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WAR POWERS, DEMOCRACY AND AMERICAN FOREIGN POLICY

by

Ryan C. Hendrickson

A DISSERTATION

Presented to the Faculty of  
The Graduate College at the University of Nebraska  
In Partial Fulfillment of Requirements  
For the Degree of Doctor of Philosophy

Major: Political Science

Under the Supervision of Professor David P. Forsythe

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DISSERTATION TITLE

War Powers, Democracy and American Foreign Policy

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GRADUATE COLLEGE  
UNIVERSITY OF NEBRASKA

## WAR POWERS, DEMOCRACY AND AMERICAN FOREIGN POLICY

Ryan C. Hendrickson, Ph.D.

University of Nebraska, 1997

Adviser: David P. Forsythe

Past literature on war powers in American foreign policy has found that since the Second World War, Congress defers to the President when the commander in chief introduces U.S. troops abroad. Congress avoids taking a decision-making role prior to the introduction of troops abroad and presidents have traditionally used autonomous political and constitutional arguments to justify their military endeavors.

With the arrival of a new Republican majority in the United States' Congress in 1995, a potential for fundamental change in the war powers relationship existed. President Clinton was faced with a seemingly aggressive legislative branch, especially in the areas of foreign policy making and U.S. deployments authorized by the United Nations. President Clinton also appeared willing to listen to congressional demands for a substantive role in deployment decisions.

In addressing the interplay between Congress and the President over war powers in the first Clinton administration, three case studies of the United States' major military deployments from 1993 to 1996 were conducted. Three chapters address the United States' deployments to Somalia, Haiti and

Bosnia. The United States' bombings of Iraq in 1993 and 1996 are also examined. This dissertation finds that Congress continued to defer to the President during Clinton's first term as President in light of an ostensibly activist 104th Congress. However, the dissertation also shows that in the American deployment to Bosnia, the President's rhetoric vis-a-vis Congress underwent substantial change compared to the language used by President George Bush.

The dissertation also examines the role of partisanship and its impact on war powers, and Congressional views on U.S. participation in U.N. peace-enforcement operations. The study concludes with a discussion of the policy implications of a Congress that acquiesces to a President who can use force abroad unilaterally.

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## WAR POWERS, DEMOCRACY AND AMERICAN FOREIGN POLICY

## INTRODUCTION

As early as George Washington's first Presidential administration, controversy has existed between the President and Congress over warmaking powers--especially when it comes to the decision to use force abroad (Lofgren, 1972). One early example of this problem in American history was President James Polk's military advances into Texas and the Rio Grande river regions in 1845, prompting some members of Congress to criticize the commander in chief for initiating and orchestrating a war with Mexico. More recently, U.S. participation in the Korean and Vietnam wars inspired some members of Congress to challenge Presidential claims of legality for these military campaigns. Political and legal questions about war powers and proper authority in foreign affairs have been a nearly constant source of friction between the executive and legislative branches.

From a constitutional standpoint, the issue of military force abroad has grown more complex since the Second World War as the United States has joined multilateral organizations. In legal theory the United Nations and the North Atlantic Treaty Organization (NATO) arguably have military enforcement powers. As witnessed during the debates about participation in Operation Desert Storm, many in Congress raised important political and legal questions

about President George Bush's introduction of U.S. troops into the Middle East under U.N. Security Council approval. Similar questions were raised regarding U.S. operations in Somalia, Haiti and Bosnia. As United States' participation in U.N. sanctioned peace-enforcement activities increases, questions of this nature remain important legally and politically for future American foreign policy endeavors.

In his first term as President, Bill Clinton resorted to both unilateral and multilateral uses of force. Clinton unilaterally conducted military airstrikes on Iraq and supported U.S. participation in major multilateral military deployments. During his administration, Constitutional issues between the White House and Congress over the relationship between war powers and peace-enforcement operations have been contentious. The "invitation to struggle"<sup>1</sup> between the two branches has not waned in the 1990s.

With the United States' enduring willingness to use force, the continuing debates between Congress and the President over the authority to use force, and new US multilateral deployments under UN authorization, fertile research opportunities exist in the area of American foreign policy. With the Republican party's ascendancy in Congress in 1994 and a Democratic President in his first term in

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<sup>1</sup> This term, first used by Edward Corwin (1948) has been often used in the literature on Congress and the President in foreign policy.

office, important institutional changes have also occurred as new players have been introduced to the war powers' controversy. Research has not yet addressed the linkage between multilateral military deployments and war powers in Europe, Africa and the Caribbean, and how Congress interpreted its role in this decision making process. Also, beyond single case studies of the war powers resolution and its relationship to Operation Desert Storm (Glennon, 1991; Stromseth, 1994) and legally-oriented analyses of war powers (Fisher, 1995; Westerfield, 1996), few scholars have studied Congressional views of UN peace-enforcement.

This dissertation examines how Congress has interpreted its authority to send U.S. troops abroad during the Clinton administration. Most of the study focuses on U.S. participation in U.N. peace-enforcement operations, although the United States' unilateral airstrikes on Iraq will also be addressed. I expect to find that a de facto congressional norm is in place, in which Congress avoids taking a legally binding position about initial deployment decisions, despite whatever theoretical ability it might have to check the President. For perceived political advantages, it appears that Congress prefers to defer to the president in the initial introduction of troops abroad. Further, the President uses United Nations Security Council approval for military deployments as a key source of international and domestic legal justification for military operations. Yet, I

also expect to find that Congress occasionally asserts its powers on a case-by-case basis to push the President in certain policy directions. At a time when the definition of U.S. national security is unclear, and in the aftermath of the perceived failure in Somalia, Congress may act forcefully vis-a-vis the President, but rarely does so in the initial stages of the deployment. I will discuss the conditions in which Congress sought to check President Clinton as commander in chief.

Finally, and most importantly, I argue that even during a perceived time of renewed Congressional assertiveness involving military deployment decisions, the 104th Congress bowed to the President when it came to the deployment of troops to Bosnia. These findings indicate that in spite of the presence of a new and seemingly assertive Congress in the area of foreign policy, the congressional practice of deference ruled. These developments have important ramifications for the Constitutional separation of powers, unilateral and multilateral use of force abroad, and the direction of U.S. foreign policy.

The dissertation begins with a literature review over American war powers, including a discussion of the constitutional, political and normative arguments surrounding the authority to use force abroad. Since participation in collective defense organizations has taken on new prominence since Operation Desert Storm, special

attention will be given to the effect of treaties on American foreign policy commitments. Chapter two considers the evolution of war powers from World War II to 1993, addressing the most important controversies and developments concerning war powers. This chapter will also help establish the background that President Clinton and the 103rd Congress inherited from President Bush, and addresses the influence of partisanship on war powers.

The study then moves to the interplay between Congress and President Clinton over the use of force abroad, paying close attention to United Nations peace-enforcement operations and the legal/political questions raised concerning proper authority for U.S. military actions. Three case studies will follow. Chapter three examines the debates within Congress over U.S. military actions in Somalia. Chapter four addresses the U.S. military role in Haiti, and chapter five discusses the questions raised over the U.S. military operations in Bosnia. Within the course of these case studies, President Clinton's unilateral air strikes on Iraq will also be addressed.

The dissertation concludes with a final chapter on war powers' current status and its relationship to U.N. deployments. The implications of this debate for American foreign policy, constitutional democracy and future U.S. participation in multilateral organizations will also be examined.

CHAPTER ONE  
THE USE OF FORCE ABROAD:  
ARGUMENTS SURROUNDING PROPER AUTHORITY

When writing the United States Constitution in the summer of 1787, the founding fathers attempted to divide the power of government between three separate branches. Within these branches, foreign policy powers were divided principally between Congress and the President. In Article I, the founding fathers bestowed Congress with the ability to declare war. They also gave the legislative body the powers to provide and maintain a Navy, to regulate the militia, to appropriate finances for military operations, the power to grant letters of marque and reprisal, and the ability to suppress insurrections and repel invasions. In the Constitution's Article II, the founders determined that the President should be the commander in chief. He was also given the power to receive foreign diplomats, and with the advice and consent of the Senate could appoint ambassadors and make treaties (Glennon, 1990: 72-73).

Much has been written about these specific or "enumerated" powers by scholars and political practitioners. During the development of U.S. history, Constitutional/legal, political and normative views have all been generated, leading to three broad schools of thought concerning the use of force abroad.<sup>2</sup> These schools vary in degree on some points, but broadly fit into three categories. The first body emphasizes Congressional primacy when sending troops abroad. Another school argues for a strong commander in chief, with nearly unilateral powers to use force abroad. The third camp centers around the argument that there is no law: the decision to go to war is inherently a political one-devoid of specific legal/constitutional answers. This literature review addresses these schools of thought, and due to the increasing importance of peace-enforcement operations in American foreign policy, pays close attention to the relevance of treaties and their effect on using force. It begins with the camp advocating a powerful and determining role for Congress.

#### Congressional Supremacy

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 of

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<sup>2</sup> This literature review stems largely from the arguments set forth by Forsythe and Hendrickson (1996).



war in the Legislature. James Madison, 1798 (quoted in Ely, 1993: 4).

Although the first school of thought varies in intensity, generally this camp stresses that Congress is to be the ultimate arbiter regarding the use of force abroad. As James Madison's quote above indicates, many of the founding fathers were deeply concerned about the possibilities of a monarchy, and desired a Congress with strong and effective checking powers. One of the founder's central fears was a President like Britain's George III, who would usurp power from the people and use it to fight wars of self-aggrandizement. This concern formed one of the principal theoretical foundations for the founders as they began their deliberations for a new governmental framework (Wood, 1969: 393-413).

When analyzing the debates at the Philadelphia Convention, many scholars argued that the founding fathers wanted Congress to play the deciding war powers' role. Law Professor Louis Fisher cites founding father Edmund Randolph's concern about executive power, who referred to it as the "foetus of monarchy" (1995: 4). In his study, Fischer includes other statements recorded at the convention, indicating the deep anxieties about placing the power of initiating war with the executive branch.<sup>3</sup> He also notes the thoughts of his contemporary, John Basset Moore, who

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<sup>3</sup> See the comments of Charles Pinckney, John Rutledge, Roger Sherman and James Wilson (Fischer, 1995: 4).

maintains that under no circumstances would the founders have intended that the President had the power to use force all over the world, even in the event that a "war" was not actually being waged (Fisher, 1995: 7). Fisher maintains that the President was only given unilateral powers to "repel sudden attacks," in order to respond to the country's defensive needs. Otherwise, Congress was intended to make the ultimate decisions on using force (12).<sup>4</sup>

Law Professor William Van Alstyne echoes these arguments by citing the original powers given to Congress, noting that the founding fathers gave Congress the powers to raise, support and provide for the army and navy, and was given the authority to make laws "necessary and proper" for the nation. Regarding war he writes: "The judgment is Congress' own" (1988: 28). Congressman Charles Bennett, in a written work, also writes that war powers were given to "the people" and not to the President alone (1988: 29). Charles A. Lofgren adds that the founders gave broad war powers to Congress. He contends that because the founders understood war could be both declared and undeclared, Congress's war powers were not simply limited to making declarations, but rather would have "nearly complete authority over the commencement of war" (1972).

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<sup>4</sup> See also Sofaer (1976), Henkin (1972: 71-72) and Glennon (1991: 80-84).

David Gray Adler follows in the "pro-Congress" tradition by making the case that within the ratification debates over the Constitution, many of the founding fathers stated their belief that Congress, with the exception of sudden attacks on the nation, would be the only branch that could introduce U.S. troops into combat. In his most potent example, Adler refers to James Iredell's comments at the North Carolina ratifying convention:

The President has not the power of declaring war by his own authority...Those powers are vested in other hands. The power of declaring war is expressly given to Congress (quoted in Adler, 1988: 5).

Adler goes on to argue that there is overwhelming evidence of original intent stemming from the Constitutional convention and the ratification debates pointing to Congressional powers for all force deployment decisions.

Further Supreme Court opinions concur in the pro-Congress interpretation. In *Bas V. Tingy* (1800), the Court ruled in favor of a strong role for Congress. In regards to the undeclared Quasi-War with France, the Court found that Congress could authorize an undeclared war (Thomas and Thomas, 1982: 97). In *Talbot v. Seeman* (1801), the court also found that Congress has the power to "declare a general war" and "to wage a limited war" (quoted in Adler, 1988: 7). Another case often cited is *Little v. Barreme* (1804), which determined that President Adams had acted beyond Congressional intent in the Nonintercourse Act of 1799 by authorizing the American Navy to capture a Danish ship

during the Quasi-War (Wormuth and Firmage, 1989: 61).<sup>5</sup> In all three cases, Congress was found to have considerable warmaking powers vis-a-vis the President, and that the President was limited in his authority to use troops abroad.

From the perspective of political practice, two of the strongest advocates of congressional checking powers are Francis D. Wormuth and Edwin B. Firmage (1989). They note that in the nineteenth century especially, Congress checked the president frequently in warmaking decisions, forcing real policy changes. Although these scholars note that there have only been five declarations of war by Congress in the nation's history, they retort with the many instances in which Congress voted approval for the use of force abroad previous to actual combat. Congress voted for three conditional declarations of war during the 19th Century, and authorized limited wars in a number of instances (58-60).<sup>6</sup> Congress also took positions in direct opposition to Presidential military intentions, resulting in policy shifts

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<sup>5</sup> Also see *United States v. Smith* (1806) for further support of early Supreme Court preferences for congressional involvement in warmaking (Koh, 1990: 83).

<sup>6</sup> The three conditional declarations include conflicts with Paraguay in 1857, Venezuela in 1890, and Spain in 1895. Wormuth and Firmage argue that there were four "conditional" declarations, but they count the Spanish-American War as both a conditional and a "pure and simple" declaration (55). Examples of the authorized limited war include America's conflicts with the Four Barbary States, the Quasi-War with France, with Great Britain in 1811 and with Great Britain in 1839 (Wormuth and Firmage, 1989, Chap. 4).

conforming to Congressional recommendations. By Wormuth and Firmage's interpretation, there were also other cases in which Presidents refused to use military force without approval from Congress (82). They conclude that within the 19th century, there is plenty of evidence suggesting an instrumental and determining role for Congress in using force abroad. Presidents deferred to Congress's collective judgement, and did not believe that they were allowed to act autonomously as commander in chief.<sup>7</sup> Fisher adds that within the 19th century, Presidents did not make unilateral arguments for Presidential powers. Arguments favoring autonomous decision making by the executive branch only surfaced in American politics after World War II, demonstrating that the founders' original intent rests on the side of Congress.

Despite the trend toward a nearly autonomous president in foreign affairs in the 20th century (Crabb and Mulcahy, 1991),<sup>8</sup> Congress did make some effort to reverse this movement in the 1970s. In 1973, Congress passed the War Powers Act over President Nixon's veto in a legal effort to define more clearly the Constitutional responsibilities of the President and Congress for the use of force abroad. Some members of Congress even voted against the War Powers Act

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<sup>7</sup> See also Thomas and Thomas (1982: 35).

<sup>8</sup> The post World War II movement of this trend will be addressed in Chapter 2.

because they felt it gave too much power to the President (Bennett, 1988: 31). While many scholars argue that its effect and legality are suspect (Collier, 1994; Turner 1991; Rostow, 1986), members of Congress occasionally threaten to invoke it as a legal trump card against the president, demonstrating that Congress does feel it has a legal role in deployment decisions.

Besides arguments based on original intent and political practice, normative concerns about autonomous Presidents have been noted, especially since World War II, echoing many of the fears the founders dreaded. Arthur Schlesinger's book (1973), The Imperial Presidency, drew widespread attention in the early 1970s, in which he noted the dangers of executive aggrandizement of powers. Schlesinger, a former aid to President Kennedy, voiced his concerns of growing presidential powers during the Nixon Administration, and how this "cancer" in part culminated in the Vietnam War and Watergate.

From another perspective, others have criticized Congress's concern with triviality during the Iran-Contra hearings (e.g. who did what, when and how), rather than focusing on the more profound questions of separation of powers between the executive and legislative branches (Koh, 1990; Damrosch, 1989). Imbedded within this interpretation, Congress has the power to affect the executive/legislative relationship, but is wary of implementing substantial

reforms involving the separation of powers. Similarly, other observers have argued that Congress does have the power to check the President in foreign affairs and the use of force, but for a number of reasons, defers to the President. John Hart Ely likens Congressional behavior during the Vietnam War to Pontius Pilate. Rather than exercising its considerable constitutional powers, Congress chose to wash its hands of decision making by turning over its powers to the President (1993). Stephen R. Weissman (1995) adds that since few constituents have an interest in foreign affairs, few electoral advantages are to be gained back home by becoming deeply involved in international issues. He also notes that votes may actually be lost if the perception develops that the members of Congress appears more interested with developments in country x, rather than with their own district and/or state. In his view, substantial electoral incentives exist for Congress to continue in this Pontius Pilate fashion.

Barbara Hinckley (1994) makes a similar assertion about Congress's role in foreign affairs. She argues that Congress plays a minimal role in foreign policy, and largely reacts to public opinion. Deference to the President represents the norm, unless Congress feels the pressure from the public to press the President in certain policy directions. Otherwise, she maintains that Congress is essentially a bystander in foreign policy making. Some pressure can be felt when jobs

may be at stake, as in the making of trade policy (see also Destler, 1986). Yet, in more general terms, many observers contend Congress often does not play a substantive role in foreign policy.<sup>9</sup> In short, the central argument of these claims is that Congress does have important checking powers in foreign affairs, but for a variety of reasons has chosen not to implement them. Congress could play a key, if not domineering role in foreign policy making, but has chosen to defer. In their view, deference places the nation at great risk as a potentially effective body wastes and avoids its constitutional duty to check the president.<sup>10</sup>

As mentioned earlier, the obligations of treaties, especially ones entailing collective defense requirements, have produced considerable controversy in American politics. As the United States has employed multilateral solutions for war and peace, such as the United Nations and NATO, questions have been raised within Congress concerning the United States' obligations under international law. Most closely associated with the "pro-Congress" side of the argument over treaties is Michael J. Glennon (1975). In Glennon's article, he discusses seven treaties in which the United States purportedly promised to come to the defense of another state or group of states if attacked. However, he

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<sup>9</sup> For an opposing viewpoint, see Ripley and Lindsay eds. (1993).

<sup>10</sup> See also Adler and George (1996).



notes that in each one of these treaties, all have incorporated language stating that before the U.S. comes to an ally's defense, the decision to act must be reached according to "constitutional processes." In his view, treaties, including the North Atlantic Treaty Organization, the Southeast Asia Collective Defense Treaty (SEATO) and the Treaty of Mutual Cooperation and Security with Japan all demand the approval of Congress before U.S. troops are engaged in combat.<sup>11</sup>

Glennon and Fisher have also examined the debates surrounding the United Nations Participation Act of 1945, allowing for the United States to become a member state of the new global organization. He recalls a number of examples indicating the strong level of Congressional input required before U.S. troops could participate in Security Council military enforcement operations. They pay special attention to Article 43 of the United Nations Charter, which, like other defense treaties the United States has joined, demands that troops can only be used if domestic constitutional standards have been met (Glennon, 1991; Fisher, 1995).<sup>12</sup>

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<sup>11</sup> See also Fischer (1995: 72-84).

<sup>12</sup> See also Stromseth (1994), who argues that there was considerable agreement that a minimum level of support was necessary from Congress before troops would be sent. Although she gives deference to the President in how to use the troops, she maintains that the legislative history of the Act did require initial congressional consent through Article 43 agreements.

Further, it is argued that the founders would have never intended that the Senate alone could have taken the U.S. to war by consenting to a treaty. The House was to be a principal player in the decision making process. Without full legislative participation before using force, the act would be unconstitutional (Glennon, 1991: 85).

Matthew D. Berger (1991) adds that the Security Council's language is also something that cannot be neglected. Security Council Resolution 678, which allowed military enforcement actions against Iraq, never *required* member states to take action, but rather allowed and authorized the use of force if member states wanted to use it. By his interpretation, Security Council decisions thus far still involve an element of choice to be determined by Congress.

Thus, while the arguments vary in degree and in kind, many firmly hold that Congress is to be closely involved, if not the key decision maker regarding when and how U.S. troops will be used abroad. Although those who interpret the founder's original intent appear to have a strong argument about a substantial role from Congress, advocates of Presidential supremacy provide a stiff challenge when considering the country's political practice.

### Presidential Supremacy

I took the canal zone and let Congress debate, and while the debate goes on the canal does also. Teddy Roosevelt, 1904 (quoted in Fisher, 1995: 49).

As shown by the previous discussion, and unlike the above quote from former President Teddy Roosevelt, Presidents did not always make unilateral claims for the chief executive in foreign affairs. However, a number of Presidents and scholars, especially in the twentieth century, argue in favor of a strong president with broad powers as commander in chief. Some of these claims are based on varying interpretations of the Constitution and the arguments presented at the Constitutional Convention.

Most of the evidence from the Philadelphia convention lends stronger support for a meaningful Congressional role. However, a few thinkers have offered different interpretations of the founders' intent. Barry Goldwater notes that during the Constitutional Convention, the founders originally gave Congress the power to "make" war, but later struck this word and replaced it with "declare." He argues that these actions indicated that the President was to be the one to make war, and Congress could, if it desired, make the announcement that war was in progress (Wormuth and Firmage, 1989: 29). William Bradford Reynolds (1988), Assistant Attorney General at the Department of Justice during President Reagan's administration, made similar arguments.

Other arguments about presidential power in the use of force abroad have come from developments in the courts and through political practice. The Supreme Court, in a number of instances, has pointed to a strong role for the commander in chief, nearly free of congressional interference. One such case periodically cited is the *Prize Cases*, which ruled in favor of President Abraham Lincoln's naval blockade of the Southern states during America's Civil War in the absence of prior congressional approval. The President was given the power to conduct a defensive war, and to determine himself the appropriate amount of force necessary (Thomas and Thomas, 1982: 55).

More notable is *United States v. Curtiss-Wright Export Corp.* (1936). In reference to the commander in chief's powers, Justice Sutherland stated: "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations." (quoted in Reynolds, 1988: 24). This ruling has been cited by others as defining for the President's role vis-a-vis the Congress in foreign affairs (Westerfield, 1996: 70).

The decision in *INS v. Chadha* (1983) also found that the legislative one-house veto portion of the Immigration and Nationality Act was unconstitutional, demonstrating that Congress did have limits on how much it could shape foreign policy in a statutory manner. Using the logic of this

decision, some elements of the War Powers Act would be unconstitutional, and in effect, limit the ability of Congress to force the President to return American troops deployed abroad (Collier, 1994: 59). While there have been other court decisions that have ruled in favor of the President in foreign affairs issues,<sup>13</sup> these cases represent the most often cited examples of president supremacy as regards the use of force.

One final legal argument for presidential power that also has roots in the maturation process of the U.S. government, rests in the claim that the chief executive has aggregate powers that have accumulated over time. Although not all of these powers are stated explicitly, some maintain that he has gained many implied powers over time, which demand considerable leadership responsibilities. As the President leads the nation, much responsibility is placed upon him as commander in chief, chief diplomat, guardian of the peace and chief executive, inter alia-all of which may be combined during times of national emergency.<sup>14</sup> Within these duties, and because of his immense national responsibilities, presumably the President has great leeway in determining when and how to use force (Westerfield, 1996: 32-39).

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<sup>13</sup> For example, see *Durand v. Hollins* (1860) in Glennon (1990: 74).

<sup>14</sup> These duties have in some cases been referred to as "plenary" powers of the president (Glennon, 1990: 71).

While there are legal arguments for executive preeminence that continue to have considerable influence, others point more specifically to the importance of historical trends, stating that the President has evolved to become the primary decision maker for using force. Proponents of this view argue that only five actual declarations of war have been made since the nation's inception, yet there have been over 200 actual uses of force abroad (see Ely, 1993: 9). William Rehnquist adds that the nation's "constitutional history" points to a strong role for the president due to the large number of undeclared wars (quoted in Westerfield, 1996: 22). Reynolds (1988) further notes that on 137 separate instances of the use of force since 1789, the President acted completely without Congressional approval. In short, especially since World War II, presidents have made unilateral claims as commander in chief, and in many cases, Congress allowed the President to act in an independent fashion (Fischer, 1995).

Normative arguments in favor of the President have also entered into the debate, primarily focusing around the President's need for flexibility, and that Congress should not be allowed to restrict the President's ability to act abroad. It is argued that if the president is restricted, these congressional intrusions handicap the credibility of U.S. foreign policy. The possibility of an assertive and controlling Congress could force the president to reverse

himself, highlighting a weakness for the enemy to capitalize upon (Tower, 1982).<sup>15</sup> This fear is in part why all Presidents since Richard Nixon, including President Clinton (discussed later), have maintained that the War Powers Resolution is unconstitutional, and takes away from the president's inherent powers as commander in chief.

Like John Tower, Robert Bork holds that in the modern age, presidents must have the power to use force abroad without congressional approval, and that Congress should avoid placing more laws on the President's ability to use force abroad. Presidents should not be countered by a Congress which can run directly in the face of national security interests (Bork, 1990).

The debate surrounding the influence of treaties also contains advocates who favor a nearly independent president. The Constitution states that once treaties are signed, they then become the supreme law of the land. Thus, the new international obligation, arguably, must be fulfilled. With the debate over U.S. participation in Operation Desert Storm, the issue of treaty obligations took on new prominence. Some argued that since the United States is a member-state of the U.N. by treaty agreement, and that because Article 25 of the U.N. Charter requires all member-states to follow the decisions made by the Security Council,

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<sup>15</sup> See also Joseph R. Avella (1996) who makes arguments very similar to John Tower.

the United States has legal responsibilities to the United Nations. When the Security Council makes a decision under Chapter VII of the U.N. Charter, U.N. member states may be authorized to use force under international law. Without surprise, the pro-presidential side of the argument takes a different view of the legislative history surrounding the U.N. Participation Act, noting a number of instances that seem to favor minimal, if negligible input from Congress on Security Council decisions. It is maintained that Congress fully understood it was sanctioning the creation of a new world organization that had expansive military "police" functions. Congress knew that it was entering a new era in which world security would be defined through an international body, rather than the old paradigm of unilateral decision making. Congress also understood that the Security Council would need the power to react rapidly in order to be effective, and a slow deliberative Congress would stand in direct contrast to the idea of the United Nations (Frank and Patel, 1991: 65-70). President George Bush essentially adopted this position when he stated he did not need "the permission of some old goat in the United States Congress to kick Saddam Hussein out of Kuwait" (quoted in Stromseth, 1994: 87). One could also add that since an Article 43 agreement has never been made, political practice establishes that there is no necessity for Congressional input in fulfilling U.N. obligations.



Leonard Meeker, Legal Counsel to the Justice Department during the Johnson administration, also argued that treaty obligations can have a profound effect on U.S. foreign policy commitments. Meeker argued that SEATO contained mutual defense provisions, requiring that the United States come to the aid of any threatened state within the treaty, in part allowing for U.S. military actions in Vietnam (Meeker, 1966: 485). This argument was supported by Senator J. William Fulbright before his position on Vietnam changed radically (Ely, 1993: 18).

From another point of view, Senator Paul Douglas argued that the President could be allowed to conduct "small wars" (Wormuth and Firmage, 1989: 29). John Norton Moore is also often cited for his position that the President can use troops abroad as long as casualties are kept low. While these last arguments are more controversial, they do in part represent the many who favor a President with broad foreign policy powers--not to be encroached upon by Congress. However, some observers and practitioners feel that neither of these camps represents accurately the true nature of the executive/legislative relationship, which escapes the boundaries of a legal framework.

#### Its Politics--Not Law

The respective powers of the President and Congress of the United States in the case of war with foreign powers are yet undetermined. Perhaps they can never be defined. John Quincy Adams, 1836 (quoted in Raven-Hansen, 1994: 29).

Implied by this quote from former President John Quincy Adams is the belief that there exists an absence of law regarding war powers. As early as 1836, only 49 years after the signing of the U.S. Constitution, Adams was unclear as to war powers' responsibilities, and maintained that thus far war powers were part of a "political process."

While Adams appears to have been troubled about the lack of constitutional parameters surrounding the conduct of war, some observers maintain that his observation resounds precisely with the founders' intent. The argument runs as follows: because the founders recognized the difficulties in specifying each branches' war powers' duties, they purposefully left war powers undefined. These questions would be determined in the foreseen democratic struggles between the President and Congress. Others add that the language was purposely left vague in order to create compromise. Because the issue engendered so much controversy, it made political sense for the founders to wisely keep these powers vague, in order to move forward with a working Constitution, rather than one that kept the founders in perpetual debate (Keynes, 1982: 56). To this argument, Edward Keynes adds that the founders feared abuse by both the legislature and the executive branches. Because of these concerns, checks and balances were intended to create frustration and inertia in policy making, resulting

in decisions made through a democratic, and hence *political* way (1982: 56).

Robert Turner (1991) refers to this line of reasoning as the "jump ball theory" of policy making. Like a basketball, war powers is tossed in the air and both Congress and the commander in chief are left to compete for the more powerful position. In effect, whoever gets the ball makes the decisions.

The courts have also made rulings that echo with similar arguments. The Supreme Court, for a variety of reasons, has often refused to officially rule on war powers' cases. From a critical standpoint, Harold Koh refers to the Court's "collective amnesia" on these issues, as if the court acted like a child at a wedding, only to be seen but not heard (Koh, 1994: 121). Putting aside the criticisms that the court has avoided a meaningful role within the debate, and the assertion that the Court fears adjudicating on cases it could not enforce anyway, many decisions argue that war powers is inherently political and not legal-- better left to the "political" branches to clarify. Former Supreme Court Justice Felix Frankfurter made this claim when he argued that war powers represents a "political thicket," outside of the Court's true jurisdiction (quoted in Thomas and Thomas, 1982: 109). It has been stated that the "Courts stayed out of the international political jungle of war and

peace" during American military involvement in Southeast Asia (Thomas and Thomas, 1982: 109).<sup>16</sup>

Some members of Congress have also made similar arguments about the absence of law for the use of force. Congressman Dante Fascell has argued that a strong U.S. foreign policy, at times, may require the United States to take action now and work the legal issues out later (see Forsythe and Hendrickson, 1996: 956). It may be that, as Supreme Court Justice Oliver Wendell Holmes stated in 1886, that "the life of the law has not been logic: it has been experience" (Moore, 1994: 162).

### Conclusion

As is apparent from the previous discussion, the authority to use force abroad has been a hotly contested issue in American foreign policy making. Arguments have been proposed from historical, political and normative viewpoints. In short, there is great debate over proper authority for the use of force. What remains unclear and unexamined is how President Clinton and the 103rd and 104th Congress fit into this debate. Has President Clinton acted unilaterally, as did Teddy Roosevelt? Does Congress demand a legal role in the decision making role to send U.S. troops abroad? Or, has

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<sup>16</sup> See also *Crockett v. Reagan* and *Lowry V. Reagan* for more on the "political questions" in the courts (Glennon, 1990: 314-321).

there been an absence of law surrounding the entire debates, in which politics determines the outcomes?

In order to more fully understand the dynamics of the debate in the Clinton administration, we must first return to the norms and legal developments established in the Post World War II era. Chapter 2 will address this evolution, focusing on Cold War trends, institutional changes, the War Powers Act and the interplay between Congress and the President over the use of force abroad. In doing so, the following chapter will also examine political partisanship and its impact on war powers interpretation during the cold war.

#### The Case Study Approach

Before I address the evolution of war powers during the cold war, a short discussion of the methodology employed in this dissertation is necessary. I have chosen the case study approach to address my research question since it is a legitimate research technique for capturing the political questions at issue in this inquiry. However, this methodology is not without weaknesses, which I have tried to overcome. Before I present the substantive chapters to follow, I will address briefly the strengths and shortcomings of the case study approach and discuss why I chose to use this methodology.

Case studies offer scholars a viable way to test and confirm theories, which can contribute substantially to the accumulation of knowledge (see George, 1979). Rogowski (1995) maintains that a number of case studies, especially in comparative politics, have proven path breaking within political science.<sup>17</sup> Ted Gurr's use of regional case studies in, Minorities at Risk, is also highly acclaimed.<sup>18</sup> In the study, Gurr examined 233 minority groups in 93 countries using statistical analyses, but follows these findings with three case studies that uncover the various political nuances and details embedded in the individual cases. In this situation, case studies were used effectively to further refine Gurr's empirical findings, and in turn demonstrate that "thick descriptive" studies can provide more substance to larger quantitative studies.<sup>19</sup> More specific to the literature on the congressional/executive interplay, a number of qualitative case studies exist that have been important for understanding the war powers' relationship, e.g. Caridi (1968), Crabb and Holt (1989), Berger (1991), Crabb and Mulcahy (1991), Ely (1993), Fisher

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<sup>17</sup> For example, Rogowski cites Lijphart (1968), Allen (1965), Gourevitch (1978), and Katzenstein (1985).

<sup>18</sup> See Ross (1995) and Forsythe (1995).

<sup>19</sup> See also Russett's (1970) discussion of deterrence, and why he found it necessary to employ case studies of individual situations of deterrence in order to understand the various forces at work.

(1995) and Weissman (1995), *inter alia*.<sup>20</sup> Thus, well done case studies can produce and/or enhance "good science."

Case studies also allow the researcher to delve deeply into one's subject matter. In case studies, many different and useful sources of evidence can be used to address a question and/or theory being explored (Sjoberg et al., 1991: 68; Eckstein, 1975: 106). Many political events have unique qualities that entail intensive and broad examination, which is especially true of this research endeavor. A case study on the use of force in Bosnia will also not include all the same factors as "Operation Restore Hope" in Somalia. By examining a variety of sources of data dealing with the relationship between the executive and legislative branches in these different cases, this approach can uncover a great amount of information that may potentially be lost in other methods of research. In order to study comprehensively the interplay between Congress and the President I rely upon statements made in the Congressional Record, Public Papers of the President, official documents and statements made by the President, State Department Bulletins articulating the President's position, and House and Senate Committee Hearings and testimony. In finding the appropriate committee hearings and/or statements, I used a number of sources to locate this data. These sources included Lexis Nexis searches in the "legis" and "exec" libraries, the Index of

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<sup>20</sup> In foreign policy making, see Cottam (1977).

Congressional Committee Hearings, and IRIS searches via the University of Nebraska Library system. In tracking committee hearings, I relied upon the *Congressional Quarterly Weekly* and journalistic sources, such as the *Washington Post* and the *New York Times*. I also interviewed two members of Congress. The case study approach is not the only research methodology that allows the analyst the opportunity to use a wide variety of data sources as evidence. Yet, when done well, case studies can provide a very rich and comprehensive base of data.

In this dissertation, the case study approach is particularly well suited to the study of the congressional/executive interplay. As is evident from the wide number of sources cited above, the congressional/executive interplay over war powers cannot be captured solely on one particular day or by one specific vote. As will be shown, executive and congressional positions evolved in some cases, which in part explains why I have not used roll call votes extensively for my data.

Many scholars, especially those who study congressional behavior, have relied upon roll call votes for a substantial portion of their data. American foreign policy has also been examined through the use of roll call votes (e.g. Scott, 1996). Moreover, some who use roll call votes argue quite convincingly that patterns and trends can be located over time by studying roll call votes over a given period of



time. While this research method potentially offers great insight to voting patterns and decisions made in Congress, it is not entirely appropriate for the question posed in this dissertation for primarily two reasons.

First, the number of votes that are relevant to the research question is very limited. In the aftermath of the U.S. occupation of Haiti in 1994, Congress made only one vote on Clinton's deployment and use of force. In the case of the United States' air strikes on Iraq in 1996, Congress made no vote. The "n" is quite small in all of the cases examined, if there is even an "n" at all to be studied, and thus there are few votes that can be used for comparative purposes. Due to the limited number of votes made, I examine statements made on both congressional chamber floors, and look at committee hearings in order to locate patterns of behavior.

Second, this dissertation seeks to uncover the key arguments and positions presented by both the executive and legislative branches, which cannot be uncovered adequately through roll call votes. Individuals' statements, the timing of the statements, and the various nuances of the positions taken cannot be fully captured by simply a yes or no vote alone. Each case examined varies somewhat and requires the recognition that different factors are at work in these separate cases (George, 1979: 46; Verba, 1976: 113). Roll call votes provide some valuable information for this study,

but offer only a limited source of data for this particular research question. In sum, a case study approach allows the analyst the ability to study his/her question within the full contextual setting of the interplay and the variations that may occur over time.<sup>21</sup>

Further, I examine three different situations that broadly fit under the same category (the use of force) involving different independent actors in each case. For example, the actors encouraging American intervention into Haiti were not the same actors that fought against American participation in NATO's Implementation Force in Bosnia. Also, the 103rd and 104th Congress had a number of fundamental differences that require close attention and analysis, with different individuals playing central roles in the different cases. The case study approach allows the researcher the ability to capture these varying independent variables that are central to the research question posed (Johnson and Joslyn, 1991: 122).

The case study approach is, however, not without weaknesses. Case studies have been criticized for a lack of analytical "rigor," in that the data chosen is ultimately up to the researcher (Johnson and Joslyn, 1991: 124; Eckstein, 1975: 112). The researcher defines what data will be used for the question being tested. Efforts have been made in

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<sup>21</sup> See also Nye (1993: 43) for his discussion of the evolution of events, and what he calls "proximity in time."

this dissertation to conduct comprehensive searches of various data bases appropriate to my research question, and to remain consistent in my searches. Except in rare occasions, only statements made by members of Congress on the Chamber floors or in Committee hearings were used as data. This approach may be criticized for missing key statements made by Members of Congress elsewhere, which may have some validity. However, in order to manage 535 potential sources of data over four years, the data base was limited to official, primary documents and reliable secondary sources as located.<sup>22</sup> I argue that statements made on the floor more likely represent serious concerns and thoughts for members of Congress, in part, since members' own floor time is limited. If my sources had not been narrowed in some way, my data base could have been filled with numerous ad hoc statements from members of Congress that may more accurately reflect a member's random thoughts on an issue, rather than a meaningful effort to affect the policy debate in Washington.<sup>23</sup>

Another potential critique surrounding case studies deals with the ability to make generalizations with only a few cases, as compared to studies with a large "n" that theoretically have wider generalizing qualities (Diehl,

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<sup>22</sup> See also Micheal Hunt's (1996: 2) defense of using primary sources.

<sup>23</sup> Two interviews with members of Congress were also conducted.

1994: 41; Lijphart, 1971: 687). However, since the number of times the United States uses force is so relatively low, the case study approach is well suited to address this question and has been the preferred approach within past scholarship. Moreover, simply because a small "n" is used does not necessarily imply that the research has limited merit. As noted above, a number of qualitative case studies have advanced political science considerably.

In this study, I also only examine three cases, all in the first term of the Clinton administration. Thus, my conclusions may have only limited applicability to future Presidents and Congresses. Ernest May (1973) has written about this problem, especially as it relates to case studies and their "misuse" by policy makers. Yet, this "time" critique is not specific to case studies and affects all other research methodologies that limit themselves to a particular time.

Case studies also run the risk of sometimes providing insignificant pieces of information that do not contribute directly to the study. Critics note that case studies can be tedious, long and sometimes present information unrelated to the research question posed (Johnson and Joslyn, 1991: 124; Macridis and Brown eds., 1955). Often, this criticism is a fair one in that case studies can become simply descriptions of historical events, rather than an analysis of the particular question. When presenting my historical

descriptions, efforts have been made to remain succinct and germane to the original research question posed. George (1979) maintains that when case studies are focused, specific and well structured, they can provide great insight into political questions.<sup>24</sup>

Some methodological schools of thought maintain that there is only a limited need for descriptive case studies, and scholars should rather strive to use methods and formulate theories that have more universal applications (Bueno de Mesquita, 1985). Many social choice theorists argue that by using formal models and by making assumptions about individuals' behavior, scholars can simplify the actors and choices made in a political environment. In doing so, formal modelers argue that they can avoid the historical/descriptive nature of case studies and better understand the more universal "process" in which decisions are made.<sup>25</sup> While in theory this approach may sound

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<sup>24</sup> For example, see Karns and Mingst eds. (1992) who seek to employ the standard set by George, and in my estimation, provide a collection of case studies that allow for "focused comparison."

<sup>25</sup> See for example Snidal's (1986: 28) discussion of the purpose of theory as it relates to game theory. He maintains that since it is "widely accepted" that game theory seeks to understand is the "process" in which political decisions are made, it is then "not desirable to incorporate all the details of any individual case." The process, in Snidal's view, has more universal relevance, where as the historical events are merely the details that tell students little about the process itself.

attractive, the social choice school has problems of its own.

In the effort to simplify the players and the choices available to the actors, some critics argue that formal modelers make gross simplifications about the political world surrounding them. It has been argued that rational choice theorists--in seeking generalities--poorly describe political reality (Green and Shapiro, 1994: 6). Moreover, formal modelers make assumptions about players' self interests and the way in which players make decisions. Critics maintain that people do not necessarily think in the way in which formal modelers contend and do not capture actors' interests accurately (Schellenberg, 1996: 116; Etzioni, 1988). Regarding one of the more preferred approaches in rational choice, game theory, it is unclear how one would determine the various "payoff outcomes" for congressional and executive assertiveness, deference and apathy, and the different forms they may take. Game theorists assign simple numbers to complex attitudes and choices, which can appear arbitrary and do not necessarily reflect the intensity of feeling associated with certain choices and decisions made. With these criticisms and the acceptance that social choice theory still has much to accomplish before it achieves the predictive value it seeks (Hedstrom, 1995; Levi, 1995; Green and Shapiro, 1994), clearly there still remains a need in political science for

rigorous descriptive studies. Thus, although there exists fair criticism of case studies' descriptive nature, other methods, including formal modelers and game theorists, have important methodological weaknesses as well.

