

STRATEGIKA

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Conflicts Of The Past As Lessons For The Present

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memorating the first anniversary
of the declaration
by the United States

DECLARATIONS OF WAR AND SURRENDER

IN THIS ISSUE

JOHN YOO • RUSSELL A. BERMAN • RALPH PETERS

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ABOUT THE POSTERS IN THIS ISSUE

Documenting the wartime viewpoints and diverse political sentiments of the twentieth century, the Hoover Institution Library & Archives Poster Collection has more than one hundred thousand posters from around the world and continues to grow. Thirty-three thousand are available online. Posters from the United States, the United Kingdom, Germany, Russia/Soviet Union, and France predominate, though posters from more than eighty countries are included.

Presidential Power in War and Peace

By John Yoo

The November 2024 presidential election has set the United States on a new course for national security and foreign policy. Vice President Kamala Harris, like President Joseph Biden before her, said she would have left untouched the United States' role as the world's policeman. Former President Donald Trump, more conscious of the high cost in lives and treasure of carrying this burden, seeks to align means and ends, and reduce America's global commitments.

But Trump's victory does not necessarily portend more, rather than less, American involvement in foreign wars. Under the Biden administration, the United States poured billions of dollars and military equipment into supporting the defense of Ukraine against Russian invasion. While it meddled in Israel's tactics, the Biden administration still supported the Netanyahu government's war against Hamas in Gaza, Hezbollah in Lebanon, and their Iranian supporters. President Trump experienced relative peace during his four years in office, but he still used force against Syria for using chemical weapons, Russian mercenaries in the Middle East, and the Iranian Revolutionary Guard Corps by killing its leader, General Soleimani. While Trump has called for an end to the war in Ukraine, he has also supported an acceleration of the war between Israel and its enemies in Gaza, Lebanon, and Iran.

Fearful of the prospect of more "endless wars," members of the new Congress may attempt to rein in presidential warmaking. A bipartisan coalition, for example, has attempted to repeal the 2001 and 2002 Authorizations to Use Military Force, which supported President George W. Bush's response to the 9/11 attacks and his invasion of Iraq (both of which I helped draft—more on that below). "Three Presidents, both Republicans and Democrats, have used this permission to drag out conflicts that will get us into new ones," Rep. Nancy Mace (R.-S.C.) said during a failed 2021 try. These critics of foreign wars argue that the president cannot launch offensive military operations without the approval of Congress, thanks to the Constitution's vesting in the legislative branch "the Power . . . to Declare War."

The view that Congress must authorize foreign wars may be widespread, but it is dangerously mistaken. Congressional support, of course, can signal political unity in war to both friends and enemies. But it is neither constitutionally necessary nor functionally wise—if Congress wishes to control warmaking, it has the power of purse and an ample set of tools available. Neither presidents nor Congresses have acted under the belief that the Constitution requires a declaration of war before the U.S. can conduct military hostilities abroad. The United States has used force abroad more than 100 times, but it has declared war in only five cases: the War of 1812, the Mexican-American and Spanish-American Wars, and World Wars I and II.

Presidents alone have sent the U.S. Armed Forces into combat from the nation's earliest days. They ordered troops to battle Indians in the West, Barbary pirates (who were really princes within the Ottoman Empire) in the Mediterranean, and revolutionaries in Russia. Without any declaration of war, Presidents Truman and Eisenhower sent troops into conflict with communists in Korea, while Presidents Kennedy, Johnson, and Nixon oversaw an undeclared war in Vietnam. American troops have fought abroad to engineer regime changes in

