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UNDECLARED WARS:
THE PACKAGING OF A NATIONAL SECURITY
STRATEGY FOR THE 1990s

by

Martin D. Giere
Lieutenant Colonel, USAF

A RESEARCH REPORT SUBMITTED TO THE FACULTY
IN
FULFILLMENT OF THE CURRICULUM
REQUIREMENT

Advisor: Colonel Mark P. Gay, USA

MAXWELL AIR FORCE BASE, ALABAMA
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ABSTRACT

TITLE: Undeclared Wars: The Packaging of a National Security Strategy for the 1990s.

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One of the most intractable issues of foreign affairs and national security decision-making since America's conception has been the allocation of power between the executive and legislative branches of government on the use of military force to implement national security strategy. In the 1980s the issue evolved into a debate over when, where and how to use military force, not on who was to initiate the action. The "new" roles for the military in peacekeeping and peace enforcement have become significantly more important since the end of the cold war, but are not new. History is replete with examples where the executive and legislative branches debated the appropriate role for and control of the military in undeclared wars. The US military and civilian leadership need look no further than the lessons of the past to focus their deliberations on the appropriate role for the military in national security strategy matters for the next decade.

BIOGRAPHICAL SKETCH

Lieutenant Colonel Martin D. Giere (B.A., History and Political Theory, University of Montana; M.S., Political Science, Auburn University) has concentrated his academic studies in the foundation and evolving nature of the American political system. He brings special insight into these issues through his two tours in Europe, where he gained insight into the perspectives of other countries with regard to the use of military force in the world environment. He served as member of NATO's Joint Theater Surety Management Group and participated in NATO's sub-ministerial level Senior Level Weapons Protection Group from 1988 to 1991. From 1991 to 1993, he was assigned to Headquarters United States Air Force as the Chief of the Nuclear Security Branch in the Security Police Policy Directorate. Lt Col Giere is a graduate of the USAF Squadron Officers School of 1979 and the Air War College Class of 1994.

The approach of the United States to military/civil relationships...could be described as anti-Clausewitzian.¹

Sir John Winthrop Hackett

One of the most intractable issues of foreign affairs and national security decision-making since America's conception has been the allocation of power between the President and Congress regarding the use of military forces--particularly in the non-traditional "grey areas"² when US combat forces are engaged in less than total war. For most of the last 200 years, the debate did not focus on whether the military was the appropriate national instrument. Rather, the dispute centered on the President's authority to deploy military forces consistent with his role as Commander-in-Chief, and Congressional involvement in such action.³ The principles that animated this discussion through the 1970s have historically generated more heat than light.

However, in the early 1980s the arguments over the use of military force took on a different tone. The debate centered not so much on which branch of government had the ultimate authority over the use of the military, as on when, how and why it was appropriate to use combat forces. More recently, this discussion has focused on more non-traditional roles for the military in peacekeeping and peace enforcement to execute national security policy.

This paper begins with a description of the roles of the executive and legislative branches when military force is used in "undeclared wars" within the framework of the Constitutional foundation and subsequent historical practices. Succeeding arguments outline the shift in the debate on using military forces in foreign policy since the 1970s, and the evolving relationship between the executive branch and Congress. Finally, this paper describes non-traditional missions for the military to further foreign policy which have come to dominate the 1990s, and how these "new" missions have focused on the issues raised in the early 1980s. This author concludes that these non-traditional missions are not new, but simply a renaming of events that have occurred since America's conception, and were recognized by the Founding Fathers: undeclared wars. As such, the "new", non-traditional roles of the 1990s should, as in the past, be challenged both within the constitutional framework and in the context of the appropriate use of military force in pursuing national security objectives.

CONSTITUTIONAL FOUNDATION AND PRACTICE

SEARCHING FOR BALANCE

At the time that America declared its independence from England in 1776, two leading Western theorists on how a national government should be constructed had articulated concepts which placed the power of foreign affairs and war in the hands of the executive function. William Blackstone and John Locke described governmental structures

where the primary authority for foreign affairs, which included war, resided within the executive.⁴ However, the early American political and military leaders rejected these concepts, in part as a consequence of the abuses of executive power by the English monarchy.

Subsequent to the War for Independence and the failures of the newly confederated nation, the Federal Constitutional Convention was convened on May 25, 1787 to strengthen and unify the colonies into one independent nation. To many participants in the convention, some sort of executive function was needed within the federal governmental structure. In a pre-convention letter to George Washington on April 16, 1787, James Madison acknowledged a national executive was required, but revealed he had "scarcely ventured as yet to form in my own opinion either of the manner in which it ought to be constituted or of the authorities of which it ought to be clothed."⁵ Charles Pickney of South Carolina said he "was for a vigorous Executive but was afraid the Executive powers...might extend to peace and war &c[sic] which would render the Executive a Monarchy."⁶ Pickney's counterpart, John Rutledge, also supported an executive, but not "for giving him the power of war and peace."⁷

On August 6, 1787, the draft constitution was presented to all delegates, and included two significant elements: First, the proposal established a new agency to conduct the daily business of foreign affairs and management of the military, a single executive office that had no counterpart in the Articles of Confederation;⁸ the president,

as the head of the executive branch, was empowered to, among other things, "command and superintend the militia."⁹ Second, the draft document proposed a structure that provided the legislative branch the power "to make war and raise armies, and to enact articles of war."¹⁰ The members clearly did not endorse any concept that the president could "make" war without Congress "declaring" it first.¹¹ In fact, James Mason argued that the safest measure for the new nation was to craft a constitution that was able to "clog rather than facilitate war."¹² As written in the Constitution, the power of Congress to declare war served as a veto--or check on--the executive's actions which could, in the executive's capacity of Commander-in-Chief, initiate a war.¹³

