

**UNCONSTITUTIONAL WAR:
STRATEGIC RISK IN THE AGE
OF CONGRESSIONAL
ABDICATION**

BY

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**UNCONSTITUTIONAL WAR: STRATEGIC RISK IN THE AGE OF CONGRESSIONAL
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by

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ABSTRACT

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UNCONSTITUTIONAL WAR: STRATEGIC RISK IN THE AGE OF CONGRESSIONAL ABDICATION

There is an imbalance of constitutional power across the branches of the U.S. government. Congress has failed to preserve its constitutional privileges, specifically its sole authority to declare war.¹ The executive branch has become accustomed to deviating from the constitutional provisions for executive and legislative branch responsibilities. This deviation has become particularly problematic in the matter of war power authority. Indeed over the past 60 years, through a combination of executive initiative and congressional abdication, the United States has engaged in large scale offensive wars absent congressional war declarations, despite Congress' constitutional authority and requirement to formally declare the nation's wars.²

The United States has engaged in 331 notable military deployments from 1798-2009, declaring war on only five occasions.³ The majority of these deployments prior to World War II were maritime operations to support U.S. interests or to secure U.S. citizens abroad.⁴ For the 162 notable military deployments after World War II, Congress never declared war, opting instead to pass resolutions that effectively circumvented the constitutional war declaration process. Arguably, in its major military actions since 1950, the nation has failed to articulate political objectives commensurate with its sacrifice of blood and resources.⁵ This dubious record stands in stark contrast to the ends obtained from wars that Congress actually declared.

Congressional resolutions are an insufficient substitute for war declarations for a number of reasons. The resolution process undercuts the framers' well-conceived declaration process that was designed to assume popular support for the nation's wars.

Thorough congressional deliberation is imperative for arguably the most important decision the Congress has the authority to make: committing the nation to war.

The executive branch's recent practice of engaging in war without exercising the process of declaring war has left the nation's military repeatedly engaged in open-ended contracts. The ensuing uncertainty exacerbates an already complicated strategy formulation process and often leads to truncated, incoherent, or overly dynamic military strategies. As the keeper of the nation's treasury, Congress determines the sustainability of any military effort. Ultimately all war strategy depends on the nation's ways and means, along with the national will to sustain the effort to meet desired ends.

Whether a result of executive ambition, congressional abdication, or a combination of the two, committing U.S. military forces to "war" without the benefit of the constitutional war declaration process has not served the long-term interests of the nation. In addition to its questionable constitutionality, the resolution process has led to insufficiently defined national objectives (ends). Further, it constantly exposes strategy (ways) to political machinations. Finally, it fails over time to provide sufficient resources (means) to achieve the uncertain objectives of the military actions that began extra-constitutionally.

War Power and the Constitution

The starting point for understanding the current power imbalance begins with comprehending the intent of the Constitution. Central to the Constitution is the foundational principle of power distribution and the ability to check and balance exercises of that power. The clearly intended separation of powers across the three branches of government ensures that no single federal office-holder can wield an

inordinate amount of power or influence. The founders carefully crafted constitutional war making authority with the branch most representative of the people—Congress.⁶

The Federalist Papers, # 51, *The Structure of Government Must Furnish the Proper Checks and Balances Between the Different Departments*, serves as the wellspring for this principle. Madison insisted on the necessity to prevent any particular interest or group to trump another interest or group.⁷ This principle applies in practice to all decisions of considerable national importance. Specific to war powers authority, the Constitution endows the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief.⁸ This construct designates Congress, not the President, as the primary decision-making body to commit the nation to war—a decision that ultimately requires the consent and will of the people in order to succeed. By vesting the decision to declare war with Congress, the founders underscored their intention to engage the people—those who would ultimately sacrifice their blood and treasure in the war effort.