Another potential weakness in my approach resides in the selection of cases.<sup>26</sup> I have only relied upon three cases involving the use of force, which may not represent the totality of the war powers situation in Clinton's first term as president. I only selected cases in which force was used and did not look at cases in which force was not used. King, Keohane, and Verba (1994: 130) would likely argue that some other case in which force was not used would have to be examined in order to more fully understand the congressional/executive interplay. However, this type of reasoning would then lead to a potentially endless search for the most appropriate case in which force was not used, e.g. why were American troops not deployed to the Sudan, Mozambique, Colombia, Myanmar, Sri Lanka, etc. What the criterion would be for selecting one of these cases is ambiguous--if not purely random. By picking a case randomly where troops were not deployed, the result may be a case that has little relevance to the original research question posed. Thus, I have limited my case selection to instances

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<sup>26</sup> For a critique of the selection of cases see King, Keohane, and Verba (1994) and Geddes (1990).

in which troops were deployed abroad and cases where troops were given the authority to use force if necessary.

One final research note is that this study involves different uses of force in the Clinton Administration, yet the uses of force will not be treated as completely distinct cases. The events in the Somalia case, as will be shown, had an important impact on the future uses of force in the Clinton administration and on the 104th Congress. The examined cases are not meant to be perfectly comparable examples of the same phenomena, but rather to show how war powers issues developed in each case, *and* to trace the evolution of war powers' constitutional and political developments during the Clinton administration.

In sum, case studies have both strengths and weaknesses that vary in degree. For the question posed in this dissertation, the case study methodology is an appropriate and useful method of analysis.



CHAPTER TWO  
WAR POWERS IN THE POST WORLD WAR II ERA

Some observers have characterized the cold war as an era of an imperial presidency, in which presidents had essentially free reign in American foreign policy making (Crabb and Mulcahy, 1991; Schlesinger, 1973). While the term "imperial" has some relevance to the political practice established prior to the Post World War II era, it does not fully take account of Congressional political partisanship and its role in the evolution of war powers.

Chapter 2 addresses the war powers' trends established after World War II and before Bill Clinton entered the White House. In doing so, it places the interplay between the President and Congress for war powers in a recent historical context and sets the foundation for the future substantive chapters to follow. For those who have analyzed the recent history of war powers, scholars have not looked closely at the issue of political partisanship and its impact upon constitutional interpretation. War powers' studies have either focused on specific wars since World War II (Guilmartin, 1995; Ely, 1993; Gregg, 1992; Smith, 1992; Hall, 1991; Caridi, 1968), or have kept to a

legal/constitutional framework based on the founding father's interpretations, or the War Powers Act (Westerfield, 1996; Fisher, 1995; Stern and Halperin eds., 1994; Glennon, 1992). Studies have not yet broadly addressed the issue of how party affiliation impacted and determined the extent to which partisanship influenced war powers' interpretations during the post World War II era. Moreover, since the following chapters deal in depth with the different constitutional interpretations of war powers advanced by Democrats and Republicans during the Clinton administration, a "party" focus on war powers recent history is merited.

This chapter examines the major uses of force since World War II, including analyses of Korea, Vietnam, Grenada, Lebanon, Panama, and Iraq. Brief attention will also be given to the Dominican Republic and the Mayaguez incident. This chapter demonstrates that the dominant political practice had been one of deference to Presidential leadership in initial stages of warmaking policy, regardless of party affiliation. However, Congress did assert its checking powers when missions became controversial, which can in part be explained through party affiliation. Yet, the President's opposition party is not necessarily the more "assertive" party as might be assumed. Furthermore, since the Cold War's end, members of both parties in Congress demanded an authorization vote prior to the initiation of

combat against Iraq in 1990. Consequently, President Clinton entered the White House at a rare moment in recent American history, a time when Congress had recently asserted its checking responsibilities prior to the use of force abroad. Chapter 2 begins by discussing the development of two key foreign policy institutions and their impact upon the President's power in foreign affairs.

#### Institutional Development During the Cold War

Prior to World War II, U.S. foreign policy makers shied away from acting as the world's hegemon. During the interwar years, policy makers reverted to the founding fathers' concerns about the evils of European diplomacy and politics. As European nations were still considered to be the world's great powers U.S. policy makers did not want to become engaged in their problems, preferring to focus U.S. foreign policies on the western hemisphere. Prior to World War II, the United States Congress passed four neutrality acts regarding the "European war" and only fully entered the conflict after Japan's direct attack on Pearl Harbor (Schulzinger, 1994: 160; Pratt, 1965: 357). At the same time, the United States did not want to lose any sovereignty to international organizations. Under the leadership of strong nationalists like Senator Henry Cabot Lodge (R-Mass.), the Republicans kept the United States out of the League of Nations.

However, after World War II the United States inherited a new leadership position in world politics and could no longer afford to hide behind its shores. During the War, many Americans looked to President Franklin Roosevelt for leadership. Roosevelt's fireside chats also resulted in many Americans who felt the development of a more intimate relationship with the nation's commander in chief. This relationship in part translated into an American public that expected strong presidential leadership for the nation (Johnson et al., 1994: 373; Lineberry, Edwards and Wattenberg, 1993: 233). President Harry Truman, who boldly stated that the "buck stops here," also believed in a strong and commanding leadership style. This vigorous, confident and independent method of presidential decision making in part typified the way in which America entered into wars in Korea and Vietnam. Before examining the executive and legislative dynamics of these wars, a discussion of the political setting and institutional framework in which post World War II presidents operated is necessary.

The Cold War, or the ideological struggle between the United States and the Soviet Union, provided the central security paradigm for U.S. foreign policy makers from 1947 to the Soviet Union's collapse in 1990. As articulated most clearly in National Security Council Memorandum 68 in 1950, communists were seen as the primary threat to U.S. security and world stability. The Soviets were viewed as aggressive

and committed to world Marxist revolution, especially in the lesser developed regions of the world (Lee, 1995: 6-9). Further, George Kennan's renowned article in *Foreign Affairs*, authored under the pseudonym of "X," established the Soviets as expansionistic, worthy of "containment" (Shulzinger, 1994: 208).<sup>27</sup>

Recognizing the widespread public acceptance of the Soviets as the "evil empire," Congress avoided placing constitutional principles over broad foreign affairs' strategies. In order to avoid the perception of being weak on communism and with the widespread agreement that communism was a threat, members of Congress followed and accepted presidential leadership against its communist/authoritarian adversaries. Joseph Nye argues that due to the national disposition, the President was given a freer hand in foreign policy making (Nye, 1986: 117). With the widely held belief that communism was wrong, even sinful, the political incentives were not in place in the 1950s and early 1960s for Congress to challenge the President in his military deployments, provided that the goal was a communist defeat. This is not to argue that Congress completely exempted itself from a foreign policy making role, but rather demonstrates that an environment existed that discouraged a critical and/or confrontational

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<sup>27</sup> See "X" in *Foreign Affairs*, "The Sources of Soviet Conduct," July, 1947.

relationship between the President and Congress in certain areas of foreign policy. The question of whether or not communism was evil was not debatable.

Within the cold war environment, two important institutional changes occurred that further allowed the President to centralize his powers as commander in chief. The National Security Act of 1947 provided the legislative means for these changes. This legislation produced the National Security Council (NSC) and the Central Intelligence Agency (CIA). Although the National Security Act also created the Department of Defense and the Joint Chiefs of Staff, its two other main developments made very important impacts and changes for the President's power via-a-vis Congress.

The NSC was originally formed in order to increase the President's effectiveness in foreign policy making. The Act was not intended to make the president more powerful relative to Congress. All Presidents since the NSC's creation have used the NSC and its supporting appendages; the Assistant to National Security Affairs (or National Security Advisor) and its corresponding staff, in different ways. The NSC was intended to be used as an advisory council for the President on security matters. Considerable leeway was given to the chief executive in determining how he would use the NSC. Presidents, beginning principally with John Kennedy, relied extensively on their own set of advisors and

national security staff for foreign affairs information. As President, Kennedy was frustrated with the State Department's ability to produce thoughtful and innovative policy options and also felt that the State Department was too slow and unresponsive at times when he needed information quickly (Inderfurth and Johnson, 1988: 91; Schlesinger, 1965: 446).<sup>28</sup> Due to State's inefficiency, the President relied more extensively on the NSC. In writing about the role of the national security staff, Kennedy's National Security Advisor McGeorge Bundy wrote, "Their job is to help the President...to extend the range and enlarge the direct effectiveness of the man they serve" (quoted in Inderfurth and Loch, 1988: 91).

Like Kennedy, President Nixon also had strong misgivings about the State Department. Some have argued that Nixon's qualms bordered on paranoia in which he thought that the State Department would try and subvert his foreign policy decisions (Hartmann and Wendzel, 1994: 162; Ambrose, 1987: 232; Clarke, 1989: 83; Sulzberger, 1987: 168). Under the direction of Dr. Henry Kissinger, the national security staff was transformed into a "mini-state Department" in

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<sup>28</sup> For a series of quotes on Kennedy's tense relationship with the State Department, see Strober and Strober (1993: 174). One particularly telling quote in this volume comes from Pierre Salinger, who stated: "The one place Kennedy criticized was the State Department. He could ask for things and felt he wasn't getting them fast enough. I can remember a number of times when he asked the department to do something and it was a now a month and a half later, and it hadn't been done" (174).

which Nixon relied almost completely on Kissinger and his staff for foreign policy advice and implementation. Kissinger's stature in foreign policy grew tremendously while playing a very visible role in Washington as Nixon's principal advisor. As an implementor, Kissinger helped pave the way for rapprochement with China and also conducted covert diplomacy in the Middle East and Vietnam. This Nixon-Kissinger "style" of policy making led to increased centralization and coordination of the executive branch's foreign policy (Wiarda, 1996: 253; Hung and Schecter, 1993: 61; Ambrose, 1987: 281).

Likely the most profound growth of the NSC's power came under the Reagan administration. During the Reagan years, the NSC staff took on a new and seemingly independent role in foreign policy making and implementation. As more information was unearthed during the Iran-Contra hearings it became clear that the NSC operated as an unchecked and autonomous body. While questions and discrepancies still remain concerning who authorized the flow of arms and funds to Iran and Nicaragua's contras, there is no doubt that the executive branch completely controlled American policy making in certain areas. Congress was shocked to discover the amount of deception and secrecy that stemmed from the NSC and its staff (Draper, 1991: 487-97; Koh, 1990).

While every President has used the NSC staff and advisor differently, and some, including Truman, Eisenhower,



and Johnson limited the NSC's role, the creation of the NSC and its advisor did have some effect on the interplay between Congress and the White House. With the National Security Act of 1947, the President was able to surround himself with advisors whom he trusted. Rather than relying upon career employees in the U.S. foreign policy bureaucracy, a President could bring a small group of loyal advisors into the White House foreign policy making circle. In theory, this would limit potential leaks and encourage coordination for the executive branch.

Second, the President has less federal bureaucracy around him with a powerful NSC, potentially resulting in a more efficient foreign policy team. Presidents, if they chose, could circumvent the large and slow bureaucracy of the State Department by replacing much of it with a skilled national security staff. While every chief executive did not exercise this option, notably President Eisenhower and his Secretary of State John Foster Dulles, others relied heavily on the newly developed NSC apparatus. The NSC staff and advisor were located close by, in the White House west wing, and were expected to respond directly to the President. By creating a strong national security staff, some Presidents felt they received more analytical and thoughtful foreign policy alternatives. Broadly speaking, the President had available a foreign affairs team that could quickly and readily respond to his needs.

Third, the NSC contributed to the development of a strong chief executive. Although the legislative history of the National Security Act of 1947 only intended the national security advisor and his staff to be a provider of information (Inderfurth and Johnson, 1988: 5), all administrations used the position to help implement policy. In the cases of Nixon and Reagan, foreign policy making and operational activities stemmed from the west wing of the White House, often in a covert manner. In short, the NSC and the National Security Advisor did not by themselves shift foreign policy making to the White House away from Congress, but certainly factored into the overall growth of a strong commander in chief during the cold war.

#### The CIA

Although the creation of the National Security Council staff helped produce a stronger commander in chief, these developments were not the only result of the 1947 Act. Another important institutional change was the creation of the Central Intelligence Agency (CIA). The CIA was established in order to coordinate all U.S. intelligence services. Its precursor, the Office of Strategic Services (OSS), was formed by President Franklin Roosevelt and performed well during World War II. However, after the war Congress recognized that it could not disband that nation's intelligence program. The struggle against communism would

require improved intelligence capabilities. Moreover, the Act of 1947 stated that the CIA would be allowed to conduct "other functions and duties" associated with national security. This phrase generated varying and flexible Presidential interpretations and has produced a great deal of attention to CIA covert operations (Wiarda, 1996: 218).

During the Cold War, the CIA was used a number of times to replace and/or bolster foreign governments where the United States had security and economic interests. The CIA provided support for alleged democratic opposition groups and used military means to encourage coup d'etats against communist and/or totalitarian governments. Throughout its history, the CIA conducted operations in Iran, Guatemala, Chile, Portugal, Vietnam, and Indonesia, inter alia (Forsythe, 1993: 33-52; Ranelagh, 1992; Richelson, 1989: 334-350; Agee and Wolf eds., 1978). President Dwight Eisenhower was the first to rely heavily on covert military operations, and President John Kennedy followed by using the CIA in a number of situations (Ambrose, 1991: 153). Eisenhower's actions should also be placed within the context of his expansive definition of "executive privilege." President John Kennedy echoed these beliefs, although not quite as adamantly, but nevertheless showed that Presidents were not afraid to exert and define their powers broadly, which included the use of covert operations (Rozell, 1994: 45-47).

During the CIA's early years, Congress did have an oversight role for covert operations. Small committees made up of senior members of the Senate Foreign Relations and Armed Services Committee, along with Senior members of the House Foreign Affairs and Armed Service committees would meet with CIA officials to hear briefings on intelligence matters. The norm in place was one of considerable deference to the President. Congress, including both Democrats and Republicans, rarely pushed the executive branch to justify its actions, and at times even encouraged administration officials to keep information from them. Congress often did not want to know the details and preferred to have the sharing of information kept to a minimum. The number of congressional staffers allowed at the meetings was also kept low in order to prevent information leaks (Knott, 1996: 162; Smist, 1994: 5; Ambrose, 1991: 153; Johnson, 1989: 8, 247; Breckenridge, 1986: 70; Ranelagh, 1986: 616; Oseth, 1985: 58; Orman, 1980: 48).

One key Congressional leader who championed this system of executive autonomy was Senator Richard Russell (D-Ga.). When there were any grumblings from the rank and file or more senior members who demanded a more comprehensive system of checks and balances, Russell was able to defeat these critics and perpetuate the norm of executive autonomy. Senator Mike Mansfield (D-Mont.) and Senator J. William Fulbright (D-Ar.) both sought change in the 1950s and 1960s

in the oversight procedures, but Russell was able to maintain the status quo (Smist, 1994: 6). To no one's surprise, Presidents preferred to operate in an independent manner. In 1982, Senator Fulbright stated about these times:

They would never reveal anything of significance. They would never tell us how much money was being spent, where it was in the budget, or what they were doing with it. There was no stenographic record kept and the oversight was neither thorough nor effective. All this was basically a device to silence the critics in the Senate (quoted in Smist, 1994: 6-7).

The broad support for the cold war explains much of this norm. Congress did not want to impede the President's ability to combat communism, whether it was covert or overt, and thus granted the chief executive considerable liberties in covert operations (Knott, 1996: 163). Congress could also avoid legal responsibility by declaring that it was unaware of an operation in the event that it went bad. Thus, during these times not only did the legislative branch act deferentially and irresponsibly, but the executive branch perpetuated a system of presidential autonomy.

During the early 1970s, Congress made changes in its oversight capabilities. Serious intelligence reforms were enacted after the Church Committee investigations in 1975. The Church Committee hearings were chaired by Senator Frank Church (D-Id.) after members called for investigations into corruption and illegal activities stemming from the CIA and the intelligence community. In the House, Otis Pike (D-N.Y.) chaired another committee that investigated abuses in the

U.S. intelligence system (Smist, 1994: 10). After the hearings, larger and more formal committees were established to oversee covert operations, and Congress postured itself as a new player in covert operations.<sup>29</sup> Despite the formal and legal changes enacted, the operational norm of behavior remained in place. Members remained unwilling to push the President on intelligence issues and preferred to give the President the benefit of the doubt, at least early in his administration (Weissman, 1996; Persico, 1990: 231; Prados, 1986: 347). Members even began to argue for a return of executive privilege and control of covert operations (Silverstein, 1997: 142-6). Furthermore, in some instances it also appears that President Reagan's Director of Central Intelligence advised subordinates to not fully inform and misguide the Intelligence oversight committees (Johnson, 1989: 119; Woodward, 1987: 486).

In short, the CIA gave the President another policy tool to use force abroad. During the cold war generally, both parties in Congress deferred to the executive branch's judgment on how to use the CIA, and were largely supportive of actions taken against alleged communists. An oversight system was in place, but was not used to prevent the President from acting abroad covertly using military means. Even after reforms were enacted, the norm of deference

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<sup>29</sup> See Smist (1994) and Oseth (1985) for a detailed analysis of changes implemented.

remained in place. With the coupling of the National Security Act of 1947 and an American public that was largely supportive of the struggle against communism, presidents were given great leeway in determining how and when to use force in the early stages of the conflict. An analysis of the domestic political dynamics during the Korean and Vietnam Wars further demonstrates this argument.

### Korea

The history of U.S. military involvement into Korea provides important insights into not only war powers, but also on the role of United Nations Security Council decisions and the United States legal obligations associated with Chapter VII of the U.N. Charter.

After World War II, Korea was divided at approximately the 38th parallel into American and Soviet zones. In the north, the Soviets organized a government under the direction of Kim Il Sung. In the south, the U.S. sponsored democratic elections and helped install a government. Despite the considerable attention placed upon Korea at the United Nations in 1945-1950, and the "loss" of its neighbor China to communism, Korea was not defined as a major security interest for the United States prior to the war. One administration official often cited is Secretary of State Dean Acheson, who in 1950 stated that Korea was not in the U.S.'s "defense perimeter" and that communist aggression

in Korea would not necessarily provoke a U.S. military response (Pratt, 1965: 487). Senator Tom Connally (D-Tx.) echoed these remarks later in the year (Caridi, 1968: 31).<sup>30</sup> These statements, however, are not to say that the U.S. had no interests in Korea, as Korea was soon viewed as the symbol of preventing communist expansion. After World War II, members of Congress increasingly viewed Korea as place of great importance for American foreign policy within the cold war context and the domino theory (Dobbs, 1981: 167).

On June 25, 1950, the North Korean military crossed into Korea's southern half and began its military assault. The United Nations Security Council in an emergency session met, and in a 9-0 vote condemned North Korea's aggression. At the time, the Soviets were boycotting their seat on the Security Council due the decision that Taiwan would represent the "Chinese" seat (Lowe, 1986: 161). The Security Council resolution called for an end to the hostilities, North Korea's departure from the south, and the support from all U.N. member states in fulfilling these decisions (U.N.S.C. S/1501). The following day, President Harry Truman dispatched U.S. air and Naval forces to South Korea, and on June 27, the Security Council recommended that member states could provide

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<sup>30</sup> Connally was originally quoted in *U.S. New and World Report*, May 5, 1950, p. 30.



"such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area" (U.N.S.C., S/1511). Further, on November 3, 1950, after the Soviet Union had resumed its Security Council seat, the United States turned to the U.N. General Assembly for support. In the "Uniting for Peace Resolution" the United States argued that when the United Nations Security Council was no longer capable of acting to provide international peace and security, the General Assembly could act (G.A. 377 V). This resolution won the overwhelming support of the member states.<sup>31</sup> Later resolutions passed by the General Assembly condemned Chinese aggression in Korea (G.A. Res 498 V, February 1, 1951 and G.A. Res 500 V, May 18, 1951).

In the conflict's early stages, public opinion was strongly behind Truman's actions. Support came from the major newspapers in the country (Schulzinger, 1994: 227) and many foreign policy analysts advanced the idea of the Munich analogy, in which communist aggression must be challenged in its earliest stages in order to be stopped (Brands, 1993: 28; Boyle, 1993: 86).

From the first actions taken, Truman maintained that his decision was constitutional and did not require congressional consent. The President argued that because the

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<sup>31</sup> See also Weiss, Forsythe and Coate (1994: 26), Luard (1982: 253), Goodrich (1977: 179), and Gross (1977: 42).

Security Council had authorized member states to support South Korea against North Korean aggression, the action was fully justified. In a Department of State Bulletin, the Administration also maintained that the political practice of independent presidential use of the military was firmly established in U.S. history. It states: "That the President's power to send the Armed Forces outside the country is not dependent on Congressional authority has been repeatedly emphasized by numerous writers" (D.S.B., July 31, 1950: 173).

Furthermore, the Bulletin stated that broad American foreign policy interests demanded that the United States promote the U.N.'s maintenance (D.S.B., July 31, 1950: 173). In Truman's Public Papers in 1950, he also states that communist aggression in the region would not be tolerated (Truman, 1965).<sup>32</sup>

Overall, the congressional response was highly supportive of the deployment, both in political and legal terms. From a legal perspective, Senator William Knowland (R-Ca.) argued that Truman's actions clearly fit under a United Nations "police action" and thus could not be defined as "war," despite the absence of any Article 43 agreement between Congress and the President prior to the

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<sup>32</sup> See also Caridi (1968: 44).

deployment.<sup>33</sup> Knowland added that because of the immediate need for response, Truman's actions were justified. About the President's powers he stated:

I believe he has the authority to do it under his constitutional power as commander in chief of the Armed Forces of the United States.

Certainly the action which has been taken to date is not one which would have required, or one which I believe it was desirable to have, a declaration of war, as such, by the Congress of the United States. What is being done is more in the nature of a police action (Congressional Record, June 30, 1950: 9450).<sup>34</sup>

Senators Eugene Miliken (R-Co.) and Ralph Flanders (R-Ver.) also accepted the idea that American intervention into Korea was a "police operation" (Congressional Record, June 20, 1950: 9541). Moreover, Senators Scott Lucas (D-Il.) (Congressional Record, June 28, 1950: 9327) and Leverett Saltonstall (R-Mass.) (Congressional Record, June 30, 1950: 9543) argued that since the U.N. Security Council approved of the actions, the President had the authority to act militarily.<sup>35</sup>

In the broader analysis of the political partisanship, the Republicans were supportive of Truman's decision. They felt that communist aggression must be met, and that the Munich analogy clearly applied (Caridi, 1968: 33). The criticism that came in the early stages stemmed from *legal*

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<sup>33</sup> See chapter 1 for more on Article 43 of the United Nations Charter.

<sup>34</sup> See also Frank and Patel (1991: 71).

<sup>35</sup> See also Frank and Patel (1991).

arguments. Senator Robert Taft (R-Oh.) argued against Truman's decision by contending that Truman's actions had not been taken in a constitutional manner. However, his criticism was quite guarded. For example, Taft stated

Furthermore, it should be noted that there has been no pretense of consulting the Congress. No resolution has ever been introduced asking for the approval of Congress for the use of American forces in Korea. I shall discuss later the question of whether the President is usurping his powers as Commander in Chief, My own opinion is that he is doing so: that there is no legal authority for what he has done. But I may say that if a joint resolution were introduced asking for the approval of the use of our Armed Forces already sent to Korea, and full support of them in their present venture, I would vote in favor of it (Congressional Record, June 28, 1950: 9320).

Senator Kenneth Wherry (R-Ne.) also argued that the Constitution had been violated, although he too stated that he favored a military response to North Korean aggression (Congressional Record, June 30, 1950: 9538). Thus, despite Taft's and Wherry's constitutional concerns, both were willing to sacrifice constitutional principles for greater American security interests. In short, they supported the policy but wanted a different procedure.

While Taft and Wherry placed pressure on the President, the Democrats continued in their strong support of Truman by asserting that what the President had done was completely lawful. The most complete Democratic defense of Truman's action was later provided by Senator Paul Douglas (D-Ill.). Douglas produced a number of arguments to support his claim. Because his arguments are considered defining for Democrats

at the time (Caridi, 1968: 46), his justifications deserve considerable attention.

Douglas first argued that when the founders wrote the Constitution, they did not want the Congress to "make" war and the President was allowed to repel sudden attacks. Since Korea was a sudden attack in his view, Congress did not have to be consulted. He follows by admitting that Congress could have been consulted, but because of the possibilities for delay and the sometimes immediate need for response, the President could not afford to wait for congressional approval. He also did not believe the conflict could be considered a "war" since Truman's conduct were undertaken with the United Nations' approval. Because of the U.N.'s decision, U.S. intervention is a police action, rather than a war. Finally he argued that like Hitler, the North Koreans cannot be appeased (Congressional Record, July 5, 1950: 9647).

Based on Douglas's logic, presidents deserved considerable leeway in defining U.S. interests. Congress's collective judgment was something that could severely damage U.S. foreign interests, even in a technologically advanced age because of the potential for delay. In light of Secretary Acheson's and Senator Connally's discussion of how Korea fit into U.S. security interests, Douglas's definition and application of "repelling sudden attacks" is also illuminating, demonstrating how extensive the Senator's (and

in this case the Democrats') definition of U.S. interests were. Much of his argument also rests on the U.N.'s approval, even though Truman's decision to send U.S. troops abroad was made before the Security Council actually endorsed this action. Republicans like Taft and Wherry did voice concerns about the constitutional implications, but still were not opposed to what the President had done in the struggle against communism. Many of these arguments will be recycled in the Vietnam era, and show how much power the President was given by members of both political parties during the initial deployment and combat phase.

Support for the war continued as General Douglas MacArthur moved his troops beyond the 38th parallel and into North Korea (Schulzinger, 1994: 230). However, once the mission became more controversial and U.S. troops began to lose ground, Congressional opposition, primarily from Republicans, arose. The resistance was led again by Republican Senator Robert Taft. Taft was particularly vehement in his criticism when he stated that

The President simply usurped authority, in violation of the laws and the Constitution, when he sent troops to Korea to carry out the resolution of the United Nations in an undeclared war (Congressional Record, January 5, 1951: 60).<sup>36</sup>.

Truman responded with a fuller clarification of his constitutional justifications through three arguments. In a briefing prepared for the Senate Joint Armed Services and

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<sup>36</sup> Also quoted in Caridi (1968: 116).

Foreign Relations Committee, he repeated that as commander in chief, he had the authority to protect "the broad interests of U.S. foreign policy," which included the maintenance of the United Nations. Moreover, Truman argued that because the United Nations was entered into by treaty agreement and thus was the law of the land, all he needed legally was approval from the Security Council--not the Congress. Like Senator Douglas, he also added that by taking action under the United Nations's approval, this was not a war, but rather a "police action" (Truman, 1951). These comments did not deter Taft, who later fired back that the President's document contained: "the most unbridled claims for the authority of the President in this field I have ever seen written in cold print" (Congressional Record, March 29, 1951: 2988).

Truman withstood the pressure from Taft, and kept the troops in Korea through the end of his administration. Once in office, newly elected President Dwight Eisenhower encouraged the peace process that had already been at work, and supported the armistice that was eventually signed in July, 1953.

What can be said of the interplay between Congress and the President during the Korean conflict? Regarding Congressional behavior, Congress supported Truman as long as public opinion was solidly behind the President and the mission appeared to be successful. In the initial stages,

Congress was unwilling to try to legally restrict the President, although based on constitutional and legal principles, some members did criticize the President. Taft and Wherry were alone in their concern that the spirit of the Constitution had been violated, yet still supported a military response to North Korea. In Congress's view, U.S. interests were so clearly at stake that not even a vote of support or confidence was needed. Overall, Congress essentially washed its own hands of any serious policy making role in the first deployment and combat process, in part for fear of being unpatriotic while fighting a communist aggressor.

Some legal arguments about the mission were advanced, as a number of Senators noted that the U.S. role was one of "policing" and not war. However, these examples were the exception, despite the presence of a number of legal ambiguities and particulars that members could have addressed. Issues left off the political agenda included the relevance and meaning of Article 43 agreements, the legality of the deployment prior to the Security Council vote under Chapter VII, and the authority gained under the Uniting for Peace Resolution. Congress also could have pushed the President to more clearly define what is meant by policing and war. By the war's end, approximately 41,000 American lives were lost and 103,000 Americans were wounded (Millett and Maslowski, 1994: 653). These numbers are by no means



small and could have produced questions about the limits of police actions. More vocal objections were only raised once the operation became somewhat controversial, and U.S. forces were retreating to the south. Most of the criticism came from strong Republican partisans. However, for the duration of the war, Congress, except for a small minority of Republicans, was content to avoid these legal war powers issues during the early years of the cold war.

In President Truman's view, Congress deserved no decision making role in the deployment process. Since Truman deployed U.S. troops before the Security Council had actually authorized a military presence, it is not clear that he felt Security Council approval was actually needed, despite his frequent citing of the Council's later decisions.<sup>37</sup> Once Republican opposition grew in Congress, Truman reasserted his broad powers as commander in chief, as well as constitutional arguments based on treaty requirements for the U.N.'s maintenance, and returned to the distinction between war and U.N. police actions. In sum, President Truman asserted broad powers as commander in chief under a number of legal ambiguities, and Congress let him operate independently until the mission became politically contentious. Similar conclusions can be reached through a brief analysis of the Vietnam war.

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<sup>37</sup> See also Sunno (1979: 81), who argues that Truman was not going to let "anything" prevent him from meeting North Korean aggression.

## Vietnam

Unlike the Korean War, America's military intervention into Southeast Asia was a slower and more gradual process. After World War II, France controlled French Indochina, which included Vietnam. Many Vietnamese had no interest in having a colonial overseer, hence the revolution to expel foreign governments in Vietnam began. This movement, headed by Ho Chi Minh and Vo Nguyen Giap, lasted until American troops were ousted in 1973. One early indication of the nationalists', or the Vietminh's, determination to gain independence came in their victory over French forces at the battle of Dien Bien Phu in 1954 (Shulzinger, 1994: 237; Herring, 1986: 3). While France was battling the Vietminh, the U.S. was providing the French with economic support. After France's defeat, the U.S. entered the region in a very limited way with military advisors and continued financial assistance to the alleged democrats in South Vietnam. By the end of President Eisenhower's term, the U.S. had 685 "advisors" in Vietnam, and when President Kennedy was killed approximately 16,000 advisors were deployed (Ely, 1993: 13).<sup>38</sup> During this time, the CIA was also conducting a number of covert military operations, most notably the overthrow of South Vietnam President Ngo Dinh Diem

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<sup>38</sup> There is some controversy regarding the number of U.S. troops deployed in Vietnam during the Kennedy Administration, with some arguing that the numbers were closer to 22,000 (Hartmann and Wendzel, 1994: 257).

(Schulzinger, 1994: 272). It is also worth noting that prior to the Johnson administration, approximately 500 U.S. troops had been killed in 1963 (Millett and Maslowski, 1994: 574), indicating that the U.S. role had certainly gone beyond "advising" and involved considerable military combat.

While the U.S. military efforts were intensifying in Vietnam, Congress supported these actions-and with very little dissent. Both the intelligence committees and the Congress as a whole supported President Eisenhower and Kennedy in their Southeast Asian military designs. Members of Congress from both parties viewed the executive branch's efforts as fully justified and voted on a number of occasions to appropriate money to the cause in its early stages (C.R.S., 1984a: 329, 244).<sup>39</sup> Some members, especially Republicans, were calling for a much more vigorous role in Vietnam, and lobbied for an increasingly combative approach to the situation (C.R.S., 1984b: 126). Yet in general terms, there was not dissent from either party about the U.S. role in Vietnam.

Congressional approval for the U.S. efforts in Vietnam remained very high throughout the Kennedy administration and into President Lyndon Johnson's first year in office. It was in the Johnson years that America's involvement reached new

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<sup>39</sup> There was a small group in Congress who was concerned about American military involvement in Vietnam, yet the overriding norm in Congress was supportive of some form of American intervention (C.R.S., 1984a: 244).

dimensions, all of which were initiated with the Southeast Asia Resolution in 1964, more commonly known as the Tonkin Gulf Resolution. Immediately prior to the Resolution, Johnson had deployed naval ships off Vietnam's coast. At the time, Johnson argued to Congress that American ships, the *Maddox* and *C. Turner Joy* had come under fire from North Vietnamese troops and required military retaliation, and the passage of the resolution. Although it is now known that Johnson's version of the alleged attacks are dubious if not false,<sup>40</sup> in 1964 it was perceived as a direct security challenge to the U.S. Johnson presented his case and the resolution to Congress, which without hesitation gave the President the ability: "to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression" (Congressional 78 Stat. 384, 1964).<sup>41</sup>

The House voted unanimously in favor of the resolution (416-0) and the Senate approved 88-2.<sup>42</sup> Johnson responded with bombing raids on North Vietnam. The President used this resolution and other arguments advanced by legal counsel,

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<sup>40</sup> See McNamara (1995: 128) and Shulzinger (1994: 274) regarding the questionable attacks.

<sup>41</sup> Johnson had this resolution prepared two months in advance before he actually presented it to Congress, leading some to believe that it was his intent all along to bomb North Vietnam (Schulzinger, 1994: 275).

<sup>42</sup> The two dissenting votes were filed by Wayne Morse (D-Or.) and Ernest Gruening (D-Al.).

Leonard Meeker,<sup>43</sup> to justify his military actions in Southeast Asia. However, Johnson never felt that he legally needed the Tonkin Resolution to act, but did want Congress to be "on-board" with the President when the initial steps were taken (Silverstein, 1997: 85).

Congress remained generally supportive of the military efforts throughout the rest of 1964. Some Democratic members began to criticize Johnson in 1965, but the overall mood remained supportive of the President, despite these few reservations (Gibbons, 1995: 32). Even among the small group of congressional dissenters who strongly opposed the war, many felt as Senator Wayne Morse (D-Or.) did. "As long as they [U.S. forces] are there, they must have every possible bit of protection that can be given" (Congressional Record, 1965: 21732).<sup>44</sup>

The Vietnam buildup also occurred during an American military deployment to the Dominican Republic on April 29, 1965. Johnson justified this intervention by an affirmative vote from the Organization of American States. In the view of U.S. Ambassador John Barlow Martin, the rebel factions who were challenging the government contained communist and pro-Cuban elements and needed to be checked (Schulzinger, 1994: 279). The vast majority in Congress accepted the logic

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<sup>43</sup> Meeker's arguments were published in a State department bulletin in 1966. See Chapter 1 for a fuller discussion of his points.

<sup>44</sup> See also Gibbons (1995: 33).

presented by the Johnson administration and supported the deployment of 33,000 marines to the island, in which 44 Americans lost their lives (Schulzinger, 1994: 279; Palmer, 1989: 137). A small minority, including Senator Robert Kennedy (D-N.Y.) and Senator Morse were critical of the administration, but with 76 percent of America approving of Johnson's actions, and cold war tensions still remaining high, most members applauded the President and did not raise constitutional war powers issues (Schoonmaker, 1990: 46). Kennedy and Morse were also quite guarded in the level of criticism given to the administration (Congressional Record, May 6, 1965: 9760-63). Senator Fulbright later adamantly criticized the intervention, but waited until September before he lashed out against the operation.<sup>45</sup>

While support for the Dominican Republic intervention was high, opposition to Vietnam grew in 1966 as many in Congress became skeptical about the United State's ability to win. Yet, the vast majority of both parties in Congress continued to authorize more spending for the war. For example, in one spending bill in 1966, the House voted 393-4 in favor of continuing financial support for the war. Likewise, the Senate continued to support the war by approving a supplemental military spending bill in a vote of 93-2 (Gibbons, 1995: 258-259). Again, the earlier logic used

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<sup>45</sup> See also Fulbright's comments, Congressional Record (October 22, 1965: 28372-28406).

by Senator Morse was used by even the most liberal Senators such as George McGovern (D-Minn.), who stated "...since we have sent 300,000 men to southeast Asia, we have no practical alternative now except to provide them with the equipment they need to survive" (quoted in Gibbons, 1995: 258).

By 1967 opposition grew considerably as many members became openly outspoken against the White House due in part to the perceived failure of the U.S. bombings. While this chapter will not survey the many comments made by members on the House and Senate Floor regarding the military failure in Vietnam, a number of statements are demonstrative of the openly hostile manner of the debate in 1967. For example, Senator Joseph Clarke (D-Penn.) stated:

I am prepared to take their judgment and suggest that as a measure of calculated risk we should immediately and unconditionally stop the bombing of North Vietnam (Congressional Record, 1967: 25132).

Congressman Ernest Gruening (D-Alaska) also brought a letter to Congress signed by 534 Yale Faculty who called for a halt to the bombing. In the process, he commented:

After 2 years of the most intense and savage bombing of North Vietnam it has become apparent that it has not succeeded in stopping the flow of men and materials into South Vietnam. If anything, the rate of infiltration is up (Congressional Record, 1967: 2331-2).

Members also noted that Johnson's policy had "failed dismally" (Congressional Record, 1967: 31653), and that "there has been no significant progress at all" (Congressional Record, 1967: 26699). Other members were

critical of the Johnson Administration's wide interpretation of the Tonkin Gulf Resolution and their role in initially supporting it. Most notable was Senator Fulbright in this brutally honest discourse:

I have on numerous occasions publicly stated I was mistaken in the part I played in that affair. In the first place, I misjudged the purposes of the President. I was very close to the President, I thought. I had full confidence in his statements at that time. He was a candidate for President against Senator Barry Goldwater of the other party, and I thought I understood what his policy was. I proved to have been grossly mistaken in that estimate. I have stated this on numerous occasions in public and privately. I regret the part I played in that incident (Congressional Record, 1967: 23501).

Despite the complaints mostly from Democrats about the perceived exploitation of the Tonkin Gulf Resolution, most did not vote specifically against cutting off appropriations for Vietnam. Public opinion was shifting against the war as the number of casualties returning home was increasing in frequency and the media became more critical of the intervention (Gibbons, 1995: 799-804; Herring, 1986: 203). Moreover, the TET offensive in 1968 also served to exacerbate the antiwar movement in the United States (Schandler, 1977: 206). However, in Stanley Karnow's words:

During the seven year span from July 1966 through July 1973, Congress recorded one hundred and thirteen votes on proposals related to the war. But its first limitation on U.S. military activities in Southeast Asia was not imposed until 1969—a restriction in American troops in [Thailand] and Laos—and it directed its full opposition to a continued commitment in the region only in August 1973, when it voted to stop all bombing throughout Indochina. By then, the U.S. combat forces had been withdrawn and the American prisoners of war held in Hanoi had come home; the argument that "our boys" needed support had lost its validity (quoted in Ely, 1993: 28).



As long as "our boys" remained in southeast Asia, Congress was unwilling to force either President Johnson or Nixon to bring the troops back through legislative means, which was true of both Democrats and Republicans.

What can be said about the interplay between Congress and the President over the Vietnam experience? First, the cold war environment increased the power of the commander in chief. As shown with the Tonkin Gulf Resolution and the votes that would follow, members did not want to vote on record against America's struggle against communism. Deference and trust was given to President Johnson when he argued that communists had attacked the *Maddox* and *C. Turner Joy*. Consequently, this deference gave the President a tremendous amount of power in determining how and when to use the U.S. military. With a clearly defined enemy, the President had few who initially opposed the war.

Once President Johnson began the troop buildup, members were not willing to engage the President in a constitutional war powers battle. Although many members grew increasingly outspoken in their opposition to the President's action in Vietnam, nearly all continued to vote in favor of the financial support needed to sustain the war.

By 1967, many in Congress argued that they had not authorized the President to engage in the type of war he was conducting. Tensions increased further on Capitol Hill at the time of TET offensive, which demonstrated that the

Vietnamese communists were capable of waging their own attack on the American resistance. Congressional frustration with the War and its perceived legal impotence culminated with the approval of the War Powers Act in 1973.<sup>46</sup> Congress overrode President Nixon's veto of the Act, illustrating that many in Congress felt that the commander in chief needed more legal restrictions on his ability to deploy and use American troops abroad. Although Ely (1993) makes a convincing argument that Congress fully understood what it was doing when it passed the Tonkin Gulf Resolution and continued to support the war financially, Congress did not address its own faults of congressional deference, but rather chose to place reporting, consulting, and time limit requirements on the President via the War Powers Act. Neither party wanted to face its own inadequacies and the failings of its checking responsibilities.

Unlike the experience with Korea, Congress was given the opportunity to vote prior to the major buildup in 1964. Yet, Congress in both Wars strongly supported the President in the initial stages of the deployment, whether there was a vote or not. In Vietnam, Congress also approved of the early military initiatives in the Eisenhower and Kennedy administrations with limited dissent. Despite Congress's past history of providing some check on military deployments

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<sup>46</sup> See Chapter 1 for more on the specifics of the War Powers Act.

in the 19th century (Wormuth and Firmage, 1989), the cold war provided an environment that made checking the executive against communist aggressors unpatriotic. Serious congressional dissent in Korea and Vietnam came only after some shift in public opinion and when the military objectives became more controversial. In Korea, the President's opposition party led the criticism, while in Vietnam, it was mainly Democrats who questioned the constitutionality of Johnson and Nixon's actions. Thus, predicting who will check the President after controversy arises cannot be easily accomplished. Congressional checking behavior in partisan terms did not follow strict patterns. What remained constant however for both parties was that, until controversy arose, Congress in nearly unanimous fashion supported the President. Despite the reforms that came with the War Powers Act and Intelligence oversight legislation, this norm remained in place in American politics until 1990.