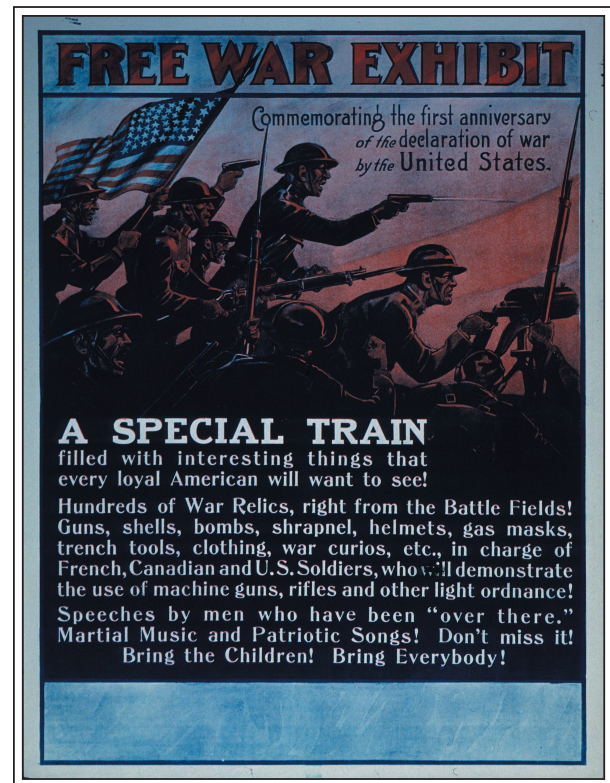


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South and Central America and to prevent human rights disasters in Somalia and the Balkans. Other conflicts, such as the 1991 Persian Gulf War, the 2001 invasion of Afghanistan, and the 2003 Iraq War, received legislative “authorization” but not declarations of war. The practice of presidential initiative, followed by congressional acquiescence, has spanned both Democratic and Republican administrations and reaches back from President Biden to Presidents Abraham Lincoln, Thomas Jefferson, and George Washington.

Common sense does not support replacing the way our Constitution has worked in wartime with a radically different system that mimics the peacetime balance of powers between president and Congress. If the issue were energy use or entitlement reform, Congress would enact policy first and the president would faithfully implement it second. But the Constitution reverses the polarity of our system in foreign affairs and war. Our Framers decided that the president would take the initiative in matters of national security while Congress would check the executive with its power of the purse.

Critics of the presidency, however, believe that the Founding’s anti-monarchical spirit dictates reading the Constitution to limit executive war powers. If the Framers rebelled against King George III’s repressions, surely they would not give the president much authority. It is true that the revolutionaries rejected the royal prerogative, and their new state governments experimented with weak governors and powerful assemblies. Legislatures chose their governors, who were often limited to one- or two-year terms and forbidden from re-election. Americans also turned a skeptical eye toward a central government made powerful by a permanent military establishment funded through oppressive taxation. The Articles of Confederation gave Congress the power to make war and peace, but it forced the national government to beg the states for men, material, and money.

This Revolutionary history can be misleading. It may cause some to ignore the fundamental difference in the Constitution’s treatment of domestic and foreign affairs. When the Framers wrote the Constitution in 1787, they rejected these failed state experiments in constitutional government and revived an independent, unified chief executive with its own powers in national security and foreign affairs. Their most important choice was to make the president the commander-in-chief of the armed forces and to vest in his office all of the executive power of the federal government. As Alexander Hamilton wrote in *Federalist* No. 74: “The direction of war implies the direction of the common strength, and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority.” Presidents should conduct war, he wrote, because they can act with “decision, activity, secrecy, and dispatch.” In perhaps his most famous words, Hamilton wrote (*Federalist* No. 70): “Energy in the executive is a leading character in the definition of good government. . . . It is essential to the protection of the community against foreign attacks.”

The writings of Machiavelli, Hobbes, Locke, and Blackstone may have influenced them, but, more importantly, the Framers had learned the lessons of history. They understood that foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Foreign affairs can demand swift, decisive action, sometimes under pressured or emergency circumstances, that is best carried out by a branch of government that does not suffer from multiple vetoes or disagreements. Legislatures are too large and unwieldy to take the swift and decisive actions required to defend the nation or conduct war. Our Framers replaced the Articles of Confederation, which had failed in part because it had no unified executive, with the Constitution’s single president for precisely this reason. Even when it has access to the same intelligence as the executive branch, Congress’s loose, decentralized structure would paralyze American policy while foreign threats grow.

Congress has no political incentive to mount and see through its own wartime policy. Members of Congress, who are interested in keeping their seats at the next election, do not want to take stands on controversial issues where the future is uncertain. They will avoid like the plague any vote that will anger large segments of the electorate. They prefer that the president take the political risks and be held accountable for failure.

As a former Senate aide and later a Justice Department official in 2001–2003, I saw this firsthand. I helped draft the 2001 Authorization to Use Military Force (AUMF) in the wake of the 9/11 attacks that empowered

the President “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.” The 2001 AUMF did not limit its approval to a place or a time, such as to a specific region or for a set number of years, but offered the President open-ended authority to pursue those responsible for the 9/11 attacks all over the world. As a Justice Department official, I maintained that the President needed no authority from Congress to defend the nation. But President George W. Bush welcomed Congress’s political support and so we at DOJ and the White House drafted the AUMF—not Congress. When we sat down to negotiate over the draft, congressional leaders made virtually no changes to the text—they wanted to be able to claim later (as they did) that they had no responsibility for an armed conflict to come that might become unpopular.

I witnessed a similar dynamic at work with the Iraq War. As the United States moved toward war against Iraq in the fall of 2002, President Bush decided again to seek the support of Congress. At the Justice Department, we believed that the President did not lack constitutional authority to attack Iraq, but we set to work drafting another AUMF. I remember briefing a senior senator, who was complaining that the White House was making him take a vote on Iraq that he didn’t want to take, and then asked the meaning of specific phrases. As a former Judiciary Committee aide myself, I had to remind him that the Senate excelled at not voting on anything it didn’t want to, and further that it was up to Congress to decide on the meaning of the AUMF’s text. I suggested that the senator offer amendments with more specific definitions, to which he responded with a face that must have approached horror. The last thing he wanted, he said, was his fingerprints anywhere on the text of the AUMF—it would make him responsible for the course of the Iraq War later. Even though the House passed the AUMF 296-133, and the Senate by 77-23, the support of members of Congress became scarce when the Iraq War ran into hardships in Bush’s second term.

