

**CONGRESS AND THE PRESIDENCY & CONTROVERSY
OVER WAR POWERS: A STUDY OF HAITI
AND AFGHANISTAN**

*Dissertation submitted to Jawaharlal Nehru University
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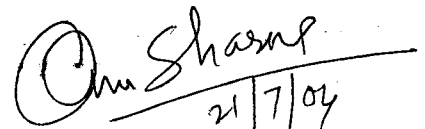


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CERTIFICATE


This is to certify that dissertation entitled "**CONGRESS AND THE PRESIDENCY & CONTROVERSY OVER WAR POWERS: A STUDY OF HAITI AND AFGHANISTAN**" submitted by **Anu Sharma** in partial fulfilment of the requirement for the award of the degree of **Master of Philosophy** of this University is her own work, and has not been previously submitted for any other degree of this or any other University.


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We recommend that this dissertation may be placed before the examiners for evaluation.



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I have not left any stone unturned to enhance the quality and accuracy of this work. However, I own the sole responsibility of any shortcomings in this work.

ANU SHARMA

PREFACE

The Vietnam War stimulated the "Imperial" Presidency and urged Congress to reassert its constitutional powers. But instead the War Powers Resolution that was a statute to determine the powers of the Congress marked the "abject surrender" of the legislative prerogatives to the President. On the one side stand the debates of the irreconcilables, who claim the Congress is usurping the rightful leadership role of the president in the foreign policy. On the other hand, some skeptics complain that a lack of political incentives leads to episodic and superficial congressional interest in foreign policy.

The Congress does not control the foreign policy decision-making rather it is subsidiary in the decision-making process. Though it is still an important actor in the foreign policy making process. The members of the congress play a vital role in the form of the critics of the policies of the president related to war powers.

War Powers Resolution is an important arena in the foreign policy where in the post-Cold War the sole responsibility of war powers have rested on the Presidents and the Congress has become the mere spectator in this game.

The present study is a modest attempt to examine that the congress has overlapping authority with the president on war making or as a conflicting one. The study is relevant in understanding the war powers and its standing with the executive and the legislative branch. The study also contains two case studies of

Haiti and Afghanistan and their relevance with the War Powers Resolution and presidential policy making.

The dissertation consists of five chapters. The first chapter deals with the debate between the Congress and the Presidency over the war making powers.

The second chapter attempts to discuss the debates in the Congress over Haiti and Afghanistan and how the debates in the Congress affected the policy making at the executive level, if they did.

The third chapter deals with the presidential pre-eminence and accommodation both in case of Haiti and Afghanistan. It also attempts to study role that both the Congress and the presidency played in the policy making process related to Haiti and Afghanistan.

The fourth chapter deals with the role of the executive departments, agencies and lobbies in the policy making process.

The last chapter contains the main findings of the study and an overall assessment of the debate between the congress and the presidency over the war powers resolution and the case studies of Haiti and Afghanistan.

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CHAPTER – I

THE PRESIDENT, CONGRESS AND DEBATES

WAR MAKING POWERS

The debate between the Congress and the Presidency over War Powers has received intense scrutiny by scholars due to various reasons. Among them, the constitutional division of powers has been the focus of the debate both amongst policy makers and the analysts with a view to clarify the intentions of the founding fathers. Several constitutional provisions have given the Congress the specific functions in the foreign policy making i.e. the declaration of war, appropriation of funds, ratification of treaties, regulation of foreign trade, and confirmation of appointments to high-level positions in the executive branch. However the executive branch is also very much involved in all of these important functions. The constitution has given the powers to both the Congress and the Presidency to conduct foreign policy; at the same time it has put restrictions on each other in the form of checks and balances. Article I of the U.S. constitution—speaks to the Congressional role in the matters of war and states that Congress shall have power “to declare war...” Article II of the constitution is the President’s principal guide—vests “the executive power” in the President. It further declares that the President shall be the “Commander-in-Chief of the Army and Navy of the United States” and have the power, by and with the advice and consent of the Senate, to make the treaties, to appoint ambassadors, other public ministers and consuls.¹ But these constitutional phrases have spurred the debates about their meaning. Thus as a Commander-in-Chief the President is involved in the war making powers along

¹ Louis Fisher. Presidential War Power (Kansas: University Press of Kansas, 1995) p. 8-12.

with the other functions. Evidence points to the fact that one of the main areas of the clash between the President and the Congress is over the war making powers and committing the military troops abroad.²

After the Cold War ended, US support for the international spread of democracy emerged as the leading candidate to become the guiding principle for the US foreign policy. The American policy makers have the idea of the promotion of Democracy abroad to the extent that now it has become one of the main tenets of the American foreign policy. As G. John Ikenberry puts it, "The "hidden grand strategy" of American foreign policy is reemerging into plain view after a long Cold War hibernation."³ Even the hardheaded apostles of *realpolitik* as George Kennan and Henry Kissinger, who in the past have criticized America's moralistic crusade recognize that for the American foreign policy to be successful it now needs to have a strong democracy component to it. Any one observing the American war making and foreign policy trends in the last three decades would clearly get the impression that the sole power to make war rests with the President. However, the Constitution of the United States of America has clearly separated the War Powers between Congress and the President and there are historical instances to prove this.

At this juncture, the conceptualization of democracy itself is useful. Some writers have simply defined it by what it is not: "Democracy is a system in which no one can choose himself, no one can invest himself with the power to rule, and therefore

² Arthur J. Schlesinger, Jr. characterized the unilateral decisions by the Presidential actions as evidence of an "Imperial Presidency" which ignored the Constitution and the Congress in critical policy disputes in his book *The Imperial Presidency* (Boston: Houghton Mifflin, 1973).

³ G. John Ikenberry. "Why Export Democracy?: The 'Hidden Grand Strategy' of American Foreign Policy" *The Wilson Quarterly*, Vol. 23, No.2, Spring 1999 also available in www.mtholyoke.org.

no one can abrogate to himself unconditional and unlimited power.”⁴ Samuel P. Huntington defines it as “a twentieth century political system as democratic to the extent that its most powerful that its collective decision makers are selected through fair honest and periodic elections in which candidates freely compete for votes, and in which all the adult population is eligible to vote.”⁵ Be that as it may, many studies have pointed out that U.S. goal of promoting democracy, as part of its overall objectives is sometimes a casualty of so called “national interest.” Several instances and evidence have illustrated that U.S. pursuit of this goal has not been without hiccups. Yet scholars noting the critiques of US efforts to promote democracy argue that they have not presented a convincing case that spreading democracy is itself a bad idea. Indeed, for them the argument can be made that promoting democracy will offer many benefits to the new democracies and to the United States. The promotion and support for democracy, also known as ‘democratization’, has developed in several stages since the World War II, when it stood for demilitarization, denazification and re-education of an entire country’s population, to Vietnam and later in Central America, when it was equated with the fight against communism. Then, the attention was placed more on challenging communist advances than on actually implementing democratic reforms.⁶ clearly, there was widespread support for this idea domestically.

For instance, at the height of euphoria about “the end of history” and the fall of the Berlin Wall, it was common to hear the argument that support for democracy abroad should be enshrined as the central pillar of the post-containment grand

⁴ Research Paper written by Sean M. Lynn-Jones, “Why the United States to Spread Democracy” John F. Kennedy School of Government, Harvard University, March 1998, pp. 1-3.

⁵ Ibid. pp. 4-6.

⁶ Karin von Hippel. Democracy by Force: US Military Intervention in the Post-cold War World (New York: Cambridge University Press, 2000) p. 9.

strategy for the United States; However, after the start of the Gulf War I it became part of the global strategy for United States. Yet, the question that arises is this: Can US export democracy abroad? Some have argued positively that if one looks at the cases of Japan, West Germany, Austria, Italy, Grenada, the Dominican Republic among others. All the democracies that have been “restored” through American intervention are now maintained by their own dynamics and popular support. According to this view, American forces have long since departed but they raise the question, would those polities be the same had US troops never landed? This argument thus concludes that although United States cannot spread democracy through conquest but all the cases above show that once implanted, democracy can take hold.⁷ Moreover, the US commitment to promoting democracy abroad is hardly a novelty of the post-Cold War era. Although it had been implemented in different ways in different eras, that strand of policy predates the “rather fortuitous international environment of the 1990s and is evident.”⁸

Some analysts point out that the democracy and the human rights agenda in the U.S. foreign policy began during the Vietnam War at the initiative of the handful of liberal congressmen. The policy remained controversial during President Carter’s administration.⁹ But the succeeding Republican President discovered that the democracy or human rights agenda, which they denounced as “romantic idealism”, could act as an important instrument in the Cold War politics. Both the Democrats (who elevated humanitarian concerns) and the Republicans (who emphasized strategic issues) supported this policy and thus there emerged domestic

⁷ Joshua Muravchik. Exporting Democracy: Fulfilling America’s Destiny (Washington D.C.: The AEI Press, 1991) p. 81-90.

⁸ “Congress, the President and the Power to Commit forces to Combat” Harvard Law Review, Vol. 81, 1968, p. 1771-1775.

⁹ John H. Esterline & Robert B. Black. Inside Foreign Policy (California: Mayfield Publishing Company, 1975) p. 4-6.

consensus on the human rights agenda. At the same time, it can be pointed out that the policy is no more working as in the cases of Bosnia and Haiti.¹⁰

To many, the argument presented by US in the favor of the spread of democracy is based on the assumption that democracies rarely go to war with each other, and therefore an increase in the number of democracies would imply, and indeed encourage, a more secure and peaceful world. Anthony Lake, the former US National Security Adviser, described this transition of US policy in the following way:

Throughout the cold war, we contained a global threat to market democracies; now we should seek to enlarge their reach, particularly in places of special significance to us. The successor to the strategy of containment must be the strategy of enlargement—enlargement of the world's free community of market democracies.¹¹

Despite the successes that US experienced in the past in democratizing and rebuilding Germany and Japan, and later in South Korea, the US government significantly downgraded its democratization and nation building efforts after Vietnam. The US defeat in Vietnam, the most prominent US foreign policy disaster of the twentieth century and one that touched all Americans, had a profound effect on US foreign policy, not only in military and political terms but also on professed objective of promoting democratization and nation building. It also significantly changed the way the domestic constituency evaluated foreign policy; it singularly changed the way in which the Congress influenced the foreign policy decisions and corresponding policy measures, especially on the War Powers issues.

¹⁰ Howard J. Wiarda Cracks in the Consensus: Debating the Democracy Agenda in US Foreign Policy (Connecticut: Praeger Publishers along with CSIS, 1997) p. 1-8.

¹¹ Karin von Hippel, footnote no. 6, p. 18.

As a brief survey of the context of War Powers shows, from a constitutional division, the power of the US to declare has become central to the conduct of its foreign policy.

Early Years:

Historically, the framers of the Constitution debated the issue in the summer of 1787 over the confusion among the branches over War Powers. They resolved it in a fashion that was employed on many other contentious issues during the convention—they divided the power. Many advocates of presidential powers have argued that the constitution assigns questions of foreign affairs, the use of military force, and diplomacy primarily, if not exclusively to the chief executive. However, the constitution does not allocate foreign policy to a single branch. It assigns certain portions to Congress, some to the President, and others to the President working jointly with the Senate. The framers deliberately dispersed political functions, including foreign affairs to avoid concentrating too much power in a single branch. The constitution gives the Congress the power to declare war but makes the President the ‘Commander-in-Chief’, thus evenly distributing the prerogative over the War Powers.¹² This is clear from the following constitutional provisions:

Article I, Section 8, of the Constitution charges the Congress with the power: “To declare war ... raise and support armies, provide and maintain a navy,” and to make rules and regulate the armed forces. In Article II, Section 2, the Constitution designates the President as commander in chief of the armed forces.

¹² Louis Fisher. The Politics of Shared Power: Congress & the Executive (3rd ed.) (Washington D.C.: CQ Press, 1993). p. 145-146.

Since the presidency of George Washington, the chief executive has committed the nation to some sort of military response hundreds of times without a formal declaration of war. Most of these actions were of short duration, with a minimal loss of life. Others, like Vietnam, were long and bloody. The swing toward more executive discretion in matters of war accelerated as the United States grew into a world power with global responsibilities in the 20th century.¹³

When the framers assembled in Philadelphia in 1787 to draft the constitution, they broke away from the British model and deliberately transferred power to initiate war from the executive to the legislature. The history of the past two centuries is one of balancing and reconciling the two powers: declaring war by the Congress and the conduct of war by the President. But for constitutional as well as practical reasons, it was necessary that these two activities work in concert with each other. For instance, while the President commands the troops, only the Congress can provide them to him constitutionally. Congress can declare a war but has to depend on the President to wage it. It is difficult to envisage reverting back to British practices in order to resolve the questions of executive-legislative privileges, impoundment and the war powers. The powers were separated ostensibly to preserve liberties. However, at the same time this separation can destroy liberties too.

The Presidential use of force during the first few decades of the Philadelphia convention conformed to the expectations of the framers. The decision to go to war or to mount offensive actions was reserved with the congress. Presidents accepted that principle for all the wars: declared or undeclared. At first narrowly confined,

¹³ John Kornacki. "The Never Ending battle over War Powers" in <http://www.hillnews.com/issues/100202/Kornacki.htm>.

the scope of presidential action gradually widened. Presidential movement of the troops and vessels could provoke war, as in Mexico, and Presidents began to use force abroad to “protect American lives and property.” Gradually the executive branch claimed for the President the power to initiate war and determine its magnitude and duration.¹⁴

1789-1800: The first exercises of the ‘Commander-in-Chief’ clause involved actions by President Washington against certain Indian tribes, actions explicitly authorized by the Congress. To this effect the congress authorized the President “to call into service from time to time, such parts of militia of the states respectively, as he may judge necessary for the purpose aforesaid.” In 1790 and again in 1791, Congress passed the new authorizations to protect the inhabitants in the frontiers. Legislation provided in 1792 that whenever the United States “shall be invaded, or be in imminent danger of invasion from any foreign nation or Indian tribe,” the president may call forth the state militias to repel such invasions and to suppress insurrections.¹⁵

The Whiskey Rebellion of 1794 marks the first time a President called out the militia to suppress the domestic insurrection. President Washington acted expressly on authority delegated to him by Congress. However the main evidence on the President’s authority to engage the country in the undeclared wars rests on US engagement in “quasi-war” with France in 1798-1800. It must also be noted that there have been at least 125 instances since the constitution was adopted in which the President has ordered the armed forces to take action or maintain positions abroad without obtaining prior Congressional authorization, starting with the

¹⁴ Louis Fisher, footnote no. 1, p. 13.

¹⁵ Ibid.

'undeclared war' with France. In this case, Congress debated the prospect of war openly and enacted a number of bills to put the country on a war footing. President Adams could not decide and asked the Congress to prepare the country for war. Congress carefully debated these bills enacting several dozens to support military action by the President.¹⁶ This legislative activity prompted several important judicial decisions. It had the effect of clarifying the prerogatives of the Congress over war and the deployment of military force.

1800-1836: In 1800 and 1801, the Supreme Court recognized that Congress could authorize hostilities in two ways: either by formal declaration of war or by statutes that authorized an undeclared war, as had been done against France. Military conflicts could be "limited," "partial" or "imperfect", without requiring Congress to make a formal declaration. Two decisions by the Supreme Court in 1800 (*Bas v. Tingy*) and 1801 (*Talbot v. Seeman*) recognized that Congress could authorize hostilities either by a formal declaration of war or by a statute that authorized an undeclared war. In short, congressional policy announced in a statute necessarily prevails over inconsistent presidential orders and military actions. Presidential orders, even those issued as the Commander-in-Chief, are subject to the restrictions imposed by the Congress. In the second case, Chief Justice John Marshall wrote for the Court: "The whole powers of war being, by the constitution of the United States, vested in congress, the acts of that body can alone be resorted to as our guides in this inquiry."¹⁷

After two decades of Congressionally authorized military action against Indians and France, Congress declared its first War in 1812 against England. President

¹⁶ Ibid. p.14-19.

¹⁷ *Talbot v. Seeman*, 1 Cranch 1 (1801) and *Bas v. Tingy*, 4 Dall. 37 (1800) in http://www.supremecourtus.gov/opinions/casefinder/casefinder_1790-1862.html.

Madison submitted a message to the Congress in 1811, alerting it to the number of hostile and discriminatory actions by England that required Congress to prepare for the war. These included the blockade of the US ports, British impressments of American seamen and provocation of Indian raids against the United States. Madison left to Congress the issue of declaring war. The chambers debated in secret and finally on June 18, 1812, a declaration of war was made authorizing the President to use “the whole land and naval force of the United States.”¹⁸ “Mr. Madison’s War” lasted thirty months, producing heavy losses along the Canadian front. In prosecuting the War of 1812, President Madison called on the state militia pursuant to authority given him by the Congress which led to a legal dispute. When it reached the Supreme Court, the Court concluded that “the authority to decide whether the exigency has arisen, belongs exclusively to the President, and that his decision is conclusive upon all other persons.”¹⁹

1836-1900: The power of Commander-in-Chief is at its low point when there is no standing army because a President cannot deploy its troops until the Congress raises them. But when the standing army does exist, ready to move at the President’s command, the balance of power can shift decisively as was the case with the Mexican War.²⁰ The capacity of the president to put the nation at war can be further illustrated by the actions of President James K. Polk in 1846, when he ordered General Zachary Taylor to occupy disputed territory on the Texas-Mexico border. The order provoked a clash between American and Mexican soldiers, prompting Polk to tell Congress a few weeks later that “war exists.” After a few

¹⁸ Louis Fisher. Footnote no. 1, p. 28-34.

¹⁹ David A. Nichols. “Lincoln and the Indians: Civil War Policy and Politics” (Columbia: University of Missouri Press, 1978), pp. 29-34.

²⁰ John S.D Eisenhower. So Far From God: The U.S. War With Mexico 1846-1848 (New York: Anchor Books, Doubleday, 1989) p. 34-38.

days of debate, Congress declared war against Mexico, recognizing that “a state of war exists.” In 1848 the House of Representatives censured Polk's actions as a war “unnecessarily and unconstitutionally” begun by the President of the United States.”²¹

One of the members of the House who voted to censure Polk was Abraham Lincoln, who some years later would ironically exercise the option of using military force during the Civil War without first obtaining authority from Congress. In April 1861, with Congress in recess, he issued proclamations calling forth the state militia, suspending the writ of habeas corpus, and placing a blockade on the rebellious states. However, there were crucial differences between the actions of Polk and Lincoln. Polk's initiatives helped precipitate the war with the foreign nation and he had some discretion over his actions. Whereas Lincoln confronted a genuine internal emergency of the Civil War and was compelled to use force to put down an internal rebellion. However, Lincoln never claimed that he had full authority to act as he did. He conceded to Congress that he had probably overstepped the constitutional boundaries established for the President and thus needed Congressional sanction. Legislators debated this issue at length, eventually passing legislation “approving, legalizing, and making valid all the acts, proclamations, and orders of the President, etc., as if they had been issued and done under the previous express authority and direction of the Congress of the United States.”²²

Presidents have used force unilaterally a number of times, but the actions were relatively small in scope and duration. Aside from Polk's initiatives in Mexico and

²¹ Charles Feller, Henry May & Neil R. McMillan. A Synopsis of American History (vol.1) (Massachusetts: Houghton Mifflin Company, 1990), p. 180-189.

²² David A. Nichols. Footnote no. 19, p. 78-79.

