POWER TO THE PRES: KEEP PRESIDENTIAL WAR POWERS

By Vance Trefethen and Chris Jeub

***Resolved: On balance, the current Authorization for Use of Military Force gives too much power to the president.***

CON will argue that the President’s hands should not be tied. Presidents throughout history have engaged in wars without Congress being called every time — in over 100 incidents, in fact — so what’s the big deal? Congress is normally too paralyzed politically to deal with issues of war. They really just want the President to handle it. If it succeeds, they will claim success since they funded it. If it fails, they will blame the President for getting us into a war they didn’t authorize. This is a body that cannot be trusted to properly manage a war, and they will mess it up if we give them the chance. In addition, setting dates in advance for troop withdrawals sends signals to our enemies that they can run out the clock and beat us on the battlefield if they know a vote is coming up.

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POWER TO THE PRES: KEEP PRESIDENTIAL WAR POWERS

The PRO advocates for a radical change in how America conducts its war authority. CON shows how this is a foolish and risky change that must not be allowed.

Now is not the time to change war powers - the political process we have now is fine

Prof. John Yoo 2012. ( professor at the Univ of Calif.-Berkeley, School of Law; worked in the Department of Justice's Office of Legal Counsel in the G.W. Bush Administration) War Powers Belong to the President 1 Feb 2012, ABA JOURNAL (journal of the American Bar Association) <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>

The Constitution creates a presidency that can respond forcefully to prevent serious threats to our national security. Presidents can take the initiative and Congress can use its funding power to check them. Instead of demanding a legalistic process to begin war, the framers left war to politics. As we confront the new challenges of terrorism, rogue nations and WMD proliferation, now is not the time to introduce sweeping, untested changes in the way we make war.

HARMS

NO PROBLEM WITH PRESIDENTIAL WAR POWERS

Historical claims of Presidential excess don’t hold up: Military interventions have either been authorized by Congress or else they were not situations requiring a declaration of war

Prof. Robert F. Turner 2012. (U. of Virginia Law school; taught International Law at the U.S. Naval War College; veteran of two Army tours in Vietnam; was national security adviser to Senator Robert P. Griffin, a member of the Senate Foreign Relations Committee; served in the Pentagon as Special Assistant to the Under Secretary of Defense for Policy) JOURNAL OF NATIONAL SECURITY LAW & POLICY “Covert War and the Constitution: A Response” (Note: AUMF = a congressional vote of Authorization for Use of Military Force) <http://www.jnslp.com/wp-content/uploads/2012/01/Covert-War-and-the-Constitution-a-Response.pdf>

Vietnam, Operation Desert Storm, Operation Iraqi Freedom, and the post-9/11 struggle against al Qaeda and its allies were formally authorized by AUMFs (joint resolutions or statutes) from Congress – a practice recognized as lawful by the Supreme Court for more than two centuries. President Truman repeatedly asked to address a joint session of Congress about Korea and had the State Department draft an AUMF, but ultimately acquiesced when congressional leaders told him he had authority to act under the Constitution and the U.N. Charter and urged that he “stay away from Congress.” The lesser examples that have been cited, like covert assistance to the non-Communist factions in Angola and Nicaragua, do not come close to constituting situations in which a declaration of war would have been deemed appropriate when the Constitution was ratified and such instruments were in use. Specific covert wars may or may not be wise policy; but they are not unconstitutional.