Congress’s track record when it has opposed presidential leadership has not been a happy one. Perhaps the most telling example was the Senate’s rejection of the Treaty of Versailles at the end of World War I. Congress’s isolationist urge kept the United States out of Europe at a time when democracies fell and fascism grew in their place. Even as Europe and Asia plunged into war, Congress passed Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and prepare the nation for war against the Axis. While pro-Congress critics worry about a president’s foreign adventurism, the more dire threat to our national security may come from passivity and inaction, rather than from activity and aggressiveness.

Many point to the Iraq and Vietnam Wars as examples of the faults of the “imperial presidency.” Neither war, however, could have continued without the consistent support of Congress. Congress authorized hostilities in Southeast Asia in the Tonkin Gulf Resolution, and it enacted an Authorization to Use Military Force in 2002 for Iraq. But even more significantly, Congress opened the purse to raise and fund the large military forces necessary to conduct the wars. And Vietnam ushered in a period of congressional dominance that led to the passage of the ineffectual War Powers Resolution and accepted a series of American setbacks in the Cold War. Congress passed the Resolution in 1973 over President Nixon’s veto, and no president, Republican or Democrat, has accepted the constitutionality of its 60-day limit on the use of troops abroad. No federal court has ever upheld the resolution. Even Congress has never enforced it.

Despite the record of practice and the Constitution’s institutional design, critics nevertheless argue for a radical remaking of the American way of war. They typically base their claim on Article I, Section 8, of the Constitution, which gives Congress the power to “declare War.” But these observers read the eighteenth-century constitutional text through a modern lens by interpreting “declare War” to mean “start war.” When the Constitution was written, however, a declaration of war served diplomatic notice about a change in legal relations between nations. It had little to do with the domestic constitutional process for launching hostilities. In the century before the Constitution, for example, Great Britain—where the Framers borrowed the phrase “power to declare War”—fought numerous major conflicts but declared war only once beforehand. By the time of the Constitution’s ratification, Hamilton could observe in *Federalist* No. 25 that “the ceremony of a formal denunciation of war has of late fallen into disuse.”

Our Constitution sets out specific procedures for passing laws, appointing officers, and making treaties. There are none for waging war, because the Framers expected the president and Congress to struggle over war through politics, not law. Other parts of the Constitution support this reading. Article I, Section 10, for example, mandates that the states shall not “engage” in war “without the consent of Congress” unless “actually invaded, or in such imminent Danger as will not admit of delay.” This provision creates exactly the limits desired by anti-war critics, complete with an exception for self-defense. Notice that the Constitution here uses “engage” in war, not “declare” war, to refer to launching hostilities. If the Framers had wanted to require congressional permission before the president could wage war, they simply could have repeated this provision and applied it to the executive.

Presidents do not have complete freedom to take the nation to war. Congress has ample powers to control presidential policy. Under Article I, Section 8, of the Constitution, only Congress can raise the military, which gives it the power to block, delay, or modify war plans. Before 1945, for example, the United States had such a small peacetime military that presidents who started a war would have to go hat in hand to Congress to build an army and navy to fight it. Since World War II, it has been Congress that has authorized and funded our large standing military, one primarily designed to conduct offensive, not defensive, operations (as we learned all too tragically on 9/11) and to swiftly project power worldwide. If Congress wanted to discourage presidential initiative in war, it could build a smaller, less offensive-minded military.

Congress’s check on the presidency lies not just in the long-term raising of the military. It can also block any immediate armed conflict through the power of the purse. If Congress feels it has been misled in authorizing war, or it disagrees with the president’s decisions, all it need do is cut off funds, either all at once or gradually. It can reduce the size of the military, shrink or eliminate units, or freeze supplies. Using the power of the purse does not even require affirmative congressional action. Congress can just sit on its hands and refuse to pass a law funding the latest presidential adventure, and the war will end quickly. Congress need not even risk a presidential veto; it can simply decline to enact the funds needed to keep a war going. Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation.

The Framers expected Congress’s power of the purse to serve as the primary check on presidential war. During the 1788 Virginia ratifying convention, Patrick Henry attacked the Constitution for failing to limit executive militarism. James Madison responded: “The sword is in the hands of the British king; the purse is in the hands of the Parliament. It is so in America, as far as any analogy can exist.” Congress ended America’s involvement in Vietnam by cutting off all funds for the war. It did the same to prevent President James Polk from pursuing even grander aims in the Mexican-American War of 1846–1848.