In their discussions the delegates were not debating *whether* Congress should have the power to initiate war; rather, the framers of the Constitution were making a distinction between the power to initiate and execute wars.¹⁴ The drafters of the US Constitution, intent on restricting the absolute authority of a monarch, constructed a document to outline war powers with "a determination not to let such decisions be taken easily."¹⁵ Inclusion of the entire Congress was calculated to "slow the process down" and ensure a "sober second thought" before the nation committed to war--a course of action Madison called "among the greatest of national calamities."¹⁶

There is nothing in the records of the proceedings of the Constitutional Convention of 1787 that suggests the framers did not

intend to grant to Congress the authority to decide when military force was appropriate. However, the declaration of the executive as the Commander-in-Chief, without further clarification or explanation, "left the President a strong basis for claiming in future controversies that Congress had overstepped its authority by interfering with his constitutional powers."¹⁷ Herein lies the crux of the controversy that developed between the executive and legislature in a practical application of the Constitution.

IDEOLOGY MEETS REALITY

Over the years, military force, or the threat thereof, has proven to be one of the more potent assets available to the executive.¹⁸ With or without explicit congressional approval, presidential decisions justifying the unilateral use of military combat forces generally have not been based on any imminent danger to America. Rather, the executive has relied on legislative endorsement of his responsibilities under international law, treaty obligations, and in supporting ethical or humanitarian obligations around the globe.¹⁹

Although Congress clearly has the authority to declare war, such declarations have occurred only five times in American history.²⁰ Yet, US military forces have been frequently employed to further foreign policy aims.²¹ This apparent contradiction was not an unforeseen development. The architects of the US Constitution recognized there would be instances short of formal declarations of war where US forces might be engaged. Undeclared wars and limited

military operations were far too important a part of early American and European history to leave up to the President to dictate; the framers of the Constitution provided that any acts of armed combat--even if not specifically pronounced as formal declarations of war--had to be endorsed by Congress.²²

Article 1, section 8 of the US Constitution provided for Congress to declare war and grant letters of marque and reprisal. Letters of marque or reprisal, commonly issued at the time, were grants of governmental permission to a federal employee, agency head, or a private party to initiate hostile military acts against another country which, in and of themselves, could be construed as acts of war.²³ Given that the Constitution empowered Congress to declare war and to issue documents endorsing military activities short of war, it seems inconsistent to suggest that the executive is authorized, by virtue of his capacity as the Commander-in-Chief, to conduct some other type of military activity outside the scope of either declared or undeclared wars.²⁴

President Washington seldom directed the use of the military. When he did so, as in the war with the Wabash Indians from October 1789 to August 20, 1794, and against the British at Fort Miamis immediately thereafter, he did not have an explicit Congressional declaration of war. However, Congress had been consulted throughout the build-up of tensions, had allocated funds, approved legislation to call up additional troops, and had dispatched formal communications to

Washington supporting his efforts.²⁵ During the Adams administration, the "quasi war" with France from 1798 to 1800 never resulted in a formal declaration of war. However, members of Congress knew they had endorsed this war through a number of statutes they passed to prepare the country. Congressman Edward Livingston said in 1798 that he considered America "now in a state of war; and let no man flatter himself that the vote which has been given is not a declaration of war."²⁶

Undeclared wars became acceptable instruments of foreign policy during this period. Both the Congress and the Supreme Court acknowledged some military activities could be "limited," "partial," or "imperfect," and yet fully within the spirit and intent of the Constitution.²⁷ The Supreme Court has not disputed the contention made, that "if Congress has had notice through its established information-gathering channels of the practice and the corresponding claim of authority to use armed force even without a declaration, then its failure to object when it has a practical opportunity to do so...may be taken as acquiesce..."²⁸ However, soon there were "executive wars without congressional endorsement or authority."²⁹ The first occurred during the Madison administration.

In 1811 President Madison secretly ordered Andrew Jackson to seize West Florida by force from the Spanish, establishing a precedent in American history when the President took unilateral action to commit US forces to offensive operations.³⁰ Madison subsequently

argued that his action was justified "by the discretion implicitly delegated...authorizing the President to establish a customs district within the territory."³¹ Such unilateral presidential action repeated itself with Polk in Mexico (1846), McKinley in the Philippines (1898), Teddy Roosevelt in Panama (1898), Franklin Roosevelt (1938-1941), Truman in Korea (1950), and Kennedy in Vietnam (1961). With the 1972 disclosure that Nixon had secretly ordered combat operations in Cambodia, the ground was ripe for Congress to attempt to restore its original Constitutional prerogatives in using military force to further foreign policy. Congress had had enough of the "imperial presidency."³²

FOREIGN POLICY AND THE MILITARY SINCE 1970

WAR POWERS AND SHARED POWERS

As public support for the Vietnam War waned, Congress set out to limit the presidential authority to commit US combat forces. The debate remained focused on which branch of government was supreme in employing military force. Presidents Nixon, Carter, and Reagan claimed that such actions infringed on the Constitutional prerogatives of the Commander-in Chief. On the other hand, Congress defended these efforts as attempts to restore a proper balance between them and the President on national security decision-making and foreign policy. "Beginning in the 1970s Congress demanded, and assumed a far more active role in making foreign policy and in the decision-making process for the employment of military force."³³ Congress was

increasingly frustrated over its inability to participate with the executive in national security decisions. This sense of impotency was founded on a history of what Elliot Richardson described when

