



**IS THE CONSULTATION  
COUNTERPLAN LEGITIMATE?**  
by David M. Cheshier

The most popular category of counterplan on the “weapons of mass destruction” (WMD) topic involves consultation. The negative argues that instead of promptly adopting and implementing the plan, the United States should consult some specified government beforehand, only moving forward if the plan meets the approval of our consultation partner. Many versions were produced over the summer, including counterplans to consult NATO, Japan, Russia, China, Israel, India, and Canada.

On this resolution, the consultation counterplan is often an irresistible strategic option for the negative. Because most plan texts as written advocate immediate implementation (if they don’t the affirmative may be in topicality trouble), the counterplan is mutually exclusive, for one can’t act and consult about acting at the same time. Because the resolution locks the affirmative into frequently defending policies the rest of the world would agree to, the counterplan consultation process would usually culminate in the eventual passage of the plan. Thus, the negative is able to argue there is little or no downside to asking for input. Consultation promises to capture the advantages, with the value added benefit of an improvement in America’s relations with NATO, Russia, or China (from here on I’ll use Russia as my example). The view is also prevalent that the consultation counterplan cannot be permuted by the affirmative, since to do so invariably commits the affirmative either to severance or intrinsicness (more on this shortly). Consultation is here to stay.

For the counterplan to work, the negative must include language, which gives the consultation partner a “veto” over the

plan. That is, Russia must be able to say no, and if they do, we must agree to follow. To do anything less is to promote illegitimate or artificial consultation, which the literature typically condemns. The idea is that Russia doesn't want to be dictated to; rather, they want to be taken seriously, with assurances their objections and suggestions will be incorporated, and this is true of NATO, China, and all the rest.

Advice to explicitly include a veto provision may seem counterintuitive, especially to those affirmative debaters willing to defend the standard of "textual competition." The logic of textual competition when advocated by the affirmative goes like this: if language from the counterplan can literally be pulled from the counterplan and affixed to the plan (with the effect of generating a permutation, yielding net benefits), then the counterplan does not compete even if the attached counterplan text radically alters the meaning of the original plan. In the consultation context, to provide an example, textual competition defenders will seize on the "veto" language for the purpose of a permutation. They will say they can permute the plan by affixing the veto language to the original plan text, even though this transforms the plan into something probabilistically topical, and in effect makes the permutation the equivalent of the counterplan. Because textual competition standards are not widely endorsed on the national circuit, I'll pass up the chance to discuss them in more depth, except to say that apart from this difficulty, including veto language in the counterplan is in every other respect I know a good idea for the negative.

The events of September 11, devastatingly tragic as they were, have changed the strategic landscape in ways favorable to consultation arguments. Before September 11, the Bush Administration was widely criticized for its ungenue commitment to alliances – in Europe, for instance, Bush and his team were widely dismissed as permanently predisposed against genuine deliberation. Instead, Bush's preferred policy, on everything from Kyoto to missile defense, was to arrive for talks where the main purpose was for Bush to tell Europe and others what he intended to do. All this seems to have changed, if only momentarily, in the aftermath of the terrorist attacks on New York and Washington. Now, if only out of the urgent American self-interest in alliance building, the Bush team is consulting everyone in sight. This fact is not without benefits to the affirmative – after all,

perhaps consultation truly is now the "normal means" by which the United States does business. But the main effect is to strengthen the negative's hand: the normal means argument is weak for other reasons beyond the fact situation of American diplomacy, and given the current urgency of alliance consultation there is less reason than ever to force a plan into existence without seeking advice and input from our allies or strategic competitors.

I highly recommend an essay on the NATO consultation counterplan written by Dan Shalmon, formerly a national championship debater from Glenbrook North High School (IL), now enjoying considerable success on the college circuit as a debater for the University of California at Berkeley. His essay in this year's *Hitchhiker's Companion* (organized by Stefan Bauschard, published by Paradigm – [www.oneparadigm.com](http://www.oneparadigm.com)) introduces the argument in a sophisticated way. Shalmon lays out how to set up the argument in cross-examination so that some affirmative escape paths are foreclosed, includes a very good bibliography, and prepares the negative to answer the most common responses. Although his essay is specifically organized around the NATO literature, Shalmon's theoretical advice is applicable and sound for counterplans engaging other consultation partners. My essay is to supplement his thoughts by addressing some of the larger theoretical issues, and by adding another perspective to his discussion of the most often defended permutations.