Our Constitution has succeeded because it favors swift presidential action in war, checked by Congress’s funding power. If a president continues to wage war without congressional authorization, as in Libya, Kosovo, or Korea, it is only because Congress has chosen not to exercise its easy check. If Congress wants to prevent future presidents from waging wars abroad, it can reorient the U.S. military away from its expeditionary focus. Congress need not fund the Navy’s carrier battle groups, which serve as portable air bases to station off the shore of hostile enemies. It need not provide the Army with a worldwide network of large bases, expensive overseas deployments, and offensive weapons systems. But Congress instead funds an expeditionary military designed to fight offensive wars abroad, rather than one aimed at homeland and hemispheric defense. Rather than presidential adventurism, the story of the last 80 years has been one of cooperation between the branches of government in pursuing a hegemonic role in defending the West. We should not confuse Congress’s desire to escape political responsibility for military setbacks as a defect in the Constitution.

A radical change in the system for making war might appease critics of presidential power. But it could also seriously threaten American national security. In order to forestall another 9/11 attack, or to take advantage of a window of opportunity to strike terrorists or rogue nations, the executive branch needs flexibility. It is not hard to think of situations where congressional consent cannot be obtained in time to act. Time for congressional deliberation, which can lead to passivity and inaction, will come at the price of speed and secrecy.

The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can seize the initiative while Congress can check them with its power of the purse. Instead of imposing a legalistic process, the Framers left war to politics. As we confront the new challenges posed not just by terrorism, rogue nations, and WMD proliferation, but by the return of great power rivalry, the president must take the initiative to protect the nation's security, ideally with the support of Congress, but alone if necessary.



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Just Don't Call It a War

By Ralph Peters

Formal declarations of war and choreographed surrender ceremonies have been rarities in humanity's crimson history, the first an odd legalistic practice spun off from the age-old need to justify making war, and the second high-risk theater prized by modern nation-states.

The declaration of war's primary target was not and is not the enemy (certainly not in this age of compressed-time, global-strike surprises), but the agent-state's population, from which sacrifice would be required. The culmination of the artfully conceived and perfectly executed declaration of war in the Western tradition was the post-Pearl Harbor response of the United States government: obviously justified, powerfully unifying, and legally flawless. But the subsequent, brilliantly staged surrender ceremony in Tokyo Bay marked the end not only of a globe-spanning war, but of an age of warfare between states that at least feigned compliance with internationally recognized norms and taboos. Thereafter, the world changed, the nature and structure of our enemies changed, and our will to win at any cost collapsed into tortured semantics and self-doubt. The age of extreme violence by non-state actors had begun.

Ferocious bloodletting plagued the post-war, post-colonial, and ideological eras, but virtually all functional states (not least, the USA) avoided the term "war" for their engagements. We saw police actions, interventions, retaliatory strikes, even large-scale conventional campaigns with significant casualties and, not least, "fraternal assistance" from Soviet-bloc forces for unpopular "socialist" governments. Still, we insisted that, somehow, none of these activities quite amounted to war. Politicians fled that evocative label, with its alarmed tone and threat of domestic sacrifice. We could, indeed, have both guns and butter. And we were too nice to declare war on anybody. Weren't we?

And on what or on whom would we have declared war? It's hard, if not impossible, to wage war effectively on ideas, which ultimately must fail on their own. Nor have civil wars—so common and cruel in our time—ever involved formal declarations of war. Our lagging conception of war is still of an activity between established governments. If there is no opposing government to which we can deliver our diplomatic notes, we're on the back foot from the start. In a burst of frustration and ire, we did bluster unofficially about a "War on Terror," a risible label that merely betrayed our confusion. It was as if, in the wake of Pearl Harbor, we had declared war not on Japan but on surprises.

In a few generations we have transitioned from the historically grounded belief that war is horrible but sometimes necessary, to the conviction that war is "never the answer"—an outright denial of historical fact and a willfully naïve view of human nature. War is not only not to be waged, but not even to be discussed, a bowel disorder at the dinner table. The only carve-outs are applications of the term "war" for domestic campaigns to rid us of social ills. Yet, warfare of the hoary old blood-and-agony sort is one of only two collective endeavors at which humans excel (the other is building and operating cities).

Our determination to behave admirably means we consistently lose to enemies we refuse to understand. We dread casualties in any cause and imagine we somehow can defeat foes who will slaughter their own kin and kind in vast numbers to win.

