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# The Expanding Rol of the President as Commander-In-Chief Since World War II

David E. Kugler

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THE EXPANDING ROLE OF THE PRESIDENT AS COMMANDER-IN-CHIEF  
SINCE WORLD WAR II

by  
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A Thesis  
Submitted to the Graduate Faculty  
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This Thesis submitted by David E. Kugler in partial fulfillment of the requirements for the Degree of Master of Arts from the University of North Dakota has been read by the Faculty Advisory Committee under whom the work has been done, and is hereby approved.

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This Thesis meets the standards for appearance and conforms to the style and format requirements of the Graduate School of the University of North Dakota, and is hereby approved.

David E. Kugler  
Dean of the Graduate School

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Date 16 April 1991

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Finally, this thesis is dedicated to those who study the art of leadership. May they learn from those who have gone before.

## ABSTRACT

While conflict has always existed between the president and the Congress over war-making roles, the president's Commander-in-Chief role has expanded significantly since World War II. This study examines expansion of presidential power in terms of the establishment of the United States as a world economic and political power and the development of nuclear weapons.

Case studies were selected from each of the administrations from Truman through Reagan to illustrate these points. The Truman administration is studied in terms of the war in Korea and the advent of the limited war concept in a nuclear-powered world.

President Eisenhower's massive retaliation strategy represents the first real national military strategy. It set the stage for an unprecedented standing force of nuclear weapons as the U.S. moved to the center stage of world power.

The Kennedy administration's handling of the Cuban Missile Crisis outlines the problems of massive retaliation strategy as other nations continued to develop their own forces. It also points out the need for a sole decision maker in crisis situations and changes in the concept of imminent danger.

The Gulf of Tonkin Resolution in 1964 granted the broadest possible powers to President Johnson as he

pursued American interests in Vietnam. The resolution led to the largest presidentially made war in American history.

President Nixon's decision to bomb and invade Cambodia in 1970 was an extension of the Tonkin Gulf Resolution. This decision served as the final straw for Congress in terms of presidential power and resulted in the War Powers Act of 1973.

The Ford Administration's handling of the Mayaguez seizure in 1975 and President Carter's approach to the Iran hostage crisis in 1979 illustrate the presidency in the post-War Powers Act environment. Both men gave lip service to the law, but basically continued to act as presidents before them had done.

President Reagan's leadership in invading Grenada in 1983 finally illustrates the use of strong presidential power, yet recognizes the role of Congress in war-making by complying with the provisions of the War Powers Act.

This thesis concludes that presidential war powers expanded to an all time high by 1973, and then levelled off. Much of the time since then has been spent seeking the correct balance between the president and Congress based on the provisions of the War Powers Act.



## CHAPTER I. INTRODUCTION

Article II, Section 2 of the U.S. Constitution states, "The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States..." At the same time, Article I, Section 8 grants various powers to the Congress including "To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water; To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval Forces; To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress..."

Clearly the framers of the Constitution meant for the executive and the legislature to share war powers in order to fight only "just wars" and limit the possibilities of personal military excursions conducted so frequently at that time by the monarchs of Europe. The actual text of

the Constitution thus becomes one influence on the division of authority between the president and Congress. Other issues also have an impact, however. Among them are the real intentions of those attending the constitutional convention, evolving beliefs, and actual practice since 1789.(1)

The basic trend over the last two hundred years has been one of presidential aggrandizement of war powers. This trend seems to run contrary to the intentions of the framers, and thus must be more a result of other influences. According to Reveley:

The weight of the evidence at Philadelphia does suggest that a majority of the Framers by September wished an Executive who would be more than an agent of Congress. But to conclude from that purpose that the Framers, without saying so, also intended to clothe the President with an indeterminate reservoir of foreign and military authority via the executive-power clause is difficult, given the Framers' caution concerning executive power and their expressed desire to limit it.(2)

Other legal scholars conclude that the Framers intended for the president to conduct war only after Congress made the decision to initiate it. This conclusion comes from convention debate over the wording of Article I. Originally, Congress was to be granted the power to "make war," but after arguments by Madison concerning the need to "repel sudden attacks" the phrase was changed to read "To declare war."(3) Clearly, historical events have moved the intentions of the framers to an academic position as the commander-in-chief powers of the president have continued

to expand. Occasional debates surface in political rhetoric and academic study, but the intentions of the framers today hold little weight in determining presidential war powers.

It did not take long for different beliefs to evolve concerning presidential war powers. During the ratification debate, Alexander Hamilton authored Federalist #69 where he described the commander-in-chief clause as "nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the Confederacy." He strongly implied that the president could only fight a war once committed to that war by Congress. About the same time, James Madison wrote to Thomas Jefferson, "The Constitution supposes what the History of all Governments demonstrates that the Executive is the branch of power most interested in war and most prone to it. It has accordingly with studied care vested the question in the Legislature." (4) However, shortly after ratification of the Constitution by the states, Hamilton seemed to allow for a bit more war-making power by the president.

It is the peculiar and exclusive province of Congress, when the nation is at peace to change that state into a state of war; whether from calculations of policy, or from provocations, or injuries received: in other words, it belongs to Congress only, to go to War. But when a foreign nation declares, or openly and avowedly makes war upon the United States, they are then by the very fact already at war, and any declaration on the part of Congress is nugatory; it is at least

unnecessary. (5)

Hamilton's statement illustrates some of the problems with the text of the Constitution and transcripts of the convention concerning war powers. There seems to be a problem of how the war powers are shared between the president and the Congress. Different circumstances can determine how and when a nation is at war. These different situations require a clearly discernable outline of powers indicating who does what. The Constitution is weak on this point. Really, all references to war powers of the president and Congress in the Constitution concern a time that the United States is prepared to initiate and conduct a war to secure its own clearly supported interests. Thomas points out the problem with this vagueness.

The language of the Constitution is ambiguous. Nor does the intent of the framers emerge from their debates with the clarity which might be desired. Perhaps the language of the constitutional debates would indicate that a larger portion of the war power was to be placed in the Congress, and insofar as the United States is concerned that body through its power to declare war would be empowered to initiate war. The President would be left free to repel sudden attacks. But what is meant by sudden attacks? Moreover, no clear-cut answer is to be found to the question of the President's power to use force short of war. (6)

What exactly is meant by sudden attacks? Does the president have to wait until the nation comes under attack to have the power to use military forces in self-defense? Or, if intelligence sources indicate the probability of imminent attack, can the president act in a pre-emptive way

to defeat the attacker? Good military doctrine supports the concept of pre-emptive strikes and international law allows pre-emptive action to protect a nation's sovereignty, but the Constitution is unclear about who has the power to initiate such action.

To expand the question, do American people and equipment outside the borders of the United States fall under the same type of protection from "sudden attacks?" Obviously, the framers were not able to forecast advances in transportation and communication which make these questions so much more complicated. They also never appear to have considered the use of military force for anything short of full scale war.

Considering these weaknesses, evolving beliefs and historical precedents will actually do a better job of describing and explaining presidential war powers. As stated earlier, the historical trend has been to increase the powers of the president as commander-in-chief. First, the constitutional basis of presidential war powers evolved from delegated to inherent powers of the president as commander-in-chief. Next, the role evolved from a simple military commander to a vast reservoir of indeterminate powers in times of emergencies. Finally, history provides examples of sweeping legislative powers claimed by Congress being delegated to the president to the extent needed to carry out commander-in-chief duties.(7) Presidential war

powers have expanded steadily since ratification of the Constitution. With the possible exception of the Civil War, the most visible expansion of presidential war powers has occurred since World War II. It is probable that this most recent expansion of power has resulted from changing circumstances affecting the presidency. These changes include rapidly advancing technology and extensive treaty commitments positioning the United States as a world leader.

This study attempts to explain the expansion of presidential power as commander-in-chief since World War II in terms of two developments: a new U.S. position as a world leader in economics and politics, and the development of nuclear weapons. At the end of World War II, the United States emerged as the pre-eminent economic power in the world. While the nations who had their territory used as a battlefield struggled to rebuild, Americans enjoyed unprecedented wealth. Appropriately, the United States was thrust into a leadership role in rebuilding the world economy.

Similarly, the United States and the Soviet Union emerged as the world's political powers. Cold War pressures and world needs for economic development led to extensive treaty commitments with the American president in a clear leadership role.

Lastly, technological developments had made the world a smaller place. More advanced communications and information systems and weapons of mass destruction made the need for quick decision making with respect to war making much more critical.

Since this expansion is so difficult to quantify in terms of some number and the constitutional aspects of the question are so vague, I plan to present case studies from each administration from Harry Truman to Ronald Reagan to support my claim of expanded presidential war powers since World War II. This method assumes that evolving beliefs about war powers and real actions of various presidents explain the expansion of the commander-in-chief role.

Case studies have the obvious disadvantage of difficulty in generalizing their conclusions to the "big picture." However, they are useful with issues like this for several reasons. First, and probably most important, case studies provide an appreciation for real time constraints on researchers and decision makers. For instance, this study will cover one particular case under each president since World War II. To study fully the president as commander-in-chief during this period alone would be a very large project. One source claims that between 1945 and 1975 (two administrations fewer than are dealt with here), the United States was involved in 215

military incidents, police actions, or shows of force, including two threats of nuclear action.(8)

A second advantage of case studies stems from the constitutional side of this issue. Policy questions like presidential war powers are often ill-defined. Because no one has been able to clearly write down what the policy is, case studies tend to clarify what is really going on.

Before turning to the cases since World War II, it is important to gain an understanding of the historical context of presidential war powers in order to see how significant the more recent changes have been. Throughout history, a variety of matters have been addressed by presidents acting as commander-in-chief without explicit Congressional approval.(9) In terms of military action, there have been short term deployments, long term stationing of troops on foreign soil, training and advising of foreign forces, providing armament or naval protection to merchant vessels, airlifting supplies over hostile or disputed territory, searches and seizures of foreign vessels or aircraft, naval blockades, covert intelligence operations, threats and assurances of U.S. military action, and actual combat operations.

Associated nonmilitary actions include concern over the treatment of Americans abroad and the giving and receiving of official apologies. Presidents have stated foreign economic claims and terms concerning foreign



officials and troops, as well as conducted foreign political operations. They have participated in summits, conferences and international organizations, recognized governments, and made threats and assurances of U.S. non-military action, all without the expressed approval of Congress. These actions have all been justified under the commander-in-chief powers of the president.

The traditions and precedents of the commander-in-chief powers have developed most during times of war, but significant precedents have been set outside of war. In 1807, Thomas Jefferson, one of the framers most distrusting of a strong independent executive, acted in the first real way to expand the powers of the president as commander-in-chief.(10) After Congress had recessed for the year, the British navy fired on the American vessel Chesapeake. Without calling Congress back into session or even consulting with Congressional leaders, Jefferson ordered emergency military supplies sent to help. In justifying his action, Jefferson stated that observance of the written law was important, but not as important as self-preservation and national security.

James Madison was president during the War of 1812. Madison preferred to delegate his military authority to subordinate commanders and the cabinet. He had no military experience himself, and had more special interest in the legal and political workings of government.(11) Despite

this lack of interest in military affairs, Madison did take an active role in war planning. He concerned himself with naval superiority on the Great Lakes, defense of the city of Washington, and the dispatch of Andrew Jackson to New Orleans to protect the mouth of the Mississippi.

Madison's Secretary of War, John Armstrong took advantage of the president's "hands off" approach to seek his own political fortune. He routinely began to disregard instructions from the president. When Madison discovered this, he became much more involved as commander-in-chief. He reminded Armstrong that he was under the supervision of and subject to the orders of the president and ordered him to clear all further instructions concerning military operations through him. Madison even briefly exercised direct command over U.S. forces during the British attack on Washington.

In 1846, President Polk acted to vastly expand his power as commander-in-chief. Polk ordered General Zachary Taylor to take troops into disputed territory between the Neuces and Rio Grande Rivers.(12) Mexico attacked Taylor's army on the grounds that American forces had invaded Mexican territory. Polk then went to Congress asking for and receiving a declaration of war on May 11, 1846.(13)

After the war declaration, Polk took an active part in commanding military operations. With the help of the cabinet, Polk already had a grand strategy mapped out when

war was declared.(14) He issued orders to Taylor directing advances into northern Mexico, to Kearney taking California, and formulated plans for an invasion from the Gulf coast near Mexico City. Polk also directed the administrative details of the military action. He was concerned with matters such as sailing dates for navy ships, purchases of army pack animals, and processing of every officer's commission.

Perhaps the largest expansion of presidential power as commander-in-chief in the history of the United States came during the Civil War. Abraham Lincoln continued the tradition started by Jefferson that self-preservation of the nation was more important than adherence to written law. In fact, Robinson claims that Lincoln proved the ability of the president to become a dictator using the commander-in-chief clause in times of national emergency.(15)

Despite a constitutional requirement for Congress to authorize increases in the size of military forces, Lincoln ordered such increases in the army and navy without Congressional authorization. He single-handedly suspended the writ of habeas corpus, ordered civilians in front line areas tried in military courts, nationalized the railroads and wire systems under the War Department, and issued the Emancipation Proclamation, freeing all slaves.(16) In addition, Lincoln ordered a naval blockade of the

Confederacy without consulting Congress. This 1863 blockade was upheld as an appropriate exercise of commander-in-chief powers by the Supreme Court.(17)

President Lincoln did not stop there. He also became the first president to exercise direct control of armies in the field outside the immediate area of Washington. Klotz explains that several different factors account for this active involvement.(18) First, the Civil War was the first American war where information about troop movements and results of battles could be learned in a matter of hours, rather than days or weeks. War Department controlled telegraph lines rapidly relayed information to Washington where the president could act on near real-time information.

The Navy and War Departments' failure to develop a strategic command and control system prior to 1861 also led to active presidential involvement in operations. In the army, planning and command responsibility rested with the commanding general officer. Lincoln had many difficulties with this system, finding it difficult to find a general he could trust. Until Grant was appointed in 1864, Lincoln was forced to plan strategy and supervise action in the field.

Lastly, the nature of the Civil War itself called for active involvement by the commander-in-chief. The goal of the conflict was not defeat of an external enemy, but

rather preservation of the union itself. Social, political and economic norms became closely tied to military objectives. Lincoln felt that the Confederacy had to be defeated before other nations recognized its existence and possibly came to its aid. The need for a speedy victory amidst commanding union generals with their own political agendas served as a cause for Lincoln to exercise command authority.

Despite expansion of presidential commander-in-chief authority due to the unique circumstances of the Civil War, the trend returned to indirect presidential command under William McKinley. Klotz claims that McKinley's style was due to his lack of mental preparedness for war.(19) In the several months prior to April 1898, McKinley concentrated his efforts on finding a peaceful solution to the call for Cuban independence. McKinley's subordinates in the armed forces, however, had already worked out a strategy for conducting a war against Spain. Once war was declared, McKinley merely became a "rubber stamp" for military commanders' plans.

Despite his lack of direct command over operations in the Spanish-American War, McKinley had more resources available than any previous president enabling him to run the show from Washington if he wished.(20) The War Room on the White House second floor consisted of 25 telegraph and 15 telephone lines connecting the president to commanders

in the Army and Navy. Maps indicating troop positions and movements were also included. A worldwide network of underwater telegraph cables also allowed the American navy to be directed to change plans without ships returning to port. The most likely reason for McKinley not feeling the pressure of previous presidents to control the war was that the war was short, publicly supported, and easily winnable.

America's next wartime president, Woodrow Wilson, was even less involved in the actual conduct of military operations in World War I. Wilson's background in public administration rather than in military matters led him to delegate authority for planning and execution to officials of the War and Navy Departments. His absence was even striking to the commanding general--General John Pershing. He remembered,

In the actual conduct of operations I was given entire freedom and in this respect was to enjoy an experience unique in our history.(21)

Wilson's hands off style does not indicate, however, an abdication of presidential power as commander-in-chief. In 1917, he ordered the arming of the U.S. merchant fleet to protect American shipping from U-boat attacks by the Germans.(22) Wilson also called on Congress to grant him powers to mobilize war making resources by regulating essential items, requisitioning fuels, foods and feeds, taking over factories, and regulating prices.(23)

World War II brought the permanent return of active presidential involvement as commander-in-chief. Franklin Roosevelt's personality and administrative style made him an active commander-in-chief, but the technological developments in weaponry and the politics of the post-war world would force all presidents after him to be strong commanders.

FDR had military experience which made him comfortable in the commander-in-chief role. He served as Assistant Secretary of the Navy in World War I and stayed in touch with naval developments after that. (24) Throughout the war, Roosevelt maintained an administrative hierarchy which kept him at the top of military decision making. Although the president's role as commander-in-chief in World War II alone is a whole story in itself, several highlights indicate the power exercised by FDR.

On October 5, 1937, the president denied any further U.S. claim to neutrality in his famous "quarantine" speech where protection of shipping lanes from a German naval threat became a priority. In September 1940, the president concluded an executive agreement selling 50 destroyers to Great Britain without consulting Congress until after the fact. The lend-lease program begun in January 1941 was another presidential initiative carried out without expressed Congressional approval. All of these events occurred long before any direct U.S. military involvement

in the war.(25) World War II conferences at Casablanca, Quebec, Cairo, Teheran, and Yalta also provided well-publicized opportunities for the president to act decisively as commander-in-chief.

W. Taylor Reveley III traces the growth of presidential war-making authority to three factors:

the evolving nature of those institutional characteristics of the presidency and Congress pertinent to the war powers; certain historical developments that have forced the Executive's characteristics over those of Congress; and, finally, the willingness of many Presidents, greater than that of Congress, to exercise their constitutional authority to the fullest and beyond.(26)

It is important to understand why each of the following cases was chosen and just how the nature of presidential war powers has changed since World War II. The Truman administration's handling of the Korean War is critical because it illustrates the first changes in the very nature of war fighting due to the existence of nuclear weapons. The concept of limited war as demonstrated in Korea springs directly from the president's fear of escalation of the war to a nuclear exchange between the U.S. and the Soviet Union. Cold War competition and the possibility of mass death and destruction called for increased attention from the commander-in-chief in order to limit the war and avoid escalation to a nuclear confrontation. This increased attention by the president also forever changed the relationship between the civilian



commander-in-chief and the military leaders who fought the war.

Massive retaliation strategy developed under President Eisenhower is important to our discussion because it reflects the first complete national military strategy developed and carried out during peacetime. Again, American presence as an economic, political, and military leader in the nuclear age called for an active commander-in-chief to develop his foreign policy based on complex military considerations. The American tradition of small peacetime armies with rapid and massive mobilization of troops and equipment during time of war was no longer a realistic policy. The speedy nature of the nuclear threat from the Soviet Union called for large standing forces capable of nearly instant response. These large standing forces brought with them an unprecedented peacetime defense budget.

The Cuban Missile Crisis resulted from weaknesses in the Massive Retaliation strategy. It was now evident that large stockpiles of nuclear weapons, although fairly cheap, were not an effective deterrent to expanding communist influence. American inability to demonstrate the will to use such weapons for anything short of major conquest on the part of the Soviets destroyed American credibility. Such weakness encouraged a challenge from the Soviets. Placement of Soviet nuclear missiles in Cuba demonstrated

the need for a more credible American defense policy, but more importantly, demonstrated the need for a strong president to react quickly and accurately in a crisis situation. The nuclear threat increased the stakes in presidential crisis decision making.

Until the mid-1960s, the Congress remained mostly silent as presidential war powers steadily included more responsibility. President Johnson's leadership in Vietnam led to a change in that position. The Gulf of Tonkin incident triggered a large grant of war powers from the Congress to the president in the form of the Gulf of Tonkin Resolution. No act of Congress in history gave the president broader war powers without a declaration of war. As the details of the incident unfolded, serious misrepresentations were uncovered that destroyed Congressional trust in the president.

The conflict between the Congress and the president reached a turning point during the Nixon administration. Here we study the Cambodia invasion because it served as a "last straw" for a Congress and nation which had grown weary of the fighting in Vietnam. Presidential war powers had reached a peak as President Nixon carried the war into another sovereign country without the knowledge or consent of the Congress. In order to reassert itself in the field of war powers, the Congress passed the War Powers Resolution of 1973 over President Nixon's veto.

The last three cases reflect attempts to balance the war powers of the president and Congress. Interestingly, all three were classified as rescue attempts; at least two arguably included more military force than was necessary to merely rescue American citizens.

The Ford administration's handling of the Mayaguez seizure is important because it was the first military action following the passage of the War Powers Act. It illustrates continued presidential war making power with disregard for most aspects of the new legislation. Rather than challenge the act in court, the administration chose to ignore it and take the risk of Congressional opposition.

President Carter's attempt to rescue the hostages at the U.S. embassy in Tehran represents a rescue attempt on a more realistic scale. In this case, little argument can be made that the president was being adventuresome. However, the political repercussions of operational failure seemed to be more damaging to the presidency than successful full-scale military operations conducted without consulting Congress.

Finally, President Reagan's orders to invade the island of Grenada reflect more of a balance in presidential and Congressional war powers. For the first time, the president appeared to recognize and accept the limitations of the War Powers Act. His willingness to abide by all provisions of the act are a significant change and may

indicate movement toward more cooperation between the president and the Congress with regard to future war powers questions.

The war powers of the president appear to have undergone a fundamental change after World War II. Up until 1973, presidential war powers continued to grow at a perhaps alarming rate based on changing conditions affecting the presidency. With passage of the War Powers Act, this expansion seems to have slowed. Presidents since then have been trying to find the proper balance between themselves and the Congress that allows for adequate handling of war powers emergencies.

We will now examine historical cases from each presidency since World War II and find that development of nuclear weapons and growth of the United States as a world economic and military power during that period have significantly expanded the president's war powers.

## CHAPTER II. TRUMAN-LIMITED WAR IN KOREA

Harry S. Truman is the only president in this study to have experienced two major wars as the commander-in-chief. His administration, therefore, provides numerous examples of a president exercising his commander-in-chief powers. For purposes of this study, we will focus only on the second war of the Truman administration, the war in Korea.

This case is unique and important because it involved the first use of the United Nations in a combat situation. In the past, commitment of U.S. forces to military situations allied with other military forces was only as a result of a specific treaty. In this case, American membership in the United Nations was certainly established by treaty, but use of American military forces by that organization was a much more indirect agreement.

The Korean War is also important to the expansion of presidential war powers since World War II because it represents the first changes in the nature of war making due to the existence of nuclear weapons. The limited war concept developed directly from President Truman's fear that the conflict might escalate to a nuclear exchange with the Soviets if a "total war" was fought. Cold War competition and fears of the destruction of civilization created the need for increased attention to military details by the president acting as commander-in-chief.

As the only American with the power to order the use of nuclear weapons, President Truman felt that he alone would decide the strategy of the war. Participation in the United Nations and the existence of nuclear weapons would be crucial to the development of modern presidential war powers.

