arrangement, it is far from clear what Israel would do. Moreover, these challenges are only a piece of the broader geopolitical tensions between the United States and Iran (and between Israel and Iran). More turmoil and perhaps more armed conflict lie ahead.

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Where Have All the (War) Powers Gone?

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If, as Lincoln wrote, the framers of the Constitution intended that "no one man should hold the power"[1] of bringing the oppression of war upon the nation, modern American practice has veered sharply from that intent. Seldom has the concentration of the war power in presidential hands been more evident than during the so-called "Twelve Day War."

The United States and Israel worked as a "team" against Iran, in President Donald J. Trump's word.[2] Months before Israel's unprovoked and unannounced attack on Iran on June 13, 2025, President Trump mulled military strikes against Iran if Iran refused to enter into a new nuclear deal. "If they don't make a deal, there will be bombing," President Trump said in a telephone interview.[3] "It will be bombing the likes of which they have never seen before."[4] In the days following Israel's June 13 attack on Iran, President Trump considered dropping a 30,000-pound "bunker buster" bomb on Iran's fortified nuclear facilities. Heading to the Situation Room, President Trump averred that he was no longer "in the mood to negotiate" with Iran.[5] He threatened Iran's Supreme Leader, Ayatollah Ali Khamenei, saying "we know exactly where" he is, adding that "we are not going to take him out (kill!), at least for now."[6] On June 17, President Trump demanded Iran's "UNCONDITIONAL SURRENDER."[7] Still, he remained noncommittal. "You don't know that I'm going to even do it. You don't know. I may do it. I may not do it. I mean, nobody knows what I'm going to do," he said, adding that he "like[s] to make the final decision one

Practice of the United States, 115 AJIL 140, 142–45 (2021). The snapback provision is available for use during the first decade of the JCPOA—meaning that its availability expires in October 2025 (unless it is extended).

[1] Letter from Abraham Lincoln to William H. Herndon (Feb. 15, 1848), *at* https://classic-literature.co.uk/abraham-lincoln-letter-on-the-mexican-war-1848 [https://perma.cc/XEP8-HTY8].

[2] Brian Bennett & Nik Popli, *U.S. Joins Israel in Strikes on Iranian Nuclear Sites, Risking Wider War*, TIME (June 21, 2025), *at* https://time.com/7296469/u-s-strikes-iran-nuclear-trump-war [https://perma.cc/N5P6-Q9EQ] ("[W]e worked as a team like perhaps no team has ever worked before.").

[3] Barak Ravid, *Trump Threatens Iran with Bombs Unless Nuclear Deal Reached*, AXIOS (Mar. 30, 2025), *at* https://www.axios.com/2025/03/30/trump-iran-nuclear-deal-bombing [https://perma.cc/FY6J-T55E].

[4] Doina Chiacu & David Ljunggren, *Trump Threatens Bombing If Iran Does Not Make Nuclear Deal*, REUTERS (Mar. 30, 2025), *at* https://www.reuters.com/world/trump-says-there-will-be-bombing-if-iran-does-not-make-nuclear-deal-2025-03-30.

[5] Adam Rasgon, *Trump Offers Mixed Messages on Israel-Iran War*, N.Y. TIMES (June 17, 2025), *at* https://www.nytimes.com/2025/06/17/world/middleeast/trump-mixed-messages-israel-iran.html.

[6] David E. Sanger, *Trump Calls for Iran's "Unconditional Surrender" and Threatens Its Supreme Leader*, N.Y. TIMES (June 17, 2025), *at* https://www.nytimes.com/2025/06/17/us/politics/trump-iran-surrender-khamenei.html.

[7] *Id.*

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second before it's due."[8] Five days later, on June 21, U.S. warplanes bombed Iran's Fordo nuclear facilities. The United States incurred no casualties during the strike or later as a consequence of Iranian retaliation.[9]

Although the White House, "consistent with" the War Powers Resolution, notified Congress within forty-eight hours of the attack that "United States forces conducted a precision strike against three nuclear facilities in Iran,"[10] the deed was done. President Trump did not seek, and Congress did not provide, statutory authorization for the attack. In its aftermath, questions arose whether Iran had been "very close"[11] to obtaining a nuclear weapon, as President Trump had claimed, and whether the attack had "completely and totally obliterated"[12] its capacity to do so, as he further claimed. President Trump warned that he could initiate another such attack should Iran try again to acquire a nuclear capability.[13]

