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The War Powers Resolution: Asserting Congress's Role Over the Use of Military Force

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THE WAR POWERS RESOLUTION:
ASSERTING CONGRESS'S ROLE OVER THE USE OF MILITARY FORCE

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ABSTRACT

THE WAR POWERS RESOLUTION: ASSERTING CONGRESS'S ROLE OVER THE USE OF MILITARY FORCE

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Immediately following the terrorist attacks of 11 September 2001, Vice President Richard Cheney identified the moment as a turning point in the relationship between the executive and legislative branches. As the representative leaders of the nation responded to the crisis that confirmed the new enemy, they granted the President substantial authority to shape the nation's policies towards the new threat. The nature of the threat called for this milestone in the executive-legislative relationship, which provided near unanimous support for the Commander-in-Chief to secure America and its interests. Yet, this moment has been relatively short-lived and the history of the tenuous executive-legislative relationship overshadows the momentary unanimity of support. Congress must now determine how it will support the campaign against terrorism while maintaining an active role in policy making, particularly over the use of military force.

In 1973, Congress enacted the *War Powers Resolution* as a way to secure its constitutional war powers authorization and role over the use of U.S. military force. The Resolution requires the Commander-in-Chief to provide Congress with the specific details and timetables for any deployment of American servicemen. Since its ratification during the Nixon Administration, every subsequent President has declared the *War Powers Resolution* unconstitutional; yet none has acted without giving thought to it. The Resolution stirs much debate regarding the conditions and limitations it places on the

President. With the close of the Cold War, military interventions have taken on new meaning. Will the institutional constraints of the *War Powers Resolution* imposed upon the President become legislation that is no longer useful and might even prove harmful?

This study will address Congress's role over the use of military force in the context of the 1973 *War Powers Resolution* in two separate cases: the 1983 Multinational Peacekeeping Force in Beirut; the 1991 Persian Gulf War with Iraq. The objective is to draw on these case studies to assess whether and how the Resolution has outlived its usefulness. In other words, after thirty years of debate and controversy is the *War Powers Resolution* still an effective and appropriate method for Congress to assert its role over the use of military force?

The research shows that as it is currently written, the Resolution would prove detrimental to military operations that are unconventional, lack an explicit strategy, or necessitate expediency. The requirements set forth in the *War Powers Resolution* compromise expediency, secrecy, and to a certain degree autonomy for the President—all integral to conducting war and maintaining the nation's security. Yet, Congress is reluctant to repeal and even revise any aspect of the Resolution that may compromise its legal right to assert itself over the use of military force. Notwithstanding, new formulas to address the weaknesses of the Resolution during times of national security crises must be explored as the role of the military and the nature of intervention evolve in the 21st century.

To Katherine and Anthony:

No two individuals have done more for me by insisting on my persistence, diligence, and self-achievement.

To my father, who is no longer with me:

You imbued in me a fierce independence, an indomitable work ethic, and a love of life—true to our heritage. *Viva Italia*

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CHAPTER I

INTRODUCTION

Many political leaders in the United States consider the collapse of the Soviet Union the watershed in American foreign policy that compels a re-evaluation of the guiding principles of that period. The end of the Cold War has ushered in new global dilemmas amidst a body of agreements, treaties, and legislation largely defined by the bilateral relationship between two superpowers.

One of these parameters, which emerged as a bi-product of the Vietnam War, is the 1973 *War Powers Resolution*. The Resolution is the consequence of congressional disapproval of an executive branch that was said to be exceeding its constitutional rights with regard to the use of military force. The Resolution mandates that the President provide Congress with specific details for the approval of the deployment of American forces into situations where there is the possibility of hostilities. Since its enactment, the *War Powers Resolution* has stirred much debate between the executive and legislative branches of government as well as within Congress itself. This study will address the Congress's role over the use of force in two separate cases: the 1983 Multinational Peacekeeping Force in Beirut and the 1991 Persian Gulf War with Iraq. The objective is to draw on these case studies to assess whether the Resolution has outlived its usefulness. Is the *War Powers Resolution* still an effective and appropriate method for asserting a congressional role over the use of U.S. military force?

This research is designed to examine the role of the 1973 *War Powers Resolution*

This paper follows the format requirements of *A Manual for Writers of Term Papers, Theses, and Dissertations 6th edition* by Kate L. Turabian.

in the context of two case studies to assess the constitutionality of the actions taken by the President during the immediate crisis, to review the congressional response to the policy, and to appraise Congress's action in response to the President's policy.¹ How will these experiences affect the future behavior of the Congress and the President? Should there be changes in the *War Powers Resolution*, or even a nullification of the document? Or, will the *War Powers Resolution* persist as the congressional "check" on the President's war powers?

PURPOSE AND IMPORT OF THE RESEARCH

The research will enhance the empirical development of existing literature. First, it will gather the evidence presented from the two case studies to answer the central question as to the usefulness of the *War Powers Resolution*: in each situation the President deployed troops into an environment of imminent danger while circumventing the constraints of the Resolution. Second, it will test the effectiveness of the Resolution to show how the institutional constraints placed upon an imperious, distrusted President of the Vietnam era need to be reconsidered in the post Cold War environment. This research will determine Resolution's effectiveness in managing conflict.

ARGUMENT AND CASE STUDIES

This study will be a qualitative analysis of the *War Powers Resolution*. The President, the Congress, the crisis, and the role of the U.S. military are variables that

¹Throughout this discussion, the President will be referred to as "he" or "him" since Presidents to date have been men.

affect the usefulness of the Resolution. Assessing the affects of these variables invite sound proposals for the future of the Resolution.

The hypothesis of this research will demonstrate that since its inception in 1973, the *War Powers Resolution* has been ineffective because both the President and the Congress are ill at ease to invoke it: the President feels stymied by its constraints and the Congress feels burdened with sharing the responsibility of the threat of imminent hostilities, war, and loss of American lives. The research will examine the political dynamics of the executive and legislative branches that led to the establishment of the Resolution in 1973; the President's unilateral decision to proceed with a use of force in Beirut 1983 and the President's unilateral decision to go to war in the Persian Gulf in 1990 despite provisions of the Resolution that require, at a minimum, consultation with Congress. The research will show that presidential compliance with the Resolution has been nominal and congressional invoking of the Resolution has been apprehensive. The document's provisions have proven ineffective in managing conflict for both the President and the Congress. If it is to stay in force, revisions are necessary to make the *War Powers Resolution* a more pragmatic piece of war powers legislation.

The hypothesis will assess whether or not expediency, secrecy, and to a certain degree, autonomy for the President are compromised during national security emergencies and at what cost. Does the Resolution affect the President's measures by requiring that he consult and report in a timely fashion his plans, decisions, and actions before placing U.S. Armed Forces in situations where hostilities may be imminent?

When Ronald Reagan became President in 1981, he was committed to reversing one decade of American decline economically, militarily, and culturally. He held the

view that the U.S. should reclaim its influence and autonomy over international events. Reagan undertook specific actions in the Middle East with the purpose of either directly enhancing regional stability or indirectly affecting stability by discouraging terrorism. The experience in Beirut proved costly both militarily and politically. In fact, the 1983 Multinational Peacekeeping Force in Beirut proved to be a disaster for the Reagan Administration.

This case will discuss the unwillingness of both Congress and the President to invoke the *War Powers Resolution*. How does Congress invoke the Resolution when the mission of the deployment is neither clear, nor achievable, and the threat of imminent hostilities cannot be ascertained? The timeliness of invoking the Resolution, an insistence on presidential compliance to report to the Congress, and the willingness to assume responsibility when agreeing to the deployment of troops, whether they meet success or failure in their mission, are part of the analysis of this case study.

The case of Beirut also brings with it political concession in both the executive and legislative branches: Reagan deployed troops pursuant to his constitutional authority as Commander-in-Chief, and Congress did not benefit from any reporting or consultation as stipulated in the *War Powers Resolution*. Congress and the President then compromised and legislation was passed with Congress assuming Reagan would concede the legitimacy of the procedures outlined in the Resolution. Reagan's concession to the legitimacy of those procedures never occurred; instead, the compromise granted Reagan more time—eighteen months instead of sixty to ninety days as determined in the *War Powers Resolution*. Reagan further contended he had no constitutional obligation to seek authorization even after the eighteen months.

There was a continuous discussion between the President and the Congress as to the appropriate role Congress would play in determining and legitimizing the use of American military power. This case proved to be a watershed for the viability of the *War Powers Resolution* for it was in Beirut that the Resolution was put to the sternest test. Two clear lessons are evident from the case study: congressional support or criticism for the operation correlated with the success or failure of the mission, and the Resolution had the opposite effect of fostering an atmosphere of cooperation by pitting one branch against the other on procedural grounds. Before the crisis in Beirut, Congress never clearly defined whether the *War Powers Resolution* applied to a particular type of troop deployment such as peacekeeping, defensive, or offensive. That changed with the Multinational Peacekeeping Force in Beirut whereby Congress was compelled to declare the Resolution applicable to the participation of U.S. peacekeeping forces. They acted on the heels of the terrorist attack that killed 281 U.S. Marines by choosing to accommodate, rather than confront, President Reagan with a compromised joint resolution permitting the Administration to stay its course.

In August 1990 President George H.W. Bush called the Iraqi invasion of Kuwait an act of aggression that required an unconditional withdrawal, despite Saddam Hussein's claims that Kuwait was causing Iraq's economic demise by lowering oil prices. Bush quickly declared a national emergency in a televised broadcast on August 3rd and left open the prospect of military action if United Nation's sanctions did not work. By seizing Kuwait, Saddam doubled his control over the world's crude oil. Prices soared from \$18 to \$30 barrel while four million barrels a day were lost from Iraq and Kuwait. The Bush Administration described the invasion as a security threat to the region and an

economic threat with the seizure of oilfields: “Hussein had placed a knife at our [United States] jugular.”² At that time, Saudi Arabia provided fifteen per cent of U.S. oil imports and Iraq and Kuwait, combined, supplied nine per cent.

The 1991 Gulf War with Iraq exemplifies presidential out-maneuvering of the Congress by creating conditions that allowed the Congress to only a minimal decision-making role in the use of force. Congress has the constitutional power to declare war, but it also needs the institutional courage to force the President to share in the important decision to send U.S. forces into combat. In the Gulf War debate, Congress did not share that decision—it supported the President’s unilateral decision, which meant Congress was supporting a war it did not declare.

A second point of interest in this case study is how the *War Powers Resolution* relates to resolutions prescribed by the United Nations. Instead of seeking authority from Congress, Bush created a multinational alliance and encouraged the United Nations Security Council to authorize the use of force. It is important to note that nothing in the history of the United Nations treaty implies that the U.S. Congress should give its President unilateral power to wage war. Yet, on 2 August 1990 Bush deployed 100,000 troops to the Persian Gulf in response to Saddam’s invasion of Kuwait acting on U.N. authority. That military force would climb to over 500,000 troops without any congressional input.

With the authorization from the United Nations Security Council, Bush believed he did not need authority from Congress. Did the United States Congress transfer its constitutional power to the U.N. Security Council by ratifying Public Law 102-1, the *Authorization for the Use of Force Against Iraq Resolution*? The Iraq Resolution

²Quoted in *Historic Documents of 1990* (Washington, DC: Congressional Quarterly, 1991), p. 533.

authorized the President to use armed force pursuant to U.N. Security Council Resolution 678, which called for member states to use all necessary means to uphold and implement the previous mandate of Resolution 660, the restoration of international peace and security in the region. Bush took the country from a state of peace to a state of war without congressional consultation and authorization, subordinating Congress's position to that of the U.N. Security Council. He did not, however, set a precedent. Truman circumvented Congress via the United Nations Security Council with the war on the Korean peninsula, but Truman did not have the requirements of the *War Powers Resolution* with which to comply. Will Congress and the American people accept this subordinated role for the legislative branch?

The case study of the Gulf War also brings into the analysis another approach to constrain the President namely, a judicial case brought forward by members of Congress citing President Bush's contemplated use of military force against Iraq. House Representative Ronald V. Dellums and fifty-two other Congressmen requested that the United States District Court direct President Bush to first secure a declaration of war or explicit authorization from Congress before initiating an offensive attack on Iraqi forces. This judicial approach abandons the Resolution and stands on the constitutional provisions governing the war powers.

The Court was cautious about interfering in this case citing the limitations placed on its judicial review: much of the relevant data was protected against compulsory disclosure by executive privilege. The Judiciary recognized it would have difficulty assessing the nature of the emergency and the validity of the claim made by members of Congress. The judicial case also brought with it the issue of public debate: like Congress,

the Courts are hesitant to challenge a President who has support of the public during a national crisis. The problem Dellums and his colleagues faced was proof of Bush's extra-constitutional use of presidential authority. With the lack of proof of the abuse of power and the inability to assess the emergency, the Courts have consistently postponed rulings or upheld the President's exercise of power. Because the *War Powers Resolution* had no direct affect on the actions of the President, congressional opponents of presidential policy approached the Court citing Bush's abrogation of the Constitution. Neither the Resolution nor the judicial hearings resulted in a change in the President's course of action. In other words, the Court saw *Dellums v. Bush 1990* as a political issue, rather than a judicial issue.

These two cases, one a peacekeeping intervention, Beirut; and one a war waging intervention, the Persian Gulf War; one a voluntary action, Beirut, and one a global emergency, the Persian Gulf War, exemplify varying types of the use of force. Congress and the President have the same responsibility, war powers, and obligation to the American public regardless of the nature, size, and cause of the intervention. Yet, the simple, small deployment of Beirut proved a debacle for Reagan and an embarrassment for Congress. The Republican Senate found it difficult not to support its Republican President while the Democratic House worried about 1) appearing non-supportive of the troops already in the theatre of operations and 2) compelling the President to re-deploy troops only to have him embarrass them by refusing. The cases demonstrate the weaknesses of the Resolution in the form of presidential evasion, congressional acquiescence, congressional compromise, congressional deference, and the Judiciary's unwillingness to intervene in a dispute between the two political branches by stating the

Court's inability to obtain the information necessary to reach a decision. The Court respects this information as privy to the President during times crises.

CHAPTER SUMMARIES

The following seven chapters examine the role of the Congress and congressional reaction to the President in the use of military force in two distinct cases. The study includes: a literature review; an analysis of the constitutional war powers vested in the President and Congress and the inherently contentious relationship between the legislative and executive branches; an examination of the *War Powers Resolution*; two case studies where the President's use of force came into question, focusing on the interactions between the Congress and the executive; and a final chapter that discusses the future of the Resolution and conclusions that arise from the research.

Chapter two provides a *Review of the Literature*. It is necessary to understand the legislation as well as the role of the legislative and executive branches with regard to the use of military force. The literature review is divided into three sections: the Congress and its relationship to the executive and the constitutional powers vested in both branches of government; the 1973 *War Powers Resolution*, its history and the debate regarding its constitutionality and usefulness; and the case studies.

The argument over the war powers between the Congress and the executive has persisted throughout America's history. A lengthy body literature demonstrates congressional deference, resurgence, and the perpetual constitutional "struggle" both branches seem to find inescapable.³ The *War Powers Resolution* gives the appearance of

³Edwin S. Corwin, *The President: Office and Powers* (New York: New York University Press, 1957), 171.

being effective in empowering the Congress to constrain the President, but the continued dispute over war powers authority and the President's pre-eminence as Commander-in-Chief suggests otherwise.

The debate about the future of the *War Powers Resolution* is ongoing. From the 1987 Persian Gulf incursion, which asks, when are hostilities imminent? to the question of U.S. military response to international crises, members of Congress have made recommendations to retain, revise, revoke the Resolution. Reviewing this body of literature will aid in reaching appropriate conclusions regarding the function of the Resolution in the 21st century.

Research on the two case studies will follow a similar pattern. Part one will review the President and his Administration. The Congress will also be evaluated as to its partisan composition and relationship the President. Each case study will review President's course of action as the crisis escalates. Analyzing congressional deliberations and action in the midst of the crisis will show whether and to what extent the *War Powers Resolution* was invoked. Finally, this study will examine the consequences of the decisions made by the President and Congress.

There is sufficient literature pertaining to the 1983 Lebanese debacle to suggest a congressional reluctance to invoke the *War Powers Resolution*. Reagan biographers such as Larry Berman, Lou Cannon, Edmund Morris, and Lloyd Demause, the biographies of key leaders to include Alexander Haig, George Shultz, Casper Weinberg, Thomas P. O'Neill, and John Lehman as well as official documents and congressional reports combine to present a multi-dimensional evaluation of this case study.

With the United Nations Security Council authorizing President Bush to proceed

with ousting the military forces of Iraq from Kuwait, what other course of action could the Congress take but to comply with what was determined to be an international crisis? Congress had little choice but to authorize the war in the Persian Gulf, and it did so in great haste. The President had conducted a major military deployment before Congress could debate the course of action its members were asked to sanction. Bush planned to proceed with or without their authorization: “Even had Congress not passed the resolutions I would have acted and ordered our troops into combat. I know I would have caused an outcry, but it was the right thing to do. I was comfortable in my own mind that I had constitutional authority.”⁴

The requirements in sections 3 and 4 of the *War Powers Resolution* that the President consult and report to the Congress, doing so within a prescribed time period, were ignored as Bush deployed 500,000 American troops while building the largest, multi-dimensional coalition of forces the world had ever seen. The Gulf War is replete with literature on this topic to include: *The Congressional Record*, resolutions of the United Nations Security Council, the Supreme Court ruling in *Dellums v Bush 1990*, *Historic Documents of 1990 and 1991*, the President’s *Public Papers* and his memoir, co-written with his National Security Adviser Brent Scowcroft, and James Baker’s memoir. Secondary sources provide another assessment of the Bush Administration and the its management of the war as found in analyses of Colin Campbell and Bert Rockman, Michael Duffy and Dan Goodgame, and John Greene.

Chapter three, *Congress, The President, The Constitution*, examines the scholarly debate about the role of Congress over the use of armed force and in foreign policy as

⁴Quoted in George Bush and Brent Scowcroft, *A World Transformed* (New York: Alfred A. Knopf, 1998), 446.

well as the nature, extent, and significance of Congress's responsibilities. This chapter discusses the evolution of the resurgent Congress starting in the 1970s when Congress was compelled to assert its authority: the country was in the throes of a war the public was no longer supporting (Vietnam), the President was conducting the business of this war behind closed doors, and a domestic scandal ensued that would soon call for the impeachment of the President. Under these conditions, Congress began to see itself more as an equal to the executive in the realm of foreign policy making. The legislative-executive relationship would become adversarial because of Congress's enactment of a resolution that would compel the President to consult with, be advised by, and seek authorization from Congress.

A thorough examination of the 1973 *War Powers Resolution* is provided in chapter (4), which serves as the foundation for understanding the character of the law, and the limitations it places on both the Congress and the President. This chapter provides a brief history of the document noting the actions of the Nixon Administration that resulted in the need to constrain the President, primarily his secretive conduct of the Vietnam War. Also included is a thorough review of the document itself (see Appendix A) to analyze the legislation as it is written. Finally, a discussion about the debate over the usefulness of the document: is it effective or obstructionist legislation? Within Congress there are a number of proposals to amend the Resolution to ensure its efficacy, and outside of Congress, there is a debate by scholars who offer many of the same proposals with much more pointed criticism. On the other side of that debate, some have concluded that the Resolution has been effective in that no President has acted without at least giving thought to it. Essentially, the *War Powers Resolution* has resulted in a

national debate that has yet to be resolved, a debate to retain, revise, or repeal the legislation.

Both case studies examine the President and the Congress, an overview of the crisis, the response on the part of the President, and the congressional response and reaction to the use of force. The overview of the case studies are found in the fifth and sixth chapters entitled, *The 1983 Multinational Peacekeeping Force in Beirut* and *The 1991 Persian Gulf War with Iraq*, respectively. The post crisis period will also be examined to determine the effect of the congressional vote to support or contest the President's policy, and to review the various actions taken by the executive and legislative branches to comply or reject the *War Powers Resolution*. The focus of the thesis is addressed here in the form of a question, given its history as discussed in these case studies, has the Resolution outlived its usefulness or is it a necessary constraint that obligates the Congress and President to analyze every option and answer every question before sending American troops abroad?

Case Study 1: The 1983 Multinational Peacekeeping Force in Beirut found President Ronald Reagan at odds with the Congress over the presence of U. S. Marines in Lebanon. Congress argued with Reagan over the duration and conditions of the Marine presence there. As a body, Congress dealt tangentially with the situation by endorsing the Multinational Force in Lebanon Resolution, which provided that Reagan would need to obtain statutory authorization with respect to substantial military expansion. As the situation deteriorated, a gradual and unannounced expansion of the U.S. role in Lebanon took place. The House and Senate were active, vocal, and in a quandary and the Reagan Administration proved divided in its strategy. All were dismayed when they learned a

terrorist bomb had killed 241 soldiers and wounded 80, the highest one-day loss of soldiers since the Tet Offensive on 13 January 1968 with the death of 246 soldiers.

Case Study 2: The 1991 Persian Gulf War with Iraq positioned President George H.W. Bush and the Congress at odds as the President shifted the nation from a defensive posture to an offensive operation without congressional approval. Spending his energies on building a coalition, Bush sought authorization from Congress only after he had received authorization from the global community. Fifty-three members of the Congress brought forward a case to the Justice Department challenging the constitutional authority of the President to initiate war in the Persian Gulf.

The *Conclusion* expands on the findings of the case studies. What lessons have been learned from them? Is the *War Powers Resolution* an effective and appropriate system for maintaining a congressional role over the use of armed forces? Can the Resolution conform to the needs of the twenty-first century? Will the legal limitations forced upon the President by the *War Powers Resolution* result in its becoming defunct legislation? Will Congress retain the Act as a necessary constraint on the President? How will the Commander-in-Chief proceed into a new era of security concerns if consultation, time limits, and authorizations are placed upon him that might affect the day-to-day management of these concerns? The Conclusion will address these questions.

CHAPTER II

REVIEW OF THE LITERATURE

This chapter reviews three bodies of literature. First, a review of the literature assessing the Congress: its relationship to the executive, the constitutional powers vested in both branches of government, and the constitutional “struggle” for war power authority, which appears to be unavoidable. This is a broad body of literature that begins by defining the framers’ literal intent of the Constitution. It then proffers the idea that the Constitution is an evolving, living document, which results in an inherent struggle between the branches. This information is integral to the case studies, which include a discussion of this already difficult relationship in times of national security crises.

The second body of literature is an analysis of the 1973 *War Powers Resolution*, its history and the debate regarding its constitutionality and usefulness. This literature explains the mood of the country, Congress’s incentive to constrain the President, and the intent of the Resolution. It explores the ongoing debate to retain, revise, and repeal the law. Assessing the conclusions found in this body of literature allow for viable proposals for the future of Congress’s role over the use of force.

Finally, an examination of the literature pertaining to the case studies, from the historical perspective to the primary documents and legislation to the memoirs, biographies, and scholarly assessments of the event. Understanding the cause of the crisis, the nature of the intervention and the President’s perception of the crisis, the justification to deploy U.S. forces are important in assessing the success or failure of the intervention. Congress’s perception of the crisis and its reaction to the President’s

decisions are key to understanding the difficulties in reaching a satisfactory outcome.

The next section will discuss the literature that explains those difficulties.

CONGRESS, THE PRESIDENT, THE CONSTITUTION

In reviewing the literature pertaining to the United States Constitution and the separation of powers and duties, a leading authority on the topic is Edward S. Corwin. His earliest writings reflect his expertise as a constitutional scholar by providing thorough explanations of the Articles and offering interpretations of the document. Corwin develops two theories for interpreting the Constitution: a “constitutional theory” which takes into consideration the framers’ intention, the document’s limitations, and the idea of a higher law, a natural law standard that would direct government. The second theory proposes the idea of a “living Constitution,” that the substitution of the majority’s needs for the original intent of the document direct the actions of the Congress and the President.¹

Corwin’s scholarship is quoted in almost every discussion of the Constitution. His argument that the powers vested in the Congress and the President are an “invitation to struggle,” that the decisive and final voice in determining the course of the American nation is “left for events to resolve” opens the door for much interpretation and criticism of the document. While most scholars in the field agree with Edward Corwin that the Constitution is an “invitation to struggle,” the debate involves the solutions proposed to reduce the incongruity, and often these differences are centered on conflicting views

¹Edwin S. Corwin, *The President: Office and Powers*, 171; Edwin S. Corwin, *Presidential Power and the Constitution* (Ithaca: Cornell University Press, 1976), 23-57.

surrounding the composition the Congress, be it a Democratic or Republican majority, and the imperious nature of the executive.²

An important consideration in this discussion is the resurgence of Congress. Although a rich debate has occurred over the constitutional and practical issues associated with a resurgent Congress, little has been written about the effects of the phenomena. In two separate essays Randall Ripley and James Lindsey criticize the lack of scholarship and attention paid to Congress and its influence in foreign and defense policy. Ripley's research as professor and scholar of U.S. foreign policy and congressional politics contends that the literature, instead of being based on systematic knowledge, subsists largely on anecdotes placing Congress in a favorable light while offering little or no discussion on the causes or consequences of congressional interests.³ This scholarly vacuum adds import to this dissertation for it places the conclusions of the thesis in unexplored territory. Within the debate over the constitutional and practical issues associated with a resurgent Congress is the benchmark date of 1973 as a turning point in legislative-executive relations and the *War Powers Resolution*, created to make certain that the President would consult with the Congress prior to the deployment of U.S. Armed Forces into areas of imminent hostilities, and that he would provide timely reports as to the situation confronting those troops.

The suggestion that Congress re-emerged after Vietnam and later entered a reform then post-reform period infers that the legislature evolved as a consequence of the actions

²*Ibid.*, 23-56.

³Randall B. Ripley and James M. Lindsey, eds., *Congress Resurgent: Foreign and Defense Policy on Capitol Hill* (Ann Arbor: University of Michigan Press, 1993); "Foreign and Defense Policy in Congress: A Research Agenda," *Legislative Quarterly*, XVII (3 August 1992) : 221.

taken by the executive branch. Further changes then took place as a result of global events that compelled Congress to participate in foreign policy making. In *Invitation to Struggle: Congress, the President, and Foreign Policy*, Pat Holt and Cecil Crabb offer one explanation for this evolutionary process: Congress is experiencing internal changes as the result of an eroding distinction between domestic and international affairs.⁴ Crabb and Holt argue that the Congress has even acquired extra-constitutional powers as in the 1973 *War Powers Resolution*. Cecil Crabb has studied recurring modes or patterns of legislative behavior and his idea of an “erosion of distinction” is noteworthy for this research, which proffers that a new erosion may be underway, an erosion of congressional war power during this period of global war against terrorism.

Thomas Mann, the W. Averell Harriman Chair and Senior Fellow in Governance Studies at The Brookings Institution, has selected various essays that explain the recent history of congressional acquisition of power and the reforms of the 1970s in *A Question of Balance: The President, the Congress, and Foreign Policy*.⁵ Mann suggests the reforms resulted in a more decentralized and democratized Congress, stronger in its policymaking capabilities, and assertive in its dealings with the executive branch. Peter Rodman supports Mann claiming the most important domino that fell during the 1970s was the American political system and process: the self-imposed paralysis and withdrawal of the United States from its role as keeper of the global balance that resulted in institutional gridlock. As Rodman states, “It took a grossly mismanaged war and a

⁴Cecil V. Crabb Jr. and Pat M. Holt, *Invitation to Struggle: Congress, the President, and Foreign Policy* (Washington, DC: Congressional Quarterly, 1994), 2.

⁵Thomas E. Mann, ed., *A Question of Balance: The President, the Congress, and Foreign Policy* (Washington, DC: Brookings Institute, 1990).

self-inflicted political disaster [Watergate] to upset the balance.”⁶ Rodman’s various positions in the executive branch of the government, the National Security Council, and the Pentagon provide a useful perspective in describing the changes that took place with an assertive Congress and weakened President. Rodman’s thesis contends Vietnam and Watergate left a legacy of novel restrictions on presidential power that, once introduced by Congress, are now embedded in legislation and exceedingly difficult to undo.

One of the essays in the Thomas Mann text is Robert Katzmann’s, “War Powers Resolution: Toward a New Accommodation.” Katzmann contends the core issues surrounding the war powers are very much alive. He uses historical examples to demonstrate how the President has repeatedly used his own discretion when committing forces. To accommodate the difficult legislative-executive relationship, Katzmann suggests Congress revise the *War Powers Resolution* to specifically prescribe when and how it will participate in the decision to commit U.S. Forces.⁷ In 1994 Barbara Hinckley went on record proclaiming the Resolution, legislation that appears to fall into the Rodman category of “exceedingly difficult to undo,” was a “legislative albatross” that has become an acute embarrassment.⁸ What Hinckley reveals is unflattering to both the executive and the legislative branches of government. She proposes reforms that might result in increased congressional participation in the making of foreign policy by delving into the system of checks and balances, how it works and doesn't.

⁶Peter Rodman, “The Imperial Congress,” *National Interest* (fall 1985) : 284.

⁷Robert Katzmann, “War Powers: Toward a New Accommodation,” in *A Question of Balance: The President, the Congress, and Foreign Policy*, ed. Thomas E. Mann (Washington, DC: Brookings Institute, 1990), 78.

⁸Barbara Hinckley, *Less Than Meets The Eye* (Chicago: University of Chicago Press, 1994), 9.

Within the body of literature on congressional-executive relations there exists a persistent complaint on the part of the President that Congress is too involved in defense spending, policy making, and management, areas of concern the executive branch would like to direct. Barry M. Blechman presents a thesis in *The Politics of National Policy* discussing Congress's response to the President's complaint. He notes two contentious issues: congressional power of the purse and the executive's dangers of secrecy and centralization. Both issues are key to placing the legislative and executive branches in opposing positions. Congress works diligently at impressing upon the President the political reality that the public holds both branches equally accountable. Blechman also elaborates on how the competing views of power and responsibility are accommodated and reconciled.⁹ To augment that discussion is the examination of the legislative-executive relationship by Colin Campbell et.al., which brings to light the negotiations that take place when a crisis erupts and bi-partisanship is the desired.¹⁰ Campbell's compilation, *Congress and the Politics of Foreign Policy* includes theses that propose a number of reasons why bi-partisanship, although achievable, does not address the perpetual issues plaguing the legislative-executive relationship such as the lack of checks and balances with regard to the war powers, the demise of true bi-partisanship, and the absence of a post Cold War paradigm for policy makers to follow. Campbell concludes the necessary ingredients that will lead to accommodation are available, yet there remains a consensus between political parties and between branches that the executive should

⁹Barry M. Blechman, *The Politics of National Security* (New York: Oxford University Press, 1990).

¹⁰Colin C. Campbell, ed., *Congress and the Politics of Foreign Policy* (Upper Saddle River: Prentice Hall, 2003.)

predominate on national security matters and can do so with inherent powers and perquisites of the President.

Crabb and Holt's research presents a thesis concerning the extra-constitutional powers of the President and the Congress via the 1973 *War Powers Resolution* as an example. The authors elaborate on the President's perquisites: unequaled access to information, influence on public opinion, political party leader, ability to commit the nation to a course of action—all of which, when juxtaposed to Congress's authority, appear to keep the balance of power shifting. Observing the two branches from an operational perspective, Professors Lawrence Dodd and Bruce Oppenheimer suggests Congress's genius lies in its diversity, democracy, and debate while the executive offers hierarchy and concentrated formal authority.¹¹ The two case studies selected for this study provide examples of presidential use of those perquisites, especially the ability to commit the nation to a course of military action without congressional authorization. Understanding the President's concentrated formal authority, as explained by Crabb and Holt, add to this discussion vis-à-vis each President's ability to affect the outcome of his crisis that established him as bold and "in-charge."

George Edwards, a presidential scholar, presents three categories of scholarship that define the legislative-executive relationship: legal or constitutional; institutional or processes involved in interaction between the Congress and President; and methods to test the propositions about presidential influence and behavior. In *Presidential Influence in Congress*, Edwards outlines four sources of conflict between the legislative and

¹¹Lawrence C. Dodd and Bruce I. Oppenheimer, eds., *Congress Reconsidered* (Washington, DC: Congressional Quarterly, 1997).

executive branches: different constituencies; differences in internal structure of centralized versus decentralized; differences in expertise and information available to each; and different time perspectives. He concludes that the President is in a weak position vis-à-vis the Congress; his burdens are great and his assets are few with party affiliation unreliable.¹² Edwards' perspective of the executive branch adds to the examination of the Administration in the two case studies. Congressional decisions were made along partisan lines because of the different constituencies; once Administrative decisions were made, the President was able to execute his plan while the Congress experienced delays within and between both houses. Their delays did little in delaying the Administration for it continued to act as a concentrated structure.

In the essay, "Who Speaks for the National Interests?" Theodore Sorensen proposed three paths for a President to choose interacting with the Congress that are suitable for assessing political behavior at any given time: submission; leadership; or defiance and domination. As special counsel to President Kennedy, Sorensen observed first hand the decision making process in time of crisis. His thesis dismisses presidential defiance and domination since he acknowledges Congress's authority to challenge an imperious President with the power of the purse. He dismisses submission for the constitutional authority granted the President must be observed. He notes that path number two, leadership, is the most probable and successful path for the President, but this reason for choosing it is not based on power or personality associated with leadership; rather it is based on available opportunities. The President can persuade a

¹²George C. Edwards III, *Presidential Influence in Congress* (San Francisco: W. H. Freeman and Co., 1980).

whole country, take the initiative to set forth an agenda then report to Congress, build and utilize his *own* team, not an elected team. Sorensen sets forth a simple argument namely that the President is more powerful than the Congress by virtue of access and opportunity.¹³

Thomas Mann supports Sorensen's thesis on the command of public opinion. In his book *A Question of Balance: The President, The Congress, and Foreign Policy*, he asserts that public opinion continues to be a prime determinant of the level of cooperation or conflict between the Congress and the President. He cites examples of Administrations that go against the tide of public opinion only to invite a more active congressional role.¹⁴

The power of the media and personality used to shape public opinion is not new to this body of research, however Richard Neustadt developed this theory recognizing executive persuasion as a powerful element, but he astutely recognizes the problems associated with this type of executive power in his revised work, *Presidential Power and Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*. Neustadt's role as political scientist, educator, and consultant to the President (1961-1966) afforded him the opportunity to recount many case studies. Neustadt recognized a principal presidential weakness in the great gap between what is expected of the individual and the capacity to carry it through.¹⁵ Although there are many schools of thought as to where

¹³Theodore C. Sorensen, "Political Perspective: Who Speaks for the National Interest?" in *The Tethered Presidency: Congressional Restraints on Executive Power*, ed. Thomas M. Franck (New York: New York University Press, 1981), 134.

¹⁴Mann, 11.

¹⁵Richard E. Neustadt, *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan* (New York: The Free Press, 1990), 28.

political balance of power lies, the fact remains that a resurgent Congress has evolved and has become more active in policy making and vis-à-vis the President.

Discussion on the evolutionary nature of Congress relative to foreign policy is discussed in Paul Peterson's *The President, The Congress, and the Making of Foreign Policy*. Peterson divides this text into three approaches to study how the Congress and the President arrive at national security and foreign policy decisions: a constitutional approach which centers around court doctrine and power relations; an institutional approach which emphasizes components of the legislature and executive branches, their behavior and interaction; and issue oriented with trade, defense, and arms control listed as most compelling.¹⁶ Peterson discusses the trend in scholarship which indicates foreign policy has become increasingly partisan, acknowledging a much more active Congress. He cites the Constitution as assigning most of the governing authority to the Congress and goes a step further to elucidate the trends in partisanship, an important factor for as Congress becomes independent as a body, it also evolves into a body of individual members who behave independent of the institution.

Congressional support, member votes, and individuals' behavior are significant to this research for in each selected case study the importance of partisanship and the influence of individual members of Congress affected the course of action. Understanding Peterson's three approaches add to this discussion regarding the use of constitutional war power authority. In the case of the 1991 Persian Gulf War, the constitutionality of President Bush's actions were called into question in what Congress

¹⁶Paul E. Peterson, ed., *The President, the Congress, and the Making of Foreign Policy* (Norman: Oklahoma University Press, 1994).

viewed as unilateral decisions to deploy troops into a theatre prime for combat and then transitioning the nation from a defensive military operation to an offensive one.

Institutionally, Congress argued with the Administration's lack of consultation and authorization from the Congress as a separate but equal body co-joined for its debating and deliberating character. The question of presidential compliance with constitutional war power and the 1973 *War Powers Resolution* loomed largely in both case studies.

THE 1973 WAR POWERS RESOLUTION

Central to this research is the 1973 *War Powers Resolution* and its role in the conflictual relationship between the President and Congress. For the President and among some in Congress, the document is superfluous and dismissed as such. In his essay, "Congress, the President, and Military Policy," Christopher Deering contends the balance of power in the legislative-executive debate leans toward the President due to the substantial increase in the size of the military establishment under his direct command.¹⁷ That is precisely what concerns the Congress and adds to the argument that the Resolution must remain in effect. But the questionable constitutionality of the Resolution itself and the problematic requirements of some of its sections make for an argument to retain, revise, or repeal the Resolution.

Critics of the document begin with calling the origins of the 1973 Resolution into question. Robert Turner, Robert Clark, and Gordon Silverstein share the view that the Congress imposed the Resolution on a President weakened by Watergate and a public

¹⁷Christopher J. Deering, "Congress, the President, and Military Policy," in *Congress and the Presidency: Invitation to Struggle*, eds. Richard D. Lambert and Alan W. Heston (Newbury Park: Sage Publications, 1988), 303.

that demanded a guarantee of no more Vietnams. The original legislation absolved the Congress of responsibility for the unpopular conflict that was to become branded “Nixon’s War.” Congress sought to “initiate statutory constraints to assure the angry public that the President would not escalate the war any further.”¹⁸

Robert Clark’s work, *The War Powers Resolution: Balance of Powers in the Eighties*, examines the flaws of the Resolution, which were noted immediately by Nixon who claimed that the document would weaken presidential authority for even humanitarian missions.¹⁹ The timing of this legislation is a point of criticism for many scholars. In *The Imbalance of Powers: Constitutional Interpretation and the Making of American Foreign Policy*, Gordon Silverstein outlined the events that led to the ratification of the Resolution and the attitude in Congress, which displayed some dispassion.²⁰ Nixon’s call for revision went unheeded, yet some of Nixon’s critics recognized the soundness of the President’s veto of the Resolution with regard to the requirements of the legislation. Others voted against the Act seeing it as legislation that would cede more power to the President. Louis Fisher, a preeminent constitutional authority, presents some of the most critical points regarding the timing and passage of the Resolution. In his book, *Presidential War Power*, Fisher claims the congressional vote on the Resolution was clouded by the Watergate scandal, specifically the “Saturday

¹⁸Robert F. Turner, *Repealing the War Powers Resolution: Restoring the Rule of Law in U.S. Foreign Policy* (New York: Macmillan Publishing Company, 1991), 23.

¹⁹Robert. D. Clark, Andrew M. Egeland, Jr., and David B. Sandford, eds., *The War Powers Resolution: Balance of War Powers in the Eighties* (Washington, DC: National Defense University Press, 1985).

²⁰Gordon Silverstein, *The Imbalance of Powers: Constitutional Interpretation and the Making of American Foreign Policy* (Oxford: Oxford University Press, 1997).

Night Massacre,” which dismissed three officials of the Administration from the government. All of this had taken place four days prior to the vote; a point Fisher adheres to in his argument that Nixon’s veto of the War Powers Act was overshadowed by these sensational events.²¹

Silverstein saw the passage of the Resolution with the demise of the President at hand as an historic opportunity to send a message at a most convenient time. He carefully notes that even the framers of the document saw it as less than perfect, yet again, the timing proved more important—it was to be an immediate vote of no confidence in the President’s use of power.²² Turner condemns the hastiness with which the Resolution was passed and is critical of those who used the timing as a way to persuade voters that Congress was not responsible for the war. Turner focuses his criticism on those in Congress who believed the Resolution would serve to restore the public’s confidence in the national government, the same Congress that, through much legislation passed on behalf of the war, would be now be able to exonerate itself.²³

In his book, *The War Powers Resolution: It’s Implementation in Theory and Practice*, Turner, questions the appropriateness of the Resolution as a response to Vietnam. His thesis asks, was it a product of the war or a product of the misunderstanding or misrepresentation of that war? Turner concludes the latter as he cites Congress’s behavior throughout the crisis, and even up to 1973, as being supportive of executive policy. He notes Congress becomes less supportive due to the

²¹Louis Fisher, *Presidential War Power* (Kansas City: University of Kansas Press, 1995).

²²Silverstein, 132.

²³Turner, *Repealing the War Powers Resolution: Restoring the Rule of Law in U.S. Foreign Policy*, 34.

Administration's conduct, rather than the war itself. Turner, Professor and Associate Director of the Center for National Security Law at University of Virginia, makes no apologies for his opposition to the legislation and provides a detailed history of the origins of the *War Powers Resolution*.²⁴ Louis Fisher's essay supports Turner's premise. In "The War Powers Resolution: Time to Say Goodbye," Fisher enumerates the compromises between the House and Senate in drafting the Resolution and the pressure to produce a bill thus splitting the difference between the two chambers.²⁵

Fisher contends the otherwise normal splitting of the difference was more than the typical compromise with the *War Powers Resolution*. It compromised the institutional and constitutional integrity of Congress: the institutional compromise is the result of Congress giving the President a green light to use force anywhere in the world for whatever reason without seeking congressional authority while the constitutional compromise lies in the fact that the Congress can invoke the *War Powers Resolution* with a concurrent resolution, eliminating the President's veto power. Fisher contends that if the Constitution empowers the President to put troops into combat; that power cannot be taken away by concurrent resolution because it is a constitutional power. He cites *INS v Chadha* (1983), which ruled Congress might only control executive actions by passing a joint resolution of which the President has veto power.²⁶

²⁴Robert F. Turner, *The War Powers Resolution: Its Implementation in Theory and Practice* (Philadelphia: Foreign Policy Research Institute), 1983.

²⁵Louis Fisher, "The War Powers Resolution: Time to Say Goodbye," *Political Science Quarterly* (spring 1998): 18.

²⁶The Congress would have a turn at overriding the presidential veto with a 2/3rds majority vote in each House. See: *INS v Chadha*, 462 U.S. 919 (D.D.C. 1983).

Further addressing the constitutional problems frustrating the executive-legislative relationship is *The Judicial Development of the Presidential War Powers*, by Martin Sheffer.²⁷ The text details the judicial development of presidential war powers, the potential constitutional dictatorship in times of war, and the notion of a wartime constitution. Included in the discussion are the many problems faced by lawyers who must somehow justify often times extra-constitutional use of presidential power, as well as what the author's view of the cryptic language presented by Article II itself.

The generalities of Article II are read expansively enough to cover specific presidential actions. Sheffer suggests a theory of inherent powers that tend to justify the means; presuming that ends and means are determined only by the President. The end result is that presidential action takes on the characteristics of constitutional power. In sum, his thesis contends that the "ends and means are determined by the President." Sheffer draws this conclusion by a review of the Constitution in basic principles that are discernible from constitutional and historical practice: the Commander-in-Chief clause relating to the war powers is interpreted to mean by some as extraordinary powers, powers that by and large are limited only by the workings of the political process or the President's own commitments to democratic constraints. Historically, limitations on the executive are usually not placed because the courts either postpone ruling or uphold exercises of presidential power. On the other hand, the legal development and/or negation of congressional war power are called into question with the constitutionality of the *War Powers Resolution*.

²⁷Martin S. Sheffer, *The Judicial Development of Presidential War Powers* (Westport: Praeger, 1999).

Much of the literature addressing the constitutionality of the Resolution stems directly from Section 3, the consultation requirement of which critics like Louis Fisher see as a fundamental flaw for it vests the President with the power to make war without consulting Congress. Fisher contends Section 3 is an abdication of congressional power.²⁸ The meaning of consultation has been debated since the ratification of the bill: history has proven President's treat it as a synonym for notification, defenders of the consultation see it as a requirement for joint deliberation. Close scrutiny of Section 3 is also found in the works of Robert Clark. Focusing on the balance of powers, Robert Clark, et al., assesses the constitutionality of the enforcement provisions of the Resolution. He asks, Can the *War Powers Resolution* bring together the executive and Congress in constitutional war power issues? Clark believes the answer is no, for Congress denies the President the right to veto should the two branches disagree with the requirements of the *War Powers Resolution*. He cites the Constitution, Article 1, Section 1 which states all legislative power is vested in both houses; and Section 7 which states that every bill passed by both Houses is presented to the executive before it becomes law. The constitutional issue arises when the Congress chooses to invoke the *War Powers Resolution* by a concurrent resolution, which would not need presidential approval. If Congress were to proceed this way, it would be able to end troop involvement during the 60-day period granted the President by the Resolution, Section 5(b). Clark raises many questions as to where the Congress is getting authorization to act. Does it recall the troops with its constitutional authority to declare war? Or, does it create legislation

²⁸Fisher, "War Powers Resolution: Time to Say Goodbye," 2.

aimed directly at the executive without providing recourse, such as would happen with a concurrent resolution?

According to Timothy Boylan and Glenn Phelps, the intent of the Resolution is to ensure the Congress is a full constitutional partner.²⁹ Their thesis suggests the requirements of the *War Powers Resolution* do not meet the intent of the Constitution. The core constitutional problem is the deference, delay, and lack of confrontation on the part of the Congress to execute its own constitutional authority let alone its self-empowered constraints of the *War Powers Resolution*. Instead of the mechanics of representation, debate, deliberation, and legislation Boylan and Phelps view the Congress as a body of deliberate inaction.

James Nathan does not express the same concerns with the bill's constitutionality. His essay, "Salvaging the War Powers Resolution," contends the bill does not seek to change in the legal status quo; rather, "it seeks to buttress a normal reading of the Constitution: that power to make war is power reserved to the Congress and that this legal status reality should not, indeed, cannot be changed."³⁰ Nathan's research and government and academic posts, including the U.S. Department of State, the Navy War College, and the Army War College, have placed him in complete disagreement with Louis Fisher, who views the Resolution as absolving congressional responsibility. Nathan contends Congress never conceded any purported inherent powers to the President.

²⁹Timothy S. Boylan and Glenn A. Phelps, "The War Powers Resolution: A Rationale for Congressional Inaction," *Parameters* (spring 2001) : 120.

³⁰James A. Nathan, "Salvaging the War Powers Resolution," *Presidential Studies Quarterly* (spring 1993) : 249.

With an eye on the constitution, Fisher argues that: “Our constitutional system is better protected by requiring Presidents to act in the absence of law and later obtain legal sanction from Congress, rather than by having Congress authorize in advance, as with the *War Powers Resolution*, unilateral presidential action.”³¹ That advanced authorization is just one content area of the Resolution that receives much criticism. There are ten sections within the document, eight of which have been found disputable by presidential and congressional scholars.

“Unanticipated ambiguities” are addressed by nearly every scholar who has written on the subject of the *War Powers Resolution* and from many within the government (both legislative and executive branches). James Nathan, Louis Fisher, Pat Holt, and Robert Turner analyze the Resolution finding incongruities in the following sections: Section 2, Purpose and Policy; Section 3, Consultation; Section 4, Reporting; Section 5, Congressional Action and the “clock”; and Section 8, Interpretation.

Section 2: At issue is the intent of the Resolution, which is to insure that the collective judgment of both the Congress and the President apply to the introduction of armed forces “into hostilities, or situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”³² Nathan considers this the “hostilities thicket” because the three kinds of armed action or hostilities listed omit other possibilities such as the use of out-of-uniform personnel, covert operations, protective reaction strikes against

³¹Fisher, “War Powers Resolution: Time to Say Goodbye,” 10.

³²*War Powers Resolution*, Public Law No. 93-48, 87 Stat.555, 1973.

international malefactors, fly-over operations that are prevalent in post Vietnam Pentagon operations.³³

Holt also finds fault with the hostilities thicket. He examines the specifics of Section 2(c) as to the circumstances in which the President can proceed: declaration of war, statutory authorization, and/or national emergency. Both the declaration of war and statutory authorization require an act of Congress; the President, therefore, can act on his own authority in the case of hostilities when there is an attack on the country, the third circumstance. The Resolution fails to define the nature of the national emergency, the causes, or if it is an attack on civilians. Therefore, the President is limited in the range of responses to that circumstance without Congress's input. The Resolution constrains the President even in times of national emergency, and the ambiguous language of Section 2 assures Congress there will be no overreaction to threats on the part of the Commander-in-Chief.³⁴ Fisher contends Congress's means of guaranteeing that collective judgment is by establishing legislative control with the imposed deadline of sixty to ninety days, and the use of the concurrent resolution to allowing Congress call for the immediate removal of troops from the crisis.³⁵

Section 3: The consultation requirement should be read along with Section 2(c), which describes the circumstances in which the President may deploy troops. Section 3 requires the President to consult in every possible instance before the considering troop

³³Nathan, "Salvaging the War Powers Resolution," 244.

³⁴Pat M. Holt, *The War Powers Resolution: The Role of Congress in US Armed Intervention* (Washington, DC: American Enterprise Institute, 1978), 23.

³⁵Fisher, *Presidential War Power*, 131.

deployment. The feasibility of that requirement is questionable particularly in light of what may be national emergencies. Another dilemma noted by Holt is that the solution does not provide for an effective method of consultation; the nature and size of the legislative body make it nearly impossible in certain situations.³⁶

Section 4: There is an obvious inconsistency with the reporting requirement of the Resolution when read alongside Section 2(c): Section 4 requires reporting in a broad range of circumstances not listed in Section 2(c) such as territory, airspace, or waters of a foreign nation while equipped for combat; or the deployment of troops to enlarge forces already in a foreign nation. Louis Fisher is critical of this inconsistency for it now sanctions presidential use of force in situations wholly unrelated to attacks against the U.S., its territories, or troops abroad without Congress's input.³⁷

Holt also notes this inconsistency. Of the three military situations outlined in Section 2, only one situation requires consultation: ongoing hostilities. There is no requirement for consultation for troop movement into territory, airspace, or waters of a foreign nation while equipped for combat; or the deployment of troops to enlarge forces already in a foreign nation. Holt concludes the reporting requirement was to give Congress more leverage over sending troops abroad on the theory that although the President may not declare war, there is ample room to cause one.³⁸ In reviewing the need to revise or repeal, Holt and Turner present the argument that congressional reluctance to acknowledge or find that forces are engaged in hostilities is grounded in the fear that

³⁶Holt, 28.

³⁷*Ibid.*, 132.

³⁸*Ibid.*, 26.

Congress would be obliged to act on that information by either effecting a withdrawal with a concurrent resolution or approving the President's course of action.

Section 5: The war powers clock. This is the structural portion of the Resolution. It asserts that the President may not continue a military commitment without congressional approval if he exceeds his allotted time, assuming he has met the consulting and reporting requirements of the Resolution. There are many weaknesses in Section 5 that the literature addresses, and it is a predominant part of the debate to revise the Resolution. Most obvious is the fact that in a dynamic situation, national security considerations could compel the President to act before Congress is able to reassess its authorization. The notion of collective judgment is cast aside with the granting of sixty to ninety days for the President to conduct military operations without congressional authority providing he reports under Section 4.

Nathan considers the ability of the Congress to terminate a military commitment with a legislative veto (in the form of a concurrent resolution) as an important feature of public protection: the President has no recourse but to terminate at any time "if the Congress so directs by concurrent resolution."³⁹ But there is ambiguity when grave security matters are at stake and the President believes he is within his constitutional authority to act.

To start the clock, which determines the amount of time the President is granted before it sixty to ninety days, the President must specifically report under this section of the resolution. There are numerous examples to indicate the executive branch has refused to comply with this requirement. Fisher contends it is the awkward language of this section

³⁹Nathan, "Salvaging the War Powers Resolution," 250; *War Powers Resolution*, Section 5.

that results in the failure of the document and a weakening of congressional control, contrary to the stated purpose of the Resolution in Section 2 of “collective judgment” and input from Congress.⁴⁰

Section 8: The interpretative provisions are really guideposts. This section specifically mentions treaties because of the recent history with Johnson and Nixon using SEATO as underwriting authority in Vietnam. Section 8(a) stipulates no treaty supercedes the *War Powers Resolution*. Holt introduces the question of NATO and the obligation to alliances in which the President establishes and executes.⁴¹ The 1991 Persian Gulf War case study will call to question the United Nations Security Council resolutions.

Relative to the two case studies selected for this research are the works of Barry Blechman, Vincent Augur, and James Nathan. Blechman addresses the difficulties in invoking the *War Powers Resolution* during the Reagan Administration and the events in Beirut and the crisis Bush face ten years later in the Persian Gulf; both instances left Congress facing situations that divided it from the President and caused debate. Blechman takes the position that Congress did not want to be held accountable for invoking the Resolution, nor take responsibility for domestic consequences should combat ensue. He examines the internal dilemma the Congress faced with some believing the *War Powers Resolution* unconstitutional. This internal quandary within Congress tied the President’s hands. Blechman’s solution to the legislative-executive

⁴⁰Fisher, *Presidential War Power*, 132.

⁴¹Holt, 28.

impasse is that Congress needs to think proactively and make decisions that can be referred to before the crisis is at hand and the Resolution clock starts.⁴²

In *The War Powers Resolution in Lebanon, 1982-1984*, Vincent Augur details the situation that provoked the “deal” between Congress and President Reagan.⁴³ Augur provides insight as to the relationship between the executive and legislative branch as well as the sometimes contentious relationships within Reagan’s administration. The agreement that was reached with the Congress and the President quickly collapsed with the terrorist bombing that killed 241 U.S. Marines. Augur describes the short-lived support for an active role on the part of Congress that quickly evaporated with this news. He also discusses the assertive personalities that circumvented the Resolution, shaped the policy, and developed the compromise legislation.

In “Revising the War Powers Act: Military Action and Declaration of War,” James Nathan assesses the executive-legislative relationship during the 1991 Persian Gulf War. He charges the Congress with ambiguities and unforeseen exigencies within the original legislation that continue to confound the application of the Resolution.⁴⁴ The introduction of United Nations Resolutions to this crisis calls into question Section 8 of the Resolution and the need to revise the Act to conform with similar crises in the future.

Robert Katzmann wrote an essay in 1990 entitled, “War Powers: Toward a New Accommodation,” that characterized the debate on the war powers and Congress’s

⁴²Blechman, 212.

