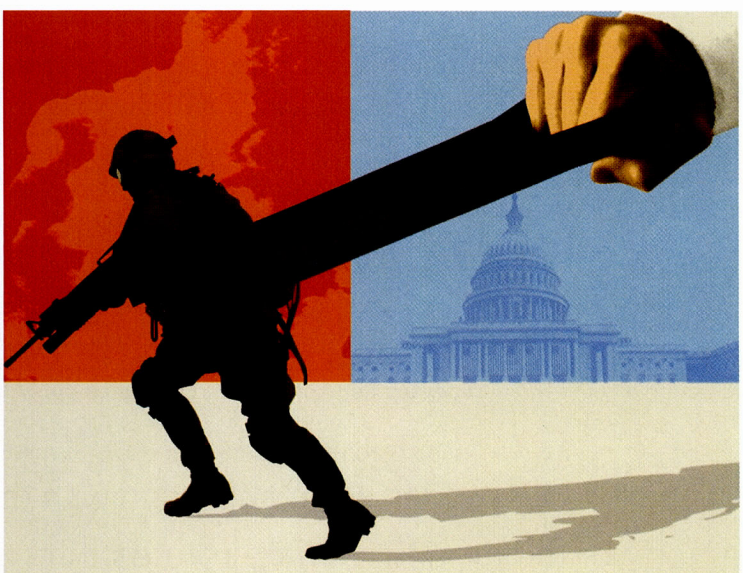
FOREIGN AFFAIRS

Declare War

It's time to stop slipping into armed conflict

BY LESLIE H. GELB AND ANNE-MARIE SLAUGHTER

Most wars are unpredictable messes. Their zigs and zags, we are reminded by the Pentagon epistemologist Donald Rumsfeld, are determined by an unstable alchemy of known knowns, known unknowns, and unknown unknowns. No nation can plan a war perfectly. Yet in Iraq even the most credulous of Washington insiders had to know before our 2003 invasion that key White House assertions—we could pay for the war out of Iraqi oil revenues; we could secure that vast and raucous country with a little over 100,000 troops—flatly contradicted what almost all civilian and military experts were saying publicly and privately. Much that has gone wrong in Iraq could have been foreseen—and was.



But Iraq is only the latest in a long line of ill-considered and ill-planned American military adventures. Time and again in recent decades the United States has made military commitments after little real debate, with hazy goals and no appetite for the inevitable setbacks. Bill Clinton, having inherited a mission in Somalia to feed the starving, ended up hunting tribal leaders and trying to nation-build. Ronald Reagan dispatched the Marines to Lebanon saying stability there was a "vital interest," only to yank them out sixteen months later, soon after a deadly terrorist attack on the Marine barracks. John Kennedy and Lyndon Johnson settled us slowly into a war intended to prevent another "domino" from falling to communism, but in a manner that tore the nation apart and ultimately led to defeat. Too often our leaders have entered wars with unclear and unfixed aims, tossing away American lives, power, and credibility before figuring out what they were doing and what could be done.

Our Framers could not have foreseen the present age of nuclear missiles and cataclysmic terrorism. But they understood political accountability, and—as their deliberations in Philadelphia attest—they knew that sending Americans into battle demanded careful reflection and vigorous debate. So they created a simple means of ensuring that debate: in Article I, Section 8, of the Constitution they gave Congress the power to declare war.

Declarations of war may seem to be relics of a bygone era—a time more deeply steeped in ritual, when ambassadors in frock coats delivered sealed communiqués to foreign courts. Yet a declaration of war has a great deal to recommend it today: it forces a deliberate, public conversation about the reasons for going to war, the costs, the risks, the likely gains, the strategies for achieving them—all followed by a formal vote.

Debates over war powers are nothing new. A recent book by the University of California at San Diego political scientist Peter Irons, *War Powers*, concludes that although the president has steadily accumulated de facto war powers, the Framers clearly—and correctly—intended to locate those powers in Congress. A report issued this year by the Constitution Project, a group of eminent academics and policymakers assembled by Georgetown University's Public Policy Institute, sounds the same note. For these experts and countless other lawyers and constitutional scholars, the solution is for Congress to step up and reassume primary responsibility for sending the nation to war.

The problem is that Congress wants power without responsibility. Most legislators fear the political costs of bucking the commander in chief when the nation appears under threat. Others worry that the president's control of vital intelligence places him in a far better position to judge the need for war. The obvious answer is to demand that the information be shared, but here the president can claim that a debate risks spilling secrets to the enemy.

As a result, Congress has often preferred form over substance. Early in the history of the Republic, when President James Madison asked for a declaration of war against Algiers to stop the Barbary pirates, Congress declined, but authorized him to use "such of the armed vessels of the United States as may be judged requisite." Over time such authorizations have become fast tracks to war. Congress votes up or down on the president's often vague military proposals, without accepting responsibility for judging the objectives of the war and the plans for waging it.

