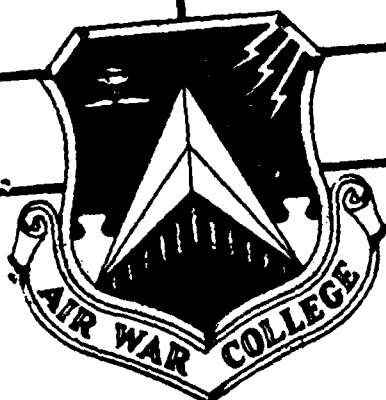


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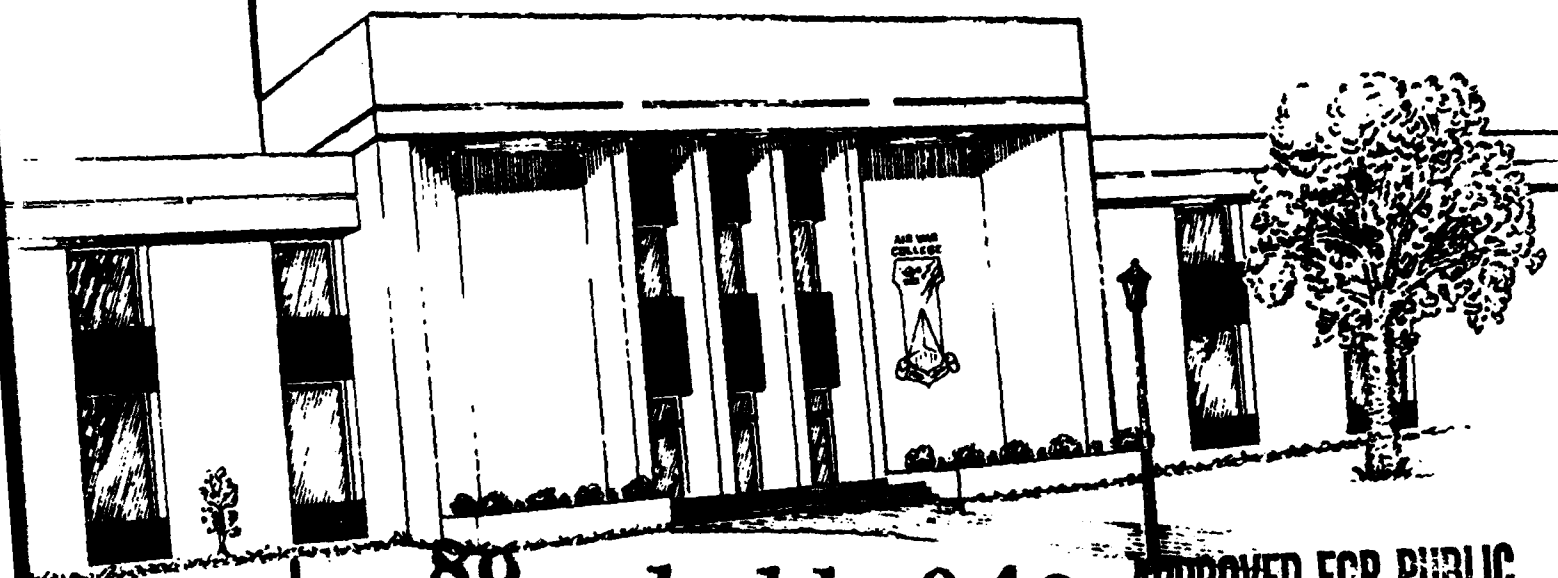
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THE WAR POWERS RESOLUTION OF 1973: A
SIGN OF THE TIMES

COMMANDER CHARLES S. VOGAN, JR., USN

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UNITED STATES AIR FORCE
MAXWELL AIR FORCE BASE, ALABAMA

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THE WAR POWERS RESOLUTION OF 1973: A SIGN OF THE TIMES

by

Charles S. Vogan, Jr.
Commander, USN

A RESEARCH REPORT SUBMITTED TO THE FACULTY
IN
FULFILLMENT OF THE RESEARCH
REQUIREMENT

Research Advisor: Colonel William N. Winters

MAXWELL AIR FORCE BASE, ALABAMA

May 1988



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AIR WAR COLLEGE RESEARCH REPORT ABSTRACT

TITLE: The War Powers Resolution of 1973: A Sign of the Times

AUTHOR: Charles S. Vogan, Jr., Commander, USN

Reviews the history of the debate regarding the "shared powers" between the Congress and the President for the use of military power in support of foreign policy.

The purpose of the paper is to examine the origins of the War Powers Resolution and the interactions of the Congress and the Commander in Chief over the use of United States Armed Forces since its enactment. This examination is a precursor to ascertaining whether the War Powers Resolution is viable as a bona fide constitutional mandate, or is it more accurately a building catalyst for change. The inability of the Congress to hold the Commander in Chief accountable to the requirements of the Resolution appears to render it an issue more tied to the success achieved by the military or the popularity of the action undertaken. The necessity of a reexamination of the current military focus towards its future utility in support of United States Foreign Policy is discussed.

BIOGRAPHICAL SKETCH

Commander Charles S. Vogan, Jr. (M.S., Naval Postgraduate School) has had extensive at-sea experience with naval battle groups since graduating from the United States Naval Academy in 1972. He has served on various ships and afloat staffs, principally in the United States Pacific Fleet, and holds the Navy Achievement Medal and Meritorious Service Medal. He is a 1984 graduate of the Naval Postgraduate School, Monterey, California, attaining a Master of Science Degree in Systems Technology (Command, Control and Communications). Commander Vogan is a graduate of the Air War College, Class of 1988.

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CHAPTER I

INTRODUCTION

In contrast to the evolutionary growth of history's great empires, the ascension of the United States onto the stage of world influence following World War II was of near meteoric proportions. The vision with which our political leaders met the challenges of the times was manifest in the Marshall Plan and the Truman Doctrine which served as the linchpins of our foreign policy. Behind the banner of containment of communism, we embarked on foreign policy courses of action which only now are we recognizing to have exacted a heavy toll from our philanthropic and natural resource wealth. Four decades later, the pluralistic nature of the world, as well as that of our own country, now mandates a foreign policy brilliance which balances actions and resulting reactions amidst an atmosphere of the mutually exclusive complexities of cultural, national and individual interests. It is beyond the scope of this paper to examine the relative merits of the foreign policy on which we approach the twenty-first century; however, inexorably tied to whatever foreign policy which we have used or will follow is the facility afforded the enactment of that policy by the prudent maintenance and use of military power.

Whether Thomas Jefferson, George Washington, Alexander Hamilton or any of the framers of our Constitution could foresee with any accuracy or clarity the nature of the world as it is today is doubtful. The issues over who is to "declare" or "make" war were much more simplistic in the late eighteenth century, the period in which they developed that document. Wars were fought "overseas." The operations of the navy and the militia were orchestrated in an environment far removed from the view of the majority of our lawmakers as well as that of the general populace. Having been spared the contact with the realities of armed conflict, in human and geographic terms, there was no significant popular outcry for justification in those instances when war was waged. Moving into the Twentieth Century, the growth of technologies has combined to not only exponentially increase the magnitude of our abilities to effect those realities, but also bring those realities into the focus of the entirety of our populace. This in turn has brought the conduct of armed conflict under a broad level of scrutiny which would be incomprehensible to those same founding fathers who were the architects of our present government.