The Constitution, on the other hand, vaguely delegates authority to execute foreign policy. It contains no instructions regarding the use or custody of that power, except to “preserve, protect, and defend the Constitution of the United States.”⁹ However, even Alexander Hamilton, known widely as an advocate of executive power, asserted

The history of human conduct does not warrant the exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.¹⁰

Accordingly, the founders never intended for the military to serve as the nation’s primary agency to interface with the rest of the world or stand as the dominant pillar of foreign

policy. So the presidential authority of Commander-in-Chief does not allow a President to use the nation's military simply to execute the President's foreign policy.¹¹

Cold War Strategic Culture

Prior to 1941, constitutional war powers were exercised several times to produce end-states consistent with the nation's long-term vision. For the War of 1812, the Mexican-American War, the Spanish American War, World War I, and World War II, Congress formally declared war.¹² These war declarations authorized Presidents, as the Commander-in-Chief, to take the nation to war and terminate the conflict under favorable strategic terms. These conflicts usually concluded with a peace treaty.¹³

However, immediately after World War II the strategic landscape became volatile and uncertain. Two major events shaped what would become the predominant school of thought for developing U.S. national security policy in this murky post-WWII strategic environment: the successful test of a nuclear weapon by the Soviet Union and the Communist victory in China. These two events fostered a national security staff that focused primarily on halting the advance of communism. Accordingly, U.S. national security strategists formulated a robust, rigid strategy of containing communism as the panacea for foreign policy challenges and defending national interests in the bi-polar strategic landscape of the Cold War. Thus the doctrine of containment and the directive to implement it, National Security Council directive number 68, dominated U.S foreign policy for several decades following WWII.¹⁴ This new national security climate supported a decision-making culture comfortable with the Executive as the primary or sole crafter of foreign policy.¹⁵ It is not a coincidence therefore, that the Cold War security advisors eschewed the war declaration process and replaced it with a desultory

resolution process to authorize the nation's uses of military power, both for large and small operations.

The NSC-68 culture appeared to facilitate the concentration of power in the executive branch. Indeed, Dean Acheson declared, "The purpose of the NSC-68 was to bludgeon the mass mind of 'top government' that not only could the President make a decision but that the decision could be carried out."¹⁶ The NSC-68 mentality encouraged congressional abdication because nuclear warfare reduced decision cycles to minutes not days or weeks.¹⁷ The new strategic concept of mutually assured destruction would not allow sufficient time for traditional wartime decision-making. This new strategic environment, right or wrong, set the conditions for the gradual migration of war powers from Congress to the executive branch.

The policy formulation process which gave birth to the NSC-68 led to executive dominance of the war-making powers, leaving Congress virtually irrelevant.¹⁸ Additionally, nuclear weapons and the aircraft and missiles that delivered them shifted the national decision making mindset from traditional deliberation to crisis response, strengthening the perception that only the Executive could act with the speed necessary to address the threat. The policy developed in the NSC-68 era thus inevitably disregarded congressional consensus and facilitated disregard of the traditional constitutional approach for authorizing the nation's uses of force.

The Korean War

On 25 Jun 1950, North Korea invaded South Korea, dramatically challenging the new policy of containment. Additionally, a new international actor in the form of the United Nations introduced another layer of complexity and bureaucracy among the member states with respect to military intervention.

President Truman authorized mass mobilization of U.S. forces and deployment for offensive operations across the 38th parallel. In the process, President Truman formulated language in which the executive branch would circumvent constitutional war-making authority.¹⁹ He directed a large scale military deployment for offensive operations across the 38th parallel—all without the approval of Congress—in the lexicon and context of law enforcement. On 29 Jun 1950, when questioned during a news conference on the situation in Korea, President Truman proclaimed, “we are not at war!” He later agreed with the suggestion from the press corps that it amounted to nothing more than a “police action” conducted under the auspices of the United Nations.²⁰ This “police action” in Korea at its peak involved over 325,000 U.S. military personnel, resulted in over 35,000 U.S. casualties, and ended in a frozen conflict that continues to befuddle the United States to the present day.²¹