⁴³Vincent Augur, *The War Powers Resolution in Lebanon, 1982-1984* (Georgetown: Georgetown University Press, 1993).

⁴⁴James A. Nathan, “Revising the War Powers Act: Military Actions and Declaration of War,” *Armed Forces and Society: An Interdisciplinary Journal* (summer 1991) : 286.

Resolution from three perspectives: keep the Resolution in its present form; modify the Resolution so that the President is more likely to comply; repeal the Resolution.⁴⁵

Katzmann, a circuit court judge, has written numerous books and articles on the topic of the Courts and the Congress and the relationship between the two suggesting numerous improvements for the relationship. Specific to the *War Powers Resolution*, Katzmann supports a modification of the Resolution; he concludes there is a need for Congress and the President to agree upon when and how Congress should become involved if a commitment of forces is to take place.

In support of retaining the Resolution is Marc Smyrl. In his book, *Conflict or Codetermination: Congress, the President, and the Power to Make War*, he contends the Resolution is “an achievement ensuring a congressional role in issues of war and peace.”⁴⁶ Smyrl further suggests Congress should be tied more closely to oversee operations and can do so by employing its undisputed power to appropriate monies. In disagreement with Smyrl is Legal Adviser for the House Subcommittee on Arms Control Abraham Sofaer who considers the Resolution a tool for diverting attention of the Congress from deliberations over the immediate military matters at hand to the legal and institutional validity of executive action.⁴⁷ Sofaer has cautioned the Congress on the detrimental impact it has on countering terrorism contending that of applied rigidly, it can

⁴⁵Robert Katzmann, “War Powers: Toward a New Accommodation.”

⁴⁶Marc E. Smyrl, *Conflict or Codetermination: Congress, the President, and the Power to Make War* (Cambridge: Ballenger, 1988), 4.

⁴⁷Abraham D. Sofaer, “Terrorism, the Law, and the National Defense,” *Military Legal Review* (fall 1989) : 12.

create serious obstacles to carrying out lawful and useful military operations against state-sponsored terrorists.⁴⁸

Suggestions for revisions of the *War Powers Resolution* tend to focus on Section 3, 4, and 5. Those who find fault with these sections offer recommendations that they feel make the requirements feasible. Consultation is required when hostilities are clearly indicated while reporting is required when combat troops are introduced or augmented in enlarged numbers in combat situations. James Nathan finds this imprecision the flaw whereby President's fail to take seriously both consultation and reporting. He recommends tying the two by linking more closely the report with the obligation to consult.⁴⁹ Nathan also provides a summary of the requirements for his proposed New War Powers Act with explicit instruction on reporting: what to report, when to report, and a required signature of the President. Military initiatives from Reagan to Clinton have revealed a deficiency in the Resolution, and the historical record has been one of increasing use of presidential war power.

In *The War Powers Resolution: The Role of Congress in U.S. Armed Intervention*, Pat Holt is critical of the general acceptance of thinking that superior wisdom resides in the legislative branch because of its collective nature. It is along those lines that the *War Powers Resolution* was enacted. The Resolution now serves to give Congress the opportunity to second-guess the President. Holt does support the establishment of a standing committee for consultation and that a quorum of the committee remains

⁴⁸Abraham D. Sofaer, "The War Powers Resolution and Antiterrorist Operations," United States Department of State (Washington, DC: Bureau of Public Affairs, August 1989), 1.

⁴⁹Nathan, "Salvaging the War Powers Resolution," 246.

available at all times for presidential reporting.⁵⁰ Holt observes the long history of Presidents using *inform* in place of *consult*, and he recognizes the implicit nature of the resolution's consulting and reporting requirements as the cause. For Holt, they are the fundamental flaws that must be reviewed. The ongoing debate within Congress regarding the constitutional issue of war powers is discussed in *The Precedence of Power: Determining Who Should Authorize Military Force* by Richard Harknett.⁵¹ Harknett compares their competing views explaining the dynamics of the legislators and their single-mindedness regarding the *War Powers Resolution*. He describes the Resolution's requirements to consult and report as *urging* the President to do so, rather than an explicit requisite. With this word choice it would appear the President does not circumvent the requirements; he has simply opted not to comply. Harknett's study of the congressional debates to revise or repeal lead to an incongruity: there is a pragmatic acceptance of the *War Powers Resolution*, but an impasse as to its value.

Michael Glennon also provides insight into the congressional debate within Congress.⁵² He focuses on the executive-legislative relationship and the "credit claiming and blame avoidance" that seems to direct the course of these debates. Glennon discusses the second attempt of Congress to pass once again the *Use of Force Act* in 1995. Congress was unable to produce agreeable revisions. He suggests the document will never be repealed because Congress is quite certain it may never have an opportunity

⁵⁰Holt, 28.

⁵¹Richard J. Harknett, *The Precedence of Power: Determining Who Should Authorize Military Force* (Washington, DC: American University Press, 1982), 6.

⁵²Michael Glennon, "Too Far Apart: Repeal the War Powers Resolution," *University of Miami Law Review* 50, no.17 (1995) : 18.

for this type of legislation again. Supporting that suggestion is Gordon Silverstein, who asserts that it is convenient for Congress to keep unused laws on the books and the resolution does two things: it provides the rhetorical support for a President who wishes to propound a prerogative interpretation of the executive power in foreign policy and it provides a legal precedent for the courts should a war powers case ever make it to the docket.⁵³ Norman Thomas and Joseph Pika recognize the deficiencies in the legislation, but conclude that as long as the Congress retains the luxury of being politically comfortable with its decisions regarding military action while providing a convenient forum for criticizing the President, the *War Powers Resolution* will remain intact.⁵⁴ Thomas and Pika also note the comfort the President has learned to enjoy with the Resolution as it is. They conclude that neither Congress nor the President have been willing to subject the Resolution to Supreme Court interpretation which would also result in the clarification of some of the language.

Christopher May encapsulates the judicial review of the war powers from the close of World War I to 1989.⁵⁵ It is interesting to note that at the time of his writing there were 470 statutes to augment presidential authority in wartime or whenever he believes there is a national emergency. There is always the recurring danger that the President will exceed his authority and invade the legislative sphere. Citing Grenada, Libya, and Nicaragua, May contends the *War Powers Resolution* did little to alleviate that fear. In

⁵³Silverstein, 138.

⁵⁴Norman C. Thomas and Joseph A. Pika, *The Politics of the Presidency* (Washington, DC: Congressional Quarterly Press, 1997), 426.

⁵⁵Christopher N. May, *In the Name of War: Judicial Review and the War Powers Since 1918* (Boston: Harvard University Press, 1989).

cases when the President has conducted himself illegally, the Congress has had little success in trying him before the courts. He notes that in almost every case relative to the war powers, the courts had determined there had been sufficient congressional participation to validate the President's actions. May's text is useful to this research for it brings into the discussion dynamics of the judicial branch: how it reacts in crises and what affects the decisions of the Court vis-à-vis the disputed constitutional war powers. Refusing to interpret the constitutional war powers in times of crises, which is when Congress has called upon the courts, May concludes Congress is better served by managing for itself what the courts consider a political dilemma. Martin Sheffer implores the Congress to act on revision of the Resolution. He tells us the record to date gives little indication that Congress will defend either its constitutional prerogatives or its statutory powers under the *War Powers Resolution*. "If Congress will not stand up for itself, is there any reason to suppose the President, Supreme Court, or people will stand up for it?"⁵⁶

CASE STUDIES

Beirut, the historical cause and justification of the deployment: The case studies in this research are documented in a number of government publications that furnish the resolutions and statistics fundamental to the case such as the *Congressional Historical Records*, which include transcribed discourses and official papers presented to the

⁵⁶Sheffer, 28.

Congress.⁵⁷ There is a large literature assessing the Reagan administration such as Larry Berman's collection of essays, *Looking Back on the Reagan Years*; Fred Greenstein, *The Reagan Presidency: An Early Assessment*; Norman Ornstein, *President and Congress: Assessing Reagan's First Year*.⁵⁸ These texts are useful in establishing an objective assessment of Reagan, his ideology, and his Administration. Biographies provide a variety of perspectives for evaluating the inner workings of the President's office and its policy making process. There are a number of biographies such as Lou Cannon's, *Reagan* and his later publication, *President Reagan: The Role of A Lifetime*. There is also Edmund Morris's more recent account of Reagan's life, *Dutch: A Memoir of Ronald Reagan*. The memoirs of George Shultz, *Turmoil and Triumph: My Years as Secretary of State*; and Casper Weinberger, *Fighting for Peace: Seven Critical Years in the Pentagon* are integral to the case study for both texts unambiguously discuss the dissentious relationship within the Administration.⁵⁹ Shultz is also explicit in his description of the Administration's tense relationship with Congress while maintaining the Marine deployment in Beirut. Insight into Reagan's relationship with his cabinet and the

⁵⁷*Historic Documents of 1981* (Washington, DC: Congressional Quarterly, 1982).

⁵⁸Larry Berman, ed., *Looking Back on the Reagan Years* (Baltimore: Johns Hopkins University Press, 1990); Fred I. Greenstein, ed., "The Evolution of Reagan Foreign Policy" in *The Reagan Presidency: An Early Assessment* (Baltimore: Johns Hopkins University Press, 1983); Norman Ornstein, ed., *President and Congress: Assessing Reagan's First Year* (Washington, DC: AEI, 1982).

⁵⁹Lou Cannon, *Reagan* (New York: Putnam, 1982); Lou Cannon, *President Reagan: The Role of a Lifetime* (New York: Simon and Schuster, 1991); Edmund Morris, *Dutch: A Memoir of Ronald Reagan* (New York: Random House, 1999); George P. Shultz, *Turmoil and Triumph: My Years as Secretary of State* (New York: Charles Scribner's Sons, 1993); Casper W. Weinberger, *Fighting For Peace: Seven Critical Years in the Pentagon* (New York: Warner Books, 1990).

relationship among members within the cabinet is essential to this research in establishing the degree of internal conflict that existed while the Administration was developing its plan and/or policy, and how that policy was then conveyed to the Congress.

Congress's Reaction: Joel Aberbach of the Brookings Institution discusses the attentive eye of congressional oversight and the Republican Senate Reagan is credited with bringing to power. In *Keeping a Watchful Eye*, Aberbach examines the techniques used by Reagan as he entered office and the dynamics of the Congress.⁶⁰ This text is helpful in explaining the Reagan Revolution from inside the Congress with its frontal attack on many programs of government. Aberbach's research is a good introduction to Reagan and the 98th Congress. Subsequently, Marc Smyrl assesses the evolution of the executive-legislative relationship in its early years and during the U.S. participation in the Beirut multinational force. In his book, *Conflict or Codetermination: Congress, the President, and the Power to Make War*, Smyrl details the Congress's position regarding the deployment and the compromise resolution that authorized Reagan to maintain the deployment beyond the time limits of the *War Powers Resolution*. Smyrl's research examines the mood of the Congress and its divided opinion.

Louis Fisher also discusses Congress's role throughout the Beirut debacle in his book, *Constitutional Conflicts between Congress and the President*. This study details the dissension between Congress and Reagan with regard to the *War Powers Resolution* citing the Marine deployment to Lebanon as an executive act disregarding constitutional

⁶⁰Joel D. Aberbach, *Keeping a Watchful Eye: The Politics of Congressional Oversight* (Washington, DC: Brookings Institute, 1990); Smyrl, 141.

war powers. Fisher criticizes Congress's acquiescence in permitting war power to drift to the executive. He contends that Congress is willing to act for short-term political advantage, which is what led to the compromise resolution. On the other hand, Fisher portrays the Administration as placating Congress to satisfy the requirements of the Resolution once the President was made to accept Congress wanted a larger role in deciding the future of this deployment.⁶¹ Presidential studies expert Richard Neustadt has developed a model to appraise the performance a President in his book *Presidential Power and the Modern Presidents: The Politics of Leadership from Roosevelt to Reagan*.⁶² Fundamental to this research, Neustadt assessed the dynamics of the Reagan-Congress relationship in the context of the President's purposes, his understanding of power, his reaction while under pressure, and his legacies.

An insiders view of the difficult relationship from the legislative perspective and the development of the compromise resolution, the Multinational Force in Lebanon Resolution, is found in the memoirs of the then Speaker of the House, Thomas (Tip) O'Neill. In his book, *Man of the House: The Life and Political Memoirs of Speaker Tip O'Neill*, O'Neill discusses the negotiation that took place between members of the executive and legislative branches in writing the controversial legislation that divided not only the two houses of Congress, but also Republicans with Republicans and Democrats with Democrats.⁶³

⁶¹Louis Fisher, *Constitutional Conflicts between Congress and the President*. (Kansas City: University Press of Kansas, 1997).

⁶²Neustadt.

⁶³Tip O'Neill, *Man of the House: The Life and Political Memoirs of Speaker Tip O'Neill* (New York: Random House, 1987).

Management of the Conflict: James Barber's *Presidential Character: Predicting Performance in the White House*, presents a psychological portrait of Reagan, characterizing him as a passive-positive President, a reactive decision maker who has faith the end result will be affirmative. It is interesting discourse, not delving into his personal life, but analyzing his conduct as President. According to Barber, Reagan made decisions that he thought would please those who worked for him.⁶⁴ The cabinet members working with Reagan during the Beirut crisis have also documented their experiences and their opinion of the management of the crisis. All recognize the intervention as a failure. Some are more direct than others such as John Lehman, then Secretary of the Navy, in *Making War: The 200 Year-Old Battle Between the President and Congress Over How America Goes to War*. Lehman found fault with the ill-defined military strategy and the misrepresentation of the intervention as one in which no hostilities existed. Lehman also speaks of the persistent divided opinion within the Administration, particularly between the State and Defense Departments.⁶⁵

William B. Quandt, Senior Fellow at the Brookings Institution reviewed the political failure of the crisis in detail. He describes the Reagan Policy as a "fresh start, false hope," in his essay, "Reagan's Lebanon Policy: Trial and Error."⁶⁶ Quandt's criticism of the policy is that it rested on several faulty judgments to include a leadership gap, a failure to understand the dynamics of the region, and the refusal to acknowledge

⁶⁴James David Barber, *The Presidential Character: Predicting Performance in the White House* (Upper Saddle River: Prentice Hall, 1992).

⁶⁵John Lehman, *Making War: The 200 Year-Old Battle Between the President and Congress over How America Goes to War* (New York: Scribners, 1992).

⁶⁶William B. Quandt, "Reagan's Lebanon Policy: Trial and Error," *The Middle East Journal* 38, no. 2 (spring 1984) : 238.

and react appropriately to the escalating hostilities. The essay enumerates lessons learned from the failed intervention. In addition to Quandt's lessons learned is Geoffrey Kemp's essay, "Lessons of Lebanon: A Guideline for Future U.S. Policy." Kemp, a Senior Associate of the Carnegie Endowment for International Peace, was Special Assistant to President Reagan for National Security Affairs. Kemp also outlines the reasons for the failed intervention to include ambiguous signals to the allies and bad luck. His essay includes "The Six Lessons of Lebanon" that detail both the cause for failure and instructions for the future. This body of literature clearly determines that the failure of the intervention was the direct result of the failed management of the crisis.

The Persian Gulf War: historical cause and justification of the deployment: The events that led up to and throughout the Persian Gulf War are also documented in a number of government publications as well as the *Congressional Historical Records*. As secondary sources, a description of the war, biographies of the leaders of state and the leading men within the Bush Administration are found in Steve Yetiv's, *The Persian Gulf Crisis* and Bob Woodward's, *The Commanders*.⁶⁷ Like Reagan, the Bush Administration is also extensively reviewed in the literature. Bush provides a first hand account of the events surrounding the invasion of Kuwait, his opinion of Saddam, and his rationale for the U.S. intervention in *A World Transformed* co-written with Brent Scowcroft. Many of the correspondences written by the President are also found in his biography, *All My Best: My Life in Letter and Other Writings*.⁶⁸ The memoirs of Secretary of State James

⁶⁷Steve A. Yetiv, *The Persian Gulf Crisis* (Westport: Greenwood Press, 1997); Bob Woodward, *The Commanders* (New York: Simon and Schuster, 1991).

⁶⁸George Bush and Brent Scowcroft; George Bush, *All My Best; My Life in Letters and Other Writings* (New York: Scribner, 1999).

Baker also contain a thorough discussion of the war with an emphasis on the Administration's expeditious formation of the international coalition and the President's actions to win over a reluctant Congress.⁶⁹

There are many sources discussing the Bush Administration and the 101st Congress. Burt Rockman, *The Bush Presidency*; John Robert Greene, *The Presidency of George Bush*; and Michael Duffy and Dan Goodgame in *Marching in Place: The Status Quo Presidency of George Bush* as well as the Terri Diebel article in *Foreign Policy*, "Bush's Foreign Policy: Mastery and Inaction" all provide an overview of the executive-legislative relationship during this period.⁷⁰ These sources concur that Bush desired to maintain an agreeable relationship with the Congress. The relationship took a drastic turn; however, when it became evident Bush was ignoring Congress's war powers. George Fisher specifically addresses Bush's management of the war powers and the requirements of the *War Powers Resolution* during the Gulf War in his 1995 thesis, *Presidential War Power*.⁷¹

Congress's Reaction: Then Secretary of Defense Richard Cheney wrote an essay in the journal *Foreign Policy and the Constitution* entitled, "Congressional Overreaching in Foreign Policy," whereby he criticized Congress for disrupting the conduct of war

⁶⁹James A. Baker III, *The Politics of Diplomacy: Revolution, War and Peace, 1989-1992*. New York: G. P. Putnam's Sons, 1995.

⁷⁰Burt A. Rockman, *The Bush Presidency* (New York, Seven Bridges Press, 1991); John Robert Greene, *The Presidency of George Bush* (Kansas City: University of Kansas Press, 2000); Michael Duffy and Dan Goodgame, *Marching in Place: The Status Quo Presidency of George Bush* (New York: Simon and Schuster, 1992); Terry L. Deibel, "Bush's Foreign Policy: Mastery and Inaction," *Foreign Policy* (fall 1991) : 153.

⁷¹Louis Fisher, *Presidential War Power*.

preparations and foreign policy by inserting its influence in matters that were not within its authority.⁷² Cheney's essay is useful, but no doubt affected by his direct role in the war. An assessment of the Bush Administration's conduct, policy, and execution of that policy during the 1991 Persian Gulf War from Bush's perspective must be assessed objectively by comparing a number of sources.

James Barber's, *Presidential Character: Predicting Performance in the White House*, characterizes Bush much differently than Reagan. He describes Bush as a passive-positive President who stressed a world-view that would ascribe optimistically to less violence and a benevolent hegemon. Barber's research presents a look at Bush's behavior toward the Congress on the threshold of the 1991 Persian Gulf War and his bitterness toward it in the post war period.⁷³ Bush worked around the Congress receiving his authorization to conduct the war from the United Nations. Barber's research adds to the discussion of why Bush circumvented the Congress.

Colin Campbell and Bert Rockman reviewed the leadership and strategy of George Bush in their collaboration, *The Bush Presidency: First Appraisals*.⁷⁴ The appraisal contends Bush was a status quo President who had no identity and governed unheroically until the Gulf War, when he broke from the status quo. The war afforded Bush the opportunity to lead an international coalition and to define his presidency. He did this by

⁷²Richard Cheney, "Congressional Overreaching in Foreign Policy," in *Foreign Policy and the Constitution*, eds. Robert Goldwin and Robert A. Licht (Washington, DC: American Enterprise Institution for Public Policy Research, 1990), 101.

⁷³Barber, 224.

⁷⁴Colin C. Campbell and Bert A. Rockman, *The Bush Presidency: First Appraisals* (Chatham: Chatham House Publishers, 1991), 148.

managing the political and military aspects of the intervention without any congressional participation and outside the parameters of the *War Powers Resolution*.

Management of the Conflict: The simple question, can the President take the nation from a defensive posture to an offensive operation without congressional approval is addressed in Louis Fisher's study, *Presidential War Power*.⁷⁵ Fisher contends Bush made no genuine effort to seek congressional authority and cites the Gulf War as an excellent example a unilateral decision to wage war. He outlines the steps taken by Bush that enabled him to make the decision to go to war without Congress. Critic of the Congress and the *War Powers Resolution*, Barbara Hinckley questions why Congress failed to declare war. Her thesis demonstrates how the Congress declined to invoke its constitutional authority. In doing so, Congress did not share the decision to go to war; rather, it was left with one option—to support the decision. Can the President take the nation to war? The literature shows Bush was able to do so because Congress failed to act in a timely manner for various reasons: division over sanction and combat, memories of Vietnam, and a lack of support for a President who circumvented the institution.

In his essay, "The Gulf War and the Constitution," Michael Glennon explains how Bush circumvented the Congress.⁷⁶ As former legal counsel to the Senate Foreign Relations Committee, Glennon argues the Gulf War exemplifies the imperial presidency. He describes the mood of Congress at the time as deferential, making it less obstructionist for the Bush Administration. Bush deployed thousands of troops without any outright objection from Congress. The essay also evaluates the role of the judiciary

⁷⁵Fisher, *Presidential War Power*.

⁷⁶Michael J. Glennon, "The Gulf War and the Constitution," *Foreign Affairs* (spring 1991) : 253.

in the context of constitutional war powers and finds fault with its restraint. Glennon denounces the Congress and the judiciary for not acting. He criticizes Bush for rejecting congressional constitutional war power and the *War Powers Resolution* and for turning to the United Nations.

To develop an accurate assessment of the role of the United Nations, citing both Bush and Baker's discussions of their day-to-day interactions with the United Nations and the allies is imperative. Another source researching the Bush plan to seek authority from the United Nations is the Louis Fisher essay entitled, "Sidestepping Congress: Presidents Relying on the United Nations and NATO."⁷⁷ Fisher contends a striking transformation of war power is found in the President's seeking authority from international and regional institutions. Additional information about securing the allies and explanations of the United Nation resolutions can be found in Yetiv's, *The Persian Gulf Crisis*. Congressional researcher for National Defense and Foreign Affairs, Richard Grimmett contributes to the discussion of presidential circumvention of the *War Powers Resolution* with a specific focus on the alternative course taken by the President, in Bush's case the U.N., in his study, "War Powers Resolution: Presidential Compliance."⁷⁸

Bush's military success in meeting the objective as outlined is uncontested. In determining why the intervention succeeded, a review of Richard Haass's, *Intervention: The Use of American Military Force in the Post-Cold War World* is necessary.⁷⁹ Haass

⁷⁷Louis Fisher, "Sidestepping Congress: Presidents Relying on the United Nations and NATO," *Case Western Reserve Law Review* 47 (1997) : 1237.

⁷⁸Richard F. Grimmett, ed., *The War Powers Resolution* (New York: Novinka Books, 2002).

⁷⁹Richard N. Haass, *Intervention: The Use of American Military Force in the Post-Cold War World* (Washington, DC: The Carnegie Endowment for International Peace, 1999).

enumerates the variables that made the Bush intervention a success. The Haass study provides formulas for successful future interventions, which is integral to this research.

From the sources enumerated in this literature review, it is apparent there are a number of texts available to develop a coherent understanding of constitutional democracy. The dynamism of the Congress, the role of the President, and the separation of powers laid out in the Constitution are key to explaining the executive-legislative relationship. Understanding the elements of the *War Powers Resolution* is essential in assessing its usefulness as a way for Congress to assert its role over the use of force. This study will demonstrate the causes for the success and/or failure of each intervention through the lens of the *War Powers Resolution*. The case studies serve as the means in which the legislative-executive relationship will be evaluated under normal conditions and during national security crises. The *Resolution* will be evaluated as the tool used to manage the difficult relationship between Congress and the President and its ability to affect the outcome of the intervention. Finally, this research will assess the need for new formulas to manage the use of force and the national security challenges of the 21st century.

CHAPTER III

CONGRESS, THE PRESIDENT, THE CONSTITUTION

There is an ongoing debate on Capitol Hill pertaining to Congress's authority and obligation to question the executive regarding the use of military force. Often, the President's intentions are less disputed than are his Administration's lack of regard for funding and the collaborative decision making process as outlined in the Constitution. Congress has the constitutional responsibility to weigh in on war-related policy decisions; yet, Congress admits to learning about war-related decisions through newspaper articles, not by consultation the executive branch.¹

The dissention between Congress and the President, as elucidated by Byrd, is not necessarily a newfound state of affairs. During the past three decades, Congress has faced Presidents who have behaved imperiously and impertinently resulting in the passage of legislation to assert congressional constitutional authority and check the President's conduct. A second consequence of three decades of discord has been the ongoing transformation within the Congress itself. Passage of the *War Powers Resolution* has afforded the legislature extra-constitutional authority and the necessary boldness to act on that authority. In 1973, a resurgent Congress made its way into American foreign policy demanding its constitutional right to cooperation and consultation with the President. Understanding the relationship between the Congress and the President is key to understanding the roles each plays. The purpose of this chapter is to analyze the constitutional authority given the Congress and the President.

¹Robert C. Byrd, "Why Congress Has to Ask Questions," *New York Times* 12 March 2002, 8.

The evolving nature of the executive-legislative relationship rests on the interpretation of that authority as well as the partisan composition of the government and the events defining the moment.

THE RESURGENT CONGRESS

The framers of the Constitution deliberately planned the struggle over the roles and prerogatives of the Congress and the President. The document explicitly outlines the assignment of some powers, but leaves other powers overlapping in authority. In America's early history and throughout the two world wars, the President has had decided advantages over Congress, which led to the office's perceived greater power: he has a special unity of office allowing him to act in a timely manner with a unique readiness for decision-making. Congress has also contributed to the growth of presidential supremacy by acquiescing to him with the deployment of troops and the formulation of executive agreements; both are constitutional powers Congress has a right to share with the President. Especially during the world wars, Congress had been willing to accept informal consultations as opposed to formal participation in policy development. But that relationship changed with an imperious President, an unpopular war, and a discontented public. The abuse of power in the 1970s by the Nixon Administration resulted in a new philosophy whereby Congress determined it needed to become more significant, more involved in foreign policy.²

Congress has an array of constitutional powers to employ as a participant in

²This will be discussed in detail in Chapter 4, *The 1973 War Powers Resolution*

foreign policy-making: war powers, budgetary authority, and foreign commerce powers to list a few. The effect of exercising this authority is that “even the most decisive chief executives can find themselves constrained by active, informed, and determined policy makers on Capitol Hill.”³ The early decades of the Cold War found Congress conceding authority to the President in support of containing communism and protecting the world from nuclear catastrophe. By the late 1960s Congress became less satisfied with its supporting role and began to question the commitments Presidents Johnson and Nixon had made under the shroud of disinformation and secrecy within their respective Administrations from President Johnson’s misrepresentation of the Gulf of Tonkin incident to President Nixon’s secret bombing missions in Vietnam and Cambodia. The crisis in Southeast Asia predicated an intense struggle between the two branches over foreign and military policy decisions.

Throughout the 1970s, Congress intensified the pressure on the executive branch by exerting its influence over a weakened President during the heightened war effort in Vietnam, and it overtook the balance of congressional-executive power in the midst of the Watergate scandal. The 1970s witnessed a decentralization and democratization of the Congress. Members of Congress now sought to dissociate from the Vietnam War and its previous congressional support given the President. The public was clamoring for an end to the conflict compelling Congress to disengage and react to the Administration’s conduct of the war, which was fast becoming “Nixon’s War.” It did not take long for this public mood to affect Congress. Throughout 1973, Congress

³Roger H. Davidson and Walter J. Oleszek, *Congress and Its Members* (Washington, DC: Congressional Quarterly Press, 1990), 381.

developed the *War Powers Resolution* as a legislative tool to constrain the President and allow it a role in the decision making process of troop deployment. Still, the public's anti-war, anti-establishment, and anti-government mood persisted and its desire for a change in policy and a new face in Congress was made evident in the 1974 election. During this period a new generation of members was voted into Congress who immediately put to use procedural reforms that challenged the old way of doing business on Capitol Hill and with the executive branch.

According to Crabb and Holt the new generation of Congressmen was younger and unyielding to senior wisdom; they put forth a movement towards procedural reforms such as the seniority principle governing the selection of committee chairpersons which led the trend toward democratization; and they successfully solicited and obtained personnel expansion that saw dramatic growth in staff and expertise.⁴ With this new assertive Congress political ties weakened as the power of committee chairs lessened with the proliferation of subcommittees, affording opportunities for individual members of Congress to make their mark. Roger Davidson introduces the notion of "blame-avoidance" techniques used at this time by members of Congress who were fraught with the need to be assertive while remaining sensitive to constituencies, terms of office, institutional interests—important factors involved in the rivalry between the President and the Congress.⁵

⁴The revision of the seniority principle, which gave senior members of Congress precedence over junior members in various committee appointments, was the consequence of a younger Congress who did not want to yield to senior wisdom. It resulted in a move toward procedural reform that included changes in the selection process of Chairpersons and dramatic growth in office staff allowing for greater expertise on specific issues and topics; Crabb and Holt, 62.

⁵Roger H. Davidson, *The Post-reform Congress* (New York: St. Martin's Press, 1992), 18.

From 1972 through 1976, Congress asserted its authority by passing legislation that constrained the powers of the Commander-in-Chief leaving no doubt that the legislative body would be an influential force in U.S. foreign policy. In 1972 legislation was passed that required the President to inform the Congress of any executive agreements enacted. In June 1973 Congress voted to cease funding of American combat activities in Cambodia and Laos. The *War Powers Resolution* was enacted in that same year despite President Nixon's veto of a sixty-day limit on any presidential commitment of American troops overseas where there was fighting or imminent hostilities. In 1974 Congress passed a major trade bill after approving an amendment linking trade concessions for communist countries to Soviet-bloc emigration policies, which led to the Soviet government's refusal of the terms, renouncing the U.S.-Soviet trade agreement. In 1975 the Congress conducted a major probe of the intelligence community exposing abuses of power resulting in the institutionalization of enhanced congressional oversight. Fearing another Vietnam-like crisis, Congress banned aid to Angola in 1976. Towards the end of the decade, Congress delved deeply into the treaty process with the strategic arms limitation talks (SALT II) and the Panama Canal Treaties refusing to leave foreign policy decisions solely to the President.

The Reagan years resulted in a near combative attitude between the Congress and the President as the Iran-Contra scandal, arms control agreements, and use of force abroad produced ongoing dissension in executive-legislative relations despite a Republican majority in the Senate. At the heart of nearly every dispute between Congress and Reagan was the President's use of the military machine to address foreign policy questions. The 1983 tragedy in Lebanon created conditions that found Congress

compromising its authority vested in the *War Powers Resolution* because the goals of that military mission seemed unclear and the onus of assuming total responsibility for the outcome was undesirable. For the first time, Congress was compelled to contemplate the validity of its *War Powers Resolution*. As Barbara Hinckley makes plain, “Congress’s hesitancy in enforcing its own Act is underscored by its plaintive demands from time to time that the President should be the one who starts the [sixty-day] clock” (a requirement of the Resolution that places time constraints on the President’s deployment of troops).⁶ Or, as Peter Rodman implies, Congress suffers the “occasional inability to keep the bargains it has struck.”⁷

Congressional oversight increased during the Reagan years; part of that growth was due to improved resources in scholarly research made available to committees as well as investigative journalism whose primitive origins during the Vietnam War were now complex, high tech, and served as initial sources of information for Congress, similar to the circumstances described by Senator Byrd.⁸ This type of journalism educated the American public to world events and the decisions the government was making relative to those events. The instantaneous playback provided on the spot coverage leaving no room for disinformation on the part of any Administration.

The 1970s and 1980s saw a group of congressional leaders emerge whose expertise matched or exceeded that of executive officials. John Tower, Sam Nunn,

⁶Hinckley, 80.

⁷Peter Rodman, “The Imperial Congress.”

⁸Frederick M. Kaiser, “Congressional Oversight of the Presidency,” in *Congress and the Presidency: Invitation to Struggle*, eds. Richard D. Lambert and Alan W. Heston (Newbury Park: Sage Publishing, 1988), 288.

William Cohen in the Senate and Les Aspin, Dante Fascell, Dick Cheney in the House of Representatives provided focal points for winning coalitions allowing Congress to vote as a committee of one. Deference to the President was no longer wise or necessary as many in Congress were equal to or more experienced than those in the executive branch. The implied oversight functions of appropriating funds, war powers, consent on treaties also serve pragmatically in protecting Congress's own institutional interests and political power from executive encroachment, while the expertise and assertiveness of the legislature would gain ground and tip the balance of power toward the Congress.

Presidents Bush and Clinton experienced the same dissonance, but with a less strident tone as the U.S. entered the post Cold War period and policy debate over U.S. involvement in global trouble spots returned with Congress now struggling internally nearly as much as with the executive branch. Bush entered the White House with the agenda of shielding his office from legislative intrusions and reclaiming lost dominion. With the invasion of Kuwait by Iraq in 1990, Bush asked for congressional approval for the use of force only after he had ignored their request to be kept abreast of the situation in the region. Congressional approval amounted more to a declaration of war because events had gotten beyond the point of debate. For Clinton, neither branch of the government had easy answers for dealing with the Balkan cataclysm. The 1998 civil war in Kosovo found the Congress encouraging Clinton to move quickly on the diplomatic front. The talks broke-down and Clinton joined U.S. forces with NATO forces to wage an air campaign. Clinton's decision to deploy American soldiers into Kosovo produced a bitter debate with no consensus within Congress or between Congress and the President.

With the dissolution of the Soviet Union and the collapse of communism, the United States is a powerful leader in a world that is now interdependent on many levels. Moreover, the U.S. is experiencing disintegration in the delineation between domestic politics and international affairs. Congress has reacted by making sure it continues to exert influence by applying what Crabb and Holt distinguish as Congress's "extra-constitutional powers."⁹ It is this notion of Congress (and/or the President) operating outside the authorized designations of the Constitution that often leads to tense relations between the legislative and executive branches.

THE LEGISLATIVE-EXECUTIVE RELATIONSHIP

The 535 members of the Congress often come under pressure to side with colleagues, special caucuses, and bi-partisan positions on issues that challenge the legislative-executive relationship. Congress has experienced a shift in philosophy from the 1960s ideal of the then Speaker of the House, Sam Rayburn: "To get along, you have to go along."¹⁰ Those who went along were rewarded with choice assignments or committee membership; those who defied the leadership were relegated to minor congressional concerns. The changes in Congress during the 1970s, the result of a younger body of representatives who were less yielding to their senior colleagues and becoming expert in specific areas, saw individual members become less dependent on their parties and less responsive to traditional pressures. With the expanding role of the

⁹Crabb and Holt, 2.

¹⁰*Guide to Congress*. Fifth edition, Volume I (Washington, DC: Congressional Quarterly, Inc., 2000), 639.

media, in particular television, and the rise of special interest groups, legislators found they could campaign as individual-minded authorities in their own right. Campaigns were now becoming candidate-centered versus party centered, partly with the vanishing presidential coattail effect (due to the unpopularity of Nixon and Carter) and partly with representatives devoting more time to their constituents by adopting an ombudsmen role facilitated by mobile offices, hot lines, computers plugged into government data banks.¹¹ This behavior caused division within both the House and Senate and with the legislative relationship with the President. Congressional scholar George Edwards recognized this meant party affiliation would become unreliable for the President. Congress's power dispersion within and without the body would also weaken his position.¹²

This independent thinking set a precedent that some members of the Congress continue to follow; however, during the 1980s party identification once again became a reliable factor for predicting how a legislator would vote. The Reagan campaign did much to draw the Republican Party closer and delineate political ideology by setting and controlling the agenda, limiting the legislative priorities, suggesting a new era of GOP—all of this done through Reagan's television appeals. With the White House controlled by Republicans and the Congress split with a Republican majority in the Senate and a Democratic majority in the House, partisan battles ensued over many issues. A polarization of Congress took place as well due to the volatile issues at stake and the reduced influence of political moderates; an ideological split occurred over domestic

¹¹Edwards, *Presidential Influence in Congress*, 77.

¹²*Ibid.*, 5.

issues such as abortion and gun control and in foreign matters with the Administration's use of the American military machine to address foreign policy.

Theodore Sorensen described the 97th Congress (1981-1983) as one that expanded its role in shaping America's course in the world "through legislative veto, riders, mandates, and investigations" placing the executive branch on the defensive much of the time.¹³ Sorensen claimed that party loyalty during the first Reagan Administration was virtually non-existent and presidential support scores in Congress were low because of the divided party government: a Republican executive, a Republican Senate often at odds with the President's use of force as a diplomatic tool, and a Democratic majority in the House at odds with the President's the use of force and domestic policy. He goes on to suggest, "Far fewer members are willing to risk the displeasure of substantial contributors of newspapers or a substantial number of constituents; and every member speaks for himself on foreign affairs."¹⁴ Nevertheless, the mood of the country is of great consequence to policy makers.

James Lindsey and Randall Ripley have summarized the literature of the debate, nature, extent, and value of congressional influence on U.S. national security and foreign policy.¹⁵ There is a wealth of scholarship claiming the public is unconcerned with foreign affairs. However, this has changed especially with specific circumstances such as the Vietnam War of the 1970s, the Soviet threat of the 1970s and 1980s, and arms for

¹³Sorensen, 123.

¹⁴*Ibid.*

¹⁵James M. Lindsey and Randall B. Ripley, "Foreign and Defense Policy in Congress: A Research Agenda for the 1990s," in *Legislative Quarterly* Vol. XVIII, no. 3 (August 1992) : 417.

hostages debacle during the Reagan Administration. Events of the post Cold War period have drawn the American public into foreign and military matters.

Assessments of the research conducted on congressional behavior starts with the assumption that re-election is foremost and constituent opinion influences congressional voting on specific issues; however, legislative behavior on foreign policy does not reliably mirror public opinion. Case in point: Congress declined to debate, let alone invoke, the *War Powers Resolution* for nearly a year after Reagan sent the Marines into Lebanon, even though the public was divided over the wisdom of having U.S. forces in Beirut. When Congress finally gave Reagan statutory authorization for the peacekeeping mission in September 1983, public opinion opposed increased involvement in Lebanon. Many members of the House and Senate have taken substantive positions on foreign policy issues. One reason is that most constituents are uninformed or unconcerned about specific issues—voters care mostly about pocketbook issues. Even when members of Congress do confront a dangerous issue, they are adept at using congressional procedure to provide themselves with political cover while they accomplish their desired substantive ends.

The close of the 1980s brought with it the importance of public opinion as the prime determinant of the level of cooperation or conflict between the branches. This was the conclusion drawn by Thomas Mann, who goes on to suggest that the President bring “foreign policy and public opinion into closer conformance by adjusting his policies or reshaping public opinion.”¹⁶ Mann proposes either action would diffuse opposition with

¹⁶Mann, 11.

the Congress. The President, however, has greater opportunities to shape that opinion.

The President commands the clout to shape or influence public opinion; Crabb and Holt cite it as one of five “extra constitutional techniques” available to the President.¹⁷ Also listed are: unequaled access to information, growing role as legislative leader especially with budget issues, ability to commit the nation to a course of action or position regardless of what others say via formal or informal executive agreements between heads of state, and leader of his political party. Ronald Reagan’s popularity served the Republican party by strengthening its fund-raising efforts and promoting a shift in voter party loyalties placing the 1985 Republicans in a position of virtual parity with the Democrats for the first time since World War II. As a result, Reagan’s presidency was able to suspend the gridlock with domestic policy that seemed to afflict the governments of the 1970s even though the Republicans never attained control of the House.

When the composition of the Congress is divided (e.g. House of Representatives is a Democratic majority and the Senate is a Republican majority) and the control of the two branches is divided between the two political parties (the executive branch is Republican and the Congress is Democratic), a situation called “divided government” exists exacerbating the tension between the legislative and executive branches.¹⁸ The following chart exemplifies how government can be divided:

With two political parties, there are eight possible combinations of control

Republican Executive	Republican Senate	Republican House
Republican Executive	Democratic Senate	Democratic House**

¹⁷Crabb and Holt, 18.

¹⁸Davidson, 226.

Republican Executive	Republican Senate	Democrat House*
Republican Executive	Democratic Senate	Republican House
Democratic Executive	Democratic Senate	Democratic House
Democratic Executive	Republican Senate	Republican House
Democratic Executive	Democratic Senate	Republican House
Democratic Executive	Republican Senate	Democratic House ¹⁹

Can the executive and legislative branches still work together when a divided government exists? When Congress is in the hands of the opposition party, it can control the machinery necessary to generate conflict over foreign policy. When both legislative and executive branches are same, the Administration can move much more decisively. Bipartisan, coalition politics have become the institutional norm in the Senate in contrast with the House where majoritarian democracy is more evident.

During the Reagan presidency, from 1981-1989 a “divided” legislature existed. The Congress, with its fragmentation and individualism, can ordinarily benefit from focus and direction; yet, the tendencies toward individualism were countered during this period by centralizing forces of Republican Party and presidential leadership. The Reagan presidency demonstrated the potential for central coordination of the policymaking process. Immediately after winning the 1980 election, Reagan placed a large tax cut on the legislative agenda and lobbied for its passage. The Republican controlled Senate of the early 1980s acted on his initiative. Reagan was able to dominate the agenda with focused attention to the issue. This resulted in a centralizing of the legislative process to his benefit.²⁰

¹⁹*Reagan 1981-1987; **Reagan/Bush 1987-1991

²⁰Burdett A. Loomis, *The Contemporary Congress* (New York: St. Martin's Press, 1998), 148.

The Bush Administration of 1989-1993 saw a return of party discipline as a source of internal pressure, notably beginning in August 1990. The peaceful impetus that developed from the dissolution of the Soviet Union and the Cold War was abruptly jarred into a set of circumstances that foreshadowed difficult decisions with the Iraqi invasion of Kuwait. Consensus within Congress easily developed around a strategy of passive defense, internationally agreed sanctions, and deployment of defensive capability in the region. The consensus dissipated after mid-term elections in November when Bush moved from *Sitzkrieg* (sitting war) to prospect of invasion to free Kuwait. The consensus faltered with Democrats preferring to delay with words and testimonials on behalf of caution, rather than legally impede the President from engagement either through invoking the *War Powers Resolution* or entertaining a resolution to support his use of force. Bush's instincts were clearly a follower of Realpolitik: force and the credibility of its use are vital to the management of this crisis.²¹ He chose to build international coalitions based on the nature of the common threat, not the common values. Bush unilaterally acted to move the nation in a direction that Congress had not approved. As a result, party identification became evident, as the tension of a divided government mounted. Ornstein, Peabody, and Rohde summed up the evolution of the executive-legislative relationship vis-à-vis the Senate during this period: "The Senate has become a more decentralized, more democratized chamber. Individual Senators, from the most senior to the most junior, have benefited—but have also become frustrated . . . Neither a great deliberative body nor an efficient processor of laws, the Senate, after years of

²¹Bert A. Rockman, "The Leadership of George Bush," in *The Bush Presidency: First Appraisals*, eds. Colin C. Campbell and Bert A. Rockman (Chatham: Chatham House Publishers, 1991), 12.

change, is an institution in search of an identity. At the same time, partisan tension and ideological division became a more regular part of the institution.²²

Bush's relationship with Congress demonstrated that a more congenial climate might be unrelated to presidential success. As a former member of the House of Representatives, Bush recognized the importance of maintaining contacts with individual members of Congress. However, by the end of his third year, Bush had prevailed on fewer congressional roll calls than his predecessor.²³ The budget impasse caused his approval rating to drop significantly. Many domestic issues were dealt with in the context of the budget deficit.²⁴ Coupled with a Democratic Congress that retained healthy margins in both the House and Senate, this legislative body was confident of sharing Bush's mandate to govern, particularly with domestic policy, an area of which Bush displayed less interest. His political success as Commander-in-Chief during the 1991 Persian Gulf War with Iraq was short-lived; it wasn't long before the Congress questioned his Administration's national security and foreign policy, claiming it lacked strategic design.

The following chart displays the party division within Congress during the Reagan and Bush presidencies:

	<u>Congress</u>	<u>House</u>	<u>Senate</u>
97 th	1981-1983	Democratic	Republican
98 th	1983-1985	Democratic	Republican

²²Norman Ornstein, Robert L. Peabody, and David W. Rohde, "The U.S. Senate: Toward the Twenty-First Century," in *Congress Reconsidered*, eds. Lawrence C. Dodd and Bruce I. Oppenheimer (Washington, DC: Congressional Quarterly, 1997), 20-32.

²³Thomas and Pika, 238.

²⁴Charles O. Jones, "Meeting Low Expectations: Strategy and Prospects of the Bush Presidency," in *The Bush Presidency*, eds. Colin C. Campbell and Bert A. Rockman (Chatham: Chatham House Publishers, 1991), 165.

99 th	1985-1987	Democratic	Republican
100 th	1987-1989	Democratic	Democratic
101 st	1989-1991	Democratic	Democratic
102 nd	1991-1993	Democratic	Democratic

The chart indicates Reagan experienced a divided Congress while Bush experienced a solely democratic Congress.

NATIONAL SECURITY AND FOREIGN POLICY

There are three types of national security and foreign policies: structural, involving the deployment of resources or personnel; strategic, advancing the nation's interests militarily or diplomatically; and crisis which is to protect the nation's vital interests against specific threats. When Congress is the opposing party of the President, it controls the machinery necessary to generate divergence over foreign policy. According to Paul Peterson and Jay Greene, conflict between Congress and the executive over foreign policy has not increased over time, but it has changed in character and direction.²⁵ It was evident during the 1980s that the changes were a by-product of the steadily declining military and ideological threat posed by the Soviet Union with a small cadre of Congress becoming more dove-like with the end of the Cold War. Simultaneously, partisan differences over national security and foreign policy questions were enlarging. Peterson and Greene suggest that the nature of the dissonance changed in two ways in response to changes in the international environment: with a high threat the Congress

²⁵Paul E. Peterson and Jay P. Greene, "Questioning by the Foreign Policy Committees," in *The President, the Congress, and the Making of Foreign Policy*, ed. Paul E. Peterson (Norman: Oklahoma University Press, 1994), 91.

tends to become more assertive with the executive branch; and disagreement takes on a more partisan coloration.²⁶

The research of Randall Ripley and James Lindsay suggests a different conclusion. They contend Congress's influence varies among different types of foreign policy ranging from almost none in crisis policy to a modest amount in strategic policy, noting a substantial congressional influence in structural policy.²⁷ The following chart shows degrees of congressional involvement in different types of national security and foreign policy during the Reagan and Bush Administrations:

<u>International Incident</u>	<u>Nature of Policy</u>	<u>Congressional Influence/Input²⁸</u>
Lebanon, 1982-1983	tactical/structural	a multinational action to maintain regional stability; approved force post crisis via joint resolution; did not act until country outraged with terrorist attack
Panama, 1989	strategic	a unilateral U.S. action for the protection of U.S. citizens; President acted without congressional consultation or authorization
Desert Shield, 1990-1991	defense/crisis	United Nations sanctioned to stop Iraqi aggression; one of two deployments authorized by Congress (Vietnam the other); House and Senate offered resolutions in support of U.N. Security Council resolutions while stipulating sanctions over use of force

²⁶*Ibid.*

²⁷Ripley and Lindsay, 25.

²⁸Tactical/structural policy involves deploying resources or personnel; strategic policy pertains to advancing the nation's interests militarily or diplomatically; and defense/crisis policy involves protecting the nation's vital interests against specific threats.

Barbara Hinckley suggests partisanship is problematic for successful foreign policy. In her study of the executive-legislative foreign policy-making, Hinckley found four patterns of foreign policy making in the government: an active President and an inactive Congress; an inactive President and an active Congress; an active President and active Congress; and a default pattern whereby the President and Congress support past programs or fail to enact any program. Hinckley contends Congress should prioritize the interests of their constituents first with the interest of the committee experts and then, Congress should consider the broader interests of the party leadership.²⁹

In *The New Tug of War*, Jeremy Rosner observes three sets of transformations in the executive-legislative relationship: changes in the terms of the debate between the legislative and executive branches; changes in the balance of power; and institutional and partisan changes within the two branches themselves. When one party controls the two branches Congress is relatively less powerful on national defense. When the control is split, Congress will be relatively more powerful.³⁰ Regardless of the composition of Congress, Republican or Democratic majority, the Constitution outlines the roles of each branch of the government in the context of national security and foreign policy. Debatable as some portions of the intent of the Constitution may be, two outstanding facts have emerged resulting in a situation of alternate tension and cooperation: the overwhelming importance of presidential initiative; and the ever-increasing dependence of American foreign policy on congressional cooperation and support.

²⁹Hinckley, 11.

³⁰Jeremy D. Rosner, *The New Tug of War* (New York: Carnegie Endowment Press, 1998), 19.

The pattern of strong anti-Soviet rhetoric and restrained conduct marked Ronald Reagan's Administration. It was, however, difficult for him to build a successful national policy on that position. Political critics raised questions about the President's knowledge of events and the role of the State Department, Central Intelligence Agency, and National Security Council as his foreign policy became disjointed with Iran-Contra. Questions about his competence in managing foreign policy focused on his detached administrative style, which entailed extensive delegation.³¹

Bush, in contrast, was hands-on and directly engaged in the formulation and implementation of national security policy. He concerned himself with details and participated actively approaching foreign policy with a pragmatic, rather than ideological orientation. This resulted in criticism of the Administration for promoting policy that was tactical but lacking in strategic design. In general Bush met approval for his foreign policy from Congress because he "rounded the hard edges" of his predecessor.³² Bush positioned himself to look neither dovish nor hawkish by maintaining a comfortable relationship with Gorbachev and Thatcher; ending civil strife in Nicaragua, facilitating the close of the Cold War—all of these events established Bush as a prudent foreign policymaker. However, his refusal to take a harder line with the Chinese government of Deng Xiaoping for the 1989 demonstration in Tiananmen Square met sharp disapproval, as did the tragedy of the *Valdez*, which called attention to his lack of interest in the global environment. Fundamentally, Bush continued the policies of the late Reagan years but with greater flexibility and adaptability.

³¹Thomas and Pika, 405.

³²*Ibid.*, 437.

One can argue that Congress has retained considerable ability to influence the substantive content of the foreign and defense policies that the President implements. The simple fact that policies formulated by the President cannot remain viable for long without congressional support adds much weight to Congress's side of that argument. Some scholars feel Congress has lost its will to co-determine foreign policy with the President and see this is a continuing legacy of the Cold War. A powerful set of internal norms and attitudes, customs and institutions create this loss of will, which Stephen Weissman so aptly describes as a "culture of deference."³³

An important congressional attempt to dismantle that culture of deference and reclaim powers lost or given to the executive is the 1973 *War Powers Resolution*. It is the war powers that have played a significant role in the conflictual relationship between the President and the Congress and that is because the ultimate defense policy is waging war. The Constitution assigns war-waging authority to both the legislative and executive branches reinforcing the system of checks and balances as a decentralization of power. The institutions represent the competing values of effectiveness and legitimacy, and their reconciliation poses a major dilemma for constitutional democracy.³⁴

CONSTITUTIONAL WAR POWERS

The Constitution stipulates a division between the legislative and executive

³³Stephen R. Weissman, *A Culture of Deference: Congress's Failure of Leadership in Foreign Policy* (New York: Basic Books, 1995), 2.

³⁴Asa A. Clark and Richard M. Pious, "Waging War: Structural Versus Political Efficacy," in *National Security and the US Constitution: The Impact of the Political System*, eds. George C. Edwards and Wallace Earl Walker (Baltimore: Johns Hopkins University Press, 1988), 143.

branches dividing power and responsibility. It assigns the Congress responsibility for declaring war, maintaining armed forces, assessing taxes, borrowing money, minting currency, regulating commerce, and making all laws necessary for the operation of the government. It allocates to the executive branch the duties of Commander-in-Chief and agent of foreign policy as chief negotiator and chief diplomat. Article I cites the authority vested the Congress; Article II refers to the authority that rests with the Executive.

Despite the widely recognized prerogatives of the President in foreign relations, Congress has a number of indispensable alternatives, powers to support or detract from the Administration's policy.³⁵ Much of Congress's influence over foreign and defense policy comes from the tools of the everyday legislative process. Through the adoption of resolutions and policy statements, Congress expresses its views then passes legislation that requires those views be followed. Congress can mandate procedural changes to enhance its influence and oversight of the President and his Administration. Congressional hearings, investigations, reporting requirements are other opportunities for oversight. Even closer to the President, Congressmen may act as advisers and consultants to the executive branch.

Congress's authority to declare war may appear most important, but it is the power of the purse—the power to raise revenues and authorize funds for national defense, war, foreign aid and the general execution of foreign policy—that is most potent. The power of the purse gives Congress a significant role in advancing, restricting, and shaping

³⁵The source for this discussion is: *Guide to Congress* Fifth edition, Volume I, 156-159

policy, hence directly affecting foreign and defense design. The legislative branch may increase funds above the President's request, refuse funds, place conditions on the use of funds, and terminate existing programs. The research conducted by Crabb and Holt indicates the use of money to influence foreign and defense policy is a relatively modern phenomenon with its origins in the closing stages of the Vietnam War. Further, their studies show the Congress has underutilized this power. Resourceful Presidents have circumvented the roadblocks via emergency funds available to them, and Congress itself has been reluctant to cut off funds fearing it would be held responsible for adverse consequences.³⁶ The power of the purse is evident in the simple fact stated by Davidson and Oleszek: "To get ninety-five per cent of the budget they need, Presidents may have to swallow five percent of what they oppose." Congress also knows if there are too many strings attached there is a highly probable chance of presidential veto.³⁷ Compromises and trade-offs become an integral part of the policy making process.

William Corwin is frequently cited as the authority in constitutional interpretation and whose oft-quoted description of the document as an "invitation to struggle for the privilege of directing American foreign policy" has served as the thesis of many articles and books. His studies conclude that the gaps in the constitutional delegation of powers pertaining to foreign relations defer to the executive, and the difficulties with that capitulation often transition the gap from legal to political discord.³⁸ More importantly,

³⁶Crabb and Holt, 47, 50-51.

³⁷Davidson and Oleszek, 392.

³⁸Edwin S. Corwin, *The President's Control of Foreign Relations* (Princeton: Princeton University Press, 1977), 127.

Corwin believes a method of compromise and statesmanship must be employed to deny the notion of inherent struggle. By conferring foreign policy powers to both the legislative and executive branches, the Constitution leaves the final voice in determining the course of the nation for events to resolve—the needs of the moment will decide policy.³⁹ Corwin’s premise overlooks the ubiquitous presence of the President as a significant factor to the imbalance in the division of the war powers. Case in point, the *United States v. Curtiss-Wright Export Corporation 1936*.