Presidents unilaterally committed this country to a series of controversial policies, including the Berlin airlift, the Korean War, the Congo rescue operation, the Bay of Pigs invasion, intervention in the Dominican Republic, and engagement in the Cuban missile crisis--seeking legislative approval *after the fact, if at all.*³⁴

The members of Congress viewed the policy of withholding information about military operations from them as a key element in the usurping of Constitutional authority. The acrimony over the Vietnam War, exacerbated by the frustration of the Congress in its inability to participate effectively in national security and foreign affairs issues, sparked a national debate over the role of Congress and the President in using military force as an instrument of national policy. As a result, the War Powers Resolution of 1973 became law. The intent of the law, as expressed in Section 2(a), was "to assure that the collective judgment" of both branches will apply to the introduction of U.S. forces into hostilities. The President is *asked* to consult with Congress in every possible instance when American forces are deployed into combat, and required to withdraw them within 90 days unless Congress approves the commitment.³⁵

Excluding the Clinton presidency, experience with the War Powers Act now spans four administrations. Since the Act's passage as law, the US has been involved in armed conflict in Indochina, Iran, Libya, Lebanon, Grenada, Nicaragua, the Persian Gulf, Chad, Liberia, and, most recently, Somalia. The War Powers Act clearly has not worked as intended. As Professor Franck said, "It has not inhibited the President from deploying forces on his sole authority. It has not promoted genuine prior consultation...between the legislative and executive branches."³⁶ Although presidents have made 19 general reports to Congress on this "potted plant" act, only one report, initiated by President Gerald Ford, ever complied with the requirements.³⁷ However, in even Ford's case, the timing of the presidential report, given the stage of the military operation, and the provisions for consultation and collective judgment with Congress suggest the President was providing only lip service to Congress.

Unilateral presidential action to use military force without a declaration of war has been accepted in the past when the President took such action pursuant to legitimate and honest congressional consultation. This concept, enumerated even today in the War Powers Act, Section 2c, was articulated by the Congress in 1967.

The committee does not believe that formal declarations of war are the only available means by which Congress can authorize the President to initiate limited or general hostilities. Joint resolutions such as those pertaining to Formosa, the Middle East, and the Gulf of Tonkin are a proper method of granting authority.³⁸

Congress has thus attempted to compromise with the executive. However, "contrary to the words and unmistakable purpose of the Constitution, contrary as well to reasonably consistent practices from the dawn of the republic...such decisions[for war]have been made throughout the Cold War period by the executive, without significant congressional participation...Congress ceded the ground without a fight."³⁹ For several interesting reasons, the political will of Congress to protect its authority in national security decision-making and foreign policy--specifically regarding the use of military force--"usually is at its nadir at the very moment when its constitutional right to insist on participation is at its zenith: That is at the inception of armed hostilities."⁴⁰ Perhaps, Congress has surrendered because "Accountability is pretty frightening stuff "⁴¹

THE DEBATE SHIFTS ITS FOCUS: WHEN TO USE THE MILITARY

The debate over the use of military combat forces in the 1980s shifted away from that argued by constitutional scholars regarding shared or separation of powers between the executive and legislature. The issue became less of which branch of government was going to approve the use of military force, and more a debate on when using combat forces to further national security policy was appropriate. Discussions within both the executive and legislative branches focused on the framework in which decisions to use the military were founded, and on the legitimacy of using combat forces in the international arena.

In the early 1980s there were significant, fundamental differences within the executive branch on the appropriate use of the military to further US foreign policy aims. Secretary of State George Shultz supported an expanded role for the military, but viewed the Pentagon, specifically Secretary of Defense Caspar Weinberger, as "extremely wary and reluctant to use the formidable/capabilities lodged in the Department of Defense."⁴² The Department of Defense, on the other hand, felt that it was under an inordinate amount of pressure to use military force as the first course of action in foreign policy. Then Secretary of Defense Weinberger summed up their feelings as such:

The State Department and Secretary of State Shultz particularly...had long had the feeling that many situations in the world required the "intermixture of diplomacy and the military." Roughly translated that meant that we should not hesitate to put a battalion or so of American forces in various places in the world when we desired to achieve particular objectives of stability, or change of government, or support of governments, or whatever else.⁴³

The sharp difference of opinion surfaced in the summer of 1982. In July, the government of Lebanon formally requested an international presence--a multinational force to oversee the PLO departure. The government of Lebanon made it clear that they did not want a UN peacekeeping operation. Curiously, within Congress there was very little debate over the Lebanon deployment, or over the merits of the action.⁴⁴ In fact, when Reagan notified Congress of his intentions

and asked approval for a 90 day deployment, the Congress passed a resolution approving 18 months. On the other hand, the executive branch of the Reagan administration was seriously divided over the question of US participation in this effort. "The Joint Chiefs of Staff and Secretary of Defense Cap Weinberger were very negative about a US role," wrote Shultz.⁴⁵ However, on July 3, 1982 the President approved a US contribution to the multinational force in Beirut. Immediately after Shultz' confirmation as Secretary of State (on August 2, 1982), Yitzhak Shamir, the Israeli Foreign Minister, met with Shultz and pressed for offensive military action to assure the PLO departed Lebanon. Shultz resisted and told Shamir, "[Using Israeli forces for] a military solution will cost many lives, Israeli as well as Palestinian. We [the United States] can do better."⁴⁶ Despite the serious reservations of the Department of Defense, Shultz and the Department of State subsequently attained presidential approval to introduce US military forces for some ill-defined objective without any clearly articulated end point. The strong reservations articulated inside the Pentagon should not have been a surprise to anyone in the legislative or executive branches.