Surveying history, we might assume that the war-initiating pronouncements of classical-era or medieval despots amounted to declarations of war. But they did not. The point of those ornate, legalistic texts was not to notify, but to justify. Particularly in high-medieval Europe, the obsession with legality, with laws secular and religious, demanded that those who chose war to resolve intractable problems or just because they were in a sour mood justify themselves by enumerating the past wrongs done unto them by the enemy, as well as their own right to rule (Shakespeare nailed it in *Henry V* and his other history plays). Warning enemies of impending hostilities was rarely, if ever, the intention. The point was to justify one's actions before emperors, popes, and peers. St. Augustine kept an eye on you, and you had best have done your legal homework. Venetian efforts to absolve La Serenissima of any guilt over the treacherous conquest and literal rape of Constantinople by the armed mob of the Fourth Crusade in 1204 is an excellent example of seized opportunity reframed as a just act (the much-put-upon Byzantine Empire never recovered, but the loot remains in Venice to this day).

The rules-based international order that gave rise to formal declarations of war appeared in the wake of the phenomenally destructive Thirty Years' War. Those rules were by no means always honored, but they offered a framework better than anarchy. The last century saw those rules wither . . . until Vladimir Putin swept away the last feeble pretense at conformity.

We are back in the fourteenth century. Without much Latin, but with plenty of nuclear weapons.

As for formal surrenders, the dead don't initial treaties. Through most of the human pageant, the conquered—at least, their ruling classes—were massacred, either immediately upon defeat or after their misery had been displayed to the victorious population back home. The most fortunate were enslaved, imprisoned, or held for ransom. And surrender ceremonies have never been common in asymmetrical warfare in any epoch. Prior to our self-doubting postmodern era, no rebels, guerillas, or freebooters were accorded any rights at all.

And any formal surrender must be finely judged and managed: if we got it amazingly right in Tokyo Bay in 1945, it was because far-thinking men put transformation above punishment. By contrast (and more representative), the vengeful armistice terms imposed on Germany in that railcar outside of Compiègne in 1918 guaranteed that lasting peace would not have a chance. In the wake of the wisely managed Japanese surrender, the defeated took up baseball. The punitive terms imposed on the Germans (primarily by the French) excited the stab-in-the-back theory and enabled the rise of demagogues.

POLL: Why do nations rarely declare war or surrender?

- ☐ In the nuclear age, the threat of annihilation restrains overt and unlimited wars.
- ☐ Globalism has suppressed religious, ethnic, racial, and ideological differences and made wars less existential.
- ☐ War is now waged mostly outside the nation-state among terrorists, insurgents, and non-state actors.
- ☐ The United Nations, the European Union, and U.S. global presence discourage wars of annihilation.
- ☐ War is no different than in the past; declarations of war and surrender are simply needless anachronisms.
- ☐ Declarations of war and surrender still occur—although mostly in Africa and the Middle East.

Nor should we forget that the post-Westphalian order was intended as an insurance policy that focused damage and guaranteed the continued possession of thrones, if not of all territory. It was not the creation of a species that had learned all of its lessons.

Nowadays, no democratic government has the stomach to formally declare war, let alone to win wars. And the only displays of surrender are our inevitable retreats from “non-wars” we have forgotten how to fight.



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What Happened to Declarations of War and Treaties of Peace?

By Russell A. Berman

Violent conflict has been a constant in human history and is likely to persist. While conflicts often occur between organized political entities—what we call states—other organizing principles, such as tribes, dynasties, or ethnic groups, have also shaped many historical struggles. The Norman invasion of England in 1066 was at its core a personal campaign for William the Conqueror to succeed Edward the Confessor who had died without a natural successor; there was no declaration of war between states in the modern sense of warfare. The Rwandan Civil War (1990–1994), which led to the terrible genocide, was largely an ethnic conflict and similarly occurred without a formal declaration. Nonetheless, there have been statements from as long ago as the ancient world approximating declarations of war, such as the Stele of Vultures from Sumeria, dating to around 2600 B.C.E., just as there is a long history of formal treaties of peace since the Treaty of Kadesh of 1269 B.C.E. between the Egyptian Pharaoh Ramses II and the Hittite King Hattusili III. Declarations of war and treaties of peace can be thought of as diplomatic instruments, distinct genres of international relations, with long histories but not always employed.

Declarations of war and treaties of peace are by no means exclusively modern phenomena; they are as old as war and peace. However, the widespread expectation that states frame military action in formalized political statements that include a justification for the use of organized violence and an explanation of the motivating grievances is a result of the gradual formalization of statehood and international relations in the course of modernity. The Peace of Westphalia of 1648, which codified the modern terms of sovereignty, was a turning point in this process that involved at its core the modernization of political authority, i.e., the move away from dynastic rule or other forms of premodern domination toward legalized legitimacy, the rule of law. States must henceforth explain the grounds for their actions, especially those actions that impinge on other sovereignties.