Lincoln's emergency actions during the Civil War, the power of war remained in the hands of Congress during the nineteenth century, and the first half of the twentieth. Congress formally declared the Spanish-American War of 1898 for the third time in response to Cuban rebellions against Spanish rulers.²³

The First World War & The Second World War: In the decades of the twentieth century, America has intervened regularly in other countries to “protect lives & property.” The two World Wars (especially the second) shifted major international responsibilities to the United States. Self-determination and nonintervention ranked high among the guiding principles of President Woodrow Wilson, at least in theory. President Woodrow Wilson proclaimed that it would be the irony of fate if his administration had to deal chiefly with foreign affairs. However, the pressure to be prepared for war grew and it became an issue in the 1916 elections. Wilson won handsomely in the elections and took his victory as an indication to stay out of war by following the policy of armed neutrality. Although he was supported by a substantial majority, he experienced how a small group within the Congress could make life difficult for the President to execute foreign policy. Congress enacted the Selective Service Act by which the old ideal of a populist army was revived. There was much popular support for entering the war, so much so that Congress not only voted upon the Selective Service Act, but also endorsed legislation, which restricted the freedom of the press. America was finally drawn into the First World War. But popular congressional support began to melt when Woodrow Wilson decided to travel to Europe to participate personally in the negotiations on the peace treaty. Wilson was aware that the establishment of the League of Nations by an international treaty would require a two-thirds majority in the US Senate and

²³ Ibid. p. 88-92.

was by all means a far reaching proposal and therefore he took a bipartisan committee to the negotiations in Europe. The Committee was composed of only one Republican and five Democrats, all with little influence within their own party. Wilson ran into the Congressional blockade and the Senate Foreign Relations Committee proposed a number of amendments in the Charter of League of Nations but all those amendments were defeated. Wilson's defeat by the Senate was a milestone in the relationship between the executive and the legislative branch in the field of foreign policy. Even in the wake of a major world war, Congress was not prepared to concentrate more powers in the hands of the executive because the United States had gained the responsibilities of a world power.²⁴

Franklin D. Roosevelt used different techniques than Woodrow Wilson to achieve his foreign policy goals. Critics even say that FDR cheated his way into the Second World War. His methods were complex and even on the fringes of constitutionality, as some of the observers noted. He crossed the neutrality threshold by entering the destroyer-for-bases deal with the Great Britain, and he did not seek Congressional approval by issuing an executive order. He was not even challenged by the Congress, which was remarkable. FDR was conscious of the fact that every step he took towards the war, Congress could block his foreign policy strategy. FDR knew that to take United States to war would need the President's appeal to the idealism of the American people by setting out war aims as well as the visions of the new world order worth fighting for. The attack on the Pearl Harbor and declaration of war by Nazi Germany against US solved FDR's lingering dilemma to move the Congress into a Second World War. The way US

²⁴ Joop Veen "The Struggle for Primacy: The President, Congress and US Foreign Policy" in Marianne Van Leeuwen & Auke Venema (ed.). Selective Engagement: American Foreign policy at the Turn of the Century (The Hague: The Netherlands Atlantic Commission, 1996). p. 48.

entered into the Second World War dramatically shifted the balance between the executive and the legislative. It gave the American President, unprecedented powers, which after the Second World War ended, were strengthened even more.²⁵

The Korean War: On June 27, 1950, President Truman announced to the country that as part of the US assistance to UN to implement its resolution ordering North Korea to cease hostility and withdraw from the 38th parallel. He ordered air and sea forces to South Korea and later ground troops were also sent in. President Truman did not seek the approval of members of Congress for his military actions in Korea. Truman met the Congressional leaders after the administration's policy was decided, established and implementing orders were issued. On June 29, when Truman was asked whether the country was at war, his response was: "We are not at war." Truman designated General MacArthur as the commander of this so called 'unified command.' But measured by troops, money, casualties and deaths, it remained an American War.²⁶ As the war dragged on and American casualties rose without clear signs of a quick victory, public opinion began to turn. At that point, some Republicans who had initially argued the President needed no formal authorization from Congress found it expedient to denounce the conflict as "Truman's War" and proclaim it an unconstitutional "Presidential war." This was effective in turning still more Americans against the President, as the records of Truman's extensive consultations and other efforts to involve Congress formally in the decision process were not yet public.²⁷ The statutory restrictions on the

²⁵ Francis H. Heller (ed.) for the Harry S. Truman Library Institute for National and International Affairs. "The Korean War: A 25 year Perspective" (Lawrence: Regents Press of Kansas, 1977). p. 78-85.

²⁶ Footnote no. 29, p.49-52.

²⁷ Robert F. Turner. "The War Powers Resolution: An Unnecessary, Unconstitutional Source of "Friendly Fire" in the War Against International Terrorism?" in [http:// www.fed-soc.org/Publications/Terrorism/WarPowers.htm](http://www.fed-soc.org/Publications/Terrorism/WarPowers.htm).

presidential war power were underscored by amendments to the UN Participation Act in 1949.²⁸ Presidents were permitted to provide the military forces to the UN on their own initiative for “cooperative action” but only on the conditions: military forces could serve as observers or guards, they could perform only in the non-combatant capacity, and they could not exceed one thousand. Congress’s reaction to Truman’s usurpations of the war powers was largely passive.

Unlike Truman, President Dwight D. Eisenhower asked the Congress to give him the statutory authority before using military force in specific areas of the world. He reminded the members of the Congress “that the Constitution assumes that our two branches of government should get along together.” Eisenhower believed that Truman’s decision to intervene in Korea was “wise and necessary”, but he came to realize that it was a serious mistake, politically and constitutionally, to commit the nation to the war in Korea without Congressional approval. When international emergencies arose, Eisenhower wanted the backing of the Congress. Eisenhower’s theory of government and international relations invited congressional enactment of the area resolutions that authorized presidential action. He received “area resolutions” for Formosa in 1955 and Middle East in 1957. The next area resolution was the ill-fated South-east Asia Resolution of 1964 i.e. Gulf of Tonkin resolution. Enacted in the middle of the Presidential election year, this massive grant of authority to President Lyndon B. Johnson was the key step in the escalation of the Vietnam War.

During the Cold War, many studies estimated that international politics, rather than domestic politics, was the primary determinant of United States foreign policy

²⁸ House of Representatives No. 1383, 79th Congress, 1st Session 7(1945) in <http://www.commdocs.house.gov>.

behavior in the conduct of the Cold War. The specific issue of which branch of government should control the War Powers, however, was unambiguously decided in the favor of the Congress by the founders. As the Vietnam debacle increased, the Congressional activism increased and the War Powers issue became the focus of great attention. In particular the process by which the United States decides to use military force was scrutinized. Evidence throughout U.S. history reveals that it was governed by custom rather than by statute. By the early 1970s, however, that custom had swung so far in the direction of the President that members of the Congress sought to reclaim their influence by creating a formal legal framework to govern the use of military force by the government. When the War Powers Resolution was finally enacted, its supporters saw it as reestablishing the constitutional balance that the founders had intended between Congress and the President.²⁹

In practice, however, the resolution has proved to be disappointing. According to Arthur Schlesinger Jr., it is no more than “a toy handcuff.”³⁰ Frustrated over the use of the Commander-in-Chief clauses and the executive clauses of the constitution to intervene abroad, Congress adopted several measures to limit the war making abilities of the President in the 1970s. The first important action was the repeal of the Gulf of Tonkin resolution, which had virtually allowed the President to have an upper hand in conducting the Vietnam War. Although the repeal was more symbolic than substantive, Congress, by this action was beginning to assert its role in war making. Spurred by the Nixon administration’s indifference

²⁹ James M. Lindsay. Congress and the Politics of US Foreign Policy (Baltimore: The Johns Hopkins University Press, 1994) p. 1-6.

³⁰ James M. Lindsay. “Congress and the Use of Force in the Post-Cold War Era” in ASPEN Strategy Group Report Titled The US and the Use of Force in the Post Cold war Era (Maryland: The ASPEN Institute, 1995) p. 89.

to its repeal of the Gulf of Tonkin resolution, Congress proceeded to work on a proposal that would limit the war making powers of the President more generally. The resulting War Powers Resolution, passed over by Nixon's veto in November 1973, remains by far the most significant congressional attempt to reassert its control over committing US forces abroad. The executive branch, however, still claimed it had the power to continue the war even without the resolution in place.³¹

During the middle of the Cold War the fear of the spread of communism gripped American policymakers which eventually led to the advancement of the "domino theory" for defending Vietnam. This theory warned that if South Vietnam became Communist, then Laos and Cambodia would also become Communist, and then Thailand, Malaysia and Burma, and Southeast Asia. The fear of Communism spreading throughout Southeast Asia became the basis for American foreign policy.³² The consensus which gradually emerged in the American political scene at that time was clearly due to the fear of the spread of communism which led both the Congress and the Presidency to take action and evolve the interventionist policies to curb the spread of communism.

Vietnam War and the Origins of War Powers Resolution

Perhaps no other armed conflict turned the spotlight on the War Powers more than the Vietnam War. During this time, the United States was faced with the critical problem of how the Congress and the Presidency work together effectively to formulate and implement a foreign policy that reflects the national interest of US?

³¹ James M. McCormick. American Foreign Policy and Process (3rd ed.) (Illinois: F.E. Peacock Publishers, Inc., 1998), p.326-330.

³² Bruce Walker. "America's Domino Theory" September 9, 2002 in <http://www.enterstageright.com/archive/articles/0902/0902domino.htm>

For nearly 20 years, from 1950s to the mid-1960s, there was national consensus on the main lines of the foreign policy associated with the Cold War. This consensus also extended the concept of the strong executive leadership. As a consequence, there developed a mystique of the President and the Department of State being absolutely in control, and of Congress, with rare exceptions, going along.³³ The national trauma over Vietnam ended this phase, both in terms of consensus and in terms of congressional or popular willingness to accept executive leadership as had been done in the 1950-68 period. By the time Lyndon B. Johnson entered the White House, three American Presidents had taken decisive steps to involve the nation in Vietnam. Truman and Eisenhower provided substantial economic and military assistance to aid the French in Indochina. After French surrendered at Dienbienphu in 1954, Vietnam was divided between the North and South and Vietnam. President Kennedy continued sending American advisers and providing US weapons to South Vietnam. The number of American military advisers rose from 700 to 16,000. In August 1964, President Johnson reported attacks against US vessels in the Gulf of Tonkin; Congress hurriedly passed the resolution authorizing the use of armed forces. In 1964 it was clear that the Johnson administration was desperately looking for some "reason" to expand the Vietnam War. Many analysts later commented that it was also clear that the Johnson's team "was not above creating or embroidering a reason — or at least so it seemed to many of us working in the Senate at the time."³⁴ The Gulf of Tonkin Resolution (Joint Resolution of Congress, H.J. Res. 1145, August 7, 1964) in effect was the last time the Congress

³³ Lee H. Hamilton & Michael H. Van Dusen. "Making the Separation of Powers Work" Foreign Affairs, Vol. 57, No. 1, Fall 1978. p. 17-23.

³⁴ Gar Alperovitz. "Remember the Gulf of Tonkin" in www.democracycollaborative.org/publications/books/alperovitz2.htm.

gave the executive such authority. Ironically, it also marked the revival of the debate on checks over presidency especially on committing the nation to war.

A brief look at the events that led to the adoption of the Gulf of Tonkin is useful to understand how the Congress moved to provide the authority to the President. On August 2, while the USS Maddox was not far from Hon Me, a North Vietnamese island being attacked, three North Vietnamese torpedo boats chased the Maddox off. The attack was unsuccessful, although torpedoes were launched. The USS Maddox was hit by one heavy machine gun shell from the torpedo boats. This is referred to as the "First Attack". Late in the afternoon on August 4, the USS Maddox returned to the middle of the Gulf of Tonkin, accompanied by the USS Turner Joy. That night, the USS Turner Joy picked up high-speed vessels on its radar. However, the USS Maddox did not. The two destroyers attacked these supposed ships. Some think that the ships were there, others do not. This is referred to as the "Second Attack". The next day, two aircraft carriers, the USS Ticonderoga and the USS Constellation, retaliated. An air strike was launched. The primary target was a petroleum storage facility, which was destroyed. On Aug. 4, 1964, North Vietnamese torpedo boats in the Gulf of Tonkin were alleged to have attacked without provocation U.S. destroyers that were reporting intelligence information to South Vietnam. President Lyndon B. Johnson and his advisers decided upon immediate air attacks on North Vietnam in retaliation; he also asked Congress for a mandate for future military action.³⁵ On August 7, 1964, Congress passed the "Gulf of Tonkin Resolution", which gave President Johnson the power to resolve the conflict with any means necessary. Commentators have argued that the Johnson administration wanted to have this type of power and some believe

³⁵ "Gulf of Tonkin Resolution" in www.vietnamwar.com/gulfoftonkinresolution.htm

that the events were manufactured in order to do so. It does appear, however, that the events did in fact take place. Congressional resolution passed in 1964 that authorized military action in Southeast Asia. Although there was disagreement in Congress over the precise meaning of the Gulf of Tonkin Resolution, Presidents Johnson and Richard M. Nixon used it to justify later military action in Southeast Asia.³⁶

President Johnson used the incidents in the Gulf of Tonkin resolution and the authority derived from it to widen the war. By May the troop strength had grown to 42,000 and on July 28 he increased US combat forces from 75,000 to 1,25,000 promising additional forces if necessary. But the appalling casualties on both sides produced a bloody stalemate and spawned a powerful antiwar movement back in the U.S. Richard Nixon, elected in 1968 to end the war in Vietnam, actually widened it to include Cambodia and Laos. His "incursion" into Cambodia in 1970 triggered protests at home and provoked Congress to enact restrictive amendments in 1971 to forbid the introduction of the US ground combat troops or advisers into Cambodia. By denying the funds for all the combat activities in Southeast Asia in 1973, Congress finally brought the war to an end.³⁷

³⁶ In effect, the Congress approved and supported the determination of the President, as Commander-in-Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression. Section 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in Southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom. Section 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise, except that it may be terminated earlier by concurrent resolution of the Congress. **Joint Resolution of Congress, H.J. Res. 1145, August 7, 1964** in <http://www.house.gov>.

³⁷ Louis Fisher. Footnote No. 1, p. 118-119.

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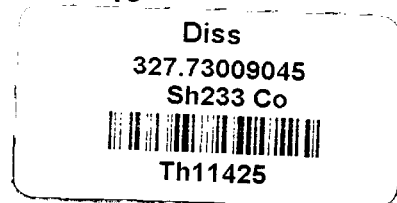
The Senate passed a resolution in 1969 challenging the right of the President to commit the nation without congressional action. This resolution marked a return to the Eisenhower's philosophy of inter-branch cooperation and recognition that the congress had been derelict in defending its constitutional powers. The Senate foreign Relations Committee noted the expansion of the presidential power and said that if the blame is to be apportioned "a fair share belongs to the Congress." The National Commitments Resolution (The "National Commitments Resolution," S. Res. 85, 91st Congress, 1st session, passed by the Senate June 25, 1969) passed by a vote of 70 to 16, defined national commitment as the use of armed forces on foreign territory or a promise to assist the foreign country by using armed forces or financial resources. Passed in the form of Senate resolution, it had no legal effect, however it signaled an important expression of constitutional principles by a bipartisan Senate. The Democrats supported it 43 to 3; the Republicans voted in favor 17 to 13.³⁸

Congressional Action and the War Powers Resolution



The acrimony over Vietnam War sparked the national debate over the appropriate roles of the Congress and the President in exercising the war powers. The War Powers Resolution was a bill that was designed to restore the powers of war powers of Congress as granted by the Constitution. The hope was that Congress would become an active player in the war-making process, whether it was a full-fledged war, or even a routine military operation to rescue Americans abroad. Representatives and Senators alike saw too much power wielded in the hands of one man, and had seen four presidents continually escalate the Vietnam conflict

³⁸ The National Commitments Resolution, S. Res. 85, 91st Congress, 1st session, passed by the Senate June 25, 1969 in <http://www.eco.freedom.org/ac92/ac92pg0504.shtml>



with little legislative interaction. The steps taken towards the creation of the War Powers Resolution played out as a contest between the House, the Senate, and of course, the President. Each institution was adamant on maintaining its vision of the War Powers, the House and Senate through new legislation, and the President through veto of such legislation. The first move in the direction of a War Powers Resolution took place in 1969, with the War Powers Resolution itself not taking effect until 1973. For four years, each house tossed bill after bill into committee, with a presidential veto looming overhead. However, after much deliberation and a final compromise, Congress was able to pass legislation that overturned the President's veto.³⁹

Congress recognized that the President might have legitimate and constitutional reasons in an emergency to use military force without prior legislative action. The Senate wanted to specify by statute the situation in which the President can act militarily without advance legislative sanction. The House doubted that it was possible to define with that kind of precision the president's war powers. The statute called for the "collective judgment" by Congress and the Presidency before US troops are sent into combat, especially for long term military engagements. Although not the Congressional intent, the War Powers Resolution has had the effect of allowing the President to make the war unilaterally for up to ninety days. Congressional approval was supposedly required after that period but that part has not worked out as planned either. The War Powers Resolution also required the

³⁹ Dennis Johnson. "A Government Divided: the War Powers Resolution in Purpose and Practice" in <http://lilt.ilstu.edu/critique/Fall2001Docs/djohnson.htm>

President to report to Congress and encourages the President to consult with legislators before taking the action.⁴⁰

In 1970 the House of Representatives conceded a measure of war prerogatives to the President. A War Powers Resolution, passed by a vote of 289 to 39, recognized that the President “in certain extraordinary and emergency circumstances has the authority to defend United States and its citizens without specific prior authorization by the Congress.” The House relied on the procedural safeguards and noted that the President would be required “whenever feasible” to consult with the Congress before sending the American troops in an armed conflict. The Senate did not act on the measure. Both Houses later passed War Powers Resolution that went beyond mere reporting requirements.⁴¹ The two Houses presented a compromise measure to President Nixon. He vetoed the bill primarily because he regarded it as “impractical and dangerous” to fix in a statute the procedure by which the President and Congress should share the war power. Both the Houses mustered a two-thirds majority to override the veto: the House narrowly (284 to 135), the Senate by a more comfortable margin (75 to 18). Although the War Powers Resolution of 1973 overcame a veto, it has not survived doubts about its quality and effectiveness.⁴²

The War Powers Resolution passed by the Congress has several important provisions that require Presidential consultation and reporting to the Congress on the use of the US armed forces abroad, limit the time of deployment of such forces and provide Congress a mechanism for withdrawing these forces prior to this time

⁴⁰ Richard F. Grimmett. CRS Report for Congress, War Powers Resolution: Presidential Compliance, September 11, 2001, p. 14-16.

⁴¹ Louis Fisher. Constitutional conflict between Congress and the President (New Jersey: Princeton University Press, 1985). p.307-310.

⁴² Ibid. p. 311.

limit as well. For the first time in the War Powers Resolution, Congress specified the conditions under which the President could use armed forces. Previously the Presidential power to use war was more discretionary and ambiguous. In the second provision, which stated that the President should consult with the Congress before sending the troops abroad till those forces have been removed expected the Congress to be involved in the process from the beginning to the end. The third provision provided that in the situations where the forces were introduced without the declaration of war, the President must submit a written report to the Speaker of the House and the President pro tempore of the Senate within forty-eight hours of the deploying of American forces. The President was to report periodically to the Congress on the status of the hostilities. The fourth provision presented the time limit which was placed on how long these forces to be deployed. The resolution provided the president to use the American forces for no longer than sixty days, unless there had been a declaration of war or a specific congressional authorization to continue the use of such forces beyond this period. Lastly the congressional resolution included the provision that allowed the congress to withdraw the troops prior to the expiration of the sixty-day limitation. But the War Powers Resolution clearly had different motive: to serve as the political and psychological restraint on the presidential war making.⁴³

Military Initiatives from Ford to Bush Jr.

From Ford through Bush Jr., Presidents have used military force on numerous occasions by citing their power as Commander-in-Chief. The record since 1973

⁴³ James M. McCormick. American Foreign Policy and Process (3rd ed.) (Illinois: F.E. Peacock Publishers, Inc., 1998). p.326-330.

have remained uniform as the Presidents have acted unilaterally when using force for short term operations in areas of the world that are relatively isolated, with little chance of the conflict spreading.