Participation in international peacekeeping doesn’t require Congressional approval

Prof. Robert F. Turner 2005. (U. of Virginia Law school; taught International Law at the U.S. Naval War College; veteran of two Army tours in Vietnam; was national security adviser to Senator Robert P. Griffin, a member of the Senate Foreign Relations Committee; served in the Pentagon as Special Assistant to the Under Secretary of Defense for Policy) The War Powers Resolution: An Unnecessary, Unconstitutional Source of "Friendly Fire" in the War Against International Terrorism? 15 Feb 2005 <http://www.fed-soc.org/publications/detail/the-war-powers-resolution-an-unnecessary-unconstitutional-source-of-friendly-fire-in-the-war-against-international-terrorism>

When the Senate consented to the ratification of the UN Charter in 1945, and Congress approved the UN Participation Act (UNPA) later that year, it is absolutely clear that they believed that international peacekeeping operations did not infringe upon their power "to declare War" and recognized instead that this was the business of the President. The unanimous report of the Senate Foreign Relations Committee urging ratification of the Charter, quoted by the unanimous report of the House Foreign Affairs Committee on the UNPA, argued that "enforcement action" pursuant to an order of the Security Council "would not be an act of war, but would be international action for the preservation of the peace," and reasoned: "Consequently, the provisions of the Charter do not affect the exclusive power of the Congress to declare war." During the final day of Senate consideration of the UNPA, an amendment offered by Senator Burton Wheeler requiring prior congressional approval before the President could send U.S. armed forces into harm's way, pursuant to a Security Council decision to use force to keep the peace, was denounced by the bipartisanship leadership as contrary to our Charter obligations and the President's well-established independent constitutional powers to use armed forces short of war for various reasons. In the end, the amendment received fewer than ten votes.

Small deployments of forces by the President should not be usurped by Congress

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The Constitution gives to Congress the power "to declare War," which was intended to be a veto or check against an adventurist President who might seek to take the nation from peace to war over some political or economic grievance or from a desire for personal fame and conquest. As an exception to the President's general grant of the new nation's "executive Power," the congressional check was to be construed narrowly. The Framers well understood the concept of "force short of war," and throughout our history presidents have deployed U.S. armed forces into harms way to protect American citizens and their property, to enforce treaty obligations and rights, and to deter misconduct by other countries. Even if one concludes that Congress still has a check on large-scale, prolonged commitments of U.S. armed forces into hostilities, it does not follow that the power to declare war permits Congress to usurp the Commander-in-Chief power concerning military deployments that do not even arguably constitute the initiation of "war."

Secret military operations are sometimes necessary and justified

Prof. Robert F. Turner 2012. (U. of Virginia Law school; taught International Law at the U.S. Naval War College; veteran of two Army tours in Vietnam; was national security adviser to Senator Robert P. Griffin, a member of the Senate Foreign Relations Committee; served in the Pentagon as Special Assistant to the Under Secretary of Defense for Policy) JOURNAL OF NATIONAL SECURITY LAW & POLICY “Covert War and the Constitution: A Response” <http://www.jnslp.com/wp-content/uploads/2012/01/Covert-War-and-the-Constitution-a-Response.pdf>

In other cases, like Pakistan in the current conflict with al Qaeda, permission for U.S. involvement may be contingent upon secrecy because the leadership of the host state might pay a severe political price domestically if its consent to American military activities within its territory were made public. Foreign states sometimes condition cooperation with, or assistance to, the United States upon strict secrecy because they do not wish to offend other nations – as with France during the American Revolution and Canada during the rescue of American embassy employees from Tehran during the Carter administration. There is nothing about acting covertly that is inherently immoral or illegal.

President is authorized to act under the UN Charter, because he enforces the law and the Charter is a treaty, therefore it’s a law, therefore it justifies his actions

Prof. Robert F. Turner 2012. (U. of Virginia Law school; taught International Law at the U.S. Naval War College; veteran of two Army tours in Vietnam; was national security adviser to Senator Robert P. Griffin, a member of the Senate Foreign Relations Committee; served in the Pentagon as Special Assistant to the Under Secretary of Defense for Policy) JOURNAL OF NATIONAL SECURITY LAW & POLICY “Covert War and the Constitution: A Response” (ellipses in original) <http://www.jnslp.com/wp-content/uploads/2012/01/Covert-War-and-the-Constitution-a-Response.pdf>

Article II, Section 3, of the Constitution obligates and empowers the President to “take care that the laws be faithfully executed,” and Article VI declares, inter alia, that “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land . . . .” Ergo, as Marshall observed during the Jonathan Robbins debate, the executive branch is “the proper department to be entrusted with the execution of a national contract” like the Jay Treaty or the U.N. Charter.