I have argued that, in light of the level of risk incurred—President Trump's assessment was that the war "could have destroyed the entire Middle East"[14]—the United States' attack on Iran unconstitutionally impinged upon Congress's war power.[15] Others have argued that it did not.[16] Some have suggested that the law provides no answer.[17] Yet it would be a mistake to regard the Trump administration's war powers claims as unique. Recent presidents also ordered the use of force in Yugoslavia (Clinton) and Libya (Obama) without congressional authorization. Although "walked back" by White House staff, President Joseph R. Biden, Jr. promised four times to defend Taiwan, five decades after the United

[8] Andrew Feinberg, *Trump Says "Nobody Knows What I'm Going to Do" About Iran as He Warns "The Next Week Will Be Big,"* INDEPENDENT (June 18, 2025), *at* https://www.the-independent.com/news/world/americas/us-politics/trump-iran-news-war-press-conference-b2772450.html.

[9] For a detailed account of the U.S. bombing of Iran, see Jean Galbraith, *The United States Bombs Iran's Nuclear Facilities*, 119 AJIL 798 (2025).

[10] Olivia Manes, *White House Releases Letter Notifying Congress of Iran Strikes*, LAWFARE (June 24, 2025), *at* https://www.lawfaremedia.org/article/white-house-releases-letter-notifying-congress-of-iran-strikes [https://perma.cc/PXJ4-AJH2]; Text of a Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate (June 23, 2025), *at* https://s3.documentcloud.org/documents/25982704/letter-informing-congress-of-iran-strikes.pdf [https://perma.cc/X8FA-LDCL].

[11] Jonathan Landay, *Trump Tells Congress That Iran Had Nuclear Weapons Program, Contradicting U.S Spy Agencies*, REUTERS (June 25, 2025), *at* https://www.reuters.com/world/middle-east/trump-tells-congress-that-iran-had-nuclear-weapons-program-contradicting-us-spy-2025-06-24.

[12] David E. Sanger, *U.S. Officials Concede They Don't Know the Whereabouts of Iran's Stockpile of Near-bomb-grade Uranium,* N.Y. TIMES (June 22, 2025), *at* https://www.nytimes.com/live/2025/06/23/world/iran-israel-ceasefire-trump#iran-uranium-stockpile-whereabouts.

[13] *See* Michael Waldman, *Congress Sleeps Through a Military Strike on Iran*, BRENNAN CTR. (June 24, 2025), *at* https://www.brennancenter.org/our-work/analysis-opinion/congress-sleeps-through-military-strike-iran [https://perma.cc/GM5X-GWED].

[14] James Saunders, *Donald Trump Hails "Complete and Total Ceasefire" Between Israel and Iran as President Declares "12-Day War" OVER*, GB NEWS (June 24, 2025), https://www.gbnews.com/news/world/ceasefire-israel-iran-agreed-donald-trump-war [https://perma.cc/Z7K7-JDVR].

[15] *See* Michael J. Glennon, *The U.S. Attack on Iran Was Unconstitutional*, JUST SECURITY (July 1, 2025), *at* https://www.justsecurity.org/115931/us-attack-iran-unconstitutional [https://perma.cc/5GHF-UUBJ]. For the argument that reliance upon historical practice requires reference to risk *see* Michael J. Glennon, *The Executive's Misplaced Reliance on War Powers "Custom,"* 109 AJIL 551 (2015).

[16] *See* John Yoo, *Trump's Strike on Iran Was Constitutional*, NAT'L REV. (June 24, 2025), *at* https://www.nationalreview.com/2025/06/trumps-strike-on-iran-was-constitutional [https://perma.cc/4JR3-RKJR].

[17] *See* Charlie Savage, *Was Trump's Iran Attack Illegal? Presidential War Powers, Explained.*, N.Y. TIMES (June 23, 2025), *at* https://www.nytimes.com/2025/06/23/us/politics/trump-iran-war-powers-constitution.html (remarks of Jack Goldsmith).