President Gerald Ford was the first to be tested by the War Powers Resolution. During his short time in office, there were many instances in which the President found himself bound by the resolution. The first three incidences in which Ford committed troops abroad occurred between late March and early May in 1975. Each of these missions was an evacuation of government personnel or U.S. nationals from Southeast Asia. Because the forces were not introduced into hostilities, Section 3 on prior consultation did not apply, although Ford stated that Congressional leaders had been informed ahead of time. However, the second of these evacuations did involve some fighting during the operation, on which Ford briefed the Congressional leaders the next day. The biggest test of the Resolution during Ford's term came not long after, on May 12, 1975. The merchant vessel *Mayaguez* was seized only 6.5 miles from the Cambodian and Vietnam Wai Islands. This situation certainly came under Section 3 of prior consultation and Section 4(a)(1) under reporting. Ford immediately received calls from Congressmen urging action and speeches to justify such action. The first act of aggression was taken on the morning of May 13th, when warning shots were fired off the bow of the *Mayaguez* to prevent it from being moved to the mainland. There was no shared decision-making in the entire process, as was required "in every possible instance." Furthermore, under the reporting clause, Ford only

succeeds if the 48 hours began upon the commencement of force, and not the dispatch of troops.⁴⁴

If the War Powers Resolution had failed under Ford because of lack of implementation, then it failed under Reagan because of its lack of clarity. Reagan was instrumental in exposing the fundamental flaws of the Resolution. These flaws were disastrous for Congress, as they were forced to rethink the roles that had been established by the Resolution. In 1982, President Reagan sent troops to Lebanon without reporting under section 4(a)(1). Consistent with Ford and Carter he deployed troops pursuant to the President's constitutional authority with respect to the conduct of foreign relations and as Commander-in-Chief of the United States Armed Forces. As Reagan refused to trigger the clock under the War Powers Resolution, Congress passed the legislation in the fall of 1983, providing that the requirements of Section 4(a)(1) became operative on August 29, 1983. However, instead of confining Reagan to sixty to ninety days, Congress authorized military action for eighteen months. The possible confrontation over the deadline never materialized because the Lebanese operation was so lacking in Congressional and public support that Reagan withdrew US marines in the spring of 1984.⁴⁵

In October 1983, President Reagan announced that he had ordered US troops to Grenada as part of a multilateral effort. President Reagan reported to the Congress, "consistent with the War powers Resolution," on deployment of US forces to Grenada. President Reagan stated that he deployed US forces pursuant to his

⁴⁴ Dennis Johnson. "A Government Divided: the War Powers Resolution in Purpose and Practice" in <http://ilt.ilstu.edu/critique/Fall2001Docs/djohnson.htm>.

⁴⁵ Cynthia Arnson. *Crossroads: Congress, the Reagan administration and Central America* (New York: Pantheon, 1989) p. 69. The author provides evidence from secretary of State Schultz's Testimony to the Congress that pointed towards the Congress as a major problem to the administration.

constitutional authority “with respect to the conduct of the foreign relations and as Commander-in-Chief of the United States Armed Forces.” The Reagan administration seemed to have accepted the sixty-day limit. The legislation was passed which required the Reagan administration to conclude military operations within sixty days, with an additional thirty days for the removal of the troops if needed.

When Saddam Hussein of Iraq invaded Kuwait, President Bush immediately began deploying US forces to Saudi Arabia, which was expected to be invaded by Saddam Hussein. But the Constitutional issue was clearly drawn: Could President shift from his defensive posture to an offensive operation without first obtaining Congressional approval? Instead of seeking Congressional support, Bush directed his energies into obtaining the backing of the other nations and encouraging the UN Security Council to authorize the use of force against Saddam Hussein. In January 1991, Bush asked the Congress to pass legislation supporting his decision in the Persian Gulf. Several days of intense debate, the Congress authorized Bush to take offensive action against Iraq. However, experts point out that for both the political and legal reasons, Presidents need Congressional authority when waging a war of the magnitude contemplated in the Persian Gulf.⁴⁶

Despite widespread opposition on Capitol Hill and among the American people, President Clinton in 1994 nearly dispatched 20,000 soldiers to Haiti to oversee the return of democracy to that troubled Caribbean nation. The peaceful occupation and the restoration of Haiti’s democratically elected government gave the Clinton administration a much-needed foreign policy success. Several attempts were made in the Senate in 1993 and 1994 to force Clinton to seek Congressional

⁴⁶ Footnote No. 40, p. 8-9.

authorization before deploying forces to Haiti, but those efforts were defeated. The votes reflected senators' reluctance to tie the hands of the Commander-in-Chief on crucial national security issues, not enthusiasm for military action in Haiti. Congress had gone on record urging the President to come to Congress before launching any military action in Haiti. With the deployment going smoothly and many members fearful of jeopardizing the safety of American soldiers, momentum in favor of setting a deadline quickly evaporated. Instead, Congress cleared a joint resolution (SJ Res 229) that did little more than require the President to provide detailed reports on the mission.⁴⁷ Clearly the Congress was playing an overseer's role than an active participant one.

The U.S. Congress September 14 approved a resolution authorizing President Bush to use "all necessary and appropriate force" against those responsible for the September 11th terrorist attacks on the United States. The U.S. Senate voted 98-0 for the resolution, and the House of Representatives voted 420-1 later that night. U.S. Representative Barbara Lee, a California Democrat, voted against the measure.⁴⁸

Congress overwhelmingly authorized President Bush to use force against the nations, groups, and individuals responsible for the September 11 attacks on America. But President Bush has vowed to wage a much broader war against terrorism. For the President, the challenge remains on how to sustain long-term congressional support for an entirely new kind of war against a shadowy, stateless enemy. As many have noted, President Bush would be wise to find ways to make

⁴⁷ Library of Congress. "Congress & the Nations" A Review of Government & Politics, Vol. IX, 1993-96 (Washington D.C.: Congressional Quarterly Inc., 1998) p. 195-197.

⁴⁸ "Congress Authorizes President to Use All Necessary Force" in <http://usinfo.state.gov/topical/pol/terror/01091706.htm>.

Congress a partner and stakeholder in the planning and conduct of this war as it would provide legitimacy and avert constitutional conflict.

Critics of the War Powers Resolution argue that it has failed to work as planned and infringes upon the constitutional powers of the President. The War Powers Resolution was designed to increase Congressional participation in war making decisions. Throughout history, Presidents, as Commander-in-Chief, have been willing to wage war and commit troops to hostilities before receiving Congressional consent, and sometimes without receiving it at all. During the Vietnam War, the ignorance by the executive of the constitutional right for Congress to declare war became a hotly debated issue in both the House and Senate. After reaching a compromise between themselves, and overriding a presidential veto, the Congress successfully gave birth to the War Powers Resolution. This new law would allow the president a 60-day executive war, and gave Congress the privileges of consultation and reporting, and reinstated the right to declare war. Unfortunately, as successful as it was on paper, the Resolution has thus far been a failure in combating the problems of war making. Every president has either found a loophole with which to circumvent his duties stated in the Resolution, or has simply ignored them altogether. Moreover, little congressional action has been taken to rectify these situations in order to set precedent for further mishaps. The War Powers Resolution remains a key document in the instance of war making, and if followed, it is a useful guide for US government to follow. However, without serious retooling or adjustment, the Resolution will continue to be worth less than the paper on which it is printed.⁴⁹

⁴⁹ Dennis Johnson. "A Government Divided: the War Powers Resolution in Purpose and Practice" in <http://ilt.ilstu.edu/critique/Fall2001Docs/djohnson.htm>.

While such controversies continue to fuel the war powers debate into the 1990s, a lingering and larger question concerns the constitutionality of the resolution, in whole or part. The constitutionality of the time limit, identified by the executive branch as a challenge to presidential powers in foreign affairs is likely to remain a 'contest' between them for the foreseeable future. Neither side is likely to yield its foreign policy prerogative, nor is any structural change ultimately going to alter the inherent constitutional dilemma between these two branches. Instead, as Arthur Schlesinger Jr., correctly puts it, the problem is "primarily political", and will undoubtedly require efforts at cooperative solutions in procedural, rather than legislative, remedies.⁵⁰

It is not easy for either the executive branch or the Congress to balance the conflicting pressures and responsibilities and ensure that a coherent foreign policy is formulated which serves American national interest. According to some analysts separation of power produces a healthy and potentially creative tension between legislative and executive branches.⁵¹

⁵⁰ Arthur J. Schlesinger, Jr. "Congress and the making of American Foreign policy" Foreign Affairs, Vol. 51, October 1972. p. 106.

⁵¹ Lee H. Hamilton & Michael H. Van Dusen. "Making the Separation of Powers Work" Foreign Affairs, Vol. 57, No. 1, Fall 1978. p. 17-22.

CHAPTER – II

DEBATES IN CONGRESS OVER HAITI AND AFGHANISTAN

In context of the post World War II international system, debates in US about the declaration of war, the existence of standing armies and the legislated provision for the military forces in the times of need to be revisited. The central issue today is who controls standing military forces and how these forces are used? Is the President provided with standing military forces in an essentially unfettered fashion? Some analysts have suggested that this is so, or at least that it ought to be so. Others have argued that the executive possesses military resources only to carry out policies established by the Congress.

According to scholars, there are several issues that need scrutiny and clarification. For instance, on the question of War Powers, as with other matters of institutional balance during the twentieth century, Congress has frequently been its own worst enemy. Congress unlike the President is generally unwilling or unable to confront the issue squarely. However, the issue crops up periodically cloaked in constitutional arguments but aimed at some policy disagreements with the executive.¹

Another issue for Congress is when the President introduces troops into situations of potential hostilities, should it invoke Section 4(a)(1) of the War Powers Resolution and trigger a durational limit for the action unless Congress authorizes the forces to remain. If Congress concurs in a President's action, application of the

¹ Christopher J. Deering. Congress, the President and the War Powers: the Perennial Debate in James A. Thruber (ed.). Divided Democracy: Cooperation & Conflict between the President and the Congress (Washington D.C.: CQ Press, 1991) p. 189-190.

Resolution may be desirable either to legitimize the action and strengthen it by making clear Congressional support for the measure or to establish the precedent that the Resolution does apply in such a situation. On the other hand, some believe it is preferable to leave the President more flexibility of action than is possible under the Resolution. Or some may not wish to have a formal vote on either the issue of applying the Resolution or the merits of utilizing armed forces in that case. If Congress does not concur in an action taken by a President, the Resolution offers a way to terminate it.²

A long-term issue is whether the War Powers Resolution is working or should be amended. Some contend that it has been effective in moderating the President's response to crisis situations because of his awareness that certain actions would trigger its reporting and legislative veto provisions. This school also suggests that it could be effective if the President would comply fully for fear that the Congress would invoke its provisions. Others believe it is not accomplishing its objectives and suggest various changes. This view has proposed that the Resolution return to the original Senate-passed version, which would enumerate circumstances in which the President needed no Congressional authorization for use of armed forces (namely to respond to or forestall an armed attack against the United States or its forces or to protect U.S. citizens while evacuating them) but prohibit any other use or any permissible use for more than 30 days unless authorized by Congress. Others would replace the automatic requirement for withdrawal of troops after 60 days with expedited procedures for a joint resolution authorizing the action or

² A joint resolution was passed concerning the war powers of the Congress and the President resolved by the Senate and the House of Representatives of the United States of America in Congress assembled and the War Powers Resolution came into being. War Powers Resolution of 1973, Public Law 93-148, 93rd Congress, **House Joint Resolution 542**, November 7, 1973 in http://www.policyalmanac.org/world/archive/war_powers_resolution.shtml.

requiring disengagement. Still others would repeal the Resolution on grounds that it restricts the President's effectiveness in foreign policy or is unconstitutional.³

Several Members have suggested establishing a consultative group to meet with the President when military action is being considered. Senators Byrd, Nunn, Warner, and Mitchell introduced S.J.Res. 323 in 1988 and S. 2 in 1989 to establish a permanent consultation group of 18 Members consisting of the leadership and the ranking and minority members of the Committees on Foreign Relations, Armed Services, and Intelligence. The bill would permit an initial consultative process to be limited to a core group of 6 Members -- the majority and minority leaders of both chambers plus the Speaker of the House and President pro tempore of the Senate. On October 28, 1993, House Foreign Affairs Chairman Lee Hamilton introduced H.R. 3405 to establish a Congressional consultative group equivalent to the National Security Council.⁴

Thus far, however, executive branch officials and Congressional leaders, who themselves have varying opinions have been unable to find mutually acceptable changes in the War Powers Resolution. Although many agreed on the consultation group, supporters of the legislation contended the time limit had been the main flaw in the War Powers Resolution, whereas opponents contended the time limit provided the teeth of the Resolution. With this broad review of changing perceptions on War Powers Resolution, it is useful to survey the Congressional debate on Haiti and Afghanistan.

³ Richard F. Grimmett, War Powers Resolution: Presidential Compliance, CRS Report to Congress, November 25, 1996 in <http://www.fas.org/man/crs/81-050.htm>.

⁴ Richard F. Grimmett, War Powers Resolution: Presidential Compliance, CRS Report for Congress (updated), Library of Congress, September 11, 2001, p. 8-9.

The United States intervention in Haiti provided another chapter in the development of the constitutional common law of the Presidential power. Several experts on the Constitution argued that the Haiti experience further confirmed the constitutional authority of the President to deploy armed forces into hostile foreign environments, and to initiate the use of force without prior, specific Congressional authorization. However, when the Haiti “precedent,” is analyzed along with the interventions in Grenada and Panama, it reveals a strong support to the exercise of an unqualified Presidential power to carry out small-scale military operations in support of the foreign policy goals. In early 1990s, the Congress was concerned about a number of developments in Haiti with attention shifting from one area to another as the situation changed. From 1991-94, Congress was concerned over the flow of Haitian refugees and ways to restore the democratic process to Haiti during the period of the military regime. Later following the military action in September 1994, Congress was concerned over the cost and the safety of the US troops in Haiti and the holding of the democratic elections to select the new parliament.⁵

US action in Afghanistan also held up the question of the Presidential authority in the commitment of troops abroad and the military action, though in the case of Afghanistan the Congress collectively adopted the resolution giving all the powers of the military action and the power of the purse to take action against Afghanistan.

HAITI: “Operation Uphold Democracy”

It was the first black independent republic in the New World. It was the richest island in the Caribbean. Today, it is the poorest country in the Western Hemisphere and one of the poorest in the world. Operation Uphold Democracy, the misnomer

⁵ Maureen Morales-Taft, “Haiti: Issues for Congress”, CRS Issue Brief for Congress, (Congressional Research Service, Library of Congress, November 21, 2001). p. 1-9.

that was used by the United States for the military intervention in Haiti gained prominence in the post cold war political lexicon, reflecting the eminence of the advocates of democratization in the post Cold War. Clinton was the first US President to appeal for the permission to intervene from the UN but not from the US Congress, many members of which were opposed to the plan.

Operation Uphold Democracy began in September 1994 with the deployment of the U.S.-led Multinational Force. The operation officially ended on March 31, 1995 when it was replaced by the United Nations Mission in Haiti (UNMIH). However, a large contingent of U.S. troops (USFORHAITI) participated in the UNMIH until 1996. The operation was originally planned as a forced invasion but it became a permissive entry operation.

The US-led military operation in Haiti had unfolded with minimal violence and few casualties. That factual proposition—which is necessarily subject to revision—has important ramifications under both US constitutional law and international law. On the constitutional level, the avoidance of hostilities defused what became a confrontation between the President and Congress.

On the international level, doubts in some quarters about the legitimacy of a forcible intervention, although not entirely allayed, were somewhat quieted with the achievement of a negotiated solution, which enabled US troops to bring about the return to power of President Aristide without having to shoot their way into Haiti.

The Clinton administration's stand on the promotion of human rights and democracy abroad drew criticism from several quarters. Some criticized the President for lacking the courage of his repeated conviction that America should

take an active role on behalf of these principles; not even the intervention in Haiti satisfied them he finally found his voice in foreign affairs. Others, on the contrary, fervently regretted that he had such convictions and hoped that the Haiti involvement might leave him chastened.⁶

As the administration, the Congress and the American public was debating the issue of intervention in Haiti, according to Ambassador Dobbins, Special advisor on Haiti, was of the opinion that US should examine the trends of the peacekeeping operations in the past rather than focusing on the “no more Somalias” debate.⁷

The United States requested the authorization from the UN because this administration did not want other regional powers to think they could have free rein in their supposed sphere of influence *without* UN sanctions. Additionally, because Aristide had requested the military option and therefore Clinton could claim that the operation was not a request for war, and therefore, could legally avoid Congressional involvement in his decision.⁸

Context and Background:

From the perspective of US foreign policy, Haiti over the past 200 years has fit into a pattern of a metaphorical accordion: sometimes large and sometimes small. Furthermore, there have been times when the accordion’s bellows have opened very wide. If nothing else, geography - that is, Haiti’s proximate location to the US - demanded that American policy-makers watch their southern neighbor closely

⁶ Tony Smith, In Defense of Intervention, Foreign Affairs, Volume 73, Number 6, November/December 1994. p. 34-35.

⁷ Ambassador James F. Dobbins (Special Advisor on Haiti, Department of State), Haiti: A Case Study in Post Cold War Peacekeeping, Remarks at the ISD Conference on Diplomacy and the Use of Force, Vol. II, No. 1, October 1995 in <http://gulib.lausun.georgetown.edu/query.html>.

⁸ Karin von Hippel, Democracy by Force: US Military Intervention in the Post-Cold War World (New York: Cambridge University Press, 2000). P. 101.

and maintain at least a minimal engagement. At times, American policy makers have watched Haiti with deep concern over the impact of developments there on the US. Other times, American engagement in Haiti has evolved far beyond observation to direct intervention, most notably during the 19-year US military occupation of 1915 to 1934. Since the late 1970's brought the first significant wave of Haitian boatpeople onto the beaches of South Florida, migration has been a "hot rail" of US-Haiti policy. To keep from being burned, a succession of administrations – from that of Ronald Reagan, through those of George H. W. Bush and Bill Clinton, to the current administration of George W. Bush - viewed Haitians fleeing by boat as unwelcome economic migrants and not political refugees.⁹

For the Clinton administration, neighboring Haiti was certainly a wide-open accordion, receiving attention highly disproportionate to its size and to other global issues. This attention to Haiti underscores not just the country's dominance as a policy issue, but also that the approach toward Haiti under Clinton was one of direct, and sustained, engagement at the highest levels of the US government.

Haiti, the poorest nation in the western hemisphere has had the history that had been one of the political and economic turmoil, and the previous decade had been no exception. Its history is also marked by the political violence and US intervention. In 1915, the United States ordered the marines to occupy Haiti out of the concern for wide spread civil unrest and US business interests. US troops left nineteen years later without establishing any sort of democratic foundation, and the country reverted to chaos with the army emerging as the dominant faction.

⁹ Dr. Robert Maguire, US Policy towards Haiti: Engagement or Estrangement? A publication of Haiti Program, International Affairs, Trinity College, Number 8, November 2003. p. 2-5.

Elections were finally held in 1956, and Francois 'Papa Doc' Duvalier won. He stayed in the office until his death in 1971 and after his death his famously unintelligent son, Jean-Claude or 'Baby Doc' assumed the control at the age of nineteen, reinforcing and consolidating his father's repressive style of rule. Baby Doc adopted the policies that finally led to his overthrow in 1986. Although US eventually facilitated the departure of Jean-Claude Duvalier in 1986 and continued to support the interim governments partly out of the belief that they were pursuing democratic policies and genuinely wanted to hand over power to an elected civilian government. The support of the US was also stemmed from the fear of the spread of communism in the region, particularly emanating from neighboring Cuba. The continuous barrage of verbal and economic pressure from the US government finally led to the elections in Haiti in 1990 in which a young priest Aristide, a radical populist won with the 70% of the national vote.¹⁰

Haiti's current conflict began with the country's first free and democratic elections, held in 1990, which brought to power President Jean-Bertrand Aristide, a strong critic of previous dictatorship. After less than nine months Aristide was overthrown by a military coup. Since that time US along with the support from the UN and the Organization of American States (OAS) has imposed increasingly stringent economic sanctions on Haiti in an effort to force the military regime from power and restore President Aristide. Haiti's constitutionally elected government lasted seven months before an army junta overthrew Aristide. Aristide simply lacked the political manipulative talents used by Haiti's power brokers. The critical factor subverting Aristide was the fear of Haiti's traditional rulers that if Aristide remained in power, he would abolish their source of power and wealth. Aristide's

¹⁰ Ambassador James F. Dobbins (Special Advisor on Haiti, Department of State), Footnote no. 7, P.98.

most tragic mistake was to appoint Lt. Gen. Raoul Cedras, who would engineer Aristide's overthrow in September.¹¹

In such a scenario, the division within the US Congress over intervention in Haiti illustrates the lingering dispute over the Presidential war powers. A brief but succinct portrayal of the debates in the Congress is thus included in this chapter to elucidate the impact on Presidential actions.