The historical background concerning Korea and the United Nations is important to understanding how and why things happened the way they did in 1950. After the atomic bombings of August 6th and 9th, 1945, the president was encouraged by many of his advisors to occupy the Korean peninsula. Basically, the goal these advisors had was to race the Soviets for influence over territory before the end of the Second World War. (27)

The War Department suggested the 38th parallel as an operational/occupational dividing line between U.S. and Soviet forces. As Secretary of State Dean Acheson remembers:

On about the 12th of August, 1945, the Pentagon sent over to us in the State Department--I was then an Assistant Secretary of State--a memorandum dealing with many affairs, but among them it said that the Japanese troops north of the 38th parallel in Korea should surrender to the Russians and those south should surrender to a representative of General MacArthur.

This was exactly what it purported to be. It did not intend to be a boundary. It did not intend to be zones of occupation. It was merely that for convenience troops north of this dividing line should surrender to one commander, those south of it to another. And this was done.

Immediately afterward we discovered in Korea, as we discovered in Germany, that when one dealt with the Russians any sort of dividing line meant much more than one had supposed it was going to mean. It meant that an Iron Curtain descended at that point and that everything north of the 38th parallel became completely Russian and everything south under Allied or American control. (28)

President Truman accepted the War Department recommendation and issued General Order No. 1 to General MacArthur, commander of the Pacific theater. This order outlined the details of the impending Japanese surrender and established the 38th parallel as the operational dividing line for the surrender of Japanese forces in the Korean peninsula. The XXIV Corps in Okinawa would accept the Japanese surrender south of the 38th parallel. Stalin approved of Truman's plan and arranged to accept the surrender north of 38 degrees north. (29)

The first warning of possible military trouble came from the U.S. commander in Korea, General Hodge, who voiced concern about the Russian attitude toward Korean territory. In February, 1947, Hodge told the president a civil war would break out if the U.S. and the U.S.S.R. could not soon agree on a plan for Korean unification.

In the summer of 1947, General MacArthur agreed with the Joint Chiefs of Staff that American occupation of southern Korea was not cost effective. MacArthur conceded that Korea was of little strategic importance to the United States and recommended withdrawing troops stationed there. (30)

President Truman then went to the United Nations with the Soviet occupation problem. On September 17, 1947, George Marshall made a speech to the UN proposing elections in each sector supervised by a UN commission. This election would serve as the basis for a new government and arrangements would be made for withdrawal of all American and Soviet forces. The Soviet delegation countered with a proposal for a complete withdrawal of all forces by spring 1948, leaving the Koreans to their own devices to organize a government. The interesting point of this proposal is that the Soviets would leave a well-equipped and well-trained North Korean force alone with an unarmed and disorganized group of South Koreans. The United Nations ultimately approved the American proposal over a Soviet abstention. (31)

Despite the UN plan, the commission sent to run the election was denied access to the northern sector by the Red Army. As a result, elections were only conducted in southern Korea and the Republic of Korea was formed on July 17, 1948. The United States transferred power to the new government on August 15. The Soviets did eventually withdraw their forces from North Korea after the Americans left, establishing a communist government in North Korea by June 29, 1949.

Speaking to the National Press Club on January 12, 1950, Secretary of State Acheson described a defensive



perimeter that would define U.S. strategic interests in the Pacific. A line running from Alaska through the Aleutian islands to Japan south through the Ryuku islands to the Philippines would serve as a forward area of defense. This perimeter, drawn by the Joint Chiefs, the National Security Council, and the president and agreed to by MacArthur, intentionally did not include Korea.

Although facts later uncovered no longer support the claim, right wing Republicans would claim that Secretary Acheson invited a North Korean invasion by leaving Korea out of the perimeter. In fact, the Secretary said,

So far as the military security in the other areas of the Pacific is concerned, it must be clear that no person can guarantee these areas against military attack...But should such an attack occur, the initial reliance must be on the people attacked to resist it and then upon the commitments of the entire civilized world under the charter of the United Nations.(30)

Even as this speech was made, North Korean hit and run squads were making guerilla raids south of the 38th parallel to create disorder. These raids continued through the spring of 1950. The Central Intelligence Agency informed the president that North Korea was ready for full-scale war at any time. MacArthur aide Major General Courtney Whitney reported that 1500 intelligence warnings were sent to Washington that spring including one on March 10, indicating a strong possibility of a June attack.(32) Despite the large number of warnings, Korea was only one of several potential hot spots identified that spring.

Back in the United Nations, another event took place that would have profound effects on the events of June, 1950. In early January, arguments were heard concerning the Chinese seat both in the General Assembly and as a permanent member of the Security Council. Mao's recent successful revolution in China created the dilemma of another communist government on the Security Council. The United States maintained that the government on Formosa was still the legitimate government of China while the Soviets claimed Mao's government was the only legitimate Chinese government. When the American position won out, the Soviets walked out of the Security Council. This loss of a veto position would later be very important to action in Korea.

At 4:00am local time on June 25, 1950, forces of the North Korean army invaded South Korea. Their first thrust was along the Onjin peninsula. Five U.S. advisors with the 17th ROK regiment soon radioed Seoul that they were about to be overrun. While amphibious landings took place on the eastern coast, seven well-armed and well-trained North Korean infantry divisions totalling 90,000 men attacked along the border where defenses consisted of five thin ROK divisions. North Korean forces captured Kaesong 35 miles northwest of the capital of Seoul within hours.

As stated in Acheson's January speech, the United States had no plans in place to repel the attack.

Secretary Acheson informed the president at his home in Independence. Truman's first decision was to call on the UN Security Council, but he also remarked to Acheson, "Dean, we've got to stop the sons of bitches no matter what."(33) It was evident the president would act regardless of what the United Nations decided. On what basis the president felt justified in using U.S. forces without a UN resolution or declaration of war by Congress is unclear. Statements made later indicate President Truman felt his position as commander-in-chief of the armed forces was sufficient authority to use those forces when carrying out administration foreign policy.

Immediate recommendations were made by the State and Defense Departments. Acheson specifically called for American nationals to be evacuated from Korea, use of the U.S. Air Force to protect the evacuation and secure ports and airports, orders to General MacArthur to give ROK forces additional arms and ammunition, positioning the 7th fleet in the Formosa Strait to prevent a conflict with mainland China, additional assistance to South Korea based on a UN Security Council resolution, and an increase in military aid to Indochina.(34) These moves followed historical precedent. Use of American forces would be strictly to protect Americans on foreign soil. Even before the Security Council had a chance to meet, Assistant Secretary of State for UN Affairs John Hickerson said,

"...a decision was reached for us to give all-out air and naval support, under the United Nations, to Korea."(35) This decision did open new questions concerning the authority of the president to commit U.S. forces to action under the United Nations without consultation with or approval of Congress.

The first report arriving from General MacArthur indicated that all territory west of the Imjin River was lost. This included the Onjin peninsula and the cities of Yonan, Panmunjom, and Kaesong. He called for immediate U.S. air support to protect the Seoul airport. An evacuation of American personnel was begun immediately.

In Moscow, U.S. embassy staffer Walworth Barbour reported the attack as,

a clear-cut Soviet challenge which in our considered opinion the U.S. should answer firmly and swiftly as it constitutes direct threat [to] our leadership of the free world against Soviet Communist imperialism. The ROK is a creation of U.S. policy and of U.S.-led UN action. Its destruction would have calculably grave unfavorable repercussions for the U.S. in Japan, SEA (southeast Asia) and in other areas as well.(36)

Barbour stressed that all assistance, including military, would be needed to keep the South Koreans independent.

Truman did consider asking Congress for a joint resolution of support before acting, but was convinced to avoid such a request by Acheson. The Secretary explained, "it would precipitate attacks on him by hostile Republicans and generate lengthy discussions of the eventual effect and financial expenditures involved in this intervention."(37)

The question remains whether threat of political attack by the opposing party in Congress is sufficient justification to commit military forces to battle without consulting with the Congress. As an alternative, the president decided to meet with Congressional leaders on the morning of June 27 to inform them of the events in Korea and his decisions. No one present in the initial staff meetings disputed the president's actions. Luckily for President Truman and perhaps less luckily for constitutional scholars, this lack of opposition from congressional leaders served as tacit approval for presidential action.

Soon after Truman ordered military intervention, the State Department released a statement explaining the powers allowing the president to act without Congressional approval.

The President, as Commander-in-Chief of the Armed Forces of the United States, has full control over the use thereof. He also has authority to conduct the foreign relations of the United States. Since the beginning of the United States history, he has, on numerous occasions, utilized these powers in sending armed forces abroad.

The administration went so far as to declare that the dispatch of troops to Korea was based on unlimited presidential prerogative. In testimony before the Senate Committees on Foreign Relations and Armed Services, Secretary Acheson stated:

Not only has the President the authority to use the armed forces in carrying out the broad foreign policy of the United States and implementing treaties, but it is equally clear that this authority may not be

interfered with by the Congress in the exercise of powers which it has under the Constitution. (38)

Congress responded to this declaration with no response at all. Although a constitutional argument certainly was available, it seems not enough opposition to presidential action could be found in the Congress to mount a serious threat to President Truman's plans.

It is entirely possible the president's advisors recommended against a Congressional resolution in support of his action in Korea because of previous legislation indicating an unwillingness on the part of Congress to give up war powers to the president. In the post-World War II environment, widespread approval was voiced for the United Nations Charter, the document designed to keep the peace by joint action. Despite this near-unanimous support, Congress refused to allow for the possibility of lone action by the president.

Soon after acceptance of the UN Charter, Congress passed the United Nations Participation Act. The Act's Section 6 authorized the president to negotiate military agreements with the UN Security Council and make U.S. forces available for peace-keeping operations. (39) However, Congress withheld the right to determine how these forces would be used. The Act states that any agreements negotiated with the Security Council are "subject to the approval of Congress by appropriate act or joint resolution." In the Korean case, a lack of Congressional

action must be interpreted as approval for the president's actions.

Congress even took extra measures to insure that the executive branch could not misinterpret the Act. The legislation included a provision that "nothing herein contained shall be construed as an authorization to the President by the Congress to make available to the Security Council...armed forces, facilities, or assistance in addition to the forces, facilities, and assistance provided for in such special agreement or agreements." (40)

Secretary Acheson claims consideration of Congressional opposition was not the reason the administration did not seek a joint resolution. They truly felt the president was acting in accordance with the commander-in-chief power outlined in the Constitution. The administration was more concerned that delays resulting from discussion would be dangerous to our troops already deployed in the theater. In his words,

The outcome of the battle was not at all clear. It seemed to me if, at this time, action was pending before the Congress, by which hearings might be held, and long inquiries were being entered into as to whether the President had the authority to do it, or whether we needed Congressional authority for matters of that sort--we would be doing about the worst thing we could possibly do for the support of our troops and for their morale. (41)

Whatever the constitutional and legal issues, public support for the president's action was initially very positive. The New York Times called the president's

initiative "momentous and courageous" and said it "produced a transformation in the spirit of the United States Government." New York's Herald Tribune also supported Truman's intervention in Korea, saying, "The President has acted-and-spoken-with a magnificent courage and terse decision...It was time to draw a line."(42)

Congressional support for the president followed that of the public. The House of Representatives hurried to extend the Selective Service Act by a vote of 315-4. Truman was allowed to call up the National Guard and reserves to active duty for up to 21 months. Initially, the only vocal dissent came from American Labor Party representative Vito Marcantonio of New York who accused the president of bypassing the constitution and declaring war on Korea by himself.(43)

At 5:00am on June 30, 1950, President Truman approved MacArthur's request for one regimental combat team to reinforce the ROK army. Later that morning the cabinet met to consider Chiang Kai-shek's offer of 30,000 troops to assist in the defensive effort. Despite Nationalist China's position as a permanent member of the UN Security Council, the administration turned down the offer because of problems of reliability, weakness, and lack of loyalty to Chiang among the Chinese troops. The cabinet also approved authorizing General MacArthur to use his four divisions and a naval blockade against the North Koreans.



Again, the American media sided with the president. Both the Washington Post and the New York Times published editorials praising the president and his cabinet for their firm and timely stand in Korea.(44) It is unfortunate for Truman that he did not even consider "backing in" Congressional support for his action. His view of himself as the sole responsible individual for intervention in Korea became a political nightmare once the war began to go against UN forces. Although it never acted to stop the president, Congress found it easy to oppose him when the going got tough. An interesting lesson to be learned is how political players can use the rules governing their activities to pursue their own political agenda. Congress had no need to question the president's constitutional authority when American forces were winning, but found that constitutional question much more important once the war had gone sour.

Some minor dissent was already starting to surface in Congress where Senator Taft of Ohio said,

His action unquestionably has brought about a de facto war with the government of northern Korea. He has brought that war about without consulting Congress and without congressional approval. We have a situation in which in a far-distant part of the world one nation has attacked another, and if the president can intervene in Korea without congressional approval, he can go to war in Malaya or Indonesia or Iran or South America.(45)

The administration countered with the argument that it was merely carrying out the intent of the United

Nations Charter which allowed the Security Council to take whatever military actions necessary to restore international peace and security.

To fully understand Truman's actions in Korea as commander-in-chief and his later problems with General MacArthur, it is important to know just what the administration's objectives in Korea were. According to President Truman:

The strong got away with attacking the weak, and I wasn't going to let this attack on the Republic of Korea, which had been set up by the United Nations, go forward. Because if it wasn't stopped, it would lead to a third world war, and I wasn't going to let that happen. Not while I was President.

That's what a lot of people never understood, including the general we had over there at the time. This was a police action, a limited war, whatever you want to call it to stop aggression and to prevent a big war. And that's all it ever was. I don't know why some people could never get that through their heads. (46)

Bert Cochran points out that no one knew then, nor really knows now whether Stalin called for or approved of the North Korean attack. It seems to have been at odds with his generally cautious foreign policy toward areas of American interest. At least one former member of the American occupation government claims that the North Koreans acted in a manner designed to entrap the Soviets into supporting them. (47) In any case, all the president's comments seem to indicate the United States assumed the attack in Korea was only part of a Soviet master plan for

world domination rather than the result of three years of civil strife over an arbitrary border.

NSC Report 73/4 of August 25, 1950 outlined the U.S. strategy based on the objectives stated by the president. This report recommended to the president that he must regain the initiative, deter further aggression, and increase the American ability to defeat aggression. These goals were to be attained by building up military forces, gaining intelligence information on UN members willing to oppose the USSR on satellite aggression, and being prepared to meet a Soviet attack with one of our own. (48)

Since global war was considered imminent in the event of a Soviet attack in Europe, it would be important to localize action and resort to the United Nations. It would also be imperative to expose the Soviets as the aggressor as early as possible to mobilize world opinion.

The Korean element of the strategy was to meet and defeat a Soviet attack in the peninsula. It was considered imperative that we not engage Communist China in general war.

President Truman addressed the nation on television and radio on September 1, 1950 outlining the following objectives in Korea. First, the United States believed in the United Nations Charter and with it, a free and independent, united Korea. We did not want expansion of the conflict into general war, nor did we want to fight the

Chinese. Our goal was to keep Formosa out of the conflict, but to insure its independence. The United States believed in the freedom of all far eastern nations. We did not believe in aggressive or preventive war, and above all, we wanted peace. (49)

Two weeks after the president's address to a worried nation, General MacArthur withdrew the marines from the Pusan perimeter and combined them with his last army division in Japan to form the offensive force of one of the most impressive tactical moves in military history. On September 15, 1950, MacArthur's forces landed at Inchon well behind the North Korean lines, secured the capital city of Seoul and cut off communications and supply lines to forward North Korean troops. Simultaneously, American forces around Pusan broke out of the perimeter sending the North Koreans into retreat.

By early October, UN forces had returned to the 38th parallel and were pursuing enemy divisions into North Korea. With the earlier goal of stopping aggression and returning to the status quo achieved, the United Nations now issued a proclamation on October 7th calling for the invasion of North Korea in order to reunify the country. This was actually a return to the original goal of the UN stated November 14, 1947. This change of goals would have serious consequences for UN forces.

In late October, UN forces began to capture Chinese prisoners as they moved northward. Although MacArthur did not know it, General Nieh Yeh-jung, acting chief of the Communist Chinese general staff, had discussed the American crossing of the 38th parallel with the Indian ambassador to Peking on September 25th. At that time he told the ambassador that China would not allow the United States to advance to the Yalu River. In public speeches on September 30th and October 1st, Chou En-lai added that China would resist aggression in North Korea. Finally, on October 3rd, the Indian ambassador was informed that if the U.S. crossed the 38th parallel, China would enter the war on the side of the North Koreans. (50)

By the first weeks of November, large numbers of Chinese troops had joined the North Koreans. MacArthur reported that enemy capabilities were now three times what they had been before Chinese intervention. An overwhelming Chinese offensive followed, causing MacArthur to retreat back south of the 38th parallel and give up Seoul by January, 1951.

On December 14, the UN General Assembly resolved to reestablish the 38th parallel as a ceasefire line. The October resolution calling for reunification was dropped, and the goal once again became to restore the divided Korea in existence in June.

The constantly changing objective became a source of irritation to General MacArthur and was a major cause of his falling out with President Truman. Back in August, the general had written to the chief official of the Veterans of Foreign Wars about U.S. policy toward Formosa. President Truman had seen this letter as an attack on his foreign policy and ordered MacArthur to withdraw it. Although the general did so, Truman was ready to relieve him then and replace him with the Chairman of the Joint Chiefs of Staff, General Omar Bradley. (51) Advisors cautioned the president that MacArthur was extremely popular with Republican opponents of the administration and firing him would be political suicide.

Instead, the president traveled to Wake Island to meet MacArthur and come to an understanding about their relationship. Donovan calls the conference at Wake the "high watermark of the Truman-MacArthur relationship." (52) The two men discussed chances of Chinese intervention and the general reportedly apologized to the president for this VFW message. All appeared to be well until the Chinese entered the war.

MacArthur had interpreted the October 7th UN resolution as a call for total victory in order to reunify Korea. The December change in plans ran contrary to his sensibilities as a soldier. On December 1st, General MacArthur made statements to U.S. News and World Report and

the United Press publicly criticizing U.S. policy and saying the European allies were "selfish" and "shortsighted" in opposing the expansion of the war to fight China. He called the order limiting bombing to targets outside Manchuria "an enormous handicap, without precedent in military history."(53)

International response was incredible and the president called Acheson, General Marshall, and General Bradley together to determine what to do about the general's statements. Despite all the clamor and evident insubordination, Truman still did not seriously consider firing the general. "You pick your man, you've got to back him up. That's the only way a military organization can work," he said.(54) Apparently the only concern expressed at the meeting was how to get the general out of the mess his statements had made.

On December 5, President Truman issued an order to MacArthur requiring that all future public statements be cleared through him to insure their compliance with administration policy.

By the end of March 1951, the Truman administration decided that the major objectives in Korea had been achieved--the aggressor had been pushed back to his own country, the United States and the United Nations had demonstrated their determination, and the moral and military strength of the Western allies had been

significantly increased.(55) When General MacArthur heard that the president was preparing to announce truce negotiations, he pre-empted the president with an invitation to meet the enemy commander in the field and discuss military means to end the war. Worse yet, MacArthur implied that refusal might mean expanding hostilities to the Chinese homeland.

President Truman was irate, calling the invitation an act totally disregarding all directives to abstain from any declarations on foreign policy...a challenge to the authority of the President under the Constitution. It also flouted the policy of the United Nations. By this act MacArthur left me no choice-I could no longer tolerate his insubordination.(56)

The Joint Chiefs reprimanded MacArthur and demanded all Communist peace offers be forwarded to Washington immediately.

Within two weeks MacArthur angered the president even more. In a letter to Joseph W. Martin, the Republican leader in the House, the general said,

It seems strangely difficult for some to realize that here in Asia is where the Communist conspirators have elected to make their play for global conquest, and that we have joined the issue thus raised on the battlefield; that here we fight Europe's war with arms while the diplomats there still fight it with words; that if we lose the war to Communism in Asia the fall of Europe is inevitable, win it and Europe most probably would avoid war and yet preserve freedom. As you point out, we must win. There is no substitute for victory.(57)

This was the last straw for Truman who met with the Joint Chiefs and his closest advisors on April 5th to draft orders to relieve General MacArthur. General Marshall wrote



the order, and in a communications blunder, reporters got hold of the text before it could be delivered to MacArthur. The political consequences of that error made the order even tougher on the president.

The disagreement between President Truman and General MacArthur illustrates the complexity of the commander-in-chief role in the modern day. MacArthur had a warrior mind. He had been an Army officer for over 50 years and had experienced four wars. In 1931, he told a congressional committee, "the objective of any warring nation is victory immediate and complete." (58) In Korea he rejected the idea that force could be limited. MacArthur saw war not as an extension of politics, but rather a result of the breakdown of politics.

Although MacArthur did not oppose the pre-war abandonment of Korea, he did believe that once committed, he must be allowed to win. The general's philosophy of fighting was that if a nation is not willing to make a total commitment to its war effort, then it shouldn't fight at all.

Truman saw his role as commander-in-chief quite clearly.

He's the absolute commander of the armed forces of the United States in time of war. He's the commander of the armed forces when they're called out for any purpose, if he wants to take control of them. Nobody else can do it. (59)

He realized that improvements in communications, alliances and weaponry, especially nuclear weaponry, made the world a much more complex place. The concept of limited war was here to stay, and with it increased control and responsibility for the president.

As for why he fired MacArthur, Truman replies,

I fired him because he wouldn't respect the authority of the President. That's the answer to that. I didn't fire him because he was a dumb son of a bitch, although he was, but that's not against the law for generals. If it was, half to three-quarters of them would be in jail.(60)

Truman's relationship with MacArthur illustrates an important lesson about the modern president's increased responsibility as a military commander. The necessity to limit war in order to avoid nuclear war forces the commander-in-chief to take a more active role in controlling military operations. Although it may be argued that presidents have always had the power to command their forces directly, the existence of nuclear weapons requires the president to be actively involved in military operations. Military leaders can no longer be trained to be concerned only with victory in the classic sense.(61) Limited war may require a reasonable peace in order to prevent a major war. MacArthur could never have accepted such an idea, but Harry Truman realized that in an age of nuclear weapons, there might not be able to be any clear cut winners. The weapon

designed to win a total war now served as the basis for a new type of limited war.

The sharing of powers between the Congress and the president regarding war powers had become even more complex. By signing the United Nations charter, the United States agreed to be an active player in world affairs. Despite historical traditions of isolationism, U.S. involvement in the United Nations and development as a major economic power forced an increased role for American military forces. Control of these forces by civilian authority required some agreement on the roles of the president and the Congress.

Although the administration had originally justified its actions as within the constitutional powers of the commander-in-chief, subsequent Congressional opposition forced a fall-back position relying on American membership and leadership in the United Nations. The president now had one more reason to exercise his commander-in-chief powers with or without the consent of Congress.

