**Plan**

***The United States Congress should require a declaration of war that is consistent with jus ad bellum principles of self-defense under international law for any decision to use or deploy armed forces against a nation-state in circumstances likely to lead to an armed attack.***

***Congress should define “armed attack” as: The use of force of a magnitude that is likely to produce serious consequences, epitomized by territorial intrusions, human casualties, or considerable destruction of property.***

***Congress should allow an exception in the event of an armed attack against the United States, or its allies, or other such national security emergency making prior approval impractical. Congress should require immediate notice of such a determination, and shall require approval within 14 days.***

**Contention 1: “Wars of Choice” Are Inevitable In The Status Quo**

***First - Circumvention - Future President’s will use Obama’s definitions of hostilities as a means to circumvent the WPR***

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WASHINGTON — **The White House, pushing hard against criticism in Congress over the deepening air war in Libya, asserted Wednesday that President Obama had the authority to continue the military campaign without Congressional approval because American involvement fell short of full-blown *hostilities***.¶ In a 38-page report sent to lawmakers describing and defending the NATO-led operation, the White House said the mission was prying loose Col. Muammar el-Qaddafi’s grip on power.¶ In contending that the limited American role did not oblige the administration to ask for authorization under the War Powers Resolution, the report asserted that “U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve U.S. ground troops.” Still, the White House acknowledged, the operation has cost the Pentagon $716 million in its first two months and will have cost $1.1 billion by September at the current scale of operations.¶ The report came one day after the House Speaker, John A. Boehner, Republican of Ohio, had sent a letter to Mr. Obama warning him that he appeared to be out of time under the Vietnam-era law that says presidents must terminate a mission 60 or 90 days after notifying Congress that troops have been deployed into hostilities, unless lawmakers authorize the operation to continue.¶ Mr. Boehner had demanded that Mr. Obama explain his legal justification for passing the deadline. On Wednesday, Brendan Buck, a spokesman for Mr. Boehner, said he was still reviewing the documents, adding that “**the creative arguments made by the White House raise a number of questions that must be further explored**.”¶ The escalating confrontation with Congress reflects the radically altered political landscape in Washington: a Democratic president asserting sweeping executive powers to deploy American forces overseas, while Republicans call for stricter oversight and voice fears about executive-branch power getting the United States bogged down in a foreign war.¶ “We are acting lawfully,” said Harold H. Koh, the State Department legal adviser, who expanded on the administration’s reasoning in a joint interview with the White House counsel, Robert Bauer.¶ **The two senior administration lawyers contended that American forces had not been in “hostilities” at least since early April, when NATO took over the responsibility for the no-fly zone and the United States shifted to primarily a supporting role — providing refueling and surveillance to allied warplanes, although remotely piloted drones operated by the United States periodically fire missiles, too**.¶ They argued that United States forces are at little risk because there are no troops on the ground and Libyan forces are unable to exchange fire with them meaningfully. And they said the military mission was constrained by a United Nations Security Council resolution, which authorized air power for the purpose of defending civilians.¶ “We are not saying the president can take the country into war on his own,” said Mr. Koh, a former Yale Law School dean and outspoken critic of the Bush administration’s expansive theories of executive power. “**We are not saying the War Powers Resolution is unconstitutional or should be scrapped or that we can refuse to consult Congress. We are saying the limited nature of this particular mission is not the kind of ‘hostilities’ envisioned by the War Powers Resolution**.”¶ **Jack L. Goldsmith, who led the Justice Department’s *O*ffice of *L*egal *C*ounsel during the Bush administration, said the Obama theory would *set a precedent* expanding future presidents’ unauthorized war-making powers, especially given the rise of remote-controlled combat technology**.¶ “**The administration’s theory implies that the president can wage war with drones and all manner of offshore missiles without having to bother with the War Powers Resolution’s time limits**,” Mr. Goldsmith said.¶ **It remains to be seen whether majorities in Congress will acquiesce to the administration’s argument, defusing the confrontation, or if the theory will fuel greater criticism. Either way, because the statute does not define hostilities and the Supreme Court has never ruled on the issue, *the debate is likely to be resolved politically***, **said Richard H. Pildes, a New York University law professor.**¶ Also on Wednesday, 10 lawmakers — led by Representative Dennis J. Kucinich, Democrat of Ohio, and Representative Walter B. Jones, Republican of North Carolina — filed a lawsuit asking a judge to order Mr. Obama to pull out of the Libya operation because Congress did not authorize it. That lawsuit faces steep challenges, however, because courts in the past have dismissed similar cases on technical grounds.¶ The administration had earlier argued that Mr. Obama could initiate the intervention on his own authority as commander in chief because its anticipated nature, scope and duration fell short of a “war” in the constitutional sense. Since then, the conflict has dragged on for longer than expected, and the goal of the NATO allies has all but openly shifted from merely defending civilians to forcing the Libyan leader, Colonel Qaddafi, from power. But Mr. Koh and Mr. Bauer said that while regime change in Libya might be a diplomatic goal, the military’s mission was separate and remained limited to protecting civilians.¶ **While many presidents have challenged the constitutionality of other aspects of the War Powers Resolution — which Congress enacted over President Richard M. Nixon’s veto — no administration has declared that the section imposing the 60-day clock is unconstitutional, and in 1980, the Justice Department’s Office of Legal Counsel concluded that it was within Congress’s power to enact such a limit**.

***Second - Commitment trap --- lack of congressional war power causes presidential utterances to become de facto strategy --- this locks us into unnecessary conflicts***

**Brookings Institution** 6-20-20**13**, The Road to War: Presidential Commitments and Congressional Responsibility, <http://www.brookings.edu/events/2013/06/20-war-presidential-power>, jj

**Ever since WWII**, Kalb said that “**history has led us into conflicts that we don’t understand” because presidents do not seek approval from Congress for declarations of war**. ***The country has reached a point now where “presidential power is so great, words out of his mouth become policy for the United States***.” **Kalb used the Syrian civil war and** President **Obama’s “red line” policy as an example of how a president’s words become strategy for the United States**. Kalb argued **that this presidential “flexibility” in foreign policy decision-making has repeatedly led the country into one misguided war to the next such as the Vietnam and Iraq wars**. ***To nullify these poor decisions***, Kalb believes that ***formal congressional declarations of war will help “trigger the appreciation for the gravity of war*” and assist in “unifying the nation” behind a strategic military intervention, resulting in more positive outcomes for the United States**. ¶ He concluded his remarks by noting that ***declarations of war by Congress are “stark commitments*,” and statements by the president of the United States must be thoroughly discussed to make well-informed decisions that will be in the best interest of the American people**. **Conflicts must be understood before the decision is made to send American troops to war, and presidents of the United States should converse with Congress before taking any military action.**

***Third - Groupthink – Comprehensive analysis proves absent sustained congressional involvement in war-making – unnecessary interventions are inevitable***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

II. The Causes of War

**In beginning to think about how to improve the legal constraints on the resort to war, it is essential to consider the causes of international armed conflict**. n10 The question of what causes war is the subject of a massive amount of re-search and debate, stretching back literally thousands of years. n11 **The focus of the various theories on the causes of war range from the individual decision makers, through small-group dynamics, the structure of the state itself, all the way to the structure and operation of the international system of states**. n12 Thucydides, whose analysis of the Peloponnesian War is one of the earliest studies of the subject known to us, set the stage with a complex explanation for the causes of that war that included the individual attributes of decision makers, the nature and structure of the leading city-states, and the nature of the interstate system itself. n13 Kenneth Waltz continues this classification by defining the three levels as "Images": the individual or human level ("Image I"), the level of the state structure or organization ("Image II"), and the level of the international system ("Image III"). n14 And despite the differing theories, disagreements, and areas of emphasis, there is a widely shared acceptance that all three Images play a role in explaining the causes of war, albeit to varying degrees [\*617] depending on one's theoretical perspective. n15 While it is not necessary for us to examine the various theories in detail, it will be helpful to get a flavor for some of the more important ideas as they relate to each of the three Images, as I will refer back to these ideas to support the argument for the proposed Model.

A. Image I--The Level of the Individual

**There are a wide variety of theories, and indeed a number of different sublevels within the Image I--the individual level--perspective on the causes of war. Some of these focus on aspects such as human nature itself and the inherent aggression of ~~man~~**. n16 **But the theories that relate to both the psychology of decision makers, and a number of systemic problems in small-group decision making are of greatest significance for the argument being advanced here**. **Beginning with individual psychology, one set of theories focus on the personality traits that are common among those who tend to reach the highest offices of government as factors that contribute to unsound judgments regarding the use of armed force**. **Empirical studies suggest that a number of traits that tend to be overrepresented in national leaders--such as au-thoritarian and domineering tendencies, introversion** (which is perhaps counter-intuitive, but Hitler and Nixon are both prime examples of this trait), **narcissism, and high-risk tolerance--also tend to correlate with much higher levels of con-frontation and the use of force to resolve conflicts**. n17

Psychological theories also focus on problems of misperception. **There is powerful evidence that people are prone to systematic patterns of misperception, and that such misperception in government leaders contributes significantly to irrational decisions**. n18 In particular, **decision makers frequently form strong hypotheses regarding the intentions** [\*618] **and capabilities of potential adversaries, and there is a strong tendency to then dismiss or discount information that is inconsistent with the hypothesis, and to interpret ambiguous information in a manner that is consistent with and reinforces the hypothesis**. n19 **Such misperception often constitutes a significant factor in the path to war**. n20

Another set of theories that relate to the Image I causes of war focus not on the individual alone, but on how deci-sions are made within groups and organizations. Contrary to the expectation that government agencies generally operate in accordance with rational choice theory, **studies suggest that group decision making is often characterized by dynamics that can lead to irrational and suboptimal decisions**. One such characteristic is excessive "incrementalism" and "satisfycing"--the tendency to make small incremental policy shifts, coupled with the sequential analysis of options and adoption of the first acceptable alternative, a process captured in the aphorism "the good is the enemy of the best." n21 **A second theory suggests that the dynamic of competing bureaucratic and departmental interests--interests which are often inconsistent with the larger national interest, but which nonetheless command greater loyalty and mobilize greater effort among department or division members--subvert the decision-making process**. n22 **Moreover, each department will itself approach the decision making within the constraints of its own perspectives and mindsets, standard operating procedures, and capabilities. This is the famous "where you stand is where you sit" explanation of internal government politics**, n23 **often referred to as the** [\*619] "**bureaucratic politics model**." n24 For **example, the senior representatives of the U.S. Air Force, with obviously vested interests, strongly argued in favor of the continued strategic bombing of North Vietnam in 1967, even though the Secretary of Defense and others in the Nixon administration had determined that it was at best pointless and at worst counterproductive**. n25

**Finally, there is the phenomenon known as "*groupthink***." n26 **This theory suggests that some decision-making groups--particularly those characterized by a strong leader, considerable internal cohesion, internal loyalty, overconfi-dence, and a shared world view or value system--suffer from a deterioration in their capacity to engage in critical analysis during the decision-making process**. n27 **Decision-making groups that suffer from groupthink are particularly vulnerable to the kind of systemic misperception discussed above, but they suffer from other weaknesses as well, all stemming from a failure to challenge received wisdom, consider alternate perspectives, or bring to bear exogenous criteria or modalities in assessing policy options**. n28

These theories do not, of course, explain all of the problems in decision making in all situations. Groupthink and the bureaucratic politics model generally do not operate at the same time in the same groups. But **the studies of each of these phenomena suggest that these systemic patterns can be a significant factor in the less-than-rational and suboptimal decision making about the use of armed force.** **And these theories together show the importance of introducing exogenous criteria for assessing the merit of competing policy options, and the kinds of checks and balances that might lessen the probability that these tendencies could affect the decision to go to war.** [\*620]

B. Image II--The Level of the State

**The causes of war also operate at the level of the state itself. Again, there is an extensive range of theoretical ex-planations for the causes of war that focus on factors at the state level, but those that are central to Image II relate to the actual structure or form of the government of the state**. n29 **The essential idea is that some forms of government are inherently less prone to wage war than others**. **This idea has been central to liberal theories of the state and international relations since the beginning of the eighteenth century, with the argument that liberal democratic states are less inclined to initiate wars than autocratic or other nondemocratic states**. These arguments were founded upon a number of strands of liberal political theory, including the nature of individual rights within democracies and the manner in which respect for such rights would influence how the state would behave within the international society. n30 They also drew upon liberal ideas about the influence of capitalist economies, arguing that laissez-faire capitalist systems would operate to reduce the incentives for war in liberal democratic states. n31 But **perhaps the most important argument among these liberal claims, is that the very structure of government, both in terms of its leaders being representative of and directly accountable to an electorate, and the separation of political power between the executive and a more broadly representative legislature, would operate to reduce the likelihood that such governments would embark on military adventures**. n32

Rousseau and Madison both wrote about the ramifications of the democratic structure of the state on the propensity for war. n33 But it was Immanuel Kant who developed the argument most fully in the eighteenth century with his [\*621] short work Perpetual Peace: A Philosophical Sketch. n34 Writing at a time when there were less than a handful of fledgling democratic "republics" in the world, n35 **Kant argued that a perpetual peace would result from the spread of the republican form of government among the nations of the world and the development of a form of pacific federation among these free states**. n36 His argument thus straddled the second and third images, and I will return to discuss his overall theory more fully below when we turn to consider Image III. But one of his arguments for why republics would be inherently less likely to wage war is still very much at the heart of current liberal theories relating to Image II. His point was that, **in the kind of republic he envisioned, the consent of citizens would be required for decisions to go to war**. **Those who would "call[] down on themselves all the miseries of war," not only fighting and dying in the conflict but also paying for it and suffering the resulting debt, would be much less likely to agree to such an adventure than the heads of state in other kinds of political systems such as monarchies, who can "decide on war, without any significant reason**." n37