Internal Divides In The Congress

Concerns:

In October 1993, as the US ships were being sent to Haiti to enforce the UN trade embargo, some members of the Congress were concerned that Congress had not authorized or been consulted on the action. The deployment of these troops has raised questions regarding whether Congress should insist on an authorization vote before an invasion is carried out under its war powers.

The Clinton White House continued to struggle with its policy towards Haiti in 1994, as it came under increasingly harsh attack from the African American leaders and the other supporters of Haiti.¹² After a hard internal debate the administration adopted the policy of increasing the economic pressure on the Haitian military. With the UN approval to the US resolution and imposed a near-total trade embargo on Haiti. Two days later Clinton replaced the summary forced repatriation of boat people with a new policy that called for the hearings aboard US

¹¹ Lester H. Brune, The United States & Post Cold War Interventions: Bush and Clinton in Somalia, Haiti & Bosnia 1992-1998 (California: Regima Books, 1998). P. 45-46.

¹² Congressional Black Caucus, "Letter to the President Regarding the Policy Towards Haiti" (unpublished) quoted in Mark Peceny, Democracy at the point of Bayonets (Pennsylvania: University of Pennsylvania Press, 1999). P. 166.

ships or in a third country. Clinton also appointed former representative William H. Gray III (D-Pa., 1979-91) as special envoy to Haiti.¹³

At a House Foreign Affairs Committee hearing in June 1994, Congressman Robert Torricelli (NJ-D) sought a commitment from special envoy Gray that the administration would seek prior Congressional notification of or authorization for an invasion. Gray avoided making such a commitment, saying that only the President would act in compliance with the War Powers Resolution. The War Powers Resolution requires the consultation with the Congress “in every possible instance.” It also requires the President to report troop deployments in certain circumstances, triggering in some cases a time limit for their remaining without Congressional authorization. Other members at that hearing and in floor debates expressed concern that the decision to invade was not just under consideration, but had already been made. This was in response to the statement made by gray to the committee that “military option was on the table.”¹⁴

Subsequently Congressional leaders and Administration officials negotiated an agreement, passed as the part of the FY 1994 defense appropriations bill, that expressed the sense of the Congress that no funds should be obligated or expended for US military operations in Haiti unless:

1. The operations were authorized by the Congress;
2. They were necessary to protect or evacuate United States’ citizens;
3. They were vital to the national security, and there was no time to receive Congressional authorization; or

¹³ Library of Congress, Haiti Intervention, Congress and the Nation: A Review of Government & Politics, Vol. IX, 1993-96 (Washington D.C.: Congressional Quarterly Inc., 1998) p.195-197.

¹⁴ Footnote No. 12. p. 167.

4. The President submitted a report in advance that intended deployment met certain criteria.¹⁵

The Senate approved the amendment after rejecting another amendment that would have required Congressional authorization prior to any US military actions in Haiti.

Opposition:

Due to the increasing violence in Haiti people began fleeing to the United States on boats. The Senior Bush Administration concluded that it was necessary to stop the flow the “boat people” to Haiti. This policy was criticized by some as inhumane and racist. Presidential candidate Bill Clinton was among the critics but as the inauguration day approached he reversed himself. With in two years, Clinton administration in June 1994 amended its policy to allow all Haitian boat people to be processed at the US Naval Base at Guantanamo Bay, Cuba and then taken to third country.¹⁶

Many members of the Congress in opposition to the US intervention in Haiti believed that administration had failed to identify a vital United States’ national security interest in Haiti, or a cause that would be worth the loss of American lives. They cite as precedent the US military intervention in Haiti in 1915, which resulted in US forces remaining there until 1934 to supervise the government and maintain

¹⁵ US Congress, Senate Committee on Appropriations, Hearings on Department of Defense Appropriations for Fiscal Year 1994, 103rd Congress, 1st Session, 20-22 April and 28-29 April, 1993.

¹⁶ Library of Congress, US Policy towards Haiti, Congressional Digest, Vol. 73, no. 8-9, August-September 1994, p.194.

public order. Some had also questioned Aristide's commitment to democracy and wisdom of fighting to save his presidency.¹⁷

The Congressional opposition to an invasion was extraordinarily broad. Although conservative Republicans, who branded Aristide as a mentally unstable radical, had been the most vocal critics of restoring him to power, the opposition included lawmakers from every point on the political spectrum. Sen. William during September 14 debate captured the restive Congressional mood, when he said: "I would like to take this opportunity to send a succinct message to send a succinct message to President Clinton concerning the projected invasion of Haiti: Don't do it."¹⁸ Many critics suggested that Clinton's Haiti policies had been dictated more by domestic political concerns—placating the Black Caucus and staving off an unpopular refugee influx—than by US security interests.

Despite the thrashing from liberals and conservatives alike, Clinton moved towards military intervention in Haiti. Clinton listed several justifications for the mission: to stop human rights abuses by Haiti's military; to restore Aristide to power; to prevent a new wave of refugees; and to uphold the international credibility of the United States.

As the refugee problem mounted, the Clinton administration stepped up its efforts to persuade Haiti's military leaders to restore Aristide and stop the refugee flow. Since October 1993, Clinton's options regarding Haiti were not only limited by divisions in the executive branch but also by the Congressional opposition to military intervention. Excepting the Black Caucus, most members of the Congress

¹⁷ Ibid. p. 196.

¹⁸ Ibid. For a detailed account see US Congress, Senate, Committee on Armed Services, Hearings on The Situation in Haiti, 103rd Congress, 2nd session, 23rd June (US GPO, Washington D.C.), 1994. In particular, statements by Senator Hatch (R-Utah) and Carl Levin (D-Mich) illustrated the extent of congressional opposition to President Clinton.

were opposed to sending US forces to Haiti. The Senate unanimously approved a non-binding resolution that the President needed Congressional approval to invade. However, as Clinton became inclined towards military intervention, Congressional leaders were reluctant to interfere.¹⁹

Support:

Explaining his decision to return all the Haitian boat people to the third country, Clinton later said that the procedure would be temporary one designed to protect the lives of the Haitian people, who might otherwise drown. He pledged to improve procedures for Haitians to apply for political asylum from within Haiti.²⁰ Clinton's decision won applause in some quarters, including from many Florida lawmakers who feared a huge influx of Haitian boat people. Some democratic members who had strongly attacked the Bush repatriation policy generally refrained from criticizing Clinton's decision. They appeared reluctant to criticize a new Democratic President, and many were encouraged by what they saw as a new commitment to resolve Haiti's problems.²¹

But their hopes—and Clinton's—for a quick solution were not realized, and patience with the administration's policies soon wore thin among some on Capitol Hill. Although Clinton's policy towards Haitian boat people was upheld by the Supreme Court in an 8-1 decision (*sale v. Haitian Centers Council Inc.*) on June 21, 1993, it irritated the relations between the White House and the initially

¹⁹ Lester H. Brune, The United States & Post Cold War Interventions: Bush and Clinton in Somalia, Haiti & Bosnia 1992-1998 (California: Regima Books, 1998). P. 53.

²⁰ William J. Clinton, Clinton offers justification for invasion of Haiti, Congressional Quarterly Weekly Report, number 52, September 17, 1994, p. 2605-2606.

²¹ See Statement by Senator Clairborne Pell (D- R.I.) in Congressional Record, 104th Congress, 1st session.

restrained Congressional Black Caucus. Congressional Black Caucus was the group of people in Congress who were sympathetic to the cause of Haiti.²²

As the supporters and critics continued to debate it was clear that there was a little consensus in Congress about how to respond to the Haitian crisis. While few supported the US military invasion to restore democracy and return Aristide to power, while many were reluctant to rule it out. Those who were in favor of preserving the military intervention option were concerned that the sanctions were inflicting the lasting damage that will make it harder to rebuild the Haitian economy and democratic institutions. They also believed that the United States had moral and practical reasons to support Haiti in restoring order and democracy.

The elderly judge appointed as the President by the Haitian military at that time clearly indicated its determination to ride out the toughened UN economic sanctions that “fueled new demands from a disparate coalition of some Congressional Black Caucus members, along with a few other liberal democrats and some Florida lawmakers that Clinton consider using force to remove the Haitian military.”²³

Amendments adopted by Congress:

Clinton’s decision in 1993 to dispatch navy warships to Haiti waters set off a heated battle in the Senate over the ground rules for US intervention abroad, but the Senate drew back from a constitutional challenge over war making powers, as it did in the debates on Haiti policy in 1994.

The Senate on October 21, 1993, during consideration of the fiscal 1994 defense appropriations bill (HR 3116), rejected 19-81 an amendment by Jesse Helms, R-

²² Footnote no. 12, p. 196.

²³ William J. Clinton, Footnote No. 18, p. 197.

N.C, that would have required prior Congressional authorization to send US forces into Haiti except to protect and evacuate US citizens.²⁴

The Senate then adopted, 98-2, a non-binding amendment sponsored by a majority leader George J. Mitchell, D-Maine and Minority Leader Bob Dole, R-Kan. It expressed the sense of Congress that the US military should not operate in Haiti unless Congress granted prior approval or the President sent Congress a detailed report before the deployment. The house accepted the non-binding amendment when it approved the Conference report on HR 3116 (H Rept 103-339) Nov. 10. The Senate cleared the bill later that day, and Clinton signed it into a law (PL 103-139) on November 11.²⁵

In 1994 it seemed that President Clinton was resolute towards ordering a military invasion of Haiti, concern intensified on Capitol Hill. Both the moderate and conservative lawmakers from both the parties in the House supported a non-binding amendment to the House fiscal 1995 defense authorization bill (HR 4301) opposing the use of force in Haiti. The amendment, offered by Porter J. Goss, (R-Fla.), was adopted 223-201. But the statement was nullified when the House voted on the question the second time and rejected it, 195-226.²⁶

Several attempts in 1994 by the Senate republicans proved unsuccessful to force Clinton to seek prior authorization. The Senate voted in favor of a milder, non-binding Mitchell amendment urging the President to seek Congressional approval before committing troops to Haiti. In a later round on HR 4426 the Senate agreed

²⁴ Library of Congress, Haiti Intervention, Congress and the Nation: A Review of Government & Politics, Vol. IX, 1993-96 (Washington D.C.: Congressional Quarterly Inc., 1998) p.195-197.

²⁵ Ibid. pp. 196-197.

²⁶ Dr. Robert Maguire, US Policy towards Haiti: Engagement or Estrangement? A Publication of Haiti Program, International Affairs, Trinity College, Number 8, November 2003. p. 6-9.

to 'kill' an amendment offered by Dole whose real objective, in view of the members on both the sides of the aisle, was to slow the momentum towards the invasion. Opponent successfully argued that it would undercut international pressure on the military rulers.²⁷

In an immediate response to the Haiti intervention, both House and Senate adopted nonbinding resolutions supporting the US forces in Haiti and urging a prompt withdrawal. Several weeks later, after an exhaustive, sometimes rancorous debate on Haiti deployment, Congress did little more. The Senate by vote of 91-8 approved S J Res 229²⁸ calling for a "prompt and orderly withdrawal" of US forces from Haiti and chiding Clinton for failing to seek Congressional authorization of the operation. The measure also required Clinton to make detailed reports on the intervention. The House approved, 236-182, an identical resolution. That same day, the House by voice vote passed S J Res 229, and the President signed it into law.²⁹

The lowest common-denominator approach to the crisis attracted broad, if not enthusiastic, support. But it outraged longtime defenders of Congress's foreign policy prerogatives. "We have not approved of the policy, we have not disapproved of the policy," said the House Foreign Affairs Committee Chairman Robert C. Byrd, (D-W.Va.), characterized Congressional action as a "shrug of the

²⁷ Maureen Morales-Taft, Haiti: Issues for Congress, CRS Issue Brief for Congress, (Congressional Research Service, Library of Congress, November 21, 2001). p. 1-9.

²⁸ **Senate Joint Resolution 229** regarding United States policy towards Haiti passed as law on October 7, 1994. A similar **House Joint Resolution** was laid on the table and passed and became a law on October 25, 1994 by 103-423 in <http://thomas.loc.gov/cgi-bin/bdquery/z?d103: SJ00229: @@@L&summ2=m&.htm>.

²⁹ Foot note No. 13, p.195-197.

shoulders in terms of any real assertion of the constitutional role of the Congress.”³⁰

The Haitian case thus clearly revisits the questions whether the Congress has the prerogative to authorize initiation of hostilities. It further demonstrates the need for an affirmative Congressional authorization of new military engagements, not just because the farmers set up such a system but because it remains the best framework for ensuring that the most fateful national decisions are made as widely as possible.³¹

As one study in a Law Journal argued that “in the case of Haiti, some may believe that military intervention needed no new validation, as it could be seen as just another iteration of longstanding US practices in the hemisphere. But the ‘Monroe Doctrine’ did not purport to set up the President as the sole authority to decide on the uses of force in the hemisphere. President Monroe evidently believed that Congressional participation in invocations of his doctrine was constitutionally required.” The study further points out that the question remains whether the Haitian events can stand as a ‘precedent’ for a strong version of executive powers. In the constitutional sense, according to her, the Haitian incident cannot stand as “precedent” for something that was aborted even as it began, namely the Presidential invasion of a foreign country.

These events raised an important question whether President can legitimately “threaten” force when he is not yet in a proper constitutional posture to carry out the threat in full. In constitutional terms, President Clinton raised the stakes with

³⁰ Ibid.

³¹ Lori Fisler Damrosch. “Agora: The 1994 US Action in Haiti. The Constitutional responsibility of Congress for Military Engagements” American Journal of International Law, Volume 89, number 1, January 1995. Pp. 67-68.

his address to the nation on September 15, 1994, when he announced his determination to remove the Haitian military leaders yet did not ask Congress to approve that decision.³² The extent to which the US led military intervention accomplished any meaningful long-term change in Haiti remained in doubt at the end of the 20th century.

In the Haiti case, the issue was whether the President has constitutional authority to initiate the use of force without the prior authorization of Congress. The strength of the Haiti precedent is enhanced by the clear, focused debate of this fundamental question in Congress, which had ample time and opportunity to act. It chose not to act in a timely fashion, and it chose not to assert its prerogatives to authorize or reject the President's proposed course of action. In the end, after the intervention was carried out, Congress passed a "sense of the Congress" resolution stating that the President should have "sought and welcomed Congressional approval before deploying United States forces to Haiti." In doing so, Congress avoided making both a decision on the use of force and the statement about the constitutional law. Instead, it protected its ability to second guess the President if the things do not turn out so well.³³

AFGHANISTAN

An old admonition states, "Be careful for what you wish for; you may get it." In many ways US policy towards Afghanistan and the late 1990s policy problem of whether to intervene in order to prevent human right abuses in that state are reflective of that admonition.

³² US Department of State, Dispatch, "Statement by President Bill Clinton," Vol. 5, No. 38 (USGPO, Washington D.C.) 1994.

³³ Philip R Trimble. "The President's Constitutional Authority to Use Limited Military Force" American Journal of International Law, Volume 89, Number 1, January 1995. p. 84-87.

The terrorist attacks of 9/11 forced a major redistribution of political power within the United States, shifting unprecedented authority to the Presidency, the military and law enforcement community. In the war against Afghanistan, President Bush received statutory authority from the Congress. President Bush Jr. has responded to the events of September 11 by setting new priorities in foreign policy, and attempting to increase Presidential power within the American political system.

The President sought to prepare Americans for a long struggle against terrorism and issued an ultimatum to the repressive Taliban regime in Afghanistan, which had provided sanctuary in the southern region for Osama bin Laden and his training camps: Hand over the terrorists or “share in their fate”³⁴

Congress in the meanwhile *unanimously* approved \$ 40 billion in emergency funds to conduct recovery efforts and to prepare for military action. Lawmakers also passed (with one dissenting vote) a resolution authorizing the President, in light of the current national security threat, to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks...or harbored such organizations or persons.” Responding to the concerns of some members, the final language ensures that nothing in the measure supersedes the War Power Resolution, which require Congress to authorize the use of US forces or declare war within 60 days before an overseas deployment can be sustained.³⁵

But Bush had vowed to wage a much broader war against terrorism. For the President, the challenge was to sustain long-term Congressional support for an

³⁴ “War on Terrorism” *Congressional Digest*, (Washington D.C.:Congressional Digest Corp.)Volume 80, Number 11, November 2001. p. 257-288.

³⁵ *Ibid.* p.257.

entirely new kind of war against a shadowy, stateless enemy. Many have argued that President Bush would be wise to find ways to make Congress a partner and stakeholder in the planning and conduct of this war.³⁶

“In the wake of the 9-11 terrorist attacks on the World Trade Center and the Pentagon, Congress in its wisdom has seen fit to revive this unconstitutional, shameful fraud of a statute and set it forth as a standard for Presidential behavior in the war on terrorism. Keeping in mind the recent murderous attacks on US and to put the divisiveness of Vietnam behind, a careful reading of the authorizing statute passed overwhelmingly by Congress on September 14 leaves some doubt. In addition to the repeated references to the War Powers Resolution, the President is authorized to use not "necessary" force, but "necessary and appropriate" force. This is not boilerplate language for declarations of war or other statutory authorizations for the use of military force. It sounds instead like the kind of ambiguous, equivocal terminology that someone might slip into a statute, so that if the President's overwhelming popularity at present slips in the future, or something goes wrong in the struggle against terrorism, legislators will be able to absolve themselves of all complicity by proclaiming that the President's conduct of the war was "inappropriate" and thus "illegal”” Argued Professor Robert F. Turner in his National Security White Paper *“The War Powers Resolution: An Unnecessary, Unconstitutional Source of “Friendly Fire” in the War Against International Terrorism?”*³⁷

³⁶ Steven J. Nider. “Congress and the War on Terror” in http://www.ndol.org/blueprint/2001_nov-dec/24_congress_war_terror.html.

³⁷ National Security White Paper by Professor Robert F. Turner. “The War Powers Resolution: An unnecessary, unconstitutional source of ‘friendly fire’ in the War against International Terrorism?” in <http://www.fed-soc.org/Publications/Terrorism/warpowers.htm>

Context and Background:

Afghanistan became unstable in the 1970s as both its communist party and its Islamic movement grew in strength and became increasingly bitter opponents of each other. On December 25, 1979, 10,000 soviet troops crossed the border into Afghanistan and began the occupation of the country that would initiate 20 years of internal conflict and would profoundly affect the growing militancy of the radical Islamic groups throughout the world. During the occupation, the United States provided a variety of overt and tacit assistance to the anti-Soviet rebels, or *mujahideen*. Once the Soviets withdrew from Afghanistan, US strategic interests in Afghanistan ended and the vacuum created by the disengagement of both the superpowers created the conditions which produced the Taliban and Al-Qaeda.³⁸

Afghanistan's civil war continued after the Soviet pull out in 1989 as various mujahideen factions fought to fill the power vacuum. In the past four years, a group called Taliban gained the control of most of Afghanistan. The Taliban, whose name means "students" have their roots in the Pakistan based seminaries established for Afghan refugees during the Soviet occupation. The Taliban have angered the international community by sheltering the Saudi-born terrorist Osama bin Laden, who was linked by the US government to the bombings of the two US embassies in Africa in August 1998. Later in the same month, US cruise missiles attacked training sites in Afghanistan associated with bin Laden. The Taliban insisted that bin Laden had nothing to do with the terrorist attacks that killed more

³⁸ Patrick Hayden, Tom Lansford & Robert P. Watson. "America's War on Terror" (Burlington: Ashgate, 2003). p.3-5.

than 300 people and wounded another 5,000, but they have only belatedly indicated a willingness to help clarify his possible role.³⁹

With the 1991 agreement to stop arms shipments and military supplies, the US policy towards Afghanistan shifted back to its more traditional benign neglect. The United States supplied humanitarian aid, but did not provide any substantial support.