In the Federal Court case *United States v. Curtiss-Wright Export Corporation 1936*, the Court established “special rules” for foreign affairs. It also served as a leading articulation of presidential authority.⁴⁰ (In the area of foreign policy, the Judiciary has either upheld executive authority or declined to rule altogether, as in *Dellums v. Bush*, 1990, which will be discussed in Chapter 6.) In this case the defendant was indicted for selling arms to Bolivia in violation of a federal statute. Under the statute, the President can prohibit the sale of arms to countries engaged in armed conflict if he finds that a prohibition might contribute to the reestablishment of peace between those countries. The statute also permits the President to prescribe the length of the prohibition and to make whatever exceptions and conditions he deems advisable. President Roosevelt made the necessary finding and imposed the prohibition. The defendant challenged the law as an improper delegation of legislative authority. Justice Sutherland delivered the opinion of the Court:

. . . Not only as we have shown is the federal power over external affairs in origin and essential character different from that over

³⁹Corwin, *Presidential Power and the Constitution*, 76.

⁴⁰*United States v. Curtiss-Wright Export Corporation*. 299 U.S. 304 (1936).

internal affairs, but participation in the exercise of the powers is significantly limited. In this external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation.

It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations

Justice Sutherland also reasoned that the external sovereignty of the United States was never possessed by the states individually, hence Congress would have no representative role. Conversely, Justice Sutherland emphasized the President's role as sole representative of the United States in foreign relations.

The literature pertaining to the executive-legislative struggle suggests the "struggle" is caused by the parochial constituency interests of the Congress and the President's capacity to engage in secret diplomacy or covert operations. For example, two models that represent the war waging process are presidential supremacy, which exploits the full authority vested the Commander-in-Chief freeing him to employ force appropriately and flexibly while building political and public support. The second mode, congressional supremacy offers the advantage of legitimacy based on political accountability and the prospect that, based on rich and intense public debate, will tend to be wiser.

There is no question that the war powers are a continuing issue of controversy between the Congress and the President.⁴¹ Crabb and Holt have recognized the reality of war powers to be determined more by experience, precedents, and circumstances than by

⁴¹The source for portions of this discussion is: *Guide to Congress*, Fifth edition, Volume I, 175-184.

the intentions of the framers of the Constitution or legal theories. They conclude the verdict of history has shown the balance of power weighing in for the President: “the overall tendency has been for legislative prerogatives to be eclipsed by executive initiative and leadership.”⁴² No formal declarations of war have been pronounced since World War II; however, Congress has passed resolutions supporting the presidential decision to use force in Vietnam and the 1991 Persian Gulf War.

In his examination of the President’s war-making powers, Louis Fisher determined four sources of constitutional authority: responsibilities as commander-in-chief; the oath to preserve, protect, and defend the Constitution; the duty to protect the nation from sudden attack; and the inherent powers derived from the general heading “executive power.”⁴³ Fisher recognizes the ongoing evolution of authority and contends the inherent or implied powers have become increasingly generous in modern times because of treaty commitments and vaguely worded resolutions. As early as 1972 he predicted the expansion of presidential power as the result of the shifting needs in national security and foreign policy.

Among the eighteen powers given Congress in Article I, seven apply to foreign policy. The responsibility to declare war is more a formality because conditions for warfare must already exist and Congress would not have time to debate. The Vietnam conflict left many in the government to further conclude declarations of war were now outmoded; the Cold War was being waged with the knowledge of nuclear military capability compelling the Commander-in-Chief to act on very short notice while

⁴²Crabb and Holt, 53.

⁴³Louis Fisher, *President and Congress: Power and Policy* (New York: Free Press, 1972), 193.

detracting from Congress's oversight and debate authority. During this period, a worldwide network of alliances also eroded congressional war powers. Congress was left to restructure its authority out of obligation to the original intent of the Constitution paying attention to the war powers vested them.

Congress paid close attention to the testimony of Alpheus T. Mason, McCormick Professor of Jurisprudence at Princeton, who spoke before the 1971 Foreign Relations Committee: "The Framers, with deliberate care, made war making a joint enterprise . . . Technology has expanded the President's role and correspondingly curtailed the power of the Congress. The fact that a congressional declaration of war is no longer practical does not deprive Congress of constitutionally imposed authority in war making. On the contrary, it is under obligation to readjust its power position."⁴⁴

What constitutional war powers authority Congress lost as a consequence of the evolution of warfare or collective security or collective defense it endeavored to regain in the form of the *War Powers Resolution*, a resolution that arguably goes beyond the design of the Constitution. The enactment of the Resolution marked a turning point in the application of the rule of law to foreign and national security affairs. Vietnam ended congressional deference to the President and the *War Powers Resolution* was to end any executive commitment of the nation into foreign conflicts against the will of the Congress and the public.

⁴⁴ Senate Foreign Relations Committee, *Hearings on War Powers Legislation*, 91st Congress, 1st session (1971), 254.

CHAPTER IV

THE 1973 WAR POWERS RESOLUTION

The United States with its responsibilities and obligations as a superpower is likely to face with increasing frequency situations of ambiguity and imprecision where neither diplomatic efforts nor the exertion of force can promise a certain outcome. It will require judgments in our determination of whether and how the United States should be involved Perhaps in addressing these questions we should review whether the War Powers Resolution, as it now stands, remains an appropriate mechanism for the interaction between the executive and legislative branches of Government. I am personally convinced that we cannot continue to begin each military involvement abroad with a prolonged tedious and divisive negotiation between the executive and legislative branches of Government. The world and its many challenges to our interests simply do not allow us that luxury.

--Senator Howard Baker on 6 March 1986

Three years after the fracas in Lebanon Howard Baker went on record criticizing the *War Powers Resolution* of 1973 as legislation whose time had expired. Seventeen have past since Baker's criticism and the Resolution is still in effect as it was ratified in 1973—no revisions have been consummated. Senator Baker's description of the dangerous and volatile global environment of 1986 has become even more the state of affairs with the end of the Cold War. If in 1986 the Senator concluded the Resolution obsolete, where does it stand today? To answer the question it is necessary to examine the document itself: its history and introduction by the Congress, the constitutionality of the legislation, and the contents and requirements of the Resolution. Understanding these elements will aid in assessing the current debate over the effectiveness and future of the resolution. The decision to retain, revise, or repeal this Cold War legislation is most

timely in this post Cold War environment fraught with uncertainty. The history of the legislation demonstrates the need to act.

HISTORY AND ANALYSIS

The *War Powers Resolution* has its origins in the Vietnam conflict, which saw the deployment of American armed forces as early as 1954 with President Eisenhower's introduction of 200 Air Force technicians to aid the French in their fight against the Viet Minh. The congressional records indicate concern was expressed by the Senate Foreign Relations Committee due to the lack of congressional consultation in that first decision to deploy American troops.¹ The State Department pledged to consult Congress before making any other decisions regarding the situation in Indochina. The White House tested the Congress in March 1954 when it made tentative plans for immediate air intervention over Vietnam on the heels of the French defeat at Dien Bien Phu. Then Senate Minority Leader Lyndon B. Johnson blocked the proposal by influencing others to take a position of non-support for the President's plan. Ten years later members of the Senate began demanding the withdrawal of all U.S. military personnel. By the winter of 1964 approximately 15,000 United States military advisers were in the country. The request was delayed and eventually denied due to a military incident in August that changed the course of the war.

With reports that the North Vietnamese attacked U. S. naval destroyers on 2 August 1964, the Congress was quick to support President Johnson's retaliatory strike in compliance with his request to preserve peace in the area by adopting a resolution

¹*Guide to Congress*, Fifth edition, Volume I, 229.

allowing him to execute that policy. An overwhelming majority expressed support of the President to take all essential measures to repel any armed attack against U.S. military forces. To accommodate President Johnson, the *Tonkin Gulf Resolution* was voted into law by an overwhelming majority of the Senate. In fact, only two Senators dissented, Democrats Ernest Gruening of Alaska and Wayne Morse of Oregon. Both men had been opposed to U.S. involvement since the Eisenhower Administration. With only two nays, Congress gave a clear indication of the strong presidential support by ratifying the *Tonkin Gulf Resolution* on 10 August 1964.²

As newly elected President Nixon discussed peace proposals and the outlined plan for Vietnamization, Congressmen shed their inhibitions about voting down war appropriations. In 1969 the Democratic Congress took measures to assert its decision-making authority by passing the *National Commitments Resolution* on 25 June. Originating as Senate Resolution 85, the National Commitments Resolution pressed for affirmative action taken by both the legislative and executive branches before U.S. forces could be committed to the defense of a foreign nation. The Senate voted as follows:

National Commitments Resolution, S.R.85

	<u>Vote 70-16</u>
<u>For</u>	43 Democrat 27 Republican
<u>Against</u>	3 Democrat 13 Republican

² The Tonkin Gulf incident occurred as a result of a North Vietnamese patrol boat torpedoing the American Destroyer *Maddox*, which was on an espionage mission. No US casualties occurred. The US destroyer then moved in closer, within four miles, and with the alleged misinterpretation of sonar data indicating North Vietnamese gunboats, the *Maddox* fired wildly in what was supposed to be a counter-attack. Johnson described the situation as “those dumb, stupid sailors were just shooting at flying fish.” It should be noted, just as the attack by the US Navy was a fabrication, so too, was Johnson’s briefing to the US Congress on the incident. He garnered their full support by not divulging the incident in its entirety. For further discussion see Edwin E. Moise, *Tonkin Gulf and the Escalation of the Vietnam War* (Chapel Hill: University of North Carolina Press, 1996).

The House did not sign on to this Resolution; instead, it issued House Resolution 613, also called the *Vietnam Resolution*, on 2 December 1969 endorsing Nixon's efforts to achieve "peace with justice" in Vietnam. The House voted as follows:

Vietnam Resolution, H.R.613

	<u>Vote 334-55</u>
<u>For</u>	162 Democrat 172 Republican
<u>Against</u>	54 Democrat 1 Republican

The President would not, however, have a blank check with this resolution. The measures taken by the Senate served as a warning to the President to consult Congress. The House Resolution conveyed overwhelming support *specifically* for ending the war. But Nixon ignored the admonition. With the announcement of the assault of U.S. forces in Cambodia in April 1970, Congress was compelled to respond because Nixon had proceeded independently despite the Senate's attempts at a collective judgment.

As the war in Vietnam grew in scope, those who had supported the *Tonkin Gulf Resolution* became disillusioned with the direction the war was taking; the end-game was not clear. By the close of 1970 Congress repealed the *Tonkin Gulf Resolution* by adding it to a foreign military sales bill signed by President Nixon. Nixon was not in favor of repealing the resolution, and he saw his way around the repeal by maintaining that the authority to conduct the war rested with him as Commander-in-Chief.³ As a matter of principle, Nixon never approached Congress to seek its consent for his increased military activity. In fact, President Nixon ordered troops into Cambodia in 1970, provided air

³The source for portions of this discussion is: *Guide to Congress*, Fifth edition, Volume I, 175-184.

support for South Vietnam's invasion of Laos in 1971, mined Haiphong Harbor (North Vietnam) in 1972, and directed the heaviest bombing of the war in 1972—all without Congress's direct knowledge or consent. Many in the United States openly opposed Nixon's execution of the war. Complaints of his abuse of authority and aggrandizement of presidential war powers began to surface. But Congress was in a tenuous situation: Congress had committed itself to the war by enacting legislation and granting financial support, thus making it difficult to force an end to the conflict without appearing to be a part of the crisis.

President Nixon's decision to send U.S. troops into Cambodia provoked a six-week debate by the Senate beginning in May 1970 introducing an amendment barring the use of funds for military operations in Cambodia. On three occasions in 1971 the Senate adopted amendments calling for the withdrawal of troops from Vietnam with a specified date of total evacuation. The House and Senate appeared to be functioning as a body of one by going on record urging an end to the war. Nixon remained steadfast as Commander-in-Chief stating these amendments were not binding on him and that he would not comply. By 1972 the Senate challenged Nixon by adopting an amendment cutting off funds for future U.S. participation that was to begin four months after the amendment was enacted. The Senate placed a deadline of 2 December 1972 for all military forces to be out of Vietnam, but the House was unwilling to endorse those requirements and refused to sign on to that amendment.

Critics of Nixon's Administration and his execution of the war did not consign any failure to the Congress for its inability to reach an agreement on the war's future course of action. Congress's dilemma stemmed from the fact that once the President had

committed troops and money, it was difficult to cease providing funds; hence, Congress seemed to be *willing* to appropriate funds, thus averting a constitutional confrontation between the President and the Congress over the abuses of constitutional war power. However, Nixon's impertinence and the secrecy with which he conducted the war reached an intolerable level for the Congress. Congressional leaders openly attacked the President's abuse of the war powers. For two years both the House of Representatives and Senate passed several measures addressing constitutional war powers, but neither branch could satisfy the other. In 1973 the two parties came to a compromise with the creation of the *War Powers Resolution*.

By July 1973 Congress felt it necessary to limit the President's authority to commit troops abroad without congressional approval. This restraint was presented to the President in the form of the *War Powers Resolution*. The Resolution was actually the compromised product of the previous three years work on the part of the Senate and House. It evolved from a resolution addressing national commitments to much larger theatres of operations listing the circumstances, conditions, and requirements, under which the President may conduct the deployment of United States Armed Forces.

Chief architect of the bill, Senator Jacob Javits, congratulated Congress for asserting its oversight power and doing something about "codifying the implementation of the most awesome power in the possession of any sovereignty and giving the broad representation of the people in Congress's voice in it."⁴ He believed it was very important, for the government had just learned the hard lesson that wars cannot be successfully fought except with the consent of the people and with their support. He

⁴Quoted in *Guide to Congress*, Fifth edition, Volume I, 234.

asserted repeatedly that he did not seek confrontation with the executive branch, but rather wished to fashion an “institutional mechanism by which Congress and the President could exercise their collective judgment.”⁵

On 7 November 1973 the *War Powers Resolution* was ratified as law and for thirty years it has remained an issue in U.S. military actions in Asia, the Middle East, Africa, Central America, and Europe. From 1975 through April 2002, American Presidents have submitted ninety-seven reports of troop deployment or military action to the Congress, one of the requirements of the Resolution.⁶ Just how did the Resolution codify this “awesome power?” What are the provisions of the Resolution that provide “consent of the people” via their elected representatives?

The Purpose of this Joint Resolution is to fulfill the intent of the framers of the Constitution of the United States of America and ensure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities or situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

--*The War Powers Resolution*, Section 2(a)

The text of the *War Powers Resolution* is brief (see Appendix A). A detailed discussion of each section to include its purpose and requirements is found in Appendix B. Congress developed the *War Powers Resolution* as a tool to manage intervention and to legally establish its role in the decision to deploy U.S. armed forces. Integral to Congress’s role in the use of force are the reporting and consulting requirements found in

⁵Smyrl, 21.

⁶Congressional Research Service Report for Congress, “War Powers Resolution: Presidential Compliance,” Richard F. Grimmett, Foreign Affairs, Defense, and Trade Division (Washington, DC: Library of Congress, 29 April 2002); President Ford submitted 4 reports, President Carter 1 report, President Reagan 14 reports, President Bush 7 reports, President Clinton 60 reports, and President Bush Jr. 11 reports.

sections 3 and 4 as well as the highly debatable “clock” discussed in section 5, i.e., the calendar days in which the Congress and/or President must take appropriate action pursuant to the reports submitted by the President.

There are different courses of action for Congress to take in the context of the Resolution: if Congress concurs with the President’s action, the application of the Resolution may be desirable to legitimize the action and strengthen it making clear the President has congressional support; Congress may also resolve to give the President more flexibility of action than what the constraints of the Resolution hold him to; or some may wish not to have a formal vote on either the issue of applying the Resolution or the merits of utilizing armed forces. The Resolution offers Congress a way to support or terminate planned presidential action and/or a way to avoid the issue by refusing to become a part of the process via a formal vote. And it is precisely that flexibility that has instigated much debate as to the usefulness and effectiveness of the Resolution. The ambiguity of language, the requirements, and the constitutionality of the *War Powers Resolution* are part of an ongoing debate between and among the executive and legislative branches, a debate that began at the time the legislation was ratified.

Since passing the Resolution into law, no President has agreed to its legitimacy. As a result, the effectiveness of the legislation has been limited by the ongoing debate between the Congress and the President, which has now become a long-term issue: is the Resolution an appropriate and effective means of assuring congressional participation in actions that might get the U. S. involved in war? Proponents *for* the Resolution argue that it promotes consultation between branches and serves as congressional leverage with the President, those *against* the Resolution argue that it has not significantly increased

congressional participation, and Presidents have not once met the requirements in a timely or direct manner. Recent reports from the Congressional Research Service indicate many proposals have been made to strengthen, change, or repeal the Resolution, but none have been enacted to date.⁷ The criticisms focus on the objective and development of the Resolution in 1973, the constitutionality of the law, and the requirements of certain sections of the document—all contributing to the thirty-year debate to retain, revise, or repeal the Resolution.

Objective and Development: In drafting the *War Powers Resolution*, the House and the Senate began with incompatible principles: the House was willing to recognize the need for the President to defend the United States and its citizens without authorization from Congress and elected to rely on procedural safeguards instead of explicating precise conditions under which he could act. The Senate agreed to the principle laid out by the House, but stiffened the language in the House proposal by placing a time limit on the President's initiatives. Specifically, unless Congress declared war within 120 days or authorized the use of force, the President had to terminate the operation. The Senate held to spelling out conditions under which the President could act unilaterally. Both Houses agreed to three circumstances in which the Commander-in-Chief could act: to repel an armed attack on the United States or territories and possessions; to retaliate in the event of an attack and forestall the direct, imminent attack;

⁷The sources for this discussion are Congressional Research Service Report for Congress, "War Powers Litigation Since the Enactment of the War Powers Resolution," David M. Ackerman, Legislative Attorney, American Law Division (Washington, DC: Library of Congress, 30 November 2000); Congressional Research Service Report for Congress, "War Powers Resolution: After Twenty-Eight Years," Richard F. Grimmett, Special in National Defense, Foreign Affairs, Defense, and Trade Division (Washington, DC: Library of Congress, 30 November 2001).

and to rescue endangered American citizens. The Senate also specified thirty-days in which the President could act under these circumstances without congressional authorization.⁸

This effort to codify presidential war powers carried a number of risks that have come to fruition. The language could broaden presidential war powers and instead of restricting the President, he could be empowered by his interpretation of terms such as “necessary and appropriate actions, imminent threat.” With increase public outcry against the war in Vietnam, the House and Senate were pressured to produce some sort of legislation to restrain President Nixon from further military action in Southeast Asia. President Nixon was compelled to veto the bill, and did so on 24 October, because he viewed it as impractical and encroaching upon the President’s constitutional responsibilities. Although Congress was able to override the President’s veto this did not remove the doubts and concerns about the motivation of the Congress and the quality of the legislation as evidenced in the fact that the veto override votes came from different corners: even detractors of the Resolution voted for it because they harbored more ill-will toward Nixon and allowed those feelings to steer their vote. The bill was passed with a vote of 284-15 in the House and 75-18 in the Senate. The vote went as follows:

<u>War Powers Resolution</u>	<u>House Vote 284-135</u>	<u>Senate Vote 75-18</u>
<u>For</u>	198 Democrat	50 Democrat
	86 Republican	25 Republican
(plus 4 to meet the 2/3 rd majority vote needed to over-ride the President’s veto)		
<u>Against</u>	32 Democrat	3 Democrat
	103 Republican	15 Republican
(plus 13 to meet the 2/3 rd majority vote needed to over-ride the President’s veto)		

⁸Congress, House, *War Powers Resolution 1973*, 93rd Cong., 1st sess., *Congressional Record* 119. no. 33555 (1973).

Congressional voters may have feared that a vote to sustain Nixon's veto would lend credence to the views of presidential powers as being aggressive and imperious. Some may even have considered the override vote as a step toward impeachment. In particular, Congresswoman Bella Abzug voted against the Resolution, but voted for the veto override stating the potential turning point in the struggle to "control an Administration that has run amuck."⁹ Much of the sober and balanced analysis of three years efforts to create the Resolution was overshadowed by the sensational events of the Watergate Scandal.

Nixon was not admired by the legislature. He had vetoed the 93rd Congress eight times and eight times the Democratic Congress was unable to override his veto. The vote on the *War Powers Resolution* was the first instance, first override in which the Congress was able to assert itself over the President. Nixon also had problems within his Administration: the so-called Saturday Night Massacre removed Special Prosecutor Archibald Cox, Attorney General Elliot Richardson, and Deputy Attorney General William Ruckelshaus from their respective offices. This event took place just four days before Nixon's veto. Two weeks prior to the veto, Nixon's Vice President, Spiro Agnew, resigned. The national media described the Resolution as a constraint on presidential war power, something the American public supported as a necessary congressional check against a "war-mongering" President.

Those who created the document were well aware of the problems with its content but proceeded to derive public support for the bill. They were able to disassociate themselves with what had become "Nixon's War". In less than two years after the bill

⁹*Ibid.*

was ratified, President Gerald Ford directed the evacuation of Saigon, which ran counter to a number of the statutes in the Resolution. With public support on the side of the President, Congress chose to not to act. This early example of congressional inaction and presidential defiance led opponents of the document to view it as a compromise of both the institutional and constitutional integrity of Congress.

DEBATING THE WAR POWERS RESOLUTION

Constitutionality of the Legislation: The Constitution's separation of war powers provides for an inherent collective judgment and a sharing of powers. The Congress and the President must coordinate military operations: one provides the legal authorization and financial support while the other acts as strategist and military leader. The Congress, in deciding to grant consent via declaration of war or statutory authorization, may require of the President the particulars of the engagement to determine political and budgetary backing for the operation. Should Congress decide the operation is not supportable it can thwart the President's plan by refusing congressional authorization and financial support. Theoretically, this separation of powers becomes a sharing of powers, a collaboration of authority.

The intent of the *War Powers Resolution* also seeks to ensure collective judgment and sharing of powers. However, citing this collaboration between executive and legislative branches as a justification for the Resolution is redundant. Simply, the extraneous nature of the Resolution's intent, as indicated in Section 2, with the citation of article I, section 8 of the Constitution which relegates to Congress the "power to make all laws necessary and proper." Why not let the Constitution stand on its own? The mere

existence of the Resolution infers a potential constitutional dictatorship, extra-constitutional use of presidential power, and/or a wartime Constitution, and its intent is not accurately presented.¹⁰ What the *War Powers Resolution* accomplishes is the placing of restrictions on the President's options in situations where U.S. Armed Forces are to be deployed or are already deployed. The validity of the Resolution's intent, collective judgment, and the actual realized function, to restrain presidential war powers, call to question the constitutional legality of its requirements.

Another questionable aspect is the heart of the Resolution in Section 2(c), which ties the President's use of force to constitutional considerations such as congressional declaration of war, statutory authorization, or an attack on the United States, its territories, or military. This section is contradicted or even undermined by Sections 4 and 5, which allow the President to act for sixty to ninety-days with no regard for constitutional considerations.

Section 3 contains a fundamental flaw in that the President may introduce troops into combat without congressional authorization. This legislation unconstitutionally delegates to the President the power to make war. Section 3 also repudiates Section 2, which calls for "collective judgment" of both branches.

Section 8 cannot survive scrutiny. It states the Resolution does not intend "to alter the constitutional authority of the Congress or the President." The principal vice of the Resolution is that it radically tilts the balance of power between Congress and the President, granting the President more power than he can derive from the Constitution.¹¹

¹⁰Sheffer, 5.

¹¹Louis Fisher, "The War Powers Resolution: Time to Say Goodbye," 18.

Problematic Contents: The ambiguity of terms and requirements in the *War Powers Resolution* has resulted in presidential non-compliance and much criticism. Sections 2, 3, 4, 5, and 8 have been viewed as problematic and in need of revision. Sections 3 and 8 have already been discussed as unconstitutional; this subsection will discuss the impracticality of each section.

Section 2 addresses the need for collective judgment of both the Congress and the President apply to the introduction of armed forces “into hostilities, or situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.”¹² The term “hostilities” is not explicitly defined. There are three kinds of armed action or hostilities listed omitting other possibilities such as the use of out-of-uniform personnel, covert operations, protective reaction strikes against international malefactors, fly-over operations that are prevalent in post Vietnam Pentagon operations.¹³ The drafters of the Resolution did not foresee these activities as part of military operations. The Resolution also fails to define the nature of the national emergency, the causes of the emergency, and/or if it is an attack on civilians. Therefore, the President is limited in his range of responses to those circumstances without Congress’s input. The Resolution constrains the President even in times of national emergency, and the indistinct language of Section 2 assures Congress there will be no overreaction to threats on the part of the Commander-in-Chief.¹⁴

¹²*War Powers Resolution, Statutes at Large* 555, sec. 1-10, (1973).

¹³Nathan, “Salvaging the War Powers Resolution,” 244.

¹⁴Holt, 23.

However, Section 2, specifically 2(c) has not been heeded and there has not been much attention paid to those violations because of the Resolution's inherent flaw: it is operational only to the degree the President chooses to voluntarily comply. Thus, the President ignores this section. The entire Resolution is unacceptable to the executive for it chooses not to instruct the President as to when he may or may not introduce forces into hostilities, but rather if he does choose to act he is instructed to report to Congress and withdraw without argument if his operation is not approved.

Section 3, the consultation requirement, should be read in tandem with Section 2(c), which describes the circumstances in which the President may deploy troops. Section 3 requires the President to consult in every possible instance before considering troop deployment. The viability of that requirement is questionable particularly in light of what may be national emergencies: the Resolution does not provide for an effective method of consultation and the sheer nature, a body designed for debate and deliberation, and size of the Congress makes it impractical in certain situations.¹⁵ There are also inconsistencies in what is deemed situations necessary to consult with the Congress and situations required to be reported to the Congress.

Section 4, when read in tandem with Section 2 demonstrates another inconsistency. Section 4 requires reporting in a broad range of circumstances not listed in Section 2(c) such as territory, airspace, or waters of a foreign nation while equipped for combat; or the deployment of troops to enlarge forces already in a foreign nation. This inconsistency can be construed as sanctioning presidential use of force in situations wholly unrelated to attacks against the U.S., its territories, or troops abroad without

¹⁵*Ibid.*, 28.

Congress's input.¹⁶ In fact, of the three military situations outlined in Section 2, only one situation requires consultation: engaged hostilities. There is no requirement for consultation for troop movement into territory, airspace, or waters of a foreign nation while equipped for combat; or the deployment of troops to enlarge forces already in a foreign nation. Critics of the Resolution deduce the reporting requirement was to give Congress more leverage over sending troops abroad on the theory that although the President may not declare war, he has ample room to cause one.¹⁷ Congressional reluctance to acknowledge that forces are engaged in hostilities may be grounded in the fear that Congress would be obliged to act on that information by either effecting a withdrawal with a concurrent resolution or approving the President's course of action.

The Resolution requires a report only if troops are engaged in hostilities. The report needs to be "disentangled" from the fact that U.S. forces are engaged in hostilities.¹⁸ The contradiction is that for troops to be engaged, Congress would have had to approve the action or see that the action is terminated. Just as Congress is reluctant to acknowledge forces engaged in hostilities, the President is reluctant to issue a report that would prime the Resolution's clock.

Another imprecise phrase in Section 4(a) is the introduction of United States Armed Forces "where imminent involvement in hostilities is *clearly indicated* by the circumstances." Where involvement in hostilities is "clearly indicated" seems too demanding, too precise for the President to offer a detailed report. On the other hand,

¹⁶Fisher, *Presidential War Power*, 131.

¹⁷Holt, 26.

¹⁸Nathan, "Salvaging the War Powers Resolution," 244.

Section 4(a)(1) is often paraphrased alluding to a “clear indication” which causes ambiguity as to the precise requirement of Section 4(a). Section 8(c) provides some definition that is applicable to Section 4(a): “For purposes of this joint resolution, the term ‘introduction of United States Armed Forces’ includes the assignment of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, *or there exists an imminent threat* that such forces will become engaged in hostilities.”¹⁹

Section 5 introduces the highly criticized clock. This structural portion of the Resolution asserts the President may not continue a military commitment without congressional approval if he exceeds his allotted time. This assumes he has met the consulting and reporting requirements of the Resolution. There are many weaknesses in Section 5, and it is a large part of the debate on Resolution revision. Most obvious is the fact that in a fluid situation, national security considerations could compel the President to act before Congress is able to reassess its authorization. The notion of collective judgment is cast aside with the granting of sixty to ninety days for the President to conduct military operations without congressional authority providing he reports under Section 4.

The amount of time granted the President has been a controversial issue.²⁰ The only legitimate rationale that supports that amount of time granted the Commander-in-Chief is that it approximates the time it will take Congress to decide whether the United

¹⁹*War Powers Resolution*, sec. 8-c.

²⁰John Hart Ely, *War and Responsibility: Constitutional Lessons of Vietnam and Its Aftermath* (Princeton: Princeton University Press, 1993), 127-129.

States should continue its involvement. American Presidents have been successful in acquiring declarations of war from Congress. Experience teaches that Congress is likely to support the President at the very outset of a war, but support may wane after sixty or ninety days. The idea of aborting an ongoing war looks as if the Congress is not supporting those in uniform; therefore, it is unlikely Congress would end a presidential war after two or three months. Allowing the President this period to conduct what would be deemed "his war" is a delegation of legislative power more open-ended than a declaration of war because it does not specify geographical locale, enemy, or precipitating condition. In fact, critics of the clock perceive this open-ended authority as a form of congressional responsibility-avoidance device. Amending the amount of time given the President to conduct a war from sixty to ninety days to a much lesser term of twenty days removes this notion of responsibility avoidance and encourages presidential compliance with the Resolution.²¹

Section 5(b) provides that if the clock runs out and Congress has not authorized continued hostilities the President must terminate the operation and the use of United States Armed Forces. To support that requirement, Congress could also place a corollary time limitation for funding. The addition of this proviso would re-emphasize Congress's constitutional war powers as well as encourage presidential compliance to the Resolution.²²

To start the clock, which determines the sixty to ninety days granted the President, he must specifically report under this section of the resolution. There are

²¹*Ibid.*, 127.

²²*Ibid.*, 121.

numerous examples to indicate that Presidents have refused to comply with this requirement. The awkward language of this section has resulted in a weak congressional control, contrary to the stated purpose of the Resolution in Section 2 of “collective judgment” and input from Congress.²³

The Resolution empowers Congress to terminate a military commitment with concurrent resolution. This is an important feature of public protection because the President has no recourse but to terminate at the specific time “if the Congress so directs by concurrent resolution.”²⁴ Congress empowered itself with the ability to have a *final* say, not a collective decision with the President, via the concurrent resolution. This resolution also raises many questions regarding the constitutionality of this type of lawmaking, especially when it directly affects the executive branch. With a resolution of this nature, Congress removes from the President his power of veto over its bill. If a concurrent resolution is issued and the President argues it is unconstitutional, the time spent arguing legal matters could lead to grave national security matters.

Section 8 calls attention to the interpretation of the Resolution, which serves as guidelines. Section 8(a) stipulates *no* treaty supercedes the *War Powers Resolution*. This calls into question the NATO alliance, the United Nations Security Council, and future obligations to alliances the President establishes and executes.²⁵ Section 8(d) states, “Nothing in the Resolution is intended to alter the constitutional authority of the President or Congress.” This insertion implies the Resolution’s provisions may stray

²³Fisher, *Presidential War Powers*, 132.

²⁴Nathan, “Salvaging the War Powers Resolution,” 250; *War Powers Resolution*, sec. 5.

²⁵Holt, 28.

across constitutional bounds. Section 8(d) also gives the President a peg on which to hang his defiance by suggesting the Resolution could stray into his constitutional domain especially with regard to the reporting requirements that cut into the President's prerogatives.²⁶

Retain, Revise, Repeal: There is much debate within Congress as to the future of the *War Powers Resolution*. Three views are held: retain the Resolution as is; retain the Resolution with revisions and amendments of sections that have been inexact and ill-defined; or repeal the legislation as unconstitutional, extra-constitutional, and/or ineffective. Supporters of the Resolution contend it is effective in moderating the President's response to crises and it acts as a reminder that he could trigger certain legislative action should he fail to report actions that link to the Congress's role in financially supporting his plan. The Resolution is seen as an effective system for maintaining a congressional role in the use of armed forces in conflict; it is sound and is not in need of amendment. From July through September 1988, the Senate Committee on Foreign Relations held hearings to assess constitutional war powers. Representative Dante Fascell testified on behalf of the *War Powers Resolution* citing it as a vehicle by which Congress can act when a majority of members wish to do so.²⁷ He and others praise the Resolution as a successful restraint on the use of armed force simply because the President's *awareness* of the Resolution affects his actions, which if called to question might invoke the provisions of the Resolution.

²⁶Ely, 116.

²⁷U.S. Congress, Senate, Committee on Foreign Relations, "The War Powers After 200 Years: Congress and the President at Constitutional Impasse," 100th Cong., 2nd sess., July 13- September 29, 1988, 11.

For many in Congress the inadequacies of the Resolution need to be addressed. Presidents have conducted military operations in non-compliance to the consultation requirement in Section 3. Since being ratified in 1973, on only one occasion has the Reporting requirement of Section 4 been observed and that was in 1983: the *Multinational Force in Lebanon Resolution* was a joint resolution that served as a compromise between President Reagan and the Congress to invoke the *War Powers Resolution* (this will be discussed in detail in the first case study). As a result, numerous proposals for amending the Resolution have been introduced. The need to endorse amending over repeal is very important for Congress for as the legislative body it may never have an opportunity for this type of legislation again. Included among those ideas are: returning to the original language of the document, which enumerated exceptions for emergency use; redefining of requirements to include time limitation and withdrawal requirement; redressing the concurrent resolution action; timeliness of congressional procedure; funding limitations; a congressional consultation group; a judicial review; name change; and United Nations actions.²⁸ It is worth noting, although thoroughly discussed and repeatedly addressed, the following ideas for amending have yet to be acted on.

Original Language: In 1986 Senator Sam Nunn suggest reverting to the original proposals that clearly articulated circumstances when the President needed congressional authorization, an idea that was originally broached a decade earlier in 1977 by Senator Thomas Eagleton. Eagleton proposed the Resolution return to its original version passed by the Senate. The language at that time stipulated prior congressional authorization for

²⁸The source for portions of this discussion is: Grimmett, *War Powers Resolution*, 64-68.

the introduction of forces without a declaration of war except to respond to or forestall an armed attack against the United States or its forces or to protect U. S. citizens while evacuating them. This amendment eliminated the sixty to ninety days in which the President can act without authorization. The argument against this proposal is the possible abuse of the blanket authorization it provides; those in favor approve the speed and flexibility to act it allows the President. In particular, this 1977 proposal has been presented a number of times since its original introduction.

Redefining Requirements: The time limitations have been at the center of controversy and proposals have been made to shorten or eliminate the time period the President is allowed to maintain forces in hostile situations. Shortening would now amount to sixty to thirty days without congressional authorization.²⁹ Those for the change contend the sixty to ninety days the President is allowed to do as he chooses provides too much opportunity for irreversible action. Opponents to this proposal argue it might induce military opponents to adopt strategies that will adversely affect debate in Congress giving them advantages in the field. Proposals to eliminate the time period completely have been presented as well.

Another requirement necessitating revision is the automatic withdrawal of troops in sixty days after the President submits an official report, as stipulated in Section 4. Some members of Congress favor replacing the automatic withdrawal with a joint resolution to either authorize action or disengagement. Automatic withdrawal has been poorly received by the Commander-in-Chief because the withdrawal is triggered by congressional inaction and an enemy on the field can wait out the sixty days. To revise

²⁹The original Senate version, S.R. 2956, provided for no more than thirty days without specific congressional authorization. It passed by a roll call vote of 68-16 on 13 April 1972, but died 20 April 1972.

this by proposing a joint resolution, instead of a concurrent, speaks to the question of constitutionality. That becomes a risk for Congress because the joint resolution can be vetoed and would require a two-thirds majority vote in both Houses for ratification.

Along those same lines are proposals to redress the option of the concurrent resolution.

Redressing the Concurrent Resolution Action: There are many proposed amendments to simply eliminate Section 5(c), which stipulates the use of a concurrent resolution to automatically withdraw troops and Section 7, outlining the procedure for a concurrent resolution. Specifically addressing this matter implies certain members of Congress do consider the use of the concurrent resolution unconstitutional. However, it is recognized that the use of a joint resolution can be time consuming. Proposals for expedited procedures for the joint resolution have also been addressed.

Timeliness of Congressional Procedure: Several proposals call for new, detailed procedures for introducing the joint resolution under the *War Powers Resolution*.

Expeditious ratification to sustain action or override the President's veto must be viewed a priority for Congress. This can be done by giving legislative priority or privileged status for consideration in each house upon the occurrence of some contingent event.³⁰

Provisions such as this already exist in other legislative areas such as the Congressional Budget and Impoundment Control Act, the Gramm-Rudman-Hollings Act, the National Emergencies Act. This fast-track approach would represent a departure from the standard, deliberative manner of Congress. The objective of expedited procedure is to provide for a timely floor vote on specified matters without undue legislative delay or diversion. There are five elements necessary for expedited procedures: 1) set time limits

³⁰Mark L. Krotoski, "Essential Elements of Reform of the War Powers Resolution," *Santa Clara Law Review* 28 (summer 1989) : 608.

for the committee of jurisdiction to report; 2) provisions for automatic discharge with no or limited debate; 3) if the committee fails to report make the resolution privileged for floor consideration immediately or after a brief lay-over period; 4) prohibit amendments and impose stringent time limits on debate during floor consideration; 5) provide for prompt floor consideration and little or no debate on identical companion resolutions from the other chamber.³¹ Should Congress choose to expedite its legislative process it must be mindful of the trade-off: losing existing control over timing and the substance of legislation. Congressional leadership, majority party, and committees of jurisdiction may each lose influence.

Funding Limitations: Some proposals call for prohibiting the expenditure of funds for any use of armed forces in violation of the Resolution except for the removal of troops. This places Congress in a quandary because as a body of representatives it would be reluctant to withhold financial support once troops were abroad. It bears noting that in 1998 the Congress passed a Supplemental Appropriations bill (H.R. 3579) by a vote of 330-174 banning funds appropriated for the conduct of offensive operations against Iraq proving the case for Congress's ability to affect the use of U.S. Armed Forces without invoking the *War Powers Resolution*. The vote went as follows:

<u>House Supplemental Appropriations Bill</u>	<u>House Vote 242-163</u>	<u>Senate Vote 88-11</u>
<u>For</u>	50 Democrat 192 Republican	40 Democrat 48 Republican
<u>Against</u>	141 Democrat 21 Republican 1 Independent	5 Democrat 6 Republican

³¹*Ibid.*, 730.

A Congressional Consultation Group: In 1989 Senators Robert Byrd, Sam Nunn, John Warner, and John Mitchell introduced resolutions for the establishment of a consultation group of six members: the majority and minority leaders of both Chambers plus the Speaker of the House and President *pro tempore* of the Senate. This core group would constitute the permanent consultative group of eighteen members of the leadership who would meet with the President when military action is being considered.³² This group would determine if the President should have reported an introduction of forces and then determine if a joint resolution to authorize withdrawal is necessary.

Along the lines of a consultative group, the House of Representatives introduced H.R. 3405 to establish a standing committee in lieu of amending the *War Powers Resolution*. On 28 October 1993 the House Foreign Affairs Committee Chairman Lee Hamilton said the Standing Consultative Group would mirror the National Security Council.³³ Its purpose would be to facilitate improved interaction between branches. The Speaker of the House and the Majority Leader of the Senate would appoint members of this group.³⁴ Establishing a Consultation Committee sounds easy, but might prove difficult. Designating single members as the initial point of contact when a crisis develops means determining who speaks for Congress. A short list of Committee members may be found offensive, and the risk increases that those members consulted may not be reflecting the majority opinion. It is hardly possible that a group from

³²Added to the original six would be leadership, ranking, and minority members of the Committees on Foreign Relations, Armed Services, and Intelligence.

³³The documents are: S.J. Res 323; S.2 and H.R.3405 consecutively. The 1989 amendment also sought to eliminate the sixty-day withdrawal provisions of the Resolution.

³⁴Grimmet, *War Powers Resolution*, 67.

Congress can participate in executive decision-making. In fact, some in Congress do not want to be drawn into discussions at an early date because they believe it limits their future freedom of action.

Another proposal to improve consultation seeks to broaden the instances in which the President is required to consult. Despite initiatives to redefine the process of consultation, both the legislative and executive branches are unable to find mutually acceptable changes for the Resolution. More recently, in 1994, President Clinton signed *Presidential Decision Directive 25* to support legislation to amend the Resolution along the lines of the 1989 proposal of Senators Byrd, Nunn, Warner, and Mitchell. The inability to reach agreement with the time-limit provision blocked this amendment.

A Judicial Review: From Presidents Ronald Reagan to Bill Clinton members of Congress have brought war power cases to court. They have been routinely denied relief under doctrines that included non-justiciability, mootness, ripeness, and standing. The judicial message has been consistent: If members of Congress want to challenge pre-war power, they must first use the institutional powers available to them as a whole, acting through a majority of its members rather than having a few legislators to bring their dispute to the judiciary. Only after Congress acts against a President to create a true constitutional impasse would there be a basis for legislative standing.³⁵

Proposals have been made to provide opportunity for any member of Congress to bring an action in the United States District Court for the District of Columbia for judgment on the grounds the President has not complied with any provision of the Resolution. This allows members to assert the interest of the House and Senate. The

³⁵Louis Fisher, "War Power: No Checks, No Balance," in *Congress and the Politics of Foreign Policy*, ed. Colin C. Campbell (Upper Saddle River: Prentice Hall, 2003), 266.

caveat: it may not compel the courts to act. Recognizing that, revised proposals have called for the court *not* to decline making a determination, *not* to cite the issue of compliance as a political question. In the case of *Dellums v Bush (1990)*, members of the 101st Congress sued President Bush for going to war without a declaration of war by Congress. The Federal District Court of Washington, DC, presided over by Judge Harold Greene, ruled the issue was between political branches and not “ripe” for adjudication. Members of the 106th Congress, with a Republican House and Senate majority, sued President Clinton in Federal Court for his refusal to seek congressional authority for military operations in Kosovo. An effective *War Powers Resolution* needs to state the criteria for establishing the fact before the Courts will act. For now, the Courts remain hesitant to prescribe judicial remedies.

Name Change: On 4 February 1988 Senators Joseph Biden and John Ritch and Representative Lungren suggested a change of name, the *Hostilities Act* or *Use of Force Act* and a repeal of the *War Powers Resolution*. They offered explanation as to why Congress is reluctant to invoke the Resolution: it could escalate international tension by an implication of war. Those who opposed these changes argued it was self-deceptive and impractical to fail to recognize hostilities of the magnitude of war. The Resolution also fails to attend to the issue of covert activity and paramilitary forces that deal with terrorism.

The *Use of Force Act* would delegate to the President a number of authorities, including the right “to protect and extricate citizens and nationals of the United States located abroad in situations involving direct and imminent threat to their lives, provided they are being evacuated as rapidly as possible.” It would also authorize the President to

use force abroad to “participate in multilateral actions undertaken under urgent circumstances and pursuant to the approval of the United Nations Security Council.” This would alleviate the need for congressional endorsement once authorization was secured from the Security Council. A third facet similar to Security Council approval is the authorization to “participate in multilateral actions undertaken in cooperation with democratic allies under urgent circumstances wherein the use of force could have decisive effect in protecting existing democratic institutions against a severe and immediate threat.”³⁶

Another point of interest regarding the title/name is the fact that it is a resolution, which implies that it has less stature than a statute or an act. Changing the name would disassociate it from what is perceived as less authority. Also, because it has not been systematically invoked, a name change would remove the legislation’s unpopular and unsuccessful past.

United Nations Actions: For some in Congress, the *War Powers Resolution* is seen as a rejection of any international undertakings, including United Nations actions, for they may be construed as a warrant for executive war. Section 8(2) specifically states: “The authority to introduce U.S. Armed Forces into hostilities . . . shall not be inferred from any treaty heretofore ratified.” Since the 1991 Persian Gulf War, the question has been raised whether the *War Powers Resolution* should include facilitating or restraining the President from supplying forces for United Nations actions. Does Congress need to approve supplying forces for United Nations peacekeeping operations?

³⁶Joseph R. Biden, Jr. and John B. Ritch III, “The War Power at a Constitutional Impasse: A ‘Joint Decision’ Solution,” *Georgetown Law Journal* 77 (1988) : 367, 398.

To date, no formal proposals have been presented, but consideration has been given to amending the *United Nations Participation Act*.

Those in favor of repealing the Resolution base their concern on the Resolution's effectiveness and appropriateness as a system for maintaining a congressional role in the use of armed forces. They maintain the Resolution attempts excessive control over the deployment of troops and an encroachment on the President's responsibility.³⁷ They argue the President needs more flexibility in the conduct of foreign policy and that the time limitations are impractical and unconstitutional. Those in favor of repeal believe Congress has always had the power to inquire, support, limit, and even prohibit the use of U.S. Armed Forces by means of their appropriations and lawmaking authority. The Resolution has muddied the waters of the constitutional war powers by complicating actions on the part of the President, misleading military opponents, and diverting attention from key policy issues.³⁸

On 7 June 1995, the House of Representatives failed by a narrow margin of 201-217 to repeal the Resolution despite the fact opposition to the Resolution comes from both Houses. The vote went as follows:

House of Representative vote to repeal the War Powers Resolution, 201-217

<u>For</u>	23 Democrat 178 Republican
<u>Against</u>	172 Democrat 44 Republican 1 Independent

³⁷Grimmett, *War Powers Resolution*, 64.

³⁸*Ibid.*

Some believe the Resolution usurps presidential authority and some feel it abdicates congressional prerogative. Instead of a full repeal of the Resolution, this proposal elected to retain two elements: consultation and reporting. With this compromise repeal, many in Congress felt the President was now empowered to do as he please so long as he consulted a few leaders and generated a few reports. Congressman David Skaggs criticized this compromise as an “unfortunate implication” that suggests the President is “restrained only by a consultative and reporting requirement.”³⁹

Debate over the *War Powers Resolution* exists outside of Congress also with constitutional/congressional scholars like Louis Fisher, Barry Blechman, and Marc Smyrl. Few supporters hold that the Resolution is sound as it is written. Many more critics agree with the need for revision, and in recent discussions questioning the effectiveness of the *War Powers Resolution*, some constitutional scholars and political scientists have recommended repealing the thirty-year old legislation.

Retain: Those in favor of retaining the *War Powers Resolution* argue the importance and timelessness of the original intent of the legislation. With the Resolution, Congress made clear that U.S. Armed Forces would not enter hostilities without domestic support in the form of congressional consent to be measured by a simple majority vote. Congress also made clear that interests dictate commitments, not the reverse, and the Resolution would interdict to make sure that the President would fit interests into national security. Congress would remain close to the President to ensure his capability to lead—

³⁹Congress, House, *Repeal the War Powers Resolution*, 104th Cong., 1st sess., H5667, *Congressional Record* 141, daily ed. (7 June 1995).

the Resolution calls for consultation and reporting, an exchange of ideas and plans that would keep congressional tabs on executive leadership.⁴⁰

Marc Smyrl suggests a simple argument in favor of the Resolution's effectiveness and appropriateness: the *War Powers Resolution* ensures a congressional role in issues of war and peace.⁴¹ This presumes Congress is in favor of this active role. Smyrl acknowledges the interaction between the Congress and executive branch has been more confrontational than cooperative. In his examination of this contentious relationship, he has concluded that Congress and the President will continue in this confrontational relationship, but as they face each crisis, their course of action will be determined in large part by the circumstances of the particular situation.

Revise: Barry Blechman charged that the 102nd Congress did not want to be held accountable for invoking the Resolution during the 1987 Gulf Crisis; "not acting seemed to be the way to let the administration take the full responsibility" of the crisis.⁴² Blechman is critical of the constitutionality of the document as is Barbara Hinckley, who accuses Congress of allowing symbolism to take precedence over substance. She asserts the Resolution, being enacted under atypical conditions during the Nixon presidency in 1973, has become an embarrassment. She calls it a "legislative albatross" because it doesn't address the reality of crisis situations, contending the debate within Congress follows party lines. Agreeing with many in Congress, Hinckley also recognizes a major flaw in the Resolution is the sixty-day clock. Congress's refusal to insist on starting the

⁴⁰Nathan, "Salvaging the War Powers Resolution," 246.

⁴¹Smyrl, 141.

⁴²Blechman, 266.

clock can be construed as tacit consent to presidential action. Like Blechman, Hinckley criticizes congressional hesitation to start the clock—all the more reason the President should be his own time-keeper.⁴³

James Nathan suggests requiring a more extensive “War Powers Report” to extract a complete checklist of explanations such as: why is this action necessary; is it likely to be successful; is it proportionate as to means and ends; does it anticipate the length of the engagement; is it defined with objectives; and does it provide Congress with the criteria to judge the mission.⁴⁴ Presently, the Resolution does not provide these explicit guidelines, requiring the President to complete this type of checklist would certainly serve both Congress and the President to arrive at a consensus. Of course, the length of stay and rules of engagement may be cryptic, some information may be classified, but the objective of communicating the details of the operation can be met.

Repeal: With the occupation of Haiti in 1994, the Clinton Administration actually cited the *War Powers Resolution* favorably as expanding presidential war-making power. Critics such as Louis Fisher endorse repealing the legislation and relying on traditional political pressures built into the language of the Constitution: the regular system of checks and balances and the impeachment process.⁴⁵ If Congress believes repeal signals a reduced role for Congress, implementation of the Resolution has shown that role has reached a minimal level anyway. The crisis in Haiti and similar “walk-over wars” allow President’s to act within their Resolution allotted time frame with less than a nod to

⁴³Hinckley, 80.

⁴⁴ Nathan, “Salvaging the War Powers Resolution,” 248.

⁴⁵Fisher, “The War Powers Resolution: Time to Say Goodbye,” 17.

Congress.⁴⁶ If the ultimate measure of success for the *War Powers Resolution* is collaboration and presidential compliance, then its history reflects much disappointment.

Presidents Reagan, Bush and Clinton demonstrated an increased use of presidential war power with Congress being progressively marginalized: from the introduction of troops in Lebanon to the last minute appeal for authorization to war with Iraq to combat operations in Somalia. The sixty to ninety-day clock allows the President the authority to conduct military operations on his own initiative, and the clock does not start ticking unless the President reports under a very specific section: Section 4(a)(1). Presidents have elected *not* to report under the specific requirement. Fisher calls this “violence to the law of delegation,” this granting of unlimited, discretionary authority: the President is vested with the authority to choose an enemy and to decide when to make war. The law of delegation stands for the proposition that Congress is the principal and the President is the agent: the Resolution makes the President the principal. And, if the President does act, he need not worry about interference from Congress for the Resolution allows for *no* collective judgment for the ninety-days it grants him.⁴⁷

Citing the failure to achieve its basic purpose of collective judgment as well as the contradictions and constitutional flaws, Fisher believes a repeal of the Resolution could accomplish three things: 1) it would eliminate the concession that Presidents may use armed force anywhere, for whatever reason up to ninety days, if not longer; 2) it would remove the source of the legislative debate regarding consultation, was it sufficient? were reports timely and complete?; 3) it would bring and end to “futile dashes” to federal

⁴⁶Ely, 62.

⁴⁷Fisher, “The War Powers Resolution: Time to Say Goodbye,” 16.

court, hoping for a judicial answer. Simply: repeal the Resolution and take legislative steps to prohibit the President such as withholding funds. Endorsing a repeal of the Resolution calls for relying on the constitutional system that requires Presidents to act in the absence of law and to later obtain legal sanction from Congress, rather than having Congress authorize in advance, as with the *War Powers Resolution*, unilateral presidential action.⁴⁸

The Resolution's failure to anticipate the possibility of disconnected crises that could blend into an extended conflict is a flaw that warrants attention in the post Cold War environment. The record of after-the-fact consultation and selective inattention to written reports has not brought about the desired result described in the Resolution. Opponents of the bill feel the overall structure of the Resolution has augmented and enhanced the President's share of war power, rather than check and limit it.⁴⁹ Many arguing for repeal of the *War Powers Resolution* feel the original intent was adequate for its historical period; now Congress needs to offer something more time sensitive. Congress is criticized for keeping the Resolution as a way to maintain power while avoiding risks. Timothy Boylan condemns the provisions of the Resolution as artificial and not fitting in the post Vietnam practice of short, easily winnable military actions, peacekeeping efforts, or nation building: "The *War Powers Resolution* has become something never intended, nor envisioned by its framers—a shield from and a substitute for substantive action."⁵⁰

⁴⁸*Ibid.*

⁴⁹Boylan and Phelps, 112.

⁵⁰*Ibid.*

The combination of presidential defiance, congressional irresolution, and judicial abstention necessitates the development of a new authorization act that would compel the President to comply with Congress's constitutional right of information, consultation and reporting. This same new authorization would compel the Congress to act on information that is provided to them. John Hart Ely created a revised version of the *War Powers Resolution* that is "calculated to achieve more effectively the goal of forcing the President to seek congressional authorization." He proposed a "Combat Authorization" that would be conditional, within the meaning of the Resolution, but specific to each crisis and timely. For example: Unless the Government of Iraq provides full disclosure of . . . (variable) by . . . (date), the President of the United States is hereby granted specific authorization by the Congress to use whatever means necessary to bring the government of Iraq into compliance.⁵¹

Since ratifying the *War Powers Resolution*, Congress challenged the conduct of the legislative body and its political behavior during the early years of the Cold War when congressional acquiescence in foreign policy was the product of inherent institutional disabilities and a strong prescriptive norm for deference to the President. The post-*War Powers Resolution* Congress has turned to policy preferences and political interests as motivating factors influencing congressional activity in foreign policy.⁵² Couple the extra-constitutional authority vested the Congress by the *War Powers Resolution* and the fact that the Resolution's record has had mixed reception and remains controversial, Congress must adapt the needs of the twenty first century. Although

⁵¹Ely, 62.

⁵²Steven S. Smith, "Congressional Party Leaders," in *The President, the Congress, and the Making of Foreign Policy*, ed. Paul E. Peterson (Norman: Oklahoma University Press, 1994), 324.

