

How Scalia Distorts the Framers

From the Archive: The late Supreme Court Justice Scalia put his right-wing ideology above any respect for the Constitution's Framers, even resorting to a made-up view attributed to Alexander Hamilton in Scalia's dissent to the landmark upholding of the Affordable Care Act, wrote Robert Parry in 2012.

By Robert Parry (Originally published on July 4, 2012)

Antonin Scalia and the three other right-wing justices who sought to strike down health-care reform cited no less an authority on the Constitution than one of its key Framers, Alexander Hamilton, as supporting their concern about the overreach of Congress in regulating commerce.

In their angry dissent on June 28, 2012, the four wrote: "If Congress can reach out and command even those furthest removed from an interstate market to participate in the market, then the Commerce Clause becomes a font of unlimited power, or in Hamilton's words, 'the hideous monster whose devouring jaws . . . spare neither sex nor age, nor high nor low, nor sacred nor profane.'" They footnoted Hamilton's Federalist Paper No. 33.

That sounds pretty authoritative, doesn't it? Here's Hamilton, one of the strongest advocates for the Constitution, offering a prescient warning about "Obamacare" from the distant past of 1788. Except that Scalia and his cohorts are misleading you. In effect, they turned Hamilton's observation inside out.

In Federalist Paper No. 33, Hamilton was not writing about the Commerce Clause. He was referring to clauses in the Constitution that grant Congress the power to make laws that are "necessary and proper" for executing its powers and that establish federal law as "the supreme law of the land."

Hamilton also wasn't condemning those powers, as Scalia and his friends would have you believe. Hamilton was defending the two clauses by poking fun at the Anti-Federalist alarmists who had stirred up opposition to the Constitution with warnings about how it would trample America's liberties. In the cited section of No. 33, Hamilton is saying the two clauses had been unfairly targeted by "virulent invective and petulant declamation."

It is in that context that Hamilton complains that the two clauses "have been held up to the people in all the exaggerated colors of misrepresentation as the pernicious engines by which their local governments were to be destroyed and their liberties exterminated; as the hideous monster whose devouring jaws would spare neither sex nor age, nor high nor low, nor sacred nor profane."

In other words, Scalia and the three other right-wingers did not only apply Hamilton's comments to the wrong section of the Constitution but reversed their meaning. Hamilton was mocking those who were claiming that these clauses would be "the hideous monster."

Twisting the Framers

It is ironic indeed that Hamilton's words, countering alarmist warnings from his era's conservatives, would be distorted by this era's conservatives to spread new alarms about the powers of the Constitution.

Scalia's distortion also underscores a larger tendency on the Right to fabricate a false founding narrative that transforms key advocates for a strong central government the likes of Alexander Hamilton and James Madison into their opposites, all the better to fit with the Tea Party's fictional storyline.

Of course, Scalia's deception would be an easy sell to typical Tea Party advocates, whose certainty about their made-up history would be reinforced as they pretend to stand with the Framers, complete with tri-corner hats from costume shops and bright-yellow "Don't Tread on Me" flags.

Indeed, the Scalia-authored dissent reads more like a Tea Party manifesto than a carefully reasoned legal argument. The dissent sees the Affordable Care Act, which seeks to impose some rationality on America's chaotic health-insurance system, as a step toward a despotic scheme that would "make mere breathing in and out the basis for federal prescription and to extend federal power to virtually all human activity."

Some Supreme Court watchers even suspect that it may have been Scalia's intemperate tone that pushed Chief Justice John Roberts from a position of initially rejecting the Affordable Care Act outright as an unconstitutional use of the Commerce Clause to supporting its constitutionality under congressional taxing powers.

The four more liberal justices endorsed the law's constitutionality under the Commerce Clause but also joined with Roberts on his tax conclusion, thus upholding the law and sending Scalia and his three right-wing cohorts Anthony Kennedy, Clarence Thomas and Samuel Alito into a further paroxysm of rage.

What becomes clear in reading the dissent is that not only do the right-wing justices misrepresent the views of the Framers regarding the Commerce Clause, these justices misunderstand a central reality of why the Framers wrote the Constitution in 1787. The Framers junked the states-rights-oriented Articles of Confederation in favor of the Constitution because they *wanted* to solve the nation's problems.

Founding Pragmatists

Led by James Madison and George Washington, the drafters of the Constitution crafted a profoundly pragmatic document, filled not only with political compromises to pull together the 13 squabbling states but looking for practical solutions to address the challenges of a new, sprawling and disparate nation.

The Commerce Clause, which grants Congress the power to regulate interstate commerce, was not some afterthought but rather one of Madison's most cherished ideas, as Justice Ruth Bader Ginsburg noted in her opinion on behalf of the Court's four more liberal members.

Citing a 1983 ruling entitled *EEOC v. Wyoming*, Ginsburg noted that "the Commerce Clause, it is widely acknowledged, 'was the Framers' response to the central problem that gave rise to the Constitution itself.'"

That problem was a lack of national coordination on economic strategy, which hindered the country's development and made the nation more vulnerable to commercial exploitation by European powers, which looked to divide and weaken the newly independent United States.

Ginsburg wrote: "Under the Articles of Confederation, the Constitution's precursor, the regulation of commerce was left to the States. This scheme proved unworkable, because the individual States, understandably focused on their own economic interests, often failed to take actions critical to the success of the Nation as a whole."

The Articles of Confederation, which governed the country from 1777 to 1787, had explicitly asserted the "independence" and "sovereignty" of the 13 individual states, making the central government essentially a supplicant to the states for necessary financial support.

After watching the Continental Army suffer when the states reneged on promised funds, General Washington felt a visceral contempt for the concept of sovereign and independent states. He became a strong supporter of Madison's idea of a stronger central government, including one with the power to regulate commerce.

In 1785, Madison proposed a Commerce Clause as an amendment to the Articles, with Washington's strong support. "We are either a united people, or we are not," Washington wrote. "If the former, let us, in all matters of a general concern, act as a nation which have national objects to promote, and a national character to support. If we are not, let us no longer act a farce by pretending it to be."

Alexander Hamilton, who had served as Washington's chief of staff in the

Continental Army, explained the commerce problem this way: “[Often] it would be beneficial to all the states to encourage, or suppress, a particular branch of trade, while it would be detrimental . . . to attempt it without the concurrence of the rest.”

Madison himself wrote, regarding the failings of the Articles, that as a result of the “want of concert in matters where common interest requires it,” the “national dignity, interest, and revenue [have] suffered.”

However, Madison’s commerce amendment failed in the Virginia legislature. That led him to seek an even more radical solution scrapping the Articles altogether and replacing them with a new structure with a powerful central government whose laws would be supreme and whose powers would extend to coordinating a strategy of national commerce.

Building the Framework

As Madison explained to fellow Virginian Edmund Randolph in a letter of April 8, 1787, as members of the Constitutional Convention were gathering in Philadelphia, what was needed was a “national Government . . . armed with a positive & compleat authority in all cases where uniform measures are necessary.”

On May 29, 1787, the first day of substantive debate at the Constitutional Convention, it fell to Randolph to present Madison’s framework. The Commerce Clause was there from the start.

Madison’s convention notes on Randolph’s presentation recount him saying that “there were many advantages, which the U. S. might acquire, which were not attainable under the confederation such as a productive impost [or tax] counteraction of the commercial regulations of other nations pushing of commerce ad libitum &c &c.”

In other words, the Founders at their most “originalist” moment understood the value of the federal government taking action to negate the commercial advantages of other countries and to take steps for “pushing of [American] commerce.” The “ad libitum &c &c” notation suggests that Randolph provided other examples off the top of his head.

Historian Bill Chapman has summarized Randolph’s point as saying “we needed a government that could co-ordinate commerce in order to compete effectively with other nations.”

So, from the very start of the debate on a new Constitution, Madison and other key Framers recognized that a legitimate role of the U.S. Congress was to ensure

that the nation could match up against other countries economically and could address problems impeding the nation's economic strength and welfare.

This pragmatism imbued Madison's overall structure even as he included intricate checks and balances to prevent any one branch of government from growing too dominant. The final product also reflected compromises between the large and small states over representation and between Northern and Southern states over slavery, but Madison's Commerce Clause survived as one of the Constitution's most important features.

However, the Constitution's dramatic transfer of power from the states to the central government provoked a furious reaction from supporters of states' rights. The Articles' phrasing about state "sovereignty" and "independence" had been removed entirely, replaced with language making federal law supreme.

The Anti-Federalists recognized what had happened. As dissidents from the Pennsylvania delegation wrote: "We dissent because the powers vested in Congress by this constitution, must necessarily annihilate and absorb the legislative, executive, and judicial powers of the several states, and produce from their ruins one consolidated government."

Winning Ratification

As resistance to Madison's federal power-grab spread and as states elected delegates to ratifying conventions Madison feared that his constitutional masterwork would go down to defeat or be subjected to a second convention that might remove important federal powers like the Commerce Clause.

So, Madison along with Alexander Hamilton and John Jay began a series of essays, called the Federalist Papers, designed to counter the fierce attacks by the Anti-Federalists against the broad assertion of federal power in the Constitution.

Madison's strategy was essentially to insist that the drastic changes contained in the Constitution were not all that drastic, an approach he took both as a delegate to the Virginia ratifying convention and in the Federalist Papers. But Madison also touted the advantages of the Constitution and especially the Commerce Clause.

For instance, in Federalist Paper No. 14, Madison envisioned major construction projects under the powers granted by the Commerce Clause. "[T]he union will be daily facilitated by new improvements," Madison wrote. "Roads will everywhere be shortened, and kept in better order; accommodations for travelers will be multiplied and meliorated; an interior navigation on our eastern side will be opened throughout, or nearly throughout the whole extent of the Thirteen States.

“The communication between the western and Atlantic districts, and between different parts of each, will be rendered more and more easy by those numerous canals with which the beneficence of nature has intersected our country, and which art finds it so little difficult to connect and complete.”

While ignoring Federalist Paper No. 14, today’s right-wingers are fond of noting Madison’s Federalist Paper No. 45, in which he tries to play down how radical a transformation, from state to federal power, he had engineered in the Constitution.

Rather than view this essay in context Madison finessing the opposition the modern Right seizes on Madison’s rhetorical efforts to deflect the Anti-Federalist attacks by claiming that some of the Constitution’s federal powers were contained in the Articles of Confederation, albeit in far weaker form.

In Federalist Paper No. 45, entitled “The Alleged Danger From the Powers of the Union to the State Governments Considered,” Madison wrote: “If the new Constitution be examined with accuracy, it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS.”

Today’s Right also trumpets Madison’s summation, that “the powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

But the Right generally ignores another part of No. 45, in which Madison writes: “The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained.”

In his ruling joining with his fellow right-wing justices in rejecting the application of the Commerce Clause to the Affordable Care Act Chief Justice Roberts does mention that line from Federalist Paper No. 45. However, he spins Madison’s meaning into a suggestion that the Commerce Clause should never contribute to any controversy.

