1

Interpretation: The affirmative must defend a just government as a general principle, not specify a subset

CCC Capital Community College [a nonprofit 501 c-3 organization that supports scholarships, faculty development, and curriculum innovation], “Articles, Determiners, and Quantifiers”, http://grammar.ccc.commnet.edu/grammar/determiners/determiners.htm#articles AG

The three articles — a, an, the — are a kind of adjective. The is called the definite article because it usually precedes a specific or previously mentioned noun; a and an are called indefinite articles because they are used to refer to something in a less specific manner (an unspecified count noun). These words are also listed among the noun markers or determiners because they are almost invariably followed by a noun (or something else acting as a noun). caution CAUTION! Even after you learn all the principles behind the use of these articles, you will find an abundance of situations where choosing the correct article or choosing whether to use one or not will prove chancy. Icy highways are dangerous. The icy highways are dangerous. And both are correct. The is used with specific nouns. The is required when the noun it refers to represents something that is one of a kind: The moon circles the earth. The is required when the noun it refers to represents something in the abstract: The United States has encouraged the use of the private automobile as opposed to the use of public transit. The is required when the noun it refers to represents something named earlier in the text. (See below..) If you would like help with the distinction between count and non-count nouns, please refer to Count and Non-Count Nouns. We use a before singular count-nouns that begin with consonants (a cow, a barn, a sheep); we use an before singular count-nouns that begin with vowels or vowel-like sounds (an apple, an urban blight, an open door). Words that begin with an h sound often require an a (as in a horse, a history book, a hotel), but if an h-word begins with an actual vowel sound, use an an (as in an hour, an honor). We would say a useful device and a union matter because the u of those words actually sounds like yoo (as opposed, say, to the u of an ugly incident). The same is true of a European and a Euro (because of that consonantal "Yoo" sound). We would say a once-in-a-lifetime experience or a one-time hero because the words once and one begin with a w sound (as if they were spelled wuntz and won). Merriam-Webster's Dictionary says that we can use an before an h- word that begins with an unstressed syllable. Thus, we might say an hisTORical moment, but we would say a HIStory book. Many writers would call that an affectation and prefer that we say a historical, but apparently, this choice is a matter of personal taste. For help on using articles with abbreviations and acronyms (a or an FBI agent?), see the section on Abbreviations. First and subsequent reference: When we first refer to something in written text, we often use an indefinite article to modify it. A newspaper has an obligation to seek out and tell the truth. In a subsequent reference to this newspaper, however, we will use the definite article: There are situations, however, when the newspaper must determine whether the public's safety is jeopardized by knowing the truth. Another example: "I'd like a glass of orange juice, please," John said. "I put the glass of juice on the counter already," Sheila replied. Exception: When a modifier appears between the article and the noun, the subsequent article will continue to be indefinite: "I'd like a big glass of orange juice, please," John said. "I put a big glass of juice on the counter already," Sheila replied. Generic reference: We can refer to something in a generic way by using any of the three articles. We can do the same thing by omitting the article altogether. A beagle makes a great hunting dog and family companion. An airedale is sometimes a rather skittish animal. The golden retriever is a marvelous pet for children. Irish setters are not the highly intelligent animals they used to be. The difference between the generic indefinite pronoun and the normal indefinite pronoun is that the latter refers to any of that class ("I want to buy a beagle, and any old beagle will do.") whereas the former (see beagle sentence) refers to all members of that class

Standards

[1] Precision outweighs - anything outside the res is arbitrary and unpredictable because the topic determines prep, not being bound by it lets them jettison any word.
[2] Limits and Ground - decimates clash by exploding limits to infinite governments with infinite possible interps of what constitutes a just one, each with different political climates, economies, and human rights problems which makes contesting the aff with unifying neg ground impossible and means they can always pick the most aff skewed country.
[3] TVA – read your aff as an advantage under whole res – we still get your content education and sufficient aff ground by switching up aff advantages, frameworks, implementation, etc. But, 1ar theory checks pics and they incentivize more of them because nothing but cheaty generics link

Fairness and education are voters - debate is a game that needs rules to evaluate it and teaches portable skills we use lifelong. Drop the debater for deterrence since the whole round was skewed. No rvis - a] illogical---you shouldn’t win for being fair b] baiting—they’ll bait theory and prep it out—justifies infinite abuse and chilling us from checking abuse. Competing interps---a] reasonability’s arbitrary and forces judge

intervention b] norm setting---we find the best possible norms c] reasonability collapses---you use offense/defense paradigm to evaluate brightlines

2

Interp: The affirmative must specify the agent that does the plan.

The standard is strat skew--1ars can clarify to delink neg offense mooting the 1nc and kills clash by skirting NC discussion e.g. if I read a courts DA, you can you defend congress. Independently links to resolvability--judge can't know who to vote on if we don't know what the 1ac advocates and we can't clash with it or read nuanced arguments absent such knowledge either. Resolvability outweighs, all arguments presume you can resolve them and otherwise Ws or Ls can't properly happen. Cx doesn't check--

1 - Moots AC prep since I have to wait to cx and precludes using cx strategically for substance

2 - You get extra time to prep our interp if we ask in cx and have an incentive to be infinitely abusive and just kick it if we call you out on it

3 - Theres no brightline to what constitutes a check

4 - Its non verifiable since judges don't flow it

5 - Key to inclusion since novices might forget to ask and get crushed since you shifted

No solvency – there's no such actor as the "Federal Government", only specific branches

Brovero 94 (Adrienne, Debate Coach, "Immigration Policies", Debater's Research Guide, http://www.wfu.edu/Student-organizations/debate/MiscSites/DRGArticles/Brovero1994Immigration.htm)

The problem is not that there is not a plan; this time there is one. The problem is that there is no agent specified. The federal government does not enact policies, agents or agencies within the federal government enact policies. The agent enacting a policy is a very important aspect of the policy. For some of the same reasons the affirmative team should specify a plan of action, the affirmative team should specify an agent of action.

3

Interpretation: If the affirmative fiats action by the federal courts, they must specify a test case for the ruling.

Federal courts require test cases to rule.