A new precedent had been set. A product of the new Cold War environment, President Truman’s actions were dangerously reckless: No previous President had inserted U.S. military forces into a foreign war without obtaining or at least seeking congressional approval.²² Congressional reactions were divided. Some in Congress objected to President Truman’s initiative, but others acquiesced—claiming President Truman’s actions were well within his authority as Commander-in-Chief. Perhaps most frightening was the group in Congress who completely off-shored their oversight: They suggested President Truman’s actions were consistent with the United Nations Charter because the United Nations Security Council passed Resolution 83 recommending “military measures and assistance” from member states to “restore peace and security in Korea.”²³

A United Nations resolution may serve to justify military intervention to the world community but it should never replace the necessity for congressional authorization as the Constitution requires. Nonetheless, President Truman's initiative was accepted as sufficient to meet constitutional muster for taking the nation to war. He had taken the first dangerous step to increasing presidential overreach. With respect to war powers, President Truman's executive police action arguably set the precedent for empowering future Presidents to engage in major war without congressional approval.²⁴

The Vietnam War

The United States has a long and intricate history with Indochina and its major political regional players. The overtones of U.S. involvement in Vietnam predate the Korean conflict and subsequent executive and congressional actions are perhaps the first manifestations of the reflexive nature of containment policy. In the end, U.S. involvement in Vietnam eventually eclipsed, by several multiples, the U.S. military effort launched on the Korean peninsula.

In 1949 President Truman exercised the initiative to offer financial aid to support French colonization efforts in Vietnam without congressional debate or justification.²⁵ After the French defeat at Dien Bien Phu and subsequent withdrawal from Vietnam, the country was partitioned into two "countries" of dubious legitimacy. To strengthen the South against northern communist aggression, the United States began sending military advisors to Vietnam to provide initial support for the South's non-communist regime. U.S. security advisors were seeking to avoid the "domino effect" that assumed other regional nations would fall to communism if Vietnam fell. Thus, the United States intervened with approximately 700 military advisors under President Eisenhower; their numbers increased to 16,000 under President Kennedy.²⁶

In August 1964, North Vietnamese gunboats allegedly attacked the USS Maddox and USS Turner Joy in the Gulf of Tonkin. In response, President Johnson successfully expedited through Congress the Gulf of Tonkin Resolution amid false reporting, misinformation, and what in hindsight could be called deliberate obfuscation.²⁷ The perceived fog of crisis had dampened Congress' will to monitor executive initiatives. Congress thus granted President Johnson the authority to use any amount of military force to do whatever he thought was necessary in Vietnam.²⁸ Another axiom the Cold War promoted was the notion that foreign policy decisions were too extraordinary for the underclass of Congress and the public to decide.²⁹ President Johnson then launched a war in Vietnam, cloaking his personal agenda and true motivations. A compliant, acquiescent Congress failed to restrain the President's ambition and by default contributed to a national disaster.³⁰

In the relatively short period of time, August 1964 to spring of 1965, President Johnson deployed the "first" combat troops to Vietnam. At the height, the United States deployed over 400,000 troops to Vietnam to participate in every facet of conventional and unconventional war—all executed under presidential authority granted by a congressional resolution that was contrived under false pretenses.³¹ This marked a significant departure from any historical precedents. President Johnson took President Truman's initiative one step further: The United Nations Security Council did not pass a resolution to address aggression in Vietnam as was the case with the divided Koreas.³²

Congress Strikes Back: The War Powers Resolution of 1973

If there is a positive element to the legacy of U.S. involvement in Vietnam, it is Congress' reassertion of its authority through its attempt to rein in the executive's war power. The failure in Vietnam and President Nixon's unprecedented abuses of

presidential power aroused Congress to the need to draft legislation restricting the Executive's war powers. In November 1973, passed over President Nixon's veto, The War Powers Resolution (WPR) emerged as the congressional effort to limit the President's ability to intervene militarily, without seeking congressional approval. Contentious from the outset, the WPR issue divided lawmakers into camps either for or against limiting executive power.³³