Looking to the Future

However, what Madison’s comments about the Commerce Clause actually demonstrated was a core reality about the Framers that, by and large, they were practical men seeking to build a strong and unified nation. They also viewed the Constitution as a flexible document designed to meet America’s ever-changing needs, not simply the challenges of the late Eighteenth Century.

As Hamilton wrote in Federalist Paper No. 34, “we must bear in mind that we are not to confine our view to the present period, but to look forward to remote

futurity. Constitutions of civil government are not to be framed upon a calculation of existing exigencies, but upon a combination of these with the probable exigencies of ages, according to the natural and tried course of human affairs.

“Nothing, therefore, can be more fallacious than to infer the extent of any power, proper to be lodged in the national government, from an estimate of its immediate necessities. There ought to be a CAPACITY to provide for future contingencies as they may happen; and as these are illimitable in their nature, it is impossible safely to limit that capacity.”

Indeed, the Commerce Clause was a principal power that Madison crafted to deal with commercial challenges both current to his time and future ones that could not be anticipated by his contemporaries. There also was a reason why the Framers made the power to regulate interstate commerce unlimited. They wanted to invest in the elected representatives the United States the ability to solve future problems.

In Madison’s day, the nation’s challenges included the need for canals and roads that would move goods to market and enable settlers to travel westward into lands that European powers also coveted. Always a principal concern was how European competition could undermine the hard-won independence of the nation.

Though the Framers could not have envisioned the commercial challenges of the modern world, American businesses remain under intense foreign competition today, in part, because of an inefficient health-care system that imposes on U.S. businesses the cost of health insurance that drives up the price of American goods.

Under the current system, not only do many American businesses pay for their employees’ health care while most other developed nations pay medical bills through general taxation but U.S. companies indirectly pick up the cost of the uninsured who get emergency care and don’t pay.

So, a law that makes American businesses more competitive by addressing this “free-rider” problem and by assuring a healthier work force would seem to be right down the middle of the Framers’ intent in drafting the Commerce Clause.

No Practicality

In contrasting Justice Ginsburg’s opinion on the Affordable Care Act with Scalia’s dissent, one of the most striking differences is how the Framers are understood: Ginsburg sees them as pragmatic problem-solvers, while Scalia envisions them as rigid ideologues placing individual freedom above practical goals.

The core of the Scalia-written dissent is that the Constitution is NOT about solving problems, but rather following the most cramped interpretation of the words. Indeed, he ridicules Ginsburg for viewing the founding document as implicitly intended to give the elected branches of government the flexibility to address national challenges.

Yet, there was little question from either side that virtually every American participates in the commerce of health care from birth to death and that the health-insurance mandate in the Affordable Care Act was intended by Congress to regulate what is clearly a national market.

In the dissent, the four right-wing justices acknowledged that “Congress has set out to remedy the problem that the best health care is beyond the reach of many Americans who cannot afford it. It can assuredly do that, by exercising the powers accorded to it under the Constitution. The question in this case, however, is whether the complex structures and provisions of the Affordable Care Act go beyond those powers. We conclude that they do.”

Scalia noted that Ginsburg “treats the Constitution as though it is an enumeration of those problems that the Federal Government can address, among which, it finds, is ‘the Nation’s course in the economic and social welfare realm,’ and more specifically ‘the problem of the uninsured.’

“The Constitution is not that. It enumerates not federally soluble *problems*, but federally available *powers*. The Federal Government can address whatever problems it wants but can bring to their solution only those powers that the Constitution confers, among which is the power to regulate commerce. None of our cases say anything else. Article I contains no whatever-it-takes-to-solve-a-national--problem power.”

The right-wing justices insisted that the power to “regulate” commerce couldn’t possibly cover something like a mandate to buy health insurance.

Chief Justice Roberts in his own opinion, which rejected use of the Commerce Clause but then justified the Affordable Care Act under the Constitution’s taxing powers decided that some of the definitions of the word “regulate” couldn’t be applied because they were not the first definitions in the dictionaries of the late Eighteenth Century.

However, in an earlier opinion upholding the Affordable Care Act, conservative U.S. Appeals Court Judge Laurence Silberman noted that “At the time the Constitution was fashioned, to ‘regulate’ meant, as it does now, ‘[t]o adjust by rule or method,’ as well as ‘[t]o *direct*.’ To ‘direct,’ in turn, included ‘[t]o prescribe certain measure[s]; to mark out a certain course,’ and ‘[t]o order; to

command.'

"In other words, to 'regulate' can mean to require action, and nothing in the definition appears to limit that power only to those already active in relation to an interstate market. Nor was the term 'commerce' limited to only *existing* commerce. There is therefore no textual support for appellants' argument" that mandating the purchase of health insurance is unconstitutional.

However, in Roberts's ruling, the Chief Justice threw out certain definitions for "regulate", such as "[t]o order; to command", saying they were not among the top definitions in the dictionaries of the time. Roberts wrote, "It is unlikely that the Framers had such an obscure meaning in mind when they used the word 'regulate.'"

Needing Health Care

Scalia and Roberts also adopted a very narrow concept of participation in the health-care industry. Though it's undeniable that virtually all Americans from birth to death receive medical care of various types and at different times, the Court's five right-wing justices treated the gaps between those events as meaning people are no longer in the health market.

Roberts wrote: "An individual who bought a car two years ago and may buy another in the future is not 'active in the car market' in any pertinent sense. The phrase 'active in the market' cannot obscure the fact that most of those regulated by the individual mandate are not currently engaged in any commercial activity involving health care, and that fact is fatal to the Government's effort to 'regulate the uninsured as a class.'"

But, as Ginsburg noted in her opinion, this comparison is off-point, because a person can plan for the purchase of a car but often is thrust into the medical industry by an accident or an unexpected illness.

Over and over again, the five right-wing justices behaved as if they started out with a determination to reject a constitutional justification under the Commerce Clause and then dreamt up legal wording to surround their preconceived conclusion. In doing so, they treated the Constitution as some finicky legal document rather than what the Framers had intended, a vibrant structure for solving national problems.

And, as for the Framers' views regarding mandating American citizens to buy a private product, one can get a good idea of their attitude by examining the actions of the Second Congress in passing the Militia Acts, which mandated that every white male of military age buy a musket and related supplies. That Congress included actual Founders, such as James Madison. The law was signed by

George Washington, another Founder. [See Consortiumnews.com's "[The Founders' Musket Mandate.](#)"]

So, despite what today's Right wants you to believe, the Framers were not hostile to a strong central government; they were not big advocates of states' rights; they were not impractical ideologues contemplating their navels or insisting on some hair-splitting interpretation of their constitutional phrasing.

Rather, they were pragmatic individuals trying to build a nation. They wrote the Constitution specifically so the country could address its pressing problems and match up competitively with America's foreign rivals. Since Justices Scalia, Kennedy, Thomas and Alito don't have this real history on their side, they apparently saw little option but to make up their own.

Investigative reporter Robert Parry broke many of the Iran-Contra stories for The Associated Press and Newsweek in the 1980s. You can buy his latest book, *America's Stolen Narrative*, either in [print here](#) or as an e-book (from [Amazon](#) and [barnesandnoble.com](#)).

New GOP Plans for Torture

President Obama's failure to prosecute Bush-era torturers created an impunity that has encouraged some Republican presidential candidates to tout new plans for more torture if they reach the White House, a grotesque example of "American exceptionalism," as Nat Parry explains.

By Nat Parry

Troubling comments within the Republican presidential field over whether to reinstate torture and implement other war crimes have been drawing criticism lately, with the 2008 Republican presidential nominee, Arizona Senator John McCain, even feeling compelled to weigh in last week by calling out the "loose talk" in the Republican primaries.

On Feb. 9, McCain took to the Senate floor to [condemn](#) remarks by his Republican colleagues regarding the use of torture, saying that "these statements must not go unanswered because they mislead the American people about the realities of interrogation, how to gather intelligence, what it takes to defend our security and at the most fundamental level, what we are fighting for as a nation and what kind of nation we are."

McCain's remarks were a welcome breath of sanity in a Republican presidential race that has recently been dominated by discourse that sounds much like a warped competition to see who would be the most brutal and lawless in the treatment of suspected terrorists. The televised debate on Feb. 6, for example, featured candidates Marco Rubio, Ted Cruz and Donald Trump vying for the "tough guy" vote, each expressing varied levels of support for waterboarding and other discredited "enhanced interrogation techniques."

While Cruz said he would support waterboarding in limited circumstances, Trump pledged to not only reintroduce the technique in a widespread way, but also introduce even more draconian torture practices if elected: "I would bring back waterboarding, and I would bring back a hell of a lot worse than waterboarding," he said.

Rubio also reiterated his support for waterboarding, saying that terrorism cases should not be held to the same humane legal standards of traditional law enforcement. "Well, when people talk about interrogating terrorists, they're acting like this is some sort of law enforcement function," he said. "Law enforcement is about gathering evidence to take someone to trial, and convict them. Anti-terrorism is about finding out information to prevent a future attack so the same tactics do not apply."

Taking this to its logical conclusion, what Rubio seems to be saying is that it is perfectly permissible to detain individuals suspected of ties to terrorism, without due process (or evidence), torture them into providing information, which may or may not be true including perhaps identifying other suspected terrorists in an endless process of extra-legal detention and torture that produces neither actionable intelligence nor evidence that can be used in a court of law.

It was precisely this sort of strategy that led to at least 26 of 119 detainees being wrongfully held and tortured in the CIA's rendition program under George W. Bush, according to the Senate report on torture that was released in late 2014. (When asked about this later, former Vice President Dick Cheney coldly stated that he's "more concerned with bad guys who got out and released than I am with a few that, in fact, were innocent.")

This mentality of endless detention and interrogation is also largely responsible for the legal abomination of Guantanamo, and has complicated President Obama's efforts in shuttering the prison. Because so much of the evidence against the detainees is tainted by torture, the evidence is inadmissible in court, making it impossible to bring them to trial in the United States.

But Rubio along with other Republican candidates has made it clear that it is a mistake to close the Guantanamo prison, which for 14 years has served as a legal black hole where detainees are denied the rights and protections they would be given by the Geneva Conventions or the Bill of Rights.

Rather than shuttering the prison, Rubio argued that it should be kept open indefinitely: "Here's the bigger problem with all this," he said. "We're not interrogating anybody right now. Guantanamo's being emptied by this president. We should be putting people into Guantanamo, not emptying it out, and we shouldn't be releasing these killers who are rejoining the battlefield against the United States."

In an earlier presidential debate, Rubio made clear that under his administration, indefinite detention and torture would be most welcome. "If we capture terrorists," he said, "they're going to Guantanamo, and we will find out everything they know."

As for Trump, when he was pressed on his statements about bringing back waterboarding and devising even more brutal torture methods, he decided to double down rather than backtrack.