In the wake of the Vietnam War, Congress tried to fix this problem by passing the War Powers Act, which states that troops sent into combat by the president must be withdrawn within

sixty days unless Congress specifically approves an extension of combat. Trouble began immediately. Richard Nixon vetoed the act; when Congress overrode the veto, he simply reaffirmed his right to go ahead with war regardless of what Congress said. But Nixon's concerns were unwarranted: the War Powers Act was much more a symbolic assertion of congressional power than an actual constraint on the executive. It is naive to believe that any Congress would vote to pull back troops just sixty days after they'd been deployed.

The War Powers Act was a half-hearted effort to counter presidential unilateralism. The Framers imagined a more solemn act—a formal congressional process and declaration that would be far more difficult for the president to ignore. We propose a new law that would restore the Framers' intent by requiring a congressional declaration of war in advance of any commitment of troops that promises sustained combat. The president would be required to present to Congress an analysis of the threat, specific war aims, the rationale for those aims, the feasibility of achieving them, a general sense of war strategy, plans for action, and potential costs. For its part, Congress would hold hearings of officials and nongovernmental experts, examine evidence of the threat, assess the objectives, and explore the drawbacks of the administration's proposal. A full floor debate and vote would follow.

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In the case of a sudden attack on the United States or on Americans abroad, the president would retain his power to repel that attack and to strike back without a congressional declaration. But any sustained operation would trigger the declaration process. In other words, the president could send troops into Afghanistan to hunt down al-Qaeda and punish the Taliban in response to 9/11. But if he planned to keep troops there to unseat the government and transform the country, he would need a congressional declaration. (Without one, funding for troops in the field would be cut off automatically.)

This process would put considerable pressure on the president to develop his case with far greater care than has been the norm over the past fifty years. And by normally requiring legislators to act before troops are in the field, it would also help save them from a natural propensity to duck their constitutional duty.

Passing this legislation might not be easy. But the time is right. Liberals and conservatives alike have become increasingly concerned about the carelessness and costs of wars over the past forty years. A law that established a clear and solemn process for taking the nation to war, while acknowledging the joint responsibility of Congress and the president, could command broad support—especially if it were framed as a return to our constitutional roots. Moderates and liberals would presumably go along. The bill would satisfy their concerns about how easily the United States has gone to war, with subsequent regrets about either the war itself or how it was fought.

But in the wake of the Iraq War such a law might also appeal to many conservatives and neo-conservatives—particularly those who have come to feel that the United States is not getting the foreign-policy results it should, despite its awesome military power. Since the Vietnam War, hawks have felt that we tend to lose wars not on the battlefield but at home. The public, they correctly argue, becomes disenchanted with combat as casualties and costs mount, particularly if no steady progress toward victory can be seen. Demands to bring the troops home begin. The enemy becomes emboldened, and we begin to lose—first psychologically and then literally.

But a more public vetting of the decision to go to war, culminating in a solemn declaration of war by Congress, would most likely ensure stronger public support for the war, by involving the people in the decision and assuring voters that the war had not been launched hastily or under false pretenses. Setbacks and sacrifices might be less surprising and more easily accepted. Because the declaration process would address problems beforehand, it would help us win wars once they started.

The process and the declaration itself would strengthen American credibility—and negotiating power—in the diplomatic run-up to war. Troublemakers abroad have seen the pressure that our government feels to cut and run when conflict turns ugly. Beyond that, many have doubted that the White House would follow through on its threats at all. Saddam Hussein apparently didn't think either President Bush would have the support to attack him. Nor did the Haitians think President Clinton had the stomach for war after he precipitately yanked U.S. troops out of Somalia. But if a president ran the declaration gauntlet and built public support, he would gain enormous credibility for his threats.

And in those cases where the president was unable to persuade Congress to make war, the United States would almost always be better off. The legislation we propose would not diminish the president's considerable stature as commander in chief as he made his case to Congress. If his arguments still failed, the case could not have been very compelling. Far better if we knew that before the killing began.

Today a transportation bill gets more deliberation than a decision to send American troops to war. It seems safe to assume that this is not what the Framers intended. They worked hard to ensure that the power to spend American lives and treasure be exercised collectively and wisely. Their solution is written into the Constitution itself. Returning to the Constitution's text and making it work through legislation requiring joint and deliberate action may be the only way to give the decision to go to war the care it deserves.

Leslie H. Gelb is the president emeritus of the Council on Foreign Relations. Anne-Marie Slaughter is the dean of the Woodrow Wilson School of International and Public Affairs.