### **Two Weak Objections: International Fiat and Plan-Inclusion**

Debaters are often tempted to initiate two theoretical objections to consultation, though neither really pertains. Some argue the counterplan should be rejected because it necessarily entails international fiat. As you know, some object to international fiat (which usually takes the form of a plan or counterplan acting through some other actor, such as a counterplan to have Russia dismantle its nuclear forces at its own initiative) as distortive of routine policy comparison. In the context of an American debate, which we imagine might be happening among American decision makers, it would simply not be normal or germane for a senator to stand up and say: "Hold on! We should not act in this case. Rather, we should imagine that Russia has acted to solve the problem for us." Others oppose permitting debaters to fiat through the so-called "object" of affirmative scrutiny; thus,

if the affirmative is urging us to contain 1930's-era Nazism, they would object to a counterplan saying Hitler will voluntarily suspend his genocide on the grounds the counterplan is just as abusive as a crime topic counterplan which has criminals abandon their racketeering.

International actor counterplans ("have Japan do the plan") have survived these arguments, and with good reason. There is a full and nuanced literature assessing the comparative benefits of American action as opposed to, say, Russian involvement in global affairs. And the Senate example just offered can be dismissed as misconstruing the nature of fiat: even in the world of "magic wand" fiat debaters are not pretending to be senators when they seek a judge's endorsement for federal government action. And if this is so, the counterplan to fiat through India is fundamentally no different than a plan which has a high school student from Boise fiat the Senators of forty-nine states or Representatives of 434 districts of which she is not a citizen, or a regulator who would probably not consent even to an interview with a high school visitor. Both plan and counterplan advocates implore a judge to endorse the governmental action of agents largely foreign to round participants. And who knows what we would do if we (gasp!) selected another topic with an international actor – one supposes debate would have to end.

But whichever side of the issue one endorses, it doesn't matter in the consultation context since the counterplan does not dictate any action or response from another government. Properly written a consultation counterplan will only specify American governmental action: "The U.S. federal government shall consult with Russia over the implementation of de-alerting proposals. If Russia refuses to consult with the United States, or vetoes de-alerting, it will not occur," and so on. This text imagines no fiat Russian action, since it only orders the beginning of the process, which occurs wholly on the American side, and specifies only an American response. And, remember, if even this degree of orchestrated state-to-state interaction is illegitimate fiat, then it is unclear how any affirmative plan operating under the topicality requirement to be a "foreign policy" could survive the fiat challenge either.

Others will be tempted to object to consultation counterplans on the grounds that they are "plan inclusive" (hereafter, "plan-inclusive counterplans" are "PICs").

I don't know a single judge in America who finds the "PICs good"/"PICs bad" debate intellectually illuminating, but that has not much impeded its success as an affirmative counterplan response. As is the case with international fiat, most judges I know have no definitive objection to PICs (and many believe they have much improved plan-centered policy comparison), but because both sides can be reasonably defended, and since it takes little time to initiate the objection, PICs theory debating is now popular.

Again the issue is whether consultation really is plan-inclusive. I don't think it is, although others may disagree. Defenders of the PICs argument will say the counterplan "includes" the plan since it details a scenario by which the plan will be implemented (that is, if Russia says "yes," the plan is enacted). But literally speaking, the mandates of the counterplan do not "include" the plan, for the counterplan explicitly adopts no part of it. The "condition" of Russian acceptance changes everything, in part because what we eventually agree to with our Russian partners after a process of meaningful give-and-take may bear no correspondence whatsoever to the original plan text – that's how genuine consultation works.

### **Is Consultation Artificially Competitive?**

Debate on the question of artificial competition (by which I mean the issue of whether a counterplan is a genuine or rigged objection to the plan) is today controlled by the back and forth over defended permutations. As a result, there is a tendency to accept the legitimacy of the consultation counterplan, since most (and maybe all) imaginable permutations suffer fatal theoretical deficiencies. We'll look at the specific permutations in the next section, but one example suffices to explain the point for now. The so-called "lie" permutation says "we will commit to the plan (secretly if necessary), and we will 'consult' (or pretend to), taking the chance our certain decision to move forward will not be detected." Beyond the debate one might have over the desirability of this ruse is the theoretical intrinsicness problem. The part of the permutation carrying out the deception is neither a part of the plan nor the counterplan; it is simply invented out of thin air and tacked on so as to produce a net benefit. This is normally thought illegitimate because allowing affirmatives to invent things to add on to the plan and counterplan invites unchecked abusiveness.

But it may be mistaken to so fully conflate the issue of permutation legitimacy and artificial competitiveness. The consultation counterplan may pose an instance of an artificially rigged alternative to the plan, whose artificiality cannot be made plain by the thought experiment of a permutation.