On Feb. 7, the real-estate-mogul-turned-reality-TV-star-turned-presidential-contender appeared on "This Week" with George Stephanopoulos. "As president, you would authorize torture?" Stephanopoulos asked Trump.

"I would absolutely authorize something beyond waterboarding," Trump said. "And believe me, it will be effective. If we need information, George, you have our enemy cutting heads off of Christians and plenty of others, by the hundreds, by the thousands."

When asked whether we "win by being more like them," i.e., to mimic the tactics of Islamic State terrorists, Trump stated flatly, "Yes."

"I'm sorry," he elaborated. "You have to do it that way. And I'm not sure everybody agrees with me. I guess a lot of people don't. We are living in a time that's as evil as any time that there has ever been. You know, when I was a young man, I studied Medieval times. That's what they did, they chopped off heads."

"So we're going to chop off heads?" Stephanopoulos asked.

"We're going to do things beyond waterboarding perhaps, if that happens to come," Trump replied.

Trump has even insinuated that Cruz is a "pussy" for hinting that he might show

some degree of restraint in the use of torture. With this kind of talk, it's clear that on the Republican side, the discussion has gone off the rails, leading several human rights groups to remind the U.S. of its moral and legal obligations not to engage in sadistic and cruel practices such as waterboarding.

"Waterboarding meets the legal definition of torture, and is therefore illegal," recalled Human Rights First's Raha Walla on Feb. 11. "Torture under U.S. and international law means acts that cause severe mental or physical pain or suffering. There's no question that waterboarding meets that definition."

Amnesty International's Naureen Shah also issued a rebuttal to the debate over waterboarding, which she described as "slow-motion suffocation." She pointed out the obvious that "the atrocities of the armed group calling itself Islamic State and other armed groups don't make waterboarding okay."

What the current "debate" over bringing back torture highlights, however, besides how perverse the Republican dialogue has become, is why prosecutions of the Bush-era CIA torture program are essential, and why it is so damaging that the Obama administration has shirked its responsibilities in this regard for more than seven years.

As human rights advocates have long maintained, prosecuting Bush administration and CIA officials involved with the torture of terrorism suspects in the post-9/11 period is needed so that torture is not repeated in the future by subsequent administrations who because of previous decisions not to prosecute may consider themselves above the law.

Indeed, this is precisely why there is a requirement under international law for allegations of torture to be investigated and prosecuted so that torture does not become a "policy option" to be utilized or shelved depending on the political whims of the day.

This is a point that Amnesty International, for one, drove home following the release of the Senate's CIA torture report in December 2014. In a statement entitled "Senate summary report on CIA detention programme must not be end of story," Amnesty lamented that limited Justice Department investigations into CIA interrogations were ended in 2012 with no charges.

Human Rights Watch concurred, noting that unless the release of the Senate report leads to prosecutions, torture will remain a "policy option" for future presidents.

The UN Special Rapporteur on Human Rights and Counterterrorism Ben Emmerson stated unequivocally that senior officials from the Bush administration who sanctioned crimes, as well as the CIA and U.S. government officials who carried

them out, must be investigated and prosecuted.

“It is now time to take action,” Emmerson said on Dec. 9, 2014. “The individuals responsible for the criminal conspiracy revealed in today’s report must be brought to justice, and must face criminal penalties commensurate with the gravity of their crimes. The fact that the policies revealed in this report were authorized at a high level within the U.S. government provides no excuse whatsoever. Indeed, it reinforces the need for criminal accountability.”

International law prohibits the granting of immunity to public officials who have engaged in acts of torture, Emmerson pointed out. He further emphasized the United States’ international obligation to criminally prosecute the architects and perpetrators of the torture methods described in the report:

“As a matter of international law, the U.S. is legally obliged to bring those responsible to justice. The UN Convention Against Torture and the UN Convention on Enforced Disappearances require States to prosecute acts of torture and enforced disappearance where there is sufficient evidence to provide a reasonable prospect of conviction. States are not free to maintain or permit impunity for these grave crimes.”

Zeid Raad al-Hussein, the UN High Commissioner for Human Rights, said that it’s “crystal clear” that the United States has an obligation under the UN Convention against Torture to ensure accountability.

“In all countries, if someone commits murder, they are prosecuted and jailed. If they commit rape or armed robbery, they are prosecuted and jailed. If they order, enable or commit torture, recognized as a serious international crime, they cannot simply be granted impunity because of political expediency,” he said.

UN Secretary-General Ban Ki-moon expressed hope that the release of the torture report was the “start of a process” toward prosecutions, because the “prohibition against torture is absolute,” Ban’s spokesman said.

Needless to say, these appeals largely fell on deaf ears, with no criminal investigations launched whatsoever. Instead, the U.S. Congress responded with a symbolic “reaffirmation” of the ban on the torture a largely redundant and unnecessary piece of legislation since torture has long been unambiguously banned under international law, the United States Constitution and U.S. criminal statutes.

For his part, Obama used the publication of the Senate report as an opportunity to tout the virtues of the United States, and actually praised the CIA for its professionalism in carrying out its responsibilities.

Following the publication of the Senate report, in a statement obliquely trumpeting the notion of “American Exceptionalism,” Obama said: “Throughout our history, the United States of America has done more than any other nation to stand up for freedom, democracy, and the inherent dignity and human rights of people around the world.” He went on to offer a tacit defense of the torture techniques while touting his own virtue in bringing these policies to an end.

“In the years after 9/11, with legitimate fears of further attacks and with the responsibility to prevent more catastrophic loss of life, the previous administration faced agonizing choices about how to pursue al Qaeda and prevent additional terrorist attacks against our country,” he said. Although the U.S. did “many things right in those difficult years,” he acknowledged that “some of the actions that were taken were contrary to our values.”

“That is why I unequivocally banned torture when I took office,” Obama said, “because one of our most effective tools in fighting terrorism and keeping Americans safe is staying true to our ideals at home and abroad.” He went on to claim that he would use his authority as President “to make sure we never resort to those methods again.”

But clearly, by blocking criminal investigations into the policy’s architects, Obama has done very little in a practical sense to ensure that those methods are not used again.

In an op-ed published by Reuters following the release of the Senate report, Human Rights Watch director Kenneth Roth called out the President for “steadfastly refus[ing] to permit a broad investigation of the use of torture after 9/11, allowing only a narrow investigation into unauthorized interrogation techniques that resulted in no prosecutions.”

Unless the Senate report’s revelations lead to prosecution of officials, torture will remain a “policy option” for future presidents, noted HRW. This is exactly what we are seeing play out today with the “loose talk,” as McCain calls it, regarding bringing back torture as official U.S. policy.

Following the one-year anniversary of the Senate torture report being released, Human Rights Watch reiterated its calls for prosecutions in a 153-page report, “No More Excuses: A Roadmap to Justice for CIA Torture.” The HRW report, released Dec. 1, 2015, challenges claims that prosecutions are not legally possible and outlines U.S. legal obligations to provide redress to victims of torture. It also details actions that other countries should take to pursue criminal investigations into CIA torture.

Of course, this report, like virtually all other calls for justice on the

torture question over the past seven years, has been studiously ignored by Official Washington. And with the Republicans now falling over each other to pledge their support for illegal policies of torture and brutality, we are seeing the fruits of Obama's refusal to uphold the laws of the land.

Nat Parry is the co-author of *Neck Deep: The Disastrous Presidency of George W. Bush.* [This story originally appeared at Essential Opinion, <https://essentialopinion.wordpress.com/2016/02/14/gop-torture-debate-and-obamas-failure-to-prosecute/>]

Saudis Goad Obama to Invade Syria

Exclusive: Syrian rebels, including dominant jihadist elements, torpedoed Geneva peace talks by setting preconditions to come to the table. But the maneuver also renewed pressure on President Obama to commit to a "regime-change" invasion of Syria alongside Saudi and other Sunni armies, as Joe Lauria explains.

By Joe Lauria

The Russian-backed Syrian Army's encirclement of Aleppo, the battle that could determine the outcome of the five-year-old war, has sparked a Saudi plan with allied Arab nations to hold a war maneuver next month of 150,000 men to prepare for an invasion of Syria.

Saudi Arabia's desire to intervene (under the cover of fighting Islamic State terrorists but really aimed at ousting Syrian President Bashar al-Assad) has been welcomed by Washington but dismissed by the Iranian Revolutionary Guards commander and some Western analysts as a ruse.

Iranian Maj. Gen. Ali Jafari told reporters in Tehran, "They claim they will send troops, but I don't think they will dare do so. They have a classic army and history tells us such armies stand no chance in fighting irregular resistance forces."

"The Saudi plan to send ground troops into Syria appears to be just a ruse," wrote analyst Finian Cunningham on RT's website. "In short, it's a bluff aimed at pressuring Syria and Russia to accommodate ... ceasefire demands."□

But I don't believe it is a bluff or a ruse and here's why: It appears instead to be a challenge by the Saudis to get President Barack Obama to commit U.S. ground troops to lead the invasion. The Saudis made it clear they would only

intervene as part of a U.S.-led operation.

After meeting Secretary of State John Kerry in Washington on Monday, Saudi Foreign Minister Adel al-Jubeir said: "The coalition will operate the way it has operated in the past, as an international coalition, even when there is a ground-force contingent in Syria. There would be no international coalition against ISIS [an acronym for the Islamic State] in Syria if the U.S. did not lead this effort."

Riyadh knows better than anyone that it doesn't have the military capability to do anything beyond pounding the poorest Arab country into dust, that would be its neighbor Yemen. And it can't win that war either. But when Saudi Arabia's ambitions outsize their capabilities, who do they call? The "indispensable nation," the United States.

President Obama has so far resisted direct U.S. combat involvement in the Syrian civil war despite longstanding Saudi, Israeli and neocon pressures. They clamored for intervention after the chemical weapons fiasco in Ghouta in the summer of 2013. The attack supposedly crossed Obama's "red line," (although there is growing evidence that the sarin attack was a "false flag" provocation by the rebels to draw the U.S. military into the war on their side).

Obama came close to acceding to that pressure. On Aug. 30, 2013, he sent out a breast-beating John Kerry, playing the role normally reserved for the president, to threaten war. However, after the British parliament voted against intervention, Obama threw the issue to Congress. And before it acted, he accepted a Russian deal to eliminate Syria's chemical weapons (though Assad continued to deny any role in the sarin attack).

Investigative reporter Seymour Hersh contends Obama backed away because British intelligence informed him it was the rebels and not the Syrian government that carried out the chemical attack.

Even earlier in the conflict, Obama resisted Secretary of State Hillary Clinton's pressure to set up "a no-fly zone" inside Syria (which would have required the U.S. military destroying Syria's air defenses and much of its air force, compromising the government's ability to battle Sunni jihadist groups, including those associated with Al Qaeda).

