrate species was 100 times higher in the past century relative to the background rate of extinction. (Other scientists have suggested that the current extinction rate could be as much as 10,000 times higher than normal.) As the authors write, “The evidence is incontrovertible that recent extinction rates are unprecedented in human history and highly unusual in Earth’s history.” Perhaps the term “Big Six” should enter the popular lexicon—to add the current extinction to the previous “Big Five,” the last of which wiped out the dinosaurs 66 million years ago. But the concept of biodiversity encompasses more than just the total number of species on the planet. It also refers to the size of different populations of species. With respect to this phenomenon, multiple studies have confirmed that wild populations around the world are dwindling and disappearing at an alarming rate. For example, the 2010 Global Biodiversity Outlook report found that the population of wild vertebrates living in the tropics dropped by 59 percent between 1970 and 2006. The report also found that the population of farmland birds in Europe has dropped by 50 percent since 1980; bird populations in the grasslands of North America declined by almost 40 percent between 1968 and 2003; and the population of birds in North American arid lands has fallen by almost 30 percent since the 1960s. Similarly, 42 percent of all amphibian species (a type of vertebrate that is sometimes called an “ecological indicator”) are undergoing population declines, and 23 percent of all plant species “are estimated to be threatened with extinction.” Other studies have found that some 20 percent of all reptile species, 48 percent of the world’s primates, and 50 percent of freshwater turtles are threatened. Underwater, about 10 percent of all coral reefs are now dead, and another 60 percent are in danger of dying. Consistent with these data, the 2014 Living Planet Report shows that the global population of wild vertebrates dropped by 52 percent in only four decades—from 1970 to 2010. While biologists often avoid projecting historical trends into the future because of the complexity of ecological systems, it’s tempting to extrapolate this figure to, say, the year 2050, which is four decades from 2010. As it happens, a 2006 study published in Science does precisely this: It projects past trends of marine biodiversity loss into the 21st century, concluding that, unless significant changes are made to patterns of human activity, there will be virtually no more wild-caught seafood by 2048. Catastrophic consequences for civilization. The consequences of this rapid pruning of the evolutionary tree of life extend beyond the obvious. There could be surprising effects of biodiversity loss that scientists are unable to fully anticipate in advance. For example, prior research has shown that localized ecosystems can undergo abrupt and irreversible shifts when they reach a tipping point. According to a 2012 paper published in Nature, there are reasons for thinking that we may be approaching a tipping point of this sort in the global ecosystem, beyond which the consequences could be catastrophic for civilization. As the authors write, a planetary-scale transition could precipitate “substantial losses of ecosystem services required to sustain the human population.” An ecosystem service is any ecological process that benefits humanity, such as food production and crop pollination. If the global ecosystem were to cross a tipping point and substantial ecosystem services were lost, the results could be “widespread social unrest, economic instability, and loss of human life.” According to Missouri Botanical Garden ecologist Adam Smith, one of the paper’s co-authors, this could occur in a matter of decades—far more quickly than most of the expected consequences of climate change, yet equally destructive. Biodiversity loss is a “threat multiplier” that, by pushing societies to the brink of collapse, will exacerbate existing conflicts and introduce entirely new struggles between state and non-state actors. Indeed, it could even fuel the rise of terrorism. (After all, climate change has been linked to the emergence of ISIS in Syria, and multiple high-ranking US officials, such as former US Defense Secretary Chuck Hagel and CIA director John Brennan, have affirmed that climate change and terrorism are connected.) The reality is that we are entering the sixth mass extinction in the 3.8-billion-year history of life on Earth, and the impact of this event could be felt by civilization “in as little as three human lifetimes,” as the aforementioned 2012 Nature paper notes. Furthermore, the widespread decline of biological populations could plausibly initiate a dramatic transformation of the global ecosystem on an even faster timescale: perhaps a single human lifetime. The unavoidable conclusion is that biodiversity loss constitutes an existential threat in its own right. As such, it ought to be considered alongside climate change and nuclear weapons as one of the most significant contemporary risks to human prosperity and survival.