Congress has experienced a resurgence of constitutional authority, it must face the present circumstances of a complex global society with a premium on coherence, discipline, consistency, and staying power in American foreign policy.⁵³

In 1983 Ronald Reagan challenged the *War Powers Resolution* with the deployment of U.S. Armed Forces to a Multinational Peacekeeping Force in Lebanon. Both the President and Congress were unwilling to invoke the Resolution. How does Congress invoke the Resolution when the mission of the deployment is neither clear, nor achievable, and the threat of imminent hostilities cannot be ascertained? Instead of invoking the War Powers Resolution, Congress and the President engaged in a political compromise of the Resolution: Reagan deployed troops pursuant to his constitutional authority as Commander-in-Chief, Congress did not benefit from any reporting or consultation as stipulated in the *War Powers Resolution*, Congress and the President compromised, legislation passed with Congress assuming Reagan would concede the legitimacy of the procedures outlined in the Resolution.

Throughout his presidential tenure Ronald Reagan and the Congress maintained a unreceptive dialogue as to the appropriate role of Congress in determining and legitimizing the use of American military power. Since the ratification of the *War Powers Resolution* in 1973 until the crisis in Beirut in 1983, Congress never decided whether the Resolution applied to a particular deployment of troops and if so, whether Congress should approve deployment or require withdrawal. One exception came in 1983 with the Multinational Peacekeeping Force in Beirut. The case study that follows will attest to the viability of the *War Powers Resolution*. In the case of the U.S. Marines stationed in

⁵³Rodman, 285.

Beirut, congressional support or criticism for the operation correlated with the success or failure of the mission; and the Resolution had the opposite effect of fostering an atmosphere of cooperation by pitting President Reagan against the Congress on procedural grounds.

CHAPTER V

1983 MULTINATIONAL PEACEKEEPING FORCE IN BEIRUT

Many Americans are wondering why we must keep our forces in Lebanon. Well, the reason they must stay there until the situation is under control is quite clear: we have vital interests in Lebanon.

--President Ronald Reagan, 24 October 1983

When Ronald Reagan assumed the office of the President he was determined to reverse a decade of American decline. He held firmly to the view that the United States should reclaim its accustomed influence and autonomy over world events. He would speak of the future of America with a vision of the past, giving hope of things to come.¹ Both critics and supporters of Reagan recognized that his influence came from his ability to articulate what has been described as the American mythology and psyche. For many Americans, Reagan embodied the nation's hopes and aspirations. In his 1964 autobiography, entitled *Where's the Rest of Me*, Reagan portrayed a life lived with the belief that a part of him was missing; a part of him was unfulfilled.² That would change in 1981.

Reagan was optimistic about American potential and values and cynical about Soviet ideologies. Coupled with descriptions of the weaknesses of his predecessor Jimmy Carter, Reagan pledged a new look with a return to the early days of American superpower. His vision was to reverse the gradual erosion of American power

¹Lou Cannon, *Reagan*, 12.

²Lloyd Demause, *Reagan's America* (New York: Creative Roots, Inc., 1984), 10.

represented in the predictable adjustment to the dominance engaged by the United States after World War II. Such dominance could not be maintained as American foreign policy evolved to meet the needs and circumstances of the period: it provided for the recovery of former powers in Europe and Asia; it encouraged the emergence of newly independent and increasingly influential third world countries; yet, it could not prevent adversaries from achieving military parity.³ Reaching his goal of getting back to America's days of dominance meant getting off on the right foot for Reagan. He understood that how his Administration began would significantly determine how it would govern.

Within hours of his inaugural address, President Reagan and the nation saw the termination of the Iranian hostage crisis. Reagan immediately set out to obtain the easing of oil prices and the security of oil supplies, which called for regional stability in the Middle East. The Reagan Administration undertook specific actions in relation to Lebanon, Iran, and Libya with the purpose of enhancing regional stability. While on his first visit to the Middle East in April 1981, Secretary of State Alexander Haig witnessed the massive bombardment of the Christian town of Zahle, Lebanon, by Syrian forces. Syria feared that Israel, in conjunction with Lebanese forces directed by Bashir Gemayel, would be able to threaten Damascus from Lebanon as well as from across the Golan Heights if they established a presence in Zahle.⁴ Haig immediately directed Ambassador to Lebanon John Gunther Dean to confer with Lebanese President Sarkis and to inform him that the U.S. was intent on helping his country. The involvement in Lebanon proved

³Simon Serfaty, *After Reagan: False Starts, Missed Opportunities, and New Beginnings* (Washington, DC: Johns Hopkins Foreign Policy Institute, 1988), 2, 13, 15.

⁴Geoffrey Kemp, "Lessons of Lebanon: A Guideline for Future U.S. Policy," *Middle East Insight* (summer 1988) : 57.

costly for the United States, both militarily and politically. On 6 July 1982 Reagan announced he was sending a small contingent of American Marines to a multinational force for a temporary peacekeeping assignment in Beirut. The House Foreign Affairs Committee informed the President that the deployment of these troops into imminent hostilities needed to be reported under Section 4(1)(a) of the *War Powers Resolution*. Reagan reported, but failed to cite the specific portion of the Resolution that would directly involve the Congress. What ensued was the worst military catastrophe since Vietnam and the implicit nullification of the 1973 *War Powers Resolution*.

Research on this and the following case study starts with a discussion of the executive-legislative relationship. At the heart of disagreement between Congress and Ronald Reagan was Reagan's use of the military machine to address foreign policy. Support or criticism from the 98th Congress tended to correlate with the success or the failure of the Administration's policy. The crisis in Beirut is a good example of congressional reaction to, rather than participation in, decisions of military deployment. Equally important is a discussion of the dissent within the Reagan Administration as well as Reagan's style of management, both of which affected events in Beirut.

Second, each crisis will be examined to provide an overview of the event and the President's course of action. The problems with the peacekeeping mission in Beirut are obvious: 1) the mission was loosely defined with broad objectives that resulted in a tenuous plan as a result of dissent between the Pentagon and the State Department; 2) the goals were soon proven to be unachievable, yet no exit plan was developed; 3) because the threat conditions were indeterminate, the Marines were ill-equipped and unprepared for what they eventually experienced. Third, there will be an analysis of the

deliberations and congressional action in the midst of the crisis to show whether or not and why the *War Powers Resolution* was invoked. The *War Powers Resolution* proved to limit Reagan's executive freedom but only by serving as a tool for compromise because the legislation does not have the enforcement provisions necessary to truly check the President. Congress reacted and then participated one year after the initial deployment, and it did so over procedural grounds as outlined in the Resolution's time limitations.

PART 1: REAGAN AND THE CONGRESS

The President: The good-natured persona that Ronald Reagan projected contributed to his personal popularity. As Bruce Buchanan wrote, "It became an article of faith among journalists on the presidency beat that the public would not stand for harsh treatment of this President . . . Consequently, Reagan's press had been noticeably less critical than President Carter's."⁵ Reagan enjoyed this advantage.

His effectiveness in projecting ideas to audiences, both in person and via the electronic media, earned him the name *Great Communicator*. Constitutional scholar Richard Neustadt described Reagan's ability to express himself: his words were often radical, yet his manner was reassuring. He compensated for less intellectual curiosity, less interest in detail with more initial and sustained commitment, more convictions independent of events or evidence than any President since Woodrow Wilson

⁵Bruce Buchanan, *The Citizen's Presidency: Standards of Choice and Judgment* (Washington, DC: Congressional Quarterly Press, 1987), 12.

championed the League of Nations.⁶ Reagan was a combination of incuriosity and delegation on one hand, and commitments and conviction on the other.

The Reagan Administration immediately put into place its agenda. Reagan's first charge as President was to recommend the solution for the troubled economy: tax cuts and a new budget. On the heels of his inaugural speech, his tax bill passed the Congress by a vote of 89 to 11 in the Senate and 238 to 195 in the House of Representatives. His first public appearance after the assassination attempt of 30 March 1981 was before the Congress, this time to appeal for passage of his budget package—which also easily passed the Congress. Speaker of the House Thomas P. O'Neill, Jr. called the Reagan promotional effort “the greatest selling job I’ve ever seen.”⁷

The distinctiveness of the Reagan presidency stands on his propensity to act on his stated principles, his success in doing so, and the consequences of his success in transforming those principles into policy. Reagan's ideology was conservative: cut taxes; cut government bureaucracy and regulation; build a stronger national defense; balance the federal budget; combat the power of the Soviet Union; and stand forth as champion of American individualism and enterprise. Not only was Reagan more devoted to and more uncompromising in his political principles than his immediate predecessors, but he also departed from convention in the kind of positions he took. His proclivity was to remain true to his principles.⁸ His early success in achieving policy goals was distinctive.

⁶Neustadt, 269.

⁷O'Neill, 341.

⁸Fred I. Greenstein, ed., “The Need for an Early Appraisal,” in *The Reagan Presidency: An Early Assessment* (Baltimore: Johns Hopkins University Press, 1983).

Under the Reagan watch the size of the federal budget soared, the civilian workforce increased, and government spending rose to over one trillion (up \$321 billion). Propagandists called it the *Reagan Revolution*, adversaries called it an attempt to repeal the New Deal, *Reaganomics* is what was settled upon—his attempt to balance the budget, increase military spending, and slash income taxes.⁹ The meaning of the slogan was never very clear: was it a mixture of the old and new? or a perceived decline of the United States and a proposal to reverse that condition?

For some, the Revolution was radical, imprudent, and arrogant. David Stockman, Reagan's Director in the Office of Management and Budget, described its two assumptions as defying the settled consensus of professional politicians and economists on its two central assumptions. First, it presumed that a handful of ideologues were right and all the politicians were wrong about what the American people wanted from government. Second, it assumed that the "damaged, disabled, inflation-swollen U. S. economy could be instantly healed when history and most of the professional economists said it couldn't be."¹⁰

Reagan's legacy may be viewed as one of paradox: ideology confronts pragmatism. He described his legacy as a national rediscovery—a great rediscovery of American values and common sense. Yet, he left behind no permanent Republican majority, not even a stronger Republican party nationally, and no apparatus to extend the

⁹Cannon, *Reagan*, 321.

¹⁰David Stockman, *The Triumph of Politics: How the Reagan Revolution Failed* (New York: Harper and Row, 1986), 9, 395.

Reagan Revolution.¹¹ This was partly the result of a failed attempt to balance the budget while greatly increasing military spending that created a soaring federal budget with spending up \$321 billion dollars.¹² Throughout Reagan's eight-year tenure from 1981-1989, the Democrats held the majority in the House of Representatives. The Republicans held the majority in the Senate until 1987, when the Democrats became the majority party. (Not until 1995 did the Republicans reclaim the Senate and claim the House of Representatives as well.)

Reagan was the conservative who made it his mission to attack the problem of government: he did so under what would be later be called *Reaganism*, a determined, systematic effort to reduce the domestic functions of the federal government by constraining off its revenues while at the same time diverting a greater portion into the military.¹³ Reagan deliberately and effectively made government the issue of his time. The American dialogue became the argument and debate over the role and function of central government. And the timing was perfect: Reagan stepped into the Oval office when Carter was at his lowest ebb in the eyes of the American public.

The climate of expectations when Reagan began his presidency stressed the need for reassurance. The fundamental premise of this President's policy envisioning a great America met the country's need for reassurance. The Administration, however, was not always certain of how to go about executing the President's policy. Reagan staff members who produced memoirs offer a consistent portrayal of presidential detachment

¹¹Larry Berman, ed., "Looking Back on the Reagan Presidency," in *Looking Back on the Reagan Years* (Baltimore: Johns Hopkins Press, 1990), 2-17.

¹²*Ibid.*

¹³Richard Reeves, *The Reagan Detour* (New York: Simon and Schuster, 1985), 18, 94.

and of chaotic administration.¹⁴ David Stockman recounts that whenever there was an argument between or among departments and cabinet heads, the President would smile and say, “Okay, you fellas work it out.”¹⁵ Don Regan, Secretary of Treasury and Chief of Staff, learned quickly that Reagan observed his personal schedule religiously: “ He was never late for an appointment, seldom so carried away by a discussion that it runs overtime . . . his performance was flawless. Reagan was a trained professional to whom the mechanics of the craft [acting] had become second nature through a lifetime of practice.”¹⁶

The Reagan Administration was the beneficiary of the most conscientious transition in White House history. Reagan had an advanced planning team and work on cabinet appointments had begun before his nomination. He also built relationships with Congress during the election year and made a point of becoming friendly with Howard Baker, first Republican Senate majority leader since 1954.¹⁷ Reagan made it clear that he wanted a complete reform of the executive branch and a quick cementing of relations with the new Republican Senate leadership. When the Reagan Administration took office in 1981, it had before it the potential of making a unique contribution to American politics and policy.

The President’s approach to management was to appoint loyal and determined

¹⁴Barber, 231.

¹⁵Stockman, 109.

¹⁶Donald T. Regan, *For the Record: From Wall Street to Washington* (New York: Harcourt Brace Jovanovich, 1988), 225.

¹⁷Greenstein, “The Need for an Early Appraisal,” 78.

officials who were ideologically of similar mind. He had insisted on a choice of three candidates for every major office at his disposal, and from the outset the appointment process laid great stress on ideological commitment as well as loyalty to the Reagan agenda of rebuilding military strength as a basis of restoring the U.S. to a position of world leadership. This was an endeavor to combine the strategic approach of strong commitment to a focused agenda with a Cabinet-centered, collegial style of government featuring committed political appointees throughout the federal bureaucracy. Reagan would adhere to the operational style described by John Lees as that of a *presider* rather than a *manager*.¹⁸

By naming George H. W. Bush as his Vice President, Reagan demonstrated his ecumenical commitment to include Republican moderates in his Administration. With remarkable speed he put together the strategy for carrying out his policies. Between Election Day and the inauguration, Reagan prepared a package of domestic and economic policy proposals. He was effective in legislative liaison, which was necessary for his strategic approach to domestic affairs, and he would select a small cadre of advisers to implement that strategy.

His Cabinet included Edwin Meese III, Counselor to the President—honest Ed, he was known as the policy maker; he had served Governor Reagan in California. James Baker III was Chief of Staff. The third member of the troika was Michael K. Deaver, who shared a mutual identity with Reagan and was assigned Deputy Chief of Staff.¹⁹

¹⁸Michael Turner, "The Reagan White House, the Cabinet, and the Bureaucracy," in *Reagan's First Four Years: A New Beginning*, eds. John D. Lees and Michael Turner (New York: Manchester University Press, 1988), 349.

¹⁹Morris, 419.

David Stockman headed the Office of Management and Budget identifying targets for cutting.

The Office of the National Security Adviser saw a number of changes throughout Reagan's tenure: Richard Allen, William Clark, Robert C. McFarlane, John Poindexter, Frank Carlucci, and Colin Powell. William J. Casey headed the Central Intelligence Agency until his medical resignation in 1987 when he was replaced with Robert Gates. Caspar W. Weinberger directed the Department of Defense until 1987 when Frank C. Carlucci replaced him. The State Department also saw transition from the appointment of Alexander M. Haig, who then resigned June 1982, to George P. Shultz. Keeping with his leadership philosophy, Reagan delegated many responsibilities to his aides and allowed them considerable leeway on achieving goals. This sometimes proved problematic especially between the Pentagon and State Department.

Secretary of Defense Weinberger was seen as a civilian among warriors in the Pentagon, while Secretary of State Haig was a warrior among diplomats.²⁰ During the Beirut crisis, Weinberger disputed with Haig's successor, George Shultz, who viewed the deployment of Marines as part of the diplomatic solution. Weinberger held to the belief American troops should not be committed to any situation unless the objectives were so important to American interests that the nation had to fight. Shultz, supported by the National Security Council Staff, held to an intermixture of diplomacy and the military committing forces in various places where it was desired to achieve particular objectives of stability or changes in government or support of governments. The presence of American troops would add a desirable bit of pressure and leverage to diplomatic efforts:

²⁰Cannon, *Reagan*, 401.

a strong defense to back up a strong diplomacy.²¹ The disputed use of a multinational force in Beirut lasted the duration of the crisis. The Pentagon and Joint Chiefs of Staff found fault with the objective; they felt it was stated “in the fuzziest possible terms; and then later, when that objective was clarified, the newly defined objective was demonstrably unobtainable.”²² The Administration was never able to agree on a common objective and/or the means of attaining it in Beirut, and Reagan’s minimalist leadership appeared naïve and ignorant to the internal conflict between Secretaries.

In this carefully selected Administration, the cabinet did not have extensive foreign policy experience. All were novices except Assistant to the President for National Security Affairs, Richard V. Allen and Robert McFarlane, who replaced William Clark as National Security Adviser. Reagan’s foreign policy struck a posture sharply different from Carter’s. The shift can be characterized in many ways from Carter’s human rights to Reagan’s *realpolitik*, from North-South issues to East-West, from diplomatic response to military response. With limited experience, the Administration created a dichotomy in its foreign policy.

In fact, there appeared to be two Reagan foreign policies under one rhetorical roof: a Cold War rhetoric and a cautiously managed East-West relationship. A hawkish message would send waves of alarm around the world as Reagan executed his foreign policy mandate: a strident anti-Sovietism, ideological anticommunism, priority to military and paramilitary policy instruments like arms build-up, military aid, arms sales, and covert action. The Administration tended to polarize approaches to regional

²¹Weinberger, 159; Shultz, 18.

²²Weinberger, 152.

situations, in particular Latin America, by supporting anti-revolutionaries.²³ The overriding conviction was that American preeminence should and could be restored overcoming the self-inflicted decline of the 1970s.

The Congress: Ronald Reagan won the 1980 election with a 50.75 % popular vote, but only half of those eligible to vote did so. President Carter gained 41% and John Anderson 6.6% of that vote. The 1980 election saw the lowest voter participation since 1948.²⁴ Hence, Reagan's victory did not represent a revolution in American values, and he was not elected because the public was fed up with a huge budget deficit and clamoring for budget cuts. Given the percentages, it was evident the American public did not want him in as much as they wanted Carter out, in fact, no President has ever had lower Gallup poll ratings than Carter received in 1980.²⁵ Reagan's big win was with the state electoral vote, 44 to Carter's 6.

President Reagan experienced three Congresses and six years worth of Senate majority control: the Senate Republican majority in 1981 was 53 to 46; in 1983 it was 54 to 46; and in 1985 it was 53 to 47. (The Republican reverted back to a minority status in 1987 with 46 to 54; and in 1989 with 45 to 55.) The Senate majority and minority leaders in the 97th (1981) and 98th Congress (1983) were Republican Howard Baker and Democrat Robert Byrd. The 97th Congress House of Representatives held a Democratic

²³Greenstein, "The Evolution of Reagan Foreign Policy," 177.

²⁴O'Neill, 336.

²⁵Greenstein, "The Need for an Early Appraisal," 123.

majority of 243 (of 435) seats. It rose in the 1983 election (98th Congress) to 269 seats.²⁶ The House majority and minority leaders in the 97th and 98th Congress were Speaker of the House Thomas P. O'Neill, Democrat James C. Wright, and Republican Robert H. Michel.

Despite a majority in the House, many southern democrats, white, middle-aged children of the new deal, became *Reagan Democrats*; they left the party in 1980 to vote for Reagan. This disaffection resulted from economic and racial resentments; they were weary of the Democratic Party taxation policies. As a result, Reagan's first year proved successful in working with the Congress. The Democratic opposition, having lost the Senate and having been severely weakened in the House, was dispirited and confused by the political tide that was perceived as overtaking the House. The President proclaimed a new agenda and was endowed with increased popularity following the attempt on his life in late March 1981. He also possessed excellent oratorical skills and a highly professional legislative liaison and political staff to take advantage of these assets within the context of the electoral upheaval of 1980. As a result Democratic opposition moorings were beset and Reagan enjoyed phenomenal success during the 1981 congressional session—a success rate of 82.4 percent, the highest since Lyndon B. Johnson in 1965.²⁷ This record was surpassed in 1993 by democratic President William

²⁶Russell D. Renka and Bradford S. Jones, "The Two Presidencies in the Reagan and Bush Administrations," in *The Two Presidencies: A Quarter Century Assessment*, ed. Steven Shull (Chicago: Nelson-Hall, 1991), 336.

²⁷Bert A. Rockman, "An Imprint, But Not A Revolution," in *The Reagan Revolution?* eds. B.B. Kymlicka and Jean V. Matthews (Chicago: Dorsey Press, 1988), 167-183.

J. Clinton with a success rate of 86.4 percent.²⁸ The nation listened and reacted to the Administration's discourse about the country's role as world leader.

During Reagan's remarkable first year, he pushed through the greatest increase in defense spending in U.S. history along with the largest cuts in domestic programs. He continually called members of the House and was very effective on the phone.²⁹ His Chief of Staff, James Baker III, also made it a practice to stay in close touch with congressional leadership.

This momentum was soon arrested as part of a budgetary stalemate produced by the successes of 1981. In the spring of 1982, a new political coalition emerged to take over party leadership with a surprising partnership between Senate Majority Leader Howard Baker and House Speaker Thomas O'Neill. The two leaders caused the President to backtrack and were successful in pushing through two job bills. Representatives Les Aspin, Al Gore, and Senator Sam Nunn formed a democratic coalition against the Administration resulting in a foreign policy vacuum due to the President's inability to move Congress. Democratic congressional involvement transitioned from inertia, due to being overwhelmed with Reagan's methodical "hit the ground running" philosophy of the first 100 days, to mounting opposition, particularly in the face of potential confrontation in Beirut, to indirectly influencing the Administration's decisions. At no time did the Democratic coalition unambiguously impose its will on Reagan, but it did limit his options primarily through debate and

²⁸Norman Ornstein, Thomas E. Mann and Michael J. Malbin, *Vital Statistics on Congress 1993-1994* (Washington, DC: Congressional Quarterly Press, 1994), Table 8-1.

²⁹O'Neill, 333, 341.

delays. The coalition believed they would gain support from the Republican Senate, which would have chosen to do the politically expedient, self-preserving thing by dissociating themselves with the Lebanon policy, but they did not act in time.³⁰

Speaker of the House O'Neill tried to warn Reagan about alienating the Congress: "Somewhere along the lines Reagan forgot where he came from; he was formerly a New Deal Democrat, now he was out of touch with regular Americans. My guess is his political shift had to do with taxes—movie stars make money. When Carter came to my office, he came to learn about the Congress. When Reagan came it was out of obligation. I explained how Congress's power eroded during Nixon and how more recently we had regained those powers. Reagan was not paying attention."³¹

Reagan and the Congress: Congress is usually a reactive body in a President's first year. When an executive wins power by an impressive electoral gain, he has a basic choice about how to exploit that initiative. First, he can press quickly for maximum policy change to fulfill the mandate it claims from the electorate. Or, he can proceed with caution, granting some continuity with its predecessor, seeking modest policy change with bi-partisan support. Although not winning his presidency by an impressive popular vote, Reagan conducted himself as if he did and opted for acting quickly. His vision for an influential and strong America would see fruition with substantial re-arming: it would show a long-overdue toughness against the Soviet Union, solidify relations with allies, build strategic consensus in the Middle East, and draw a firm line in

³⁰Smyrl, 97-117.

³¹O'Neill, 330.

Latin America. The 1980 Republican capture of the Senate gave Reagan a Congress in harmony with his views.³²

To be perceived as a successful national leader a President must be an effective legislative leader. This requires the President to persuade Congress to enact his agenda of legislative proposals for tackling what he sees as the main problems facing the nation. Reagan began courting Congress in 1977 and made visits to the Hill during the 1980 campaign. During his first term Reagan won the opening battle for congressional approval for his economic plan, but not the war over his proposed budget. By 1983 the pre-congressional relationship on fiscal issues settled into a pattern of stalemate.³³

Agenda setting and control was a hallmark of Reagan's leadership during his first year in office. He limited the number of his legislative priorities, most encapsulated as *Reaganomics*, to include his tax and spending cuts. He introduced the plan soon after the 1980 elections, which was both the political honeymoon period and a time of widespread anticipation of a new era of GOP national political dominance. He dealt skillfully with Congress to mobilize support and galvanized public backing through television appeals.

As Reagan's control over the agenda loosened, Congress found itself confined to a playing field largely demarcated by the President. It was compelled to respond to, although not always accept, the positions the President had staked out on taxes, spending,

³²Ornstein, ed., *President and Congress: Assessing Reagan's First Year*, 66.

³³Joseph F. Hogan, "Legislative Liaison in the Reagan Administration," in *Reagan's First Four Years: A New Beginning*, eds. John D. Lees and Michael Turner (New York: Manchester University Press, 1988), 361-369.

defense, and social issues.³⁴ Reagan made sure Congress could not stand still. The 1980 Reagan election signaled a close to congressional reforms of the 1970s and a vigorous reassertion of presidential authority. With the support of a Republican majority in the Senate, the President launched a frontal attack on many domestic agencies and programs of government. His 1981 bill altered the course of more than 250 programs worth thirty-six billion dollars.³⁵ According to Reagan's Budget Manager Stockman, Reagan sent the nation's fiscal policy in a new direction: hurting millions of people in the short run with principles that clashed with political reality, such as eliminating subsidies to farmers and businesses, requiring an end to welfare for the able-bodied poor, and eliminating the right to draw more from the Social Security fund than retirees had actually contributed. Stockman further noted: "The strategy [in the spring of 1981] was to bring all the power of the Great Communicator to bear on the Congress and shove our budget cuts down their throats."³⁶

The Administration was charged to "break with the past." Reagan's most potent political resource was to repudiate the status quo. The Reagan Revolution turned out to be a single-jolt affair.³⁷ Reagan was successful in diminishing congressional committee influence, but by 1982 the Senate was not as pliable as it had been; chairmen began to hold to their programs and interest groups were better prepared to deal with Reagan.

³⁴Davidson and Oleszek, 228.

³⁵Aberbach, 180.

³⁶Stockman, 395.

³⁷Stephen Skowronek, *The Politics Presidents Make: Leadership from John Adams to George Bush* (Cambridge: Harvard University Press, 1993), 415.

Stockman asserts the Administration locked the door on its own fiscal policy by November 1981.³⁸ However, ensuing problems with the economy proved the Reagan Revolution to be impossible and an upcoming election made Reagan less powerful. Congressional concerns with the Administration's foreign policy also detracted from executive dominance.

For the Reagan Administration, the oil crisis meant two things: continued high prices at the gas pump and a persistent emphasis on the Soviet threat in the Middle East. Reagan opted to allow energy decisions to be made by the free market while reducing the role of government regulation in the energy realm. Within one year the Administration benefited from easing oil prices and energy consumption. Thus, Reagan was able to obtain considerable relief from the effects of high oil prices, although this relief was essentially the result of global factors rather than policy action. Concern for the security of oil compelled Congress to proceed with the Strategic Petroleum Reserve and raised questions as to the willingness to project use of force in defense of national vital interests.³⁹

The Republican Senate and Democratic House held divergent views on foreign affairs. With Reagan's decision to reestablish an active policy on containing the Soviet Union in the Third World by using U.S. surrogates or if necessary, U.S. military forces, most House democrats, including Speaker Thomas O'Neill and Representative James C. Wright, were equally determined to prevent further U.S. support for foreign surrogates

³⁸Stockman, 13.

³⁹Robert J. Lieber, "The Middle East," in *Looking Back on the Reagan Years*, ed. Larry Berman (Baltimore: Johns Hopkins University Press, 1990), 37-42.

with dubious democratic credentials. Reagan countered by demonstrating a new willingness to assert U.S. military power overseas.

After the first year the President faced increasing difficulty winning majority support in Congress on issues of defense spending and foreign policy. Congressional support was passed by paper-thin margins and came only after the President agreed to substantial concessions. The honeymoon period ended shortly after Reagan's first year as a result of the Administration's legislative agenda, partisan differences over the budget deficit, and its policy in the Middle East. The focus of the new dissent was the budget. The 1982 elections brought with it a loss of twenty-six Republican seats in the House which indicated an opposition to Reagan's "new beginning" of domestic budget cuts, defense budget increases, tax cuts, and deregulation of business.⁴⁰

Reagan distinguished his foreign policy from that of his predecessor by introducing a new theme of promoting strategic consensus based on the moderate states shared *consensus of concern* vis-à-vis the Soviet threat in the region. Building on this common perception, the Administration's goal was to create a loose network of bilateral and multilateral relations with like-minded regimes starting with Egypt, Saudi Arabia, and Israel.⁴¹ If this worked, then regional problems in Palestine and Lebanon would assume a secondary importance to the broader strategy of a Soviet threat in the Middle East. For critics of the Administration, the viability of this plan was unclear. Would moderate states like Lebanon become proxies, or as William Quandt calls it, *side-shows*,

⁴⁰Skrowronek, 409.

⁴¹Quandt, "Reagan's Lebanon Policy: Trial and Error," 239.

in the larger U.S.-Soviet dispute? Reagan wanted to establish relationships of trust based on mutual ideals: "If we are going to bring warring states together, we had to convince them we could be fair."⁴²

Reagan thought that strengthening ties to moderate Arab nations might help in the long run resolve some of the problems of the Middle East. The projected Airborne Warning And Control System (AWACS) sale became a symbol to moderate Arab countries of the fairness and the strength of the Administration's commitment to them. Unfortunately, to Israel and some of Israel's supporters in Congress, the great AWACS battle became the symbol of what they perceived as a betrayal of Israel by the U.S. Israel's Prime Minister Menachim Begin and congressional supporters of Israel felt compelled to take on the Administration. Reagan knew he could not afford to lose, believing it "was a battle that had to be won to advance the cause of peace in the Middle East." He also made known his support for Israel: "I believe many things in my life, but no conviction I've ever held has been stronger than my belief that the U.S. must ensure the survival of Israel." Reagan was aware that losing support on the sale of AWACS might also undermine his ability to persuade Congress to approve his domestic programs and the rearmament of the Pentagon.⁴³

The AWACS controversy came to a boil in fall 1981. The sale could be blocked by a majority vote in both the Senate and the House. Through its lobbying efforts, Israel had significant influence over the votes in the House. The battle was in the Senate. Prime Minister Begin met with Reagan in September 1981; he urged the President not to

⁴²Ronald Reagan, *An American Life* (New York: Simon and Schuster, 1990), 410.

⁴³*Ibid.*, 410-411.

sell the AWACS. He argued Israel was owed everything the U.S. could possibly do to preserve its security. Begin said he was fearful of anything that might change the balance of power in the Middle East. Reagan responded that the Pentagon reported the sale of the AWACS would not materially alter the balance: "I repeatedly emphasized that the U.S. was committed to ensuring Israel's survival and would do nothing to diminish its position of military superiority over the Arabs." Reagan felt the meeting was good and the two leaders had come to an agreement. Reagan was stunned and offended when he learned Begin went immediately to Capitol Hill and began lobbying very hard against the President, the Administration, and the AWACS sale.⁴⁴

Within a month the sale passed the Congress with the Senate narrowly defeating a measure that would have blocked it. Prime Minister Begin denounced the Reagan Administration for anti-Semitism and betrayal.⁴⁵ The AWACS sale was President Reagan's introduction to both the complexities of the Middle East and the significant role of Congress in American foreign policy. The Reagan Administration would soon realize that their policy of strategic consensus would not be viable and that regional problems would not assume a secondary importance.

It was in Lebanon that the Administration's policies first resulted in disaster with the death of 241 U.S. Marines as a result of a terrorist bombing. The incident was described in the 15 February 1984 *Washington Post* as "men [American Marines] staked out waiting for an accident to happen." Adamantly refusing to withdraw a small contingent of Marines from Beirut, Reagan would ultimately comply, but not before

⁴⁴*Ibid.*, 414.

⁴⁵*Ibid.*, 410.

suggesting that advocates of withdrawal were treasonous. And as the catastrophe in Lebanon unfolded, it seemed that Reagan possessed a President-centered government in which rational deliberation disappeared in the mystic clouds of manipulative rhetoric.⁴⁶

Reagan's vision of a powerful America was dashed with the death of 241 Marines in Beirut. The Administration was challenged by the underestimated complexities and seriousness of the regional conflict confronted by pragmatism in the decision to stay the American forces, or cut and run. Reagan's delegating style of management led to internal strife and mixed messages within and without his Administration causing Congress and the American public to question his course of action as well as his leadership. Moreover, the events in Beirut furthered a divide between Reagan and Congress, from his initial successes in 1981 to the impending loss of support by the Republican Senate in the winter months of 1984. The Administration's policy in what it described as an American vital interest, Lebanon, was increasingly called into question.

PART 2: OVERVIEW BEIRUT 1982-1983

The difficulties in Lebanon were many and complex. The population, part Christian and part Muslim, is divided among disputatious factions, many with their own armies. Secretary of Defense Caspar Weinberger called it a racial and religious killing ground.⁴⁷ Lebanon had received waves of Palestinian refugees from Israel and there was

⁴⁶Barber, 260.

⁴⁷Quoted in Edmund Morris, *Dutch: A Memoir of Ronald Reagan*, 462.

also an influx of Palestinian Liberation Organization (PLO) fighters whom King Hussein of Jordan had expelled in 1970.⁴⁸ Moreover, the country had been in a state of civil war since 1975 and suffered 100,000 casualties (in a nation of three million) over a six-year period until 1982.⁴⁹ In 1976 Syrian military intervention, carried out on behalf of the Arab League, temporarily ended the fighting, and from that point on the Syrian army remained in Lebanon.

The Administration was compelled to focus on a number of issues in Middle East between 1981 and 1982. Iran released the American hostages in January. The Israeli army raided Iraq in June. The Kingdom of Saudi Arabia introduced the Saudi Peace Plan to encourage a peace process in the region only to be thwarted two months later with the October assassination of Egypt's President, Anwar Sadat. By December, Israel had annexed the Golan Heights and subsidized a Lebanese Christian militia to keep the PLO away from northern Israel, but persistent and sporadic guerrilla raids on Israeli settlements continued until 1982.

In retaliation for the raids, the Israeli forces invaded Lebanon in the summer of 1982 driving as far north as Beirut. Reagan's Middle East policy of *strategic consensus* became muddled with the Israeli invasion into Lebanon in that June raid. Secretary of State Haig's memoirs reflect the White House position at the time: "The President and I wanted to make it very clear that we sincerely hoped Israel would continue to exercise complete restraint and refrain from any action which would further damage the

⁴⁸Crabb and Holt, 144-149.

⁴⁹Lieber, "The Middle East," 39.

understanding underlying the cessation of hostilities . . . Begin's reply: ' . . . the man has not been born who will ever obtain from me consent to let Jews be killed by a bloodthirsty enemy and allow those who are responsible for the shedding of this blood to enjoy immunity.' On June 3 the *casus belli* Israel was waiting for came: the terrorist attack and wounding of Israeli Ambassador to Great Britain, Sholom Argov. Within ten days Israel closed the ring around Beirut. To all appearances they [Israel] had cast off any constraint. One week later an expressionless Reagan read off the American position from typed file cards; Begin responded with equal coldness. There was no exchange of pleasantries, no dialogue, no hint of warmth sympathy that had up to now characterized their relationship."⁵⁰

Initially, Reagan chose to acquiesce quietly to the Israeli intervention. However, what was supposed to be a quick rout of the PLO turned into a major Israeli-Syrian war with overtones of threatening Soviet intervention. Even after the threat was contained, the war dragged on inflicting terrible punishment on the city of Beirut and its inhabitants. On August 20 the Israeli and Lebanese governments introduced a cease-fire to be observed by all military factions in Lebanon. The agreement called for PLO withdrawal, an evacuation plan, and the installation of a temporary multinational force to assist the Lebanese forces in carrying out the operation.

The multinational force consisted of 800 American, 800 French, and 400 Italian soldiers; their mission was to observe the evacuation as outlined in the cease-fire agreement. It was agreed by member states of the multinational force that the troops

⁵⁰Alexander M. Haig, Jr. *Caveat: Realism, Reagan, and Foreign Policy* (New York: Macmillan Publishing Company, 1984), 317-352.

would remain no longer than thirty days after arrival.⁵¹ U.S. Marines began arriving 25 August 1982. The evacuation was successful and the Marines were out of Lebanon by 10 September 1982. Thus, the first deployment of U.S. Armed Forces from August through September was brief and relatively uneventful.

Secretary of State George Shultz was convinced the answer to resolving the Beirut dilemma lay in a solution to the Israeli-Palestinian problem. Simultaneously, with the approval of the President, Shultz addressed the means to get the PLO out of Beirut as well as the future governance of the West Bank and Gaza. To develop this plan, Shultz called together a select few that included: Bud McFarlane from the National Security Council; Lawrence Egelburger from the State Department; Paul Wolfowitz, Director of Policy Planning; Nick Veliotis, Assistant Secretary for Near Eastern Affairs, Bob Ames of the C.I.A.—all were sworn to secrecy and “there were no leaks.”⁵² Shultz established close ties with McFarlane and gained support from the National Security Council for his new peace initiative. Shultz’s committee held the view that any achievements in the Middle East diplomacy since 1967 had been washed away with the Israeli invasion of Lebanon and that the U.S had to find a way to return to what had been lost, this time with the U.S. suggesting an outcome without compromising its role as mediator. The Secretary warned Reagan, “we must be ready to take a lot of flak . . . [the President must] make sure if he stands there, that he will stay there.”⁵³

⁵¹This was called the “Cease-fire Agreement-Lebanon 20 August 1982” and it can be found in *Historic Documents of 1982* (Washington, DC: Congressional Quarterly, 1983), 745-749.

⁵²Shultz, 86.

⁵³*Ibid.*, 89.

Unlike his immediate predecessor Alexander Haig, who Shultz believed kept Reagan out of direct involvement, Shultz desired presidential engagement recognizing the need for the President to master the details of the proposal to bring international opinion and cooperation into play. He requested briefings with the President and felt confident he provided the President with a better understanding of the interrelated dynamics of Lebanon and the wider peace process. The Secretary was determined not to “make the peace initiative hostage to the crisis in Lebanon or to put planning on hold until the PLO departed.” He believed if the process was placed on hiatus until restored stability in Lebanon, uncertainty would exist. How much time was needed for stability? Would that hiatus jeopardize the greater achievement of peace between Israel and Egypt?⁵⁴ With the short-lived success of the PLO departure, Reagan called for a “fresh start” in Lebanon and the West Bank, placing the initiative on higher ground and turning attention to the larger underlying problems in the Middle East.

What emerged from Shultz’s committee was *Reagan’s Peace Proposal of 1 September 1982*, also called the *Reagan Plan*.⁵⁵ Critic of the proposal, William Quandt, claimed the proposal was noteworthy as much for what it left out, as for what it included. The Plan described portions of the Middle East policy previously laid out by the Administration in January 1981 as admittedly in need of that “fresh start.” The bulk of the Plan consisted of an addendum to the Camp David Accords, spelling out the Administration’s vision of Palestine. It placed Jordan as the centerpiece for negotiations

⁵⁴*Ibid.*, 91.

⁵⁵This is called the “Reagan Peace Proposal of 1 September 1982” and it can be found in *Historic Documents of 1982*, 755-760.

instead of Egypt. Lebanon was mentioned, but Syria was not. The omission of Syria was based on the belief that the region was on its way to recovery: U.S. Ambassador to the Middle East Philip Habib had negotiated a deal between Israel and the PLO restoring American diplomatic leadership in the region. The Administration was also supporting the hoped-for presidency of Bashir Gemayal, leader of the Maronite (Christian) Lebanese Forces.⁵⁶ Bashir had maintained close ties with Israel making him a controversial figure. Israel figured into his presidency through its military operation. Backed by his Lebanese Forces, Israel, and the U.S., Bashir could have become the second Arab leader to sign a peace treaty with Israel. This was not to happen.

On 14 September 1982 Lebanese President Bashir Gemayal was assassinated when a bomb hit the headquarters of his Christian Phalangist Party in East Beirut. No one claimed responsibility, although his election in August had been controversial. The Israeli government had supported his election, but opponents denounced him as a militia leader who allied with Israel. His assassination and new civil strife prompted Israeli forces to move into Beirut the next day. President Reagan called for Israeli forces to withdraw. Tel Aviv refused, fearing reorganization of the PLO and leftists Muslim militias, and Lebanese and Israeli forces terrorized Palestinian refugee camps as a revenge for the assassination. There were two days of massacre in the camps. The Israeli government hesitated in intervening to end the massacre.⁵⁷ The White House was aghast by the senseless killing and President Reagan felt compelled to direct Prime Minister

⁵⁶Quandt, "Reagan's Lebanon Policy: Trial and Error," 253.

⁵⁷The source for this discussion is: *Historic Documents of 1982*, 550-589; *Historic Documents of 1983* (Washington, DC: Congressional Quarterly, 1984), 901-935.

Begin to cease and desist. Israel acted immediately on President Reagan's order. At the State Department, Shultz had already confided his feelings to Eagleburger: "The brutal fact is, we are partially responsible. We took the Israelis and the Lebanese at their word." The President quietly questioned whether "we had been too cautious with the Marines? Had we withdrawn them too quickly?"⁵⁸

The Marines returned to Lebanon within three weeks to begin a second deployment that would last until March 1984. By 29 September the U.S. contingent numbered 1200, and it was later increased to 1700. The returning forces were once again in company with the French and Italian forces, and later joined by British troops. Their new mission, vehemently opposed by the Pentagon, was to interpose themselves between the various parties of the conflict—Israel, Syria, Lebanese government forces, and the numerous armed factions. There were many problems with this mission.

Broad and Ill-Defined: The Reagan Administration's ambitious objectives in Lebanon were: withdrawal of all foreign forces; support for an independent government with control over all of its Lebanese territory; establishment of peaceful relations with Israel; and continued support for political reconciliation within Lebanon. The *ends* were rational, yet the Administration's actions seemed incongruent with these objectives because the *means* were ill-defined. The resulting differences within the Administration left it at odds with meeting the stated objectives.

The State Department, backed by the National Security Council, believed progress would be made toward a diplomatic solution and that U.S. commitment in the form of a military presence was essential. On the other hand, the Pentagon, supported by the Joint

⁵⁸Shultz, 105.

Chief's of Staff, warned against any static deployment of troops. (Biographer Lou Cannon depicts this significant period of decision-making as a moment of trial and error for the "rival barons" within the Administration—a moment of "undisciplined internal conflict" that would have ruined other Presidents.)⁵⁹ Weinberger described the situation as a self-made "Israeli swamp—and we should leave it at that."⁶⁰ But, because the President was ready to send the Marines back to Beirut, Weinberger and the Joint Chiefs of Staff had to shift their approach to appear responsive to the President's announcement of redeployment.

According to Secretary Shultz, Weinberger's acquiescence proved more manipulative than sincere. To this end, the Pentagon set forth a proposal with an impossible set of conditions to include no re-deployment anywhere in Lebanon until all foreign forces agreed to depart; after their departure the U.S. would form a giant cordon around the perimeter of Lebanon's borders to facilitate the Lebanese Army's retaking of control.⁶¹ Weinberger would remain inert until the State Department produced a comprehensive international agreement to rid Lebanon of its foreign forces. McFarlane argued in favor of the peacekeeping force as a signal to the government of Lebanon as well as to the Arabs: the force's mission was to be a political act, not a military act. Weinberger objected and insisted the U.S. would not act as the Beirut police department.

Weinberger's objection stemmed from the lack of clear a mission other than to establish a presence. Later the mission was defined to be the interposition of a

⁵⁹Cannon, *President Reagan: The Role of a Lifetime*, 389.

⁶⁰Quoted in Shultz, 107.

⁶¹Shultz, 108.

multinational force between the withdrawing armies of Israel and Syria until Lebanese armed forces could take over. Weinberger's next concern was that there was no agreed upon plan for withdrawal. He warned, "The MFN [multinational force] was lightly armed, not capable of dealing with any forces. The Secretary of Defense asserted, 'the whole U.S. policy including the MFN presence was premised on achieving diplomatic success.'"⁶²

The heated discussions that pitted Weinberger against Shultz included narrowly defining the mission, the number of troops required, the various forms of hostilities in the context of the foreign forces in the region. They argued over the need for clear records of what the Israelis and Syrians have already said regarding their withdrawal, the problems associated with limiting military missions, and the issue of timing. Weinberger was also in total disagreement with the likelihood of American forces exposed to danger in a situation of mixed command.⁶³ Weinberger's stipulations would result in months of State Department negotiations—but the need to act was *now*. The Administration's decision upheld the State Department's point of view. Secretary Shultz issued a final statement on the matter declaring, "The President wants teeth in whatever he does, and it is up to the Department of Defense to provide the teeth."⁶⁴

At a meeting in the Situation Room with Weinberger present, Reagan agreed with Shultz. The heated discussions had come down to one question: Did the political and diplomatic benefits of an immediate reestablishment of a multinational force in Beirut

⁶²Weinberger, 135.

⁶³Shultz, 80.

⁶⁴*Ibid.*, 109.

outweigh the military risks? The answer was Yes. Reagan's formula for success in Lebanon was to be straightforward: he would use his close relations with Israel and the new Lebanese President Amin Gemayal, Bashir's brother, to work out an agreement on the withdrawal of Israeli forces; then the Lebanese and Arab leaders would work towards a Syrian withdrawal; and with that the new Lebanese President would have the solid foundation to form a coalition government of Muslims and Christians.⁶⁵ All of this would take place with U.S. support. The President agreed with his Secretary of State, that the U.S. must contribute to a visible, definitive, constructive, international effort to help the central government of Lebanon regain control over its own country. Not once during the cabinet discussions weighing the pros and cons of a second peacekeeping force did the topic of the *War Powers Resolution* and/or congressional input influence the Administration's course of action.

If the Administration had correctly judged the local and regional dynamics in the Middle East in the fall of 1982, its policy would have added one vital ingredient: more direct presidential involvement. Since 1973, Middle East governments had come to expect the involvement of the President of the United States and his Secretary of State: Presidents Nixon and Carter were very involved because they realized that while the President need not engage himself in the details of negotiation, to be taken seriously he does have to lend his authority to his designees. Such a course of action would enable him to better defend his policy before Congress and the American public whose support is essential. Reagan's September 1982 speech introducing his plan set the frame of

⁶⁵Quandt, "Reagan's Lebanon Policy: Trial and Error," 253.

reference for Middle East policy, but a speech is not policy, and policy needs implementation.⁶⁶

Unachievable, Politically and Militarily: The U.S. decision to re-enter Lebanon was not a considered policy decision, but rather an impulse to do something to demonstrate U.S. concern over what had taken place in the refugee camps with new U.S. promises that Palestinians would be safe after PLO's departure.⁶⁷ U.S. Marines remained in Beirut as part of the multinational force, despite congressional concerns about their mission and safety. Their environment was chaotic and at risk. There had been no withdrawal of Syrian and Israeli troops and no domestic order. Skirmishes occurred between the various factions with no end in sight.

On April 18, 1983 a delivery van detonated near the U.S. Embassy, killing sixty-three people, seventeen Americans, including Robert C. Ames, Chief CIA analyst of Middle East Affairs, who was meeting with eight other CIA officials. "These gallant Americans," said Reagan, "understood the danger they faced, and yet they went willingly to Beirut. And the reprehensible deed, the act of unparalleled cowardice that took their lives, was an attack on all of us, on our way of life and on the values we hold dear. We

⁶⁶*Ibid.*

⁶⁷On 3 June the Israeli ambassador to Great Britain, Shlomo Argov was shot in London and critically wounded. Israel blamed the attack on the PLO and launched air strikes on Palestinian positions in southern Lebanon. World opinion turned against Israel and Prime Minister Menachim Begin. The media blamed the blockade of food and medical supplies for killing civilians. The U.N. Security Council voted several times on resolutions demanding immediate Israeli withdrawal. In the U.S. opinion was sharply divided: citizens expressed sympathy for Palestinian and Lebanese civilians urging Reagan to take a harder line with Israel; The source for this discussion is: *Historic Documents of 1982*, 550-589; *Historic Documents of 1983*, 901-935; Haass, 24.

would indeed fail them if we let that act deter us from carrying on their mission of brotherhood and peace.”⁶⁸

The 1982 Reagan Plan was well received, but until Israel withdrew from Lebanon, no leader would invest in the plan. Prime Minister Begin rejected the plan and the White House’s request for a date when Israel would remove its troops. Instead, Israel began by making a list of demands that undermined President Gemayal’s attempt at consensus within his government and that infuriated Syria. During this time the Soviet Union decided to re-supply and rebuild Syria’s Air Force and Syria’s leader, Hafez el-Assad, manipulated the Druze leader, Walid Jumblatt, until Jumblatt’s cooperation with Lebanon was non-existent.⁶⁹ The State Department believed there had to be an Israeli withdrawal before anything could happen. As the Reagan Plan stagnated, Syria rearmed and President Gemayal proved incapable of rebuilding consensus in his government. Not until Secretary Shultz visited the region in April 1983 was a peace plan agreed to.

On 17 May 1983 Israeli and Lebanese negotiators signed the *Israeli-Lebanese Agreement* once again outlining the procedures for withdrawal of foreign troops from Lebanon and the details of the security agreements. The agreement called for withdrawal of Israeli troops from Lebanon in eight to twelve weeks contingent upon the corresponding withdrawal of 40,000 Syrian and 8000 Palestinian troops. Egypt and Jordan fully supported the Agreement. Algeria and Saudi Arabia offered muted support.

⁶⁸Quoted in Lou Cannon, *President Reagan: The Role of a Lifetime*, 410.

⁶⁹Kemp, “Lesson of Lebanon: A Guideline for Future U.S. Policy,” 59.

Opposing the agreement were Syria, Libya, and South Yemen. Four months of talks ensued, but it was construed as purely a paper pact: Israel refused to withdraw its troops from Lebanon until Syrian and Palestinian forces moved out—by summer's end all forces were still there.

Syrian opposition leaders reminded negotiators that Syrian approval was necessary for any settlement. The Syrian Government made attempts to disrupt the agreements announcing plans to acquire Soviet missiles capable of hitting aircraft over much of Israel. Israel reacted to the agreement by blocking roads linking Beirut with Syrian controlled territory. Throughout 1983 Syria refused to withdraw troops from Lebanon, continued its arms buildup, and demonstrated increased hostilities toward Israel and the U.S.

Reagan was able to diffuse some tensions with the announcement of congressional authorization for economic aid to Lebanon. The *Lebanon Emergency Assistance Act* was signed into law on 27 June 1983. Reagan had requested this aid in the wake of the September 1982 Israeli invasion of Lebanon. This action followed the 18 April bombing of the U.S. Embassy. Three months after instituting the Act, President Reagan wrote a letter to congressional leaders (dated 27 September 1982) regarding the multinational force in Beirut. He optimistically announced that a cease-fire would ensue and praised the Congress and their respective committees for the aid package to Lebanon.⁷⁰

Shifts in Policy and Threats Indeterminate: This period of peace would not last long. Once again the cease-fire ended and civil strife resumed. In fact, the multinational

⁷⁰This is entitled "Reagan Letter to Congressional Leaders on the United States Participation in the Multinational Force in Lebanon 27 September 1983" and it can be found in *Historic Documents of 1983*.

force had been targeted by terrorist attacks throughout the summer. Uneasiness in Congress became a stark reality on 29 August when two Marines were killed and fourteen wounded. Within a week two more American Marines were killed; the French suffered casualties as well. Reagan quickly responded by ordering U.S. Navy guns offshore to fire into the mountains, the source of the fire directed at the Marines. This was a significant change in the rules of engagement for the multinational peacekeeping force: they were now seen as combatants by opposition forces and they no longer were able or willing to adhere to the original plan designed around neutrality.

The White House announced that U.S. air power might be used to defend positions of Lebanese Armed Forces important to the defense of the Marines while naval fire was ordered against Syrian held territory that was shelling the Lebanese defense ministry and the U.S. Ambassador's residence. This was another significant change in military policy: the need to defend U.S. troops became a reality, and the White House announced it would use air power if necessary. Those inside Beirut saw the new policy as minimal protection while the world saw it as military move to protect President Gemayal. In mid-September Navy guns opened fire to prevent the Lebanese army's loss of a strategic town in the mountains. A cease-fire was arranged on 26 September and was seen as sincere effort on the part of U.S., Saudi Arabia, and Syria to prevent a more serious conflict. The problem now was to monitor the cease-fire.

The Reagan Administration was never able to agree on the common objective in Lebanon, much less the means of attaining it. Behind the scenes Reagan's National Security Adviser sought a wider role for the multinational force while the Pentagon sought an exit from the operation. Defense Secretary Weinberger was a civilian among

warriors in the Pentagon while National Security Adviser McFarlane, a soft-spoken diplomat and former Marine, agreed with Secretary Shultz that the Marines deployed in Lebanon as part of an international peacekeeping force were useful in obtaining a diplomatic solution. Both men believed in the legitimacy of U.S. military power to accomplish diplomatic objectives. Keeping the multinational force intact bought time for Shultz to continue endorsing the President's policy. The President addressed Congress informing them of the Marine casualties of August, but did not describe U.S. forces as being engaged in hostilities.

Congress reacted to the situation, but in doing so it compromised its ability to limit executive freedom. Instead of tightening the reins on the President's actions concerning the mission and the withdrawal of U.S. forces, construed by many in Congress to be tools of the State Department, Congress had issued a resolution that allowed Reagan to stay the course in Beirut.

Congress issued a joint resolution authorizing the President to proceed as he deemed necessary for a total of eighteen months in the peacekeeping mission in Lebanon. The *Multinational Force in Lebanon Resolution*, dated 12 October 1983 (Appendix B), allowed the President to continue his operation within the parameters of the *War Powers Resolution*. The *War Powers Resolution* served as a vehicle of compromise toward the issuance of the *Lebanon Resolution*, which was created to establish the eighteen-month time limit for the troops' deployment.

