

Supplemental Notes to Lecture 19: US Foreign Policy in the 21st Century. *What is War?*

I. The War Powers Resolution, Revisited

Bipartisan bill aims to assert Congress's power over arms sales, emergencies and military operations



By [Karoun Demirjian](#)

July 20, 2021 at 3:02 p.m. EDT



A bipartisan group of senators unveiled legislation Tuesday to give Congress a more active role in approving arms sales, authorizing the use of military force and declaring national emergencies, in an across-the-board effort to claw back national security power from the executive branch.

The bill aims, for the first time, to define what type of “hostilities” require a president to seek congressional approval before committing military resources; establish expiration dates for

national emergencies and military authorizations; and automatically curtail funding for any operation a president continues without explicit congressional support.

But despite the measure's bipartisan backing, it is likely to face stiff head winds from lawmakers who defend presidential authority to make decisions affecting national security without constantly seeking permission from Congress, and from the administration itself. On Tuesday, one of its authors even acknowledged that the bill is unlikely to pass in its current form, while expressing hope it will "stimulate a conversation within Congress" about asserting its national security powers.

The comprehensive measure imposes more stringent restrictions than current law does, and comes as Washington grapples with whether and how to repeal long-running authorizations for use of military force, or AUMFs, including those passed nearly two decades ago to greenlight U.S. military operations in Iraq and Afghanistan.

The legislation also draws inspiration from recent disputes between lawmakers and the past two administrations, in seeking to impose firm standards forcing presidents to consult Congress early and often when it comes to using and funding weapons of war.

The trio behind the measure, Sens. Chris Murphy (D-Conn.), Mike Lee (R-Utah) and Bernie Sanders (I-Vt.), are longtime proponents of giving Congress a more proactive role in such matters. In recent years, they joined forces to invoke Congress's war powers and bring an end to U.S. participation in Yemen's civil war — an effort that secured majority support, but not enough to overcome President Donald Trump's veto.

"Over time, Congress has acquiesced to the growing, often unchecked power of the executive to determine the outline of America's footprint in the world," Murphy said in a statement. "Before it's too late, Congress needs to reclaim its rightful role as coequal branch on matters of war and national security."

The measure seeks to replace the War Powers Act of 1973 with stiffer and better-defined directives to the current and future administrations about when to approach Congress for permission to conduct military operations.

It would define "hostilities" as any operation involving the use of force, remotely or directly — superseding the unofficial custom of administrations interpreting the law as applying only when there are combat troops on the ground. It also would shorten the time that presidents have to engage in those hostilities from 60 to 20 days and automatically terminate funding for an operation if a president fails to secure congressional support for the venture by that deadline. Lawmakers have argued that such prescriptions are necessary to force presidents to recognize Congress's power to declare war, given to the legislative branch under Article I of the Constitution. But successive presidential administrations have argued that the War Powers Act is unconstitutional for restricting the president's authority as commander in chief, as defined under Article II of the Constitution.

The legislation seeks to impose similar authority over how administrations conclude arms sales and declare national emergencies; it would require the president to secure affirmative votes from Congress before finalizing such sales, instead of leaving it to lawmakers to come up with veto-proof majorities on tight timetables to block them.

The measure would require presidents to secure such congressional approval for most major foreign military or direct commercial sales of military-grade weaponry — which, in most cases, means sales valued at \$14 million or more.

The issue came to prominence earlier this year after lawmakers were alerted to a \$735 million sale of munitions to Israel in the midst of its bombing campaign in Gaza. Sanders was one of the leading voices raising an alarm — but because the notification requirements were minimal, it came too late to do anything about it.

While the proposed legislation would not have blocked that sale, as it does not impose a requirement for preliminary congressional approval of transactions involving NATO countries and other designated allies, it would require administrations to seek permission for similar transactions to other countries, such as last year's \$23 billion sale of F-35 fighter jets, Reaper drones and other military equipment to the United Arab Emirates and other nations. The bill also proposes elongating the window under which Congress may review sales to allied nations from 15 to 20 days.

Typically, it is difficult for Congress to come up with veto-proof majorities to block presidential action. That was also the case in 2019, when Trump declared a [national emergency along the U.S.-Mexico border](#), to enable him to divert billions of dollars in military construction funds by fiat to build a wall. The new bill from Murphy, Lee and Sanders would curtail any national emergency that Congress does not approve within 30 days, and it would limit Congress's authorizations of such emergencies to one year at a time, with a total limit of five years. The bill weighs in more specifically on existing war powers as well, by seeking to sunset four active authorizations related to military operations in the Middle East within 180 days of passage. While [two of those are noncontroversial](#) — Democrats and most Republicans support repealing the 1991 authorization approving the deployment of troops to the Gulf War and the 1957 authorization allowing presidents to use force to stop the spread of communism in the region — the others are not.