As we will see, Kant himself did not argue that the development of democratic structures within any given state would be sufficient to prevent it from going to war, and his theory of perpetual peace also rested on the requirement that the republican form of government be also spread throughout the international system. Indeed, **one of the problems with liberal theories that rely upon governmental structure as an explanation for the cause of war is that the extensive empirical research and analysis on the subject suggest that liberal democracies are almost as prone to engaging in war as nondemocratic states, at least as against nondemocratic countries**. n38 **Some have tried to argue that liberal democracies nonetheless do not initiate wars to the same degree, and thus** [\*622**] are inherently less aggressive than other forms of government, but even that claim is very difficult to sustain from the perspective of traditional international law conceptions of aggression and self-defense**. n39

What has emerged from this line of research, however, is the widely accepted proposition that liberal democracies do not commence wars against other liberal democracies. The so-called "democratic peace" encompasses both this empirical fact and the principle said to explain it. n40 While there remains some residual debate over the validity of the principle, n41 persuasive evidence suggests that, with the possible exception of two instances of armed conflict between what might be considered democratic states, there have been no wars between liberal democracies during the period between 1816 and 1965. n42 The assertion has been made, and often cited, that the democratic peace is close to being an empirical law in international relations. n43

**There is less agreement over the best explanation for the democratic peace. There are two main theoretical posi-tions: (1) normative and cultural explanations, and (2) institutional and structural constraints**. n44 The normative-cultural explanations argue that the shared norms of democracies, and particularly the shared adherence to the rule of law and commitment to peaceful dispute resolution internally, inform and influence the approach of democratic governments to [\*623] resolving disputes that may arise as between democracies. Moreover, there is a shared respect for the rights of other people who live in a similar system of self-government. These shared beliefs, norms and expectations tip the cost-benefit analysis toward peaceful resolution of disputes when they arise as among democracies. n45

**The structural-institutional advocates argue that the elements of the liberal democratic legal and political system operate to constrain the government from commencing armed conflicts**. **This is entirely in line with the insights of earli-er writers such as Madison, Kant, and Cobden, regarding the lower likelihood of war when representatives of those who will pay and die for the war are deciding, since it is more politically risky for democratic leaders to gamble the blood and treasure of the nation in war unless it is clearly viewed by the public as being necessary**. n46 **The arguments are also based in part on the broader idea that structural checks and balances typical of democratic systems, and the operation of certain other institutional features of deliberative democracy, will reduce the incidence of war**. n47 We will return to some of these arguments in more detail below.

***Finally - Obama’s decision to seek authorization for Syria only takes out negative disads***

* It is an open-ended authorization with limited precedent – but that limited precedent is enough to trigger all their perception based DAs

Andrew **Rudalevige**, The Monkey Cage, **Sep 2, 2013**, Wall Street Pit, A Win for the WPR? No, but…, http://wallstreetpit.com/100986-a-win-for-the-wpr-no-but/

President **Obama’s decision to seek congressional authorization for the use of force in Syria seems to have taken the political world by surprise**. After all, when Obama intervened in Libya in 2011, he creatively evaded such an action, citing such rationales as UN resolutions, the “non-kinetic” nature of logistical support to NATO, and the proposition that the Libya operation did not constitute “hostilities” as envisioned in the 1973 War Powers Resolution. (For further details see my series of posts at the time, linked here.) This time around, he has provided a draft resolution that even mentions the WPR. **The reaction shows the extent to which presidents have claimed—and Congress has abdicated—** authority in this area, as I posted earlier today. **The WPR** has only been invoked formally once by a president (Ford, back in 1975). There are many reasons for this, ranging from presidents’ claim of inherent war powers to the drafting imprecisions of the WPR itself. (On the latter, see my earlier summary here, and a longer discussion in a book chapter, here – go to Ch. 6, p. 192.) No president—starting with Nixon, in his overridden veto message—has accepted the WPR as binding. And nor did **Obama,** with respect to Syria. Indeed, **in his Rose Garden statement** of August 31, the president **argued that “I believe I have the authority to carry out this military action without specific congressional authorization**.” **In this he followed past precedent**. The first Gulf War in 1991, the Afghanistan war in 2001 (including, albeit controversially, the much broader “global war on terror”), and the Iraq war in 2003 all received congressional sanction at presidential request—but in none of these cases did the president say he needed congressional authorization to act. Most colorfully, George H.W. Bush said in 1992 that “I didn’t have to get permission from some old goat in Congress to kick Saddam Hussein out of Kuwait.” (If the gentlemanly Bush thought the relatively friendly 102nd Congress was full of goats, one wonders what Obama might call their contemporary counterparts…) **To be sure, the Syria intervention**, as discussed publicly to date, ***is far less broad in its intent*** than these wars. ***On the other hand, the draft resolution the administration sent to Congress is not particularly constrained*.** **It would give the president the authority, without time limit, to “prevent or deter the use or proliferation” of chemical weapons or weapons of mass destruction as well as to “protect the United States and its allies and partners”** from them. It mentions the WPR, yes, but only to say the resolution is “consistent with” it (not, say, “required by” it.) **Even so, why?** **Why attract accusations from** Sarah Palin, and even (self-loathing?) **legislators that he is** “***hiding behind Congress”?*** There are surely many answers, but **it strikes me that other post-1973 actions where prior congressional authority was not sought have some characteristics in common** not present in the Syrian case. **First, they have a rationale in self-defense, even imaginatively defined**. In the WPR, presidents are given authority to use force when there is (1) a declaration of war; (2) a specific statutory authorization; or (3) ”a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.” Obviously options (1) and (2) can be based on any rationale, or none; but they do not – yet – apply to the Syrian situation. So one question facing Obama was whether (3) would cover sufficient ground. Some cases are easy, as with the (failed) rescue attempt of the American hostages in Iran in 1980 or the 1998 missile strikes after the African embassy bombings. In other cases presidents have been very generous in their interpretation of “attack upon the United States.” The 1989 invasion of Panama was explained by President Bush as a response to General Manuel Noriega’s “reckless threats and attacks upon Americans in Panama [which] created an imminent danger to the 35,000 American citizens” there. The 1983 invasion of Grenada was publicly justified by President Reagan along similar lines: “first, and of overriding importance, to protect innocent lives,” and not just any lives: “American lives are at stake.” Still, it’s hard to stretch to this from the Syrian rationale, sold before today largely as punishment for the violation of international norms. **Second** – in addition or instead—**they had multilateral support**, a cause of action endorsed by the international community, normally **with a humanitarian component**. Even Reagan in Grenada was careful to stress that the US had been invited to respond, that it was doing so in concert with other nations in the region (whose battleship inventory was perhaps a bit thin), and that ”this collective action has been forced on us by events that have no precedent in the eastern Caribbean and no place in any civilized society.” Likewise in Somalia (1992), Kosovo (1999), and Libya (2011), one could cite both humanitarian concerns, and treaty obligations (e.g. with the United Nations, NATO, or both). The WPR specifically rules out inferring authority to use force from such obligations (see Section 8(a)(2).) Nonetheless, they muddy the legal waters. ***In Syria, Obama has neither of these covering contexts to justify action***. Indeed, he faces substantial international opposition, divided domestic opinion, and little likelihood that a ‘one and done’ airstrike will do much to change the behavior of the Assad regime. In the circumstances (and given his earlier “red line” pledge), **it makes sense to bring Congress “in on the take-off” and hope the landing is not too rough.** **Obama’s argument that congressional debate is “the right thing to do for our democracy” might have been self-serving. But that doesn’t make it incorrect**. “Senior administration officials” grumpily told the Washington Post that they debated “the implications of ceding executive authority over war powers to the legislative branch.” Such a formulation frames this authority as purely executive in the first place. It is not. In short, **this is probably not a “win” for the WPR**. ***The combination of circumstances it entails seems rare in the annals of presidential uses of force.* Still, even if the president is doing the right thing for the wrong reasons**, I cannot bring myself to take T.S. Eliot’s view of such cases. Even if they don’t want to, **presidents set precedents. This one**, ***however limited it proves***, **might force Congress to regain some self-respect.**

**Contention 2: The US Will Lose These Wars**

***Status quo war-fighting follows a “Vietnam model” – A disjointed American grand strategy – the result is prolonged conflicts without congressional support, and ultimately military failure***

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**As the practice of declaring war has become passé**, **American strategy has likewise become** ***disjointed and disconnected*** **from national security objectives**. **Following World War II, an acquiescent Congress and an aggressive presidency have**, for decades, **fostered a strategic climate that failed to maintain the links between the political dimensions of the state and its strategy**. **The predominant** “NSC-68 **thinking**,” largely a product of executive national security panels that administrations have embraced and Congress has blithely followed, **provided inadequate guidance on how objectives and capabilities should be joined to produce *coherent overall strategy***.63 **This connection**, Clausewitz observed, ***is necessary for success in war***. For example, **US strategy following World War II ironically came to resemble the German strategy of the early 20th century**, **relying heavily on military ways and means that failed to address the political and economic components of warfare**.64 Historians are quick to extol the superiority of the German military machine, but Germany lost two world wars. **Similarly, the United States has pursued a strategy built on loosely linked operational and tactical successes.** Unfortunately, **without concretely defined end states specified in a coherent all-encompassing strategy, these successes have not achieved national strategic ends**. In Vietnam, Afghanistan, and Iraq, our leaders failed to properly define the national strategic ends, so the attendant strategies have been inchoate. Leaders’ attempts to match ways and means to fluctuating or poorly defined ends resulted in unacceptable levels of uncertainty and risk. **These protracted and strategically uncertain conflicts are alien to America’s strategic culture**, **which has little tolerance for long, risky, or uncertain conflicts**.65 More recently, **as the executive branch exercises greater authority in directing military interventions, the gap between risk and strategy becomes wider**. **Theater commanders** **charged with developing adequate or complete strategies** with sound ends and feasible ways to achieve them ***lack confidence in congressional support to provide the means necessary to achieve these strategic objectives***.66 **As the world’s only superpower, the United States can expect asymmetrical conflict as the norm**. **Future adversaries will increasingly focus on the strategic target of the American people’s collective will in their efforts to *subvert our national strategy***.67 The tragic military and political experience of Vietnam was spawned by an aggressive president promoting foreign policy absent congressional and public blessings.68 **Vietnam War strategy affirms how congressional abdication on war matters resulted in *protracted disaster***. As historian George 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.”69 After Congress passed the Gulf of Tonkin Resolution, the strategy formulation and decision process operated vacuously, failing to determine strategic objectives and the means to obtain them.70 President Johnson made numerous decisions concerning the strategy and operations of the war, resulting in a strategy of incremental gradualism. **Despite some tactical successes, Vietnam strategy never developed sufficient coherence nor the sustained support of the American people**. ***Through executive design***, **Congress and the people never fully vetted the value of the political objective in the context of large-scale military intervention** before **President Johnson** committed forces to combat.71 As a result, President Johnson lacked the top cover of a war declaration. This prevented him from unleashing the nation’s enormous military capability to achieve full, quick military success. Instead, he **implemented a strategy that he thought was least likely to jeopardize his legislative agenda, upset the domestic apple cart, or threaten his reelection**.72 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.73 Afghanistan and Iraq Strategies **The strategies for the ongoing conflicts in Iraq and Afghanistan have both failed to properly incorporate national strategic ends, ways, and means in a consistent manner across the whole of government.** In the absence of a national consensus on strategic ends, Congressman James Marshall (D-GA) not surprisingly 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.74 US Afghanistan strategy has continually morphed from 2001 to the present. The sweeping language in the September 2001 congressional resolution did little to shape the effort and focus the nation on acceptable long-term national ends.75 A careful analysis of coalition command and control structures indicates how the United States, partners, and allies prosecuted any number of operational strategies.76 Strategic priorities changed from counterterrorism to counterinsurgency, to nation building, back to counterterrorism, then eventually to a combination of all of them. 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**.77 **Significant executive powers facilitated side-stepping full disclosure of policy risk.** 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.78 Eventually, the wars in Iraq and Afghanistan and their strategies became focal points in the 2008 presidential campaign. Similar to President Johnson on Vietnam, candidate Obama politicized the Iraq and Afghanistan conflicts, promising on the campaign trail that, if elected, he would redeploy US combat forces out of Iraq and refocus on Afghanistan as the central front on the war against extremism. This **politicalization of the war efforts may have removed strategic considerations from decisionmaking, exposing the strategies to additional, unnecessary risk at a crucial time**.79 Another Cry for Reform In 2009, The National War Powers Commission, a bipartisan 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 1973 WPR does not function as intended and needs replacement.80 Commission members testified before the House Foreign Affairs Committee and 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.”81 The Commission recommended replacing the 1973 WPR with the War Powers Consultation Act of 2009 that adds fidelity to the size, scope, and types of conflict subject to the Act. Most significantly, it directs the president to consult with Congress before introducing troops into “significant armed conflict.”82 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 president from deploying forces into significant armed conflict without the full blessing of Congress.83 Conclusion Reminiscent of the 1973 WPR, the National War Powers Commission’s effort to redress war power authority hoists another warning flag about war power overreach and executive presumption of constitutional power. But it is insufficient 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, which has compromised US military efficacy**. It has repeatedly 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 prerequisites for successful prosecution of war. As the executive and congressional branches deviate from US constitutional foundations** with respect to war authority, **they increasingly leave** the military—and **the nation**—***vulnerable to unacceptable strategic risk***. **The current interpretations** or disregard for war power authority, as practiced today, **no longer maintain the necessary connective tissue between political and military muscle movements**. **As a result, US national and military strategy has become disjoined from legitimate political will**. **American military operations are hampered** by the leadership’s inability to harness the national will. ***If this nation declared war*** when it engaged in war, **as the Constitution requires**, ***the United States would wage fewer of them—and be far better positioned to win them***.