King 2000 (Brian, 10 Kansas Journal of Law and Public Policy 215, http://www.law.ku.edu/journal/articles/v10n2/v10p215.html)

Without a judicial case or controversy, **the federal courts**, being part of the limited federal government, **lack the authority to hear and decide a matter, and thus, must dismiss the suit.** Therefore, in a jurisprudential analysis of justiciability under Article III, the key concept, the one upon which all justiciability cases turn, is a judicial case or controversy. Exactly what the Founders meant by the requirement of a judicial case or controversy has been debated since the founding. Professor Nichol has exclaimed: "To the great surprise of all but the most cynical, after over 200 years we still have no real idea what the term 'case or controversy' means." http://www.law.ku.edu/journal/articles/v10n2/v10p215.html - ftn10Admittedly, the concept has at times seemed amorphous. Yet using a jurisprudential analysis can help limit and define the concept of a judicial case or controversy. Using the set theory, both the characteristics of a judicial case or controversy and the rationales behind the requirement of a judicial case or controversy will be identified and described below. The goal of this part of the article is not to teach the law of federal courts, but to uncover a more structured way to analyze justiciability under Article III by defining a judicial case or controversy and identifying the theories behind the definition.http://www.law.ku.edu/journal/articles/v10n2/v10p215.html - ftn11 The law of justiciability is more than just an amalgamation of rules and exceptions that are often criticized as being manipulated by judges; it is a structured analysis with the definition of a judicial case or controversy at the center.

This means the aff has no solvency since the supreme court cannot pass the plan

Violation – they don't specify one

Standards

Ground – the test case is an enforcement mechanism which affects what precedent is set – lack of specification denies the negative disads to the precedent set because it can vary wildly from little to no precedent to broad sweeping precdent. Key to clash and fairness because lack of ground sets the negative behind and prevents discussions on costs of the plan

The aff is extra-topical - it requires a rewriting of supreme court institutional rules that is not germane to the topic. The aff has zero corresponding to reality. Extra-t is a voter because it's impossible to prep something not predicated on the stable basis of the resolution.

4

The Bureau of Prisons ought to recognize the unconditional right of incarcerated workers to strike.

The BOP solves – oversees all federal prisons

Kozlowska 16 [Hanna Kozlowska, reporter on Quartz's investigations team, 9-9-2016, accessed 7-31-2020, US prisoners are going on strike to protest a massive forced labor system, Quartz, https://qz.com/777415/an-unprecedented-prison-strike-hopes-to-change-the-fate-of-the-900000-americans-trapped-in-an-exploitative-labor-system/]//Lex AV

- BOP is a federal agency under the DOJ

On Friday (Sept. 9) prison inmates across the US will participate in what organizers are touting as the "largest prison strike in history," stopping work in protest of what many call a modern version of slavery. The protest, organized across 24 states, is spearheaded by the inmate-led Free Alabama Movement (FAM) and coordinated by the Incarcerated Workers Organizing Committee (IWOC), a branch of an international labor union. Its manifesto, published online by "prisoners across the United States," reads: This is a call to end slavery in America…To every prisoner in every state and federal institution across this land, we call on you to stop being a slave, to let the crops rot in the plantation fields, to go on strike and cease reproducing the institutions of your confinement. The strike will be held on the 45th anniversary of the Attica prison revolt, when prisoners took control of a maximum-security correctional facility near Buffalo, New York, demanding better conditions and an end to their brutal treatment. Today, **nearly 900,000 US prisoners work while incarcerated. The Bureau of Prisons, which oversees all federal inmates requires that all prisoners** (barring medical reasons) **work**. State prisoners are in the same boat; according to Eric Fink, a professor at Elon Law school, in all or nearly all US states prisoners must work. If they refuse, they can be punished with solitary confinement, revoking visitation, or other measures. Inmates receive very little pay for their labor—in federal prisons it ranges from **$0.12 to $0.40** an hour. In some states, like Texas, those held at state prisons receive zero compensation. The majority of inmates work on prison maintenance and upkeep—cleaning, cooking, etc.—but **approximately 80,000 do work for the outside world**. Sometimes these jobs are the result of government contracts; other times, prisoners end up doing work for private companies such as **Victoria's Secret, Whole Foods or Walmart**. Unlike other American workers, these prisoners are not protected by labor laws. They don't have access to worker's compensation, they get payed well below the minimum wage, and they cannot effectively form unions. Courts have ruled that because the relationship between prisons and inmates is not that of an employer and a worker, inmates don't get these labor protections. According to The Nation, there is a faction among the organizers that would rather see prison labor abolished, but IWOC is pushing for inmates to unionize. "Prisoners are the most exploited labor class in this country," says Azzurra Crispino, spokesperson for the organization. The moral case to let prisoners unionize and have the protections given to civilian workers is straightforward: forcing people to work is inhumane, as are the ridiculously low wages and often the labor conditions themselves. The economic case is much more complex. Prisons argue that paying inmates a minimum wage would bankrupt them—in fact, Alex Friedmann, an editor for Prison Legal News told The American Prospect that the criminal justice system would collapse without exploiting inmates. But prisons don't exist in a bubble, their effects ripple across society. While economists have argued that prison labor in general has little potential to significantly add to the GDP, there are longer-term and broader effects to consider. Higher wages can help not only inmates, but their dependents in the

outside world, who might avoid ending up on welfare having greater support. Cheap inmate labor may save money for prisons or corporations, but meaningful, decently-paid employment and job training could reduce recidivism and future crime. Ultimately, it's the taxpayers who pay for most of the criminal justice system, and that means they are subsidizing cheap labor for big corporations instead of investing in reducing crime in the future. In addition to putting pressure on individual institutions, strike organizers are hoping to raise awareness among the public. "Nothing is preventing employers from paying prisoners a decent wage and offering benefits and after 300 years it's pretty clear it isn't going to happen on its own. No more than slavery was ended in this country because slave owners got enlightened," said Paul Wright, editor of Prison Legal News and prisoner rights advocate. "Alas, there is no General Sherman coming to rescue and liberate America's prison slaves."