On 23 October 1983, 241 U.S. Marines were killed by a terrorist attack; Syria and Iran denied any involvement. A nearly simultaneous bombing of the French paratrooper headquarters killed 58 of the 800 French troops who remained in Beirut as

part of the multinational peacekeeping force. French President Mitterrand was a staunch ally in Lebanon, and French troops played a significant role in the multinational peacekeeping force.⁷¹ (Moments after the April attack of the U.S. Embassy, the French Force Commander, in a gesture that was unprecedented, turned over command of his troops to Colonel James Mead, U.S. Commander of the Marines.⁷²) Mitterrand's assessment upon visiting the French Headquarters was depressing and caused grave concerns for the White House and Congress. He described the situation: "There is no counter-attack possible . . . There are Soviet officers in uniform twenty kilometers from Beirut. Attack Syria and you attack Moscow."⁷³

The terrorist bombing changed the situation dramatically. However, Reagan quickly made clear his position by announcing that the U.S. would stay in Lebanon because it would dishonor the dead Marines to engage in an untimely pullout. The President's speech to the American public weaved together the disconnected tragedies of downing of Korean Airlines 007, the Beirut terrorists attack, and the invasion of Grenada into a single message of patriotism and anti-communism, blaming the ills of the world on the Soviet Union. He made clear the necessity of recognizing the strategic importance of such places. According to Reagan biographer Lou Cannon, Reagan was convinced that the attack on the Marine barracks in Beirut was precisely "because they were doing their

⁷¹The reasons for France's desired involvement are beyond the scope of this research, however, it should be noted France's presence was a cause of concern for Israel, for its perceived anti-Semitism and pro-Arab position.

⁷²Shultz, 204.

⁷³Morris, 495.

job—accomplishing their mission.”⁷⁴ Two days later Reagan signed the *National Security Decision Directive 111*, the essence of which was to revive U.S.-Israeli cooperation in an effort to put pressure on Syria.

Congress adjourned 18 November 1983 (to 23 January 1984). Three significant developments occurred during their absence in December: the fighting escalated between the U. S. and Syria; it was revealed the Joint Chiefs of Staff had unanimously opposed sending the Marines to Lebanon in the first place; a Pentagon commission investigating the October bombing issued a scathing report criticizing the Marines’ security arrangements.⁷⁵

A climax occurred when four American bombers were shot at while attacking Syrian anti-aircraft positions. Two pilots were downed, one was killed and one was captured by Syria.⁷⁶ The *U.S.S. New Jersey* fired in retaliation for Syrian actions. This offensive action resulted in a policy change for the Administration. The President had hoped that a strengthened Lebanese Army would be able to reach an agreement on security with the Druze and Shiite militias. In this improved atmosphere, the Marines could gradually be withdrawn without leaving Reagan open to a charge of cut and run. This was not to be the case.

Syria made clear it would not move out of Lebanon until the U.S. did so, which caused great concern in Congress about the growing vulnerability of the Marines. More naval fire took place in February when the *U.S.S. New Jersey* fired in Syrian controlled

⁷⁴Cannon, *President Reagan: The Role of a Lifetime*, 449.

⁷⁵Crabb and Holt, 146.

⁷⁶On 30 December Syrian Leader Hafez el Assad met with Jesse Jackson to discuss the fate of the captured pilot, Lieutenant Robert Goodman, who was then released on 3 January 1984.

Lebanon, and this action was interpreted as yet another new definition of the rules of engagement since U.S. forces were now permitted to hit *any* units attacking the city and U.S. warships were firing openly. Despite strong pressure from Congress to withdraw the Marines, Reagan refused to consider such surrender believing that there was no reason for the U.S. to turn our backs on our friends and cut and run. He announced that the U.S. would increase its assistance by employing planes and ships to attack forces opposing the Amin Gemayal government. Increased Syrian pressure on President Gemayal forced Lebanon to dissolve its 17 May Accord (the Israeli-Lebanese Agreement) with Israel.

It became apparent that the position of the Government was unclear when Secretary of the Navy John Lehman said the firing was in support of the Lebanese army, while the Pentagon reported it was fire in support of the Marines, and White House denied all of the above. For the Reagan Administration this type of confusion was not uncommon.⁷⁷ At this time Congress became critical of the Administration, accusing the President of being unaware of reality and unable to see the escalating crisis that was rapidly becoming to apparent the leadership. Soon, the Lebanese army collapsed in West Beirut leaving the Marines surrounded on three sides. The White House was left with no alternative but to concede to deployment and announce the Marines would be sent to offshore ships within two or three days. Changes in the military situation on the ground made the Administration advance its timetable for withdrawal. More confusion from the Administration became apparent with the 17 February announcement by Secretary of State Shultz that the U.S. would continue to support the 17 May Agreement.

⁷⁷Kemp, "Lesson of Lebanon: A Guideline for U.S. Policy," 65.

At the same time President Reagan was telling reporters “we’re not a party to the agreement so there’s no way we should have a position one way or the other.”⁷⁸ The inevitable withdrawal of U.S. forces came on 26 February 1984 amidst a sense of failure and confusion.

By mid March U.S. forces were out of Lebanon. Congress and the Pentagon were not prepared to outwait the Syrians and increase military pressure to the point where Syria would withdraw. The Marines spent a total of 533 days in Beirut, suffered 241 deaths and more than 130 wounded and accomplished very little. The political goals of the mission were never met: withdrawal of foreign forces, establishment of strong central government in Lebanon who had good relations with Israel, and reform of the Lebanese political system. The reasons for the failure of the mission varied: divisive leadership, bureaucratic conflict, strategic misjudgment, poorly executed military operations, and ambiguous signals to allies and adversaries.⁷⁹ On 30 March 1984 President Reagan reported to Congress that U.S. participation had ended.

In reviewing the history of this debacle, it is clear mistakes were made in the Administration’s foreign policy by assuming moderate Arab states would reign in the fractious Arab states, and with the unconsidered omission of Syria as a regional actor in the Reagan Peace Proposal. Mistakes of a military nature, regardless of where the blame lies, were made as to mission, appropriate force, intelligence, and volatility in the theatre of operations. Defense Secretary Weinberger and the Joint Chiefs of Staff warned about

⁷⁸Quoted in Michael Turner, “Foreign Policy and the Reagan Administration,” in *Reagan’s First Four Years: A New Beginning*, eds. John D. Lees and Michael Turner (New York: Manchester University Press, 1988), 351.

⁷⁹Kemp, “Lesson of Lebanon: A Guide for Future U.S. Policy,” 62.

the static deployment of troops and urged the Marine redeployment to ships offshore while the State Department sought a diplomatic solution to the terrorist activity.

The Beirut bombing exposed the weaknesses of the Administration. Reagan accepted the contention in his Administration without examination. The result was tragic.⁸⁰ Lebanon became an arena of trial and error for the “rival barons” within the Administration by demonstrating the naiveté, ignorance, and undisciplined internal conflict characteristic of the Reagan presidency.⁸¹ A paradox pointed to Reagan’s firm position that the forces would stay despite alarmingly increasing hostility.

Lebanon was not a strategic interest in the strictest sense of the word, but as newly appointed Secretary Shultz quickly assessed, “there was no point in philosophizing over whether this country was a vital interest A war was raging there and war in the Middle East meant trouble for everybody.”⁸² The mid-tem switch from Secretary of State Haig to George Shultz added to the flux. Arafat was reported to be jubilant about Haig’s resignation believing it give new life to the PLO presence in Beirut. Shultz had been pegged an “Arabist in contrast to pro-Israel Haig” due to his association with the Bechtel Corporation, which had big construction jobs underway in Saudi Arabia and around the Persian Gulf.⁸³ Shultz’s initial assessment was pragmatic. He had inherited a crisis that was spiraling out of control. The U.S. did not want the Israelis to invade, but once it was done, the U.S. had a lot at stake in the outcome. Shifting from one objective to another, trying to behave honorably, alternately catering to pressures from moderate

⁸⁰Cannon, *Reagan*, 401.

⁸¹Cannon, *President Reagan: The Role of a Lifetime*, 389.

⁸²Shultz, 7.

⁸³*Ibid.*, 14

Arabs, Israel, and the Lebanese, and from the Congress, the policy changed constantly, baffling friends and encouraging enemies.

The Beirut bombing exposed the weaknesses of the Congress and the *War Powers Resolution* as well. Not until the threat of hostile fire was directly upon the Marines did the Congress act in a definite manner with the ratification of the *Multinational Force in Lebanon Resolution*, which served in place of the *War Powers Resolution* by setting compromised constraints on the President.

INVOKING THE WAR POWERS RESOLUTION

The following paragraphs outline the interactions between Reagan and the Congress in the context of the *War Powers Resolution*. It is important to review in detail the sequence of events that gave rise to the ultimate course of action on the part of the Congress to ascertain the effectiveness of the Resolution. Throughout the crisis, Reagan reported and or informed Congress, but he never collaborated with them on the course of action he would take. The only definitive interaction that took place was in the development of a compromised resolution. The *War Powers Resolution* was invoked via this compromised resolution because of the inherent flaws of the legislation and its inability to check the President. Congress reacted to and then participated in the events of Beirut nearly one year after the initial deployment of the Marines. The straightforward lesson learned from Beirut is that the *War Powers Resolution* was referred to, but never truly exercised because the President regarded it as insignificant while the Congress feared being bound to it.

Consulting and Reporting: The President's first report to Congress began with the

events of 6 July 1982 when Reagan announced he would send a small contingent of Marines to a multinational force for temporary peacekeeping in Lebanon. Talk of the initial deployment raised issues of adequacy of consultation and technicalities of reporting. It appeared there was some informal discussion, but the President had made a unilateral decision to deploy U.S. troops. Reagan met with congressional leaders 13 July 1982 informing them that the troops would be there a short period. Congress asked that, if the Marines were to be “equipped for combat,” and if so, did that mean they would be exposed to hostilities? Chairman of the House Foreign Affairs Committee Clement Zablocki wrote to the President notifying him that if such a contingent were sent, the U.S. would be introducing forces into imminent hostilities, which required reporting under 4(1)(a) of the *War Powers Resolution*. Congress was leery of a mission and a deployment that the President had decided upon without joint consultation with them.

According to Representative Zablocki the *War Powers Resolution* required a prior disclosure of the facts. A small cadre of congressional leaders attempted to introduce mission requirements for congressional approval, such as Senator Charles Percy’s stipulation that the President guarantee the safety of the Marines and that Israel would not deploy its troops into West Beirut. Senator Howard Baker was less favorable to the President’s plan; he construed this guaranteed stipulation of safety for the Marines to infer a condition of imminent hostilities, placing U.S. forces on an assignment in a region that contained a large number of heavily armed and ill-disciplined forces.⁸⁴ With this

⁸⁴Smyrl, 97-117.

condition of imminent hostilities came the required authorization of the Congress; but Reagan obtained his authorization implicitly via congressional non-interference or action after his meeting with them in July.

Secretary of State Shultz appeared before a closed session of the Senate Foreign Relations Committee just prior to the first deployment that was to take place in mid-August. Shultz reported to Reagan that the “Senators did virtually all the talking” focusing on the West Bank-Palestinian question, Jordanian involvement, the Camp David process, and Israeli settlement activity. Shultz concurred with the Committee on all their concerns sharing this information as well as the fact that the Committee was consistent with his thinking. He then replayed this visit with the House Foreign Affairs Committee.⁸⁵

For the initial deployment 25 August 1982 through 10 September 1982, President Reagan reported to Congress that the mission of the Marine deployment would be to assist the Lebanese government with the withdrawal of Syrian-Palestinian forces. The multinational force was to keep Israeli and Syrian forces from further skirmishes. He also stated the duration of the deployment would be no more than thirty days. Reagan’s report the day before U.S. Marines began landing in Beirut, was “consistent with the War Powers Resolution.” With this reference “consistent with” he avoided recognizing the validity of the Resolution by not using the words *under* or *pursuant to*. At the same time he made it difficult to charge that he was floating or circumventing the Resolution, a criticism from congressional leaders to which Reagan remained sensitive.

⁸⁵Shultz, 91.

After President Bashir Gemayal's assassination on 14 September 1982, Reagan accepted the invitation from the Lebanese government to assist the new administration in restoring order in the post-assassination period. The President announced that the U.S., France and Italy agreed to form a new, second multinational peace force that would return to Lebanon for a limited period to restore and maintain order. That action followed three events: the assassination of Bashir Gemayal, the entry of Israel into West Beirut, and the massacre of Palestinian civilians by the Lebanese Christian militiamen. In the second report to Congress, the Administration used the implicit congressional approval of the first multinational force deployment to justify the second deployment. Many in Congress voiced concern about the situation in Lebanon, but Reagan held to the position that hostilities were not clearly indicated by the circumstances—this was used as an excuse for no prior consultation.⁸⁶ Again, Reagan did not cite section 4(1)(a) of the *War Powers Resolution*, saying instead that the American force would not engage in combat.⁸⁷

The second deployment's mission of September 1982 (through March 1984) was larger in scope than the first: the President reported to Congress that the Marines, as part of the multinational force, would help restore Lebanese sovereignty and authority and allow Lebanese Armed Forces to restore the country's territorial integrity and independence. This objective required the disarmament of private militias and the withdrawal and neutralization of Israeli, Syrian, and Iranian forces. The mandate for the multinational force was to provide an interposition force at agreed locations by

⁸⁶Lehman, 101-108.

⁸⁷Congressional Research Service Report for Congress, "War Powers Resolution: After Twenty-Eight Years."

maintaining a military presence. Moreover, the action was done at the request of the Lebanese government; President Bashir asked for U.S. and multinational peacekeeping assistance to augment the Lebanese Armed Forces in Beirut.

The second multinational force responded to an open-ended mission that was very different from the first deployment. It allowed the President broad objectives that could also lead to a gradual increase in the role of U.S. forces in Beirut and throughout Lebanon. This difference, however, did not incite the Congress to require more consultation, nor did the President explain these differences in his second report. In fact, the Administration sought no authorization from Congress.

The Lebanon Emergency Assistance Act: The controversy in Congress grew over whether or not the Marines faced conditions of “imminent” hostilities. If they did, the *War Powers Resolution* limits the Marines’ stay to no more than sixty days unless Congress declared war or passed a specific statutory authorization. Congress dealt with the matter tangentially in the *Lebanon Emergency Assistance Act* (P.L. 98-43), which required that the “President shall obtain statutory authorization with respect to any substantial expansion in the number or role in Lebanon of U.S. forces.”⁸⁸ The Senate authorized \$251 million in economic and military aid requested by the Administration in the wake of the 1982 Israeli invasion of Lebanon. Congress resisted attempts to require the President to obtain authorization from Congress before sending more troops, but Reagan was mandated to report any “substantial” expansion of U. S. troops forces in

⁸⁸*Lebanon Emergency Assistance Act*, Public Law No. 98-43, 97 Stat.639, 1983.

Lebanon.⁸⁹ The *Lebanon Emergency Assistance Act* was careful to include in its section 4(b) the following: “Nothing in this section is intended to modify, limit, or suspend any of the standards and procedures prescribed by the War Powers Resolution of 1973.”⁹⁰

The Act accomplished two objectives regarding war powers: it cited section 4(1)(a) of the *War Powers Resolution* requiring congressional statutory authorization, and it served to place Congress on record as supporting the presence and stated goals of U.S. participation in the second multinational force while keeping close watch on where the role of the U.S. forces might be heading. Over the summer, questions were raised about compliance with the *Lebanon Emergency Assistance Act* as the U.S. deployment grew from 1200 to 1700. The issues of deploying more soldiers and the new mission lacked political immediacy, so Congress did not pursue these issues aggressively in the form of an inquiry.

Another presidential report on 30 August 1983 ignored 4(1)(a) even after fighting between various factions in Lebanon had killed three Marines. As fighting increased, U.S. casualties rose and the area of action enlarged, compelling Congress to call for an invocation of the *War Powers Resolution*. New hostilities in Lebanon were not merely *imminent* but *actual*. By only reporting *consistent with* the Resolution, Reagan did not set in motion the clock that would have limited military action to sixty to ninety days unless Congress specifically authorized an extension. The President’s report denied that the combat deaths indicated the existence of hostilities instead he characterized the events

⁸⁹*Congress and the Nation*, Vol VI 1981-1984 (Washington, DC: Congressional Quarterly, Inc., 1985), 158.

⁹⁰*Lebanon Emergency Assistance Act*.

as sporadic fighting and a generalized pattern of violence. Senator Percy responded: “We have people up in helicopters who are shooting rockets and artillery—if that isn’t imminent hostilities, I don’t know what is.”⁹¹

Within the Administration there was discord as well. Secretary of State Shultz and National Security Adviser Bud McFarlane challenged the Secretary of Defense over the future course of action for American forces. “Reagan was being told Marines don’t cut and run,” said Weinberger, “or Americans don’t run when the going gets tough. American’s don’t pull down the flag. I said, ‘Nonsense, they’re not doing any good over there.’ Reagan was not considering withdrawing; he did not recognize the Marines were in danger, and he was then under *no particular political pressure* to bring them home, even though they had been deployed for nearly a year.”⁹² According to biographer Lou Cannon, President Reagan did not want the Marines forced out of Lebanon by congressional clamor. But neither did Tip O’Neill, who did not want to undermine the Marines’ presence while they were under fire and accordingly helped Reagan avert a showdown over the issue.⁹³

Avoiding the Resolution: The President insisted on the illusion of neutrality to avoid the *War Powers Resolution*. He acknowledged that the forces were there to take *whatever* steps were necessary in support of the newly constituted government of Lebanon: he told Congress using the Marines in Lebanon was essential to help restore

⁹¹Quoted in John Lehman, 108.

⁹²Quoted in Lou Cannon, *President Reagan: The Role of a Lifetime*, 414.

⁹³Cannon, *President Reagan: the Role of a Lifetime*, 420.

Lebanon's territorial integrity, sovereignty, and political independence.⁹⁴ Other officials, including Secretary Shultz, argued that the attacks were directed at the Lebanese army, not the Marines. When opponents pointed out this was in violation of the *War Powers Resolution*, the President responded that U.S. forces were deployed in support of the multinational force and protection of U.S. lives. Secretary Lehman contends, "The Administration felt forced to continue the ambiguities it had undertaken to avoid congressional restrictions."⁹⁵ Clearly, the Marines were not neutral. In attempting to avoid the strictures of the *War Powers Resolution*, the military chain of command overlooked the reality of the Marines true status as combatants.

Secretary Shultz called Senator Howard Baker to explain the situation to the Majority Leader. Shultz continued the President's allusion to neutrality saying, "we have no need for reinforcements . . . the Marines return fire only in self-defense." Shultz did alert Baker to the need to be careful recognizing the Israeli withdrawal as the precipitating factor of the crisis.⁹⁶ Faced with an increasingly ominous situation, several congressional leaders publicly urged the President to invoke the Resolution by filing his report on the situation under the appropriate section. Otherwise, warned Representative Zablocki, Reagan would unnecessarily risk a confrontation with a Congress unwilling to be excluded from fulfilling its constitutional responsibilities. Representative Zablocki's counterpart in the Senate, Charles Percy, supported that position. But even though in late August Senator Robert Byrd called on Reagan to invoke the Resolution to assure the

⁹⁴*Congress and the Nation* Vol VI, 156.

⁹⁵Lehman, 101-108.

⁹⁶Shultz, 225.

fullest possible cooperation between Congress and the executive, none of the congressional leaders seemed to prepare to force the Marines' withdrawal.⁹⁷

None of Reagan's three reports was filed under 4(1)(a) of the Resolution to indicate forces were being introduced into hostilities or imminent hostilities, thereby triggering the sixty-ninety day time limit. But when did the time limit begin? As a result of the growing congressional opposition to the President and the question of how long troops would be deployed, legislation was introduced to invoke the *War Powers Resolution*. Senator Charles Mathias called for the invocation of the *War Powers Resolution* by drafting Senate Joint Resolution 159, which stipulated an effective date of 31 August 1983; his answer as to when the clock should begin. Representative Thomas Downey's House Joint Resolution 348 stipulated that Reagan report specifically under 4(1)(a); reporting what was taking place and consulting on further action. Senator Robert Byrd supported Downey finding 4(1)(a) applicable and drafted the Senate version, Senate Joint Resolution 163.⁹⁸ (Mathias's S.J. 159 would become Public Law 98-119, the *Multinational Force in Lebanon Resolution*, to be discussed in the following paragraphs.) With the creation of these resolutions, both the House and Senate compelled the President to comply with the requirements of the *War Powers Resolution*.

On 8 September 1983 the Chairman of the House Appropriations Foreign Operations Subcommittee Congressman, Clarence Long, announced he would attempt to cut off all funds for deployment as of 1 December 1983 unless Reagan invoked the *War*

⁹⁷*Congress and the Nation* Vol VI, 156.

⁹⁸Richard F. Grimmett, ed., *The War Powers Resolution*, 23-26.

Powers Resolution. Congressman Long and his subcommittee had forced the issue by suggesting that the lack of success in Lebanon would otherwise rest on the shoulders of the President and the Republican Senators. Representative Long sought to legislate foreign policy directly through the appropriation process (a return to 1970s strategy), but the Republican dominated Senate was an obstacle to this open repudiation of Reagan's policy. Long's subcommittee did, however, focus the debate and place Reagan in a difficult position. Reagan could be left defending an unpopular, costly, and seemingly un-ending military commitment going into an election year.

A Compromise Resolution: Congress wanted an outcome that would not make a mockery of the *War Powers Resolution*. Majority Leader Baker pressed Reagan to file a report with Congress under the *War Powers Resolution*. Senator Lloyd Bentsen believed that unless the Resolution was invoked, it would be worthless. Republican leaders felt the same, but they were not prepared to defy the President, nor were they prepared to order troops out of Beirut and face the President's refusal to comply. The stakes seemed larger than U.S. policy in Lebanon alone. The Administration wanted congressional support, but rejected any limits Congress might place on the Lebanon operation as opening the door for Congress to effectively seize control of most foreign policy issues and thus undermine the general effectiveness of U.S. foreign policy. When Shultz testified before the House and Senate, he stressed the adverse consequences of a failure to remain engaged in Lebanon.

Members of Congress from both political parties feared that the President was challenging the integrity and legitimacy of their institution. The House risked losing political credibility if it submitted to the President. Meanwhile, Democrats looked to

the possibility of future conflicts. Senate Majority Leader Baker led discussions with the Democratic leadership to construct a compromise to the inter-branch conflict over the *War Powers Resolution*. The Republican Senate, Democratic House, and the President all had a strong interest in forging a broadly acceptable compromise on this issue diffusing its political differences. It was the Senate Democrats who introduced a resolution that would trigger the *War Powers Resolution*.

On 20 September 1983 congressional leaders agreed upon a compromise resolution with President Reagan that would cite section 4(1)(a). Reagan agreed because as the situation in Beirut deteriorated, the White House was losing congressional and public support while becoming vulnerable to Congress's power of the purse. The *Multinational Force in Lebanon Resolution* (P.L. 98-119) became the first legislation to be processed under expedited procedures of the *War Powers Resolution*.⁹⁹ The *Lebanon Resolution* contained four contingencies that would terminate the authorization before eighteen months: withdrawal of all foreign forces from Lebanon unless the President certified the continued presence of U.S. troops was required to accomplish specified purposes; assumption by United Nations or Lebanese government of the responsibilities of the multinational force; implementation of other effective security arrangements; and/or withdrawal of all other countries from the multinational force.¹⁰⁰

Political expediency established the period of eighteen months: the President would agree to nothing shorter and the Congress would not have to face the issue until

⁹⁹22 September 1983 the measure was considered in the House via H.J. Resolution 364 by a vote of 270-61 (nays: 134 Democrats, 27 Republicans; yeas: 130 Democrats, 140 Republicans). On 23 September the Senate passed S.J. Resolution 159 by a vote 54-46 (nays: 43 Democrats, 3 Republicans; yeas: 2 Democrats, 52 Republicans).

¹⁰⁰*Multinational Force in Lebanon Resolution*, Public Law No. 98-113, 97 Stat.805, 1983.

after the 1984 election.¹⁰¹ The implementation of other “effective security arrangements,” as outlined in the Resolution, expresses the sense of the Congress that the United States should discuss with members of the U.N. Security Council the establishment of a U.N. peacekeeping force to replace the Multinational Force in Lebanon.¹⁰² Congress required that the President report the results of these discussions with the Security Council as well as his assessment of the implications of any proposals put forth. President now had eighteen months to conduct operations in Beirut with congressional approval. Congress could claim its authority had been recognized since the compromise preserved its right to limit deployment with additional resolutions. The compromise made clear that U.S. forces in the multinational force were engaged in “hostilities,” which required congressional authorization for their presence under the *War Powers Resolution*.

The compromise also provided that Congress had invoked the requirements of section 4 (1)(a) effective 29 August 1983 when two Marines were killed in Lebanon leading to the subsequent citing of Section 5(b) of the Resolution to keep U.S. Armed Forces in the multinational force in Lebanon for eighteen months. Importantly, it permitted U.S. forces to use such protective measures as they thought necessary to protect the multinational force. Reagan signed the *Lebanon Resolution* into law 12 October 1983 with an eighteen-month expiration date of 12 April 1985. He praised its bipartisan spirit, but it was clear his policy lacked genuine bipartisan support as

¹⁰¹Crabb and Holt, 144-149.

¹⁰²*Multinational Force in Lebanon Resolution*.

evidenced in the roll call votes (see footnote 100). The majority of Democrats in both houses voted against the resolution, charging it would give the President the same “blank check” given to President Johnson through the *Tonkin Gulf Resolution*. Those who opposed the resolution but voted in favor of the compromise resolution felt a sense of obligation to the Marines in Beirut.

Problems with the Compromise: Congress grudgingly authorized the Marines to remain for eighteen months but only in exchange for a promise that Reagan would not try to expand the role of the force, relocate the force, or otherwise change its mission without congressional approval. House Speaker Tip O’Neill and the Republican Senate convinced the President that he must make at least a symbolic acquiescence to the provision of the *War Powers Resolution* to avoid a major political confrontation.¹⁰³ Congressional opposition welled up after the 23 October bombing, no doubt convincing the Syrians that time was on their side. As Congress returned to work in January 1984, many Democrats began proposing resolutions to withdraw the Marines. Even Republican supporters like Trent Lott were backing away from Reagan’s policy.¹⁰⁴

The argument in Congress was over the duration and conditions of the Marine presence. Many Republicans were under pressure to support the *Lebanon Resolution* as evidence of their loyalty to the President and the party. Many Democrats in the House faced comparable pressures to support Speaker Tip O’Neill, who had played a leading role in negotiating the resolution. The House Speaker’s role was unsettling in the Senate

¹⁰³Smyrl, 97-117.

¹⁰⁴David C. Martin and John Walcott, *Best Laid Plans: The Inside Story of America’s War Against Terrorism* (New York: Harper and Row, 1988), 133.

where many Democrats were irritated at being left out of the negotiations and at what seemed to them efforts by the House to usurp the Senate's foreign policy prerogatives. Senate-House sensitivity was never far below the surface.

With respect to the substance of the *Lebanon Resolution*, many thought eighteen months was too long. Some in Congress felt that the clock had already started with the initial deployment and that the President was drawing down his time; critics contended eighteen months compromised the time constraints of the *War Powers Resolution*; concerns were expressed that the President would be given far too much time to act autonomously, eighteen months plus the period of initial deployment. The House Appropriations Committee went so far as to vote 20-16 to cut off funding after sixty days unless the President invoked the *War Powers Resolution*, but the committee backed down after pressure from House Speaker O'Neill.¹⁰⁵

In the House, the Democratic majority was unhappy with the compromise resolution. Speaker O'Neill used his authority to crush attempts to defeat the compromise; his strong support got the compromise voted in 270-161. The *Lebanon Resolution* had the effect its authors hoped for: it gave Congress an ancillary role in decisions on U.S. commitment of forces; the troops had been deployed via a unilateral decision by the President into an environment of imminent hostilities long before Congress intervened. The *Lebanon Resolution* did, however, establish a political dynamic that persuaded the Administration to abort the mission. House Speaker O'Neill accused the President of being untrustworthy in foreign policy. Even some Republicans expressed skepticism at the Administration's efforts to blame Congress. Congressional

¹⁰⁵Crabb and Holt, 144-149.

observers said Congress had not been active enough in challenging the Administration. Congressmen Long's proposal echoed the sentiments of a growing number of Committee members who were frustrated with Reagan's rigidity and the unwillingness of congressional foreign policy leaders to confront the Administration. His amendment sought to legislate foreign policy directly through the appropriations process.

In the Minority Views appended to the Senate Foreign Relations Committee's Report on the *Multinational Force in Lebanon Resolution*, Democratic Senators defined three areas of disagreement. They believed the enactment of this *Lebanon Resolution* was a dereliction of congressional responsibility to uphold the principles set forth in the *War Powers Resolution*; the enactment signaled a failure to require the Administration to present a persuasive statement of the mission; and the enactment constituted an eighteen month blank check to the Commander-in-Chief while asserting that it is operating under congressional sanction.¹⁰⁶

The first and third points are directly related to constitutional war powers and the *War Powers Resolution*—Congress could have avoided ambiguity by simply passing a resolution triggering 4(1)(a) and reserving judgment to authorize further U.S. activities. By combining points one and three, Reagan was allowed to evade the question of whether he would be bound by the sixty day limit. The President tried to assure Congress of his goodwill in a letter dated 27 September 1983 by stating: "Regarding the Administration's intentions with respect to the eighteen month time period, I can assure you that if our forces are needed in Lebanon beyond the eighteen month period, it would be my intention to work together with the Congress with a view toward taking action on

¹⁰⁶*Ibid.*, 107.

mutually acceptable terms.¹⁰⁷ Reagan's words, however, would not prove true.

Prior to approval of the legislation, the Senate Foreign Relations Committee attempted to shorten its authorization to six months (instead of eighteen), but the attempt failed by one vote. In the House Foreign Affairs Committee, Congressman Ted Weiss proposed to cut off funding at the end of the authorization period to ensure presidential compliance. In response, Senator Zablocki said this would unravel the compromise reached. The fate of the resolution rested on the coalition that created it—Senate Republicans favored it, Democrats opposed it, and the split was down party lines. House Republicans favored the resolution to support the Reagan presidency and to ensure that more radical legislation would be avoided. The *Multinational Force in Lebanon Resolution* was approved 270-161 with limited debate and no allowance for amendments. The *Lebanon Resolution* was successful in influencing Reagan to invoke *War Powers Resolution* jointly with the Congress. It is significant that in a situation with a high potential for confrontation, the *War Powers Resolution* emerged as the vehicle for compromise.¹⁰⁸

The provision for “protective measures necessary to ensure the safety of the Multinational Force” made many uneasy. Members compared Lebanon to Vietnam and believed that the provision could open the way for unlimited expansion. Eleven days after *Multinational Force in Lebanon Resolution* was signed into law, 241 Marines were killed. Congressional support held until December despite intense fighting and the

¹⁰⁷This is called the “Reagan Letter to Congressional Leaders on the United States Participation in the Multinational Force in Lebanon 27 September 1983” and it can be found in *Historic Documents of 1983*.

¹⁰⁸Smyrl, 97-117.

deaths of seventeen more soldiers. However, subsequent events undermined congressional support and alerted Congress to the mission's goal and capability problems as well as the impossibility of brokering an agreement in the region. An amendment was offered by Congressman Long to the defense appropriations bill to cut off funding after March 1984. The House defeated it 2 November 1983 by a vote of 153-274. In the Senate, the Republicans used parliamentary maneuvers to avoid a vote in the Foreign Relations Committee on proposals to reduce from 18 to 3 months the authorization for the Marines to remain.

By January 1984, House Speaker O'Neill said the status quo of U.S. Marines was unacceptable, and he would join others in requiring congressional authority for their continued presence. Congress was giving mixed messages: Secretary Shultz said this was the wrong time to send a signal that Americans were not supporting the President; Reagan said there were terrorist factions in the region watching the debate and that plans for redeployment were underway.

Democrats in Congress pressured Reagan for a prompt withdrawal of the troops by introducing a nonbonding resolution on 1 February 1984. The Democratic Caucus submitted a draft resolution to the House Foreign Affairs Committee—an unusual procedure—calling for a prompt and orderly withdrawal. The Administration reacted negatively to this resolution. Reagan said House Speaker O'Neill might be ready to surrender, but he was not. Under Secretary of State Lawrence Eagleburger said the Administration was morally bound to oppose the new resolution. Eagleburger predicted dire consequences as the aftermath of the retreat and abandonment of Lebanon to Syria and the Soviets. As a result the House delayed its resolution.

Democrats complained Reagan spent time denouncing their resolution as an act of capitulation when he actually agreed to an identical policy to re-deploy. In fact, President Reagan suddenly announced his decision to re-deploy the Marines to ships offshore before the House released its resolution. This draft resolution was overtly partisan. With the draft resolution, the Democrats could have dissociated themselves from the Lebanon policy and set the stage for an all-out political confrontation that would have been played out in the impending presidential election. If Reagan had not announced deployment, even the Republican Senate would have done the “politically expedient, self-preserving thing and worked with the Democrats for the withdrawal of American troops.”¹⁰⁹ Republicans felt they had been politically exposed by Reagan’s announcement—all support in Congress for an active role in Lebanon evaporated.¹¹⁰ Reagan could declare he did not recognize the *War Powers Resolution* constitutionally since he, himself, did not invoke it; yet, he gained the political benefit of bipartisan support for his policy in Lebanon in the form of the compromised *Multinational Force in Lebanon Resolution*. The nature of that support, however, was not genuine: the Republican Senate was not prepared to defy Reagan and Democratic House was not prepared to order troops out and face the President’s refusal to comply.

Many Senate Democrats denounced the compromise, arguing the President should have been more stringently limited in his authority to deploy forces. Reagan used this opportunity to attack the legitimacy of the *War Powers Resolution* stating that it would

¹⁰⁹Smyrl, 115-117

¹¹⁰Augur, 28.

have no effect on his authority as President to deploy forces as Commander-in-Chief.

Invoking the *War Powers Resolution* in the Lebanon crisis provided the focus for debate and a model for structuring an executive-legislative agreement as in the *Multinational Force in Lebanon Resolution*. At a time when political need for a broad compromise was imperative, both sides saw the advantage of withholding constitutional and technical reservations in the interest of avoiding a mutually damaging confrontation. The coalition that put the *Lebanon Resolution* together disintegrated 23 October 1983 with the terrorist attack on the Marines. House Democratic leadership abandoned the compromise and called for withdrawal. On the ill-fated day of the terrorist bombing, the Marines, faithful to the rules of engagement that had been designed around neutrality required by the *War Powers Resolution*, did not have guns ready.

CONCLUSION

If the Marines were in Lebanon to fight, they were too few; if they were there to die, they were too many.

The mission of the Multinational Force was to promote confidence, and restore order; as the President did not believe that by committing U.S. forces he had deprived Congress of its constitutional authority. The Marines were under strict rules of engagement, and these rules were defensive in nature. Congress argued over the fact that the President did not provide an exact date for the withdrawal. Simply, the *War Powers Resolution* clock had not been started. Reagan feared that the Resolution gave Congress the power to disrupt the nation's ability to defend its foreign interests. The Resolution's requirement that the President report to the Congress would unequivocally

set the sixty-day clock and place Congress in a shared decision making role.¹¹¹

Ronald Reagan conceded the crisis in Lebanon was due in part to his non-compliance with consulting and reporting and his difficulty in securing Congress's support for his Beirut operation. The President drew some important conclusions from this failed military mission. He said, "The lowest point during my eight years in Washington was the day when 241 Marines lost their lives during the bombing of our Marine barracks in Beirut. Some principles I adopted post-Lebanon include: not committing forces to military action overseas unless the cause is vital to national interest; decisions should be made with clear intent and support needed to win; [the Administration] must have full support of the American people and Congress; and we should commit to combat only as a last resort."¹¹²

Every President has found unconstitutional the *War Powers Resolution* provision that automatically withdraws armed forces as a result of congressional inaction. President Reagan also cautioned that his approval was not an acknowledgment that his authority can be impermissibly infringed by statute—he did not acknowledge the applicability of the Resolution. Congress gained an advantage as a result of the compromise—it could set the *War Powers Resolution* clock. Precedents suggest that the precise balance of power cannot be measured by constitutional rules; rather, the balance at any point in time is a reflection of political reality. If the constitutional problems were

¹¹¹Barry M. Blechman, 18.

¹¹²Reagan, 464-466.

corrected, the *War Powers Resolution* could represent a pact for sharing constitutional war powers. If enacted into law with President's signature, it could serve as symbol of cooperation between the branches of government guaranteeing collective judgment in use of military forces abroad. In the case of President Reagan, he did not acknowledge and Congress did not amend.¹¹³

Secretary of State Shultz made it clear to Congress that Reagan would not allow the *War Powers Resolution* to diminish his authority as Commander-in-Chief. Shultz looked to Congress for the failure of the policy, saying the debate over the Lebanon Resolution and appropriations undermined the Administration. President Reagan charged the debate had stimulated the terrorists. There was obvious discord between the executive and legislative branches and even the enemies knew that.

The deployment of Marines into Lebanon saw Congress act independently to enforce the *War Powers Resolution* after a few months of chaos in Lebanon. Congress determined the *War Powers Resolution* applied, but it extended the deadline for its approval of the intervention (or the withdrawal of troops) from the sixty days specified to eighteen months via the *Multinational Force in Lebanon Resolution*. By invoking the *War Powers Resolution*, but not demanding the troops' withdrawal, Congress implicitly assumed some of the responsibility for the U.S. losses.¹¹⁴ When Congress learned some Marines were carrying loaded rifles, there was an outcry. They viewed it as clear evidence that the Marines were anticipating hostilities if not seeking to initiate a war. After the terrorist killing of the 241 Marines, Congress questioned why the sentries had

¹¹³Robert D. Clark, et. al., 32, 34, 40.

¹¹⁴Blechman, 7.

not been carrying loaded rifles (could the delay of a few seconds to load rifles avert the attack?).¹¹⁵

This deployment was a test case for the *War Powers Resolution*: it was the first commitment of U.S. forces abroad for a period in excess of the Resolution's sixty day limit. In addition, it also exposed the harmful consequences of the partisan politics, election year concerns, a defiant President, and an obstinate Administration. Senate Republican leadership told the Administration that an election year was not the time to persist in an unpopular military operation where responsibility would rest with the Republicans. Apparently convinced, the Administration soon redeployed the troops to ships offshore.¹¹⁶

Congress had to pass legislation to invoke section 4(1)(a) of the *War Powers Resolution* because of Reagan's refusal to trigger the clock. In passing this legislation in the fall of 1983, Congress gave the Administration authority for eighteen months, deliberately allowing military forces to remain in Lebanon throughout the election year of 1984 without further legislative action. Members supported this massive delegation of authority by reasoning that upon signing the bill, Reagan would concede the legitimacy of the process established by the Resolution. But what the President did was to give Congress de facto recognition by making it clear that he might continue military operations beyond the eighteen-month period without reauthorization by Congress.

¹¹⁵Turner, *Repealing the War Powers Resolution: Restoring the Rule of Law in U.S. Foreign Policy*, 138.

¹¹⁶Blechman, 183.

Although he was compelled to compromise, his actions confused his political opponents. After stating he might continue military operations, Reagan redeployed the Marines to the offshore ships. His switching tactics was both bold and expedient, and he diffused a politically dangerous issue. The events of 1983 illustrate that Congress has been willing, in return for the short term political advantage, to forfeit long term institutional interests and to act contrary to a fundamental goal of the Resolution.¹¹⁷

Congress looked for insurance policies in case the worst came to pass and few wanted to criticize the Middle East peace effort—they insulated themselves from ultimate accountability by raising procedural objections to the deployment and by focusing their criticism of the fact that the President had chosen to report under the “equipped for combat” rather “imminent involvement in hostilities” clause of Section 4. The fact that it was not until the end of August of the following year that any Marines came under hostile fire and that the two resulting deaths were caused by hostile shelling by terrorist groups would seem to confirm the President’s judgment that involvement in hostilities was not imminent.¹¹⁸ Beirut was a Pyrrhic victory for Congress providing the high point and the beginning of the decline in its assertiveness with respect to the *War Powers Resolution*.

Congress was willing to go along with the Marine deployment as part of the second Multinational Force, but only through a carefully crafted agreement that, while technically stopped short of a formal invocation of the *War Powers Resolution*, made the troop commitment politically subject to congressional renewal or termination. Thus

¹¹⁷Fisher, *Constitutional Conflicts between Congress and the President*, 287.

¹¹⁸Turner, *Repealing the War Powers Resolution: Restoring the Rule of Law in U.S. Foreign Policy*, 139.

support was there, but it was tenuous and tentative, ready to be tipped in the other direction by some unforeseen event, which is what happened with the Marine barracks bombing on the October 23.¹¹⁹ The incident, which a respected investigative body The Long Commission subsequently blamed on lax security and ill defined mission, was a hard blow to the Shultz policy and the seminal event in a four month process that ended with the total withdrawal of U.S. forces.¹²⁰

The *War Powers Resolution* in the Lebanon crisis proved useful both as a working definition of the limits of executive freedom of action and as a vehicle for compromise. Enactment of the *Multinational Force in Lebanon Resolution* marked the first time the *War Powers Resolution* served as a direct means for exercising collective judgment of the branches. The Lebanon experience illustrated that while the *War Powers Resolution* lacked enforcement provision, Congress has other tools available to it. The Lebanon Resolution overtly set the boundaries within which the President may act; and Congress indirectly defended those boundaries. While events surrounding the enactment of a compromised resolution in the Beirut crisis reflected Congress's reluctance to invoke the *War Powers Resolution*, the details leading up to the 1991 Persian Gulf War with Iraq were quite different.

The problem facing the Congress in 1991 was one of presidential out-maneuvering by the President's ability to create conditions that allowed the Congress only a minimal decision-making role in the use of force. Congress has the constitutional

¹¹⁹Bruce W. Jentleson, "American Policy: Around the World and Along Pennsylvania Avenue," in *A Question of Balance: The President, the Congress, and Foreign Policy*, ed. Thomas E. Mann (Washington, DC: Brookings Institute, 1990), 186.

¹²⁰Cannon, *Reagan*, 401.

power, but it also needs the institutional courage and constitutional understanding to share with the President the momentous decision to send U.S. forces into combat. In the Persian Gulf War debate, Congress did not share a decision—it supported the President’s decision. It did not give evidence of its constitutional understanding as to the power to declare war; instead it gave the appearance of institutional courage. The Persian Gulf War also addresses the relationship between the *War Powers Resolution* and resolutions prescribed by the United Nations as well as introduces a judicial approach that abandons the *War Powers Resolution* and stands on constitutional provisions governing war powers.

CHAPTER VI

1991 PERSIAN GULF WAR WITH IRAQ

Even had Congress not passed the resolutions I would have acted and ordered our troops into combat. I know I would have caused an outcry, but it was the right thing to do. I was comfortable in my own mind that I had constitutional authority.

--President George Bush, 12 January 1991

In the past two centuries of American government there have been three types of Presidents: the traditional President, like George Washington, who had little to do but execute the charge of protecting the country; the modern President, like Franklin D. Roosevelt, who had plenty to do at home and abroad and appealed for public support to accomplish it; and the post-modern President of the 1970s, like Jimmy Carter, who may have had too much expected of his presidency.¹ The post-modern President must contend with the fact that he cannot dominate the international system; moreover, it is other nations who can now influence the White House instead of vice versa. The challenge to the post-modern President is to be both responsive and effective in a domestic environment with its formal system of checks and balances and in the global environment of fluctuating interdependence.

George Bush serves as example of the post-modern President; he faced the challenges of fiscal concerns inherited from his predecessor while engaging the international system to its fullest. By August 1990 the American economy had weakened in part because of escalating oil prices due to the invasion of Iraqi forces into Kuwait

¹Richard Rose, *The Post Modern President: George Bush Meets the World* (Chatham: Chatham House Publishers, 1991), 2.

coupled with the President's own surrender to his "no new taxes" pledge. The Bush Administration Chief of Staff, John Sununu, explained the situation at the annual Conservative Leadership Conference in November 1990: the alternative to maintaining the President's "no new taxes" would have been "chaos, a budget crisis, government shutdown, and likely panic by the bond and stock markets during the fragile period when the economy was weakening and the largest American expeditionary force since Vietnam was faced off against Iraq."² Bush had acquiesced on the need for expanded taxation only after winning unprecedented controls on future federal spending. The difficult relationship between the executive and legislative branches during this period is evident in the Chief of Staff's further statements: "Let me suggest the following, there's not another single piece of legislation that needs to be passed in the next two years for this President. In fact, if Congress wants to come together, adjourn, and leave, it's all right with us. We don't need them."³

Bush sought to introduce a new world order but was stymied by a budget deficit and the prospect of all-out war. Nevertheless, he successfully led the country through both dilemmas despite a tense relationship with the Congress. Retracting his promise of "no new taxes" was undoubtedly very humbling; on the other hand, the remarkable, swift creation of a multinational coalition of unlikely allies to face war in the Middle East established George Bush as a *world leader*. He single-mindedly convinced potential allies in the Gulf War that he was certain of success: fear often relates less to what the

²Duffy and Goodgame, 80.

³*Ibid.*

threat is than what it might do . . . and that as interests converge so will policy, as needs emerge so the will.⁴

During his four years in the White House, Bush faced both the challenges from within his government as well as the dynamism of the global system. As the nation and the world prepared for a war that was believed to be the *mother of all wars*, Bush confronted congressional dissent and charges of illegal and unconstitutional conduct as Commander-in-Chief. The short-lived drama of the 1991 Persian Gulf War with Iraq introduced the Supreme Court into the longstanding debate on both the constitutionality of war powers and the effectiveness of the 1973 *War Powers Resolution*.

The lessons of the 1991 War in the Persian Gulf are more a matter of protocol than was the case in the Beirut crisis. At the heart of this dispute is the method by which President Bush circumvented the Congress—he out-maneuvered it by declaring a state of emergency and then working with the United Nations. The analysis of Bush’s succession to the White House and the executive-legislative relationship is important in establishing what affected Bush’s behavior: was this independent course his way of defining his presidency as juxtaposed to the Reagan legacy? The case study reveals that the Bush Administration did not experience the internal discord of the Reagan presidency; instead, his inner circle gave constructive criticism and support for his decisions perhaps emboldening his course of action. Bush also had fewer successes with Congress than did his predecessor in the first few years of his Administration, but he possessed much more experience in working with the global community. These two variables no doubt affected Bush’s decision to work closely with the United Nations while unilaterally deciding on the

⁴Serfaty, 35.

fate on the country with respect to taking an offensive posture in the Persian Gulf. The overview of the Persian Gulf War is important for it elaborates on the speed with which things transpired, leaving Bush with little opportunity to consult with Congress, and on the untimely absence of Congress during the crisis. Third, the evaluation of congressional action in the final stages of the crisis will address presidential avoidance to confer with the Congress and its reaction to presidential adherence to Security Council Resolutions over congressional war power. Also in this section is an examination of the legal disputation introduced by a small group of Congressmen who took the case to the Federal Court only to learn of the limitations placed on the judicial system in a time of national emergency. The court's decision brought to bear the ineffectiveness of the *War Powers Resolution* to limit executive freedom. Congress was left with one course—to fully support Bush and the war. It did so, but only after the decision to go to war had been made. The *War Powers Resolution* indirectly and briefly affected the President's course of action, for after establishing the legal ramifications of non-compliance, Bush quickly determined the Resolution's shortfalls and chose to ignore it.

PART 1: BUSH AND THE CONGRESS

A Conciliatory President In Need of a Crisis: When George Bush ran for presidential nomination in the 1980 primary, he denounced his opponent for endorsing what he believed to be voodoo economics, economic madness. It was difficult for him to negotiate out of that situation as Vice President to his former opponent, the newly elected Ronald Reagan. In fact, the events of the 1980 campaign became an enduring source of embarrassment for Bush. Labeled the American Tory, Bush was a genuine conservative.

The September 1990 Institute of Governmental Services (IGS) Panel Assessment portrayed Bush as one who cared “about the society and the government handed to him... a professional in public service, which means he has respect for other professionals. Conventional wisdom means something to him. He pays attention to people who are supposed to be experts. These are qualities he does not share with his predecessor.”⁵

George Herbert Walker Bush compared himself to Harry S. Truman in the political sequence and the leadership undertaking that Truman marked his moment—a come from behind vindication. Bush endured an extended debate about his identity. He would hold to Reagan’s programs, building on that Administration’s record of accomplishments: hence “no new taxes.” As President, Bush maintained the existing order domestically, but looked globally to create a new world order. Bush held to a strategy of inclusion—a spirit of moderation, openness, bi-partisanship—for he recognized his limitations and did not possess the public relations instincts and skills of his immediate predecessor. Critics may have found Bush to be inadequate, but the American public saw him as sincere; Bush surpassed Reagan with higher levels in the polls.

Reagan’s victory placed a stigma on big government; Bush was criticized for not doing that. Reagan carried forty-four states and fifty one percent of the popular vote, a ten percent margin of victory over Carter. Bush also carried forty-four states, fifty three percent of the popular vote, and a six percent margin in the popular vote. With the numbers so close to the previous Administration, his victory lacked the psychological

⁵“IGS Panel Assesses Bush Administration,” *Public Affairs Report* (September 1990).

advantage of surprise and because the media did not invest much time analyzing him, they concluded his presidency would represent a continuity of the Reagan agenda.⁶

Bush emerged from the campaign not so much as a spokesman for the country's aspirations, but as a steady leader during its uncertain mood and conflicting desires that came with the end of the Cold War. He came to represent different things to different people: to traditional Republicans he was a card-carrying member in perpetually good standing; to Conservatives he was an acceptable, if not imperfect torch carrier of Reagan; to disaffected Democrats, particularly the ethnics and refugees, he was a "take no prisoners" American President who wasn't afraid to use force against outlaws; to moderate Independents he was the kinder, more competent chief executive.⁷ The many faces of Bush would place considerable constraints on his leadership. As soon as the campaign ended Bush dropped the themes he had employed and took a more conciliatory tone and style.

In the previous offices he occupied there is nothing conspicuous that would define Bush as an exceptional leader despite his varied political experience. In 1966 he was elected as a moderate Republican in House of Representatives from Texas. He won that seat again in 1968. In 1970, Richard Nixon encouraged him to run for the Senate. He did so but he lost. President Nixon then appointed Bush Ambassador to the United Nations in 1971. Bush became the Chairman of the Republican National Committee in 1972 and envoy to China in 1974. President Ford appointed him Director of the Central

⁶George C. Edwards III, "George Bush and the Public Presidency: The Politics of Inclusion," in *The Bush Presidency: First Appraisals*, eds. Colin C. Campbell and Bert A. Rockman (Chatham House: Chatham House Publishers, 1991), 255.

⁷Duffy and Goodgame, 27.

Intelligence Agency in 1975. In 1981 he served as Vice President in the Reagan Administration until he was elected the forty-first President in 1989.

Bush was a hands-on executive and deeply engaged in the formulation and implementation of national security. He concerned himself with details and participated actively approaching foreign policy with a pragmatic, rather than ideological, orientation. This too was criticized as policy that was tactical and lacked strategic design. It is fair to say Bush continued policies of the late Reagan years, doing so with greater flexibility and adaptability. He provided what some construed to be a “competent Reagan policy.”⁸ Bush assembled his Administration with a team of professionals who were competent and cohesive.

The Bush Administration included Daniel Quayle as Vice President, Richard Cheney as Secretary of Defense, and John Sununu as Chief of Staff. James Baker, who had just served as Bush’s campaign chairman, was appointed Secretary of State. Baker was popular during the Reagan presidency because Congress considered him the pragmatist of the Reagan Cabinet. Lieutenant General Brent Scowcroft became the National Security Advisor, a position he had held during the Ford Administration. Scowcroft was respected as a low-key strategist and a behind the scenes adviser. Colin Powell, as Chairman of the Joint Chiefs of Staff, was highly respected; he had served as President Reagan’s National Security Adviser. This team, unlike the Reagan roundtable, brought with them years of experience and showed no signs of bitter fissures. The familiarity among the men created an unusually cooperative team. Thus, preparing for decisions, Bush sought balance from within this circle.

⁸Thomas and Pika, 405-437.

With the collapse of the Soviet Union, Bush was pressured to lower the defense budget. By accepting a modest set of cuts in the defense budget, Bush positioned himself to look neither dovish nor hawkish. Bush met the expectations as Reagan's successor by becoming a good *maintaining* President. In the age of the *personal* President, Bush could not so easily compartmentalize the political man from the personal man. He was an energetic executive, a President who loved his work. Moreover, Bush appeared to be torn between two conflicting sides of his persona: *the Politician*, non-confrontational, non-ideological, pragmatic, willing to learn to live with divided government; and *the President*, jealous guardian of executive prerogative.⁹ Presidential vision would call for Bush to stake out the terms for the exercise of his presidential power. What would be the nation's priorities when the reconstruction of the previous Administration turned out to be mostly rhetorical and very expensive? What does the premise of continuity entail when recent rhetoric and policy diverge?

The presidency of George H.W. Bush was compromised because of these trade-offs. What resulted was a split within Republican Party with the outspoken Patrick Buchanan coming forth as the conservative Republican candidate for the next presidential election. The 1990 Bush budget plan promised new control on spending, but his "no new taxes" renege raised questions on his credibility among conservative Republicans. "No new taxes" was the linchpin of his campaign and when he reneged, his party partisans rose up in revolt.¹⁰ Whereas Carter exaggerated the importance of technocratic skills in

⁹Larry Berman and Bruce W. Jentleson, "Bush and the Post Cold War: New Challenges for American Leadership," in *The Bush Presidency: First Appraisals*, eds. Colin C. Campbell and Bert A. Rockman (Chatham: Chatham House Publishers, 1991), 237.

¹⁰Skowronek, 409-446.

tackling complex problems and Reagan exaggerated his ability to ignore old problems and establish a new order in their place, Bush exaggerated the ability of his aides to manage domestic problems while he directed his attention elsewhere. These events coincided with the Persian Gulf War, and a speedy victory in that sphere would come on the heels of his greatest difficulty at home.

Bush demonstrated the powers of his office most dramatically in the Persian Gulf War, but international muscle flexing has never proven a sufficient distraction from the dilemmas of government. By August 1990 a recession had arrived (defined as two or more consecutive quarters of negative economic growth). It actually began in mid-July 1990 and lasted through first quarter of 1991, and according to the Administration, it was caused by the sharp hike in oil prices and the evaporation of consumer confidence. The budget impasse of 1990, the bad economic news, and the prospect of a prolonged military presence in the Persian Gulf all resulted in a significant drop in the President's approval rating. His ability to influence some in Congress regarding to the Persian Gulf War crisis did not extend to influence on domestic issues.