#### Post-Vietnam Deployments

The trend of congressional deference to the President in the initial stages of a military deployment remained throughout the rest of the cold war. As long as the public remained supportive of the mission or the mission did not experience unexpected casualties, Congress remained nearly silent on war powers issues. Congress supported President Gerald

Ford's actions at the Mayaguez incident (Greene, 1995: 151; Tananbaum, 1993: 530). In President Jimmy Carter's unilateral attempt to rescue American hostages held in Iran, Congress was somewhat critical of the operation, yet not on constitutional grounds (Collier, 1994: 64-65). Hearings were held on the incident and deployment processes, but generally both Democrats and Republicans agreed in principle that the rescue efforts should have been undertaken.

President Ronald Reagan's deployment to Lebanon provides another case of congressional deferment in the initial deployment phase. In 1982, Reagan deployed 800 U.S. troops (later rising to 1,200) to Lebanon in a Multinational Peacekeeping Force (Farrell, 1982: A1). Reagan argued that as commander in chief and under his "constitutional authority" to conduct foreign relations, the deployment was legal.<sup>47</sup> In the process, American troops came under fire resulting in four dead American troops, and later 241 marines were killed by a suicide bomber in 1983. However, prior to the American casualties, as a body Congress had little to say. Letters were written by a number of Senators to the President questioning the deployment and the relevance of the War Powers Act, and members of the Senate Foreign Relations Committee had written bipartisan letters

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<sup>47</sup> See reprint of his letter to Congress in the Congressional Record (September 14, 1983: 24036).

noting their concern with the deployment in 1982.<sup>48</sup> Senator Robert Byrd (D-W.V.)<sup>49</sup> and Senator Thomas Eagleton (D-Mo.)<sup>50</sup> had been particularly active. Otherwise, most members gave tacit support to Reagan in the early stages of this deployment.<sup>51</sup>

Once the troops experienced casualties, Congressional concern increased dramatically, with widespread support in a bipartisan effort to apply the War Powers Act (Congressional Record, September 14, 24031-24055). In the House, partisan controversy rose over the Democratic proposal to allow the President 18 months to extract American troops (Congressional Record, September 21, 1983: 25076-25080, 25147-25153, September 28, 1983: 26117-26133). However, in general there was widespread bipartisan agreement that the President should be checked after the casualties.<sup>52</sup> Except for a small contingency of Congressional War Powers

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<sup>48</sup> For reprints of the letters see Congressional Record (September 12, 1983: 23519, 23520).

<sup>49</sup> See Byrd's two letters, Congressional Record (September 14, 1983: 24035-6).

<sup>50</sup> See Eagleton's three letters, Congressional Record (September 14, 1983: 24051-2).

<sup>51</sup> Congress did pass a statutory provision requiring that before a "substantial expansion" of troop numbers occurred, Congress must approve of the efforts. However, this vote was made in 1983, one year after the initial U.S. deployment in the Multinational Force occurred (Collier, 1994: 68).

<sup>52</sup> See also Malone (1983: 3).

advocates, Republicans and Democrats did not assert their checking powers in the initial stages.

Reagan's deployment to Grenada provided another opportunity for Congress to utilize its war powers authorities. However, despite early grumblings from the Democratic majority after Reagan's use of force in Grenada, which he justified with highly dubious references to international law (Forsythe, 1990: 72-77), Congressional Democrats did an "about face" in the almost immediate aftermath of the deployment (Burrows, 1988: 88; Schoenhals and Melason, 1985: 154). Upon the return of American medical students from Grenada, with public opinion solidly behind the President, Congress chose not to battle with the commander in chief over constitutional responsibilities (Collier, 1994: 68; Payne, Sutton and Thordike, 1984: 165). Even the Democratic opposition, who successfully invoked the War Powers Resolution in the Senate and the House after the deployment, did not want to pass judgement on Reagan's initial deployment decision. Floor statements concerning the relevance of the War Powers Act demonstrate this point clearly. About the War Powers legislation, House Foreign Affairs Chairman Clement Zablocki (D-Wi.) stated

This resolution is not intended to address itself to the presence of the U.S. armed services in Grenada, or the bravery they have shown, or commend the President.

It is merely intended to trigger the clock on the 60-day provision in the war powers act (Congressional Record, October 31, 1983: 29995).

Republicans who voted for the enactment of the War Powers time table were even more cautious in justifying their vote. One striking example of one member's effort to reconcile his deference to the President's deployment and his vote for the War Powers Act is Gerald Solomon (R-N.Y.):

I just want to point out that I voted for implementing the War Powers Act in the Foreign Affairs committee, as did every Republican, not because we are critical of our President, but because we praise our president and the actions that our armed services took in Grenada (Congressional Record, October 31, 1983: 29997).

Steven Gunderson (R-Wi.) also added to the Record: "But my vote, and I suspect those of many other members of Congress, should not be viewed by either the public or critics of the President's action as a condemnation of his decision"

(Congressional Record, October 31, 1983: 29999). Moreover, Congressman William Bloomfield (R-Mich.), who also supported the invocation of the War Powers Act stated: "I support the President for his promptness in acting to seize the initiative before another group of innocent Americans became hostages" (Congressional Record, October 31, 1983: 29994). Thus, Republicans strongly deferred to Reagan's initial deployment decisions, while most Democrats swallowed their original qualms with the American invasion and generally kept quiet on constitutional responsibilities.

In President Bush's first year in office, he dispatched approximately 10,000 troops to Panama in an effort to capture and replace Panama's dictator, Manuel Noriega. With the American public strongly supportive of an aggressive war

on drugs, and Noriega's past history of drug trafficking and militant demeanor toward the United States, Bush justified the intervention with references to Article 51 of the U.N Charter allowing for self defense to protect Americans in Panama, and to "fulfill our responsibilities under the Panama Canal Treaties" (Bush, December 21, 1989). Keeping in step with public opinion, Congress gave strong support to the President for Operation "Just Cause" (Collier, 1994: 72). Again, despite the questionable legality of the deployment and widespread international condemnation for the U.S. actions (Nanda, 1990: 502), Congress overwhelmingly supported the President in a resolution supportive of the deployment, with only a token group of Democrats who publicly took exception to the deployment. Congressman Jim Bates (D-Ca.) called for the War Powers Act invocation, and felt the invasion was unjustified (Congressional Record, January 23, 1990). Moreover, in February, 1990, a few Democrats rose on the floor to criticize Bush's actions. Don Edwards (D-Ca.) stated:

We should not declare that the President acted appropriately in invading this small, weak nation,

The invasion was unwise and illegal...I hope that President Bush will hereafter respect the constitutional mandate that Congress be included in warmaking decisions (Congressional Record, February 7, 1990).

In another comparable critique, Ted Weiss (D-N.Y.) argued

Perhaps most importantly, the invasion violated the U.S. Constitution, which gives the Congress the responsibility for the introduction of U.S. Armed Forces into hostilities abroad, and says that it has to be done by way of a declaration of war, except in emergency circumstances, which



certainly did not apply in this instance (Congressional Record, February 7, 1990).

Likewise, Peter DeFazio (D-Or.) stated

But I cannot support a resolution that congratulates the President for invading a sovereign nation at great cost to our Nation in lives and dollars without approval from Congress and without even prior consultation with congressional leadership. We do our institution, the U.S. Congress, a grave disservice by approving an action that was illegal under the U.S. Constitution and under international law (Congressional Record, February 7, 1990).

Yet even with the Democrats in the majority, Congress remained unwilling to force a constitutional show-down.

Congressman Weiss raised the issue again on the House floor in May 1990, but to no avail (Congressional Record, May 9, 1990). Congress had little interest in constitutional war powers issues at this time, and deference to the President again represented the norm. Congressional Republicans found little to question concerning the deployment, and supported the unilateral claims advocated by the President.

This short recall of the major military deployments made from Ford to Bush, and prior to Operation Desert Storm indicates that Congress continued the practice established with the Korean and Vietnam war. Despite the presence of the War Powers Act and Congress's seeming resurgence in foreign policy making in 1973, Congress continued in its post World War II norm of deference to the President. Even though Congress has considerable checking powers, including appropriating powers, WPA consultation requirements, and the power to declare war (which may have applied in Grenada and

Panama), during the Cold War Congress preferred that the President act independently, and only challenged the President if America experienced unexpected casualties or the mission became unpopular. When opposition arose, often it came from the President's opposition party, but one should be careful not to oversimplify. In the case of Vietnam, Democrats under the leadership of members like Senators William Fulbright, Robert Kennedy, Eugene McCarthy and George McGovern directly challenged the President of their own party in constitutional grounds. Congressional Republicans were also willing to invoke the War Powers Act under Reagan with Lebanon and Grenada, although they did so after the deployment had taken place. This is not to argue that partisanship does not matter since party positions have developed for certain military deployments (e.g. Korea and Vietnam). Yet when the President uses force, the standard level of political partisanship appears to filter out of the political agenda, due in part to a perceived sense of nationalism and patriotism to support the President. Thus, partisanship may partially explain how Congress applies war powers, but not completely. More accurately, both parties support the president if the mission appears successful. As a body, Congress took action after the fact, and Presidents, regardless of their party, asserted expansive definitions of their powers as commander in chief.

However, in the case of the Persian Gulf War, in which Congress and President Bush came head to head in a constitutional battle over the right to use force, Congress demanded an initial role in the deployment decision. Although President Bush asserted a traditionally expansive justification of the commander in chief's powers, Congressional behavior was out of the norm for the post World War II era. Since this deployment was an important precursor to the Clinton administration and its uses of force, it deserves considerable attention.

#### Operation Desert Storm

The United States and Iraq had a complex relationship prior to 1990. After the Ayatollah Khomeini and his Islamic rebel faction took over Iran's government, supporting Iraq became a way for U.S. administrations to encourage a balance of power in the Middle east. Even after Iraq's leader, Saddam Hussein used chemical weapons on its Kurdish minority, the United States' relationship with Iraq remained fairly close, as officials in the Bush Administration continued agricultural loan packages to Hussein (Jentleson, 1994: 134). This policy changed dramatically when Hussein invaded neighboring Kuwait in August, 1990.

The United Nations Security Council responded to Iraq's aggression by condemning Iraq and imposed economic sanctions

on Hussein's regime.<sup>53</sup> The Bush Administration also took action by deploying to Saudi Arabia the largest number of troops abroad since the Vietnam war. In a letter to Congress, Bush originally justified his actions: "pursuant to my constitutional authority to conduct foreign relations and as Commander in Chief" (Bush, August 9, 1990).

It did not take long for Congress to become concerned about Bush's deployments. Many members felt that Bush was moving the country toward war without any consultation or vote, especially after Bush ordered 200,000 reservists to be called up. For example, on September 19, 1990, in a letter to Speaker of the House Tom Foley (D-Wa.), Representative Henry Gonzales (D-Tx.) wrote "What happened to...the power invested in Congress to declare war" (quoted in Hiro, 1992: 190). Similar suspicions remained in Congress into October, as a number of members, Democrats and Republicans, stated that a declaration of war would be necessary before Bush attacked Hussein (Rourke, 1993: 46). Other members, especially Democrats up for election, preferred to criticize past U.S. policy with Iraq and Kuwait, rather than criticize the current actions in order not to not appear weak on Hussein (Hiro, 1992: 191).

In October, Bush was able to gain the support of Congress through a vote that stated support for Bush's actions so far, but went no further in authorizing any

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<sup>53</sup> See Security Council Resolutions 660, 1990 and 661, 1990.

future military actions (Rourke, 1993: 27). Up until the actual hostilities began, debate continued in Congress, centering around primarily three issues: 1) Does a Security Council Resolution give the president the authority to use the military; 2) Did Bush act in an "offensive" way, rather than in a defensive fashion; 3) Should Bush wait for economic sanctions to work before initiating combat? (Tucker and Hendrickson, 1992; Smith, 1992; Gregg, 1993). Much of the debate broke down into partisan lines, with Republicans supporting the President and Democrats in the opposition. This however is not to say that Republicans felt a vote on the use of force was unnecessary. Many Republicans, notably Senator Richard Lugar (R-Ind.), argued that a declaration of war should at minimum be given consideration (Rourke, 1993: 46). It is worth noting the strong support from many Republicans, who argued that if Congress repudiated Security Council vote, Congress was voting directly against the idea of collective security and the United Nation's existence (see Gregg, 1993: 117).<sup>54</sup> Some Democrats were particularly impassioned in their calls for the necessity of a vote. Commenting upon the debates thus forth, Majority Leader George Mitchell (D-Ma.) stated,

These Senators have made clear that Congress must be part of the grave decisions that could lead to war. As the law and the Constitution make clear, these Senators are right (Congressional Record, October 2, 1990).

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<sup>54</sup> These arguments will stand in stark contrast to the arguments addressed in further chapters.

Senator Ted Kennedy (D-Mass.) offered an even more stinging critique:

The Persian Gulf is in danger of becoming a constitutional crisis too. President Bush and his arrogant advisors seem to believe that they have the right to war without obtaining a declaration of war from Congress, as the Constitution requires (Congressional Record, October 2, 1990).

On the House side, many Democrats were also highly motivated to restrict Bush's movements toward war. Led by Congressman Ron Dellums (D-Ca.), 54 more liberal congressional Democrats filed a motion with the Federal District Court of Washington to require that Bush gain congressional approval before engaging in an offensive war. Although the District Court Judge Harold Greene ruled that the case was not "ripe" for a decision since a majority in Congress had not filed for the suit and because it was still unclear what Bush's intentions were (Collier, 1994: 73), these House efforts were reflective of a Congressional posture that was not backing away from presidential supremacy claims.

The debates continued right up until the final votes were taken on January 14, 1991, in which Congress voted on whether to support the U.N. Chapter VII resolution authorizing the use of force.<sup>55</sup> In the end, the House voted 250-183 in support of the resolution and the Senate approved the resolution 52-47 in very partisan votes. However, in the aftermath of Congress's approval, Bush reiterated his position that although the vote was helpful, it did not

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<sup>55</sup> See Security Council Resolution 678, 1990.

change his authority to use force as commander in chief. In his letter to Congress, he stated:

As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing of this resolution does not, constitute any change in the longstanding positions of the executive branch on wither the President's constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution (Bush, January 14, 1991).<sup>56</sup>

These comments echoed Secretary of Defense Richard Cheney's earlier remarks:

I do not believe the president requires any additional authority from Congress...Of the more than two hundred occasions in American history when presidents have committed U.S. military force, on only five of those occasions was there a prior declaration of war (quoted in Smith, 1992: 227).

Although Bush forwarded these legal claims for action, he also at times referred to other standards that appear *primaefacie* to be based purely on Bush's own decision. At one point, Bush argued that he would make the morally correct choice, regardless of whether Congress supports him or not (Smith, 1992: 237). Likewise, in an interview in Cairo, Egypt in November, 1990, Bush was asked this question:

Mr Bush, how far away are you now from achieving a U.N. resolution on the use of force? And if you fail to get one, is the United States willing to go with its allies in Saudi Arabia and in the gulf, to go to war without U.N. backing?

Bush responded:

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<sup>56</sup> Bush stated later in 1992 that he would have engaged U.S. troops in combat with or without congressional approval (Mueller, 1994: 60).

Well, I was asked that question earlier on, and I do feel we have the authority to do what we have to do. But we have tried very hard to work within the U.N. confines, within the Security Council (Bush, November 23, 1990).

These comments suggest that even without full Security Council backing, Bush was willing to do what "had to be done." His statements indicate how far he may have been willing to stretch his powers as commander in chief.

Some may argue that Congress waited so long to act that war was already inevitable by the time they acted. Since Bush had already solidified public opinion around his policy, and with Bush's repeated analogies between Adolph Hitler and Hussein that generated public support, war was certain (Rourke, 1993). This argument is much too simple and undervalues the congressional concern generated over the use of force, particularly in the Senate. While Bush clearly had the momentum, there is no telling what would have happened if the vote would have gone the other way. If only three more Senators would have voted against supporting the resolution, there would have been profound constitutional war powers issues raised. However, once the war began Congress rallied behind the President, and with the short term success the mission achieved, most in Congress supported Operation Desert Storm. Later, some members even



stated publicly that their vote against the Bush administration had been a mistake.<sup>57</sup>

In sum, what was shown throughout the debate was that the executive branch's position had changed little since Korea. In Bush's view, the Security Council's approval was helpful in his desire to use force, although it appeared that he was willing to use force even if the Security Council said no--just as Truman was in 1950. Bush also indicated that the practice of independently using force throughout American history establishes that as commander in chief, the President is to be the sole arbiter for this decision. Statements from the executive branch like Richard Cheney's also demonstrated that from the executive branch's view, Congress's power to declare war has little constitutional value or application in modern times, especially in situations in which the U.N. Security Council has authorized the action. From Bush's standpoint, Congress's vote was only a political statement, which had no legal relevance on his authority to act.

Congress did not accept the views presented above and demonstrated and demanded a role in the decision to use America's forces abroad. Although Congress did wait until nearly the last moment to vote on using force, Congress nonetheless engaged in substantive debate and decision

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<sup>57</sup> For example, see Toner's (1991: 43) discussion on Senator Bob Kerrey's (D-Ne.) changing views. Senator Sam Nunn also made similar comments (OWH, 1996: 11A).

making role over the use of force. These debates showed that Congress can act responsibly prior to the actual use of force, and in some circumstances, is willing to place their position(s) on record regarding war powers. However, Congress did not actually vote on a "declaration of war," and there was considerable deference in the early stages with the vote supporting Bush's initial deployment. In the end, votes were highly partisan, with Republicans supporting the President and Democrats in opposition, indicating that war powers is still not immune to partisan politics. Yet, Congress was certainly assertive in a new way in the cold war's aftermath.

### Conclusion

Throughout the cold war, Congress deferred to the President in the first deployment and combat stages when using force. Whether it was Korea, Vietnam, CIA covert operations, or Grenada, Congress, regardless of party, did not want to be perceived as "weak" on communism, and thus remained reluctant to vote against its perceived Marxist adversary. Congress also did not check the President unless the mission became controversial and public opinion began to question the wisdom of using force. Except in the case of the Persian Gulf War, it can safely be said that Congress, regardless of party, avoids position taking in the early deployment stage,

waiting to judge the mission's success and popular response to the operation.

With the cold war's end, Congress's recent efforts in 1990-1991 to check President Bush in Operation Desert Storm, and a newly inaugurated commander in chief in 1993 with no foreign policy experience, a number of conditions existed in which Congress potentially could more easily influence the decision to use force abroad. However, despite these circumstances, Congress's practice of initial deference returned to capitol hill during Clinton's first term in office. A return to these trends became apparent as early as 1993 after President Bush's deployment to Somalia, and Congress's reaction to American casualties in Africa. The interplay between Congress and President Clinton over America's deployment to Somalia is the subject of Chapter 3.

## CHAPTER 3

## SOMALIA: CONGRESSIONAL DEFERENCE TO LIMITED ACTIVISM

When Bill Clinton took the presidential inaugural oath, not only was he moving into a position that few are actually prepared for, he inherited a foreign policy gamble in Somalia with "Operation Restore Hope." As a lame duck President, George Bush introduced approximately 20,000 U.S. troops into Somalia in a "humanitarian mission," which eventually rose to 25,000 troops (Copson and Dagne, 1993: 56). Not only was Clinton faced with the logistical difficulties of providing for a starving and dying state, he was also confronted with policy choices about how and when to extricate U.S. forces. At the same time, Clinton had a Democratic House and Senate that had recently demonstrated a belated, but nonetheless "check" on Republican President George Bush prior to Operation Desert Storm. This chapter addresses the interplay between Congress and the President over the American deployment to Somalia. The relationship can be broken down into three periods. The first phase entails the historical relationship and the eventual breakdown of Somalia. The second phase addresses the

initiation of Operation Restore Hope on December 4, 1992 to the House's vote on May 25, 1993, approving of U.S. participation in the United Nations Operation in Somalia II (UNOSOM II). The final phase begins in the summer of 1993 when serious hostilities were experienced by American troops and ends with President Clinton's March 31, 1994 withdrawal date. In order to have a more complete understanding of the chronological evolution of war powers during President Clinton's first term, the U.S. bombing of Iraq in 1993 will also be addressed between the two later phases of the Somalia experience. Although President Clinton remained consistent in his position throughout the American deployment to Somalia that he had full authority to deploy American troops to Africa, the Congress acted differently in these phases, with much more vigor and attention to law after American casualties were experienced.

Before we examine the interplay between the chief executive and the legislature, a short review of the United States' diplomatic relationship with Somalia will be presented in order to provide the necessary historical context.

#### Somalia's Evolution to Chaos

Somalia has a long and troubled history of colonial exploitation and internal repression, with only a short history of U.S. involvement in the country. Somalia gained

its independence in 1960 from Italy and Britain. Although Somalis speak a common language and have similar cultural origins, the most intense group affiliation is with local clans. Due in part to the clans, the development of a "national" identity, and consequently respect for a national government has been an arduous process (Schultz, 1995; Lewis, 1994; Clarke, 1993: 208).

In a military coup in 1969, Siad Barre came to power. As leader, Barre was an authoritarian who espoused his own version of socialism. With his ideological leanings and his own diplomatic skills, he attracted other communists' attention during the cold war--namely the Soviet Union, Cuba and East Germany. All of these countries provided financial and military support to his regime. However, Barre's socialist backing ended after the Ethiopian government became communist and after Somalia and Ethiopia went to war over land claim differences in 1977. In a stroke of realpolitik, Somalia's communist allies--most importantly the Soviet Union--transferred their allegiances to Ethiopia, and the United States moved in to fill the void (Stevenson, 1995: 17; Simmons, 1995: 47). As the United States' new ally, Somalia received American financial support that eventually reached \$200 million (Clarke, 1993: 209). U.S. assistance continued into the 1980s, until international and domestic developments in Somalia resulted in a new U.S. approach. When relations between the United States and the

Soviets relaxed in the 1980s, Somalia was no longer seen as a state with strategic significance. By 1988, U.S. financial support had been cut dramatically. Congress also had grown increasingly concerned about Barre's many human rights violations and placed some pressure on President Ronald Reagan to cease U.S. foreign lending to Somalia.<sup>58</sup>

Barre's rule has been characterized as "oppressive and corrupt," due to his widespread violations of human rights (Schultz, 1995: 87). Not only did many people within the country oppose his rule, opposition also came from the Somalia National Movement. Opposition forces argued that Barre especially neglected the needs of people in Somalia's northern regions. By 1991, the country was on the verge of breakdown. Clan allegiances were running high, armed opposition groups were forming, large scale dissatisfaction with Barre's leadership existed, and human rights abuses continued (Stevenson, 1995: 32). By the year's end, the country disintegrated into a region of chaos; no government, no police force and no order (Clarke, 1993: 212; Parmalee, 1991: A1; Henry, 1991: A17; Perlez, 1991: 3). Moreover, one million displaced persons existed within the country. Some observers estimate that 300,000 people died during the year due to war and malnutrition (Copson and Dagne, 1993: 56;

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<sup>58</sup> For some examples, see comments in the Congressional Record by Sam Gejdenson D-Conn. (September 8, 1988: E 2849), Paul Simon D-Ill. (September 20, 1988: S 12984) and Hamilton Fish R-N.Y. (November 10, 1987: E 4434).

Clarke, 1993: 212). Save the Children Foundation also estimated that 200 children died daily (C.F.A., February 19, 1992: 299). From this chaos, General Mohammed Aideed rose to become one of the strongest clan leaders in Somalia, who would later prove damaging to the Clinton administration's foreign policy in the region.

In 1992 pressure built within the United States to take action. Human rights interest groups and some members of Congress were calling for an international humanitarian relief mission. A number of Congressional committee hearings were also held on the situation. Most argued in favor of a larger intervention role for the United Nations at minimum, with some members suggesting active U.S. support and possible engagement.<sup>59</sup> The House Select Committee on Hunger was especially active in calling for U.S. leadership and a bipartisan group of 88 members of Congress wrote a letter to President George Bush asking that his administration place its "highest priority" on Somalia (S.C.H., July 22, 1992: 82-86).

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<sup>59</sup> See S.C.H. (July 22, 1992), C.F.A. (June 23, 1992), C.F.R. (October 1, 1992), Senators Paul Simon (D-Il.) and Howard Metzenbaum's (D-Oh.) Report to the Senate Committee on Foreign Relations (Simon and Metzenbaum (1992) and Markups before the House Committee on Foreign Affairs, "Consideration of Miscellaneous Bills and Resolutions" (C.F.A. February 19, 1992: 105, 296).



As the graphic and disturbing pictures of starving Somalians reached American viewing audiences,<sup>60</sup> and as the pressure grew in Congress for action, President Bush agreed that a humanitarian mission was needed (Bush, December 4, 1993). After his defeat to Governor Bill Clinton, the Bush initiated Operation Restore Hope, or the United Nations Task Force (UNITAF), on December 4, 1992. Under United Nations Security Resolution 794, U.S. troops were allowed to use "all means necessary" in the distribution of humanitarian aid, and in its Chapter VII decision, defined Somalia as a threat to international peace and security (S/Res/794). By December 9, 20,000 troops were being deployed to Somalia, which eventually rose to approximately 25,000 (Haas, 1994: 44). The commander in chief's actions received widespread backing from Congress and were strongly supported by the American public (Morin, 1992: A16; Bendetto, 1992: 4A; Schneider, 1992).

Presumably, the Somalia mission fit into the foreign policy goals of President-elect Bill Clinton. During the campaign, most of the debate centered around domestic issues (Dionne, 1992: A1). There was some indication that Clinton would give more attention to human rights in U.S. foreign policy (e.g. Haiti and China), and Governor Clinton had been supportive of multilateral solutions to world crisis and

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<sup>60</sup> Some observers also note the "CNN effect," which instantly brought these disturbing pictures into American's homes (See Clarke, 1992: 213).

conflict. At one point during the campaign, Clinton advocated the development of a U.N. rapid deployment force (Goshko, 1992: A22). However, clearly there was great uncertainty about how the Arkansas governor would conduct foreign policy as President and much remained to be seen regarding the extent to which Congress would influence and/or shape foreign policy. These policy roles soon took shape in the first months of Bill Clinton's administration.

#### UNITAF to UNOSOM II

In general terms, we know that both Clinton and Congress were supportive of Operation Restore Hope when Bush initiated the mission. From a more formal standpoint, the Senate approved of the mission (by voice vote) on February 4, 1993, and the House voted on May 25, 1993 to support U.S. participation in the operation. However, these votes engendered different levels of controversy and guarded concern by some members of Congress about the President's constitutional authority to conduct the operation.

Before the Senate vote in February, 1993, support for the mission was strong and the concerns that were raised by members of Congress were minimal. Originally, Bush deployed the troops under Security Council Resolution 794, which gave member states the authority to begin the mission, and Bush added that the troops would likely be home before Clinton's inauguration (Goshko, 1992: A1). Under this "humanitarian"

deployment, member states were allowed to use "all means necessary" in the delivery of humanitarian aid (S/Res/794, 1992; Clarke, 1993: 222). Although it seemed unlikely at the time, a potential for the use of force did exist.

Despite the generally widespread support for the mission, there was some concern about the deployment's constitutionality in the Senate. Senate Majority Leader George Mitchell (D-Mn.) stated that Congress was to have some role in peacekeeping and that Congress had a responsibility to check the President when he deploys troops under a U.N. endorsement. In his most poignant statement, Mitchell argued: "U.N. Security Council resolutions are no substitute for congressional authorization" (Congressional Record, February 4, 1993: S 1363). It is noteworthy that this statement, came from a distinguished and well regarded member of the President's own party, rather than from a combative Republican partisan. Moreover, Mitchell's comment is interesting when recognizing that the troops had already been in Somalia for nearly two months at the time of his statement. Strangely, Mitchell spoke assertively on congressional rights and duties. Yet, even as Majority Leader, Mitchell waited until February before his chamber voted on the deployment.

In a voice vote on February 4, 1993, the Senate gave its approval for the mission in a legally non-binding measure. Senate Joint Resolution (S.J. Res) 45 stated that

the mission was "consistent with" the war powers resolution (WPR), in that if imminent hostilities were experienced, the WPR time mechanism would begin and the President would have to turn to Congress for authorization. S.J. Res. 45 also gave U.S. troops the authority to use "all necessary means" in fulfilling their humanitarian objectives (Congressional Record, February 4, 1993: S 1368). There was no immediate House follow-up on the Senate vote.<sup>61</sup>

After the vote, the Senate stayed relatively quiet for the next month over Somalia. As UNITAF (or UNOSOM-United Nations Operation in Somalia) proceeded, however, interest began to brew again. In a Senate Armed Services Committee on March 25, 1993, Senators Sam Nunn (D-Ga.) and Carl Levin (D-Mi.) openly expressed their concern that WPR requirements should be applied, and that Congress was neglecting its duties by not forcing the President to gain full congressional approval for the deployment. About President's actions under UNOSOM, Nunn noted:

But it seems to me Congress is in the situation of sitting on its hands now while these commitments are being made, and not really taking any kind of responsibility under the Constitution. It seems to me we have some responsibilities here and we better start paying attention to them (C.A.S., March 25, 1993: 20).

Senator Levin also stated that Congress's behavior demonstrated an "abdication...of our responsibilities" (21). He later argued that because of the strong possibilities for

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<sup>61</sup> See below, page 10-15.

hostilities and with the military's robust rules of engagement allowed under Chapter VII, the war powers act applied and the President should seek authorization (28-29). Nunn also stated that because U.N. authorization fell under "Title VII" [sic]<sup>62</sup>, congressional authorization for the operation was required (28). These points echoed the comments made by Senator Mitchell two months earlier, and again are significant in that well respected and senior members of the President's own party were critical of the constitutionality of the deployment. With perfect clarity, leading members of the Senate's majority party asserted that U.N. deployments under Chapter VII demanded congressional authorization. Yet, despite these pointed criticisms of Clinton's actions, the Senate did not push further on this issue and remained content to criticize its own unwillingness to take additional responsibility. Senators of both parties essentially let the constitutional and legal issues rest until the next phase when American casualties were experienced.<sup>63</sup>

On the House side, events proceeded similarly in the first part of 1993. House Foreign Affairs Chairman Lee

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<sup>62</sup> Presumably, Nunn intended to mean Chapter VII of the U.N. Charter.

<sup>63</sup> This pattern of Congressional deference is also typical of Congress's role in human rights policy, in which Congress will often assert a role in foreign policy--or may even pass specific legislation--but neglect to see that its decisions are enforced (Forsythe, 1988).

Hamilton (D-Ind.) had stated in 1992 that Congress, and by implication the House Foreign Affairs Committee, would be playing a fundamental role in the deployment (Krauss, 1992: A13). Collectively, however, the House was very slow to act and the Democrats did not make any serious effort to bring a Resolution of support or a vote on the deployment to the House floor. Some individuals in the House, however, did raise constitutional issues over the appropriate role for Congress with the deployment. In a House Foreign Affairs subcommittee meeting on February 17, these concerns and issues were raised. Some insight into the congressional/executive interplay is gained in the discussion between Harry Johnston (D-Fl.) and Clinton's Deputy Assistant Secretary of State Robert Houdek. In the hearing, Johnston asked Houdek if a congressional resolution were needed for the President to take further actions in Somalia and if the war powers resolution applied to Somalia. Houdek responded that a congressional resolution was not necessary, nor did the WPR apply in this case (C.F.A., February 17, 1993: 10). In the same hearing Houdek was pushed further by Representative Alcee Hastings (D-Fl.), who questioned the Deputy Secretary on why the WPR did not apply. In response, Houdek returned to statements made by the Bush administration, arguing that since no intent to engage in combat existed and because no hostilities currently were being experienced, no authorization is

needed. Hastings followed by asking Houdek for his views on section 6 of the United Nations Participation Act. Section 6 states that U.S. troops may be made available to the United Nations provided that a special agreement is made between the President and Congress prior to the deployment.<sup>64</sup>

Although Houdek refused comment at the hearing, he replied later in writing: "the President has constitutional and other legal authority to deploy U.S. troops in support of the U.N. efforts in Somalia" (C.F.A., February 17, 1993: 17). Thus, even from these early hearings and statements by members of Congress, Congress demonstrated that it had some concern about its constitutional responsibilities and was willing to press the executive branch on these issues. Members of Clinton's own party also willingly questioned the administration on Congress's proper role, yet did not force any legal restrictions upon their President. Congress was content to assert a constitutional role, but not to exercise it vis-a-vis the President. Although the constitutional claims were not articulated at this time, the executive branch felt that it could act without Congressional approval, and argued that in doing so the President was acting in a constitutional manner.

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<sup>64</sup> As noted earlier, no special agreements have been made between the Congress and the President prior to deployment under U.N. authorization, with the exception of Operation Desert Storm.

In the following month, on April 27, House minority discontent rose considerably at a meeting of the House Subcommittee on International Security, International Organizations and Human Rights. At the time, the House was debating S.J. Resolution 45. The resolution gave support for the President and authorized U.S. participation in Somalia for twelve months, with the possibility of extension. It also called for the invocation of the War Powers Resolution in the event that U.S. troops experienced hostilities. At the subcommittee markup meeting for the House's consideration of S.J. Res. 45, Doug Bereuter (R-Ne.) noted that the Resolution and House's actions to date were weak and open-ended. He argued that the resolution being advanced violated the WPR, and that U.S. troops should be returned immediately (C.F.A., April 27, 1993: 20). Bereuter's concerns were indicative of the discontent that followed soon on the House floor.

Once the resolution reached the House floor in May, a highly partisan debate ensued over the Congressional role in dispatching troops under the United Nations. Many Republicans argued that the operation violated the WPR, and that U.S. troops should be brought home. On May 4, 1993, the Security Council ruled in Resolution 814 that control of the Somalia operation would shift to the United Nations Operation in Somalia II (or UNOSOM II), and that Chapter VII still applied. Troops were also authorized to use combat if



the appropriate conditions arose (Clinton, June 10, 1993). Because of this development, House Republicans asserted that U.S. forces should not be serving under a United Nations commander in UNOSOM II. For example, Representative Bill Goodling (R-Penn.) argued "we are authorizing the deployment of U.S. troops under foreign command. This in itself is a monumental event, unparalleled in our history....I stand in opposition to the resolution before the House today" (Congressional Record, May 20, 1993: H 2614).

Under the leadership of their ranking minority member Benjamin Gilman (R-N.Y.), House Republicans fought for a shorter authorization period of 6 months and felt that Congress had not been appropriately consulted (Congressional Record, May 25, 1993: H 2612). In another Republican critique, Representative Gerald Solomon (R-N.Y.) also indicated that Congress needs to express its approval before U.S. troops are allowed to participate in Somalia (Congressional Record, May 20, 1993: H 2608). Moreover, like the more vocal Senate Democrats, Gilman and Toby Roth (R-Wi.) claimed that Congress was avoiding its constitutional responsibility by giving President Clinton an operational blank check (Congressional Record, May 20, 1993: H 2617). Similar sentiments were also expressed by House Democrats. In one of the more poignant comments, Representative Harry A. Johnston (D-Fl.) stated: "...if we ever want this establishment, the U.S. Congress, to be relevant to the

situation, then we [must] acknowledge the War Powers Act is the law of the land" (quoted in Bowens, 1993: 1373).

Furthermore, in written comments to the Congressional Record, Doug Bereuter (R-Ne.) called for the Operation's end, and the immediate withdrawal of the U.S. troops (Congressional Record, May 28, 1993: E 1401).

Despite the Republican efforts, House Democrats voted down these attempts to limit further funding and to set time limits on the operation. In a highly partisan vote on May 25, the House voted 243-179 to continue support for the mission. In the arguments presented, many Democrats maintained that they had fully met their constitutional responsibilities by passing their non-binding resolution. For example, Alan Wheat (D-Mo.) stated: "Today's legislation fulfills our congressional obligation under the War Powers Act" (Congressional Record, May 20, 1993: H 2608). Later, Lee Hamilton (D-Ind.), Chair of the House Foreign Affairs committee stated:

By approving this resolution, the Congress shows that we are willing to step up to our responsibilities, I might say our constitutional responsibilities, and assume the proper role as a partner with the President in making the decision to commit U.S. troops abroad (Congressional Record, May 20, 1993: H 2611).

He later added:

Congress here must play its constitutional role. Congress in my view should authorize whenever U.S. forces are sent abroad for potential use in combat. Such authorization is required by the constitution. It is required by the War Powers Resolution, and is required by the basic principles of sound policy making (Congressional Record, May 20, 1993: H 2612).

Tom Lantos (D-Ca.) similarly stated, "It is a constitutional and legal responsibility of the Congress to participate in decisions that commit our military forces. This resolution reflects a balanced approach to this issue" (Congressional Record, May 20, 1993: H 2614). Thus, the Democratic majority argued that Congress was to have a role in U.N. deployments, and that by passing this resolution, Congress's constitutional responsibilities were being met. Despite waiting six months to vote on the mission, the Democrats felt that a "balance" or "partnership" with the President had been achieved and that they had played a meaningful role in the deployment.

Until this time, President Clinton had remained quiet on the legal specifics of constitutional war powers. The Administration had expressed its feelings that the WPR was unconstitutional, which had been the norm for all other administrations since Congress overrode President Richard Nixon's veto in 1973 (CQA, 1993: 485).<sup>65</sup> However, White House Communications Director George Stephanopoulos had stated that Clinton was supportive "in theory" of the War Powers Resolution, but did not go into specifics (Broder and

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<sup>65</sup> It should be noted that President Jimmy Carter did not argue that the WPR was unconstitutional, but he also did not necessarily accept it as legally binding on his authority to use force. Herbert Hansell, Carter's Legal Advisor at the State Department, made this argument before the House Foreign Affairs Committee (C.F.R. July 13, 1977: 207. See also Stern and Halperin eds., 1994: 168; Smyrl, 1988: 37). In his only use of force, some observers agree that Carter violated the WPR (Fisher, 1995; Lehman, 1992: 101).

Mcmanus, 1993: A1). Moreover, in response to a letter from Representative Henry Gonzales (D-Tx.) concerning the WPR's relevance to Somalia, Clinton recognized that tensions existed between the legislature and the chief executive, and that this was one area deserving of some examination (Congressional Record, April 19, 1993: H 1899). Based on this letter and from Stephanopoulous' statements, it was not clear that President Clinton had defined what war powers responsibilities meant for his administration at this time. Most Presidents have argued adamantly that the WPR was unconstitutional, but Clinton, through these accounts displayed some ambiguity on the issue.

A defining moment for Clinton came on June 10, 1993 with his official notification letter to Congressional leaders. In the letter President Clinton stated that in order to be "consistent with the War Powers Resolution" he was informing Congress of the actions and progress in Somalia. In the letter, Clinton discussed the United Nations Security Council decision to transfer the operational duties of the Somalia mission to U.N. control in Resolution 814. In practice, Resolution 814 was later referred to as the U.N. Operation in Somalia II, or UNOSOM II. Clinton argued that he had consulted closely with Congress and would continue to do so, and that the deployment was constitutional under his power as commander in chief and under international law (Clinton, June 10, 1993).

Much can be said about congressional and executive practice over Somalia in this phase of the deployment. There was attention to legal responsibilities from the President and Congress. Both the President and Congress attempted to justify legally how they conducted themselves. Yet, through this analysis it becomes clear that especially in the early deployment stages, discrepancies between Congress's words and actions were developing, and legal issues were not fully exercised. Even in the Senate's bipartisan vote in February, 1993, the Senate choose to pass only non-binding resolutions of support, rather than invoking any time or funding requirements on the mission.<sup>66</sup> As indicated publicly by Senator George Mitchell, some members of Congress felt that Security Council approval was not enough for the President to deploy troops, which proved troublesome in the months to follow. Members of Clinton's own party, most notably Sam Nunn and Carl Levin, were not pleased about the President's constitutional conduct under UNOSOM. Yet, even though many senior Democratic Senators were willing to voice their concerns about Clinton's actions, they did not try to push the President into a legal corner with Congressional mandates. Moreover, a member like Sam Nunn, who had built a reputation of bipartisanship and expertise on foreign/military affairs throughout his years in Congress

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<sup>66</sup> See also Forsythe's (1988: 5-8) discussion of Hortatory statements and resolutions made by Congress with human rights.

could have raised serious legal predicaments for the President, but rather gave the president leeway in his first major use of force abroad. The Senate did send signals to the White House, but did not place legal limitations on him.

In the House, Democratic House leaders deferred to the President in the first deployment stages under UNITAF. House Foreign Affairs Committee Chairman Lee Hamilton (D-Ind.), who had earlier advocated a strong congressional role when the troops were originally deployed in December, 1992 later fought off Republican attempts to place more legal requirements on the President in May, 1993. Strangely, House Democrats felt that they had met their "constitutional responsibility" by passing a non-binding resolution in May-- five months into Clinton's first year as President and six months after the original deployment. In sum, among most Democrats a critical deference was at work. Members noted publicly their concern about the constitutionality of Clinton's actions, but did not want or make the newly elected commander in chief face a constitutional crisis over the deployment at home. The House Democrats' original call for an early role in the deployment process subsided with the arrival of the first Democrat in the White House in twelve years.

House Republicans supported the original deployment and raised few constitutional qualms with the chief executive

when S.J. Res. 45 passed the Senate in February, 1993. Unlike Lee Hamilton (D-Ind.), Republicans were not fighting for the constitutional right to play a decision making role in this U.N. authorized deployment. However, emotions stirred after Security Council Resolution 814, or UNOSOM II was enacted. Legislative efforts, especially by House Republicans, were introduced to legally restrict the President. Republicans were also concerned about sovereignty issues. Once UNOSOM II began, the mission became much more multilateral in nature, which also put Republicans on the attack. Traditionally, Republicans have been more protective of national sovereignty and U.S. responsibilities in collective security organizations than Democrats. For example, Senator Henry Cabot Lodge (R-Mass.) was instrumental in lobbying the Senate to keep the United States out of the League of Nations in 1919. Moreover, as demonstrated in chapter 2, it was a small Republican minority that questioned President Truman on his constitutional authority to deploy U.S. troops to Korea with only United Nations' approval. With these characteristically Republican norms, the appearance of "U.N. control" in Somalia proved to be another catalyst for Republican activism. However, the Republican efforts with Somalia contrast starkly with their more supportive behavior of the United Nations during the Persian Gulf crisis, which was especially true of Benjamin Gilman.