There is a widely accepted school of thought that "World Wars" are things of the past and that our foreign policy will be enacted amidst, in today's parlance, low

Intensity Conflicts (LIC) or High Probability Conflicts (HPC). If true, such actions will be fraught with extenuations oriented to justifying to a myriad of interest groups the strategies and tactics employed, oftentimes at the expense of optimally employing military force. The intra-country conflicts which will arise from these "undeclared wars," in the absence of a popular mandate, presents the President with the challenge of conditioning the population to the "national interests" of such actions in order to gain that support. This must concomitantly be accomplished in the presence of a Congress which seeks to satisfy their electorate by demonstrating their own authority in impacting such situations. Both the Executive and Legislative branches of the government are bound in their actions by their interpretations of implied authority within the framework of our Constitution.

Against the backdrop of the national frustration engendered by the Vietnam Conflict, an "undeclared war," the United States Congress was equally frustrated with their impotence in either significantly impacting the conduct of the conflict or effecting a timely resolution to the hostilities. They seized a moment of Presidential turmoil and the tenuous popularity of the Chief Executive to solidify their power base in control of the military, by

declaring a right of oversight and approval to the actions of the Commander in Chief. The vehicle they chose to effect this pronouncement was the War Powers Resolution (Public Law 93-148), enacted in 1973 by the Congress, overriding a Presidential veto.

The purpose of this paper is to examine the origins of the War Powers Resolution and the interactions of the Congress and the Commander in Chief over the use of United States Armed Forces since its enactment. This examination will be a precursor to ascertaining whether the War Powers Resolution is viable as a bona fide constitutional mandate, or is it more accurately a signal for change in the manner in which the military is employed. Regardless, the War Powers Resolution is a valid contemporary issue from which we in the military must examine the focus with which we develop the strategies for our future utility in support of United States Foreign Policy.

CHAPTER II

EVOLUTION OF THE WAR POWERS RESOLUTION

Selecting one criteria from among many available, the generation of men and women in political power can be separated by those who had experienced war and those who did not. Considering the multiplicity of paths whereby these people reach their respective destinies, it is ironic that in this context governmental politics offers a junction at which these paths become common. Each faction brings to the game an ambition to achieve goals through the mediums to which they were most conditioned by their own experiences. While the "dove" or "hawk" characterizations may be gross generalities, they are acceptable representations of the mediums of choice which evolve in their quest to "provide for the common defense." To ensure there is an enduring balance of views amidst the vagaries of time and individual behavior, it would be essential to provide for checks and controls to ensure there becomes no monopoly to be gained by a particular interest group. To what extent should the President of the United States, whose tendencies and/or experience may be oriented to reliance on military might, have the autonomy to brandish the armed forces of this country? This contemporary question, along with the aforementioned characterizations, are familiar themes which

receive near daily treatment in some form throughout the country. Ironically, in 1787 it was this issue that was at the heart of the deliberations orchestrated by Jefferson, Madison, et al, in authoring the Constitution of the United States. At issue was to establish the most effective vehicle to provide for civilian control of the military as George Washington, Commanding General of the Continental Army, coincidently was rising to the Presidency.

To "Declare" or to "Make" War

The subtle context of these verbs to the uninitiated disguise the raging debate which has occupied the framers of the Constitution as well as every Congress and President since 1787. Interestingly, in an early draft of the Constitution, Congress was empowered to "make" war. The critical semantics were changed to "declare" war with the controversial rationale that the President must be empowered to repel sudden attacks. The voracity with which today's pacifists challenge the rationality of maintaining means to effect massive destruction pales in comparison to the aversion to establishing and maintaining strong war powers which was held by the delegates to the Constitutional Convention. It was clear that the power to determine peace

and war best resided with the central government. At issue though, was the degree to which the individual states should be authorized to maintain individual militias, to be available for a call into national service, as there was no need seen for a centralized standing armed force.

Washington contended that the revolution of a decade earlier established the need for the maintenance of a national standing army. Madison and Mason lead the opposition under the pretext that the maintenance of a standing army in peacetime potentially jeopardized the liberties of the citizenry. The compromise achieved allowed for a modest national militia (1000 to 3000 men), subordinated to civilian power. A further constraint was imposed mandating that the legislature could only fund such a land army for no longer than two years, "as a real security against the keeping of troops without evident necessity."* Owing to the fact that the delegates perceived military conflict for land armies to be in response to armed aggression into the United States, the two year ceiling was not imposed on the operations of the navy, whose "threat" was overseas.

(1: 3-8; 2:24)

*Alexander Hamilton in the Federalist Papers

The delegates' extensive dissection of the wording in the document was best reflected in the concern that arose over empowering the President to initiate treaties. To preclude the President from exercising autonomy in the use of Armed Forces under the pretext of support for the treaties which "he" initiated, the provision was added for treaty approval by two-thirds of the Senate as an additional check on his use of military power. Irrespective of the intensity of the level of scrutiny aimed at guarantying a balance of powers among each branch of government, the very nature of the Constitution remained as a "framework" for the operations of those branches.

Appendix A provides excerpts from the Constitution which address the war powers of the Congress and the President as they exist today. With respect to the maintenance and employment of armed forces, the anxieties over a national standing army faded as the realities of peaceful existence in a "global" context bore out the adage coined by Benjamin Franklin in 1747. "(Maintaining) one's own sword often times keeps another's in the scabbard." In broad terms, the Congress has the power to raise and support armies as needed, as well as to "declare" war. The President, as Commander in Chief, is empowered to conduct war with those forces the Congress had decided to provide. The print on the document was barely dry when scholars began

exhaustive study of the constitutional debates. Their goal was to decipher intent in those areas which proved ambiguous when applied to diversity of governmental actions to which "constitutional" authority was or could be claimed.

In those circumstances where Franklin's military axiom proved faulty, and the use of armed forces was determined to be necessary to support national policy, a legitimate constitutional interpretation dilemma has plagued us. Which of the war verbs, "declare" or "make," is most closely synonymous with the most controversial war verb of all, "initiate?" This interpretation lies at the roots of the Congressional-Executive war powers debate. (1: 3-8)

Presidential Prerogatives vs. Congressional Authority
The Battle for the Ultimate Foreign Policy Leverage

"...at some stage (a presidential military employment decision) ceases to be repelling or retaliating against an attack and becomes a basic commitment to war...that requires the concurrence of Congress." (3: 845)

These words of Senator Jacob Javits (D-NY), one of the principle authors of the War Powers Resolution, articulate an "acid test" for determining which branch of the government has the authority to use the military in a particular situation. That is, at least in the halls of

Congress, for just what is that "stage?" To the young platoon leader who has just taken his men out the rear ramp of a C-130 by parachute, and finds himself descending amidst a hailstorm of gunfire, he has just been "committed" to war, even if it was on the first day of a one day police action. The intense rhetoric which has been exchanged between the Executive and Legislative Branches over war powers has focussed on war, not in the physical sense but in the legal one. Yet, from a purely judicial perspective, if one is taken under attack or is threatened by overt hostilities, one is at "war." Any de facto declaration of war, therefore, is a redundancy. (1: 36-90) It can be from this loose interpretation that the Presidency has built a strong historical precedent for its utilization of the armed forces as an element of national foreign policy.

In the 200 years since the Constitutional Convention, United States Armed Forces have been used regularly by the Commander in Chief, without a declaration of war by Congress. As President in 1801, without Congressional sanctions, Thomas Jefferson deployed naval forces to Tripoli for offensive actions following Tripoli's declaration of war against the United States. An interesting contrast in interpretations of war powers arose in the mid-nineteenth century by then Representative Abraham Lincoln. Contesting the constitutionality of Presidential

military powers, Lincoln stated that "...to allow the President to invade...whenever he deem it necessary to repel an invasion...you allow him to make war at his pleasure." Several years later, a constitutionally "enlightened" President Lincoln unilaterally directed Federal troops to suppress an illegal rebellion by the Confederate States of America. (1: 13-18) Even during the years prior to our last "declared" war, World War II, President Roosevelt placed troops in Greenland and directed the Navy to "capture or destroy by every means at its disposal, Axis-controlled submarines or surface raiders..." (4: 267-275) The list of other events such as these is extensive. While there have been token gestures made by the Executive to include Congress at the "take off" of operations over the years, the perceived necessity to take timely foreign policy "action" precluded incurring the delays attendant to inevitable Congressional deliberations.