To see why consultation might be illegitimate, even if that fact cannot be expressed in a reasonable permutation, it is productive to compare it to another counterplan thought illegitimate by most judges. If a negative team were to defend a counterplan to "steal the plan's funding and divert it to AIDS treatment in southern Africa," most would find it abusive even though it's not topical (in fact it has nothing to do with weapons of mass destruction use), mutually exclusive ("you can't spend the same money twice"), and net beneficial ("AIDS is the biggest threat to humanity"). The problem is that, in the absence of evidence that WMD and AIDS funding naturally trade off, the counterplan offers a choice only in the falsest, most rigged sense. Reduced funding for AIDS treatment is not regularly an opportunity cost of WMD action, and only becomes one thanks to the counterplan's fiat. Nor, to take a more extreme (and hopefully plainer) example, does the following counterplan pose a genuine choice: "any adoption of de-alerting will be mandatorily interpreted as a repeal of AIDS programs worldwide." To tolerate these counterplans as genuinely competitive is to utterly destroy the ability of affirmatives to win, for as Dallas Perkins argued many years ago, no affirmative can prove its plan desirable in every possible world (as created by counterplans), and the capacity of the negative to "re-define" the world in which the plan is tested, so as to make the plan either unnecessary or undesirable, is unlimited.

The question is whether consultation falls into this category of excludable or artificially competitive counterplans despite our apparent collective inability to produce a legitimate permutation illustrating the point. Does a consultation mandate create a contrived comparison in the same way the "any law that says 'de-alert' will trigger repeal of AIDS treatment" or the "steal their money" counterplans do? In my opinion, the affirmative argument ("consultation is artificial: the only reason 'consultation good' evidence counts against us is because they rigged fiat to consult on our plan") can be compellingly made, although deciding the issue requires us to take account of matters

both factual and theoretical.

It matters, for example, whether consultation normally happens or not. If the United States normally consults (e.g., the NATO Charter requires it), then the counterplan mandate is not so rigged. On the other hand, if we regularly consult as a matter of treaty compliance then wouldn't we automatically do so on the plan too?

A side note: In the context of an otherwise very smart essay, Shalmon's answer to this question seems unusually weak, and in my view deeply flawed. Shalmon recommends the negative concede the "normal means" argument, all to say, "this means the plan is abnormal means; since we consult on everything else, the absence of consultation is unique to this plan." But the whole point of the affirmative "normal means" response is that consultation always happens as a matter of routine; for the negative to concede the point is to admit the link connects to no policy, including the plan. Shalmon's other arguments on this point are equally suspect, although I agree with him that the entire issue can often be headed off given a skilled cross-examination.

This discussion of "artificial competitiveness" leads to this practical advice: you might want to consider adding an argument to your affirmative consultation answers which says, "Reject the counterplan because it artificially competes. It's no more legitimate than a counterplan that steals our funding. They've invented a net benefit purely out of their use of fiat, which is not a valid reason to reject our plan." Run the normal permutations elsewhere, but connect none with this claim. Doing so will give you another place on the flow to make the "non-germaneness" objection to consultation without being held hostage to potentially flawed permutations.

### **Can Any of the Obvious Permutations Survive Scrutiny?**

A brief review of the major permutations against consultation confirms the suspicion that most, maybe all, cannot find theoretical legitimacy. Simply saying we should "do both" doesn't help, since it is literally speaking impossible to both act and not act while we hear out our allies' concerns, and hard to defend pragmatically given evidence that NATO, Russia, and the rest can't stand it when we say we're listening even while we charge ahead, giving the lie to our claims to care what they think.

Several of the other possibilities are

vulnerable to the objections against “intrinsicness permutations.” In addition to the “lie” permutation already discussed, the intrinsicness problem also affixes to the “do the plan and consult on something else” permutation (the consulting on something else part is neither in the plan nor the counterplan, which is incidentally a reason the counterplan should only fiat consultation on the plan and no more).

The permutation which essentially endorses the counterplan (“do the plan but give them a veto”) is arguably an act of pure severance, which is to say illegitimate since the affirmative is abdicating its advocacy of the entire, guaranteed adoption plan they originally proposed. And the permutation to “consult but then do the plan either way” only risks adding insult to injury as alliance partners realize we never meant it when we said we wanted their input.

There is one permutation which, in my opinion, survives these theoretical difficulties, and potentially achieves a unique net benefit for the affirmative. Consider a permutation where the affirmative says we should “adopt the plan and then meaningfully consult, including a veto, on mechanisms for implementation.” This permutation does not constitute severance, since it includes the mandated adoption of the plan. More importantly, the permutation is not an intrinsicness argument, a point that can be, in my view, convincingly demonstrated in cross-examination.