Gilman has been noted by others as a "strong" supporter of President Bush after Saddam Hussein invaded Kuwait (Barone and Ujifusa, 1994: 911). When it came time to vote on the use of force in Operation Desert Storm, Gilman was unwilling to limit President Bush's military powers and instead voiced his support for the United Nations. In discussing House Joint Resolution 658 on October 1, 1990, which expressed Congress's approval of President Bush's action vis-a-vis Saddam Hussein up to that time,<sup>67</sup> Gilman inserted these comments into the Congressional Record:

I think we must recognize that the unprecedented action of the United Nations Security Council gives us all hope that in an environment where east-west tensions are diminishing on a daily basis, multinational organizations such as the United Nations, will be able to play a constructive and productive role in maintaining law and order (Congressional Record: October 1, 1990: H 8441).

It is notable that at the same time in 1990, Vic DeFazio (D-Ca.) and Ron Dellums (D-Ca.) both argued that H.J. Res. 658 "undermines the constitutional responsibility of the Congress," and that Bush was in violation of the WPR (Congressional Record, October 1, 1990: H 8453).

In 1991, Gilman made similar comments prior to Congress's vote on whether or not to support United Nations Security Council Resolution 678 Gilman again inserted these comments into the Congressional Record:

As the member of the United Nations with the most resources and the best ability to support the U.N. resolutions, the

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<sup>67</sup> For the full resolution, see Congressional Record (October 1, 1990: H 8441).



United States should not turn its back on Kuwait and the world. Rather, we should set the example for peace and security which will define our post cold war world (Congressional Record, January 10, 1991: H 175).

Another Republican member, Paul Henry (R.-Mich.) stated in more blatant terms:

the US Congress ought not put itself with odds against the United Nations or question the considered opinion and actions of the Security Council. Turning against the United Nations in this instance would strike a blow against the struggle to refine and strengthen international peacekeeping institutions that will be so important in the post-cold war era (quoted in Gregg, 1993: 117).

These "pro U.N." comments from Henry and Gilman are striking compared to Republican efforts to later place legal restrictions via the WPR on President Clinton in 1993. The changing views on the United Nations also highlights how quickly some members of Congress can essentially reverse their positions on the relationship between Security Council decisions and Congress's role with these resolutions.

The Republican's early efforts in 1993 to limit the Somalia deployment were in vain since the House Democratic majority easily outvoted them. Thus, partisan affiliations, especially in the House, helped shape how the War Powers Act was defined in this phase of the interplay. House Republican support for Gilman's initiatives was very strong, while House Democrats overwhelmingly fell in line behind their Democratic leadership. House Democrats chose to enact non-binding resolutions that gave the President more time and leeway in Somalia, and consequently supported the President.

From the executive branch, mixed messages were sent. In the first months of the Clinton administration, it was not entirely clear where Clinton stood on war powers. Clinton appeared willing to have some debate over constitutional division of powers when questions concerning the issue were posed to him in an open-ended or "academic" way. However, in practice it was clear that Clinton wanted to act without Congressional approval. Throughout UNITAF, and in the initial stages of UNOSOM II, Clinton kept Congress out of the decision making process. Through Assistant Secretary Houdek's statements and Clinton's letter to Congress, in which both situations called for specific position taking, the executive branch reverted to arguments favoring the powers of the commander in chief. Clinton did keep Congress informed via his letter to congressional leaders about UNOSOM II, but in the end it was his executive powers coupled with U.N. endorsements that he forwarded as legal justification for his actions. Clinton essentially held this position throughout the rest of the Somalia experience, just as President Bush did before and after Operation Desert Storm. Congress quickly changed its view once American casualties were taken.

#### Bombing in Iraq

Throughout the rest of the summer in 1993, Congress's public concern expressed on the chamber floors was minimal. Most in

Congress were consumed with other issues, and President Clinton's statements on Somalia concerning his deployment authority were insignificant. President Clinton however did decide to use force in the Persian Gulf. Chapter 6 will deal more specifically with the use of force in 1996 in Iraq, but for understanding the chronological evolution of war powers in the Clinton administration, the United States' bombing of Iraq merits our attention at this time.

Soon after Operation Desert Storm, on April 5, 1991, the U.N. Security Council passed Resolution 688, which condemned Iraq's actions against its Kurdish population, and called for humanitarian relief organizations to enter the country to provide humanitarian aid (S/Res/688, 1991). The United States, France and Great Britain also established "no-fly zones" over portions of Iraq and the United States conducted "Operation Provide Comfort" in delivering humanitarian aid to the Kurds who were under attack from Saddam Hussein's Republican guards (Bush, May 17, 1991; Stromseth, 1993: 85-94). Moreover, the Security Council condemned Iraq for not living up to its previous agreements and obligations regarding its weapons' production sites (S/Res/707, 1991). Thus, U.S. pressure on Iraq continued well after Desert Storm's conclusion.

During his campaign for President, Clinton, like George Bush, had been critical of Saddam and his violations of human rights (Wines, 1992: A1). At one point during the

campaign, Clinton escalated the level of his criticism against Bush's Iraq policy by stating that the Bush administration had "appeased" Saddam prior to the war, and that "democratic principles" were not being upheld by Bush's policy after the war (quoted in Friedman, 1992: A1). Consequently, as the new President entered the Oval Office in 1993, U.S./Iraqi relations were still in a strained condition.

After the presidential election, George Bush visited Kuwait in April, 1993. During his visit, an assassination attempt was made against the former chief executive. In investigating the attack, the Central Intelligence Agency reported that Saddam Hussein's regime was to blame (Vicini, 1993; Balman, 1993; Jehl, 1993: A1). On June 28, 1993, after the CIA argued that it had conclusive proof of an Iraqi plot to kill Bush, Clinton responded with a nighttime air raid of 23 precision guided missiles on Iraq military posts. In his letter to Congress, Clinton justified his actions by referring to Article 51 of the U.N. Charter, which allows member states to use force when their self defense is threatened, and the President made reference to his "constitutional authority with respect to the conduct of foreign relations and as commander in chief" (Clinton, June 26, 1993). In a national address, which did not deal specifically with the legal aspects of the attack, Clinton also spoke about U.S. national security interests at risk.

He argued that Iraq had violated U.S. sovereignty, and that the intent of the U.S. response was to send a clear message to Saddam and other terrorists that similar actions against the United States would not be tolerated (Clinton, June 28, 1993). Three days after the bombing, a public opinion poll found that 61 percent of the American public approved of the bombing and that Clinton had received an 11 point boost in his overall approval rating (Berke, 1993: A7).<sup>68</sup>

Overall, Congress had little to say about the attack. Congressman Ron Dellums (D-Ca.) did note his concern with Clinton's decision: "This unilateral U.S. military action was initiated by the executive alone, and is further evidence of the absolute imperative to reestablish the proper balance between the Executive and Congress" (quoted in Farrell and Mashek, 1993: 1). However, the vast majority in Congress supported the action. No one in either the Senate or House rose to protest the action, nor were hearings held on the situation. On the day of the attack, White House operators had tried to contact Dellums (Farrell and Mashek, 1993: 1), yet there is little evidence to suggest that Clinton fully sought out members to "consult" over the decision.

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<sup>68</sup> See also transcripts from Nightline, June 29, 1993, in which they cite an ABC news poll indicating a 12 point jump in public approval, and Farrell and Mashek (1993: 1) who cite a CNN-USA Today poll showing that 66 percent of Americans agree with the strike on Baghdad.

In many ways, the response from Congress mirrors the cold war norm of deference. The United States had a clearly defined and popularly accepted enemy among the American public, and few members of Congress were willing to place constitutional process issues over perceived national security interests. Moreover, from a constitutional standpoint, it is striking that President Clinton was aware of the CIA's report as early as May, but did not authorize the attacks until late June. Clearly there was time to consult with Congress prior to the bombing. Clinton's phone call to Dellums also appears to more closely reflect an instance of notification, rather than consultation, as is required by the War Powers Act. There is also nothing that suggests an immediate response by the U.S. was needed for self defense purposes, as the founders allowed.<sup>69</sup>

From an international law viewpoint, Clinton's definition of "self defense" is also arguable. In the International Court of Justice's hearing of *Nicaragua v. United States (1984)*, the United States claimed that by defending El Salvador from Nicaraguan attacks, the U.S. was acting in El Salvador's defense as well as its own "collective self defense." The Court ruled that the Article 51 claim allowing for member-state's "self defense" did not

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<sup>69</sup> See chapter 1 for more on this argument. Most agree that the founders allowed the President to act unilaterally in the event there was a sudden attack on the U.S. requiring an immediate response.

apply in this case. In the Court's view, Nicaragua's actions did not constitute an armed attack on the United States, nor had Nicaragua's activities reached a level equivalent to an armed attack. The Court also decided that since the United States had not informed the Security Council that it had been "attacked" by Nicaragua, Article 51 did not apply (I.C.J., 1984: 169-170).<sup>70</sup> Whether or not an attack on a former President--travelling in a foreign country--allows for the state's self defense is not *prima facie* clear. Nonetheless, this issue prompted no inquiry from Congress. There is also no evidence that suggests the United States had informed the Security Council of an Iraqi attack on the United States. Thus, a host of constitutional and legal issues could have been raised about the process surrounding the actual decision to bomb Iraq, yet Congress preferred not to challenge the President.

Based on the events that took place in this case, Clinton's actions reflect a continuation of an imperial presidency, in which the chief executive unilaterally defined what the U.S.'s national security interests are, and justified his actions through a broad definition of Presidential powers. Congress's behavior was deferential. Although constitutional issues could have been raised by Congress (e.g. the lack of consultation, the unilateral decision, and the definition of self "defense"), the risk to

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<sup>70</sup> See also Forsythe (1990).

U.S. troops was low, no American casualties were taken, and the public widely agreed that Iraq deserved the attacks. All of these conditions conform well to a Congress that does not seek a functional war powers role. Congress was content to let the president take blame or credit for the bombings. Members of Congress had little interest in more abstract legal issues, and let public opinion be their measure for inaction. With Somalia, once American casualties occurred, Congress began to reevaluate its responsibilities vis-a-vis the President.

#### UNOSOM II and American Casualties

With Clinton's public approval ratings running high after bombing Baghdad, legislators had little to say about Somalia in June and July. In August, pressure resumed as Congressman Benjamin Gilman (R-N.Y.) again raised the deployment "authority" issue. The Congressman's written statement, which was inserted into the Congressional Record, was entitled "Death of the War Powers Resolution in Somalia." In his statement, he argued that because combat had broken out in Somalia on June 5, 1993, and that since 60 days had now passed, both Congress and the President were at fault for not enforcing the War Powers Act. In his view, the troops should be brought home. Included in Gilman's statement was a letter he sent to Secretary of State Warren Christopher. In the letter, which was co-signed by Senator Jesse Helms (R-



N.C.), ranking minority member of the Senate Foreign Relations Committee, they asked whether American troops were faced with "hostilities" as defined by the WPR in Somalia. In a written response from Assistant Secretary of State Wendy Sherman (which Gilman included in his statement), the administration's position is well articulated.

Sherman remarked that on war powers, "regardless as to whether or not it is constitutional," the Act was intended for American troops in "sustained hostilities." She follows by noting: "This is not the situation we face in Somalia." Further she adds that the American use of force had been undertaken with a United Nations mandate, and notes that both the House and the Senate approved of U.S. participation in the Somalia peacekeeping operation by approving S.J. Res 45. However, like George Bush's position on Congress's vote on Operation Desert Storm, she states about Congress's vote: "we do not believe that specific statutory authorization is necessary" (Congressional Record, August 4, 1993: E 1984). These efforts are reminiscent of Ronald Reagan's effort to redefine "hostilities" during his U.S. troop deployment to Lebanon. Reagan, like Clinton, too sought to avoid Congressional legal limitations on his deployment by arguing that "there is no intention or expectation that U.S. Armed Forces will become involved in hostilities in Lebanon," (Congressional Record, September 14, 1983: 24036), and thus

the War Powers Act did not apply.<sup>71</sup> In sum, the Clinton administration's legal claims rested on semantical differences with Gilman over what is meant by "hostilities," and previous United Nations Security Council decisions.

By August, Clinton still had 4,028 U.S. troops deployed in Somalia while Congress was in recess. However, on August 8, four American troops were killed by a Somalian land mine, which was the principal catalyst for congressional action. When members of Congress returned to Washington from their summer recess, the national debate on Somalia became quite intense. One of the most vocal advocates of policy change was Senator Robert Byrd (D-W.Va.). Prior to the Senator's more public effort to check the President, Byrd had shown some interest in defining legal responsibilities between the White House and Congress by writing three letters to the President--urging him to gain full congressional approval for the Somalia operation (Doherty, 1993a: 2824). After the American casualties, Byrd proposed a resolution that would have eliminated funding for the Somalia operation if the President did not gain full congressional approval within one month. Byrd also argued that the President had not appropriately consulted with Congress after the mission changed under UNOSOM II. Byrd stated, "The United Nations Mandate to disarm the warlords and rebuild a civil society

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<sup>71</sup> See also Lehman (1992: 101-109) for his discussion of the legal semantics surrounding the U.S. deployment to Lebanon.

in Somalia, approved by the U.N. Security Council, was never addressed, never debated, or never approved by this body" (quoted in Palmer, 1993: 2399).

Byrd's aggressive effort to check the President however, was watered down by his Senate colleagues. In a non-binding resolution, the Senate approved of a measure that called for Clinton to consult with Congress by October 15, and to win approval from the Senate for the mission by November 15. The vote was 90-7, which Byrd ended up supporting (Palmer, 1993: 2399). At the same time, the House made no formal effort to restrict the President. Just as the House had done earlier in the year, it let the Senate lead.

The House did not stay quiet for long, especially after three more American troops were killed on September 26 (Lorch, 1993: 22). Two days later, the House voted to place a November 15 deadline on Clinton for gaining full congressional approval. This non-binding resolution was cosponsored by Richard Gephardt (D-Mo.) and Benjamin Gilman (R-N.Y.). The 406-26 vote in favor of the resolution demonstrated the strong bipartisan support for the measure (Towell, 1993a: 2668). However, the key and most instrumental development in the congressional/executive interplay occurred with the death of 18 U.S. Army Rangers, and the wounding of 80 other Americans in a battle with General Aideed's forces. One American soldier's body was

dragged through the streets of Mogadishu, which highlighted the already considerable media attention the incident was receiving (Miller, 1993). Once the coverage of the attack reached American viewing audiences, public reaction against the deployment was strong.<sup>72</sup>

After the atrocity, many members of Congress vigorously attempted to limit the American role in UNOSOM II. Senator Russ Feingold (D-Wi.), one of the more legally oriented members of Congress, pushed the President and his fellow colleagues to accept their full legislative responsibility. In his statement on the Senate floor, Feingold referred to congressional responsibility and the War Powers Act. He stated: "...it has been my position that the troops should not have been there past 90 days after President Bush sent American soldiers there in December with a congressional resolution of approval" (Congressional Record, October 5, 1993: S 13081). Other Democrats, like Vic DeFazio (D-Ca.), called for the invocation of the War Powers Act by arguing that Congress had deferred on its duties, and the President needed to bring the issue to Congress. He stated: "...it is time for the President and the Congress to face up to their constitutional responsibilities" (Congressional Record, October 7, 1993: H 7550). Most Democrats began to call for a

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<sup>72</sup> Reuters reported that a Time/CNN poll found that 60 percent felt that an immediate withdrawal would not undermine U.S. prestige in the world. 37 percent also favored an immediate withdrawal (Reuter, October 9, 1993).

reevaluation of the current Clinton policy, but some cautioned against an immediate withdrawal. Senator Sam Nunn (D-Ga.), John Warner (D-Va.) and Jim Exon (D-Ne.) all made similar remarks regarding this latter position (Congressional Record, October 6, 1991: S 13145-13147). Yet, Democrats in both the House and Senate at this time were willing to question openly the President on his deployment authority in Somalia.

The Republicans, some of whom had earlier made efforts to restrict the President, came together to speak out against the President. Representative Bud Shuster (R-Penn.), in a manner similar to Feingold, remarked:

Our troops are in combat. I call upon the President to invoke the War Powers Act. It is the law of the land.

If the President does not invoke the War Powers Act, I call upon the Congress to see to that we can take action. It is the law of the land, and it is an impeachable offense for any President to violate the law (Congressional Record, October 6, 1993: H 7460).

Added to similar Republican assaults like Shuster's was a letter sent to President Clinton, in which 142 House Republicans called for the immediate withdrawal of U.S. forces (Doherty, 1993b: 2751).

Many members of Congress became concerned with the issue of proper command of troops, and whether American troops were serving under U.S. or United Nations leadership. Senator Jesse Helms, whose career is marked by efforts to limit the United States role in the United Nations (Helms,

1996; Gregg, 1993: 66; Forsythe, 1990: 121) was vocal on this issue.

...the United States has not constitutional authority, as I see it, to sacrifice U.S. soldiers to Boutros-Ghali's vision of multilateral peacemaking...I do not want to play any more U.N. games. I do not want any more of our people under the thumb of any U.N. commander--none (Congressional Record, October 6, 1993: S 13125).

Despite Helm's vehemence and seeming authority on the issue, his version of the military command structure in Somalia grossly misrepresented the role played by the United States. In all situations in Somalia, U.S. troops served directly under U.S. leadership, and the United States was the principal author for all of the U.N. resolutions that dealt with Somalia. When 18 U.S. Army Rangers were killed by Aideed's forces, these troops were serving directly under U.S. command (Clarke and Herbst, 1996: 73). However, this anti-U.N. position resonated with many members of Congress, especially Republicans, who were later very influential in forming the foreign policy position in the *Contract with America* (see chapter 5). In a bit of hypocrisy, even Clinton joined Congress in criticizing the United Nations. While ignoring the previous resolutions and U.S. command in Somalia, Clinton argued, "We cannot expect the United Nations to go around the world, whether it's in Cambodia or Somalia or any of the many other places we're involved in peacekeeping, and have people killed and have no resolution for it" (Clinton, October 14, 1993).

With congressional pressure building, Clinton responded by setting a March 31 mission departure date. At the same time the President sent 1,700 more troops to Somalia, and reported that 3,600 troops would be stationed offshore (Doherty, 1993: 2750). The President's actions were persuasive enough to prevent any legal challenges from the Democratic majority in either chamber, but was not enough to quell Congress's public displeasure with the Operation, or the hearings that were to follow. However, Congress's efforts were never strong enough to fully develop a collective legal challenge to the President despite some members' apparent wishes. The Democrats were willing to criticize the President, but prevented the Congress from restricting Clinton after the withdrawal date was set. Republicans who wanted to restrict the President never had enough support from outlier Democrats to override the majority.

One House Democrat who earlier had taken issue with Clinton's deployment to Somalia was Vic DeFazio (D-Ca.). After Clinton's announcement, DeFazio still criticized his party's chief executive by again bringing his legal qualms with Congress and the President to the House floor. In noting that there was some confusion involving the "responsibilities between the President as Commander in Chief and the constitutional obligation of the Congress and

its war making authority," DeFazio pushed for a legal role for Congress:

There is no declaration of war. This body nor has the other body authorized the deployment of troops to Somalia.

There is no national emergency. President Clinton must meet his obligation under the War Powers Act and submit a written request for authorization to the Congress defining the scope, duration and, most importantly, the objectives of our military operation in Somalia.

Congress, we must stop ducking our responsibilities and vote to authorize this deployment or bring the troops home (Congressional Record, October 14, 1993).<sup>73</sup>

DeFazio was not the only member of Congress to try and impose a legally binding role for Congress. In the Senate, a resolution offered by Senator John McCain (R-Ariz.) called for a "prompt withdrawal" of troops from Somalia, but the Senate voted down this measure in a 61-38 partisan vote (Congressional Record, October 19, 1993: S 13927; also see Towell, 1993b: 2823). Thus, despite the willingness of some in Congress, the Senate and House Democratic leadership had been appeased by Clinton's withdrawal date. They did not want to address the proper legal role for Congress surrounding Somalia, and were unwilling to invoke a legally binding position against the President.

On October 19 and 20, the Senate Committee on Foreign relations held hearings on the U.S. role in Somalia. At the hearings, Feingold again pushed for the invocation of the War Powers Act and stated that he opposed this mission on "its merits" (C.F.R., October 19, 1993: 15). There was also

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<sup>73</sup> See also the Congressional Record (October 7, 1993: H 7550).



some disagreement over the level of consultation between the White House and Congress. Senator Frank Murkowski (R-Alaska) alleged that when the mission went from UNOSOM to UNOSOM II, "it might have been more prudent had the administration sought some consultation with Congress (29)." Senator Paul Simon (D-Il.), however, argued that he had been in contact with the administration, and that "there clearly was consultation (43)." Whether or not Simon's comments accurately reflected the majority of Democrats at the time is not clear, but it was clear that many Republicans felt as Murkowski did, both in the Senate and the House.

During the hearings, many Senators diverted to other issues, including the financial costs of the operation, and the level of allied cooperation. The question of authorization for the use of force was not necessarily the central issue of the hearings. The hearings also gave little insight on the executive branch's position of Congress's role. Prior statements and letters continued to reflect policy vis-a-vis the role of Congress in deployment decisions. At the hearings, Clinton's Ambassador to the United Nations, Madeleine Albright argued that Congress and the President must "work together to establish that consensus (69)," and that the executive branch would continue in its consultations with Congress (70). Other than these remarks, the executive branch offered no reevaluations or new definition of its perceived division of powers.

Besides some references to the War Powers Act, most members of Congress did not pursue legal arguments stemming from U.N. Security Council agreements. However, back on the Senate floor, Senator Claiborn Pell (D-R.I.) recognized the need for further clarification of Article 43 of the U.N. Charter. In his view, the United Nations Participation Act of 1945 and Article 43 provided Congress with the ability to exercise its war powers duties and the President could not act unilaterally in United Nations enforcement activities without Congressional approval (Congressional Record, October 21, 1993: S 14157). Yet, even in light of the statements from members like Pell, Feingold, and DeFazio, the Democratic majority avoided placing further restrictions on the President's powers in foreign affairs. Byrd was successful in passing a resolution to cut funding for the operation on March 31, 1994. Yet, Pell stood alone in his references to Article 43. Although a Senior Senator from Rhode Island, Pell had not developed wide respect in foreign relations as a Senator (Barone and Ujifusa, 1993: 1131), which partially explains his inability to raise these legal issues to the broader issue agenda. Otherwise, the Democrats' deference to President Clinton once Clinton set the withdrawal date was striking. Nowhere was this more true than in the House Republican's effort to force the return of American troops by January 31, 1994.

Under the leadership Benjamin Gilman (R-N.Y.), with the help of Floyd Spence (R-S.C.), the ranking minority member of the House Armed Services Committee, the Republicans sought to return the troops two months prior to Clinton's March 31 withdrawal date (Congressional Record, October 26, 1993). Gilman's resolution nearly made it to the House floor, but it was barely defeated in the House Foreign Affairs Committee in a 22-21 vote.<sup>74</sup> In this vote, three Democrats, Robert Andrews (N.J.), Sherrod Brown (Oh.) and Eric Fingerhut (Oh.) all voted with the unanimous Republican minority (Doherty, 1993c: 3060). In the end the Republican efforts died under the weight of the Democratic majority as Congress accepted President Clinton's March 31 deadline and the Democrats prevented any further limitation on Clinton's foreign policy in Somalia. Members of the majority party were much more interested in finding a short-term political solution to the immediate crisis in Somalia, rather than solving any long term constitutional/legal issues.

### Conclusion

Somalia was Clinton's first real test in foreign policy. In the end, Clinton reacted to heavy pressure from Congress to limit the U.S. role in Somalia, but also gained considerably from the Democrat's deferment to his March 31 withdrawal

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<sup>74</sup> See also Toby Roth's (R-Ca.) statements in the markup session on Gilman's initiatives (C.F.A., November 3, 1993: 13).

date. A number of factors can explain this White House/Congressional interplay.

From a political perspective, the deaths of four American soldiers to a Somali land mine in early August sparked a new level of congressional activism vis-a-vis the commander in chief. After three more American soldiers were killed the intensity of activism reached new heights, which was further exacerbated by the deaths of 18 U.S. Army Rangers on October 3, 1993. Once the deaths were experienced, Congress began its onslaught on the President's policy and asserted war powers responsibilities. On the Senate side, most members of Congress did not take an active role in trying to force the president to bring the troops home until the American deaths in September. Even after the mission changed under the UNOSOM II mandate, as a body the Senate stayed relatively quiet until American casualties were experienced.

In the House, Republicans, such as Benjamin Gilman (R-N.Y) did try to keep pressure on the President to change course. However, the Democrats would not allow Gilman and others to restrict the President, and only supported non-binding resolutions that gave the President considerable leeway in his deployment. Yet, once Americans were killed in combat, a bipartisan effort arose to force a change in Clinton's foreign policy, but with different partisan degrees.

In analyzing the partisanship of war powers over Somalia, war powers cannot be placed exclusively into a partisan box. In the Senate, Democrats, most importantly Robert Byrd, along with Sam Nunn and John Warner, led the effort to limit Clinton's deployment authority. Democrat Russ Feingold likewise openly contested the President's authority with a number of references to the War Powers Act. In the House, Democratic members like Vic DeFazio also tried to force a legally binding vote on Somalia. Other Democrats were critical of Congress as a whole for not living up to its constitutional responsibility.

Despite these nonpartisan examples, partisanship is an important factor in understanding congressional behavior over Somalia. Under Benjamin Gilman's leadership in the House, the Republicans were strongly unified in their opposition against the Democrats and President Clinton, and vigorously fought for legal restraints on Clinton's actions. In some cases, Republican views of United Nations Security Council decisions underwent a new direction. Many Republicans actively argued against U.N. missions and mandates, despite their seemingly "internationalist" leanings prior to Congress's vote on U.S. participation in Operation Desert Storm.

On the other side of the partisan aisle, House and Senate Democrats, with only a few exceptions, deferred to the President once he set his withdrawal date. Once Clinton

established an exit date, the Democrats could claim a political victory, but were also unified against Republican efforts to further limit the troop deployment. The Democrats could argue to their constituents that they had forced President Clinton to set the withdrawal date through congressional pressure, while in practice they were quickly appeased once Clinton set his withdrawal date. A number of Democrats did argue in favor of constitutional restraints on the President, but in reality did not push fervently for legal clarity once Clinton reacted to congressional pressure. All efforts to reduce funding or bring home troops prior to that date were prevented by the House and Senate leadership, and the influence of more "legally oriented" Democrats was kept to a minimum. In an interesting twist of political fate, Lee Hamilton (D-Ind.), Chairman of the House Foreign Affairs Committee, who had in December, 1992 argued for a meaningful Congressional role in U.N. deployments, later argued that Congress (implying Republican efforts) should not micro-manage foreign policy (Doherty, 1993c: 3060).

From a legal perspective, there was considerable attention given to the law under the War Powers Act, especially by House Republicans and those highly motivated Democratic Senators noted above. In the aftermath of the hostilities, some Democrats did call for a full review and

rethinking of the War Powers Act,<sup>75</sup> yet most Democrats did not press for a well defined legal role for Congress. Besides Senator Claiborn Pell's attention to Article 43 of the U.N. Charter, few members wanted to deal with the legal and constitutional questions surrounding these issues and if there was a legally definable role for Congress with U.N. enforcement actions in U.S. law. In part, the issue of U.N. military enforcement became centered around sovereignty issues, e.g. whether American troops should be serving under "U.N. command" rather than what the constitutional requirements were for participation in United Nations enforcement operations. However, it was clear that the War Powers Act was considered a viable tool by members of Congress and was a salient background factor in framing the interplay between the White House and Congress. Only when casualties were experienced were legal legislative tools fully utilized by the majority party to influence a policy change. For most members, the specifics of United Nations's Article 43 and its legislative history had little relevance to the debate in Washington.

In terms of congressional authorization for the U.S. role in Somalia, both the House and Senate did approve of U.S. participation in the U.N. mission, which included the

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<sup>75</sup> In the House, see Jane Harman's (D-Ca.) comments (Congressional Record, November 1, 1993: H 8941), and in the Senate see Joseph Biden (D-R.I.) suggestions (Congressional Record, November 20, 1993: S 16856).

authorization to use "all necessary means" in both UNITAF and UNOSOM II. The Senate did not specifically approve of UNOSOM II, but the House resolution in May passed after the U.N. Security Council had approved of UNOSOM II. Both Congressional resolutions did reserve the right to call for the invocation of the war powers resolution in the event that hostilities occurred. These votes demonstrated that Congress, especially in the case of Senate's bipartisan vote in February, wished to have it both ways: 1) support the United Nations and the President's humanitarian objectives, and 2) reserve the right to later invoke domestic war powers against the U.S. commander in chief. Although the U.N.'s mandate was not well defined in many ways under UNOSOM II, in one sense the mandate was very clear. U.N. member-states were allowed to use force in delivery of humanitarian aid with UNITAF and in the nation-building process under UNOSOM II. However, some members of Congress like Senator Jesse Helms criticized the United Nations rather than recognizing that both chambers had shown their support for the U.N. resolutions and President Clinton earlier in the year. Hence, the argument that members of Congress did not fully understand the risks entailed in the operation(s) is weak.

The House also waited until May, 1993 to approve of the mission, despite the "all necessary means" language, and the Senate never took a stand on UNOSOM II collectively until Americans were killed in Somalia. Thus, with Congress there



was deference as well as a degree of hypocrisy. The use of all necessary means language included in the United Nations Resolutions was approved by both chambers, and therefore gave President Clinton broad powers, while Congress in both chamber votes simultaneously attempted to reserve the legal right to later criticize the mission if problems/casualties occurred.

In the case of President Clinton, the executive branch remained consistent throughout the entire Somalia experience that Congress had no formal authority in the deployment of American troops. Clinton did respond when Congress placed strong pressure on the administration to bring the troops home by setting a definite withdrawal date, but never argued that Congress had a legal decision making role in this process. Like all other chief executives since the WPR's passage, the President did argue that he would continue his "consultation" between the branches, but there is no evidence to suggest that the chief executive felt Congress had the power to force the troops' return.

Like Ronald Reagan's deployment in Lebanon, the Clinton administration also employed a flexible definition of "hostilities" in order to avoid legal restrictions stemming from the War Powers Act. Just as Reagan did in Lebanon after American casualties were taken, Clinton reacted to congressional pressure and changed his policy, but did not seek any changes in the congressional/executive relationship

over war powers. In practice, Clinton used United Nations agreements to justify his actions, but from the domestic standpoint, made traditional post World War II "imperial" presidential arguments, just as George Bush did prior to Operation Desert Storm. Similar patterns of behavior would be followed in the case of Haiti, which is the subject of Chapter 4.

## CHAPTER 4

## HAITI: PRESIDENTIAL SUPREMACY AND CONGRESSIONAL INDECISION

The U.S. intervention in Haiti was President Bill Clinton's third use of force as President and proved to be as controversial as Somalia. Unlike the Somalia case, Congress played a somewhat different role in this deployment by invoking some legal claims vis-a-vis the president prior to the September, 1994 deployment. However, in the end partisan politics and traditional congressional deference explains much of the executive/congressional interplay over the "Operation Uphold Democracy."

The case study in this chapter breaks the interplay into four periods, with some attention devoted to U.S. diplomatic efforts in Latin America in order to fully understand the legal aspects of the Clinton administration's justification for the use of force. I begin with a short discussion of U.S./Haitian historical relations, the coup on President Jean-Bertrand Aristide and the Bush administration's response. The chapter follows with two sections of political chronology over Haiti, focusing on the key developments in U.S. foreign policy in 1993 and 1994. The final section addresses the congressional/executive interaction immediately prior to the September 19, 1994

deployment, and the reactions from the House and Senate. In all periods there was heated debate between the President and Congress over legal and political issues, with factions existing within both Congressional parties. The American experience in Somalia also had some impact on the domestic political dynamics at work. In the end, the executive branch asserted and exercised Presidential powers over the wishes of most Republicans and many in Clinton's own party. This case study provides further evidence of the importance of U.N. resolutions for U.S. foreign policy in the Clinton administration, and Congress's inability, despite the presence of some highly motivated members, to play an integral role in the decision to deploy troops abroad.

Moreover, this chapter addresses the global political and legal efforts made by the Clinton administration to gain support for its troop deployment to Haiti. Caribbean and South American (regional) diplomatic politics figured much more prominently in U.S. foreign policy and in the political arguments presented by the Clinton administration to justify its actions. In short, broad claims of Presidential powers and Congressional indecision define war powers' politics in the case of Haiti.

#### Haitian/U.S. Background

Unlike the U.S.'s limited past in Somalia, the United States has long been engaged in Haitian domestic politics. Under

the leadership of revolutionary Toussaint L'Ouverture, Haiti gained its independence from France in 1804 (Lauren, 1988:24). During its first century of independence, the country was characterized as a state dominated by corrupt politics, deep divisions in wealth and general instability, all of which continued into the 20th century (Weinstein and Segal, 1992: 22 Bellegarde-Smith, 1990: 45-48). With the U.S. victory in the Spanish-American War and with President Theodore Roosevelt's amended version of the Monroe Doctrine, or the "Roosevelt Corollary," interest in American hegemony in Latin America grew considerably. Based in part on a fear of German intervention into Haiti, Haiti's poor economic condition, the government's "slaughter" of 167 people on July 27, 1915, and a U.S. willingness to assert its power in the region, Woodrow Wilson deployed 350 U.S. troops to the country in 1915 (Nicholls, 1979: 146; Weinstein and Segal, 1992: 28; Pratt, 1965: 232).<sup>76</sup> The U.S occupation lasted until 1934, when it left behind a conservative President, Stenio Vincent (Bellegarde-Smith, 1990: 86).

Following the American withdrawal, Haiti experienced a series of leaders who tried to maintain power through attempts to alter Haiti's constitutional one term presidency (Weinstein and Segal, 1992: 37-38). From 1934 to 1956, government repression was also widespread, and grassroots

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<sup>76</sup> A number of scholars also point to the imbedded racism and paternalism inherent in the U.S. view of Haitian people, e.g. Hunt, 1987: 100; Lauren, 1988: 24.

democratic groups were repressed (Bellegarde-Smith, 1990: 86). In 1957, Francois Duvalier rose to dominate Haitian politics. Duvalier, or "Papa Doc," gained power initially through elections that many historians believe were tainted with corruption (Bellegarde-Smith, 1990: 95).<sup>77</sup> Despite the corruption, Duvalier's election was the beginning of a dynasty that lasted until 1986.

During his tenure as President, Duvalier used a combination of dictatorial leadership, supported by his own secret police force, voodoo and popular appeal to solidify his position as ruler of Haiti. During his tenure as President, U.S. support for the regime varied. Prior to his election, the United States gave most of its backing to another candidate, Louis Dejoie, although Duvalier apparently had some American support (Weinstein and Segal, 1992: 38).<sup>78</sup> Thus, U.S. relations with Duvalier were not necessarily good from the start. There are some reports that the Kennedy administration may have tried to assassinate Duvalier, but the evidence for these claims is limited at best. However, U.S./Haitian relations did improve during the Nixon administration, culminating with John D. Rockefeller's visit in 1969 (Nicholls, 1979: 221).

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<sup>77</sup> Lawless (1992: 59) challenges the notion that the elections were filled with corruption, but does note some "minor irregularities." however, the evidence seems to be much stronger that serious corruption occurred.

<sup>78</sup> Historians have made different conclusions on the amount of U.S. support for Duvalier. See Bellegarde-Smith (1990: 95).

With his father's help, Jean Claude Duvalier, or "Baby Doc," took over as Haiti's new ruler upon his father's death in 1971. As a 19 year old President, Duvalier was welcomed by the United States. American support continued through the years despite Duvalier's many human rights violations and his wife's lavish spending (Bellegarde-Smith, 1990: 105). By 1986 Haitian domestic opposition had grown so much that, at the U.S.'s urging, Duvalier exiled the country in a U.S. Air Force plane (Acevedo, 1993: 126).

After Duvalier's rapid departure from Haitian politics, a series of rulers occupied Haiti's presidency, all of whom came to power through either a coup d'etat or corrupt elections (Acevedo, 1993: 126). However, in an election judged to be free and fair by outside observers, Haiti elected Father Jean Bertrand Aristide to become its President in 1990 in its first ever free election. Aristide had gained prominence from the pulpit by preaching his own version of liberation theology against past Haitian rulers and had developed a strong following among the poor (Weinstein and Segal, 1992: 45). However, democracy lasted for only eight months due to a coup orchestrated by Aristide's top military officials. On September 30, 1991, Aristide was thrown out of office and exiled to the United States. Haiti's new leader was Lt. General Raoul Cedras, an individual who had been selected by Aristide to lead Haiti's military forces (Perusse, 1995: 17).

After Aristide's overthrow, the United States strongly condemned the newly installed Cedras regime. President George Bush stated that although he was reluctant to use military force to help return Aristide to power, he fully supported a restoration of democracy to the island (Bush, October 4, 1991). Bush also supported the economic sanctions that were imposed on Haiti by the Organization of American States (OAS), and Bush froze the American financial assets of a number of Haitians involved in the coup.<sup>79</sup> Members of Congress were also livid about the coup. Both the House and Senate, with strong bipartisan support, passed resolutions calling for the restoration of democracy in Haiti.<sup>80</sup> Moreover, the coup resulted in a flood of Haitians seeking refuge in the United States, primarily in Florida.

As Cedras remained in power and violated human rights, Haitians continued to try and gain entry into the United States. The Bush administration's Haitian refugee policy was essentially a systematic rejection of these people.

Democratic Presidential Candidate Bill Clinton, later in 1992 took issue with this approach, stating:

If I were President, in the absence of clear and compelling evidence that they were not political refugees, I would give

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<sup>79</sup> See Bernard Aronson's (Assistant Secretary for inter-American Affairs, Department of State) comments at House Hearing before the Subcommittee on Western Hemisphere Affairs (C.F.A., October 31, 1991).

<sup>80</sup> Congressional Record (October 2, 1991: H 7250 and S 14201). See also the Hearing before the House Subcommittee on Western Hemisphere Affairs (C.F.A., October 31, 1991).



them temporary asylum here until we restored the elected government of Haiti. I would turn up the heat and try to restore the elected Government of Haiti and meanwhile let the refugees stay here (quoted in Friedman, 1992a: A1).

Soon after Clinton criticized Bush's refugee policy, some members of Congress called for a policy change.<sup>81</sup> Many Democrats actively pushed the administration to pay more attention to human rights, and brought together a number of human rights activists and religious organizations to place pressure on the administration for policy change (C.F.A., June 11 & 17, 1992). Thus, by the summer of 1992 Bush faced pressure from Bill Clinton, an increasingly vocal Congress and many human rights organizations to give greater respect to Haitian refugees' human rights. Despite the criticism, Bush remained steadfast in his policy throughout the rest of his Presidency.

#### President Clinton and Haiti

Upon becoming President-elect, Bill Clinton made one of his many policy reversals that were to come in the first two years of his administration. One week prior to his inauguration, Clinton reversed himself and his campaign promise by deciding to continue with Bush's refugee policy. The decision was strongly criticized by human rights

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<sup>81</sup> Some members had also called for Bush to be more assertive earlier in the year by pushing for a wider economic embargo via U.N. Security Council Resolution. Some members felt that the OAS sanctions had little impact on Haiti (C.F.A., February 19, 1992). See especially Robert Torricelli's (D-Mich.) and Ron Dellums (D-Ca.) comments (p. 34, 87).

organizations (French, 1993a: A2), and later became the target of fierce congressional criticism.

Throughout the first few months of the Clinton presidency, there was no policy change and congressional/executive relations remained calm over Haiti. Clinton did express his support for a restoration of Haitian democracy through a joint appearance with Aristide, but overall there were no new developments from the executive branch in the first few months (Clinton, March 22, 1993). Part of this political tranquility was due to the diplomatic success at Governor's Island in the summer of 1993. At Governor's Island, former Argentinean Foreign Minister Dante Caputo, acting for the United Nations, helped negotiate an agreement between Cedras and Aristide. The agreement had ten points with the key decision being Cedras's departure and Aristide's return to Haiti as President on October 30, 1993.

Although the Clinton administration expressed support for the agreement (Christopher, July 26, 1993), the President did not end his pressure on the Cedras regime once the agreement was made. On July 16, the Clinton administration voted in the affirmative for United Nations Security Council Resolution 841, which placed a global oil and arms embargo on Haiti (S/Res/841, 1993). He stated that the United States was leading the effort to place further sanctions on Haiti, and that he felt at some point a multinational peacekeeping force would have to be deployed

there in order to restore democracy (Clinton, June 17, 1993).

As the year progressed, uncertainty remained over whether or not Cedras would keep his promises. The U.S. also seemed closer to using force in Haiti on September 23, 1993 when it voted in favor of Security Council Resolution 867. The resolution allowed for 1,200 policy and military advisors to enter Haiti under the terms of the Governor's Island agreement in order to ensure a smooth leadership transition (S/Res/867, 1993).