With the Persian Gulf War, the President skillfully mobilized both domestic and world opinion behind the most effective international coalition since World War II. In building the international coalition, Bush proved to be a skillful bargainer by trading advantages in return for support for international sanctions against Iraq: he canceled Egypt's debt of seven billion dollars; he convinced Saudi Arabia to give Moscow one billion dollars in aid; he allowed Turkey to ship fifty percent more textiles to U.S. markets; he ended China's eighteen-month diplomatic isolation; he shipped weapons to Israel; he

brought Hafez Assad of Syria into the anti-Iraq coalition; and he convinced the Soviet Union to join the U.S. as an ally in Middle East policy formulation.¹¹

Despite this success, Bush's foreign policy remained essentially reactive; the Persian Gulf War was a *response* to a crisis. The absence of a strategic framework led to an emphasis on individual problems and to policies that lacked cohesion. His Administration was unable to develop a strategic design for the post-Cold War world or a replacement for the Soviet threat as the unifying force that once held NATO together. The absence of a strategic focus for national security may have left Bush with little sense of how to counter growing domestic pressures for reduced international involvement or how to cope with the increasing impact of international factors on the domestic economy.¹² When the Soviet Union collapsed in 1991, isolationist forces that had been dormant re-awoke. This development made any prospect of a national security policy built on a broad consensus beyond reach in the foreseeable future.¹³ Isolationism and the end of bi-partisan congressional support for administrative policies made the need for effective international leadership in the U.S. more critical.

The Congress: During both the Reagan and Bush presidencies divided government tended to belittle efforts by Democrats and Republicans alike in defining a collective purpose. Congress criticized Bush for reactive problem solving, and for not being visionary or strategic. The Democrats were confident that they shared his mandate to govern. His inaugural address was a call to arms for them as the President now looked

¹¹Berman and Jentleson, 239.

¹²Thomas and Pika, 405-437.

¹³*Ibid.*

to “friends in the Congress.” He wanted to establish a conciliatory and cooperative posture toward those who shared his mandate. The early months of the Bush presidency did see such cooperation, but that may have been due more to lack of leadership among Congress Democrats than to a shared vision.

A new Majority Leader was needed in the Senate with the exit of Robert Byrd, who served in that position since 1977. George Mitchell replaced Byrd opening the way for a new leadership to work with the President. The Senate Minority leader remained Robert Dole. House Speaker Jim Wright’s leadership was questioned for his acceptance of monies for honoraria by the Committee on Standards of Official Conduct, which led to his resignation in May 1989. Representative Tom Foley became the new Speaker of the House with Richard Gephardt as the Majority Leader on 6 June 1989. The House Minority leader was Robert H. Michel. Thus, 101st (1989-1991) and 102nd (1991-1993) Congress saw significant changes in the Democratic leadership.

The years of the Bush Administration were not a happy time for the Congress; it was continually attacked from all sides for sins of omission and commission. Congress was perceived as lacking the capacity to address the fundamental policy questions confronting the nation.¹⁴ Like other recent Republican Presidents faced with a Democratic-controlled Congress, Bush used the veto to block measures that he viewed as expanding the role of government or non-reflective of his budgetary priorities. Of his forty-four presidential vetoes, only one was overridden. Bush had also issued

¹⁴Leroy N. Rieselbach, *Congressional Reform: The Changing Modern Congress* (Washington, DC: Congressional Quarterly Press, 1994), 1

approximately sixty veto threats annually either to kill legislation or to stimulate bargaining.¹⁵

The Democratic-control of the Senate was by a margin of ten and in the House by a margin of eighty-five. As a result, Bush's willingness to compromise was dictated more by limited resources than by a broad-ranging coincidence of interests.¹⁶ In 1989 Bush agreed to congressional defense spending cuts because "no new taxes" and domestic needs made even cuts unavoidable. Geopolitical events were the most important cause of relatively tranquil relations between the executive and legislative branches. The first eighteen months saw no major confrontations between the President and the Congress over foreign policy. At the same time, Congress showed no sign of retreating from its assertive foreign policy and defensive policy role.

Congressional Republicans felt themselves less beholden to Bush and Conservative Republicans worked to ensure that his agenda did not retreat from the gains of the Reagan Revolution, particularly when it came to Bush's promise of "no new taxes."¹⁷ Bush chose to present a limited agenda rather than a large domestic package, knowing it would have been foolhardy to do otherwise. His victories came more as the result of a shrewd use of the power of the veto rather than from a skillful presentation and defense of White House initiative, which is the President's most formidable weapon when his party is outnumbered on the Hill.

¹⁵*Congress and the Nation*. Vol. VIII, 1989-1992 (Washington, DC: Congressional Quarterly Press, 1993), 670.

¹⁶Barbara Sinclair, "Governing Unheroically (and Sometimes Unappetizingly): Bush and the 101st Congress," in *The Bush Presidency: First Appraisals*, eds. Colin C. Campbell and Bert A. Rockman (Chatham: Chatham House Publishers, 1991), 139.

¹⁷Greene, 61.

Bush and the Congress: The Constitution establishes a relationship of mutual dependence between the executive and legislative branches. The President depends on Congress for new programs, for money to carry out existing programs, for approval of top-level personnel, and for acquiescence in many of the decisions he makes that Congress could hinder through legislation or less formal means. The Constitution also endorses a decentralized party system in which the President has no basis for commanding the Congress. He does, however, have some leverage through presidential veto power. He also, through control of the executive branch and his access to the media, can advance or hinder the goals of members of Congress. Given his dependence on Congress, his inability to command, and his potential capacity to influence, every President needs a strategy for dealing with Congress, a plan for getting Congress to do what he wants in order for him to accomplish his goals.

The inherited problem of the budget and the Reagan legacy of tax cuts and over spending, \$464 billion in eight years equating to a twenty-five percent increase or an inherited deficit of \$152 billion, left Bush with no room in which to operate: “And the Congress will push me to raise taxes, and I’ll say no, and they’ll push, and I’ll say no, and they’ll push again. And I’ll say to them: Read my lips. No new taxes.”¹⁸ Congress quickly prevailed over the new President with the Gramm-Rudman-Hollings Act, which required proposals for a balanced budget in the foreseeable future. Bush was compelled to act. He could not speak ambiguously because this deficit was too large and this Congress insisted on answers. Through the end of his third year, Bush had prevailed on fewer congressional roll calls than had than had his predecessors.

¹⁸Rose, 317.

With the invasion of Iraqi forces into Kuwait on 2 August 1990, the peaceful period that followed from the dissolution of the Soviet Union and the Cold War shifted into a set of circumstances that foreshadowed difficult decisions. Consensus in Congress easily developed around a strategy of passive defense, internationally agreed sanctions, and deployment of defensive capability in Saudi Arabia. That consensus ended after mid-term elections in November 1990 when Bush moved from a sitting war to prospect of invasion to free Kuwait. When consensus faltered, the Democrats preferred to delay with rhetoric on behalf of caution, rather than to legally impede the President from engagement either through invoking the *War Powers Resolution* or entertaining a resolution to support his use of force.

Bush planned to proceed with or without congressional authorization by making clear that even without its resolutions he would have acted and ordered troops into combat. With the United Nations Security Council authorizing Bush to oust Iraqi forces from Kuwait, what other course of action could the Congress take but to comply with what was now an agreed upon international crisis? Congress ultimately authorized the 1991 war in the Persian Gulf with great haste partly due to the major military deployment conducted before Congress had fully debated the course of action they would sanction. The requirements of the *War Powers Resolution* for presidential consulting and reporting to Congress fell to the wayside as Bush unilaterally decided to deploy 500,000 American troops, building the largest, multi-national coalition of forces the world had ever seen.

The legacies carried forward from the Reagan years into the Bush presidency made it difficult for the forty-first President to establish his own White House. The Democratic majority in Congress and the Republican minority, both of whom viewed

him as ineffectual, challenged Bush's indeterminate political character. His asymmetrical interest in foreign policy over domestic policy created a rift between the executive and legislative branches. Clouded by his retracting a campaign promise of "no new taxes," Bush's presidency would soon change with the 1990 Iraqi invasion into Kuwait. Bush's experience, straight-laced character, and respect from the international community would distill into a moment of glory as he seized the opportunity to engage himself and the world in a fight against tyranny.

Congress didn't share that moment with Bush. More precisely, Congress felt as if it were an afterthought in the planning of the war. It was compelled to support the operation because of *timing*: the swiftness of the Iraqi invasion; the immediate reaction on the part of the President; the hasty deployment of American troops; the impending congressional election year; ongoing military build-up which became unstoppable on the part of the Congress; and congressional hesitancy to invoke the *War Powers Resolution*. Bush proceeded via the United Nations leaving himself open for criticism at home, as well as congressional non-compliance, tenuous future relations with Congress, and a lawsuit before the Supreme Court. Ironically, victory in Kuwait brought with it a heavy political price at home for George Bush.

PART 2: OVERVIEW PERSIAN GULF WAR 1990-1991

Iraq had wealth and population, but lacked political coherence having been cobbled together by the British after WWI out of several Ottoman provinces. The population of Iraq was composed of twenty percent Sunni Muslims, twenty percent ethnic Kurds, and fifty-five percent Shi-ite Muslims, whose sacred sites are in Iraqi

territory. Kuwait, Bahrain, Oman, Qatar, and United Arab Emirates traded among each other. They needed security from pirates inside and outside their borders; Britain who was trading with India, willingly provided that security.

In 1961 British troops were in the region to protect Kuwait against Iraqi aggression, but by 1971 Britain realized it could no longer secure the region and withdrew all of its forces from east of the Suez Canal. On the heels of the British withdrawal, the Baathist revolutionary regime that gripped Iraq sought alliance with the Soviet Union.¹⁹ In neighboring Iran, the Carter Administration found the Shah in violation of many human rights issues. The Shah had an unbridled arms buildup causing deep resentment by fundamentalists under their religious leader, Ayatollah Khomeini. The Iranian military indicated to Carter that the Shah would not survive the internal revolution taking place in Iran. The U.S. announced it would not support a military take over, which proved to be a grave mistake in U.S. history, for the U.S. facilitated the triumph of Ayatollah Khomeini who dreamed of a new Islamic empire built on the ruins of Western influence and interests, and made the Shah's human rights policies look like a model of enlightenment.

The Carter Doctrine of 1980 declared a policy that would be the basis for

¹⁹The Baathist "renaissance" party promoted Arab world unity that subscribes to socialist ideology while seeking an assertive global position for Arab states. The party ruled in Iraq and Syria, although during the Persian Gulf crisis, Saddam and President Assad of Syria were enemies.

Operation Desert Storm.²⁰ President Reagan pressed forward that doctrine with a justified defense build-up that would result in the Persian Gulf War's success. From 1980-1988 Iran and Iraq had been at war with the U.S. supporting Iraq because it was believed Iran might take over the Middle East. Reagan gave Iraq monies and intelligence; in return, he required the U.S. have a stable political and economic relationship after seventeen years of separation. Saddam did the politically expedient thing and complied, although his socialist ideology and mistrust of the West kept the relationship tenuous at best. By 1982, Iraq was defending its own territory against Iran, which believed it was fighting a holy war. Ironically, the two most powerful states in the region shared a long drawn out war and a mutually hostile relationship to the U.S.

Both belligerents had to sell oil to finance the conflict. Iran increased sales through ports on the Gulf. Iraq persuaded Gulf Arab states to trade for oil. Iran retaliated by attacking Kuwaiti tankers, more than 100 by 1987. Reagan intervened against Iran by ordering the U.S. Navy to escort Kuwaiti tankers.²¹ In 1987 the *U.S.S. Stark* was attacked by Iran and 1988 the *U.S.S. Samuel B. Roberts* hit an Iranian land mine. In retaliation, Reagan ordered an attack against Iranian naval targets. Concurrently, because he U.S. had aided Afghani Mujahideen forces during the Soviet-Afghan war, the Saudis

²⁰In his 23 January 1980 State of the Union Address, Carter lamented the ongoing hostage situation in Iran, denouncing Soviet military actions, and declaring the U.S. must reduce its dependency on foreign oil. The U.S. would use military force to counter aggression by any outside force in the oil-rich and strategically significant Persian Gulf. Carter worried that Moscow was boldly moving to establish a presence on the Indian Ocean and the Persian Gulf. In the event of an international confrontation, the Soviet Union would be in a position to threaten vital oil shipments. Carter declared that the Persian Gulf would henceforth be considered a vital American interest. The doctrine served notice that the U.S. would go to war to protect the Gulf from outside interference by anyone including the Soviet Union.

²¹Reagan was in violation of the *War Powers Resolution* with this action for not consulting with Congress prior to placing troops in *imminent hostilities*.

began to gravitate to the side of the U.S. Despite a suspicious relationship, no one did more to aid Saddam than the Reagan and Bush Administrations. By 1988, the war between Iraq and Iran was over. Iran had ended the conflict, leaving Iraq with eighty billion dollars of debt. In 1989, Bush declared Iraq the key friendly state in the region and deemed it vital to U.S. national security.²²

In Iraq, war galvanized the regime. Saddam gained control of the state and established a republic of fear. War also consolidated the Islamic Republic of Iran under the Ayatollah. The U.S.-Iraqi shared interest in defeating the Ayatollah forged a closer alliance. Iraq profited from *Operation Staunch*, the U.S. effort to deny Iran arms. By 1984, the U.S. had full diplomatic relations with Iraq and sent wheat and U.S. commodities. Meanwhile, Saddam expanded his diplomatic relations internationally by purchasing French missiles, Italian mines, Brazilian radar, German munitions, and South African artillery. Between 1982-1989 Iraq purchased \$13.4 billion in Western arms.²³ With the close of the Iraq-Iran War, Saddam turned his attention to a domestic threat, the Kurds. President Reagan did not recognize the human disaster that caused the death of thousands by chemical means, but the U.S. Senate took note and enacted a sanctions bill against Saddam. Reagan's managing of the Iran-Contra affair left the succeeding Bush Administration little choice but to continue to cultivate Saddam.

Bush had to face the results of a decade of U.S. disasters in the Middle East: Lebanon, the revolution in Iran, Iran-Contra, hostages in Iran and Lebanon. Like previous administrations, the Bush Administration was loath to rock the boat in the

²²Barber, 475.

²³Lehman, 23.

Middle East by openly criticizing Saddam for the atrocities against the Kurds. In October 1989, the U.S. increased the number of agricultural credits to Iraq but protested Saddam's use of the money for military purposes. Saddam repeatedly damned Israel, which resulted in a congressional push to cut off funds, but Bush and State Department turned this aside saying it would hurt the U.S. farmers selling to Iraq. Instead, an economic incentive was put together to provide Commodity Credit Corporation (CCC) credit guarantees to U.S. exporters to encourage Iraq's importation of U.S. grain. Iraq ultimately ran short of money; the resulting urgency in Saddam's February 1990 explanation to the Arab Cooperation that the demise of the Soviet Union meant the U.S. should get out of the Persian Gulf. Saddam also wanted Iraq's thirty billion dollar debt to be canceled by the smaller oil states, and in return, thirty billion dollars be given to him by these same states. This began Saddam's period of defiance.

The Downward Spiraling of Events: In early 1990 it became clear that Saddam had made an abrupt change in his policy toward the U.S. There also emerged signs that he was developing weapons of mass destruction in addition to his anti-Israel rhetoric. Bush sent him an unambiguous message via Ambassador to Iraq April Glaspie, Undersecretary of State Lawrence Eagleburger, and a bipartisan Senate group led by senior Senators Robert Dole and Howard Metzenbaum. The message they were to deliver was clear: unless there were distinct changes in Iraq's international behavior, the U.S. would not continue to conduct business as usual. Dole reported that Saddam was indeed convinced that there was a conspiracy against Iraq, although he seemed pleased when Dole reassured him that President Bush was not plotting against him.²⁴ The

²⁴Bush and Scowcroft, 306.

conclusion of the Senate group was optimistic: stay the course because sanctions would only lend credence to Saddam's conspiracy theory.

The spring and summer of 1990 brought a mood of optimism. But that optimism was short-lived. Saddam now began to argue with the Organization for Petroleum Exporting Countries (OPEC). On 17 July for example, Saddam accused Kuwait of exceeding OPEC production limits and thus driving down prices. He focused on the lowering of prices and the negative effects it had on Iraq. He saw a solution to the dilemma: no more U.S. aid to Iraq meant Iraq would need to look elsewhere. Saddam looked to Kuwait. Saddam concluded that Kuwait was both the cause of and the answer to his problem, and he concentrated his ire on the small state. He disputed the common boundary, the islands claimed by Kuwait, and Iraq's thirty billion dollar debt owed to Kuwait. The Kuwait's ruling family, al-Sabah, became the envy of Saddam because their country was so wealthy and the Kuwaiti people never had to work. The Kuwaiti government, however, was reluctant to share its wealth as demonstrated in its refusal to allow its eight million immigrant workers citizenship.

Bush and Scowcroft were uncertain of Saddam's objectives in view of the reassurances they had received from Hosni Mubarak of Egypt, King Fahd of Saudi Arabia, and King Hussein of Jordan.²⁵ U.S. Ambassador to Kuwait Nathaniel Howell informed the President that the Kuwaitis were perplexed, and they considered Saddam's accusations as a bid for hegemony in the region. Did Saddam aspire to play the leading role in OPEC and the Arab world?

²⁵*Ibid.*

On 25 July, Saddam sent for Ambassador Glaspie, who spoke Arabic, for a private meeting. Immediately following their talk, she informed President Bush that Saddam had given his word that he would not antagonize the U.S. any further. He did, however, want the President to understand that Kuwait and United Arab Emirate's selfishness was becoming unbearable. Glaspie informed Saddam that the U.S. would not take a position on territorial disputes, which is standard State Department policy; but in this case, however she was sharply criticized by Congress, who had made their position known by an earlier endorsement of sanctions against Iraq. Only days after his meeting with Glaspie Saddam ordered Iraqi forces to invade Kuwait; the invasion took place on 2 August 1990.

Within hours of the invasion, Bush's predilection for political diplomacy took over: he made numerous phone calls and spoke to every leader of the Western alliance to freeze Iraqi assets. He spoke directly with Moscow and Beijing garnering their support. Bush's success left Saddam stunned by the surprising unity of the global community. The President's experience with the U.N. as Ambassador proved useful in getting the Security Council to act.²⁶ On the same day, the U.N. Security Council voted 14-0 in favor of Resolution 660 freezing Iraqi assets, condemning the invasion, and demanding the withdrawal of Iraqi forces (see Appendix C for a list and concise summary of Security Council resolutions pertaining to the Persian Gulf War).

With the U.S. and Soviet Union now acting in tandem, a superpower harmony enabled the Security Council to take action. For only the third time in the U.N.'s forty-five year history, the Security Council invoked economic sanctions against a nation that

²⁶Greene, 109.

refused to obey its directives with Resolution 661 on 6 August.²⁷ All nations were to stop trading with Saddam.

Circumventing the Congress: Six days after the invasion, Bush deployed 230,000 American armed combat troops to the desert of Saudi Arabia as a deterrent shield.²⁸ The next day, Security Council Resolution 662 was enacted declaring Iraq's annexation of Kuwait null. Saddam retaliated by declaring a holy war against the U.S. and Israel. Approximately 3600 Americans were working or traveling in Iraq and Kuwait. Saddam refused to let them and their British counterparts leave, and his hostage taking was bitterly denounced by Bush. In a week the U.N. Security Council acted with Resolution 664 stating Saddam must permit detained foreigners to leave. On 20 August, Saddam offered to free his "guests" if the U.S. left the Persian Gulf. They would otherwise be used as human shields.²⁹ Bush refused. Five days later Resolution 665 was enacted with the help of the Soviet Union to authorize all appropriate measures to enforce a naval blockade to enforce the trade ban. Never before had the U.N. sanctioned military force without linking it to a U.N. command.

Bush's decisions in the Persian Gulf crisis were clearly in the tradition of *Realpolitik*: force and the credibility of its use are vital instruments to this perspective as well as coalition building based on the nature of a common threat, not common values.

²⁷The U.N. had acted against Rhodesia 1967 banning imports and exports and against South Africa in 1977 banning arms sales.

²⁸The 8 August deployment was called, "Operation Desert Shield" by the Bush Administration. On 16 January 1991 with the commencement of offensive air attacks, the President renamed the mission "Operation Desert Storm."

²⁹The source for this discussion is: *Historic Documents of 1990*, 533-784 and *Historic Documents of 1991* (Washington, DC: Congressional Quarterly, 1992), 3-246.

Bush had already taken an incrementally tougher line with Saddam before the war. Constructive engagement was giving way to a critical view. Bush also had to educate the global public that Saddam was a threat. Portraying Saddam as the world's villain was a difficult task in light of the timing—this same public saw the Soviet Union as a single adversary, an adversary who had just laid down its arms. Yet Bush made it known now that the Soviet threat has receded, Saddam was stepping in with the fourth largest military in the world and possessed both chemical and biological weapons. Overnight Saddam was likened to Hitler.

Congress's opinion of the President's actions was split: some realized the economic impact of Iraq's aggression and agreed with the President. Representative Les Aspin vividly described Saddam's actions as placing a "knife at our jugular." Iraq and Kuwait combined supplied nine percent of U.S. imported oil while Saudi Arabia provided fifteen percent. By seizing Kuwait, Saddam doubled his control over the world's crude oil. Prices soared from \$18 to \$30 per barrel. Four million barrels a day from Iraq and Kuwait were no longer available to the global market. Nevertheless, others in Congress mirrored the public's apathy. Some held that maintaining the forty-year naval presence in the region was sufficient. In fact, the prevailing view on the Hill was that the U.S. did not have a national interest in the region to warrant a military intervention.³⁰ Some in Congress saw even the initial deployment to Saudi Arabia as an overreaction.

Scowcroft warned that a war fought to liberate Kuwait, occupy Iraq, and overthrow Saddam could splinter the coalition—it could trigger violent resentment by the Arab masses. He realized that such broad goals could create a power vacuum that Iran

³⁰Baker, 335.

and Syria might want to fill. If it came to war, the U.S. would have ample opportunity to bomb deep inside Iraq to destroy unconventional and ballistic weapons and cripple Iraq's conventional army as an offensive threat. Bush and his small circle of advisers, Scowcroft, Cheney, Powell, and Baker, agreed that removing Saddam must remain an unstated goal not a public objective. Scowcroft even cautioned the President with regard to calling Saddam Hitler—that language implied the U.S. would not come home until Saddam was destroyed. However, Bush felt the comparison was necessary to sell his policy to the public.³¹

The President's initial comments that he was not contemplating intervention had been taken by some to indicate that he was passive or indecisive about doing something until British Prime Minister Thatcher put some "stiffening in his spine." However, those in the inner circle knew Bush's language was deliberate: don't say anything too early that could telegraph his thinking, and make it clear that the National Security Council meeting was not a decision session, but a discussion.³² Yet he drew an alliance together before going to Congress for statutory authority. On the day of the invasion, Bush deployed 100,000 troops in response to Saddam's invasion of Kuwait with the possibility of engaging in an offensive exercise. The following week the President went on television stating that the mission was to be wholly defensive.

Responding to the International Crisis: To take charge in an international crisis, a President must do three things more or less simultaneously: act effectively in the international arena, mobilize public opinion, and maintain support in Washington. Bush

³¹Duffy and Goodgame, 151.

³²Bush and Scowcroft, 315.

portrayed the invasion as he saw it: a security threat to the oil supplies in neighboring states. Arab nations quickly sided with Bush. Europe and Japan saw the invasion as one of a series of disputes in Middle East, but recognized the importance of their support to the U.S. Within a few weeks Bush had shown how a post-modern President could be a global leader by assembling a coalition of disparate nations to endorse a U.N. resolution. Three types of support came forward in response to Bush's coalition building: those who saw Iraq threatening their borders, those who wanted to defend Gulf oil, and those who gave grudging support because they did not want to risk losing U.S. assistance elsewhere.³³ Bush's actions were clear, but the reason that Iraq was a vital U.S. interest was not so clear. The Administration had difficulty in articulating this.

What the President did share was an explanation of his decision to send ground forces, a decision he made without consulting either the American people or their designated representatives. He settled on the deployment as a means of preserving of the US and its allies way of life. Criticized for this explanation, the Administration expanded its rationale to include national security, economic disaster, freedom of navigation, commitment to the peace and welfare of our friends and allies, and the preservation of peace.³⁴

There were two powerful and legitimate justifications for sending troops: first, Bush's attempt to impose economic sanctions would probably have not worked had it not been reinforced by military power. Coalition Arab partners probably would not have

³³Rose, 331.

³⁴Judith Miller and Laurie Mylroie, *Saddam Hussein and the Crisis in the Gulf* (New York: Random Books, 1990), 216.

stood up to Saddam and never would agree to sever his pipeline. Second, Saddam himself noted that the decline of the Soviet Union would change politics in the Middle East.³⁵ With waning Soviet power and the end of the Cold War, the rules that had governed the conduct of nations were no longer in force. In 1990, hopes of ending the fractious bi-polar world were dashed as a less stable world order emerged. Bush decided to introduce new expectations of state behavior for the post-Cold War and to mobilize national and world resources to stop Saddam from controlling the world's oil. By the end of August the U.S. had used the United Nations to reverse aggression. The Administration believed Article 51 of U.N. Charter "helping member states to defend themselves" was ample legal justification along with resolutions condemning the invasion.³⁶

The Senate still needed more convincing and wanted more information. On 31 August sixteen Senators left for Saudi Arabia for a briefing by Schwarzkopf. The group's second stop was Bahrain where they were to meet with Kuwaiti officials, but the Kuwaitis declined to meet. This infuriated the group. Senator Moynihan declared the Kuwaitis cowards for leaving families and taking their money to Swiss accounts. The final stop was in Cairo where President Hosni Mubarak told them Saddam tried to bribe him.³⁷ Meanwhile, in Washington, Bush began to secure congressional support.

The Untimely Absence of Congress: Congress's August recess had been to Bush's advantage. The Administration spent the month hastily preparing for war instead

³⁵Miller and Mylroie, 226.

³⁶Bush and Scowcroft, 354

³⁷Woodward, 286.

of spending time explaining and negotiating the next course of action to the Congress. The President quickly realized the need for congressional goodwill; on 5 September Bush invited thirty members of Congress to the White House. The meeting proved successful for Bush, and he received praise from the group. Senator Cohen suggested that Bush convene a special session to deal with the law of the land and the *War Powers Resolution* and that Bush get the vote while he had support of the Congress for this operation. Cohen said he was suggesting this for the sake of the President, the unity of the Administration and Congress, the sake of the troops, and the Congress who was deft at avoiding its responsibilities.³⁸

Bush's diary entry on 7 September 1990 depicts his mood and assessment of the situation: "I have a confident feeling here—maybe it's the support from the American people—maybe it's the fact that I have been intimately involved in the personal diplomacy with the leaders. Certainly it is the trust I have in Brent Scowcroft, and Jim Baker, and Dick Cheney and Colin Powell and all our team that are intimately involved in this very dicey problem . . . The importance of the U.S. leadership is brought home to me clearly. It's only the U.S. that can lead. All countries in the West clearly have to turn to us. But it is my theory that the more we get their opinion, the more we reach out no matter what is involved, in terms of time involved, the better it is. Everyone is proud. Everyone has his place in the sun—large country or small, they should be consulted, their opinions considered. The time when the U.S. makes a move and I make a decision, we are more apt to have solid support . . ."³⁹

³⁸*Ibid.*, 288.

³⁹Bush, 478.

Secretary of State Baker recommended that the President not announce his planned November deployment of additional troops until the Congress and the allies had been better informed; his suggestion was rejected. Bush told him, "It's absolutely essential that we cooperate. We face a very difficult and momentous challenge. We need to send the strongest possible signal to Saddam that he can't divide Americans."⁴⁰ Baker assumed the White House would arrange briefings for senior Congressmen, but that did not happen. In fact, the timetable for consultations with Congress was actually shortened with the President's fear of news leaks from the Pentagon. Baker's chief congressional liaison officer, Janet Mullins, told him: "I can't believe we're going to do this without them knowing anything. They have no idea we're preparing for war. These guys will go crazy. You're going to have a load of crap on your hands when you get back."⁴¹

On 11 September President Bush addressed a joint session of the Congress telling them his position: the U.S. had no quarrel with the Iraqi people but rather, the quarrel was with Saddam. The U.S. could not permit Iraq to annex Kuwait. Bush was determined to stand firm. It was not a threat or boast, it was simply the firm position of the Administration. Bush wanted individual members and then collectively the whole Congress to go on record in support of what he was doing.⁴² Immediately following that session Bush assigned White House Legal Counsel Boyden Gray to research the avenues

⁴⁰Baker, 329.

⁴¹*Ibid.*

⁴²Bush and Scowcroft, 356.

taken by President Johnson regarding the 1964 *Tonkin Gulf Resolution*.⁴³ At that time House Speaker Foley told the President that up to now, there was a broad consensus of support in both parties, but it was too soon to talk of a military option. Foley said a provocation would be a different matter. He warned Bush that if the U.S were to engage in war, the war powers issue would resume.⁴⁴ Senators Mitchell and Gephardt concurred. Mitchell told the President, "We've been supportive because your actions warranted it." Senator Pell objected to any unilateral use of force. Congress continued to endorse sanctions. Senators Dole and Michel supported existing policy, but realized with many others that the current course would lead to war. Senator Sam Nunn and Representative Aspin concurred that if it did come to war, it would be best to use air and sea forces, not ground forces. The Bush Administration consistently opposed Congress's attempts to impose sanctions on Iraq.

Diplomatic pressure and economic sanctions were hard enough for Congress to endorse. The State Department realized marshalling congressional support for an aggressive policy in the Persian Gulf would be as hard as passing comprehensive tax

⁴³In an effort to obtain congressional authorization for his particular crisis, Bush had inquired about the 1964 Tonkin Gulf Resolution to determine any historical precedent, which he could cite. There were none. Congress responded quite the opposite for a number of reasons: Bush's Munich 1938 analogy meant we were dealing with another Hitler; referring to the Tonkin Gulf Resolution could prove antagonistic (it was the impetus for the *War Powers Resolution*); the apparent international threat differed significantly from Vietnam which was believed to be backed by Soviet Union. While Saddam acted without the support of any major power; President Johnson was faced with Republican hawks who believed he did not do enough to counter communism and were willing to support his measures to retaliate, while Bush received active opposition from democratic doves who felt neither Reagan nor Bush had been sufficiently responsive to the Soviet disarmament proposals; Bush's opposition was more favorably situated than Johnson's, in that Bush's Congress was partisan controlled; the division of governmental power was reinforced by a partisanship on foreign policy questions that was less evident in the early post-war era; electoral circumstances: the election was not menacing for the Democrats in the winter of 1991; although Bush was high in favor, the presidential election was two years away and the mid term elections were safely behind; Paul E. Peterson and Jay P. Greene. "Questioning by the Foreign Policy Committees," 90.

⁴⁴Bush and Scowcroft, 372.

reform. Baker was surprised by his underestimation of Congress's reaction upon their return: they were furious for being caught by surprise.⁴⁵ The Administration worked diligently for two months on intensive damage control in an effort to persuade Congress to support the military operation. Simultaneously, the Bush team worked at securing the necessary U.N. Resolution and final diplomatic efforts by the President to avert war. The two months culminated in direct talks between Secretary of State Baker and the Iraqi Foreign Minister Tariq Aziz; but the talks were to no avail.

Congress did little pertaining to the situation in the Gulf during August and September. Subsequently, during the first week in October both chambers overwhelmingly passed carefully circumscribed resolutions designed to offer support for the actions Bush had taken, but carefully refusing to authorize any future military operations against Iraq. Despite Bush's pledges to consult with Congress over the crisis, Baker made the Administration's position clear when he told the House Foreign Affairs Committee in mid-October that congressional approval was not necessary. Majority Leader Mitchell argued: "The President has no legal authority, none whatsoever, to commit the United States to war. Only Congress can make that grave decision."⁴⁶ Fearful that military action might be taken after Congress's election year adjournment, Senate and House leaders designated a group of lawmakers who would be available for consultation with the President while Congress was in recess for the November elections. Bush ordered his plan for attack remain undisclosed until after the November elections and refused to meet with the congressional consultation committee.

⁴⁵Baker, 336.

⁴⁶*Guide to Congress*. Fifth edition, Volume II. (Washington, DC: Congressional Quarterly, Inc.,

On 8 November Secretary of Defense Cheney called relevant committee chairpersons to inform them Bush was going to make an announcement about troop reinforcement. He stated the President had grown impatient with the boycott and sanctions as a means of choking Saddam and planned to double the deployment of troops. Congressional sentiment for a role in approving military action against Iraq intensified with this announcement. In ordering a deployment intended to shock Iraq into retreat, Bush finally galvanized members into realizing that they had to take some kind of action on the issue, although there was still no consensus as to what that action should be.

Representative Les Aspin, House Armed Services Committee Chairman chose to communicate only with Scowcroft. Cheney met with Senator Nunn who was unhappy he was being *informed* instead of *consulted*. Why the hurry? Cheney sensed a change in Nunn, who endorsed sanctions yet supported the President. Cheney speculated that Nunn was planning a long-shot run for the democratic presidential nomination in 1992 and wanted to be in the good graces of his party by taking on Bush. Cheney continued to monitor the public debate: maintaining public support of the policy, dealing with Congress, attending to the U.N. and Arabs, and managing the Israeli problem.⁴⁷ The message was now shifting to an offensive action against Saddam.

The President's announcement also incurred a wave of anti-war protests: *Must we trade body bags for oil?* Republican Conservatives opposed the move toward war claiming Bush was involving the nation in another Vietnam for no real purpose and some claimed Saddam was not a major threat to the U.S. As a result of these protests, public support ebbed: seventy-five percent in August, fifty-nine percent in October, and fifty

⁴⁷Woodward, 322.

percent after elections in November. (The decline was also the result of Bush's support for a tax increase.)⁴⁸ Democratic Congressman Henry Gonzalez of Texas proposed impeaching Bush for violating the Constitution. With a significant decline of public support, Bush would have difficulty proposing war in the Persian Gulf to a Democratic Congress.

On 13 November Cheney and Powell met with Senators Warner and Nunn. Nunn thought the President's announcement would play into Saddam's hand. He informed Cheney that he was going to open public congressional hearings later in the month. Such hearings were his strongest weapon to force the issues of goals and costs. The next day Cheney met with 100 House members. He was convinced that the Congress was not equipped to deal with the issue. When he told the Representatives that the President could launch a military strike without their prior approval, congressional support continued to fall. At the same time, Bush met with another group of congressional leaders. He told them he had not crossed any Rubicon and that no decision for war had yet been made. He then pulled out a copy of the Constitution referencing the duties and authority of the Commander-in-Chief. Bush would grant a special congressional session, as recommended by Senators Dole and Lugar, but only if he would receive a substantial vote in support of his policy.⁴⁹

Senator Richard Lugar, Republican Foreign Relations Committee Chairman, publicly urged the President to call Congress from its recess for a special session; he had supported the idea and left Bush thinking it would be acted on. Lugar believed a

⁴⁸Greene, 123.

⁴⁹Woodward, 322.

resolution would show bipartisan support, while Dole saw an opportunity to force the hand of the Democrats who were posturing against the policy, but who Dole and Lugar felt would be understandably reluctant to vote against the Commander-in-Chief on what essentially amounted to be a declaration of war. This was a tempting proposal to deny the Democrats the luxury of having it both ways.

The Democrats refused to convene an emergency session. Instead, they took action to conduct the congressional hearing. Lugar's suggestion failed due to bad timing. At the same time there were not enough Senators to vote for such a measure because both Republicans and Democrats were infuriated with Bush's failure to consult. Sanctions had been in effect only sixty days. While, the Administration felt it had the legal authority to move in the Gulf, it realized that defying a congressional authorization would have negative long-term consequences.⁵⁰

Baker recognized the gamble in approaching Congress as Lugar suggested; Congress could give a conditional resolution. Senate Majority Leader Mitchell told Baker that the votes were not there for a clean resolution of support, but a definitive U.N. resolution would provide powerful leverage to persuade wavering members. Ultimately, Mitchell publicly announced he would not call a special session to consider the Lugar proposal. Baker saw the irony of events as he returned from preparing the allies for war only to see Congress refusing to get on board.

The escalating legislative turmoil hastened the debate within the Administration about the advisability of asking for a congressional resolution of support at all. Getting Congress to acquiesce would take delicate consultation. Members of the Administration

⁵⁰Baker, 337

held divergent views on the best course of action. Baker felt Congress would not turn down the President. Scowcroft was neutral, believing a resolution was not mandatory. Cheney did not want to risk potential repercussion if the resolution failed. Sununu argued that Congress should be ignored. Bush could always bypass Congress if they did not give him the vote by relying instead on Article 51 of the U.N. Charter and a U.N. resolution authorizing use of force.⁵¹

Bush's diary entry of 25 November 1990 contained a memo to Scowcroft that included nine questions. Question four referred in detail to how the scenario would play after the U.N. resolution. "What do we ask Congress to do, if anything? When do we go to Congress if we decide to do that?" The President then sent a memo to Boyden Gray, via Scowcroft, asking that he prepare a short analysis of the *War Powers Resolution*: "Without recognizing the constitutional validity of the War Powers Resolution, is there a way for the President to fulfill all his responsibilities to Congress by saying, a few days before any fighting was to begin, 'hostilities imminent—period!' Bush was unclear on how to fully involve Congress: "If we have to attack from a cold start, how does the latest U.N. resolution impact on Congress? Is there something short of 'declaring war' that satisfies Congress, yet doesn't risk tying the President's hands? As the clock on the U.N. resolution keeps running toward the time when force has international authority, what possible official requests can/should a President make of Congress?"⁵²

The President delayed approaching Congress until the Security Council considered the use of force for the coalition. On 29 November Resolution 678 was

⁵¹Baker, 338

⁵²Bush, 490.

passed authorizing U.N. member to use “all necessary means” to enforce previous resolutions if Saddam did not get out of Kuwait by 15 January. This resolution granted the most sweeping authorization to engage in warfare since Korea, however, the resolution did not compel or obligate member states to participate. Thus, instead of seeking authorization from Congress, Bush relied on his multinational alliance to encourage the Security Council to authorize use of force. With authorization from the U.N., Bush was convinced he did not need authority from Congress.

On 30 November Bush invited Iraqi Foreign Minister Tariq Aziz to Washington. As a gesture of goodwill, Saddam released thousands of westerners. Eager to share this news, Bush met with congressional leaders that same day. He announced Baker had been working hard at achieving the U.N.’s authorization of “all necessary means” to force Saddam from Kuwait. Bush told them he had no second thoughts at all, and he became emotional when discussing the brutality of the Iraqi regime and felt Saddam did not deserve the courtesy of his Foreign Minister’s visit to the White House. Bush then invited Congress to join in endorsing the U.N. resolution: “But let’s not have a hung jury. If you can’t support, frankly, I’d be wary. So I’d welcome your support.”⁵³ Baker then told them that the “threat of force” was what the Administration hoped would convince Saddam. Baker wanted the threat only as a diplomatic tool. House Speaker Foley praised the Administration for being open and forthcoming. Foley wanted Bush to consult the new Congress in January.

Leaders Foley and Mitchell were adamant about Bush getting a vote; they told him it was constitutionally required. Bush countered: “Don’t underestimate the strength

⁵³Bush, 421.

of the signal it would send if Congress would endorse the U.N. resolution. It would be the most powerful guarantee of getting [Saddam's] attention . . . There's an enormous price to pay if we try to help him save face."⁵⁴ Some congressional leaders followed Senator Nunn's admonition to continue on course with the use of sanctions. But Baker looked for consensus and asked if Congress would agree to air attacks only. Senator Mitchell spoke for the majority with a resolute "no." Senator Cohen told Bush he had to answer, "Why are we willing to die for the Kuwaitis at this moment? and What kind of war is this going to be?" Cohen spoke frankly because he wanted the President to know what was on their minds.⁵⁵ In early December the House Democratic caucus approved a resolution explicitly stating that unless American lives were in danger the President should first seek authorization from Congress.

Bush had also received word from senior Senator Byrd in mid December urging the President to get congressional approval before going into battle and to give sanctions more time. Bush's response, dated 22 December, explained his position: "Dear Robert: I simply wanted to thank you for that thoughtful letter *re*: the Gulf and what to do about it. I differ with you on a couple of counts. I don't think we have six months to wait. The economies of Eastern Europe and the Third World, and indeed our own are being devastated by what Saddam has wrought. The U.N. resolution must be fully complied with or else the new promise of the U.N. that we helped bring about will be ground into dust. Kuwait is still being brutalized. That Amnesty International report is devastating. I want Congress on board—fully. Saddam will only unconditionally pull out when he is

⁵⁴*Ibid.*, 422.

⁵⁵Woodward, 337.

convinced on two points about which he has doubts: that the united world will use force against him; that if that force is used he will lose.”⁵⁶

On 3 January 1991, Bush met once again with the congressional leadership. He announced the last diplomatic attempt, the Baker-Aziz meeting scheduled for January 9. The leadership made it clear they could not assure Bush of a majority vote. Four days later House Speaker Foley announced that a House debate would begin and stated he was opposed to the war. That night Bush made calls and drafted a letter requesting that the Congress endorse the “all means necessary” clause of the U.N. resolution. The inner circle of Bush advisers became weary: Cheney was skeptical, Powell was fearful of sending troops without the backing of Congress. White House lawyer William P. Barr told Bush he did have the authority to conduct military operations without congressional approval: “Congress can take away money if they don’t like the way you are operating.”⁵⁷ Bush’s lawyers told him that although he was not immune from legal challenge, he was on solid constitutional ground. Scowcroft did not want a war with a divided country, but Cheney did not want Bush to send his letter requesting a resolution because he believed it would be interpreted as if the President needed Congress’s vote. The letter was re-worked and sent to the Hill.

Bush’s January 8 letter addressed to Speaker Foley and the Senate leaders described the situation in the Persian Gulf. The invasion of Kuwait by Saddam was a threat to peace. Bush implored Congress to act: “It would, however, greatly enhance the chance for peace if Congress were now to go on record supporting the position adopted

⁵⁶Bush, 495.

⁵⁷Woodward, 354

by the U.N. Security Council on twelve separate occasions. Such an action would underline that the U.S. stands with the international community and on the side of law and decency; it also would help dispel any belief that may exist in the minds of Iraq's leaders that the U.S. lacks the necessary unity to act decisively in response to Iraq's continued aggression against Kuwait." The President asked that Congress enact a resolution that would support his objective in the Persian Gulf. Placing the onus of Saddam's further actions on Congress, Bush concluded his letter by telling the leadership: "Anything less would only encourage Iraqi intransigence; anything else would risk detracting from the international coalition arrayed against Iraq's aggression ... This truly is the last best chance for peace."⁵⁸

The next day Bush implicitly blamed Congress for the fact that Baker would go empty-handed to his 9 January meeting with Tariq Aziz: "It would have been most constructive if he could have presented the Iraqi government a resolution passed by both houses of Congress supporting the U.N. position and in particular the Security Council Resolution 678. As you know, I have frequently stated my desire for such a resolution. Nevertheless, there is still opportunity for Congress to act to strengthen the prospects for peace and safeguard this country's vital interests."⁵⁹ Baker had been traveling to various countries to gain support even without congressional authorization and in his final meeting with Aziz, he reported there would be no diplomatic resolution to the crisis. The opposition crumbled when the Geneva meeting with Baker and Aziz failed. By the close of the day the President's advisors saw war as inevitable.

⁵⁸*Historic Documents of 1991*, 6.

⁵⁹Bush, 500.

Bush had one final hurdle to before signaling war. The hurdle was with Congress's claim of its war powers authority vis-à-vis the *War Powers Resolution*. Bush decided to co-opt the process and to formally ask Congress for its support before such a debate could begin. The decision was made despite the issue of Saddam's violation of international law and Bush's legal grounds to deploy troops. Neither Bush nor Cheney wanted to risk rejection. Bush did, however, want to send a message to Saddam that he was not eager for war and had the American nation behind him. In addition, if his request was rejected or went badly, Bush wanted a unified government with him. The debate was civil but the line had been drawn. Bush believed the cumulative effect of the Security Council Resolutions had pushed the fence-sitters off the fence. When Resolution 678 allowing "all necessary means" was passed, the building block of domestic strategy fell into place.

Most of January 10 and 11 was dominated by debate in Congress, interrupted only by the voices of protestors. Congress acted on 12 January, just three days before the U.N. deadline. Passage of the *Persian Gulf Resolution* (PL 102-1) put the political and constitutional weight of the legislative branch behind Bush as he prepared the nation for potential battle. However, the divided vote revealed deep fissures in Congress over the wisdom of going to war.⁶⁰ In the House, Conservatives who had abandoned Bush on the budget weeks before returned and voted for the resolution resulting in a total vote of 250-183. In the Senate, the vote was much closer, 52-47. Senators Mitchell and Nunn worked hard to keep the Democratic ranks together, but Minority leader Dole did a better

⁶⁰*Guide to Congress*. Fifth edition, Volume. II, 233.

job of persuading Republican's support of their President.⁶¹ Nevertheless, with this joint resolution authorizing the use of United States Armed Forces pursuant to United Nations Security Council Resolution 678, Bush was given the diplomatic authority and political leverage to wage war, "in effect, shame the recalcitrants in Congress into doing the right thing."⁶²

By voting against the President, Congress would not only have been turning its back on America's traditional obligation to support the U.N. Security Council resolutions for which it voted, but it would also have been spurning the will of the international community. Some in Congress believed that the President could not shift from defense to offense; he could not start a war on his own. In fact, fifty-three Representatives and one Senator viewed this shift as a violation of the Constitution and took their case to the Supreme Court. By the time an injunction reached the Court, however, the troops had amassed. In a sole two hour meeting Bush alone decided to start the war and get support from the U.N. (Many Congressmen did not see this as adequate authorization.) The war began on January 16 with a tremendous air attack that lasted forty-three days and a brief ground war that was halted after one hundred hours.

With the Persian Gulf War, Bush defined his presidency and demonstrated his leadership and decisiveness. He never wavered; he defied the consensus of his aides on several crucial questions, including the decision to intervene in the first week of August and to seek explicit backing from Congress before starting the air war. Although, he encountered public resistance at a half dozen major turns in the crisis, he overcame it, not

⁶¹Greene, 126

⁶²Baker, 336.

with soaring rhetoric, but with bold and forceful actions, each of which shifted public opinion toward support of his policy. Through it all, he radiated a sense of calm and command. He told his closest advisers the Gulf War was the moment he was training for all his life.⁶³

The war's success is also attributed to what critics cite as the President's dubious measures. Bush misled Saudi Arabia, the allies, and the public by exaggerating the nature of the threat that Iraq posed and by concealing a number of his intentions which defied the consulting and reporting requirement of the *War Powers Resolution*: the massive size and duration of the military deployment, his determination to defend Saudi Arabia and liberate Kuwait, his private assessment from the early weeks of the crisis. At the outset of the invasion, Congress held to a *let sanctions work, no support for war* position. The President's persistent defiance vis-à-vis constitutional war powers and the *War Powers Resolution* compelled Congress to act in a number of ways to invoke their right of consultation and reporting. From anti-war resolutions to congressional hearings to Supreme Court lawsuits, Congress conspired to constrain the President and take its rightful place in this crisis.

INVOKING THE WAR POWERS RESOLUTION

The following section details the actions of President Bush and the Congress in addressing the issue of sharing war power authority. Throughout the evolution of the crisis, from August 1990-January 1991, the *War Powers Resolution* was never directly invoked. It was only a momentary concern for Bush; he had determined he was on firm

⁶³*Ibid.*, 134.

constitutional ground to act. For the Congress, it became a non-starter because Bush had quickly deployed 100,000 troops and aligned near total global support for his effort, which was sanctioned by Security Council resolutions placing Congress in a reactive mode. To counter these circumstances, a small group of Congressmen chose to take the matter to court. Some chose to hold tight their congressional purse strings, while others sought a way to save face with a last minute resolution that fully supported the President and the war. The alternatives sought in lieu of invoking the *War Powers Resolution* speak to the inability of the Resolution to enforce its requirements, to check executive power, and to compel collaboration between the executive and legislative bodies.

President Bush and the Congress faced a difficult political decision in January 1991. In December 1990 public opinion was divided and falling slightly among those who supported an aggressive policy in the Gulf. Sixty percent of the American public thought U.S. lives were too high a price to pay in a Gulf conflict. Bush also faced a divided opinion in the Congress and among foreign policy experts. Some felt the timing was wrong and the use of force should have been employed earlier; others wanted to pursue sanctions. The military action necessary to meet the objectives of Operation Desert Storm would terminate quickly enough for the President to report that an operation had occurred once the operation was over, as in the convenient case of President Ford. However, the kind of action contemplated by the Administration—heavy aerial bombardment and commitment of ground troops—meant the question of war powers and the *War Powers Resolution* should not have been evaded.

Presidential Circumvention of the War Powers Resolution: The President's *Message to Congress* on 3 August cited the International Emergency Economic Powers

Act of the National Emergency Act (NEA) section 204(b) as his authorization for action in the Persian Gulf.⁶⁴ His message said nothing about deploying troops or seeking congressional approval.⁶⁵ Rather, his message concentrated on a declaration of national emergency and the issuance of two Executive Orders prohibiting services/transactions between the U.S. and Iraq. The decision to omit information on troop deployment in defense of Saudi Arabia, which occurred immediately after the invasion, averted any reference to the *War Powers Resolution* and its clock. Not until 8 August were Congress and the nation given the details of U.S. troop deployment for a “defensive position in Saudi Arabia” in the President’s *Address to the Nation*.⁶⁶ In this address, Bush cited authorization by the U.N. Security Council for his actions but said nothing regarding the Congress and its participation in the decisions of this military operation. It was during the 11 September *Address to Congress* that Bush disclosed his plan on the day of invasion: “It was then *I* decided to act to check Saddam’s aggression.”⁶⁷

Although Bush described the mission as defensive and was confident that an American military presence would facilitate a peaceful resolution of the crisis, many in

⁶⁴The National Emergency Act, the initial authorization under which Bush took action, allows the President the use of standing emergency legislation to declare a state of emergency, an authority that can only remain in effect for one year. The NEA terminated four existing states of emergency, abolished most of the 470 emergency statutes, and created new procedures for delegating emergency powers to the President. He is to report to Congress his reasons for declaring the emergency and must indicate in his report the constitutional and statutory basis for all emergency actions. He must report every six months and Congress is to vote at six months whether to continue the state of emergency. It also allows Congress to call an end to the state of emergency by concurrent resolution.

⁶⁵This is called the “Message to the Congress on National Emergency” and it can be found in *Historic Documents of 1990*, 536.

⁶⁶This is called the “Address to the Nation” and it can be found in *Historic Documents of 1990*, 537.

⁶⁷This is called the “Address to Congress” and it can be found in *Historic Documents of 1990*, 552.

Congress held to the fact that congressional approval would be needed if the build-up of U.S. Armed Forces continued. 170 Congressmen interrupted their recess and returned to Washington on 28 August for a briefing. The House Intelligence Committee chaired by Representative Dan Glickman wanted to know estimates of the costs, the identity of other countries that were to put up money, and how much? There was particular interest in Japan's contribution that accompanied an undercurrent of negative criticism of Japan in the country. The President replied formally in his 11 September address to Congress by informing them that both Baker and Treasury Secretary Nicholas F. Brady met with world leaders to underscore that the burden of this collective effort must be shared. He defined his objectives and goals and once again conveyed the endorsement of the U.N. Security Council, which had by this date issued five consecutive resolutions on Iraq to that effect. The President relied on those resolutions and the clout of the global alliance as authorization and tacit approval for his decisions.

A 13 September entry in Bush's diary revealed his concern for garnering and maintaining the support of the Congress: we do not want to "unleash a *War Powers Resolution* debate over the use of force, nor do most of the Senators, so we're going to keep working the problem . . . My gut wonder is, how long will they be with us? How long will the Senate stay supportive? Or the House? As long as the people are with us, I've got a good chance. But once there starts to be erosion, they're going to do what LBJ said: 'they painted their asses white and ran with the antelopes.' It's not all of them, of course."⁶⁸

⁶⁸Bush and Scowcroft, 368.

The War Powers Clock: The congressional response to the timing issue had been one of delay and deferment. And President Bush ignored the sixty-day clock provision within section 5 of the *War Powers Resolution*. After Bush put troops in harm's way the clock should have started. The Pentagon acted in August by providing special pay for troops placed in imminent danger. This indeterminate state was of the Congress's own making because a debate could have been held at any time after the Iraqi invasion. Congress's hesitancy was not because a *soon-to-be-disbanded* Congress did not want to debate the authorization of war. Bush never felt legally bound to get their permission. The majority of Congress did not want war, nor did they want to obstruct one if it was necessary, and, importantly, they did not want to look like Saddam's ally. Congress's hesitancy was rather the result of opting for the safest course: act tough, but hope sanctions succeed.

This most controversial aspect of the *War Powers Resolution*, the time-constraint of the clock, should have triggered automatically with the President's first report, but to declare the clock ticking would have been to force the issue of congressional debate, decision, and shared responsibility. Neither the President nor the Congress acted to invoke this provision and the President dominated the outcome.

The Gulf policy was fraught with risk; congressional members did not wish to be held responsible for sending troops into what might be a bloody battle. Many preferred the politically safer course of doing nothing. Secretary Baker's desire for a congressional mandate was grounded in political reality, not constitutional or legislative legalities. He strongly believed that Congress did not enjoy a right equal to that of the President: the Constitution without doubt grants the President authority to conduct foreign policy.

Baker also believed the President did not need congressional authorization for ordering troops to combat.⁶⁹

The Lack of Consulting and Reporting: The effectiveness of the *War Powers Resolution* is raised because the President began action, deployed troops without consultation, and moved the nation close to war without any significant consultation with reporting to or authorization from Congress. Congress veiled the reality of those significant events, in fact, Representative Fascell proclaimed the *War Powers Resolution* alive and well after passage of the *Iraq Resolution*. He believed the *Iraq Resolution* established a process by which the Congress could authorize the use of force. But Congress did not formally declare war on Iraq, and war is what was conducted. House Speaker Foley said at the National Press Club 7 February 1991: "The reason we did not declare a formal war was not because there is any difference I think in the action that was taken and in a formal declaration of war with respect to military operations, but because there is some question about whether we wish to excite or enact some of the domestic consequences of a formal declaration of war—seizure of property, censorship, and so forth, which the President neither sought nor desired."⁷⁰ Yet, underlying the January congressional debates and the Iraq Resolution was the disquiet legitimacy of sending U.S. troops into battle by order of the U.N.