## Case

### NC – PTD

#### Aff doesn’t solve – all of the really destructive mining projects are the ones with super high economic benefits – tiny projects with little benefit would get stopped but SpaceX stuff like starlink with huge economic ramifications would still happen

Fees cause circumvention – private companies can just pay their way out of it  
Babcock 19 (, H., 2019. THE PUBLIC TRUST DOCTRINE, OUTER SPACE, AND THE GLOBAL COMMONS: TIME TO CALL HOME ET. [online] Lawreview.syr.edu. Available at: <https://lawreview.syr.edu/wp-content/uploads/2019/09/H-Babcock-Article-Final-Document-v2.pdf#page=67> [Accessed 15 December 2021] Professor Babcock served as general counsel to the National Audubon Society from 1987-91 and as deputy general counsel and Director of Audubon’s Public Lands and Water Program from 1981-87. Previously, she was a partner with Blum, Nash & Railsback, where she focused on energy and environmental issues, and an associate at LeBoeuf, Lamb, Leiby & MacRae where she represented utilities in the nuclear licensing process. From 1977-79, she served as a Deputy Assistant Secretary of Energy and Minerals in the U.S. Department of the Interior. Professor Babcock has taught environmental and natural resources law as a visiting professor at Pace University Law School and as an adjunct at the University of Pennsylvania, Yale, Catholic University, and Antioch law schools. Professor Babcock was a member of the Standing Committee on Environmental Law of the American Bar Association, and served on the Clinton-Gore Transition Team.)-Harker PG

There are less than fee ownership property regimes that can give the holder of a defeasible fee all the rights of an owner with complete title to the property, except the right to alienate it.300 Thus, “leaseholds, licenses, reversionary interest, easements, and covenants” might work well in outer space without violating international laws.301 There are also three types of defeasible fees that might be useful in outer space.302 “Defeasible fees, unlike fee simple absolute,” might convey property to a company, but are encumbered by an “automatic reversion or right of entry interest.”303 The first of these is a “fee simple subject to condition subsequent.”304 These conditions, “if triggered, would revert the realty back into the control of the multinational community.”305 So to the extent space resources have been appropriated, the withdrawal is not permanent.306 Then there is a “fee simple determinable,” which is like a fee simple subject to condition subsequent, “except that a fee simple determinable creates an automatic reversion to the grantor upon the occurrence of the condition—the grantor need not assert the right of reverter in order to reestablish possession of the property.”307 A third type of defeasible fee is a “fee simple subject to executory limitation[, which] reverts ownership upon the occurrence of a specified event or condition not back to the grantor, but to an heir or third party.”308 In each of these situations, a fee simple is less than absolute because it can revert back to the grantor or a third party if some later condition occurs.309 In the case of development of outer space resources, examples of later changes in circumstances that could revert title to the grantor might be those that damage the resource or make its continued development non-sustainable, or the developer’s violation of international law or any terms regulating or otherwise limiting their actions. Leases and licenses are additional examples of impermanent types of property transfers.310 While a lease transfers exclusive possession of property from a grantor to a grantee, the transfer is only for a limited period of time; a license does not transfer any property and merely allows one party to use property that is managed and controlled by another party.311 Then there are easements, which “are rights, conveyed with the property.”312 Easements generally allow the property owner who owns the transferred property to continue to make some specified use of it.313 A negative easement, on the other hand, allows the entity that transferred property to prohibit the person who received it from using it in a specified way.314 Covenants are found in property conveyances and may prevent the grantee from using the property in some specific way.315 In each situation, not only is less than a full fee interest in property

### NC – Debris Defense

#### No debris cascades, but even a worst case is confined to low LEO with no impact

Daniel Von Fange 17, Web Application Engineer, Founder and Owner of LeanCoder, Full Stack, Polyglot Web Developer, “Kessler Syndrome is Over Hyped”, 5/21/2017, http://braino.org/essays/kessler\_syndrome\_is\_over\_hyped/

Kessler Syndrome is overhyped. A chorus of online commenters great any news of upcoming low earth orbit satellites with worry that humanity will to lose access to space. I now think they are wrong.

What is Kessler Syndrome?