While not explicitly a declaration of war, the American Declaration of Independence exemplifies this imperative of providing justifications for steps that will lead to armed conflict. This obligation underpins the famous opening sentence of the Declaration: “When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.” The final clause is vital. Prevailing political culture evidently “requires” that the “causes” be enumerated in a declaration in order to explain the justification of the pending violence: violence without justification is disallowed. The Continental Congress, which issued the Declaration, was of course not the body of an already existing state but rather only a representation of the thirteen separate colonies acting in concert to declare their rejection of rule by England. Since there was not yet a unified American state, the document cannot be viewed as a full-fledged declaration of war in the modern sense, but rather an announcement of hostilities by a still nascent “America” against England. Yet the text did provide a justification for acts of

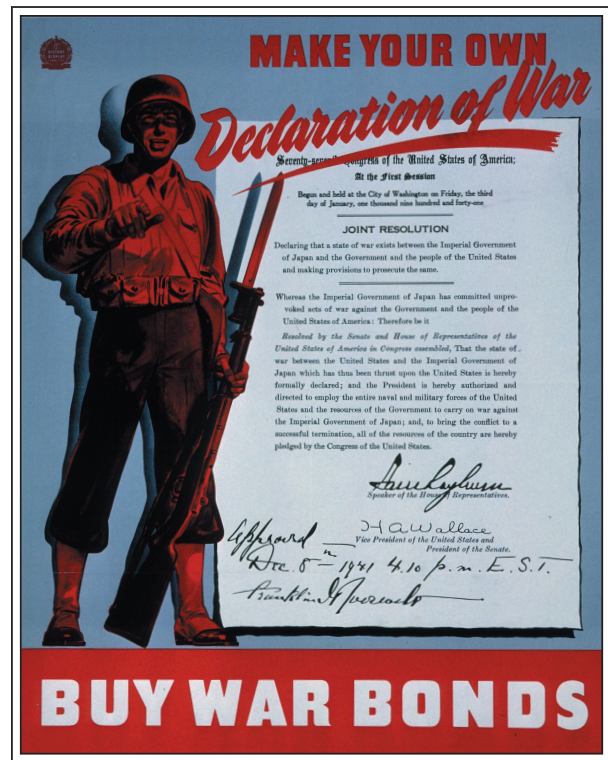


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rebellion that would lead to war, and it therefore approximates a declaration of war in its act of explaining the necessity of violence as the appropriate means to correct a long list of accumulated grievances.

Modern expectations concerning diplomacy were developed further in the Congress of Vienna in 1815, which established a system of post-Napoleonic states as well as the network of international emissaries, embassies, and frameworks for negotiation. The 1907 Hague Convention firmly established the expectation that armed conflict between states must be preceded by clear statements of intent. Article III stipulates “that hostilities between [the contracting parties] must not commence without a previous and explicit warning, in the form either of a declaration of war, giving reasons, or of an ultimatum with a conditional declaration of war.” This requirement of a statement effectively outlawed surprise attacks; there should be no acts of belligerence without prior warning. The word must precede the deed. However, outlawing certain practices does not necessarily prevent them.

When Japan attacked Pearl Harbor on December 7, 1941, it had not issued a prior declaration of war (although there is some indication that it had intended to do so). This circumstance amplified the anger in the United States. The lack of a prior declaration made the attack appear not only brutal but also treacherous and without warning. President Roosevelt responded on December 8 with his “Date which will live in infamy” speech, which concludes with a request to Congress: “I ask that the Congress declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, 1941, a state of war has existed between the United States and the Japanese Empire.” It is worth noting that Roosevelt did not ask that Congress issue a declaration of war in order to initiate conflict: rather, he asks that Congress “declare” in the sense of recognizing the reality that war already existed in the wake of the Japanese attack. What really matters then are the deeds, not the words. The secondary status of words—declarations—when measured against the decisiveness of the deeds of war is as old as Pericles’ Funeral Oration as reported by Thucydides, but even more familiar from Abraham Lincoln’s phrasing in the Gettysburg Address: “The world will little note, nor long remember what we say here, but it can never forget what they did here.” The actions of the warriors decide the outcome, not the texts of the declarations. As important as the demand of the Hague Convention may be in trying to deter surprise attacks, in the end it is force that decides the victor.

Congress promptly acceded to Roosevelt’s request, legally establishing that the U.S. was indeed at war with Japan, even though the war had already been in existence at least since the attack the day before. The same gap between deed and action marks the end of the war as well. The formal surrender took place when the Japanese foreign minister Mamoru Shigemitsu and General Yoshijiro Umezumi signed surrender documents on the USS *Missouri* in Tokyo Bay, marking the end of the war on September 2, 1945, which became “V-J Day.” In fact, the tides of war had turned against Japan as early as the Battle of Midway, June 4–7, 1942. Atomic bombs were dropped on the Japanese cities of Hiroshima on August 6, 1945, and Nagasaki on August 9, soon followed by Emperor Hirohito’s radio announcement of surrender on August 15. American occupation troops began to land in Japan on August 28, leading to the formalization of the surrender in the September 2 signing. The definitive peace treaty was the Treaty of San Francisco, signed on September 8, 1951, to come into effect on April 28, 1952. The series of distinct events and dates demonstrates how the war came to an end with Japan’s defeat only through a series of steps, and the formal peace treaty was merely the culmination and conclusion of a long process.