After the counterplan is read, presumably in the first negative, the first affirmative might ask these questions (I’ve put likely negative responses in brackets): “Is the counterplan just a one-time, yes or no, up or down vote on the total plan?” [“No” – if the 1N says anything different s/he is conceding away their “genuine consultation” benefit]. “If Russia says yes to adopting the plan, but then we implement the plan in a way totally offensive to them, by let’s say running roughshod over their concerns or violating their sovereignty, does the counterplan provide Russia with an ongoing role in the plan’s implementation?” [“Yes” – if the 1N says different then there is no solvency to the counterplan, since the genuineness of the original consultation is immediately suspended the first time they express any problems with the policy in action].

If you can elicit a “yes” answer to the second question, then the permutation is not an intrinsicness perm. In fact, the permutation is the same sort of “logical permu-

tation” universally accepted by debate theorists. Here’s why: by responding “no” and then “yes,” the negative concedes their counterplan logically takes this form: “(a) Consult over the plan’s adoption, with a veto. (b) Consult over ongoing implementation, with a veto.” Understood as such, the permutation simply affixes part (b) to the plan.

Accepting the theoretical legitimacy of the permutation still leaves open the question of whether it constitutes a net benefit for the affirmative, and this is a closer call, for Russia would undoubtedly be even happier to have the opportunity to consult at every point along the way. The affirmative answer to this claim would go something as follows: “While it is true that we do not capture the benefits of consultation in their entirety, we capture almost all of them. And the very slight good will deficit between the counterplan and the permutation is more than justified by the major benefit to be derived by locking in the plan’s adoption.” In responding to such a claim, the negative will obviously want to revert to their evidence insisting that consultation has to be “genuine, from the start,” and they’ll want to emphasize that in these “critical times” (Putin instability, Japanese economic vulnerability, NATO cohesion fragility) we must do “everything possible” not to offend Russia or derail NATO or subvert Japan’s sense of mission in the world. But these claims are considerably weakened when the affirmative is also defending a version of consultation with a veto, and it cannot be so hard to read uniqueness answers to minimize the marginal risk of giving offense (such as “not unique, since we aren’t genuinely consulting on NMD”).

By defending one permutation, I am not advising you to abandon the others. You may find more success in defending the legitimacy of severance or intrinsicness than others on your circuit, and if so I wish you luck (if only as someone more inclined than most to accept intrinsicness as theoretically valid). Or you may simply want to laundry list multiple permutations as a way to bog down the second negative. Or you may debate in an area more sympathetic to them than appears the case nationally. My point is that a redeemable permutation may in fact exist, despite the possibly fatal shortcomings which plague the others.

### Concluding Advice

By way of closing, I’d like to offer some practical advice, some of which reiter-

ates essential ideas stressed in Dan Shalmon’s essay.

First, *on the affirmative you should never argue that Russia or NATO supports the plan.* Doing so is a virtual suicide tactic, for the negative will immediately respond by saying, “there is now no risk to voting negative. Doing the counterplan will certainly attain the benefits claimed on the case, and only we capture the additional benefit of improving relations.” To the contrary, affirmatives should do everything in their power to prove why the plan is likely to be opposed or subverted, so they can beef up a net benefit claim able to outweigh the benefits of genuine dialogue. While this can be difficult – NATO supports many of these plans (although they would oppose policies like “no first use”), and Russia and China would probably support virtually every plan being defended this year – it is not impossible, despite negative evidence that Country X will do whatever we want. Consider the possibility that Russia or China might well torpedo even a plan they support in principle as a way of asserting their own autonomy; since the counterplan gives them the veto power, they’ll be more inclined than normal to use it since the very offer of a veto conveys how relatively low a priority the plan is for American decision makers.

Second, *think about adding some version of consultation to the plan text.* Or at least you might consider adding language which makes it explicit that as worded the plan does not foreclose consultation. Negatives will object this means you’re not topical – “there’s no guaranteed action in the plan,” and all the rest. But I think the affirmative can reasonably argue that the limit they implement is made specifically stronger by bringing others on board, and that consultation is necessarily part and parcel of what it means to make “foreign policy.”

Finally, a point that simply reiterates the main theme of this essay: Especially given the careful scrutiny which permutations will receive in the consultation context, it is particularly important that you *devise your permutations (and responses) with care.* Script them out, lest you create confusion on the questions of severance or intrinsicness. And on the negative, make sure you pin the affirmative down, so they will not easily evade your responses.

(© David M. Cheshier, Director of Debate at Georgia State University.)