The language in the WPR is convoluted and cryptic. It offers very little in the critical issue of enforcement. Subsequently, it has been dismissed by every administration since its passage.³⁴ The WPR set the requirement, contained in section 4(a) (1), for the President to report to Congress within 48 hours of any introduction of armed forces with the intent to perform combat operations.³⁵ Additionally, it requires congressional authorization for the President to sustain commitments of U.S. forces beyond 60 days—and a new authorization if the commitment extends beyond 90 days.³⁶ In reality, the WPR fails its intent because the oversight mechanisms, as flaccid as they are, do not apply until *after* U.S. military forces are deployed. One could argue the true crowning achievement of the WPR is that it affirms the aphorism that it is easier to ask forgiveness than to seek permission.

Cold War Thaw: A New Strategic Environment

The fall of the Berlin Wall in 1989 and the ultimate demise of the Soviet Union in 1991 altered the strategic landscape yet again, removing the threat of imminent nuclear destruction. No longer did the United States stand toe-to-toe with a belligerent Soviet Union bent on dominating or "burying" the democratic, capitalist world.³⁷ Logically, the collapse of the Soviet Union nullified the rationale for the policy to grant the preponderance of war powers authority to the Executive. However, the Executive's war

powers did not recede despite the new strategic context. The decision to employ nuclear weapons remained with the Executive.

The Persian Gulf War

The 1990 Iraqi invasion of Kuwait would serve yet again as a justification for massive U.S. intervention. Despite having the time to consult with Congress, President G.H.W. Bush initiated OPERATION DESERT SHIELD in August of 1990 without congressional consultation or authorization.³⁸ Not until November of 1990 did Congress review the Gulf situation as a crisis in earnest. And only in December did the Democratic caucus pass a resolution mandating the President obtain congressional authorization before initiating hostilities, a feeble attempt to close the barn-door after the horse departed.³⁹

On 12 January 1991, Congress eventually authorized the use of force by a vote of 250 to 183 in the House and 52 to 47 in the Senate. However, this was months *after* President G.H.W. Bush directed the deployment of upwards of 150,000 troops to the Gulf region.⁴⁰ The ensuing resolution was perhaps the closest to a U.S. war declaration since WWII. House Speaker Tom Foley called it the “practical equivalent of a declaration of war.” But it was not functionally a war declaration because it only authorized the use of force to enforce United Nations Security Council resolution 678.⁴¹ Nonetheless, the United States mounted a major military operation. At its peak, the United States deployed approximately 350,000 personnel in support of operations to liberate Kuwait under the auspices of the United Nations resolution.⁴²

The U.S. military campaign of OPERATION DESERT SHIELD/DESERT STORM exhibited operational and tactical genius. The campaign quickly fulfilled the conditions of the United Nations resolution by evicting Iraqi forces from Kuwait and restoring

Kuwaiti sovereignty. But the lack of full, national debate on how to terminate the Persian Gulf War essentially facilitated the transition of quick military success into “open-ended quasi-war,” which continued for 12 years, ending only with the 2003 invasion of Iraq—another undeclared war.⁴³

Afghanistan And Iraq, 2001-2003

In 2001, the Al Qaeda attacks on New York and Washington D.C. easily justified authorization for U.S intervention in Afghanistan. The 9/11 attacks shocked, bruised, and bloodied a nation which then quickly responded with congressional expediency not seen since the 1941 attack on Pearl Harbor. On 12 September 2001, President George W. Bush declared “these deliberate and deadly attacks...were acts of war.”⁴⁴ Yet he did not ask the Congress for a war declaration nor did Congress provide one.⁴⁵ Instead, on 14 September 2001 Congress quickly passed the joint resolution authorizing the President

to use all necessary force and appropriate force against those nations, organizations, or persons, *he* [emphasis added] determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations, or persons.⁴⁶