5

DA – PQD

Plan breaks the PQD—it's an entirely unprecedented act of court policymaking that justifies unrestrained Judicial intervention

--PQD Link

--AT: N/U

Hall, 10

(Associate-Riggs, Abney, Neal, Turpen, Orbison & Lewis, Denver, CO & JD-Loyola Law School, 13 Chap. L. Rev. 265, Lexis)

It is beyond dispute that courts often weigh in, either explicitly or as a consequence of the decisions that they make, on certain policy issues. **However**, the manner in which policy issues are influenced by the judiciary has historically largely been limited to decisions **upholding, striking down or interpreting acts of the legislature**. For instance, examine the most significant cases of the courts that commentators often point to in identifying judicial activism. Two periods of the Supreme Court's history are continually identified as particularly "activist" periods in which the Court ventured into the realm of determining policy issues: The New Deal era and the Warren Court. n129 Before the New Deal era, the Supreme Court repeatedly declared legislative attempts to regulate worker rights, including [*287] setting wage and hour requirements, unconstitutional, holding that such laws would impermissibly restrict the right to freedom of contract. n130 Following the famed "Switch in Time that Saved Nine," the Court suddenly began to uphold regulations setting maximum hours and minimum wages, overruling its previous precedents holding the opposite. n131 The Court decided that freedom of contract was not absolute and could permissibly be restricted where the restriction would improve health and safety or protect vulnerable groups. n132 In other words, the Court made a clear policy determination that freedom of contract should yield to worker protections where health and safety or vulnerable groups were concerned. However, it should be noted that the legislature had already made this policy choice in enacting the health and safety oriented laws in the first place, and so there was nothing "initial" about any policy determination made by the Court in these instances. The Warren Court is likewise frequently cited as being an "activist" Court for its decisions striking down numerous laws harmful to minorities and other historically vulnerable groups. n133 The Warren Court is perhaps best known for striking down the "separate but equal" doctrine in schools through Brown v. Board of Education, n134 predicated on the Court's determination that separate educational facilities based on race were inherently unequal, and thus ran afoul of equal protection. But even this decision was not setting any sort of initial policy. Instead, it was a determination that the policy previously set forth via the equal protection guaranteed by the 14th Amendment was not being advanced through segregated education. The Warren Court also recognized a constitutional right to privacy, which it held outweighed a state's interest in prohibiting its citizens from using contraceptives in striking down such a law enacted by the State of Connecticut. n135 While this could be considered a policy determination of sorts in some respects, the real policy being advanced by that decision is the Supremacy Clause - the Court in [*288] effect prohibited a state from enacting a law that, in the Court's view, conflicted with the Constitution. Advancement of such a policy did not require any "initial" policy determination by the Court, as the Supremacy Clause is of course written into the Constitution. Some of the Court's brightest and most important moments have come amid accusations of judicial policy setting, including cases like Brown. n136 By the same token, some of the Court's lowest points, such as Korematsu v. United States, resulted from the Court's failure to inject itself into politically charged issues. n137 However, should the judicial branch be permitted to **set far reaching emissions restriction policy**, it would be taking a step **beyond the** purportedly **"activist" decisions of The New Deal era or the Warren Court**. As the District Court in Connecticut v. American Electric Power Co. correctly noted, the relief sought by the plaintiffs in that case would require the court to **unilaterally** set an appropriate **level** of emissions reduction as well as setting a **schedule** by which those reductions were to occur. n138 Moreover, any policy sufficient to redress the injuries claimed by the plaintiffs would require, at a

minimum, a broad-based decision (or series of decisions) setting restrictions on many (or all) domestic energy producers in order to make any measurable dent on the consequences of global warming complained of by the plaintiffs. n139 In other words, contrary to the vehicles used by the Warren Court in eliminating "separate but equal" education, the judicial branch would not be simply **evaluating** actions taken by the elected officials of the legislative branch and making a decision to uphold or declare unconstitutional those actions. Instead, the judicial branch would be **required to set forth**, **in the first instance, the policy options that should prevail** in the ongoing debate on global warming and the **mechanisms which should be implemented** to achieve those policy goals. Consider an analogy to what the Warren Court would have had to undertake in Brown to match the largely legislative function that the judicial branch would have to assume in the global warming debate to determine the guiding policies for [*289] emissions restrictions and implement the necessary changes in one fell swoop. First, allowing the judiciary to determine that domestic energy producers should be subject to emissions restrictions without any legislative action setting forth this policy would be akin to the Warren Court creating the concept of equal protection on its own, rather than extracting it from the 14th Amendment. **There is no provision** of legislatively enacted law to support such a decree from the judiciary at this point in time. Further, allowing the judiciary to set specific emissions restrictions on specific domestic energy producers to combat global warming would be the equivalent of the Supreme Court in Brown requiring that "Topeka High School A is to consist of no more than 70 percent white students, whereas Topeka High School B is to consist of no more than 60 percent white students, and Topeka High School C is to consist of no more than 65 percent white students." These, of course, were not the tactics taken by the Supreme Court in Brown. Rather, after initially striking down segregated education as unconstitutional under the equal protection clause of the 14th Amendment, the Court set further hearing on the matter of how to implement the necessary changes. n140 The following year, the case came back to the Supreme Court in Brown II. n141 In that case, the Court **recognized** that the judicial branch should not be charged with **creating the programs** to implement desegregation. n142 Rather, the Court held that "full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles." n143 The Brown and Brown II Courts followed a traditional pattern of legislation and jurisprudence in the context of major policy change. n144 First, a legislative body enacts a law. Second, a plaintiff damaged by the law challenges its validity before the courts. Third, the courts are charged with evaluating the validity of the law. Fourth, the courts either uphold or invalidate the law. Fifth, if the courts invalidate the law, they allow for the legislative branch (or if the legislative branch has delegated [*290] rulemaking to an agency, that agency) to amend the scheme to bring it into compliance with the previously existing law, namely in Brown, the 14th Amendment. By contrast, judicial intervention into the global warming debate steps far outside this framework. To date, no legislative body has acted to set emissions restrictions for domestic energy producers. Rather, through cases like Connecticut v. American Electric Power Co., plaintiffs are attempting to fit an issue requiring widespread legislation into common law doctrines such as nuisance. n145 As such, rather than being charged with evaluating the validity of a law enacted by the elected officials of the legislature, the judicial branch, should it intervene, is instead left to **create** not only **its own policies**, but also the **mechanisms** for enforcing those policies. In sum, the actions that would necessarily be undertaken by the judiciary should it intervene in the global warming debate and attempt to create its

own set of emissions restrictions without allowing for the other coordinate branches of government to act would exceed the actions of even those courts long accused of "judicial activism." The courts would need to determine whether emissions restrictions should be imposed on domestic energy producers at all, and if so, such restrictions should be imposed prior to the creation of a global emissions reduction agreement and how the emissions restriction scheme should be structured. These far reaching initial policy determinations that would be required of the judiciary are **precisely what the third Baker factor** is aimed to prevent, and so the **political question doctrine precludes judicial intervention** in this debate **absent action by** at least one of **the other** two **branches** of government.