***This lack of declaring war has caused every military loss since World War II***

Abdication of the Constitutional responsibility to seek a declaration of war before committing troops to conflict has resulted in every military loss since World War II

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There is an imbalance of constitutional power across the branches of the US government. **Congress has failed to preserve its constitutional privileges**, ***specifically its sole authority to declare war***.1 **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’s constitutional authority and requirement to formally declare the nation’s wars.***2 **For the 162 notable military deployments after *W*orld *W*ar 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**.3 **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 designed to assure 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 conflict. The ensuing uncertainty exacerbates an already complicated strategy formulation process and often leads to truncated, incoherent, or episodic 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 US military forces to “war” without the benefit of the constitutional 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**. **It constantly exposes strategy to political machinations**. Finally, **it fails over time to provide sufficient resources to achieve the uncertain objectives of the military actions that began extraconstitutionally**. First, consider the constitutional issue of power imbalance. Central to the Constitution is the foundational principle of power distribution and provisions to check and balance exercises of that power. This clearly intended separation of powers across the three branches of government ensures that no single federal officeholder 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.4 The Federalist Papers No. 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.5 This principle applies in practice to all decisions of considerable national importance. Specific to war powers authority, **the Constitution empowers the legislative branch with the authority to declare war but endows the Executive with the authority to act as Commander-in-Chief**.6 **This construct designates Congress, not the president, as the primary decisionmaking 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 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.”7 Alexander Hamilton, known widely as an advocate of executive power, asserted: The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a 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.8 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 instrument of foreign policy. So **the presidential authority of Commander-in-Chief does not permit a president to use the nation’s military simply to execute a president’s foreign policy.**9 **Following World War II, the strategic landscape became volatile and uncertain**. Two major events shaped what would become the predominant school of thought for developing US national security policy in this murky post-World War II 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. US national security strategists formulated a robust, rigid strategy of containing communism as the panacea for foreign policy challenges and for defending national interests in the bipolar strategic landscape of the Cold War. Thus **the doctrine of containment and the directive to implement it,** National Security Council Report 68 (NSC-68), **dominated US foreign policy for several decades following World War II**.10 This new national security climate supported a decisionmaking culture comfortable with the executive branch as the primary or sole crafter of foreign policy.11 It was not a coincidence, therefore, that 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, for large and small operations. The NSC-68 culture appeared to facilitate the concentration of power in the executive branch. 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.”12 **This mentality encouraged congressional abdication because nuclear warfare reduced decision cycles to minutes, not days or weeks**.13 The new strategic concept of **mutually assured destruction would not allow sufficient time for traditional wartime decisionmaking.** **This new strategic environment 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.14 Additionally, nuclear weapons and the aircraft and missiles that delivered them shifted the national decisionmaking mindset from traditional deliberation to crisis response, strengthening the perception that only the executive branch could act with the speed necessary to address the threat. The policy developed in the NSC-68 era inevitably disregarded congressional consensus and marginalized the traditional constitutional approach for authorizing the nation’s use of force. On 25 June 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 directed a large military deployment for offensive operations across Korea’s 38th parallel—all without the approval of Congress**.15 **In the process, President Truman formulated language in which the executive branch would circumvent constitutional war-making authority.**16 **The “police action” in Korea at its peak involved over 325,000 US military personnel, resulted in over 35,000 US casualties**, and ended in a frozen conflict that continues to befuddle the United States.17 A product of the new Cold War environment, President Truman’s actions were recklessly unprecedented. No previous president had deployed US forces into a foreign war without obtaining or at least seeking congressional approval.18 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 congressional group that completely offshored oversight. They suggested President **Truman’s actions were consistent with the United Nations (UN) Charter** because the Security Council passed Resolution 83 that recommended “military measures and assistance” from member states to “restore peace and security in Korea.”19 **A UN 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 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.20 In 1949 President Truman offered financial aid to support French recolonization efforts in Vietnam without congressional debate or justification.21 Following the 1954 French defeat at Dien Bien Phu, 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 noncommunist regime. US security advisors were seeking to avoid the “domino effect,” which posited that other regional nations would fall to communism if South Vietnam fell. Thus, the United States intervened with approximately 700 military advisors under President Eisenhower; their numbers increased to 16,000 under President Kennedy.22 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.23 The perceived fog of crisis had dampened Congress’s 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.24 Another axiom the Cold War induced was the notion that foreign policy decisions were too extraordinary for the underclass of Congress and the public to decide.25 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.26 In a relatively short period, August 1964 to spring of 1965, President Johnson deployed the “first” combat forces to Vietnam. At the war’s height, the United States sent over 400,000 troops to Vietnam to participate in various modes of conventional and unconventional war—all executed under presidential authority granted by a congressional resolution contrived under false pretenses.27 President Johnson took President Truman’s initiative one unprecedented step further; the UN Security Council did not pass a resolution to address aggression in Vietnam as was the case with Korea.28 If there is a positive element to the legacy of America’s involvement in Vietnam, it is Congress’s attempt to reassert its authority and rein in executive war power. The failure in Vietnam and President Nixon’s unprecedented abuses of presidential power aroused Congress to draft legislation restricting executive war powers. In November 1973, **the War Powers Resolution** (WPR) **was passed over President Nixon’s veto and emerged as the congressional effort to limit the president’s ability to intervene militarily without first seeking congressional approval**. Contentious from the outset, the WPR divided lawmakers into camps either for or against limiting executive power.29 The language in the WPR is convoluted and cryptic. It offers very little regarding the critical issue of enforcement. Subsequently, it has been dismissed by every administration since its passage.30 The WPR set the requirement for the president to report to Congress within 48 hours of the introduction of armed forces with the intent to perform combat operations.31 Additionally, it requires congressional authorization for the president to sustain commitments of US forces beyond 60 days—and a new authorization if the commitment extends beyond 90 days.32 In reality, **the WPR fails because the oversight mechanisms, flaccid as they are,** ***do not apply until after US forces are deployed. One could argue that the crowning achievement of the WPR is that it affirms the aphorism that it is easier to beg forgiveness than to seek permission.*** The 1990 Iraqi invasion of Kuwait served again as a justification for massive US intervention. Despite having the time to consult with Congress, President G. H. W. Bush initiated Operation Desert Shield in August 1990 without congressional consultation or authorization.33 Not until November 1990 did Congress earnestly review the situation in the Gulf. In December 1990, the Democratic caucus passed a resolution mandating the president obtain congressional authorization before initiating hostilities, a feeble attempt to close the barn door after the horse departed.34 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 more than 150,000 troops to the Persian Gulf.35 The ensuing resolution was perhaps the closest to a US war declaration since World War II. 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 UN Security Council Resolution 678.36 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 UN resolution.37 The US military campaign of Operation Desert Shield/Desert Storm exhibited operational and tactical genius. The campaign quickly fulfilled the conditions of the UN 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 a 12-year open-ended quasi-war that continued until the 2003 invasion of Iraq—another undeclared war.38 **In 2001, the al Qaeda attacks on New York and Washington DC easily justified authorization for US 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 the following day, President George W. **Bush** declared “these deliberate and deadly attacks . . . were acts of war.”39 Yet he **did not ask Congress for a war declaration nor did Congress provide one**.40 Instead, on 14 September, **Congress quickly passed a 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.41 This resolution, which the president signed into law (P.L. 107-40) on 18 September, was unprecedented with regard to all provisions for war power authority. **It provided carte blanche power for the president to invoke military force against all nations**, organizations, and people associated with the 9/11 attack.42 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 controversial programs both abroad and at home**.43 **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 president the perceived authorization to initiate an entirely new and costly preemptive war in Iraq**—a country with no visible, logical, or strategic connection to the 9/11 attack.44 **Ironically, however, 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**.45 **At the height of the debates over the Iraq War in the House and Senate, fewer than ten percent of the members attended**—a clear indication of congressional apathy.46 Debate on the Senate floor was pedestrian; most senators read prepared statements and then departed.47 ***The administration’s pre-invasion power grab and Congress’s 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.***48 **Since World War II, a wide gap has developed between Congress and the executive branch with respect to the critical issue of war powers. *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 the evolution of this phenomenon. But history does not clearly reveal the structural and political dimensions of this phenomenon. The Constitution grants most foreign policy prerogative to Congress in Article I. Article II grants the president very limited authority in the foreign policy arena.49 This results in a structural dichotomy because the executive branch is better positioned to lead and execute, but congressional actions are more indirect and diffuse. Congress’s bicameral design and widely dispersed support base do not optimize the expeditious exercise of its power. Consequently, considerable power has flowed from Congress to the president.50 Execution of US foreign policy is fraught with political uncertainty and vulnerability. Compared to domestic issues, foreign policy decisions and initiatives are susceptible to greater unpredictability.51 Therefore, when dealing with high levels of uncertainty, Congress often finds it easier to defer to the executive branch, thereby reducing congressional members’ exposure or liability.52 **Because most Americans elect their congressional representatives based on domestic issues, they tend to pay little attention to foreign policy; members of Congress often defer acting on foreign policy matters as a safer political option**.53 **This political safe haven of indecision**, however, does not serve the nation well because it encourages concentrating power in the executive branch. Likewise, it ***severs the link between the electorate, the constitutionally intended legislative process, and the executor***. **Matters of war,** however, **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 America to unacceptable strategic risk.***

***There are no alt causes - America has the greatest war fighting machine since the end of World War 2 – but has won exactly zero wars. Failure to declare war is correlation AND causation***

**Gallagher ’11**, Joseph V. Gallagher III served as an F/A-18C Pilot, Air Officer, and F/A-18C/D ¶ Flight Instructor in the US Marine Corps operating forces. He worked Security Assistance ¶ initiatives for the US European Command and most recently as a Joint Planner in the ¶ USEUCOM J3 and J5. Gallagher is currently assigned to the Joint Staff, PakistanAfghanistan Coordination Cell. 3-24-11, Strategic Studies Institute, Unconstitutional War: ¶ Strategic Risk in the Age of ¶ Congressional Abdication, <http://strategicstudiesinstitute.army.mil/pubs/parameters/Articles/2011summer/Gallagher.pdf>, jj

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**.”54 Behind this proposition is a deeply textured argument about the intrinsic political purpose of war. **This political purpose encompasses the components comprising war: societal disposition, economic capability, and strategy.** Clausewitz advised leaders to thoroughly consider any use of violence. So the link between war and politics “should never be overlooked.”55 Even in the 21st century, ***war retains this political dimension despite the recent emergence of nonstate actors and transnational groups***.56 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—all need to be fully engaged in the development of feasible, suitable, and acceptable strategy**.57 **And this carefully crafted strategy needs to include legitimate justification for violence, rigorous calculation and valuation of political objectives, and commitment of resources sufficient to achieve strategic objectives**.58 Since 1945, ***the United States has built the world’s most capable war-fighting machine***. **So why,** then, ***have most of the nation’s large military interventions since World War II ended in defeat or, at best, stalemate***? **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 of 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.59 **National unity enables political leaders to muster resources needed to win wars and to amass the human capital that makes an army.** Clausewitz advised, “to discover how much of our resources must be mobilized for war, we must first examine our own political aim.”60 **National unity underwrites the commitment the nation needs to successfully prosecute war, provided the war has political value commensurate to the effort expended.61 The founders directed this nation to use a collaborative process to assess the political value of a war. *So the 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 1941 war declaration against Japan. It captures the national unity, the political value of the objective, and the will and support of Congress to support the war.62

***Syria IS THE EXAMPLE of the status quo model – it will not be a declaration of war – but a vague and open-ended authorization***

GARANCE **FRANKE-RUTA** is a senior editor covering national politics at The Atlantic, “All the Previous Declarations of War”. Aug 31st 20**13**, http://www.theatlantic.com/politics/archive/2013/08/all-the-previous-declarations-of-war/279246/

**As we head into a period of** vigorous congressional **debate over whether to authorize the use of force against Syria, it's instructive to look back at America's history of congressional war declarations**. The Congressional Research Service put together a great mini-history in 2011, "Declarations of War and Authorizations for the Use of Military Force: Historical Background and Legal Implications," by Jennifer Elsea and Richard Grimmett, which is worth a read at this juncture. The obvious take-home is that ***America has done a better job of winning its declared wars*** in the last century than **achieving clear-cut victories in ventures authorized under legislative measures that fell short of a formal declaration of war. The United States Congress has not formally declared war since World War II. All of our wars in the Middle East have been authorized using other means**, which rather goes to the heart of the nature of those different conflicts. **U.S. entry into World War I and World War II took place through joint congressional resolutions stating "a state of war exists** between the Government of Country X and the Government and People of the United States," where country X was, variously, Germany, Japan, Italy, and so on. **It would be impossible to write such a sentence about Syria today. In what meaningful way does a state of war exist between the United States and Syria? None. That's why Congress, if it approves anything,** ***will approve an authorization for the use of force.*** **And if history is any guide, *that's going to be a rather open-ended commitment, as fuzzy on the back-end as on the front.***

**Contention 3: The Impacts**

***Iraq proves – failure to achieve success in these wars results in the perception of the decline of American leadership and the rise of challengers***

Dr. LOUISE **FAWCETT,** author of International Relations of the Middle East, Oxford University, “The Iraq War ten years on: assessing the fallout”, International Affairs, 20**13** http://www.chathamhouse.org/sites/default/files/public/International%20Affairs/2013/89\_2/89\_2Fawcett.pdf