Wary from its Vietnam experience, the military wanted no more involvement in such conflicts that had demoralized the troops and lost or destroyed public confidence. In 1984 the debate between State and Defense became public, starting with Weinberger's November 28 speech to the National Press Club.⁴⁷ While the central issue specifically addressed the US response to international terrorism, it outlined two

fundamentally opposing views on the use of military force. Weinberger stated that US forces should not be sent into any conflicts unless (1) the engagement was deemed vital to US national interests or that of its allies; (2) sufficient forces were committed to win; (3) clearly defined political and military objectives were articulated; (4) the relationship between objectives and forces were continually assessed to determine if they were still valid; (5) some "reasonable assurance" of support from the people and Congress, through constant consultation was attained; (6) and finally, that US forces were used only as a last resort.⁴⁸ Weinberger stated "These tests can help us to avoid being drawn inexorably into an endless morass where it is not vital to our national interests to fight."⁴⁹

Shultz publicly attacked this rationale in his December 9, 1984 speech.⁵⁰ He believed that "diplomacy not backed by military strength is ineffective," and warned that at critical moments foreign policy might require quick military action.⁵¹ "Our greatest challenge", he stated, "is to learn to use our power when it can do good, when it can further the cause of freedom and enhance international security and stability."⁵² Reminiscent of Cotton Mather and Woodrow Wilson, Shultz invoked an almost spiritual obligation:

We must keep the flame of liberty burning forever, for all mankind...Our morality must give us the strength...Our burden is great...the United States will fulfill the role that history has assigned to us.⁵³

Conversely, Weinberger cautioned that the United States "should only engage our troops if we must do so as a matter of our own vital national interests. We cannot assume for other sovereign nations the responsibility to defend their territory--without their strong invitation--when our freedom is not threatened."⁵⁴ Weinberger's formula, articulated in national security and military policy guidance, served the United States well in the more traditional roles of the military. His caveat that the United States must have "a strong invitation" established the framework for focusing the debate on when, how and why military combat forces should be the preferred instrument to further national security policy, specifically within the context of "new" military functions called peacekeeping and peace enforcement.

THE TEMPLATE FOR TOMORROW'S DECISIONS?

By default, consensus or accident, in the late 1980s, the executive and legislature relegated constitutional debates on which branch of government is supreme in using military force to the issue of when and how the military would be used. As Samuel Huntington points out, the 1990s are not the first time the nation has confronted challenges in constructing an architecture in which military force is used in less traditional functions, or in defining the roles of each of the players in what Clausewitz described as the "remarkable trinity."⁵⁵ Although there is little evidence that those who constructed the US Constitution anticipated the concept of

multinational or collective security agreements, "the general principles which seem to underline the separation of powers" in using military force in non-traditional roles can be found in the Constitution, as articulated by the Founding Fathers.⁵⁶ These principles are simply not as obvious in the new and evolving world of the 1990s.

The search for an appropriate role for the US military in national security strategy in an evolving multipolar world is much more complex today than during the Cold War. The United States confronts major political, economic and social changes in the structure of international systems, as well as what Brent Scowcroft described as "intolerant versions of nationalism based on ethnic and religious persuasions."⁵⁷ The realities of the new world order (or as some would describe, a new world disorder) call for a reevaluation of the role of the military in national security decision-making and foreign policy. "Future oriented missions [for the military]," as Admiral Miller, the first Commander-in-Chief US Atlantic Command stated, "will not be easily defined", as the lines between open conflict and hostile acts have become so blurred.⁵⁸ The new international environment portends using the military instrument in more non-traditional activities. The challenge, therefore, is to define the appropriate roles of the military in such non-traditional activities, and only secondarily to articulate the appropriate roles of Congress and the President in executing a national security strategy with military force.

PEACEKEEPING: THE TRADITIONAL "NON-TRADITIONAL" ROLE

Within the international structure, in 1945 the United States as a composite trinity (the military, congress and president) formally endorsed the use of military forces in international peacekeeping roles. The United Nations Treaty approved in 1945 includes two significant concepts. Chapter 6 of the UN charter, entitled "Pacific Settlement of Disputes," provides for *noncoercive* measures to resolve disputes and conflicts based on the consent of the parties involved. These noncoercive means are outlined in Article 33, and include negotiations, mediation and arbitration.⁵⁹ Chapter 7, on the other hand, "Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression," approves a variety of *coercive* measures to enforce peace, including international military forces. Article 42 empowers the UN Security Council to "take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security; Article 43 calls on member nations to provide military forces for this purpose."⁶⁰ The distinction between noncoercive peacekeeping (Chapter 6, Article 33) and coercive action (Chapter 7, Articles 42 and 43) is critical to understanding the roles of Congress and the president when using the military in the multinational arena.

