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## **Making Civilian Control Work**

“Open Letter from Former Secretaries of Defense and Chairmen of the Joint Chiefs of Staff” on “Principles of Civilian Control and Best Practices of Civil-Military Relations,” *War on the Rocks*, September 6, 2022, <https://warontherocks.com/2022/09/to-support-and-defend-principles-of-civilian-control-and-best-practices-of-civil-military-relations/> ..... 1

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## Making Civilian Control Work

*What are the essential principles that govern the relationship between the most senior officers and the leadership of the national government? What issues cause tension, disagreement, and misunderstanding? How should each behave in the interaction, and treat the other? What might the future bring in this relationship, so crucial to the nation's security and overall well-being? This article addresses the relationship: signed by the most recent Secretaries of Defense and Chairmen of the Joint Chiefs of Staff, it enunciates the principles of civilian control and how they operate.*

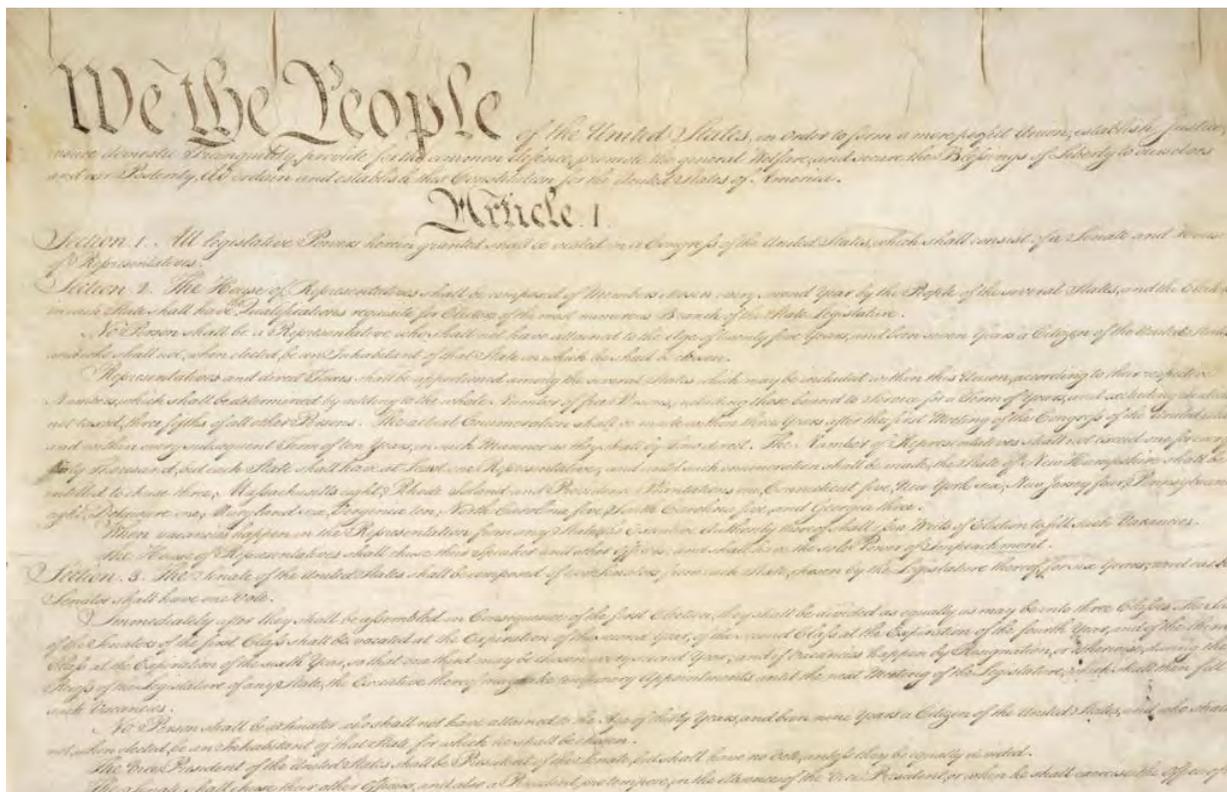


# TO SUPPORT AND DEFEND: PRINCIPLES OF CIVILIAN CONTROL AND BEST PRACTICES OF CIVIL-MILITARY RELATIONS

OPEN LETTER

SEPTEMBER 6, 2022

COMMENTARY



We are in an exceptionally challenging civil-military environment. Many of the factors that shape civil-military relations have undergone extreme strain in recent years. Geopolitically, the winding down of the wars in Iraq and Afghanistan and the ramping up of great power conflict mean the U.S. military must simultaneously come to terms with wars that ended without all the goals satisfactorily accomplished while preparing for more daunting competition with near-peer rivals. Socially, the pandemic and the economic dislocations have disrupted societal patterns and put enormous strain on individuals and families. Politically, military professionals confront an extremely adverse environment characterized by the divisiveness of affective polarization that culminated in the first election in over a century when the peaceful transfer of political power was disrupted and in doubt. Looking ahead, all of these factors could well get worse before they get better. In such an environment, it is helpful to review the core principles and best practices by which civilian and military professionals have conducted healthy American civil-military relations in the past — and can continue to do so, if vigilant and mindful.