Obama also defied the Saudis, Israelis and the neocons in pushing through the Iranian nuclear deal over their strident opposition in 2015. But Obama has not shown the same resolve against the neocons and liberal interventionists elsewhere, such as in Libya in 2011 and Ukraine in 2014.

Regarding Saudi Arabia's new offer to intervene in Syria, the Obama

administration has welcomed the Saudi plan but has not committed to sending in U.S. ground troops, preferring instead to deploy some air power and a limited number of Special Forces against Islamic State targets inside Syria.

However, the Saudi plan is being discussed at a NATO defense ministers' summit in Brussels this week. In Istanbul last month, Vice President Joe Biden hinted at a possible Obama change in position when he said if U.N.-led peace talks in Geneva failed, the United States was prepared for a "military solution" in Syria. (In making that comment, Biden may have given the rebels an incentive to sink the peace talks.)

The talks collapsed last Wednesday when Syrian rebel groups set preconditions for joining the talks, which were supposed to be started without preconditions. (However, the U.S. mainstream media has almost universally blamed Assad, the Iranians who are supporting Assad, and Russian President Vladimir Putin who has committed Russian air power to the offensive around Aleppo).

So, with the Syrian government now realistically viewing victory in the war for the first time, the panicked Saudis appear to be prodding Obama on whether he's ready to be remembered as the president who "lost" Syria to the Russians and Iranians.

Like most leaders, Obama is susceptible to his "legacy," that vain concern about how 'history will view him.' It is an attitude that can conflict with doing what's best for the country he leads and, in this case, would risk direct confrontation with Russia. Even embedding only hundreds of U.S. Special Forces with Saudi and other Arab troops inside Syria could lead to disaster if they are struck by Russian warplanes.

The Saudis are counting on U.S. domestic criticism to motivate Obama, such as this from New York Times columnist Roger Cohen: "Syria is now the Obama administration's shame, a debacle of such dimensions that it may overshadow the president's domestic achievements. Aleppo may prove to be the Sarajevo of Syria."

Emile Hokayem, a Middle East scholar at the International Institute for Strategic Studies, wrote that it's understandable for Obama to seek a negotiated settlement of the war. "But to do so while exposing the rebellion to the joint Assad-Russia-Iran onslaught and without contingency planning is simply nefarious."

It is up to Obama to resist such pressure and not commit the folly of risking a direct confrontation with Russia by committing U.S. ground forces to what would amount to an illegal invasion of Syria. It might be in Saudi Arabia's interests,

but how is it in America's?

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Hillary Clinton's Hawkish Record

Surviving Iowa in a dead heat with Sen. Bernie Sanders, ex-Secretary of State Hillary Clinton now hopes her establishment-backed campaign will grind down her opposition and pave the way for her presidential nomination. But many Democrats remain leery of her hawkish foreign policy, writes Marjorie Cohn.

By Marjorie Cohn

Hillary Clinton likes to extol her foreign policy credentials, particularly her experience as Secretary of State. She attaches herself to Barack Obama's coattails, pledging to continue his policies. But she is even more hawkish than the President.

Like Obama, Clinton touts American exceptionalism, the notion that the United States is better than any other country. In his State of the Union addresses, Obama has proclaimed America "exceptional" and said the U.S. must "lead the world." Clinton wrote in her book *Hard Choices* that "America remains the 'indispensable nation.'"

It is this view that animates U.S. invasions, interventions, bombings and occupations of other countries. Under the pretense of protecting our national interest, the United States maintains some 800 military bases in other countries, costing taxpayers tens of billions of dollars annually. Often referred to as "enduring bases," they enable us to mount attacks whenever and wherever our leaders see fit, whether with drones or manned aircraft.

Obama, who continues to prosecute the war in Afghanistan 15 years after it began, is poised to send ground troops back to Iraq and begin bombing Libya. His aggressive pursuit of regime change in Syria was met with pushback by the Joint Chiefs of Staff, according to Seymour Hersh.

The President has bombed some seven countries with drones. But besides moving toward normalization of relations with Cuba, his signature foreign policy

achievement is brokering the agreement to prevent Iran from developing nuclear weapons.

Although Clinton supports the nuclear deal, she talks tough about Iran. In September 2015, she provocatively declared, "I don't believe Iran is our partner in this agreement. Iran is the subject of the agreement," adding, "I will confront them across the board." She said, "I will not hesitate to take military action if Iran attempts to obtain a nuclear weapon."

During the 2008 presidential campaign, Clinton promised to "totally obliterate" Iran if it attacked Israel. Clinton was, in effect, pledging to commit genocide against the Iranian people.

In an August 2014 Atlantic interview with Jeffrey Goldberg, Clinton maintained, "There is no such thing as a right to enrich." Apparently, she has not read the Nuclear Non-Proliferation Treaty (NPT), which gives countries like Iran the right to enrich uranium for peaceful purposes. Article IV of the treaty says, "Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty."

One country that does possess nuclear weapons is Israel, which refuses to ratify the NPT. Clinton has consistently and uncritically supported the policies of the Israeli government. In the Atlantic interview, she placed the blame for Israel's 2014 massacre in Gaza squarely with the Palestinians.

From July 8 to Aug. 27, 2014, Israel killed over 2,100 Palestinians, 80 percent of them civilians including more than 400 children. Sixty-six Israeli soldiers and seven Israeli civilians were killed.

When Goldberg asked Clinton whom she held responsible for the deaths of hundreds of Palestinian children, she demurred, saying, "[I]t's impossible to know what happens in the fog of war." She blamed only the Palestinians, saying, "There's no doubt in my mind that Hamas initiated this conflict." Claiming "Israel has a right to defend itself," she said, "I think Israel did what it had to do to respond to the rockets."

But Israel did not act in self-defense. In the first 10 days of June 2014, Israeli forces abducted 17 Palestinian teenage boys in the occupied West Bank. On June 12, three Israeli teenagers were abducted in the southern West Bank; Israel accused Hamas. After those three were found dead, a group of Israelis tortured and killed a Palestinian teenager in Jerusalem.

On July 7, Israel launched a large military operation in the Gaza Strip, dubbed

Operation Protective Edge. The Israeli Defense Forces devastated Gaza. For 51 days, Israel bombarded Gaza with more than 6,000 airstrikes.

The United Nations Human Rights Council subsequently convened an independent, international commission of inquiry, which concluded that Israel, and to a lesser extent Palestinian armed groups, had likely committed violations of international humanitarian law and international human rights law, some constituting war crimes. "The scale of the devastation was unprecedented" in Gaza, according to the commission.

Yet Clinton was puzzled by what she calls "this enormous international reaction against Israel," adding, "This reaction is uncalled for and unfair." She attributed the "enormous international reaction" to "a number of factors" but only mentioned anti-Semitism, never citing Israel's illegal occupation of Palestinian lands or its periodic massacres in Gaza.

Indeed, in January 2016, U.N. Secretary-General Ban Ki-moon told the Security Council it was an "indisputable truth" that "Palestinian frustration is growing under the weight of a half century of occupation and the paralysis of the peace process." He noted that it was "human nature to react to occupation, which serves as a potent incubator of hate and extremism."

Clinton didn't ponder why so many people around the world are participating in the Boycott, Divestment and Sanctions (BDS) movement against the Israeli occupation. Representatives of Palestinian civil society launched BDS in 2005, calling upon "international civil society organizations and people of conscience all over the world to impose broad boycotts and implement divestment initiatives against Israel."

In her November 2015 article titled "How I Would Reaffirm Unbreakable Bond With Israel – and Benjamin Netanyahu," published in the Jewish newspaper Forward, Clinton vowed to continue to oppose BDS. "As secretary of state, I requested more assistance for Israel every year," she boasted, adding that she opposed "the biased Goldstone report," explained below.

After Israel's 2008-2009 Operation Cast Lead, in which nearly 1,400 Palestinians (82 percent of whom were civilians) and 13 Israelis were killed, a U.N. Human Rights Council report by a commission headed by Justice Richard Goldstone concluded that "Disproportionate destruction and violence against civilians were part of a deliberate policy [by Israel]."

Israel responded to the report with threats and harassment against Goldstone, leading him to backtrack on one of the findings in the report that bears his name, namely, that Israel deliberately targeted civilians. But the other members

of the commission stood fast on all of the report's conclusions.

Clinton's vote in favor of President George W. Bush's illegal 2003 invasion of Iraq cost her the 2008 election. It also cost more than 4,500 Americans and hundreds of thousands of Iraqis their lives. Yet Clinton cynically told corporate executives at a 2011 State Department roundtable on investment opportunities in Iraq, "It's time for the United States to start thinking of Iraq as a business opportunity."

The same year, Clinton led the campaign for forcible regime change in Libya, despite opposition by the Joint Chiefs of Staff. Responding to the gruesome sodomizing of President Muammar Gaddafi with a bayonet, Clinton laughed and said, "We came, we saw, he died."

Both the Iraq War and regime change in Libya paved the way for the rise of Islamic State and dangerous conflict in the Middle East. Obama is about to escalate his military involvement in Libya. Joseph Dunford, chairman of the Joint Chiefs of Staff, said, "The president has made clear that we have the authority to use military force." The New York Times reports that the expanded campaign is "expected to include airstrikes and raids by elite American troops."

The Obama administration is reportedly changing the rules of engagement to allow more civilian casualties in the "war" against Islamic State. A senior military official told The Daily Beast, "Now I think you'll see a little more willingness to tolerate civilian casualties in the interest of making progress." But the Geneva Conventions prohibit the disproportionate killing of civilians.

Clinton has promised to escalate the wars in Syria and Iraq, including a no-fly zone in Syria. Since Islamic State doesn't have an air force, her no-fly zone is likely to capture Russian planes flying over Syria.

Talking tough on ABC's "This Week," Clinton declared, "We have to fight in the air, fight on the ground and fight them on the Internet." She said nothing about diplomacy or an arms embargo to stop sending weapons that end up in the hands of Islamic State.

Although the corporate media fans the flames of fear about Islamic State, only 38 people in the United States have died in terror-related incidents since 9/11, according to Politifact.com. The "war on terror" has cost us more than \$1.5 trillion, in addition to U.S. lives and those of untold numbers in other countries.

Nevertheless, there is little doubt that a President Hillary Clinton would continue our "perpetual war." She would do everything in her power to ensure the robust survival of the American empire.

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Hillary Clinton's Iraq War Albatross

George W. Bush's Iraq invasion may rank as the worst foreign policy disaster in U.S. history spreading chaos across the Mideast and now into Europe, yet polls show Democrats nationwide favor nominating Hillary Clinton, who voted for the war and backed it even after Bush's WMD claims were debunked, recalls Stephen Zunes.

By Stephen Zunes

Former Sen. and Secretary of State Hillary Clinton is the only candidate for the 2016 Democratic presidential nomination who supported the invasion of Iraq. That war not only resulted in 4,500 American soldiers being killed and thousands more permanently disabled, but also hundreds of thousands of Iraqi deaths, the destabilization of the region with the rise of the Islamic State and other extremists, and a dramatic increase in the federal deficit, resulting in major cutbacks to important social programs.

