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Allan Ides

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**THE SEVENTH ANNUAL
FRITZ B. BURNS LECTURE**

**THE WAR POWERS RESOLUTION
AND KOSOVO**

INTRODUCTION

*Allan Ides**

During 1998 and the early months of 1999, the United States, in partnership with NATO and other countries, attempted to achieve a diplomatic resolution of the conflict between ethnic Albanians and the Federal Republic of Yugoslavia. By mid-March of 1999, the United States and NATO had made it very clear that a failure to reach a negotiated agreement on terms acceptable to NATO would result in military action against Yugoslavia. The parties failed to reach such an agreement, and on March 24, 1999, the United States, in cooperation with NATO, began air strikes on Yugoslavia.

The United States' military intervention in Yugoslavia raises some very serious domestic issues for us, in particular the controversy over the legitimacy of the presidential power to initiate and authorize offensive military action against a sovereign nation. It also presents the converse question of congressional responsibility in this very ambiguous realm of power. The justification for the President's action was in part premised on a re-interpretation of the NATO defense pact, under which member nations may engage in collective military activity to promote stability in the North Atlantic region. The action was also based in part on a perception that there was a serious violation of human rights taking place in Kosovo and a need for some type of international intervention.

From a domestic perspective, the President's authority to order our military into this conflict was based on an independent power of

* Professor of Law and William M. Rains Fellow, Loyola Law School.

the President to engage our military forces in combat as a tool of American foreign policy, and from the perspective of the White House, this justification alone was deemed sufficient to invoke that power without any reference to Congress. As such, President Clinton's exercise of war-making powers represents a broad and encompassing claim of independent presidential authority.

Congressional support for the military action in Yugoslavia was mixed. On March 23, the day before the air strikes began, the Senate passed by a vote of 58 to 41 a concurrent resolution authorizing the President to conduct military air operations along with NATO. The House of Representatives, however, adopted a very enigmatic resolution simply voicing support for American troops in the region. In fact, the House never got on board. On April 28, about a month into the conflict, the House voted on four different measures indicating the lack of complete support for the President's action.

First, the House voted by a vote of 427 to 2 not to declare war on Yugoslavia, and then, by a tie vote of 213 to 213, they refused to adopt the Senate resolution that had endorsed the presidential action. By a vote of 290 to 139, they refused to order a disengagement, and finally, they passed a measure that prohibited the President from using ground troops without the authorization of Congress. So, in short, in one day Congress refused to declare, refused to endorse, refused to reject, and at the same time, tried to control the future activity of the President.

The House's refusal to pass an affirmative resolution supporting President Clinton's actions did not in any way deter prosecution of the war. Nor did that reluctance deter the House itself from appropriating the funds necessary to see the conflict through to a successful end. These enigmatic facts, coupled with the breadth of the power claimed and exercised by the President, would seem to suggest a relatively minor role for Congress's modern exercises of the war powers, assuming that "war powers" is the correct description. Perhaps the proper nomenclature is "international police power."

In any event, the model of seeming presidential hegemony over the use of the military as a tool of foreign policy raises a number of very perplexing questions that our panelists are going to consider. Among them are: What is the scope of the unilateral power of the President to undertake such action? If such a power exists, is its ex-

ercise limited only by political considerations or is it limited in any way by the Constitution or by the War Powers Act?

Next, to what extent does the United States' role as a world leader alter the range of war-making powers vested in the President? To what extent may a treaty be used to enhance the war-making powers of the President? And assuming a treaty can enhance presidential power, does the NATO treaty in fact do that? Conversely, what is the role of Congress? There was a big debate during this controversy, specifically, does Congress have any responsibility at all other than providing the money for the conflict? In short, has the time come to search for a new model of power allocation in this post-cold war world?

Following are several illuminating articles addressing these questions written by individuals who represent a wide spectrum of experience in government and in academics.