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States had terminated a Senate-approved treaty committing it to do so.[18] President Trump arguably adhered to the same view of presidential power in offering Ukraine a security commitment in "Article 5-like language," in the words of his envoy Steve Witkoff[19]—even though a NATO-like presidential security commitment to Ukraine, like a commitment to defend Taiwan, would implicate Congress's war and appropriations powers as well as the Senate's treaty power. Each of the seven security guarantees that the United States extended to its allies after World War II to contain the Soviet Union were set out in treaties that were accorded the advice and consent of the Senate.[20]

The contemporary *de facto* if not *de jure* power of the executive to commit the nation to war might be summed up as follows:

> Already possessing vast powers over our country's foreign relations, the executive, by acquiring the authority to commit the country to war, now exercises something approaching absolute power over the life or death of every living American—to say nothing of millions of other peoples all over the world. There is no human being or group of human beings alive wise and competent enough to be entrusted with such vast power. Plenary powers in the hands of any man or group threaten all other men with tyranny or disaster. Recognizing the impossibility of assuring the wise exercise of power by any one man or institution, the American Constitution divided that power among many men and several institutions and, in so doing, limited the ability of any one to impose tyranny or disaster on the country. The concentration in the hands of the President of virtually unlimited authority over matters of war and peace has all but removed the limits to executive power in the most important area of our national life. Until they are restored the American people will be threatened with tyranny or disaster.[21]

It is significant that these words were written over half a century ago, in the report of the Senate Foreign Relations Committee on the National Commitments Resolution.

The resolution represented Congress's first formal recognition of a long-incubating problem, labeled four years later by Arthur Schlesinger in his landmark book, *The Imperial Presidency*. The resolution was authored by the esteemed chairman of the Senate Foreign Relations Committee, J. William Fulbright. Its final form, adopted on June 25, 1969, consisted of a single sentence: it defined a national commitment as "the use of the Armed Forces of the United States on foreign territory, or a promise to assist a foreign country, government, or people by the use of the Armed Forces or financial resources of the United States, either immediately or upon the happening of certain events."[22] Such a commitment, the resolution provided, could be made only "by means of a treaty, statute, or concurrent

[18] Susan V. Lawrence, CONG. RSCH. SERV., IF10275, TAIWAN: BACKGROUND AND U.S. RELATIONS 2 (2025).

[19] *Top Trump Envoy: "Substantial Progress" Made in Summit with Putin*, CNN (Aug. 17, 2025), *at* https://www.cnn.com/2025/08/17/politics/video/us-special-envoy-steve-witkoff-on-progress-made-in-putin-zelensky-peace-talks-russia-ukraine-war.

[20] *See* MICHAEL J. GLENNON, CONSTITUTIONAL DIPLOMACY 205–20 (1991).

[21] S. Rep. No. 797, at 26–27 (1967) [hereinafter National Commitments Report].

[22] National Commitments Resolution, S. Res. 85, 91st Cong., 1st Sess. (1969).

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resolution"—that is, with Senate or congressional approval.[23] Perhaps anticipating the resolution's potential ramifications, the Johnson and Nixon administrations both opposed it,[24] something extremely rare in the history of measures that are merely non-binding expressions of congressional opinion. Yet the resolution has been all but lost to history.

This is unfortunate. The resolution was the product of what has been called "the last great Senate."[25] The Senate of the late 1960s and 1970s was distinguished both in the eminence of its members and in their willingness to confront deeper structural problems inhering in the exercise of the war power, treaty power, appropriations power, and intelligence oversight. It was comprised of household names in their time: Fulbright, Robert Byrd, Walter Mondale, Jacob Javits, Mike Mansfield, George McGovern, Edmund Muskie, Stuart Symington, John Sherman Cooper, Mark Hatfield, Frank Church, Charles Percy, Edward Kennedy, Wayne Morse, Sam Ervin, Tom Eagleton, and Daniel Inouye, among others. They dealt purposefully with nerve-center foreign policy issues such as the Panama Canal Treaties, the SALT II Treaty, the normalization of relations with China, unchecked intelligence services, Vietnam, Watergate, and other questions of serious national import.[26]

In considering the making of national commitments, the Senate attempted to identify the reasons that its powers had atrophied, and it spelled out specific steps needed to guard against the further loss of congressional power, laying the groundwork for legislation that would be enacted over the next decade to reclaim those powers. The great congressional initiatives of the 1970s aimed at restoring core legislative foreign affairs powers—the War Powers Resolution,[27] the Case-Zablocki Act,[28] the International Emergency Economic Powers Act,[29] the Congressional Budget and Impoundment Control Act,[30] the Arms Export Control Act,[31] the Trade Act of 1974,[32] the Foreign Intelligence Surveillance Act,[33] the Hughes-Ryan Amendment,[34] and other laws—all trace their origins to the awareness of withering congressional foreign affairs powers highlighted initially by the National Commitments Resolution.