Moreover, the primary reasons Clinton gave for supporting President George W. Bush's request for authorizing that illegal and unnecessary war have long been proven false.

As a result, many Democratic voters are questioning, despite her years of foreign policy experience, whether Clinton has the judgment and integrity to lead the United States on the world stage. It was just such concerns that resulted in her losing the 2008 nomination to then-Sen. Barack Obama, an outspoken Iraq War opponent.

This time around, Clinton supporters have been hoping that enough Democratic voters, the overwhelming majority of whom opposed the war, will forget about her strong endorsement of the Bush administration's most disastrous foreign policy. Failing that, they've come up with a number of excuses to justify her October 2002 vote for the authorization of military force. Here they are, in no

particular order:

–“Hillary Clinton’s vote wasn’t for war, but simply to pressure Saddam Hussein to allow UN weapons inspectors back into Iraq.”

At the time of vote, Saddam Hussein had already agreed in principle to a return of the weapons inspectors. His government was negotiating with the United Nations Monitoring and Verification Commission on the details, which were formally institutionalized a few weeks later. (Indeed, it would have been resolved earlier had the United States not repeatedly postponed a UN Security Council resolution in the hopes of inserting language that would have allowed Washington to unilaterally interpret the level of compliance.)

Furthermore, if then-Sen. Clinton’s desire was simply to push Saddam into complying with the inspection process, she wouldn’t have voted against the substitute Levin amendment, which would have also granted President Bush authority to use force, but only if Iraq defied subsequent UN demands regarding the inspections process. Instead, Clinton voted for a Republican-sponsored resolution to give Bush the authority to invade Iraq at the time and circumstances of his own choosing.

In fact, unfettered large-scale weapons inspections had been going on in Iraq for nearly four months at the time the Bush administration launched the March 2003 invasion. Despite the UN weapons inspectors having not found any evidence of WMDs or active WMD programs after months of searching, Clinton made clear that the United States should invade Iraq anyway.

Indeed, she asserted that even though Saddam was in full compliance with the UN Security Council, he nevertheless needed to resign as president, leave the country, and allow U.S. troops to occupy the country.

“The president gave Saddam Hussein one last chance to avoid war,” Clinton said in a statement, “and the world hopes that Saddam Hussein will finally hear this ultimatum, understand the severity of those words, and act accordingly.”

When Saddam refused to resign and the Bush administration launched the invasion, Clinton went on record calling for “unequivocal support” for Bush’s “firm leadership and decisive action” as “part of the ongoing Global War on Terrorism.” She insisted that Iraq was somehow still “in material breach of the relevant United Nations resolutions” and, despite the fact that weapons inspectors had produced evidence to the contrary, claimed the invasion was necessary to “neutralize Iraq’s weapons of mass destruction.”

–“Nearly everyone in Congress supported the invasion of Iraq, including most Democrats.”

While all but one congressional Democrat, Representative Barbara Lee of California, supported the authorization of force to fight Al Qaeda in the aftermath of the 9/11 attacks in 2001, a sizable majority of Democrats in Congress voted against the authorization to invade Iraq the following year.

There were 21 Senate Democrats, along with one Republican, Lincoln Chafee, and one independent, Jim Jeffords, who voted against the war resolution, while 126 of 209 House Democrats also voted against it.

Bernie Sanders, then an independent House member who caucused with the Democrats, voted with the opposition. At the time, Sanders gave a floor speech disputing the administration's claims about Saddam's arsenal. He not only cautioned that both American and Iraqi casualties could rise unacceptably high, but also warned "about the precedent that a unilateral invasion of Iraq could establish in terms of international law and the role of the United Nations."

Hillary Clinton, on the other hand, stood among the right-wing minority of Democrats in Washington.

The Democrats controlled the Senate at the time of the war authorization. Had they closed ranks and voted in opposition, the Bush administration would have been unable to launch the tragic invasion, at least not legally. Instead, Clinton and other pro-war Democrats chose to cross the aisle to side with the Republicans.

—"Her vote was simply a mistake."

While few Clinton supporters are still willing to argue her support for the war was a good thing, many try to minimize its significance by referring to it as simply a "mistake." But while it may have been a terrible decision, it was neither an accident nor an aberration from Clinton's generally hawkish worldview.

It would have been a "mistake" if Hillary Clinton had pushed the "aye" button when she meant to push the "nay" button. In fact, her decision, by her own admission, was quite conscious.

The October 2002 war resolution on Iraq wasn't like the 1964 Gulf of Tonkin resolution authorizing military force in Vietnam, which was quickly passed as an emergency request by President Lyndon Johnson when there was no time for reflection and debate. By contrast, at the time of the Iraq War authorization, there had been months of public debate on the matter. Clinton had plenty of time to investigate the administration's claims that Iraq was a threat, as well as to consider the likely consequences of a U.S. invasion.

Also unlike the Gulf of Tonkin resolution, which was disingenuously presented as an authorization to retaliate for an alleged attack on U.S. ships, members of Congress recognized that the Iraq resolution authorized a full-scale invasion of a sovereign nation and a subsequent military occupation. Clinton had met with scores of constituents, arms control analysts, and Middle East scholars who informed her that the war was unnecessary, illegal, and would likely end in disaster.

But she decided to support going to war anyway. She even rejected the advice of fellow Democratic Sen. Bob Graham that she read the full National Intelligence Estimate, which would have further challenged some of the Bush administration's claims justifying the war. It was not, therefore, simply a "mistake," or a momentary lapse of judgment. Indeed, in her own words, she cast her vote "with conviction."

As late as February 2007, Clinton herself refused to admit that her vote for the war resolution was a mistake. "If the most important thing to any of you is choosing someone who did not cast that vote or has said his vote was a mistake," she said while campaigning for president, "then there are others to choose from." She only began to acknowledge her regrets when she saw the polling numbers showing that a sizable majority of Democrats opposed the decision to go to war.

—"She voted for the war because she felt it was politically necessary."

First of all, voting for a devastating war in order to advance one's political career isn't a particularly strong rationale for why one shouldn't share responsibility for the consequences, especially when that calculation proved disastrously wrong. Clinton's vote to authorize the invasion was the single most important factor in convincing former supporters to back Barack Obama in the 2008 Democratic primary, thereby costing her the nomination. Nevertheless, it still raises questions regarding Hillary Clinton's competence to become president.

To have believed that supporting the invasion would somehow be seen as a good thing would have meant that Clinton believed that the broad consensus of Middle East scholars who warned of a costly counterinsurgency war were wrong, and that the Bush administration's insistence that U.S. occupation forces would be "treated as liberators" was credible.

After all, for the war to have been popular, there would have had to be few American casualties, and the administration's claims about WMDs and Iraq's ties to Al Qaeda would have had to be vindicated. Moreover, some sort of stable pro-Western democracy would have emerged in Iraq, and the invasion would have

contributed to greater stability and democracy in the region.

If Clinton believed any of those things were possible, she wasn't paying attention. Among the scores of reputable Middle East scholars with whom I discussed the prospects of a U.S. invasion in the months leading up to the vote, none of them believed that any of these things would come to pass. They were right.

Nor was pressure likely coming from Clinton's own constituents. Only a minority of Democrats nationwide supported the invasion, and given that New York Democrats are more liberal than the national average, opposition was possibly even stronger in the state she purported to represent. Additionally, a majority of Americans polled said they would oppose going to war if Saddam allowed for "full and complete" weapons inspectors, which he in fact did.

Finally, the idea that Clinton felt obliged to support the war as a woman in order not to appear "weak" also appears groundless. Indeed, every female senator who voted against the war authorization was easily re-elected.

—"She thought Iraq had 'weapons of mass destruction' and was supporting Al Qaeda."

This excuse is problematic on a number levels. Before the vote, UN inspectors, independent strategic analysts, and reputable arms control journals all challenged the Bush administration's claims that Iraq had somehow rebuilt its chemical and biological weapons programs, had a nuclear weapons program, or was supporting Al Qaeda terrorists.

Virtually all of Iraq's known stockpiles of chemical and biological agents had been accounted for, and the shelf life of the small amount of materiel that hadn't been accounted for had long since expired. (Some discarded canisters from the 1980s were eventually found, but these weren't operational.)

There was no evidence that Iraq had any delivery systems for such weapons either, or could build them without being detected. In addition, a strict embargo against imports of any additional materials needed for the manufacture of WMDs, which had been in effect since 1990, made any claims that Iraq had offensive capability transparently false to anyone who cared to investigate the matter at that time.

Most of the alleged intelligence data made available to Congress prior to the war authorization vote has since been declassified. Most strategic analysts have found it transparently weak, based primarily on hearsay by Iraqi exiles of dubious credibility and conjecture by ideologically driven Bush administration officials.

Similarly, a detailed 1998 report by the International Atomic Energy Agency indicated that Iraq's nuclear program appeared to have been completely dismantled by the mid-1990s, and a 2002 U.S. National Intelligence Estimate made no mention of any reconstituted nuclear development effort. So it's doubtful Clinton actually had reason to believe her own claims that Iraq had a nuclear weapons program.

Additionally, there was no credible evidence whatsoever that the secular Baathist Iraqi regime had any ties to the hardline Islamist group Al Qaeda, yet Clinton distinguished herself as the only Senate Democrat to make such a claim. Indeed, a definitive report by the Department of Defense noted that not only did no such link exist, but that none could have even been reasonably suggested based on the evidence available at that time.

Moreover, even if Iraq really did have "weapons of mass destruction," the war would have still been illegal, unnecessary, and catastrophic.

Roughly 30 countries (including the United States) have chemical, biological, or nuclear programs with weapons potential. The mere possession of these programs is *not* legitimate grounds for invasion, unless one is authorized by the United Nations Security Council, which the invasion of Iraq, pointedly, was not. If Clinton really thought Iraq's alleged possession of those weapons justified her support for invading the country, then she was effectively saying the United States somehow has the right to invade dozens of other countries as well.

Similarly, even if Iraq had been one of those 30 countries, and remember, it was not, the threat of massive retaliation by Iraq's neighbors and U.S. forces permanently stationed in the region provided a more than sufficient deterrent to Iraq using the weapons beyond its borders. A costly invasion and extended occupation were completely unnecessary.

Finally, the subsequent war and the rise of sectarianism, terrorism, Islamist extremism, and the other negative consequences of the invasion would have been just as bad even if the rationale weren't bogus. American casualties could have actually been much higher, since WMDs would have likely been used against invading U.S. forces.

But here's the kicker: Clinton stood by the war even after these claims were definitively debunked.

Even many months after the Bush administration itself acknowledged that Iraq had neither WMDs nor ties to Al Qaeda, Clinton declared in a speech at George Washington University that her support for the authorization was still "the right vote" and one that "I stand by." Similarly, in an interview on Larry King

Live in April 2004, when asked about her vote despite the absence of WMDs or Al Qaeda ties, she acknowledged, “I don’t regret giving the president authority.”