The trend toward the growing recognition of the security threat posed by al-Qaeda accelerated with the attack on the *USS Cole* in October 2000. Within the administration, Secretary of State Madeline Albright and Secretary of Defense William Cohen passed strongly for the military action against bin Laden and his terrorist network, Al-Qaeda while Attorney General Janet Reno strongly dissented. As early as 1993, Madeline Albright outlined the use of force by the US in a post Cold War world in an address to the National War College, (NDU, Washington D.C.). The unwillingness of the Clinton administration to take strong action against Al-Qaeda or to exert significant pressure on the Taliban regime emboldened bin Laden that would lead bin Laden to plan even more daring and powerful attacks on the United States, while it encouraged the Taliban to be dismissive and contemptuous of US threats in the aftermath of the September 11.⁴⁰

US policy in the Afghanistan has been multifaceted although in the three years prior to the September 11 attacks, US approach had largely narrowed to ending the al-Qaeda leadership and infrastructure there. Both the executive branch and the Congress have become highly critical of the Taliban well before the September 11

³⁹ "War on Terrorism" Congressional Digest, (Washington D.C.:Congressional Digest Corp.)Volume 80, number 11, November 2001.p. 261.

⁴⁰ Patrick Hayden, Tom Lansford & Robert P. Watson. America's War on Terror (Burlington: Ashgate, 2003). p. 13-14.

attacks. A Sense of the Senate Resolution (S. Res. 275) that resolving the Afghan civil war should be a top US priority passed that chamber by unanimous consent on September 24, 1996. A similar resolution, H.Con.Res. 218 passed the House on April 28, 1998. After September 11, legislative proposals became more adversarial towards Taliban.⁴¹

Divides and Eventual Consensus

Like the international law, US domestic law also leaves the President room for the action while counseling restraint. Significantly in authorizing the President to respond, Congress did not declare the war, which it has done only five times in the US history and thus did not place US in the legal state of war. Such a declaration would have triggered a series of extraordinary statutory powers that authorize the President in times of declared war to seize property, businesses and manufacturing facilities, to restrict otherwise lawful political activities, and to obtain wire traps without a court order. Nor has Congress declared a formal state of national emergency, which would have vested additional statutory crisis powers in the President. Instead, seven days after the attack, it announced that the September 11 attacks “pose [d] an unusual and extraordinary threat to the national security and foreign policy of the United States” that warrants giving the President broad statutory powers to respond.⁴²

Immediately following the September 11, 2001 terrorist attacks on the United States, Congress embarked on a new agenda, setting aside, for the time being, all other pending matters. Both Republicans and Democrats took up a range of

⁴¹ Kenneth Katzman. Report for Congress, Afghanistan: Current Issues and US Policy (Congressional Research Service, Library of Congress, January 28, 2003). P. 25-30.

⁴² Harold Hongju Koh. “Preserving American Values: The Challenge at Home & Abroad” in Strobe Talbot & Nayan Chanda (ed.). The Age of Terror: America & the World after September 11 (New York: Basic Books & Yale Center for the Study of Globalization, 2001). p.155-156.

proposals relating to America's new war on terrorism. The decision was unanimous and there was no debate in the Congress over America's reaction to the September 11 terrorist attacks.

Congress quickly passed emergency relief and retaliation funds and a resolution granting President George W. Bush authority to use military force. Other measures—including some proposed by the President in a September 20 address to a joint session of the Congress—contain more controversial elements and underwent more deliberative legislative scrutiny.⁴³

Emergency Appropriations: On September 14, 2001, Congress unanimously approved a \$40 billion emergency appropriations measure (H.R. 2888, signed into law as P.L. 107-38) the measure gives the President the authority to spend \$20 billion immediately to recover from and retaliate against the attacks and gives Congress the primary responsibility for allocation the other \$20 billion.⁴⁴

Use of Military Force: Congress also approved on September 14 a resolution (S.J. Res. 23) approving the President's plan to use the armed forces to find and retaliate against those responsible for the attack, but included language making it clear that Congress reserved the Right to review the military effort in the future. The resolution cleared Congress with only one dissenting vote and was signed into law as P.L. 107-40.⁴⁵

⁴³ "War on Terrorism" *Congressional Digest*, (Washington D.C.:Congressional Digest Corp.)Volume 80, Number 11, November 2001. p. 270.

⁴⁴ *Ibid.* pp. 271.

⁴⁵ *Ibid.* pp. 272.

Though the funds were unanimously approved but still various senators in the Congress warned the President and asked them to consult the Congress appropriately to use the funds and the forces.

Senator Russell Feingold (Democrat, Wisconsin) compared this war on terror with the war powers resolution and lauded the President's efforts, "The President has already shown respect for the War Powers Resolution by asking for the consent of Congress before ordering U.S. military troops into Afghanistan, a constitutionally mandated step that his most recent predecessors ignored. The Joint Resolution adopted by Congress and signed into law by the President last year provides the President with statutory authorization to use all necessary and appropriate force against those responsible for the September 11 atrocities. This includes authority to prevent future attacks by responding with force against any nations, organizations or persons responsible for planning, authorizing, aiding or harboring the terrorists who were responsible. But to preserve our constitutional framework and the popular resolve that has lent so much to our success to date, the President should acknowledge that the authorization does not give him a blank check. As laudable as it might be for the U.S. to root out all bad actors around the globe, such action is outside the scope of the use-of-force resolution that Congress passed, and beyond our financial means."⁴⁶

According to Senator Feingold, "Given the unprecedented nature of the threat confronting us, we must ensure our most powerful and constitutionally unified response to the new threats confronting us at home and abroad. And the effectiveness to date of our military campaign in Afghanistan demonstrates that our

⁴⁶ Sen. Russell Feingold. "War Powers and War on Terrorism" in <http://www.counterpunch.org/feingoldwarpowers.html>.

nation and our military operate at the zenith of moral, political and military might when they act under constitutional authority and with a defined democratic mandate.”

During the debate in the Congress, David Obey (Democrat, Wisconsin) pointed out that the Congress has essentially two powers. First is the War Powers and the second is the power of the purse. But in the times today, the power of the Congress to determine when America go to war has been eroded.⁴⁷

But to acknowledge that US law gives the President broad discretion to respond does not mean that there are no constraints on his action. Less than a month later after the attacks, after the details from a classified intelligence briefing on Capitol Hill were apparently leaked, President Bush briefly overreacted by restricting top-secret Congressional briefings to eight specified Congressional leaders. But the September 11 attacks cannot be shoehorned into the language of “war” to give US Presidents ample authority to deal with global terrorists and their state supporters. For under the Law of Nations clause Article I, Congress has abundant constitutional power to punish the perpetrators of the September 11 attacks for what they are: international criminals and violators of the law of all civilized nations.⁴⁸

The most serious failure of oversight has been in the case of Afghanistan and that of the Congress. Despite unanimously granting authority to the President to take military action against the nation or individuals responsible for the September 11 attacks for the most part, Republicans and Democrats in the House and Senate

⁴⁷ Footnote no. 34, p. 282.

⁴⁸ Harold Hongju Koh. “Preserving American Values: The Challenge at Home & Abroad” in Strobe Talbot & Nayan Chanda (ed.). The Age of Terror: America & the World after September 11 (New York: Basic Books & Yale Center for the Study of Globalization, 2001). Pp. 145-169.

have abandoned their constitutional duty to question, to challenge, to honestly advise and cautiously consent to war-making by the executive branch. Only a handful of members have spoken out forcefully about this war's lack of focus and disturbingly high level of civilian casualties. Of these lonely voices of reason, the loudest is that of U.S. Rep. Dennis Kucinich, (D-Ohio), the chair of the Congressional Progressive Caucus.⁴⁹

⁴⁹ John Nichols. "Where's the Debate over Continued Bombing of Afghanistan?" in <http://www.commondreams.org/views02/0802-06.htm>

CHAPTER – III

PRESIDENTIAL PREEMINENCE AND ACCOMMODATION IN CASE OF HAITI AND AFGHANISTAN

The issue is familiar: whether the President has the constitutional authority to initiate the use of force without the prior authorization from the Congress. Despite the significant increase in their power over the course of the twentieth century, Presidents still cannot always prevail in the political system. Part of this “weakness” of the Presidency is due to congressional reassertations of power and to the reforms of the 1970s, but a larger cause is the basic nature of the system of separated powers. This chapter highlights the developments related to the presidential pre-eminence and dominance over Congress in the areas of foreign policy making and war making.

Presidential ascendancy—the increasing control of the government by the President—has developed as an outgrowth of three overlapping and cumulative trends. The first is the institutionalization of the presidency beginning in the early twentieth century. The second is the centralization of control of executive branch in the White House beginning in earnest in the 1960s. The third is the harnessing of the presidential apparatus to respond to the personal political interests of the presidents, sometimes at the expense of the longer term institutional interests of the presidency, a process often referred to as ‘politicization’. Presidential ascendancy has generally been aided and abetted by delegation of authority from Congress, though at times Congress has tried to regain some of the power it relinquished to

the presidents.¹ Put another way, growth in communication technology and military technology and judicial action and legislative inaction have constituted to give the Presidents power to make war.

President's pre-eminent position in the foreign affairs government derives in part the authority granted in the constitution. It also flows from the combination of judicial interpretation, legislative acquiescence, personal assertiveness, and custom and tradition that have transformed an otherwise coequal branch of the federal government into what remains arguably the most powerful office in the world. There is a widely shared consensus that the international environment demanded an active American world role contributed to the belief that strong presidential leadership was needed. Thus the increased power of the presidency went largely unchallenged.²

Various resolutions were passed by the Congress after World War II in which Congress gave the President broad power to deal with external conflict situations, fostered Presidential supremacy by demonstrating a unity of purpose between the President and the Congress. Together these factors eventually gave rise to what Arthur J. Schlesinger, Jr. (1973) labeled as "imperial presidency."³ In his view, swelling of the Presidential bureaucracy, the pressures of the Cold War and the demands of secrecy in the name of the 'national security' has produced a President who is increasingly isolated and unaccountable. Other reasons were the

¹ James P. Pfiffner, "Divided Government and the Problem of Governance" in James A. Thruher (ed.) Divided Democracy: Cooperation and Conflict between the President and Congress (Washington D.C.: CQ Press, 1991). p. 39.

² Charles W. Kegley & Eugene R. Witkopf. American Foreign Policy: Pattern and Process (ed.).(New York: St. Martin's Press, 1996).p. 340.

³ Ibid. p. 341.

centralization of decision-making in war and peace and decay in the traditional party structure also resulted in the imperial presidency.

As the president's power and preeminence grew to seemingly excessive proportions, Congress became uneasy. Of particular concern to the Congress was the question of control over America's commitments and the President's war powers. Through the War Powers Resolution they tried to make it difficult for the President to initiate war single-handedly and to otherwise circumscribe their foreign policy latitude. None removed the president from his pivotal position in the foreign affairs government, however. Thus power remains concentrated in the White House. The Supreme Court has never tried to resolve the executive-congressional war powers dispute because it considers the issues involved as political rather than legal. However as some scholars point out, the Supreme Court has extended to the President the broad discretionary powers in the foreign affairs even while it has limited or denied the President the same latitude in the exercise of the powers related to domestic affairs.⁴

Some theorists opine that there is a "Dual Presidency" created by the legislative branch and written into law by the Supreme Court. This formulation provides that the powers of the President are strongly divided between those he can exercise internally and those that may be externally. The resulting dichotomy of the "Dual Presidency" creates an "external president" who is the most powerful person controlling the army, diplomatic core, economy etc. the "internal President" while still quite powerful, is merely head of a co-equal branch of the government, sharing his power with the Congress and to some extent the states. In sum, the basic idea of

⁴ Elder Witt. "Guide to the Supreme Court" in Congressional Quarterly, (Washington D.C., 1990) p. 200.

the dual presidency is that there exists “two distinct presidencies.”⁵ What it means in practice is that laws which dictate what the President must do, then he may act within the country, if the law does not say he may something, then he may act outside the country. Thus, when acting as the external President, the executive must cite his source of power, when acting as an external one, all he needs is to prove that there exists no constraints on his actions.

It is in this context this chapter assesses the War Powers Resolution and the cases of Haiti and Afghanistan. As explained earlier the passage of the resolution brings out how this dichotomy was disturbing the Congress and the resulting developments in the Executive-Congressional relationship in this regard. Many ‘executivists’ believed that in order to solve the deadlock in the system it is necessary to give more power to the President and less power to the Congress. Over the years Congress had come under attack for a variety of reasons, and some of the reasons have stemmed from the disagreements with the individual presidents. But those who favor giving more power to the President have not fully accepted the legitimate role that the framers gave Congress in domestic and foreign policy. The reason that Congress should continue to play a major role in national policy, domestic and foreign policy, is not that it is best equipped by structure or disposition to make decisions, nor that it always wiser than the President. One of its primary functions is to act as a constraint on the president and to raise constituency concerns that the president might otherwise ignore. The framers intended to sacrifice some efficiency in order to prevent abuse of power.⁶

⁵ Aaron Jacobs & Gillian Mueller, Selection from the Dual Presidency and the Role of Supreme Court in the Internet edition <http://www.trincoll.edu/zines/papers/1997/dual.html>.

⁶ Charles W. Kegley & Eugene R. Witkopf, Footnote No. 2, p. 52-55.

Rather than directly challenging the War Powers Resolution, all recent administrations have been content to criticize Congress's interference, to reject the resolution publicly, and to define a narrow role for Congress in national security policy. The Presidents have acknowledged Congress's right to declare war, mindful that such declarations are essentially obsolete. They recognized, however, the Congress's power of the purse, asserting though that power is circumscribed. Clearly, the Presidency has developed the theory of constitutional mandate to govern practical and optional realities of war making. However, at critical times, Congress has been subordinate to the Presidential Directives. In particular, the "War on Terror" illustrates how in recent times, Congress has changed the way it deals with war making powers.

HAITI

The US intervention in Haiti is illustrative of the development of the constitutional common law of presidential power. In the view of many scholars, the Haiti experience further confirms the constitutional authority of the president to deploy forces into hostile foreign environments and to initiate the use of force without prior, specific congressional authorization. The facts of the situation limit the "precedent" to the small-scale interventions where the risk of major military engagements, either initially or upon escalation, is negligible.⁷

The cases of large-scale hostilities, like Korea, Vietnam and Iraq, are quite different in fact and perhaps also in law. But the Haiti "precedent" coupled with the recent interventions in Grenada and Panama and innumerable examples earlier in the history strongly supports the use of unqualified presidential power to carry

⁷ Philip R. Trimble. "The President's Constitutional Authority To Use Limited Military Force" in American Journal of International Law, Volume 89, Number 1, January 1995. p. 84.

out small-scale military operations in support of foreign policy goals. The strength of the Haiti 'precedent' is enhanced by the clear focused debate of this fundamental question in Congress (as well as in the media and among the informed public), which is purported to have ample time and opportunity to act. To some, the Congress chose not to act in a timely fashion, and it chose not to assert its prerogative to authorize or reject the President's proposed course of action. The Congress has failed to discover constitutionally sound ways to fulfill its obligations. Instead, it has ignored and avoided those options, and substituted less risky alternatives. This has moved Congress from exercising its significant powers during an event or crisis to waiting to see how the event or crisis plays out. In one of the most crucial policy areas, the conduct of war and the use of force, Congress has abdicated its representational duties. And it has been greatly aided and abetted by the War Powers Resolution of 1973.⁸

In the end, after the Haiti intervention was carried out, Congress passed the "sense of the Congress" resolution stating that the President should have "sought and welcomed Congressional approval before deploying United States' forces to Haiti." In doing so, Congress avoided making both a decision on the use of force and a statement about the constitutional law. Instead it projected its ability to second-guess the President if things do not turn out so well.⁹

After 1994, Clinton was beset on the Haiti issue by the Republicans, who took both houses of Congress only two months after he went into Haiti. He had to exit precipitously, having seemingly accomplished his main objective of stanching the

⁸ Timothy S. Boylan & Glenn A. Phelps. "The War Powers Resolution: A Rationale for Congressional Inaction" in Parameters, Spring 2001. p.109-24 also available in the Internet edition <http://jan.ucc.nau.edu/~phelps/Parameters.htm>.

⁹ Philip R. Trimble, Footnote no. 7, p. 84-85.

refugee flow. The shortsightedness of the right in American politics, evidenced in this case by ideological rejection of Aristide's early pretend-leftism and a visceral attack on Clinton's intervention, may be taken as a given. The right, with control of the White House for more than two years, has shown much less decisiveness and courage than Clinton in addressing the Haiti problem; indeed it has done no more than blindly continue the policy inherited from Clinton.¹⁰

The executive branch claimed the power to intervene, without specific congressional action, on the basis of Presidential constitutional authority. At a news conference on August 2, 1994 President Clinton said, "I have not agreed that I was constitutionally mandated to get [Congressional approval]." The Justice Department's legal opinion claimed that Congress had already acknowledged the President's constitutional authority in earlier legislation dealing with Haiti, and that the War Powers Resolution itself implicitly recognized that the President had authority to act for sixty days. Congressional reaction was equally predictable. As the debate was focused and quite public, that reaction seems especially telling.¹¹

The constitutional debate was foreshadowed in early August, after the President sought, and obtained, the authorization by the UN Security Council to use force against Haiti.

The Clinton administration's policy to promote democracy and peace abroad pleased no one. Some criticized the President for lacking the courage of his repeated conviction that America should take an active role on behalf of these

¹⁰ James Morell. Haiti (1994-96): The Perils of a rush for the Exits in <http://haitipolicy.org/PolicyExchange2.htm>

¹¹ Letter from Walter Dellinger, Assistant Attorney General, Office of the Legal Counsel, US Department of Justice, to Senators Dole, Simpson, Thurman and Cohen (September 27, 1994) available in the Internet edition <http://www.radford.edu/~mfranck/images/490%20seminar/Dellinger/%20opinion.pdf>.

principles; not even the intervention in Haiti satisfied them that he had finally found his voice in foreign affairs. Others, to the contrary, fervently regret that he has such convictions at all and hoped that Haiti intervention would leave him chastened.¹²

Many at that time argued most critically that the Clinton administration needed was to articulate a clear definition of the American self-interest to be served by defending human rights and democracy in place like Haiti.

Since there was general agreement on the merits of the intervention (practically every person was opposed), the debate over Haiti intervention focused on the constitutional law. Senator Specter passionately argued the case for an exclusive congressional prerogative, but lost the vote by thirty-one to sixty-three (Senators McCain, Warner and Rob took the lead in defending presidential power). The debate intensified in September. On September 10, Secretary of State Christopher stated on "Meet the Press" that the President had the constitutional prerogative to invade. Several representatives expressed their belief that congressional approval was constitutionally required, but neither House nor Congress acted.¹³

Clinton engaged in more short "wars," or at least interventions, than any American President since Wilson. Some would argue that the Weinberger/Powell doctrine of certain victory cum superior power cum national interests cum U.S. public support was quickly abandoned because of Wilson and Clinton's common idealism. Although both favored an actively engaged U.S. foreign policy on behalf of democracy and humanity, the Clinton "doctrine" of humanitarian intervention has

¹² Tony Smith. "In Defense of Intervention" in Foreign Affairs, Volume 73, Number 6, November/December 1994. p. 36-38.