1. Civilian control of the military is part of the bedrock foundation of American democracy. The democratic project is not threatened by the existence of a powerful standing military so long as civilian and military leaders — and the rank-and-file they lead — embrace and implement effective civilian control.
2. Civilian control operates within a constitutional framework under the rule of law. Military officers swear an oath to support and defend the Constitution, not an oath of fealty to an individual or to an office. All civilians, whether they swear an oath or not, are likewise obligated to support and defend the Constitution as their highest duty.
3. Under the U.S. Constitution, civilian control of the military is shared across all three branches of government. Ultimately, civilian control is wielded by the will of the American people as expressed through elections.
4. Civilian control is exercised within the executive branch for operational orders by the chain of command, which runs from the president to the civilian secretary of defense to the combatant commanders. Civilian control is also exercised within the executive branch for policy development and implementation by the interagency process, which empowers civilian political appointees who serve at the pleasure of the president and career officials in the civil service to shape the development of plans and options, with the advice of the military, for decision by the president. The chairman of the Joint Chiefs of Staff is not in the formal chain of command, but best practice has the chairman in the chain of communication for orders and policy development.
5. Civilian control is exercised within the legislative branch through the extensive powers enumerated in Article I of the Constitution, beginning with the power to declare war, to raise and support armies, and to provide and maintain a navy. Congress determines the authorization and appropriation of funds without which military activity is impossible. The Senate advises and consents on the promotion of officers to the pay grade of O-4 and above. The Senate is also charged with advising and consenting to certain senior-level civilian political appointees. Congress conducts oversight of military activity and can compel testimony from military or civilian officials, subject to narrow exceptions such as executive privilege. Members of Congress empower personal and

committee staff to shape the development of policies for decision by the committees and Congress as a whole and thereby play an important role in civilian oversight of policy.

6. In certain cases or controversies, civilian control is exercised within the judicial branch through judicial review of policies, orders, and actions involving the military. In practice, the power to declare a policy/order/action illegal or unconstitutional is decisive because the military is obligated (by law and by professional ethics) to refuse to carry out an illegal or unconstitutional policy/order/action.

7. Civilian control is enhanced by effective civil-military relations. Civil-military relations are comprised of a dynamic and iterative process that adjusts to suit the styles of civilian leaders. Under best practices, civil-military relations follow the regular order of the development of policy and laws, which protects both the military and civilian control. Under regular order, proposed law, policies, and orders are reviewed extensively by multiple offices to ensure their legality, appropriateness, and likely effectiveness. However, regardless of the process, it is the responsibility of senior military and civilian leaders to ensure that any order they receive from the president is legal.

8. The military has an obligation to assist civilian leaders in both the executive and legislative branches in the development of wise and ethical directives but must implement them *provided that the directives are legal*. It is the responsibility of senior military and civilian leaders to provide the president with their views and advice that includes the implications of an order.

9. While the civil-military system (as described above) can respond quickly to defend the nation in times of crisis, it is designed to be deliberative to ensure that the destructive and coercive power wielded by the U.S. armed forces is not misused.

10. Elected (and appointed) civilians have the right to be wrong, meaning they have the right to insist on a policy or direction that proves, in hindsight, to have been a mistake. This right obtains even if other voices warn in advance that the proposed action is a mistake.

11. Military officials are required to carry out legal orders the wisdom of which they doubt. Civilian officials should provide the military ample opportunity to express their doubts in appropriate venues. Civilian and military officials should also take care to properly characterize military advice in public. Civilian leaders must take responsibility for the consequences of the actions they direct.

12. The military reinforces effective civilian control when it seeks clarification, raises questions about second- and third-order effects, and proposes alternatives that may not have been considered.

13. Mutual trust — trust upward that civilian leaders will rigorously explore alternatives that are best for the country regardless of the implications for partisan politics and trust downward that the military will faithfully implement directives that run counter to their professional military preference — helps overcome the friction built into this process.

Civil-military teams build up that reservoir of trust in their day-to-day interactions and draw upon it during times of crisis.

14. The military — active-duty, reserve, and National Guard — have carefully delimited roles in law enforcement. Those roles must be taken only insofar as they are consistent with the Constitution and relevant statutes. The military has an obligation to advise on the wisdom of proposed action and civilians should create the opportunity for such deliberation. The military is required ultimately to carry out legal directives that result. In most cases, the military should play a supporting rather than a leading role to law enforcement.

15. There are significant limits on the public role of military personnel in partisan politics, as outlined in longstanding Defense Department policy and regulations. Members of the military accept limits on the public expression of their private views — limits that would be unconstitutional if imposed on other citizens. Military and civilian leaders must be diligent about keeping the military separate from partisan political activity.

16. During presidential elections, the military has a dual obligation. First, because the Constitution provides for only one commander-in-chief at a time, the military must assist the current commander-in-chief in the exercise of his or her constitutional duty to preserve, protect, and defend the Constitution of the United States. Second, because the voters (not the military) decide who will be commander-in-chief, they must prepare for whomever the voters pick — whether a reelected incumbent or someone new. This dual obligation reinforces the importance of the principles and best practices described above.

*Signatories:*

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