Here’s the popular view on Kessler Syndrome. Every once in a while, a piece of junk in space hits a satellite. This single impact destroys the satellite, and breaks off several thousand additional pieces. These new pieces now fly around space looking for other satellites to hit, and so exponentially multiply themselves over time, like a nuclear reaction, until a sphere of man-made debris surrounds the earth, and humanity no longer has access to space nor the benefits of satellites.

It is a dark picture.

Is Kessler Syndrome likely to happen?

I had to stop everything and spend an afternoon doing back-of-the-napkin math to know how big the threat is. To estimate, we need to know where the stuff in space is, how much mass is there, and how long it would take to deorbit.

The orbital area around earth can be broken down into four regions.

Low LEO - Up to about 400km. Things that orbit here burn up in the earth’s atmosphere quickly - between a few months to two years. The space station operates at the high end of this range. It loses about a kilometer of altitude a month and if not pushed higher every few months, would soon burn up. For all practical purposes, Low LEO doesn’t matter for Kessler Syndrome. If Low LEO was ever full of space junk, we’d just wait a year and a half, and the problem would be over.

High LEO - 400km to 2000km. This where most heavy satellites and most space junk orbits. The air is thin enough here that satellites only go down slowly, and they have a much farther distance to fall. It can take 50 years for stuff here to get down. This is where Kessler Syndrome could be an issue.

Mid Orbit - GPS satellites and other navigation satellites travel here in lonely, long lives. The volume of space is so huge, and the number of satellites so few, that we don’t need to worry about Kessler here.

GEO - If you put a satellite far enough out from earth, the speed that the satellite travels around the earth will match the speed of the surface of the earth rotating under it. From the ground, the satellite will appear to hang motionless. Usually the geostationary orbit is used by big weather satellites and big TV broadcasting satellites. (This apparent motionlessness is why satellite TV dishes can be mounted pointing in a fixed direction. You can find approximate south just by looking around at the dishes in your northern hemisphere neighborhood.) For Kessler purposes, GEO orbit is roughly a ring 384,400 km around. However, all the satellites here are moving the same direction at the same speed - debris doesn’t get free velocity from the speed of the satellites. Also, it’s quite expensive to get a satellite here, and so there aren’t many, only about one satellite per 1000km of the ring. Kessler is not a problem here.

How bad could Kessler Syndrome in High LEO be?

Let’s imagine a worst case scenario.

An evil alien intelligence chops up everything in High LEO, turning it into 1cm cubes of death orbiting at 1000km, spread as evenly across the surface of this sphere as orbital mechanics would allow. Is humanity cut off from space?

I’m guessing the world has launched about 10,000 tons of satellites total. For guessing purposes, I’ll assume 2,500 tons of satellites and junk currently in High LEO. If satellites are made of aluminum, with a density of 2.70 g/cm3, then that’s 839,985,870 1cm cubes. A sphere for an orbit of 1,000km has a surface area of 682,752,000 square KM. So there would be one cube of junk per .81 square KM. If a rocket traveled through that, its odds of hitting that cube are tiny - less than 1 in 10,000.

So even in the worst case, we don’t lose access to space.

Now though you can travel through the debris, you couldn’t keep a satellite alive for long in this orbit of death. Kessler Syndrome at its worst just prevents us from putting satellites in certain orbits.

In real life, there’s a lot of factors that make Kessler syndrome even less of a problem than our worst case though experiment.

* Debris would be spread over a volume of space, not a single orbital surface, making collisions orders of magnitudes less likely.
* Most impact debris will have a slower orbital velocity than either of its original pieces - this makes it deorbit much sooner.
* Any collision will create large and small objects. Small objects are much more affected by atmospheric drag and deorbit faster, even in a few months from high LEO. Larger objects can be tracked by earth based radar and avoided.
* The planned big new constellations are not in High LEO, but in Low LEO for faster communications with the earth. They aren’t an issue for Kessler.
* Most importantly, all new satellite launches since the 1990’s are required to include a plan to get rid of the satellite at the end of its useful life (usually by deorbiting)

So the realistic worst case is that insurance premiums on satellites go up a bit. Given the current trend toward much smaller, cheaper micro satellites, this wouldn’t even have a huge effect.

I’m removing Kessler Syndrome from my list of things to worry about.