Critical of the President's statements that omitted reference to any potential imminent danger, Secretary of the Navy John Lehman questioned whether the President's action was consistent with reality because there *did* exist a fear the troops would be

⁶⁹Baker, 335.

⁷⁰Richard F. Grimmett, ed., *War Powers Resolution*, 35-42.

attacked by Iraqi forces before they were combat-ready. The President contradicted his earlier statement that U.S. forces were in a defensive mode on September 16 by revealing that Iraq and the U.S. were on the brink of war; so much so that the Pentagon authorized the forces deployed there be given “imminent danger” pay starting 20 September.⁷¹ It was clear that the President was placing troops in harm’s way and that the *War Powers Resolution* could have been triggered by a more accurate presidential notification or congressional debate on the issue. The President’s 21 September meeting with the bipartisan leadership offered an opportunity to test the waters. The President learned he had their support as long as no conflict emerged and sanctions were given a fair opportunity to make an impact.

Secretary of State Baker had reservations about a formal mechanism for presidential consultation with Congress on Gulf matters. He believed the Administration would have no difficulty with Congress voting a formal declaration of war if Iraq were to launch an all out attack. Thus, he advised the President to reject requests for advanced congressional authorization for military action. In an attempt to facilitate and support the Administration’s plan as well as to engage the Congress, Senators Dole and Lugar suggested Congress meet on 8 November to provide the President with standing authorization for military action. However, President Bush, acting on Baker’s advice, rebuffed the suggestion and quashed the need for a special session.

In a speech to the World Affairs Council in Los Angeles on 29 October, Baker explained the need for and purpose of the troop deployment and the President’s resolve: “Adding weapons of mass destruction to much of the world’s energy supplies becomes

⁷¹Lehman, 35.

an explosive mix . . . our military forces are there to provide an effective and decisive military response should the situation warrant it . . . let there be no doubt, we will not rule out a possible use of force if Iraq continues to occupy Kuwait.” It was at this time Saddam refused to allow foreigners the leave Kuwait; Baker believed Congress ignored his comments about the Administration’s resolve and focused on the treatment of the hostages.⁷² But Congress did hear the words of war proclaimed by the Administration.

On 14 November Bush met with insistent bi-partisan leaders who berated him about Congress’s right to declare war. They accused the President of flaunting public opinion and failing to consult with Congress. Defiantly, the President pulled out a copy of the Constitution and told them that he understood their constitutional authority, but that same document also declared him Commander-in-Chief. He continued to avoid calling any special sessions by assuring the leadership that he would consult Congress before using force; he said nothing about seeking their authorization. Two days after the meeting Bush sent a letter to Congress via the Speaker of the House and President *pro tempore* informing them of further troop deployment to exercise our “inherent right of individual and collective self-defense against Iraq’s aggression and consistent with the U.N. Security Council resolutions.” Bush’s letter made clear that no change had occurred since his first report on 9 August relative to the threat hostilities, and thus this once again averted triggering the *War Powers Resolution*.⁷³

⁷²Baker, 333.

⁷³This is called the “Letter to Congressional Leaders on the Deployment of Additional United States Armed Forces to the Persian Gulf 16 November 1990” and it can be found in *Public Papers of the President: George H. W. Bush, 1989-1991* (Washington, DC: Government Printing Office, 1992), 1617-1618.

Baker's memoirs demonstrate the general opinion among Bush's inner circle with regard to the *War Powers Resolution*: "At one point we gave consideration to finessing the matter by actually invoking the *War Powers Resolution*. The Pentagon assured us the war would be over by the ninety-day limit placed by the *War Powers Resolution*. Even if wrong, Congress would not elect to cease support. In the end, we decided that such a stratagem, while clever, would set a terrible constitutional precedent sure to haunt a future President's freedom of action." At a December meeting of his inner circle, Bush was asked what action he hoped Congress would take: "My preference would be to get the Congress to bless what I am about to do."⁷⁴

The President fully appreciated Congress's power of the purse while his own power lay in strategy and tactics. Secretary of Defense Cheney also opposed asking Congress for a resolution of support that authorized using all possible means. His rationale: if the President was successful on convincing Congress to pass a resolution it still would not guarantee later support if the war went badly; if the resolution lacked sufficient votes, he would be badly hurt for lack of support. The only reason to seek it would be political rather than constitutional.⁷⁵ Nevertheless, Bush risked asking for a resolution when on 3 January the President solicited Congress for their support. In this request, Bush placed the onus of peace on the shoulders of the Congress: "It would greatly enhance the chances for peace if Congress were now to go on record supporting the position adopted by the U.N. Security Council on twelve separate occasion."⁷⁶ Bush

⁷⁴Quoted in Baker, 339.

⁷⁵Lehman, 20-55.

⁷⁶This is entitled "President Bush Requests Congressional Resolution" and it can be found in *Historic Documents of 1991*, 6.

wanted to place the responsibility for any lack of unity on the Congress and he chided the legislature for not ratifying a resolution that Secretary of State Baker could have delivered during his final meeting with Iraqi officials that month.

Bush's letter of request made it clear that he believed he did not need further approval because he already had U.N. authorization. Nevertheless, a resolution from Congress would send "the clearest possible message to Saddam Hussein that he must withdraw without condition or delay."⁷⁷ Although Bush requested congressional support, the country was already in an undeclared state of war: sanctions, blockades, troop deployments, and an international ultimatum were all elements of war. Bush might have complied with the *War Powers Resolution* then waited for Congress to approve or disapprove. Instead, he refused to acknowledge Congress's formal role in *deciding* whether to use force and solicited only their support after the decision had been made.

As the U.N. deadline of 15 January drew near, Bush sent identical letters to House Speaker Foley, Senate Majority Leader Mitchell, Senate Republican Leader Dole and House Republican Leader Michel urging each to endorse the Security Council's resolution. As Commander-in-Chief he wanted to convey "the clearest message" of resolve. In his letter he provided the rationale for continued action, requested action from both chambers, and asked that the Congress adopt a resolution supporting the use of all means necessary to implement the U.N. Security Council Resolution 678. He continued to oversee battle plans and ignored the argument over presidential power in foreign policy by holding firm to the U.N. authorization, declaring that this was a global effort to

⁷⁷This is called the "Letter to Congressional Leaders on the Persian Gulf Crisis 8 January 1991" and it can be found in *Public Papers of the President: George H. W. Bush, 1989-1991*, 13-14.

restore peace in the region, propagandizing the evils of Saddam, and making sure of financial and world political support. He claimed that he had provided Congress with its fair share of briefings: “Over twenty occasions during the course of the crisis I met with or briefed Congress, its leadership, and bipartisan groups, not counting the meetings with individuals, beginning 28 August, even though Congress was in recess until after Labor Day.”⁷⁸

Congress responded by passing the *Authorization For The Use Of Force Against Iraq Resolution*, a joint resolution authorizing the President to act.⁷⁹ When he signed the document, Bush reasserted the presidential position that the *War Powers Resolution* was unconstitutional due to the explicit language in the Iraq Resolution requiring him to comply with the *War Powers Resolution*. The *Iraq Resolution* required the President to notify the Congress if and when he determined that diplomatic and other peaceful means had failed which would necessitate the exercise of his newly legislated authority. The resolution also required that he comply with *War Powers Resolution* requirements, specifically section 8(a)(1), which sets the parameters of the operation as outlined within the *Iraq Resolution* and 5(b), and which allows the President to consider that this an implied congressional declaration of war and holds him to the time constraints of sixty to ninety days.

On 16 January Bush directed forces to begin operations and “consistent with the *War Powers Resolution*” he *reported* to Congress that he had exhausted all diplomatic and peaceful means. However, Bush’s announcements to the Hill were merely

⁷⁸Bush and Scowcroft, 358.

⁷⁹*Authorization For The Use of Force Against Iraq Resolution*, Public Law No. 102-1, 1991.

protocol—designed to notify, not consult. By the time the first member of Congress had been notified that the President had commenced operations, bombers had been in then air for thirty minutes.⁸⁰ Having already authorized Bush to begin the war, members of Congress were well aware its role was now reduced, both politically and constitutionally. Once the war was underway, both the Senate and the House rushed to support the effort with another resolution on 17 January; the Senate bill passed by a vote of 98-0, the House bill passed by a vote of 399-6. As the war widened, Congress continued to play a peripheral role. To restore congressional involvement, Congress continued to pass resolutions denouncing Iraq for launching missiles against Israel, mistreating allied prisoners, and introduced legislation to benefit U.S. troops and their families. Congress had forfeited its constitutional war powers authority by failing to invoke the *War Powers Resolution* as a vehicle to reclaim power lost or ceded to the executive branch.

The effectiveness of the *War Powers Resolution* as a congressional means to control presidentially initiated military action has been historically unclear. President Bush's actions are yet another example of circumventing the requirements of the Resolution. Bush had indeed notified the Congress and/or its leadership of his plans on limited occasions under the pretext "consistent with" the *War Powers Resolution*, but the Resolution's clock was never started because the President did not officially report his actions specific to section 5(b) of the Resolution to initiate the time constraint. Bush claimed he had the authority to force Iraqi troops out of Kuwait without congressional action. He did seek congressional approval for his actions, but due to U.N. time constraints, only when Congress had no option but to comply. In a speech at Princeton

⁸⁰*Guide to Congress*. Fifth edition, Volume. II, 233.

University later that year, George Bush said, "I felt after studying the question that I had inherent power to commit our forces to battle after the U.N. resolution." He then added that he "solicited congressional support before committing our forces to the Gulf War," which was a misrepresentation of his established resolve to use force with or without Congress and their belated issuance of support.⁸¹

The War Powers Resolution and the Congress: At the outset of the Iraqi invasion of Kuwait, Congress quickly rallied behind the President and Security Council actions by ratifying resolutions to that effect in both chambers. The Senate adopted Resolution 318 by a vote of 97-0 urging the President to act immediately using unilateral and multilateral measures to seek the withdrawal of Iraqi forces. The House passed Resolution 5431 by a vote of 416-0 condemning the invasion and seeking an embargo. Within weeks the military build-up continued, but congressional support faltered as the leadership questioned under whose authority the President was acting.

A congressional debate over the implementation of *War Powers Resolution* took place on 2 October, with Congress deliberating how it would assert its war powers without undermining the President's strategy. The constitutional dilemma facing the nation was simple: how far could the President go to commit the nation to war? Of the major and minor conflicts since the founding of the nation, only five were preceded with a declaration of war and congressional debate: the War of 1812; the War with Mexico, The Spanish-American War, World War I, and World War II. The October Senate debate demonstrated how Congress tried to walk a fine line between showing national unity in a crisis while refusing to yield to the executive branch full control in a matter of

⁸¹Fisher, *Presidential War Power*, 148-156.

grave importance. Senator Hatfield introduced Senate Joint Resolution 376 which suggested holding to the required *War Powers Resolution* ninety days and using force to defend the territorial integrity of Saudi Arabia and to enforce U.N. resolutions. This bill was replaced by the House non-binding resolution, HR 658, which passed by a vote of 380-29 and supported the Administration's objectives in the Gulf while urging the President to continue to seek diplomatic solutions.

The sponsors of the bill pointed out that the new resolution was not in conflict with the *War Powers Resolution* since there had been meetings in August and September with the President, and he had reported on 9 August pursuant to the Resolution. Those opposed to HR 658 did not accept the fact that it complied with the *War Powers Resolution* and maintained that the report from the President was simply a *letter* detailing his actions in response to the invasion and that there had been no further updates reported since. The sixty-day clock and the timing requirement had been absent from discussions. Those in opposition to HR 658 demanded a report from the President in which the scope, the duration, and the objectives of the deployment be addressed. They demanded that the House vote on invoking the *War Powers Resolution*, noting that the sixty-day clock would soon be in need of extension.⁸² Because they were a small minority, however, their demands were unfulfilled.

The Senate passed a similar resolution, Senate Congressional Resolution 147 by a vote of 96-3, supporting the deployment of troops and action in the Gulf. Senator Herbert Kohl made it clear that he was not pleased with Resolution 147 accusing the President of not seeking congressional approval for the actions taken thus far as required

⁸²Boylan and Phelps, 112.

by the *War Powers Resolution*: “The President may not like the *War Powers Resolution*, but it is the law of the land and one of the issues at stake in the Persian Gulf is respect for the rule of law.”⁸³

Senator Robert Kerry emphasized the limitation of Resolution 147, which stipulated congressional support so long as the action was in accordance with the Security Council. Kerry also mentioned the *War Powers Resolution* but stated it “should not be used as an excuse for not exercising the most effective tool we have to decide these issues—the power of the purse.”⁸⁴ Senator Joseph Biden reviewed the chronology of events and criticized not the President, but rather the Senate for its non-involvement: “Mr. President, eight weeks have passed since American troops were sent to the Arabian Peninsula . . . we have seen the largest of American forces since the Vietnam war—in a fraction of the time it took to make a similar commitment in Indochina, with a fraction of the debate . . . It is now October 1, nearly two months since the first U.S. soldiers arrived . . . in these two months, the U.N. Security Council has approved no less than eight resolutions regarding the Gulf crisis . . . yet the Senate has remained, as an institution, largely silent.”⁸⁵

Both House and Senate resolutions stopped short of backing military action, yet it was the first time since the invasion that Congress had gone on record behind the troop deployment. The Senate bill was passed as a concurrent resolution, but Senator Nunn spoke on behalf of the Congress making it clear to the President that the concurrent

⁸³This is entitled the “Senate Debate 2 October 1990” and it can be found in *Historic Documents of 1990*, 666.

⁸⁴*Ibid*, 669.

⁸⁵*Ibid*, 671.

resolution does not express support for every future action, rather it limits congressional support in accordance with U.S. constitutional and statutory process.⁸⁶ Nunn also stressed Congress's power of the purse and dismissed the *War Powers Resolution* as less effective than the power of the purse in constraining future military action. Those who had supported the Administration thus far made it clear the resolution was not a Tonkin Gulf Resolution giving the President *carte blanche*. Senate Majority Leader Mitchell echoed the Nunn's simple parameters of the October Resolution, "Approval for past actions isn't approval for all future actions."⁸⁷

On 23 October Senator Mitchell announced that he and House Speaker Foley had designated members of the joint bipartisan leadership to make themselves available as a committee for consultation on developments in the Gulf. At the time of their announcement 200,000 troops had already been deployed. Immediately after 101st Congress adjourned on 28 October to prepare for the election in November, Bush sent 150,00 additional troops. The President did not *consult* with the eighteen-member consultation group on any of these deployments, although he did meet with them on 30 October. At that meeting a letter was delivered to the President signed by the eighty-one Democratic members in which they outlined their concerns: the shift from a defensive to an offensive posture; possible catastrophic results if we went to war with death toll as high as 50,000 Americans; the fact that only Congress can declare war; support of the U.N. sponsored embargo instead of military action; and the need for the President to seek

⁸⁶*Ibid*, 675.

⁸⁷*Historic Documents of 1990*, 663-680.

a declaration of war if he came to believe military action was necessary⁸⁸ (This was the second letter given to the President. On 9 October a letter signed by thirty-three Democrats was submitted to the President as an “expression of concern.”) Not until 16 November did Bush send a second report to Congress describing the increased deployment of forces; the report was submitted one week after his public announcement of the increase of U.S. forces in the Gulf.

When the 8 November announcement was made Congress exploded and many members felt blindsided. On 14 November Bush asked for a special session of Congress in order to debate the war aims. Senators Kennedy and Lugar called for such a session too, for different reasons, but the Democratic leadership refused, saying that a hearing must be held instead. A Senate hearing was held on 28 November with Sam Nunn, Chairman of Armed Services Committee facilitating. Nunn was a leading opponent of the offensive option, and he adopted the Pentagon and the Joint Chiefs of Staff cautions considering their request for more troops, but recognizing the political realities of the Democratic Party. Senator Nunn was convinced that a strategy of containment and sanctions should be pursued for a longer, unspecified period and that the President was moving too fast. Meanwhile the Administration refused to send top witnesses to testify because it feared the impact of the congressional hearings on U.N. discussions. In effect, Bush made clear that the U.N. authorization for war was more valuable than any possible congressional approval. All of the witnesses who testified wanted sanctions and time. Former Secretary of State Henry Kissinger alone spoke of the costs of delay, supporting the President. Others spoke of half measures—an air war only. On 29 November the

⁸⁸Bush and Scowcroft, 390.

Security Council accepted Bush's reasoning that Saddam was not taking U.N. warnings seriously.

Secretary of Defense Cheney testified on 3 December before the Senate Armed Services Committee stating that the President did not require congressional authorization. Reacting to Cheney's assertion the House Democratic Caucus adopted a resolution the next day stating the President must first seek authorization from Congress unless American lives were in danger and the resolution passed 177-37.⁸⁹ Both Cheney and Powell argued against the effectiveness of sanctions. They believed that sanctions could mean that the U.S. would have troops in the Gulf indefinitely. To counter any talk of a compromise "air war only," Powell told the Committee that a ground attack was necessary for certain victory. Democratic members of the Senate Foreign Relations committee accused Bush of rushing into war. At the conclusion of the Senate hearings, the 101st Congress seemed like a lame duck: they adjourned complaining of the costs, the uncertainty of allies paying their fair share, and the President's threatening language.

Meanwhile the House Foreign Affairs Committee conducted its hearings with Representative Dante Fascell facilitating. Fascell told Baker that by refusing to testify he was insulting the Congress. Baker chose to risk upsetting Congress rather than to leak any news about diplomatic negotiations. He appeared only after the 5 December U.N. resolution had come to a vote. Baker wanted to let the Committee know that they would pay a political price for sitting on the fence: "Put bluntly, this is the last chance for a peaceful solution. If we are to have any chance of success, I must go to Baghdad with the

⁸⁹Fisher, *Presidential War Power*, 148-156.

full support of the Congress and the American people behind the message of the international community.”⁹⁰

Baker observed that Congress was still reluctant and wanted to hold to sanctions even though sanctions were not working. Baker also appeared before the Senate Foreign Relations Committee, outlining the diplomatic steps he had taken thus far and informing the Committee of the President’s invitation to Tariq Aziz as the last and best chance for a peaceful resolution. Baker informed the Committee of the Administration’s goal for the Baghdad meeting: “my mission will be an attempt to explain to Saddam the choices he faces, comply or risk disaster.”⁹¹ Baker laid a solid foundation for war with Iraq. He bluntly described the dangers Saddam presented and the responsibility of the United Nations and free world to reverse the events of 2 August 1990.

The Congress might have ratified the President’s position in their October resolutions, but instead individual members further undercut the threat of force. Many realized the precarious position they now occupied. Ranking Senator Bob Dole recognized that the American public was not yet committed to war, but worried that a debate would send the wrong message to Saddam. By the end of December, the House Foreign Affairs and Armed Services Committees stressed the need for diplomacy, not deadlines, and concurred that the American people needed more time. Bush, however, contended that he did not need additional congressional authorization: he had Security Council Resolution 678 (ratified 20 November) and the set deadline of 15 January 1991,

⁹⁰Baker, 340

⁹¹This is entitled the “Secretary of State Baker’s Testimony Before the Senate Foreign Relations Committee, 5 December 1990” and it can be found in *Historic Documents of 1990*, 780.

which was key to military planning. At that time Congress had no united position to take. Many Representatives supported the President, but the majority of Democrats opposed the use of military force.

The impasse the Democrats faced was that they could find no strong public support *against* the war. The October hearings on the war gave both branches an opportunity to test public opinion. Congress appeared actively involved debating the prospects of war, but it was generally understood before any discussion or debate that the President would get the support he needed should war ensue.⁹² Also, Congress, like the President, felt it was in their best interest not to mention the *War Powers Resolution*, for it would compel Congress to play a larger role. With that in mind, key members of Congress from both parties urged the Administration to take up the Baker mission, diplomacy first, and supported the scheduled 3 January meeting between Baker and Aziz. The newly elected 102nd Congress resolved to keep the Gulf policy under consideration, but no dissentious debate ensued. Senator Mitchell and Representative Foley were determined to avoid blame for undercutting Baker with a formal debate; they did , however, remain clear on the necessity to obtain congressional permission to start an offensive.

On 4 January 1991 the new 102nd Congress convened. Both Houses said they would debate policy regarding the crisis in Kuwait beginning 10 January. Congress received a letter from the President on 8 January requesting a resolution supporting the use of all necessary means to implement U.N. Resolution 678. During a press conference the next day, Bush made it very clear he was seeking *support*, not authorization:

⁹²Hinckley, 92.

“Question: Do you think you need such a resolution? And if you lose it, would you be bound by that? Answer: I don’t think I need it . . . I feel I have the authority to fully implement the United Nations resolutions . . . I still feel I have the constitutional authority—many attorneys having so advised me.”⁹³ He wrote that he would not feel bound by the lack of a congressional resolution of support.

From January 8 through 10, Congress conducted a televised debate to decide if the President should take the country, unprovoked by a direct attack, into war. Congress was sharply divided in authorizing war. This decision might mark the first time since World War II that Congress voted to send large numbers of troops into combat. However, the January debate revealed doubt on how to confront Saddam. It focused on the question of congressional authorization versus continued sanctions. Senators Nunn and Mitchell and House Speaker Foley argued for a continuation of sanctions, and those in favor of sanctions believed this action would weaken Iraq. Ranking Senator Nunn supported sticking to sanctions for as long as two years. Those opposed to sanctions argued that extending the deadline would mean that Saddam had time to improve his defenses. Senator Dole argued that the time for sanctions would give Saddam “a holiday from the threat that we might use force.”⁹⁴

Democratic support for the President came from House Armed Services Committee Chairman Aspin and the House Foreign Affairs Committee Chairman Fascell, who by this time saw war as a reasonable option.⁹⁵ Representative Bud Shuster spoke of

⁹³This is called the “President’s News Conference on the Persian Gulf Crisis 9 January 1991” in *Public Papers of the President: George H. W. Bush, 1989-1991*, 17-23.

⁹⁴*Historic Documents of 1991*, 8.

⁹⁵*Ibid.*, 3-14.

chemical weapons and the devastating price delaying could exact. Congress was in danger of being the spoiler of the President's strategy. Senator Alphonse D'Amato decried the indefinite time granted Saddam. Senator Charles Robb endorsed the rational actor theory: "If Saddam understands what's before him, he will behave rationally." Senator Albert Gore chose the argument of time and ignoring deadlines. Senator Phil Gramm said, "I believe the President deserves to have the presumption of correctness of his actions."⁹⁶ During the debate, Senator John Warner tried to keep the testimony focused on questions of readiness and military issues while others like Senator William Cohen choose to center the debate on whether Congress should be consulted before any use of force.⁹⁷ The question of sanctions was finally resolved: furthering sanctions was voted down in the House 183-250 and in the Senate 46-53. The issue of a declaration of war was still undecided.

Reluctance to support the President persisted despite the hearings, but the debate did establish a few significant points: the use of force was not to suppress a nationalistic uprising, but instead to prevent aggression by a regional power against a weaker neighbor; the terrain was desert and few strategists doubted the likelihood of military victory; the U.S. was acting within the framework of a Security Council resolution; and the European and regional allies were fully supportive. And, important to the fiscally conscious members, it was established that a good deal of the armament was to be taken

⁹⁶Lehman, 40-55.

⁹⁷Bush and Scowcroft, 418.

from supplies already destined to be remaindered and that the war could be undertaken at little additional cost to the national economy.⁹⁸

The debate in both Houses was free of partisan rancor. Foley spoke against the President's request, recognizing that the authorization of a joint resolution of support would be a virtual declaration of war. Representative Ted Weiss wanted to reassert congressional constitutional authority by denying Bush opportunity to pick the time and place and saying that the people had made that decision and that Congress represents the people. Senator Daniel Inouye advised restraint and redoubled diplomatic efforts, which would show strength, not weakness. Senator Robert Byrd condemned the fast-track approach by simply stating: "A superpower does not have to feel rushed."⁹⁹

Resolutions in Lieu of the War Powers Resolution: The January debate yielded three congressional resolutions: the first authorized force in support of embargoes; and the second proffered a sanction and contain policy; the third supported the President giving him authority once he formally notified Congress that he had determined that no other course of action would work. The first resolution, the *Durbin-Bennett House Bill*, reaffirmed the right of Congress to declare war and stated Congress must first approve any offensive action taken against Iraq; it granted the President authority to use force in support of existing embargoes on Iraq. The second resolution, the *Gephardt-Hamilton House Bill* also known as the "Sense of Congress" resolution, expressed continued support for economic sanctions, endorsed a policy of containment, and also asserted that any offensive action against Iraq must be authorized by Congress. The third resolution

⁹⁸Peterson and Greene, 95.

⁹⁹Lehman, 20-55.

was the bipartisan *Michel-Solarz Bill*, which supported the use of force to achieve the objective of the U.N. This was the joint resolution requiring the President's signature. The *Michel-Solarz Bill* was passed 250-183 as Public Law 102-1¹⁰⁰ (The bill comparable to Michel-Solarz was the Senate Dole-Warner bill.)

Overcoming the Democratic leadership in both Houses was difficult; nevertheless, the *Michel-Solarz Bill* was re-titled and ratified as the *Authorization for Use of Military Force Against Iraq Resolution* with a vote of 250-183 in the House, (164 Republicans, 86 Democrats for) and 52-47 in the Senate (43 Republicans, 9 Democrats for). Democratic Senator Robb underscored the fact Congress had acted too late to have any real choice believing it would be a fundamental mistake to give even the appearance of withdrawing our trust and support at this late point in time. On 14 January the President signed the joint resolution, which ignored any question on constitutional prerogatives.

The *Iraq Resolution* was concise and explicit. Section 2(a) of the Resolution authorized the President to use Armed Forces pursuant to U.N. Security Council Resolution 678 in order to achieve implementation of the earlier resolutions. Section 2(b) required the President first to report that the U.S. had used all appropriate diplomatic means to obtain compliance. Section 2(c) stated the resolution was intended to constitute specific statutory authorization within the meaning of section 5(b) of the *War Powers Resolution*. Section 3 required the President to report to Congress every sixty days to maintain congressional approval.

On the day the *Iraq Resolution* was ratified the House adopted House Congressional Resolution 32 (302-131) expressing the sense that Congress must approve

¹⁰⁰Bush and Scowcroft, 445-446.

any offensive military actions against Iraq emphasizing congressional power to declare war; however, the Senate did not act on this measure.¹⁰¹ (Responding to the President's request for a congressional resolution, Senator Nunn's speech on 11 January was interrupted three times by twelve antiwar protesters shouting antiwar slogans such as *no war for Bush—no blood for oil*. The protests undoubtedly unsettled the Senators and affected their action regarding Resolution 32.) Hostilities in the Gulf began 16 January. That same day the President sent a letter to Congress pursuant to the Iraq Resolution submitted within forty-eight hours of the commencement of hostilities.¹⁰² The letter did not mention the *War Powers Resolution*; however meeting the forty-eight hour reporting requirement served to satisfy section 4(a)(1) of the *War Powers Resolution*.

The Persian Gulf War is a complex case study in the authorization of the use of force: the interactions between the executive and legislative branches provide evidence of the deterioration of relations between the President and the Congress relative to constitutional war powers and the ineffectiveness of the *War Powers Resolution*. In both the Senate and the House the President's request for the use of all necessary force to turn back aggression was opposed by the majority leadership. The Iraq Resolution received less than sixty percent of the votes cast, a vote widely said to be *a matter of conscience* but which actually divided Congress down party lines.¹⁰³

¹⁰¹The roll call vote: yeas 41 Republicans, 260 Democrats, 1 Independent; no 126 Republicans, 5 Democrats.

¹⁰²This is entitled the "Letter to Congressional Leaders Transmitting a Report Pursuant to the Resolution Authorizing the Use of Force Against Iraq" and it can be found in *Public Papers of the President: George H. W. Bush, 1989-1991*, 42.

¹⁰³Peterson and Greene, 124.

The War Powers Resolution and the United Nations: The basic issue of authorization and command of U.S. forces in U.N. military operations depends on the type of U.N. action and is governed by the U.N. Participation Act (P.L. 79-264) as well as the *War Powers Resolution* and constitutional war powers. Section 6 of the Participation Act addresses armed actions vis-à-vis Articles 42 and 43 of the U.N. Charter authorizing the President to negotiate special agreements with the Security Council; those agreements, however, are subject to congressional approval by an appropriate Act or joint resolution:

The President shall not be deemed to require the authorization of the Congress to make available to the Security Council on its call in order to take action under article 42 of said Charter and pursuant to such special agreement or agreements the armed forces, facilities, or assistance provided therein: Provided, that nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the agreement or agreements.¹⁰⁴

This qualification means that once the President receives the approval of Congress for a special agreement, he does not need subsequent approval from them to provide military assistance under Article 42¹⁰⁵ Simply, this qualification does not eliminate or weaken the need for congressional approval—Presidents can commit forces to the U.N. only *after* Congress gives its explicit consent.

Section 7 of the Participation Act authorizes up to 1000 personnel to serve in any noncombatant capacity for certain peaceful activities.¹⁰⁶ The *War Powers Resolution*

¹⁰⁴*United Nations Participation Act*, Public Law No. 79-264, 59 Stat.621, 1945.

¹⁰⁵Fisher, "Sidestepping Congress: Presidents Acting Under the U.N. and NATO," 1237-1248.

¹⁰⁶*United Nations Participation Act*.

neither excludes U.N. actions nor makes any special procedures for them. It does stipulate in section 8(a) that the authority to introduce U.S. Armed Forces into hostilities shall not be inferred from any treaty unless it is implemented by congressional authorization. The purpose of this provision was to ensure that both Houses be affirmatively involved in any decision to engage in hostilities pursuant to a treaty.¹⁰⁷

Bush outflanked the Congress when he won explicit U.N. approval to oust Saddam. With Security Council Resolution 678 the Administration knew it now placed Congress in a precarious position chiding, “the United States Congress won’t support its President but the Prime Minister of Ethiopia will?” Of course, a simple response could be that the Prime Minister of Ethiopia was not risking one-half million American men and women. Bush had gambled on the strength of the Security Council resolutions for the liberation of Kuwait.¹⁰⁸ By adhering to U.N. resolutions as authorization to act, Bush rejected Congress’s formal role in deciding whether or not to use force.

Can the President take the nation from a defensive posture to an offensive operation without congressional approval? Bush did. He made no effort to seek authority from Congress before acting. He directed his energy to gaining support from other nations and encouraging the Security Council to authorize the use of force. The U.N. resolution did not require force, it authorized member states to take all necessary means to enforce resolutions. Although a declaration of war by Congress is not required for U.N. actions, clearly Congress was expected to approve the use of military

¹⁰⁷Congressional Research Service Report for Congress, “War Powers Resolution: After Twenty-Eight Years,” Richard F. Grimmett.

¹⁰⁸Duffy and Goodgame, 157.

commitment to the U.N. Congress did not surrender its constitutional power, yet the U.N. served as the impetus for Bush's decisions. Defense Secretary Cheney's testimony before the Armed Services Committee (3 December) he made it clear that the Administration believed it did not require additional authorization from Congress before attacking Iraq.

When Bush dispatched troops into Saudi Arabia, Congress began discussions about whether the President could lawfully commit those forces without formal authorization. This is a difficult issue because the Constitution does not address the idea of collective security treaties and their general principles. On the one hand, the records of the Federal Convention could be interpreted as requiring formal legislative sanction before the President could send forces into war in the absence of a foreign attack on the U.S. This would give Congress a "check" on commitments likely to endanger the lives of servicemen. On the other hand, the founding fathers intentionally chose to use the words "declare war," an expression that had a specific meaning under international law, rather than "commit forces" to hostilities or situations in which imminent involvement in hostilities is clearly indicated by the circumstances. The generic language of the *War Powers Resolution* could also be interpreted to reflect an intention that congressional approval would be required in any situation where a formal declaration of war would be *considered* appropriate under international law.¹⁰⁹

Applying this narrow construction of the *declare war clause* to the Persian Gulf crisis might support a conclusion that Bush needed no specific authorization beyond

¹⁰⁹Turner, *Repealing the War Powers Resolution: Restoring the Rule of Law in U.S. Foreign Policy*, 88.

funding to commit armed forces to help defend Kuwait against Iraq. The use of armed force in helping to enforce the prohibition against the use of aggressive force contained in article 2(4) of U.N. Charter might also be authorized by the President's constitutional duty (Article II, section 3) to take care that the laws be faithfully executed.¹¹⁰

A thoughtful debate that ensued relative to Bush and U.N. authorization began with New York University Law Professor Thomas M. Franck who wrote a compelling article for the *New York Times* on 11 December 1990, "Declare War? Why Congress Can't." He argued that a congressional declaration of war is "inapplicable to U.N. police actions." Franck claimed the U.N. Charter "does not leave room for each state, once the Council has acted, to defer compliance until it has authority from its own legislation." But the legislative histories of the U.N. Charter and U.N. Participation Act do not support Franck's position.¹¹¹

Although a declaration of war is not required for U.N. actions, clearly Congress was expected to approve the use of military commitments to the U.N. Congress did not surrender its constitutional power. Franck erred in suggesting that the contemplated action against Iraq was a "U.N. police action." If initially it was construed as a police action, it quickly evolved into a full-fledged military action dominated by the U.S. with the assistance of allies. Franck's position would have the Congress accept that although the framers of the Constitution expected Congress to share war power with the President, contemporary conditions permit that power to be shared between U.N. Security Council

¹¹⁰*Ibid.*

¹¹¹Thomas M. Franck, "Declare War? Why Congress Can't," *New York Times* 11 December 1990, 28.

and President. The Congress cannot be excluded from its constitutional responsibility for contemporary convenience.

Immediately after the Iraqi invasion on 2 August Bush worked in tandem with U.N. for multilateral military action. On 9 August Bush reported for the first time to Congress “consistent with the *War Powers Resolution*,” but he did not cite section 4(b) and specifically said, “I do *not* believe involvement in hostilities is imminent.” Bush did not consult prior to deployment, yet both chambers adopted legislation supporting efforts to end Iraqi occupation and called for an economic embargo consistent with U.N. Security Council actions: the Senate passed Resolution 318 and the House passed Resolution 5432. On 2 October the Senate passed Senate Congressional Resolution 147 (vote 96-3) that said Congress supports continued action *in accordance with U.N. Security Council* to deter Iraqi aggression. This was not an open-ended resolution like the *Tonkin Gulf Resolution*, and it made no mention of the *War Powers Resolution*, but it did support Security Council decisions. (The House did not act on Senate Resolution 147.)

As Congress continued to appropriate funds for operation Desert Shield and later Operation Desert Storm, Bush enlarged the military build-up and expanded his authority via the U.N. Like his predecessors Johnson and Nixon, Bush believed that however vague his constitutional authority to send forces abroad, once troops were deployed, his powers as Commander-in-Chief covered whatever course of action he decided without any need for Congress to approve or disapprove. In this case, Bush also had cover from the U.N. Security Council; nevertheless, fifty-four Congressmen challenged the President’s course of action in the Federal Court.

The War Powers Resolution and the Supreme Court: On 20 November Representative Ron Dellums and 53 other democratic members of Congress (53 House, 1 Senate) sought a judicial order enjoining the President from offensive military operations in connection with Operation Desert Shield. Presidential avoidance and congressional inaction led Dellums to initiate the law suit in the federal court to compel Bush to comply with the reporting and/or troop withdrawal requirements of the *War Powers Resolution* or to otherwise recognize Congress's war powers.

Judge Harold Green presided over the Federal District Court of Washington, DC. He offered an opinion on 13 December by first making clear the fact that both the House and Senate had expressed their support for the President's past and present actions. He recognized that the Congress was not asked, nor did it take action pursuant to Article I, Section 8 of the Constitution to declare war on Iraq. The plaintiffs' action proceeded on the premise that the initiation of offensive U.S. military action was imminent and that such action would be unlawful in the absence of a declaration of war by the Congress whose constitutionally entitled voice had not been heard.

The Justice Department argued on the grounds of tactical interference with presidential prerogative stating the President could order offensive actions against Iraq without seeking advance authority. The Department opposed the motion for a preliminary injunction and moved to dismiss. It also raised a number of defenses to the lawsuit: the complaint presented a non-justiciable political question; the plaintiffs lacked standing to take action, the plaintiffs' claim violated established canons of equity jurisprudence. The court also stated that the issue of proper allocation of the war making powers between branches was not ripe for decision.

Judge Green's opinion was in response to the defenses of the Department of Justice.¹¹² The Court did agree the Dellums case was not ripe for judicial determination because all the elements necessary for a decision were not yet present. However, it rejected many sweeping interpretations advanced by the Administration for independent presidential war powers, and it maintained that definitions of war power were left to the elected branches not the judiciary. Judge Greene: "The President had sole power to determine any particular offensive military operation, no matter how vast, [this] does not constitute war-making but only an offensive military attack, the congressional power to declare war will be at the mercy of a semantic decision by the executive. Such an interpretation would evade the plain language of the Constitution, and it cannot stand . . . it is therefore clear that congressional approval is required if Congress desires to become involved."

Judge Green based his decision on the concurring opinion of Justice Powell in *Goldwater v. Carter* (1979): "if Congress chooses not to confront the President it is not our task to do so."¹¹³ The court concluded that neither the political question nor the equitable/remedial discretion doctrines precluded it from resolving the question presented in the suit. In principle, the opinion said an injunction might be issued at the request of members of Congress to prevent the conduct of a war that is about to be carried on without congressional authorization.¹¹⁴

On the one hand, a majority of the Congress had taken no action on the matter of

¹¹²Sheffer, 164.

¹¹³*Dellums v Bush*, 752 F. Supp. 1141 (D.D.C. 1990).

¹¹⁴Congressional Research Service Report for Congress, "War Powers Litigation Since the Enactment of the War Powers Resolution," David M. Ackerman.

whether congressional authorization was needed in this instance; the plaintiffs represented only about ten percent of the Congress. Moreover, it was also not yet irrevocably certain that the President intended to initiate a war against Iraq. Both elements were necessary before the Court could address the constitutional issue. The Court said a majority of Congress had to request relief from an “infringement on its constitutional war-declaration power,” and the Executive branch had to be shown committed to a definite course of action.¹¹⁵ No appeal was taken from this decision.

On the political question, the Court noted the “clear” language of the Constitution authorizing Congress to declare war, as well as the absence of any serious factual dispute that the initiation of combat operations against Iraq by several hundred thousand troops would *constitute* war. The Court further asserted that the courts were not excluded from resolving suits merely because they involved questions of foreign policy. On the issue of remedial or counteractive discretion, the Court concluded without further explanation that the plaintiffs “cannot gain substantial relief by persuasion of their colleagues alone.”¹¹⁶ Judge Green suggested that a joint resolution counseling the President to refrain from attacking Iraq without a congressional declaration of war would not likely stop the President from initiating such military action if he was persuaded that the Constitution affirmatively gives him the power to act otherwise.

On 25 November eleven prominent law professors filed a brief in favor of Dellums’ judicial action arguing that the Constitution clearly vested Congress with the authority to declare war and that Federal Judges should not use the political questions

¹¹⁵*Ibid.*

¹¹⁶*Ibid.*

doctrine to avoid ruling on such an issue.¹¹⁷ On 13 December Judge Greene denied that injunction as well, holding that the controversy was not ripe for judicial resolution because a majority of Congress still had not sought relief and the executive branch still had not shown sufficient commitment to a definitive course of action. If the Congress confronted the President and he refused to accept a statutory restriction, the issue would have been “ripe” for the Court to adjudicate. In a less publicized case, *Ange v. Bush*, the Court rejected legal challenges to sending troops to Saudi Arabia holding that the deployment order presented non-justifiable political questions.¹¹⁸ Finally, the American Civil Liberties Union also filed a memorandum in favor of the plaintiffs. The President was not deterred by any of these actions.

Congress gained little by bringing the Supreme Court into the Persian Gulf dilemma beyond introducing political questions regarding the executive-legislative relationship and congressional constitutional authority before the Court. The decision that the case was not yet ripe and rejection of the Justice Department’s no doubt affected the Administration’s thinking relative to constitutional theories and presidential power. The question remains, will the controversy of war powers ever be ripe for adjudication? In the case of the *Dellums v Bush*, the Court preferred to avoid the issue of the division of powers vested in each of the political branches.

The Persian Gulf War saw congressional leaders of both political parties taking opposite positions. The October resolutions and November Committee hearings informed but did not empower the Congress. The President acted so swiftly that upon

¹¹⁷Grimmet, *War Powers Resolution*, 35-42

¹¹⁸*Ange v Bush*, 52 F. Supp. 509 (D.D.C. 1990).

their return in January, Congress was in a position to do nothing but ratify the Iraq Resolution, which in principle was the declaration of war Bush sought. The President's perception of what transpired was quite different. He believed the issue was debated openly and in good faith, and as President he held extensive consultation with the Congress. Among the remarkable features of the Persian Gulf crisis was the fact that no one in the Administration or in the Congress referred to or relied upon the stipulations of the *War Powers Resolution*. It was never the frame of reference for the executive or legislative branch.

CONCLUSION

Operation Desert Storm was the most significant and the most dangerous American military campaign since the Vietnam War, the conflict that generated the *War Powers Resolution*. Although Bush reported twice to Congress, he did little else to comply with the requirements of the Resolution. No effort was made on the part of Congress to make time to consult, debate or react in a way that insisted upon presidential compliance to the Resolution. Not until days before the deadline did the President tacitly invoke the Resolution in a gamble to muster congressional support for the war. What he received was the *Iraq Resolution*, an implied declaration of war. Some in Congress thought this to be a victory for them: the President did request their authorization indirectly referring to the *War Powers Resolution*; but this was a shallow victory as Bush stated at the signing of the bill: "As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing of this resolution does not, constitute any change in the longstanding position of the executive branch on either the

resident's constitutional authority to use armed forces to defend vital U.S. interests or the constitutionality of the *War Powers Resolution*.”¹¹⁹

Can Presidents rely on the U.N. for legal authority instead of seeking approval from Congress? Doing so would violate both the text and the legislative history of the U.N. Charter and the U.N. Participation Act. There is nothing in the language of the Charter or the statute, nor was there anything in the congressional hearings, committee reports, or floor debate to indicate that Congress had ever consented to transferring its authority to the U.N. Yet, Presidents have circumvented Congress by seeking authorization from the U.N. Harry Truman's reliance on Security Council resolutions set the precedent in 1950 providing authorization in support of his unilateral response to the North Korean invasion of the South. Forty years later, George Bush turned to the Security Council to underpin his unilateral decision to order offensive forces against Iraq. Only at the eleventh hour did Bush come to Congress to requesting support. Bush's successor, William J. Clinton, also relied on Security Council resolutions for legal authority to invade Haiti and to send ground troops into Bosnia. Conducting executive affairs in similar fashion to that of Bush, at no time did Clinton acknowledge the need to obtain congressional authority.

Up to and during the Persian Gulf War there existed a synergistic relationship between the multinational coalition and domestic support—the stronger the coalition, the easier it was to generate consensus at home. Likewise, the more domestic support, the easier it was for Bush to take the lead internationally. Security Council Resolution 661 imposing economic sanctions gave some in Congress an opportunity to indulge in their

¹¹⁹Statement issued 14 January 1991 at the signing of House Joint Resolution 77, “Authorization for the Use of Military Force Against Iraq Resolution” can be found in *Historic Documents of 1991*, 23.

proclivity for having both ways: denouncing Saddam while avoiding the central policy dilemma of what to do if sanctions failed. Resolution 661 gave some in Congress an opportunity to avoid hard choices, but Secretary of State Baker harshly criticized Congress for avoiding difficult decisions: "Profiles of timidity are standard operating procedure for many."¹²⁰

During the 1990s several developments rendered the President and Congress less capable of decisive action in the area of foreign policy. A reluctance to use congressional authority and the unwillingness to act vis-à-vis the *War Powers Resolution* both convey impotency on the part of Congress. Since the Reagan Administration, the Republican Party has become more internationalist, interventionist, and more favorable to the President's leadership in the foreign policy arena while the Democratic Party has been more focused on domestic issues. 1991 saw the trend moderating within the Republican Party conservatives like Pat Buchanan who opposed intervention in Kuwait on the grounds U.S. had no vital interests there, while at the same time Democrats were beginning to show indications of a reversion to their pre-Vietnam internationalism. Despite the President's high approval ratings following the war with Iraq, Democratic Congressmen were quick to criticize Bush for his failure to act against the ethnic cleansing in Yugoslavia and the communist regime in Beijing. Bill Clinton emphasized these facts during his presidential campaign.¹²¹ Although the war ended in triumph for

¹²⁰Baker, 334.

¹²¹Jonathan D. Mott and Nicole C. Rae, "The Republican House and Foreign Policy in the 104th Congress and Beyond," in *Congress and the Politics of Foreign Policy*, ed. Colin C. Campbell (Upper Saddle River: Prentice Hall, 2003), 252-259.

the President, the speed with which the country and Congress became divided indicates that Presidents do not automatically dominate crisis and war-making as they once did.

The 102nd Congress had to decide whether the costs of opposing the President were higher than the costs of supporting him. In 1991 Congress found a way to make a stand without invoking the *War Powers Resolution* by authorizing use of force explicitly outside the context of the Resolution. The Persian Gulf buildup took five months, which provided Congress ample time to develop legislation and to build political coalitions. However, only two approaches were offered: Senator Hatfield suggested holding to the ninety days and the use of force only to defend the territorial integrity of Saudi Arabia thus enforcing U.N. resolutions in Senate Joint Resolution 376 (5 October 1990); while Representative Dante Fascell introduced deployment with no time limit in House Joint Resolution 658 (1 October 1990). The House resolution passed. Removing the time limit, an integral component of the *War Powers Resolution*, compromised Congress's ability to constrain Bush's military plan. The only issue that Congress could raise was a declaration of war.

While many people praised Congress for being responsible, few raised the basic question: if Congress has the power to declare war, why did it not do so? House Speaker Foley responded by saying the *Iraq Resolution* was the moral equivalent of a declaration of war, but Congress had chosen to take a moral equivalent rather than the constitutional provision. The 102nd Congress played a minimal role during this crisis despite its constitutional power. Congress needs the institutional courage and constitutional understanding to share with the President the decision to send U.S. forces into combat, but Congress did not share a decision—it supported the President's decision. In choosing

such an action, Congress did not give evidence of its constitutional understanding as to its own power to declare war. Instead, it gave the appearance of an institutional courage that it did not actually possess.

The Persian Gulf War is unique in that while the President amassed 400,000 troops and months of preparation left little doubt that war was imminent, still there was relative quiet in Congress. Even after Supreme Court Judge Harold Greene issued his opinion saying if the President went forward, he would then be violating Constitution, Congress remained inert. Congress recessed for two months with no vote for or against the President's quickly evolving course of action. As a result, Bush lobbied the U.N. and proceeded as if congressional approval were optional. What eventually motivated Congress to act was Bush's request for support to tighten the vice on Saddam with several justifications: Saddam was a mad dictator; the oil life-line was threatened; Iraq's invasion was an act of aggression; the security of the Gulf was threatened; Iraq threatened our national security; jobs would be created by this action; rule of Kuwait must be restored; Saddam posed a nuclear threat. Torn between confrontation and accommodation, Bush had to choose between dealing with the Democratic Congress and acting unilaterally with full support of the Security Council.

Did Congress transfer its constitutional power to the Security Council with the Iraq Resolution? Congress countered Security Council Resolution 678 with the Iraq Resolution so as not to forfeit its war power to the Council or the President. What transpired was not a police action, but a military action dominated by the U.S. and assisted by a number of allies.¹²² Resolution 678 authorized member states to use all

¹²²Fisher, "Sidestepping Congress: Presidents Relying on the United Nations and NATO," 1239.

means necessary to uphold and implement Resolution 660 [Iraqi forces out of Kuwait] and all subsequent relevant resolutions and to restore international peace and security in the area. The phrase “all subsequent relevant resolutions” can be construed to mean that whatever the Security Council generated after the war could also be sanctioned by the Iraq Resolution. The term “subsequent” is ambiguous and could permit the President an open-ended *Iraq Resolution*. Congress might deny abdicating its authority, but the fact remains that the American military commitment was decided by the President with support from the U.N., not congressional statutes.

Many members of Congress agreed and felt compelled to vote for a war they would not otherwise have supported because the alternative seemed worse. Senator Dole, who was part of the group who traveled to the region at the request of the President, said that returning the Emir of Kuwait to power was not worth one American life. Yet, two weeks later, 30 December 1990, Dole led the effort to approve a war aimed at precisely that. Senator Robb considered it a mistake to give even the appearance of withdrawing our trust and support, implying that the congressional commitment to war took place on 8 November with the President’s announcement of the offensive troop build-up. On 12 January Congress had approved war after the President had already placed the nation on a virtually inevitable course. Congress was handed a *fait accompli*. It could have acted immediately upon the 8 November announcement. Refusing to do so on the grounds that it was a “lame duck” Congress was foolhardy: Even a lame-duck Congress could have blocked a *fait accompli*.

Will Congress and the American people accept this subordinate role for the legislative branch? Shall the crucial question of taking the country from a state of peace

to a state of war rest solely with President? In 1995 Congress debated repealing the *War Powers Resolution*—keeping only the provisions for consultation and presidential reports. The bill was voted down 201-271 in the House.¹²³ After thirty years of unproductive legal debate, new reservations about the effectiveness of the *War Powers Resolution* and the restraints it places on the Commander-in-Chief may shift the argument in a different direction, one that seeks a pragmatic, rather than legal or judicial solution, to the debate. How can the Congress expect the President to comply with the requirements of the 1973 *War Powers Resolution* in the twenty-first century?

¹²³*Ibid.*

CHAPTER VII

CONCLUSION

When Senator Robert Byrd called upon Congress to do a self-examination of its role and responsibility with regard to its constitutional war powers, he called attention to the sensitive nature of the relationship between the Congress and the President. Many in Congress agree with the senior Senator that it is their duty to stay informed with regard to U.S. foreign and military policy by questioning the President's use of executive privilege, and that it is their obligation to execute their congressional rights and responsibilities.¹ The congressional introspection called upon by Byrd is part of an ongoing debate that began during the height of the Cold War, when Congress worried that it had ceded its war powers authority to the President via the Tonkin Gulf Resolution.

During the throes of the Vietnam War, Senators John Stennis and William Fulbright debated two opposing points of view regarding Congress's role over the use of military force: Stennis condemned Congress's insistence on being involved in matters of war while Fulbright charged flexibility had become a euphemism for unchecked executive privilege. Fulbright believed Congress was obligated to involve itself in matters of war.² Within two years of the Stennis-Fulbright discussion, Congress passed the *War Powers Resolution* as permanent oversight of unilateral

¹Robert C. Byrd, "Why Congress Has to Ask Questions," 8.

²John C. Stennis and J. William Fulbright, *The Role of Congress in Foreign Policy* (Washington, DC: AEI, 1971).

decisions of the President regarding the deployment of military forces. As this research has shown, both Congress and the President are reluctant to invoke the Resolution as a tool to manage national security crises. Why?

ASSESSING THE RELATIONSHIP

Tension Under Normal Conditions: The relationship between the Congress and President is an inherently difficult one. The Constitution is deliberate in instituting this struggle over the roles and prerogatives of the Congress and the President by outlining the assignment of some governing powers, while leaving other authorities overlapping. The document explicitly assigns to Congress the responsibility for declaring war and maintaining armed forces and while granting the Commander-in-Chief head of all forces and chief negotiator and diplomat. The Constitution then delegates less specific war-waging authorities to the legislative and executive branches. This indistinctness has resulted in competing values of effectiveness and legitimacy between the branches. History has shown, however, that the President is the benefactor of the ambiguity.

As demonstrated in William Corwin's research on the Constitution as an "invitation to struggle," the gaps in the constitutional delegation of powers pertaining to foreign relations defer to the executive, often leading to political discord.³ Moreover, granting war and foreign policy powers to both the legislative and executive branches, the Constitution leaves the final voice in determining the course of the nation for events to resolve—the needs of the moment will decide policy. This ambiguity places the

³Corwin, *The President's Control of Foreign Relations*, 127.

President in a superior position for it is the President who has the ability to shape or influence public and congressional opinion on the course of action by defining what are vital or important interests and what are necessary interventions. As enumerated by Cecil Crabb and Pat Holt, the President has “extra constitutional techniques” available to him such as unequaled access to information, a growing role as legislative leader especially with budget issues, the ability to commit the nation to a course of action or position regardless of what others say via formal or informal executive agreements between heads of state, and as leader of his political party.⁴

Congress has also established its own extra-constitutional procedure with the ratification of the *War Powers Resolution*. The enactment of this Resolution marked a turning point in the application of the rule of law to foreign and national security affairs. It is important to note, however, that no President has recognized the legitimacy of the *War Powers Resolution*. From the President’s perspective this legislation contributes to the already tense legislative-executive relationship because it requires collaboration between the branches during times of national security crises, a role the President considers reserved for him alone. It also serves to constrain the President by monitoring timed deployments and executive reporting.

Consequently, the requirements and constraints of the Resolution become a focus of attention when a national security issue arises. Predictably, a national crisis superimposed upon the already difficult association between Congress and the President can result in a highly aggravated relationship. In effect, employing the *War Powers*

⁴Crabb and Holt, 18.

Resolution to manage the course of events only serves to contribute to the dissention.

The conflicts analyzed in this research bear this out.

LESSONS LEARNED FROM BEIRUT

Tension During Extreme National Security Conditions: President Reagan's commitment to the mission that deployed 1200 U.S. Marines as part of a multinational peacekeeping force to facilitate the withdrawal of PLO forces from Beirut was to be a long term commitment. The decision to participate was less a policy decision and more a reaction on the part of the Administration to do something to demonstrate U.S. concern for the crisis in the region. The mission, however, is widely viewed as a political and military failure for two obvious reasons: the purpose of the intervention was never clearly defined; and the response of the adversary was not anticipated.

The relationship between Reagan and the Congress can also be attributed for the failure of the Beirut mission. On the one hand, the President saw no need to consult with Congress about the deployment and chose to withhold information. Conversely, despite events unfolding quickly for the worst, Congress slowly reacted over the course of a year to constrain the President via the *War Powers Resolution*. At the heart of disagreement between Congress and the President was Reagan's use of the military machine to address foreign policy. The transitioning of Alexander Haig to George Shultz as Secretary of State had repercussions throughout the Administration, Congress, and Middle East.