¹³ Philip R. Trimble, Footnote no. 7, p. 85-86.

been mostly honored in the breach. The frequent U.S. interventions in Somalia, Haiti, Bosnia, and Kosovo and indirectly in East Timor, Sierra Leone, Liberia, and other UN peacekeeping missions, have been guided by equally compelling considerations: U.S. domestic politics.¹⁴

Opinion polls showed that as many as 66-73 percent of the electorate opposed military action in Haiti; a whopping 78 percent reportedly thought that the President should ask permission from the Congress before invading Haiti. Columnists and editorial writers urged the President to respect constitutional principle and go to Congress in advance. In the weeks leading up to Haitian invasion/operation, President Clinton and his administration affirmed a strong view of the Commander-in-Chief's powers, similar to those claimed by the other presidents. At a press conference in early August 1994, President Clinton said: "Like my predecessors of both parties, I have not agreed that I was constitutionally mandated to get" Congressional approval before undertaking military action. High-ranking officials reiterated this view during September, as the administration and its Congressional supporters maneuvered to avoid a vote in Congress on the question.¹⁵

On September 7, 1994, when President Clinton met with his National Security Adviser and members of the National Security Council to discuss plans for the impending U.S. invasion of Haiti, he was concerned about the problem of obtaining congressional support for the invasion. A major purpose of the meeting

¹⁴ Henry F Carey. "US Domestic Politics and the Emerging Humanitarian Intervention Policy: Haiti, Bosnia & Kosovo" in *World Affairs*, Fall, 2001 also available in http://www.findarticles.com/cf_dls/m2393/2_164/82772072/p1/article.jhtml? Term.

¹⁵ Lori FISLER DAMROSCH. "The Constitutional Responsibility of Congress for Military Engagements" *American Journal International Law*, Volume 89, Number 1, January 1995. p. 59.

was to help the President decide whether to seek congressional passage of a joint resolution authorizing U.S. military action in Haiti. Secretary of State Christopher argued against the President's requesting such a resolution from Congress, holding that, if Clinton took this course of action, he would be encouraging congressional interference with the President's constitutional powers as Commander-in-Chief, resulting in undue legislative restraints on exercise of those powers by Clinton and his successors. At the White House on September 13, President Clinton met with Democratic members of Congress to discuss the Haiti problem and what the U.S.A. should do about it. The meeting, however, was hardly a consultation with Congress or a move to lay the groundwork for an attempt to secure official congressional approval of the President's planned military initiative. The Capitol Hill Democrats attending the meeting were well aware that Clinton had already made up his mind and could not be persuaded to abort his projected invasion of Haiti, regardless of the number and intensity of the complaints uttered by congressional Democrats. The success of the Haiti mission, which was accomplished smoothly and without effective Haitian resistance or mounting American casualties, functioned as a restraint on both Democrats and Republicans in Congress. The President dispatched U.S. combat troops to Haiti and kept them there for over four and a half years. Yet, Clinton's initiation and pursuit of his Haiti policy did not raise a major storm of congressional criticism and protest.¹⁶

Clinton warned the Congress against interfering in what he saw as his authority to decide whether to commit troops abroad or not. In response to a proposal by then-

¹⁶ Dr. Elmon Leroy Way, Jr., How America goes to War: The President American Law, US Military Intervention into Foreign Conflicts in The Progressive Conservatives, An Online Journal of Political Commentary and Analysis, Volume 2, Issue I, June 10-December 31, 1999 available in the Internet edition http://www.geocities.com/way_leroy/ProConVolTwoIssueOnePage7.html.

Senate Minority Leader Robert Dole (R-Kan.) to restrict the president's ability to invade Haiti without congressional approval, Clinton admonished: "I would strenuously oppose such attempts to encroach on the president's foreign policy powers The president must make the ultimate decision" about whether to use U.S. armed forces."¹⁷

Moreover, the Haiti intervention demonstrated that on matters of foreign policy, the Clinton administration would back up its words with action. By toppling Cedras, Clinton showed that his administration meant what it said on foreign policy. After all, if the United States was willing to fight in Haiti--the poorest country in the Western hemisphere, and one with virtually no strategic importance--then presumably it would back up its words anywhere.

Many considered that the Haitian operation has been executed to date in a manner consistent with the constitutional allocation of responsibilities between Congress and the President, and also consistent with the War Powers Resolution. But at the same cannot be said of the situation that would have transpired if the military invasion had proceeded and resulted in actual combat. In the present critical phase of transition to new post-Cold War foreign policies, it is more important than ever that Congress affirmatively act to authorize military engagements when the President determines to initiate combat.¹⁸

The Haitian intervention is more than a precedent confirming the presidential power to use the small-scale military force. If forced to vote, Congress almost certainly would have refused to authorize the action. Given these assumptions, one

¹⁷ Quoted in Jason Sherman, Clause and Effect, *Armed Forces Journal*, September 1998, p. 14 also available in the Internet Edition "Arrogance of Power Reborn: the Imperial Presidency and Foreign Policy in the Clinton Years" by Gene Healy in <http://www.cato.org/dailys/01-20-01.html>.

¹⁸ Lori Fisler Damrosch, Footnote no. 15, p. 61.

could argue that the President's action was undemocratic and therefore illegitimate, or at least that to acknowledge the President's constitution's authority to go to war under the circumstances would be undemocratic and therefore misguided. Proponents of a Congressional prerogative have often argued that congress is the most democratic branch of government, hence the branch that should take the momentous decisions to use military force. The Haiti experience dramatically demonstrates the accountable, and hence quintessentially democratic, nature of presidency. The President and his advisers had discussed the Haiti situation in new conferences, radio addresses, press releases and innumerable other interactions with the interested constituencies. The Haiti precedent demonstrates that important democratic values can actually be served by placing constitutional authority to use limited military force in the hands of the President. It is strange how a President can acquire a passion for foreign policy. The trauma in Haiti has been wrenching distractions from his main business, which is domestic reform. But no sooner did he scent a threat from Congress to his foreign policy powers than Mr. Clinton responded with real feelings.

AFGHANISTAN

The September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon and the abortive attack that resulted in the crash of a jetliner in Pennsylvania resulted in a new and extraordinary emphasis by the Bush administration and Presidency on combating terrorism. Till September 21st, 2001, key administration officials, along with President Bush, namely Secretary of Defense Donald Rumsfeld, and Secretary of State Colin Powell, have repeatedly emphasized that their long-term objective is the destruction of terrorism – a goal to be achieved by the death or apprehension of terrorists, the destruction of their

infrastructure and support base, and retaliation against states that aid or harbor terrorists.¹⁹

For instance, following the violent attacks of September 11 by Al-Qaeda operatives one of the fundamental questions faced by the administration of George W. Bush, as well as by the broader international community, was how best to respond to the threat and reality of terrorism. The Bush administration assumed that the answer was obvious and uncontroversial: resorting to war in order to strike back at the terrorists, as well as those nations suspected to harboring them, was justified. The American commitment to restrain terrorism, however, brought into sharp focus the War Powers in relation to the Presidency. Further, the unfolding of the “War on Terror,” once again brought out the issue of Presidential pre-eminence in taking the country to the war. The main difference in 2001 was the alacrity with which the Congress was largely supportive of the Presidential initiatives. Indeed the absence of severe opposition in the Congress has reinforced the Presidential predilection for increasing his powers. This part of the chapter, therefore attempts to deal with different aspects and ways the Presidents have wielded their often-increased powers in the time of war. It also attempts to highlight the partisan nature of the Congress especially in relation to the President.

In case of Afghanistan the question that arises is that is it always automatic that the power flows to the President in the times of War? In a recent discussion in “Online News hour” on December 24, 2001 historians stated that it is not always automatic. Rather the constitution is quite specific and narrow in enumerating what a

¹⁹ Jeffrey Richelson and Michael L. Evans (ed.). “Volume 1: Terrorism and US Policy”, The September 11 Source Book, National Security Archive Electronic Briefing Book No. 55, dated September 21, 2001 also available in <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB55/index1.html>.

President's powers are. But in fact the constitution didn't anticipate events like September 11. "Yet the Bush administration has thus far failed to elaborate the normative judgments that led them to this answer, so that their justification for resorting to the use of armed force remains incomplete."²⁰

Many commentators have argued that, in this case, Congressional debates were more political rather than serious attempt to clarify their powers. For instance, Congress had discussed the actions that would grant the President the "blanket" authority to take such military actions, as he deems appropriate to deal with the terrorist attacks in the American history. According to this view, this was political—and Washington power politics—posturing. Congress knew well that the American people were going to overwhelmingly support the President's action, so the members of Congress were merely positioning themselves to make it appear that he is acting with powers they have legally authorized. In fact, this view contended that the President does not need Congressional authority to respond.²¹

In contrast, since Vietnam, many scholars and politicians have taken the position that the President can only make war with the authority of Congress. They claim, accordingly, that the Presidents, from George Washington to Bill Clinton, who have done otherwise have acted illegally. But *John W. Dean*, a law columnist, previously served as the Counsel to the President, ("*Examining the President's Power to Fight Terrorism*" in <http://writ.news.findlaw.com/dean/20010914.html> on Friday, September 14, 2001) argues that Article 1, Section 8 of the constitution provides that the President can only make war, and to raise and support military

²⁰ Patrick Hayden, Tom Lansford & Robert P. Watson. *America's War on Terror* (Burlington: Ashgate, 2003). p. 105.

²¹ John Dean. *Examining the President's Power to Fight Terrorism* in <http://writ.news.findlaw.com/dean/20010914.html> on Friday, September 14, 2001.

forces. But in fact, this clause does put the Congress in charge of counter-terrorism, which is an executive function.

The complexity of the question concerning the just use of force—which brings together the moral, legal, political and military issues—cannot be overstated, and its implications are profound with regard to the formulation of the appropriate foreign policy. Debate surrounding the United States' response to the specter of international terrorism necessarily revolves around different conceptions of the national interest and how best to define and defend it. Terrorism has been the subject of numerous Presidential and Defense Department directives as well as executive orders. The willingness and the capacity of United States, as well as other nations, to respond militarily to the form of 'warfare' embodied in international terrorism are therefore open to critical assessment to develop an understanding of how the war on terrorism, and its underlying policy are shaping the world. The United States did publicly declare its resort to force, and did initiate conflict according to the principle of legitimate authority.²²

Vehement supporters of the President's constitutional rights to declare war against terror have in recent times elaborated their contention. Robert F. Turner — a former legal adviser to the Senate Foreign Relations Committee and an experienced legal scholar and practitioner in the national security area. According to Professor Turner, those who question the President's powers need to look at Article II, Section 1 of the Constitution, which vests "the executive Power ... in a President of the United States." He further noted that since John Locke penned his treatises on government, foreign affairs have been considered an executive function. Thus, no declaration of war is necessary for the President to act against terrorists. "The

²² Jeffrey Richelson and Michael L. Evans (ed.), Footnote No. 19.

right of the President to protect the nation against terrorist threats is constitutional rather than statutory in origin," Turner reports. Accordingly, he notes, this Constitutionally-based power "may not be taken away by a simple statute like the War Powers Resolution, any more than Congress could, by statute, vitiate the pardon power."²³

It is clear though that the Congressional institutional powers are still very strong in the field of foreign policy. To illustrate, the Congress does have the power of the purse. While Congress cannot put strings on the money it authorizes, its power to fund is a significant power nonetheless. This power, together with the nature of the undertaking and the need to project a unified front, dictate that "a wise President" will consult with Congress and seek a bipartisan approach. Yet, Congressional financial clout cannot restrain totally the Presidency from responding to national security threats. As all the predecessors of President Bush realized, when it gets down to how, when and where to respond, the President can do whatever he feels necessary — whether the Congress agrees or disagrees. Article II, Section 1 has vested him with that power.²⁴

The September 11 terrorist attacks on New York and Washington fixed the spotlight on the leadership potential of President George W. Bush. While some of his detractors had questioned whether he had the acumen to lead the United States, it did not take long for many observers to acclaim him as a great war time President, highlighting his individual leadership role in the struggle against terrorists. Indeed with a former Secretary of Defense as the Vice-President, another former Secretary of Defense as the current Secretary of Defense, and a former

²³ John Dean, Footnote No. 21.

²⁴ Ibid.

Chairman of the Joint Chiefs of Staff as the Secretary of State, Bush seemed to have picked an ideal set of advisers appearing as cold warriors that were out of touch with twenty-first century realities, after September 11 the Cabinet appeared as quite suitable to turn back transnational terrorism.²⁵

Addressing the joint sessions of the Congress, President Bush declared that “our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated.” He also said “I thank the Congress for its leadership at such an important time... You acted by delivering \$40 billion to rebuild our communities and meet the needs of our military.”²⁶ It clearly indicates that President Bush was merely acting to inform the Congress that he has already made the plan to wage a war against terrorism and that Congress has to be a part of it.

However, some praised the Bush’s individual role in shepherding the United States through a difficult period and stressed his individual role in shaping budgetary priorities. Under a contrarian view it can be said that the budgetary priorities and funding, especially in the defense arena, were shaped not so much by Bush as the individual but by a plethora of other factors, including government politics, organizational culture, external threats and domestic politics and pressures. This places the role of the individual in contra-distinction to that of the state, its government and internal processes, and that of the system of inter-nation relations and global processes—a classic set of competing variables.²⁷

²⁵ Patrick Hayden, Tom Lansford & Robert P. Watson, Footnote No. 20. p. 43-44.

²⁶ US President Bush’s September 20, 2001, Address to the joint sessions of the US Congress, Facts on File, World News Digest, Yearbook 2002, Volume 62, no. 3225, (Washington D.C.: Facts on File News Service) p. 740-741.

²⁷ Patrick Hayden, Tom Lansford & Robert P. Watson, Footnote no. 20. p. 43-44.

The attacks on New York and Washington certainly transformed American foreign policy, or a presidentially created one. It was of course too early to judge the lasting significance of the of Bush's War on Terror, but it fits the pattern of a presidentially created foreign policy regime. This transformation was certainly precipitated by the exogenous shock of the September 11 attacks, but President Bush has been the dominant actor in responding to that crisis with new substantive commitments and institutional changes.

It has to be appreciated how in a prompt and yet deliberate way the two branches came together in the aftermath of September 11. Several political commentators feel that the nation's righteous anger under-girded an extraordinary political consensus. to them, President Bush has shown exemplary leadership in pursuing the terrorist Al Qaeda network and its supporters. Yet, the most difficult tasks lie ahead, and sustaining the national consensus will depend on effective collaboration between Congress and the President.²⁸ in other words, even those who argue that the President is pre-eminent, do not overlook the importance of Congressional role as well.

The War on Terror has seemingly reoriented most American foreign policy commitments, much as the Cold War did in the post-War period. Bush had outlined a policy of opposing terrorism with military force everywhere it exists, and also taking military action against foreign governments that harbor and support terrorists.²⁹ This new commitment quickly came to fruition with the war in

²⁸ Testimony, Applying the War Powers Resolution to the War on Terrorism, Testimony of Alton Frye, Presidential Senior Fellow and Director, Program on Congress and Foreign Policy, Council on Foreign Relations, senate Judiciary Committee, Subcommittee on the Constitution, April 17, 2002 also available on http://www.cfr.org/pub4514/alton_frye/applying_the_war_powers_resolution_to_the_war_on_terrorism.php.

²⁹ Footnote no. 26, p. 740-741.

Afghanistan, an operation pursued under a broad grant of authority by Congress to the President, and at a time and place chosen in the White House, not the Congress. The Bush Doctrine is much like the Truman Doctrine, pledging the United States to act anywhere in the globe to combat particular enemy.

On Sept. 14, Congress overwhelmingly authorized President Bush to use "all necessary and appropriate force" against the nations, groups, and individuals responsible for the Sept. 11 attacks on America. The sweeping grant of authority given by the Congress reflected the appreciation of the enormous challenges the President faced after September 11. In fact, it had two components: one to rebuild within the US and the other to strengthen the military. Evidently, the Congress not only legitimized the Presidency's power use, but also supported the lead taken by President. The 'War on Terror' is unlike any other war as it is not time bound or even state specific. Hence, for the President, the challenge is to sustain long-term congressional support for an entirely new kind of war against a shadowy, stateless enemy. President Bush was wise to find ways to make Congress a partner and stakeholder in the planning and conduct of this war.³⁰

In the recent American war in Afghanistan, intergovernmental cooperation between the branches of Congress and the Presidency is quite obvious especially the Presidential directives on Homeland Security and the ordering of military attacks on Taliban have been by and large supported by the Congress, strengthening the view that the Presidency unilaterally acts in terms of war and perhaps consults afterwards. The Afghan case was no exception. Yet Congressional sources reveal some apprehension and concern about the wisdom of such actions

³⁰ Steven J. Nider. Congress and the War on Terror in http://www.ndol.org/blueprint/2001_nov-dec/24_congress_war_terror.html.

by the President. The following section attempts to deal with both the components of American policy on terrorism and American military intervention in Afghanistan and Congressional debate on it.

Though many suggested that America's war on terror lacked adequate efforts to enlist the international community and it remains to be seen just how much intergovernmental cooperation results within the US Federal bureaucracy. Some intelligence and security agencies opposed consolidation within the new Department of Homeland Security,³¹ while many states complained of being shortchanged by the Bush administration in terms of financial aid to the states to implement homeland security measures. The military attacks that routed the Taliban regime from power in Afghanistan in late 2001 are the only most visible and newsworthy facets of the war against terror. The efforts involve following actions:

- President Bush signed the Anti-Terrorism Act on 26 October 2001, expanding the powers of and tools available to the nation's intelligence and law enforcement communities;
- Presidential Executive order 13224, signed on 23 September 2001, blocked the ability of people who commit terrorist acts and aid or support terrorist activities from conducting various financial and property transactions in the United States;

³¹ Executive Order Establishing Office of Homeland Security, October 8, 2001 by President Bush. Full text of the order is available on <http://www.whitehouse.gov/news/releases/2001/10/20011008-2.html>.

- The US department of State submits an annual report titled ‘Patterns of Global Terrorism’ to Congress on the activities of terrorists and membership of terrorist organizations;

The US Congress has enacted numerous measures since the war on terror began. Immediately after September 11 attacks, President Bush enjoyed considerable support among the American public and in Congress. In the immediate period following the 9/11 attacks, Congress moved quickly to provide the President with support for the war. Congress also passed the USA Patriot Act, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (October 25, 2001).³² Although Bush’s approval rating dropped gradually after the conclusion of the campaign to eliminate the Taliban in Afghanistan. In addition Congress played an active role and provided the president with the regular intelligence and national security authorizations—and considerable amounts of money for supplemental and emergency appropriations in the wake of 9/11.³³

The terrorist attacks of 9/11 forced a major redistribution of political power within the United States, shifting unprecedented authority to the Presidency, the military and the law enforcement community. In taking the military action against Afghanistan, the United States signaled its intention to act with or without allies, with or without UN Security Council, with or without public support. In this war, President Bush received statutory authority from Congress. In some cases, as with

³² USA Patriot Act Passed by the Congress, 107th Congress, 1st Session H.R. 3162, in the Senate of United States, October 25, 2001. Full text available on
http://www.eff.org/Privacy/Surveillance/Terrorism/20011025_hr3162_usa_patriot_bill.html.

³³ Patrick Hayden, Tom Lansford & Robert P. Watson, Footnote No. 20. p. xiii-xiv.

his military order of November 13, 2001, which authorized the creation of military tribunals, he acted alone.³⁴

Thus far, the Bush administration has demonstrated a greater capacity for military victory than for securing the peace and stabilizing a defeated nation. In Afghanistan, the United States was particularly on notice that it should not duplicate its earlier mistake of intervening only to help check Soviet designs and then vacating the territory, creating a vacuum that invited control by the Taliban and the al-Qaeda terrorist network.

President Bush rallied the Congress and the nation in his address to the nation in which he thanked the Congress for its leadership at such an important time. He praised the Congress for delivering \$40 billion to rebuild our communities and meet the needs of our military.³⁵ Congress quickly passed emergency relief and retaliation funds and a resolution granting President George W. Bush authority to use military force, as well Airline Bailout Legislation. Other measures—including some proposed by the President in September 20 address to joint session of Congress—contain more controversial elements and are undergoing more deliberate legislative scrutiny.³⁶

³⁴ President Issues Military Order on Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism on November 13, 2001. Full text available on <http://www.whitehouse.gov/news/releases/2001/11/20011113-27.html>.