When Congress enacted the United Nations Participation Act of 1945, Section 6 of that act specifically reiterated that US forces *made available* to the UN could be employed in combat without further authorization from Congress, if the UN Security Council and a UN

General Assembly resolution approved the use of force. Louis Fisher, among other war powers scholars argues that "Nothing supports the notion that Congress, by endorsing the structure of the United Nations, amended the Constitution by reading itself out of the war-making power."⁶¹ However, the record would suggest otherwise; the Senate Committee on Foreign Relations report on the United Nation Act states,

Any reservation to the Charter or subsequent limitations designed to provide, for example, that employment of the armed forces of the United States to be made available to the Security Council *in Article 43*...could be authorized only after the Congress has passed on each individual case...would clearly violate the spirit of one of the most important provisions of the Charter. Prevention or enforcement action by these forces upon the order of the Security Council would not be an act of war...Consequently, the provisions of the Charter do not affect the exclusive power of Congress to declare war.⁶²

This language was included in the 1945 act passed by Congress and signed into law in 1945. Two significant issues are present: First, through Congressional action debating and approving the UN charter, the Congress openly participated in the discussion on the use of military force in "undeclared wars." Second, Congress approved the use of US military forces without prior consultation only for forces already committed to the UN *under Article 43*. Thus, peacekeeping activities with US military "made available" to the UN under the auspices of Chapter 6 do not have or need the approval of Congress, because by definition they are noncoercive. Such actions using

military forces are inherently peaceful in nature. As Frank G. Wisner, Undersecretary of Defense for Policy, stated, "Peacekeeping actions are generally non-combat military operations to monitor an existing agreement, undertaken with consent of all major belligerent parties, and conducted under Chapter 6 of the United Nations Charter."⁶³ Peacekeeping, or the absence of war, "presupposes that either war has not broken out or that it has been terminated..."⁶⁴

Military forces engaged in peacekeeping, therefore, are ostensibly pursuing a benign activity with little chance for open hostilities. Such missions also found common acceptance in the 1990s, and were explicitly outlined by the Reagan and Bush administrations in their national security and military strategy documents.⁶⁵ Testifying before the House Committee on Foreign Affairs in March 1993, Ambassador Jeane J. Kirkpatrick summarized this role as follows: "Peacekeepers, we should be clear, do not make peace. Where will to peace exists, they help prevent further violence by interposing troops between the parties. They may not even help negotiate outstanding differences."⁶⁶ Consistent with Chapter 6 of the UN Charter, the United States intends to continue to be engaged in peacekeeping operations to further foreign policy. Peacekeeping operations, by definition, are within the purview of the executive to implement.

PEACE ENFORCEMENT: A NEW INSTRUMENT OR JUST A NEW NAME?

With the end of the Cold War and the demise of the Soviet Union, there is apparently another use of the military instrument available

to US national security decision makers in furthering foreign policy goals. This instrument, called *peace enforcement*, was first articulated by UN Secretary-General Boutros Boutros-Ghali, and refers to "actions to keep a cease-fire from being violated or to reinstate a failed cease-fire."⁶⁷ Peace enforcement activity involves the uninvited introduction of military force into combat situations to actively engage parties, one or more of which prefer the continuation of hostilities and resents the presence of the outside force.⁶⁸ As Undersecretary Wisner defined, "Peace enforcement is armed intervention, involving all necessary measures to compel compliance with UN Security Council resolutions, and conducted under Chapter 7 of the Charter."⁶⁹

The current administration institutionalized the new peace enforcement mission in the September 1993 Department of Defense *Bottom-Up Review* report. For the first time, peace enforcement is outlined as a fundamental role of the US military. Notwithstanding the absence of any reference to peacekeeping, Secretary of Defense Aspin articulated offensive "intervention" of US forces to conduct "forced entry" operations in a foreign nation as an additional mission for the US military.⁷⁰ His *Bottom-Up Review* also makes an interesting distinction between combat operations and peace enforcement: What are characterized as "Peace Enforcement and Intervention Operations" are considered outside the scope of all other military functions outlined in the "Four Phases of US Combat Operations."⁷¹ Within the military services, only the Department of

the Army has embraced this "new" role of peace enforcement as a formal mission separate from other combat activities. The Army defines peace enforcement as,

military intervention in support of diplomatic efforts to restore peace or to establish the conditions for a peacekeeping force between hostile factions that may not be consenting to intervention...units conducting peace enforcement, therefore, cannot maintain their objective neutrality in every instance.¹²

Perhaps the first example of this "new" Chapter 7 coercive peace enforcement role occurred subsequent to initial humanitarian efforts in Somalia. Initially executed by President Bush in December 1992, Operation Restore Hope was "a mission to deliver food to starving victims of the civil war...[however] it evolved into an effort to forge a peace among rival clan militia."¹³ This humanitarian peacekeeping effort under Chapter 6, involving US military forces quickly escalated in scope and the measured application of force into a coercive, Chapter 7 military combat operation. As the staff of the Committee on Foreign Relations concluded after a visit to Somalia in July 1993,

Somalia represented a major shift in U.N. peacekeeping operations. Initially conceived as a *Chapter 6* operation, the failure of the limited force...resulted in a decision by United Nations Security Council to implement a *Chapter 7* operation. The Somalia operation is an example of the new type of "peace enforcement" operation that the United Nations may increasingly find to be the norm...¹⁴

As articulated in July 1993 by Peter Tarnoff, Under Secretary of State for Political Affairs, the UN forces, including 4,000 US military in Somalia, were charged "with an ambitious agenda--nothing short of rebuilding a nation..." including the "arrest, detention, trial and punishment" of hostile forces.⁷⁵ Without any debate in the federal government and through passive voting in the United Nations, US military forces became engaged in combat.