#### It takes centuries and adaptation solves

Ted Muelhaupt 19, Associate Principal Director of the Systems Analysis and Simulation Subdivision (SASS) and Manager of the Center for Orbital and Reentry Debris Studies at The Aerospace Corporation, M.S., B.S. Aerospace and Aeronautical Engineering & Mechanics, University of Minnesota - Twin Cities, Senior Member of the American Institute of Aeronautics and Astronautics, “How Quickly Would It Take For the Kessler Syndrome To Destroy All The Satellites In LEO? And Could You See This Happening From Earth?”, Quora, 2/28/2019, https://www.quora.com/How-quickly-would-it-take-for-the-Kessler-Syndrome-to-destroy-all-the-satellites-in-LEO-And-could-you-see-this-happening-from-Earth

The dynamics of the Kessler Syndrome are real, and most people studying it agree on the concept: if there is sufficient density of objects and mass, a chain reaction of debris breaking up objects and creating more debris can occur. But the timescale of this process takes decades and centuries. There are many assumptions that go into these models. Though there is still argument about this, many people in the field think that the process is already underway in low earth orbit. But others, including myself, think we can stop it if we take action. This is a slow motion disaster that we can prevent.

But in spite of hype to the contrary, we will never “lose access to space”. Certain missions may become impractical or too expensive, and we may decide that some orbits are too risky for humans. Even that depends on the tolerance for the risk. But robots don’t have mothers, and if we feel it is worthwhile we will take the risk and fly the satellites where we need to.

To the specifics of the question, it will take many decades. It will not destroy all satellites in LEO. You won’t be able to see it from the ground unless you were extraordinarily lucky, and you happened to see a flash from a collision in the instant you were looking, with just the right lighting.

#### Squo tracking, shielding, and removal plans solve

Dr. Brian Koberlein 16, Professor of Physics at the Rochester Institute of Technology and PhD in Astrophysics from the University of Connecticut, “Cascade Effect”, 5-4, https://archive.briankoberlein.com/2016/05/04/cascade-effect/index.html

In the movie Gravity the driving force of the plot is a catastrophic cascade of space debris. An exploding satellite sends high speed debris into the path of other satellites, and the resulting collisions create more space debris until everything from a space shuttle to the International Space Station faces an eminent threat of destruction. Not unexpectedly, the movie portrayal of such a situation is not particularly accurate, but the risk of a debris cascade is very real.

It’s known as the Kessler syndrome, after Donald Kessler, who first imagined the scenario in the 1970s. The problem comes down to the fact that small objects in Earth orbit can stay in orbit for a very long time. If an astronaut drops a bolt, it can stay in orbit for decades or centuries. Because the relative speed of two objects in orbit can be quite large, it doesn’t take a big object to pose a real threat to your spacecraft. On the highway a small pebble can chip your car windshield. In space it can be done by a chip of paint traveling at thousands of kilometers per hour. In the history of the space shuttle missions, there were more than 1,600 debris strikes. Because of such strikes, more than 90 space shuttle windows had to be replaced over the lifetime of shuttle missions.

While that might sound alarming, it’s actually quite manageable. Upgrades and maintenance were quite common on the shuttle missions, and we tend to err on the side of caution when it comes to replacing parts. Modern spacecraft also have ways to mitigate the risk of small impacts, such as Whipple shields made of thin layers of material spaced apart so that objects disintegrate when hitting the shield rather than the spacecraft itself. We also have a tracking system that currently tracks more than 300,000 objects bigger than 1 cm, so we can make sure that most spacecraft avoid these objects.

But the risk of big collisions isn’t negligible. In 2009 the Iridium 33 and Kosmos-2251 satellites collided at high speed, destroying both spacecraft and creating more dangerous debris. It wouldn’t take many collisions like this for the debris numbers to rise dramatically, and more debris means a greater risk of collisions. In Gravity the cascade happens very quickly, triggered by a single event. The reality is not quite so grave. Instead of happening overnight, Kessler syndrome would occur gradually, raising collision risks to the point where certain orbits become logistically impractical. It could occur so gradually that we might not notice it early on, and there are some that argue it’s already underway.