Legislature is where the right to strike should be changed, not the courts

Washington University Law Review 86 [Washington University Law Review, January 1986, " California Public Employees Granted Right t anted Right to Strik o Strike Without e Without Legislative Authorization—County Sanitation District No. 2 of Los Angeles County v. Los Angeles County Employees Association, Local 660, 699 P.2d 835 (Cal.)," Washington University Law Review, https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=2130&context=law_lawreview, accessed 11-12-2021] BCortez

The specificity of the state legislation varies. The Illinois statute, for example, details the class of employees entitled to strike, the prerequisites for permissible strikes, and the procedures for employer petitions for judicial relief.'7 The Montana statute, on the other hand, broadly authorizes "concerted [bargaining] activities,"' 8 which the Montana Surpeme Court has interpreted to include a right to strike.' 9 In states that have refused to recognize a public employee right to strike, the courts have generally held that the legislature is the appropriate vehicle for such a change. In Port of Seattle v. International Longshoremen's & Warehousemen's Union,20 the Washington Supreme Court refused to overturn the common-law rule prohibiting public employee strikes, although it conceded justification for such a change.2 1 The court rejected the proposed modification, reasoning that the **legislature is better equipped to evaluate policy issues and to determine the effects of a strike on public health and safety**.22 Similarly, the New Jersey Superior Court sympathized with arguments allowing public employee strikes, but upheld the common-law prohibition.23 The court reasoned that the legislature should determine when the public interest dictated a change.24 Likewise, the Idaho Supreme Court found that the legislature had made a policy decision by not expressly providing for the right to strike in its labor statute.25 Thus, the court held that the common law would control until statutorily abrogated.26

Collapse of US PQD triggers Japanese kickout of US forces

Chen 17 Po Liang Chen, PhD-Washington Law, Jordan Wada JD-Wash Law, in conjunction with Tatsuhiki Yamamoto, Professor, CAN THE JAPANESE SUPREME COURT OVERCOME THE POLITICAL QUESTION HURDLE?, 26 Pac. Rim L. & Pol'y J. 349, April 2017

In the wake of World War II, the **current** Constitution of Japan (the "Kenpo") was enacted under unusual circumstances, coordinately drafted by United States ("U.S.") and Japanese legal experts. n1 The Kenpo is known as the **pacifist** Constitution and this principle is expressed substantively in the Kenpo's Preamble and in Article 9. n2 Article 9, Paragraph 1, provides, "the [*350] Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes." n3 Article 9, Paragraph 2, the "War Potential Clause," declares, "in order to accomplish the aim of the preceding paragraph, **land, sea, and**

air forces, as well as other war potential, will never be maintained." n4 Since the Kenpo's enactment, the **War Potential Clause** has invariably represented the **most controversial issue in Japanese politics**. n5 Given the **ambiguity** in the War Potential Clause's language, concern over the **constitutionality of** Japan's military body - **the Self-Defense Force** ("SDF") - abounds. n6 Similar controversies regarding **The Treaty** of Mutual Cooperation and Security **between the United States and Japan** n7 ("Anpo") and the **stationing of U.S. forces in Japan** compounded. n8 Early **disputes over the SDF**, **Anpo**, **and** the **stationing of U.S. forces** comprise three of the **most prominent factors** shaping the field of Japanese politics, and planted seeds of dynamic social movements springing up since the 1950s. n9 On July 1, 2014, Japanese Prime Minister Shinzo Abe's Cabinet issued an executive reinterpretation of Article 9 ("2014 reinterpretation"). n10 The [*351] government claimed the basic rationale remained the same, but many believed this reinterpretation n11 substantially shifted the meaning of Article 9's War Potential Clause away from its previous interpretation allowing only individual self-defense n12 to include collective self-defense. n13 This 2014 reinterpretation shook the roots of the Kenpo and its pacifist principle. n14 Although the 2014 reinterpretation will not produce a practical impact until potential new legislation enables the SDF to undertake acts and redefine its relationship with U.S. forces, the reinterpretation was criticized as a significant departure from longstanding policy. n15 Most Japanese constitutional scholars denounced the 2014 reinterpretation as unconstitutional, criticizing the Cabinet for bypassing the process of amending the Kenpo. n16 Thereafter, dormant social movements **reawakened**, summoning thousands of citizens to the streets, and bringing the issues of the **constitutional legitimacy** of the SDF, Anpo, and stationing of U.S. forces **back into the political spotlight.** n17 A deadlock between the hard-liner Cabinet and the pacifist people generated a **constitutional crisis**. n18 [*352] At this **critical moment** of constitutional crisis, one of several serious obstacles the Supreme Court of Japan ("SCJ") must overcome to serve as Japan's court of last resort is its own political question doctrine. n19 SCJ jurisprudence is fairly characterized as **exhibiting judicial restraint**, often leaving the **executive branch as the final interpreter** of the Kenpo in practice. n20 **Currently**, **for** both political and **legal reasons, no** defined **route for judicial review is established for Article 9 challenges**. n21 When hearing **disputes** related to defense or foreign policy, especially **concerning Anpo and stationing of U.S. forces**, SCJ justices and sitting in the interior court judges have **employed the** concept of Tochi Koi Ron ("**political question doctrine**"), n22 a theory to the effect that certain acts of the Diet done in the name of the State or of the government are not subject to the power of judicial review. n23 **This** theory **is influenced by the U.S. political question doctrine** n24 **and acts as** one **legal barrier preventing the Court from rendering a substantive opinion**. n25 n25. Id. (since 1947, SCJ has developed its constitutional avoidance and political question doctrine to **avoid deciding the merits of disputes related to Article 9**, including the legitimacy of the Self-Defense Force, the Security Treaty between the US and Japan, and the stationing of U.S. Forces). Though Article 81 of the Kenpo grants the Court full judicial review power, SCJ has placed little emphasis on this text, and shies away from the Kenpo's framers' insistence on full judicial review. [*353] **Clarifying the political question doctrine in light of U.S. Supreme Court jurisprudence could remove one major hurdle that prevents SCJ from granting a merits hearing and settling** the current constitutional crisis. Reexamining the meaning of political questions and contemplating **its wane in the U.S. Supreme Court could provide SCJ with a jurisprudential basis to play a** more effective **role in interpreting the Kenpo**. n26 Part I of this comment introduces the historical transplant of judicial review and the political question doctrine into Japan. Part II provides an overview of judicial review and the political question doctrine in the U.S., as a foundation for comparison. Part III recommends steps SCJ could take to clarify and restate its political question doctrine, and how it might use the U.S. political question doctrine's development from Baker v. Carr (1962) to Zivotofsky v. Clinton (2012) as an example when navigating a challenge to the 2014 reinterpretation. We conclude that overcoming the political question doctrine will help bring SCJ one step