No Excuses

The 2016 Democratic presidential campaign is coming down to a race between Hillary Clinton, who supported the Bush Doctrine and its call for invading countries that are no threat to us regardless of the consequences, and Bernie Sanders, who supported the broad consensus of Middle East scholars and others familiar with the region who recognized that such an invasion would be disastrous.

There’s no question that the United States is long overdue to elect a woman head of state. But electing Hillary Clinton, or anyone else who supported the invasion of Iraq, would be sending a dangerous message that reckless global militarism needn’t prevent someone from becoming president, even as the nominee of the more liberal of the two major parties.

It also raises this ominous scenario: If Clinton were elected president despite having voted to give President Bush the authority, based on false pretenses, to launch a war of aggression, in violation of the UN Charter, the Nuremberg Principles, and common sense, what would stop her from demanding that Congress give her the same authority?

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<http://fpif.org/five-lamest-excuses-hillary-clintons-vote-invade-iraq/>]

Hillary Clinton’s Own Petard

In 2008, Hillary Clinton sought to exploit Barack Obama’s limited foreign policy experience by claiming she was more fit to answer a 3 a.m. phone call announcing some crisis, but her national security judgments continue to demonstrate serious weaknesses and fail to meet her own standard, writes Bart Gruzalski.

By Bart Gruzalski

Journalist Robert Parry in a recent piece on Hillary Clinton shows us that she has moved to the right of President Barack Obama and is actively courting the

support of neocons while operating within the Beltway's foreign policy consensus:

"Clinton is rolling the dice in the belief that most Democrats won't think through the fallacious 'group thinks' of Official Washington or will at least be scared and confused enough to steer away from [Sen. Bernie] Sanders. That way, Clinton believes she can still win the nomination."

Not that this is entirely new. Clinton's attempts to project a commander-in-chief toughness began during her 2008 primary fight against Obama, but her own famous ad from eight years ago gives us a criterion for POTUS that she fails to satisfy.

To underscore doubts about Obama's readiness to be president, Hillary Clinton's team created an ingenious ad that played on the fear factor while emphasizing her experience with military issues and with foreign leaders. As a phone rings in the background, we hear a male voice:

"It's 3 a.m. and your children are safe and asleep. But there's a phone in the White House and it's ringing. Something's happening in the world. Your vote will decide who answers that call: Whether it's someone who already knows the world's leaders, knows the military someone tested and ready to lead in a dangerous world. It's 3 a.m. and your children are safe and asleep. Who do you want answering the phone?"

The visuals begin with the image of a suburban middle-class house, then quickly fades to images of one child after another asleep. A parent opens a door and looks down as the male voice ends with the question above: "Who do you want answering the phone?" The final image is Hillary Clinton wearing a brown business-suit and glasses, picking up the phone: "I'm Hillary Clinton and I approve of this message."

That ad is not running this election cycle, perhaps for good reason. Hillary Clinton has demonstrated that she is not a person with good enough judgment to answer a 3 a.m. phone call.

Administrative Bad Judgment

For instance, Hillary Clinton has told us that none of her Secretary of State emails were classified. Yet on Jan. 19, the intelligence community's inspector general Charles McCullough responded to inquiries from Senate committees overseeing intelligence matters, saying that some of Clinton's emails contained sensitive information above "top secret."

"Several dozen additional classified emails have been found," he reported,

“including ones containing information from so-called ‘special access programs.’” The emails about special access programs were so sensitive that “McCullough and some of his aides had to receive clearance” to review the material.

Hillary Clinton’s hair-splitting distinction between what was labeled or marked “classified” at the time and what was in fact so sensitive that it deserved a “top secret” stamp (or higher) is irrelevant, for negligence is not a defense when it comes to national security information.

As Secretary of State, Clinton should have realized that some emails sent to her would contain highly sensitive information, even when it was not labeled that way. Her failure to use a secure government server reflects very bad judgment for a person wanting to make decisions about how the U.S. government should respond to 3 a.m. crises “happening in the world.”

Jennifer Palmieri, communications director for the Clinton campaign in November, inadvertently confirmed her boss’ lousy judgment. Palmieri appeared on Bloomberg TV and said “that Clinton ‘didn’t really think it through’ when she decided to use her personal email account for State Department business.”

Political Bad Judgment

But the email brouhaha is not the only significant example of Clinton showing poor judgment. (Arguably far worse, she has admitted to a “mistake” in voting for the Iraq War, which some foreign policy analysts consider the worst foreign policy decision in U.S. history).

Also, on a personal level, seeking to burnish her image as a tough and seasoned player on the world stage, she began a foreign policy address at George Washington University on March 17, 2008, by describing her landing in Bosnia during that country’s civil war:

“I remember landing under sniper fire. There was supposed to be some kind of greeting ceremony at the airport, but instead we just ran with our heads down to get into the vehicles to get to our base. There was no greeting ceremony, and we were basically told to run to our cars. Now, that is what happened.”

Clinton later said she misspoke after CBS released the video of her, with daughter Chelsea, greeting dignitaries, receiving flowers, and visiting with a little girl on the tarmac. For Clinton to tell her dramatic tale about her Bosnian tarmac experience when she should have realized that major news agencies had visual records is another instance of very bad judgment.

This also was not a one-off slip-up that Bill Clinton blamed on her being 60

years old and tired (which should raise another red flag since she is now eight years older). She had been repeating versions of the story since December 2007.

So who should answer that urgent 3 a.m. White House phone call? Should it be someone who has exercised seriously bad judgment as a U.S. senator and as Secretary of State as well as verifiably bad judgment in the political arena? Hillary Clinton, the Democratic Party's war candidate, has hoisted herself on her own petard.

Bart Gruzalski, Professor Emeritus Northeastern University Boston, has published three books, over 50 articles, as well as articles online. Prior to the U.S. invasions of Afghanistan and Iraq, he traveled the country criticizing the Bush-43 administration's bellicose position and articulating a nonviolent solution to terrorism based on his book on Gandhi.

A Step Toward Campaign Transparency

President Obama has called government "transparency" vital for a democracy. But, in practice, he has favored secrecy, keeping key foreign-policy facts away from Americans (all the better to manipulate them) and even balking at a rule requiring government contractors to disclose campaign spending, the latter only requiring a stroke of his pen, says Bill Moyers.

By Bill Moyers

Barack Obama once confessed to politics' original sin but has yet to atone for it. He now has an opportunity to do so. I speak of his promiscuous relationship with money in politics. During his 2008 race for the White House, Obama opted out of the public funding system for presidential campaigns, the first candidate of a major party to do so since the system was created in 1976, after the Watergate scandals.

His defection chilled hopes that public funding might enable everyday citizens to check the power of the super rich and their super PACs, countering the influence of "dark money", contributions that cannot be traced to their donors.

A friend of mine, a prominent conservative Republican who champions campaign finance reform (yes, there are some and we get along marvelously!) recently told me he believes Obama's decision was a significant blow to the cause for reform.

Six years ago, the conservative majority on the Supreme Court tried to finish it

off when they ruled for Big Money, unlimited amounts of it, in their *Citizens United* decision.

In his first State of the Union in 2010, President Obama denounced *Citizens United*, saying that it would reverse a century of law and open “the floodgates for special interests.” He was just as blunt last year when he declared flatly that *Citizens United* was “wrong” and had caused “real harm to our democracy.” Right on all counts.

Public-interest advocates Lisa Gilbert of Public Citizen and Stephen Spaulding of Common Cause recently reminded us that since *Citizens United* “special interests have spent over \$500 million from secret, undisclosed sources.”

Think of it as poison poured into the mainstream of democracy, just as toxic as the lead released in Flint, Michigan’s drinking water.

Americans of every stripe know money corrodes our politics. In a poll last year, *The New York Times* and CBS found that 85 percent of us think the system for funding political campaigns should be fundamentally changed or completely rebuilt.

President Obama knows it, too. Despite his own apostasy, he has spoken eloquently over the years against the present system. Unfortunately, he has done nothing about it. He’s gone AWOL in our biggest battle for democracy.

Which brings us back to his confession. During that first campaign for president, the *Boston Globe* reported that “In Obama’s eight years in the Illinois Senate, from 1996 to 2004, almost two-thirds of the money he raised for his campaigns, \$296,000 of \$461,000, came from PACs, corporate contributions, or unions and many other corporate interests”

Confronted with this by Tim Russert on *Meet the Press*, Obama replied: “I have said repeatedly that money is the original sin in politics and I am not sinless.”

Far from sinless, he has in fact been a serial sinner. From repeated campaigns for the state legislature, through his one campaign for the US Senate, to his last campaign for president in 2012, money from organized interests poured into his coffers. The finance industry, communications industry, the health industry, they all had a piece of him, sometimes a very big piece.

In his defense, Obama said he could not “unilaterally disarm.” So like the young Augustine of Hippo, who prayed, “Lord, grant me chastity but not yet,” Barack Obama was saying that when the time arrived, he would sin no more.

Well, Mr. President, it's time. You have no more campaigns to wage. With a little less than 12 months left in the White House, you have the opportunity to atone for exploiting a system that you have deplored in words if not deeds. You can restart the engine of reform and even demonstrate that *Citizens United* can be tamed.

Just take out your pen and sign an executive order compelling federal contractors to disclose their political spending. In one stroke you can put an end to a blatant practice of political bribery that would be one small step for you and one giant leap for democracy.

It's an open-and-shut case. In fewer than five minutes, you could face the cameras and announce your decision:

My fellow Americans. I have today signed an executive order requiring any company with a federal contract to disclose how much they spend on politicians and lobbyists, and who is receiving their money. There are several reasons for this.

First, federal contracting is big business. In 2013 alone, the United States government spent about \$460 billion on contracting, with \$177 billion of that going to just 25 companies. Since the year 2000, the top 10 contractors have raked in \$1.5 trillion in federal contracts.

That's your money. All of it comes from taxpayers. And as the economic analyst Robert Reich reminds us, you are footing the bill twice over. You pay for these corporations to lobby for those contracts. Then you pay for the stuff they sell us. It's only fair that you see how much it costs for corporations to buy influence.

Second, there is a direct relationship between what a corporation spends on campaign contributions and the amount it receives back in government spending. Federal contractors have long been banned from contributing to federal candidates, parties or political committees, but that ban does not apply to their executives, shareholders and political action committees.

*In fact, since the *Citizens United* decision in 2010, contractors have been free to contribute unlimited amounts of undisclosed money to super PACs and the shadowy operations known as "social welfare organizations."*

It's now possible for companies that get government contracts to secretly, let me say it again, secretly, spend untold amounts to elect and re-elect the very legislators who are awarding them those contracts. That's wrong. It's a terrible conflict of interest that undermines the integrity of government.