Power of the Purse: Congressional funding authority is adequate to block Presidential war power

Prof. John Yoo 2012. ( professor at the Univ of Calif.-Berkeley, School of Law; worked in the Department of Justice's Office of Legal Counsel in the G.W. Bush Administration) War Powers Belong to the President 1 Feb 2012, ABA JOURNAL (journal of the American Bar Association) <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>

Congress’ 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. Even the Kosovo war, which lasted little more than two months and involved no ground troops, required special funding legislation.

Afghan war shows the process is working as the Framers intended

Prof. Charles Tiefer 2011. (Commissioner, Commission on Wartime Contracting in Iraq and Afghanistan; Professor, University of Baltimore Law School) Can the President and Congress Establish a Legislative Veto Mechanism for Drawing Down a Long And Controversial War? March 2011 (brackets added) <http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=charles_tiefer&sei-redir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dfunding%2520%2522war%2520powers%2522%2520%2522power%2520of%2520the%2520purse%2522%2520veto%26source%3Dweb%26cd%3D7%26ved%3D0CEQQFjAG%26url%3Dhttp%253A%252F%252Fworks.bepress.com%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1001%2526context%253Dcharles_tiefer%26ei%3DqzGeT4m-EYiy0QXfotz1Dg%26usg%3DAFQjCNE1W41DKtPVBa78n8AH2YkT4VwvDg#search=%22funding%20war%20powers%20power%20purse%20veto%22>

As noted above, however, the Secretary Rumsfeld’s “light footprint” doctrine left the way open for the return of the Taliban as an insurgency. That insurgency, being too much neglected during the Bush Administration, took deep root. As presented in the 2010s, the war had entered its second decade, now cast as a long-term counterinsurgency – not what the public and Congress could have expected during the three days of the AUMF’s [Authorization for Use of Military Force in response to 9/11] consideration in 2001. If Congress sought, and the President supported, a drawdown schedule and/or a concurrent resolution mechanism, they used their shared war powers in a way the Framers would have approved.

Congressional votes of funding are formal consent to military operations and war

Mark Levin 2011. ( attorney, served in the administration of President Ronald Reagan and was a chief of staff for Attorney General Edwin Meese) “Mark Levin on Presidential and Congressional War Powers” <http://iusbvision.wordpress.com/2011/03/28/mark-levin-on-presidential-and-congressional-war-powers/>

When members of Congress vote to fund these activities, they are giving their formal, official consent to the operations. More than voting to declare war, they are actually voting to fund war — all kinds of war. Interestingly, in most of the cases in which Congress has formally declared — which is World War II — there was never any doubt that the president would use all possible military force to protect the nation, and Congress would fund it, even without any declarations. The declarations were not used as constitutional requisites for war, but to rally the nation and assert our resolve. But once Congress has funded a military operation, and it funds virtually all of them, it is undoubtedly helping to make war for without the funds there can be no war.

Congress has power to end operations that are started with general revenue funding - they just aren’t interested in doing so

Mark Levin 2011. ( attorney, served in the administration of President Ronald Reagan and was a chief of staff for Attorney General Edwin Meese) “Mark Levin on Presidential and Congressional War Powers” <http://iusbvision.wordpress.com/2011/03/28/mark-levin-on-presidential-and-congressional-war-powers/>

What of military operations launched by a president where the president uses funds already appropriated by Congress before the operations began, but which were approved for general national security purposes — that is, where Congress has not actually voted on funding a particular operation? Without question Congress has the power to withhold appropriations or defund operations, if it can muster enough votes to overcome a presidential veto. Congress rarely does so, although most notably in ending the Vietnam War. Congress has the power to enforce its decisions by impeaching a president and removing him from office should he continue to prosecute military operations after it has formally acted to end them. Hence, comparisons between the president and a monarch are ridiculous. These are very powerful tools, should Congress decide to use them. However, even now, when the president has directed military operations in Libya, is Congress even considering cutting off funding? What about the Republican majority in the House? No. But there is no question that congressional authority respecting war powers is significant, which distinguishes our system from many, including a monarchy.