closer to the role of final interpreter of the Kenpo to provide clear guidance and produce a constructive dialogue among the government, scholars, and the people. I. Judicial Review and the Political Question Doctrine in Japan The political question doctrine is difficult to distill because it is intertwined with debates regarding the boundary of judicial review and the proper function of the judicial branch. Therefore, before reaching the political question doctrine in Japan, it will prove useful to review the historical context wherein judicial review was transplanted from the U.S. into Japan. This will provide a backdrop to examine the jurisprudential evolution of the political question doctrine in Japan, especially in SCJ over the past seventy years. A. The Establishment of SCJ and Judicial Review in 1947 The establishment of Japanese judicial review is swaddled in an unusual history. On August 14, 1945, the Empire of Japan surrendered to the United Allies and the U.S. appointed General Douglas MacArthur Supreme Commander for the Allied Powers ("SCAP"), marking the end of World War II. n27 Under Allied and SCAP supervision, Japanese Prime [*354] Minister Kijuro Shidehara, appointed Joji Matsumoto chairman of the Constitution Research Committee ("Matsumoto Committee") to amend Japan's Meiji Constitution. n28 The Matsumoto Committee drafted two versions of its constitutional amendment. n29 No record exists of any Matsumoto Committee member proposing judicial review. General MacArthur was unsatisfied with the Matsumoto Committee's failure to revive democratic tendencies and respect fundamental rights in its proposal; he directed the Government Section ("GS") n30 to secretly begin a new draft (the "MacArthur proposal"). n31 On February 13, 1946, the SCAP formally rejected the Matsumoto Committee proposal and presented the until-then-clandestine MacArthur proposal. n32 Surprising the Japanese government, Article 73 n33 of the MacArthur proposal included a limited version of judicial review, reading: The Supreme Court is the court of last resort. Where the determination of the constitutionality of any law, order, regulation or official act is in question, the judgment of the Supreme Court in all cases arising under or involving Chapter III [rights of the people] of this Constitution is final; in all other cases where determination of the constitutionality of any law, ordinance, regulation or official act is in question, the judgment of the Court is subject to review by the Diet. n34 After reviewing and deliberating over the MacArthur proposal, the Japanese government embraced the idea of full judicial review and insisted on removing n35 the MacArthur proposal language that would have limited judicial review. n36 During negotiations between the GS and Japanese [*355] government on March 4-5, 1946, the Japanese government emphasized the importance of judicial independence and public reliance on the judicial branch, rationales in contrast with the GS's concern of judicial oligarchy. n37 Thus, the March 6, 1946 draft of the constitution provides, "the Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act,"-textually identical to Article 81 of the 1947 Kenpo, which is viewed as the origin of judicial review in Japan. n38 The March 6, 1946 draft was thereafter written in vernacular, and ultimately came into effect on May 3, 1947 as the 1947 Kenpo. n39 The birth of judicial review in Japan emanates a duality. On one hand, it is clear that judicial review was initiated as a legal transplant from the U.S. rather than from Japanese enthusiasm. n40 On the other hand, at the Kenpo's drafting, compared to the McArthur proposal's limited scope judicial review, the framing Japanese scholars and officials all preferred full judicial review, employing rationales of judicial independence and public reliance on the judicial branch. n41 Following the Kenpo's enactment, SCJ first took office in August 1947. n42 As with U.S. Supreme Court Chief Justice John Marshall in the early 19th Century, the issue of drawing the boundary of judicial review soon emerged. In response, the concept of Tochi Koi Ron n43 was considered and accepted by SCJ. n44 n43. The concept of Tochi Koi Ron was substantially influenced by the political question doctrine in the U.S. See supra note 22. Given that the U.S. acted as Japan's main judicial review donor, Japanese scholars and SCJ naturally noted the U.S. political question doctrine among their influences. n45 n45. Saiko Saibansho [Sup. Ct.] Dec 16, 1959, A no.710, 13 Saiko Saibansho Keiji Hanreishu [Keishu] 3225 (Japan) (Hachiro Fujita, J., & Toshio Irie, J., concurring) ("There are divergent views regarding the origin, the basis for the theory, or the scope of the acts which would fall within the purview of such restriction, such is a well established precedent and an accepted academic theory in the European and American countries, as may be perceived from such expressions as... "political question', appearing in American cases."). Meanwhile, the weight of [*356] Article 81's text and unusual history diminished in SCJ's political questions case law. n46 B. The Sunagawa Case: Japan's Leading Precedent on the Political Question Doctrine Soon after the enactment of the 1947 Kenpo, communism in Far East Asia threatened the security of Japan. n47 The U.S. government and Japanese ruling elites agreed this necessitated the establishment of the Japanese Self-Defense Force and retention of U.S. forces for Japan to deter potential armed attacks or internal riots. n48 As a result of this decision, SCJ had to face three main types of constitutional challenges brought under the Kenpo's Article 9, Paragraph 2, War Potential Clause: challenges to the SDF, to Anpo, and to the stationing of U.S. forces in Japan. For disputes concerning the legitimacy of SDF, SCJ seemed to fall under the influence of the constitutional avoidance principles stated in the 1936 U.S. Supreme Court case Ashwander v. Tennessee Valley Authority, n49 and have not granted a merits hearing on the issue of the SDF's constitutionality. SCJ first faced a War Potential Clause challenge in the National Police Reserve Case (concerning the origin and predecessor of the SDF), filed by Japan's Socialist Party in 1952. n50 SCJ dismissed the case and held "it could not determine the constitutionality of a law or an official act in the abstract and in the absence of any concrete legal dispute." n51 In contrast to the constitutional avoidance analysis deployed on the issue of the legitimacy of SDF, SCJ adopted the political question doctrine in disputes involving Anpo and the stationing of U.S. forces. n52 SCJ initially [*357] adopted the political question doctrine in the 1959 Sunagawa Case. n53 Japanese scholars have achieved consensus that the Sunagawa Case concerned political questions jurisprudence, and they continue to debate how far its political questions implications extend. n54 In the Sunagawa Case, SCJ invoked what it understood as the spirit of the political question doctrine to avoid the political controversy of whether Anpo and retaining U.S. forces in Japan violated the War Potential Clause. n55 Thereafter, the political question doctrine became a legal barrier to further Article 9 challenges. n56 In autumn of 1957, seven demonstrators protesting the expansion of a military base in the town of Sunagawa were charged with trespassing on a U.S. air base. n57 Their protest violated Article 2 of the Special Criminal Law, criminalizing trespasses against military bases stationing U.S. armed forces. n58 The case soon gained public attention because the Special Criminal Law raised an Article 9 issue: whether the authoritative basis of the Special Criminal Law, the 1952 United States-Japan Security Treaty, which allowed the stationing of U.S. forces, violated the War Potential Clause. n59 The Tokyo District Court acquitted the protesters on March 30, 1959, holding the 1952 United States-Japan Security Treaty's allowance of U.S. military personnel in Japan violated Article 9, Paragraph 2. n60 The Tokyo District [*358] Court's decision churned up controversy over Article 9 and the undefined boundary of judicial review. n61 Addressing the dispute, SCJ took the case and overturned the district court, limiting the scope of judicial review on political question grounds. n62 The SCJ interpreted Article 9, Paragraph 2 as prohibiting the maintenance of war potential over which Japan exercises the right of command and supervision only, not the stationing of foreign armed forces in Japan. n63 Moreover, SCJ raised the political question doctrine without directly citing its name, n64 declining to rule on the merits whether the SDF is unconstitutional under Article 9. n65 The Sunagawa Case's majority noted

