

2009 MOOT COURT HYPOTHETICAL

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It is 2015, and the United States has recently engaged in a Mutual Defense Treaty with the newfound nation of Kurdistan. Article 2 of the treaty permits the U.S. to maintain several military bases it established there after Kurdistan won its independence from Iraq in 2010. Article 3 provides that the U.S. is obligated to come to the aid of Kurdistan in the event of an external armed attack.

Congress has also passed a defense appropriations bill that allots \$50 billion for the training of Kurdistan military, as well as for the direct aid and maintenance of U.S. bases in Kurdistan. But mere days after the bill's passing, a massive bomb demolishes a wing of the Turkish parliament building. The Turkish Government lays blame for the act on Kurdish militiamen allegedly taking refuge in northern Kurdistan. In retaliation, Turkey dispatches troops into Kurdistan to "cleanse" the area of Kurdish terrorists. Prompted by pleas from officials of the Kurdistan government, the American President, Joseph Pace, announces that Turkey's invasion has triggered the U.S.'s obligations under Article 3 and orders U.S. forces to repel Turkish forces from Kurdistan.

Watching this, members of Congress become unnerved that news commentators are focusing on "Operation Kurdish Shield" as a military intervention benefitting a terrorist-harboring nation, but they are equally concerned about criticizing a U.S. troop deployment while those troops are coming under fire and abandoning a regional ally in what continues to be a fragile part of the world. The risk-averse Congressional leadership decides that silence is the best option. After all, the War Powers Resolution (WPR) of 1973 affords the president a maximum of ninety days (actually, sixty days plus a single extension of an extra thirty days) before he must secure authorization for his venture from Congress or halt it at once. Instead of demanding immediate withdrawal, Congressional leaders decide to let the clock run down.

But after ninety days, the conflict has only escalated, and President Pace insists that withdrawal would compromise the credibility of our commitments abroad and have devastating consequences for national security. He announces that he has no intention of removing U.S. forces "until every Turkish soldier is expelled from Kurdistan."

Largely through the efforts of freshman Congressman Michael Coenen of Connecticut's First District, the House and then the Senate pass resolutions demanding that the president immediately withdraw troops from northern Kurdistan. But President Pace, who has more than enough money from the appropriation bill to prosecute the war for months to come, disregards Congress, insisting that the 1973 War Powers Resolution is "an affront to the very Constitution that I have taken an oath to preserve and protect." In response, 51 Senators and 220 members of Congress file suit in federal court seeking an order requiring immediate cessation of U.S. activities in northern Kurdistan. "The president," says Congressman Coenen, "has clearly exceeded his authority. Now, he will answer to the Courts." As the case of *Coenen v. Pace* is scheduled, millions of Americans become riveted on the district court, awaiting the arguments that have brought the nation to a constitutional crisis.