This resolution, which the President signed into law (P.L. 107-40) on 18 September 2001, was unprecedented with regard to all provisions for war power authority. It provided carte blanche power to the President to invoke military force against all nations, organizations, and people associated with the 9/11 attack.⁴⁷ It provided no oversight whatsoever; it indefinitely extended executive authority; it “legalized” a war, not on a defined sovereign entity, but on a vaguely defined instrument

of war—a “War on Terror.” This broad sweeping language has been interpreted and invoked to support many future controversial programs both abroad and at home.⁴⁸

It is important to note the nexus between the 9/11 use-of-force resolution process and the 2002 authorization for the use of force against Iraq. The unlimited, broad authority of the 2001 resolution was perhaps the first brick laid on the road to war with Iraq. This resolution gave the Executive the perceived authorization to initiate an entirely new, costly, preemptive war in Iraq—a country with no visible, logical, and strategic connection to the 9/11 attack.⁴⁹

Ironically, however, the congressional resistance to what would become such a polarizing issue and ultimately a tremendous sacrifice of blood and treasure was epitomized by the parody of congressional deliberation prior to the invasion.⁵⁰ At the height of the debates over the Iraq war in the House and Senate, fewer than ten percent of the chambers’ members presided—a clear indication of congressional apathy.⁵¹ Debate on the Senate floor was pedestrian; most senators read prepared statements and then departed.⁵² The administration’s pre-invasion power grab and Congress’ acquiescence provided the most blatant example of power imbalance across the branches with respect to war power authority since Congress yielded its war powers at the beginning of the Cold War.⁵³

The Quiet Court

The Supreme Court has been conspicuously silent when it comes to interpretation of constitutional war power. As the third branch of government, the Court’s role in such matters is much more subtle than executive ambition or legislative acquiescence. The Court has never directly challenged the constitutionality of presidential war-making. Conversely, it has given the appearance of broad concurrence

on presidential authority involving foreign affairs and military interventions. This is manifest in two ways. First, the Court has refused to hear cases challenging presidential actions. Second, the Court has supported and affirmed executive authority in the cases it has decided to adjudicate.⁵⁴ Historically, the court has been reluctant to hear cases challenging the constitutionality of governmental roles and responsibilities. So expecting a decisive voice from the Court on issues involving conflict between executive and legislative war power authority seems overly optimistic.⁵⁵

Understanding the Gap

Consider the gap between Congress and the executive branch specific to war power authority. Like a black hole, this gap draws in the roles and abilities of the branches to execute foreign policy. Ostensibly, this gap has resulted from two symbiotic behaviors: executive aggressiveness and congressional abdication. The historical record reveals an evolution of this phenomenon well. But history has not clearly revealed the structural and political dimensions of this phenomenon.

A structural dichotomy in the Constitution grants most foreign policy prerogative to Congress in Article I. However, Article II grants the President very limited authority in foreign policy.⁵⁶ The dichotomy exists because structurally, the executive branch is better positioned to *lead and execute* while congressional actions are more indirect and diffuse. Congress' bicameral design and widely dispersed support bases do not optimize the expeditious exercise of its power. Consequently, considerable power has flowed from the Congress to the Executive.⁵⁷

Execution of U.S. foreign policy is fraught with political uncertainty and vulnerability. Foreign policy decisions and initiatives are susceptible to great uncertainty compared to domestic issues.⁵⁸ When dealing with high levels of uncertainty,

Congress often finds it is easier to defer to the executive branch, thereby reducing congressional members' exposure or liability.⁵⁹ Because most Americans elect their congressional representatives based on domestic and more local issues, they tend to pay little attention to foreign policy. Therefore, members of Congress often defer acting on foreign policy matters as a safer political option.⁶⁰ This political safe haven of indecision, however, does not serve the nation well because it encourages concentrating power in the hands of the Executive. Likewise, it severs the link between the electorate, the constitutionally intended legislative process, and the executor. However, matters of war require the collective involvement of the people. Militaries fight wars, but *nations* go to war. In the final analysis, congressional abdication of its Article I authority to oversee the nation's foreign policy has exposed this nation to an unacceptable level of strategic risk.