Ultimately, as evidenced by the ease with which these legislative measures have been evaded by successive presidents, the effort to recapture lost powers was largely ineffectual. It is striking that even this remarkable Senate, proceeding in the most propitious circumstances and riding the waves of the Civil Rights Movement, Watergate, and Vietnam against resistance by two unpopular presidents, still could not devise survivable bulwarks to safeguard legislative power. Why that reclamation failed holds important lessons for

[23] *Id.*

[24] Ellen C. Collier, CONG. RSCH. SERV. 70-112F, THE NATIONAL COMMITMENTS RESOLUTION OF 1969: BACKGROUND AND ISSUES 10–11 (1970).

[25] *See* IRA SHAPIRO, THE LAST GREAT SENATE: COURAGE AND STATESMANSHIP IN TIMES OF CRISIS (2012) (providing an insider's account of the "world's greatest deliberative body" at the zenith of its modern-day influence).

[26] *See* Thomas E. Cronin, *A Resurgent Congress and the Imperial Presidency*, 95 POL. SCI. Q. 209 (1980).

[27] Pub. L. No. 93-148, 87 Stat. 555 (1973) (codified at 50 U.S.C. §§ 1541–1548).

[28] Pub. L. No. 92-403, 86 Stat. 619 (1972) (codified as amended at 1 U.S.C § 112b).

[29] Pub. L. No. 95-223, 91 Stat. 1626 (1977) (codified as amended at 50 U.S.C. §§ 1701–1707).

[30] Pub. L. No. 93-344, 88 Stat. 297 (1974) (codified at 2 U.S.C. §§ 618–688).

[31] Pub. L. No. 94-329, 90 Stat. 729 (1976) (codified at 22 U.S.C §§ 2751–2796).

[32] Pub. L. No. 93-618, 88 Stat. 1978 (1975) (codified at 19 U.S.C. §§ 2101–2487).

[33] Pub. L. No. 95-511, 92 Stat. 1783 (1978) (codified at 50 U.S.C. §§ 1801–1885).

[34] Pub. L. No. 93-559, 88 Stat. 1804 (1974) (codified at 50 U.S.C. § 3093).

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contemporary legislators attempting to do the same. One lesson is that, notwithstanding all the remedial legislation, the same corrosive forces that had earlier hollowed out Congress's war powers will continue to eat away at any attempted restoration. Some of these forces were identified in the Committee's report.

The Committee believed that three factors drove the atrophy of Congress's war power. First, "[t]he principal cause of the constitutional imbalance," the Committee suggested, "has been the circumstance of American involvement and responsibility in a violent and unstable world."[35] Congress has acquiesced in executive incursions upon its powers because it was unfamiliar with this deep involvement throughout "a series of crises" and "global commotions," to which "[t]here is no end in sight."[36] Second, members of Congress had been fearful of being labeled isolationists. Congressional acquiescence was fed by a lingering guilt over rejection of the Covenant of the League of Nations, with the result that "Congress has been doing a kind of penance for its prewar isolationism."[37] Third, in an early recognition of the influence of "The Blob," the Committee suggested that Congress had been "overawed by the cult of executive expertise" and the "veritable army of foreign policy experts that has sprung up in government and in universities[.]"[38] Together, these forces impelled the United States "toward the concentration in its national executive of unchecked power over foreign relations, particularly over the disposition and use of the armed forces."[39]

To correct this imbalance, the Committee recommended four steps in considering future resolutions involving the use of force. First, Congress should debate the resolution at sufficient length to establish a record of its intent. Second, it should use the word "authorize" or "empower" to make clear that Congress is conferring power that the executive would not otherwise have. Third, it should explicitly specify the kind of military action that is permitted and the place and purpose of its use. And fourth, it should put a time limit on the resolution.[40]

Subsequent military actions suggest the far-sightedness of these recommendations, but also their limited breadth. For example, the Authorization for the Use of Military Force ("AUMF") enacted on September 18, 2001, following the attacks on the Twin Towers, did use the word "authorize."[41] However, it was enacted with virtually no debate in either House of Congress. It placed no limit on the kind of military action that was permitted. It did not identify the specific entity against which force could be used, or the place or purpose for which force was permitted. It set out no time limit. As a consequence, the AUMF has been dubiously cited numerous times by the executive as a source of authority for subsequent military actions across twenty-two countries, including the campaign against ISIS, the leadership of which had actually been hostile to those who plotted the September 11 attacks.[42] Had the Committee's 1969 recommendations been followed, such claims would likely have been unsupportable.