Anchored to this contention, the "war" over war powers continued into the 1960s as primarily a battle of rhetoric. Under the semantically translucent veils of "police actions," "surgical strikes" and "invitations to assist," the Executive staved off substantive confrontations with the Congress in employing the military as an element of foreign policy. (5: 132) Instilling some sense of carrying out implied responsibilities, the Congress provided

a form of approval of Presidential actions by passing various resolutions supporting those actions. The Tonkin Gulf Resolution, born from a slightly misrepresented recounting of a naval attack against our ships, was such a Congressional sanction for the Vietnam War. It ultimately proved however, to be the final vehicle by which the Congress mollified its urge to strongly claim a stake in effecting foreign policy. (3: 842)

To Fulfill the Intent of the Framers of the Constitution

Such is the stated purpose of the War Powers Resolution, the full text of which is presented in Appendix B and summarized in Chapter III of this paper. What was the revelation that provided the 92nd Congress the insight to codify what war powers the Constitution had left vague, and that their predecessors had been unable to experience?

In their 1964 Tonkin Gulf Resolution, Congress authorized the President "...take all necessary measures to repel attack on U.S. Forces and prevent further aggression....(the) U.S. was prepared, as the President determines, to use force." President Johnson viewed this "...as broad as any declaration of war." The resolution endured the entirety of the Vietnam War through to 1971 when

it was repealed, as an in-kind blank check to the Chief Executive to run the war. As the war protracted on, the Congress was relegated to providing the funding "fuel" for the President to conduct the war as he saw it. The resolution provided a link of complicity though, between Congress and the war for which their constituency held them accountable. The growth of the public calls for that accountability reached a head during the 1970/1971 period with the outcry over the Cambodian bombing and our support of the South Vietnamese invasion of Laos. Congressional leaders approached President Nixon asserting a desire and right for a greater say in the conduct of the war, and used as leverage a threat to repeal the Resolution "under which" he was operating. The reply which they received was that the President had no opposition to the repeal of the resolution because he had not been relying upon its provisions for war making authority in the first place. The frustrated Congress seized that moment to initiate actions designed to "restore to Congress (the) Constitutional powers involving decisions of war and peace." The vehicle at which they would ultimately arrive was the War Powers Resolution.

(3: 842)

A Footnote: The War Powers Resolution and Watergate

It would be extremely inaccurate to portray the Congress as being unanimous in their fervor to wrestle foreign policy powers from the President, as the vote on the War Powers Resolution did have some "nays." However, in reviewing volumes of the Congressional Quarterly, and examining many Congressional Committee Hearing records, one can't help but be taken with the fact that it was the turmoil filled times and the personality of the President, Richard M. Nixon, that most contributed to enactment of this Resolution. As will be discussed in the following chapters, the manner in which our Presidents have employed military forces has changed little, if any, since enactment of the Resolution in 1973. In nearly all cases in which war powers are at issue, the Commander in Chief disavows any constitutional relevance to the War Powers Resolution; and is carefully articulate in submitting reports to Congress to avoid inadvertently implying such relevance. Therefore, why was 1972/1973 the period in which Congress chose to confront the Presidency with respect to Constitutional powers? I feel it was the "President" and not the "Presidency" that

they actually wanted to confront, and the following quotation strikes at the heart of what I feel are the true reasons for enactment of the War Powers Resolution.

"I realize this is a time when everyone can with impunity kick the President because he is at a low ebb in popularity now, and many people are calling for impeachment and resignation...I hope we are not so caught up in the hysteria of Watergate and a desire to punish what we consider to be the wrongdoings of this President, that we make the power of the President to effectively formulate and implement foreign policy a victim of our emotions..."

(Senator John Tower (R-TX)) (6: 907)

CHAPTER III

WAR POWERS RESOLUTION SUMMARY

As was mentioned earlier, the full text of the War Powers Resolution is quoted in Appendix B. There are some key elements however, which provide the essence of its meaning, and they are provided below.

o Purpose and Policy

- to ensure the collective judgement of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities
- powers of the President as Commander in Chief to introduce United States Armed Forces into hostilities are exercised only pursuant to
 - (1) declaration of war;
 - (2) specific statutory authorization; or
 - (3) national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

o Consultation

- the President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated

o Reporting Requirement

- in the absence of a declaration of war, in any case in which United States Armed Forces are introduced
 - (1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;
 - (2) into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

- the President shall submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report in writing within 48 hours setting forth
 - (A) the circumstances necessitating introduction of United States Armed Forces;
 - (B) the constitutional and legislative authority under which such introduction took place; and
 - (C) the estimated duration or scope of the involvement.
- the President shall provide other information as the Congress may request

o Termination of the Use of Armed Forces*

- within sixty (60) calendar days after a report is submitted, the President shall terminate the use of United States Armed Forces as reported unless the Congress
 - (1) has declared war or enacted a special resolution for such use;
 - (2) has extended by law the sixty day period; or
 - (3) is physically unable to meet as a result of an armed attack upon the United States.
- such sixty day period shall be extended for not more than an additional thirty days if the President determines and certifies to Congress in writing that unavoidable military necessity involving the safety of the Forces requires their continued use in bringing about a prompt removal of such forces
- at any time, such forces shall be removed by the President if the Congress so directs by concurrent resolution

* This section contains the highly controversial inference that without any Congressional action, the President must still terminate the use of such forces.

CHAPTER IV

SHARED WAR POWERS IN PRACTICE

The Pro/Con camps which evolved over enactment of the War Powers Resolution drew their battle lines within the Capital Beltway. The ensuing confrontations provided great press for the media, but little impact on the conduct of Foreign Policy. President Nixon called it "repugnant to the Constitution...seriously undermining this nations ability to act decisively and convincingly in a time of international crisis." Representative Tip O'Neill (D-MAS) countered that "if the President can deal with the Arabs andthe Soviets, then he should be able and willing to deal with the U.S. Congress. That's all we are really asking of him." Gerald R. Ford, perhaps seeing what the cards may have had in store for him with a President under political duress, took the position that "... (the resolution) negatively affects the President's ability to move forward from cease fire to achieve a permanent peace." (6: 905-908)

Understandably, there are a multitude of positions and quotations on both sides of the constitutionality or practicality arguments. As a military man, I found two to be the most telling for the person at the opposite end of the spectrum from the politicians in the "practice" of war. In the text of his veto letter to Congress, President Nixon

noted that "... (the War Powers Resolution injected) a substantial element of unpredictability in our ability to act convincingly ... (and provide any substantive form) of deterrence... Congress can take no action at all to effect termination (of a military action)..." (6: 90-91A)

Certainly not an enemy of the military establishment, some ten years after enactment of the Resolution, Senator Barry Goldwater (R-AZ) contributed the following War Powers Resolution criticism in the Senate debate on our operations in Lebanon. "It is the height of nonsense to tell forces who are shooting at you that no matter what they do, you will pull out by a certain date." (4: 267)

While Congress was "on a roll," so to speak, in clarifying the intent of the Constitution's framers, there were several concessions made which are of note. First, in spite of their dissatisfaction over the conduct of the Vietnam War, the Resolution stipulated that it would not apply to any hostility in which we were engaged at the time of or prior to its enactment. Also, by a narrow margin, Senator Thomas Eagleton's (D-MO) proposed amendment which brought clandestine, Central Intelligence Agency and civilian operations under the bounds of the Resolution was defeated.