War, Strategy, and the Constitution

One of Clausewitz' greatest contributions to the study of war is his emphasis on the conceptual link between politics and war. "War is never a separate phenomenon," Clausewitz wrote, "but the continuation of politics by other means."⁶¹ Behind this proposition is a deeply textured argument about the intrinsic political purpose of war. This political purpose encompassed the components comprising war: societal disposition, economic capability, and strategy. Additionally, Clausewitz advised the thorough consideration of the use of violence. So the link between war and politics "should never be overlooked."⁶² Even in the 21st century, war retains this political dimension despite the recent emergence of non-state actors and transnational groups.⁶³

In other words, success at the tactical level of war first requires careful preparations at the political and strategic levels. The enabling institutions for success in

war—Congress, the President, the Cabinet and other advisors—must all be fully engaged to ensure developing feasible, suitable, and acceptable strategy.⁶⁴ And this carefully crafted strategy must include the legitimate justification for violence, the rigorous calculation and valuation of political objectives, and the commitment of resources necessary to achieve strategic objectives.⁶⁵

So why, then, have most large U.S. military interventions since World War II ended in defeat or at best, stalemate? The U.S. military since the end of WWII became the world's most capable war fighting machine in the history of the planet. Political leaders should attend more to what Clausewitz calls the political dimensions of war—national unity and the political value of the objective—as inseparable from national and military strategy.

War theorists have long emphasized the importance between national unity and the political value of the war objective. Thousands of years ago, Sun Tzu identified the necessary pre-condition of national unity for successful war strategy.⁶⁶ National unity enables political leaders to muster resources needed to win wars and to amass the human capital that makes up an army. Further, Clausewitz advised “to discover how much of our resources must be mobilized for war, we must first examine our own political aim.”⁶⁷

National unity underwrites the commitment the nation needs to successfully prosecute war, provided the war has political value commensurate to the effort expended.⁶⁸ The founders directed this nation to use a collaborative process to assess the political value of a war. So the U.S. Constitution requires Congress to deliberate on the decision to go to war and, when it so decides to declare war. Therefore, the

Constitution serves as the guarantor of ensuring national unity and a legitimate valuation of the war's political objective—provided through the mechanism of the war declaration. Consider the language of the war declaration against Japan in 1941:

That the state of war between the United States and the Imperial Government of Japan which has thus been thrust upon the United States is hereby formally declared; and the President is hereby authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government to carry on war against the Imperial Government of Japan; and, to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States⁶⁹

This declaration leaves no question about national unity, political value of the objective, and the will and support of the Congress to support the war endeavor.

A Risk to Strategy

As the practice of declaring war has become passé, U.S. strategy has likewise become disjointed and disconnected from national security objectives. After World War II, an acquiescent Congress and an aggressive Executive have, for decades, fostered a strategic climate that has failed to maintain the linkages between the political dimensions of the state and its strategy. The predominant “NSC-68 thinking,” largely a product of executive national security panels, which administrations have embraced and Congress has blithely followed, provided inadequate guidance on how objectives and capabilities should be linked to produce coherent overall strategy.⁷⁰ This linkage, Clausewitz observed, is necessary for success in war.