The concept of peace enforcement, when intertwined with other notions of peace building and peacemaking under some ill-defined UN criteria, can quickly become bogged down, rationalized and diluted by the rhetoric of the bureaucracy. Nevertheless, peace enforcement is *fundamentally the use of military force in combat operations*. In October 1993 the killing of the 17 US Army Rangers in Somalia demonstrated this fact.

The Clinton administration seems to acknowledge the distinction between the immediate use of military force as a function of the authority of the Commander-in-Chief, and that for the execution of broad national foreign policy. Subsequent to the killing of US troops and Congressional outcries in October 1993, the President modified the US mission in Somalia. In his address to the nation on October 7, 1993 the President said "It is not our job to rebuild Somalia's society, or even to create a political process that can allow Somalia's clans to live and work in peace."⁷⁶ The Clinton administration hopes to finalize the new guidelines in Presidential

Decision Directive 13, which will outline the conditions by which the U.S will participate in peacekeeping and "the more dangerous peace enforcement missions."¹⁷ Reportedly, the President plans to establish a number of conditions that must be met before US military forces are committed to peace enforcement operations:

It must be sure the proposed operation is in the United States own national interest and that there is a real necessity for American forces to participate. It must also be satisfied that the American contribution is of sufficient size to ensure the military effectiveness of the force and that the operation has sufficient support in Congress and the country.¹⁸

This criteria is quite similar to that in the Weinberger Doctrine of 1984, and refocuses the debate from which branch of the federal government is supreme to the issue of the appropriate use of the military. Secretary of State Warren Christopher recently told the Senate that he could not "imagine committing troops without a vote of this body."¹⁹ One is left to wonder if this includes peacekeeping or peace enforcement activities.

CONCLUSIONS

From the first day of the Federal Constitutional Convention on May 25, 1787 through the early 1980s, scholars have debated the appropriate relationship between the executive and legislative branches with regard to US military force. The Constitution

stipulates that Congress possesses the ultimate authority over using the military to implement national security policy, but grants the President, in his capacity of chief executive and Commander-in-Chief, authority to direct foreign policy and military operations.

Since America's conception, the distinctions between war and peace, between foreign affairs and national security, have been blurred. This is not new today. What is a new experience is that non-traditional roles have replaced the virtues of symmetry and predictability provided by the cold war. Today, senior US leadership, with the acquiesce of the military, are attempting to label and repackage these "new" roles. These efforts are particularly unhelpful in defining and articulating the appropriate role for the military in the post-cold war era. Describing "peace enforcement" as anything other than military combat is pure sophistry, analogous to Madison's characterization of the 1946 Spanish-American War as only a US customs enforcement action. Recall that unilateral presidential action to employ the US military for "peace enforcement" in Korea resulted in a commitment now 42 years old. More recent, one should not forget in future deliberations that peacekeeping efforts in Somalia quickly evolved into combat operations where 17 American soldiers were killed, and that the United States was forced to deploy reinforcements and finally define an end-point--acceptable to Congress.

The United States continues to plan for the introduction of 25,000 combat troops in Bosnia. Yet, the criteria established in the

Weinberger Doctrine and subsequently articulated by the Clinton administration have yet to be met. Moreover, it is unclear under what auspices such a deployment would be conducted--United Nations Chapter 6 peacekeeping, Chapter 7 coercive peace enforcement, through a NATO combined joint task force (CJTF) structure, or some combination of each. The potential for "mission creep" is already apparent with the recent authorization of NATO air strikes against Serbian positions. Regardless of US policy makers' rhetoric in defense or justification of this planned deployment, two fundamental questions must be answered before US forces are used: Is the military the appropriate instrument for pursuing US national security objectives in this region; and should the President, by executive order, be authorized to unilaterally employ military forces into this "undeclared war."

The US need not look any further than the lessons of the past to guide it in the new world. As Winston Churchill said many years ago, "In history lie all the secrets of statecraft." The role of the military, the executive and Congress in determining national security policy is an age-old debate. Therein lie the keys to constructing rational and comprehensive policies for using the military to further national security strategy in the 1990s and beyond. Euphemistic labels such as police action, peacekeeping or peace enforcement are counterproductive, and potentially fatal to those combat forces assigned these "new" roles.