The momentum which originated with this Resolution carried forward into a myriad of other interpretations which were made by the Congress regarding their right of control of Presidential actions. One source written in 1977 stated that there had been "hundreds" of pieces of legislation passed by the Congress in which they empowered themselves to have what has become to be called a "legislative veto" over the Chief Executive. While in 1983, the U.S. Supreme Court declared "legislative vetoes" as being unconstitutional, many of those bills, among them the War Powers Resolution, remain law, as enacted by Congress. It is time, however, to leave the "whys" of the War Powers Resolution and look at what it has actually meant to the conduct of foreign policy.

In the remainder of this chapter, we will discuss several occasions where the military was used as an element of foreign policy, concomitantly exploring the workings of the War Powers Resolution in practice. This will serve as a presursor for ascertaining the true viability of the Resolution in today's world.

Consultation or Pontification

"...this is a time to spurn partisan politics and display a greater spirit of unity...we need nonpartisanship in foreign policy...can't we consult and act rather than pontificate and poke?"

(President Gerald R. Ford, 1974)

The shift in the momentum of Congressional assertiveness took no prisoners. The major successes of the Nixon Presidency which reached fruition in 1974, the South Vietnamese truce, major trade agreement with the Soviets and a Middle East/Israel settlements, proved of little leverage in July when Turkey invaded Cyprus. In the first major Executive/Congressional confrontation since enactment of the War Powers Resolution, Congress chose its budgetary management powers as the weapon of choice. This was in partial response to President Nixon's use of the military to conduct evacuation operations from Cyprus, without complying with the provisions of the new law. Amidst the turmoil of Nixon's resignation, Secretary of State Kissinger's ongoing Turkey/Greece negotiations became stalled when Congress independently moved to terminate all military aid to Turkey. In the presence of strong popular support for the urgency of the evacuations, the stated rationale was that Turkey had violated the mandates of the foreign military sales agreement by using U.S. provided

weapons in their invasion. In a short lived deference to their former colleague, Congress reached a compromise with President Ford by allowing him the option of delaying the aid for several months as a negotiation incentive. In this, the first test of the enforceability or legality of the War Powers Resolution, it was an issue only as a minor discussion point in Congress, and not a major infraction of the law.

The quotation which opened this section was made by President Ford while he was embroiled with regaining the leverage of military aid in the peace negotiations. While the inferences were not lost on the Congress, the compromise mentioned above was approved. Dr. Kissinger, in a modicum of contempt for this infringement on the heretofore inviolate nature of his diplomatic negotiations, said at the New York Press Club that the "growing tendency of Congress to legislate in detail the day to day or week to week conduct of our foreign affairs raises grave concerns." This statement was popular with the press and also not lost on Congress, and what semblance of amicability that did exist between President Ford and the Congress evaporated quickly. (7:513-518, 545-551)

To Act With Alacrity

"The distrust in the Executive Branch runs so deep in this chamber that members are afraid that any discretion, any grant of authority to the Executive Branch will open the door to allow the Executive Branch to again try to make one more effort to do what 10 years have failed to do."

(Representative Donald M. Fraser (D-MIN) (8: 295)

There are two periods in the past fifteen years in which a President has been faced with a number of military conflicts occurring either in sequence or simultaneously. One such period is the Spring of 1975. The circumstances were our closing out the last vestiges of an official involvement in Vietnam. The above quotation accurately conveys the Congressional sentiment of the moment.

The Paris Peace Accords, signed in January, 1973, included the stipulation that the United States would react vigorously to violations of the accords. Congressional refusal to approve a request for additional military aid for Cambodia and South Vietnam, in concert with their lethargy in approving the already programmed \$722 million in military aid and \$250 million in economic aid, set the stage for us to back-up that provision. But as has been covered earlier in this paper, Vietnam stood as a monument to Congress' perceived impotence in effecting the prosecution of the war. Those scars appeared to remain deep, and the sentiment was

strong to "close this chapter in the American Experience."
To that end, the political situation in those countries were held together in a precarious balance.

Anticipating the requirement for the use of the military for evacuation purposes should diplomatic efforts fail, President Ford, "taking note of" Section 4(a) of the War Powers Resolution made the following request of Congress.

"..now I ask Congress to clarify immediately its restrictions on the use of military force in Southeast Asia for the limited purposes of protecting American lives by ensuring their evacuation if this becomes necessary...prompt revision of the law to cover those Vietnamese to whom we have a special obligation and whose lives may be in danger should the worst come to pass. I hope this "authority" will never be used, but if it is needed, there will be no time for Congressional debate. Because of the gravity of the situation I urge Congress to complete action on all these measures not later than April 19th."

Representative Fraser's quotation, which opened this section, was extracted from the Congressional discussions in response to this request. On April 18th, Congress approved \$100 million as a Vietnam Contingency Fund and for humanitarian assistance. Additionally, they authorized the President to use armed forces to withdraw U.S. citizens and dependents. Foreign nationals could also be withdrawn provided their evacuation would not prolong troop exposure to danger and they would be withdrawn only from those areas

where U.S. troops and Americans were already present. They opportunistically seized the moment to validate the War Powers Resolution, by including as a rider on the appropriation that the President submit a report certifying the following information.

- the direct and imminent threat to the troops
- the diplomatic means which had been used and failed
- that the evacuation would be conducted as rapidly as possible

The rapid pace of events which ensued precluded submission of this letter prior to the April 29th evacuation operations. The evacuation of several thousand people was conducted successfully, and literally within hours of its completion, the Saigon government unconditionally surrendered to the North Vietnamese. A quotation of Representative Thomas Merger (D-PA) in the Congressional Quarterly following the evacuation provides a sobering commentary on this, our abdication of a treaty agreement to react vigorously to a violation of the Paris Accords. "... (We) lost an opportunity to work the War Powers Resolution. (8: 291-309)

In effect, the President made three reports to the Congress during April 1975. The first was on April 4th advising that he had ordered Navy and Marine forces to

assist in a relief attempt to transport refugees in South Vietnam. Coincident with those operations, one transport with 178 people aboard crashed killing all aboard. The second, on April 12th, addressed the evacuation of Americans in Cambodia. In both cases he cited as his authority the Foreign Assistance Act of 1961, his Presidential Powers and authority as Commander in Chief, without any inference that the reports were submitted pursuant to the War Powers Resolution. The third report, submitted on April 30th following the Saigon evacuation, again was a courtesy advisement that the actions had been carried out under his authority from Constitutional Executive powers. In a facetious sense, he should have made it a form letter, because on May 12th the U.S. Mayaguez was seized by Cambodian patrol boats in international waters, prompting a fourth report on May 15th. (9: 262)

Whether it was a "courageous and decisive act," in the words of one Senator, or "a hasty and ill considered use of military force against tiny countries," in the words of a Representative, the President's decision to use military force to rescue the crew of the Mayaguez received exceptionally strong popular support. Regrettably, there were some casualties sustained, yet the issue of compliance with the War Powers Resolution "surprisingly" didn't surface in any significant fashion. The Administration had

discussed the options with members of the Congress prior to the action, prompting Senator Javits to comment that "the procedures of the law had worked satisfactorily." The thrust of the Congress' actions following the operation was an attack, again, on semantics. Were they "consulted" (in the spirit of the War Powers Resolution), or were they simply "notified?" During the hearings, the Administration position was articulated by Mr. Robert H. Miller, a Deputy Assistant Secretary of State for East Asian and Pacific Affairs. "...the administration made every effort to solicit comments from Congress...the Congressional leadership had the opportunity to express its views concerning impending operations; however, consultations with all members of Congress were not possible and the administration had to move with alacrity." The consensus of the articles on the Mayaguez Incident show that the legality of the War Powers Resolution was thwarted by the popular support the action received, phrased by one author as a "cathartic" effect after Vietnam. (8: 310-311)