For example, U.S. strategy after World War II ironically came to resemble German strategy of the early 20th century, which relied heavily on military ways and means and failed to address political and economic components.⁷¹ While historians are quick to extol the superiority of the German military machine, Germany lost both world

wars. Similarly, the United States pursued strategy built on bridges of loosely linked operational and tactical successes. Unfortunately, without concretely defined end-states achieved from a coherent overall strategy, they were bridges to nowhere. Similarly, in Vietnam, Afghanistan, and Iraq, our leaders have failed to properly define the strategic ends, which have constantly placed the strategy in flux. Attempting to match ways and means to fluctuating or poorly defined ends has resulted in unacceptable levels of uncertainty and risk. These protracted and strategically uncertain conflicts are alien to U.S. strategic culture, which has little appetite for long, risky, or uncertain conflicts.⁷²

More recently, as the Executive exercises more authority in directing military interventions, the gap between risks-to-strategy has become wider. Theater commanders charged with developing adequate and complete strategies with sound ends and feasible ways to achieve them lack confidence in congressional support to provide the means necessary to achieve strategic objectives.⁷³ Additionally, as the world's only superpower, the United States can expect only asymmetrical conflicts as the norm. Future adversaries will increasingly focus on the strategic target of the collective will of the American people in order to subvert national strategy.⁷⁴

Vietnam Strategy

The U.S. experience in Vietnam left an indelible mark on the national psyche. This tragic military and political episode was spawned by an aggressive President promoting foreign policy absent congressional and public blessings.⁷⁵ Vietnam War strategy affirms how congressional abdication on war matters resulted in protracted disaster. As historian George C. Herring points out, "America's failure in Vietnam and the tragedy that resulted also make clear what can happen when major decisions are

made without debate or discussion.”⁷⁶ After Congress passed the Gulf of Tonkin Resolution, the strategy formulation and decision process operated vacuously; it failed to determine objectives and the means to obtain them.⁷⁷

President Johnson made many decisions concerning strategy and operations of the war himself, resulting in a strategy of incremental gradualism. Despite some tactical successes, Vietnam strategy never developed sufficient coherence and never sustained the support of the American people to deliver victory. By executive design, Congress and the people never fully vetted the value of the political objective against large-scale military intervention in Vietnam before the president committed forces to combat.⁷⁸

As a result, President Johnson lacked the strategic cover of a war declaration. This prevented him from unleashing the full weight of military capability to achieve full, quick military success. Instead he implemented a strategy that he thought would not jeopardize his domestic legislative agenda, or upset the domestic apple cart, or threaten his campaign for re-election.⁷⁹ In retrospect, the incoherence of the Vietnam strategy reflected the real value of the political objective in the eyes of the American people. They could not have cared less about Vietnam.⁸⁰

Afghanistan and Iraq Strategies

The strategies for the ongoing conflicts in Iraq and Afghanistan have both failed to properly encapsulate national strategic ends, ways, and means in a consistent manner across the whole of government. Without large-scale consensus on strategic ends, not surprisingly, Congressman James Marshall (D-GA) identified

the mismatches among the needs of post conflict stability operations in Afghanistan and Iraq, the size and the types of military forces available, and the pitiful scarcity of capability in the civilian branches of our government to effect nation-building efforts, as well as, our utter incompetence as a government in strategic communications.⁸¹

U.S. Afghanistan strategy has continually morphed from 2001 to the present. The sweeping language in the resolution Congress provided in September of 2001 did little to shape the conflict's effort and focus the nation on acceptable long-term national ends.⁸² A careful analysis of coalition command and control structures indicates how the United States, its partners and allies prosecuted any number of operational strategies.⁸³ Strategic priorities changed from counter-terrorism to counter-insurgency, to nation building, back to counter-terrorism, then eventually to a combination of them all.