NOTES

1. Sir John Winthrop Hackett, *War, Morality, and the Military Profession*, Westview, Inc., Harold Ober Associates, 1986, p. 106.
2. Despite other significant differences, Shultz and Weinberger agree about the existence of this "grey area". It is here where their national security decision-making and foreign policy positions diverged. See George P. Shultz, "The Ethics of Power" (hereafter cited as *Ethics*), speech given on December 9, 1984 to the convocation of Yeshiva University in New York, and Caspar W. Weinberger, "The Uses of Military Power", speech to the National Press Club, November 28, 1984 (hereafter cited as *Uses*), *Ethics and American Power*, edited by Ernest W. Lefever, Ethics and Public Policy Essay No. 59, Washington DC: Ethics and Public Policy Center, May 1985, pp. 2-3, 13.
3. Robert F. Turner, *Repealing the War Powers Resolution*, New York: Brassey's (US) Inc., Macmillan Publishing Co., 1991, p. 86.
4. Louis Fisher, *The Politics of Shared Power*, 3rd ed., Washington DC: Congressional Quarterly, Inc., 1993, p. 157.
5. Arthur Bestor, "Advise from the Very Beginning, Consent when the End is Achieved", *Foreign Affairs and the US Constitution*, edited by Louis Henkin, Michael J. Glennon and William D. Rogers, New York: Transnational Publishers, Inc., 1990, p. 8.
6. Ibid, pp. 8-9.
7. Ibid.
8. Walter LaFeber, *The American Age*, New York: W.W. Norton and Company, Inc., 1989, p. 32.
9. *The Record of The Federal Convention of 1787*, edited by Max Farrand, 3 vol, New Haven: Yale University Press, 1911, vol II, p. 145.
10. Ibid, pp. 143, 144.
11. LaFeber, p. 32.
12. *The Record of The Federal Convention of 1787*, op. cit., vol 1, p. 319.

13. Turner, *Repealing the War Powers Resolution*, op cit., p. 81.
14. Abraham D. Sofaer, *War, Foreign Affairs, and Constitutional Power*, Cambridge, Mass: Ballinger Publications Co., 1976, pp 30-32; Turner, *Repealing the War Powers Resolution*, pp. 68-69. Sofaer provides a detailed accounting of the presidential use of military without explicit Congressional declarations of war from Washington through Monroe. His analysis also suggests the presidential actions had either implicit congressional approval, or were taken within the context of national defense.
15. John Hart Ely, *War and Responsibility*, Princeton, NJ: Princeton University Press, 1993, pp. 3-4.
16. Ibid.
17. Sofaer, p. 38.
18. Alberto R. Coll, "Power, Principles, and Prospects for a Cooperative International Order, " *The Washington Quarterly*, Vol. 16, No. 1, Winter 1993, p. 10.
19. Sofaer, p. 378.
20. Congress passed formal declarations of war five times: The War of 1812, The Mexican War, the Spanish-American War, World War I, and World War II.
21. Donald M. Snow and Eugene Brown, *Puzzle Palaces and Foggy Bottom*, New York: St. Martin's Press, Inc., 1994, p. 160. The authors state that since the founding of America, US military forces have been used in foreign countries over 200 times.
22. Sofaer, p. 56; Ely, p. 67.
23. Ely, pp. 66-67.
24. Sofaer, p. 4.
25. Sofaer, pp. 119-129.
26. Fisher, p. 159.
27. Sofaer, (*Talbot v. Seeman*), pp. 146-147; 161-164. In his findings on this case, Chief Justice Marshall wrote, "The whole powers of war being, by the constitution of the United States, vested in congress, the acts of that body can alone be resorted to as our guides in this inquiry."
28. Peter Raven-Hansen, "Constitutional Constraints = The War Clause", *The U.S. Constitution and the Power to Go to War*, edited by

Gary M. Stein and Morton H. Halperin, Westport, CT: Greenwood Press, 1994, p. 32. (emphasis in original)

29. Fisher, p. 159.

30. LaFeber, pp. 58-59.

31. Sofaer, p. 377.

32. History is replete with examples of presidents unilaterally directing military force against another nation: Polk's "simple and devious" use of US military forces against Mexico in 1846 was condemned by the US House of Representatives in 1848 when the members censured him for "unnecessarily and unconstitutionally" initiating the war (See LaFeber, pp 110-111 and Fisher, pp. 159-160). McKinley took the US into war with Spain to gain influence in the Philippines and Latin America in 1898; in 1905 Theodore Roosevelt unilaterally directed American forces to intervene in a coups in Panama (LaFeber, pp 190-197; 235-237). Prior to World War II, Franklin Roosevelt "carefully orchestrated policy of aiding Britain and her allies...using executive agreements of dubious constitutionality to avoid confronting an uncertain and isolationist Congress." (See Amos A. Jordan, William J. Taylor, Jr., and Lawrence J. Korb, *American National Security*, 3rd edition, Baltimore, MD: John Hopkins University Press, 1989, pp. 82-85). In 1950 Truman directed US forces to Korea without seeking Congressional approval (Jordan, Taylor and Korb). Kennedy and Nixon uses of the military are described in James A. Nathan and James K. Oliver, *United States Foreign Policy and World Order*, 4th edition, University of Delaware: Harper Collins Publishers, 1989, pp. 266-267.

33. Weinberger, *Uses*, p. 2.

34. Elliot L. Richardson, "Checks and Balances in Foreign Relations", *Foreign Affairs and the U.S. Constitution*, op. cit., p. 27. (emphasis added)

35. Fisher, p. 164; LaFeber, p. 632.

36. Franck, *Foreign Affairs and the U.S. Constitution*, op. cit., p. 58

37. Ibid, p. 58-59; Fisher, p. 165. Only President Ford reported to Congress on the deployment of armed forces under the provisions of section 4a(1), which triggers the 60 day clock. Ford did so in his May 15, 1975 report regarding the *Mayaguez* rescue attempt.

38. Senate Report No. 90-797, "National Commitments Resolution", 90th Congress, 1st sess. 1967, p. 25.

39. Ely, p. ix.

40. Franck, *Foreign Affairs and the U.S Constitution*, op. cit., p. 58. (emphasis in original)

41. Ely, p. ix.

42. George P. Shultz, *Turmoil and Triumph*, New York: Charles Scribner's Sons, 1993, pp. 84, 107. Shultz articulates his position regarding the Defense Department's reluctance to use the military in various operations when he thought that was the appropriate method. Regarding the decision to deploy Marines to Beirut in 1982, Shultz notes he had "real difficulty getting Cap Weinberger and the Defense Department to deploy the Marines in the first place." (p. 103).