A Tangible Strategic Interest

The model for United States' foreign policy with respect to the Middle East was formed by Henry Kissinger. His contention was that the policy in practice depended on the Arab states developing confidence that we took their concerns seriously and were prepared to treat their legitimate needs fairly and with sympathy. In that vein, we undertook the sale of six C-130 aircraft to Egypt and granted \$701.6 million in aid to Saudi Arabia. Coincident with the development of these policies was the publishing of the Library of Congress report showing that the military balance had shifted to the Soviet Union. This disclosure validated our pursuit of tangible strategic interests in the Middle East. As the fighting in Lebanon's civil war increased, in June 1976 President Ford committed navy landing craft to evacuate 263 Americans and Europeans. There was no report submitted to the Congress addressing the introduction of the landing craft. Apparently owing to the interest in the area stemming from the world military balance disclosures, there was minimal debate in Congress regarding the President's failure to adhere to the provisions of the resolution. (10: 703; 11: 381)

Two months later, in August, following the killing of two U.S. Servicemen in the demilitarized zone in Korea,

the President ordered a squadron of twenty F-111's and eighteen F-4's sent to South Korea. The Congressional challenge on noncompliance with the provisions of the War Powers Resolution came from Representative Elizabeth Holtzman (D-NY) on the House Committee on Foreign Affairs. The Administration's response was that in contrast to the 41,000 troops already stationed in South Korea, the addition of the aircraft was but a "relative handful." As the additional assets did not "substantially enlarge" the force in place (a requirement of Section 4(a)(3) of the Resolution) a report was not required. There was no further Congressional action. (9: 262; 11: 381)

Energy, Human Rights and Economic Development

The heading for this section captures the thrust of President Carter's foreign policy, as presented in his State of the Union Address in 1978. An interesting contrast was that while we were castigating Rhodesia, Turkey, Chile, Argentina and Uganda, among others, for their human rights violations, we were less principled with South Korea, the Philippines, Israel and Panama. This appeared to be in an effort to bring to fruition the Camp David Accords, the Panama Canal Treaties, as well as maintain our other

interests. In the midst of our renewed emphasis on human rights as the foreign policy issue, President Carter ordered U.S. transport aircraft to provide assistance to the French and Belgians during their rescue operations in Zaire. The flight support lasted approximately two months. The President submitted no report to Congress under the War Powers Resolution. Reaction in Congress was mixed with Representative Clement Zablocki (D-WI), Chairman of the House Committee on Foreign Affairs, ultimately agreeing with the Administration that the operations did not fall within the scope of the Resolution. That opinion was not shared by all members of the Congress and a House Continuing Resolution was introduced requesting the President to submit a report. The rationale being that the forces were in fact subject to a situation involving imminent hostilities. No action was taken on that resolution however, and the President did not submit a report.

(12: 319,377; 9: 262; 11: 381-382)

April 24, 1980 - "The Guts to Try"

"Consistent with the reporting provisions of the War Powers Resolution I directed on April 24th....This operation was ordered and conducted pursuant to the President's powers under the Constitution of the United

States as Commander in Chief of the United States Armed Forces expressly recognized in Section 8.(d)(1) of the War Powers Resolution."

With those words, President Carter made the only report of the use of military forces to the Congress during his Presidency. It was in no small measure that it was the aborted nature of the Iranian Hostage Rescue Mission that forced him to stave off Congressional criticism amidst an already extremely frustrating situation. The immediate costs of the failed mission (men, equipment and prestige) muted somewhat the Congressional reaction. Obviously there was the sense of "failure" and frustration felt by the entire country exacerbated by the loss of eight American lives. For the President, in the aftermath was also the resignation of his Secretary of State, Cyrus Vance. Against that background, there was little argument other than the usual rhetoric from the Congress over War Powers issues. Senator Byrd opined that while the President's "verbiage in his reports can be argued...there was no violation in the spirit and intent of the Resolution." While there were still critics calling the operation Carter's "ignominous" intervention, it is this author's opinion that the national malaise over the entire hostage ordeal, when coupled with the failure of the mission, caused the restriction of Congressional reprisals. (13: 309; 14: 549)

The Issues of Human Rights are Best Served Through Quiet Diplomacy

The results of the 1980 General Elections brought a new tenor to the Presidency best characterized by a renewed commitment to development of the military and a change in diplomatic tack as the caption to this section indicates. While the former attribute appeared to provide the Congress a "feeding ground" on which to finally take hold of military usage, President Reagan's skillfully orchestrated popularity worked to deny them that opportunity. Such was the case when the President ordered twenty additional military advisors to El Salvador in March 1981 to assist the nineteen already placed there by President Carter. The rallying cry to which the President drew popular support for this action was best articulated by the new Secretary of State, Alexander Haig. He stated that El Salvador is a textbook case of indirect armed aggression by the communist power in Cuba and we are "drawing the line against communists." No report under the Resolution was submitted, and notwithstanding the popular support, Congress moved to enact a resolution requiring the President's compliance. The Administration successfully thwarted this assertion stating that the troops were armed with only personal sidearms and

not "equipped for combat" a la the requirements of the Resolution; a report was not appropriate, therefore, it would not be submitted. (15: 125-127; 11: 382)

Among a variety of available rationale (exportation of terrorism, arms sales and hostile intervention in Chad and Sudan), President Reagan chose the issue over freedom of the seas to bring pressure to bear on Libya. Claiming the Gulf of Sidra as their "internal waters," the Navy made carefully orchestrated excursions across the "Line of Death" to demonstrate the right of free passage. In August, 1981, when two Libyan fighter aircraft fired upon two Navy F-14's they (the Libyans) were shot down. The success of this aggressive (and successful) action received wide public acclaim, and there was no Congressional movement to press for invoking the Resolution. Had they made this attempt, it is conjectured that the President could have defeated such an action by holding that involvement in "imminent hostilities" was not clearly indicated. (11: 382)

In December of 1981, the Congress appropriated the monies to send up to 1200 U.S. Troops to the Sinai to participate in a multi-national peacekeeping force. In addition, they appropriated \$125 million to support that 2500 man force. The troops were deployed in March 1982, beginning a lengthy series of controversial and in one case

catastrophic military activities. (15: 151) For continuity, the period March '82 through December '83 will be treated as one period in the following section.