Congressional paralysis: Politics makes congressmen afraid to take stands on war controversies, they want the President to do it

Prof. John Yoo 2012. ( professor at the Univ of Calif.-Berkeley, School of Law; worked in the Department of Justice's Office of Legal Counsel in the G.W. Bush Administration) War Powers Belong to the President 1 Feb 2012, ABA JOURNAL (journal of the American Bar Association) (ellipses in original) <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>

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.

Incompetent Congressional enforcement: We know from experience that Congress will retroactively approve military actions that succeed and condemn actions that fail, regardless of whether the President complied with War Powers limitations

Prof. Robert F. Turner 2005. (U. of Virginia Law school; taught International Law at the U.S. Naval War College; veteran of two Army tours in Vietnam; was national security adviser to Senator Robert P. Griffin, a member of the Senate Foreign Relations Committee; served in the Pentagon as Special Assistant to the Under Secretary of Defense for Policy) The War Powers Resolution: An Unnecessary, Unconstitutional Source of "Friendly Fire" in the War Against International Terrorism? 15 Feb 2005 (ellipses in original) <http://www.fed-soc.org/publications/detail/the-war-powers-resolution-an-unnecessary-unconstitutional-source-of-friendly-fire-in-the-war-against-international-terrorism>

Space does not permit a full discussion of this phenomenon, which is just as well as I have dealt with it extensively in two books on the War Powers Resolution. But compare the reaction of Congress to President Ford's rescue of the crew of the *S.S. Mayaguez* in Cambodia during May 1975 with President Carter's failed attempt to rescue U.S. hostages from Iran four years later. In the Mayaguez rescue, President Ford flagrantly violated not only the War Powers Resolution but also several specific statutory prohibitions on using appropriated funds for combat operations by U.S. armed forces "in or over or from off the shores of . . . Cambodia." But the operation was a success, and it received strong support from the American public. The Senate Foreign Relations Committee responded by unanimously passing a resolution praising the rescue and falsely asserting it was conducted "within the framework of the War Powers Resolution." In contrast, President Carter's rescue attempt failed, so the Chairman and Ranking Member of the Foreign Relations Committee held a press conference denouncing the President for violating the War Powers Resolution, and other Members of Congress suggested the President should be impeached.

Political games: Congress inserts loopholes and ambiguity so they can declare the President’s actions “illegal” later if something goes wrong

Prof. Robert F. Turner 2005. (U. of Virginia Law school; taught International Law at the U.S. Naval War College; veteran of two Army tours in Vietnam; was national security adviser to Senator Robert P. Griffin, a member of the Senate Foreign Relations Committee; served in the Pentagon as Special Assistant to the Under Secretary of Defense for Policy) The War Powers Resolution: An Unnecessary, Unconstitutional Source of "Friendly Fire" in the War Against International Terrorism? 15 Feb 2005 <http://www.fed-soc.org/publications/detail/the-war-powers-resolution-an-unnecessary-unconstitutional-source-of-friendly-fire-in-the-war-against-international-terrorism>

As much as we might like to think that the recent murderous attacks on our nation have finally brought us together and put the divisiveness of Vietnam behind us, a careful reading of the authorizing statute passed overwhelmingly by Congress on September 14 leaves some doubt. In addition to the repeated references to the War Powers Resolution, the President is authorized to use not "necessary" force, but "necessary and appropriate" force. This is not boilerplate language for declarations of war or other statutory authorizations for the use of military force. It sounds instead like the kind of ambiguous, equivocal terminology that someone might slip into a statute, so that if the President's overwhelming popularity at present slips in the future, or something goes wrong in the struggle against terrorism, legislators will be able to absolve themselves of all complicity by proclaiming that the President's conduct of the war was "inappropriate" and thus "illegal."