After Resolution 867 passed, the Clinton administration was deeply embarrassed on October 11, when the USS Harlan County, loaded with 250 U.S. military engineers, linguists and medical specialists, was turned away from a Port-au-Prince dock by chanting and seemingly hostile Haitian gangs. The gangs also had the support of Haiti's police forces, who did little to prevent the chaos on the dock (Perusse, 1995: 55). These developments came at a time when Congress's debate over American casualties in Somalia and the proper role of Congress in deploying troops abroad had reached a climax. In response to the mood of the times, Clinton's embarrassment with the USS Harlan, and Security Council Resolution 867, Senator Bob Dole (R-Kan.) and Senator Don Nickles (R-Ok.) introduced legislation to prevent U.S. participation in international operations, (Congressional Record, October 18, 1993: S 13565).

Clinton reacted firmly to these proposals by writing that he was "fundamentally opposed to amendments which improperly limit my constitutional duties as Commander-in-Chief" (Clinton, October 18, 1993). Although Clinton did indicate that he remained committed to consultation with Congress, nowhere in his letter did he indicate the proper role of Congress, or give any legitimacy to the claim that Congress has a legal decision-making role in troop deployments. The letter implied that Clinton felt that the President could essentially act autonomously, since the President's mandate as the commander in chief was so broad.

Two days later Clinton demonstrated his broadly perceived powers as commander in chief when he deployed six U.S. naval ships to Haiti to enforce the new U.N. embargo. Although the U.N. Security Council had not given him the authority to deploy the ships, the Clinton administration argued that authority had been gained by previous Security Council decisions to enforce the embargo. In a hearing before the House Committee on Foreign Affairs, Under Secretary for Policy at the Department of Defense, Frank Wisner stated that the ships are "enforcing a U.N. Security Council decision" (C.F.A., October 20, 1993: 7). Furthermore, at the same committee hearing on the issue of using force in Haiti, Wisner said: "the President has not ruled out options, but that option is not one we are

considering" (C.F.A., October 20, 1993: 8). Thus, in these instances Clinton acted without either the United Nations' or Congress's approval in his naval deployment. A Clinton administration official also stated that they had not ruled out force, implicitly stating that they had the authority to do so. Clearly, the President interpreted his powers as commander in chief quite broadly.

On October 21, 1993, while enforcing the Security Council embargo, the United States fired two warning shots across the bow of a Turkish merchant ship. The ship was later searched and turned back to sea after the Turks would not allow some aspects of its cargo to be examined (French, 1993b: A10). On the same day, Senator Jesse Helms (R-N.C.) introduced an amendment calling for prior congressional approval before making any appropriations to military operations in Haiti. The vote failed by a vote of 19-81, but demonstrated some Republicans' willingness to challenge the President's military powers regarding Haiti (CQW, 1993: 2925). Instead, the Senate voted in favor of Majority Leader George Mitchell's (D-Mn.) resolution, which stated that Congress must approve of the use of force in Haiti unless vital national security risks were at stake. The resolution was adopted 98-2 (CQW, 1993: 2925). While the vote theoretically said that the Senate wanted a role in the deployment process, in reality the language of the

resolution still gave great leeway to the President on the decision to use force.

After the naval deployment, Republican opposition to a Haitian intervention and the United Nations continued. For example, in the House, John Doolittle (R-Ca.) said,

I have been very concerned about our mission in Haiti, this U.N. mission which the President approved and was trying to move troops into in support of that. Thank goodness, under pressure for the Congress, he reversed his decision (Congressional Record, October 27, 1993: H 8542).

On a larger scale, many members of Congress were unwilling to push for intervention at this time and were very critical of President Clinton's foreign policy. Reflective of many Republicans' mood at the time, House Minority Whip Newt Gingrich (R-Ga.) stated

I think it is very important for this President to understand that he has a deep, serious foreign policy crisis and that he needs to thoroughly overhaul his defense and foreign policy establishment and he needs to find a way to calmly and consistently lead Americans in a way that we can support and follow (Congressional Record, November 9, 1993: H 9050).

Part of the reason for Congress's lack of support for a Haitian intervention came from conservative Senators' questions on Aristide's mental stability. Senator Jesse Helms (R-N.C.), who helped wage an all-out effort against Clinton's Haitian policy, cited Central Intelligence Agency reports that raised questions about Aristide's psychological balance. Helms referred to Aristide as a "psychopath" (quoted in Bowens, 1993a: 3061) and called Aristide a "demonstratable killer" (quoted in Shanks, 1993: 8).

Throughout his years in Congress, Helms has been viewed by many as a racist, which also may in part explain his opposition to an invasion in behalf of black Haitians.<sup>82</sup> Democrats contested some Republicans' summaries of the classified committee briefings on Aristide, but this new concern about Aristide did provide another element to the intervention debate, and more support for Republicans who were opposed to an intervention (Bowens, 1993a: 3061).

Some members of Congress pushed vehemently for a Haitian intervention, notably, Major Owens (D-N.Y.), Chair of the Congressional Black Caucus on Haiti. For example, he had these comments inserted into the Congressional Record: "Without further waiting the United States must do whatever is necessary to support the majority of the people of Haiti. Democracy in Haiti is definitely a vital interest of the United States" (Congressional Record, November 16, 1993: E 2892). However, Owens' comments did not reflect Congress's majority, and with Clinton's tenuous foreign policy relationship with Congress, the Chief Executive remained unwilling to risk a political and legal battle with Congress over a major military deployment to Haiti.

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<sup>82</sup> For more on those who lend support to the notion that Helms is racist, see Bates (1995) and Hosenball (1994). Moreover, strong evidence is found in Stewart (1996: 8), who maintains that Helms served as Chairman to the editorial board of the International Freedom Foundation--an organization that was the "chief apologist" for the white ruling party in South Africa and was opposed to Nelson Mandela's African National Congress.

Throughout the rest of 1993, Clinton remained on a tightrope with Congress over foreign policy, and after Congress's reaction to Somalia and the Naval deployment to Haiti, no more military actions were taken. Clinton did keep open the option of using force in Haiti, (Clinton, November 7, 1993), but it seemed after the Somalia fiasco, the use of force in the Caribbean was not high on the President's priority list (Christopher, November 22, 1993).

In sum, in 1993 a number of conclusions can be made about the congressional/executive interplay over Haiti. Like House Republicans did in the summer of 1993 with Clinton's Somalia policy, Senate Republicans under the leadership of Bob Dole and Don Nickles demonstrated a guarded level of assertiveness by introducing legislation to check Clinton's use of force abroad. However, the Republicans backed off these proposals, but certainly showed some interest in reigning in their commander in chief. In the aftermath of the Somalian tragedy, Senate Democrats also remained unwilling to limit their President's military powers, and only could muster a symbolic vote against Clinton with George Mitchell's resolution. In short, the Senate was willing to say that it wanted a role, but when it came to limiting the President, i.e. in Jesse Helms' Resolution, it shied away from any required decision-making role in advance with Haiti.



Clinton also considered the Dole/Nickles' resolution a violation of his powers as commander-in-chief. Like his predecessor George Bush, Clinton continued to assert broad powers as commander in chief, with few, if any, legal powers granted to Congress.

From an international legal perspective, there had not been a U.N. resolution allowing Clinton to deploy the six U.S. Navy ships, and the deployment came ten days prior to the October 30 deadline for Cedras to leave. Clinton had acted unilaterally from the domestic standpoint, but also in a multilateral sense. However, these legal issues were not addressed by Congress. Most of the debate centered around national security issues and how Haiti did or did not fit these national objectives.

#### 1994: Guarded Congressional Assertiveness and Deference

##### **The President**

In 1994 the Clinton administration continued to assert that the option to use force remained a possibility in Haiti (Clinton, May 3, 1994). At that same time, Clinton was attuned to the political dynamics that occurred during the Somalia debate and the corresponding reactions that came from both the House and Senate. During 1994, the Clinton administration reacted to these developments by reformulating its policy on U.N. peace operations that was more "congressional friendly." After all the congressional

pressure that existed over Somalia, and with the growing concern about the possible use of force in Haiti, the Clinton's effort resulted in Presidential Decision Directive 25, entitled "The Clinton Administration's Policy on Reforming Multilateral Peace Operations" (B.I.O.A., May 1994). In this paper, the President provided a set of guidelines for future participation in multilateral military enforcement operations. The paper made several major points that reflected many of the concerns raised previously with the U.N. operation in Somalia.

P.D.D. 25 reiterated that the United States would never allow foreign command of U.S. troops, that it would only participate in missions in which there is a strong likelihood of success, that U.S. expenditures on peace operations would decrease, and that the United States would push for reforms at the United Nations. About Congress's role, P.D.D. 25 recognized its importance in American foreign policy making. A summary of the decision stated:

Traditionally, the executive branch has not solicited the involvement of Congress or the American people on matters related to U.N. peacekeeping. This lack of communication is not desirable in an era when peace operations have become more numerous, complex and expensive. The Clinton administration is committed to working with Congress to improve and regularize communication and consultation on these important issues (B.I.O.A., May, 1994: 14).

More specifically, the paper stated that the President would continue to consult on a bipartisan basis with Congressional leaders, continue with monthly staff briefings, keep Congress informed of all U.N. activities, and would support

the repeal of the War Powers Resolution in favor of "some sort" of required consultative mechanism (p. 14-15, See also D.S.D., May 1, 1995). On paper, Clinton could not have gone much farther in recognizing the political importance of Congress in U.N. operations. However, what is not written is perhaps more interesting, that is, P.D.D. 25 granted and recognized no legal authority to Congress. Although the President reached out to Congress in a political way, in a legal manner little changed, in that the President implicitly asserted autonomy in U.S. foreign policy when dealing with multilateral military operations. In reality, the paper resulted in no fundamental shifts in the relationship between Congress and the President.<sup>83</sup>

Throughout the rest of 1994, the United States continued to place pressure on Haiti through its support of U.N. Security Council Resolutions on the Cedras regime. The Clinton administration approved of U.N. Security Council Resolution 905, which reiterated the United States' support for implementing the Governor's Island agreement (S/Res/905, 1994). Security Council Resolutions 917 and 933, which the United States approved, placed further economic sanctions on the Haitian government and called for the implementation of the Governor's Island agreement (S/Res/917, 1994; S/Res/933, 1994).

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<sup>83</sup> Clinton had reached out to Congress in April by notifying Congress that Naval forces were still deployed off Haiti's coast (Clinton, April 20, 1994).

The key U.N. Security Council decision came with Resolution 940. Made under Chapter VII of the U.N. Charter, the resolution authorized member-states to use "all necessary means" in disposing of the Haitian dictatorship (S/Res/940, 1994). Thus, through this resolution broad authority had been given to U.N. member-states, including the United States. However, Congress did not automatically accept U.N. authorization(s) as constitutional, and a number of efforts were made in 1994, especially from Congressional Republicans, to restrain the commander in chief.

#### *The House*

In 1994, the level of attention placed on Haiti grew dramatically. The year also began with some concern about the United States' relationship with the United Nations and the lack of "consultation" with Congress,<sup>84</sup> but these issues manifested more clearly in the Senate (see below). As the year progressed, most members of Congress remained hesitant to support a deployment to Haiti. Other members, notably the Congressional Black Caucus and some members of the Florida delegation, pushed Clinton to help restore

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<sup>84</sup> See the Congressional Record (January 26, 1994: E 35). Henry Hyde (R-Ill.) introduced the Peace Powers Act in the House with Benjamin Gilman (R-N.Y.) as a cosponsor. However, the bill's primary author was Senator Bob Dole (R-Kan.), who introduced the Act on the same day in the Senate (see below).

Aristide to power.<sup>85</sup> During the 103rd Congress, the Black Caucus had grown to become a particularly strong political faction. With 39 members in the House, and with a powerful and articulate leader, Kweisi Mfume (D-Maryland), the Caucus represented an important coalition of votes that the President would need for his future domestic legislation (Holmes, 1994: 10).

By mid-spring, congressional pressure for a changed refugee policy rose considerably. A House Foreign Affairs subcommittee had held hearings on the humanitarian aspects of the economic sanctions on Haiti, in which a number of members were critical of Clinton's policy (C.F.A., February 9, 1994). In a more emotional display of concern and protest, on April 21, Joseph Kennedy (D-Mass.) and five other members of the Congress Black Caucus were arrested for civil disobedience in protest against Clinton's policy (Greenhouse, 1994: A1).<sup>86</sup> Activist Randall Robinson, who had lobbied extensively against U.S. policy toward South Africa over apartheid, also began a fast that some observers feel brought considerable attention to the refugees' cause

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<sup>85</sup> See for example Lincoln Diaz-Balart's (D-Fl.) statements regarding Haiti (Congressional Record, August 3, 1994: H 6739). Other members of the Florida delegation were opposed to an intervention. See the Congressional Record (July 19, 1994: H 5870).

<sup>86</sup> Other members of Congress who were arrested included some higher profile Black Caucus leaders: Ron Dellums (D-Ca.), Kweisi Mfume (D-Md.), Major Owens (D-N.Y.), Donald Payne (D-N.J.) and Barbara-Rose Collins (D-Mich.). See Spiegel (1994).

(Mandelbaum, 1996; Merida, 1994). The day before Robinson's fast began, he stated about the Clinton administration's policy: "The policy is cruel, patently discriminatory and...profoundly racist" (quoted in Elsner, 1994). Moreover, during this time, Aristide was using the millions of dollars of frozen assets from the Haitian dictators to lobby for his cause.<sup>87</sup>

Clinton reacted to these pressures by slightly amending his refugee policy by instituting a more liberal examination process for the refugees. However, even this policy change came under Republican criticism. For example, Doug Bereuter (R-Ne.) stated that Clinton's foreign policy seemed to be guided by Randall Robinson, and that a coherent and consistent policy was needed (CQW, 1994: 1402). In May 1994, Tom Lantos (D-Ca.), subcommittee Chairman of International Security, International Organization and Human Rights had also called for a recall of all the relevant documents and correspondence between the President and Congress over the War Powers Resolution, demonstrating that at least one Democratic leader remained very interested in the constitutional balance of power and the use of force (C.F.A.. May, 1994)

Besides these pressures, a number of other important political and potential legal challenges were presented to

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<sup>87</sup> By the time of the U.S. deployment to Haiti, Aristide spent approximately \$90 million in public relations efforts and legal costs in promoting his cause (Malone, 1994: A15).

the President over Haiti during the summer of 1994 in the House. Porter Goss (R-Fl.) led a successful effort in the Committee of the Whole to require Clinton to gain Congressional approval prior to a Haitian intervention on May 24, 1994, which also included a measure to create new refugee safe havens (Congressional Record, May 24, 1994: H 3933). The vote passed 223-201 (CQW, 1994: 1420). However, once the resolution made it to the House Floor on June 9, it was rejected in a 195-226 vote. Approximately 25 House Democrats switched their votes at the final vote (CQA, 1994: 68-H).<sup>88</sup> Although, the President avoided a major embarrassment on the Haiti vote, it was largely overshadowed by a direct vote against Clinton's arms embargo policy in Bosnia (see chapter 5). Clinton's narrow escape from defeat with Haiti meant little in the broader analysis of Clinton's foreign policy vis-a-vis Congress.

Thus, for the first half of 1994, House Democrats prevented any major legislation from limiting the President's powers and kept the House out of the deployment decision from a statutory standpoint. Although Democrats

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<sup>88</sup> Goss, who spoke on the House floor on the day of the vote, noted that there had been a "tortuous two weeks of arm twisting" after the vote in the Committee of the Whole (Congressional Record, June 9, 1994: H 4227), and likely would argue that the Democratic leadership forced House rank and file members to switch their votes. On the same day, Bill Richardson (D-N.M.) noted that since the Clinton administration had changed its refugee policy, the Goss amendment was no longer needed (Congressional Record, June 9, 1994: H 4278), which may also help to explain why the Democrats defeated Goss's amendment.

were concerned about the use of force, they did not want to substantially limit their President and the option of using force. However, Democrats were not comfortable with granting the President autonomy in foreign and military affairs. In a House Foreign Affairs Committee meeting, Robert Torricelli (D-N.J.) questioned former member of Congress and newly appointed Special Advisor to the President on Haiti, William Gray, on the relevance of the War Powers Resolution to Haiti. Torricelli asked Gray if the President intended to seek legal authorization, "before or simultaneously with the military invasion of Haiti..." Gray responded that the administration would remain in consultation with Congress, but would not indicate whether or not a vote prior to the use of force would be sought. Gray and Torricelli also could not come to an agreement on whether or not the War Powers Resolution required Congressional approval in every instance in which force was used (C.F.A., June 8, 1994: 41-42). Thus, a higher ranking House Democrat was not afraid to challenge his President verbally, but avoided doing so in a legal manner.

The Democrats' repeal of the earlier Goss amendment did not discourage Republicans from waging other challenges to the President. In July, Benjamin Gilman (R-N.Y.) sent a letter to the President with 102 House signatures, asking the President to seek prior congressional approval before troops were introduced to Haiti (Congressional Record,



August 2, 1994: H 6552). Moreover, in a July Foreign Affairs subcommittee meeting, Robert Torricelli reiterated his position on the War Powers Resolution. Although he did not push Clinton administration representatives on the issue, he stated:

I trust that the Clinton Administration consistent with the precedents established by the Bush Administration, in the Persian Gulf war and consistent with the legislative responsibilities as envisioned in the War Powers Act, will come before this Congress before proceeding militarily. It is in any case our intention to have it do so consistently with our responsibilities (C.F.A., July 27, 1994: 2).

Thus, not only did Subcommittee Chair, Robert Torricelli, feel that the President had a duty to come Congress before an intervention occurred, but also that Congress had a responsibility to vote on the decision prior to a deployment. In short, the Republicans were not alone in their beliefs as shown through Torricelli's comments. Many in the House positioned themselves against presidential autonomy and felt that Congress had a clear role in military deployments.

Similar sentiments were expressed in August, soon after U.N. Security Council Resolution 940 that included the "all necessary means" language. In response to Resolution 940, Clinton's support of it, and the seemingly inevitable deployment of American troops, Congressman David Skaggs (D-Co.) stated:

Unfortunately, there is no indication that the President will seek authorization from the only body this Constitution vested with the power to grant it: The U.S. Congress.

When President Bush made the case for expelling Saddam Hussein from Kuwait, the Congress gave its approval. The debate in Congress, and the decision by Congress, strengthened the President's hand. Following the Constitution worked as the Founding Fathers intended.

We now have a similar constitutional challenge, and I urge my colleagues to join in affirming our constitutional duty. It would be a bad bargain indeed if we damaged democracy in America while attempting to restore it in Haiti (Congressional Record, August 3, 1994: H 6703).

About Security Council Resolution 940, Jim Cooper (D-Tn.) also said: "It is not enough to get U.N. approval as the administration has done. U.N. approval has nothing to do with U.S. approval. American interests must come first (Congressional Record, August 12, 1994: H 8044). Moreover, Representatives David Skaggs (D-Co.), Sherwood Boehlert (R-N.Y.) and Dick Durbin (D-Il.) introduced legislation calling for prior approval for the use of force in Haiti in light of U.N. Security Council Resolution 940 (Congressional Record, August 12, 1994: H 8044). Congressman Porter Goss (R-Fl.) also remained steadfast in his opposition to a "Haitian Invasion."<sup>89</sup> Thus, by the end of August many members on both sides of the partisan aisle had strong concerns about the constitutionality of a U.S. deployment to Haiti. The environment existed for a constitutional show-down.

### **The Senate**

Throughout 1994, the Senate had also kept attuned to Clinton's Haitian policy and made its own separate efforts

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<sup>89</sup> See Congressional Record (August 12, 1994: H 6545).

to influence U.S. foreign policy. However, the year began with Bob Dole's introduction of the "Peace Powers Act." Dole, with 12 Republican Senators as cosponsors, sought a more prominent role for Congress in United Nations military operations. His resolution would have required that no U.S. troops serve under foreign command, an outside inspector to examine U.N. spending and a reduction in U.S. contributions to peacekeeping. On the floor, Dole also stated "no U.S. forces for a U.N. army without congressional approval," and that Congress should be "in the loop" (Congressional Record, January 26, 1994: S 180). Prima facie it appeared that the Republicans were willing to play an assertive role during Clinton's second year.

Regarding Haiti, the Senate took up the issue of the human rights situation for the Haitian refugees. At a Foreign Relations Committee meeting, in his prepared statement, Tom Harkin (D-Iowa) noted that Clinton's policy has been "embarrassing and shameful" (C.F.R., March 8, 1994: 9). At the committee hearing, a number of humanitarian and human rights groups, including the Catholic Relief Services, Oxfam America and Human Rights Watch all criticized the Clinton administration's policy on the refugee situation (C.F.R., March 8, 1994).

Individual members also kept pressure on the administration. A more direct pressure for policy change came in April, when six Senators introduced the Haitian

Restoration of Democracy Act, underscoring the Senate's persistent concern with the issue.<sup>90</sup> In the Act, the Senators called for stiffer sanctions against the Haitian regime, more international support for the sanction's efforts, and for a new refugee policy (Congressional Record, April 19, 1994: S 4466). However, the Act did not state specific support for the use of force in Haiti and consequently completely avoided the issue.

Like the House, many Senators were also uncomfortable with deploying U.S. troops to Haiti. The Senate's key vote on the issue came on August 3, 1994, when Bob Dole (R-Kan.) and Judd Gregg (R-N.H.) successfully introduced a resolution stating that U.N. Security Council resolution 940 would not be enough authorization for the President to deploy troops to Haiti under the War Powers Resolution. The vote was especially impressive in that it was unanimous, indicating the bipartisan feeling that U.N. approval was not enough legal merit for a deployment (CQA: 1994: 43-S).

In the floor discussion leading up to the vote, a concern about the United Nations and Congress's Constitutional role resurfaced. For example, Senator Judd Gregg (R-N.H.):

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<sup>90</sup> These Democrats included Christopher Dodd (D-Conn.), Tom Harkin (D-Iowa), Russ Feingold (D-Wi.), John Kerry (D-Mass.), Carol Moseley Braun (D-Ill.), and Paul Wellstone (D-Minn.). See CQA (1994: 449-450) and the Congressional Record (April 19, 1994: S 4466). Paul Simon (D-Ill.) also added his name to the list of co-sponsors (Congressional Record, April 21, 1994: S 4751).

You cannot have the United States agreeing with the U.N. Security Council which essentially calls for war without having the Congress of the United States alter the process and the people of the United States involved in the process...

I do not wish to be perceived as bashing the United Nations here, because I am not trying to...But the fact is that does not mean that the role of the United Nations can be allowed to usurp, to exceed, or to in any way replace the role of the Congress of the United States and the role of the people of the United States in relationship to the Presidency and the President's authority to declare war (Congressional Record, August 1, 1994: S 10176).

On the same day, Senator Dole (R-Kan.) added "International support is fine, but it is no substitute for the support of Congress and the American people" (Congressional Record, August 1, 1994: S 10180). The passage of this resolution was a rare statement from this chamber, especially from a Democratic majority that had earlier been content to criticize President Clinton's deployment under UNOSOM I, but remained unwilling and deferential to the freshman President prior to the American casualties on Somalia. The Senate had taken a clear stand on U.N. resolutions and their legal relevance to the War Powers Resolution.

However, the Senate's assertiveness did not go so far in that it would require an automatic role in force deployment decisions. In a resolution offered by Arlen Specter (R-Penn.), the President was asked to gain approval from the Senate prior to the use of force in Haiti (Congressional Record, August 5, 1994: S 10662). Senator John McCain (R-Ariz.) offered an amendment to kill Specter's resolution, which passed the Senate 63-31. In this vote, 13

Republicans sided with 50 Democrats. On the Democratic side, only Paul Wellstone (D-Minn.) and Congressional war powers advocate Russ Feingold (D-Wi.) voted against McCain's amendment (CQW, August 13, 1994: 2377).

About the vote, McCain noted his fear that Specter's resolution would unconstitutionally extend Congress's role vis-a-vis the commander in chief. Although McCain was opposed to a Haitian intervention, he still leaned toward the side of a strong commander in chief. He stated:

My problem with the Specter amendment is that it exceeds the authority of the Congress of the United States.

...it is impossible for legislative bodies to anticipate world events. That is why our Founding Fathers put those responsibilities-the lives of American service men and women-within the authority of the President of the United States of America (Congressional Record, August 5, 1994: S 10665).

Thus, McCain challenged many within his own party in the short term and gave considerable leeway to the President.

In sum, as in Desert Storm, the Senate was clear in its belief that United Nations Security Council Resolution alone did not give the President authority to use force abroad. However, the Senate remained unwilling to force the President to gain prior approval before force was used in Haiti. Like the House, the Senate expressed strong concern about a Haitian deployment, but resistance from the Democratic majority and some Republican "presidential power" advocates prevented a vote on prior Senate authorization.

### The Latin American Dynamic

While problems brewed in the House and Senate, Clinton also faced some international pressure about U.N. Security Resolution 940. With the United States' long history of intervention into South and Central America, and these states' traditional apprehension and resistance to U.S. intervention in the region (Forsythe, 1991: 93), the Clinton administration went to some lengths to gain the approval of states south of the U.S. border. Quiet diplomatic efforts with members of the Organization of American States had been in progress during the year (Greenhouse, 1994a: A10), but became much more public after Resolution 940.

When the Security Council voted on Resolution 940, two Latin American countries sat on the Council: Argentina and Brazil. Argentina approved of the resolution, while Brazil abstained from the vote, and later expressed its opposition to the resolution. On the day of the vote, Mexico also expressed its opposition (R.N.S., July 31, 1994),<sup>91</sup> and Cuba soon echoed the Mexican position (R.N.S., August 1, 1994).

The United States reacted by trying to lobby these states to switch their vote. Clinton's first major effort came at a Caribbean Community (CARICOM) meeting, in which member-states unanimously adopted a resolution in support of

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<sup>91</sup> See Simpson (1994) for more of Brazil's position.

Resolution 940 and the "all necessary means" provision.

Clinton State Department official Strobe Talbott noted at a State Department Press Conference: "But the point I want to stress here is that CARICOM, as a group, unanimously endorsed the action..." (Talbott, September 5, 1994).

Clinton officials were also present at a RIO group meeting held in Brazil. Assistant Secretary of State for Inter-American Affairs, Alexander Watson, met with the foreign ministers from 14 states to lobby for troop contributions for a multinational peacekeeping force to Haiti. Watson was unsuccessful in his efforts. Argentina also announced that while its position on Resolution 940 had not changed, it was unwilling to send troops to Haiti in support of the resolution (Dickson, September 8, 1994).

Clinton's international lobbying may have been in part due to Congressional pressure and well-informed members who raised the concerns of Latin American states on the chamber floor. About Brazil's abstention and the Latin American apprehensions, Senator Judd Gregg (R-N.H.) noted his concern at the international level for Resolution 940:

It is important to note that one of the nations who abstained from the vote was Brazil. I think it is equally important to note that some of our sister nations expressed extreme concern and outright opposition to the concept (Congressional Record, August 1, 1994: S 10178).

Gregg recognized that Latin American opposition could be an important political stumbling block for U.S. policy, and as



someone who opposed an invasion, it made smart political sense for him to raise these issues.

Clinton's diplomatic efforts demonstrated that the administration clearly placed some importance on Latin American approval prior to a Haitian invasion and went to some lengths to gain these states' political endorsement(s). These efforts, however, did not change the Clinton administration's position regarding its deployment authority. After the CARICOM endorsement and prior to the RIO Group meeting, Strobe Talbott stated:

U.N. Security Council Resolution 940 authorizes the international community--the member states of the United Nations--to use all necessary means to bring about the departure of the dictators from Haiti and to establish the conditions that allow the restoration of democracy in Haiti (Talbott, September 5, 1994).

From a legal perspective according to Talbott's analysis, since the Security Council had endorsed the Resolution, no further multilateral or other legal approval was necessary. However, the administration did not discount the political importance of Latin American support for a potential deployment and thus made serious lobbying efforts to gain further multilateral support and possibly to help appease well informed Members of Congress.

#### The Deployment and Congressional Reaction

As President Clinton's movement toward a Haitian military intervention proceeded in September, heated debates occurred in Congress over the issue of proper consultation between

the President and Congress. Anti-U.N. rhetoric resurfaced also, and figured prominently into the debate. These sentiments were most visible in the House. In a House Foreign Affairs Committee meeting on September 13, 1994, Dana Rohrabacher (R-Ca.) stated:

I would like to ask, why is it that the President of the United States has sought guidance and permission from the United Nations, and from many, many other countries around the world in terms of policy for Haiti, but we haven't bothered to have any type of consultation ourselves, either a hearing or any type of a vote on whether or the U.S. government should be invading Haiti? (C.F.A., September 13, 1994: 2).

At the same hearing, Congressmen Henry Hyde (R-Ill.) and Donald Manzullo (R-Ill.) made similar remarks about the perceived lack of consultation (4). Democrats took exception to these claims. Southern Florida Democrat and Black Caucus member, Alcee Hastings, argued that the consultation requirement had been met, and that it was time to support the President (6-7).<sup>92</sup> On September 17, at a Black Caucus dinner, Kweisi Mfume (D-Md.) also stated: "The caucus is clearly near the zenith of its ability to effectuate change" (quoted in Grove and Gribble, 1994: D1). However, Hastings and the Black Caucus were in a small minority of members of Congress who vocally supported an intervention. Otherwise, the vast majority in Congress were unwilling to advocate publicly the use of force (Doherty, 1994: 2578).

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<sup>92</sup> In October, in the aftermath of the American deployment, William Gray did meet with over 200 members of Congress to consult with them on the developments in Haiti (Jackson, 1994: 17).

Even though opposition to a Haitian intervention was intense, the Democrats' willingness to support their President also remained strong. Efforts were made in both the House and the Senate to vote again on a Haitian deployment. In both cases, the Democratic leadership used legislative stalling tactics to prevent a vote from taking place (Doherty, 1994: 2582).<sup>93</sup> Despite these efforts, an invasion seemed imminent. On September 15, President Clinton, in a nationally televised address, stated: "The message of the United States to the Haitian dictators is clear: Your time is up. Leave now, or we will force you from power" (Clinton, 1994: 2605). Some hope for a diplomatic solution occurred on the following day when, in a last minute diplomatic effort Clinton dispatched Senator Sam Nunn (D-Ga.), former Joints Chiefs of Staff Colin Powell, and former President Jimmy Carter to Haiti to encourage and negotiate the Cedras' regime transfer. During the late hour negotiations with Cedras, Clinton deployed 61 American warplanes in preparation for an air assault on Haiti (Jehl, 1994: A1). Soon after, Cedras gave in. On the following day, Clinton sent to Haiti 1,500 U.S. troops, which rose to

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<sup>93</sup> In the House, Congressman Chris Cox (R-Ca.) and Gene Taylor (D-Miss.) attempted to introduce legislation calling for Congress's approval of an intervention, and in the Senate, John McCain (R-Ariz.) tried to bring to the Senate floor a resolution stating that American soldiers' lives should not be risked trying to restore Aristide to power (Doherty, 1994: 2582). For McCain's efforts, who also introduced his amendment with Bob Dole's (R-Kan.) support see the Congressional Record (September 14, 1994).

approximately 10,000 in the following weeks in Operation Uphold Democracy.

In a letter to Congress, Clinton justified the invasion with a reference to U.N. Security Council Resolution 940, and through his constitutional powers as Commander in Chief, Chief Executive and under his authority to conduct foreign relations (Clinton, September 21, 1994).

Although public opinion prior to the deployment was against an invasion, in polls taken after the deployment the President benefitted from his actions. One poll indicated that Clinton's overall job approval rating increased 9 percentage points in the aftermath of the invasion. In regards to Haiti specifically, public opinion jumped 22 points for his handling of the situation (Kagay, 1994: A16).

After the deployment, both the House and the Senate passed resolutions supporting the President and the American troops in Haiti. However, neither chamber gave explicit approval for the deployment and also called for an American withdrawal as soon as possible. Both resolutions were sufficiently vague to gain widespread support.<sup>94</sup>

In the two weeks following the innocuous resolutions immediately after the deployment, both Congressional chambers revisited the Haitian issue. In the Senate, there was widespread criticism of the deployment. Many Senators of

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<sup>94</sup> See CQW (1994: 2730, 2732) for the resolutions and the House and Senate's vote.

both parties expressed their disapproval of the President's actions, including Jesse Helms (R-N.C.), Joseph Lieberman (D-Conn.), Max Baucus (D-Mont.), Hank Brown (R-Co.), Robert Byrd (D-W.V.), and Dirk Kempthorne (R-Id.).<sup>95</sup>

Some Senators deferred to the President using a logic reminiscent of Congress during the Vietnam War. For example, Sam Nunn (D-Ga.) stated "I wasn't in favor of invading Haiti...But now that we're there I think if we're going to avoid having American interests over the world challenged...then we better make up our mind we've got to make this one succeed" (quoted in Doherty, 1994a: 2703).

Senator Bob Smith (R-N.H.):

I adamantly oppose the occupation of Haiti by American troops, and I oppose the policy of sending them there...But they are there--they are there, and they need our unequivocal support. We do not need another situation as we had in Vietnam (Congressional Record, October 6, 1994: S 14309).

And Senator Slade Gorton (R-Wash.):

I have expressed my strong objections to our mission in Haiti on a number of occasions, but those objections in no way reflect upon my admiration for the troops we have there today. They have done a remarkable job and they certainly have my full support and I believe that of all the Members of this body (Congressional Record, October 6, 1994: S 14319).

Thus, members who vigorously opposed an intervention caved in to the President's policy by giving their "support to the troops," and were content to merely criticize the President.

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<sup>95</sup> See Congressional Record (October 6, 1994, beginning at S 14302).

Constitutional issues were not central to their analysis in the deployment's aftermath.

One of the most critical members of the Senate was Russ Feingold (D-Wi.). Just as he had done previously with the Somalia tragedy, Feingold pushed for the application of the War Powers Act and a congressional role in deployment decisions. In short, he noted that Congress never approved of the mission and that U.N. authorization alone was not legal authorization to take action. He stated:

...it has been a sloppy and ineffective approach to war powers.

I believe that Congress should have a central role in authorizing the Haiti mission because it is a large military operation where our troops may face imminent hostility (Congressional Record, October 6, 1994: S14313).

In his Senate floor statements, Feingold also printed correspondence with the Senate from the Clinton administration official Walter Dellinger.<sup>96</sup> In Dellinger's letter, the Clinton administration provided the most legally articulate defense of its position throughout the entire deployment. Dellinger used three arguments to support the administration's claim that Uphold Democracy was an entirely legal deployment. In his first argument, Dellinger wrote that in 1993, Congress only required that the President report to Congress about any planned deployment in Haiti, with which the President fully complied. Dellinger's reference is to Senator George Mitchell's (D-Ma.)

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<sup>96</sup> Dellinger served at the Office of Legal Counsel, U.S. Department of Justice.

resolution, which eventually became law.<sup>97</sup> Second, he asserted that the deployment satisfied the War Powers Resolution. Since the WPR does allow unilateral deployments in national emergencies, and since the President did notify Congress about the deployment, the WPR was not violated. Finally, he claimed that Haiti did not fit within the definition of a "war." Because the nature, scope and duration of the deployment were felt not to be synonymous with a "war," Congressional approval was not needed (Congressional Record, October 6, 1994: S 14313). Interestingly, Dellinger made no reference to United Nations authorization, which Clinton noted in his national address. He also did not recall Dole's successful Resolution stating that U.N. approval was not legal authorization for a deployment. Nor did he address the issue of consultation required under the WPR.

As expected, these arguments did not satisfy Feingold, but as one of the few legally oriented members of the Senate, and as a Senator who only had been elected in 1992, he did not have the necessary stature to affect the debate. His arguments had little impact on the wider Senate discourse.

As a body, the Senate passed a resolution on the deployment on October 6, 1994. The resolution required nothing more than written reports and updates on the

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<sup>97</sup> Public Law No. 103-139, 107 Stat. 1418, 1474 (1993).

deployment, and included the statement that the President should have come to the Congress for approval prior to the deployment. The resolution passed 91-8 (CQW, 1994: 2929). Thus, the Senate took no position on the actual legality of the deployment and placed no time limits upon the operation itself. The President was really given free reign in Haiti as long as reports were filed with Congress.

In the other chamber, the challenges made to the President were much more serious in nature. Both House Republicans and some Democrats tried to limit the deployment, but were unsuccessful in both cases. Like in the House opposition to the President's policy in Somalia, most vocal among Republicans was again Benjamin Gilman (R-N.Y.). Gilman introduced a resolution calling for the "immediate withdrawal of American troops" from Haiti. In the most partisan House vote witnessed on Haiti, the resolution failed 205-225, with only one Republican, Jay Dickey (R-Ark.) voting against Gilman (CQW, 1994: 2924). Robert Torricelli (D-N.J.) also introduced a resolution to limit the deployment to March 1, 1995, but this resolution garnered little support, in a 27-398 vote (CQW, 1994: 2926).

In the end, like the Senate, the House voted for reports on the mission, but placed no time limits on the deployment and avoided any legal judgments on the deployment (CQW, 1994: 2926). It also stated that Congress should have been asked for prior approval.



Not all members were pleased with this decision. Lee Hamilton (D-Ind.), who voted in favor of the resolution stated:

We have not approved of the policy, we have not disapproved of the policy. We simply default. We do not take a position on the gravest decision a government can take--whether to commit forces abroad (quoted in Doherty, 1994b: 2895).

In the opposing view from Republican members of the House Foreign Affairs Committee, Gilman and other Republicans condemned the resolution. He stated that it provided "retroactive authorization" for the deployment, and "unlike the Persian Gulf, the President acted without Congressional approval" (Hamilton, October 3, 1994: 10).<sup>98</sup>

Racial tensions also rose in the House over the deployment. Members of the Congressional Black Caucus made accusations of racism against those members who opposed the intervention. For example, Charles Rangel (D-N.Y) noted that the invasion of Grenada had been conducted to save "20 white students" (quoted in Doherty, 1994b: 2896), implying that since Haitians were black, the same standard in American foreign policy was not being upheld. Gary Ackerman (D-N.Y.) also noted in a committee hearing:

I think it is also interesting to note how partisan we can suddenly get when it comes to protecting democracy for a bunch of people whose skins are slightly darker and colored in comparison to how nonpartisan we can be when it comes to preserving democracy for a bunch of other people whose skins

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<sup>98</sup> See also Gilman's comments (C.F.A. September 28, 1994: 53).

are lighter and provide us with gasoline and our oil (C.F.A., September 28, 1994: 77).

Thus, the political tone in the House was anything but congenial, both from partisan and racial perspectives.

In sum, the House voted with the Senate in approving of a policy that only required the President to submit reports to Congress on the mission's progress. The Democratic House leadership avoided bringing substantive legal/constitutional issues to the floor, and thus let the President take credit or blame for the mission's outcome.

### Conclusions

Similar to Somalia, "Operation Uphold Democracy" in Haiti provides another example of Presidential autonomy in American foreign policy making, and to a large extent, Congressional deference.

From a legal perspective, President Clinton used a number of arguments to justify his deployment. Clinton primarily relied upon United Nations Security Council Resolution 940, and the argument that Haitian instability represented a threat to U.S. national security interests. He also declared wide powers as commander in chief. Many of Clinton's arguments echo claims made earlier during the Somalia experience, and are reminiscent of President Bush's assertions in the Persian Gulf War. Department of Justice Legal Counsel, Walter Dellinger, also demonstrated how fungible the definition of "war" can be, and why--according

to him--Congressional approval was not required in the Haitian case. Thus, by September 1994, Clinton had conducted bombing raids on Iraq, and had made two major troop deployments without Congressional approval. In all cases he argued that legislative mandates were not required in advance, all of which indicate the President's perceived legal status of near complete independence as America's Commander in Chief. The President also apparently felt it was legal to deploy 61 warplanes prior to Cedras' agreement to leave Haiti. Whether Clinton's intent was simply a show of power politics or to actually use force is not clear. However, his vigorous display of military might certainly demonstrated that Clinton felt he had the authority to do so.

As in Somalia, Clinton did keep Congress informed of his actions in Haiti, and sent letters to Congress within the requirements specified under the WPR. Yet, he never granted nor accepted any claim of Congressional decision making power in any of these situations. For Clinton, Congress was like Bush's "old goat" reference before Operation Desert Storm that need not be consulted prior to a deployment.

However, the President's politics in this case were somewhat different than in Somalia. Regional diplomacy mattered much more to the Clinton administration. Gaining the approval of CARICOM member states in Latin America was

clearly something that the Clinton administration sought. Although Clinton failed to gain Brazil's support for a Haitian intervention, lobbying efforts were made in its behalf. Moreover, even though the legal status of CARICOM's approval for the Haitian deployment is dubious, Clinton officials worked to acquire it. Regional diplomacy was likely a perceived means of rebutting some domestic criticism and to avoid a backlash from Latin American states once an invasion occurred.

For Congress, the Haitian case, in general terms, represents another case of deference to Presidential powers. What was different in Haiti is that the Senate unanimously stated that U.N. approval was not adequate authority alone to deploy troops to Haiti. However, the Senate was unwilling to go as far as requiring prior approval before a Haitian deployment occurred. Senator Dole's Peace Powers Act introduced new measures to check the President, but Dole did not vigorously pursue this legislation, and it is highly unlikely that Senate Democrats would have passed it. In the end, the Senate placed no limitations on the deployment and unanimously reserved any judgment on the actual deployment. A legislative body could not defer more than it did in this case.

For those Senators who were more legally oriented, such as Russ Feingold (D-Wi.), his efforts were not enough to shift the balance in the Senate. As a junior Senator,

Feingold did not have the necessary legislative stature to make a substantial impact upon the debate. Many Senators expressed constitutional concerns over the deployment, but the majority was not willing to precisely specify Congress's role before or after the deployment.

In the House, deference explains much of the legal dynamics of the congressional/executive interplay. The majority in Congress did not want to place limitations on the President, even though most members were clearly opposed to an intervention. Members were content to criticize the President on an individual basis, but would not restrict his powers as commander in chief. Robert Torricelli's (D-N.J.) efforts to place a March 1, 1995 deadline on the operation also failed miserably.