Shultz held the view that the military had a role in the execution of foreign policy. His argument to retain the second deployment in the region proved weightier

with Reagan than did the position of the Defense Department. Weinberger questioned the mission as vital to U.S. interests and believed the committing forces only as a last resort. In the case of Beirut, the apparent flaws of the Administration's military and political policy, the disinformation regarding conditions in the theatre of operations, and the deliberate exclusion of the Congress on the part of the Administration fueled a contentious executive-legislative relationship.

The War Powers Resolution: Managing the Congress: With the initial Marine deployment August - September 1982, Reagan *informed* the Congress that the mission was to assist the Lebanese government with the withdrawal of Syrian-Palestinian forces. Simply, the multinational force was to keep Israeli and Syrian forces from further skirmishes with a thirty-day time limit. This information was presented to Congress the day before U.S. Marines began landing in Beirut making the report consistent with the requirements of the *War Powers Resolution*. Reagan's reference "consistent with" was deliberate; it precluded validity of the Resolution by not reporting *under* or *pursuant to* the document and avoided charges that Reagan was floating or circumventing the Resolution. The Administration then based the second deployment on the tacit congressional approval of the first mission.

The second deployment in September 1982 (through March 1984) was larger in scope. Reagan again *informed* Congress that the Marines would once again play a role in the multinational force whose focus was on restoring Lebanese authority and territorial integrity by disarming private militias. Essentially, the military presence of the multinational force would serve as an interposition force.

Reagan maintained that hostilities were never clearly indicated with this mission.

In doing so, he raised no immediate cause for concern and avoided any required consultation with Congress. The fluidity of the mission also allowed for broad objectives that could lead to the gradual increase in the role of U.S. forces without congressional involvement. This ambiguity in mission and reports of terrorist skirmishes in the Marine compound led some in Congress to question whether or not the Marines were facing imminent hostilities. Opponents in Congress cited the President in violation the *War Powers Resolution*, in their opinion terrorist activities equated to imminent hostilities. But timing was on the Reagan's side: Congress realized too late the reality of the Marines' true status as combatants and the mission was well under-way.

Reagan did not report or consult with Congress, nor did he refer to the *War Powers Resolution* in a manner that would require compliance. He was never formally cited in violation for conducting a military mission outside the parameters of the Resolution. On the contrary, Reagan obtained congressional authorization to conduct the mission with additional time allotted via an executive-legislative compromise introduced in lieu of the Resolution. The *War Powers Resolution* proved ineffective in managing the mission or the President.

The War Powers Resolution: Managing the President: The 98th Congress had to develop a way to invoke the *War Powers Resolution* for a mission that was neither clear, nor achievable, and with the threat of imminent hostilities indeterminate. Although Congress witnessed the breakdown of the *Reagan Plan* and the escalation of the crisis, it took one year to develop a plan that would establish its congressional role vis-à-vis the crisis. Throughout the course of the year, congressional and public support

or criticism for the operation correlated with the successes and failures of the mission. As a result, Congress took no definitive position in support of or opposition to the President.

Those who opposed the mission produced Senate and House resolutions, which drew attention to Reagan's non-compliance of the *War Powers Resolution*. The outcome of the Senate and House resolutions was the *Lebanon Resolution*. Unique in its design, members from both the executive and legislative branches worked jointly in developing a compromise resolution. In sum, Congress grudgingly authorized the Marines to remain for eighteen months but only in exchange for a promise that Reagan would not try to expand the role of the force, relocate the force, or otherwise change its mission without congressional approval.

The additional time granted Reagan was more than a compromise between the executive and legislative branches; it was a concession to the President because the eighteen months invalidated the time constraints of the *War Powers Resolution*. The Congress wanted to preserve the legitimacy of the *War Powers Resolution*, but in reality it succumbed to the pressures of a failed mission, a determined President, its own failing of non or late involvement as well as the Administration's deliberate exclusion of the Congress from consultation. The *War Powers Resolution* did not serve as an "extra-constitutional" tool for the 98th Congress to manage the President. Instead, Congress seemed to be managed by the Resolution: Congress was compelled to compromise with the President to maintain the legitimacy of the *War Powers Resolution*.

Conclusions: What Beirut Demonstrates Regarding the Legislative-Executive Relationship: The events in Beirut bear out the complexity of relationships within the

Administration and between the branches. Internal dissention precluded collaboration within the Administration, let alone with the Congress. On the other hand, Congress failed to insist on information regarding the deployment, clarity of mission, and the persistent threat of hostilities in Beirut.

The *War Powers Resolution* indirectly defined the limits of executive action by serving as a vehicle for a compromise resolution. A reluctant Congress and a resolute President agreed to this compromise legislation, but the President was the true benefactor. The compromise also demonstrated how the *War Powers Resolution* lacked enforcement provisions once the crisis appeared unmanageable, and it was ineffective in altering executive decisions. The President gave implicit compliance due to congressional threats of purse strings restrictions, not the mandates of the Resolution. The executive-legislative relationship was deeply fissured with the events in Beirut: Congress wanted to maintain the legitimacy of its Resolution while the Administration wanted conditional congressional support rejecting any limits Congress might place on the Beirut operation.

Senate Majority Leader Baker had to press Reagan to file a report with Congress; Senior Senator Lloyd Bentsen made it clear to the Senate that unless the Resolution was invoked, it would be worthless. Republican leaders concurred, but they were not prepared to defy Reagan, nor were they prepared to order troops out of Beirut and face the President's refusal to comply. The Democratic House, generally opposed to the Administration's management of the crisis, was divided because its own leadership co-authored the compromise. Dissention existed between the legislative and executive branches, between the Senate and House, and within the Republican and Democratic

parties. The crisis in Beirut tried and tested the executive-legislative relationship, which in this case resulted in a failing final grade.

Conclusions: What Beirut Demonstrates Regarding the Management of Conflict: Congress's role over the use of force in Beirut was minimal. Congress can be found at fault for not asserting its constitutional authority and/or the requirements of the *War Powers Resolution*, which is designed to encourage collaboration between the branches; but the overall failure of the management of the conflict resides with the Administration.

From the outset of the mission there was a lack of concurrence within the Administration and little public and congressional support. Secretary of Defense Caspar Weinberger viewed domestic support a prerequisite before committing forces abroad. To adhere to this view means the President needs to recognize the provisions of the *War Powers Resolution* and seek congressional approval to stay the forces after sixty days. This line of reasoning was not convincing for Reagan and Secretary of State Shultz. Shultz believed no such guarantee of support and approval existed. In answering the question of whether to intervene on behalf of the Lebanese government, the Administration concluded that the nature and proportion to scale of the Beirut mission did not warrant the need for advanced, formal congressional support. Consequently, the Administration unilaterally made the decision to deploy the Marines for the second mission.

The mission was designated as peacekeeping, involving the deployment of unarmed or at most lightly armed forces in a peaceful environment. Categorizing the mission as peacekeeping enabled the Administration to respond quickly to the request

of the Lebanese government. However, Reagan's desire to act quickly violated one of the fundamental precepts of intervention: judgments of desirability cannot be made divorced from assessment of feasibility.⁵ A number of problems soon became obvious: 1) the purpose of this intervention was not clear; 2) the Administration's inconsistency with the objectives of the mission as well as its designation of Lebanon as a vital interest (versus major, minor, and peripheral) then reassigning its designation served to confuse policymakers and antagonize the belligerents; 3) the attacks from the various warring factions caught the Marines and the Administration unexpectedly. The failure of the intervention was the result of the Administration's dismissal of the need to adjust to the conditions in the theatre of operations. The decision to keep the force small in number, keeping with its designation as a peacekeeping force, was incongruent with the needs of the intervention. Portraying the mission as modest and without indication of imminent hostilities, when in fact it was becoming a hotbed of terrorist activity, misrepresented the reality of the crisis.

The political goals of the mission also failed. The Marines were not able to facilitate the withdrawal of foreign forces, nor was there a strengthening of the central government. Relations between with Israel and Lebanon remained tenuous. Again, divisive leadership, bureaucratic conflict, strategic misjudgment, poorly executed military operations, and ambiguous signals to allies and adversaries resulted in the political failure of the mission.⁶ Beirut demonstrates the failed political and military

⁵Haass, 68.

⁶Kemp, "Lessons of Lebanon: A Guideline for Future U.S. Policy," 65.

management of a conflict at the cost of 241 Marines and others representing the peacekeeping mission.

LESSONS LEARNED FROM IRAQ

Tension During Extreme National Security Conditions: The Bush Administration and the Congress both realized a decade of U.S. disasters in the Middle East: the revolution in Iran, Beirut, Iran-Contra, hostages in Iran and Lebanon. Like previous Administrations, Bush was reluctant to further disrupt the region by condemning Saddam for his rogue activities, particularly the slaughter of thousands after the Iran-Iraq war. Congress made known that it preferred sanctions as a means of coercing better behavior from Saddam. But when Iraqi forces invaded Kuwait, Bush quickly condemned Saddam's aggression and opposed the further use of sanctions. The President severed the consensus to use of sanctions against Iraq. Bush's immediate turn-about of policy and speedy response to the crisis created a rift in the legislative-executive relationship that not only aggravated a characteristically tense association, but also resulted in a federal injunction against the President for overstepping his constitutional authority. The Administration, on the other hand, had to work diligently for two months on intensive damage control in an effort to persuade Congress to support the military operation.

This events surrounding the Gulf War draw attention to three issues regarding the executive-legislative relationship: 1) circumventing the Congress—How did Bush elude a body of 535 legislators to prepare the nation and the world for war with Saddam? 2) U.N. Resolutions taking precedence over the *War Powers Resolution*—

How does the *War Powers Resolution* relate to resolutions prescribed by the United Nations, and where does that leave Congress? 3) taking the President to court—What judiciary recourse does Congress have if the President acts unilaterally? Bypassing Congress, the *War Powers Resolution*, and the federal courts, George H. W. Bush seemed to effortlessly take the country from a state of peace to a state of war in a matter of weeks.

The War Powers Resolution: Managing the Congress: Bush out-maneuvered the Congress by quickly creating conditions that diminished Congress's role over the use of force. In effect, Bush's expeditious manner circumvented Congress and placed it in a reactive mode. On the day of the invasion, Bush deployed 100,000 troops in response to Saddam's invasion of Kuwait with the possibility of engaging in an offensive exercise. Within a week of the invasion, Bush deployed another 230,000 American armed combat troops to the desert of Saudi Arabia as a deterrent shield for a mission that was described as wholly defensive. Moreover, instead of seeking authority from Congress, Bush created a multinational alliance and encouraged the United Nations Security Council to authorize the use of force.

It was clear the President was placing troops in harm's way and that the *War Powers Resolution* could have been triggered by either a presidential notification or congressional debate. But Bush chose to delay approaching Congress until the Security Council approved the use of force for the coalition with Resolution 678 authorizing the use of "all necessary means" if Saddam did not get out of Kuwait by 15 January. With this mandate from the U.N., Bush was convinced he did not need authorization from Congress. However, Bush was cognizant of the benefits of congressional support. The

Administration was concerned with Congress's fiscal capacity to support the war.

On more than one occasion the President asked that Congress enact a resolution to indicate its concurrence with his objective in the Persian Gulf. After outlining the purpose and importance of the mission, Bush took a coercive tact and placed the onus of Saddam's future actions on Congress. His letter to the congressional leadership made clear that their non-support would encourage Iraqi intransigence and detract from the international coalition's goal to stop Iraq's aggression.⁷ He pronounced the Baker-Aziz meeting as the last diplomatic approach. In turn, the leadership made clear it could not guarantee a majority vote in support of the President. House Speaker Foley clearly stated he was opposed to the war. Bush implicitly blamed Congress for the failed meeting between Baker and Aziz and made a final request for its support stating there is "still opportunity for Congress to act to strengthen the prospects for peace and safeguard this country's vital interests."⁸ But none of these measures convinced Congress to take the nation to war. The President then made the decision to go to war. His authority came from the U.N. Security Council.

Initially, Bush cited the International Emergency Economic Powers Act of the National Emergency Act (NEA) section 204(b) as his authorization for action in the Persian Gulf. His citation said nothing about deploying troops or seeking congressional

⁷*Historic Documents of 1991*, 485.

⁸Bush, 500.

approval and omitted information on troop deployment in defense of Saudi Arabia.⁹ In doing so, Bush averted attention from congressional authorization and the *War Powers Resolution*, and he began working in tandem with U.N. for multilateral military action. He did report “consistent with” the *War Powers Resolution*, but he did not cite any section that would require his compliance. There was therefore no consultation with Congress regarding any deployments.

Bush then turned to the U.N. Security Council as his authority, specifically Section 7 of the Participation Act. Congress had an opportunity to deny that authorization because the *War Powers Resolution* neither excludes U.N. actions nor makes any special procedures for them. In fact, it does stipulate in section 8(a) that the authority to introduce U.S. Armed Forces into hostilities shall not be inferred from any treaty unless it is implemented by congressional authorization. This stipulation ensures congressional involvement in any decision to engage in hostilities pursuant to a treaty. The clarity of this requirement would have allowed Congress ample input to manage the President and the crisis, but the Resolution was never invoked. Instead, Bush outflanked the Congress and then placed it in a precarious position. The President proceeded on the strength of the Security Council resolutions and rejected Congress’s role in deciding whether or not to use force.

The President built the coalition by working indefatigably personally calling world leaders and sending James Baker on follow-up visits. He had a long list of

⁹This is entitled “Message to the Congress on National Emergency” and it can be found in *Historic Documents of 1990*, 536.

friends and associates whom he had interacted with throughout his career that he could call upon. This fact was no doubt integral in his decision to work at building a coalition then secure the legitimacy of force through the U.N. This plan served him well; he was more successful in quickly securing their support than he was of the Congress. Choosing the multilateral approach precluded any opposition to the intervention as an independent U.S. operation both at home and internationally. The coalition contributed various assets to the mission from troops to money to base rights to economic sanctions. Collectively, the coalition let Saddam know that states in the region and around the world were making efforts to stop and reverse his belligerence.

Getting support from the allies meant Bush had to overcome the longstanding relationships that France and the Soviet Union had with Iraq. Concerned about appearing obstructionist, both France and the Soviet Union eventually supported the Security Council resolution and the use of force. For the first time since 1950 did the U.N. authorize war against an antagonist, and it did so as a credible agency for collective security. Bush garnered this authorization by condemning Saddam's behavior and obstinacy as brutal and brash, by portraying the invasion of Kuwait as a threat to the world community, by exposing the Iraqi regime as a proliferator of weapons of mass destruction, and making it known to the smaller nations that left unchecked, this could happen to them.¹⁰ Essentially, the President outmaneuvered the Congress by successfully putting collective security into practice.

The War Powers Resolution: Managing the President: At the outset of the

¹⁰Yetiv, 99.

invasion, Congress quickly rallied behind the President and Security Council ratifying resolutions to that effect in both chambers. The Senate resolution urged the President to act immediately using unilateral and multilateral measures to seek the withdrawal of Iraqi forces. The House condemned the invasion and supported an embargo. Notably, in both houses there was no talk of war. The Administration focused its efforts on preparing for war during the August congressional recess. Not until September and the deployment of 100,000 troops did Bush convene a group of thirty members of Congress at the White House. At this meeting Senator William Cohen recommended that Bush convene a special session of Congress to deal with the law of the land and the *War Powers Resolution*; Cohen saw this as a way for Bush get congressional support for this operation. The special session was never convened; events had transpired so quickly Congress was unable to keep pace with the Administration, who by November 8 announced its plans to deploy another 200,000 troops to increase the deployment to 440,000. With the continued military build-up, congressional support faltered and the leadership questioned under whose authority the President was acting. But, congressional protocol slowed the legislative process placing Congress in a reactionary mode. There were some dissenters, however, who elected to challenge Bush's constitutional authority in federal court.

Congressmen Ron Dellums led the small group filing an injunction in opposition to the Administration's policy berating Bush about ignoring Congress's constitutional right to declare war. They also accused him of flaunting public opinion. Bush had gained support from the global community and worked at increasing his support from the American public; Congress was in a difficult position to contest. Bush remained

insolent claiming his constitutional authority rested in his responsibility as Commander-in-Chief. The Justice Department argued on the grounds of tactical interference with presidential prerogative stating the President could order offensive actions against Iraq without seeking advance authority.

The Federal Court was cautious about interfering in the Gulf War citing the limitations placed on its judicial review: much of the relevant data was protected against compulsory disclosure by executive privilege. The Judiciary recognized it would have difficulty assessing the nature of the emergency and the validity of the claim made by members of Congress. The injunction was determined to be unsubstantiated. With the lack of proof of the abuse of power and the inability to assess the emergency, Judge Harold Green upheld the President's exercise of power. Bush had garnered public support. Much like the Congress, the Courts are hesitant to challenge a President who has considerable public support during a national crisis.

Congress gained little by bringing the Supreme Court into the Persian Gulf dilemma beyond introducing political questions regarding the executive-legislative relationship and congressional constitutional authority before the Court. The decision of the courts bolstered the Administration's position relative to constitutional theories and presidential authority. Bush now had his legal argument that he did not need congressional authorization.

Congress had no united position to take. Many members of the House supported the President, but the majority of Democrats opposed. They faced a huge impasse due to the public support for the war. The debates and hearings that took place in October 1990 were nominal—it was understood before any discussions that the President would

get the support he needed to go to war. By voting against the President, Congress would not only have been turning its back on America's traditional obligation to support the U.N. Security Council resolutions for which it voted, but it would also have been spurning the will of the international community.

Congress was left with no option but to support Bush with its *Use of Force Against Iraq Resolution*. Bush considered the Iraq Resolution unconstitutional due to its explicit language instructing him to comply with the requirements of the *War Powers Resolution*. Bush did, however, comply by commencing activities "consistent with" the *War Powers Resolution* and reporting to Congress that he had tried all diplomatic and peaceful means; but by the time the first member of Congress was informed, operations had been underway for thirty minutes. With Bush's persistent denial for the need of congressional authority, Congress was unable to participate in, let alone manage the President's plan of war in the Persian Gulf. The congressional weaknesses and the executive strengths of the governing branches added to the strains of the legislative-executive relationship. Congress was hindered by its divided opinion and measured process while the President was able to act decisively and quickly.

Conclusions: What the Persian Gulf War Demonstrates Regarding the Legislative-Executive Relationship: The Persian Gulf War is a complex case study in the authorization of the use of force: the interactions within Congress and the Administration, and the interactions between the executive and legislative branches provide evidence of the deterioration of relations throughout the crisis relative to constitutional war powers and the ineffectiveness of the *War Powers Resolution*. In both the Senate and the House, the President's request for the use of all necessary force

to turn back aggression was opposed by the majority leadership. The Iraq Resolution, ratified just days before the war, received less than sixty percent of the votes cast that divided Congress down party lines.

Republican Conservatives opposed the move toward war claiming Saddam was not a major threat to the U.S. Democratic Congressman Henry Gonzalez of Texas proposed impeaching Bush for violating the Constitution. The escalating legislative turmoil hastened the debate within the Administration for a congressional resolution of support at all. Getting Congress to acquiesce would take tactful consultation. Members of the Administration held divergent views on the best course of action. Baker felt Congress would not turn down the President. Scowcroft was neutral, believing a resolution was not mandatory. Cheney did not want to risk potential repercussion if the resolution failed. Sununu argued that Congress should be ignored by relying on Article 51 of the U.N. Charter and the U.N. resolution authorizing use of force.¹¹

The President fully appreciated Congress's power of the purse, while recognizing his own power lie in strategy and tactics. Bush cultivated a synergistic relationship between the multinational coalition and the American public that gave him global and domestic support to conduct a war. Likewise, the more public support, the easier it became for Bush to lead internationally. While the President amassed 400,000 troops and conducted months of preparation, there was little doubt that war was imminent. Still there was relative quiet in Congress. The 102nd Congress had to decide whether the costs of opposing the President were higher than the costs of supporting him. In

¹¹Baker, 338.

1991 Congress found a way to assert its position without invoking the *War Powers Resolution* by authorizing use of force explicitly outside the context of the Resolution.

Conclusions: What the Persian Gulf Demonstrates Regarding the Management of Conflict: Operation Desert Storm was the most significant and the most dangerous American military campaign since the Vietnam War, the conflict that generated the *War Powers Resolution*. Acting within the framework of a Security Council resolution and with the full support of the European and regional allies, every aspect of the conflict the Persian Gulf War was successfully executed.

There are four basic reasons for the successful management of the war. Foremost, was Bush's determination to defend Saudi Arabia and Kuwait by first employing a deterrent strategy and creating a diverse coalition of global partners. He gained international and domestic support for the crisis he described as an attack upon the core principles of international order.¹² Second, within months of the invasion Bush methodically built the military component of the coalition to compel or intimidate Iraq into compliance with U.N. resolutions demanding its retreat. Third, with the military in place, Bush shifted the international support to now include *all means necessary* to force Iraq's retreat from Kuwait. He negotiated directly with Moscow and Beijing and used coercive diplomacy with the global community asking, "Do you want to be with us?"¹³ Last, Bush simultaneously garnered de facto authorization from Congress while brokering one last chance at diplomacy by arranging the meeting between Baker and

¹²Haass, 34.

¹³Yetiv, 23.

Aziz. Within weeks the military operation was completed meeting every objective and proving to be much less difficult than anticipated.

Bush followed textbook intervention protocol: 1) the purpose of the intervention was explicit and found consensus among the coalition; 2) the Pentagon prepared for the anticipated response of the enemy and took seriously Saddam's threats of annihilation; 3) although an exit date is not required, the Pentagon was confident a short-term conflict would meet the coalition's objectives; and 4) just prior to entering battle, Bush was given congressional authority to conduct the war.

From another military perspective, *Operation Desert Shield* transitioned to *Desert Storm* seamlessly. Foremost, Bush followed a policy of intervening sooner, rather than later. The Administration concluded that any delay would risk Kuwait's future, the integrity of the coalition, and give Saddam time to shore up forces. Bush chose a decisive early use of force over a gradual escalation as necessary. When stage one of the intervention, the deterrent strategy, failed, Bush shifted to stage two, preventive attacks, that served to stop Iraqi forces from expanding their unconventional warfare capabilities inside Iraq. With Saddam's persistent refusal to retreat and diplomatic approaches exhausted, the coalition moved to the final stage of the intervention, war fighting. The coalition brought with it a preponderance of power to dominate the confrontation. Within weeks the operation was over with a military victory for the coalition in having met its objectives. The case studies beg the question, whose strategy was more successful and why?

Reagan: The failed mission in Beirut was not necessarily a failure for Reagan vis-à-vis the Congress and its role over the use of armed forces. For the President,

limiting Congress's role in national security matters can serve to broaden his authority. Reagan held firm to his position that the U.S. must contribute to a visible, definite, constructive, international effort to help the central government of Lebanon regain control over its own country by way of the peacekeeping force. Significantly, not once during the cabinet discussions weighing the pros and cons of this plan did the topic of the *War Powers Resolution* and/or congressional input influence the Administration's course of action.

The only definitive interaction that took place was in the development of a compromised resolution with Reagan gaining the political benefit of bipartisan support for his policy in Lebanon. Both Congress and the President saw the advantage of withholding constitutional and technical reservations in the interest of avoiding a mutually damaging confrontation. In the inherent struggle over constitutional war powers, Reagan was the winner because his policy and actions remained relatively unaffected by Congress and the *War Powers Resolution*. His strategy was simply to ignore the constraints of the Resolution and portray the mission as a peacekeeping deployment. But it is the overall failure of the mission that will be remembered, overshadowing any momentary victory the Administration held over Congress.

Bush: The military success and the methods used by the President to circumvent congressional constraints make this a successful intervention at both the military and political level. George H.W. Bush was able to conduct a war half way around the world in the Persian Gulf with one of the largest deployments in American military history, unhindered by Congress. The speed with which he proceeded as Commander-in-Chief exemplifies how much and how quickly the President can act.

Bush's reliance on the U.N. for legal authority allowed him to conduct the war as part of a collective defense, a multinational coalition that grew to have enormous domestic and global support. The President was able to lead internationally with the respect of the global community leaving Congress no choice but to join.

The intervention was conducted in the tradition of *Realpolitik*: force and the credibility of its use were imperative as well as coalition building based on the nature of a common threat, not common values. There was consensus within the Administration. Congress did not abdicate its authority, but it appeared insignificant juxtaposed to Bush's dominant role. The American military commitment was decided by the President with support from the U.N., not congressional statutes.

Bush's success can also be attributed to his foreign policy experience. He addressed the U.N. fully aware of what was needed to reach agreement among the nations. His personal relationships with the leaders in China and Russia made it fairly easy for him to ask their support for the coalition. He encouraged a collegial, collaborative atmosphere with his inner circle of advisers. Congress could not detract from Bush's ability to draw upon his reputation, experience, and tested Cabinet. The military and political successes of this intervention belong to George H.W. Bush and his ability to lead expediently and autonomously what is considered the one of the last interventions of the Cold War.

The post Cold War and twenty-first century is shaping a security environment that requires expediency, secrecy, and to a certain degree, autonomy for the President, something, which the *War Powers Resolution* negates. What will be the role of Congress and the Resolution over the use of military force and intervention? There are

number of viable ideas for revising and retaining the *War Powers Resolution* in some form.

PROPOSALS FOR THE FUTURE

The War Powers Resolution: The national security issues of the twenty first century continue to include the economic well being of the country, world-order, and the promotion of values and democracy. In addition, national security concerns are broadening taking in immigration, monitoring disruptions to trade and investment, responses to terrorist acts, and narcotics trafficking. Future obligations of U.S. military forces will be even more demanding and varied ranging from regional conflict (Persian Gulf and Korean Peninsula) to resurgences in Eastern Europe to interdiction (peace keeping, peace making, hostage rescue) efforts.¹⁴ With this significant broadening of military responsibility, what will be the future of the *War Powers Resolution*?

The fundamental intent of the *War Powers Resolution* is to provide the broad representation of the people in Congress's voice by acting as an institutional mechanism by which Congress could exercise its collective judgment based on consultations with the President and reports. Ideally, the reports are to include the circumstances necessary for using force, the constitutional and legislative authority to introduce force, and the estimated scope/duration of hostilities. In both case studies the President avoided this collective judgment by non-compliance and/or acting before an opinion could be offered.

¹⁴Haass, 139.

The case studies highlighted the two most controversial problems with the document: consulting/reporting and time constraint. The Resolution offers Congress a way to *support* or to *terminate* planned presidential action as well as a way for Congress to evade the issue by refusing to become a part of the process via a formal vote. In both cases studies, however, the controversial requirements of the Resolution were ignored, and the events in Beirut and the war in the Persian Gulf exposed the many weaknesses of the *War Powers Resolution*: presidential evasion, congressional acquiescence, congressional compromise, congressional deference, and the judiciary's unwillingness to intervene in a dispute between the two political branches.

The case studies indicate the *War Powers Resolution* is not a viable tool for Congress to assert its role over the use of military force. The literature suggests the Resolution will not be repealed, particularly with the recent failed attempt to repeal in July 1995. This research has uncovered proposals for amending the document to include redefining the time requirements and sixty-ninety day time frame in which the President can act unilaterally. Other options address the timeliness for congressional procedure, a flaw made evident in the Persian Gulf War, and funding limitations, seen by some as a method of constraining both Reagan and G.H.W. Bush. Changing the name of the Resolution to the "Use of Force Act" or "Hostilities Act" implies the undesirable *declaration of war*.

Another suggestion for repeal is to develop a judicial review. The Gulf War made clear that this option is out of the question because the Courts have limitations on what information is available to them. Finally, addressing U.N. actions vis-à-vis the Resolution raises the question can the *War Powers Resolution* constrain the President

from supplying forces to the U.N? George H.W. Bush proved he could work directly with the Security Council and that the Resolution was impotent.

Proponents *for* the Resolution argue that it promotes consultation between branches and serves as congressional leverage with the President, those *against* the Resolution argue that it has not significantly increased congressional participation, and Presidents have not once met the requirements in a timely or direct manner. Presidential compliance with the Resolution has been nominal and congressional invoking of the Resolution has been apprehensive. The argument for repeal of the *War Powers Resolution* hinges on the original intent, that it was adequate for its historical period. Congress now needs to propose an alternative in the context of the needs of the twenty-first century.

Ratified during the Vietnam conflict, the *War Powers Resolution* fails to anticipate the possibility of disconnected crises that could blend into an extended conflict. There are three kinds of armed action or hostilities listed in the Resolution, but other possibilities are omitted such as the use of out-of-uniform personnel, covert operations, protective reaction strikes against international malefactors, fly-over operations that are prevalent in today's military operations.¹⁵ The drafters of the Resolution did not foresee the evolving nature of intervention and since its original intent does not correspond with the needs of the twenty-first century.

Congress and the President: Managing Conflict: What would an explicit invocation of the *War Powers Resolution* accomplish? Would it give the Congress

¹⁵Nathan, "Revising the War Powers Act: Military Actions and Declaration of War," 300.

more power? Would it compel the President to bring Congress into the decision-making? Should the whole of Congress be involved in such consultation? The case studies have answered these questions in the negative. The dynamism of the global security needs call for an *evolution of authority* in both the White House and the Congress. This is not a new concept. In 1972, Louis Fisher predicted the expansion of presidential power as the result of the shifting needs in national security and foreign policy.¹⁶ In his examination of the President's war-making powers, Fisher recognized the need for an evolution of authority. He predicted the inherent or implied powers of the President would become increasingly generous in modern times because of treaty commitments and vaguely worded resolutions.

Presidential war power has expanded dramatically throughout the Cold War with shifts in institutional positions and variations on interpretation. With the end of the Cold War, the U.S. moved from unilateral military actions toward authorized (as in the 1991 Persian Gulf War) or U.N. supported actions. During the Clinton Administration, U.S. troops were deployed to Kuwait, Iraq, Somalia, Bosnia, Haiti—all under U.N. auspices. These deployments raised the new issue of whether the *War Powers Resolution* applied to U.S. participation in U.N. military actions: under what circumstances is congressional authorization required for U.S. participation in U.N. military operations—does it depend on the type of U.N. action and is it governed by the U.N. Participation Act (P.L. 79-264) as well as the *War Powers Resolution*? The

¹⁶Fisher, *President and Congress: Power and Policy*, 193.

Resolution neither excludes U.N. actions nor makes any special procedures for them.

Where does the Resolution fit in today?

It is unlikely that the *War Powers Resolution* will be repealed despite arguments to do so. However, new formulas can alleviate the tension of the difficult relationship and contribute to better management of conflicts. Two viable recommendations are the use of multilateral arrangements and a congressional consulting group.

Multilateral Arrangements: Both the Beirut peacekeeping force and the war in the Persian Gulf are examples multilateral interventions, one being peacekeeping and the other war making. In most situations, there are varying degrees of involvement on the part of other countries. The U.S. needs base rights, overflight permission, intelligence to conduct a successful intervention of any kind. The dilemma for the U.S. is whether or not the multilateral arrangement compromises the President's authority.

There are various versions of multilateralism: 1) Regional organizations such as NATO, the Organization of Eastern Caribbean States; 2) collaboration among concerned states as demonstrated in the multilateral peacekeeping force in Beirut; 3) informal coalitions, which the model used by Bush drew before approaching the U.N. for final authority to go to war.¹⁷ In preparing the coalition for war in the Gulf, Bush considered the U.N. Security Council resolution his vehicle of political legitimacy.

As demonstrated with the Persian Gulf War, multilateralism gave Bush the decided advantage of international approval. Stronger international support coincided with public support at home. Reagan did not benefit from such a high degree of

¹⁷Haass, 149.

support; however, his lack of support evaporated as a result of the persistent then deadly terrorist activity, not organization of the coalition that included French, Italian, and British forces alongside U.S. troops. Electing to proceed in a multilateral arrangement avoids opposition to the burdens of the intervention such as financial costs and military commitment. During the Gulf War, Congress required reports on the contributions made by members of the coalition, particularly Japan and the states in the region.

A Congressional Consulting Group: To alleviate the problems inherent with consulting and reporting to the Congress, and to address the Resolution's inability to address the military needs of the 21st century, the Senate and the House have offered a sound proposal calling for a *permanent consulting group*—this would significantly reduce the time expended by involving the full Congress and provide an authorization for the President to *participate in multilateral actions without Congressional involvement*—this thinking may open the door for multinational security. The creation of a permanent consulting group is the most viable solution. A consulting group would redress the difficulties of the consulting and reporting requirement, and it would allow the President to act quickly when necessary with the support of the Congress.

This is not a new concept, in fact, during the immediate post World War II period the Senate Foreign Relations Committee, led by Republican Arthur H. Vandenberg, was able to collaborate with Democratic President Truman and rally for bi-partisan support of the Truman Doctrine, the Marshall Plan, and NATO. The Congress at this time had among its members leaders who won national and international support for their non-partisan, consensus building approach to the

executive-legislative relationship. This defacto consulting group fostered a period of bi-partisanship that resulted in historic American foreign policy-making.

This 21st century group should be carefully selected for its expertise in all areas of military and foreign policy while recognizing how closely linked domestic and foreign issues have become. Members need to be willing to serve and be available to meet with the President at all times. The case studies have shown that crises do not wait for Congress to return from its hiatus. The consulting group must be empowered to make decisions as a representative body of Congress, and Congress must accept those decisions. With that authority, the group is compelled to meet with the President, and he in turn, has no reason for excluding, out-maneuvering, or bypassing the Congress. The consulting group will personify the requirements of the Resolution: consultation, reporting, and setting time limitations leaving any decision that can be debated, such as going to war/declaring war, with the Congress as a whole.

At the close of his Administration, George H.W. Bush cautioned future Presidents about the use of force: "In the complex new world we are entering, there can be no single or simple set of fixed rules for using force. Inevitably, the question of military intervention requires judgment. Each and every case is unique. To adopt rigid criteria would guarantee mistakes involving American interests and American lives."¹⁸ Despite its proven ineffectiveness in managing conflict, the *War Powers Resolution* remains exactly as it was ratified in 1973. As is, it serves more to aggravate the tense legislative-executive relationship than to satisfy the original intent of the legislation: a

¹⁸Bush, 587.

congressional voice and a collective judgment. In most circumstances the inherent struggle, the shared constitutional authorities, and the unavoidable politics of decision making of both branches will bring the President and Congress together without any reference to the *War Powers Resolution*.

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APPENDIX A

WAR POWERS RESOLUTION OF 1973

Public Law 93-148
93rd Congress
7 November 1973

Joint Resolution

Concerning the war powers of Congress and the President.

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This joint resolution may be cited as the "War Powers Resolution".

PURPOSE AND POLICY

SEC. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under article I, section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

SEC. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situation where imminent

involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

SEC. 4. (a) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced-- (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances; (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or (3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation; the president shall submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report, in writing, setting forth-- (A) the circumstances necessitating the introduction of United States Armed Forces; (B) the constitutional and legislative authority under which such introduction took place; and (C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad (c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) of this section, the President shall, so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation as well as on the scope and duration of such hostilities or situation, but in no event shall he report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

SEC. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required

to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

SEC. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

SEC. 7. (a) Any concurrent resolution introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted on within three calendar days after it has been reported, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

SEC. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred-- (1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or (2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established prior to the date of enactment of this joint resolution and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of member of such armed forces to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution-- (1) is intended to alter the constitutional authority of the Congress or of the President, or the provision of existing treaties; or (2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

SEC. 9. If any provision of this joint resolution or the application thereof to any person or circumstance is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

SEC. 10. This joint resolution shall take effect on the date of its enactment.

CARL ALBERT

Speaker of the House of Representatives.

JAMES O. EASTLAND

President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, U.S.,

November 7, 1973.

The House of Representatives having proceeded to reconsider the resolution (H. J. Res 542) entitled "Joint resolution concerning the war powers of Congress and the President", returned by the President of the United States with his objections, to the House of Representatives, in which it originated, it was Resolved, That the said resolution pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest:
W. PAT JENNINGS, Clerk.

I certify that this Joint Resolution originated in the House of Representatives.
W. PAT JENNINGS, Clerk.

IN THE SENATE OF THE UNITED STATES
November 7, 1973

The Senate having proceeded to reconsider the joint resolution (H. J. Res. 542) entitled "Joint resolution concerning the war powers of Congress and the President", returned by the President of the United States with his objections to the House of Representatives, in which it originate, it was Resolved, That the said joint resolution pass, two-thirds of the Senators present having voted in the affirmative.

Attest:
FRANCIS R. VALEO
Secretary.

APPENDIX B

AMPLIFICATION OF THE PURPOSE AND REQUIREMENTS OF THE
WAR POWERS RESOLUTION

Section 1 is the short title, which states: “This joint resolution may be cited as the ‘War Powers Resolution.’” It also identifies the individuals and the issue at hand: it is a joint resolution between the Senate and the House of Representatives “concerning the war powers of Congress and the President.” The Resolution was codified as Public Law 93-148 and ratified by the 93rd Congress.

Section 2 outlines the purpose and policy defining the intent of the Resolution and the constitutional authorization for its existence. Its purpose is to insure that the “collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated.” Citing Article I, Section 8, of the Constitution, the Congress reiterates its constitutional authority to make all laws necessary. The Resolution then restates the constitutional parameters of the Commander-in-Chief. The President’s decision to deploy armed forces into hostilities or imminent hostilities is contingent upon a congressional declaration of war or specific statutory authorization or in a national emergency created by an attack on the United States, its territories or possessions, or its armed forces.

The word *hostilities* was substituted for the phrase *armed conflict* during a subcommittee drafting process because it was considered somewhat broader in scope. In addition to a situation in which fighting actually was begun, hostilities also encompasses a *state of confrontation* in which no shots have been fired, but where there is a clear and

present danger of armed conflict. *Imminent hostilities* denote a situation in which there is a clear potential either for such a state of confrontation or for actual armed conflict.

Sections 3 through 5 are the operative provisions outlining the requirements of the President: consultation with the Congress before introducing armed forces into hostilities; reporting requirements of all non-routine deployments within forty-eight hours of their initiation; instruction stating where the reports would be addressed, to the Speaker of the House and President pro tempore of the Senate; and stipulations as to the time-limits, sixty days then withdrawal unless given consent by Congress and/or directed by Congress to withdraw prior to the sixty days.

Section 3 addresses the consultation requirement in which the President must consult "in every possible instance." A significant issue with the Resolution is the interpretation of when and how often consultation is required, how consultation is defined, and who exactly is to meet with the President. Consultation is required only before introducing armed forces into "hostilities or into situations where imminent involvement in hostilities is clearly indicated." The definition of consultation, as required by the Congress, is that a decision is pending requiring the President to meet with Congress to seek advice and approval. Does the requirement end there? Who is to meet with the President for consultation is not clearly defined. An earlier House version specifically called for consultation between the President and congressional leadership and appropriate committees. The ambiguity of the consultation requirement is one of the debatable issues that has given rise to the constitutionality and effectiveness of the Resolution. This ambiguity is problematic for both the Congress and the President; it has

become a large part of the discussion of the Resolution's usefulness, which will be discussed further in the next subsection.

Section 4 outlines the reporting requirements. The President must provide a written report to Congress within forty-eight hours and periodically thereafter as long as the involvement in hostilities continues. Reports are to be submitted to Speaker of the House and President *pro tempore* of Senate. The *War Powers Resolution* requires the President *inter alia*, to report to the Congress anytime U.S. military forces are introduced into hostilities or situations where imminent hostilities are clearly indicated. Presidents have viewed the reporting requirement of the Resolution as undermining their constitutional powers. To avoid instigating congressional involvement in presidential military policy, Presidents avoid any language that would trigger a response to the Resolution's reporting requirements. If invoked, the President is to share with Congress explicit details of the immediate action and future plan.

Presidential reports are to include the circumstances necessitating the introduction of U.S. Armed Forces, the constitutional and legislative authority under which the introduction took place, and the estimated scope and duration of the hostilities or involvement. In analyzing the different sections of the Resolution it is obvious that the language used to describe when reports are required is not consistent with the language in Section 2. This inconsistency of the Resolution receives much criticism from the executive and legislative branches as well as constitutional scholars, and it is a large part of the effectiveness debate concerning the legislation; this will also be discussed in the next subsection.

Section 5 discusses congressional action and introduces the highly debatable “clock”, i.e., the calendar days in which the Congress and/or President must take appropriate action pursuant to the reports submitted by the President. It requires the President to withdraw forces after sixty days unless the Congress specifically authorizes their remaining there. This is the most controversial section of the Resolution for it includes an automatic withdrawal provision with the set the time limits of sixty to ninety-days. There are a number of interpretations of this provision: some view it as allowing the President unrestricted authority in conducting military operations providing he stays within the time limits; some interpret it as unconstitutional for it allows Congress to require removal of forces via a concurrent resolution, thus usurping the President’s authority as Commander-in-Chief and disallowing presidential veto power. A thorough discussion of the controversy of this requirement will follow as part of the debate regarding the *War Powers Resolution*.

Sections 6 and 7 outline the procedures for congressional action and consideration of legislation pursuant to Sections 3 through 5. Specific deadlines are mandated for each step of the legislative process to ensure it remains within the sixty- day limit imposed.

Section 6, the congressional priority procedures for joint resolution or bill, establishes expedited procedures for congressional consideration of a joint resolution or bill to authorize use of force under Section 5(b) providing for: 1) A referral to House Foreign Affairs Committee or the Senate Foreign Relations Committee, the committee to report one measure not later than twenty-five calendar days before the expiration of the sixty-day period; 2) Reported measure to become pending business of the relevant House and be voted on in three calendar days; 3) Measure passed by one House to be referred to

the relevant committee of the other House and reported not later than fourteen calendar days before the expiration of the sixty-day period and voted upon within three days; 4) Requiring conferees to file a report not later than four days before the expiration of the sixty-day period.

Section 7, the congressional priority procedures for concurrent resolution establishes similar priorities for a concurrent resolution to withdraw forces under section 5(c).

Section 8, interpretation of joint resolution, clarifies any points the authors considered loopholes such as “no security treaties and appropriation acts would be viable as statutory authorization to deploy troops into hostile situations unless the treaty or act was intended to do so within the context of the Resolution.” This section was added by the Senate to make clear that the Resolution did not prevent U.S. Armed Forces from participating in certain joint military exercises with allied or friendly organizations or countries. Section 8(c) is to prevent secret, unauthorized military support activities and to prevent a repetition of many of the most controversial and regrettable actions as those associated with the Vietnam War. Section 8(d) states, “Nothing in the Resolution is intended to alter the constitutional authority of the President or Congress.”

Section 9 is the separability clause, which states in sum that if any provision or its application is found invalid, the remainder of the Resolution is not to be affected.

Section 10 is simply the effective date on which the joint resolution is enacted: 7 November 1973.

APPENDIX C

MULTINATIONAL FORCE IN LEBANON RESOLUTION

Public Law 98-119
98th Congress,
12 October 1983

Concurrent Resolution

"Section 1. This joint resolution may be cited as the 'Multinational Force in Lebanon Resolution'. "FINDINGS AND PURPOSE

"Sec. 2. (a) The Congress finds that - "(1) the removal of all foreign forces from Lebanon is an essential United States foreign policy objective in the Middle East; "(2) in order to restore full control by the Government of Lebanon over its own territory, the United States is currently participating in the multinational peacekeeping force (hereafter in this resolution referred to as the 'Multinational Force in Lebanon') which was established in accordance with the exchange of letters between the Governments of the United States and Lebanon dated September 25, 1982; "(3) the Multinational Force in Lebanon better enables the Government of Lebanon to establish its unity, independence, and territorial integrity; "(4) progress toward national political reconciliation in Lebanon is necessary; and "(5) United States Armed Forces participating in the Multinational Force in Lebanon are now in hostilities requiring authorization of their continued presence under the War Powers Resolution (50 U.S.C. 1541 et seq.). "(b) The Congress determines that the requirements of section 4(a)(1) of the War Powers Resolution (50 U.S.C. 1543(a)(1)) became operative on August 29, 1983. Consistent with section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)), the purpose of this joint resolution is to authorize the continued participation of United States Armed Forces in the Multinational Force in Lebanon. "(c) The Congress intends this joint resolution to constitute the necessary specific statutory authorization under the War Powers Resolution for continued participation by United States Armed Forces in the Multinational Force in Lebanon. "AUTHORIZATION FOR CONTINUED PARTICIPATION OF UNITED STATES ARME

FORCES IN THE MULTINATIONAL FORCE IN LEBANON

"Sec. 3. The President is authorized, for purposes of section 5(b) of the War Powers Resolution (50 U.S.C. 1544(b)), to continue participation by United States Armed Forces in the Multinational Force in Lebanon, subject to the provisions of section 6 of this joint resolution. Such participation shall be limited to performance of the functions, and shall be subject to the limitations, specified in the agreement establishing the Multinational Force in Lebanon as set forth in the exchange of letters between the Governments of the United States and Lebanon dated September 25, 1982, except that this shall not preclude

such protective measures as may be necessary to ensure the safety of the Multinational Force in Lebanon. "REPORTS TO THE CONGRESS

"Sec. 4. As required by section 4(c) of the War Powers Resolution (50 U.S.C. 1543(c)), the President shall report periodically to the Congress with respect to the situation in Lebanon, but in no event shall he report less often than once every three months. In addition to providing the information required by that section on the status, scope, and duration of hostilities involving United States Armed Forces, such reports shall describe in detail - "(1) the activities being performed by the Multinational Force in Lebanon; "(2) the present composition of the Multinational Force in Lebanon, including a description of the responsibilities and deployment of the armed forces of each participating country; "(3) the results of efforts to reduce and eventually eliminate the Multinational Force in Lebanon; "(4) how continued United States participation in the Multinational Force in Lebanon is advancing United States foreign policy interests in the Middle East; and "(5) what progress has occurred toward national political reconciliation among all Lebanese groups. "STATEMENTS OF POLICY

"Sec. 5. (a) The Congress declares that the participation of the armed forces of other countries in the Multinational Force in Lebanon is essential to maintain the international character of the peacekeeping function in Lebanon. "(b) The Congress believes that it should continue to be the policy of the United States to promote continuing discussions with Israel, Syria, and Lebanon with the objective of bringing about the withdrawal of all foreign troops from Lebanon and establishing an environment which will permit the Lebanese Armed Forces to carry out their responsibilities in the Beirut area. "(c) It is the sense of the Congress that, not later than one year after the date of enactment of this joint resolution (Oct. 12, 1983) and at least once a year thereafter, the United States should discuss with the other members of the Security Council of the United Nations the establishment of a United Nations peacekeeping force to assume the responsibilities of the Multinational Force in Lebanon. An analysis of the implications of the response to such discussions for the continuation of the Multinational Force in Lebanon shall be included in the reports required under paragraph (3) of section 4 of this resolution. "DURATION OF AUTHORIZATION FOR UNITED STATES PARTICIPATION IN TH

MULTINATIONAL FORCE IN LEBANON

"Sec. 6. The participation of United States Armed Forces in the Multinational Force in Lebanon shall be authorized for purposes of the War Powers Resolution (50 U.S.C. 1541 et seq.) until the end of the eighteen-month period beginning on the date of enactment of this resolution (Oct. 12, 1983) unless the Congress extends such authorization, except that such authorization shall terminate sooner upon the occurrence of any one of the following: "(1) the withdrawal of all foreign forces from Lebanon, unless the President determines and certifies to the Congress that continued United States Armed Forces participation in the Multinational Force in Lebanon is required after such withdrawal in order to accomplish the purposes specified in the September 25, 1982, exchange of letters providing for the establishment of the Multinational Force in Lebanon; or "(2) the

assumption by the United Nations or the Government of Lebanon of the responsibilities of the Multinational Force in Lebanon; or "(3) the implementation of other effective security arrangements in the area; or "(4) the withdrawal of all other countries from participation in the Multinational Force in Lebanon. "INTERPRETATION OF THIS RESOLUTION

"Sec. 7. (a) Nothing in this joint resolution shall preclude the President from withdrawing United States Armed Forces participation in the Multinational Force in Lebanon if circumstances warrant, and nothing in this joint resolution shall preclude the Congress by joint resolution from directing such a withdrawal. "(b) Nothing in this joint resolution modifies, limits, or supersedes any provision of the War Powers Resolution (50 U.S.C. 1541 et seq.) or the requirement of section 4(a) of the Lebanon Emergency Assistance Act of 1983, relating to congressional authorization for any substantial expansion in the number or role of United States Armed Forces in Lebanon. "CONGRESSIONAL PRIORITY PROCEDURES FOR AMENDMENTS

"Sec. 8. (a) Any joint resolution or bill introduced to amend or repeal this Act shall be referred to the Committee on Foreign Affairs (now Committee on International Relations) of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be. Such joint resolution or bill shall be considered by such committee within fifteen calendar days and may be reported out, together with its recommendations, unless such House shall otherwise determine pursuant to its rules. "(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by the yeas and nays. "(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by the yeas and nays. "(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.'

ADHERENCE TO WAR POWERS RESOLUTION

Pub. L. 96-342, title X, Sec. 1008, Sept. 8, 1980, 94 Stat. 1122, provided that: "Whereas, the National Command Authority must have the capacity to carry out any military mission which is essential to the national security of the United States having in its hands

in the Rapid Deployment Force an increased capability to extend the reach of our military power in an expedited manner; and whereas, without the significant safeguard of the War Powers Resolution (Public Law 93-148) (this chapter), United States foreign and defense policies could be subject to misinterpretation; it is therefore the sense of the Congress that the provisions of the War Powers Resolution be strictly adhered to and that the congressional consultation process specified by such Resolution be utilized strictly according to the terms of the War Powers Resolution.'

APPENDIX D

UNITED NATIONS SECURITY COUNCIL RESOLUTIONS

<u>Date</u>	<u>Number</u>	<u>Summary</u>
2 August 1990	660	Condemned invasion. Demanded withdrawal. Adopted 14-0, Yemen not participating.
6 August	661	Imposed a trade and financial embargo. Established special sanctions committee. Called on U.N. members to protect Kuwaiti assets. Adopted 13-0, Cuba and Yemen abstaining.
9 August	662	Declared Iraq's annexation null. Adopted unanimously.
18 August	664	Demanded immediate release of foreigners from Iraq and Kuwait. Insisted Iraq rescind its order closing missions in Kuwait. Adopted unanimously.
25 August	665	Called on U.N. members to enforce sanctions by inspecting and verifying cargoes and destinations. Adopted 13-0, Cuba and Yemen abstaining.
13 September	666	Reaffirmed Iraq was responsible for safety of foreign nationals. Specified guidelines for delivery of food and medical supplies. Adopted 13-2, Cuba and Yemen against.
14 September	667	Condemned Iraqi aggression against diplomats. Demanded immediate release of foreign nationals. Adopted unanimously.
25 September	670	Expanded embargo to include air traffic. Called on U.N. members to detain Iraqi ships that could be used to break the embargo. Adopted 14-1, Cuba against.
29 October	674	Demanded Iraq stop mistreating Kuwaiti and other foreign nationals. Reminded Iraq it is liable for damages. Adopted 13-0, Cuba and Yemen abstaining.
28 November	677	Condemned Iraq's attempts to change Kuwait's demographic composition and Iraq's destruction of Kuwaiti civil records. Adopted unanimously.
29 November	678	Authorized U.N. members to use all means necessary to enforce previous resolutions if Iraq does not leave Kuwait by 15 Jan 1991. Adopted 12-2-1, Cuba, Yemen no, China abstains

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Demands Iraq cease hostile action, return all POWs and detainees, rescind annexation, accept liability, return Kuwaiti property, disclose mine locations. Adopted 11-1, Cuba against, China and India abstaining.

APPENDIX E

AUTHORIZATION FOR THE USE OF FORCE AGAINST IRAQ RESOLUTION

Public Law 102-1
102nd Congress
12 January 1991

Whereas the Government of Iraq without provocation invaded and occupied the territory of Kuwait on August 2, 1990;

Whereas both the House of Representatives (in H.J. Res. 658 of the 101st Congress) and the Senate (in S. Con. Res. 147 of the 101st Congress) have condemned Iraq's invasion of Kuwait and declared their support for international action to reverse Iraq's aggression;

Whereas, Iraq's conventional, chemical, biological, and nuclear weapons and ballistic missile programs and its demonstrated willingness to use weapons of mass destruction pose a grave threat to world peace;

Whereas the international community has demanded that Iraq withdraw unconditionally and immediately from Kuwait and that Kuwait's independence and legitimate government be restored;

Whereas the United Nations Security Council repeatedly affirmed the inherent right of individual or collective self-defense in response to the armed attack by Iraq against Kuwait in accordance with Article 51 of the United Nations Charter;

Whereas, in the absence of full compliance by Iraq with its resolutions, the United Nations Security Council in Resolution 678 has authorized member states of the United Nations to use all necessary means, after January 15, 1991, to uphold and implement all relevant Security Council resolutions and to restore international peace and security in the area; and

Whereas Iraq has persisted in its illegal occupation of, and brutal aggression against Kuwait: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the 'Authorization for Use of Military Force Against Iraq Resolution'.

SEC. 2. AUTHORIZATION FOR USE OF UNITED STATES ARMED FORCES.

(a) AUTHORIZATION- The President is authorized, subject to subsection (b), to use United States Armed Forces pursuant to United Nations Security Council Resolution 678 (1990) in order to achieve implementation of Security Council Resolutions 660, 661, 662, 664, 665, 666, 667, 669, 670, 674, and 677.

(b) REQUIREMENT FOR DETERMINATION THAT USE OF MILITARY FORCE IS NECESSARY- Before exercising the authority granted in subsection (a), the President shall make available to the Speaker of the House of Representatives and the President pro tempore of the Senate his determination that--

(1) the United States has used all appropriate diplomatic and other peaceful means to obtain compliance by Iraq with the United Nations Security Council resolutions cited in subsection (a); and

(2) that those efforts have not been and would not be successful in obtaining such compliance.

(c) War Powers Resolution Requirements-

(1) SPECIFIC STATUTORY AUTHORIZATION- Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.

(2) APPLICABILITY OF OTHER REQUIREMENTS- Nothing in this resolution supersedes any requirement of the War Powers Resolution.

SEC. 3. REPORTS TO CONGRESS.

At least once every 60 days, the President shall submit to the Congress a summary on the status of efforts to obtain compliance by Iraq with the resolutions adopted by the United Nations Security Council in response to Iraq's aggression.

Passed the House of Representatives January 12, 1991.

Attest:

DONALD K. ANDERSON, Clerk.

VITA

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