### CHAPTER III. EISENHOWER-MASSIVE RETALIATION STRATEGY

Although the Constitution holds the president responsible for wartime decisions as commander-in-chief, another concern of the founders appears to have been to keep military men out of politics during peacetime. (62) Up until World War II, with limited exceptions, this desire was met. The United States never maintained large peacetime armed forces and active soldiers and sailors only occasionally were an important part of public life.

A unique characteristic of the American presidency since the Second World War is that the president is almost daily faced with issues which had once only been concerns during wartime. As such, it is natural that the president's role as commander-in-chief should expand to meet the needs of a constant state of emergency. The world faced by President Eisenhower was one of conflict or potential conflict in multiple theaters, such as Central America, the eastern Mediterranean, the Middle East, India, southeast Asia, Japan, Korea, Africa, and central Europe.

Rather than study a particular event during the Eisenhower administration, it is helpful to take a look at the formulation of national defense strategy during that period. Although atomic weapons were developed and used during the 1940s, no particular national defense strategy was developed until the Eisenhower administration. This is due to the fact that the short peacetime period between

World War II and Korea saw no rival to the U.S. atomic capability. With a monopoly on atomic power, the United States enjoyed no fear of attack from another nuclear enemy.

The development of massive retaliation strategy is important in the evolution of presidential war powers because it was the first real American national military strategy. Prior to the nuclear age, American military planners had done relatively insignificant exercises in guessing who the next enemy might be and developing contingency plans to deal with that threat.

From the broader view, it was natural that the president and his staff have the role of developing national military strategy. After all, military commanders are generally held accountable for strategic planning and the president had already begun to take a more active part as a military commander during the Truman administration. In addition, massive retaliation strategy was as much a foreign policy as it was a military strategy. The threat of U.S. nuclear attack was to serve as a deterrent to Soviet activity running contrary to American interests. Foreign policy planning was certainly in the domain of the president and the State Department.

What is less natural is that the Congress appeared to have little interest in a national military strategy even though the existence of large standing military forces

during peacetime was unprecedented and would be a significant strain on the federal budget. The founders' fear of a militarily strong executive seems to have disappeared by 1953.

We have already seen how a fear of atomic weapons limited the conduct of the war in Korea. The 1950s brought much more emphasis on the Cold War and how nuclear weapons might be employed in that type of "engagement." A second concern was the typical American tendency to disband considerable numbers of military forces in the absence of a hot war. A need for constant military readiness in a peacetime environment posed a new and unique problem to the Eisenhower administration.

When Dwight D. Eisenhower was elected president, the Soviet Union had already exploded its first atomic bomb on September 24, 1949. Soon after Ike took office, the Soviets tested their first hydrogen bomb on August 12, 1953. Shortly after the H-bomb test, the U.S. Atomic Energy Commission announced that the USSR had begun tests of tactical nuclear weapons. Although America still had the edge in weapon technology and delivery systems, it was clear to the administration that a new threat existed which would demand constant readiness on the part of American armed forces.

President Truman's Air Policy Commission had reported in December 1947 that the USSR could obtain "substantial

quantities" of atomic weapons within five years and concluded:

This means that the traditional peacetime strategy of the United States must be changed radically. We can no longer count on having our cities and the rest of our mainland untouched in a future war... We must count on our homeland becoming increasingly vulnerable as the weapons increase in destructiveness and the means of delivering them are improved.(63)

The Commission's prediction had come true. Despite a lack of accurate delivery vehicles that would not be disclosed until much later, the Soviets now had the capability to strike at the American homeland with little or no warning, a capability that no other nation had ever had before in U.S. history.

Besides the military threat, the Eisenhower administration had to deal with two problems left over from the Truman presidency. The country was disenchanted with the concept of limited war as it was carried out in Korea, and the resources required to fight the Korean War had placed a heavy burden on the American economy.(64) The search was on to find a defense strategy that would provide for the nation's defense needs, but reduce the economic burdens of maintaining large peacetime forces.

What resulted became known as the New Look policy or the "long haul" concept.(65) Secretary of State John Foster Dulles outlined the policy in a speech to the Council on Foreign Relations on January 12, 1954. Dulles recognized the burdens of an emergency mentality and said

that the cost and reactionary nature of emergency measures could not be depended on as a permanent policy.

The administration defined the threat as Communist ideology. Assumptions based on that threat were that the Soviet Union could never really live in peace alongside free nations and that international security would remain threatened by Communism as long as ideology remained unchanged. (66) In addition, the United States had stated that Communism was a totally unacceptable way of life. Therefore, any military strategy designed to meet the threat must be inherently flexible, in order to meet the demands of the rigid economic and political framework imposed on military strategy by a democratic way of life. (67)

Dulles underscored the need for a maximum deterrent at an acceptable cost:

We want, for ourselves and the other free nations, a maximum deterrent at a bearable cost. Local defense will always be important. But there is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power. A potential aggressor must know that he cannot always prescribe battle conditions that suit him... The way to deter aggression is for the free community to be willing and able to respond vigorously at places and with means of its own choosing. (64)

The Secretary actually discussed the nature of the threat and massive retaliation strategy as early as May 1952 in an article for Life magazine entitled "A Policy of



Boldness."(68) He described a united Soviet and Chinese army of 3-4 million men threatening 20 nations over a 20,000 mile boundary.

Dulles accurately pointed out that current or projected U.S. forces failed to meet that threat by a wide margin. The only solution, then, was to design a force that could retaliate instantly in a place where it would hurt the enemy at times of our own choosing.

The Eisenhower administration determined that nuclear weapons were the answer to the defense problem. Long-range strategic nuclear forces would provide the core of the country's defense forces and serve as the overall deterrent. Shorter range tactical nuclear weapons would provide greater local firepower and thus, a smaller need for large conventional armies.

Massive retaliation policy has a number of meanings, all of which were mentioned by the Eisenhower administration over the course of its eight years in office.(69) First is the concept of deterrence. Basically deterrence strategy means that our reaction to moves of an aggressor become so costly to that aggressor that he no longer can see the benefit in carrying out an aggressive policy. Massive retaliation strategy left no question that the United States would react as it saw fit in times and places of its own choosing with means of its own choosing up to and including the use of strategic nuclear weapons.

Eisenhower's advisors sought to keep the Communist world guessing by never stating when a nuclear response would be appropriate or if an enemy's military bases or cities would be held at risk. (70)

The second meaning of massive retaliation strategy is that selected acts of aggression can quickly be expanded beyond the desires of the aggressor. Eisenhower sent the message that the United States would no longer feel the need to limit itself the way it had in Korea. Dulles specifically referred to the limitations on the doctrine of "hot pursuit" used to prevent U.S. fighter aircraft from chasing down North Korean and Chinese MiGs into Chinese airspace. (71) Because of this self-imposed restriction, Dulles explained, the enemy was able to execute a successful campaign against UN forces and exploit the weakness created by the restriction. This success resulted in unneeded waste of lives among UN forces and delayed successful prosecution of the war. Such self-imposed restrictions were no longer to be a part of American strategy.

A third meaning of the Eisenhower policy was that the U.S. now had the ability to strike at the so-called silent aggressor. Actual combatants were no longer the only possible targets of a retaliatory strike. If the United States had sufficient evidence of an enemy acting as a supplier or an instigator in some aggressive act, we would

hold them responsible for that attack and respond in a way we found appropriate.

Lastly, the massive retaliation doctrine implied that an actual attack on the United States or its vital interests would result in a massive counterattack destroying all of an aggressor's warmaking capabilities. Such a policy would make any thought of attack against the United States too costly to consider seriously.

According to a presidential budget message, the primary mission assigned to U.S. forces "is to maintain ready nuclear-air-retaliatory forces so strong that they will deter a potential aggressor from initiating an attack." (72) National defense priorities in order of precedence became deterrence, continental defense, and actual combat operations.

The defense budget and procurement goal was to avoid a series of peaks and valleys. There was no time set to have U.S. capabilities reach a peak. According to Paul Peeters, "any attempt to establish some date of maximum danger is futile." (73) Slow steady growth using cheaper nuclear weaponry over large manpower accounts would insure adequate defense capability while promoting a strong economy.

As Soviet nuclear capabilities continued to increase through the 1950s, the administration's reliance on nuclear weapons began to come into question. The theme most undermining the credibility of the strategy was reliance on

tactical nuclear weapons in a small conventional scenario with a Soviet foe capable of quickly accelerating the conflict to strategic nuclear exchanges. (74)

In response to this criticism, the administration now played a game of what became called "brinkmanship." The U.S. would continue to be willing to retaliate with nuclear weapons if necessary to defend important interests. Now the U.S. would even be willing to risk mutual destruction in order to maintain deterrence. This concept eventually became known as mutual assured destruction or MAD and has served as the core of strategic nuclear policy ever since.

An interesting observation is that Congress never attempted to take an active role in U.S. nuclear strategy. Perhaps rightly so, the president exercised his authority as commander-in-chief of the armed forces to develop a strategy for the use of his forces. The real concern of the Congress at this time was not military strategy. After all, the country was not at war. Congressional concern centered around getting the economy under control by reducing defense spending. Nuclear weapons were a conveniently cheap way to show an attempt at defense while reducing the budget through manpower cuts. Since massive retaliation strategy served the defense needs of the commander-in-chief and the economic needs of the Congress, little disagreement was voiced between the executive and the legislature.

While massive retaliation strategy can arguably account for a prompt end to the Korean War out of a fear of a U.S. nuclear strike, a number of events throughout President Eisenhower's two terms showed the weaknesses of the strategy. Inadequate responses to these events raised doubts by both Republicans and Democrats about the presidency itself, and whether the president and the commander-in-chief could continue to be one person. (75)

The first crisis concerned the Viet Minh attack on French forces at Dien Bien Phu in 1954. President Eisenhower originally spoke of the event as the Korea of Indochina. On April 7th, he gave his famous "domino theory" speech, implying that a communist victory would lead to other communist victories in surrounding areas. He approved a National Security Council recommendation for limited U.S. intervention, but was publicly embarrassed when General Ridgway informed him that American troop strength and transport capability were inadequate for the task. Moreover, a call-up of national guard and reserve forces at least as large as the Korean build-up of 1950-51 would be required even for a limited involvement. (75) The president's hesitation sent a message to the Viet Minh that the U.S. might not consider their attack to be such a high priority.

As open revolt broke out in Hungary in 1956, an opportunity to exercise U.S. policy again came about. With

the threat of a full-scale nuclear confrontation with the USSR in the back of his mind, President Eisenhower again backed down from direct confrontation. Despite earlier encouragement for such rebellion through Radio Free Europe and other propaganda vehicles, the most the United States could offer the rebels was a word of support along with food and Red Cross supplies. (76)

October 4, 1957 brought the shocking news that the Soviets had launched the world's first satellite, Sputnik I. Immediately, superior Soviet capabilities in the rocket (and therefore nuclear delivery) business were evident. The United States now had a questionable ability to carry out massive retaliation strategy even if it wanted to.

Middle Eastern crises returned in the summer of 1958. Egypt absorbed Syria, forming the United Arab Republic with the goal of uniting all Arab nations in the region. The U.S. feared the threat to the young nation of Israel and suspected Soviet assistance in the effort. (77)

Lebanon complained of border intrusions by the UAR designed to upset dissident groups and topple the Lebanese government. On July 16th, President Eisenhower ordered Marines into Lebanon without consulting Congress or referring to a 1957 resolution of support by the Congress. The Marines' goal was to protect the 2500 Americans in Lebanon and assist the Lebanese government in maintaining its sovereignty.

The president explained,

I have come to the sober and clear conclusion that the action taken was essential to the welfare of the United States. It was required to support the principles of justice upon which peace and a stable international order depend. (78)

Similarly, the president single-handedly approved U-2 overflights of the Soviet Union in order to gain intelligence information from aerial photography. In the spring of 1960, word of the overflights became public when Soviet air defenses shot down Francis Gary Powers who was flying a U-2 on a reconnaissance mission. Initially, the State Department and NASA issued statements that the shoot-down must have been a weather aircraft operating out of Turkey. They claimed the pilot must have suffered oxygen deficit loss of consciousness due to cabin pressure loss and strayed over Soviet territory when automatic systems took over. (79)

When Khrushchev announced the plane had crashed 1200 miles inside Soviet borders near Sverdlovsk, administration credibility was damaged. In addition, the aircraft had been recovered and identified as a U-2 with reconnaissance camera equipment on board. The pilot also had been equipped with a poison "suicide needle," hardly standard issue for a weather mission.

Finally, the administration admitted the president had authorized the flights which had begun several years before. The details of each flight, however, had not been

a presidential concern. In the June 6, 1960 State Department Bulletin, the president explained,

It is part of my grave responsibility, within the overall problem of protecting the American people, to guard ourselves and our allies against surprise attack...as commander-in-chief, charged with the direction of the operations and activities of our armed forces and their supporting services, I take full responsibility for approving all the various programs undertaken by our government to secure and evaluate military intelligence.(80)

Despite these lone actions by the president acting as commander-in-chief, Eisenhower never really tried to expand his role as commander-in-chief. If anything, he attempted to temper the precedents set by Truman by asking for Congressional resolutions of support in most circumstances and by limiting the military budget to promote the general welfare of the economy.

The president's attempts, however, were just that. The demands of the cold war and the increasing complexity of American responsibility around the world did increase the president's power to pursue foreign relations and act in the role of commander-in-chief. As Robinson points out, "the President himself, whether or not he wanted to be, had become a world leader."(81) Dealing with the inadequacies of massive retaliation strategy would fall upon the shoulders of the next administration.

If Congress was interested in maintaining its share of the war powers, it was strangely silent. Although the president had some difficulty adjusting to his increased



responsibilities, the Congress lagged further behind in recognizing the new position of the United States in world leadership. This lag continued well into the Vietnam conflict and allowed for continuing expansion of power by the president as commander-in-chief.

#### CHAPTER IV. KENNEDY-THE CUBAN MISSILE CRISIS

When Senator John F. Kennedy ran for president against Vice President Richard Nixon in 1960, much of the Democratic position rested on the idea that the Eisenhower administration had been weak on defense issues. Kennedy pointed out the weaknesses in massive retaliation policy, showing that any challenge to American determination would have to be met with grave decisions about the fate of the civilized world unless the United States had some more flexible defense capabilities than nuclear weapons. The Kennedy administration, therefore took office calling for a new strategy, known as flexible response, where the United States would still be able to respond to aggression with nuclear weapons; but now we would also be able to respond to lesser acts of aggression in the Third World with conventional forces. This new strategy would require considerably larger defense forces than were in existence in 1960. While the buildup took place, Kennedy would have to deal with the weaknesses of massive retaliation strategy.

Perhaps the biggest challenge to American determination and the best example of the complexities of nuclear superpower relations is Kennedy's handling of the Cuban missile crisis. The details of this crisis make a case for strong presidential leadership and the inability of a large group (like Congress) to make important timely

decisions concerning national defense. On the other hand, had the president handled the situation poorly, it would be just as easy to make the case that one person can not and should not be entrusted with ultimate war powers.

The missile crisis is important because it built Congressional and public confidence in the president's ability to act properly as the commander-in-chief without consulting Congress until the crisis was over. It is also unique because it is the first time that brinksmanship was truly put to the test. The seriousness of the modern president's commander-in-chief role was confirmed.

As Lester Brune points out, the success of deterrence depends on understanding how an enemy will act in a crisis.(82) With this in mind, it is helpful to look at the series of events leading up to the missile crisis of October, 1962. U.S. strategy was in a state of change and President Kennedy was underestimated by the Soviet leadership.

Remembering that JFK's presidential campaign rested on the idea that the Eisenhower administration had been weak on defense and reliant on an unrealistic strategy, it is easy to understand why Kennedy resorted to much more confrontational Cold War tactics once he took office. His ordering of the Bay of Pigs invasion as well as developing American policy in the Congo, Berlin, and Vietnam indicated Kennedy's willingness to be more aggressive with the

Kremlin.(83) The administration program also included a healthy build-up of conventional military forces to offset the weaknesses of relying on strategic nuclear weapons.

In a special message to Congress on defense policies and principles on March 28, 1961, President Kennedy declared:

Our arms must be adequate to meet our commitments and insure our security, without being bound by arbitrary budget ceilings. This nation can afford to be strong- it cannot afford to be weak... Our strategic arms and defenses must be adequate to deter any deliberate nuclear attack on the United States or our allies- by making clear to any potential aggressor that sufficient retaliatory forces will be able to survive a first strike and penetrate his defenses in order to inflict unacceptable losses upon him... The strength and deployment of our forces in combination with those of our allies should be sufficiently powerful and mobile to prevent the steady erosion of the Free World through limited wars; and it is this role that should constitute the primary mission of our overseas forces... our objective now is to increase our ability to confine our response to non-nuclear weapons, and to lessen the incentive for any limited aggression by making clear what our response will accomplish.(84)

Kennedy's initial failure at the Bay of Pigs and his failure to impress Chairman Khrushchev at their first meeting led to a Soviet miscalculation of American determination and capabilities. A complicating factor was a differing definition of offensive and defensive nuclear weapons between the U.S. and the Soviet Union.(83)

In early 1962, the Soviet Presidium decided to place Medium Range and Intercontinental Ballistic Missiles (MRBM/ICBM) in Cuba. Brune claims the decision was made in

order to test Kennedy's will and protect Cuba against the threat of an American invasion.(85)

Meanwhile, the United States was still recovering from the idea of a "missile gap" which had become a popular notion after the 1957 Sputnik launch. President Eisenhower always maintained that no such gap existed, but his critics won out in the public opinion polls. Although the president was ultimately correct, and no missile gap ever really existed, his critics won by stating potential numbers of Soviet missiles rather than the numbers actually produced. Eisenhower also counted American strategic bombers in his evaluation while the missile gap proponents counted only numbers of ICBMs.

After taking office in early 1961, Kennedy quickly had access to Eisenhower's data and realized the missile gap really did not exist. We are left to wonder whether President Kennedy really already knew that no missile gap existed, but rode the tide of public opinion to attack the Eisenhower/Nixon record. Secret U-2 aerial photography indicated that the U.S. was still well ahead of the Soviets in strategic nuclear arms.(86) By late 1961, the president decided to publicly disclose the Soviet inadequacies.

It is now clear that Khrushchev wanted to make every effort to establish strategic parity with the United States. He was supported in that effort by S.S. Biryuzov, commander of the Soviet Strategic Rocket Forces. Biryuzov

called for Cuban based missiles to offset a perceived first-strike capability by the United States.(87)

The U.S.S.R. steadily increased economic aid to Castro from 1960 to 1962. Khrushchev first suggested Soviet military protection for Cuba on July 9, 1962. He told Castro, "Soviet artillerymen can support the Cuban people with their rocket fire" and Soviet missiles could "land precisely on targets 13,000 kilometers away."(88) Later that month, Castro announced that the Soviets showed a new commitment to deter or repel a U.S. attack.

President Kennedy never agreed to abandon Cuba to communism. Falling back on the Monroe Doctrine, he said, "I want it clearly understood that this government will not hesitate in meeting its primary obligations" to ensure the nation's security.(89)

On July 12th, Khrushchev made a statement that the Monroe Doctrine could no longer be valid, and that the United States was merely relying on an outdated concept to project its control over Latin America. Additionally, restrictions on Soviet activities in the western hemisphere were not balanced with similar restrictions on American activities in Europe.

By August, the Central Intelligence Agency, through U-2 overflights, had confirmed the presence of new Surface-to-Air missile sites in Cuba. The president chose not to act. Republican criticism from Congress immediately

began to mount. Interestingly, the two parties had changed positions on who was "weak on defense."

By September 4th, the president felt the need to publicly answer the criticism from the minority party in Congress. Kennedy made statements on September 4th and September 13th claiming there was no evidence of Soviet offensive weapons in Cuba. Since SAMs were purely defensive in nature, the administration chose to do nothing while assuring the public and the Congress that it would be willing to do whatever was necessary to protect American security if offensive missiles were ever discovered.(90)

Also in early September, Secretary of State Dean Rusk convinced the Committee on Overhead Reconnaissance to stop flights over Cuba after China shot down a U-2 loaned to Formosa. He did not want to have a repeat of the Powers incident in Cuba. The Director of Central Intelligence was on his honeymoon at the time and therefore was not present to oppose the Secretary. As a result, no reconnaissance flights were flown over Cuba from September 10th until October 14th.

Upon his return, Director McCone directed resumption of U-2 overflights of Cuba. The first flight on October 14th found evidence of Soviet missile site construction.(91)

McGeorge Bundy informed the president of the discovery of MRBM construction in Cuba early on the morning of

Tuesday, October 16th. Kennedy immediately called for an 11:45 am secret meeting of the Executive Committee of the National Security Council. Attendees were to be Vice President Johnson, Secretary of State Rusk, Secretary of Defense McNamara, Attorney General Robert Kennedy, Generals Taylor and Carter, Roswell Gilpatric, George Ball, Edwin Martin, McGeorge Bundy, Ted Sorenson, Douglas Dillon, Ambassador Bohlen and Appointments Secretary Kenneth O'Donnell.(92) This first meeting dismissed the "do nothing" alternative as a nullification of the Monroe Doctrine and the Rio Treaty. The first decision would be an increase in U-2 activity and no public comment until a solution was chosen.

The president decided to maintain his normal schedule while allowing his brother, the Attorney General, to run the ExComm meetings. This would avoid the public perception that something out of the ordinary might be going on. Kennedy also recognized an important element of decision making. Since his presence might stifle creative thinking and pressure ExComm members to give the answer they felt the president wanted, the president decided not to attend many of the ExComm meetings. Even when he did attend, his brother claims he played the role of devil's advocate rather than taking a position.(93)

Elie Abel describes the first six options considered by the ExComm on October 17th. Three options were proposed



by the diplomats and three were proposed by the military members. Track A was to take no immediate action. The administration would privately confront Andrei Gromyko with the U-2 photos.

Track B was to send an emissary to Khrushchev to privately demand removal of the Soviet missiles from Cuba. Track C would be to arraign the U.S.S.R. and Cuba before the United Nations Security Council.

Each of the three diplomatic proposals had weaknesses that led to their dismissal. Track A was rejected because it would give the Soviets advance warning before any public pressure could be brought to bear on them. Track B could be hazardous because it could be countered by a Soviet initiative similar to the Munich conference. Finally, Track C was unacceptable because of Soviet veto power on the Security Council and the Soviets' turn to chair that body during the month of October.

The military proposals were labelled Tracks D, E, and F. Track D, favored strongly by Secretary of Defense McNamara, was an embargo and naval blockade of Cuba. This would be the "slow track" which could be selective and easily controlled in relation to an armed attack.

Track E was favored by Air Force generals and consisted of a pinpoint bombing attack on the missile sites. Concerns here included casualties, accuracy and retaliation.

Track F was the most drastic proposal--an all out invasion of Cuba. Problems with this proposal were the time needed to mount the offensive and the difficulty in concealing plans for such a large operation.(94)

On October 18th, the ExComm split into two "teams" to debate the only remaining options seen as realistic. The air strike and blockade options were sent through a war games type exercise to find weaknesses. By this time, new intelligence estimates indicated half of the current Soviet ICBM capacity being installed in Cuba.