In taking on the President, House members were also faced with a well organized and vocal Congressional Black Caucus, which may have served as a deterrent for some members to more actively challenge the President. Some conservative columnists maintained that the Black Caucus, spurred by Randall Robinson's efforts, was directing Clinton's policy with Haiti (Will, 1994; Cohen, 1994). One can only speculate about the true impact of the Caucus on the Clinton administration, but Clinton certainly had important legislative incentives to keep this group as a dedicated political ally. In the Caucus' passion for their cause, constitutional issues played no significant role.

Thus, in many respects, the Caucus acted constitutionally irresponsibly by granting the President unilateral powers to invade Haiti under Clinton's powers as commander in chief. Many liberal Democratic members went on record in favor of an intervention, but never raised concerns over the constitutional implications of Clinton's use of force. This behavior is different from the conduct of many liberal Democrats during the Bush and Reagan administrations and during the Vietnam era, who openly challenged Presidents on the authority to use of force abroad.

As in Somalia, the War Powers Act was again a legislative tool that had some saliency for members. Some members felt that the WPA did apply to Haiti and that a Congressional vote on the issue was required by the Constitution. However, these individuals were not able to convince the Democratic leadership or majority that a vote was essential.

From a partisan perspective, many other insights can be gained in this analysis. There are several examples of fairly strong partisanship. The Democratic House and Senate did work to protect their President. In the Senate, Majority Leader George Mitchell (D-Me.) did not allow another vote on Haiti during the deployment's September "build-up stage" despite some efforts made in the Chamber to do so. The House leadership also did not schedule any votes on Haiti prior to the buildup in September, 1994. On the other side of the

aisle, House Republicans, led by Benjamin Gilman (R-N.Y.), were nearly unanimous in their efforts to limit and restrict President Clinton's asserted powers. This level of partisanship was not present in the Senate. One reason for the House's more vigorous attack on the President may be in part due to the Senate's Republican Presidential aspirants. Senators Bob Dole (R-Kan.), Richard Lugar (R-Ind.), Arlen Specter (R-Penn.) and Phil Gramm (R-Tx.) all eventually ran for the Presidency, and may have not wanted to appear unpatriotic, or as partisan obstructionists to the President. With House Republicans applying pressure on the President, presidential aspirants may have seen little advantage to engaging in a "full court press" on Clinton since House Republicans were providing the necessary hurdle. Thus, presidential politics likely has some relevance in explaining the Senate Republicans' behavior.

However, as in Somalia partisanship cannot explain all of the interplay. Russ Feingold (D-Wi.) and Robert Torricelli (D-N.J.) were two of the President's strongest critics. Representative David Skaggs (D-Co.) also was very vocal in his opposition to the President and joined with Republicans in trying to prevent a Haitian deployment. In the Senate, John McCain (R-Ariz) also led the effort to repeal Arlen Specter's (R-Penn.) amendment requiring congressional approval before a U.S. deployment to Haiti. Thus, generalizations about partisanship must include these

notable examples of nonpartisan challenges and/or support for the President.

In sum, only the Senate took a clear stand as a body against the deployment. The Senate clearly stated that United Nations Security Council Resolutions did not give the President Constitutional authority to use force in Haiti. However, the Senate went no further than this resolution, and through its own unwillingness to define its legal authority prior to the use of force, consequently gave the President broad leeway as commander in chief. Congress could have taken a stand on a number of legal issues, but chose not to. Again, United Nations' Article 43 was not raised in the Congressional debates. Although Walter Dellinger's defense of Clinton's decision did not rely upon U.N. authorization, certainly Article 43 could have been raised since Clinton did cite the "commitments" made to the United Nations in his national address. There was some bickering over the level of congressional consultation as well. Under the WPR, the President is required to "consult" with Congress over the use of force. However, as in many past deployments since 1973, defining "consultation" was again contentious. Presidential Decision Directive 25 was another issue that Congress did not raise. Clinton went to great lengths to reach out to Congress in P.D.D. 25, yet in practice, allowed no specific legal role for the legislative body.



More generally, U.S. troops were deployed under Chapter VII of the U.N. Charter and were allowed to use "all means necessary" in ousting Cedras from Haiti. U.S. troops were deployed in a country that had witnessed considerable hostilities and presented some risk to American men and women. Dellinger's very fungible definition of "war" also could have raised concern from members of Congress. It appears in this case that as long as another state has not declared war on the United States, the President would be free to deploy troops in nearly any situation. Yet, these issues were not dealt with in any substantive fashion by Congress.

CARICOM's endorsement of the "all necessary means" clause also has dubious legal standing in international law. CARICOM was formed primarily to enhance the economic integration process that had already begun under the Caribbean Free Trade Association (CARIFTA), its precursor formed in 1967 (Will, 1996). Although CARICOM does support foreign policy coordination of its members, this coordination has centered around common export and tariff policies.<sup>99</sup> Thus, its endorsement of the Clinton administration and U.N. Security Council Resolution 940 may have been a political victory for the President, but has limited, if any, legal status.

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<sup>99</sup> See <http://www.tcol.co.uk:80/COMORG/CARICOM.htm> and <http://www.gov.nb.ca:80/ael/projspec/caricom.htm>.

Most members of Congress were content to criticize the President on "national security" issues, and as in Somalia, chose not to deal with legal and constitutional questions. This pattern of Congressional behavior was repeated in the U.S.'s participation in NATO air strikes in Bosnia, and was witnessed again prior to American deployment in Bosnia's Implementation Force (IFOR). The norm of deference was strong during the President's first two years as chief executive, and continued in the following two years, despite a more assertive and partisan 104th Congress. Chapter 5 deals with this new Congress and U.S. participation in NATO and IFOR in Bosnia.

CHAPTER 5  
BOSNIA: EXECUTIVE OMNIPOTENCE  
AND CONGRESSIONAL ACQUIESCENCE

Of all the case studies examined in this dissertation, Bosnia is perhaps the most interesting, and may be the most illuminating for future implications of the congressional/executive interplay over war powers. As demonstrated in chapters three and four, congressional behavior and executive arguments used in Somalia, Iraq, and Haiti were reminiscent of the post World War II norms. In most circumstances, the president asserts nearly unilateral constitutional powers as commander in chief, and Congress tends not to place legal limitations on the President's deployment of troops--unless the mission goes badly. In the case of Bosnia, a number of these norms were challenged, providing new insights on the American foreign policy making process.

In 1995, the 104th Congress--especially House Republicans--took their seats in Washington with a vigor for policy change. The new Republican majority in the House and Senate sought to revamp U.S. foreign policy, in particular the U.S. relationship with the United Nations and peacekeeping operations. With its newfound power, the Republican Congress exhibited an uncommon behavior, in that

the majority party appeared interested in, and genuinely committed to, playing a new role in U.S. foreign policy. Moreover, after the midterm elections, Clinton administration officials expressed some willingness to rework the constitutional war powers relationship with the 104th Congress. And prior to the American deployment in the NATO Implementation Force (IFOR), popular opinion was generally opposed to a large scale American deployment in Bosnia. Despite all of these developments and catalysts for change, in the end the congressional/executive interplay followed the post World War II norm. President Clinton deployed approximately 20,000 U.S. troops to Bosnia in light of strong congressional opposition to the operation and considerable public resistance, demonstrating that Presidential war powers are nearly omnipotent if the chief executive wishes to fully exercise them.

This chapter begins with a discussion of Yugoslavia's collapse into chaos and the ensuing policy reactions from the Bush Administration. Attention will be given to American foreign policy during the 103rd Congress and President Clinton's choices regarding Bosnia during his first two years in office. Most of the analysis focuses on the 104th Congress since it *prima facie* appeared different in kind (not degree) from Congresses in recent memory. U.S. military cooperation in the North Atlantic Treaty Organization (NATO) and congressional reaction to the NATO airstrikes will also

be examined. Much of the substantive interplay between Congress and President Clinton dealt with the United Nations arms embargo on Bosnia, in which Congress challenged the President's policy. With Clinton's deployment in IFOR and U.S. participation in NATO, important U.S. foreign policy making lessons can be gleaned from a close study of America's role in Bosnia.

#### Yugoslavia's Collapse and Bush's Reaction

Formed in World War I's aftermath under the aegis of Woodrow Wilson's fourteen principles, Yugoslavia was created in accordance with the principle of "self determination" by the allied victors (Woodward, 1995: 23).<sup>100</sup> The newly formed state of Yugoslavia existed previously as the Kingdoms of Montenegro and Serbia within the Austro-Hungarian empire. The logic used by Wilson and the Great Powers in justifying its creation was that a new Yugoslavia would serve as a buffer between Austria and Serbia--the initiators of World War I--and would produce regional stability in an area inhabited by a number of different ethnic and religious groups (Woodward, 1995: 23). In their newly established government, the Serbs, one of the ethnic factions within the country, came to dominate the key leadership positions in Yugoslavia during the 1920s and 1930s. Serb dominance did

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<sup>100</sup> Wilson's conception of self determination was limited, in that only white Europeans were included among those who were allowed to create their own states (Lauren, 1988: 112).

not sit well with many other Yugoslavians, in particular, the Croats. During these first two decades of the country's existence, there was also discontent over the lack of autonomy within the various provinces of Yugoslavia (Woodward, 1995: 23). Many non-Serbs viewed their country's government as a foreign-imposed political arrangement, and detested the Serbs' control. Consequently, in 1941, the Croats moved to secede from the state, which resulted in substantial suffering and casualties among both Serbs and Croats (Castellan, 1992: 419; Steinberg, 1993: 30). Soon afterwards, all of the major groups in Yugoslavia were engulfed in World War II as the various factions paired with either the Nazis or the Allies.

After World War II and until 1980, Yugoslavia existed as a relatively peaceful state. Much of this stability can be attributed to the communist leadership of Josip Broz Tito. During World War II, Tito worked to solidify his power with the state's communist party, and after the war rose to become President. As leader, Tito allowed a mild form of national self determination among the differing populations and provinces. Power was shared between the national and local governments and people were encouraged to identify with the historical and ethnic traditions of their own homelands. The Constitution under Tito also called for multi-ethnic tolerance, and the government actively promoted "equality" among the various groups (Woodward, 1995: 31-39,

Glenny, 1993: 13). In many ways, Tito's model of socialism coupled with his rhetoric and policies of political tolerance managed to transcend the differences between the various Yugoslav factions, and to keep the nation at peace.

Internationally, Tito practiced a policy of neutrality during the cold war. Tito was not included, nor did he aspire an alliance with Stalin's communist bloc, but neither was he a puppet for the American government. As an activist for the less developed world, Tito was instrumental in leading the Nonaligned Movement at the United Nations against the western economic powers, and he boldly asserted his nation's independence from both superpowers. However, in its first years after World War II, Tito's Yugoslavia benefitted greatly from financial assistance from the International Monetary Fund, the World Bank, the United States, and from other private banks abroad (Woodward, 1995: 25).

Upon Tito's death in 1980, the country underwent significant governmental decentralization. Under a new constitution, the chief executive position rotated among six Yugoslav republics, in which each republic temporarily occupied the Presidency.<sup>101</sup> In this new system, however, hostilities fomented when Serbian, Slobodan Milosevic, rose to the presidency. During his campaign to lead Serbia,

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<sup>101</sup> These republics included Bosnia-Herzegovina, Croatia, Macedonia, Montenegro, Serbia and Slovenia.

Milosevic called for a greater Serbian nationalism and argued that Serbs were being discriminated against in southern Yugoslavia, Kosovo by its Albanian majority. His campaign rhetoric helped him gain strong support among many Serbs who felt that they had historically been discriminated against, and drew upon a Serbian population that felt politically under-represented (Zimmermann, 1996: 92; Glenny, 1993: 32).

Tensions may have also stemmed from the relative economic differences between the republics and the historical religious and ethnic divisions that had deep roots (Lampe, 1996; Moodie, 1995; Steinberg, 1993: 31). Slovenia and Croatia were more advanced financially than the rest of Yugoslavia, and cross-national ties between the provinces had not solidified during Tito's reign (Gagnon, 1995: 188).

As President, Milosevic attempted to centralize his power while trying to gain formal control of each republic. In doing so, he reached out to fellow communists and Serbs throughout Yugoslavia (Gagnon, 1995: 189; Woodward, 1995: 91). However, instead of gaining the increased support he sought, his efforts resulted in heightened fears among other Yugoslavian republics and led to greater nationalism elsewhere in the country among other groups (Gagnon, 1995: 189; Glenny, 1993: 32). Due largely to Milosevic's Serb nationalism, two early steps towards secession were



initiated in 1990 in Croatia and Slovenia. Milosevic reacted by stating that no republic would be allowed to secede under his rule. In 1991, domestic anxiety intensified when Serbia and Montenegro blocked the appointment of Stipe Mesic--a Croat, who was due to take over the rotating presidency. Armed combat started when Croatia and Slovenia declared their independence on June 25, 1991. The atrocities commenced when Milosevic sent troops to both provinces. Combat further magnified in 1992 when Bosnia-Herzegovina followed Slovenia and Croatia in declaring independence (Steinberg, 1993: 32).

From the conflict's earliest days, the Serbs practiced a policy of "ethnic cleansing." The Serbs targeted for destruction the cultural, religious and historical traditions of its non-Serb neighbors, particularly in Bosnia. The Serbs bombed mosques, centuries' old historic buildings and libraries in the first months of the conflict in Bosnia (Sells, 1996). Reports of mass killings, systematic rapes, tortures, and other gross violations of internationally recognized human rights began to emerge, of which the vast majority were conducted by the Serbs (Stokes, 1997; Sells, 1996; H.R.W./H., 1995: 5; Kim, 1993: 58).

As the conflict escalated, U.S. President George Bush's attention was focused firmly on Operation Desert Storm. Yugoslavia was not high on the American foreign policy agenda in late 1990 and early 1991. Prior to the conflict's

outbreak in 1991, U.S. Secretary of State James Baker met individually with each province leader in an effort to prevent war. In his memoirs Baker writes that he expressed adamantly the United States' opposition to violence in the region, but notes that Milosevic and Milan Kucan, Slovenia's leader, had little interest in diplomatic initiatives for peace or negotiation (Baker, 1995: 481).<sup>102</sup>

Once the violence began, Bush and other high ranking U.S. administration officials spoke out against the inhumanity and violence, but from the start it was clear that the administration viewed Yugoslavia's problems as regional or "European," and not in the U.S.'s vital national interests (Baker, 1995: 636). An assertive or vigorous use of force, or the deployment of ground troops was simply not an option from the start. The administration was operating under the Chairman of the Joint Chiefs of Staff, Colin Powell's principles on the use of force--otherwise known as the "Powell Doctrine." Powell maintained that force should only be employed to protect America's vital interests and would only be used "overwhelmingly" once initiated.<sup>103</sup> Since Bosnia did not fit these criteria, Baker notes that within the administration, both Powell and Secretary of

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<sup>102</sup> See also Zimmermann (1996: 133).

<sup>103</sup> Powell also served as a top military assistant to Secretary of Defense Caspar Weinberger during the Reagan administration. Weinberger developed a strict set of criteria for the use of force, which Powell also supported as a necessary guideline. See Cohen (1995).

Defense Dick Cheney resisted the use of force. Their unwillingness to use force was in part supported by the Central Intelligence Agency's estimates that massive bloodshed would occur in the region in the civil war, and thus by implication, U.S. troops would be at great risk if placed on the ground (Zimmermann, 1996: 219; Baker, 1995: 631).<sup>104</sup>

One of Bush's first policy decisions came on September 25, 1991, when the United States voted in favor of United Nations Security Council Resolution 713, which enacted an arms embargo on Yugoslavia (S/Res/713, 1991). In theory, the embargo was intended to keep the conflict to a minimum. The United States also supported United Nations Security Council Resolution 757, 1992, which called for an economic embargo on Serbia and Montenegro. Moreover, the administration supported U.N. Security Council Resolution 770, 1992, which authorized the use of "all necessary means" to ensure the safe delivery of humanitarian aid (Clinton, May 14, 1993).<sup>105</sup> However, throughout the war the Bush administration remained steadfast in its belief that the conflict was "European" in nature, and that the United States was not the "world's policeman" (Baker, 1995: 651).

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<sup>104</sup> See also Harden (1991: A10) on CIA predictions in early 1991 that a civil war could erupt in the former Yugoslavia, and would entail many casualties.

<sup>105</sup> See also Bush (August 11, 1992) for more on Bush's policy regarding humanitarian assistance.

Bush later backed the development of the United Nations Protection Force (UNPROFOR), which aided principally in the delivery of humanitarian supplies to Bosnia-Herzegovnia, but resisted any U.S. deployment.<sup>106</sup>

In the early stages of the conflict in Bosnia, reaction from Congress was mixed, although no one was advocating the deployment of ground troops (Kim, 1992: 56). Most of the reaction came from the Senate in 1992, when a bipartisan group began to call for a change in the Bush administration's policies. On April 29, 1992, the Senate called for Serbia to halt its aggression in Bosnia and to withdraw its forces from Bosnia, Croatia and Kosovo. In the following month, on May 21, the Senate voted unanimously to place economic sanctions on Serbia and Montenegro, which had little effect on the Serbs. The Bosnian-Serbs responded by bombing Sarajevo, killing 20 and wounding 100 Bosnian Muslims who were waiting in line for bread (Goshko, 1992a: A25).<sup>107</sup> After the attack, a number of Senators, including Bob Dole (R-Kan.), Richard Lugar (R-Ind.), Claiborne Pell (D-R.I.) and Joe Biden (D-Del.) made waves in the Senate for a limited use of force against the Serbs. Their efforts resulted in the Senate's approval of a measure that

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<sup>106</sup> See Claesson and Findlay (1994) for more on UNPROFOR in its initial stages. See also Security Council Resolutions 743 and 749 for more on UNPROFOR.

<sup>107</sup> The Bosnian-Serbs also held 5,000 Bosnian civilians hostage after an attack on Sarajevo in mid-May, 1992. See Williams (1992: A21).

encouraged the United Nations Security Council to consider the use of force (Kim, 1993: 66-67).

In August, 1992, the Senate stepped up the pressure on the Bush administration by expressing its support for armed assistance if necessary in the delivery of humanitarian aid to Bosnia. This decision came after the Senate Foreign Relations Committee issued a report entitled "The Ethnic Cleansing of Bosnia-Herzegovina," which took a strongly critical view of the Serbs' conduct during the war. Near the end of the session, the Senate also gave the President the authority to lift the arms embargo on Bosnia and to supply the Bosnian military with up to \$50 million in military assistance. While these resolutions all received strong support, there remained considerable opposition in the Senate to any U.S. armed intervention (Kim, 1993: 56).

Although the House was quieter than the Senate on Yugoslavia, it too challenged the Bush administration's policy. In doing so, it generally followed the Senate's lead by supporting the initiatives to become more actively engaged and to condemn the Serbs.<sup>108</sup> The House voted in favor of providing more financial assistance to refugees within the former Yugoslavia, which also was backed by the

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<sup>108</sup> The notable exception in the House was Helen Delich Bentley (R-Maryland), whose parents came from Serbia. She argued throughout 1992 that the media's and Congress's depiction of the Serbs had been unfair and unbalanced. Since 1989, she had also received over \$80,000 in campaign contributions from Serbian supporters (Doherty, 1992: 1715).

Senate (P.L. 102-391). The members of the House also approved of a measure to revoke most favored nation status with Yugoslavia and approved of the use of force if necessary in the delivery of humanitarian aid (Kim, 1993: 77-78). The Senate also supported the repeal of most favored nation status (P.L. 102-420). Thus, both Congressional chambers had grown restless with the Bush administration's approach throughout 1992. The opposition was bipartisan, yet neither chamber ever argued for the deployment of U.S. ground troops to the region.

Bush's "hands-off" Yugoslavian policy eventually became an issue in the 1992 presidential election. Democratic candidate, Bill Clinton, openly criticized the President on his resistance to engage U.S. troops in a combat role. Clinton's criticism specifically targetted the many human rights violations in Bosnia as an affront to traditional U.S. values. The Arkansas Governor claimed confidently that he "would begin with air power against the Serbs to try to restore the basic conditions of humanity" (quoted in Gellman, 1992b: A24). Clinton also hinted that a new arms embargo policy should be considered, which ran counter to Bush's current policy (Katz, 1992: 3A). Near the November elections, as the ethnic cleansing continued (Goshko, 1992: A15), Bush elevated his diplomatic pressure for peace by supporting the development of a no-fly zone over portions of Bosnia, which banned certain types of military flights in

these areas.<sup>109</sup> After his defeat in the 1992 elections, Bush increased the pressure by supporting a naval blockade to aid in the arms embargo (Prial, 1992: A1). Thus, by the end of 1992, the United States was slowly becoming engaged in the war-torn region, but most in Congress were hesitant about further involvement for U.S. troops.

**The Clinton Administration, the 103rd Congress and Bosnia**  
1993: The President

In 1993, human rights violations in Bosnia continued at striking levels with no apparent decline in sight. Widespread international condemnation was directed at the Serbs and their reported genocide policies (Ottaway, 1993: A31).<sup>110</sup> One of Bill Clinton's first statements as President on Bosnia was his pledge to provide up to 25,000 U.S. ground troops to a multilateral peacekeeping operation in Yugoslavia in the event that a comprehensive peace settlement was reached between the three warring parties (Clinton, February 10, 1993). Clinton reiterated this position in March at a Joint Press conference with French President Francois Mitterand (Clinton, March 9, 1993). However, throughout the rest of 1993, and despite Clinton's "tough" campaign rhetoric, his policy in general varied

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<sup>109</sup> See UN Security Council Resolution 781, 1992 and Security Council Resolution 786, 1992.

<sup>110</sup> See also N.Y.T. (1993: A22) for a discussion of the Serb-run camps that, according to this source, totaled 135.

little from President Bush's. The consistency in policy terms was perhaps best illustrated by Secretary of State Warren Christopher, who during his Senate confirmation hearings referred to the problem in Bosnia as a "European situation" (Christopher, January 13, 1993).

Throughout 1993, Clinton made a number of other substantial policy decisions for the former Yugoslavia. One of his earliest initiatives was the support of a War Crimes Tribunal for the former Yugoslavia. The Court was established in an effort to punish those who violated human rights, and also achieved the political objective of appearing that the Clinton administration was doing "something" on Bosnia.<sup>111</sup> In early February, Secretary of State Warren Christopher noted that "the President is seeking the urgent creation of a war crimes tribunal to bring justice and to deter further atrocities" (Christopher, February, 15, 1993). Along with the war crimes tribunal, Clinton also supported the development of U.N. safe enclaves in Security Council Resolution 824 (S/Res/824, 1993), and initiated airdrops of humanitarian aid to Bosnia (Clinton, February 25, 1993) .

Besides these attempts to develop a more "human rights friendly" policy, Clinton advocated a more vigorous use of

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<sup>111</sup> See Forsythe (1994) for the early progress and history of the International Tribunal for the Former Yugoslavia. Also see Assistant Secretary of State for Human Rights and Humanitarian Affairs, John Shattuck's comments (Shattuck, October 11, 1993).



force through three key U.N. Security Council decisions. The administration voted in favor of U.N. Security Council Resolution 816, allowing for the use of "all necessary measures" to police U.N. no-fly zones (S/Res/816, 1993). Clinton justified the policy by noting that there had been "blatant violations of the ban, and villages in Bosnia have been bombed" (Clinton, April 19, 1993). In his statement, it was implicit that Clinton felt he had adequate constitutional authority to use force in the former Yugoslavia without Congressional approval. He noted that he was using U.S. troops "pursuant to my constitutional authority as commander in chief," without recognizing the need for any prior authorization from Congress. Moreover, Security Council Resolution 836 authorized all U.N. member states to again use "all necessary measures" in protecting UNPROFOR forces (S/Res/836, 1993).<sup>112</sup>

The President also supported United Nations Security Council Resolution 842 by providing 300 U.S. troops to a U.N. peacekeeping force in Macedonia (S/Res/842, 1993).<sup>113</sup> Historically, Macedonia's territory encompasses a wider area than current Macedonia occupies, causing some concern in

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<sup>112</sup> See also Security Council Resolution 844, which reaffirmed the statements made under Resolution 836 (S/Res/844, 1993).

<sup>113</sup> The Macedonian peacekeeping force had been authorized in the U.N. Security Council resolution 795 on December 11, 1992. U.S. troops did not arrive until July, 1993 (Claesson and Findlay, 1994: 78). For more on Macedonian peacekeeping forces see President Clinton's 1994 letters' to Congress (Clinton, January 8, 1994 and Clinton, April 19, 1994).

Greece about a potentially expansionist Macedonia. Clinton's deployment was made in the hopes of checking the conflict's expansion into Greece and to provide a deterrent to Serbian expansionism to the south. Notably, the American troops stationed in Macedonia were deployed under Chapter VII of the U.N. Charter and were given the authority to use force in self defense if necessary (Sciolino, 1993: A1).<sup>114</sup> Again, Clinton clearly felt he had the authority to allow troops to use force in Macedonia if necessary, without Congressional approval.

Diplomatically, Clinton supported the efforts of former U.S. Secretary of State, Cyrus Vance, and former British Foreign Minister, Lord Owen, to bring peace to the region (Christopher, February 15, 1993).

### 1993: The Congress

Throughout 1993, most members of Congress did not encourage the President to take an active role in Bosnia. A few members, most notably Senator Joe Biden (D-Del.) actively lobbied for a more assertive approach to the conflict (CQA, 1993: 494). But most members agreed with the administration that Bosnia was a "European problem" and that the U.S. should stay out. Some in Congress did protest Clinton's peacekeeping deployment to Macedonia by making an analogy with the Vietnam War--that is, once troops were deployed to

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<sup>114</sup> See Iatrides (1995) for more on Macedonia.

the region, it would be difficult to extricate them.<sup>115</sup> However, the vast majority raised no objections to the mission, and rather were in favor of participating in this cautious manner in southern Europe.<sup>116</sup> Many members were also supportive of the humanitarian airdrops on Bosnia. Congressman Henry Hyde (R-Ill.) noted: "It's the minimum that we should be doing...and can be done with minimal risk" (quoted in CQA, 1993: 495). Other members supported the airdrops, but doubted their success in the long run.<sup>117</sup>

Much of the congressional action concerning Clinton's Bosnia policy came after the fiasco in Somalia. As shown in Chapter 3, Clinton's relationship with Congress during the fall of 1993 was tense. Both Democrats and Republicans made efforts to limit Clinton's authority as commander in chief in Somalia, which spilled over into a potential deployment to Bosnia. Many members began to voice their opposition to a European deployment. For example, Senator Alfonse D'Amato (R-N.Y.) referred to an American troop deployment to Bosnia as "absolute madness" (Congressional Record, October 6,

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<sup>115</sup> See Philip Crane (R-Ill.) in the Congressional Record (June 23, 1993: 1608) and Toby Roth (R-Wi.) in the Congressional Record (June 21, 1993: 3857).

<sup>116</sup> For example, see Senator Carl Levine (R-Mich.) in the Congressional Record (June 9, 1993: S 6998).

<sup>117</sup> For example, see the statements from Dave Durenberger R-Minn. (Congressional Record, March 4, 1993: S2444), John Warner R-Va. (Congressional Record, February 25, 1993: S2085) and Arlene Specter R-Penn. (Congressional Record, February 25, 1993: S2061).

1993: S 13102). Senator Lauch Faircloth (R-N.C.) also stated: "I do not know what course of action this Senate would take on sending troops to Bosnia, but I know what I would take. I would be 100 percent against it" (Congressional Record, October 7, 1993: S 13183). Moreover, Senator Dan Coats (R-Ind.) expressed his reservations on a number of occasions about a U.S. deployment to Yugoslavia.<sup>118</sup> As a body, the Senate supported a non-binding resolution introduced by Majority Leader George Mitchell (D-Mn.), which asked the President to gain prior congressional approval before sending troops to Bosnia. The House approved of this resolution in a voice vote in part of a Defense Appropriations bill that Clinton eventually signed into law (P.L. 103-139). With many in Congress fuming about the 18 U.S. casualties in Somalia on October 3, 1993, and with considerable opposition for an American deployment to Bosnia, it would have made little political sense for Clinton to enact any serious policy change and/or propose a deployment in the final months of 1993. The potential for Congress to raise ardent objections to a Bosnian peacekeeping force was high.

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<sup>118</sup> See Senator Dan Coats' (R-Ind.) comments in the Congressional Record (October 7, 1993: S 13214, and October 21, 1993: S 14042). Hearings were also held on September 29, 1993 in the House on "The Crisis in the Former Yugoslavia and the U.S. Role" but there were no major policy recommendations or calls for extreme caution from those members who attended the hearing (C.F.R., September 29, 1993).

What is most interesting in 1993 is what Congress did not do. Bill Clinton promised NATO allies that he would provide 25,000 troops to Bosnia if a peace was reached and at no time implied that Congressional consent was required. Clinton also authorized U.S. troops to use "all necessary means" under NATO in Bosnia's no-fly zones, and he deployed U.S. peacekeepers under Chapter VII of the U.N. Charter to Macedonia. Congress did have some lone voices of dissent regarding Macedonia, and did pass a non-binding resolution against a Bosnian deployment in the Senate. But, as a body Congress never tried to even slightly alter Clinton's current deployment policy or question his legal authority to make these decisions. There was some pressure provided by Congress after the American deaths in Somalia, yet it took an American tragedy in Africa before the Democrats took any serious legislative interest as a body on the issue. With Congress's guard up against any further peacekeeping deployments, Clinton surely recognized the thin political ice he was on. Yet when it came to the legal specifics, Congress deferred and/or avoided a discussion of these issues in NATO authorizations, the Macedonia deployment and Clinton's promise to send troops abroad in a peacekeeping and/or peace-enforcement effort.

#### 1994: The President

In 1994, human rights violations persisted as civilians were the target of many attacks in Bosnia. In a sharp policy change from 1993, and in a historical first, President Clinton decided to carry out the decisions made by the U.N. Security Council by using NATO to conduct air strikes against Bosnian-Serb targets. On five occasions, U.S. planes and soldiers in NATO conducted limited or "surgical" attacks against primarily Bosnian-Serb military outposts.<sup>119</sup> In the broader perspective, these bombings may have actually prolonged the war, and resulted in what one observer called a "confused" policy (Betts, 1994).<sup>120</sup> Nonetheless, these "pinprick" attacks remained the pillar of U.S. foreign policy until August, 1995.

Throughout the year, the Clinton administration outlined a number of constitutional justifications for the use of U.S. troops in NATO combat. Clinton sent four official notification letters and reports to Congress after U.S. troops participated in the NATO attacks. In a letter prior to the first attack, Clinton stated that NATO had accepted the request of the U.N. Secretary General to conduct air attacks upon all "unauthorized flights" in the no-fly zones, and that Clinton had made available 60 U.S.

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<sup>119</sup> Approximately 1600 violations of the no-fly zone had occurred as of February 28, 1994 (F.F., 1994: 135).

<sup>120</sup> See Betts (1994) and Ullman (1996) for more analysis of the Clinton administration's policies choices in 1994 and the disagreement among western allies.

aircraft for an attack mission. He wrote that he had taken all of these actions "pursuant to my constitutional authority to conduct U.S. foreign relations and as Commander in Chief" (Clinton, February 17, 1994). In this case, Clinton asserted his authority well in advance of NATO's first attack on February, 28, 1994. Congress was fully informed about what could potentially take place and under what constitutional grounds the action would be conducted.

In two other letters after NATO bombings, Clinton restated his position that he was fully authorized to participate in NATO combat operations. Both of Clinton's letters similarly argued that Clinton was fully justified in using U.S. troops in NATO based on his powers as Commander in Chief and under his responsibility to conduct the nation's foreign relations (Clinton, March 1, 1994; Clinton, April 12, 1994).

In public statements about the NATO bombings, the administration noted its concern for the U.N.'s success and for the people working in these operations. For example, after the second series of bombings on April 10 and 11, Madeleine Albright said about the strikes: "Basically it is, according to the U.N. resolution, to protect the UNPROFOR personnel" (quoted in F.F., 1994: 253). This theme was echoed in President Clinton's April 12 letter to Congress, in which he stressed that because of threats to Gorazde (a "safe enclave" established by the United Nations) and

because UNPROFOR and United Nations High Commission for Refugees' personnel were under grave danger from the Bosnian-Serbs, NATO was fully justified in conducting its bombing raids (Clinton, April 12, 1994). The September 22 NATO attack also came in the aftermath of an attack on French peacekeepers in UNPROFOR, which prompted loud calls from NATO allies for retaliation (Williams, 1994: A10).<sup>121</sup> Thus, outside of Clinton's letter noting his constitutional powers as commander in chief, his justification(s) for the attacks came from past NATO and United Nations Security Council Resolutions.

With nearly every use of force by the United States and NATO, air strikes occurred after the media gave extensive coverage to the tragedy in progress in Bosnia. The first use of force on February 28 occurred after Bosnian-Serbs attacked and killed 68 unarmed civilians in Sarajevo, which generated an avalanche of media attention. In the following year, the western media gave extensive coverage to the Serbs' attacks on the safe havens in Zepa and Srebrenica and the attacks on civilians in Sarajevo, which resulted in military responses from NATO. These policy decisions have led some observers to place great importance on the "CNN factor" as it relates to the Clinton administration's policy in Bosnia, arguing that media coverage drove policy

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<sup>121</sup> See Clinton's statements (May 3, 1994) that also emphasized the importance of U.S. allies to Clinton's foreign policy justifications.



(Weiss, 1996: 71; Neuman, 1996: 240). Although these insights on the media's role and impact on policy go beyond the scope of this study, these observations seem to have considerable relevance in explaining when force was used in Bosnia and likely provide some insight on the levels of congressional activism as well.<sup>122</sup>

Besides the NATO attacks in 1994, President Clinton increased the number of U.S. troops deployed to the Macedonia peacekeeping mission to approximately 500. Clinton similarly repeated his claim that in this deployment, he acted in a constitutional manner. He stated, "Our forces will remain fully prepared not only to fulfill their peacekeeping mission but to defend themselves if necessary" (Clinton, April 19, 1994). Thus, as in 1993, Clinton made wide assertions about his Presidential powers. These claims were supported at the international level through United Nations Security Council agreements made in 1993 that were exercised in 1994. Although some in Congress protested against U.S. military engagement in Bosnia, constitutionally the policy was not in question, even among congressional war powers advocates.

#### 1994: The Congress

1994 began with a challenge to President Clinton from Senate Minority Leader Bob Dole (R-Kan.). Senator Dole introduced

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<sup>122</sup> See also Doherty (1995d: 2283).

the Peace Powers Act, which sought to restore some power back to Congress regarding U.S. participation in U.N. deployments (Congressional Record, January 26, 1994: S 180).<sup>123</sup> His bill did not go far in the Senate, but demonstrated the concern a powerful Senate leader had with U.S. participation in U.N. operations, and his bill was somewhat of a precursor for what was to come with the Republican majority in 1995. As a leading Republican challenger for the Presidency and with the upcoming mid-term elections, Dole's efforts may have also been undertaken as an early attempt to politically position himself and his party against the "Clinton foreign policy," and to identify Republicans as stronger defenders of U.S. sovereignty and national security. After Somalia, Congress in general had become skeptical and wary of peacekeeping operations, and motions had been made to substantially cut back on U.S. funding for U.N. peacekeeping (CQA, 1994: 445). Dole supported these policy trends in Washington, which also made for good partisan politics during an election year.

Prior to the NATO bombings, the House conducted hearings on NATO's future. In the hearings, Under Secretary of Defense Walter B. Slocombe testified before Chairman Lee Hamilton (D-Ind.) that one of the conditions that would be met before placing U.S. troops on the ground was "the support of Congress" (C.F.A., February 2, 1994: 42).

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<sup>123</sup> See Chapter 4 for more on the 1994 Peace Powers Act.

However, Slocombe did not specify what "support" from Congress meant, and the issue was not pressed further by the committee.

Regarding the bombings, Congress had very little to say over the constitutionality of U.S. participation in NATO. More often than not, the debate was over national security interests and the lack of a clear U.S. strategy, rather than on questions of constitutional authority. In February, 1994, Senator Joe Biden (D-Del.) and Rep. Frank McCloskey (D-Ind.) strongly encouraged NATO attacks, implicitly granting the President the authority to do so.<sup>124</sup> More reactions came after NATO's bombings in April as some members responded to the airstrikes apprehensively. For example, Doug Bereuter (R-Ne.) stated: "I think the bombing will increase the resolve of the Bosnia Serbs...You're left with the question of what we do now, and a circumstance that could lead to escalating involvement" (quoted in Doherty, 1994c: 906). Congressman Joe Knollenberg (R-Mich.) also expressed his fears that Clinton was sacrificing U.S. foreign policy making to the United Nations and NATO (Congressional Record: April 21, 1994: H 2589). Senator John Warner (R-Va.) added that the civil conflict in Bosnia did not warrant American

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<sup>124</sup> For Biden's comments, see C.F.R./C.A.S. (February 1 and February 23, 1994). For more on McCloskey's position, see the Congressional Record (March 16, 1993: E 639; April 20, 1994: E 2539). McCloskey was recognized as one of the key leaders in the House calling for a much more active approach to solving the conflict, including the use of force (CQA, 1994: 447).

military intervention and implied that a U.S. response would not produce the long term peace the United States sought (Doherty, 1994d: 1010). Thus, members were unquestionably concerned that NATO airstrikes would not produce the desired peaceful end, and that U.S. national security interests were not at risk in Bosnia. However, even though Section 8 (a & b) of the War Powers Act prohibits the President from using force under treaty commitments without specific authorization from Congress, constitutional issues of this nature were not central to the opposition's appraisal of the situation.

Other members, and more importantly key leaders in Congress, strongly supported the airstrikes and encouraged the President to do more. Among those advocating NATO airstrikes was Senator Bob Dole (R-Kan.). Dole stated that he welcomed a more aggressive policy with NATO to protect the U.N. safe enclaves (Congressional Record, April 21, 1994: S 4607). House Majority Whip David Bonior (D-Mich.) also responded with some fervor for action:

It is time, Mr. Speaker, to use the full weight of United States and NATO warplanes in Bosnia. If the Bosnian Serbs continue to practice genocide and continue to dishonor the cease-fires, it is time to pound the Bosnian Serbs into submission. And if the Serbs continue to hit targets in Bosnia, then selected targets in Serbia itself ought to be hit in return (Congressional Record: April 19, 1994: H 2496).

Senator Diane Feinstein (D-Ca.) added her support for the President, stating: "NATO should step up air strikes against Serb artillery" (Congressional Record, April 20, 1994: S

4550). Moreover, Senator Orrin Hatch (R-UT), who called for an end to the U.N. arms embargo, reacted with very strong language against the Serbs:

...lifting the embargo should be coupled with a NATO air campaign against Serbian strategic targets, such as bridges, fuel and ammunition dumps, and other facilities. So far, the Serbs have had a free ride. It's time they paid a price for their aggression (Congressional Record, April 21, 1994: S 4602).

Thus, Clinton had bipartisan backing for the use of force, and support came from key congressional leaders in both the House and Senate. It is notable that in all the key statements supporting an escalation of the bombings, nowhere did a member note a constitutional concern about Congress's role in the use of force. Even Senator Joe Biden (D-Del.), who has been an advocate of war powers reform,<sup>125</sup> and in 1995 would introduce his "Use of Force Act" limiting the President's war powers, called for strong NATO actions,<sup>126</sup> but made no reference to war powers issues. By 1994's end, Congress took no vote on NATO's use of force.

Hearings had also been held in May, 1994 in the House and in the Senate over Presidential Decision Directive (P.D.D.) 25. Recall that in April of 1994, the Clinton administration announced the development of P.D.D. 25, which stated its new policy on U.S. participation in multilateral

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<sup>125</sup> Biden has written on war powers in various law journals. See Biden and Ritch (1988) and Biden (1987).

<sup>126</sup> For one example of Biden's strong sentiments on striking the Serbs with NATO air power see the Congressional Record (July 25, 1994: S 9641).

peacekeeping. In a summary of the document, and in further statements by Clinton administration officials, Congress was welcomed as a real player in U.S. foreign policy, even though no formal legal recognition of its status was given.<sup>127</sup> At two congressional hearings in May--after two NATO airstrikes--NATO's use of force in Bosnia was not at issue. Thus, during 1994 Congress did not consider NATO's use of force as constitutionally questionable, and deferred to Presidential judgement within this military alliance.

For most of 1994, the central issue for Congress was the United Nations arms embargo. Although this issue does not deal directly with the authority to use force abroad, it does merit some attention since Congress waged such an important battle against Clinton's policy. During the year, Congress increasingly aligned itself with the plight of the Bosnian Muslims and Croats, and argued that the United Nations arms embargo should be lifted in order to provide them with the weapons necessary for an adequate defense. In April, 1994 Senator Bob Dole's (R-Kan.) non-binding resolution passed in the Senate, urging the President to begin arming the Bosnian-Muslims (CQA, 1994: 448). On April 30, this non-binding resolution became law in the Foreign Relations Authorization Act, FY94-FY95 (PL 103-236). The Senate placed further pressure on Clinton in May when it voted to unilaterally end U.S. participation in the U.N.

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<sup>127</sup> See Chapter 4 for more on P.D.D. 25.

arms embargo. However, this vote was immediately followed by another vote that only asked the President to urge NATO allies and other U.N. member states to end the embargo. In the event that the President failed, he was only required to consult with Congress on the issue (CQA, 1994: 20-S). In this case, the Senate sent wildly mixed signals, and in effect, gave the President considerable leeway in his policy towards Bosnia.