A Postmortem Summary of "Peacekeeping" in the Middle East

In March 1982, President Reagan submitted his first report to Congress regarding the use of armed forces when he sent U.S. military personnel to assist in the Sinai Peacekeeping Force. In the text of this report he asserted that it was being submitted "consistent with... the War Powers Resolution," but citing his "constitutional authority with respect to the conduct of foreign relations and as Commander in Chief." He additionally stipulated that this use does "not trigger the legislative veto provision of Section 5 (of the War Powers Resolution) as long as the forces are not engaged in hostilities." (9: 288)

A growing rift between the U.S. and Israel which grew out of Israel's invasion of Lebanon in early summer 1982 was an interesting sidelight to the war powers interactions. In an effort to instill stability in Lebanon, the President attempted to levy modest sanctions against Israel to dissuade them from continuing their invasion and occupation. Against the President's desires however, the

Congress increased aid to Israel. (As an editorial note, in contrast to the sanctions levied against Turkey several years earlier, it is interesting that the Congress did not hold Israel culpable for the same violations of the foreign military sales statutes for their use of U.S. provided weapons in their invasion.) As a standoff developed, and Israel's forces held Beirut under siege, the Lebanese government petitioned the U.S. to provide a small military force to assist in the safe conduct of the removal of Syrian and Palestinian forces from the city; 800 Marines were subsequently sent to Beirut in August. Citing his "desires that the Congress be fully informed...and consistent with (the War Powers Resolution)," the President submitted a letter report to the Congress which addressed the action. He went on further though, to clearly restate that the deployment was undertaken pursuant to his constitutional powers to conduct foreign relations and as Commander in Chief. The troops were withdrawn by September 10th. (16: 169; 11: 363)

Less than two weeks after the Marines were withdrawn, the Lebanese government asked for U.S. military assistance to facilitate the maintenance of peace while the restoration of the government was taking place. This was to be in conjunction with French and Italian forces already in place. On September 29th, the President reported that he

had ordered 1200 Marines to participate in the peacekeeping force and that they would not engage in combat but would exercise their "right of self-defense." The deployment was to be for a limited but unspecified amount of time. He cited his authority under the Constitution as he had in previous occasions. The discussions in Congress centered around the provisions in the Resolution requiring troops introduced into situations involving hostilities must be withdrawn within 60 days without Congressional approval. In November, 60 days later, Congress was informed that since the President did not quote the section of the War Powers Resolution addressing the 60 day limit, the requirement did not apply. There was no official Congressional rebuttal. (9: 264)

These interactions continued into 1983. When the Lebanese government asked for increases in U.S. troop numbers, the Congress moved to reach a "consultation" agreement with the President. Acquiescing to a rigid compliance with the War Powers Resolution, Congress sent the following message to the President. "...we would expect Congress to be involved at the earliest possible stage in the development of such proposals (to increase troop numbers) and that formal Congressional authorization would be sought before undertaking long-term or expanded commitments or extending indefinitely the present level of

operations." They further stipulated that they would direct withdrawal of the troops should they engage in hostilities or their presence was not justified. A compromise was reached in June when the parties agreed that statutory authorization was required for any "substantial" increase in involvement. At the behest of the Congress, the Lebanon Emergency Assistance Act, as it was called, included the statement that "nothing in this section is intended to modify, limit or suspend any of the standards and procedures prescribed by the War Powers Resolution..." (11: 264)

In August, with the resumption of hostilities, two Marines were killed. Congress' attempts to evoke the Resolution because of the now "imminent" hostilities were again thwarted by the President in holding that we had the assurances of the Lebanese government that our forces would be protected, however, you can never rule out an isolated act of violence. The President submitted another report to Congress as he directed naval ships to close the Lebanese coast and provide naval gunfire support for the troops as needed. This ultimately escalated into the additional use of naval attack aircraft. Congressional criticism took on the tone of our "using military muscle to address foreign policy issues" and they repeatedly called upon the President to honor the War Powers Resolution and commence the 60 day clock on our presence there. (17: 109)

In an effort to reach an equitable compromise, both the President and the Congress reached an agreement extending the Marine presence 18 months in order to achieve the three foreign policy goals for Lebanon ((1) withdrawal of all external forces; (2) establishment of a sovereign, independent government; and (3) provide security for Israel's northern border). A provision of the new compromise made reference to the requirements of the War Powers Resolution, and when the President signed the bill in early October, it was seen by Congress as a major victory in having the Chief Executive acknowledge the legality of the Resolution. In order to effect attaining some favorable position for his policies, the President verbally stated that his signing should not "be viewed as any acknowledgement that the President's Constitutional authority can be impermissibly infringed by statute."

(4: 265, 288)

In a large measure, passage of the new bill through Congress, and the arrival at the 18 month figure was a result of assurances of the Marines' security received from their Commandant, General P.X. Kelley. In his testimony before the Senate Committee on Foreign Relations, General Kelley based his assertions on his own observations made in mid-September. Unforeseen by General Kelley, and an unfortunate element of fate, approximately two days after

President Reagan signed the continuing resolution for the Marines, their barracks was bombed by a terrorist, killing 241 of them. (18: 1-10)

The major impact of this national tragedy was a rekindling of the public sentiment challenging the rationale for our presence in Lebanon. Congress, unfortunately, was incapable of strongly focusing the complicity for the disaster strictly on the President, for it was their compromise resolution on which the Marines were subjected to this eventuality. In this author's opinion, had it not been for the new resolution, the bombing of the Marine Barracks would have been the first true test of the War Powers Resolution when Congress would have directed the President, by concurrent resolution, to remove our forces. Congressman Tip O'Neill best summed up the Congressional frustration.

"...I am saying to the President those of us who supported the policy must see some action because we can no longer go with the status quo...Unless measureable progress is achieved in the very near future, I will join with many others in Congress in reconsidering Congressional authorization of our Marine presence."

Lost in the understandable national fervor and emotion over the deaths of the two Marines in August, the President ordered several AWACS and F-15 fighter aircraft to support friendly forces in Chad in their struggle against

invading Libyan forces. As he had done in the past, the President made a report sighting his constitutional authority as Commander in Chief. Amidst the intensity of the Congressional focus on Lebanon, this action received minimal criticism. (4: 288)

"God Bless America, God Bless Reagan"

As President Reagan was returning to the White House from Georgia following the bombing of the Marine barracks, a Joint Task Force was massing to invade the Caribbean island of Grenada. The quotation above came from one of the students who were rescued by those forces. Several key Congressional leaders had met with the President prior to the operation at which time they were briefed on contemplated actions. The debate over the propriety of invading the island again centered on whether Congress had been "consulted" or "advised," an aging discourse. Nonetheless, the immediate surge of favorable public support, I feel in large part a counter reaction to the Lebanon disaster, relegated this renewed semantics debate to the back page of importance. However, when the President sent his report to Congress, while he in no way acknowledged

the applicability of the War Powers Resolution, through Committee action, Congress started the 60 day clock invoking the "law." (19: 123-136)

An editorial footnote to the resolution that covered the Grenada operation is that throughout the majority of the testimony before the House Committee on Foreign Affairs, the predominance of discussion was not on Grenada but on the constitutionality of the War Powers Resolution. In fact, many Congressmen wanted to change several aspects of the Resolution as they applied to Grenada to be more restrictive. These restrictions never materialized in the bill presented on the floor of the House, but it clearly demonstrates the non-partisan and highly individualistic nature of Congress even with respect to their own legislation.

A "Statement" on Terrorism

The joint USAF/USN raid on terrorist targets in Libya in April 1986, was a calculated military response for which there was a wealth of warnings. Not the least of these was the literal "rotating door" at the White House where the President consulted with members of the Congress long before the operation. In fact, the visibility given

the arrivals and departures of the Congressional leaders was taken by the Press as a clear signal that something was in the offing and may have been devised to convey just that. Nonetheless, the speed of the operation and the general supportive consensus it received precluded any substantive war powers challenge from Congress. While not specifically tied to any reference to the War Powers Resolution, the President's consultation actions conformed to the spirit of the Resolution, in fact, it far exceeded the requirements. (20: 68-71)

The Persian Gulf and Reflagging

On May 18, 1987, the day after the Iraqi Mirage attack on USS STARK, the totality of the American people became aware of our military presence in the Persian Gulf. The common misconception however, was that with this sudden awareness they also perceived that presence to be a new employment of the military. This couldn't be further from the truth. On my first deployment as a naval officer in 1973, we spent five months in the Indian Ocean area, two months of which were in the Gulf. To the average American, the "turmoil" in the Middle East is but a literary experience they receive through the news media. To the

thousands of USAF, USA and USN personnel who operated in this area of uncertainty that "turmoil" was anchored to some hostile realities, not the least of which are the diverse cultural differences within the region. The Arab Oil Embargo in the mid-seventies was instrumental in escalating the form of the naval presence in the area, ushering in the requirement for the maintenance of a carrier battle group to respond to regional tensions. The Iran/Iraq war has been going on in excess of seven years; we have maintained forces there throughout the conflict. When did the area become hostile and/or when were U.S. forces first subjected to "imminent" hostilities?