CON-AT: Keep Presidential War Powers

1. Signs of weakness.

Link: Withdrawal of troops could be a sign of weakness

Impact: Encourages international armed aggression

Prof. Robert F. Turner 2005. (U. of Virginia Law school; taught International Law at the U.S. Naval War College; veteran of two Army tours in Vietnam; was national security adviser to Senator Robert P. Griffin, a member of the Senate Foreign Relations Committee; served in the Pentagon as Special Assistant to the Under Secretary of Defense for Policy) The War Powers Resolution: An Unnecessary, Unconstitutional Source of "Friendly Fire" in the War Against International Terrorism? 15 Feb 2005 <http://www.fed-soc.org/publications/detail/the-war-powers-resolution-an-unnecessary-unconstitutional-source-of-friendly-fire-in-the-war-against-international-terrorism>

As Commander in Chief, the President is charged with so disposing of the resources placed under his command by Congress as in his judgment are most likely to protect American interests and maintain peace. While it may be argued that sending thousands of U.S. troops to South Korea at the request (or with the consent) of that country's government might ultimately lead to war-if, for example, China or North Korea were to decide to attack those forces-the reality is that virtually every movement of U.S. forces could encourage war. Indeed, it is absolutely clear that President Truman's decision to withdraw U.S. military personnel from South Korea in 1949 was a major factor in North Korea's decision to invade South Korea the following June. Indeed, modern history strongly suggests that signs of American weakness and vacillation are far more likely to result in armed international aggression than signs of strength.

2. Setting Dates for Withdrawal

Link: Setting dates for withdrawal is unreasonable and enables our enemies. Professor Robert Turner in 2005 gives two historical examples, one hypothetical - imagine if Congress had set a date for withdrawal after Pearl Harbor -- and one real, the US Marine engagement in Lebanon in 1983.

Prof. Robert F. Turner 2005. (U. of Virginia Law school; taught International Law at the U.S. Naval War College; veteran of two Army tours in Vietnam; was national security adviser to Senator Robert P. Griffin, a member of the Senate Foreign Relations Committee; served in the Pentagon as Special Assistant to the Under Secretary of Defense for Policy) The War Powers Resolution: An Unnecessary, Unconstitutional Source of "Friendly Fire" in the War Against International Terrorism? 15 Feb 2005 <http://www.fed-soc.org/publications/detail/the-war-powers-resolution-an-unnecessary-unconstitutional-source-of-friendly-fire-in-the-war-against-international-terrorism>

One of the points on which there was no apparent discord at the Federal Convention in Philadelphia was that Congress had no role in the actual conduct of military operations. They were given only a "veto" over certain kinds of commitments, leaving to the President such decisions as where to deploy troops, when to attack or redeploy troops, and when to bring them home. As Locke explained, such decisions are heavily dependent upon the behavior of external actors, and it would have been foolish for the President to declare in advance that U.S. forces would be withdrawn on a given date irrespective of those realities. Imagine the reaction of Franklin D. Roosevelt had Congress demanded a withdrawal deadline before it would consider authorizing the President to defend the United States following Pearl Harbor? Once they knew the artificial date on which the United States would withdraw, opponents of a peace settlement in Beirut would be able to orchestrate their strategy for maximum advantage. For much of the press and many Americans, the issue no longer became whether the United States should assist the parties in an important Middle Eastern country to resolve differences and achieve peace, but whether the President was "above the law." Legislation to authorize the President to continue the deployment led to more partisan debate, and the Washington Post noted that the active involvement of Senate Democratic Campaign Chairman Lloyd Bentsen in the debate suggested that "the Democrats are doing push-ups" for the 1984 elections. Marine Corps Commandant P.X. Kelley became so concerned about the partisan debate that he testified before the Senate Foreign Relations Committee that the partisan debate could "encourage hostile forces or forces inimical to the best interest, the life and limb of the Marines." General Kelley warned that "hostile forces would use this as an opportunity to up the ante against our Marines."