The two parties are divided over whether to repeal the 2001 AUMF that Congress authorized in the wake of that year's Sept. 11 terrorist attacks. Republicans argue it is vital to maintaining active operations against groups that continue to pose a threat to the United States, while most Democrats say it needs to be updated or replaced.

Although President Biden has declared his support for ending the 2002 AUMF that enabled the 2003 Iraq War, efforts to repeal that measure have similarly run aground in the evenly divided Senate, after the chamber's Republicans insisted on a more painstaking review of its continued significance. The 2002 AUMF has not been used as the sole justification for a U.S. military operation in a decade.

II. Is the US at War in Ukraine?



Op-Ed by Bonnie Kristian published on June 20, 2022, in the *New York Times*

In the more than three months since Russia invaded Ukraine, the Biden administration has said a lot of things about the war. It had to walk a few of them back almost immediately, like when President Biden’s statement that Vladimir Putin “[cannot remain in power](#)” turned out *not* to be a call for regime change. On other points, its rhetoric has sharpened over time: In March, America’s goal was to help Ukraine defend itself; by [the end of April](#) it was a “weakened” Russia.

But on one thing the administration has [been very consistent](#): America won’t get into a war with Russia for Ukraine.

“We do not seek a war between NATO and Russia,” President Biden [wrote](#) in The Times at the end of May. “As much as I disagree with Mr. Putin, and find his actions an outrage, the United States will not try to bring about his ouster in Moscow. So long as the United States or our allies are not attacked, we will not be directly engaged in this conflict, either by sending American troops to fight in Ukraine or by attacking Russian forces.”

Much of the praise and critique of Mr. Biden’s Ukraine policy has accepted his version of events. But are we sure Americans can reliably recognize when we’ve joined a war?

Presidents have a history of insisting they have no intention of going to war, until they do. “He kept us out of war,” President Woodrow Wilson’s 1916 re-election slogan declared, only for Wilson to take us into World War I a mere month into his second term, right after [describing](#) American intervention as inevitable.

During the presidential election of 1964, President Lyndon B. Johnson [promised he was](#) “not about to send American boys nine or 10 thousand miles away from home to do what Asian boys ought to be doing for themselves.” But in February 1965, within a month of his inauguration, Johnson authorized the bombing campaign known as Operation Rolling Thunder. A month after that, “American boys” were in Vietnam.

That history is instructive on the shelf life of any president’s promise — perhaps particularly during an election — to keep us out of war: Even if it’s true at the moment it’s uttered, it is no guarantee for the future.

But at least in the cases of World War I and Vietnam there was a demonstrable shift from not at war to at war, and Americans could point to a moment when that shift occurred. That bright line meant presidents could make straightforward promises to stay out of a war, and the public could tell when those promises weren’t kept.

In recent decades, however, especially in the aftermath of the Sept. 11 attacks, we’ve moved into a model of perpetual warfare, with ambiguous boundaries of chronology, geography, and purpose. The line between what is war and what is not war has perilously blurred, and determining the moment we move from one to the other has become a more difficult task.

That’s partly because of technological advances, like drone warfare and cyberattacks, that have made it possible to commit what might otherwise be seen as acts of war — killing adversaries, destroying buildings, [degrading nuclear facilities](#) — in other countries without U.S. troops ever leaving U.S. soil. It’s also a function of executive war-making: Congress hasn’t formally declared war [since 1942](#), but successive presidents have relied on the broad war powers granted to George W. Bush in 2002 to authorize the use of military force.

Are we at war in Pakistan or Somalia, for example, where we have been conducting [drone attacks](#) against Qaeda, Islamic State and Taliban militants in Pakistan since 2004 and Al Shabab in Somalia since 2011? Or at war in Niger, where U.S. forces were deployed and where four American soldiers were killed in an ambush in October 2017?

The United States has never officially joined the civil war in Yemen, but a Saudi-led coalition has killed civilians with [U.S.-made warheads](#) and chosen targets with [American guidance](#).