[35] National Commitments Report, *supra* note 21, at 5.
[36] *Id.* at 6.
[37] *Id.* at 14.
[38] *Id.*
[39] *Id.* at 5.
[40] *Id.* at 26.
[41] Pub. L. 107-40, 115 Stat. 224 (2001) (codified at 50 U.S.C. § 1541).
[42] *See* Stephanie Savell, *The 2001 Authorization for Use of Military Force: A Comprehensive Look at Where and How It Has Been Used* (Dec. 14, 2021), *at* https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Costs%20of%20War_2001%20AUMF.pdf [https://perma.cc/Q7WE-P6X3]; Brian Finucane, *The House Tackles Zombie War Authorizations: Possibilities and Perils*, JUST SECURITY (Aug. 14, 2023), *at* https://www.

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On the other hand, because the executive argued that the use of force against Iran, Libya, and the Houthis had been authorized by the Constitution rather than by statute, the Committee's proposed remedies were irrelevant to those attacks. The Committee provided no guidance as to how Congress should proceed in circumstances where the president claims contestable constitutional authority. It observed simply that "[i]t is obvious that the question of authority to commit the United States to war is in need of clarification."[43]

Subsequent efforts to do so, however, have repeatedly failed.[44] This includes, most notably, the War Powers Resolution.[45] It provides no *ex ante* limits concerning when armed force is permitted.[46] Provisions of the War Powers Resolution that would have limited statutorily unauthorized use of force were dropped in conference; the version that emerged merely imposed a sixty-day time limit to conclude "hostilities" and a requirement to report any such hostilities to Congress within forty-eight hours of their occurrence.[47] In the face of this gap, following the attack on Iran, Senator Tim Kaine introduced a joint resolution that would have prohibited the president from doing so again without congressional approval.[48] It was, however, defeated on the Senate floor (and, because a joint resolution is presented to the president for signature or veto, would surely have been vetoed had it been enacted).[49]

An additional factor, which materialized after the resolution's consideration, is Supreme Court precedent and practice. A single case, *INS v. Chadha*, has been uniquely responsible for thwarting congressional efforts to curb the unauthorized use of U.S. armed forces in hostilities of the sort that occurred in Iran.[50] It held that to have the force and effect of law, a measure must be presented to the president for his signature or veto.[51] A national commitment thus could no longer be approved, as the Committee had suggested it could, by concurrent resolution (that is, by a resolution adopted by both Houses of Congress but not so presented). Nor could Congress disapprove executive action by concurrent resolution. This would constitute a "legislative veto," and was henceforth unconstitutional. The 1973 War Powers Resolution provided for a legislative veto, arguably its most significant limit: Section 5(c) required the president to remove the armed forces from hostilities when Congress so directs by concurrent resolution.[52] Had the Court not invalidated the procedure, and had Senator Kaine

justsecurity.org/87560/the-house-tackles-zombie-war-authorizations-possibilities-and-perils [https://perma.cc/PY75-7XY6].

[43] National Commitments Report, *supra* note 21, at 22.

[44] *See, e.g.*, Brian Finucane, *Key Takeaways from September 28 House Foreign Affairs Committee Hearing on AUMF Reform*, JUST SECURITY, (Oct. 4, 2023), *at* https://www.justsecurity.org/89148/key-takeaways-from-september-28-house-foreign-affairs-committee-hearing-on-aumf-reform [https://perma.cc/M5LE-E9XX].

[45] *See* Michael J. Glennon, *Too Far Apart: Repeal the War Powers Resolution*, 50 U. MIA. L. REV. 17 (1995).

[46] *See* GLENNON, *supra* note 20, at 94.

[47] *See War Powers Resolution Reporting Project*, REISS CTR. L. & SEC. (Mar. 28, 2025), *at* https://warpowers.lawandsecurity.org/reports [https://perma.cc/V5UV-BLRA] (database compiling all unclassified 48-hour reports submitted to Congress, which are required under the War Powers Resolution when presidents introduce forces into hostilities or imminent hostilities, deploy combat-equipped forces, or substantially enlarge a combat-equipped contingent).

[48] *See* S.J. Res. 59, 119th Cong., 1st Sess. (2025).

[49] *See* Patricia Zengerle, *U.S. Senate Rejects Bid to Curb Trump's Iran War Powers*, REUTERS (June 28, 2025), *at* https://www.reuters.com/world/us/us-senate-rejects-bid-curb-trumps-iran-war-powers-2025-06-27 [https://perma.cc/RH2A-D7JV].

[50] INS v. Chadha, 462 U.S. 919 (1983).

[51] *See id.* at 954–55.

[52] 50 U.S.C. § 1544(c).