That is a rhetorical question, yet is an interesting dilemma for those who contend the War Powers Resolution now applies to our presence there. Our Peacetime Rules of Engagement (ROE) were clear and were ingrained in the ethics of self-defense of U.S. forces and interests. That tenor is universal throughout all services operating in all parts of the world and is not unique to the Persian Gulf. In 1987, when Kuwait approached the U.S. with a request for assistance in deterring the Iran/Iraq conflict from impacting their commercial interests, we initiated Reflagging their tankers to bring them under those Peacetime ROE. While unquestionably this commitment necessitated some increase in our force structure there, has it been a

"substantial enlargement" of those forces? The answer is arguably, no.

Have those forces been introduced into the territory, airspace or waters of nation, while equipped for combat. To the former aspect of this question, no, as the naval forces are operating in international waters outside of the defined war zone established by Iran. The answer to the latter aspect of this question is yes, but not appreciably more so than any other deployed naval force and therefore is not germane to the War Powers Resolution requirements.

There are unquestionably arguments in Congress that the Persian Gulf requires adherence to the War Powers Resolution. By the evaluation above, based on the prerequisites of that Resolution, the Administration can contend that it does not. As the President is consulting with the Congressional leaders on a regular basis, the "spirit" of the "law" is being met. The vitality of the War Powers Resolution once again remains purely a matter in "debate."

CHAPTER V

WHAT IS PAST IS PROLOGUE

I do not claim any propriety over that chapter heading however accurate it may be. As shown in Chapter IV, the War Powers Resolution in all practicality is unenforceable and ineffective as a "Constitutional" mandate. It presents the Congress with something to wave around periodically, as well as to give their committee hearings some testimonial bulk. It is defeated at every turn either by broad interpretations of its semantics or overtaken by events in the case of a swift military action. A regular "trump card" is popular opinion which when strongly in support of an action causes the paling of the Resolution, or at least the fervor with which it is pursued. In its current form and interpretation, it stands as a paradox against the effective enactment of a cohesive foreign policy.

Senator Ernest Hollings once hailed the Resolution as the vehicle whereby the consensus of the people through their elected officials would be brought into play in foreign policy decisions involving use of the military. He went on to say that the matter of sending our men and women into hazardous situations was not one to be taken lightly, nor entrusted solely to one individual. The former portions

of his statement are somewhat preposterous as what is the true depth of constituency consensus that today's elected officials command? First, how many Congressmen campaign on foreign policy issues? I would venture to say very few if any. Following the progress of the current Presidential Primary campaigning, rarely do those candidates attempt to rally the people with other than domestic issues. As a result, how can any Congressman or Congresswoman claim they have the referendum of their constituency on foreign policy issues? One, those issues are the most dynamic of all governmental activities and how could they have envisioned them with any accuracy during their campaign; and two, how do they claim to hold the opinions of those who didn't vote for them. So to claim to serve the consensus of the people is a tenuous position. To assert that position one would have to poll their electorate on a regular basis, exponentially compounding the potential time delays in effecting a policy that may require timely actions. As an aside, even when the popular opinion seemed to support the actions taken by the President, a form of pseudo consensus I suppose, the Congress chose to dissect the action with respect to their Resolution instead of supporting it as well.

There is an often used analogy with respect to Congress and foreign policy, that we have 535 aspiring

Secretaries of State. That is a misnomer, and grossly understated. You must add to that number the powerful Congressional Staffers, who command a comparable amount of power within the government. Whether it be through a microphone and mini-cam or through the filtration of a print journalist, all these potential foreign policy actors readily command a national as well as international forum through which to air their policy views. A tragedy is that this proliferation of "governmental" positions often proves confusing to our allies not to mention our own population. In its current form the War Powers Resolution, as it is applied, stands as a potentially serious detriment to our ability to conduct effective foreign policy. To advise adversaries toward whom we are directing military force that we may not be in it for the long haul, and may change our minds in 60 days, grievously undermines our credibility within the region concerned. Additionally, to subject our military to face danger throughout a period while a publicity oriented Congress debates the pros and cons of their actions would have a debilitating effect on morale and effectiveness. The prerogative powers of the President are not constitutionally mandated, they have evolved through practice in dealing with the threats to this nation. They are emergency actions not to be subject to partisan politics to be effective. Congressman Newton Gingrich (R-GA) made a

compelling statement about the service of our country in the military. The military profession he says "is the vocation of preserving democracy until tyranny can decay." The War Powers Resolution, irrespective of its constitutionality, significantly retards the conduct of that vocation.

What does the War Powers Resolution symbolize for the future? Several speakers at the Air War College addressed the spectrum of activities embodied by our foreign policy as being a balance of interrelated assets. Military power exists in this arena along with diplomacy, economic aid, humanitarian aid, market sharing, etc. As many elements in a quasi-mathematical equation, the end result of our foreign policy efforts can often times be attained with differing combinations of those elements. It is clear however, that when one of the elements, military assistance for example, is changed without adjustment of another element, the end result will change. As was mentioned in the Introduction to this paper, the foreign policy avenues on which we embarked in the 1950's are being manifest in increasingly austere resources to support them. While we are not bankrupt from a fiscal viewpoint, the reality is that we cannot rely on our wallet to offset pragmatic shortcomings any longer and cannot be monetarily cavalier in pursuing our various interests. In the area of monetary assistance, one of the elements in our foreign policy

equation, as we deal with increasing austerity in available funds, another element of that equation must have the flexibility to counter the detrimental effects of a cut in financial aid. While not the "end/cure all," the military provides a medium to instill some modicum of stability into a situation until a more acceptable long term solution is available. Timing, both in speed as well as in longevity, is a critical element on the use of this medium. Owing to the nature of our society, as we have seen in the analysis of the War Powers Resolution, success plays heavily into the acceptance of using the military as an arm of foreign policy. We must, therefore, posture ourselves to optimally meet these new challenges across the full spectrum of potential regional instabilities.

We have currently postured ourselves for a major conflict with the Soviets. Our force structure, deployment strategies and intelligence gathering mechanisms are all focussed in support of that posture. The activities in which we have found ourselves over the past fifteen years however, have not been with the Soviets. From a purely military perspective, many of the difficulties we have encountered stem from the incompatibility of our fighting or support forces with the challenge at hand. We are always able to adjust and optimize what we do have, but is that sufficient to satisfy the "zero defects" philosophy held by

many of our leaders as well as the majority of the general public? I say no. Congress may be stymied in their attempts to effect foreign policy through the War Powers Resolution, but they hold, uncontested, the ultimate power to posture the military element of that policy. Through their control of the "purse" they control the ultimate destiny of the use of military power as a viable instrument of contemporary foreign policy. Amidst a wave of national euphoria over the perceived peaceful intentions of the Soviet Union stemming from "Glasnost" and arms control issues, we cannot let our guard down. In an atmosphere of increased restructuring of our forces due to arms control treaties, our challenge to remain a formidable element of foreign policy is compounded. The potential for this euphoria to be manifest in an even greater reduction in the DOD budget cannot be underestimated. How clearly we articulate this reality to our Congressional leaders will determine the continuity in capabilities with which we move into the Twenty-First Century.