What we learn from this history is that wars have begun and ended in different ways, but the expectation of a formal declaration of war is only a twentieth-century phenomenon. Yet even in the wake of the Hague Convention, wars are not always declared in advance of attacks. Moreover, the initiation of hostilities like their conclusions are in practice separate from opening announcements or concluding documents. This distance between deeds and words, between fighting and declarations, holds even in the case of the arguably classic modern war, World War II, with the highly dramatic moments of Roosevelt’s speech to Congress and the signing of surrender on the *Missouri*. That discrepancy has only grown greater in the subsequent decades. What happens on the ground is more important than what takes place on paper.

Since World War II, there has been no lack of armed conflicts, but formalized declarations of war—in particular declarations issued prior to the onset of hostilities—are rare indeed, just as are definitive peace treaties

that bring conflicts to complete conclusions. When member states of the Arab League invaded Israel in May of 1948, the League did provide a formal statement, albeit addressed to the Secretary General of the U.N. and not to its adversary, Israel. The U.S. did not issue a declaration initiating the Korean War, since the conflict formally belonged to the United Nations. There was no declaration for the Vietnam War, although Congress did adopt the Gulf of Tonkin Resolution in 1964. Argentina did not declare war when it invaded the Falkland Islands in 1982, nor has Russia declared war in Ukraine, designating its aggression instead as a “special military operation,” which is apparently something different from a real “war.” The U.S. invasion of Iraq (2003) was not preceded by a declaration of war but only by an “Authorization for Use of Military Force” because of the claim of weapons of mass destruction. Turkey’s operations in Syria since 2016 were not preceded by a declaration of war, as its target was primarily Kurdish forces, rather than the Syrian state. India and Pakistan have declared war at stages in their extended belligerence, but not for example in the 2019 Balakot airstrike, presumably in order to avoid formal “war” between nuclear states.

The history of peace treaties is similarly mixed. Since World War II, there have been several formal peace treaties, such as between Israel and Egypt (1979), Israel and Jordan (1994), and Eritrea and Ethiopia (2018), all between states. Agreements that have been less than binding than treaties have taken the form of armistices, cease-fires, or other arrangements, especially with the involvement of non-state actors. The 1973 Paris Peace Accords ended the American war in Vietnam, although fighting continued until the fall of Saigon in 1975. The Good Friday Agreement (1998) ended the “troubles” in Northern Ireland. The conflict between the government of Colombia and FARC (Revolutionary Armed Forces of Colombia) was ended with a peace agreement—but not a treaty—in 2016.

In general, it is fair to say that traditional diplomacy of declarations of war and treaties of peace continues to hold some sway, even if they are not omnipresent in conflict resolution processes. Hostilities currently begin and end in much less formalized ways, indeed so much so that the expectation of formal statements appears anachronistic if not fully obsolete. This shift in the practice of international affairs reflects some underlying changes in the nature of the international system and warfare as well as domestic political cultures. Three key points in this transformation have particular importance.

1. The presence of nuclear weapons and the recognition of their potential for enormous destruction tends to make direct conflict between nuclear adversaries unlikely. As a result, forms of asymmetric conflict ensue. In Vietnam, the U.S. did not do battle with Russia or China directly, but rather with Vietnamese forces that could be seen (to some extent at least) as proxies for the nuclear powers. In the Ukraine War, Russia has not faced Western powers directly (at least not yet), but instead an opponent that Moscow views (at times) as a Western proxy. Given the incommensurability between the respective sides, direct diplomacy—of which declarations of war or peace would be components—becomes less likely. Furthermore, asymmetric power arrangements tend not to lead to definitive victories or defeats, meaning that the grounds for conflict may continue even after a notional cessation of hostilities framed loosely as a cease-fire, rather than definitively as a treaty.
2. Beginning with the Hague Conventions and in the wake of the world wars, a thick network of international law has developed that increasingly subjects any military actions to scrutiny and potential litigation in national and in international courts. This process of legalization exposes any belligerent party to a supplementary front that has come to be known as “lawfare,” the strategy to tie up the party engaged in violence or its political and military leaders in extensive court cases. In this legalized context, eschewing a formal declaration of war can at least delay the initiation of lawfare, to the extent that the claim can be made that the conflict is not “war,” as with Russia’s “special military operation.” This extension of the laws of the war, as part of the broader legalization of international affairs in the “rules-based order,” has gone hand in hand with a broad cultural stigmatization of war. The potential heroization of military accomplishment that was still part of the culture of World War II appears to belong to the past; hence the inclination to avoid declaring “war,” pushing armed conflict away from the public eye and into the murkiness of “special operations.” In a related vein, avoiding a formal declaration leaves the belligerent government with greater latitude, since it is not restricted by the terms of any such declaration and associated international law.