Had the war been more successful, history might have judged it differently. **As its short-term military achievements gave way to** widely advertised **long-term failures**, **this led to intense speculation about the** possible ***demise of US power and reputation in an emerging multipolar system.* There was** ***undoubtedly* reputational and soft power damage**—‘***a sharp drop in the attractiveness of the United States around the world***’;40 it was also true that the war’s immediate effect was to galvanize local and international opinion against the western ‘coalition of the willing’ and the policies it embodied. **This,** in turn, **presented new opportunities for other aspiring powers**, ***like Russia or China***, **to raise their international profile in a still evolving post-Cold War era**. Retrospectively **this was a kind of** ‘***Vietnam moment’*** **for the United States in which both its allies and its rivals became** ***more critical and assertive.*** In the medium term, **the Iraq War has certainly contributed to a shift in the policy priorities and choices of the US**, UK and other European **government**s, those most intimately involved in the conflict, for whom the ***war became a serious political liability***. **However, viewed from a longer-term** Arab Spring **perspective**, which has seen western powers acting—more often in concert than not—to influence the political future of the region, **it can hardly be said that the** **US** and European priorities, or their **propensity to intervene** where core interests appear threatened, have **suffered an irreversible setback**, even if the modality of intervention has, for the moment, changed. What was the effect of the Iraq War on US standing? **There was widespread domestic and international criticism of the invasion**, and of the prolonged occupation of Iraq that followed. **This was part of a wider critique about the nature and direction of post-Cold War US foreign policy** **in which terms like** unilateralism and **neo-imperialism predominated. There was scoffing at the naivety and hubris** demonstrated by President George W. Bush, as he outlined after the fall of Baghdad his ‘forward strategy of freedom’.41 Certainly, the Iraq War was a factor in the Republican defeat in the 2008 presidential election and in the reshaping of foreign policy-making under a new Democratic administration led by Barack Obama with initially a very different feel. Similarly, in Britain the Iraq War became a liability for the Labour administrations of Tony Blair and Gordon Brown, and a factor also in the latter’s replacement by the current coalition government in 2010. The results of the Iraq (Chilcot) Inquiry, launched in 2009, tasked with considering the different aspects of the UK’s involvement, are still awaited.42

***This perceived loss of leadership ensures lash-out and superpower conflicts – followed by an inward turn that results in the corrosion of the global commons***

**Brzezinski ’12** (Zbigniew Brzezinski, national security advisor under U.S. President Jimmy Carter, is author of the forthcoming book Strategic Vision: America and the Crisis of Global Power, Foreign Policy, After America¶ <http://www.foreignpolicy.com/articles/2012/01/03/after_america?page=0,1>, jj)

For **if America falters, the world is unlikely to be dominated by a single preeminent successor** -- not even China. **International uncertainty, increased tension among global competitors, and** even **outright chaos would be far more likely outcomes**. **While a sudden, massive crisis of the American system** -- for instance, another financial crisis -- **would produce a fast-moving chain reaction leading to global political and economic disorder, a steady drift by America into increasingly pervasive decay or endlessly widening warfare with Islam would be unlikely to produce, even by 2025, an effective global successor**. **No single power will be ready by then to exercise the role that the world,** upon the fall of the Soviet Union in 1991, **expected the United States to play: the leader of a new, globally cooperative world order**. **More probable would be** a protracted phase of rather inconclusive realignments of both global and regional power, with no grand winners and many more losers, in a setting of **international uncertainty and even of potentially fatal risks to global well-being. Rather than a world where dreams of democracy flourish, a Hobbesian world of enhanced national security based on varying fusions of authoritarianism, nationalism, and religion could ensue**. The leaders of the world's second-rank powers, among them India, Japan, Russia, and some European countries, are already assessing the potential impact of U.S. decline on their respective national interests. The Japanese, fearful of an assertive China dominating the Asian mainland, may be thinking of closer links with Europe. Leaders in India and Japan may be considering closer political and even military cooperation in case America falters and China rises. **Russia**, while perhaps engaging in wishful thinking (even schadenfreude) about America's uncertain prospects, **will almost certainly have its eye on the independent states of the former Soviet Union**. Europe, not yet cohesive, would likely be pulled in several directions: Germany and Italy toward Russia because of commercial interests, France and insecure Central Europe in favor of a politically tighter European Union, and Britain toward manipulating a balance within the EU while preserving its special relationship with a declining United States. **Others may move more rapidly to carve out their own regional spheres: Turkey in the area of the old Ottoman Empire, Brazil in the Southern Hemisphere, and so forth**. **None of these countries, however, will have the requisite combination of economic, financial, technological, and military power even to consider inheriting America's leading role**. China, invariably mentioned as America's prospective successor, has an impressive imperial lineage and a strategic tradition of carefully calibrated patience, both of which have been critical to its overwhelmingly successful, several-thousand-year-long history. China thus prudently accepts the existing international system, even if it does not view the prevailing hierarchy as permanent. It recognizes that success depends not on the system's dramatic collapse but on its evolution toward a gradual redistribution of power. Moreover, the basic reality is that **China is not yet ready to assume in full America's role in the world. Beijing's leaders themselves have repeatedly emphasized that on every important measure of development, wealth, and power, China will still be a modernizing and developing state several decades from now, significantly behind not only the United States but also Europe and Japan in the major per capita indices of modernity and national power**. Accordingly, **Chinese leaders have been restrained in laying any overt claims to global leadership.** At some stage, however, **a more assertive Chinese nationalism could arise** and damage China's international interests. **A swaggering, nationalistic Beijing would unintentionally mobilize a powerful regional coalition against itself**. None of China's key neighbors -- India, Japan, and Russia -- is ready to acknowledge China's entitlement to America's place on the global totem pole. They might even seek support from a waning America to offset an overly assertive China. **The resulting regional scramble could become intense, especially given the similar nationalistic tendencies among China's neighbors**. **A phase of acute international tension in Asia could ensue**. ***Asia of the 21st century could then begin to resemble Europe of the 20th century -- violent and bloodthirsty.*** At the same time, **the security of a number of weaker states located geographically next to major regional powers also depends on the international status quo reinforced by America's global preeminence -- and would be made significantly more vulnerable in proportion to America's decline. The states in that exposed position -- including Georgia, Taiwan, South Korea, Belarus, Ukraine, Afghanistan, Pakistan, Israel, and the greater Middle East -- are today's geopolitical equivalents of nature's most endangered species**. Their fates are closely tied to the nature of the international environment left behind by a waning America, be it ordered and restrained or, much more likely, self-serving and expansionist. A faltering United States could also find its strategic partnership with Mexico in jeopardy. America's economic resilience and political stability have so far mitigated many of the challenges posed by such sensitive neighborhood issues as economic dependence, immigration, and the narcotics trade. A decline in American power, however, would likely undermine the health and good judgment of the U.S. economic and political systems. ***A waning United States would likely be more nationalistic, more defensive about its national identity, more paranoid about its homeland security, and less willing to sacrifice resources* for the sake of others' development.** The worsening of relations between a declining America and an internally troubled Mexico could even give rise to a particularly ominous phenomenon: the emergence, as a major issue in nationalistically aroused Mexican politics, of territorial claims justified by history and ignited by cross-border incidents. **Another consequence of American decline could be a corrosion of the generally cooperative management of the global commons -- shared interests such as sea lanes, space, cyberspace, and the environment, whose protection is imperative to the long-term growth of the global economy and the continuation of basic geopolitical stability**. In almost every case, **the potential absence of a constructive and influential U.S. role would fatally undermine the essential communality of the global commons because the superiority and ubiquity of American power creates order where there would normally be conflict.** None of this will necessarily come to pass. Nor is the concern that America's decline would generate global insecurity, endanger some vulnerable states, and produce a more troubled North American neighborhood an argument for U.S. global supremacy. In fact, the strategic complexities of the world in the 21st century make such supremacy unattainable. But **those dreaming today of America's collapse would** probably **come to regret it. And as the world after America would be increasingly complicated and chaotic, it is imperative that the United States pursue a new, timely strategic vision for its foreign policy -- or start bracing itself for a dangerous slide into global turmoil.**

***Collapse of the global commons breaks down globalization causing war***

**Owen 11** John M. Owen Professor of Politics at University of Virginia PhD from Harvard "DON’T DISCOUNT HEGEMONY" Feb 11 [www.cato-unbound.org/2011/02/11/john-owen/dont-discount-hegemony/](http://www.cato-unbound.org/2011/02/11/john-owen/dont-discount-hegemony/)

Andrew **Mack and** his **colleagues** at the Human Security Report Project are to be congratulated. Not only do they **present a study with a** striking **conclusion**, **driven by data**, **free of** theoretical or **ideological bias**, but they also do something quite unfashionable: they bear good news. Social scientists really are not supposed to do that. Our job is, if not to be Malthusians, then at least to point out disturbing trends, looming catastrophes, and the imbecility and men dacity of policy makers. And then it is to say why, if people listen to us, things will get better. We do this as if our careers depended upon it, and perhaps they do; for if all is going to be well, what need then for us? Our colleagues at Simon Fraser University are brave indeed. That may sound like a setup, but it is not. I shall challenge neither the data nor the general conclusion that violent **conflict** around the world **has been decreasing** in fits and starts **since the Second World War. When it comes to violent conflict among and within countries, things have been getting better**. (The trends have not been linear—Figure 1.1 actually shows that the frequency of interstate wars peaked in the 1980s—but the 65-year movement is clear.) Instead I shall accept that Mack et al. are correct on the macro-trends, and focus on their explanations they advance for these remarkable trends. With apologies to any readers of this forum who recoil from academic debates, this might get mildly theoretical and even more mildly methodological. Concerning international wars, one version of the “nuclear-peace” theory is not in fact laid to rest by the data. It is certainly true that nuclear-armed states have been involved in many wars. They have even been attacked (think of Israel), which falsifies the simple claim of “assured destruction”—that any nuclear country A will deter any kind of attack by any country B because B fears a retaliatory nuclear strike from A. But the most important “nuclear-peace” claim has been about mutually assured destruction, which obtains between two robustly nuclear-armed states. The claim is that (1) rational states having second-strike capabilities—enough deliverable nuclear weaponry to survive a nuclear first strike by an enemy—will have an overwhelming incentive not to attack one another; and (2) we can safely assume that nuclear-armed states are rational. It follows that states with a second-strike capability will not fight one another. Their colossal atomic arsenals neither kept the United States at peace with North Vietnam during the Cold War nor the Soviet Union at peace with Afghanistan. But the argument remains strong that those arsenals did help keep the United States and Soviet Union at peace with each other. Why non-nuclear states are not deterred from fighting nuclear states is an important and open question. But in a time when calls to ban the Bomb are being heard from more and more quarters, we must be clear about precisely what the broad trends toward peace can and cannot tell us. They may tell us nothing about why we have had no World War III, and little about the wisdom of banning the Bomb now. Regarding the downward trend in international war, Professor **Mack is friendlier to** more palatable theories such as the “**democratic peace**” (democracies do not fight one another, and the proportion of democracies has increased, hence less war); the interdependence or “**commercial peace**” (states with extensive economic ties find it irrational to fight one another, and interdependence has increased, hence less war); **and the notion that people** around the world **are** more **anti-war** than their forebears were. Concerning the downward trend in civil wars, he favors theories of economic growth (where commerce is enriching enough people, violence is less appealing—a logic similar to that of the “commercial peace” thesis that applies among nations) and the end of the Cold War (which end reduced superpower support for rival rebel factions in so many Third-World countries). These are all plausible mechanisms for peace. What is more, none of them excludes any other; all could be working toward the same end. That would be somewhat puzzling, however. Is the world just lucky these days? How is it that an array of **peace-inducing factors happens to be working coincidentally** in our time, when such a magical array was absent in the past? The answer may be that one or more of these mechanisms reinforces some of the others, or perhaps some of them are mutually reinforcing. Some scholars, for example, have been focusing on whether economic growth might support democracy and vice versa, and whether both might support international cooperation, including to end civil wars. **We** would still **need to explain how this** charmed **circle of causes got started**, however. And here **let me raise** another factor, perhaps even less appealing than the “nuclear peace” thesis, at least outside of the United States. That factor is what international relations scholars call hegemony—specifically **American hegemony**. A theory that many regard as discredited, but that refuses to go away, is called hegemonic stability theory. The theory emerged in the 1970s in the realm of international political economy. It asserts that **for the global economy to remain open**—for countries to keep barriers to trade and investment low—**one** powerful **country must take the lead**. Depending on the theorist we consult, “taking the lead” **entails** paying for global public goods (**keeping** the **sea** lanes **open**, **providing liquidity** to the international economy), **coercion (threatening** to raise **trade** **barriers or withdraw military protection** from countries that cheat on the rules), **or both**. The theory is skeptical that international cooperation in economic matters can emerge or endure absent a hegemon. The distastefulness of such claims is self-evident: they imply that it is good for everyone the world over if one country has more wealth and power than others. More precisely, they imply that it has been good for the world that the United States has been so predominant. There is no obvious reason why **hegemonic stability** theory **could** not **apply to other areas** of international cooperation, **including** in **security affairs,** **human rights**, **i**nternational **law**, **peacekeeping** (UN or otherwise), **and so on**. What I want to suggest here—suggest, not test—is that American hegemony might just be a deep cause of the steady decline of political deaths in the world. How could that be? After all, the report states that United States is the third most war-prone country since 1945. Many of the deaths depicted in Figure 10.4 were in wars that involved the United States (the Vietnam War being the leading one). Notwithstanding politicians’ claims to the contrary, a candid look at U.S. foreign policy reveals that the country is as ruthlessly self-interested as any other great power in history. The answer is that U.S. **hegemony might** just **be a deeper cause of the proximate causes** outlined by Professor Mack. Consider **economic growth and** openness to foreign **trade** and investment, which (so say some theories) **render violence irrational**. American power and policies may be responsible for these in two related ways. First, at least since the 1940s **Washington has prodded other countries to embrace** the market capitalism that entails **economic openness** and produces sustainable economic growth. The United States promotes capitalism for selfish reasons, of course: its own domestic system depends upon growth, which in turn depends upon the efficiency gains from economic interaction with foreign countries, and the more the better. During the Cold War most of its allies accepted some degree of market-driven growth. Second, the U.S.-led western victory in the Cold War damaged the credibility of alternative paths to development—communism and import-substituting industrialization being the two leading ones—and left market capitalism the best model. The end of the Cold War also involved an end to the billions of rubles in Soviet material support for regimes that tried to make these alternative models work. (It also, as Professor Mack notes, eliminated the superpowers’ incentives to feed civil violence in the Third World.) What we call **globalization is caused** in part **by the emergence of the U**nited **S**tates **as the** global **hegemon**.