McNamara advocated the blockade option because of its controllability and flexibility while Air Force Chief of Staff General Curtis LeMay pushed for a surgical air strike to eliminate the missiles before they could become a threat. His worry was that once operational capability was achieved, any misses in a later strike might result in instant nuclear retaliation against the United States. The president was called in at 10:00pm, and according to his brother, was initially in favor of the air strike option.(95)

President Kennedy was initially opposed by UN ambassador Stevenson who suggested giving up missiles in Turkey and Italy and the naval base at Guantanamo Bay in exchange for the Soviets removing the missiles from Cuba. An interesting point is that the president had ordered the older missile systems removed from Turkey in the spring of

1962, but bureaucratic inertia prevented their removal. Now they appeared to be becoming an important bargaining chip with the Soviets.

Abel says,

The President alone, as Commander in Chief, had the power to decide and did in fact give the orders. The President's was the controlling intelligence. He ran the operation, one official recalls, "like a lieutenant runs a platoon in combat." Bundy, Rusk, Stevenson, and the rest were there to advise him. He listened, then made his own decisions. (96)

The ultimate policy objective was to remove the Soviet missiles from Cuba or get rid of Castro. With the Bay of Pigs humiliation in the back of his mind, the president chose the blockade plan, with the option to carry out air strikes or an invasion at a later date. Ted Sorenson was assigned to write the president's announcement.

The final plan had seven steps. First was the naval quarantine. It would not be like the 1948 Berlin Blockade because only offensive weapons shipments would be turned back.

The second step was continued close surveillance of activities on Cuba. Cubans and Soviets at the sites would be warned of possible danger from attack.

The U.S. would promise instant retaliation in the event of any launch of missiles from Cuba. This retaliation would be aimed at the Soviet homeland.

Next, Navy dependents were to be evacuated from Guantanamo Bay and the base was to be reinforced in case of

hostile action by the Cubans. Diplomatic action would also be taken. The U.S. called a meeting of the Organization of American States to invoke the Rio Treaty.

The United States also called an emergency meeting of the United Nations Security Council to call for a resolution ordering the U.S.S.R. to dismantle and remove all offensive missiles from Cuba.

Lastly, there would be a personal appeal to reason. The president would call on Chairman Khrushchev to support world peace.(97) The president went on national television the night of October 22nd to outline the plan for the American people and the world.(98) Before his speech, however, the president wrote a letter to Khrushchev which would become the first of a daily series of written communications between the two leaders.

The ExComm did address the question of the president's powers as commander-in-chief. It pondered the idea of calling on Congress to ask for a declaration of war on Cuba. Former Secretary of State Dean Acheson advised the president not to worry about legal formalities because American security was at stake. His advice sounds remarkably similar to the advice he gave President Truman after the North Korean invasion. This is a key point about how presidential war powers had evolved up until then. Acheson and all those who went along with his advice believed that the law did not apply to the president in

times when the national security was at stake. As long as the president is making decisions that are publicly popular, this concept of presidential power might be fairly easy to accept. However, as the nation would find out by experiencing the next two presidents, the idea of unrestricted presidential power during emergencies sets a dangerous precedent for accumulation of personal power. By basically sitting idle during the ever increasing number of national emergencies, Congress helped set the stage for the major conflict over the "imperial presidency" in the early 1970s.

President Kennedy apparently did reject all ideas of recalling Congress or asking for a declaration of war. He directed the blockade "acting under and by virtue of the authority conferred upon me by the Constitution and statutes of the United States Congress and the Organ of Consultation of the American Republics and to defend the security of the United States..."(99) The Congressional resolution Kennedy referred to was one passed in September, 1962, calling for any means necessary to prevent Cuba from extending subversive activities throughout the western hemisphere or from creating or using any military capacity threatening to the United States.

The full cabinet and Congressional leaders were not informed of the complete plan until three hours before the president's television address. Some tension did develop

among members of Congress, but overall, the response was supportive of the president. Senators Russell and Fulbright were not satisfied with the blockade and called for an invasion of Cuba. When Fulbright was questioned about how he could oppose the Bay of Pigs invasion yet favor an invasion now, he responded that the Bay of Pigs was not a critical event, but deployment of Soviet missiles was.

Representative Halleck represented the Republican minority point of view by stating that he supported the actions of the president but was disappointed that he was only informed, not consulted about U.S. military plans. This viewpoint was expressed, but never very loudly with the threat of a nuclear war bearing more on the public mind than a constitutional issue. (100)

Answering later charges that Congressional consultation may have been necessary, President Kennedy answered,

We no longer live in a world where only the actual firing of weapons represents a sufficient challenge to a nation's security to constitute maximum peril. Nuclear weapons are so destructive and ballistic missiles are so swift that any substantially increased possibility of their use or any sudden change in their deployment may well be regarded as a definite threat to peace. (101)

The president seems to have been equating presidential action concerning nuclear weapons with an imminent threat to the people and/or property of the United States. If this is accepted as true, he was really doing nothing more

than exercising presidential power recognized since the founding fathers. What really had changed was the concept of "imminent threat." With the minimum response time available under nuclear attack, the president could now argue that an imminent threat to the United States existed on a day to day basis. While his "list of powers" did not change much, the implications of presidential action regarding nuclear weapons and the frequency of such actions now gave the president opportunity to exercise war powers on a scale never imagined by the founding fathers.

At 7:00 am on Friday, October 26th, the U.S. Navy stopped and boarded the first vessel headed for Cuba. The vessel was the Marucla, an American built Liberty ship owned by Panama, registered in Lebanon, and bound for Cuba under Soviet charter. President Kennedy personally selected the Marucla as the first ship to be boarded because it wasn't Soviet owned. At this late hour he still tried to reduce the conflict by choosing a chartered vessel, but he felt it important to demonstrate American resolve. At 7:24 am, crewmen from the destroyers John Pierce and Joseph P. Kennedy, Jr. boarded the Marucla, found no weapons and encountered no problems with the vessel's crew.

The president ordered increased reconnaissance overflight activity. The sortie rate increased from two per day to one flight every one to two hours. This

photographic information would be critical to the president's decision about whether or not to order an air strike on the missile sites.

Later Friday morning, President Kennedy ordered the State Department to prepare for an occupation government in case of an American invasion. Again, Secretary McNamara reminded him, "we should expect very heavy casualties in an invasion." (102)

Meanwhile, Secretary McNamara was leading the blockade effort. According to Elie Abel,

Methodically the Secretary of Defense quizzed the Chief of Naval Operations about details--the kinds of details, Navy men insist, that civilians have no business worrying about. No Secretary of Defense had ever spoken that way to a member of the Joint Chiefs of Staff. He asked whether there was a Russian-speaking officer on each blockading destroyer. Anderson confessed he did not know. Then find out, McNamara said. (In fact the Navy had foreseen this need and, among others, had assigned several Annapolis language instructors to blockade duty.) (103)

Attorney General Robert Kennedy pointed out that the President felt compelled to supervise every detail. He was concerned with medical personnel, electronic intelligence, leaflet drops, and the ships to be used for the invasion. (104) Apparently, the president felt his duties as commander-in-chief required this attention to the many details of the operation.

On October 25th, Walter Lippmann had appealed to President Kennedy to trade American IRBM sites in Turkey for the Soviet missile sites in Cuba. Lippmann argued



these sites were defenseless and militarily unimportant to the United States. He stressed the need to continue diplomatic efforts despite initiation of military action. He did not know that the president had already considered all these points and indeed was quietly pursuing diplomatic solutions through his daily correspondence with Chairman Khrushchev.

At 6:00pm on Friday evening, the 26th, Khrushchev's most revealing letter of the crisis arrived at the White House. Robert Kennedy points out that much has been written about this letter, but it was clearly a personal message from the chairman not written by Kremlin officials. (104) The letter was very long and focused on death and anarchy that would result from a nuclear exchange. Clearly, Kennedy's resolve was very real to Khrushchev.

Khrushchev sought to calm the president by assuring him that Soviet missiles in Cuba would never be used to attack the United States. They were present only for defensive purposes.

You can be calm in this regard, that we are of sound mind and understand perfectly well that if we attack you, you will respond the same way. But you too will receive the same that you hurl against us. And I think that you also understand this...This indicates that we are normal people, that we correctly understand and correctly evaluate the situation. Consequently, how can we permit the incorrect actions which you ascribe to us? Only lunatics or suicides, who themselves want to perish and to destroy the whole world before they die, could do this.

We want something quite different...not to destroy your country...but despite our ideological differences, to compete peacefully, not by military means. (105)

Khrushchev also acknowledged that all planned missile shipments were already in Cuba, so there was no need to stop ships currently proceeding to Cuba. He explained that the USSR had placed them there because they felt a U.S. interest in overthrowing Castro. The missiles were merely a means to help the Castro government defend itself by providing a deterrent to an American invasion.

Khrushchev's proposal came down to this: The United States promises not to invade Cuba and withdraws the blockade in exchange for the removal or destruction of missiles in Cuba and the curtailment of any further missile shipments to Cuba from the Soviet Union.

Developments came rapidly the morning of Saturday October 27th. FBI director J. Edgar Hoover submitted a report to the president indicating Soviet personnel in New York were destroying sensitive documents in preparation for war. A second letter from Khrushchev arrived with a much more formal tone. Obviously, this letter had been prepared by other Kremlin officials. It included a demand that American missiles in Turkey be removed in exchange for Soviet missiles in Cuba.

The Attorney General reports that the ExComm met again to consider the Soviet proposal. Although the president was angry about his earlier orders to remove missiles from

Turkey being ignored, the ExComm found the Soviet offer reasonable with no projected loss to U.S. or NATO capabilities.(106)

Later that morning, word reached the president that Major Rudolf Anderson, Jr. was shot down and killed by a Soviet surface-to-air missile while on a U-2 reconnaissance mission over Cuba. President Kennedy expressed concern about further U-2 flights with the continued SAM threat. Despite his concern, the president restrained his call for an attack.

It is isn't the first step that concerns me, but both sides escalating to the fourth and fifth step--and we don't go to the sixth because there is no one around to do so. We must remind ourselves we are embarking on a very hazardous course.

He also was worried about other parts of the world. His next question was whether areas like Berlin or Turkey should be notified of a potential war.(107)

Robert Kennedy remembered,

These hourly decisions, necessarily made with such rapidity, could be made only by the President of the United States, but any one of them might close and lock doors for people and governments in many other lands. We had to be aware of this responsibility at all times, he said, aware that we were deciding, the President was deciding, for the U.S., the Soviet Union, Turkey, NATO, and really for all mankind...(107)

President Kennedy decided to try one more letter to Khrushchev. The State Department's draft bluntly said "no trades," but the Attorney General and Ted Sorenson believed the State Department's tone was too harsh. They encouraged

the president to accept the Soviet offer as it did not damage American security and achieved our policy objectives. At the president's request, Kennedy and Sorenson drew up an alternate response. Their version provided general acceptance of the Soviet proposal, but did not directly offer to remove U.S. missiles from Turkey. This allowed the president to compromise with Khrushchev without appearing to have backed down. President Kennedy accepted the alternate response and signed the text.

On Sunday, October 28th, the president issued a public statement.

I welcome Chairman Khrushchev's statesmanlike decision to stop building bases in Cuba, dismantling offensive weapons and returning them to the Soviet Union under United Nations verification. This is an important and constructive contribution to peace.

We shall be in touch with the Secretary-General of the United Nations with respect to reciprocal measures to assure peace in the Caribbean area.

It is my earnest hope that the governments of the world can, with a solution of the Cuban crisis, turn their attention to the compelling necessity for ending the arms race and reducing world tensions. This applies to the military confrontation between the Warsaw Pact and NATO countries as well as to other situations in other parts of the world where tensions lead to the wasteful diversion of resources to weapons of war. (108)

Because the president was killed a year after the Cuban missile crisis, he had little chance to reflect on the lessons learned from it. In an address at American University in Washington, D.C. on June 10, 1963, President Kennedy said,

Above all, while defending our own vital interests, nuclear powers must avert those confrontations which bring an adversary to the choice of either a humiliating retreat or a nuclear war. (109)

In his memoirs, Robert Kennedy reflected at length about the lessons of the Cuban missile crisis. He summarizes the key lesson as providing enough time for a variety of departmental interests to work in private to develop a realistic set of options for the president. An important corollary is to avoid too much respect and awe for the president. Often subordinates are more concerned with what the leader wants to hear than they are with the best solution to the problem.

In this case, President Kennedy went to extraordinary lengths to avoid insulation from ideas because of some notion of rank or position. He also allowed the ExComm to work without him to avoid his own influence on their decision making. However, in the end, the president realized his responsibility as commander-in-chief to make the final decision.

I think this was more necessary in the military field than any other. President Kennedy was impressed with the effort and dedicated manner in which the military responded--the Navy deploying its vessels into the Caribbean; the Air Force going on continuous alert; the Army and Marines moving their soldiers and equipment into the southeastern part of the U.S.; and all of them alert and ready for combat.

But he was distressed that the representatives with whom he met, with the notable exception of General Taylor, seemed to give so little consideration to the implications of steps they suggested. (110)

While Kennedy concluded an important need existed for civilian control over those dedicating their lives to waging war, he did express a larger fear for those few generals who always sought to avoid military action. In the president's view, generals and admirals should always advocate military solutions. This provides one side of the argument needed for good decision making. Perhaps he would liked to have talked with President Lincoln about his experiences with McClellan and the Army of the Potomac.

The handling of the Cuban missile crisis was certainly a success for President Kennedy. It does point out the need to have one solid decision maker in the midst of a national security crisis. It also illustrated the point that imminent danger to national security exists in day to day activities when large nuclear arsenals are present. A lack of congressional involvement in such a situation was not unusual, but the day to day presence of nuclear weapons provides more opportunities for the president to act alone as the commander-in-chief.

## CHAPTER V. JOHNSON-THE GULF OF TONKIN RESOLUTION

Through the early 1960s, we have seen the development of the president's commander-in-chief role in terms of a new concept of limited war, national strategy with a monopoly on strategic nuclear weapons, and confrontation with a nuclear enemy approaching parity. All of these situations reflect a general reluctance on the part of Congress to interfere with an increasing presence by the chief executive as commander-in-chief.

The Johnson administration reflects a continuation of a trend of increasing presidential power, but provides a case indicating the beginnings of congressional opposition to this power. The Gulf of Tonkin Resolution represents many aspects of the Johnson presidency. It indicates a congressional trust in the judgment of the president with respect to war making, justification of massive build-up of American involvement in Vietnam, and the beginning of a movement to reassert the power of Congress with respect to the war powers, culminating in the War Powers Resolution of 1973 during the Nixon administration.

When Lyndon Johnson took office in 1963, nearly 17,000 American troops were in Vietnam, most in an advisory capacity. American involvement in the region began as long ago as the Truman administration, when 35 American advisers were sent. By the end of the Eisenhower years, about 100 military advisers were in South Vietnam playing a small

part in resisting the Viet Minh, a role abandoned by the French in 1954. A rapid build-up occurred during the Kennedy administration when the president viewed American military involvement as critical to the survival of South Vietnam.

As with most domestic and foreign aspects of the Johnson presidency, the war in Vietnam became an expansion of what began under President Kennedy. The war would become America's longest war, and one of its most costly. Only World War II cost more money, and only the Civil War and the two world wars cost more American lives. One might wonder, then, why no formal declaration of war was ever forthcoming from the Congress. (111)

Post-World War II experience seemed to indicate the president no longer needed a declaration of war from Congress to commit American troops to action. The Johnson administration maintained the position that "while any formal support that Congress might wish to extend in a given instance would be welcomed, the independent power of the executive was sufficient." (112)

Johnson's Undersecretary of State Katzenbach went so far as to state that since war was outlawed by the United Nations Charter, and armed force was only allowed in self-defense or in response to UN action, the concept of declarations of war had lost all international significance. (111)



Harold Hyman claims that Johnson and presidents after him have misread presidential war powers history.(113) He cites the various examples where presidents have used military forces without a declaration of war and compares it to the situation in Vietnam in 1964. Where previous cases were either sanctioned by the United Nations or dealt with threats to American security or the lives of significant numbers of American citizens abroad, the United States had only a small number of advisers threatened in Vietnam in 1964. Although Hyman believes a constitutional requirement existed for congressional support of LBJ's Vietnam policy, he acknowledges that even if such a requirement did not exist, some politically strong sanction was necessary to enlarge the U.S. presence in the region.

The events leading up to the Gulf of Tonkin Resolution illustrate the presidential war powers already being exercised by Johnson in 1964. By the summer of 1964, the U.S. Navy was conducting so-called DeSoto patrols as part of a covert operation known as 34A. Operation 34A's purpose was to advise, train and assist South Vietnamese naval forces in interdicting North Vietnamese vessels.(114)

The DeSoto patrols were coastal reconnaissance missions aimed at investigating enemy naval potential. They were generally carried out by U.S. Navy destroyers carrying "COMVAN" equipment and extra crewmen. Their mission was to collect information on water depth and

temperature, navigation lights and buoys, currents and tide patterns. Patrols also observed maritime traffic for evidence of military activity. "COMVAN" equipment was used to identify radar transmitters, plot their locations, estimate effective ranges, and record emissions.

Finally, coastline photographs were taken to identify prominent landmarks, military installations, and new construction. All of this information was intended to help the South Vietnamese counter any North Vietnamese naval strategies. (115)

On July 30-31, 1964, the South Vietnamese navy shelled the North Vietnamese islands of Hon Me and Hon Ngu, approximately three miles from the mainland. By July 31, the U.S. destroyer Maddox was patrolling the Tonkin Gulf area where these islands are located. The Navy claims the Maddox entered the gulf to stimulate and monitor North Vietnamese and Chinese radars. (116)

While on patrol approximately 30 miles from the mainland on August 2nd, the Maddox intercepted emissions indicating potentially hostile intentions by North Vietnamese patrol boats. A message was dispatched to Admiral Sharp's headquarters in Hawaii describing the intelligence. The Admiral ordered resumption of surveillance when the captain of the Maddox deemed it "prudent."

At 11:00am and 2:40pm the Maddox changed course to avoid three North Vietnamese patrol boats it identified on radar. The destroyer radioed the aircraft carrier Ticonderoga that it would fire in self-defense if necessary. According to the captain's log, the Maddox fired six salvos before the North Vietnamese returned fire. (117) Secretary of Defense McNamara testified before Congress that the first three shots were warning shots fired by the destroyer's five inch guns. Weapons officer Lieutenant Raymond Connell later told a reporter that all shots fired were aimed at the enemy.

The Ticonderoga launched four Crusader aircraft to assist. Following a 21 minute battle, the aircraft reported two vessels damaged and one dead in the water with no personnel injuries or equipment damage to U.S. Navy assets.

The North Vietnamese promptly publicized the August 2nd engagement, claiming their patrol boats "drove the intruder out of Vietnamese waters" and shot down two U.S. aircraft. (118) What happened over the next two days is less clear.

On August 3 and 4, the South Vietnamese attacked two points on the North Vietnamese mainland. Believing the United States directly participated in the shelling, the North Vietnamese protested. The Johnson administration

stated publicly that there was no American participation in the shelling.

During the afternoon and evening of August 4th, the Maddox was cruising in rough seas about 65 nautical miles from the Vietnamese mainland. At 7:40pm, five surface radar contacts were recorded approximately 36 miles northeast of the Maddox, identified as probable North Vietnamese torpedo boats. An interesting note is that the normal range of the radar carried on board the Maddox was 20-25 miles, with longer ranges possible with degraded reliability due to ducting.

At 8:36pm, the Maddox radar identified two surface vessels and three aircraft. The Ticonderoga immediately launched fighter cover to protect destroyers in the area. The Maddox then lost the three aircraft contacts from its radar. At 9:30, additional unidentified vessels were shown closing at speeds in excess of 40 knots. At this point, the Maddox reported hostile intentions by the radar contacts. At a range of 8000 yards, the Maddox unsuccessfully fired star shells in an attempt to light the target for visual identification. As the targets closed to 6000 yards, the destroyer C. Turner Joy opened fire. The Maddox was now unable to locate the targets on radar. The crew reported dodging a number of torpedos and sinking two attacking boats. The C. Turner Joy also reported

being fired on by automatic weapons while being illuminated by searchlights. (119)

Just as promptly as they had publicized the first incident, the North Vietnamese denied any engagement on August 4th. The captain of the Maddox reported the incident to Admiral Sharp, who contacted Secretary McNamara. Despite doubts expressed by Admiral Sharp, President Johnson ordered retaliatory airstrikes against North Vietnam at 6:07am on August 5th.

Before the ships involved could answer inquiries for facts, President Johnson went on television to announce retaliatory action. McNamara ordered 64 airstrikes at four patrol boat bases and a major oil depot. Bomb damage reporting indicated that 10% of North Vietnam's patrol boat storage was up to 90% destroyed. (120) Two U.S. planes were destroyed and two were damaged in the attack.

Fifteen minutes after the president ordered the strike, he called in 16 Congressional leaders for a 90 minute briefing about the incident. According to Republican leader Everett Dirksen,

The whole case was laid on the table by the President, by the Director of the Central Intelligence Agency, by the Secretary of Defense, and by the Secretary of State. Thereafter, there was no limit on the amount of discussion or on the questions that any member of the joint leadership from both the House and Senate might have wished to propound, whether they were addressed to the Secretaries or to the President. (121)

As he requested in his television address, LBJ had asked the Congressional leaders for a resolution "making it

clear that our government is united in its determination to take all necessary measures in support of freedom and in defense of peace in Southeast Asia."(122) Records show that all 16 Congressional leaders supported such a resolution and none felt it was significant that they were consulted after the attack was ordered.

In the House of Representatives, Robert W. Kastenmeir suggested a "haunting suspicion" that Congress was about to "endorse, as it did in 1898 (after the sinking of the USS Maine), a disproportionate response to a limited and ambiguous challenge."(123) Nevertheless, he voted for the Tonkin Gulf Resolution.

During debate on the resolution, Senator Wayne Morse of Oregon dared to dissent from the popular position. He stated his belief that electronic espionage by the Maddox done so close to South Vietnamese attacks, both in location and time, could not help but be seen as provocation by the North Vietnamese.

On August 6th, Senators Cooper and Fulbright debated the long term effects of the resolution on presidential war powers on the Senate floor:

Cooper- Are we now giving the President advance authority to take whatever action he may deem necessary respecting South Viet Nam and its defense, or with regard to the defense of any other country included in the (SEATO) treaty?

Fulbright- Correct.

Cooper- ...looking ahead, the President decided that it was necessary to use such force as could lead into war, will we give that authority by this resolution?

Fulbright- That is the way I would interpret it. If a situation later developed in which we thought the approval should be withdrawn, it could be withdrawn by concurrent resolution. (124)

Fulbright went on to argue that the speed of modern warfare requires anticipation of events. In other words, Congress can not react quickly enough to allow for military effectiveness. He also implied the president did not need to consult with the Joint Chiefs of Staff or the Congress under the terms of the resolution.