3. Article I, Section 8, of the U.S. Constitution ascribes to Congress the power to declare war. Article II, Section 2, designates the president as commander-in-chief, and gives him the power to make treaties and appoint ambassadors. While the Senate has the obligation to “advise and consent” on appointments and treaties, and while both houses together control the budget, the normal course of foreign policy is in the hands of the executive branch. As Congress has become less amenable to compromise, a de facto power shift has taken place, away from the legislature and to the president. While the president cannot declare war explicitly, he nonetheless retains the capacity to authorize engagement in armed conflict at lower levels. The fact that formal declarations of war are unlikely results in part from congressional dysfunctionality, leaving more power, in many fields including military matters, with the executive. Meanwhile, within the executive, the natural home of diplomacy, the Department of State, suffers from deep-seated structural problems that inhibit the normal conduct of foreign policy. Key functions, including the utilization of military force in manners short of formal war, become the purviews of the National Security Council and the Pentagon. The marginalization of the State Department is cut from the same cultural cloth as the reduced role of Congress, as power shifts toward more instrumental sectors of government.

As we saw above, the brute facts of war and peace are not the same as declarations and treaties. There is an irreducible difference between bullets and documents, the worlds of soldiers and the words of lawyerly diplomats. To be sure, in the harsh reality of conflict both dimensions are vital, the use of force and the will to negotiate. However, the existential priority of force, the realism of violence, can at best be limited but never eliminated by diplomacy. In the world as it has developed in recent years, we are seeing further reduction in the capacity for diplomacy as well as the diminished significance of international organizations. This is the fraying of the “rules-based order,” in Ukraine and the Middle East, in the Sahel and in Venezuela, and step by step in the western Pacific. If we lose the will to enforce the law, internationally just as much domestically, the rule of law will not endure. “Declarations of war” may go out of fashion; war will not.



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Discussion Questions

1. Why has the U.S. declared war only 11 times, but fought abroad far more frequently?
2. Are surprise attacks still seen as violations of the classical laws of war?
3. What are the advantages to a state in formally declaring war?
4. Does agreeing to a formal surrender mitigate the victor's treatment of the defeated?
5. Do formal declarations of war and surrender shorten wars and lessen casualties?

IN THE NEXT ISSUE
Military Recruitment



Military History in Contemporary Conflict

As the very name of Hoover Institution attests, military history lies at the very core of our dedication to the study of “War, Revolution, and Peace.” Indeed, the precise mission statement of the Hoover Institution includes the following promise: “The overall mission of this Institution is, from its records, to recall the voice of experience against the making of war, and by the study of these records and their publication, to recall man’s endeavors to make and preserve peace, and to sustain for America the safeguards of the American way of life.” From its origins as a library and archive, the Hoover Institution has evolved into one of the foremost research centers in the world for policy formation and pragmatic analysis. It is with this tradition in mind, that the “Working Group on the Role of Military History in Contemporary Conflict” has set its agenda—reaffirming the Hoover Institution’s dedication to historical research in light of contemporary challenges, and in particular, reinvigorating the national study of military history as an asset to foster and enhance our national security. By bringing together a diverse group of distinguished military historians, security analysts, and military veterans and practitioners, the working group seeks to examine the conflicts of the past as critical lessons for the present.

Working Group on the Role of Military History in Contemporary Conflict

The Working Group on the Role of Military History in Contemporary Conflict examines how knowledge of past military operations can influence contemporary public policy decisions concerning current conflicts. The careful study of military history offers a way of analyzing modern war and peace that is often underappreciated in this age of technological determinism. Yet the result leads to a more in-depth and dispassionate understanding of contemporary wars, one that explains how particular military successes and failures of the past can be often germane, sometimes misunderstood, or occasionally irrelevant in the context of the present.

Strategika

Strategika is a journal that analyzes ongoing issues of national security in light of conflicts of the past—the efforts of the Military History Working Group of historians, analysts, and military personnel focusing on military history and contemporary conflict. Our board of scholars shares no ideological consensus other than a general acknowledgment that human nature is largely unchanging. Consequently, the study of past wars can offer us tragic guidance about present conflicts—a preferable approach to the more popular therapeutic assumption that contemporary efforts to ensure the perfectibility of mankind eventually will lead to eternal peace. New technologies, methodologies, and protocols come and go; the larger tactical and strategic assumptions that guide them remain mostly the same—a fact discernable only through the study of history.



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