that the issue of whether the stationing of U.S. armed forces under the 1952 United States-Japan Security Treaty conflicts with Article 9 featured "an extremely high degree of political consideration ... there is a certain element of incompatibility in the process of judicial determination of its constitutionality by a court of law which has as its mission the exercise of the purely judicial function." n66 SCJ further indicated, "legal determination as to whether the content of the treaty is constitutional or not is ... related to the high degree of political consideration or discretionary power on the part of the Cabinet ... and [*359] ... the Diet." n67 The Court concluded judicial restraint was proper because highly political considerations belong to the people. n68 As for drawing the boundary of judicial review on issues with a high degree of political consideration, SCJ held that the 1952 United States-Japan Security Treaty and the stationing of U.S. forces were not "obviously unconstitutional and void," fell outside the scope of judicial review, and must be left to the discretion of the executive and legislature. n69 Accordingly, SCJ has "avoided ruling upon the merits of constitutional challenges to Japan's military activities and security arrangements under Article 9," and ruled that the Tokyo District Court exceeded the scope of judicial review. n70 In the Sunagawa Case, SCJ set a landmark for the political question doctrine, straddling the competing ideas of judicial supremacy and the avoidance of judicial oligarchy. The Court restricted judicial review of Article 9 challenges to those concerning the 1952 United States-Japan Security Treaty or the stationing of U.S. forces, and placed issues of "an extremely high degree of political consideration" outside the scope of Article 81's judicial review power. n71 For reviewable Article 9 issues (which exclude the constitutionality of the SDF), SCJ declared a clear mistake rule, deferring to the political branches so long as the act is "not obviously unconstitutional and void." n72 C. Evolution of the Political Question Doctrine After the Sunagawa Case After the Sunagawa Case, SCJ soon faced two questions: whether the political question doctrine and its clear mistake rule would extend to other disputes of high political consideration, and whether it would **bind all future Article 9 disputes**. As for other highly political disputes, one year after the Sunagawa Case, SCJ considered the issue of the procedure for dissolving the Diet in the Tomabechi Case, setting political questions criteria distinct [*360] from Sunagawa. n73 On August 28, 1952, Prime Minister Shigeru Yoshida dissolved the house of representatives pursuant to Article 7 of the Kenpo. n74 Representative Gizo Tomabechi challenged the dissolution and sued for his unpaid salary. n75 In 1953, the Tokyo District Court held the dissolution invalid because it was not made at a Cabinet meeting. n76 In 1954, the Tokyo High Court reversed on appeal, ruling the Cabinet reached its decision in a legal manner, but rejecting the political question doctrine. n77 Representative Tomabechi appealed to SCJ. n78 As in the Sunagawa Case, SCJ evoked the political question doctrine without directly naming it. n79 SCJ held that judicial review should be precluded from touching action within the discretion of the political branches, including the Cabinet's act of dissolving the Diet. n80 The Court reasoned that this discretion should be viewed as subject to political accountability, controlled ultimately by the people. n81 In the Tomabechi Case, although the spirit of the political question doctrine was retained, SCJ used new rationales and distinguished it from the Sunagawa Case in two ways. First, SCJ did not mention the "not obviously unconstitutional and void" clear mistake rule. Second, SCJ emphasized the rationales of separation of powers and political accountability to justify its exercise of judicial restraint. As to whether the Sunagawa Case and its clear mistake rule would bind future Article 9 disputes, SCJ and the lower courts distinguished those cases from the Tomabechi Case. For cases that threatened to **unleash an Article 9 issue**, especially those **challenging the constitutionality of Anpo and retaining U.S. forces in Japan**, **the** application of the Sunagawa Case **p**olitical **q**uestion **d**octrine **is binding**. n82 In short, a dual standard for political [*361] questions analysis bore over the lower courts. n83 First, the Sunagawa Case's clear mistake rule prevailed in Article 9 disputes including challenges to Anpo and stationing of U.S. forces. n84 Second, other disputes of high political consideration, such as the mutual relations between the political branches seen in the Tomabechi Case, are categorically precluded from judicial review. n85 Since the Sunagawa Case, SCJ has further split Article 9 disputes by subject matter. First, on Anpo and the stationing of U.S. forces disputes, SCJ affirmed the Sunagawa Case as binding **precedent.** SCJ cited the Sunagawa Case and adopted the political question doctrine and clear mistake rule, while refraining from ruling on the merits in the 1969 Zenshihosendai Case, n86 and the 1996 Okinawa Mandamus Case. n87 As for disputes regarding SDF and its military base, while SCJ refrained from stepping in on the 1982 Naganuma Case n88 and the 1989 Hyakuri Air Base [*362] Case, n89 the lower courts were divided between the political question doctrine, n90 constitutional avoidance, n91 and striking down the SDF. n92