The Tonkin Gulf Resolution passed the House 416-0 and the Senate 88-2 on August 10, 1964. It stated,

the Congress approves and supports 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...consonant with the Constitution of the United States...the United States is therefore prepared, as the President determines, to take the necessary steps, including the use of armed force, to assist any member or protocol state (of the SEATO) requesting assistance in the defense of its freedom. (111)

Although repelling armed attack had historically been recognized as a presidential war power, the resolution allowing the president to determine the necessary steps to

defend the freedom of allies seems to pass up Congressional authority over war making.

The Johnson administration certainly interpreted the resolution as a broad grant of power. In testimony before the Senate Foreign Relations Committee on August 17, 1967, Under Secretary of State Nicholas de B. Katzenbach called the Tonkin Gulf Resolution the "functional equivalent" of a declaration of war. (125)

The dangers of such a broad grant of power by Congress to the president quickly became evident. The North Vietnamese claimed a Johnson fabrication the day of the second gulf incident. In a "Memorandum Regarding the U.S. War Acts Against the Democratic Republic of Vietnam in the First Days of August 1964," Hanoi's Ministry of Foreign Affairs said,

This is an imprudent fabrication inasmuch as in the day and night of August 4, 1964, no naval craft of the Democratic Republic of Vietnam was present in the area where the U.S. destroyers were allegedly "attacked for a second time by North Vietnamese PT boats." The alleged attack was deliberately staged by the United States to have a pretext for carrying out its criminal designs against the Democratic Republic of Vietnam.

According to reports from various sources, a task group of the Seventh Fleet including the aircraft carrier Ticonderoga and the destroyers Berkeley, Edson, Harry Hubbard, and Samuel Moore were cruising on a permanent basis in the South China Sea off Da Nang. On August 4, 1964, the Harry Hubbard met with the HQ609 and HQ11 of the South Vietnamese navy 60 kilometers off Da Nang. Thereafter, the South Vietnamese ships did not return to their base...as usual. In the same night, from 2000 to 2200, at about the time when "North Vietnamese PT boats" allegedly "attacked the Maddox and the Turner Joy" gun shelling was heard, flares and planes were seen



off the shores of the Democratic Republic of Vietnam on international waters.

That is what the Pentagon termed the "second deliberate attack" on the destroyers Maddox and Turner Joy, or the "second Tonkin Gulf incident."(126)

Subsequent investigation by Congressional committees and Pentagon officials fueled doubt that the second incident had actually taken place. To begin with, August weather conditions in the Tonkin Gulf are extremely turbulent. On the night of August 4th the Maddox was encountering rough seas due to thunderstorms. The Maddox was encountering sonar malfunctions as well as atmospheric interference with her radar system. Technicians later testified that false returns caused by weather, high seas, or propeller action were not only possible, but likely.

At approximately 8:00pm, the Maddox intercepted North Vietnamese radio transmissions which gave Captain John Herrick the impression that patrol boats were preparing for action. The actual transcripts of these messages remain classified today due to the intelligence sources used to collect them. When the Ticonderoga sent air support responding to Herrick's request, the eight Crusader jets found no evidence of enemy naval activity.(127)

Automatic weapons fire reported by the C. Turner Joy turned out to be the Maddox's anti-aircraft barrage fired at erroneous radar targets. While the C. Turner Joy located a number of enemy vessels on radar, the Maddox was unable to confirm any radar targets due to malfunctions.

Similarly, the Maddox identified 22 torpedo shots on sonar, none of which was seen by the C. Turner Joy's sonar men. As Galloway points out, North Vietnamese patrol boats carry only two torpedos, so 11 boats would have had to be present. No evidence exists to support such a claim. (128) Captain Herrick would later testify that the false sonar targets probably resulted from his own screw beats from evasive maneuvering.

Even as early as the hours following disengagement from the alleged attack, Captain Herrick and the men of the Maddox began to doubt some of the details of what had just happened. In an immediate message to Admiral Sharp in Hawaii, Herrick said the "entire action leaves many doubts" and that a "thorough reconnaissance in daylight" by aircraft would be necessary to confirm the accuracy of initial reports. (129)

Despite awareness of these reports by Secretary McNamara and a call by him to Admiral Sharp stating that retaliation could not be justified "unless we are damned sure what happened," political momentum already had caused the president to act. The question remains whether President Johnson created that momentum to justify his actions or the momentum already established forced him to act. By the time anyone was able to sort out what actually happened, the decisions had been made and the retaliatory airstrikes had been carried out.

By early 1965, even the president had significant doubts about whether a second incident had ever occurred. He told a close aide that reports of the incidents were merely an example "of what I have to put up with" at the Pentagon. He added, "For all I know, our Navy was shooting at whales out there." (130) Current evidence indicates that Navy communications and reports were working as designed, but the president's political need for a Congressional resolution of support and an impulsive decision were more the cause of his problems.

Added support for the skepticism came on July 1, 1966 when the U.S. Navy captured a North Vietnamese patrol boat division commander whom they described as "cooperative and reliable." The prisoner reported extensively on the attack of August 2nd, but claimed to know nothing of any activity on the 4th. His claims were backed up by the stories of other prisoners of war. (131)

Whether or not the second incident ever took place, the Gulf of Tonkin Resolution definitely became Johnson's justification for escalation of the war in Vietnam. By the end of 1965, 181,382 more American troops had been sent to southeast Asia with over 500,000 eventually arriving in the region. In addition, President Johnson ordered the systematic bombing of North Vietnam on February 7, 1965, explaining that there would be no more "tit for tat."

In September, 1965, the Lawyers Committee on American Policy Toward Viet Nam issued a statement on the president's actions since the Gulf of Tonkin incident. They claimed that Johnson administration policies were contrary to international law and the U.S. Constitution.

A March 4, 1966 State Department White Paper titled "The Legality of United States Participation in the Defense of Viet Nam" claimed that without a declaration of war, the president could commit combat troops acting as the commander-in-chief, a party to the SEATO treaty, and by consent of the Congress outlined in the Tonkin Gulf Resolution. An interesting observation becomes clear. In every case we have studied since World War II, treaty commitments were a significant argument justifying lone presidential action. In the Truman case, participation in the United Nations was a justification for the Korean War. In the Eisenhower and Kennedy cases, widespread commitments to mutual defense treaties where the U.S. acted as a "nuclear umbrella" were important contributors to decision making by the president.

In this case, the Johnson administration relied largely on Article IV paragraph 1 of the SEATO treaty which said in case of armed attack, each member would "meet the common danger in accordance with its constitutional processes." (132) Obviously, the Johnson administration's entire justification for escalation in Vietnam had to rely

on the commander-in-chief powers unless the Gulf of Tonkin Resolution could add to the argument.

As Rossiter explains,

The central paradox of the Johnson administration's response to the Tonkin Gulf resolution was that, while the administration requested the resolution and employed it openly as the justification for the use of armed forces in Asia, the administration also declared that the resolution was not necessary. (133)

It is hard to believe that President Johnson truly felt he did not need the resolution to justify expansion of the Vietnam war. In a news conference on August 18, 1967, he said,

We stated then, and we repeat now, we did not think the resolution was necessary to do what we did and what we are doing. But we thought it desirable. We thought if we were going to ask them to stay the whole route, and if we expected them to be there on the landing we ought to ask them to be there on the take off. (134)

By this time, Fulbright and other Senators came to regret the resolution and began to call for limits on the president and an investigation of the Tonkin Gulf affair. The Senate Foreign Relations Committee conducted the investigation and found that Secretary McNamara had misled the committee by not telling "how increasingly ambiguous the reports of the second incident became as the hours wore on. What he described in such positive terms was actually a highly confused event." (135)

By March 8, 1968, the investigation was complete and Senator Fulbright commented,

Insofar as the consent of this body is said to derive

from the Gulf of Tonkin Resolution, it can only be said that the resolution, like any other contract based on misrepresentation, in my opinion, is null and void.(136)

Repeal of the resolution would eventually come. Public dissatisfaction with the war and more reports of misrepresentation would finally cause the Congress to act in order to "take back" some of the war making powers it had handed over to the president since World War II.

Lyndon Johnson had been able to expand presidential commander-in-chief powers to new extremes, but that same expansion of power became his political downfall. The next president would have to wrestle with the Congress over appropriate uses of presidential war powers.

## CHAPTER VI. NIXON-CAMBODIA AND THE WAR POWERS ACT

Throughout 1967 and 1968, a variety of factors combined to increase the disillusionment of many in the United States about the Johnson administration's Vietnam policy. By early 1968, public opinion so strongly opposed the president that he elected not to run for reelection. Although all the precedent and policy machinery was already in place to continue the war in Vietnam, Richard Nixon entered the White House in 1969 with a different set of pressures affecting his Vietnam policy. Clearly, significant pressure existed to end U.S. involvement and bring the troops home. On the other hand, American foreign policy concerns about southeast Asia had not really changed, and the Nixon administration still felt a need to support the efforts of the South Vietnamese against Communism.

Richard Nixon's expansion of the war into Cambodia provides an illustration of the ultimate in presidential war powers. Never before had a U.S. president secretly arranged to go to war against another country without consulting more than a handful of close personal advisors. Not only were the arrangements secret, but the actual conduct of the war remained secret for quite some time. While relying on post-World War II precedent and the commander-in-chief clause of the Constitution, the Nixon administration carried on the last uninhibited war from the

White House. Reaction to this war would finally bring about the reassertion of power by the Congress through the War Powers Act of 1973. All subsequent presidents, while denying the constitutional basis for the War Powers Act, would basically comply with its provisions.

President Nixon did not rely on the same rationale as President Johnson to justify his actions in southeast Asia. The administration quickly silenced any reliance on the SEATO treaty voiced by Johnson's people. This change was based on arguments by Nixon's advisors that actions based on SEATO agreements were shaky at best.

The North Vietnamese were quick to test the new president. In February, 1969, small scale offensives were launched which relied on troop and equipment sanctuaries located just inside Cambodia. Prince Norodom Sihanouk of Cambodia loudly proclaimed his country's neutrality in an attempt to protect Cambodian sovereignty.

We are a country caught between the hammer and the anvil, a country that would very much like to remain the last haven of peace in Southeast Asia. (137)

To protect his sovereignty from stronger North Vietnamese military incursions into his territory, Prince Sihanouk had granted President Johnson the right of "hot pursuit" in December, 1967. In other words, U.S. forces could pursue fleeing Viet Cong and North Vietnamese troops into Cambodia to eliminate their sanctuaries. Johnson had rejected the



idea because he was reluctant to expand an already unpopular war.

General Earle G. Wheeler, Chairman of the Joint Chiefs of Staff, brought the issue up again to the new president. Nixon recalls his reaction to the North Vietnamese attacks.

My immediate instinct was to retaliate. Kissinger and I agreed that if we let the Communists manipulate us at this early stage, we might never be able to negotiate with them from a position of equality, much less one of strength. Johnson had made this mistake and had never been able to recover the initiative. (138)

General Creighton Abrams, commander of U.S. forces in South Vietnam called General Wheeler on February 9th to inform him that photographic intelligence confirmed the Central Office for South Vietnam or COSVN in Base Area 353, one of the suspected sanctuary areas inside Cambodia. COSVN was allegedly a North Vietnamese and Viet Cong headquarters established to direct the war effort in South Vietnam. Up until this time, COSVN had been reported located inside Laos. Abrams requested an attack on COSVN.

General Abrams called for "a short-duration, concentrated B-52 attack of up to 60 sorties, compressing the time interval between strikes to the minimum. This is more than we would normally use to cover a target of this size, but in this case it would be wise to insure complete destruction." (139) The objective was to damage the enemy's offensive capability in order to allow for the withdrawal of U.S. ground troops from South Vietnam.

Abrams argued that there was little chance of inciting Cambodian reaction since the B-52s would only be over Cambodian airspace for about one minute. In addition, the sanctuaries were supposedly located in sparsely populated areas, so the chance of civilian casualties was low.

The Joint Chiefs forwarded the message to Secretary of Defense Melvin Laird, then on to National Security Advisor Henry Kissinger and President Nixon. Abrams reportedly did not expect much to come of his suggestion, and was encouraged when the Joint Chiefs of Staff told him to make a tentative plan for an attack early on March 18th.

The Central Intelligence Agency did not strongly support General Abrams' and defense intelligence's estimates concerning the COSVN. In a report to the president, the CIA still expected the Ho Chi Minh Trail in Laos was logistically more important to the enemy effort than the Cambodian sanctuaries. (140)

Some historical background is helpful to understand the decision that faced President Nixon. Since he came to power in 1955, Prince Sihanouk's primary ambition was to preserve Cambodia's independence from foreign powers. National survival was always his major political issue. To ensure this survival, Sihanouk pursued a "policy of extreme neutrality" playing off his neighbors against each other. (141) Richard Nixon met Prince Sihanouk while serving as Vice President under Eisenhower. His initial

impression of Sihanouk as "troublesome" lasted through his time as president.

In 1958, South Vietnam violated the Cambodian border several times in pursuit of enemy forces. While the U.S. supported the South Vietnamese in this endeavor, Sihanouk developed diplomatic relations with China to counter the South Vietnamese threat to Cambodian sovereignty.

A 1959 Department of Defense study titled, "Psychological Operations: Cambodia" attempted to find "effective" groups in Cambodian society who might be subject to American pressure. The study concluded the Cambodian people were "by and large a docile passive people. They cannot be counted on to act in any positive way for the benefit of U.S. aims and policies."(142) The Pentagon suggested the best possibilities for support were with the middle class urban elite and the military officer corps. Interestingly, these two groups were instrumental in Sihanouk's overthrow in 1970.

American aid provided 14% of annual revenues and 30% of the Cambodian military budget by 1963. In the eyes of the middle class, this U.S. money provided the only chance for economic and social progress. American military money did buy friends in the Cambodian officer corps, but a provision of U.S. law insulted Prince Sihanouk. According to military aid law, Americans had to inspect the "end use" of U.S. military equipment sold abroad to be sure it was

not being sold to communist forces. Sihanouk saw such an intrusion as another threat to his independence.

In 1963, Sihanouk publicly announced his belief that the North Vietnamese and Viet Cong would eventually triumph over South Vietnamese and American forces. His dislike for the American arms arrangement and an increasing reliance by the Cambodian military on American aid caused him to renounce all American aid agreements and send all U.S. military aid missions home.

Reporting on his last call to Cambodian Minister of Defense Lon Nol, General Taber, head of the U.S. military aid mission said,

Lon Nol's friendliness was apparently genuine and his indirect placing of responsibility on Sihanouk for the termination of U.S. aid, as well as his assurance that Cambodia will never voluntarily become a communist country imply the possibility that there is a point beyond which the military will refuse to support the Chief of State. (143)

It would take six more years before General Taber's prediction would come true.

Newsweek contributed to Prince Sihanouk's displeasure with the United States in 1965 when it published an article attacking him and his family for enjoying the profits from a brothel business. This article, coupled with the first deployment of American combat troops to South Vietnam, resulted in a break in diplomatic relations between the Prince's government and the United States.

Although Sihanouk did not particularly like the communists any more than he did the United States, American strategy in the Vietnam war directly affected foreign incursions on Cambodian territory. Throughout 1965, General Westmoreland ordered search and destroy missions pushing in from the Vietnamese coast to eliminate enemy strongholds and supply lines. The U.S. Navy also established a coastal blockade to strangle sea lines of supply and communication.

Sihanouk elected to allow sanctuaries for communist forces in Cambodia's eastern provinces. This was largely done out of a fear of the communists' military might. Meanwhile, the Viet Cong established the Ho Chi Minh Trail through Laos and northeast Cambodia to keep supply lines safe from American interdiction efforts.

In 1966, Chou En-lai asked the prince for the use of the port of Sihanoukville to ship supplies to the Viet Cong. Sihanouk agreed to the arrangement because he would receive 1/3 of all supplies shipped for his own country. The Central Intelligence Agency was aware of the agreement, but minimized its importance in reports to the president. The Nixon administration commissioned its own study in 1969 and found that five times the amount of supplies indicated in CIA reports were being shipped through Sihanoukville to the enemy. Later findings would support the Nixon figures. (144)

President Johnson ordered special forces and the CIA to recruit mercenaries from eastern Cambodia to disrupt the sanctuaries in 1967. Without notifying Congress, LBJ ordered clandestine reconnaissance and sabotage missions code-named Salem House into Cambodia to interrupt supply shipments. These missions would later be known as Daniel Boone missions. In all, 1835 missions were carried out over the next four years.

Expanding U.S. activity in South Vietnam forced the communists west into Cambodia, but Prince Sihanouk's military had deteriorated since 1963 because of the cut-off in U.S. aid. He found himself unable to counter the communists on Cambodian soil. Sihanouk began to fear the communists and made a political shift calling for more right wing officials in government. Lon Nol moved up to the Prime Ministry. Although the mood was more pro-American, the goal was still to play the foreigners against each other.

According to the Nixon administration, Sihanouk contacted the U.S. ambassador to India, Chester Bowles. He reportedly told Bowles that he could not object to a U.S. bombing of the communist sanctuaries in Cambodia. Shawcross points out that the declassified portions of Bowles' reports do not support this.(145) Sihanouk's French aide Charles Meyer later said the intent was for

small scale attacks, not the large B-52 raids which actually took place.

By the time Richard Nixon took office in 1969, over 40,000 Viet Cong and North Vietnamese troops had sanctuary in a 10-15 mile strip just inside Cambodia. The new president's attitude toward ending the war rested on his experiences in dealing with World War II and Korea, as well as his observations of the Johnson administration in Vietnam. The Nixon position was that appeasement results in a drawn out and expensive war. The administration's goal was to operate from a position of military and diplomatic strength.

Despite pessimistic reports from nearly all executive agencies including the Defense Department, Nixon and National Security Advisor Henry Kissinger believed the war could end on satisfactory terms if domestic opposition could be reduced and if Hanoi and Moscow could be convinced of a U.S. will to expand the fighting beyond the self-imposed limits of the Johnson administration.(146) Since the administration believed that most domestic opposition stemmed from the draft, they embarked on a program of "Vietnamization" to gradually transfer responsibility for the preservation of South Vietnam to the South Vietnamese themselves. To convince the communists of U.S. willingness to expand the conflict, Nixon and Kissinger believed they had to appear to be unpredictable.

In order to appear unpredictable, Nixon would have to be unpredictable and this became the problem.

On his first day in office, Nixon had asked for ideas on how to "quarantine" Cambodia and thus cut the enemy's supply lines. General Abrams' request followed shortly and the Joint Chiefs of Staff argued that bombing and a limited invasion were politically more feasible than a quarantine because criticism would come after, not during the action. (147)

On March 4, 1969, Nixon issued his first threat to the communists in an attempt to scare Hanoi and Moscow about his unpredictability. Secretly and without contacting Congress, he ordered the beginning of what became known as "the Menu." Operation Breakfast would consist of 48 B-52 sorties against the Cambodian sanctuaries beginning March 18th. Although a handful of sympathetic Congressmen were told, the president insisted on absolute secrecy to protect the operation. Even Secretary of the Air Force Robert Seamans, Air Force Chief of Staff General John Ryan, the Cambodian desk officers on General Abrams' intelligence staff, and key Congressional committees were not informed of the action.

Over the next 14 months, a secret systematic bombing of Cambodian sanctuaries took place. Over 3600 B-52 missions were flown along different sections of the Cambodian border in operations known as "Lunch, Snack,



Dinner, Dessert, and Supper." In order to maintain secrecy, the pilots and navigators on the B-52 raids were quietly briefed on new targets and told not to report them as a "diversion" during debriefing. This way, the crews would never know that no one else was aware of the real targets.

An elaborate dual reporting system was developed to make the strike results "disappear." Ground radar operators directing the strikes received secret target information with the reporting paperwork already filled out. These false reports were then filed with the Strategic Air Command's advanced echelon eliminating any suspicion by those not directly involved in the bombing. The original target coordinates would be destroyed in classified waste after the strikes were carried out.

Stanley Karnow describes the importance of secrecy to the operation. Nixon's goal was to demonstrate U.S. resolve to Hanoi and Moscow to force them to the negotiating table. By remaining silent, pressure was taken off Prince Sihanouk to protest the bombing in order to protect his neutrality. Additionally, domestic opposition at home would be minimized until peace negotiations were already underway. (140) The administration did not carry out a simultaneous campaign against North Vietnamese targets to protect the Paris talks already ongoing.

By the fall of 1969, General Abrams and the Joint Chiefs of Staff were able to see that the B-52 strikes were not accomplishing their objective. Although they were very effective at destroying their targets, the bombing raids merely forced the enemy farther west into the heart of Cambodia. Without a credible defense, local officials now were having problems keeping the communists under control. By February, 1970, both North and South Vietnamese troops were deep inside Cambodia. Cambodia was now calling for, but not getting United Nations help in maintaining its neutrality. Options seen by the administration included heavy artillery attacks, use of South Vietnamese troops with or without U.S. air and artillery support, and a combined U.S./South Vietnamese ground effort.

At this point, General Abrams asked for permission to conduct a ground invasion against the sanctuaries. Although the president approved limited clandestine attacks, he refused to allow an invasion with Sihanouk still in power. In hindsight, it is easy to question the military utility of such an invasion. Perhaps the General was merely trying to cover for past failures.

Other input to the president did not support an invasion. Mike Reeves, reporting from Phnom Penh, advised, "It would be very risky to try to solve the North Vietnamese problem in Cambodia by force. I would consider

our best action to be to wait on events, saying little."(148)

The president's advisors now finally brought up the issue of the constitutionality of an invasion into Cambodia. Could the president expand the war to another country without telling more than a few sympathetic Congressmen? Kissinger thought very little of Congress, claiming their incompetence in foreign affairs.(149) He went so far as to propose a moratorium on all debates about the administration's Vietnam policies.

Others close to the president justified action based on a "Sihanouk excuse." The Prince's desires to maintain neutrality justified secrecy in order to protect him and his policy. In effect, support for a leader the president did not even like justified secrecy, wiretaps, burning and falsification of reports, and concealing the widening of the war from the Congress and the people of the United States.

The president himself preferred to justify military action into Cambodia based on his responsibility as commander-in-chief to protect the lives of the forces under his command.(150) As he briefed the bi-partisan Congressional leadership later,

I just want you to know that whether you think it's right or wrong, the reason I have decided to do this is that I have decided it's the best way to end the war and save the lives of our soldiers.(151)

One of the barriers keeping President Nixon from ordering an invasion of Cambodia was removed on March 18, 1970, when Prince Sihanouk was ousted by a coup while visiting Moscow and Peking. Prime Minister Lon Nol, who had historically supported the American position, became the leader of the new government. On April 14th, he issued an appeal to the United States to help control violence in Cambodia and oust the North Vietnamese. (152)

President Nixon decided to support Lon Nol, but was tense over reports in the press of secret bombing by U.S. forces in Laos. He ordered secret arms shipments to Phnom Penh and training of Khmer units in Vietnam who could later be launched into Cambodia. Although the Joint Chiefs expressed doubts over the success of such a move, they told General Abrams to order all captured enemy weapons collected and secretly shipped to Phnom Penh.