43. Caspar W. Weinberger, *Fighting for Peace*, New York: Warner Books, Inc., 1990, p. 159.

44. Robert F. Turner, *The War Powers Resolution: Its Implementation in Theory and Practice*, Philadelphia, PA: Foreign Policy Research Institute, 1983, pp. 85-86.

45. Shultz, *Turmoil and Triumph*, pp. 46-47.

46. Ibid, p. 56.

47. LeFeber, pp. 672-673; Shultz, *Turmoil and Triumph*, pp. 649-651.

48. Weinberger, *Uses*, pp. 7-8.

49. Ibid, p. 9.

50. Shultz, *Ethics*, pp. 11-17.

51. LaFeber, pp. 672-673.

52. Shultz, *Ethics*, p. 15.

53. Ibid, pp. 15-17.

54. Weinberger, *Uses*, p. 6.

55. Samuel P. Huntington, "New Contingencies, Old Roles", *Joint Force Quarterly*, No. 2, Autumn 1993, pp. 38-39; Carl Von Clausewitz, *On War*, edited and translated by Michael Howard and Peter Paret, Princeton, NJ: Princeton University Press, 1976, p. 89. Clausewitz describes the "paradoxical trinity" between the government, the military, and the people, in formulating policies on war. He states the decision for war should be founded on a balance between these three activities, "like an object suspended between three magnets."

56. Turner, *Repealing the War Powers Resolution*, p. 88.

57. Brent Scowcroft, Lieutenant General, USAF (Ret). Speech on October 25, 1993 at Maxwell Air Force Base, Alabama, presented by the Air War College Foundation as a part of the General George S. Brown Distinguished Lecture Series.

58. Paul David Miller, Admiral, USN, "Preparation for Future Military Conflicts," speech presented to the US Naval Institute, Washington DC, October 28, 1993; Weinberger, *Uses*, portrays the world environment as "blurred...lines...between open conflict and half-hidden hostile acts." (p.1)

59. Inis L. Claude, Jr., *Swords into Plowshares*, New York: Random House, 1971, pp. 215-284.

60. Ibid.

61. *The U.S. Constitution and The Power to Go to War*, edited by Garry M. Stein and Morton H. Halperin, op. cit., p.21

62. US Senate Report No. 717, *Report Providing for the Appointment of Representatives of the United States in the Organs and Agencies of the United Nations, and to Make Other Provisions with Respect to the Participation of the United States in Such Organizations*, 79th Congress, 1st sess., November 8, 1945, p. 8. See also US House of Representative Report No. 1383, same title, 79th Congress, 1st sess., December 12, 1945, pp. 8-9. Similar language is included in the House report. (emphasis added).

63. Frank G. Wisner, Testimony before the Senate Armed Services Committee, Subcommittee on Coalition Defense and Reinforcing Forces, July 14, 1993, p. 1.

64. Donald M. Snow, *Peacekeeping, Peacemaking and Peace-Enforcement: The US Role in the New International Order*, US Army War College, Strategic Studies Institute, February 1993, pp. 22, 23.

65. Most recently Colin Powell's *National Military Strategy of the United States*, US GPO, January 1992, and George Bush's *National Security Strategy of the United States*, US GPO, January 1993, articulate the role of military forces in humanitarian and peacekeeping within the context of UN operations. Neither of these documents refers to "peace enforcement" in any context.

66. Jeane J. Kirkpatrick, Testimony before the Committee on Foreign Affairs, *The Future of U.S. Foreign Policy: Functional Issues*, part 2, 103rd Congress, 1st sess., March 17, 1993, p. 371.

67. Boutros Boutros-Ghali, *An Agenda For Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping*, New York: United Nation, 1992, p. 11.

68. Snow, pp. 21-24.

69. Wisner, op. cit.

70. Secretary of Defense Les Aspin, *The Bottom-Up Review: Forces for a New Era*, US GPO, September 1, 1993, p. 13.

71. Ibid, pp. 7-9; p. 13. This document clearly distinguishes between military force structure for combat operations and that identified for peace enforcement.

72. Field Manual 100-5, *Operations*, Headquarters United States Army, Washington DC, June 14, 1993, p. 13-7.

73. Daniel Williams, "U.S. to Help Create Somali Central Government," *Washington Post*, September 25, 1993, p. A18.

74. *Reform of United Nations Peacekeeping Operations: Mandate for Change*, Staff Report to the United States Senate Committee on Foreign Relations, August 1993, p. 6.

75. Peter Tarnoff, Statement before the Senate Foreign Relations Committee, July 29, 1993, *US Department of State Dispatch*, August 9, 1993, Vol. 4, No. 32, pp. 567-568.

76. President Clinton, "US Military Involvement in Somalia," *Department of State Dispatch*, October 18, 1993, Vol. 4, No. 42, p. 713.

77. Paul Lewis, "U.S. Plans Policy on Peacekeeping," *New York Times*, November 18, 1993, p. 7.

78. Ibid.

79. Elane Sciolino, "Christopher Spells Out New Priorities," *New York Times*, November 5, 1993, p. 8.