During the lead-up to OPERATION IRAQI FREEDOM, significant executive power may have subjected the strategy to unnecessary risk. Indeed, failure of Congress to deliberate a declaration of war may have resulted in poorly defined national objectives and shoddy strategy.⁸⁴ Significant executive powers facilitated side-stepping of full disclosure of policy risk involved. The President's obsession with regime change subordinated other key elements crucial to a comprehensive strategy, particularly with respect to clear strategic ends. This obsession obscured full debate and railroaded the nation into a course of action fraught with unexamined risk. Additionally, it masked the real cost of the strategy in terms of lives and dollars and inevitably compromised support for the effort when the strategy did not unfold as planned.⁸⁵

Eventually, the wars in Iraq and Afghanistan and their strategies became focal points in the 2008 presidential campaign. Similar to President Johnson in Vietnam, candidate Obama politicized the Iraq and Afghanistan conflicts, promising on the campaign trail in 2008 that if elected, he would redeploy U.S. combat forces out of Iraq and re-focus on Afghanistan as the central front on the war against extremism. This

politicalization of the war efforts may have removed strategic considerations from decision making, thereby exposing the strategies to additional, unnecessary risk at a crucial time.⁸⁶

Transcending the Strategic

In addition to strategic liabilities, the absence of war declarations possibly introduces unwanted operational and tactical complexities. These complexities have at times led to additional strategic liability. A war declaration removes all doubt about how to proceed with issues of combatant prisoners and detainees. The United States invited much consternation by crafting an intentionally ambiguous policy with respect to abducting, handling, and detaining “terrorists” from battle zones that did not qualify as “war zones.” A congressional war declaration instantly removes any question about the status of an enemy combatant and does not allow for selective application of Geneva Convention articles and protocols.⁸⁷ This in turn eliminates risk associated with international scrutiny over prisoner operations and enables the United States to hold the moral high ground, which has always been a founding principle in America’s strategic communication.

Another Cry for Reform

In 2009 The National War Powers Commission, a bi-partisan group commissioned under the auspices of the University of Virginia’s Miller Center for Public Affairs, reviewed the existing WPR and addressed executive overreach with respect to military intervention. Chaired by Warren Christopher and James Baker, the 2009 War Powers Commission concluded that the WPR of 1973 does not function as intended and needs replacement.⁸⁸ The Commission members testified before the House Foreign Affairs Committee and the Senate Foreign Relations Committee recommending

a policy to restore the constitutional grounding for mandatory congressional war declaration for “large” force deployments and “significant armed conflict.”⁸⁹

The Commission recommended replacing the WPR of 1973 with the War Powers Consultation Act of 2009 which adds fidelity to the size, scope, and types of conflict subject to the Consultation Act. Most significantly, it directs the President to consult with Congress *before* introducing troops into “significant armed conflict.”⁹⁰ Despite the bipartisan clout of former Secretaries of State Warren Christopher and James Baker, the Commission’s recommendations still lacked the necessary political power to prevent the Executive from deploying forces into significant armed conflict without the full blessing of Congress.⁹¹

Conclusion

Reminiscent to the WPR of 1973, the National War Powers Commission’s effort to address war power authority hoists another warning flag about war power overreach and executive presumption of constitutional power. But it is not sufficient to have an academic debate over the constitutionality of war authority. Since the end of World War II, an assertive executive branch has run roughshod over an abdicating Congress. This has compromised U.S. military efficacy. It has resulted in the expenditure of national blood and treasure for strategically hollow ends.

The Constitution is, in itself, a strategic national security document. The Founders’ wisdom imbued within Articles I and II capture, in the Clausewitzian sense, the necessary pre-requisites for successful prosecution of war. As the executive and congressional branches deviate from U.S. constitutional foundations with respect to war authority, they increasingly leave our military—and our nation—vulnerable to unacceptable strategic risk. The constitutional interpretation of war power authority, as

practiced today, no longer maintains the necessary connective tissue between political and military muscle movements as intended. As a result, national and military strategy has become inordinately difficult to develop. Our military operations are hampered by our leaders' inability to harness the national will. If this nation resorts to war as the Constitution requires, we will wage fewer wars—and be far better prepared to win them.

Endnotes

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