of the lawyer's profession.[78] A universal system would have to make allowances for such differences even as it presses to bring about uniformity.

CONCLUSION

This tour d'horizon of various aspects of professional behavior in international litigation shows that there are problems and uncertainties. It would seem to be worthwhile to expend some intellectual energies in grappling with them. For as the number of international tribunals grows—as does the size of their caseloads—the utility of more formal and detailed guides seems apparent. Some aspects of international practice would be difficult to change—amending the Statute of the International Court of Justice, for example. But, even there, guidelines about the exercise of the recusal power might be useful to the Court. Perhaps it would be a fitting task for the International Law Commission to generate a code of conduct for international public law institutions that deals with issues not tackled in its 1958 version. Similarly, UNCITRAL might expand its commercial arbitration rules to clarify these matters. Private bodies, such as the International Law Association and the American Law Institute, might play a useful role; after all, the American rules were developed with much private participation. It would then fall to international tribunals and arbitration institutions to adapt them for their use. The task would be challenging, given the variety of practices that prevail in national legal systems, but the need of international lawyers for intelligible and, as far as possible, uniform guidance is becoming clearer. The rules should take into account the importance of an international procedure aimed at achieving widespread respect for its integrity, openness and efficiency. Such rules should help counsel resist requests from their clients, including governments, that they engage in inappropriate behavior. One of the major issues to be addressed would be the currently anomalous roles assigned to national judges and party-appointed arbitrators.

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The *American Journal of International Law* welcomes short communications from its readers. It reserves the right to determine which letters should be published and to edit any letters printed. Letters should conform to the same format requirements as other manuscripts.

TO THE CO-EDITORS IN CHIEF:

In response to the comments by Robert F. Turner (Correspondence, 90 AJIL 77 (1996)), the key issue is not the power of Congress "to declare war" or whether, as Fulbright remarked, the power to declare war has "never been very important." We all know that there have only been five declared wars. The central point is that the Framers, with the British models very much in mind, granted Congress the power not only to

[78] ORDRE DES AVOCATS DE LA COUR DE PARIS, RÈGLEMENT INTÉRIEUR ET TEXTES APPLICABLES À LA PROFESSION D'AVOCAT, Art. 1.3 (1994).

* This Note would not have been possible but for the help of an unusual number of collaborators. A preliminary version was presented to a meeting of the Executive Council of the American Society of International Law and the Board of Editors of the *Journal* on October 27, 1995, and many of those present made useful comments. Written comments and materials were provided by Jerome Ackerman, Wallace Baker, James Carter, Lori F. Damrosch, Keith Highet, Andreas F. Lowenfeld, W. Michael Reisman and William W. Park. My appreciation is also due to my diligent research assistants, Jonathan Jenkins and P. Dan Smith of the Harvard Law School class of 1997.

declare war but to authorize it and to initiate military operations. Constitutionally, it was up to the judgment of the legislative power to take the country from a state of peace to a state of war. That fundamental principle of republican government was seriously violated when President Truman took the nation to war in Korea without ever seeking congressional authority or approval. Scholars who gave partisan support for that venture later regretted their endorsement, for Truman's action had a highly destructive effect on our political and constitutional system.

We are now on the verge of similar unilateral actions by President Clinton, who believes that he can do the "right thing" by using military force in Haiti and Bosnia without ever receiving congressional approval. Executive officials in the Clinton administration even suggested that, if Congress had disapproved either action, the President had full support under the Constitution to deploy troops anyway. This is bad law and bad politics.

Turner cites remarks by the Senate Foreign Relations Committee and the House Foreign Affairs Committee in their reports. That is interesting, but committee reports do not change the Constitution. The same can be said of the Senate's rejection of Wheeler's amendment. The Constitution is not altered when one House rejects a floor amendment. The fact that Truman "did not ignore" Congress is not a substantial point, constitutionally. Of course he did not ignore Congress. He had a few members over for briefings, after the military operation was launched. If he had every member over, and wined and dined them, that would not change in the least his unilateral seizure of the war power. That Tom Connally and Scott Lucas would suggest to Truman that he had the power, and that he should not involve Congress, means nothing. They had no authority to waive or suspend the Constitution. Finally, the issue is not whether the meaning of treaties is to be determined by what the Senate understands the treaty to mean when it gives its advice and consent. What was at stake was not just a treaty (the UN Charter) but a statute (the UN Participation Act) and the Constitution.

From Potsdam, Truman cabled Senator McKellar that he would always seek the prior approval of Congress when using military force in a UN action. By relying on clever legal definitions (whether the commitment was a "special agreement" under the UN Participation Act), Truman violated his word and did great damage to the country, his presidency, his party and the Constitution. No doubt there are special situations in which the President may deploy troops abroad without seeking prior approval from Congress. Korea was not one of them.

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