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and his allies used a concurrent resolution under the Section 5(c) procedure rather than a joint resolution, they would not have confronted the insurmountable obstacle of a Trump veto. (Representatives Thomas Massie and Ro Khanna, perhaps hoping[53] that *Chadha* would be overruled or that it might be distinguished as inapplicable to the resolution's concurrent resolution procedure, introduced a concurrent resolution under Section 5(c) that would have required the termination of hostilities against Iran,[54] but it was not brought to a vote.)[55]

That such legislative machinations would be necessary to halt or prevent a war would have astonished the framers. In 1789, presidential action such as the attack on Iran would have been impossible for practical reasons. "In the earl[iest] years of the Republic," as Michael McConnell has pointed out, "the United States had only a miniscule standing army .... [I]f the president wished to take the nation to war, he had to go to Congress not just for a declaration, but, more importantly, for an appropriation that would raise a fighting force."[56] As a consequence, when President John Adams wished to engage in hostilities with France, he "went hat in hand to Congress to pass legislation creating a 10,000 man army for that specific purpose."[57]

No longer does that practical check exist, of course. Multi-year appropriations for the military and massive standing armed forces made it possible for a president to fight a war in Libya for eight months without specific appropriations for that purpose,[58] or to bomb Iran with no specific appropriation. Congress's only check is now to enact legislation cutting off funds for war-fighting—with a two-thirds majority, overriding a presidential veto, thus inverting the framers' original scheme by making it more difficult to get out of war than into one. Significantly, no member of Congress resorted to the courts to stop action against Iran, perhaps because of the futility of such efforts in earlier conflicts.[59] The Committee, in drafting its report on the National Commitments Resolution, had not foreseen that judicial deference would become judicial submissiveness when it comes to enforcing the Constitution's most consequential check on executive power.

Two additional causes of the transfer of the war power from Congress to the president were unforeseen by the framers. They relate to the war power directly and to congressional power in general. Each goes to the heart of James Madison's theory that equilibrium can be maintained, and encroachments on the power of one branch by another can be remedied, by pairing rival motives against each other.

The first is political parties.[60] When Madison extolled the benefits of setting ambition against ambition in *The Federalist 51*, political parties had not yet emerged. Madison and Jefferson's democratic-republican party did not begin to take shape until three years later, in 1791, with

[53] Hoping against hope, in my view: clearly *Chadha* does apply to the War Powers Resolution's legislative veto. *See* GLENNON, *supra* note 20, at 98–104.

[54] *See* H.R. Con. Res. 38, 119th Cong., 1st Sess. (2025).

[55] *See* Don Wolfensberger. *Whose Power Is the War Power?*, THE HILL (July 10, 2025), *at* https://thehill.com/opinion/congress-blog/foreign-policy/5392278-president-trump-military-action-iran [https://perma.cc/C9C2-QQQ2].

[56] MICHAEL W. MCCONNELL, THE PRESIDENT WHO WOULD NOT BE KING: EXECUTIVE POWER UNDER THE CONSTITUTION 200 (2020).

[57] *Id.*

[58] *See id.* at 201.

[59] *See, e.g.*, Dellums v. Bush, 752 F. Supp. 1141 (D.D.C 1990); Lowry v. Reagan, 676 F. Supp. 333 (D.D.C. 1987); Campbell v. Clinton, 52 F. Supp. 2d 34 (D.D.C. 1999).

[60] This paragraph draws upon Michael J. Glennon, *Who's Checking Whom?*, *in* REIMAGINING THE NATIONAL SECURITY STATE: LIBERALISM ON THE BRINK (Karen J. Greenberg ed., 2019).

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their famous botany expedition to New York. Parties made it possible to advance political careers not by standing up for the institutional prerogatives of Congress but by abandoning them—by trading favors with party members in the executive branch. In the unanticipated political order that emerged, public officials were sometimes energized by an ambition to resist encroachments on their own institutional prerogatives, but they were possessed of other ambitions as well. They had ambitions for their political party to succeed, for their careers to progress, and for their policies to be adopted. Party, career, and policy ambitions often align with, rather than clash with, the ambitions of executive officials who seek to encroach upon Congress's constitutional prerogatives. Representative Massie, in opposing the Iran attack, thus stood alone in the Republican House caucus in facing the wrath of a president whose response to his opposition was a promise to "primary" him in the next election.[61] In the 2025 House of Representatives, party and career ambitions had come to prevail over institutional ambitions. Rather than producing an equilibrium of power, the prevailing party system produced disequilibrium.[62]