On April 20, President Nixon announced the withdrawal of 150,000 ground troops from Vietnam over the next year. Despite his optimism about Vietnam, he stressed, "I shall not hesitate to take strong and effective measures" to deal with the threat to U.S. forces from enemy escalation in Laos and Cambodia. (153)

With increasing communist pressure on Phnom Penh, Kissinger and the military leaders called for an invasion to protect the administration's policy of Vietnamization. They reasoned that if the communist threat was not

significantly reduced or eliminated, a continued presence by U.S. forces in South Vietnam would be necessary. They failed to consider that prosecution of a ground campaign without the support of Congress would also be damaging to Vietnamization.

Unfortunately for the president, the CIA had prepared a report on long-term considerations for Cambodia, but Director Richard Helms withheld it from him. Perhaps Helms did not agree with the conclusions or he thought it was not what Nixon wanted to hear. In any case, presentation of the report might have been helpful because of its accurate prophecy. In "Stocktaking in Indochina: Longer Term Prospects," the CIA analysts agree with the president's assessment that denying Cambodian sanctuaries was a threat to Hanoi's strategy. They also claim Lon Nol was unable to do it. Such denial

would require heavy and sustained bombing and large numbers of foot soldiers, who could be supplied only by the United States and South Vietnam. Such an expanded allied effort could seriously handicap the communists and raise the cost to them of prosecuting the war, but, however successful, it probably would not prevent them from continuing the struggle in some form. (154)

It is questionable whether the president or Kissinger would have accepted these conclusions, but it is interesting to note how accurate they were.

In a memo to Kissinger on April 22nd, the president said,

We have really dropped the ball on this one due to the

fact that we were taken in with the line that by helping him (Sihanouk) we would destroy his "neutrality" and give the North Vietnamese an excuse to come in. Over and over again we fail to learn that the Communists never need an excuse to come in. (155)

The president authorized final planning for an invasion. Chairman of the Joint Chiefs General Wheeler called Abrams to develop the plan. The operation was to begin April 27th and "Our objective is to make maximum use of ARVN assets so as to minimize U.S. involvement, and maintain lowest possible U.S. profile." (156)

Secretary of State Rogers opposed the plan because he believed an invasion would endanger Vietnamization due to public outrage at an expansion of the war. The administration's answer to his opposition was to eliminate his position in the information loop. Kissinger appeared to use this tactic quite often in order to quiet the voices of dissent.

Conflicting reports exist about when the president really decided to go ahead with the invasion of Cambodia. Sometime between April 26th and April 28th, he made the decision and informed Kissinger, H.R. Haldeman, and Attorney General John Mitchell, but not the Secretaries of State or Defense. Not one Congressional committee was told either, despite the fact that the Senate Foreign Relations Committee had informed Secretary of State Rogers of its opposition to substantial aid to Lon Nol. Speculation exists that Nixon elected not to tell Congress until the

invasion was underway because he wanted to reassert his power after the Senate rejected Supreme Court nominees Clement Haynsworth and G. Harrold Carswell. Nixon claims his power to protect American troops as commander-in-chief was enough.

The president announced his decision to the country on television the night of April 30, 1970.

In cooperation with the armed forces of South Vietnam, attacks are being launched this week to clean out major enemy sanctuaries on the Cambodian-Vietnam border...This is not an invasion of Cambodia. The areas in which these attacks will be launched are completely occupied and controlled by North Vietnamese forces...Tonight I again warn the North Vietnamese that if they continue to escalate the fighting when the United States is withdrawing its forces, I shall meet my responsibility as Commander in Chief of our Armed Forces to take the action I consider necessary to defend the security of our American men.(157)

Anticipating the public backlash to come, Nixon assigned Assistant Attorney General William Rehnquist the task of writing the legal justification for the invasion. Citing historical precedent of France in Tunisia, Britain in Yemen, and Israeli attacks on foreign sanctuaries, Rehnquist told the New York City Bar Association,

The President's determination to authorize incursion into these Cambodian border areas is precisely the sort of tactical decision traditionally confided to the Commander-in-Chief in the conduct of armed conflict. From the time of the drafting of the Constitution it has been clear that the Commander-in-Chief has authority to take prompt action to protect American lives in situations involving hostilities... President Nixon had an obligation as Commander-in-Chief of the country's armed forces to take what steps he deemed necessary to assure their safety in the field. A decision to cross the Cambodian border...to destroy sanctuaries being utilized by

North Vietnamese in violation of Cambodia's neutrality, is wholly consistent with that obligation. It is a decision made during the course of an armed conflict already commenced as to how that conflict shall be conducted, rather than a determination that some new and previously unauthorized military venture shall be taken. (158)

Anti-war demonstrations on American college campuses became violent. A demonstration at Kent State University ended with the deaths of four students fired on by National Guard troops called out to restore order.

Reaction in the Congress was equally loud. The day after the invasion began, the Senate Foreign Relations Committee approved a bill to repeal the Tonkin Gulf Resolution and charged the president with usurping Congressional war powers by not consulting them. On May 11, the committee approved an amendment to the Foreign Military Sales Act restricting future Cambodian operations. By the time the bill passed, it said no new troops were authorized in Cambodia after June 30, 1970, no new advisers were permitted for the Cambodian military, all air operations in direct support of Cambodian forces must end, and assistance by the United States did not constitute a commitment to defend Cambodia. (159)

To justify his failure to consult Congress, President Nixon said,

I trust we don't have another situation like Cambodia, but I do know that in the modern world there are times when the Commander-in-Chief...will have to act quickly. I can assure the American people that the



President is going to bend over backward to consult the Senate and consult the House whenever he feels that it can be done without jeopardizing the lives of American men. But when it is a question of the lives of American men or the attitudes of people in the Senate, I am coming down hard on the side of defending the lives of American men. (160)

Not all reaction to the invasion was negative. In Great Britain, The Economist said,

It is not the Americans who have brought the war to Cambodia, but the Communists. For years, North Vietnam has violated the neutrality of this country—with barely a chirp of protest from the rest of the world...To condemn the United States for "invading" neutral Cambodia is about as rational as to condemn Britain for "invading" formerly neutral Holland in 1944. (161)

By the end of the operation on June 30th, U.S. forces captured individual weapons to outfit 74 battalions, enough rice for all the enemy forces in South Vietnam for four months, 143,000 rockets, mortars and recoilless rifle rounds (14 months worth), 199,552 anti-aircraft rounds, 5482 mines, 62,022 grenades, 83,000 lbs. of explosives, 435 vehicles, and 11,688 bunkers and military structures. American casualties in South Vietnam dropped from 93 per week prior to the invasion to 51 per week in the six month period after June 30th. Clearly, the sanctuaries were important to the communist effort, but the U.S. never found any evidence of a central headquarters inside Cambodia.

Public disclosure of the B-52 raids did not happen until 1973 when military officers involved in the early operations contacted members of Congress. New York Times Pentagon correspondent William Beecher had asked Defense

Department officials how to extricate American troops after the 1968 elections. He was told "to bomb sanctuaries." With no indication of such a plan at the time, Beecher filed away the idea.

When rumors of the bombing began to surface in April, 1969, Beecher revisited the same Defense Department officials. He reported on Operation Breakfast in the May 9th New York Times. Interestingly, there was no public interest, no press follow-up, and no Senate concern until four years later. (162)

The Nixon administration had clearly stretched the presidential war power to the limit of what Congress and the public would stand for. With similar complaints surfacing about Watergate, the time had finally come for the Congress to reassert itself.

A good illustration of the expansion of the war power over the previous twenty-five years is found in a story about the early days of Vietnam. In 1954, French foreign minister Georges Bidault asked John Foster Dulles for U.S. air support to help save Dien Bien Phu. Dulles answered that the president could not authorize even a single air strike without Congressional approval. President Eisenhower added that he would not make any military commitment to Indochina without the agreement of the British and French governments and the complete support of

the Congress. Clearly things had changed by the time the Nixon administration was running the war.(163)

A thought provoking story also comes from the Lincoln administration. When a subordinate advised the president he had the power to invade a neighbor to repel an invasion, Lincoln responded, "Study to see if you can fix any limit to his power in this respect, after you have given him so much as you propose."(164)

In order to reestablish the balance of power with respect to war making, the Congress passed The War Powers Resolution of 1973. Prior to this act, Congress had only been able to control the president through its power of the purse as it had done to stop the Cambodian invasion. The Supreme Court had remained quiet on the Vietnam war issue, so little real restraint was available on the president.

The War Powers Act set down procedures for the president to follow when ordering American troops into combat situations. President Nixon vetoed the bill as an unconstitutional intrusion on presidential authority, but the Congress passed the bill over his veto. Subsequent presidents have all expressed similar disapproval with the law, but have more or less complied with its provisions.

According to the law, the president can only commit U.S. forces to combat under three conditions: a declaration of war by Congress, specific statutory authorization, or in a national emergency created by an attack on the United

States or its armed forces.(165) In the third instance, the president must report immediately to Congress. Unless specifically authorized by Congress, the hostilities must end within sixty days, and troops must be withdrawn within ninety days. After ninety days, the Congress may direct by concurrent resolution not subject to veto, the return of American troops. The president is also obligated to report to Congress before committing troops "in every possible instance."

In terms of war making, the power of the president was to change. With the instability left in Cambodia after the U.S. invasion and withdrawal, the first test of the War Powers Resolution would soon come for another president in the same part of the world.

## CHAPTER VII. FORD-THE MAYAGUEZ INCIDENT

At 2:18pm local time on May 12, 1975, the Delta Exploration Company in Jakarta, Indonesia received a mayday radio message from the merchant vessel Mayaguez. The Mayaguez was a container vessel registered in the United States delivering materiel under government contract. The mayday call indicated that she had been fired upon and boarded by forces of the Cambodian navy. The Mayaguez was currently under tow to an unknown port in Cambodia.

The Mayaguez incident is important to the development of post-World War II presidential war powers because of the background leading up to it and timing of the event in relation to feelings about the presidency in the United States. As we have seen, the United States had significant impact on internal developments in Cambodia up until it withdrew its forces from southeast Asia in 1973.

With the fall of Lon Nol's government in April, 1975, the Khmer Rouge brought a communist government to power. Remembering recent experience with the Americans, they began to prod people out of the capital city of Phnom Penh stating their belief that U.S. forces would strike again, this time in the cities. Although this may sound absurd to us, it is helpful to remember the atmosphere in Cambodia at the time. Memories of American B-52 raids and the 1970 invasion were fresh. President Ford and Secretary of State Kissinger had made statements at the end of America's

involvement in Vietnam describing a need to maintain American credibility as a military power. Finally, Henry Kissinger was remembered as President Nixon's chief proponent of acting unpredictably to maintain a position of strength. With Kissinger in office, could the United States not continue to act in an unpredictable manner? The Cambodian communists needed to take the initiative to protect themselves from the United States.

At home in the U.S., Gerald Ford had taken office in August, 1974 at perhaps the most difficult moment for the presidency in American history. His predecessor had resigned amidst charges of abusing presidential power. The combined stresses of Vietnam and Watergate had demoralized the American public and Congress was making every effort to assert itself over the president in many areas.

The War Powers Act and the presidential interpretation of that law were about to meet their first test. The S.,S. Mayaguez belonged to Sea-Land Services, Inc. and was enroute to Sattahip, Thailand from Hong Kong with a containerized cargo of food, clothing, medical supplies, mail and consumer products. Cambodia and Vietnam were mounting a full scale naval war against each other over several islands in the vicinity of the Mayaguez's route.

When the communists came to power in Cambodia, they claimed the seas up to 90 miles off shore as their national limit. This claim has more basis in nationalism than in

international law.(166) These waters included several islands in the Gulf of Thailand historically claimed by Cambodia. These waters also included several major trade routes to and from Asian ports.

Head, Short, and McFarlane cite four incidents prior to May 12, 1975 illustrating the seriousness of the Cambodian claim.(166) First, Cambodian forces seized and released several Thai fishing boats around May 2nd. Second, the Cambodian navy fired on and attempted to board a South Korean ship on May 4th. Third, they seized several South Vietnamese small craft on May 6th. Fourth, Cambodia detained a Panamanian ship for 36 hours on May 7th. The Mayaguez appeared to be the next in a string of seizures.

When Cambodia fell to the Khmer Rouge on April 17th, several U.S. made gunboats were captured. These gunboats were used by the Cambodian navy to seize the Mayaguez. Shortly after 2:00pm on May 12th, Cambodian gunboats fired warning shots across the bow of the Mayaguez as it sailed abeam the island of Paulo Wai. Captain Charles T. Miller brought his engines to idle and ordered the radio operator to send a distress call to any station that might be listening. The vessel was unarmed and was sailing approximately 65 miles off the Cambodian coast.

John Neal of the Delta Exploration Company in Jakarta received the message and communicated with the Mayaguez until approximately 4:00pm when all communications were

lost with the ship. At that time, Mr. Neal contacted the U.S. embassy in Jakarta.

Initial reports from Indonesia arrived at the National Military Command Center near Washington at 5:12am May 12th (4:12pm Cambodia time). The commander in chief, Pacific (CINCPAC) was ordered to prepare a reconnaissance aircraft for launch at approximately 7:00am. The Joint Chiefs of Staff ordered the aircraft to launch at 7:30.

The president's deputy assistant for national security affairs Lieutenant General Brent Scowcroft received word of the seizure about 7:00am and briefed President Ford at his daily intelligence briefing at 7:30. Secretary of State Kissinger was informed at his 8:00 staff meeting. At 9:23, Kissinger arrived at the White House to discuss the matter with Scowcroft and the president. President Ford called a meeting of the National Security Council for noon.

The first U.S. Navy reconnaissance aircraft to arrive on the scene flew over Paulo Wai at 10:28am eastern time. The P-3 immediately found a number of vessels within 60 miles of the island. Two were large enough to be the Mayaguez but positive identification was impossible on the very dark night, even when using parachute illumination flares.

The National Security Council met at noon, approximately nine hours after the capture of the ship. In attendance were Vice President Nelson Rockefeller,



Secretary of State Kissinger, Secretary of Defense James Schlesinger, CIA Director William Colby, Deputy Secretary of State Robert Ingersoll, Deputy Secretary of Defense William Clements, acting chairman of the Joint Chiefs of Staff General David Jones, Assistant to the President Donald Rumsfeld, Lieutenant General Scowcroft, and NSC staffer Richard Smyser. The purpose of the meeting was to determine the facts in the case, attempt to determine motives and objectives of the Cambodians, define U.S. interests and objectives, assess possible third party interests and discuss U.S. alternatives. (167)

Two reasons have been stated for President Ford to go directly to a NSC meeting rather than beginning with a lower level body. First, time was critical. The president clearly remembered the Korean seizure of the USS Pueblo in 1968 and did not want to allow the Cambodians sufficient time to transfer the crew to the mainland where their safe recovery would be much more difficult. (168)

Second, the president felt the need to handle the crisis himself. The presidency had suffered greatly from Vietnam and Watergate and American allies were beginning to question the president's power to effectively handle foreign policy. A decisive move by President Ford would help bolster confidence in the presidency. (169) As President Ford later explained,

First, I think it is the responsibility of the president. The American people expect their president

to act--particularly during crises--to restore matters to normal and protect U.S. interests. Perhaps it was also a carryover from the evacuations of Saigon and Phnom Penh. Certainly in the environment we were in, it was essential for the president to be directly involved. (167)

The NSC quickly agreed on the two most important American objectives: recover the ship and its crew, and demonstrate American resolve to act in defense of its right to passage on international waters. President Ford preferred open discussion among his advisors as the input to his decision making. Where Nixon liked written reports, Ford liked to be present during the discussion, where he could hear and digest dissenting views.

When asked whether his presence stifled discussion, the president responded,

I don't believe so, at least not in the way I ran the meetings. We had pretty freewheeling discussions. I don't think anyone was inhibited because I was there. You know, we had some pretty strong personalities there. I did have occasion to act in an arbitration role, but I believe this is a proper role for the commander in chief. (170)

The president ordered a strong diplomatic protest note sent to Cambodia through the People's Republic of China, that the USS Coral Sea be ordered to the area, that an amphibious task force be assembled in the Philippines, that continuous photo reconnaissance be conducted over the area, and that a public statement be made demanding release of the ship and crew. Agreement was quick. A rescue mission would be prepared immediately.

While Secretary Schlesinger wanted to limit the action to the rescue of the ship and crew, Secretary Kissinger believed some statement of resolve should be made beyond the rescue of the ship and crew. Vice President Rockefeller favored the use of B-52 strikes flying out of Guam. Kissinger favored a carrier-based strike, but argued for a strong military response in any case.(171) Nearly all the members favored some sort of military action. President Ford agreed that some statement of strength was necessary, but that response could be something short of B-52 strikes.

Surprisingly, the young man photographing the NSC meeting made a suggestion which temporarily made each of the members think in silence. He suggested that perhaps the seizure of the Mayaguez was not directed by the government, but was rather the action of a local Cambodian commander. In this case, the amount of retaliation would make no difference, because the government would have no control over events.(172) After some discussion, sufficient evidence was presented to believe the communist government of the Khmer Rouge did indeed order and have control over the seizure of ships off the coast of Cambodia.

Foreign responses began to arrive as diplomatic efforts were carried out. A Chinese official told the U.S. they would not act in the event the United States chose to

use military force to recover its vessel. The Thai government expressed opposition to military action, but President Ford dismissed it as mere rhetoric. He said, "Until the Mayaguez and her crew were safe, I didn't give a damn about offending their sensibilities."(173)

At 9:16pm eastern time on May 13th, a Navy P-3 made a low pass over a large ship anchored near Poulo Wai and read the name Mayaguez on the bow and stern. The P-3 also came under fire from Cambodian patrol boats, receiving a .50 caliber hit in its tail. Within the hour, the Mayaguez had weighed anchor and appeared to be heading toward Kompong Som. Based on speed and heading, the reconnaissance teams estimated the time enroute as six hours. Scowcroft received this report at 10:15pm and immediately returned to the White House to inform the president.

Before meeting the president, Scowcroft questioned the military assistant to the secretary Major General John Wickham about the ability of aircraft to intercept the Mayaguez and prevent its reaching the mainland. At 1:00am, General Wickham told General Scowcroft that Thai-based F-4 fighters could intercept the ship and attempt to turn it by strafing its path. Scowcroft ordered them launched and asked the president for permission to carry out the interdiction. President Ford immediately approved.

A second NSC meeting was held at 10:30am May 13th. Counsellors Robert Hartmann and John Marsh were added to

the list of attendees. Marsh's job was to handle reporting of the event to the Congress. Several alternatives were discussed during the meeting, but the rapidly changing situation did not allow the president to make a final decision.

President Ford ordered the USS Hancock to leave the Philippines with a Marine amphibious assault unit. He also directed deployment of a Marine battalion for a heliborne assault and use of F-4, F-111, and A-7 aircraft to prevent the ship from reaching the mainland and to provide close air support for any subsequent ground activity. Finally, the president directed preparation of a plan to deal with the War Powers Resolution.

Consultations with Congress began about 5:30pm on May 13th in accordance with Section 3 of the War Powers Act. During the first of four such sessions, John Marsh and the White House staff contacted ten House and eleven Senate members and told them of military measures the president had ordered.

Early on May 14th, U.S. forces observed a fishing boat moving the crew to the island of Koh Tang. General Jones told the NSC of five possible military options. They included boarding the Mayaguez, landing Marines on Koh Tang, bombing the mainland with tactical aircraft, bombing the mainland with B-52s out of Guam, and other special

operations type military measures. The president issued four specific orders.

1. The State Department would deliver a letter to the UN Secretary General seeking help in securing the release of the ship and crew.
2. The JCS would plan to attack Tang Island on Wednesday night, May 14, Washington time (the earliest possible time after essential forces had arrived.) The attack would include simultaneously landings by marines from the USS Holt, and naval air attacks against mainland targets to prevent Cambodian reinforcement of the island or ship.
3. B-52 bombers in Guam would be alerted for deployment against the Cambodian mainland if required (although the president thought that very unlikely and undesirable).
4. Small vessels would not be permitted transit between Koh Tang and Kompong Som. (174)

The Joint Chiefs' plan to rescue the ship and crew had several parts. First, Marines would land on the USS Holt. They would move alongside the Mayaguez, and take it with a boarding party. Next, a helicopter assault would be conducted against Koh Tang using approximately 175 Marines in two landing zones. Meanwhile, two target complexes on the mainland would come under air attack. These targets were the Ream airfield and naval base and the port of Kompong Som.

Although the JCS hoped to have an extra day of preparation in order to increase the odds of success, the president and the NSC felt the urgency of early rescue of the crew outweighed additional safety factors. The Chiefs decided the degree of risk was acceptable, and prepared to launch the assault as planned on May 14th.

At 11:15am on May 14th, John Marsh once again met with key members of Congress to inform them that three Cambodian patrol craft had been sunk and four others damaged in an attempt to keep the Mayaguez from moving.

That afternoon, General Jones briefed the NSC on the military plan. The Washington Post reported one participant's description of the president's reaction to the JCS plan.

He was very calm and deliberate...For some reason, he gave me the impression of being a general himself. The impression I got was of a man who had been in the military, and the members of the NSC were obviously impressed with his knowledge of the military.

He was the one who pressed all the questions. He wasn't going to be rushed into something that would fall on his head. (175)

At the conclusion of the meeting, President Ford ordered the plan executed.

He then used the same room to brief Congressional leaders on his actions. Although the president had promised Senator Robert Byrd he would comply with the reporting sections of the War Powers Act, he expressed some doubt about its applicability to this rescue mission. (176)

A number of members of Congress were unsatisfied with the president's attempts to consult with them. Senator Mansfield and Representative Holtzman complained that Ford failed to consult with Congress before ordering action. He merely reported to them once the action was underway.

Senator Eagleton responded by introducing three amendments to the War Powers Act designed to "plug loopholes." He also asked the General Accounting Office for a complete investigation into the incident. "Such reactions," the president thought, "were hopelessly naive."(177)

By 8:20pm on May 14, the White House staff had contacted most of the Senators who were unable to attend the president's briefing. According to a White House staffer, about one-half of those contacted merely acknowledged the information. Press Secretary Ron Nessen claimed the response was "a strong consensus of support and no objections."(178)

Military forces deployed in response to presidential orders carried out the JCS plan over the next day and ceased all operations by 8:15pm on May 15th. Due to the short notice and lack of adequate intelligence, the operation was costly. The crew and ship were recovered, but U.S. forces had 41 killed and 50 wounded. Most of these casualties occurred during the amphibious assault on Koh Tang.