***It’s “try-or-die” for the plan – failure to reign in “wars of choice” cause entanglement and future retrenchment – scaling back intervention now ensures US engagement in the global commons and sustainable leadership***

**Wagner & Haas 5-28-‘13**, Margaret Wagner, Richard Haass is the president of the Council on Foreign Relations and author of Foreign Policy Begins at Home: The Case for Putting America's House in Order, Time, PBS, 5-28-13, Is the U.S. Overreaching Abroad?, <http://www.pbs.org/newshour/bb/world/jan-june13/haas_05-28.html>, jj

**Yes, there were some things we needed to do after 9/11, but most of what we have done abroad in the last 20 or so years I would say were wars of choice**. And in many cases, **our vital national interests weren't at stake**. Presidents got pressured. And more often than not, they gave into the pressure. In some cases, **the president just decided, like George W. Bush, that we would embark on a major adventure to remake the Middle East**.¶ **And I simply think it was ill-advised. At the same time, they didn't tend for the most part on things at home. So we funded, for example, a new prescription drug benefit program. Well, where's that going to come from? Or we had the Simpson-Bowles commission under this administration. It gets reintroduced and then essentially it gets orphaned. And we're not doing anything now, so five, 10, 20 years from now when all the baby boomers are retired, we have got enough to take care of them**.¶ MARGARET WARNER: Now, you're not saying all wars are to be avoided. Only, we have to be more discriminating.¶ RICHARD HAASS: Absolutely.¶ MARGARET WARNER: What's the criteria?¶ RICHARD HAASS: This is not an isolationist book.¶ I actually want us to do more in Asia, where the great powers, the economic powers of the day are increasingly colliding. **Wars of necessity, where our vital national interests are at stake, where there are not good alternatives, we ought to fight those**. But **something like Syria, which is very much in the news, is not a vital national interest**.¶ There are alternatives to the United States getting heavily involved. We have always got to ask ourselves two questions: Can we make a difference, given local realities? And, second of all, do we have the luxury, if you will, of focusing on one square of a chessboard, given everything else in the world and everything here at home?¶ And what I try to write is something of a guide to working through those challenges.¶ MARGARET WARNER: All right, but that is where your doctrine will be most immediately put to the test is what to do about Syria. So what are the alternatives? You're saying don't get involved at all militarily? Are you say no to no-fly zone? Are you saying no to even further arming the rebels?¶ RICHARD HAASS: I'm OK with selectively arming rebels. That's an indirect form of involvement.¶ I'm OK conceivably with certain very, very limited military actions, for example, cruise missile strikes if chemical weapons are used. But, no, **I don't want to set up no-fly zones. I don't want the U.S. Air Force involved. I certainly don't want soldiers on the ground. I don't want to be responsible for trying to put Humpty Dumpty back together again**.¶ If and when the Assad regime goes, that's when the really difficult stuff is going to begin. That's what **we should have learned from Afghanistan. That's what we should have learned from Iraq, a little bit of humility. There are limits to what American to power can do**.¶ Instead, we ought to focus it in foreign policy, where we really know our tools can be useful. And, more important, **we ought to focus it here at home**. **We want to be a leader for the long haul. We don't want to be a short-term power**. I have recently written, **we want the 21st century to be a second American century. It will only be that if we first get strong again, and that means fixing things here at home**.¶ MARGARET WARNER: And what are the consequences if we don't?¶ RICHARD HAASS: Interesting enough, **the alternative to an American-led world, it is not a China-led world. It's not an India- or Europe- or Japan-led world. It's a world that no one leads**.¶ **That's a world that's chaotic.** And what we have learned is the world is not Las Vegas. What happens there doesn't stay there. It comes here. So **a world in which there's chaos out there, that chaos will come here in the form of terrorists, the form of a breakdown of economic relations, in the form of climate change, in the form of nuclear proliferation. We have got to stay involved, but, again, we will only be able to do it if we're strong.**

***Miscalc alone risks escalation of “wars of choice”***

**Crowe**, writer for the International Press Service, January 20**06** (Naman, “How to avoid nuclear war,” http://www.ipsfeatures.com/Menu/Naman/2006/1-23-06%20how%20to%20avoid%20nuclear%20war.htm)

**History has moved us into the nuclear age, an age more dangerous and threatening to the continued existence of life itself on this planet than anyone could have ever conceived of or imagined before the birth of the atomic bomb**. We are only 60 years into this age, which is the same age as myself, and yet **the reality of nuclear war and the destruction of all life is speeding toward us and picking up speed so fast it could happen almost any day now**. **The only way to avoid this is to change our direction as nations of people around the world, united in the same cause - the survival of the human race**. **This cannot be achieved by a single nation such as America deciding that it will be the Supreme Commander-in-Chief, deciding what nations should have nuclear weapons and what nations shouldn't, deciding that it has the supreme right and duty to overturn any sovereign nation that it determines to turn over and change it's government and force it to yield to its will**, even if it has to overrule the United Nations itself, disregard International Law and become the LAW, the Jesus Figure, the God Figure, the Supreme Ruler, the Commander-in-Chief of the World. **This kind of thinking**, as represented by the Christian, Conservative, Right Wing Neocon Republicans, Chicken Hawks and Bushites, **can only speed up the process which is leading us to world-wide destruction**. **That is not the proper direction if we want to bring about peace and avoid a nuclear collision**. The proper direction is through peace. The final question is do we as a people have the ability to really look at the details and see the truth, or do we continue our blind race into the black face of that fast approaching and final good night. **There are times when nations have to defend themselves from actual attack and actual for-real, bona fide, serious, not-made-up threats of actual attack**. There are times when the attackers win and kill the weak and take over nations and rule over the people, the way Hitler did to Poland and other nations. **But that doesn't make it right, nor does it naturally follow that it therefore gives the sole surviving superpower, America, the right to break International Law and attack a nation which is not a threat to it and has not harmed it and is too weak to be a threat to any other nation**. **It doesn't follow that the superpower’s executive branch has the right to lie and deceive the Congress and the people of America and the world in order to carry out an evil and illegal power grab through war and the slaughter of tens of thousands for no just reason.** Regime change is not a just reason. No nation, not even all the nations of the world combined, has a right to attack and take over another nation for the sole purpose of regime change. Regime change, for the purpose of removing Saddam Hussein and changing the government of Iraq into a Democracy, was the sole purpose behind President George W. Bush’s illegal attack on Iraq which has resulted in the deaths of unknown thousands, maybe as much as 100,000 Iraqi people.

***Even if future warfare is mechanized --- those operations are uniquely prone to mission creep and escalation***

**Druck ’12**, Judah A. Druck, B.A., Brandeis University, 2010; J.D. Candidate, Cornell Law School, 2013; Notes Editor, Cornell Law Review, Volume 98, November, 2012¶ Cornell Law Review¶ 98 Cornell L. Rev. 209, NOTE: DRONING ON: THE WAR POWERS RESOLUTION AND THE NUMBING EFFECT OF TECHNOLO-GY-DRIVEN WARFARE, Lexis, jj¶

The War Powers Resolution in the Era of Technology-Driven Warfare

A. Why an Unconstrained Executive Matters Today

**If public scrutiny acts as a check on presidential action by pressuring Congress into enforcing domestic law** (namely, the WPR), **then that check has weakened given the increased use of technology-driven warfare abroad**. n135 As a result, **fewer checks on presidential military actions exist, implying that we will see more instances of unilateral presidential initiatives**. **But if the new era of warfare removes the very issues associated with traditional warfare, should we be con-cerned about the American public's increasing numbness to it all? The answer is undoubtedly yes.**

**First, from a practical standpoint, the psychology surrounding mechanized warfare makes it easier for the United States to enter hostilities initially**. n136 **Without having to worry about any of the traditional costs of war (such as a draft, rationing, casualties, etc.), the triggers that have historically made the public wary of war are now gone**. **When ma-chines, rather than human beings, are on the front lines, the public** (and, as a result, politicians and courts) **will not act to stop the continued use of drones. In other words, people will simply stop caring about our increased actions abroad**, regardless of their validity, constitutionality, or foreign harm.

But again one must wonder: should we care? After all, even if we increase the number of military conflicts abroad, the repercussions hardly seem worth worrying about. For example, worrying that WPR violations will cause significant harm to the United States seems somewhat misplaced given the limited nature of technology-driven warfare. Granted, this style of warfare might make it easier to enter hostilities, but the risk of subsequent harm (at least to the United States) is low enough to mitigate any real danger. Furthermore, even if the effects of warfare might become increasingly dulled, any use of force that would eventually require traditional, Vietnam-esque types of harms as the result of technology-driven warfare would in a sense "wake up the populace" in order to check potentially unconstitutional action. n137 [\*232] Thus, if our level of involvement requires machines and only machines, why worry about a restrained level of public scrutiny?

The answer is that **a very real risk of harm exists nonetheless. War by its very nature is unpredictable**. n138 Indeed, **one of the major grievances concerning the war in Vietnam was that we ended up in a war we did not sign up for in the first place**. n139 ***The problem is not the initial action itself but the escalation***. Therefore, **while drone strikes might not facially involve any large commitment, the true threat is the looming possibility of escalation**. n140 **That threat exists in the context of drones, whether because of the risk of enemy retaliation or because of a general fear that an initial strike would snowball into a situation that would require troops on the ground**. n141 **In both cases, an apparently harmless initial action could eventually unravel into a situation involving harms associated with traditional warfare**. n142 Worse yet, even if that blowback was sufficient to incentivize the populace and Congress to mobilize, the resulting involvement would only occur after the fact. n143 **If we want restraints on presidential action, they should be in place before the United States is thrown into a war, and this would require public awareness about the use of drones**. n144 As such, **whether it is unforeseen issues arising out of the drones themselves** n145 **or unforeseen consequences stemming from what was ostensibly a minor military undertaking, there is reason to worry about a** [\*233**] populace who is unable to exert any influence on military actions, even as we shift toward a more limited form of warfare**. n146

Another issue associated with a toothless WPR in the era of technology-drive warfare involves humanitarian con-cerns. If one takes the more abstract position that the public should not allow actions that will kill human beings to go unchecked, regardless of their legality or underlying rationale, then that position faces serious pressure in the era of technology-driven warfare. As the human aspect of warfare becomes more attenuated, **the potential humanitarian costs associated with war will fade out of the collective consciousness, making it easier for the United States to act in potentially problematic ways without any substantial backlash**. Rather than take note of whom we target abroad, for example, **the numbing effect of technology-driven warfare forces the public to place "enormous trust in our leaders" despite the fact that good faith reliance on intelligence reports does not necessarily guarantee their accuracy**. n147 Accordingly, **as the level of public scrutiny decreases, so too will our ability to limit unwarranted humanitarian damage abroad**. n148 **At the very least, some dialogue should occur before any fatal action is taken; yet, in the technology-driven warfare regime, that conversation never occurs.** n149

**Contetion 4 – Solvency**

***Redefining hostilities in the WPR boosts congressional involvement, checks intervention, and stops presidential circumvention via judicial enforcement***

**Farley ’12**, Benjamin R. Farley, J.D. with honors, Emory University School of Law, 2011. Editor-in-Chief, Emory International Law Review, 2010-2011. M.A., The George Washington University Elliott School of International Affairs, 2007, Winter, 2012¶ South Texas Law Review¶ 54 S. Tex. L. Rev. 385, ARTICLE: Drones and Democracy: Missing Out on Accountability?, Lexis, jj

**Congress should strengthen the WPR regime by defining hostilities in a manner that links hostilities to the scope and intensity of a use of force, irrespective of the attendant threat of U.S. casualties**. **Without defining hostilities, Con-gress has ceded to the President the ability to evade the trigger and the limits of the WPR**. **The President's adoption of a definition of hostilities that is tied to the threat of U.S. casualties or the presence of U.S. ground troops opens the door to long-lasting and potentially intensive operations that rely on drones** - at least beyond the sixty-day window - **that escape the WPR by virtue of drones being pilotless** (which is to say, by virtue of drones being drones). **Tying hostilities to the intensity and scope of the use of force will limit the President's ability to evade Congressional regulation of war**. **It will curtail future instances of the United States being in an armed conflict for purposes of international law but not for purposes of domestic law, as was the case in Libya**. Finally, ***a statutory definition of hostilities will provide the judiciary with a meaningful standard for determining presidential compliance with the WPR*** - assuming the future existence of a plaintiff able to surmount the various prudential doctrines that have counseled against entertaining WPR cases thus far.

***The plan rectifies all the contributing factors to war outlined above***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

Turning to the second element of the Model--the provision that would require legislative approval of decisions to use force--there is of course considerable theoretical support for such a constitutional structure. As we have already discussed, the concept dates back at least to the development of the American Articles of Confederation, and the war powers provisions of the U.S. Constitution continues to be a model of the principle. It is also one of the central issues in the war powers debate that has been raging in the United States for over a hundred years. But much of the modern debate in the United States is over the precise meaning and exact scope of the war powers provisions of the U.S. Constitution, and the particulars of many of those arguments need not concern us [\*680] here. n257 As we have already reviewed, however, **the primary motive of many of the drafters of the U.S. Constitution, as expressed most clearly by Madison, was to reduce the likelihood of war**. n258 **And the theoretical arguments of Madison, Kant, and others in support of such a separation of powers related to both the domestic objectives of the state: putting an important check on the state's rush to war and increasing the democratic accountability of the process of deciding on war; and the broader goals of reducing the incidence of war generally in the international system**. In this sense, the arguments in support of this element of the Model again relate to the causes of war at both the domestic level and the international level.