Second, legions have now been added to the army of foreign policy experts who occupied a commanding position fifty years ago.[63] It was even then the rare member of Congress who was not "awed" by it, as the Committee said, and the rare member who would question its counsel or vote against its wishes, particularly when dominant elements within it aligned with the interests of a politically powerful ally such as Israel. Predictably, Senator Kaine's effort to prohibit an attack on Iran was defeated on the Senate floor.[64] This bureaucracy—or Blob, or "security state," or "deep state," as some have called it (or "double government," as I have referred to it)—resists the Committee's diagnosis at a deeper level. The bureaucracy-dominated foreign policy of the United States has, through multiple presidencies in recent years, often been directed not at the domestic objective of securing democratic values such as separation of powers and freedom of speech but at maintaining U.S. primacy in its dealings abroad,[65] to the point that NATO's secretary general could openly remind President Trump, without contradiction, that the United States is now the "police agent of the world."[66]

Why military preeminence is required, rather than a simple sufficiency of power, has never been clear. Because not every nation welcomes U.S. dominance and the coercion needed to secure it,[67] this aspiration has led to a series of forever wars aimed, ultimately, at maintaining American supremacy, which has in turn incentivized not the domestic protection of political

[61] Bruce Schreiner & Jill Colvin, *Trump and His Political Operation Target Their First GOP Incumbent: Kentucky's Thomas Massie*, AP (June 23, 2025), *at* https://apnews.com/article/trump-kentucky-thomas-massie-primary-iran-55252ce7fbda9c27f6fbd9123927b1b4 [https://perma.cc/936T-8WUD].

[62] *See* Jeffrey S. Peake, Dysfunctional Diplomacy: The Politics of International Agreements in an Era of Partisan Polarization (2022).

[63] *See* Michael J. Glennon, National Security and Double Government 15 (2016).

[64] *See* Zengerle, *supra* note 49.

[65] *See* Patrick Porter, *Why America's Grand Strategy Has Not Changed: Power, Habit, and the U.S. Foreign Policy Establishment*, 42 Int'l Sec. 9 (2018); Patrick Porter, *How the U.S. Foreign Policy Establishment Constrains American Grand Strategy*, Int'l Sec. (June 2018), *at* https://www.belfercenter.org/publication/how-us-foreign-policy-establishment-constrains-american-grand-strategy [https://perma.cc/2Z54-6FDX]; Christopher Preble, *Rethink U.S. Grand Strategy*, Stimson (Nov. 19, 2024), *at* https://www.stimson.org/2024/rethink-us-grand-strategy [https://perma.cc/KV3B-DNW7].

[66] Devanshe Pandey, *First "Daddy", Then "Police of the World": NATO's Rutte Flatters Trump Again*, News18 (July 15, 2025), *at* https://www.news18.com/world/first-daddy-then-police-of-the-world-natos-rutte-flatters-trump-again-ws-bl-9440599.html [https://perma.cc/4S5S-QE4H].

[67] *See* Yoram Hazony, The Virtue of Nationalism (2018).

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pluralism but its suppression. Modern-day censorship of unfavorable war reportage traces directly to the United States' earliest dalliance with colonialism;[68] it is no surprise that each of the six episodes in which the United States government "attempted to punish individuals for criticizing government officials or policies" all involved war or fear of war.[69] The quest for primacy provokes war, war provokes resistance, and resistance provokes repression.

The Foreign Relations Committee, analyzing the reasons for the demise of Congress's war power in its National Commitments report, recognized the impact of "global commotions" yet tiptoed around the disquieting possibility that the United States has assumed a role in the world that is irreconcilable with a constitutional order grounded on pluralistic decision making and buttressed by political and civil liberties. But the Committee warned against such a role. It said:

> [W]e conduct foreign policy for a purpose extrinsic to itself, the purpose of securing democratic values in our own country. These values are largely expressed in processes—in the way in which we pass laws, the way in which we administer justice, and the way in which government deals with individuals . . . . [W]hen the processes by which it is made—whose preservation is the very objective of foreign policy—are then sacrificed to it, . . . [s]uch a foreign policy is not only inefficient but positively destructive of the purposes it is meant to serve.[70]

The open question is whether the way in which we have been deciding to use armed force, and the reasons we have used it, have damaged processes of U.S. constitutionalism beyond repair, or whether the United States has the discipline to adopt a restrained role in the world compatible with a government of shared powers. It will be said that a policy of restraint would mark "the escalating retreat from its role of global policeman" and "foster instability and conflict."[71] But the United States has never been the global policeman. A policeman does not enforce rules for his own personal benefit; he enforces rules for the benefit others. The U.S. government typically sells foreign military intervention to the American public as advancing this nation's vital national security interest, not the interests of other nations let alone a vague, undifferentiated global interest.