Domestic reaction to the Mayaguez incident was overwhelmingly supportive of the president's actions. Congressional reaction was mixed. Opposition rested with partisan political objectives and dissatisfaction with



President Ford's attempts to comply with the War Powers Act.

According to the president,

In accordance with my desire that the Congress be informed on this matter and taking note of Section 4(a)(1) of the War Powers Resolution, I wish to report to you that at about 6:20am, 13 May, pursuant to my instructions to prevent the movement of the Mayaguez into a mainland port, U.S. aircraft fired warning shots across the bow of the ship and gave visual signals to small craft approaching the ship... I directed the United States Armed Forces to isolate the island and interdict any movement between the ship or the island and the mainland...Our continued objective in this operation was the rescue of the captured American crew along with the retaking of the ship Mayaguez. For that purpose, I ordered late this afternoon an assault by United States Marines on the island of Koh Tang to search out and rescue such Americans as might still be held there...This operation was ordered and conducted pursuant to the President's constitutional Executive power and his authority as Commander-in-Chief of the United States Armed Forces.(179)

The General Accounting Office study demanded by Senator Eagleton was completed and made public in October, 1976. The study was critical of the substantive handling of the crisis, the decision making process used by the president, and itself became a subject of controversy.

The GAO was especially critical of President Ford's use of military force to rescue the ship and crew. According to the GAO's International Division, several non-military options were available that were not used. Among them were: contacting Phnom Penh directly, contacting Cambodian representatives in Paris and Moscow, and

enlisting the diplomatic assistance of governments other than the Chinese. (180)

The administration responded by pointing out that Cambodia's diplomatic isolation and unwillingness to communicate with anyone precluded all the GAO options within the time constraints allowed by the situation. They also believed that such efforts were unnecessary since no evidence exists to indicate that the diplomatic protest lodged with the Chinese failed to make it to Phnom Penh. As Deputy Under-Secretary of State Lawrence Eagleburger responded,

The drafters of this report had a special responsibility to attempt to understand the realities of the diplomatic environment at the time of the Mayaguez seizure. They did not meet this responsibility. Instead, they went out of their way to develop wholly fictional diplomatic scenarios which bore no resemblance to fact or reality, and then criticized the Administration for its "failure" to pursue their fantasies. (181)

The Mayaguez incident illustrates the problems with the post-War Powers Resolution relationship between the president and the Congress. Real world time constraints and threats to American citizens still required timely responses by the president. Congress was no more able to respond quickly as a coordinated body than they were prior to the War Powers Act.

There is little doubt that President Ford failed to meet all the conditions outlined in the War Powers Act.

He clearly did not consult with the Congress prior to ordering military action. The point is that few members of Congress seemed to care. They still expected the president to act quickly and decisively to protect the lives of Americans overseas. Expansion of the president's war powers theoretically may have stopped because of the War Powers Act and its implied reassertion of Congress' war making powers. In reality, expansion of presidential war powers probably did slow down or stop because of the mere threat that Congress might assert itself through the provisions of the War Powers Act. However, when an emergency involving American lives was involved, President Ford seemed quite willing to risk that threat while complying with those provisions of the act that were convenient.

Failure of the Congress to pressure the president to follow the provisions of the War Powers Act may well stem from the fact that few in Congress care about the execution of military operations. Domestic issues fulfill members' political aspirations much more neatly as they serve their constituent districts. The fact that the War Powers Act was even passed in the first place does not necessarily indicate a renewed interest in defense policy by the Congress. It is equally likely that individual members of Congress supported the War Powers Act because of a popular notion that presidential power had been abused

and it was time for Congress to act to limit that power. Weakening of the presidency by Watergate may be just as responsible for the War Powers Act as presidential action in the war making arena.

## CHAPTER VIII. CARTER-HOSTAGES IN IRAN

The Mayaguez incident indicated that as long as the military operation was successful, a president could still act swiftly and with resolve in spite of restrictions at least symbolically imposed by the War Powers Resolution. The difficulties in planning and executing the Mayaguez rescue also illustrated the need for the United States military to develop a fast-reaction multiservice counterterrorist force. Such a force was developed and trained during the late 1970s. The Delta Force was designed from the beginning to specialize in counter terrorism using elite special forces from all branches of the military. They were to be able to quickly plan and execute rescue operations anywhere on the globe against the spectrum of terrorist threats.

The 1979 revolution in Iran sowed the seeds for the first use of the new Delta Force in a counter terrorist situation. While the details of that revolution are too lengthy to discuss here, it will suffice to say that the Iranian situation reached crisis proportions on November 4, 1979 when revolutionary Iranian students stormed the U.S. embassy in Tehran and captured the American personnel working there. The hostage-taking was reportedly in response to U.S. acceptance of the exiled Shah into the United States for medical treatment.

This case illustrates a situation similar to that discussed during the Ford administration, but shows the political cost of military failure. It represents yet another post-War Powers Act military action directed by the president with minimal consultation with the Congress. It also shows how the president can minimize opposition from Congress by defining the operation as a rescue attempt rather than calling it a military action. We quickly notice that every presidential military action from the War Powers Act through the Reagan administration has been in some way defined as a rescue operation. While this case most closely reflects such an operation, others appear to include military activity well beyond that required to rescue a group of Americans on foreign soil.

The initial American response to the hostage taking on November 4th was composed of economic and diplomatic actions. President Carter ordered an embargo on Iranian oil, a freeze on all Iranian monetary assets in the United States, a ban on all pro-Khomeini demonstrations in the city of Washington, review of all Iranian visas, deportation of illegal Iranian aliens, and the ousting of nearly all Iranian diplomats from the United States. The U.S. also secured a United Nations Security Council resolution calling for the release of the hostages on December 4, 1979.

In addition, the U.S. petitioned the International Court of Justice in The Hague and won its case against Iran on December 15th. UN Secretary General Kurt Waldheim began his attempts to negotiate for release of the American hostages in January, 1980.

Shortly after November 4th, the president called on the Joint Chiefs of Staff for their assessment on the potential for a successful rescue operation. General David C. Jones, chairman of the Joint Chiefs reported that chances of a successful rescue operation were extremely small because of a lack of good intelligence information on the location of the hostages as well as information about local conditions inside Iran. He did, however, promise to begin plans for such an operation, in case the need for it would arise.

By late December, when the Soviets invaded Afghanistan, the military option became more attractive to President Carter. The U.S.S.R. had vetoed UN Security Council sanctions against Iran and the United States had been unable to convince its allies to apply economic sanctions without a UN resolution. As the president said on December 31,

This action of the Soviets has made a more dramatic change in my own opinion of what the Soviets' ultimate goals are than anything they've done in the previous time I've been in office. (182)

The president was apparently publicly admitting the failure

of a U.S. policy of quiet diplomacy. He was about to adopt a more confrontational approach.

Although a military option had become more attractive, the president still had to consider the disadvantages. With regard to the Soviet Union, the U.S. and Iran had mutual security interests in the middle east. Early use of the military option would certainly destabilize U.S. efforts for a regional security framework. (183)

The new year brought several new developments in the hostage crisis. On January 18th, the Special Coordination Committee (SCC) of the National Security Council met to discuss military deployments to the region and a planned set of belligerent public statements designed to keep Iran off balance and pressure American allies to adopt sanctions against Iran. General Jones reported that conditions for a military operation were considerably more favorable than they had been in November. The president elected to give diplomatic efforts more of a chance to work.

On the 28th of January, former Foreign Minister Abulhassan Bani-Sadr was elected president of Iran. He would become the prime target of U.S. diplomatic efforts. On the same day Canada shocked the world by announcing that six U.S. embassy personnel had been hiding at the Canadian embassy since November and had finally been able to escape Iran.



Few developments came about over the next two months as the U.S. struggled to discuss the hostage issue with a disjointed Iranian leadership. Two Farsi-speaking foreign service officers with Iranian experience reported to the president that a rescue operation at the earliest possible moment offered the best chance for a safe return of the hostages. Although this report was not well received by Secretary of State Vance, the viewpoint it represented was becoming more fashionable among the president's advisors as diplomatic efforts continued to fail.

By April 1st, the president had finally had enough of the frustration. Pierre Salinger reports that President Carter determined that the segment of the Iranian leadership desiring resolution of the hostage crisis either did not have the capability or did not have the political courage necessary to secure release of the hostages. (184) With signs of even more instability in the Iranian government and the Ayatollah Khomeini's frail health, the president began to believe reports from Iranian sources that a release might take months or even years without a military action. Clearly, a policy of restraint was only producing failure and humiliation.

The hostage crisis had a crippling effect on all the president's other efforts as well. The time had come for some sort of action. Although the U.S. did not formally break diplomatic ties with Iran until April, planning for a

rescue operation had been going full speed ahead throughout March. The military planning group of the NSC met on March 11, where National Security Advisor Zbigniew Brzezinski suggested a threat of a U.S. naval blockade.

Cyrus Vance opposed a military option, maintaining throughout the crisis that a diplomatic solution was the only acceptable answer. The Secretary of State claimed the U.S. effort should be aimed at downplaying the crisis in order to decrease its propaganda value to the Iranians. After all, he said, the hostages were not in imminent personal danger because of their propaganda value. (185) A military raid not only risked the lives of the hostages and the participants, but U.S. interests in the Persian Gulf would be threatened as well.

On March 21st, the SCC discussed mining of Iranian harbors. Undersecretary of State for Political Affairs David Newsom suggested that secret advance warning of a naval blockade to Iranian moderates might secure the hostages' release without spurring anti-American sentiment caused by a surprise action.

The next day, President Carter held a NSC meeting at Camp David to discuss the various military options. General Jones began the meeting with a detailed briefing of the rescue option. While intelligence was better than before, it was still impossible to know the exact location of all the hostages. The general said if a team could make

it to the embassy wall undetected and all the hostages were inside, there was a good chance that all of them could successfully be rescued. (186) Brzezinski agreed with General Jones that detection during the ingress was a rescue team's biggest worry. Any plan would have to be able to terminate and withdraw at any time. This would make the plan even more difficult.

In the first stage of a rescue operation, men and equipment would be secretly prepositioned in the gulf region. For the insertion phase, eight RH-53D helicopters and eight C-130 aircraft would depart from different locations and fly over 500 miles at low level to rendezvous at an airfield near Tabas known as "Desert One." The helicopters would refuel and pick up supplies from the C-130s. The C-130s would egress the area while the helicopters continued on to a remote site in the mountains southeast of Tehran to wait for the cover of darkness on the second night.

The actual extraction of hostages would take place on the second night. Delta team members would enter Tehran on local vehicles and storm the embassy. The helicopters would make a brief appearance to pick up the team and the hostages and fly to an abandoned airfield near Tehran where they would meet awaiting transport aircraft and heavy fighter air cover. From there, the helicopters would be abandoned and the team would fly out on the transports.

General Jones worried aloud about the complexity of the operation. Defense Secretary Harold Brown examined the other military options including the mining of harbors and a naval blockade. Risks for all the options were similar: physical retaliation against the hostages, widespread political repercussions, pushing Iran into the Soviet camp, and difficulties for American allies. Overall, the Secretary liked the rescue option best.(187) However, the president decided there would be no rescue attempt unless he had no other choice.

General Jones reminded President Carter that the rescue mission would become more difficult as the summer months approached. The shorter nights would eventually require a third night inside Iran in order to operate under the cover of darkness.

On April 4th, the U.S. sent a secret message to President Bani-Sadr indicating that internal pressures for a military operation against Iran were increasing due to Iran's failure to keep its promises. The letter called for immediate Iranian action or President Carter would be forced to take decisive steps and pressure allied governments to do the same.(188) The president indicated that economic sanctions were only the beginning of "sterner measures," and that he was about to make some important decisions about the hostage crisis. The Iranian Foreign

Ministry requested a clarification and was told that no more clarifications would be given.

On April 7th, Carter called a meeting of the NSC to discuss the Iranian government's refusal to accept the hostages from the students. Khomeini had just announced that the hostages' fate would not be determined until the Iranian parliament had a chance to meet. At the meeting, the president ordered diplomatic pressures placed on allies to break ties with Iran and U.S. military preparation for action including the interruption of Iranian commerce. He stated his belief that no further negotiating options were available. (188)

By April 8th, the White House staff narrowed down the options to two choices. The first option would be one of escalating pressure and could include actions like a naval blockade and the mining of Iranian harbors. The second option was a military rescue attempt. The staff favored this option because it would be quick, minimize loss of life, puncture the Ayatollah's image of invincibility, and avoid an unpredictable escalation. (189)

Brzezinski's note to the president on April 9th pushed the rescue attempt idea.

In my view, a carefully planned and boldly executed rescue operation represents the only realistic prospect that the hostages-any of them-will be freed in the foreseeable future. Our policy of restraint has won us well-deserved understanding throughout the world, but it has run out. It is the time for us to act. Now. (189)

At a foreign policy breakfast on April 11th, the president made one last attempt to discuss mining and blockade options. Hamilton Jordan believes he had already made his decision when he called for another NSC meeting at noon. (190)

The lunch meeting included Vice President Mondale, Brzezinski, Jordan, Lloyd Cutler, Secretary of Defense Brown, General Jones, and Warren Christopher representing the vacationing Secretary of State. Secretary Vance was not to hear of the decision to attempt a rescue until his return on April 14th.

The president said that although Vance's view that a diplomatic solution was the only acceptable one had been his own over the course of his presidency, he now felt military action was necessary. Harold Brown discussed the other military options and concluded that they would not free the hostages. In his opinion, the rescue plan probably would. In less than an hour, the NSC decided on the rescue option. General Jones reported the first available date would be April 24th. He was tasked to finalize the plan stressing secrecy and surprise over the use of large amounts of force.

Hamilton Jordan wrote the president a memo on April 12th in an effort to support his tough decision. Analyzing the situation, Jordan concluded it would be a "long, long time" before the hostages came home without military

assistance. "Once you are satisfied with the soundness of the rescue plan, I believe you should proceed with the mission."(191)

The Secretary of State returned to Washington on April 14th and was briefed on the president's decision. He approached the president one last time with a list of objections. First, a rescue was a difficult option with little chance for success. If the operation did succeed, a large number of hostages would probably be lost. Even if these hostages, escaped from Iran, others could easily be taken. Iranian reaction to such a move could cause an Islamic holy war declared on the west. A rescue attempt would be a deception against our allies because the economic sanctions had been sold as being done without military force. Finally, such a move could easily push Iran closer to the Soviet Union.(192)

Carter offered Vance an opportunity to address the NSC, but he still favored the rescue option. The Secretary indicated that he was forced to resign, but would wait until after the rescue attempt to protect the security of the operation. On April 15th, the Secretary of State addressed the NSC, but the decision had already been made. No one present changed his opinion about the rescue option.

The foreign policy group met secretly with Colonel Charlie Beckwith, commander of the Delta Force on April 16th. Key planners for the operation would be Colonel

Beckwith, Air Force Major General Philip Gast (Assistant for Readiness at Tactical Air Command), and Army Major General James Vaught, the task force commander. Beckwith was very impressed with the president's sense of professionalism. He remembers the president addressing General Jones,

David, this is a military operation. You will run it. By law you will keep the Secretary of Defense Dr. Brown informed; and I'd appreciate it if you'd do the same for me. I don't want anyone else in this room involved. (193)

and to Colonel Beckwith,

I want you, before you leave for Iran, to assemble all your force and when you think it's appropriate give them a message from me. Tell them that in the event this operation fails, for whatever reason, the fault will not be theirs, it will be mine.

The second thing is, if any American is killed, hostage or Delta Force, and if it is possible, as long as it doesn't jeopardize the life of someone else, you bring the body back. (194)

The president had ordered what had been his constant concern, the safety of Americans.

Later, General Jones took Colonel Beckwith for a ride and questioned him about the "real story" on the rescue plan. Beckwith assured him that Delta Force was ready and quite capable of carrying out the rescue. His biggest concern was entering Iran undetected. As he told Jordan,

The toughest part was getting into Iran undetected. They had some pretty sophisticated radar equipment. That's why the helicopters were so damn important, because we could fly under their radar at treetop level. One thing I learned in Nam is that if you need one helicopter, you ask for two more, cause they get sick real quick. And you gotta remember that



we're flying in low at night over a long damn distance. Choppers aren't made for that, so me and Vaught and Gast all agreed in December that we wouldn't leave Desert One for Tehran unless we had six birds. I figured we'd lose one on the way to Iran, one going into the compound, and maybe another one at the soccer stadium across from the embassy where we were going to take the hostages before lifting off. That would've given me three, worst case. We could have gotten out with three and made it to the desert for the flight out. (195)

Army Chief of Staff General Edward Meyer and General Jones were concerned about over control of command and control elements during the operation based on their Vietnam experience. The president understood their concern and reassured them that although he had ultimate authority, he would not interfere with their planning or execution of the rescue.

Early on the evening (Iran time) of April 24th, eight helicopters left the USS Nimitz and headed for Iran. Approximately two hours after takeoff, the number six helicopter developed indications of a possible impending blade failure and elected to abort. The helicopter landed and was abandoned. The other helicopters picked up the crew and continued.

As the flight continued, the formation encountered intense dust storms, about which the weather forecasters had known but failed to brief the crews. Four hours into the mission, the number five helicopter lost essential flight instruments. This helicopter reversed course and flew two more hours back to the waiting carrier. The crew

was unaware the storm would be over in 25 minutes and the Desert One weather was clear.

The remaining helicopters arrived at the rendezvous point 85 minutes late because of the dust storms. At this point, they still had their pre-determined minimum of six helicopters, but the crew found a hydraulic failure on the number two helicopter shortly after landing.

At just before noon eastern time, the president called Jordan into the Oval Office to inform him that two helicopters were down and the Secretary of State would be resigning after the mission. The president and his staff continued their normal schedules waiting for more news from Iran.

With the latest hydraulic failure, Colonel Beckwith chose to abort the mission. The president was called out of a campaign staff meeting at 4:30pm to receive the call. With Mondale and Jordan present, President Carter approved the abort recommended by Colonel Beckwith. He made no mention of attempting to continue with less than six helicopters.

While organizing to withdraw, the rescue team encountered a number of problems. First was the problem of intruding vehicles. A bus with 44 people on board wandered into the middle of the refueling operation. The team captured the bus and held it temporarily until they were ready to leave. A fuel truck and a pick-up also drove into

the area. The team fired on the fuel truck. Its driver stopped and ran to the other truck and escaped. Beckwith was not overly concerned because he assumed they had surprised smugglers who thought they had been discovered by government troops. (196)

Beckwith's more serious problems developed during the refueling operation. Maneuvering in blowing dust, one of the helicopters collided with a C-130 creating a large explosion. Eight crewmen died and five more were wounded. The Delta team abandoned the remaining helicopters and withdrew on the remaining C-130s. Unfortunately, the team was unable to recover the dead in the burning wreckage.

President Carter immediately began to plan for the post-mission crisis. His first priority was to convince the Iranians that they were not being invaded, but rather an attempt to rescue the hostages had failed. (197) He would also need to notify Congress, other countries and the American people. The president elected to wait to notify anyone until the team had safely exited Iranian airspace.

The U.S. immediately sent a secret message to Iran explaining the rescue attempt. In a rather bizarre message, State Department officials suggested the generous aspects of the Koran and indicated the Iranians might take the hostages to visit the crash site on their way out after release. Five main themes were pursued. First, the Islamic revolution had already been successful. Since the

revolution had been a success, the hostages no longer served a useful purpose. Second, the failure of the rescue mission showed the justness of their being taken. Third, the hostages should be released since we knew the Iranians never intended to harm them, but were merely expressing their hatred for the American government. Fourth, the captors were now victorious heroes, and finally, a hostage release would show an act of mercy by the Ayatollah. (198)

Hamilton Jordan expressed two other concerns. (199) First, he felt the aborted mission would be politically damaging because a failure would confirm an image of ineptness that had surrounded Carter's handling of the hostage crisis. Jordan was also worried that the president had violated the War Powers Act by not officially informing Congress before committing troops to action.

The Ayatollah responded to the State Department message quickly, indicating that the hostages would not be harmed out of revenge for the rescue attempt. He did, however, say that they now had to be dispersed to deter any further rescue attempts by the United States.

A number of lessons can be learned from the aborted rescue mission in Iran. First, judgment can easily be overridden by technology. Two helicopters appear to have aborted early despite the fact that they were still flyable. The "impending blade failure" indication was a

fleet-wide problem with no historical basis in fact. The complex sensing system on the blades of the RH-53 had never before accurately indicated an impending blade failure. There is room to second-guess the crew about its decision to abort. (200)

The second helicopter aborted for "essential flight instruments." While instruments were required for flight in the dust storms, landing and waiting out the storm in order to fly in the clear was an option. In this case, a complete weather forecast might have saved the operation.

The second lesson concerns the president's relationship with his military leaders. Although considerable criticism was aimed at the president about over control, he had made considerable efforts to avoid this problem from the beginning. He was painfully aware of the command and control problems in Vietnam, and made every effort, according to the Joint Chiefs and Colonel Beckwith, to avoid repeating those errors. There is no evidence the military leaders of the operation felt overridden by their commander-in-chief. In fact, when Hamilton Jordan interviewed Colonel Beckwith after the mission, he asked what Beckwith would have done had he received a message from the president to go with five helicopters. The colonel told him, "I'd have said, I can't hear you, we're coming out." (201)

Other analysts were not so generous. Paul Ryan, writing on why the rescue attempt failed, cites a flawed chain of command and inadequate coordination. He claims the Joint Chiefs of Staff never got involved in the detailed planning of the operation and thus, never provided a necessary "devil's advocate." Ryan writes,

In sum, the actors included a president anxious to avoid any semblance of an uncertain procrastinator; a pugnacious but militarily unqualified national security advisor pressing for covert action to rescue the hostages; a cautious secretary of state who anticipated trouble if the military rescue went forward; a defense secretary whose role in the entire affair remains vague; a chairman of the Joint Chiefs of Staff under pressure to keep the operation small and, above all, secret; a distinguished combat general expected to organize and train a multiservice force for a highly complicated operation to be launched in the shortest possible time, but to avoid much killing; and last, a highly competent helicopter commander and equally distinguished commando officer whose recommendation for a minimum of nine helicopters had been turned down, a decision that augured ill for the mission. (202)

While a good portion of this statement may be true, Ryan fails to realize that this situation is not unique. Such are the things of which crises are made. Every case studied so far provides similar elements. This operation just happened to fail.

The president addressed the concern over the War Powers Act by reporting to Congress on April 26th. The text of his message appears in the appendix. As expected, reaction was mixed. While some applauded the president's efforts to take charge of the crisis, others condemned him for the loss of American lives in the unsuccessful rescue

attempt. Perhaps surprisingly, little was heard from the Congress about failure to consult prior to the operation. President Carter successfully described the mission as a rescue effort, not a military operation, whose need for secrecy outweighed the need for prior consultation. Although the political price of failure was high, the president's war powers were basically left intact. Once again the president had acted before consulting Congress and got away with it despite the existence of the War Powers Act.