The starting point is the insight that **requiring legislative approval of executive decision making on the use of force will likely reduce the risk of rash decisions to go to war for the wrong reasons**. This argument was initially advanced by Madison and Kant, among others, and indeed can be traced all the way back to Thucydides. n259 Madison and John Jay both argued **that the executive is more likely to be motivated by parochial self-interest and narrow perspectives, and thus more likely to enter into armed conflict than the legislature**. n260 Madison further argued that there ought to be a separation between those who are charged with the conduct of war, as the President is as the Commander in Chief, and those who have the authority to decide on the commencement of war. n261 But **the argument becomes more compelling when unpacked and explained in a little more detail, with the support of more modern theory. We need to explore the question of how exactly the legislative involvement improves decision making or** [\*681] **engages the causes of war in a manner that would reduce the incidence of war.**

It is helpful to begin by recalling the functions of legislatures. n262 In addition to passing legislation, **the legislature in virtually all liberal democracies**, whether parliamentary or presidential in structure, **performs the core functions of representation, oversight, and control over government expenditure.** n263 **Representation and oversight in particular are important to the argued benefit of legislative involvement in the decision to use force**. **Both functions are tied to the core notions of democratic accountability and to deliberative democracy, which overlap in important ways**. **Democratic accountability is understood to include the idea that the people who are likely to be impacted by decisions ought to be able to participate in the decision making. Participation in this sense means not only having some expectation that the collective will of constituents will be taken into consideration in the decision-making process, but that the public debate and deliberation that is part of the parliamentary process of decision making will also serve the vital function of informing constituents and affording them some sense of access to the decision-making process**. n264

**Obviously, this process of debate and information exchange is also at the heart of ideas of deliberative democracy**. The perspective here, though, is not so much on the importance of making the process accountable to and representative of the people, but on the extent to which the **very process of deliberation among the representatives of disparate stake-holders and interests will result in the generation of sounder judgments**. **The argument is that the process results in better decisions due to the attenuation of extreme positions, the canvassing of a wider range of perspectives and sources of information, and the vigorous public interrogation of reasons** [\*682] **and motives underlying proposals**. n265 More specifically, theories of deliberative democracy hold that **the deliberative process**, of which the parliamentary debate and decision-making process is a key feature, **actually involves the transformation of preferences through the consideration of the justifications offered by various perspectives, rather than merely serving as a means by which society can aggregate preferences**. n266

**The oversight function of legislatures also feeds into both these aspects of democracy, in that the employment of specialized committees to engage in public inquiries into policy choices or proposed courses of action, provides a deeper level of deliberation that ensures a more thorough interrogation of policy justifications and the underlying information upon which policy proposals are based**. **Senate committee hearings during the Vietnam War illustrate how such oversight can reveal important information underlying policy debates, which in turn can influence public opinion and better inform the policy preferences of the representatives of the people**. In 1967, the Senate Armed Services Committee held hearings on the escalation of the strategic bombing of North Vietnam. After the representatives of the Joint Chiefs, and in particular the Chief of the Air Force, had testified before the committee on the necessity of the continued strategic bombing, Secretary of Defense Robert S. McNamara stunned the committee, the government, and the public by testifying that the bombing was entirely ineffective. n267

**The performance of these functions of the legislature, to the extent that they are permitted or required to operate in the decision-making process on the use of force, engage the domestic causes of war in important ways**. The fuller realization of the representative and oversight functions--serving as they do to both incorporate the will of the broader population and to arguably contribute to the arrival at sounder judgments through the deliberative process--would result in those structural aspects of democratic states that comprise the Image II factors most related to the causes of the "democratic [\*683] peace," being brought to bear more directly on the decision-making process. In other words, the structure would thus more perfectly reflect the theoretical ideal that is part of the structural explanations of the democratic peace. n268

**The institutional structure of the decision-making process created by the Model's separation of powers element would also affect the political costs of going to war** in a manner that would further engage the Image II causes of war. **Absent an overwhelming or obvious threat, the procedural requirements to obtain the support of the majority of the legislature would impose significant political costs upon the executive**. n269 The structure would effectively create a sliding scale, in the sense that **the greater the threat or the more obvious the case for war--such as the use of force in self-defense against an ongoing armed attack--the lower the costs would be in obtaining legislative approval**. Converse-ly, **the more tenuous the case for engaging in armed conflict, the more** [\*684] **politically costly it would be to win over the majority of the legislature for support.** This is precisely the kind of structural characteristic that reduces the Image II causes of war.

**The second element of the Model would also engage the** Image I **causes of war, which include particular psycho-logical traits that are common in many executive officers, systemic problems of misperception among decision makers, and the irrational behavior of small-group decision making reflected in "groupthink" and the "bureaucratic politics model" of decision making**. n270 **The risks that such tendencies could lead to irrational or suboptimal decisions to use armed force would be reduced, in the case of each of these particular phenomenon, by spreading the decision-making process more widely through the inclusion of the legislative body**. **The requirement to obtain legislative approval, bringing to bear the core functions of deliberative democracy on the decision-making process, such that a wider set of perspectives and criteria are brought to the process, as well as a more public interrogation of reasons and rationales, would significantly reduce the potential for these potential features of government decision making to manifest themselves in the form of unsound or dangerous decisions regarding the use of force.** n271

***The plan’s requirement that the declaration of war be consistent with international law checks wars of choice***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

**The requirement to consider the legality of the proposed action under international law**, as mandated by the first element of the Model, **would of course inject *precisely* the kind of exogenous criteria and divergent perspectives that could operate to reduce the effects of the domestic causes of war**. And conversely, **the requirement for legislative approval**, bringing to bear the foregoing parliamentary functions on the considerations of legality, **would vastly increase the traction of that aspect of the process**. Evidence has recently emerged, for instance, on the extent to which disputes within the British cabinet over the legality of the contemplated invasion of Iraq [\*685] severely complicated the prime minister's decision making, even in the absence of any constitutional or statutory to consider such issues. **Had there been such a legal obligation**, and in addition a requirement to take the debate of that issue to parliament, **it is quite conceivable that the decision would have gone the other way**. n272

***The status quo definition of “hostilities” is the WPR’s biggest flaw***

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**Policymakers take advantage of the existing flaws in or intentional weaknesses of the supervisory accountability sys-tem governing U.S. use-of-force decisions when they choose force generally.** However, **using drones for overt action exacerbates the WPR's flaws in unexpected ways**. Moreover, the lack of political accountability attending drone strikes undermines congressional incentives to exercise its supervisory accountability mechanisms or fix the flaws in the exist-ing supervisory and fiscal accountability system.¶ As is the case for covert uses of force generally, covert drone strikes are subject to finding and reporting require-ments - relatively weak accountability measures that afford Executive Branch policymakers [\*416] flexibility in covert uses of force. n180 Similarly, **overt uses of drones are subject to the WPR - a regime that, although it was designed to prevent unilateral executive uses of force, has proved ineffective in constraining use-of-force decisions**. n181 **Although drones have operated relatively neatly within the existing framework of covert uses of force - covert drone strikes have been authorized by presidential findings and duly reported to the intelligence committees as well as congressional lead-ership** n182 - **reliance on drones for overt uses of force has unexpectedly weakened the WPR**.¶ ***The WPR is built around "hostilities***." For example, **the WPR's consultation requirement is triggered by the "intro-duction of United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances**." n183 Similarly, **the first of three WPR reporting triggers is the introduction of U.S. armed forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances."** n184 Finally, **the WPR's sixty-day limit** n185 **on a president's use of force without statutory authorization begins when "a report is submitted or is required to be submitted**;" n186 **that is, the sixty-day limit runs from the introduc-tion of U.S. armed forces into hostilities or circumstances indicating imminent involvement in hostilities**.¶ The **Obama** Administration, however, **describes hostilities as occurring when there is "sustained fighting or active exchanges of fire with hostile forces, ... the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by those factors**." n187 **This definition will likely be adopted by** [\*417] **future U.S. Presidents and it allows the President to escape the WPR whenever drones are relied upon - regardless of the extent of a military campaign involving drones**. **Thus, without amendment to the WPR, the President may rely on drones to engage in unreported, unconsulted, and temporally boundless overt uses of force with-out statutory authorization.**

***The plan fixes this --- redefining “hostilities” as “armed attack” solves***

**Martin ’11**, Craig Martin, Visiting Assistant Professor, University of Baltimore School of Law, Winter, 2011¶ Brooklyn Law Review¶ 76 Brooklyn L. Rev. 611, ARTICLE: Taking War Seriously: A Model for Constitutional Constraints on the Use of Force in Compliance with In-ternational Law, Lexis, jj