The House also became more involved in U.S. policy toward Bosnia in the summer of 1994. On June 8, Frank McCloskey (D-Ind.) led a successful effort to require the President to unilaterally end U.S. participation in the U.N. embargo. McCloskey's bill passed, representing an important challenge to the President's policy (CQA, 1994: 68H). However, the Senate could only muster support for a non-binding resolution introduced by George Mitchell (D-Me.) to end U.S. participation in the arms embargo (CQA, 1994: 448). When the House and Senate came together in August to consider the legislation, the conference committee decided to only "encourage" the President to end U.S. participation in the embargo. The legislation, which eventually became law, did require the President to cease enforcement of the embargo if the United Nations had not lifted the embargo by November 15 and if the Serbs did not accept a peace agreement by the same date (P.L. 103-337).

Over the course of the year, Clinton responded to these challenges. In a letter to the Chairman of the Senate Armed Services Committee, Sam Nunn (D-Ga.) in August, the President argued that while he agreed in principle with lifting the arms embargo, he felt that cooperation with NATO allies was essential. Moreover, Clinton wrote that he did not seek to strain relations with Russia, which had historical ties with the Serbs, and wanted to continue his support for the Contact Group's diplomatic negotiations with the warring factions. The Contact Group, composed of the United States, Russia, France, Great Britain and Germany, was formed in 1994 and offered a peace plan to divide Bosnia into a federation (Moodie, 1995: 109). Throughout the year, the Clinton administration expressed its support for the Contact Group on a number of occasions and declared its willingness to work within this multilateral framework to create solutions to the conflict (Christopher, July 28, 1994; Clinton, September 28, 1994; Christopher, December 2, 1994).

In response to Congress's demands for ending the arms embargo, Clinton stated that if the Bosnian Serbs did not accept the Contact Group's demands by October 15, 1994, he would unilaterally "consider" ending U.S. enforcement and participation in the arms embargo. But the President offered no promises (Clinton, August 11, 1994).



In sum, throughout the year Clinton faced competing demands at home and abroad. France and Britain, both of whom had peacekeeping troops on Bosnian soil, resisted an escalation of NATO airstrikes and were opposed to lifting the arms embargo (CQA, 1994: 449). Besides its Serbian ties, Russia also was vocal in its opposition to rearming the Muslims (Friedman, 1994: A1; Stanley, 1994: 21). At the same time, the United States was also interested in expanding NATO, which Russia also opposed. Thus, Clinton faced a barrage of domestic and diplomatic pressures. In the end, he sided more often with his NATO allies rather than with Congressional demands over the arms embargo.

In October, 1994, at the signing of Public Law 103-337, (which called for an end to the arms embargo) Clinton added that he still remained open to many options with his arms embargo policy--despite the legislation passed by Congress. Although he signed the bill into law, in reality Clinton conceded nothing officially as the law related to U.S. foreign policy on Bosnia. He wrote that his policy remained "flexible," and de facto, unaltered by Congress (Clinton, October 5, 1994).

Throughout 1994, Clinton asserted the right to use force abroad without Congressional approval in a number of instances. From an international legal standpoint, his assertions were based principally on United Nations Security Council Resolutions and NATO's support. From the domestic

standpoint, Clinton used his broadly perceived powers as commander in chief and through his "authority to conduct foreign relations" as constitutional support for his military actions abroad. Under Secretary of Defense Walter Slocumbe promised House Foreign Affairs Chairman Lee Hamilton (D-Ind.) that the President would gain Congress's "support" before putting U.S. troops on the ground, but this statement was the only recognition from the executive branch that Congress had a role in the use of force abroad, and was a rather vague one at that. As demonstrated with the Haitian deployment, and throughout the 1994 NATO airstrikes, Presidential Decision Directive 25 had little legal impact on congressional/executive relations. Like all past Presidents since the passage of the War Powers Resolution, Clinton did keep Congress informed about his policy in Bosnia with letters to Congressional leaders and by sending executive administration officials to committee hearings. Yet, Clinton asserted broad powers by saying that he would use force in Bosnia, prior to any Congressional authorization and without any outstanding threat to U.S. national security.

In 1994, Congress was active on Bosnia, but not in any formal legal sense over the use of force. Some members, particularly Sen. Joe Biden (D-Del.) and Rep. Frank McCloskey (D-Ind.) strongly encouraged Clinton to use force--as did many others in April after the second round of NATO

bombings. Even conservative members such as Orrin Hatch (R-Ut.), who was extremely critical of President Clinton and the United Nations' efforts in Somalia, vigorously advocated air strikes in Bosnia.<sup>128</sup> With these open criticisms of the President's policy, members could distance themselves from the President, Republicans could try to make partisan gains over the policy, and other critical members could capitalize on the increased media attention on the Serbs' atrocities and perceived changes in public opinion. This is not to say that every member of Congress acted so politically. Some members were consistently opposed to U.S. and U.N. intrusion into the "civil" war. Other members like Senator Joe Biden (D-Del.), consistently advocated the use of force. But, in an election year there were political incentives for members, especially Republicans, to criticize the President. At the same time, there was no movement to vote on NATO's conduct, which exempted members from taking a position that they would later have to justify to their constituents during an election year.<sup>129</sup> Thus, there was never any serious attempt to make a collective judgement on whether to endorse or denounce the NATO bombings. Yet, it was implicit in members' statements that Clinton had the authority to conduct the operations.

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<sup>128</sup> See Congressional Record (October 7, 1993: S 131198) for one example of Hatch's opposition to U.S. policy in Somalia.

<sup>129</sup> For example, Senator Hatch was one member whose seat was up in 1994. He was reelected with overwhelming support.

Those members who opposed NATO's use of force offered no concerted effort to force Clinton to gain Congressional approval, although many complained about Clinton's policy and strategy in general.<sup>130</sup> Nor did Congress make any effort to authorize the deployment to Macedonia, even though by the year's end, more than 500 U.S. troops were deployed and were authorized to use force if necessary. A few members expressed their opinions on an individual basis, but as a body they never placed themselves on record when it came to the authority to use force as peacekeepers.

Congress clearly asserted some influence in U.S. foreign policy on the arms embargo, and provided an important challenge to Clinton's policy on the issue. Clinton did react to these demands by exhibiting some willingness to pressure U.S. allies to change U.N. policy. However, when Clinton signed the bill into law, he did not acknowledge that Congress had formally forced a change in U.S. foreign policy. With little surprise, after the November 15 deadline came to end U.S. participation in the embargo, the policy remained.<sup>131</sup> Congress also passed non-

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<sup>130</sup> Through House Minority leader Bob Michel (R-Ill.), the House Republican Policy Committee as early as March 11, 1993 referred to Clinton's policy on Bosnia as an "ad hoc, piecemeal approach...without any real game plan and without any clear policy objectives" (Congressional Record, March 11, 1993: E606). See also the statements from Alfonse D'Amato R-N.Y. (Congressional Record, June 22, 1994: S7466) and Bob Dole R-Kan. (Congressional Record, April 20, 1994: S4493).

<sup>131</sup> Clinton was helped here by a change in the Bosnian Muslims' position on the embargo (CQA, 1994: 449).

binding resolutions on two occasions, which reflects the typical congressional approach to foreign policy issues.<sup>132</sup> Congress was assertive when it came to the arms embargo, but resisted any formal legal challenge on the President's uses of force, and remained reluctant to place any hard and fast requirements on the commander in chief.

In the 1994 midterm elections, the Democrats lost control of the House and Senate for the first time in forty years. Under the new Republican leadership of Senate Majority Leader Bob Dole (R-Kan.) and Speaker of the House Newt Gingrich (R-Ga.), it appeared that Congress truly sought a new role in the foreign policy making process, especially regarding U.S. peacekeeping operations. Moreover, at the time President Clinton was perceived as weak on foreign policy (Dowd, 1994: A1). After the mid term elections, Clinton's National Security Advisor, Tony Lake, expressed some willingness to rework the war powers relationship. He stated:

...what is needed is a war powers mechanism and system of consultations that work. Next year, we will hold serious discussions with Congress on amending the War Powers resolution in an effort to ameliorate a struggle between these branches of government that has lasted two centuries (Lake, November 14, 1994).

At the same time, the newly elected Congress appeared to be nothing like the deferential body that existed during the Cold War and the first two years of the Clinton Presidency.

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<sup>132</sup> See Chapter 4 for more on this issue.

Ostensibly, Congress appeared as a new and assertive player in America's foreign policy making process.

### **The Republican Revolution and Clinton's Deployment**

#### The "Contract" and the Republican Majority

The Contract with America was formulated during the 1994 midterm election cycle. It sought to provide voters with a clear issue platform of what House Republicans stood for. If the House Republicans became the majority party, they promised to vote on the "Contract's" ten issues within the first 100 days of the 104th Congress. In the area of foreign policy, referred to as the "National Security Restoration Act," the Contract read as follows: "No U.S. troops under U.N. command and restoration of the essential parts of our national security funding to strengthen our own national defense and maintain credibility around the world" (reprinted in Wilcox, 1995: 70). Once the Republicans became the majority in the House, they took their pledges seriously. Even though very few American voters actually knew what the "Contract" was, House Republicans claimed that their victory and the legislative proposals set forth in the Contract defined a policy mandate for change (Jacobson, 1997: 162; Wilcox, 1995: 21). Once in Congress, the Republicans went to work immediately.

Upon becoming the majority party, the Republican discourse opposed to President Clinton's foreign policy and

the United Nations more generally was quite strong. Although this was not the first time a President had faced a hostile Congress over U.S. relations with the United Nations (Gregg, 1993; Forsythe, 1990), Congressional vehemence aimed at U.S. foreign policy was striking. For example, on whether or not the Contract was a true "mandate" from the people, new House Majority Leader Dick Armey (R-Tx.) stated, "It's a statement by the Congress that we, too, have heard the voice of the American people...The nation has gone too far in the direction of globalism" (quoted in Towell, 1995: 535). In perhaps the strongest condemnation of the United Nations that came later in the year, Representative Dana Rohrabacher (R-Ca.) said that the U.N. is "a collection of tin-pot dictators and corrupt regimes from around the world...Everything done through the United Nations can be better accomplished on a bilateral basis (quoted in Cassata, 1995: 3214).

With a mood of this nature resonating among Republicans in Congress, the National Security Revitalization Act was introduced. In the Act, Republicans hoped to achieve a number of goals. Most relevant to this study is the reassertion of a more substantive role for Congress regarding U.N. peacekeeping deployments. Titles III, IV and V of the Act dealt specifically with Congress's role vis-a-vis the United Nations. In a House Committee summary of Title IV, the new proposals would

require the Congress to approve in law any agreement made between the President and the U.N. Security Council for the use of U.S. forces in maintaining international peace and security...if Congress denied U.S. participation in some peacekeeping activities the budgetary savings would no likely be no more than a few hundred million dollars per year based on recent experiences (Combest, February 6, 1996: 11).

Moreover, other key provisions of the Act required that any U.S. forces serving in a United Nations' operation must serve under a U.S. commander, and that Congress must be informed 15 days in advance of any United Nations Security Council vote on requests for additional funding to peacekeeping missions. The House also sought to restrict the transfer of U.S. intelligence to the United Nations, and indicated that it would require prior approval from Congress before any information was shared with the U.N (Spence, February 6, 1995).

About their new proposals, Dana Rohrabacher (R-Ca.) added "This is America comes first as policy...Americans have sacrificed their lives and well-being for an ungrateful world for far too long" (quoted in Towell, 1995: 535). Representative Toby Roth (R-Wi.) added: "The reason we have a Contract with America is because we want to put Congress back into the loop in the decision making process when it comes to peacekeeping" (Congressional Record, February 16, 1995: H 1862). Although there was some opposition to the bill, particularly from Lee Hamilton (D-Ind.) and some Democrats were concerned about Congressional "micro-management" of U.S. foreign policy, the bill passed in the



Committee on National Security in a 41-13 vote (CQA, 1995: 9-16). The Act later passed on the House floor in a 241-181 vote, demonstrating the nearly unanimous support from Republicans (CQA, 1995: H-40).<sup>133</sup> In the Act, the provision requiring prior authorization from Congress was watered down with Doug Berueter's (R-Ne.) proposal to allow the President to deploy U.S. troops under U.N. authorization if U.S. national security interests were at stake (CQA, 1995: 9-18). The provision passed by voice vote, which did not force members to go on record, re-emphasized the primacy of national security interests. While this provision was a victory in the short term for the Clinton administration, this short term loss for Congress should not be considered a major blow to the House Republicans, who clearly appeared unwilling to engage in any risky deployments in the near future.

In the first month of the House Republicans' tenure, tremendous efforts were also devoted to limiting peacekeeping appropriations to the United Nations. The United States contributes financially to the United Nations in four ways: annual assessments to the General Assembly,<sup>134</sup> voluntary contributions to individual U.N. agencies, assuming the costs for U.S. actions under U.N.

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<sup>133</sup> Only four Republicans voted against the measure (CQA, 1995: H-40).

<sup>134</sup> See Article 17 of the U.N. charter.

Security Council Resolutions, and by paying a portion of the assessed costs of peacekeeping. When the Republicans took the majority, the United States was paying 31.7 percent of the peacekeeping costs. Under the pressure from the Congressional majority, this amount was reduced to 25 percent, which President Clinton agreed to (CQA, 1995: 9-18). In sum, in the House of Representatives there were clear signs that a Congressional ascent had occurred, in which the President would be checked by the House in many aspects of his foreign policy pursuits--especially in regards to deployments sanctioned by the U.N. Security Council.

On the Senate side, members were also active in reevaluating Presidential powers and the use of force abroad, but not to the same extent as the House. On the first legislative day of the 105th Congress, Senate Majority Leader and aspiring President, Bob Dole (R-Kan.), along with nine co-sponsors, introduced his Peace Powers Act. Two sections of the Act have special relevance to this study. First, the Act repealed the War Powers Resolution, but stated:

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

His Act also amended the United Nations Participation Act.

It stated:

Any special agreement or agreements negotiated by the President with the Security Council providing for the numbers and types of United States Armed Forces...to be made available to the Security Council for the purpose of maintaining international peace and security in accordance with Article 43 of the United Nations Charter shall be subject to the approval of the Congress by Act or joint resolution (Congressional Record, January 4, 1995: S 101).

Although the Peace Powers Act did little to solve the problem of defining "consultation," and did not offer a radically new version of the U.N. Participation Act according to its legislative history,<sup>135</sup> Dole and his cosponsors certainly reasserted a new and deeply involved legislative capacity for Congress, especially for U.S. policy on peacekeeping deployments. The Act also required that U.S. troops serve only under U.S. command while participating in a U.N. mission.

On March 21, 1995, the Senate dealt with both the Peace Powers Act and the National Security Revitalization Act. At the hearings, Senator Dole testified in support of his legislation. He restated his desire to repeal the War Powers Resolution, but also argued that "we need to reign in the blank check on U.N. peacekeeping" (C.F.R., March 21, 1995: 63). Senator Rod Grams (R-Minn.) also testified at the hearings and referred to Congress's "peace powers"

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<sup>135</sup> See Stromseth (1994) and Fisher (1995).

oversight. He argued that with Dole's legislation, some Congressional responsibility would be restored (25).

On March 15, 1995, Senator Joe Biden (D-Del.), who opposed Dole's Peace Powers Act, also introduced his "Use of Force Act." Biden's legislation stated: "Congress affirms that the provisions of the United States Constitution compel the President and Congress to engage actively and jointly in decisions to use force abroad" (Congressional Record, March 15, 1995: S 3969). Biden's proposal included a congressional leadership group with whom the President must consult. Further, his legislation outlined five emergency situations in which the President could use force independently.<sup>136</sup> In the event that the President did use force in a non-emergency situation, and that the Congress did not act within sixty days, under his Act the President's authority is extended indefinitely. Biden made this last proposal in an effort to force Congress to vote on the use of force before the President became officially and unilaterally empowered to act (Congressional Record, March 15, 1995: S 3969).

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<sup>136</sup> These situations include 1) to repel an attack, 2) to deal with urgent U.S. interests e.g. Cuban Missile Crisis, 3) to extricate imperiled U.S. citizens, 4) to "forestall or retaliate against acts of terrorism, 5) to defend against substantial threats to international sea lanes or airspace (Congressional Record, March 15, 1995: S 3969).

Despite the committee attention given to Dole's and the House's legislative initiatives,<sup>137</sup> neither Congressional Chamber acted on these proposals. The Peace Powers Act was not voted on in the Senate, and Biden's bill was not even considered in Senate committee hearings. Recognizing that Clinton would have vetoed Dole's legislation, and with a doubtful 2/3rds majority in the Senate to override his veto, Senate leaders may have decided to avoid embarrassment to one of their stronger Republican Presidential challengers, and simply dropped the issue. However, the Republicans and Biden undeniably demonstrated a willingness to redefine the legal specifics of war powers, with Congress playing a meaningful legal role in the deployment process. House Republicans especially were not comfortable with broad arguments of Presidential supremacy for the use of force and participation in peacekeeping operations. Republicans of the 104th Congress were a coalition that seemed uncomfortable deferring to the chief executive, especially to Bill Clinton. Many of these members had campaigned directly against Clinton in their home districts and had electoral incentives to fulfill their promises made in the Contract (N.Y.T., 1994: E6). In the Senate, both Dole and Biden also were interested in tilting the war powers balance back to Congress. Although their proposals differed, both pieces of

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<sup>137</sup> See the hearing before the Senate Committee on Foreign Relations (C.F.R., March 21, 1995).

legislation placed legal limitations on the President's power as commander in chief. In broad terms, these steps represented potentially a new arrival for congressional activism over war powers constitutional responsibilities.

### Bosnia

While the Republicans were attempting to reassert a congressional role in U.S. foreign policy making, pressure also continued on Clinton's policy in Bosnia. In December, 1994, former U.S. President Jimmy Carter helped negotiate a four month cease fire in Bosnia, which in most cases, was holding (Cohen, 1994: A1; Pomfret, 1994: A1). However, these developments did not stop Congress from examining the situation in Bosnia. In the Senate Armed Services Committee, hearings were held on current U.S. military operations abroad. At the Hearing, Senator William Cohen (R-Ma.) stated that if the Serbs interfered with UNPROFOR, these offenses should "be met with overwhelming and, I would say, disproportionate force" (C.A.S., January 12, 1995: 19).

Individual members on both floors of Congress also pushed the President to become more active on the issue. For example, Rep. Chris Smith (R-N.J.) introduced a bill to end U.S. participation in the Bosnian arms embargo (Congressional Record, March 8, 1995: E 545). Senator Strom Thurmond (R-S.C.) also expressed his support of NATO bombings to protect the U.N. mission (Congressional Record,

March 17, 1995: S 4122). And Senator Joseph Lieberman (D-Conn.) continued to advocate an aggressive policy in the Balkans by openly supporting the use of force (Congressional Record, February 22, 1995: S 2977).<sup>138</sup> Some members were supportive of the President's policy,<sup>139</sup> but of those who spoke out, the vast majority advocated change.

By the first part of April, Congressional evidence of massive human rights abuses were mounting against the Serbs. One hearing before the Congressional Commission on Security and Cooperation in Europe presented strong evidence of genocide conducted by the Serbs (C.C.S.C.E.: April 4, 1995). Members of the committee, including co-chair Senator Alfonse D'Amato (R-N.Y.) and Representative Steny H. Hoyer (R-Md.) stated in the committee meeting that NATO had failed, and that new action must be taken to end the Bosnians' suffering.

Senator Dole also would not relent in his pressure on Clinton's policy. The Senate Majority Leader stated that if the cease fire established was not extended beyond May 1, when it was due to expire, he would lead an effort in the Congress to force Clinton to arm the Bosnian Muslims,

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<sup>138</sup> See also Senator Patrick Moynihan's (D-N.Y.) comments. Moynihan was vague in his recommendations about what steps to take, but did admit that the United Nations and NATO had failed in its effort in Bosnia to date (Congressional Record, April 7, 1995: S 5557).

<sup>139</sup> See Lee Hamilton's (D-Ind.) statements (Congressional Record, February 3, 1995: E 272).

stating that "Three years of monitored genocide is enough" (Congressional Record, April 7, 1995: S 5535).<sup>140</sup> Thus, it was clear that Clinton faced an active and assertive Congress--not only on Bosnia, but in the broader scheme of his foreign policy powers.

### Presidential Policy

During the first months of the 104th Congress, the Clinton administration worked to prevent any limitations on the President's perceived constitutional powers. In a letter to the Speaker of the House dated February 14, 1995, Clinton argued that the National Security Revitalization Act harmed U.S. interests by limiting his power. He claimed that the Act was unconstitutional by limiting his authority to place U.S. troops under temporary foreign command. Clinton also wrote that required consultations with Congress would limit his ability to respond "swiftly and proportionally" to protect U.S. interests abroad (Clinton, February 14, 1995). In another letter to Congressional leaders, the President lobbied members to accept a strong role for the United Nations in American foreign policy (Clinton, February 13, 1995). Clinton also began to label those who sought a reduced role for the U.S. in the United Nations as "new isolationists" (Clinton, March 1, 1995).

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<sup>140</sup> See also Doherty (1995e: 761).



Clinton was not the only administration official to react against these congressional motions. U.S. Ambassador to the United Nations, Madeleine Albright also testified before the House Subcommittee on International Operations and Human Rights against the Act, and reasserted the importance of the United Nations in American foreign policy (U.S.S.D., February 20, 1995). In a speech before the Council on Foreign Relations, Albright added:

This Administration will not allow the hullabaloo over a more recent contract to cause the Charter of the United Nations--the contract of Truman and Vandenberg and Dulles and FDR and Eleanor Roosevelt and the generation that triumphed over the Nazis--to be ripped to shreds (Albright, February 6, 1995).

At another House committee meeting, Secretary of State Warren Christopher did his part by stating "the United Nations is a sensible bargain that the American people support" (U.S.S.D., March 6, 1995).

Regarding the use of force, the Clinton administration stayed the course in 1995 with two NATO bombing raids on Bosnian-Serb targets. NATO strikes occurred on May 25 and 26, and on July 11. On no occasion did Clinton file a letter with Congressional leaders notifying them of the attacks, nor did Congress react with constitutional concern over his decision. About the bombings in May, Clinton stated, "I hope that today's air strike will convince the Bosnian-Serb's leadership to end their violations of the exclusion zone and to comply with their other agreements with the United Nations" (quoted in Mitchell, 1995: A8). After the July

bombings, Clinton noted that the attacks were justifiable for humanitarian reasons to protect refugees in the U.N. enclaves (Clinton, July 13, 1995).

In early May, there was some indication that the Clinton administration's policy was evolving when the U.S. stationed 3,500 troops off Italy's coast in the event that a massive evacuation program for UNPROFOR was needed (Sciolino, 1995: A12). In a National Public Radio interview, Clinton stated: "We have obligations to our NATO allies and I do not believe we can leave them in the lurch, so I must carefully review any request for an operation involving temporary use of ground forces" (quoted on N.P.R., 1995). Similar sentiments were repeated on the same program by Secretary of Defense William Perry and National Security Advisor Anthony Lake.

Other developments in 1995 demonstrate that the U.S. was becoming increasingly fearful of a Serb monopoly of the region. In a State Department briefing, it became public knowledge that the U.S. actively supported private consultants from the United States who were helping Croats organize their military (F.N.S., 1995), and that NATO was giving tacit approval of arms smuggling into Croatia, despite the U.N. arms embargo. As of August, 1995, these arms shipments totaled approximately \$1.3 billion worth of weapons by some estimates (Schmetzer, 1995: 1C).

During the summer of 1995, the pressure on President Clinton to lift the international arms embargo on the former Yugoslavia elevated considerably.<sup>141</sup> However, like the executive branch, Congressional calls for direct intervention were limited at best. Yet a sense of urgency pervaded a Congress that sought some sort of policy change (Doherty, 1995c: 2386). Most of the pressure came from Bob Dole (R-Kan.), who remained very critical of the U.N. operation, the arms embargo still in place, and President Clinton's leadership with Bosnia (Doherty, 1995d: 2282). With Dole as the leading Republican challenger for President, and as U.S. policy in Bosnia was increasingly in doubt, Clinton's political capital was slowly decreasing over Bosnia.<sup>142</sup>

With the political pressures increasing on Bill Clinton, presidential electoral questions should not be removed from the analysis. Political and future electoral incentives existed for Clinton to make some sort of policy change. These pressures, coupled with the Cable News Network's (CNN) frequent broadcasts of the horrendous

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<sup>141</sup> See Clinton's letter to the Senate after it voted to end the U.S. support of the arms embargo, articulating the President's position, which also included a strong concern for U.S. allies (Clinton, August 11, 1995).

<sup>142</sup> A USA-Today poll in July, 1995 indicated that Clinton's foreign policy approval on Bosnia had fallen to 37 percent approval (Benedetto, 1995: 5A). Another ABC News-Washington Post poll similarly found that only 37 percent agreed with Clinton's foreign policy, while 56 percent disapproved (P.O.O., 1995).

conditions in Bosnia, provided substantial incentives for the President to respond (Doherty, 1995d: 2283). Throughout the summer, the pressure continued as Congress held hearings on Bosnia. Bosnian Prime Minister Haris Silajdzic testified before the Commission on Security and Cooperation in Europe and lobbied for his cause (C.S.C.E., June 8, 1995). On the same day, the House Committee on International Relations met to discuss the situation in Bosnia. Sensing the change in Clinton's policy, Chairman Benjamin Gilman (R-N.Y.) stated the importance of consultation between Congress and the White House prior to the deployment of any ground troops (C.I.R., June 8, 1995: 2). Doug Bereuter (R-Ne.) likewise expressed the importance of "real" consultation, which in his view, went beyond mere committee hearings (C.I.R., June 8, 1995: 21). Bereuter added:

I also think it is important to say that while the President has talked about sending troops, and even with some fairly specific numbers from other administration sources to implement a peace settlement, that has never been debated in Congress. That is not something Congress has signed off.

I hope that is clear. It just goes on and sometimes you think that silence is acceptance. As far as I am concerned, that is not something that we have reached a conclusion upon here in the Congress (21).

Thus, Republican House leaders were certainly posturing themselves for a battle with the President if ground troops were to be deployed. Moreover, there is no reason to doubt that House rank and file members, especially Freshmen, felt any differently.

In the first week of June, the House also voted on a resolution to repeal the War Powers Resolution (WPR). Introduced by Henry Hyde (R-Ill.), the legislation stemmed from Hyde's argument that the WPR had failed, the WPR placed unconstitutional restraints on the President, and Congress could always use its appropriations powers to limit the President in the use of force abroad (Doherty, 1995b: 1655). Hyde's resolution failed, however, as 44 Republicans sided with the Democrats to repeal the vote. The vote did not get that much attention or debate on the House Floor, but did demonstrate that many Democrats and some Republicans felt that the WPR did have some remaining utility. President Clinton did not lobby the Congress on the vote, which Speaker Gingrich characterized as "pathetic" (quoted in Doherty, 1995a: 1656).

One event at the beginning of the summer in 1995 brought a great deal of attention to the U.S. role in Bosnia. U.S. Air Force Captain Scott O'Grady's plane was shot down on June 2 while enforcing the U.N. no-fly zone. Six days later, O'Grady was rescued by American troops, whose aircraft were fired upon during the rescue mission (F.F., June 8, 1995: 405). This event drew widespread attention from members of Congress and concern for the role of U.S. troops in NATO operations in Bosnia.<sup>143</sup> At the same

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<sup>143</sup> In the Senate, Bob Dole (R-Kan.) introduced a resolution commending Captain O'Grady, which received strong bipartisan support (Congressional Record, June 9, 1995: S 8119). In the

time, the Serbs were holding over 100 U.N. workers hostage (F.F., June 8, 1995: 405). By mid summer, Clinton's Bosnia policy was in deep trouble as UNPROFOR was in dire need of help. The Bosnian-Serbs had embarrassed the United States and the United Nations when they overran Srebrenica-a U.N. "safe enclave,"<sup>144</sup> and took 30 Dutch peacekeepers hostage in mid July. Congressional pressures seriously escalated on the President's Bosnian policy in August, when both the House and Senate passed another resolution requiring the President to end U.S. participation in the arms embargo (CQA, 1995: 10-11).

By late August, U.S. foreign policy reached its breaking point, when Clinton authorized massive airstrikes against the Bosnian-Serbs. Under NATO auspices, 3,500 sorties occurred, in which U.S. bombers were heavily involved in NATO's largest use of force ever (Atkinson, 1995: 6). In his first letter to Congress after the major bombing, Clinton characterized the Bosnian-Serbs' behavior as "tragic and inexcusable" (Clinton, September 1, 1995). Clinton also appealed to U.S. humanitarian interests on September 5, noting that "we cannot allow innocent civilians and children to die there" (Clinton, September 5, 1995).

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House, International Relations Committee Chair Benjamin Gilman (R-N.Y.) also noted O'Grady's courageous efforts in Bosnia (Congressional Record, June 9, 1995: E 1211).

<sup>144</sup> Allegations later surfaced that the Serbs massacred up to 8,000 Muslims and Croats at Srebrenica and buried them in mass graves (Geoghegan, 1996: 12; Herald, 1996: 1).

From a legal perspective, Clinton stated that he "authorized these actions in conjunction with our NATO allies to implement the relevant U.N. Security Council resolutions and NATO decisions." He also relied upon the now familiar language regarding his powers as commander in chief and through his authority to conduct foreign relations (Clinton, September 1, 1995).

Congress's response to the bombings was very limited. Both chambers were actually quite passive considering the gravity of NATO's conduct, and rather seemed prepared to battle with the President over a possible peacekeeping deployment. Congressman Bill Baker (R-Ca.) did oppose the bombings by saying: "What right do we have to use our military might 6,000 miles away from home? Has Congress been consulted?" (Congressional Record, September 14, 1995: H 8913). However, the vast majority of members stayed silent on the chamber floors, and through their relative silence, tacitly endorsed the mission.

Thus, up to September, 1995 a number of conclusions about the congressional/executive interplay can be made. In the broader scope, Congress appeared unwilling to defer on any U.N. peacekeeping deployments. In its view, any step taken to involve the United States in a United Nations operation deserved legislative scrutiny. The House voted in favor of the National Security Revitalization Act, and it was also clear that Senate Majority Leader Bob Dole was not

going to be easily pacified by Clinton's assertions of constitutional power. Dole was willing to openly challenge the President on his foreign policy, even to the chagrin of some fellow senior Republicans (Doherty, 1995e: 761).

Leading Republicans in the House, including Benjamin Gilman (R-N.Y.) and Doug Bereuter (R-Ne.) also made it clear that Clinton's peacekeeping promise was not a done deal, and that Congress would have to be consulted in a substantive manner prior to a deployment.

However, after the NATO bombings in 1995 Congress did not raise constitutional questions about the legality of Clinton's actions, and in fact, encouraged the President to take swift and decisive action during the first months of the year. Even though 3,500 sorties were flown, 2,318 of which involved U.S. fighters (Atkinson, 1995: 6), Congress said very little about the decision. As in Haiti, Congress made no serious legislative ruling as a body on these deployments, and preferred a "wait and see" approach. Nor did Congress question with any serious vigor the troop deployment off Italy's coast. Congress may have been pacified since the bombings were undertaken by NATO, in which the United States has supreme command. However, in doing so Congress placed itself in a very tenuous situation politically and legally. After encouraging Clinton to undertake the bombings, Congress would have appeared hypocritical to begin raising constitutional questions and



issues about the proper authority to use force since it had not taken action to date. If the mission had gone badly and American casualties would have been experienced, Congress would have had important legal issues to consider. One of the arguments used by the Johnson administration during the Vietnam War was that the executive branch was fully authorized to come to Vietnam's "aid" under the South East Asian Treaty obligations.<sup>145</sup> Clinton would have likely made a similar claim under his authority through NATO, and a constitutional war powers dilemma could have ensued.

Outside of Under Secretary Walter Slocombe's promise that Congress would be consulted prior to a U.S. peacekeeping deployment, the Administration's position on the use of force underwent no revision in 1995. The President wrote to Congress that legislative elements of the National Security Revitalization Act violated his constitutional powers as commander in chief. When the President authorized the use of force in Bosnia in August, 1995, he stated that he was authorized by the United Nations and NATO to undertake the action, and used further arguments based on the U.S. Constitution. U.S. troops also remained on the ground in Macedonia under the President's perceived constitutional authority. From a domestic standpoint, so far Clinton had acted nearly autonomously in his policy with Bosnia. Yet, the seeds also appeared to have been sown for a

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<sup>145</sup> See Leonard Meeker's position in Chapter 1.

full scale constitutional battle over a peacekeeping deployment to Bosnia, which would soon occur after the Dayton Peace Accords.

The Peacekeeping Promise: Congressional Deferment Reigns

After the NATO bombings, a cease fire arrangement was signed and it looked as if there was a strong possibility for a more comprehensive peace agreement in Bosnia. In this case, the President would be called upon to honor his previous peacekeeping promise.

Prior to the peace talks that would occur soon in Dayton, Ohio, Chief of Staff Leon Panetta indicated on NBC's Meet the Press that if a peacekeeping force were deployed, the President would consult with Congress. Yet, Panetta also stated that the President would not give up his constitutional powers as commander in chief (Doherty, 1995: 3158). Earlier, Secretary of State Warren Christopher stated "We want Congress's approval...We consult very much with them" (quoted in Holland, 1995). Moreover, President Clinton indicated that he would consult with Congress over a possible deployment. He stated:

The United States will not be sending its forces into combat in Bosnia. We will not send them into a peace that cannot be maintained. But we must use our power to secure that peace. I have pledged to consult with Congress before authorizing our participation in such an action. These consultations have already begun (Clinton, October 16, 1995).

On November 1, the Dayton Peace talks began between the three major warring parties. In approximately three weeks,

the talks were completed, and a comprehensive peace agreement was signed on November 21.<sup>146</sup>

During the period when the talks were in progress, Vice President Al Gore indicated to some members of Congress that the President would not act unilaterally and Congress would have the opportunity to debate the deployment (Towell, 1995a: 3467). President Clinton also sent a letter to the Speaker of the House, Newt Gingrich (R-Ga.) indicating that Congress would be consulted after the negotiations were complete (Towell and Cassata, 1995: 3549).

Once President Clinton addressed the nation on November 26 after the Peace Accords, in many ways the decision to send troops appeared to have been made. In the address, he stated: "I want you to know what is at stake, exactly what our troops will be asked to accomplish, and why we must carry out this mission." He also said, "In Bosnia we can and will succeed because our mission is clear and limited." Thus, in his address Clinton implied that the mission was essentially on its way. However, Clinton also said that if the NATO plan of action met his approval, he would "immediately send it to Congress and request its support." (Clinton, November 27, 1995). With this statement, the President did not necessarily appear committed to sending

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<sup>146</sup> See [www.unm.edu/~vuksan/mario/peace2.html](http://www.unm.edu/~vuksan/mario/peace2.html) for more on the specifics of the Dayton peace plan.

troops abroad without Congressional support, and left an opening for the legislature's input on the issue.

Clinton's behavior strongly contrasts with George Bush's political posturing prior to Operation Desert Storm. At no time prior to the initiation of combat in the Persian Gulf War did Bush recognize any legal role for Congress.<sup>147</sup> Yet, prior to, during and in the aftermath of the Dayton Peace Accords, the Clinton administration publicly noted the alleged importance of Congress in the decision. Although Clinton never articulated what the administration meant by "consultation," it was clearly part of the administration's strategy to openly recognize Congress as a political player in the deployment process.

After Clinton's national address, polls indicated that there was little change in public opinion and that the majority of people in the U.S. were still against a Bosnian deployment. Two polls especially made it clear that Clinton did not have strong support from the American people for the proposed mission. A USA Today-CNN poll found mixed public support as well.<sup>148</sup>

It soon became clear that the comments made by Panetta, Gore, and Clinton had only limited value. On December 6,

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<sup>147</sup> See Chapter 2 for more on this point.

<sup>148</sup> An ABC news poll found that 57 percent opposed a deployment, and a CBS poll found that 58 percent were against the mission. A USA Today-CNN poll however did find that 46 percent of the American public did support the mission, whereas 40 percent were opposed (Rothberg, 1995: A1).

1995, Clinton sent a letter to Congressional leaders, indicating that he was sending 1,500 U.S. troops to Bosnia and Croatia to begin laying the groundwork for the Dayton Peace Accords Implementation Force (IFOR). Clinton noted that these decisions were made "in conjunction with our NATO allies" and that his decision met the requirements set forth by the U.S. Constitution (Clinton, December 6, 1995). On December 21, Clinton sent another letter to Congress indicating that 20,000 U.S. troops were on their way to Bosnia and Croatia. Clinton again noted his constitutional authority and Security Council authorizations to begin the mission (Clinton, December 21, 1995).

### The House

It was fairly clear after the major NATO bombings that the House was not going to let the President walk into Bosnia without a fight. As demonstrated during summer congressional committee hearings, members of the House Republican leadership noted that serious consultation would have to occur before military action was taken abroad. The first action taken collectively came two days prior to the onset of the Dayton Peace Talks. In a proposal introduced by Steve Buyer (R-Ind.) and Paul McHale (D-Pa.), the House passed a resolution stating that the President should not assume he could send troops abroad without authorization from

Congress. This "sense of the House" vote passed in a vote of 315-103. Only two Republicans voted against the measure, while 93 Democrats joined the rest of the 222 Republicans who supported the resolution (CQA, 1995: H-214). Although the Speaker of the House had been critical of Clinton's foreign policy in Bosnia, it is noteworthy that soon after the vote, Gingrich maintained that NATO's and America's leadership credibility could be at stake, and thus appeared willing to follow President Clinton's leadership on the issue with some reservations.<sup>149</sup>

Gingrich was, however, in a small minority of Republicans. Rules Committee Chairman, Gerald Solomon (R-N.Y.) stated: "Heart-wrenching as...this tragedy has been, and as despicable as the Serb aggression has been, this conflict does not justify putting one single American soldier in combat" (quoted in Towell, 1995b: 3390). Journalistic accounts of the House Republican Conference on November 8 also indicate that Republicans "overwhelmingly" called for immediate action to prevent the proposed peacekeeping deployment (Towell, 1995a: 3467). Soon after the Republican's position became public, both Clinton and Gore lobbied Congress with their promises to consult before deploying the troops.

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<sup>149</sup> The Speaker did not record a vote for the October 30 measure to restrict the President.

At the same time the Bosnia issue was under House scrutiny, the House Republicans were in an intense battle with the White House over the federal budget and had threatened to shut down the federal government if Clinton did not meet their demands. For the Republicans, the problem was that polls indicated most people would blame the G.O.P for the shutdown if the decision was made (Clymer, 1995: 10). Thus, the Republicans were in a political predicament, in that they risked being viewed as obstructionists by the American public in more than one way if they tried to force Clinton to change his policy in Bosnia, as well as with the budget. In the short term, the Republicans were willing to take the risk and attacked both issues with vigor.

On November 17, the House passed a measure originally sponsored by Joel Heffley (R-Colo.), stating that the President would not be allowed to use federal funds for the Bosnian mission unless appropriated and approved specifically by Congress (CQA, 1995: H-234). When this vote was coupled with the previous "sense of the House" vote made earlier, it was clear that the House would likely deny Clinton the authority to begin the mission.

Shortly after Clinton's national address, it became increasingly apparent to the House that Clinton was going to conduct the operation whether Congress approved of it or not. The House Committee on International Relations did hold hearings on the U.S. policy towards Bosnia on November 30,

1995. In a written question submitted to Secretary of State Warren Christopher, Chairman Benjamin Gilman (R-N.Y.) asked: "Was there any consultation with Congress about this commitment before it was made?" In writing, Christopher responded:

Since shortly taking office, the President has said that U.S. troops would participate in a force to implement a peace settlement in Bosnia. I have repeated the President's commitment on a number of occasions in testimony before this committee. In a November 13, 1995 letter to the Speaker, the President wrote that on October 20, 1993, in a letter to Senator George Mitchell, he said he intended to provide U.S. troops to help implement a Bosnian settlement and the desirability of Congressional support for such a deployment. This commitment has since been publicly reiterated a number of times...

Throughout the peace process, President Clinton and all levels of his administration have consulted closely with Congress both on our peace initiative and our participation in implementation (C.I.R., November 30, 1995: 124).

In another meeting of the same committee a number of House Republicans expressed their frustration with the process. While the House Republicans complained about the process, they seemed resigned to the fact that Clinton was going ahead with the operation regardless of their views. The committee debate centered on the logistical specifics of IFOR and avoided the constitutional questions of a deployment. About the deployment process, a senior House Republican, Henry Hyde, (R-Ill.) stated his frustration by noting that "the dye is cast, now we have to fall in line."<sup>150</sup> However, at the same time Hyde noted the futility

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<sup>150</sup> In a personal interview with the author, Doug Bereuter (R-Ne.) stated that he felt that Clinton had presented IFOR as a "fait accompli" and there was little that Congress could do to



of his complaints, and followed with logistical questions about IFOR (C.I.R., December 6, 1995: 40). Similarly, in a personal attack on the President, Rep. Dan Burton (R-Ind.) added:

We have to march in lock step with this person who has no foreign policy experience, who gropes around in the dark trying to come up with a policy...

I think my friend from Texas said that putting Mr. Clinton in charge of foreign policy was like putting some one who ran a corner store in charge of Wal-mart; nevertheless, that is the way we have it (C.I.R.: December 6, 1995: 42).

Two days later, 186 Republicans and 15 Democratic members of the House signed a letter sent to the President, stating in its entirety, "We urge you not to send ground troops to Bosnia" (quoted in Towell, 1995: 3750; Seelye, 1995: A18).