Our role in the seven-year conflict in Yemen has been robust enough that many [experts believe](#) the Saudi-led coalition would sue for peace without it. It has been robust enough that American lawmakers — including a bipartisan majority of senators [in 2019](#) and Representatives Pramila Jayapal, Democrat of Washington, and Peter DeFazio, Democrat of Oregon, [this year](#) — have characterized it as [a violation](#) of [Article I](#) of the Constitution, which grants Congress the

power to declare war, and of the 1973 [War Powers Resolution](#), which sharply limits, in nature and timeline, military action initiated by the president.

We crossed the line in Yemen, those lawmakers concluded, even if it's not wholly clear where the line is.

And what we've done in Yemen looks a lot like what we're doing in Ukraine. Last month, leaks by U.S. officials revealed that the United States helped Ukraine to [kill Russian generals](#) and [strike a Russian warship](#), and Mr. Biden [signed](#) a \$40 billion [aid package](#) for Ukraine, a lot of which is for [military assistance](#) like weaponry and intelligence sharing. The bill, which Ms. Jayapal and Mr. DeFazio [voted for](#), comes on top of billions of prior [military support](#). The Biden administration [also announced, this month](#) that it will send rocket systems to Ukraine that could [theoretically](#) strike inside Russian territory, and it reportedly has [plans to sell](#) the Ukrainian government four drones that can be armed with Hellfire missiles.

Are we at war in Ukraine? If we swapped places — if Russian apparatchiks admitted helping to kill American generals or sink a U.S. Navy vessel — I doubt we'd find much ambiguity there. At the very least, what the United States is doing in Ukraine is not *not* war. If we have so far avoided calling it war and can continue to do so, maybe that's only because we've become so uncertain of the meaning of the word.

III. Reinstate the Draft?

The US military is as unequal as America. Want a fair fight? Reinstate the draft
Charles B Rangel in Washington

A war tax and a draft would make us stop and rethink who we're sending off to fight Isis - and why

Tue 30 Sep 2014 12:39 EDT



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The late Charles Rangel (D-NY) was a member of the House of Representatives from 1971-2017.

I am certain that the US-led coalition can defeat the Islamic terrorist groups in the Middle East. But if we ultimately must put boots on the ground, we should only do so when our entire nation is fully committed to sharing the burden – when we reinstate the draft and enact a war tax. Most American families today do not have much stake in the cost of war. Right now, few fight and

even fewer decide. But war becomes more personal when you have to pay for a loved one to fight in it.

Since 1973, the all-volunteer US military has comported itself with honor and bravery. Yet the burden of service disproportionately falls on less than 1% of the population. The same familiar faces have served multiple tours in Iraq and Afghanistan. A more inclusive military draft, however, would compel everyone in the nation to stop and rethink about who we send to wars, how we fight – and why we fight them at all.

Our military leadership is absent of racial diversity. While minorities are slightly over-represented in its lower ranks, they are nearly absent from its top brass . . .

I am further troubled by the socio-economic disparity of the all-volunteer force. Due to a glaring lack of opportunities, many young Americans from distressed, rural communities are more inclined to volunteer for the military than those from affluent backgrounds. The military recruits in rural areas at a rate of 1.94 per 1,000 young people, [well above the national average](#). A mere 5% of enlisted, active-duty service members hold a bachelor's degree, while 82% of their counterparts in the officers corps have at least a bachelor's. In a society where higher education is essential to securing a job, many view the military as an alternative means – as I did in 1948 – to achieving the American Dream . . .

Currently almost all male US citizens and immigrants between the ages of 18 to 25 are required to register for selective service, in case our nation needs to reinstate the draft. I have introduced a bill to include women in the registry, doubling the approximate 13.5m currently eligible for conscription – not to send women off to the battlefields, but to give them a voice on matters of war.

Still, not everyone will have a son or daughter, a brother or sister, in the fight. That is why I believe it is important to levy a war tax – so that everyone has a reason to question America's decision to go to war. When we require citizens to pay out of their own pockets, the costs become more real. Nearly 6,900 American service men and women paid the ultimate sacrifice in Iraq and Afghanistan. War should be our last resort.

But if we must go back to war, we should decide and fight together as a nation. Reinstating the draft and enacting a war tax would ensure that our fight against the [Islamic State](#) is a shared sacrifice. If we want a fair fight, national defense should be synonymous with the contributions of everyone, not just the small few.

Quiz Question 5: What is one way in which the bill proposed by Senators Lee, Murphy, and Sanders would strengthen the War Powers Act of 1973?

Quiz Question 6: According to Kristian, what is one way in which, since September 11, 2001, the US military has adopted a “model of perpetual warfare?”

Quiz Question 7: Do you support Congressman Rangel's proposal to reinstate the draft? Briefly explain why or why not.