A. A Process-Based Constitutional Incorporation of Jus ad Bellum The article begins with the incorporation of the principles of jus ad bellum. The first section provides: (1) **Any decision to use armed force, or to deploy armed forces in circumstances likely to lead to the use of armed force, of a level in scale, duration, and intensity equal to that constituting an armed attack in international law, shall be made only after sufficient and demonstrable consideration of whether the proposed action is consistent with the applicable principles of international law relating to the use of armed force, as found in the United Nations Charter, other relevant treaties to which the State is a party, and the related principles of customary international law. The key elements of this section**, which require some further discussion and explanation, **are that**: (i) it incorpo-rates both conventional international law (that is, treaty law) and customary international law; (ii) it specifies the regime of law from which the principles are drawn, with reference by name to the most important governing convention (the U.N. Charter); (iii) it incorporates the relevant principles of international law by reference only, rather than explicitly stipulating the substance of those principles; (iv) it is process based rather than substantive, in the sense that it does not purport to incorporate and impose the actual prohibitions from international law, but rather it only creates an obligation for decision makers to sufficiently consider compliance with those prohibitions (and the exceptions thereto); and finally, (v) **it provides a threshold level of force that would trigger the operation of the provision, with some criteria for defining that trigger**. Beginning with the first element, there are a number of reasons underlying the decision to incorporate both treaty and customary international law. There is a wide range of approaches among constitutional democracies regarding the manner in which international law is treated within their domestic legal systems, and great variation in the extent to which there is already some constitutional provision for such treatment. This not only relates to the classic theoretical division between monist and dualist perspectives, but also relates, in practical terms, to the significant differences among [\*706] states regarding how the different forms of international law are received and the status each is af-forded within the domestic legal system. n330 The mechanisms and processes by which states incorporate (or transform, as the case may be) customary international law are typically different than those used for the incorporation of conventional international law, and many states also afford one a higher status within the domestic legal system than the other. Moreover, these differences themselves vary considerably across states, even among liberal democracies, with some such as the Netherlands placing a primacy on treaty law, n331 while others such as Germany, Austria, and Italy giving customary international law higher status. n332 States vary as well on how each of these is to be received by the domestic legal systems. n333 All of this suggests a couple of inferences. First, there are clear examples of constitutional democracies incorpo-rating within their constitutions both conventional international law and customary international law, and indeed examples of each being afforded a higher status than domestic statutes and even a national constitution. Second, given the very uneven treatment among democracies for the purposes of developing a universal model of incorporation, and given that there are principles from both a treaty and custom that are thought to be [\*707] important, the incorporation mechanism should explicitly incorporate the principles of both systems as part of the Model. That way, regardless of the more general approach within the particular constitutional system, the provision would make quite clear that the principles of both systems are being incorporated directly into the constitution for the purposes of this constraint on the use of armed force. This of course raises the question of whether there are significant differences between the principles of jus ad bel-lum to be found in conventional international law and custom. There is in fact very little difference, as the International Court of Justice went to some pains to establish in Nicaragua v. United States (Merits). n334 And the most fundamental principles of the jus ad bellum regime, the incorporation of which is central to the Model, are essentially found in Article 2(4) and Chapter VII (which includes Article 51) of the U.N. Charter. Nonetheless, it will be recalled that one of the theoretical arguments in support of adopting the Model to begin with is that the jus ad bellum regime is coming under pressure to change, leading to the possible development of new principles and new legal tests to determine their application. The extent to which there is indeed some change to the jus ad bellum regime in the near to mid-term, it is unlikely to come in the form of amendments to the U.N. Charter or the adoption of any new treaty. It is much more likely to come in the form of changes to customary international law. In such circumstances, it will be important that the Model will have been structured so as to incorporate the relevant principles of customary international law, and to require that the decision making on the use of armed force be informed by the most current developments in the law. The second element of this subsection of the provision is the manner in which it refers specifically to the principles of the jus ad bellum regime, and refers even more explicitly to a particular treaty regime, namely the U.N. Charter. This is in contrast to the option of a much broader incorporation of international law as a whole, as many national con-stitutions already have. Some of the reasons for a more narrow and specific incorporation will be obvious and were discussed earlier. n335 In addition, given fairly widespread concerns about [\*708] the legitimacy in permitting interna-tional law to trump domestic law--concerns grounded in arguments about the democratic deficiency of the international law-making process, the erosion of national sovereignty, and the negating of the democratic will of the state's citizenry--it may be considerably easier in practical terms to mobilize support for a carefully tailored provision than a blanket incorporation of international law along the lines of the Netherlands. In addition to this, however, the incorporation of specific principles or regimes of international law provides a much more fertile basis for the internal interpretation and internalization of the associated norms, which as was dis-cussed earlier is an important aspect of the process of enhancing compliance with international law according to trans-national legal process theory. Moreover, by identifying particular regimes and specifying the precise treaty from which principles are drawn, examples from a number of countries suggest that the constitutional provision will thereby create the legitimate basis for courts and other domestic institutions to consider how those principles have been interpreted by international tribunals and organizations. This can be an important factor in insuring that the principles that are incor-porated remain organically connected to the international law sources from which they were drawn. One of the best examples of this approach is the constitutional incorporation of human rights principles by a number of countries over the last few decades. For instance, Article 10(2) of the Spanish Constitution of 1978 provides that "the norms relative to basic human rights and liberties which are recognized by the constitution, shall be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements on those matters ratified by Spain." n336 This has been interpreted to mean that such human rights conventions as the European Convention on Human Rights and the International Convention on Civil and Political Rights n337 have constitutional status within the Spanish legal system; or, to put it another way, the relevant provisions of those conventions have effectively been incorporated by reference into the [\*709] Constitution. n338 What is more, this incorporation by explicit reference to the conventions themselves has provided a basis for the Spanish courts to not only interpret the constitutional provisions in light of the principles in the conventions, but also to draw upon the interpretation of the relevant provisions of the conventions by international courts and other interpretative bodies. n339 The third element of this subsection of the Model relates to the manner in which the provision incorporates the principles of jus ad bellum by reference only, rather than specifying the content of those principles as part of the consti-tutional text. In other words, **the provision requires decision makers to consider the applicable principles relating to the use of force, as found in the U.N. Charter and other sources,** but it does not provide an explicit list of what those princi-ples are. An alternative approach would have been to provide a set of subsections detailing the content of each principle and rule taken from international law that decision makers had to consider before taking action. Aside from the sheer awkwardness of trying to stipulate all the relevant rules and principles, the reasons for employing the "by reference" mechanism are similar to those discussed above in relation to the importance of including general references to customary international law and treaty sources. That is, **incorporation by reference preserves the flexibility of the Model, such that the provision can essentially evolve as the underlying international law principles change over time, and it retains the organic link to those principles for purposes of interpretation**. As already discussed, that has its own inherent risks, but given the likelihood that the jus ad bellum regime will develop over the next few decades, coupled with the difficulty associated with any constitutional amendment, building in that kind of flexibility is important. An example of this approach, albeit in a regular statute rather than a constitutional context, can be found in the Alien Tort Statute in the United States, the key clause of which states that "the district courts shall have original juris-diction of any civil action by an alien for a tort only, committed in violation of [\*710] the law of nations or a treaty of the United States." n340 This does not incorporate international law norms per se, but as the Supreme Court held in Sosa v. Alvarez-Machain, the statute confers subject matter jurisdiction and creates a cause of action for the violation of the "laws of nations," which is a reference to customary international law. n341 Two advantages of the incorporation by reference are well illustrated by this example. The first is the flexibility of the legislative provision, as its content can essentially evolve over time without requiring any change to statutory lan-guage. Thus, in Sosa it was recognized that the content of the "narrow set of violations of the law of nations" today is certainly not the same as the narrow set of violations that were contemplated back in 1789 when the statute was enacted. Rather, the range of what types of violations within the law of nations was defined, but the content of those violations was not specified, and is left to be ascertained according to the current principles of customary international law. n342 Second, but very much related, is the advantage of maintaining an organic connection to the international law principles, which thus continue to be the living source of the rules. The employment of the term "in violation of the laws of nations" constituted an intermediary within the statute, or a trigger, for the application of the primary norms that are promulgated in detail somewhere else--in this instance in the sources of the laws of nations. In the sense of Hart's pri-mary and secondary rules, therefore, the reference in the statute is merely a secondary norm, and leaves the primary norm as the source of the content. n343 [\*711] As explained earlier, this retention of an organic connection with the underlying international law principles also ensures that there will be full access to the associated interpretations and understanding of those principles, including the decisions of international tribunals and organizations, as they have developed over time. This relationship tends to be lost when the contemporary understanding of customary international law rules is taken or the language of a rule is lifted from some treaty and then dropped into the text of a constitution (often in some slightly revised form). Moreover, the juxtaposition of the revised language with other provisions, severed as it is from its conceptual source, can lead to significant unintended consequences. n344 The fourth element of the subsection is that it is process-based rather than substantive in nature. In other words, the provision does not incorporate the prohibitions (and corresponding exceptions) of the jus ad bellum regime as sub-stantive clauses in the Constitution. Rather, it merely requires that the decision makers contemplating the use of force sufficiently and demonstrably consider whether the proposed action is consistent with the international law principles that have been incorporated. There are several reasons for choosing to develop the mechanism in this fashion, but they largely relate to the practical issues of implementation. It can be anticipated that there would be significant political objection in many jurisdictions to any contemplated adoption of this Model. The foundation of many of these objections, principled and otherwise, would be a resistance to the idea of incorporating international law principles to bind the hands of government on issues of national security--issues relating to self-preservation and defending "vital interests." As has already been suggested above, the arguments behind many of these objections are misplaced. But the fact remains that if the Model proposed the incorporation of the principles as binding constitutional prohibitions, which would also entail conferring upon the judiciary the power to decide whether a proposed use of force did or did not comply with the exceptions to the prohibition as a matter of both constitutional and international [\*712] law, then the volume of these objections would likely be overwhelming. Such implementation of binding prohibitions may be possible and desirable in the future, but for now a process-based model may serve as an initial and more viable step along the road to that objective. And for the reasons already discussed in the previous Part, a process-based provision will still have a significant effect. **The final element in the subsection is the initial gate-keeping mechanism, which limits the application of the pro-vision to only those decisions regarding the use of armed force that could constitute an "armed attack," as that term is understood in international law**. **This is to ensure that there is a de minimis level below which the government would not be bound by the provision.** Moreover, as will be discussed in the next section, the same trigger would apply to the other elements of the Model, thus ensuring that the various elements of the Model operate in harmony, and the domestic elements are triggered by criteria that are consistent with valid concepts in international law. **The parameters of this threshold test are not novel**. As explained briefly in the discussion of the modern system of jus ad bellum, **the occurrence of an armed attack is a condition precedent to the exercise of the right of self-defense (or, for the exercise of anticipatory or preemptive self-defense, that an armed attack is imminent, in the sense that it is irrevocably in motion**). n345 Similarly, **the current understanding in international law is that the use of force against a state must reach a certain level--or be of "sufficient gravity**," **to use the language of the U.N. Resolution on the Definition of Aggression--before it can be considered an act of aggression**. n346 **The I**nternational **C**ourt of **J**ustice **has adopted this language in holding that the use of armed force must rise to a certain level before it constitutes an "armed attack" justifying the exercise of the right of self-defense, and it is clearly well above the mere use of force that would violate the prohibition in Article 2(4) of the U.N. Charter**. n347 **Where that line is actually drawn, or what criteria are to be used to determine exactly where to draw the line, has not yet been clearly established in international law, but the principle itself has been. It is no** [\*713] **more uncertain or incapable of determination than any number of other constitutional principles**. **Dinstein suggests that an armed attack requires that the use of force must be of a magnitude that is likely to "produce serious consequences, epitomized by territorial intrusions, human casualties, or considerable destruction of property**." n348 **The trigger mechanisms in current constitutions, in legislation such as the War Powers Act, and proposed legisla-tion such as that in the War Powers Commission Report, are not any clearer, and what is more, they often employ terms that are not related to known and valid concepts in international law**. We have already seen that the constitutions of many countries, including that of the United States, require legislative approval of any "declaration of war." While declarations of war continue to be theoretically part of the international law on the use of force, they are no longer reflected in state practice, and are certainly no longer considered necessary to trigger the operation of the laws of war or bring into existence the legal state of war. n349 To the extent the term is interpreted to mean anything other than a formal declaration that triggers a technical state of war, it becomes highly ambiguous, as the war powers debate in the United States illustrates. **The War Powers Act lowered the threshold significantly, using as the trigger "any case in which United States Armed Forces are introduced: . . . into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances**." n350 **There is no definition of "hostilities," and so there is no indication of what scale, intensity, or duration of armed conflict that would be required to constitute "hostilities" for the purpose of the provision**. **It could arguably encompass peace-keeping operations, or the lowest-level border skirmishes, yet could potentially be interpreted to exclude such uses of force as cruise missile strikes on foreign targets.** The proposed legislation of the War Powers Commission Report, in contrast, tries to raise the threshold by requir-ing a "significant armed conflict" as a condition precedent, which is defined as being "any combat operation by U.S. armed forces [\*714] lasting more than a week or expected by the president to last more than a week." It explicitly excludes a number of activities, such as "limited acts of reprisal against terrorists or states that sponsor terrorism," "covert operations," and "missions to protect or rescue American citizens or military or diplomatic personnel abroad." n351 Again, "combat operation" remains undefined, creating uncertainty as to what precisely is contemplated. More sig-nificantly, not only does this formulation similarly employ concepts for the trigger that do not equate with the principles of jus ad bellum, but the provision also explicitly endorses unilateral executive action for purposes that could very well violate the prohibition on the use of force in international law. Reprisals, as the term is understood in international law, are illegal. n352 Covert ops and missions to protect nationals abroad would easily encompass the support provided to the Contras in Nicaragua, and the invasions of Grenada and Panama, all actions that are widely seen as having been unlawful. n353 Moreover, aside from the explicit exceptions, the threshold would not be crossed by such uses of force as extensive missile or air strikes, including strikes with nuclear weapons, so long as they would not be expected to lead to "combat" lasting more than one week. There is little apparent relationship between the requirements of international law and that which the War Powers Commission Report considered important enough to require Congressional involvement. **The trigger that is contemplated in the Model**, while it admittedly contains some uncertainty as to its precise scope, **is a concept understood in international law.** **By employing it in the Model, we ensure that the same criterion is used for both requiring consideration of international legality and for obligating the government to obtain legislative approval, and that the criterion itself is comprised of concepts taken from international law**. **It is the kind of principle that courts are in any event well accustomed to working with, and it is necessary to have some threshold to ensure that the government is able to act more freely in circumstances that would not implicate the jus ad bellum regime in interna-tional law. It is only the use** [\*715] **of force constituting an armed attack, whether legally justified or not, which is likely to escalate into an armed conflict. Armed attack, therefore, is arguably the appropriate level of force to trigger the requirement to involve the other branches of government and focus consideration on the questions of whether that use of force will comply with international law**. n354 **A final word should be said about whether the trigger makes any distinction between the use of force for individu-al self-defense and that used for other purposes, be it collective self-defense or collective security operations**. **Constitu-tional controls of some countries do make such a distinction**, as discussed in Part III. The Constitution of Denmark, for instance, provides that "except for purposes of defence against an armed attack upon the Realm or Danish forces the King shall not use military force against any foreign state without the consent of the Parliament." n355 This clearly limits the exception to the exercise of individual self-defense. **The trigger as it is employed in both this element of the Model** and in the separation of powers element to be dis-cussed next, **makes no such distinction**. **In this element, the whole point is to force the decision makers to consider whether the proposed action complies with the principles of jus ad bellum--that is, to determine whether it falls within the scope of either self-defense, individual or collective, or collective security operations authorized by the U.N. Security Council** (to state the current exceptions on the prohibition on the use of force). **It would simply beg the question to suggest that they could avoid such a requirement in the event that the contemplated use of force was to be an exercise of self-defense. Whether it is legally a case justifying self-defense is the very thing to be determined by considering compliance with international law principles. In the context of the next element of the Model, the requirement to obtain approval of the legislature, the trigger would serve the same function. Permitting the government to avoid obtaining legislative approval in the event the force is to be used for self-defense would simply create further incentives** [\*716] **for the government to manipulate the record to provide support for a claim that the action is in fact an exercise of self-defense. It would thereby defeat the very objective of having such assertions subjected to inquiry and debate in the legislature. If the case is obvious and pressing, the analysis will be easy and the approval from the legislature quickly forthcoming; if it is not easy, than there is all the more reason for having the legislature involved in the deliberations, with all the advantages that such delibera-tion brings to the exercise. In the event of an invasion or the like, there is an emergency exception**, as will be discussed in the next section. B. Separation of Powers: Legislative Approval and Judicial Review **The second element of the Model would require legislative approval of any decision to use force**, while the third element would explicitly confer jurisdiction and establish standing for judicial review of the decision-making process. Together they form the "separation of powers" component of the Model, and as such they will be considered together here. The two provisions would read as follows, allowing, of course, for the necessary changes to conform to the cir-cumstances of each jurisdiction: 2. (i) **Any decision to use armed force, or to deploy armed forces in circumstances likely to lead to the use of armed force, of a level in scale, duration, and intensity equal to that constituting an armed attack in international law, shall be approved by both houses of the legislature by a simple majority of votes cast.** (ii) **In the event of an armed attack against the territory or armed forces of the state, or other such national security emergency requiring the urgent use of armed force, making prior approval from the legislature impractical, the government may use armed force without prior approval, but shall immediately provide notice of such determination to the legislature, and it shall obtain approval from each house of the legislature in accordance with the terms of subsection (i) above within 14 days of providing such notice, failing which the executive shall cease any such use of armed force.** (iii) **The approval of any use of force by the legislature in accordance with subsections (i) and (ii) above shall also constitute a decision to use force, subject to the requirements of Section 1 above.** 3. (i) Any person may apply to a court of competent jurisdiction to obtain a declaration, injunctive relief, or dam-ages, or any other remedy that the Court may consider just and appropriate in the circumstances, for any violation of this Article. [\*717] (ii) Any person who has made application under subsection 3(i) above shall have standing so long as the issue raised is a serious issue to be tried, the person has a genuine interest in the issue, even if only as a representative of the general public, and there would be no other reasonable or effective means for the issue to be brought before the Court. Again, a number of the elements of these two sections require further explanation, namely, (i) the terms of the re-quirement for legislative approval of the use of armed force; (ii) the trigger for the provision, being the same de minimis level that was provided for in the first section of the Model; (iii) the emergency exception and ex post approval re-quirement; (iv) the fact that the approval of the legislature is a "decision to use force," thus triggering the application of the requirements of Section 1 of the same Article; (v) the provision of specific jurisdiction for judicial review, and the remedies provided for; and (vi) the creation of broad standing for applications for judicial review. The first element, legislative approval for the use of armed force, is obviously an explicit move away from a "dec-laration of war," and it does not even require that the approval be in the form of a law. But it does require "approval," expressed through a formal vote. This is in contrast to the "consultation" that is contemplated by the draft legislation proposed in the War Powers Commission Report. n356 **As discussed earlier, legislatures may have natural tendencies to avoid making difficult decisions in these kinds of situations, but that is precisely why the Model should require the ex-ecutive to work to obtain the legislature's approval**. At the same time, while in some jurisdictions such approval requires supermajorities of some form, a simple majority of votes cast should be sufficient for the purposes of a general model, albeit in both houses if the system consists of a bicameral [\*718] legislature. n357 **The requirement to obtain a majority vote in each house should be sufficient to engage the deliberative and representational features of the parliamentary process in a manner that will have an impact on the operation of the domestic causes of war**. The second element is the employment of the same trigger or threshold level of force as was used in the first sec-tion of the Article. The reasons for employing this particular concept as the threshold has already been discussed at some length in the explanation of Section 1 so will not be repeated here. **It is perhaps helpful to emphasize yet again, however, how important it is to use a concept that has real meaning in international law for the purposes of triggering the involvement of the legislature in the decision to use armed force**. n358 **Even if a provision providing for the separation of powers with respect to the use of force does not have as one of its objectives an increased compliance with international law, the principles of jus ad bellum would naturally serve as a good proxy for the kinds of armed force that are likely to both escalate conflict and attract international censure. The trigger employed in this Model is taken directly from international law, based on precisely the kind of action that is most likely to lead to wider armed conflict, which are exactly the types of action that should be subject to legislative deliberation and oversight. Moreover, it still provides the executive with significant scope for limited use of force that falls below that threshold. The third element is the emergency carve out**. As mentioned earlier, **this too is not a novel concept, and various forms of such an emergency exception with ex post approval requirements can be found in a number of constitutions, though more frequently with respect to the power to declare emergencies and thus trigger emergency powers domesti-cally**. An early example of such a mechanism can be seen in the [\*719] Constitution of France of 1791. n359 **A varia-tion on this form of emergency carve-out is also the cause of much of the controversy regarding the structure and operation of the U.S. War Powers Act of 1973. Upon closer inspection, however, the War Powers Act provisions in question are not so much an emergency carve out as the grant of a carte blanche for up to ninety days, followed by an effective legislative veto of further action if Congress does not move to approve the operation. n360 That is very different from what is contemplated by the Model.** Many of the criticisms of the War Powers Act may be quite valid, but they ought not to be extended to constitu-tional provisions that require the executive to obtain legislative approval, and which include an automatic termination mechanism in the event that approval is not obtained within a specified period following an emergency use of force. Precisely because the provision is constitutional rather than statutory, the legislature would be less able to shirk its obli-gations to take up the issue when approval is sought by the executive. And requiring the executive to overcome the difficulty of mobilizing support within the legislature is a key element of the Model. That it is difficult and costly is not a basis for criticism, but one of the virtues of the structure. If the executive cannot galvanize the legislature to approve the use of force by a simple majority, particularly where the use of force has already been undertaken in what are al-leged to be urgent circumstances, then that by itself ought to raise significant questions about both the necessity and legitimacy of the use of force in question. The fourth element of this subsection of the article specifies that any approval to use force enacted by the legisla-ture constitutes a "decision to use force" as contemplated by the provisions of section 1 of the article, thus being subject to the requirements of that section. This means that **the legislature** too, in **deliberating on the question of whether or not to approve the use of force, must sufficiently and demonstrably consider whether the use of force in question is in com-pliance with the relevant prevailing principles of international law**. This is key to the combined operation of the distinct elements of the Model, as **it is the mechanism through which the Model effectively causes the deliberative functions of** [\*720] the **legislature to engage the issues of international law compliance, and which causes the criteria of legitimacy under international law to be integrated into the deliberative process of the legislature**. **It is only by requiring both branches of government to grapple with the question of compliance with international law that the Model can ensure that this perspective will be brought to bear in a meaningful and serious fashion in the decision-making process, and that over time the international law norms will be internalized and subsequently exercise influence, in the manner contemplated by transnational process theory and the ideational strand of the liberal theories of international law compliance.**