³⁵ “War on Terrorism” Congressional Digest, Volume 80, Number 11, November 2001, p. 265-267.

³⁶ *Ibid.* p. 270.

CHAPTER – IV

ROLE OF EXECUTIVE DEPARTMENTS, AGENCIES AND LOBBIES IN POLICY MAKING PROCESS

Global activism is an inherent pattern of American foreign policy: diplomatic relations with nearly every foreign government; participation in scores of international organizations; billions of dollars in economic and military assistance and sales; a capacity to strike militarily anywhere in the world; and trade and investment connections with other countries far beyond the nation's proportions of world population. Whose activities are reflected in such involvements? Whose responsibility is it to protect the interests they represent? The President and the presidency are the easy answers; the executive departments and agencies of the federal government, and especially the State and Defense Departments, are the more accurate ones.

In practice the distinction is not always clear-cut, as the heads of executive departments and agencies, appointed by the president and their immediate subordinates also make up the innermost circle of advisers. The President and his closest advisers must depend on them and on their hundreds of thousands of career professionals to manage America's day-to-day foreign relations and to implement the decisions of the President and Presidential advisers.¹

The "bureaucratic politics" approach views the emergence of policy from the interactions among the various bureaucracies, competing to shape the nation's actions. Policy thus becomes less the result of the values and beliefs of an

¹ Charles W. Kegley & Eugene R. Witkopf (ed.). American Foreign Policy: Pattern and Process (New York: St. Martin's Press, 1996). p. 338.

individual political actor in the process and more the result of the interaction process between and among several bureaucracies. In other words, policymaking is the result of the “pulling” and “hauling” among competing institutions. Compromise within bureaucracies and coalition building across them becomes the important ways in which policy ultimately emerges. The bureaucratic politics approach thus provides another approach in order to interpret and understand American foreign policy.²

In this chapter, this approach is used to examine the influence of “foreign policy establishment” within the federal bureaucracy on US policy towards Haiti and Afghanistan.

EXECUTIVE DEPARTMENTS AND AGENCIES

The US government has what has been called as the foreign policy subsystems of the United States government are numerous. Some forty institutionalized units carry out United States foreign policy by means of their activities and physical presence in countries throughout the world. Other elements operate entirely within the United States but have a major impact upon foreign policy. All make decisions about the allocation of the national political resources to achieve foreign policy goals.³

As the “first among equals” in the conduct of the foreign affairs, the Department of State is the principal agent of the executive branch of the government responsible for managing US foreign relations. In the mid-1990s it operated a network of more than 250 diplomatic and consular posts throughout the world (principally

² James M. McKormick. American Foreign Policy and Process (Illinois: F.E. Peacock Publishers, Inc., 1998). p. 374-375.

³ John H. Esterline & Robert B. Black. Inside Foreign Policy (California: Mayfield Publishing Company, 1975) p. 3.

embassies and consulates), plus delegations and missions to the international organizations. Decisions of great importance in the State Department are made by the Secretary, the deputy secretary and the under secretary. Country directors and “desk officers” within each regional bureau arguably comprise the backbone of the State Department when it comes to US policy towards particular countries abroad.⁴

However, the scholars examining the Department of State argue that it has not played the dominant role in the recent administrations that its central diplomatic position might imply. But the Department of State’s political system and its subsystems are the central focus. Together they perform more foreign policy roles than any other actors in the American political system. As mentioned, the diminished role of the state department the policy influence than that of the other foreign policy has comparatively lessened bureaucracies in United States government. The factors that have reduced the policy influence of the State Department range from a series of internal problems, such as its increasing budget problems, its size, the kind of personnel within this bureaucracy, the “subculture” within the organization, and the relationship between the secretary of state and the Department to a series of external problem—such as the relationship between the President and the Secretary, and the relationship between the President and the Department, and the perception of the public at large.⁵

The subculture of the State Department combined with the factors external to the organization are critical in explaining why a department that theoretically sits center-stage in the foreign affairs government is in fact ill equipped to play a

⁴ James M. McKormick, Footnote no. 2, p. 381.

⁵ Ibid. p. 385. It must be mentioned that powerful Secretaries of State have played a prominent role in the US policy e.g. Henry Kissinger etc. Yet this need not translate to the whole of the department.

leadership role. Many within the US Government dealing with the state department have pointed to these difficulties. Some like Oliver North, the key National Security Council operative in the Iran-contra scandal, gave the State Department the code name “wimp”. Two additional factors that circumscribe the State Department’s ability to exercise leadership in the foreign affairs. One is that Secretaries of State often choose—sometimes inadvertently—to remove themselves from the department rather than give it the kind of vigorous attention necessary to involve it more intimately in the policy process.⁶

The second reason for the State Department’s inability to exercise greater leadership role is the relative lack of resources and the bureaucratic muscles in Washington’s intensely political environment.⁷ Centralization of the foreign policymaking the White House—described by the three close observers as the “triumph of politics and ideology over foreign policy” —grows naturally out of the State Department’s lack of leadership. Ironically, however, centralization further undermines Department of State’s capacity to lead, as it typically results in the “exclusion of the bureaucracy from the most serious, presidential foreign policy business.” And both circumstances reflect the State Department’s inattentiveness to the presidential needs, especially its comparative insensitivity to domestic political considerations.⁸

The determination of the White House to dominate foreign policy making stems in part from the its perception that the State Department lacks responsiveness. Thus recognizing its own penchant towards parochialism, a recent State Department

⁶ Charles W. Kegley & Eugene R. Witkopf, Footnote no. 1, p. 384-385.

⁷ Secretary Colin Powell, 2003 Leadership Lecture: Why leadership matters in the Department of State, October 28, 2003, also available on www.state.gov/secretary/rm/2003/26930.htm.

⁸ Charles W. Kegley & Eugene R. Witkopf, Footnote No. 1, p. 386-387.

self-study concluded that “there should be little wonder that the top leadership in the White House and in the Department have tended over the years to create separate, smaller mechanisms to deal with the key foreign policy agenda items—leaving [the State Department] more and more marginalized.”⁹

Policymaking can be conceived as a political game in which the participants with the conflicting policy preferences use strategies to try to win so that their preferences will prevail. The games are constantly arising because there are always problems needing decisions and because there are usually conflicts over what the decision should be. Although all the participants in the policy process may have a conception of the national interest that largely determines their policy preferences, they do not all have the same conception of the national interest. Nor are their organizational interests and their personal interests the same. Such differences in interests and policy preferences originate in the participants’ organizational role, their career groups, and their individual experiences.¹⁰

Conflicting preferences and interests are common in bureaucracy. When policy preferences are strongly held or when important organizational or personal interests are at stake in an issue, bureaucrats are inclined to participate in the decision games concerning that issue. They may employ many strategies once they decide to play.¹¹

The defense/military side of policy confronting both the White House and the State Department also concerns the secretary and the secretary’s office. Historically,

⁹ Barry Rubin. Secrets of the State: The State Department and the Struggle over US Foreign Policy (New York: Oxford University Press, 1985) p. 262-265.

¹⁰ Thomas L. Brewer. American Foreign Policy: A Contemporary Introduction (New Jersey: Prentice Hall, 1997). p. 94.

¹¹ *Ibid.* p. 95-96.

these units have been among the most powerful in the department. Contributing to the influence were Secretary of Defense Robert McNamara's ability to establish an unprecedented degree of civilian control over the sprawling military complex and the fact that Vietnam, the principal foreign policy problem of the era, was also a formidable military problem.¹²

Therefore, Department of Defense may well be perceived as a bureaucracy that only implements policy, but in fact, Department of Defense contributes substantially to the formulation of foreign policy decisions. But its role in the foreign policy formulations remains a source of debate. The Department of Defense has increased its foreign policy making influence over the years and that, even in the face of changes in the 1990s that influence is likely to remain for the foreseeable future.¹³

There are two hallmarks of all of these are that they are government agencies. One is that they are hierarchical—everyone is in a position superior or inferior authority in relation to others. The second key characteristic of their formal organization is that they are highly differentiated according to functional specialization; that is each organizational unit has a specific responsibility. Organizational procedures and bureaucratic politics may be inevitable, but they also create problems in policy making. Although it occasionally becomes a public issue, organizational reform is continually an issue within the government.¹⁴

¹² Charles W. Kegley & Eugene R. Witkopf, Footnote no. 1, p. 322-325.

¹³ James M. McKormick, Footnote no. 2, p. 424.

In particular, some authors point to the leading role played by the pentagon in the post-Cold War in US foreign policy. One important work is by Michael Clare, *Rogue States and Nuclear Outlaw: American Search for a New Foreign policy* (Universal books, 1997).

¹⁴ Barry Rubin, Footnote No. 9, p. 86.

The policy division, headed by an under secretary of defense for policy, illustrates the crucial policy-formulating function within the Office of the Secretary of Defense (OSD). Despite its statutory foreign policy duties, the Joint Chiefs of Staff probably has been less effective in shaping American policy since World War II than the civilian side of the Pentagon.¹⁵ In a separate action on July 24, the House approved by an overwhelming 413-3 vote a measure that would add some \$10,000 million to the amount to be authorized for Defense Department use in fiscal year 2003, which began on October 1.

In prepared testimony June 20 before the House Committee on International Relations Subcommittee on the Western Hemisphere, John Leonard reported on the administration of US assistance funds to Haiti, noting that “only the Haitians’ own resolve and the ability to make difficult decisions will determine success and failure in the end.”¹⁶

The central stand of policy making in the Department of State in Haiti rests on Latin American Bureau and geographical bureaus headed by Assistant Secretary. This department oversees all the policy initiatives and provides evidence of continuity and change.

In case of Haiti, it was clear that the state department played a major role in fleshing out the US policy. In fact, the evidence from the testimonies of officials and other special envoys clearly reveal the need to understand how the Department of State provided major inputs into the presidential decision making. For instance, when the Department of State requested the support for the already introduced US

¹⁵ James M. McKormick, Footnote no. 2, p. 427-429.

¹⁶ John Leonard, “State Department’s John Leonard testifies on Haiti” House Representatives, US Foreign Affairs; Congressional testimony available on <http://pdq.state.gov/scripts/cqcgi.exe/@rware70.env>

armed forces into Haiti, the Director of the State Department's working group on Haiti, John Leonard, testified to the House Committee on International Relations, Sub-Committee on Western Hemisphere, thus:

“Many in the Congress from both sides....questioned the judgment....by President Clinton in 1994 that the deployment of the US forces was called for, both to bring and end the coup regime and to provide security and stability necessary for Haiti.....but that disagreement on military means did not imply a disagreement on ends.....(we) done an effective job of pursuing our national interest.”¹⁷

The executive agencies that comprise the foreign affairs government are so numerous and multifaceted that no brief description could adequately capture either the breadth of their interests or the depth of their involvement in matters of foreign policy. As a way of explicating governmental sources of American policy, however, it depicts the distinguishing characteristics of American foreign policy making—decision making by and within a disparate set of exceedingly large and complex organizational structures. Still Presidents depend on the organizations and agencies comprising the foreign affairs government, without which it would be impossible to accomplish their foreign policy agendas.¹⁸

The organizations comprising the second concentric circle of the policy making also often have their own agendas. During the Cold War these placed the Defense Department in the preeminent position, but also more immediately because its tentacles reach deep into the American economy, society and politics. The State Department, on the other hand, suffers from the lack of identity with in the

¹⁷ John Leonard, US Department of State, Testimony to the House Committee on International Relations, Sub-Committee on Western Hemisphere, Wireless File (USIS, New Delhi), 20th June, 1996. See also testimony of Alexander Watson, Assistant Secretary of State for International American Affairs before the House Appropriations Committee, 21st March, 1996.

¹⁸ Charles W. Kegley & Eugene R. Witkopf, Footnote No. 1, p. 416.

American polity and a corresponding domestic constituency to support its foreign affairs role. Legally it is preeminent; politically it is not.¹⁹

The executive agencies involved in the American foreign policy making are numerous, large and varied. It is actually rather difficult to determine the precise number of agencies involved in the foreign policymaking because many of them are only marginally involved, as the definition of an agency is ambiguous and their responsibilities change periodically. However, many of them are among the most important agencies in the foreign policy making process.²⁰

There is a large list of the “domestic” agencies that are involved in the foreign affairs. Indeed, most of the government agencies today have some kind of involvement in the foreign affairs; several of them have the policy-making responsibilities and operate major programs in other countries. Therefore, most agencies have divisions and bureaus that are specifically designated as their international units.²¹

An important structure within the foreign affairs bureaucracy is the intelligence community. Although the growth of the America’s intelligence apparatus owes much to the Cold War, the role of the intelligence community has hardly diminished in the post-Cold war era. The ability of the policymakers to evaluate effectively the global political, economic and social conditions may be more important than ever. With continued incidents of global terrorism, the rise of the states with aggressive arms and the occurrence of the potential ecological disasters world wide, sound intelligence work remains necessary—may be even more so—

¹⁹ Ibid. p. 416.

²⁰ Edward S. Corwin. The President: Office and Powers, 1784-1984 (New York: New York University Press, 1984) p. 10-12.

²¹ Ibid. p.85.

than at the height of the cold war. While intelligence community is associated with the Central Intelligence Agency (CIA), it is really much more comprehensive than that single agency. Within the Defense Department, for example, the Defense Intelligence Agency (DIA) operates services, as do the intelligence agencies within each branch of the military.²² In both Haiti and Afghanistan these agencies have had to play an important role.

The policy making impact of the CIA, and of the intelligence community more generally, stems from a central role in providing information about international issues and in evaluating different foreign policy options. Several different types of intelligent products developed by the intelligence community as a whole and by its components (i.e. CIA, DIA etc.) enable the community to affect the foreign policy formulation process. By one estimate, the community produces at least fifteen different intelligence products for policymakers. The National Intelligence Council (NIC) oversees and authorizes the production of intelligence estimates for the community as a whole. Despite these numerous reports and analyses, the intelligence community's effectiveness in the policy process remains difficult to gauge because of the secrecy surrounding its role and its activities. Since the policymakers are heavily dependent upon the intelligence community for information about policy options, a reasonable inference is that its influence is quite substantial. Yet assessments of the intelligence community's analytic capabilities vary widely. In case of Afghanistan the issues were more complex.²³

Congress frequently is an intimate part of the complex interagency politicking in which governmental agencies often become engaged and has the capacity to affect

²² James M. McCormick, Footnote No. 2, p. 435.

²³ Ibid. p. 66.

their relative political influence within the executive branch. The convenient partnership between certain bureaucracies and their congressional allies helps explain, for example, the political functions of bureaucratic “leaks” to the press. They became mechanisms for cuing others within the political system, such as Congress, of impending changes in policies or programs, which they can then attack or defend. In the political struggle between Congress and the President, however, the president is generally in the more commanding position when it comes to foreign policy.²⁴

Marchetti and Marks, two severe critics of the CIA generally nevertheless hint at the quality of its intelligence estimates. While CIA estimates on relative US-USSR strength during the cold war were not always successful in shaping policy and were subject to abuse on occasion, they argue, these estimates often served as a counterweight to the influence of the military planners in debates between President and the Congress. These analysts also point to the success of the agency in gathering intelligence leading to the showdown with the Soviet Union over missiles in Cuba in 1962. At the same time, the intelligence community has been object of severe criticism by the presidents and others both for the quality of its intelligence and for its efforts to shape foreign policy.²⁵

While the analysis side is a crucial component of the intelligence community, it is not the only one. The other “side” of the intelligence community consists of covert operations. This side of the intelligence community, too, has been increasingly criticized for its lack of accountability and control and for its considerable influence on the direction of the American foreign policy. As the post-Cold War

²⁴ Robert M. Gates. “The CIA and American Foreign policy” *Foreign Affairs*, No. 66, Winter 1987-88, p. 215-220.

²⁵ *Ibid.* p. 221-227.

approach has emerged, critics have more frequently called for the elimination of these operations, on both policy and they are inconsistent with the ethical standards of the American people.²⁶

American covert intelligence operations or “special activities” as they are euphemistically called, are far more numerous than we often think, and they form important aspects of the foreign policy making. These activities have included propaganda campaigns, secret electoral campaign assistance, sabotage, assisting in the overthrow of unfriendly governments, and, apparently, even assassination attempts on foreign officials. Such covert (and not so covert) operations immediately raise questions about their compatibility with democratic values and how accountable the agents are for their actions. Covert activities have been widely used and have stirred serious concerns about their accountability to the policy makers and the American people.²⁷

The CIA’s internal culture and bureaucracy often interfere with the way the CIA performs its mission. The cold war did not create the CIA but it helped shape the way the CIA conducts its operation. More generally, some policymakers are concerned about whether the CIA has adapted the way it collects and analyses intelligence community at all in this international environment.²⁸

Foreign Service officers, military officers, and other bureaucrats are important participants in the policy process. Bureaucrats are especially important in the implementation of policy decisions; the organizational capabilities that they administer are often essential in this respect. The bureaucrats who are important in

²⁶ Pat M. Holt, *Secret Intelligence and Public Policy: A Dilemma of Democracy* (Washington D.C.: CQ Press, 1995) p. 89.

²⁷ *Ibid.* p. 93-95.

²⁸ Barry Rubin, Footnote No. 9, p.111.

foreign policy making are not only in the obvious foreign affairs agencies—the State Department, the Defense Department, the Commerce Department, the Agriculture Department, the Energy Department, but in most other executive agencies as well.²⁹ For any given policy problem, there are usually several agencies and parts of agencies with some relevant authority and expertise. Policy making, therefore, often moves slowly as clearances are obtained from numerous units. Standard operating procedures may be conducive to orderly policy making, but they are not necessarily conducive to timely policy making. Furthermore, organizational routines and tradition bound career groups often restrain major policy changes. Therefore, organizational policymaking tends to be incremental. Whatever distribution of power resources for bureaucratic political games and regardless of who wins or loses those games, they create distortions in the content and flow of information in policy making. Bureaucrats in the agencies other than the State Department have considerable political resources. They have operational capabilities for implementing decisions and they have nongovernmental interest groups who support their programs. The State Department, however, has a central coordinating role in many policy areas in addition to its responsibilities for general, non-technical diplomacy.³⁰

Lobbies and Interest Groups and Haiti & Afghanistan

How can one conceptualize the process by which interest groups influence foreign policy? On which kind of foreign policy issues are which kinds of groups likely to have influence? Do groups act differently when trying to influence foreign policy decisions than they do when trying to influence domestic policy decision?

²⁹ Ibid. p. 112-113.

³⁰ Barry Rubin, Footnote no. 9, p. 113.

There are various non-governmental participants that are actively involved in the policy process. Although the role of the general public may be described as typically marginal and passive in the foreign policymaking, but this does not leave out the crucial role that the non-governmental organizations play in the policy making process. As opposed to this, another view also stands out to be true because there are numerous non-governmental organizations and groups that often play a central role in the policy making process.

The term 'pressure groups', 'interest groups' and 'lobbies' are widely used to refer to such groups and organizations, but it is preferable to think of them as interest groups, since that term is more descriptive of their nature and activities. Interest groups do sometimes exert pressure in the policy process, and they do sometimes lobby; however their nature and activities are not nearly so circumscribed as those terms suggest.³¹

Interest groups are particularly important here in the issue network model of the policy process. The issue network model assumes that interest groups are organized for the political action and the struggle among the interest group organizations is central in the policy process. Foreign policy is the compromise outcome of that struggle, according to the issue network model. The ways in which groups' interests are represented in the policy process are diverse. There are hundreds of individuals and organizations registered to lobby in Congress under the provisions of the Federal Regulation of Lobbying Act. There are also hundreds of representatives of foreign governments or other foreign interests registered with

³¹ Barry Rubin, Footnote No. 9, p. 138.

the justice department under the Foreign Agents Registration Act and they represent clients from nearly every country.³²

Lobbying is basically, influencing lawmakers to enact desired legislation. The US system of representational democracy is designed to be influenced by any association of citizens who desires to participate in the process of legislation.³³

Persons who might wish to influence a decision on foreign policy live in many places and play many roles. Only a citizen who had the close personal relationship with an official decision maker could hope to exert much influence through his individual action. Relatively few groups are formed solely to attempt to influence foreign policy; usually groups are formed for some broader purpose which incorporates foreign policy. For questions of foreign policy, however, foreign governments and groups in foreign countries became important aggregates of persons desiring to influence the decisions of the American foreign policy makers. The interest of the foreign governments in the foreign policy of the United States is obvious.³⁴

Lobbyists determine their interests; learn the rules with which they do business, stick with those rules in building political relationships, play the political game of being friends and generate broader political support for their goals, and finally explicitly make their cases. In a nutshell, lobbyists use those they know to meet policy players whom they previously didn't know.³⁵

³² Ibid. p.139.