JCS Pub 1, the dictionary of military terms, is constantly being updated. While many of those updates are a result of our propensity for acronym development, you don't see some of the more telling operational terms with which we work. "Surgical strike," "minimize casualties" and "minimize damage to the geography" are but a few of the

terms in today's military operational vernacular. More than just words though, these terms represent hard operational requirements around which we are charged to accomplish the mission. When imposed as operational constraints, these philosophies mandate that the manner in which we approach an objective must be adjusted. Does a ship "designed to price" as an open ocean escort function credibly in a restricted body of water against an unpredictable and hostile air threat. The answer is problematical having over 35 USS STARK's available for duty in the Persian Gulf. The issue though, is that we will ultimately be held accountable for the success of the tables of equipment ends towards which we are currently working. Whether that accountability comes from operational success or failure, piecemeal through continuous Congressional review of conducted operations or through the annual right of the budget is irrelevant.

The War Powers Resolution is symptomatic of a Congressional dissatisfaction over an inability to substantively "impact" the full spectrum of governmental foci. The use of the military with its attendant potentially devastating consequences has provided a convenient and visible target for that dissatisfaction. As a professional military, we must effectively deal with the contemporary day to day world while remaining a deterrent to major conflicts. The adage, you cannot get something for

nothing applies here. We must guard against allowing governmental factions to dilute capabilities, or hold unrealistic expectations as to the postulated effectiveness of our new capabilities or those already in the inventory, amidst the philosophical operational constraints discussed above. We must be candid with the governmental leadership and convey that fixed personnel end strengths and decreasing budgets do not facilitate diversification into the new arenas of Low Intensity Conflicts without compromises on capabilities already in place. In today's world we can ill afford the planning excursions engendered by transitions in either acquisition strategies or Congressionally imposed strategy redirection. We must posture ourselves to meet the "current and future threats." We must prepare to fight efficiently and effectively orienting our support assets towards meeting not the global war scenarios, but regional tensions against adversaries other than the Soviets. We must educate the Congress to all facets of this charter.

A relative surety in our political process is that the President will pass his power in a maximum of eight years. Interestingly, that is less time than our acquisition process allows us to bring a new aircraft or ship to initial operational capability. We must have the programming strategy continuity to withstand the perturbations germane to these regular governmental

transitions concomitant with solidifying the "common ground" on which we and the Congress see our world and the directions from which we feel we should approach it. By so doing, we will have optimized our ability to "defend democracy."

APPENDIX A
EXCERPTS OF CONSTITUTIONAL POWERS

Article I, Section 1 --

All legislative powers herein granted shall be vested in a Congress of the United States.

Section 8 --

The Congress shall have the power...to declare war...to raise and support armies...to maintain a navy...make rules for the government and regulation of the land and naval forces...to provide for organizing, arming and disciplining the militia.

Article II, Section 1 --

The Executive Power shall be vested in a President of the United States of America.

Section 2 --

The President shall be the Commander in Chief of the Army and the Navy of the United States.

APPENDIX B

Text of The War Powers Resolution - Public Law 93-148*

1. War Powers

A. War Powers Resolution

Public Law 93-148[H.J.Res.542], 87 Stat. 555, 50 U.S.C. 1541-1548, passed over the President's veto November 7, 1973

JOINT RESOLUTION Concerning the war powers of Congress and the President.

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This joint resolution may be cited as the "War Powers Resolution."

PURPOSE AND POLICY

Sec. 2. (a) It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations.

(b) Under Article I, Section 8, of the Constitution, it is specifically provided that the Congress shall have the power to make all laws necessary and proper for carrying into execution, not only its own powers but also other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof.

(c) The constitutional powers of the President as Commander-in Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a

*Underlining added by the author for emphasis

declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.

CONSULTATION

Sec. 3. The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

REPORTING

SEC. 4. (A) In the absence of a declaration of war, in any case in which United States Armed Forces are introduced-

(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

(2) into the territory, airspace, or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces; or

(3) in numbers which substantially enlarge United States Armed Forces equipped for combat already located in a foreign nation;

the President shall submit within 48 hours to the Speaker of the House of Representatives and the the President pro tempore of the Senate a report, in writing, setting forth-

(A) the circumstances necessitating the introduction of United States Armed Forces;

(B) the constitutional and legislative authority under which such introduction took place; and

(C) the estimated scope and duration of the hostilities or involvement.

(b) The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Forces abroad.

(c) Whenever United States Armed Forces are introduced into hostilities or into any situation described in subsection (a) if this section, the President shall so long as such armed forces continue to be engaged in such hostilities or situation, report to the Congress periodically on the status of such hostilities or situation

as well as on the scope and duration of such hostilities or situation, but in no event shall report to the Congress less often than once every six months.

CONGRESSIONAL ACTION

Sec. 5. (a) Each report submitted pursuant to section 4(a)(1) shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty day period shall be extended for not more than a additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

(c) Notwithstanding subsection (b), at any time that United States Armed Forces are engaged in hostilities outside the territory of the United States, its possessions and territories without a declaration of war or specific statutory authorization, such forces shall be removed by the President if the Congress so directs by concurrent resolution.

CONGRESSIONAL PRIORITY PROCEDURES FOR JOINT RESOLUTION OR BILL

Sec. 6. (a) Any joint resolution or bill introduced pursuant to section 5(b) at least thirty calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

(b) Any joint resolution or bill so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents), and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas or nays.

(c) Such a joint resolution or bill passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported on not later than fourteen calendar days before the expiration of the sixty-day period specified in section 5(b). The joint resolution or bill so reported shall become the pending business of the House in question and shall be voted on within three calendar days after it has been reported unless such House shall otherwise determine by yeas or nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution or bill passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such resolution or bill not later than four calendar days before the expiration of the sixty-day period specified in section 5(b). In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than the expiration of such sixty-day period.

CONGRESSIONAL PRIORITY PROCEDURES FOR CONCURRENT RESOLUTION

Sec. 7. (a) Any concurrent resolution introduced pursuant to section 5(c) shall be referred to the Committee on Foreign Affairs of the House of Representatives or the

Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

(b) Any concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

(c) Such a concurrent resolution passed by one House shall be referred to the committee of the other House named in subsection (a) and shall be reported out by such committee together with its recommendations within fifteen calendar days and shall thereupon become the pending business of such House and shall be voted upon within three calendar days, unless such House shall otherwise determine by yeas and nays.

(d) In the case of any disagreement between the two Houses of Congress with respect to a concurrent resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such concurrent resolution within six calendar days after the legislation is referred to the committee of conference. Notwithstanding any rule in either House concerning the printing of conference reports in the Record or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed. In the event the conferees are unable to agree within 48 hours, they shall report back to their respective Houses in disagreement.

INTERPRETATION OF JOINT RESOLUTION

Sec. 8. (a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances shall not be inferred-

(1) from any provision of law (whether or not in effect before the date of the enactment of this joint resolution), including any provision contained in any appropriation Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this joint resolution; or

(2) from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution.

(b) Nothing in this joint resolution shall be construed to require any further specific statutory authorization to permit members of United States Armed Forces to participate jointly with members of the armed forces of one or more foreign countries in the headquarters operations of high-level military commands which were established pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

(c) For the purposes of this joint resolution, the term "introduction of United States Armed Forces" includes the assignment of members of such armed forces to command, coordinate,, participate in the movement of, or accompany the regular or irregular military forces of any foreign country of government when such military forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

(d) Nothing in this joint resolution -

(1) is intended to alter the constitutional authority of the Congress or of the President, or the provisions of existing treaties; or

(2) shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.

SEPARABILITY CLAUSE

Sec. 9. If any provision of this joint resolution or the application thereof to any person or circumstances is held invalid, the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected thereby.

EFFECTIVE DATE

Sec. 10. This joint resolution shall take effect on the date of its enactment.

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