Impact: American servicemen die. Unfortunately General Kelley was right: Our enemies in Lebanon acted because of Congressional meddling

Prof. Robert F. Turner 2005. (U. of Virginia Law school; taught International Law at the U.S. Naval War College; veteran of two Army tours in Vietnam; was national security adviser to Senator Robert P. Griffin, a member of the Senate Foreign Relations Committee; served in the Pentagon as Special Assistant to the Under Secretary of Defense for Policy) The War Powers Resolution: An Unnecessary, Unconstitutional Source of "Friendly Fire" in the War Against International Terrorism? 15 Feb 2005 <http://www.fed-soc.org/publications/detail/the-war-powers-resolution-an-unnecessary-unconstitutional-source-of-friendly-fire-in-the-war-against-international-terrorism>

All of this partisan bickering was not lost on radical states in the Middle East, and the Syrian Foreign Minister announced that the United States was "short of breath." The message had also not escaped radical Muslim militia members in Beirut, and in October U.S. intelligence intercepted a message between two terrorist units saying: "If we kill 15 Marines, the rest will leave." Inadvertently, by its partisan debate and repeated pronouncements that further Marine casualties could provoke another debate and a withdrawal of funds for the deployment (such legislation had already been reported out of a key House subcommittee), in their partisan effort to invoke the War Powers Resolution, Congress had essentially placed a bounty on the lives of American forces. The rest is history. Early on the morning of Sunday, October 23, 1983, a Mercedes truck loaded with highly-sophisticated explosives drove into the Marine Corps compound at the Beirut International Airport and exploded. America's terrorist enemies had capitalized on the congressional signals of weakness by murdering 241 sleeping marines, sailors, and soldiers-more Marines than had been lost on any single day since the height of the Vietnam War in 1968 and more American military personnel than had been killed in the Gulf War, Grenada, Haiti, Somalia, the Former Yugoslavia, and all other military operations since Vietnam until the September 11, 2001 attack on the Pentagon.

3. Policy Paralysis.

Link: Alexander Hamilton explained that we need the President to have power to conduct war because he can act decisively to protect the country

Prof. John Yoo 2012. ( professor at the Univ of Calif.-Berkeley, School of Law; worked in the Department of Justice's Office of Legal Counsel in the G.W. Bush Administration) War Powers Belong to the President 1 Feb 2012, ABA JOURNAL (journal of the American Bar Association) (ellipses in original) <http://www.abajournal.com/magazine/article/war_powers_belong_to_the_president>

The most important of the president’s powers are commander in chief and chief executive. As Alexander Hamilton wrote in *Federalist 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 could act with “decision, activity, secrecy and dispatch.” In perhaps his most famous words, Hamilton wrote: “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.”

Impact: Foreign policy paralyzed as high-stakes foreign threats grow

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The framers realized the obvious. Foreign affairs are unpredictable and involve the highest of stakes, making them unsuitable to regulation by pre-existing legislation. Instead, they can demand swift, decisive action—sometimes under pressured or even emergency circumstances—that is best carried out by a branch of government that does not suffer from multiple vetoes or is delayed by disagreements. Congress is too large and unwieldy to take the swift and decisive action required in wartime. Our framers replaced the Articles of Confederation, which had failed in the management of foreign relations because they had no single 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’ loose, decentralized structure would paralyze American policy while foreign threats grow.

Impact: Inaction and isolationism by Congress can threaten national security

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Congress’ 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’ 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 the Neutrality Acts designed to keep the United States out of the conflict. President Franklin Roosevelt violated those laws to help the Allies and draw the nation into war against the Axis. While pro-Congress critics worry about a president’s foreign adventurism, the real threat to our national security may come from inaction and isolationism.

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