That collapses deterrence

Newsham 15 Grant Newsham, senior research fellow – Japan Forum for Strategic Studies, J.D. – UC Berkeley, Executive Director – Corporate Security @ Morgan Stanley Japan, US military bases on Okinawa — still an essential deterrent, Asia Times, October 2015

One should first ask what is being 'deterred'? Put simply, **US forces forward deployed** on Okinawa as elsewhere **in Japan** are intended to **deter countries that would attack other nations or seek to seize** land **territory** or dominate seas and airspace that are either international global 'commons' or owned by somebody else. For many years, the Okinawa bases were seen as playing a role in **deter**ring **a North Korean attack on South Korea**. However, in recent years the People's Republic of China (**PRC**) has strengthened the case for the US bases' deterrent value. The PRC's rapid military build-up, increasing Chinese military activities throughout the region, and claims to nearly all of the South China Sea have **unsettled** China's **neighbors** — nearly **all of whom look** (even if **furtively**) **to the**

United States to restrain China. Why do Okinawa bases deter? The Okinawa bases alone do not deter China or anyone else. But they are an important part of a larger network of American resources, power, and influence that give the PRC pause. One first notes Okinawa's location. It is near Taiwan, close to contested areas in the East China Sea and the South China Seas, and not far from the Korean Peninsula. Okinawa is a perfect place from which to deploy and conduct a range of military operations to counter an aggressor or someone seeking to upset long established rules regarding freedom of navigation and flight, and even international boundaries. Time and distance still matter in warfare. Being close to where one will operate allows a more rapid and comprehensive response. Okinawa-based forces are able to move just about anywhere in Asia in a matter of days or even hours. This response time is much shorter than if based elsewhere in Japan — and weeks or months faster than US-based forces, even if based in Hawaii. Also, being nearby allows you to stay 'on-scene' longer. Try patrolling the South China Sea from bases in Hokkaido or Hawaii. By the time forces arrive it is almost time to go home. An illustration that helps one understand the importance of time and distance (and location) is to consider the effect of moving Tokyo Metropolitan Police Headquarters to Gotemba — 60 miles west of Tokyo. Theoretically, TMPD might send patrols into Tokyo for a few hours a day or as needed to respond to emergencies — before driving back to Gotemba to refuel. This is obviously less effective for maintaining law and order than actually being based in Tokyo. Similarly, US bases on Okinawa are located near where trouble might occur — and therefore better able to respond and to deter adversaries. China understands the importance of location Chinese behavior in the South China Sea shows it understands the role of 'location' as a part of deterrence. PLA forces operating out of Hainan Island can operate throughout the South China Sea. However, China's recent island-building efforts much further south in the South China Sea demonstrate a clear understanding of the importance of basing forces 'forward' in the area one wants to control or influence. This forward location facilitates military operations — allowing a more rapid and constant presence – and it also 'deters.' Some critics have pointed out that China's new man-made islands are indefensible in the event of war with a competent enemy. This is true enough, but it misses a larger point. Once the island bases – even with small military detachments in place – are established, they effectively 'deter' other countries from striking back — or even applying pressure – out of fear of provoking or starting a war with China. Thus, these small islands with military forces placed on them can restrain a potential adversary's behavior. This restraining effect is otherwise known as 'deterrence.' US bases on Okinawa from which US Air Force, US Navy, US Marine, and US Army forces operate serve a similar function in bolstering American defense power and the possibility of using it in the region — as Beijing would probably admit. Aren't US forces assigned to US bases on Okinawa too small to deter? Some commentators argue that there are not enough US forces on Okinawa to deter an aggressor, much less make a difference in the event of a major conflict in Asia. Besides the fact that even a small number of troops, ships, or aircraft rapidly deployed can make a difference, this argument overlooks the fact that in the event of a more serious contingency, Okinawa-based forces will be reinforced. They are intended to be employed as part of a larger effort involving US forces from overseas. Only a rash opponent would care to take on the full might of the United States. A similar dynamic applies on the Korean Peninsula. The relatively small number of US Army troops in South Korea stationed near the DMZ have a limited warfighting capability, but force the North to run the risk of bringing the full weight of the United States in the event of an attack. This deterrent effect has worked for many decades. Also, one should remember that deploying US troops from a distance (i.e. the US mainland or even Hawaii) is almost always a difficult domestic political decision. With forward deployed troops, the decision has mostly already been made — and if US troops are targeted or harmed, the certainty of a response is near 100 percent. This gives adversaries pause. It is, of course, possible to reduce US forces (and bases) on Okinawa to a point where they are operationally irrelevant or ineffective — and therefore of little deterrent value from a purely military standpoint. Similarly, such a reduction in forces and bases might easily be viewed by an adversary such as the PRC as a weakened US commitment to defending Japan writ large. The 'political' deterrent effect of US bases on Okinawa Ultimately, US bases on Okinawa – with all the challenges and costs they involve — demonstrate a political commitment on the part of both governments — to include America's promise to defend