Moreover, instability and conflict have more often been triggered in recent years not by U.S. restraint but by U.S. interventionism. Interventionism, and the efforts at large-scale social engineering that generally accompany it, incentivize repression not only at home, as noted above, but within target states where harsh measures are needed to control nationalistic backlash. It sparks destabilizing refugee flows, polarizing job loss, and embittering income inequality. To deal with such consequences, interventionism necessitates expanded international authority, leading to resentment at a loss of sovereignty and giving people "the sense that foreign forces are controlling their lives."[72] It is understandable why the United States' European allies would favor returning to a U.S. neo-imperialism aimed at imposing

[68] *See* STEPHEN KINZER, THE TRUE FLAG: THEODORE ROOSEVELT, MARK TWAIN, AND THE BIRTH OF AMERICAN EMPIRE 145–48 (2018).

[69] GEOFFREY R. STONE, PERILOUS TIMES: FREE SPEECH IN WARTIME FROM THE SEDITION ACT OF 1798 TO THE WAR ON TERRORISM 12–13 (2004).

[70] National Commitments Report, *supra* note 21, at 7–8.

[71] Editorial, *A World Without Rules*, FIN. TIMES, at 8 (Sept. 13, 2025).

[72] Jeff D. Colgan & Robert O. Keohane, *The Liberal Order Is Rigged: Fix It Now or Watch It Wither*, FOR. AFF., at 36 (May/June 2017).

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western liberal precepts worldwide; John Mearsheimer has written that a liberal international order can be sustained only if it is led by a liberal hegemon in a unipolar world.[73] But America's unipolar moment is over. Restoring that world, even if it were financially and militarily possible, would require traducing liberal values at home for the purpose of promoting those values abroad, with uncertain results. For Americans, a more sensible effort would be aimed at restoring pluralistic decision-making domestically in realms such as war powers and bolstering the protection of individual rights such as freedom of speech—unless, as the Committee said in its National Commitments report, "it is believed that a government of limited and divided powers is no longer feasible, or no longer desirable, insofar as foreign relations is concerned."[74] In that case, even if it could be established, it is open to doubt whether an international order that the United States might ordain would be led by a liberal hegemon. "[T]he price of empire," as Fulbright warned, "is America's soul and that price is too high."[75]

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OCEANS, ENVIRONMENT, AND SCIENCES

International Space Law Under the Trump Administration: Commerce and Security
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In an April 2025 statement commemorating the thirty-fifth anniversary of the Hubble Space Telescope, President Donald J. Trump declared that his administration was committed to "lead[ing] the way" in space discovery and "pursuing our manifest destiny into the farthest depths of the cosmos."[1] The remarks emphasized America's legacy of leadership, invoked the language of national supremacy, and highlighted proposed partnerships with the private sector to sustain U.S. dominance. They also reflect the broader orientation of the administration's first six months of space policy: extending America First principles into space security; maintaining engagement in international legal fora such as the United Nations Committee on the Peaceful Uses of Outer Space (COPUOS);[2] and decisively advancing commercialization. At the same time, the second Trump administration has largely preserved the core priorities and international commitments of prior administrations, building on initiatives launched under both the first Trump and Biden administrations. These early themes—military assertiveness,

[73] *See* John J. Mearsheimer, *Bound to Fail: The Rise and Fall of the Liberal International Order*, 43 INT'L SEC. 7 (2019).

[74] National Commitments Report, *supra* note 21, at 6.

[75] Senator J. William Fulbright, Address to the American Bar Association, Honolulu, Hawaii (Aug. 7, 1967), *reprinted in* HAYNES JOHNSON & BERNARD M. GWERTZMAN, FULBRIGHT THE DISSENTER 311 (1968).

[1] White House Press Release, Presidential Message on the 35th Anniversary of the Hubble Space Telescope, (Apr. 24, 2025), *at* https://www.whitehouse.gov/briefings-statements/2025/04/presidential-message-on-the-35th-anniversary-of-the-hubble-space-telescope [https://perma.cc/79WY-2LPV].

[2] This continuity comes despite initial indications that the Trump administration could renounce its international legal commitments and pull out of international fora. *See* Withdrawing the United States from and Ending Funding to Certain United Nations Organizations and Reviewing United States Support to All International Organizations, Exec. Order 14199, 90 Fed. Reg. 9275 (Feb. 4, 2025).

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