The good news is that we’re aware of the threat. And, as the old saying goes, knowing is half the battle. Already we take steps to limit the amount of debris created. New spacecraft include end of life plans to remove them from orbit, either by sending them into Earths atmosphere to burn up, or sending them to a “graveyard orbit” that poses little risk to other spacecraft. There are also plans on the drawing board to clear orbits of debris, particularly in low-Earth orbit where the risk is greatest. The cascade effect is a real risk, but it’s also one we can likely manage with a bit of ingenuity.

### NC – War Defense

#### No retal or escalation from satellite attacks

Eric J. Zarybnisky 18, MA in National Security Studies from the Naval War College, PhD in Operations Research from the MIT Sloan School of Management, Lt Col, USAF, “Celestial Deterrence: Deterring Aggression in the Global Commons of Space”, 3/28/2018, https://apps.dtic.mil/dtic/tr/fulltext/u2/1062004.pdf

PREVENTING AGGRESSION IN SPACE

While deterrence and the Cold War are strongly linked in the public’s mind through the nuclear standoff between the United States and the Soviet Union, the fundamentals of deterrence date back millennia and deterrence remains relevant. Thucydides alludes to the concept of deterrence in his telling of the Peloponnesian War when he describes rivals seeking advantages, such as recruiting allies, to dissuade an adversary from starting or expanding a conflict.6F6 Aggression in space was successfully avoided during the Cold War because both sides viewed an attack on military satellites as highly escalatory, and such an action would likely result in general nuclear war.7F7 In today’s more nuanced world, attacking satellites, including military satellites, does not necessarily result in nuclear war. For instance, foreign countries have used high-powered lasers against American intelligence-gathering satellites8F8 and the United States has been reluctant to respond, let alone retaliate with nuclear weapons. This shift in policy is a result of the broader use of gray zone operations, to which countries struggle to respond while limiting escalation. Beginning with the fundamentals of deterrence illuminates how it applies to prevention of aggression in space.

#### Accidental war or miscalc is impossible

--self-deterrence – basic assumption of survival interest doesn’t require assumption of broader rationality

--opportunity for revising judgments – can “undo” escalation

--physical safeguards – Permissive Action Locks

--organizational checks – layers of communication and control double-checks

--overwhelming empirics – hundreds of near-accidents demonstrate safety, not risk

Michael **Quinlan 9**. Distinguished Former British Defence Strategist and Former Permanent Under-Secretary of State. 2009. “Thinking About Nuclear Weapons.” p. 63-69