***We don’t have to stop intervention in every instance --- just when vital national interests aren’t at stake***

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**The most fundamental objection**, grounded in the theories of Carl Schmitt, **is that it is simply not possible to de-velop effective constitutional constraints on the use of armed force, for in moments of crisis such constitutional provi-sions will be simply ignored**. n276 **This form of argument comes in a number of variations. It is reflected in the U.S. war powers debate, in which it is frequently argued that requiring Congressional approval of the use of armed force would not really provide for a sober second look, and thereby reduce the incidence of imprudent wars, because Congress would either be just as prone as the executive to patriotic fervor or other inflamed emotions in the midst of a severe crisis**. n277 An analogous form of argument, much more explicitly grounded in or responsive to the theories of Schmitt, is to be found in much of the post 9/11 theoretical literature regarding the impact of national security imperatives on the normative power of constitutional protections, and the role of the judiciary in times of national crisis or emergen-cy--what Schmitt called the moment of "exception." n278 [\*687]

David **Dyzenhaus and others have marshaled several persuasive arguments to refute the Schmittian attack on the idea, central to liberal legal theory, that the law, and more importantly the rule of law, can operate effectively in periods of emergency**. n279 Dyzenhaus draws upon the theories of Dicey to argue that **the continued operation of a thick substantive notion of the rule of law during the period of emergency is not only possible, but that cooperation among the executive, legislature, and judiciary to ensure that legal responses to the emergency comply with the rule of law is crucial to the liberal democratic idea of the state being constituted by law**. n280 **Under this theory of the liberal democratic constitution and a thick conception of the rule of law, the exception does not provide the justification for the creation of legal black holes or the suspension of constitutional constraints at all, and neither does it operate so as to necessarily create such lawlessness.** **On the contrary, it is feasible to develop constitutional provisions that can survive the exception and operate to govern the response to national security emergencies**. n281

**It is not necessary, however, to refute Schmittian theoretical arguments to defend the Model**. **This is because the Model is designed primarily to constrain conduct in the moment of true exception**. The rationales advanced to justify the use of armed force cover a broad spectrum, from protecting national interests as ephemeral as national prestige and credibility, to the desperate need to repulse a massive invasion of the homeland. **It may be true that when a state is suddenly confronted with an immediate existential threat, one that truly threatens the "life of the nation," it might be less likely that a constitutional provision prohibiting any use of armed force will effectively govern state behavior**. n282 Thus, while the war [\*688] renouncing provision of the Constitution of Japan operated effectively to constrain Japanese policy on the use of armed force even in moments of perceived crisis, the provision "would not likely have exercised much influence over national policy in the event of a Soviet invasion of Hokkaido." n283 But **the Model being developed here is not intended to prevent or even hinder the use of force in such dire circumstances.**

First, **the constitutional incorporation of principles** of jus ad bellum **being proposed here would not actually oper-ate to prohibit an appropriate response to such existential crises**. **The** jus ad bellum **regime itself provides for the exer-cise of the right to self-defense, and since most true existential threats would more than satisfy the conditions for the exercise of self-defense** in international law, **the requirement** to consider compliance with international law **would not create any constraint on government action**. **Similarly, requiring legislative approval would not operate as any constraint in such circumstances.** **So quite aside from the argument that the constitutional provisions will not operate in moments of existential crisis, this Model is neither intended to be, nor would it actually operate as, a constraint in such circumstances.**

**The Model is intended, rather, to operate as a constraint with respect to the use of force when the life of the nation is not at stake, but where "vital interests" and other such imperatives provoke calls for action**. **For the fact remains that few armed conflicts that have involved Western constitutional democracies in the last 60 years have been responsive to existential threats**. **Rather, they range from such low-level operations as the U.S. invasions of Grenada and Panama at one end of the spectrum, which were defended as being for the purpose of protecting nationals overseas**, n284 **to such larger conflicts as the Korean conflict, the Vietnam war, the first Gulf war, the Kosovo war, the Falklands war, or the invasions of Afghanistan and Iraq since 2001, all of which were justified as being exercises of collective or individual self-defense**. **None of these, however, were in response to existential threats to the Western** [\*689] **democracies cen-tral to the conflicts**. Some were consistent with international law, some were not, but with the possible exception of the invasion of Afghanistan in response to 9/11, **none was a reaction to a national security crisis of such a scale that consti-tutional provisions would likely be ignored in liberal democracies engaged in the conflicts**. n285

***Statutory restrictions work – they raise the political cost of executive circumvention***

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In part, **these two positions can be reconciled. Recognition that presidents under specific political circumstances will in essence act unilaterally does not mean sustained tyranny is upon us**. **If congressional majorities and large segments of the public respond vigorously and negatively to specific presidential actions, political pressures will minimize the duration and impact of such actions**. Conversely if Congress and large segments of the public go along with the president, formal legal restrictions will have few decisive effects.¶ Over twenty years of experience with the War Powers Resolution (WPR) illuminates the problem. Presidents have usually claimed that they have consulted with Congress as stipulated in the WPR before committing troops to hostile zones. Few members of Congress would read the evidence that way. Presidents have notified Congress about what they were about to do while asserting that they have consulted Congress. What presidents have actually done does not conform with any normal meaning of consultation. Similarly, most presidential decisions to send troops into environments where combat is likely were reported, as required by the WPR , to the Congress. But presidents have studiously avoided reporting in the manner prescribed by the WPR, one that triggers its sixty-day cut-off provisions. [End Page 527]¶ This behavior by presidents surely leaves some critical decisions in a legal limbo. That, for good or evil, is where they actually are. What we can do is recognize that fact and act accordingly. Politics has and will govern the resolution of this issue. Whether this is desirable in principle can be debated. The realities of politics, however, have and are likely to prevail.¶ Legal restrictions sometimes cannot withstand political tides. Constitutional, limited government is not intended to work that way but it does in reality. There are few effective legal safeguards against intense and enduring political tides. Fortunately in U.S. history, such episodes have been few and relatively fleeting. **Legal restrictions** such as those specified in the War Powers Resolution have little direct, conclusive impact. They do, however, **help raise the political costs of unilateral executive actions**. **Therein lies their primary value**. Will presidents fully and freely involve Congress in decision making to send U.S. armed forces into potential or actual combat? Despite the force of Louis Fisher's account of the constitutional history of the war powers, the answer is probably not. **Will presidents carefully calculate the political costs of such initiatives? They usually will.** **Legislation designed to raise political costs may be a useful way to promote this possibility**, but Fisher places far too much weight on "solid statutory checks" (p. 205).

***Even if Congress fails --- plan triggers Court action***

**Cowan ’04**, Kelly L. Cowan, Comments Editor, Santa Clara Law Review, Volume 45; J.D. Candidate, Santa Clara University School of Law; B.A., Economics, University of Colorado., 2004¶ Santa Clara Law Review¶ 45 Santa Clara L. Rev. 99, COMMENT: RETHINKING THE WAR POWERS RESOLUTION: A STRENGTHENED CHECK ON UNFETTERED PRESIDENTIAL DECISION MAKING ABROAD, Lexis, jj

**Finally, the War Powers Resolution can become more effective if the judiciary is able to better interpret specific provisions of the statute**. n227 **Future cases must be brought by plaintiffs in such a way as to avoid dismissal on justiciable grounds, such as constituting a political question, lack of standing, or lack of ripeness**. n228 **In order to escape such dismissal, cases need to center on the meaning of the words within the statute, rather than on alleged presidential actions**. n229 [\*126] **If courts could better interpret the meaning of words within the Resolution, such as** "consult" n230 or "**hostilities**," n231 **the expectations of the president's actions would be more clearly defined. Thus, Congress would know when the president fails to meet the Resolution's requirements and could legitimately act in response to indiscretions.**

***Reformation of the WPR boosts legitimacy and prevents risky decisionmaking***

**Cowan ’04**, Kelly L. Cowan, Comments Editor, Santa Clara Law Review, Volume 45; J.D. Candidate, Santa Clara University School of Law; B.A., Economics, University of Colorado., 2004¶ Santa Clara Law Review¶ 45 Santa Clara L. Rev. 99, COMMENT: RETHINKING THE WAR POWERS RESOLUTION: A STRENGTHENED CHECK ON UNFETTERED PRESIDENTIAL DECISION MAKING ABROAD, Lexis, jj

**The world today is a different place as compared to 1973, when the War Powers Resolution was passed**. **As dras-tic changes have taken place in the United States and the world at large, it is now even more imperative that both the executive and the legislative branches of the government determine the federal government's foreign policy decisions**. n232¶ **In order to safeguard the United States from unilateral and hasty decision making**, certain provisions of **the W**ar **P**owers **R**esolution **should be amended. The Resolution should** also **be better** enforced and **interpreted, in order to be a more effective statute**. **These changes to the Resolution would help reinforce the United States' position *as a world leader*, while at the same time respecting the global trend of multilateral foreign policy and decision making.**

***The plan makes U.S. power sustainable***

**Robinson 6-26-13**, Don Robinson, a retired professor of government at Smith College, June 26, 2013, Gazette Net, Donald Robinson: The arguments for and against intervening in Syria, <http://www.gazettenet.com/home/7163738-95/donald-robinson-the-arguments-for-and-against-intervening-in-syria>, jj

Nasr’s case for a stronger American commitment to the Middle East is countered by Richard Haass, president of the Council on Foreign Relations and author of “Foreign Policy Begins at Home: The Case for Putting America’s House in Order.” **What America needs now**, he writes, **is to “take a breather” from foreign engagements**.¶ **This would be an opportune moment for an American respite**, he argues. **We face no great-power rival. No one can challenge our primacy, not China, Russia, Europe, Japan, India. We are by far the richest, most powerful nation on Earth. We are politically stable. We enjoy “healthy demographics**” (not too many elders**), a widely shared commitment to the rule of law, a “rich endowment” of energy, minerals, water and arable land and** an openness to immigration that is a continuing source of **innovation**.¶ **Our good fortune gives us an opportunity**, Haass says. ***To seize it, we must avoid “wars of choice*** and wholesale efforts to remake societies like the invasion of Iraq in 2003 and the surge in Afghanistan in 2009.” **We could use the pause to “restore the foundations of American power” — for example, by repairing a health care system that spends nearly twice as much as other industrialized nations per citizen, and rebuilding public education, where we spend more per student than most other wealthy countries**.¶ **There is another reason to “take a breather” from foreign interventions**. We need to think through the data collection issues exposed by Edward Snowden’s disclosures. Obama contends that we need this debate, but who thinks we would be having it if Snowden hadn’t spilled the beans on the NSA? He is the Daniel Berrigan of the Obama era.¶ What we desperately need is a thorough airing of this data-gathering, conducted in a spirit of profound skepticism. Who is on this Foreign Intelligence Surveillance “court”? What do they do? Is anyone at this “court” responsible to present the argument against a claim of necessity to analyze this data? And what did Congress (its intelligence committees and other members) know about this program, and why have they not shared what they know with the country? Is that not the function of Congress? And where is the loyal opposition?¶ Have members traded their obligation to exercise checks and balances for a chance to play statesman?¶ **It is indeed time to take a breather and to renew our constitutional liberties.**