³³ Robert L. Guyer. Guide to State Legislative Lobbying (Florida: The Law Inc., 2003). p. 12-13.

³⁴ James N. Rosenau (ed.). Domestic Sources of Foreign Policy (New York: The Free Press, 1967) p. 244-245.

³⁵ William P. Browne. Groups, Interests & US Public Policy (Washington D.C.: Georgetown University Press, 1998) p. 154-155.

External interest group pressure on officials in the Executive Office of the president is perhaps less than half the story; the other half is the executive public outreach in which the White House engages to pursue several different goals simultaneously: to keep itself informed, to legitimate the group it engages, to demonstrate its commitments to its constituencies, to enhance political standing and to advance its own political agenda. The term “lobbying”—suggests the group outside the White House, reaching in. but the second platitude recognizes the difference between the politics of foreign policy and domestic policy. In foreign affairs, the stakes are much higher; decisions are often irreversible; relationships are much less under control of the American policymakers; decisions often need to be made very quickly; and domestic interests and constituencies are less engaged. A vast majority of what is done at the White House, or at the State Department, especially in the new global areas of democracy and US humanitarian assistance.³⁶

Policy issues without important constituencies are still important to the US foreign policy interests. Because a global issue lacks a large domestic politics constituency does not mean that it is unimportant to the national security interest of the country and to the international and national standing of the president or to his capacity to conduct foreign policy effectively. “Orphan issues”—humanitarian relief, human rights and pro-democracy engagements in Somalia, Haiti and china—significantly affected the President’s standing and his capacity to act in other more traditional foreign policy areas. The challenge for presidential politics is twofold. Even the

³⁶ Paul S. Herson, Ronald G. Shaiko & Clyde Wilcox. The Interest Group Connection: Electioneering, Lobbying and Policymaking in Washington (New Jersey: Chatham House Publishers, Inc., 1998). p. 242.

'orphan issues' on occasions developed powerful guardians and helped change the US foreign policy on Haiti.³⁷

The Haitian crisis became a major political issue in United States; because of the presence of the large Haitian community, because it was the destination of the Haitian asylum-seekers, because of liberal outrage at their treatment, and because of the solidarity with an independent black republic. Thus the US Congress and its Black Caucus became significant actors, and the proximity of Haiti to Washington encouraged a constant flow of the US political visitors to the country. Most were on the liberal side of the political debate in the US, but not all: they included Republican critics of the Aristide, who although reluctant to be identified with the military directly, were allies of the supporters of the *de facto* governments in the Haitian parliament.³⁸

Aristide's decision to make Washington his place of exile was the recognition of its centrality to the fate of Haiti and in turn heightened the debate in US over Haiti. In addition to his ambassadors in Washington and New York, several paid and unpaid US lobbyists acted on his behalf: though his Haitian and American lobbyists were often not well coordinated, although all claimed to speak with the voice of the President. The non-recognition of the *de facto* made it more difficult for it and the military to work openly through US lobbyists.

Non Governmental Organizations (NGOs) constituted an outer circle of the influence on the negotiations, and on the human rights in particular. The most objective and influential were the major human rights NGOs which saw ore

³⁷ Ibid. p. 255.

³⁸ Ian Martin. "Haiti: International Force or National Compromise?" Journal of Latin American Studies, Volume 31, 1999. p. 726.

positive than negative features in its period in office. The Black Caucus and the human rights NGOs played a significant role in the swelling tide of criticism of the bankruptcy of policy in early 1994. Many felt bitterly let down by the Clinton's withdrawal of the *Harlan County* yet they were personally opposed to the military intervention and increasingly critical of what they saw as the Aristide's obduracy. The consternation was not confined to the Aristide camp and the human rights NGOs; it was also shared by the administration.³⁹

The other friends of Haiti and black and liberal members of the Congress were more consistently willing to share Aristide's perspective regarding the human rights situation. The human rights NGOs were alert to the issue and stated their opposition.

Though the congressional opposition to an invasion was extraordinarily broad and the conservative republican group in the Congress was the most vocal critics of the Clinton's Haiti policy and they branded Aristide as a mentally unstable radical. A disparate coalition of some congressional Black Caucus members, a few other liberal democrats and some Florida lawmakers fueled the new demand that Clinton should consider using the force to remove the Haitian military.⁴⁰

It is difficult to determine with precision how much actual influence interest groups exercise. The organizations limit one another's influence; there is a countervailing power. But not all groups and organizations are equal. Some have considerable resources and exercise substantial influence, others do not. The collective and individual influence of the interest group organizations is marginal

³⁹ Ibid. p. 727.

⁴⁰ Library of Congress. Congress and the Nation: A Review of Government & Politics, volume IX, 1993-96 (Washington D.C.: Congressional Quarterly Inc., 1998). p.195-197.

on most of the issues. Generally, the partisan and ideological composition of the Congress, the position of the President, and the preference and expertise of the bureaucracy all have greater impact on policy than nongovernmental interest groups and their lobbying organizations.⁴¹

It is difficult to piece together the number of lobbies and interest groups involved in Afghanistan. However, mention should be made of To insure success Aristide's U.S.-based lobbying is going through some transformation, including a hire from among Washington's lead law firms, Patton Boggs. The shift toward a democratic majority in the U.S. Senate also diminishes somewhat the perceived early sting of a Republican administration. In the interim, the latter has yet to assemble its own Latin American/Caribbean policy leadership, adding further credence to the notion that current Haiti policy is shaped by a framework inherited from the Clinton White House. Numerous and diverse interest groups are concerned about the effects of the American foreign policy on their interests. Those interests are represented by hundreds of organizations, which lobby for special interest and the general public, labor and business, energy producers and environmentalists, and even foreign governments and corporations. Some of them are concerned with American policy towards one country or region. These organizations lobby in the executive branch as well as the Congress. They also form coalitions—with one another, with members of the Congress and with the executive—branch officials as happened in case of Haiti where Florida lawmakers' lobby formed the coalition with the Black caucus members of the Congress.⁴²

⁴¹ Barry Rubin, Footnote no. 9, p. 150.

⁴² Ibid. p. 158.

The agenda setting model assumptions about the power of big businesses are only partially supported by the evidence. They do have some significant political and economic consequences which have often included direct and indirect support for repressive foreign governments and for American intervention in foreign countries' internal political processes. Their activities are often restrained by other interest groups; their opinions on policy issues are often divided; and their attitudes towards war are typically not very positive. However, to conclude the interest group influence on the foreign policy is very slight.

CHAPTER – V

CONCLUSION

For years President was conceded a paramount role in the conduct of the foreign policy, and even the thorniest issues were resolved with bipartisan agreement favoring the chief executive's policies. "Politics stops at the water's edge," was a favored dictum that characterized the willingness of Congress to support the President's decisions about the nation's foreign policy. While the Congress always played an important role in setting the domestic policy, in the past few decades, Congress asserted its power increasingly in the field of foreign affairs as well as domestic matters. In an age that equates speedy decisions with effectiveness, the foreign policy mechanisms established by the US constitution appear at best anachronistic and under any circumstances frustrating. Most of the time, the foreign policy of the United States is conducted by the President with only perfunctory review by the Congress. The members of the legislative branch, as a rule, operate on the assumption that they cannot possibly lose by supporting a President in this field. Should the President's policy be successful, they can bask in his glow. Should the President's policy fail, they can tell their constituents that they had reservations but felt it to be their patriotic duty to support the president. An observer of the contemporary scene could conclude that the only role of the US Congress is to interfere with the President's conduct of foreign affairs. This is far from the truth. Historically, Congress stays out of foreign policy as much as it can. There comes a time, however, when the political agreement on which a President has been operating comes to an end. Failure becomes so apparent that public support diminishes to a danger point. When that happens there is no way of

avoiding Congressional debate—the mechanisms through which the American people reach agreements on the permissible limits of the policy. This is precisely the situation in which the US finds itself whenever it decides to wage a war or deploy its troops for intervention. The national understandings that arrived through the debates ran afoul of the Vietnam War. This does not mean that all the institutions created by those debates will be scrapped or that all of the policies that were adopted will be repudiated. But it does mean that all of them are being, or will be, reexamined and that many will be changed and new institutions and policies added.

In terms of the “public image,” congressional debate on foreign policy is rarely orderly or even seemly. It is not a debate by experts—though some members are as well informed on the subject as any Secretary-of-State—but rather a contest of political wills.

The relationship between the Chief Executive and Congress has been described as an “invitation to struggle.” The nature of the US political system and its constitutional basis create separate but equal branches of government, with checks and balances. However, the President has more latitude in committing and deploying US military forces. Nevertheless, congressional oversight and budgetary power restrict the power on how far he can go in committing forces without triggering congressional response. But Congress, ever sensitive to negative reactions from constituents about US force commitments will make that reaction known to the President.

The US constitution presumes differences and even clashes between the political branches, and it provides panoply of political means for their resolution. Many of

these suits have challenged military action taken without a formal declaration of war.

The central issue today is who controls standing military forces and how these forces are used? Is the President provided with standing military forces in an essentially unfettered fashion? Some analysts argue that this is so, or at least this ought to be so. Others have argued that the executive possesses military resources only to carry out the policies established by the Congress. Almost no one disputes the power of the President to repel sudden attacks against the territory of the United States. Nor does anyone dispute the power of the Congress to commit the United States to war. During the past two hundred years, the scope of the president's power has expanded substantially, progressing from limited notion of the executive's prerogative to respond to sudden attacks on US territory to a wider authority to protect, even on a preemptive basis, American lives and property abroad. Due to this change, legislative-executive competition now focuses on the control of the preemptive, protective, retaliatory, limited and covert use of American military force.

Contemporary opinion is divided on whether this situation is desirable, but almost everyone agrees that the modern presidency has had the upper hand. By 1973 the war in Southeast Asia and protests in the United States had rekindled active debate on the subject and generated unambiguous competition between the two branches. Although Congress could seldom act with one voice, it was sufficiently displeased with the Nixon administration in 1973 to pass the War Powers Resolution. That act—which limited troop deployments in hostile situations, required prompt presidential reports to Congress, and required formal congressional approval of

continued troop deployments—was intended to reassert Congress's role in war powers and to regain some control of the standing military establishment.

Rather than settling the debate, however, the War Powers Resolution seems to make the matters more difficult. By virtually all accounts the act has failed. Debate surrounding its passage uncovered serious disagreement regarding the constitutional rights and responsibilities—as originally intended and as currently needed—for the use of military force. As a result, the executive and legislative branches have reached an uneasy standoff.

Since the War Power Resolution was passed, each President has stated his opinion that it is an unconstitutional infringement of the inherent powers of the executive as Commander-in-Chief. Rather than directly challenging the War Powers Resolution, all recent administrations have been content to criticize Congress's interference, to reject the resolution publicly, and to define a narrow role for Congress in national security policy. The Presidents have acknowledged Congress's right to declare war, mindful that such declarations are essentially obsolete. They recognized Congress's power of the purse, asserting, however, that the power is circumscribed. Once appropriations have been made, they claim, the President is free to use the troops as he sees fit. Recent presidents have chosen to put up with the congressional micromanagement, while publicly proclaiming broad inherent powers for the executive office. What makes their claim increasingly problematic is the mingling of foreign and national security policy.

On the question of War Powers, as with other matters of institutional balance in the twentieth century, Congress has frequently been its own worst enemy. It should be clear that if Congress had refused to delegate powers to the President or had

circumscribed them more carefully at each step, fewer problems would have resulted during the past forty-five years. Congress, like the President, is generally unwilling or unable to confront the issue squarely. Instead, the issue crops up periodically cloaked in constitutional arguments but aimed at some policy disagreement with the executive. Ultimately, these three congressional perspectives lead to deadlock. As long as presidential power is viewed as legitimate—and that has been a majority opinion since World War II—there can be no serious confrontation between the branches.

Despite the hopes of its supporters, the War Powers Resolution has proved to be no more than what Arthur Schlesinger has called “a toy handcuff.” The sixty-day clock has never been tested, and many members seem almost pained by the fact that the resolution exists. In case of Somalia, the House and the Senate both passed the non-binding resolution asking President Bill Clinton to consult with Congress about the controversial deployment, but neither chamber moved to invoke the War Powers Resolution.

“Reasons for the failure of the War Powers abound” as James M. Lindsay puts in his book *Congress and the Politics of U.S. Foreign Policy* (Baltimore: The Johns Hopkins University Press, 1994). *Firstly*, according to him, the Congress is of many minds when it comes to the wisdom of resolution. Some members doubt the constitutionality of the resolution or are happy to ignore its provisions if they agree with the President’s decision to deploy troops. These attitudes give members who doubt the wisdom of the policy or the President’s authority to order it good reason to conclude that any effort to invoke the resolution will be futile. *Secondly*, the War Powers Resolution has failed is because every president since Richard Nixon has denied its constitutionality. Some has gone so far as to ignore the resolution in

the situations, as it would seem to apply. Presidents have avoided taking any steps that might be construed as acknowledging the constitutionality of the War Powers Resolution. In rejecting the War Powers Resolution, Presidents have stated repeatedly that the Commander-in-Chief clause gives them independent authority to make war.

The ability of the Presidents to disregard the War Powers Resolution has been made easier by the law's imprecision. The text of the resolution does not define what constitutes imminent or actual hostilities, thereby enabling presidents to evade the law by denying that US troops face a military danger. The resolution also fails to require presidents to state if they are filing the report under the provision that triggers the sixty-day clock. The War Powers Resolution also has been weakened by the respect the courts pay to the president in foreign policy.

The failure of the War Powers Resolution has prompted several reform proposals. In 1989, a bipartisan group of senators led by Robert Byrd (D-W.V.), John Warner (R-Va.), and Sam Nunn (D-Ga.) urged replacing the provision mandating the sixty-day clock with one stipulating that a resolution to reverse a presidential decision to send troops to imminent or actual hostilities would be accorded expedited attention in both chambers. The Byrd-Nunn-Warner proposal sought to reverse the presumption of the War Powers Resolution that troops should be withdrawn unless Congress gave its permission. Reform efforts such as the Byrd-Nunn-Warner proposals faced a dim future. Any attempt to revise the War Powers Resolution is likely to spark bitter debate on the floor, and many conservatives will use the opportunity to try to repeal the resolution outright.

There is no other option but to blame the Congress itself for the shift in the foreign policy making to the President. The tradition of the bipartisan foreign policy deterred most members of the Congress from criticizing the actions of the President during the Cold War era. In the post Cold War era and the nuclear age one can most easily point out that the President of the United States of America has the sole responsibility and the full authority to conduct a war or deploy military forces to any foreign nation for intervention. Though Congress has awakened and started asserting its powers on the executive especially in the field of the foreign policy making and the war powers. But now as the whole ballgame has changed, **Chapter 1** ascertains that it remains to be seen who dominates whom where the war making powers are concerned. The first chapter provides the justification and studying of war powers as important given US unilateral power in the 1990s. It points out how decisions are reached using Haiti and Afghanistan as illustrative cases.

Evidence on the issue of political feasibility has also revealed that no reform can solve the fundamental problems that prevent members of Congress from having a say in the crisis policy. Further, seldom laws have been passed that can prevent presidents from sending troops abroad without notice and thereby presenting Congress with *fait accompli*. If the deployment turns out to be for the shorter duration, as happened in Grenada, Libya and Panama (among other instances), members have no practical recourse against the President for having acted without congressional authorization. If the deployment turns out to be lengthy, however, the main recourse members have is the politically and morally difficult one of cutting off funds to troops who may be fighting for their lives. Despite the hope of the framers then, the members of Congress have not found the means by which to

keep the war power vested in the legislative branch. In effect, actions of the presidency provide evidence that despite War Powers Resolution, it has retained the initiative in committing the US troops abroad, using a variety of methods.

The end of the Vietnam War saw several changes in the Presidential-Congressional Relationship. The main change that is germane was that the inter-governmental linkages that have previously existed changed in the 1970s. The support from the Congress to the President on Foreign policy divided. Scholars have pointed to the beginning of an antagonistic phase between the Congress and the Presidency combined with the reforms of the Congress. It coincided with the Democratic Party's control of the Congress. It is also an end in the bipartisan consensus in the US foreign policy **Chapter 2** explains the debates in the Congress with regard to the Haiti and Afghanistan in this light.

The strength of the Haiti precedent is enhanced by the clear, focused debate of this fundamental question in Congress, which had ample time and opportunity to act. It chose not to act in a timely fashion, and it chose not to assert its prerogatives to authorize or reject the President's proposed course of action. Congress avoided making both a decision on the use of force and the statement about the constitutional law. Instead, it protected its ability to second guess the President if the things do not turn out so well.

Chapter 2 also illustrates that in case of Afghanistan the most serious failure of oversight was on the part of the Congress when due to national emergency and unanimously granting the authority to the President to take action against the nation and the individuals responsible for the September 11 attacks on America. Both Republicans and Democrats in the Senate and the House abandoned the

constitutional authority and duty provided to the Congress to question, to challenge, to honestly advise and cautiously consent to war-making by the executive branch. Haiti and Afghanistan debates reveal that Congressional behavior towards the presidency has been marked by extreme caution, temperate support, partisan fights and ideological divides. Further it reveals that despite the enthusiastic support in case of Afghanistan demonstrate that Congress has not reverted to the pre-1960s position.

The Haitian incident cannot stand as “precedent” for something like the invasion of a foreign country by the President. The events raise an important question whether the President can legitimately threaten “force” when he is not in a proper constitutional authority to carry out the threat in the full. However it can be pointed out that the rise of the Presidential preeminence occurred in response to demands, foreign and domestic, to which the other branches of the government, notably Congress, could not respond adequately. Alexander Hamilton—political realist and proponent of presidential preeminence—would be pleased.

It is concluded in **Chapter 3** that each presidential war constitutes a “precedent” that in turn legalizes the next such action. Presidents found that a crucial tool exists in the shape of war powers. Since War Powers Resolution have been passed, the Presidents have been careful to gain domestic legitimacy and international leverage and support. Thus, while it can be argued that to some extent there is some degree of positive relevance to Presidential actions, it is clear from Haiti and Afghanistan cases that most presidencies find it insignificant. In case of Haiti, on the one hand President Clinton admonished a minority Senator when he asked President Clinton to seek the Congressional approval to deploy the troops to Haiti. Whereas in case of Afghanistan President Bush merely informed the Congress that he is going to

war against Afghanistan. However, due to national crisis and emergency, Congress fully supported the President's stand and gave him \$40 billion for the war and reconstruction in America.

As the United States expanded its role in the international political system following the World War II, the executive departments and agencies became increasingly important and visible within the American foreign policy system. **Chapter 4** exemplifies that the executive departments & agencies along with lobbies play an important role in the foreign policy arena. Bureaucratic politics sustain policies and also provides the stability. Bureaucratic politics in the cases of Haiti and Afghanistan have been centered and supportive actions.

Both the Departments of State and the Defense have been in the forefront of the decisions with regard to the Haiti and Afghanistan while the Department of State was in greater control in Haiti, it is Department of Defense that is more in control in the case of Afghanistan. What is interesting in the Haitian case, the informal groups inside the legislative like the Black Caucus moved alongside into groups outside to provide momentum to Presidential actions.

Thus, taken at face value, the arguments that the constitutional grant of power to Congress embark upon war has increasingly become open to debate.

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