Even if initial nuclear use did not quickly end the fighting, the supposition of inexorable momentum in a developing exchange, with each side rushing to overreaction amid confusion and uncertainty, is implausible. It fails to consider what the situation of the decisionmakers would really be. Neither side could want escalation. Both would be appalled at what was going on. Both would be desperately looking for signs that the other was ready to call a halt. Both, given the capacity for evasion or concealment which modern delivery platforms and vehicles can possess, could have in reserve significant forces invulnerable enough not to entail use-or-lose pressures. (It may be more open to question, as noted earlier, whether newer nuclear-weapon possessors can be immediately in that position; but it is within reach of any substantial state with advanced technological capabilities, and attaining it is certain to be a high priority in the development of forces.) As a result, neither side can have any predisposition to suppose, in an ambiguous situation of fearful risk, that the right course when in doubt is to go on copiously launching weapons. And none of this analysis rests on any presumption of highly subtle or pre-concerted rationality. The rationality required is plain. The argument is reinforced if we consider the possible reasoning of an aggressor at a more dispassionate level. Any substantial nuclear armoury can inflict destruction outweighing any possible prize that aggression could hope to seize. A state attacking the possessor of such an armoury must therefore be doing so (once given that it cannot count upon destroying the armoury pre-emptively) on a judgement that the possessor would be found lacking in the will to use it. If the attacked possessor used nuclear weapons, whether first or in response to the aggressor's own first use, this judgement would begin to look dangerously precarious. There must be at least a substantial possibility of the aggressor leaders' concluding that their initial judgement had been mistaken—that the risks were after all greater than whatever prize they had been seeking, and that for their own country's survival they must call off the aggression. Deterrence planning such as that of NATO was directed in the first place to preventing the initial misjudgement and in the second, if it were nevertheless made, to compelling such a reappraisal. The former aim had to have primacy, because it could not be taken for granted that the latter was certain to work. But there was no ground for assuming in advance, for all possible scenarios, that the chance of its working must be negligible. An aggressor state would itself be at huge risk if nuclear war developed, as its leaders would know. It may be argued that a policy which abandons hope of physically defeating the enemy and simply hopes to get him to desist is pure gamble, a matter of who blinks first; and that the political and moral nature of most likely aggressors, almost ex hypothesis, makes them the less likely to blink. One response to this is to ask what is the alternative—it can only be surrender. But a more positive and hopeful answer lies in the fact that the criticism is posed in a political vacuum. Real-life conflict would have a political context. The context which concerned NATO during the cold war, for example, was one of defending vital interests against a postulated aggressor whose own vital interests would not be engaged, or would be less engaged. Certainty is not possible, but a clear asymmetry of vital interest is a legitimate basis for expecting an asymmetry, credible to both sides, of resolve in conflict. That places upon statesmen, as page 23 has noted, the key task in deterrence of building up in advance a clear and shared grasp of where limits lie. That was plainly achieved in cold-war Europe. 11 vital interests have been defined in a way that is clear, and also clearly not overlapping or incompatible with those of the adversary, a credible basis has been laid for the likelihood of greater resolve in resistance. It was also sometimes suggested by critics that whatever might be indicated by theoretical discussion of political will and interests, the military environment of nuclear warfare—particularly difficulties of communication and control—would drive escalation with overwhelming probability to the limit. But it is obscure why matters should be regarded as inevitably so for every possible level and setting of action. Even if the history of war suggested (as it scarcely does) that military decision-makers are mostly apt to work on the principle 'When in doubt, lash out', the nuclear revolution creates an utterly new situation. The pervasive reality, always plain to both sides during the cold war, is 'If this goes on to the end, we are all ruined'. Given that inexorable escalation would mean catastrophe for both, it would be perverse to suppose them permanently incapable of framing arrangements which avoid it. As page 16 has noted, NATO gave its military commanders no widespread delegated authority, in peace or war, to launch nuclear weapons without specific political direction. Many types of weapon moreover had physical safeguards such as PALs incorporated to reinforce organizational ones. There were multiple communication and control systems for passing information, orders, and prohibitions. Such systems could not be totally guaranteed against disruption if at a fairly intense level of strategic exchange—which was only one of many possible levels of conflict— an adversary judged it to be in his interest to weaken political control. It was far from clear why he necessarily should so judge. Even then, however, it remained possible to operate on a general fail-safe presumption: no authorization, no use. That was the basis on which NATO operated. If it is feared that the arrangements which a nuclear-weapon possessor has in place do not meet such standards in some respects, the logical course is to continue to improve them rather than to assume escalation to be certain and uncontrollable, with all the enormous inferences that would have to flow from such an assumption. The likelihood of escalation can never be 100 per cent, and never zero. Where between those two extremes it may lie can never be precisely calculable in advance; and even were it so calculable, it would not be uniquely fixed—it would stand to vary hugely with circumstances. That there should be any risk at all of escalation to widespread nuclear war must be deeply disturbing, and decision-makers would always have to weigh it most anxiously. But a pair of key truths about it need to be recognized. The first is that the risk of escalation to large-scale nuclear war is inescapably present in any significant armed conflict between nuclear-capable powers, whoever may have started the conflict and whoever may first have used any particular category of weapon. The initiator of the conflict will always have physically available to him options for applying more force if he meets effective