Japan. This sort of commitment is **closely watched** as an adversary decides how much to push. One recalls the classic example of **Saddam** Hussein **miscalculating** the United States' willingness to defend Kuwait in 1990 that led to the First Gulf War. One often detects a degree of puzzlement on the PRC's part over the US's willingness to defend Japan –and particularly certain territory in the Ryukyus, such as the Senkaku Islands. Solidly linked US and Japanese forces that are able to operate effectively together – to include forces based on Okinawa — are ultimately evidence of a strong political link between the two countries. This directly affects deterrence. The deterrent effect of American bases on Okinawa depends heavily on the state of the US-Japan political relationship. The stronger the political relationship, the more likely the US will use the bases (and its other military and non-military resources) to defend Japan – and the more likely it is that the Japanese government will make the necessary efforts to preserve the US bases. One tends to depend on the other. In this regard, the US and Japan should seriously consider integrating JSDF forces as fully as possible onto US bases in Okinawa — to include bringing the bases under Japanese control, such as at Atsugi and Misawa air bases. This would be politically beneficial as well as operationally useful. The deterrent effect of US and Japanese forces operating as 'full' allies and completely interoperable would be immense. This combination of military and political linkage has a deterrent value of its own and gives PRC strategic and operational planners considerable headaches. Although not widely reported in the press, PRC political warfare efforts on Okinawa to create opposition to US bases and other friction for the central government demonstrate China's awareness of political deterrence arising from a strong US-Japan relationship. Such political warfare efforts are ongoing in Guam and the Commonwealth of Northern Marianas (CNMI) as well — where additional US bases are being built or planned. Importantly, the Guam/CNMI bases are intended to augment US bases on Okinawa and provide strategic depth and enhanced deterrence for US military capabilities in East Asia. Political deterrence also extends to third countries. The presence of US forces in Japan — and on Okinawa — is, as noted earlier, something many other regional nations desire and find reassuring. This tends to bolster their willingness — both individual and collective — to stand up to Chinese threats and/or blandishments — thus, deterring Chinese behavior that would otherwise be even more aggressive and assertive. Can't US bases on Okinawa be moved to mainland Japan? Of course they can, and the PRC would think this is a splendid idea. However, the aforementioned 'time and distance' problems — and consequently weakened deterrence — would apply. Moreover, such a move would suggest a weakened US-Japan political relationship (and lessened deterrence) by virtue of Japan's central government being unwilling to make the political effort needed to maintain US bases on Okinawa. Additionally, moving US bases to mainland Japan would leave a vacuum. **Vacuums get filled**, and it is possible the PRC will fill this vacuum. But it is almost unthinkable that a future Japanese administration would allow this to happen as the result of a drastically reduced military presence on Okinawa's main island in light of the PRC threat. Thus, even if US forces leave their Okinawa bases, JSDF forces will certainly replace them. Importantly, in the absence of a US military presence on Okinawa, Chinese forces would be facing off more or less directly with Japan Self Defense Force units. Removing the deterrent effect on the PRC of the fear of harming US troops would be dangerous given **deep-seated Chinese resentment of Japan and an increasing belief the PLA is a match** for the JSDF. In the absence of 'deterrent' US forces on Okinawa, **expect the PRC to push and ratchet up the pressure on Japan** – and in the Ryukyus and the **East China Sea**, to which China has stated it is rightly entitled. This is dangerous. Other ideas that have been considered for reducing US bases and force presence on Okinawa while maintaining adequate operational and deterrent capability include a 'virtual presence' scheme and a scheme for 'pre-positioning' US equipment and flying in troops when contingencies arise. These are both doubtful concepts in terms of the ability to conduct effective military operations — and as importantly — to deter unacceptable behavior by regional nations. The 'virtual presence' solution calls for rotating forces, particularly US Marines, though it applies just as well to Air Force and US Navy units through the region for training, without actually having any bases in the area. However, without a single location serving as a 'center of gravity' from which military — and Marine — power is seen to derive, there would always be something ephemeral about its presence, and suggests the US is not really serious about its promise to defend Japan and its own interests. The 'prepositioning' school of thought claims US forces and Marines only need to have supplies and equipment staged on Okinawa, with troops flying out in the event of crisis. However, it is a truism that it is better to be located and to train in the region where you operate — just like a baseball team does best when practicing and playing at its home field. Also, pre-staged supplies and forward-based troops are **viewed differently** by adversaries. One is a vague promise of intervention, **the other is a near certainty.** Final comments **Calculating the deterrent effect of bases** and/or forces **is always** an **imprecise** business. Perhaps the most important determinant is the **degree of commitment** and willingness of one country to **sacrifice for another**. **To date, the US-Japan defense relationship and the maintaining of US bases on Okinawa for over 40 years** after Okinawa's reversion to Japan **has maintained peace and stability in Northeast Asia**. This has also had a calming effect in other parts of the region. The Government of Japan obviously values the US bases on Okinawa or it otherwise would have closed them down — as is quite doable under the US-Japan Defense Treaty. However, the Japanese government must

explain clearly and forcefully to the Japanese public why these bases are necessary for Japan's national defense if it hopes to keep them. To date, no Japanese administration has done what is necessary in this regard. Maybe someday one will — as **the more secure the US Okinawa presence, the greater the deterrent value.** Importantly, **deterrence has never been tested quite like it is today.** The US military presence on Okinawa is, as noted, **operationally important** and also a **measure of the US-Japan political relationship**. **Our adversaries know this**, although in both the US and Japan many observers and commentators downplay the deterrent effect of US bases on Okinawa. Perhaps the ultimate test of the US Okinawa bases' deterrent value is to **remove** the US military presence or **drastically reduce** it. Do so, and **we will soon discover that they were a deterrent — and a good one indeed.**

US-China war is likely and goes nuclear

Kulacki 16 Gregory Kulacki, China Project Manager in the UCS Global Security Program, The Risk of Nuclear War with China, 2016, http://www.ucsusa.org/nuclear-weapons/us-china-relations/risk-nuclear-war-china#.Wc8tb8iGMh4

Mistrust and misunderstanding have plagued US and Chinese relations for years. Nowhere is this more evident—and more dangerous—than in the contrasting perspectives and policies each country holds on nuclear weapons. Could simmering tensions lead to a full-blown nuclear war? More specifically: could a minor skirmish or conventional war escalate into a full-blown nuclear conflict? Numerous factors suggest that it could—and that the likelihood of nuclear use between the United States and China may be increasing. The two countries have a very contentious history. Despite sincere and occasionally successful efforts to cooperate on shared concerns such as climate change and nuclear terrorism, lack of mutual trust sustains an entrenched and deepening antagonism. Both governments are preparing for war. Their preparations include improvements to their nuclear arsenals, including a trillion dollar investment in the United States. Both governments also believe that a demonstrable readiness to use military force—including nuclear weapons—is needed to ensure the other will yield in a military confrontation. Discussions of contentious issues are exceedingly inadequate. Their militaries have produced shared understandings of the conduct of naval vessels and aircraft, but strategic dialogues on nuclear forces, missile defenses, and anti-satellite weapons are limited at best. United States and Chinese officials see the risk of nuclear use differently. US officials believe that if a military conflict starts, nuclear weapons may be needed to stop it—but Chinese officials assume no nation would ever invite nuclear retaliation by using nuclear weapons first. Their only concern is maintaining a credible threat of retaliation. These and other factors are exacerbated by recent developments between the two countries, including China's apparent move toward hair-trigger alert—a policy that increases the risk of accidental nuclear war, especially in the early days of its development.