Some of you will remember that I said the Citizens United decision would harm democracy. I wish it were not so, but I was right; this secrecy in influence peddling by federal contractors is a bad thing. It wastes your money. It distorts the relationship between your government and business.

It works against start-up entrepreneurs who can't afford to hire lobbyists or make political contributions while entrenched old-line companies hire former government officials, members of Congress and their staffs in particular, to steer business their way. Let's put an end to these practices, once and for all.

Third, an open democracy is an honest democracy. Disclosure is the foundation of public trust in government and business, while secrecy invites corruption. Even the Supreme Court justice who wrote the majority opinion for Citizens United acknowledged this to be true.

Justice Anthony Kennedy belongs to another party than I. He adheres to a different ideology. But listen to what he wrote: "With the advent of the Internet, prompt disclosure of [political] expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are 'in the pocket' of so-called moneyed interests." I agree with Justice Kennedy.

You see, undisclosed money, "dark money", is not "free speech" as its proponents claim. To the contrary. It's a threat to free speech, especially to citizens like you. Even if you believe money is speech, don't you and every other American have a right to know who's speaking?

Secrecy weakens democracy's backbone, causing it to become brittle, so brittle that fractures are now commonplace. That's one reason Washington is broken and dysfunctional. As Justice Kennedy himself, the author of the Citizens United decision, remember, recently admitted, our system "is not working the way it should."

The executive order I have signed today is a step toward helping us see why it is not working and giving us a way to start fixing it. We are casting sunshine on a system badly in need of light. Sadly, I must report to you that Republicans in Congress are opposed to sunshine. They prefer government do business in the dark, out of your sight and away from the prying eyes of reporters.

But the Sunlight Foundation has discovered that over one recent five-year period 200 of the most politically active corporations spent a combined \$5.8 billion on

federal lobbying and campaign contributions and, in return, got \$4.4 trillion in federal business and support. Yes, \$4.4 trillion, with a “t”. That’s an enormous return on their investment in lobbyists and politicians.

Earlier this month I delivered my last State of the Union address to you. I told you that, “We have to reduce the influence of money in our politics, so that a handful of families or hidden interests can’t bankroll our elections. And if our existing approach to campaign finance reform can’t pass muster in the courts, we need to work together to find a real solution.”

My record on this issue may not inspire confidence, but I offer this executive order as an act of genuine penitence. And I pledge to you that in my remaining months as president I intend to take more steps to put right what I have helped to keep wrong. When I leave this office next January there will be no private citizen in the country more active in the fight to save our public life from the pernicious grip of private greed.

I am not a saint; I am a sinner. But I have been born again, again. And this time I will keep the faith. If you believe in democracy, join me. Thank you and good night.

A note to our readers: Some observers in Washington think President Obama may be about to sign such an order. We are not so sure. He reportedly came close in 2011 when the draft of such an order was leaked.

The U.S. Chamber of Commerce and other lobbyists roared and the President backed down. The only spunk he has shown on the issue since has been rhetorical. So he could once again capitulate. You can help to stiffen his spine by signing the petition sponsored by the non-partisan group Public Citizen.

As the President himself concluded in his most recent State of the Union address: “Changes in our political process will only happen when the American people demand it. It depends on you. That’s what’s meant by a government of, by, and for the people.”

OK, agreed. But in the meantime, let’s tell the President to stand tall like a leader and do the right thing. Mr. President, sign the executive order compelling federal contractors to disclose all their political spending, including dark money.

My long-time colleague Gail Ablow reported and researched this column.

Bill Moyers is the managing editor of *Moyers & Company* and BillMoyers.com.

Is Obama's Drug Clemency a Mirage?

President Obama once promised hope and that is what some non-violent drug offenders have left as they serve draconian "drug war" sentences. But Obama's offer of clemency may be more mirage than reality, says ex-CIA officer John Kiriakou, who himself was imprisoned for telling the truth about illegal torture.

By John Kiriakou

The federal government's program to reduce prison sentences for thousands of federal offenders sentenced under draconian drug laws will fail to help almost anybody without the immediate intervention of the White House. In the meantime, thousands of federal drug offenders are stuck in a rut with no end in sight.

The Justice Department announced the Clemency Project in 2014 as a way for drug offenders to argue that their sentences are overly long, and that, if their crimes had been committed today, they would have been given significantly less time in prison. For many federal prisoners, this program is the only chance they have to have some semblance of a real life, to die outside prison walls, or to spend whatever time they may have left with family.

The way the program is supposed to operate is that any federal drug offender who meets a strict set of criteria can apply for a sentence reduction. If they meet these criteria, they are assigned an attorney, and that attorney can go before a federal judge and ask for resentencing.

The criteria are that the prisoner must be currently serving a federal sentence in prison and, by operation of law, likely would have received a substantially lower sentence if convicted of the same offense today; the prisoner must be a non-violent, low-level offender without significant ties to large-scale criminal organizations, gangs, or cartels; the prisoner must have served at least 10 years of his sentence; the prisoner must have no significant criminal history; he must have demonstrated good conduct in prison; and he must have no history of violence prior to or during his current incarceration.

I spent 23 months in prison after blowing the whistle on the CIA's illegal and immoral torture program. During those 23 months, I made friends, many of whom were doing very long stretches for what seemed to me to be innocuous drug offenses. When the Clemency Project was first announced, it seemed too good to be true. I fear that as the end of the Obama administration nears, it may be.

Let me give you some examples of the people this program is supposed to help.

My closest friend in prison was "Mark." Mark is in his mid-40s and is from Philadelphia. Back in the 1990s, Mark's stepfather taught him how to make high quality methamphetamine, which they and a group of cohorts then sold to a crime ring in the city. There were nine people in the conspiracy.

After about six months, Mark decided that this wasn't the life for him, and he voluntarily left the operation. He was the only person to do so. Mark went on to open a successful small business that employed a half dozen people, he got engaged, and he started to build a life for himself.

Years passed. Finally the FBI, DEA, and ATF swooped in and arrested everybody except Mark. He waited another year for the other shoe to drop and, finally, he was arrested, too.

Mark refused to testify against his co-defendants. He didn't realize that they had all agreed to testify against him. Eight of the defendants took pleas and got sentences of five and a half years. Mark went to trial, where he was found guilty of conspiracy to manufacture methamphetamine.

Despite the fact that he was the only defendant to leave the conspiracy, and despite the fact that he had the least involvement in the conspiracy, he was given three consecutive sentences of life without parole. That was later reduced on appeal to 30 years. This was for a first-time, nonviolent drug offender.

Mark has been in prison for more than 16 years. His record has been exemplary. He's earned a variety of certifications, he has a loving and supportive family, and he's never been in trouble. He can and should be a productive member of society. His only hope is the Clemency Project.

Mark's case is not unusual. There are thousands of people in our prisons like him. And many are in even worse situations. The Huffington Post recently reported on the story of Carlos Tapia-Ponce, a 94-year-old serving a life sentence for managing a cocaine warehouse. He has been in prison for 26 years and has twice been denied compassionate release for chronic health problems.

Even though he has also been denied release under the Clemency Project, his attorney is appealing the decision, and the application apparently will be reconsidered. If the Clemency Project is not for Carlos Tapia-Ponce, then who is it for? Is this 94-year-old man that much of a threat?

One question that the Justice Department and sentencing judges ought to ask themselves is, "Is society truly served by keeping these people in prison, in some cases for the rest of their lives?" I would posit that it is not. Society would be better served if these prisoners could work, pay taxes, tend to their families, and lead normal lives. Long sentences are punitive. They don't help

“society” in any way.

As for the President, addressing draconian drug sentences is a great idea, even if it doesn’t address the sentencing laws themselves. The Clemency Project has the potential to help thousands of people indeed, thousands of families rebuild their lives.

But it will only work if the Justice Department can process the applications. And that hasn’t happened. A year after the program was announced, only two out of 30,000 prisoners had had their sentences shortened. By December 2015, the list of those whose sentences were commuted grew by only another 95.

We need presidential action right now. Without it there will be no legacy of justice in drug sentencing. And there’s not a lot of time.

John Kiriakou is an associate fellow with the Institute for Policy Studies. He is a former CIA counterterrorism officer and a former senior investigator with the Senate Foreign Relations Committee. [This story originally appeared at Readers Supported News at <http://readersupportednews.org/opinion2/277-75/34848-focus-the-clemency-project-another-obama-mirage>]

US Abets Saudi War Crimes in Yemen

U.S. officials are quick to decry “human rights violations” in “enemy” states, but different rules apply to “allies” such as Saudi Arabia, which is committing war crimes in Yemen and executing dissidents at home while the Obama administration aids and abets the atrocities, writes Marjorie Cohn for TeleSUR.

By Marjorie Cohn

Saudi Arabia has engaged in war crimes, and the United States is aiding and abetting them by providing the Saudis with military assistance. In September 2015, Saudi aircraft killed 135 wedding celebrants in Yemen. The air strikes have killed 2,800 civilians, including 500 children. Human Rights Watch charges that these bombings “have indiscriminately killed and injured civilians.”

This conflict is part of a regional power struggle between Iran and Saudi Arabia. The Saudis are bombing Yemen in order to defeat the Houthi rebels, who have been resisting government repression for a long time. Iran has been accused of supporting the Houthis, although Iran denies this. Yemen is strategically located on a narrow waterway that links the Gulf of Aden with the Red Sea. Much

of the world's oil passes through this waterway.

A United Nations panel of experts concluded in October 2015 that the Saudi-led coalition had committed "grave violations" of civilians' human rights. They include indiscriminate attacks; targeting markets, a camp for displaced Yemenis, and humanitarian aid warehouses; and intentionally preventing the delivery of humanitarian assistance. The panel was also concerned that the coalition considered civilian neighborhoods, including Marra and Sadah, as legitimate strike zones. The International Committee of the Red Cross documented 100 attacks on hospitals.

Protocol I to the Geneva Conventions prohibits the targeting of civilians. It provides that parties to a conflict "shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

Saudi Arabia is also engaging in serious individual human rights violations. In January 2016, the Saudi government executed 47 people, including a prominent pacifist Shia cleric, who had been a leader of the 2011 Arab Spring in Saudi Arabia. Many of those executed were tortured during their detention and denied due process. Most were beheaded.

This horrifies us when ISIS does it. Yet State Department spokesman John Kirby protested weakly, "We believe that diplomatic engagement and direct conversations remain essential in working through differences."

Also in January 2016, Palestinian artist and poet Ashraf Fayadh, a Saudi citizen whose family is from Gaza, was sentenced to death by beheading. His alleged crimes: "apostasy," or renouncing Islam, and photographing women. "Throughout this whole process," Amnesty International UK found, "Ashraf was denied access to a lawyer, a clear violation of international human rights law."

Both Saudi Arabia and the United States are parties to the Geneva Conventions, which define as grave breaches willful killing, willfully causing great suffering or serious injury to body or health, and torture or inhuman treatment. Grave breaches are considered war crimes.