resistance. If the risk of escalation, whatever its degree of probability, is to be regarded as absolutely unacceptable, the necessary inference is that a state attacked by a substantial nuclear power must forgo military resistance. It must surrender, even if it has a nuclear armoury of its own. But the companion truth is that, as page 47 has noted, the risk of escalation is an inescapable burden also upon the aggressor. The exploitation of that burden is the crucial route, if conflict does break out, for managing it to a tolerable outcome—the only route, indeed, intermediate between surrender and holocaust, and so the necessary basis for deterrence beforehand. The working out of plans to exploit escalation risk most effectively in deterring potential aggression entails further and complex issues. It is for example plainly desirable, wherever geography, politics, and available resources so permit without triggering arms races, to make provisions and dispositions that are likely to place the onus of making the bigger and more evidently dangerous steps in escalation upon the aggressor who wishes to maintain his attack, rather than upon the defender. (The customary shorthand for this desirable posture used to be 'escalation dominance'.) These issues are not further discussed here. But addressing them needs to start from acknowledgement that there are in any event no certainties or absolutes available, no options guaranteed to be risk-free and cost-free. Deterrence is not possible without escalation risk; and its presence can point to no automatic policy conclusion save for those who espouse outright pacifism and accept its consequences. Accident and Miscalculation Ensuring the safety and security of nuclear weapons plainly needs to be taken most seriously. Detailed information is understandably not published, but such direct evidence as there is suggests that it always has been so taken in every possessor state, with the inevitable occasional failures to follow strict procedures dealt with rigorously. Critics have nevertheless from time to time argued that the possibility of accident involving nuclear weapons is so substantial that it must weigh heavily in the entire evaluation of whether war-prevention structures entailing their existence should be tolerated at all. Two sorts of scenario are usually in question. The first is that of a single grave event involving an unintended nuclear explosion—a technical disaster at a storage site, for example, or the accidental or unauthorized launch of a delivery system with a live nuclear warhead. The second is that of some event—perhaps such an explosion or launch, or some other mishap such as malfunction or misinterpretation of radar signals or computer systems—initiating a sequence of response and counter-response that culminated in a nuclear exchange which no one had truly intended. No event that is physically possible can be said to be of absolutely zero probability (just as at an opposite extreme it is absurd to claim, as has been heard from distinguished figures, that nuclear-weapon use can be guaranteed to happen within some finite future span despite not having happened for over sixty years). But human affairs cannot be managed to the standard of either zero or total probability. We have to assess levels between those theoretical limits and weigh their reality and implications against other factors, in security planning as in everyday life. There have certainly been, across the decades since 1945, many known accidents involving nuclear weapons, from transporters skidding off roads to bomber aircraft crashing with or accidentally dropping the weapons they carried (in past days when such carriage was a frequent feature of readiness arrangements—it no longer is). A few of these accidents may have released into the nearby environment highly toxic material. None however has entailed a nuclear detonation. Some commentators suggest that this reflects bizarrely good fortune amid such massive activity and deployment over so many years. A more rational deduction from the facts of this long experience would however be that the probability of any accident triggering a nuclear explosion is extremely low. It might be further noted that the mechanisms needed to set off such an explosion are technically demanding, and that in a large number of ways the past sixty years have seen extensive improvements in safety arrangements for both the design and the handling of weapons. It is undoubtedly possible to see respects in which, after the cold war, some of the factors bearing upon risk may be new or more adverse; but some are now plainly less so. The years which the world has come through entirely without accidental or unauthorized detonation have included early decades in which knowledge was sketchier, precautions were less developed, and weapon designs were less ultra-safe than they later became, as well as substantial periods in which weapon numbers were larger, deployments more widespread and diverse, movements more frequent, and several aspects of doctrine and readiness arrangements more tense. Similar considerations apply to the hypothesis of nuclear war being mistakenly triggered by false alarm. Critics again point to the fact, as it is understood, of numerous occasions when initial steps in alert sequences for US nuclear forces were embarked upon, or at least called for, by indicators mistaken or misconstrued. In none of these instances, it is accepted, did matters get at all near to nuclear launch—extraordinary good fortune again, critics have suggested. But the rival and more logical inference from hundreds of events stretching over sixty years of experience presents itself once more: that the probability of initial misinterpretation leading far towards mistaken launch is remote. Precisely because any nuclear-weapon possessor recognizes the vast gravity of any launch, release sequences have many steps, and human decision is repeatedly interposed as well as capping the sequences. To convey that because a first step was prompted the world somehow came close to accidental nuclear war is wild hyperbole, rather like asserting, when a tennis champion has lost his opening service game, that he was nearly beaten in straight sets. History anyway scarcely offers any ready example of major war started by accident even before the nuclear revolution imposed an order-of-magnitude increase in caution. It was occasionally conjectured that nuclear war might be triggered by the real but accidental or unauthorized launch of a strategic nuclear-weapon delivery system in the direction of a potential adversary. No such launch is known to have occurred in over sixty years. The probability of it is therefore very low. But even if it did happen, the further hypothesis of its initiating a general nuclear exchange is far-fetched. It fails to consider the real situation of decision-makers, as pages 63-4 have brought out. The notion that cosmic holocaust might be mistakenly precipitated in this way belongs to science fiction.