## CHAPTER IX. REAGAN-RESCUE IN GRENADA

Ronald Reagan took office in January, 1981 with a position that the nation had lost its sense of pride. A combination of economic woes and the post-Vietnam/Watergate depression had resulted in an embarrassing hostage situation in Iran. President Carter's failed attempt at a hostage rescue was just one more contributor to a national defeatist attitude. With Reagan's flag waving rhetoric and emphasis on a strong military establishment, it may be surprising that he became the first president since 1973 to effectively acknowledge the limits on power established by the War Powers Act. In fact two fine examples stand out during the Reagan presidency to illustrate the president's compliance with the War Powers Act. The deployment of Marines to Lebanon provides the first case where a president consulted with the Congress to determine the conditions for deployment.

The invasion of the tiny island nation of Grenada in 1983 also provides an example of the War Powers Act at work. Although it does not "fit" the structure of the law as neatly as the Marines in Lebanon, the Grenada invasion provides circumstances similar to those found in the Iranian hostage rescue, and shows presidential compliance with the War Powers Act and a more successful military outcome.



Grenada is a small island nation in the Caribbean with a population of approximately 100,000 people. It gained its independence from Great Britain on February 7, 1974. Although initially democratic, the government of Grenada quickly shifted toward a Marxist position. In 1976, a coalition of the New Jewel Movement (NJM) and other opposition parties won 48% of the vote. The NJM was the leading communist party in Grenada.

In March 1979, while Prime Minister Eric Gairy visited New York, the NJM carried out a coup with little resistance. It named Maurice Bishop Prime Minister on March 13th. Bishop and the NJM went about installing a Cuban style of government. By 1980, Cuban military advisors and construction workers were building an airport at Point Salines.

In June, 1982, Bishop banned all opposition newspapers. By 1983, he found himself in a power struggle with his deputy prime minister Bernard Coard, leader of a radical faction of the New Jewel Movement. During the summer, the NJM carried out extended debates about Bishop's future.

On October 12, 1983, Coard's faction placed Bishop under house arrest. On October 14th, he was expelled from the NJM. Bishop's supporters freed him on the 19th, but People's Revolutionary Army troops loyal to the Central

Committee recaptured him and later murdered the former prime minister and his close supporters.

The United States had been closely watching developments in Grenada since 1979. Hugh O'Shaughnessy suggests that the State Department and the Pentagon had been secretly contemplating an invasion since Gairy's overthrow, but little evidence exists to support that theory. (203)

During a speech announcing the Strategic Defense Initiative on March 23, 1983, President Reagan publicized intelligence reports he had received indicating a military nature of the facilities being built at the Point Salines airport. After a June 7th meeting between Bishop and National Security Advisor William Clark indicated a complete denunciation of the U.S., the administration became concerned about the safety of Americans in Grenada. (204)

When General Hudson Austin, leader of the Grenadian army imposed a 24 hour curfew, the president's advisors began to worry about the safety of American medical students studying at St. George's University Medical School. This medical school was actually a Brooklyn-based school for students who were unable to gain acceptance to medical schools in the United States. With the Iran hostages still clearly remembered, the administration badly wanted to avoid another Tehran-type capture. The recent

tragedy concerning U.S. Marines in Beirut also weighed heavily on the president's mind.

Eugenia Charles, prime minister of Dominica, informed the president of "great risks for us all" in the current Grenada situation. (205) The Organization of Eastern Caribbean States (OECS) requested American assistance due to,

The current anarchic conditions, the serious violations of human rights and bloodshed that have occurred and the consequent unprecedented threat to the peace and security of the region created by the vacuum of authority in Grenada.

The OECS also pointed out,

That military forces and supplies are likely to be shortly introduced to consolidate the position of the regime and that the country can be used as a staging post for acts of aggression against its members; and that the capability of the Grenada armed forces is already at a level of sophistication and size far beyond the internal needs of the country. (206)

The day after Bishop's death, Secretary of Defense Weinberger and Chairman of the Joint Chiefs of Staff General John Vessey asked the president to approve a planning effort to design a military rescue operation for the medical students at St. George's. General Vessey also recommended turning the battle group of the USS Independence and Marine replacements bound for Lebanon to the south in case they were needed in Grenada. Planning was complicated by the situation in Lebanon.

At 4:45pm on October 20th, Vice President Bush chaired a meeting of the Special Situation Group (SSG) of the

National Security Council. The group discussed the events in Grenada and dispersed to collect facts and begin planning for potential military action.

At 2:00am on Saturday, October 22nd, Secretary Weinberger contacted the president by secure telephone at Augusta, Georgia to discuss plans, the OECS request, and the short time to collect accurate intelligence. (207) He urged the president to direct continuation of detailed invasion planning.

At 9:00am, the planning group of the NSC met and spoke with President Reagan again by secure phone. The president approved a landing of Navy SEALs to collect pre-landing intelligence, and also the additional goal of restoring democracy to Grenada. He returned to Washington at 8:40am on Sunday to address the attack on the Marines in Beirut.

A 4:00pm meeting of the NSC planning group was held to discuss both Lebanon and Grenada. At this meeting, the president directed the go ahead for Operation Urgent Fury. The JCS immediately dispatched the rules of engagement to CINCLANT Admiral William McDonald. Secretary Weinberger authorized General Vessey to use the 82nd Airborne Division as a back-up to the Marines already headed for Grenada.

The president immediately decided to notify Congressional leaders and some allies before the landing. General Vessey advised that Tuesday, October 25th was the earliest possible landing time. Reagan approved this time

and stressed the need for operations security and surprise. (208)

While the president had consulted extensively with Congress about the deployment of Marines to Lebanon, he elected to meet only with the Congressional leadership about the Grenada invasion. On Monday evening, October 24th, the president invited these leaders to the White House for a briefing. Secretary Weinberger briefed the details of the situation, the risks of the operation, and the hopes of the administration for a rescue of American students and restoration of a democratic government to Grenada. General Vessey briefed the details of the military plan with the Joint Chiefs and the National Security Council in attendance to answer questions.

Weinberger reports that little comment was made by the Congressional leadership. Speaker of the House Tip O'Neill reacted to the briefing by commenting, "I can only say, Mr. President, God be with you, and good luck to us all." (209) No opposition was voiced by anyone present.

Following the meeting, the president called Prime Minister Margaret Thatcher in Great Britain, but was unable to convince her to support the American invasion. The OECS was informed that the U.S. would provide assistance. By the time all the calls were made, U.S. Rangers were airborne headed for Grenada.

Meanwhile, Sir Paul Scoon, Governor-General of Grenada had verbally appealed to Prime Minister Adams of Barbados for help from an OECS peacekeeping force. Although his letter was sent October 24th, the government of Barbados would not release it until after Scoon was rescued by U.S. forces.

Dear Prime Minister,

You are aware that there is a vacuum of authority in Grenada following the killing of the prime minister and the subsequent serious violations of human rights and bloodshed. I am, therefore, seriously concerned over the lack of internal security in Grenada. Consequently I am requesting your help to assist me in stabilizing this grave and dangerous situation. It is my desire that a peace-keeping force should be established in Grenada to facilitate a rapid return to peace and tranquility and also a return to democratic rule. In this connection I am also seeking assistance from the United States, from Jamaica, and from the Organisation of Eastern Caribbean States through its current chairman, the Hon. Eugenia Charles, in the spirit of the treaty establishing that organisation to which my country is a signatory.

I have the honour to be  
(signed)  
Sir Paul Scoon, Governor-General(210)

Hugh O'Shaughnessy claims that the long time delay in gaining release of the letter may indicate it was fabricated after the Governor-General was safely aboard the USS Guam. Such a situation is unlikely since Prime Minister Charles visited Washington just before the U.S. landing communicating a very similar message.

In a move drawing criticism from the media, the president approved CINCLANT's request that no press or other people be allowed transportation to Grenada until the

beachhead was secure. Because of limited intelligence about dangers on the island and a limited amount of transportation available, the admiral wanted to delay arrival of press teams. The Secretary of Defense supported CINCLANT, but stated a goal of allowing the press on the island by the end of the first day of the invasion. Actual circumstances prevented this until the second day.

Forces for the invasion consisted of the USS Guam carrying 20 helicopters under the command of Rear Admiral Joseph Metcalf, the USS Saipan with 26 helicopters, and the USS Independence carrying 70 aircraft. The 22nd Marine Amphibious Unit was aboard the battle group with over 400 Marines, five M-60 tanks, 13 amphibious armored vehicles, and a jeep equipped with anti-aircraft missiles. Their mission was to capture the Pearls civil airport and secure the capital city of St. George's.

AC-130 aircraft and 500 Rangers were based in Barbados, less than an hour's flight away. They were to capture and secure the Point Salines airfield. Reinforcements would come from the 82nd Airborne out of Fort Bragg.

Members of the OECS provided policemen to restore order. Jamaica and Barbados also provided small numbers of troops, although none saw action in the invasion itself. Their role was to guard prisoners and patrol for resistance after the U.S. force had taken the island.

Resistance to the invasion would come primarily from the People's Revolutionary Army and local militia units. Support from the militia was now almost non-existent, however, because of public outrage over the death of Maurice Bishop. Over 780 Cuban personnel were also on Grenada. Most were involved in building the Point Salines airport. While no more than 43 Cubans were designated as military, all had the means and rudimentary training to defend the field with small arms. (211)

Although U.S. forces encountered small pockets of stiff resistance, military goals were met and the island was secure by Thursday, October 27th. Order was restored and moves toward re-establishment of a democratic government were made under OECS supervision. The last contingent of U.S. military forces left Grenada on December 12, 49 days after the invasion began. Free elections followed on December 19th.

Deputy Secretary of State Kenneth Dam explained the U.S. objectives in Grenada as well as the international legal justification for the invasion. (212) Throughout the action, America's two basic objectives were to rescue American medical students and help Grenada re-establish order.

Dam described three legal grounds for the invasion. First was the appeal from Governor-General Scoon to the OECS to help restore order. "The invitation of lawful



governmental authority constitutes a recognized basis under international law for foreign states to provide requested assistance." There is still considerable room for debate here. Just what constitutes "lawful governmental authority?" Most would agree this refers to the recognized government in power. The trouble is that not every nation recognizes the same governments. What constitutes lawful authority for one nation might not for another.

The second legal justification was the content of the 1981 OECS treaty. Grenada was a signatory to that treaty and requested assistance under its provisions.

Lastly,

U.S. action to secure and evacuate endangered U.S. citizens on the island was undertaken in accordance with well-established principles of international law regarding the protection of one's nationals.

Although officials of the medical school claimed as late as October 21st that no danger existed, the freed medical students told otherwise. According to Weinberger, chancellor of the school Charles Modica,

secure in Brooklyn, seemed far more concerned with whether his school was going to be able to continue to collect tuition fees than he was with the actual conditions on the island itself-or with the very real risk that his students faced, particularly in view of the 24 hour curfew that had been imposed. (205)

Despite denying the need, President Reagan complied with the provisions of the War Powers Resolution.

Although arguments could be made that he did not consult the full Congress prior to initiating hostilities, he did consult with the Congressional leadership. In addition, his recent consultation with the full Congress over deployment of Marines to Beirut caused opponents to trust his claim that time was not available for such consultation in this case. Security considerations about the rescue of the American students also illustrated a need for secrecy much the same as that claimed by President Carter in the Iran case.

President Reagan did submit a full report to Congress following the invasion, and more importantly, withdrew all U.S. forces before the end of the sixty day limit. He did this despite the fact that after fighting had stopped, the administration told the Senate Foreign Relations Committee that the War Powers Act no longer applied to Marines on Grenada because they were not in combat. (213)

Presidential war powers remained intact and indications were that a balance could possibly be struck between the war powers of the Congress and those of the president. The key to success seems to be good communications between the president and Congress. Because he had gained the trust of the Congress by complying with the War Powers Act in the Lebanon situation, President Reagan was able to act with less consultation in the Grenada invasion. Congress believed

his claim that secrecy was important to the safety of American students on the island because he had left no reason for them to believe he wasn't telling the truth. His compliance with all other provisions of the act once the invasion began lends support to the view that Reagan was acting in good faith. Congress seemed more concerned with how they were viewed than how they actually participated in war making in this case.

## CHAPTER X. DISCUSSION AND CONCLUSION

As this study came to a close, the United States had just completed the largest military operation it had undertaken since Vietnam. Certainly, a good deal of study may now be done about President George Bush's application of presidential war powers during Operations Desert Shield and Desert Storm. A cursory look at the operations as they happened seems to indicate a continuation of compliance with the War Powers Act that began under President Reagan. Although he claimed no need, the president made significant efforts to consult with Congress during the deployment of troops and before the beginning of hostilities. President Bush went so far as to secure legislation allowing military action in the Persian Gulf. No such action had been taken since the declaration of war in World War II. Whether he would have taken action without Congressional approval is open to question. His speeches and historical patterns indicate that he would have.

In the post-World War II world, the war powers necessarily expanded with the larger role of the United States as an economic and political power. The advent of nuclear weapons changed military and political considerations with regard to foreign policy as well. Where there had once been definite divisions between war and peacetime, now the differences were less clear. Advanced delivery vehicles allowed national leaders to

transition from peace to war in a matter of minutes. Cold War tensions led to the development of organizations like the Strategic Air Command and an intercontinental submarine launched missile force designed to react in minutes to an attack on the United States. The United States was now prepared for war every day.

President Truman was the first to deal with the stresses of world leadership in a world of nuclear power. His actions in Korea and a constant concern for escalation to World War III brought on the development of the undeclared and limited war. No longer would conventional military wisdom be able to govern the conduct of war fighting. Political considerations had become much more important due to the types of weapons available. Alliances and membership in the United Nations seemed to downplay the role of the Congress in military decision making. The president now claimed treaty considerations, the U.S. role as a world leader, and fears about nuclear warfare as grounds for unrestricted presidential action regarding war powers.

President Eisenhower dealt with the aftermath of Korea and large numbers of brushfire wars around the world. He recognized the importance of a national strategy concerning the employment of nuclear weapons directly linked to U.S. actions in the foreign policy realm. He also became the first president to have to face a potential enemy with a

nuclear capability. Although Congress paid to implement the Eisenhower strategy, it had little role in developing it. For the first time, the president led significant standing military forces during peacetime. These forces provided resources for the president to project power at a scale never before imagined.

President Kennedy faced the limitations of a massive retaliation strategy and was forced to deal with the first real confrontation between the nuclear powers. His actions during the Cuban missile crisis show how decision making had to be limited to a small group because of real world time constraints. Throughout this case, the Congress was merely along for the ride. War powers expansion here refers to the "imminent danger" concept. While the president had always had the power to protect Americans and American property from imminent danger, this type of danger now existed every day. The details of the Cuban Missile Crisis illustrate how very real that danger is and was. While the list of presidential powers did not grow longer, the actual effect of the president's war powers grew much more serious.

President Johnson continued in this pattern of increasing presidential control over war making. By securing passage of the Gulf of Tonkin Resolution he led the country into a war of tremendous expense. Without a declaration of war, the president now conducted the second

most expensive war in American history. Vietnam also resulted in more U.S. casualties than any other military action in history except for the world wars and the civil war. A price was also paid by the presidency as an institution. For the first time since World War II, the Congress began to seriously discuss limiting the president's war powers.

President Nixon inherited this dissent and contributed to it himself by believing in the existence of strong presidential war powers. His decision to expand the Vietnam war into Cambodia without consulting Congress contributed at least in part to the War Powers Act. It is possible the Congress was merely striking out at a weakened president in the wake of Watergate. In any case, Congress had finally acted to reassert itself after allowing the president to expand his war powers since World War II.

Although expansion of presidential war powers slowed or perhaps stopped after 1973, President Ford did not seem to allow for much reassertion of power by the Congress. His handling of the Mayaguez seizure in 1975 reflects a general disregard for the provisions of the War Powers Act while continuing to commit U.S. forces to action as a sole decision maker.

A change in political parties in the White House did not reverse this trend. President Carter responded to the

Iran hostage crisis much the way President Ford reacted to the Mayaguez incident. Although he spent a considerable length of time working for a diplomatic solution, the president's eventual use of a military option was planned and carried out without consulting Congress. Like his predecessor, President Carter acknowledged the existence of the War Powers Act by reporting to Congress after the fact, but failed to meet its provisions for prior consultation.

President Reagan was the first to truly comply with the provisions of the War Powers Act. Although his own statements and those of his cabinet reflect doubts about the constitutionality of the law, he complied with its provisions when deploying troops to Lebanon and Grenada. It is unclear whether limits imposed by the Act really controlled Reagan's use of presidential power or if they just happened to coincide with what he felt were necessary military actions.

Implications for the future suggest hope for a balance between presidential and Congressional war powers. Although I believe it would be foolish to think that a president might feel restrained from action because of the War Powers Act when handling a real emergency, it is realistic to think that the War Powers Act is enough to stop military adventuring by the president. The real key to the balance of power between the president and the Congress will continue to be good communication. As long



as the members of Congress feel important to the process, they seem willing to allow the president considerable latitude with regard to war making.

Additionally, it is unlikely the Supreme Court will ever rule on the constitutionality of the War Powers Act. Its silence on the issue up to now indicates that the real issue is the settlement of power division between the president and the Congress. Traditionally, the Court has left these "political" issues for the people and the institutions involved to decide.

Should it feel the need to comment, the Court would likely support the president's commander-in-chief power in a way similar to its comment on foreign policy in United States v. Curtiss-Wright Export Corporation (Supreme Court of the United States, 1936, 299 U.S. 304, 57 S.Ct. 216, 81 L.Ed. 255). In that case, Justice Sutherland's majority opinion explains and accepts a theory of presidential dominance over foreign policy. Since foreign policy and war making are often one in the same, it is likely the Court would hold up presidential power in all but the most extreme circumstances.

In summary, we may conclude that the role of the president as the nation's commander-in-chief continued to expand in the post-World War II world up until passage of the War Powers Act of 1973. Although the president's power was not reduced by the legislation, the expansion of his

power was brought under control by the Congress. Today, the president holds more military power than he did in 1945 because the U.S. position as a world leader and the development of nuclear weapons require him to.

**APPENDIX**

## APPENDIX

Following is the text of President Carter's April 26, 1980 communication to the House and Senate, under provisions of the War Powers Act of 1973, concerning the aborted hostage rescue operation in Iran:

Dear Mr. Speaker:  
Dear Mr. President:

Because of my desire that Congress be informed on this matter and consistent with the reporting provisions of the War Powers Resolution of 1973 (Public Law 93-148), I submit this report.

On April 24, 1980, elements of the United States Armed Forces under my direction commenced the positioning stage of a rescue operation which was designed, if the subsequent stages had been executed, to effect the rescue of the American hostages who have been held captive in Iran since November 4, 1979, in clear violation of international law and the norms of civilized conduct among nations. The subsequent phases of the operation were not executed. Instead, for the reasons described below, all these elements were withdrawn from Iran and no hostilities occurred.

The sole objective of the operation that actually occurred was to position the rescue team for the subsequent effort to withdraw the American hostages. The rescue team was under my overall command and control and required my approval before executing the subsequent phases of the operation designed to effect the rescue itself. No such approval was requested or given because, as described below, the mission was aborted.

Beginning approximately 10:30 AM EST on April 24, six U.S. C-130 transport aircraft and eight RH-53 helicopters entered Iran airspace. Their crews were not equipped for combat. Some of the C-130 aircraft carried a force of approximately 90 members of the rescue team equipped for combat, plus various support personnel.

From approximately 2 to 4 PM EST the six transports and six of the eight helicopters landed at a remote desert site in Iran approximately 200 miles from Tehran where they

disembarked the rescue team, commenced refueling operations and began to prepare for the subsequent phases.

During the flight to the remote desert site, two of the eight helicopters developed operating difficulties. One was forced to return to the carrier Nimitz; the second was forced to land in the desert, but its crew was taken aboard another of the helicopters and proceeded to the landing site. Of the six helicopters which landed at the remote desert site, one developed a serious hydraulic problem and was unable to continue with the mission. The operational plans called for a minimum of six helicopters in good operational condition able to proceed from the desert site. Eight helicopters had been included in the force to provide sufficient redundancy without imposing excessive strains on the refueling and exit requirements of the operation. When the number of helicopters available to continue dropped to five, it was determined that the operation could not proceed as planned. Therefore, on the recommendation of the force commander and my military advisers, I decided to cancel the mission and ordered the United States Armed Forces involved to return from Iran.

During the process of withdrawal, one of the helicopters accidentally collided with one of the C-130 aircraft, which was preparing to take off, resulting in the death of eight personnel and the injury of several others. At this point, the decision was made to load all surviving personnel aboard the remaining C-130 aircraft and to abandon the remaining helicopters at the landing site. Altogether, the United States Armed Forces remained on the ground for a total of approximately three hours. The five remaining aircraft took off about 5:45 PM EST and departed from Iran airspace without further incident at about 8:00 PM EST on April 24. No United States Armed Forces remain in Iran.

The remote desert area was selected to conceal this phase of the mission from discovery. At no time during the temporary presence of United States Armed Forces in Iran did they encounter Iranian forces of any type. We believe, in fact, that no Iranian military forces were in the desert area, and that the Iranian forces were unaware of the presence of United States Armed Forces until after their departure from Iran. As planned, no hostilities occurred during this phase of the mission-the only phase that was executed.

At one point during the period in which United States Armed Forces elements were on the ground at the desert landing site a bus containing forty-four Iranian civilians happened to pass along a nearby road. The bus was stopped

and then disabled. Its occupants were detained by United States Armed Forces until their departure, and then released unharmed. One truck closely followed by a second vehicle also passed by while United States Armed Forces elements were on the ground. These elements stopped the truck by a shot into its headlights. The driver ran to the second vehicle which then escaped across the desert. Neither of these incidents affected the subsequent decision to terminate the mission.

Our rescue team knew, and I knew, that the operation was certain to be dangerous. We were all convinced that if and when the rescue phase of the operation had been commenced, it had an excellent chance of success. They were all volunteers; they were all highly trained. I met with their leaders before they went on this operation. They knew then what hopes of mine and of all Americans they carried with them. I share with the nation the highest respect and appreciation for the ability and bravery of all who participated in this mission.

To the families of those who died and who were injured, I have expressed the admiration I feel for the courage of their loved ones and the sorrow that I feel personally for their sacrifice.

The mission on which they were embarked was a humanitarian mission. It was not directed against Iran. It was not directed against the people of Iran. It caused no Iranian casualties.

This operation was ordered and conducted pursuant to the President's powers under the Constitution as Chief Executive and as Commander-in-Chief of the United States Armed Forces, expressly recognized in Section 8(d)(1) of the War Powers Resolution. In carrying out this operation, the United States was acting wholly within its right in accordance with Article 51 of the United Nations Charter, to protect and rescue its citizens where the government of the territory in which they are located is unable or unwilling to protect them.

Sincerely,  
JIMMY CARTER

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