Also prohibited are "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

Although neither the United States nor Saudi Arabia is party to the Rome Statute for the International Criminal Court, that statute sets forth standard aider and

abettor liability provisions. It says that an individual can be convicted of war crimes if he or she “aids, abets or otherwise assists” in the commission or attempted commission of the crime, “including providing the means for its commission.”

The U.S. government is the primary supplier of Saudi weapons. In November 2015, the U.S. sold \$1.29 billion worth of arms to Saudi Arabia. It included more than 10,000 bombs, munitions, and weapons parts manufactured by Raytheon and Boeing, as well as bunker busters, and laser-guided and “general purpose” bombs.

A month earlier, the United States had approved a \$11.25 billion sale of combat ships to Saudi Arabia. The U.S. also provides intelligence and logistical support to the Saudi-led coalition. During the past five years, the U.S. government has sold the Saudis \$100 billion worth of arms. These sales have greatly enriched U.S. defense contractors.

Why has the United States “usually looked the other way or issued carefully calibrated warnings in human rights reports as the Saudi royal family cracked down on dissent and free speech and allowed its elite to fund Islamic extremists,” in the words of *New York Times*’ David Sanger? “In return,” Sanger writes, “Saudi Arabia became America’s most dependable filling station, a regular supplier of intelligence, and a valuable counterweight to Iran.” Saudi Arabia, and close U.S. ally Israel, opposed the Iran nuclear deal.

In April 2015, the U.S. government prevented nine Iranian ships loaded with relief supplies from reaching Yemen. President Barack Obama also sent an aircraft carrier to the area to enforce the Saudi embargo on outside supplies. According to UN estimates, 21 million people lack basic services, and over 1.5 million have been displaced. UNICEF notes that six million people don’t have enough food.

Moreover, the U.S. government seeks to prevent scrutiny of Saudi human rights abuses in Yemen. In October 2015, the United States blocked a UN Security Council sanctions committee proposal that would have required the committee’s chair to contact “all relevant parties to the conflict and stress their responsibility to respect and uphold international humanitarian law and human rights law.”

The U.S. government is also violating domestic law by providing the Saudis with military aid. The Leahy Law prohibits U.S. assistance to foreign security forces or military officers “if the Secretary of State has credible information that such unit has committed a gross violation of human rights.”

Sen. Patrick Leahy, D-Vermont, for whom the law was named, told *Foreign Policy*:

“The reports of civilian casualties from Saudi air attacks in densely populated areas [in Yemen] compel us to ask if these operations, supported by the United States, violate” the Leahy Law.

Furthermore, 22 U.S.C. section 2304 provides that “no security assistance may be provided to any government which engages in a consistent pattern of gross violations of internationally recognized human rights.”

The Arms Trade Treaty obligates member states to monitor exports of weapons and make sure they do not end up being used to commit human rights abuses. Although the U.S. has not ratified the treaty, we have signed it. Under the Vienna Convention on the Law of Treaties, a signatory is prohibited from taking action inconsistent with the object and purpose of the treaty.

The U.S. government should immediately halt arms transfers and military support to Saudi Arabia and support an independent investigation into U.S. arms transfers and war crimes in Yemen. The United States must stop participating in and call for an end to the de facto blockade so that humanitarian assistance can reach those in need, engage in diplomatic efforts to end the conflict, and ratify the Arms Trade Treaty.

In an interesting twist, the Saudis contributed \$10 million to the Clinton Foundation before Hillary Clinton became Secretary of State. In 2011, the year after the State Department had documented myriad serious human rights violations by Saudi Arabia, Hillary Clinton oversaw a \$29 billion sale of advanced fighter jets to the Saudis, declaring it was in our national interest.

The deal was “a top priority” for Secretary Clinton, according to Andrew Shapiro, an assistant secretary of state. Two months before the deal was clinched, Boeing, manufacturer of one of the fighter jets the Saudis sought to acquire, contributed \$900,000 to the Clinton Foundation.

Hillary Clinton now says the U.S should pursue “closer strategic cooperation” with Saudi Arabia.

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[<http://www.telesur.tv/english/opinion/Saudi-Arabia-Is-Killing-Civilians-with-US-Bombs-20160125-0004.html>]

Can US Break with Jihadist Allies?

Exclusive: The Obama administration finds itself caught in the contradictions of its Syrian policy, having backed radical jihadists to achieve another “regime change” but now finding that its opportunism is spreading chaos beyond the Mideast into Europe. But can the U.S. adjust course and abandon its jihadist clients, asks Joe Lauria.

By Joe Lauria (Updated on Jan. 25 with new last two paragraphs)

The passage of a major U.N. Security Council resolution is like a cheap high: the euphoria wears off pretty quickly. Such was last month’s unanimous adoption of a “peace plan” to end nearly five years of Syrian bloodshed.

With Monday’s start date for a planned ceasefire and the launch of negotiations already put off, it’s looking increasingly unlikely that the talks will start any time soon. The major obstacle is deciding who will represent the opposition across the table from the government. And that hinges on the question of who is a terrorist in Syria. It doesn’t help that world governments have failed since the League of Nations to agree on a treaty legally defining terrorism.

Secretary of State John Kerry and Russian Foreign Minister Sergey Lavrov met in Geneva on Wednesday and the two were unable to decide who the Syrian terrorists are that should be excluded from the negotiations.

They agree on excluding the Islamic State and al-Nusra Front (Al Qaeda’s affiliate) who have already been eliminated from participation. But what about the myriad other opposition groups, some of whom collaborate closely with Nusra and other extremists?

A hundred of them were melded together by Saudi Arabia in Riyadh last November. But they want Syrian President Bashar al-Assad to step down immediately. That’s a complete non-starter as the U.N. plan would allow him to stay on for six months making way for a transitional government until a new constitution is written and a general election held in 2017. Kerry has been blasted by neoconservatives for agreeing to this compromise and for allowing Assad to run again in that election.

The U.S. compromised on that point after being spurred on by the refugee crisis that is spreading disorder into Europe and by Russia’s entry into the war against the Islamic State and other jihadist groups. But there is so far little compromise on the question of terrorism.

Putin's Challenge

Moscow's and Washington's disagreement goes back to the beginning of the Syrian civil war, as I reported more than three years ago. In September, Russian President Vladimir Putin went a step further in accusing the U.S. of supporting terrorists in Syria in his address to the U.N. General Assembly.

"The Islamic State itself did not come out of nowhere," Putin said. "It was initially developed as a weapon against undesirable secular regimes." He said it was irresponsible "to manipulate extremist groups and use them to achieve your political goals, hoping that later you'll find a way to get rid of them or somehow eliminate them."

He made it clear he was speaking of the U.S., when he added: "I'm urged to ask those who created this situation: do you at least realize now what you've done? But I'm afraid that this question will remain unanswered, because they have never abandoned their policy, which is based on arrogance, exceptionalism and impunity."

Putin did not mention clear evidence he was certainly aware of from the U.S. Defense Intelligence Agency. An August 2012 DIA document declassified by a judge says that Washington, Ankara and the Gulf States were helping to establish a Salafist principality in eastern Syria to pressure Assad and that it could team up with extremists on the Iraqi side of the border to form an Islamic State, the document uses that exact phrase. Then DIA chief Gen. Mike Flynn later told Al Jazeera that this was a "willful decision in Washington," not the U.S. merely turning a blind eye to what was happening.

The U.S. has long supported unsavory groups to reach short-term U.S. interests. Washington argues it is vetting what groups it supports, but even the Daily Beast (a big supporter of neoconservative regime-change strategies) has called this into question, reporting that CIA-backed rebels fight in tandem with Al Qaeda.

In his speech Putin called for a coalition similar to the Soviet-U.S. alliance in the Second World War to fight the most fearsome terrorist force in history, Adolf Hitler's Nazis. Putin argued that Syria's military is the only effective ground force (along with the Kurds) against the Islamic State and that all nations who really want to defeat it should work with Assad's army and fight the groups trying to overthrow him.

"Similar to the anti-Hitler coalition, it could unite a broad range of parties willing to stand firm against those who, just like the Nazis, sow evil and hatred of humankind," Putin said.

Russia presented a draft resolution at the Security Council that would have authorized such a grand coalition. But the U.S. flatly rejected it because it still plots Assad's overthrow with groups that Russia says are terrorists. It wasn't a surprise then that two days after Putin spoke that Russia launched its first airstrike was against a CIA-backed group threatening the Assad government. It was a strong message from Moscow to Washington: if you keep supporting extremists in Syria we will strike them.

The U.S. government and its corporate media accused Russia of hitting "moderate" groups instead of the Islamic State (which Russia has repeatedly also targeted). Washington leveled the tired charge that Putin is trying to reestablish the Soviet Empire and takeover the Middle East from the U.S.: a duplicitous case of projecting imperial designs onto another. Perhaps Russia really is worried about terrorism spreading from Syria and really wants to do something to stop it.

Defining Terrorism

Having an international agreement legally defining terrorism would be useful in this circumstance, but coming up with one codified in a treaty has long bedeviled governments. The League of Nations tried and failed. A month after 9/11 the U.N. General Assembly met to agree on an international convention against terrorism, but failed because it couldn't agree on defining terrorism.

Terrorism is only a tactic. But governments seem to conflate it with a cause. It's okay when their side uses it, but not when their enemy does. This has spawned the cliché, "One man's terrorist is another man's freedom fighter."

If you can objectively isolate the tactic from the cause, an agreed definition may be possible. It would be along the lines of terrorism is an act of violence carried out by non-state actors, targeting civilians for any cause, whether just or not.

The cause of the Palestinians under occupation is just, for instance, but blowing up Israeli civilians in a bus is terrorism. The cause of the Islamic State, as an occupying force, is clearly unjust, and it commits terrorism when it targets civilians. The target is essential to the definition. A non-state actor, even the Islamic State, attacking military targets is using guerilla tactics not terrorism. Some groups, like ISIS, use both.

The lack of a definition has helped states to continue sponsoring terrorism, though they do not directly commit acts of terrorism themselves, as many people contend. States commit war crimes, which is worse. Only non-state actors employ terrorism, which is not under the jurisdiction of the war-crimes International Criminal Court and could only in some instances be considered a war crime.

Without a common understanding of what terrorism is, it is difficult to imagine agreement between Moscow and Washington to get the Syrian talks started without some extremely deft diplomatic maneuvering. That may still happen amid [reports](#) that the U.N. will invite two sets of opposition groups to satisfy both the U.S. and Russia.

Without such a compromise to get talks started, however slim the chance they will succeed, there is no prospect in sight of an end to the Syrian war until one side wins it militarily.

Joe Lauria is a veteran foreign-affairs journalist based at the U.N. since 1990. He has written for the Boston Globe, the London Daily Telegraph, the Johannesburg Star, the Montreal Gazette, the Wall Street Journal and other newspapers. He can be reached at joelauria@gmail.com and followed on Twitter at [@unjoe](#).