### NC – Space War

#### No miscalc or escalation

James Pavur 19, Professor of Computer Science Department of Computer Science at Oxford University and Ivan Martinovic, DPhil Researcher Cybersecurity Centre for Doctoral Training at Oxford University, “The Cyber-ASAT: On the Impact of Cyber Weapons in Outer Space”, 2019 11th International Conference on Cyber Conflict: Silent Battle T. Minárik, S. Alatalu, S. Biondi, M. Signoretti, I. Tolga, G. Visky (Eds.), <https://ccdcoe.org/uploads/2019/06/Art_12_The-Cyber-ASAT.pdf>

A. Limited Accessibility Space is difficult. Over 60 years have passed since the first Sputnik launch and only nine countries (ten including the EU) have orbital launch capabilities. Moreover, a launch programme alone does not guarantee the resources and precision required to operate a meaningful ASAT capability. Given this, one possible reason why space wars have not broken out is simply because only the US has ever had the ability to fight one [21, p. 402], [22, pp. 419–420]. Although launch technology may become cheaper and easier, it is unclear to what extent these advances will be distributed among presently non-spacefaring nations. Limited access to orbit necessarily reduces the scenarios which could plausibly escalate to ASAT usage. Only major conflicts between the handful of states with ‘space club’ membership could be considered possible flashpoints. Even then, the fragility of an attacker’s own space assets creates de-escalatory pressures due to the deterrent effect of retaliation. Since the earliest days of the space race, dominant powers have recognized this dynamic and demonstrated an inclination towards de-escalatory space strategies [23]. B. Attributable Norms There also exists a long-standing normative framework favouring the peaceful use of space. The effectiveness of this regime, centred around the Outer Space Treaty (OST), is highly contentious and many have pointed out its serious legal and political shortcomings [24]–[26]. Nevertheless, this status quo framework has somehow supported over six decades of relative peace in orbit. Over these six decades, norms have become deeply ingrained into the way states describe and perceive space weaponization. This de facto codification was dramatically demonstrated in 2005 when the US found itself on the short end of a 160-1 UN vote after opposing a non-binding resolution on space weaponization. Although states have occasionally pushed the boundaries of these norms, this has typically occurred through incremental legal re-interpretation rather than outright opposition [27]. Even the most notable incidents, such as the 2007-2008 US and Chinese ASAT demonstrations, were couched in rhetoric from both the norm violators and defenders, depicting space as a peaceful global commons [27, p. 56]. Altogether, this suggests that states perceive real costs to breaking this normative tradition and may even moderate their behaviours accordingly. One further factor supporting this norms regime is the high degree of attributability surrounding ASAT weapons. For kinetic ASAT technology, plausible deniability and stealth are essentially impossible. The literally explosive act of launching a rocket cannot evade detection and, if used offensively, retaliation. This imposes high diplomatic costs on ASAT usage and testing, particularly during peacetime. C. Environmental Interdependence A third stabilizing force relates to the orbital debris consequences of ASATs. China’s 2007 ASAT demonstration was the largest debris-generating event in history, as the targeted satellite dissipated into thousands of dangerous debris particles [28, p. 4]. Since debris particles are indiscriminate and unpredictable, they often threaten the attacker’s own space assets [22, p. 420]. This is compounded by Kessler syndrome, a phenomenon whereby orbital debris ‘breeds’ as large pieces of debris collide and disintegrate. As space debris remains in orbit for hundreds of years, the cascade effect of an ASAT attack can constrain the attacker’s long-term use of space [29, pp. 295– 296]. Any state with kinetic ASAT capabilities will likely also operate satellites of its own, and they are necessarily exposed to this collateral damage threat. Space debris thus acts as a strong strategic deterrent to ASAT usage.