Despite the large scale opposition and some members' belief that the President was acting in an unconstitutional manner,<sup>151</sup> the House acquiesced on December 13, 1995. In a 287-141 vote, the House voted to support the U.S. troops, but also its opposition to Clinton's policy (CQA: 1995: H-248). In a sense, the House admitted defeat and demonstrated that it was unwilling to test President Clinton on constitutional war powers issues. The House undoubtedly had

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prevent the deployment. Using a similar logic as employed during the Vietnam War, he also stated that once troops had been placed on the ground, it would be "almost unthinkable" to vote against the deployment in progress (Hendrickson, April 25, 1997).

<sup>151</sup> See for example comments from Helen Chenoweth's (R-Id.), Bob Dornan (R-Ca.) in the Congressional Record (December 7, 1995: H 14229).

the votes to put IFOR in question, but rather chose to publicly disassociate itself from Clinton's policy and let the legal issues rest. The Senate acted in a similar manner.

### The Senate

The founding fathers established two houses of Congress so that they might "watch and check each other." In Madison's notes, the Senate was created in part in order to secure prudence and deliberation rather than have policy determined by "fickleness and passion" of popular sentiment (Madison, 1966: 193-194). For those observers who view the House's actions as ill-advised and reactionary, the Senate proved to be all that Madison hoped for.

As a body, the Senate was less adversarial than the House, although a number of members were particularly vocal in their concern with a deployment. Bob Dole (R-Kan.) led the charge against the President by noting that Clinton should not assume that Congress would automatically support an American deployment to Bosnia, and that Congress had not been fully consulted on the issue. Dole also sent a personal letter to the President expressing his reservations about a potential deployment (Congressional Record, September 26, 1995: S 14271). Soon after Dole's comments, the Senate passed a "Sense of the Senate" Resolution, calling for the President to gain prior approval before a deployment ensued.

Introduced by Senator Judd Gregg (R-N.H.), the measure passed 94-2 (CQA, 1995: S-77). This mood continued into the next month, when the Senate Foreign Relations Committee held hearings on Bosnia. One of the most telling interchanges came between Senator Chuck Robb (D-Va.) and the Secretary of State. Robb asked Secretary Christopher if the Senate passed a resolution requiring congressional approval prior to a deployment, what the administration's view would be?

Christopher responded:

I would say that, from a fundamental standpoint, the President would have to say that he is not bound by such a resolution. I do not think he can give away his constitutional authority as commander in chief any more than President Bush was willing to do so. As you know, right up to the last, he said that if there was a resolution, he would welcome it. But if there was a resolution, he would not feel bound by it.

I would not be doing my duty to the President adequately if I did not say that the President would not be bound by such a resolution and he would retain his constitutional powers (C.F.R., October 17, 1995: 31).

Christopher made these statements before the Dayton peace talks had even begun and in light of other comments he made indicating the importance of Congress. Thus it appeared that the Clinton administration felt it could deploy troops independent of Congress's view. Senator Robb also did not follow Christopher's remarks with any rebuttal in favor of a Congressional role, and actually prefaced his question by stating that he did not support or encourage a resolution of "that kind" (31). These comments are also telling in that Congressional acquiescence to the President already was at work. In a personal interview conducted by the author,

Senator Jim Exon (D-Ne.) similarly noted that even in the event that Congress had voted against the President's deployment, Exon still felt that the President still may have likely had the Constitutional authority to deploy the troops. He noted that often military deployment decisions are "judgement calls," and that the President's powers as commander in chief are broad. In his view, the President has an obligation to notify Congress regarding the use of force, but would not necessarily be restricted by a Congressional resolution opposing the President (Hendrickson, March 25, 1997).<sup>152</sup>

Later in the committee meeting, Senator Russ Feingold (D-Wi.) pushed the administration on where it would get the funding for the operation if Congress voted not to support the administration. Secretary of Defense William Perry responded that the question was too "broad" and "hypothetical" to answer, but later stated that Congress would have to supply the funds (37). Senator Joe Biden's line of questioning in the committee also proved revealing. Biden asked the Secretary of State what the administration would do if the Russians used their Security Council veto to prevent a NATO peacekeeping deployment. Christopher stated "...the ball game is not over. We feel an obligation to

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<sup>152</sup> Exon also noted that his opposition to the U.S. deployment to Haiti had been "a mistake," and in his view, further reinforced the notion that the President is entitled to some leeway in the use of force.

ensure that there is some kind of equilibrium of forces" (C.F.R., October 17, 1995: 42-42). The Secretary's response indicates that the U.S. was ready to act without the U.N. Security Council's approval. Coupled with Christopher's earlier statement about the President's constitutional powers, the administration appeared willing to act without either Congress's or the Security Council's approval.

Chairman Jesse Helms (R-N.C.) ended the meeting by stating:

Let me suggest, with all the sincerity that I possess, that you not proceed with putting American military personnel on the ground, in harm's way, without congressional approval. I make that suggestion to you in good faith, and I hope you will be attentive to it (C.F.R., October 17, 1995: 46).

After the committee hearing, the still fuming Russ Feingold took his thoughts to the Senate floor. The Senator stated:

The President has in effect rendered Congress's role meaningless...Congress is not simply supposed to be consulted on such matters or just be a rubber stamp for such actions. Congress is supposed to be an active partner in this process (Congressional Record, October 20, 1995: S 15399).

Despite Feingold's attention to legal specifics, after Clinton's November 27 national address, the Clinton team seemed to have made its decision. At another Senate Foreign Relations committee meeting, the Secretary of Defense laid out specifics on how the operation would occur, who would participate, and addressed many other logistical questions

asked by members of Congress (C.F.R., December 1, 1995: 64).<sup>153</sup> Perry also continued to state the importance of Congress in the deployment, and that Congress actually had a "choice" in the matter (62). Some members of the committee, including both Democrats and Republicans, seemed offended by Perry's two-faced presentation. Again, Feingold expressed his concerns:

I question how real this process is. It seems to me like the decision is already made. In fact, troops are being sent now as a NATO vanguard force, which I think in effect turns this into a fait accompli that we cannot reverse in any serious way if we wanted to (C.F.R. December 1, 1995: 97).

Senator Fred Thompson (R-Tenn.) also echoed Feingold's remarks (98). Later in the hearing, Secretary Perry reiterated his position: "I am here to seek support from the Congress" (102). When Senator Craig Thomas (R-Wy.) reacted to Perry's statement by asking Perry what the real role of Congress is, Secretary Christopher came to Perry's defense, and reiterated the written statement Christopher provided to Representative Benjamin Gilman (R-N.Y.) in a similar question. Christopher argued that Congress had known for 2 1/2 years about the mission and had adequate time to address the issue in advance (102-103).

By late November, Senate Majority Leader Bob Dole (R-Kan.) was willing to support the President on the Bosnia mission, but did not have the support of his party. For the

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<sup>153</sup> See also a Senate Appropriations Subcommittee meeting on funding and cost questions of IFOR, at which Secretary of Defense William Perry testified (C.A.S., December 1, 1995).

Clinton administration, Dole's support was crucial, in that the leading Republican contender to topple the Clinton administration now supported the mission. Dole may have been motivated to take this stance as a show of patriotism to the President, and by not wanting to be viewed as an obstructionist. Some observers argued that Dole sought to appear "presidential" by not posing as the main obstacle to the deployment (Hallow, 1995: A12). However, Dole's guarded support for U.S. participation in IFOR was likely the breaking point for the Republican opposition in the Senate, and served to quell the vehement resistance in the House.

In the end, the Senate voted like the House to state its support for the troops, but expressed reservations about the policy in a 69-30 vote (CQA, 1995: S-99).<sup>154</sup> On the same day, a resolution was introduced to require congressional approval for the use of federal monies for a Bosnian peacekeeping operation, which was repealed in a 22-77 vote (CQA, 1995: S-98). The Senate's voting behavior demonstrated that like the House, it, too, did not want to take responsibility for any casualties that might possibly occur in Bosnia. From a political public relations standpoint, they tried to wash their hands of the policy, and remain patriotic at the same time by supporting the American troops in Bosnia. In the end, and despite all the

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<sup>154</sup> Feingold opposed Bosnia on constitutional grounds until the very end. See his comments in the Congressional Record (December 13, 1995: S 18449).

posturing and policy initiatives the Republicans sought in the 104th Congress, they remained unwilling to exert their constitutional powers to prevent a policy that a majority of people in America opposed.

### Conclusion

Much can be learned from this case study of Bosnia. In this post Cold War peace-enforcement operation, sanctioned by the United Nations and NATO, Bosnia is an especially interesting and telling case about the congressional/executive interplay over the use of force abroad. A number of conditions existed that appeared conducive to a reassertion of congressional powers; Tony Lake's statement concerning the need for reevaluating the war powers arrangement, a new and seemingly assertive Republican majority in both the House and Senate, and public opinion that had grown cautious after Clinton's past military deployments and appeared none too supportive of a deployment to Bosnia. In the end it was congressional deference and executive omnipotence that best explains the interplay over the war powers question.

For President Clinton, the arguments over war powers' authority his administration presented were consistent from the beginning. Clinton stated in 1993 that a peacekeeping force would be deployed if a peace settlement was reached. Once the Dayton Peace Accords were signed Clinton fulfilled his promise, and justified his decision by arguing that



Congress knew for 2 1/2 years about his plan. President Clinton also stated that he had full authority under the U.S. Constitution to deploy and use force in the NATO bombings and in IFOR throughout the entire political process.

What was different about President Clinton's rhetoric was the extent to which he remained publicly willing to "consult" with Congress--implying that Congress would have a real opportunity to contribute to the deployment debate. President Clinton, Vice President Gore, Chief of Staff Leon Panetta, Secretary of Defense William Perry and Secretary of State Warren Christopher all stated that Congress would be consulted after the Dayton Peace Accords' conclusion. With Republican opposition so strong, especially in the House, the Clinton administration recognized the need to use the language of "consultation," and went to great lengths to have top administration officials appear at House and Senate committee hearings to defend the policy. In the end, the Clinton administration only paid lip service to the idea of "consultation" since the decision to participate in IFOR appeared to have been made prior to the hearings, but this strategy is very different from the one adopted by President Bush before Desert Storm. Although other evidence strongly suggests that Clinton was going to deploy American peacekeepers with or without Congress's approval, such as Warren Christopher's comments about Congress's legal

irrelevance vis-a-vis the constitutional powers of the President, the political process and strategy used by Clinton prior to IFOR's deployment was different for America's chief executives in recent times.

Secretary of State Warren Christopher's statements on the significance of U.N. Security Council approval for a NATO peacekeeping deployment also demonstrated that the U.S. felt it could act without the Security Council's approval. International law, as stated in the U.N. Charter, was not necessarily going to prevent the Clinton administration from doing what it wanted in Bosnia. Thus, the Clinton administration's concept of collective security has its limits. As long as NATO allies supported the peacekeeping mission in Bosnia, the United States appeared willing to go forth with their proposed mission, with or without the support of the United Nations Security Council.

In sum, Clinton perceived his authority as commander in chief quite broadly in a situation that involved arguable national security interests. In Bosnia, there was no immediate threat to the United States' security, the region had experienced over 200,000 deaths due to war, and the warring factions had proven themselves as less than trustworthy with past diplomatic agreements. Yet, Congress allowed Clinton to deploy 20,000 U.S. ground forces in a peace-enforcement operation. From a political viewpoint, his actions were nothing short of remarkably risky and involved

a political gamble that Congress would not raise Constitutional issues over the mission, even though the President was making wide assertions of his Constitutional power.

In many respects, the 104th Congress acted very much like the 103rd Congress. The 104th legislature did not question the President on the constitutionality of NATO's bombings. Both Democrats and Republicans tacitly supported the President's authority when NATO used force. Congress raised no constitutional questions over NATO's use of force, which is interesting considering that NATO's bombings in late August and early September of 1995 included 3,500 sorties. This last NATO mission did not involve "pin-prick" or low risk missions, but entailed heavy bombings. Congress was content to sit on its hands and not take any formal position on U.S. participation in these activities, despite War Powers Resolution Section 8, which gives Congress the power to check U.S. participation in multilateral treaties.

When it came to the peacekeeping deployment in IFOR, Congress was much more assertive. The Senate voted once prior to the Dayton peace accords, and the House twice expressed its belief that congressional authorization would be required. Many statements in 1995, notably House Foreign Affairs Chair Benjamin Gilman (R-N.Y.) and Doug Bereuter (R-Ne.), both argued in the summer of 1995 that Clinton should not assume U.S. peacekeepers could be sent to Bosnia without

Congressional approval. Despite these votes and well articulated statements from members of the House and Senate, Congress yielded to the President by voting "for the troops and against the policy." A number of explanations give insight into this Congressional deferment.

One important aspect of the Senate and House's acquiescence involves the Republican leadership. Neither Bob Dole (R-Kan.) or Newt Gingrich (R-Ga.) wanted to wage a constitutional battle with the President over the deployment. Their positions may have trickled down to rank and file members, who were content to "support the troops but not the policy." Rank and file members could go back to their states or districts and explain that they had voted against Clinton, but did support the nation's military. As the leading Republican Presidential candidate, Dole may have felt added pressure to appear patriotic to the President. During the Vietnam War, some members of Congress who opposed the President were seen as divisive, which is a label that Dole was likely unwilling to risk when heading into the first presidential primaries.

For the Republicans in general, one of the foremost policy objectives of the 104th Congress was a balanced budget. When the budget issue developed in November and December of 1995, the G.O.P. may have decided that tax and spend issues were more central to their party's objectives. Rather than taking on a foreign policy issue and the

deployment of 20,000 troops, the party may have felt it was more politically profitable to place its foremost challenge to Clinton over budget issues. With the political cover they could take with their "support the troops-not the policy" vote, the Republicans were likely content to defer to the president while remaining focused on the budget.

Putting these speculations aside, Congress's decision with Bosnia does fall into the cold war norm of deference to the President, which clearly continued into the Clinton administration. As was shown in Somali, Iraq, Haiti, and Bosnia, Congress prefers not to force either itself or the President into a legal and constitutional confrontation--at least until casualties are experienced. Yet, if there was a Congress that seemingly could have seriously challenged the President on Constitutional foreign policy issues, especially in the area of multilateralism and peacekeeping, it should have been the 104th Congress. There were some members who did give considerable attention to the constitutional implications of what was happening. Many legislative initiatives were introduced in the House's National Security Restoration Act to rework the foreign policy relationship between the President and Congress. Dole also had nine Republican cosponsors to his Peace Powers Act. Moreover, Senator Russ Feingold (D-Wi.) was particularly adamant in his belief that the Constitution had been cast aside and that the President had become an imperial decision

maker in a supposedly democratic polity. These forces were not enough to break the norm of deference that is deeply imbedded in the Congressional demeanor. However, the Congress did create a situation in which the President felt it necessary to promise consultation after the Peace Accords. While the end result of congressional deference was the same, the process in getting there was different.

After the Senate's vote, Senator Sam Nunn (D-Ga.) noted his extreme frustration with the war powers issues by stating that in 1996 he would begin the year by introducing new legislation to deal with war powers in a substantive way (Congressional Record, December 15, 1995: S 18679). However, Nunn as a senior and well respected Senator had the opportunity to address the issue with Somalia, Haiti, and Bosnia, but chose not to. One may envision the irony of a disgusted member of Congress who feels that his constitutional powers have been exploited, while at the same time says "we'll have to fix this later" as he avoids the issue at hand. The Senate and House's vote was reminiscent of the dominant attitude taken by Congress during the Vietnam War. Once troops were stationed abroad, even those members who were opposed to the war were reluctant to vote against an end to the appropriations for fear of not supporting "our boys." In 1995, a similar attitude pervaded Congress. Members did not want to appear unpatriotic to the

country's military and thus avoided their own war powers' legislative tools with a politically expedient vote.

## CHAPTER 6

## CONCLUSION: STRIKES ON IRAQ AND FUTURE USES OF FORCE

The interplay between Congress and the President over war power's responsibilities continued to be controversial and contentious during Bill Clinton's first term as President. In the three case studies examined in this dissertation, important insights have been gained on the rule of law in American politics, the role of international law and collective security organizations in American foreign policy, the level of partisanship and its impact on war power's responsibilities, and the conditions in which Congress can effectively check the President on the use of force abroad.

Before I summarize my findings and address these issues, we first must examine the last use of force in President Clinton's first term. Because the interplay between Congress and the President over the airstrikes on Iraq on September 3, 1996 was so limited, this discussion does not merit an entire chapter. However, this use of force has significant implications for war powers' responsibilities in the future, and thus deserves our attention. Moreover, in order to understand the full chronological evolution of war powers during Clinton's first



term, the Iraqi bombings need to be studied before any broad conclusions are drawn about the 105th Congress and Clinton's actions as commander in chief. As will be demonstrated, Clinton's decision to bomb Iraq was made unilaterally, both from a domestic and international standpoint, which has great relevance to collective security organizations and the constitutional division(s) of power.

### Iraq

After Bill Clinton's 1993 bombing of Iraq, U.S. relations with Saddam Hussein improved little over the next two years. In October, 1994, Hussein began a troop-buildup along the Kuwait border, which appeared to some U.S. officials as a precursor to Iraqi aggression. Clinton responded by deploying 36,000 troops to Saudi Arabia, and Secretary of State Warren Christopher stated that Iraq would pay a "horrendous price" for another invasion of Kuwait (quoted in Gordon, 1994: A1). The Administration also deployed 550 American fighter planes in the event that force would have to be used (Jehl, 1994: A1).<sup>155</sup> No military confrontation ensued after this American deployment, but relations remained tense in the short term.

In August, 1995, diplomatic tensions were further exacerbated when U.S. Department of Defense officials felt

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<sup>155</sup> See also Clinton's address to the nation (Clinton, October 10, 1994).

that Iraqi forces were conducting "unusual training activities" that demanded some military response by the United States. At the time, two Iraqi defectors had also indicated that Hussein was planning an invasion into Kuwait and Saudi Arabia. In response, the United States threatened to send additional U.S. troops to the region and the Navy moved its aircraft carrier the U.S. Theodore Roosevelt into striking position off the Israel's coast (Schmitt, 1995: A1). Thus, during the Clinton administration's first three years, Hussein proved to be a persistent nemesis for U.S. national security interests. The following year was no exception.

In late August, 1996 Hussein's troops attacked the northern Iraqi city of Irbil, which had been controlled by the Patriotic Union of Kurdistan (PUK). The PUK had previously received some support from Iran. Iraq maintained its use of force was justified due to the PUK's victimization of the Kurdish Democratic Party (Myers, 1996: A1). In the process, Iraq gained control of Irbil, which is situated above Iraq's 36th parallel. Its location is significant because the United States had established a no-fly zone above this line after United Nations Security Council Resolution 688 called for Iraq to end its repression of its Kurdish minority in the aftermath of the Gulf War (S/Res/688, 1991).

In response to Hussein's military maneuvers, on September 3, Clinton authorized two attacks on Iraq. The strikes totalled 44 cruise missile launchings aimed at military outposts in Iraq's southern half (Doherty, 1996: 2535). Clinton also unilaterally extended a "no-fly zone" in the south from the 32nd parallel to the 33rd parallel (Clinton, September 3, 1996). The President announced his decision to conduct the airstrikes at a morning White House Press Conference on September 3, by stating that Saddam Hussein had violated international law, and condemned Hussein's "latest act of brutality" (Clinton, September 3, 1996). There is no public record indicating that Clinton sent a letter to Congress justifying the attacks on constitutional grounds as is required under the War Powers Resolution. There was no United Nations Security Council Resolution authorizing Clinton's use of force.

The American public responded favorably to the bombings. In a poll taken immediately after the bombings, 69 percent of those polled approved of the U.S. attacks. Among those surveyed who followed Iraq more closely, 79 percent approved (Elder, 1996: B11).<sup>156</sup> Like the American public, Congress applauded the use of force. In the Senate, Minority Leader Tom Daschle (D-S.D.) almost immediately introduced a resolution supporting the President's actions (Congressional

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<sup>156</sup> See also Kempster (1996: A6) who reported similar results a week later with a sample size of 1,522.

Record, September 3, 1996: S 9682). Daschle's resolution is interesting in light of the fact that there was no consultation with Congress prior to the bombings, and the United States had acted without multilateral approval. Election year politics may have influenced Daschle's prompt effort to build quick support for the President. Yet through Daschle's stand, the Senate Minority leader conceded all war powers authority to the President in this instance by applauding the President for his unilateral use of force.

Within two days, the Senate was mired in a debate over how to commend Clinton's air strikes. Republicans strongly objected to specifically endorsing "the President" in the resolution. There was also some concern among Republicans that the President had not consulted with Congress prior to the bombings (Doherty, 1996: 2536). The issue of consultation, however, did not make great headway on the Senate floor or with the majority of Republicans. Senate Majority Leader Trent Lott (R-Miss.) did state:

I want to say I am concerned...about the lack of prior consultation with the Congress about this action. The War Powers Act is very clear about the need for notification, consultation and also a report on what happened. It did not happen in this instance, and I don't believe it happened on either side of the aisle. That is unacceptable. Perhaps there were reasons for it, but I have expressed my concern to the administration, to the NSC, and I believe that we will have more consultation and notification in the future. We must not have the commitment of military power without even a word of consultation with the Congress (Congressional Record, September 5, 1996: S 9934).

Lott's criticism was the strongest launched at the President on constitutional grounds. Otherwise, the Senate stayed

relatively quiet on specifics of the War Powers Act or the Constitution. On September 5, the Senate passed a resolution commending the American troops and the actions taken against Iraq, but did not mention the President specifically. The Resolution also avoided the contentious issue of proper consultation. It was supported in a 96-1 vote with only Senator Slade Gorton (R-Wa.) voting in the opposition (CQW, 1996: 2555).<sup>157</sup>

The House made no formal resolutions on Clinton's airstrikes. Like Daschle, Speaker of the House Newt Gingrich (R-Ga.) issued a statement on September 3 supporting the troops and the military decision made by the President (U.P.I., 1996). Later he expressed some concern that the decision to bomb had been made without strong international support as was witnessed during Desert Storm (Schmitt, 1996: A1). Yet, overall the House was quiet over the bombing, and through its silence, implicitly endorsed the President.

From an international legal standpoint, Gingrich's comments have great validity. After the cruise missile attacks, the United Nations Security Council was unwilling to pass a resolution supporting the bombings. Of the permanent members of the Security Council, only Great

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<sup>157</sup> Gorton originally supported Clinton's decision by stating: "the United States has a duty and obligation to protect its interests in the Middle East, and I support action taken to fulfill those responsibilities (quoted in Blumenthal, 1996: A1). He later switched his position and was very critical of the President on both the policy and the lack of consultation (Congressional Record, September 6, 1996: S 10016).

Britain actively supported Clinton, while Russia and China were very critical of the U.S.'s actions (Crossette, 1996: A17). France would not openly support the United States. The French did not verbally condemn the United States, but President Jacques Chirac clearly made an effort to distance himself from Clinton's decision (Briancon, 1996). Although Clinton had relied heavily upon United Nations Security Council Resolutions to legitimize the use of force in Somali, Haiti and Bosnia, Iraq was clearly different, which seemed to bother President Clinton little. With the Presidential election only two months away, and Republican criticism about Clinton's forfeiture of American foreign policy to the U.N. Security Council, the administration openly criticized the United Nations and at times flaunted its unilateral decision (Harden, 1996a; Berke, 1996). As if it were part of the administration's campaign strategy, in late September U.S. Ambassador to the United Nations, Madeleine Albright, gave a critical speech about the United Nations at a town hall meeting in Atlanta, Georgia (Albright, September 23, 1996). In October, 1996, Secretary of State Christopher also travelled to Africa in order to build support for a new U.N. Secretary General. The United States had openly stated that it would exercise its veto power in the U.N. Security Council to prevent Boutros Boutros Ghali from having another five year term as U.N.

Secretary General in an effort to demonstrate its commitment to U.N. reform (Crossette, 1996a: A6).

Furthermore, during a Presidential debate with Republican candidate, Bob Dole, the former Senator for Kansas criticized the President for not consulting more closely with the United Nations prior to the bombings. Clinton responded, "Sometimes...the United States has to act alone...we cannot let other countries have a veto on our foreign policy" (quoted in Kristol and Kagan, 1996: 17A). Thus, in the aftermath of the attacks, Clinton used his unilateral strike on Iraq to stem criticism that he was weak on foreign policy, and as a demonstration that he could act decisively without consulting the United Nations. It is also noteworthy that like Congress, the Republican presidential candidate also refused to criticize Clinton for bombing Iraq, or question him on Constitutional grounds. Although Dole tried to gain political points by questioning the President on his international support, he, too, deferred to the President and supported his decision (Harden, 1996b).<sup>158</sup>

In short, Congress followed its post World War II norm of deference to the President. Since Saddam Hussein was widely perceived as the United States' chief security

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<sup>158</sup> Dole was critical of Clinton's overall foreign policy, but stated about the missile attacks in Iraq, "matters like this, all of us think, not as Republicans or Democrats, but as Americans. And as Americans, we wish our troops success and safety" (quoted in Harden, 1996b).

nemesis, there was no push to question the President on constitutional grounds for the air strikes. Immediately after the bombings, there was nearly unanimous bipartisan support for the airstrikes in both Congressional chambers. In this respect, Congress reflected popular opinion and stood solidly behind the President. Moreover, despite the complete absence of consultation between the White House and the Congress, the war powers resolution requirement of "consultation" had little constitutional relevance for most members of Congress. With the elections only two months away, members of Congress likely saw little electoral gain in questioning the President, and did not want to risk the appearance of disloyalty to the President during a time of crisis involving Saddam Hussein. Republicans, who traditionally support unilateralism over multilateralism (see chapter 3), criticized Clinton on his lack of international support. The G.O.P.'s position appeared very partisan, particularly in light of the Republicans' efforts to "restore national security" and reassert an "America first" strategy in 1995. In many respects, the position taken by Congressional Republicans was almost a complete reversal from their viewpoints after the 1994 mid-term elections. However, their criticisms were short lived and created a public relations coup for the President, who could place America's interests over all others, without appearing to sacrifice anything to the United Nations or U.S. allies.



As President, Clinton exercised unilateral authority to bomb Iraq with 44 cruise missiles, and threatened to continue with the bombings after the initial September 3 strikes if Saddam did not retreat (Clinton, September 3, 1996). In a manner completely different from the U.S. deployment in IFOR, Clinton did not meet with members of Congress prior to the attack, filed no letter with Congress after the attack, and had no formal international support. He justified his attacks through a moral appeal against Saddam Hussein's actions and through past United Nations Security Council decisions, even though at least two permanent members of the Security Council were strongly opposed to Clinton's use of force. The Clinton administration defined international law as it wanted, with broad interpretations of its own mandate under Security Council Resolution 688. Like his predecessors, the President acted as other chief executives have in the 20th century: individual executive interpretation of U.S. national security interests, without seeking any formal role by the U.S. Congress.

#### CONCLUSION

A number of questions can be answered after examining these three case studies and other uses of force in Iraq.

1. What can be said about the interplay between the White House and Congress over war powers? In short, this study

confirmed the dissertation's central hypothesis. Congress defers to the President and avoids taking a legally binding position prior to the use of force abroad. These findings support the past literature on this subject (Weissman, 1996; Fisher, 1995; Ely, 1993). Past scholarship had not examined closely the interplay between the President and Congress over President Clinton's uses of force. Therefore this research provides an update on war powers in the Clinton administration, and contributes to the cumulative knowledge of war powers during Clinton's first term as President.

As witnessed with U.S. troop deployments to Somalia, Haiti and through Congress's "support the troops, not the policy" vote in Bosnia, Congress does not want to take legal and political responsibility when it comes to the initial deployment of U.S. troops abroad. Moreover, Congress did not challenge the President's use of force under NATO in Bosnia or his uses of force in Iraq. What is especially interesting about the Bosnia case study is that, *prima facie*, the 104th body represented a new breed of highly motivated and committed members of Congress. Yet, in practice, even the 104th Congress remained unwilling to test the President on his perceived constitutional authority, and preferred to defer to the President's decision rather than engage in a constitutional struggle for power.

From a strictly legal standpoint, there were some individual members, e.g. Senator Russ Feingold (D-Wi.),

David Skaggs (D-Co.), and Robert Torricelli (D-N.J.), inter alia, all of whom sought an initial legal role for Congress in the war powers relationship. The House was also unwilling to repeal the War Powers Resolution, which demonstrates that members still see some value in the 1973 legislation, despite the generally wide recognition that the Resolution has failed to produce a meaningful legislative role for Congress. The Senate also took stands opposed to United Security Council Resolutions that by themselves served as authorization for the use of force in Haiti and Bosnia. Yet, both of these initiatives were non-binding resolutions, and only reflected the "sense of the Senate." As a legislative body, Congress did not work to instill a legal role for itself prior to the use of force, even though it has many "war powers" under the Constitution and the War Powers Act. Rather, Congress prefers to operate on a political basis. In other words, it practices a "wait and see" strategy, in which it can criticize the President after the deployment if a military operation abroad goes badly, just as Congress did with Reagan's troop deployment to Lebanon in 1983. In doing so, members avoid taking a controversial position during the initial phases of the deployment, and later can champion public opinion to their political advantage. Some members, including Senator Jim Exon (D-Ne.) and Senator Chuck Robb (D-Va.) appeared to operate under the assumption that the President's powers are quite broad as commander in chief,

which also explains their deference from a constitutional standpoint. Yet, this position gives great leeway to the President, and de facto, renders Congress impotent as a legal player in the deployment decisions.

As commander in chief, Clinton used a host of justifications to use force abroad. Clinton relied upon his own broadly perceived powers under the Constitution, U.N. Security Council decisions, NATO support and agreements, varying interpretations over how to define "war" under the War Powers Resolution, and in his last use of force in 1996, used a moral appeal to the American people for his decision to bomb Iraq. Clinton acted like past chief executives during the post World War II era. He interpreted his authority under the Constitution very broadly and accepted little to no legal role for Congress concerning the use of force. Even after Presidential Decision Directive 25 and its purported interest in including Congress more fully in the decision making process to use force, the President used force independently of Congress.

The one notable exception was the U.S. deployment under IFOR. In the early stages prior to the Dayton Peace Accords and after the September, 1995 bombings of the Bosnian-Serbs, the President and his highest ranking officials all promised Congress that the administration would consult with them prior to a deployment. Clinton undoubtedly sensed some risk in adopting traditional unilateral arguments for the use of

force as other Presidents have done. Recall that President Bush never promised he would consult, or even needed to consult with Congress, prior to Operation Desert Storm, which involved 25 times the number of troops Clinton was proposing with IFOR. Congress eventually did authorize U.S. troops to participate in U.N. Security Council Resolution 678 to expel Hussein from Kuwait. It is probable that Bush recognized that without Congress's support of the Persian Gulf War, his mission would have been more difficult, but the President never consented publicly to grant any legal authority to Congress to limit his own perceived powers as President. Yet, Clinton clearly changed the traditional presidential rhetoric and came before Congress with his plan. The President sensed the political necessity to at least tacitly "consult" with Congress, which in the short term would appease some members, and in the long term could be used as an argument to continue a controversial mission in light of Congressional opposition. Thus, Bush and especially Clinton likely sensed some political advantages in consulting Congress in some manner prior to their major troop deployments. In reality, the Clinton administration did nothing more than "appear" and testify before Congress. This dissertation demonstrated that the political process and rhetoric used by the Clinton administration were clearly different than in the recent past, with the President's explicit strategy to "consult" with Congress. These findings

are new to the war powers interplay, which leads to the next set of conclusions.

2. Under what conditions does Congress exercise a war powers check? This dissertation expected to find that Congress does assert itself vis-a-vis the President occasionally on a case by case basis. While it is true that the norm of deference is strong regarding foreign policy and security issues in Congress, the legislature did exercise an important check on the President. The most important example, as shown in Chapter 3, was UNOSOM II. This case presented a number of factors that encouraged Congress to exercise a check. The key factor in Somalia was that American troops were killed in action. After the troops were killed, and the western media brought the news back to American viewing audiences, the public and Congress began to question the role that the United States was playing in Africa. The United States was also participating in a U.N. operation: UNOSOM II. When 18 Americans were killed by General Mohammed Aideed's forces, many members of Congress viewed the deaths and the operation as a loss of U.S. sovereignty to the United Nations, despite the fact that the U.S. troops were serving in a Rapid Reaction Force directly under U.S. command. UNOSOM II also involved dubious national security interests. Although the humanitarian interests were unquestionably profound, the tangible American interests, whether economic or military,

were ambiguous at best. Congress's check was also likely aided by the vigorous lobbying efforts of a politically influential Senator, Robert Byrd (D-W.V.). As a senior Senator and member of the President's party, Byrd has gained much respect during his years on the Hill. As a well reputed Democrat, Byrd was capable of waging a substantial and politically powerful challenge to the President. Thus, the American deaths, changing public opinion, high media coverage, a challenge from a senior senator of the President's own party, and the appearance of a loss of U.S. sovereignty, all provided the conditions in which Congress sought to redirect the President's policy. Just as Ronald Reagan reacted to American casualties in Lebanon, Clinton backed down to Congressional pressures over the deaths in Somalia and set a withdrawal date for the operation.

Another example of congressional influence was demonstrated in Chapter 5. Prior to IFOR, Congress forced the President to use the rhetoric and language of "consultation" in new ways. With the presence of a new and highly ideological 104th Congress that was generally opposed to multilateral deployments, and since Bosnia was a situation that also involved questionable U.S. national interests, Congress was able to have some impact on the President's relationship with the legislature. In this case, it was the language and process that experienced change. However, it is not clear that Congress could have prevented

the deployment, even if it had directly voted against authorization. Just as one can only speculate as to what would have happened if Congress had voted against President Bush and Desert Storm in 1991, there is no telling how Clinton would have reacted to a "no" vote from Congress in 1995. In avoiding a constitutional struggle for power due to Congressional acquiescence, President Clinton was able to do what he wanted.

With Haiti, the President was pushed in another direction by the Congressional Black Caucus and a small contingency of other motivated members to intervene in the Caribbean. As liberal Democrats, the Black Caucus served as a strong legislative ally for the President, whose criticisms could not be summarily dismissed. For Clinton, there were strong political incentives to, at a minimum, listen closely to these members' needs. This is not to say that Clinton completely based his foreign policy on the Caucus's demands since a U.S. deployment involved great domestic and international political risks, but rather that the Caucus placed strong political and moral pressure on Clinton to intervene. Caucus members spoke out loudly in their efforts to lobby the President to restore Aristide to power.

Thus, in the larger analysis of war powers, Congress can exercise a political check on the President when the mission appears to go badly. In Somalia, the congressional



checks came when public opinion had changed, when a senior and well respected member of Congress led the effort, and when America experienced casualties in combat. In Bosnia, it took a new majority party and a highly controversial mission for Congress to exercise a limited check on the President before the Republicans backed down to the President's policy. Otherwise, Congress allowed the President to have wide powers as commander in chief. In the case of Haiti, there was actually a domestic push for intervention without prior Congressional authorization. Thus, each case differed in terms of Congress's interest and the political pressure placed on the executive branch.

### 3. What is the role of partisanship with war powers?

Party affiliation can explain a great deal about war powers. As shown in the case study on Somalia, Democrats prevented any legal encroachment from Benjamin Gilman (R-N.Y.), the ranking minority member of the House Foreign Affairs committee and other motivated Republicans in the House. As a group, the Democrats were also generally appeased once Clinton set a withdrawal date from Somalia after 18 Americans were killed, and the Democrats curtailed Republican efforts to further limit the deployment after Clinton offered his withdrawal date. As shown in Chapter 4, while many Democrats were opposed to the intervention into Haiti, the Democratic leadership also prevented any

substantial legal challenges to the President prior to the deployment. As a body, liberal Democrats in the Congressional Black Caucus were also well organized in their support of an intervention into Haiti. With Bosnia, there was a strong partisan division in the House over Clinton's policy, as the vast majority of Republicans approved of the language "supportive of the troops but not the policy," while Democrats opposed this politically expedient vote. In the Senate, partisan politics were moderated by the leadership of Senate Majority Leader Bob Dole (R-Kan.), although the Republican leadership similarly crafted language in their vote on Bosnia that echoed the House Republican legislation.

As shown in the historical trends of war powers in chapter two, it is much too simple to generalize the Congressional/executive interplay by partisanship. The first Clinton term followed the historical pattern, in that partisanship cannot explain everything about the war powers relationship. A number of Democrats openly challenged the President over each multilateral deployment he made. Senator Russ Feingold (D-Wi.), David Skaggs (D-Co.), and Robert Torricelli (D-N.J.) were among a small group of members that contested the policies of their own President on Constitutional grounds and called for some legal precision in defining the war powers relationship. On the Republican side, Senator Bob Dole (R-Kan.) crossed party lines to

support the President with IFOR. Moreover, Senator John McCain (R-Ariz.) argued against Arlen Specter's (R-Penn.) efforts to limit the President's authority to intervene in Haiti. Dole's backing of the President may in part be explained by the Senator's political calculation that support for the President would resonate better with the voters in the upcoming presidential primaries, rather than risking the appearance of being an unpatriotic obstructionist. Whatever Dole's reason, party lines were crossed to support the President. Furthermore, in both air strikes on Iraq, partisanship mattered little in the overall war powers' analysis since both parties immediately applauded the President for taking action against Saddam Hussein. Partisan bickering only occurred when trying to determine how to commend the commander in chief, yet there was little controversy over the President's constitutional authority to conduct the bombings. In short, partisanship plays a role in explaining the war powers interplay, but cannot define the totality of the war powers interplay.

4. What is the interplay between international and constitutional law in America's uses of force? In the Clinton administration, international law played an important legal role in justifying the use of force. International law may also be linked to a moral concern for action, in that broad international support may provide a

further moral basis for taking military action. In Somalia, United Nations Security Council resolutions were the principal formal justification(s) for the use of force by American troops used by the President. In Haiti, although Clinton distanced himself from the United Nations after American deaths in Somalia, it was Security Council Resolution 940 that gave the United States the legal authority under international law to conduct the operation. Clinton officials also went to some lengths to gain legal endorsements (dubious as they may be) from the Caribbean Community and from the Organization of American States prior to the deployment to Haiti. In Bosnia, United Nations Security Council resolutions gave NATO forces the authority to bomb the Bosnian-Serbs, and later resolutions allowed for the deployment of U.S. peace-enforcers in IFOR and the Dayton Peace agreement. Thus, international law as specified by the United Nations Security Council was important for the Clinton administration in justifying its conduct, both internationally and domestically.

In contrast, before the deployment under IFOR there was some indication that the Clinton administration was willing to deploy forces to Bosnia without the U.N. Security Council's full approval. As shown in Chapter 5, Secretary Christopher appeared willing to deploy U.S. troops to Bosnia even if Russia vetoed the Dayton Accords and the peace-enforcement plan. And in 1993 after the bombing raids on

Baghdad, the President defined international law in a somewhat arguable manner through a very broad interpretation of Article 51 of the U.N. Charter. After the 1996 air strikes in southern Iraq, Clinton also stated that there will be instances when the United States must "act alone" to protect its interests. Thus, the President at times was willing to abandon principles of multilateral endorsement if required by his perception of the United State's best interest. If U.S. foreign policy did not necessarily have strong international support, Clinton avoided a U.N. Security Council vote and acted alone.

In general, Clinton's use of international law does not necessarily bode well for the future of multilateralism. There is no guarantee that Clinton is setting any precedents for U.S. presidents to follow in U.S. foreign policy with his use of U.N. Security Council authorizations, and Clinton maintained a certain level of brashness about international law before the 1996 election. While there were undoubtedly positive signs regarding the development of international law and collective security in Clinton's first term, coupled with strong cooperation between the United States' NATO allies, it is also clear that Clinton will maintain a certain level of unilateralism in U.S. foreign policy, especially if the adversary happens to be a well established rogue state and/or ruler such as Saddam Hussein. If a President senses that U.N. Security Council approval is

imminent and convenient, its backing will be sought. Otherwise, at this stage in the evolution of American foreign policy, multilateral approval will be placed aside for the United States' perceived national interests.

#### Policy Implications

There is no reason to believe that Congress will implement any new war powers legislation in the near future. As was shown in the use of force in Iraq, 1996, Congress applauded the President on the same day that he attacked Iraq, without any consultation with Congress or any multilateral approval. The use of force in Iraq demonstrated that if public opinion is in favor of the operation, Congress will not question the President on his use of force. If a majority of members in a new and highly partisan Congress cannot politically prevent the President from deploying U.S. troops to Bosnia--in light of considerable public opposition to the deployment--there is no reason to think that legal articulation of the proper responsibilities will suddenly develop. Although President Clinton and a number of his aides expressed some desire to reevaluate war powers responsibilities, and Presidential Decision Directive 25 was announced, these initiatives only appear to be the rhetoric of an idealistic and young administration and may more accurately reflect a desire to appease Congressional war powers advocates. Thus, as long as

politics triumph over law, there resides the potential for a war powers crisis.

Without any well defined legal responsibilities, e.g. a President who exerts wide powers as commander in chief and Congress's persistent unwillingness to accept legal responsibility for American military deployments, there exists a grave danger to America's Constitutional democracy. Congressional unwillingness to accept a substantive legal status with multilateral military deployments is of serious concern, particularly in U.N. peace-enforcement and peacekeeping deployments in which U.S. troops are authorized to use force. Although U.S. participation in a U.N. operation may not be "war" in the legal sense, the troops have the authority to use "all necessary means," which de facto is difficult to divorce from the concept of "war." This current legal ambiguity invites a constitutional battle, in which the President and the Congress become embroiled in a legal battle over proper authority. The War Powers Resolution has done little to alleviate this problem. Thus, there is a need for some war powers clarification. Some in Congress, e.g. retired Senator Sam Nunn (D-Ga.),<sup>159</sup> bemoan the fact that the President has become essentially autonomous in many respects in the decision to use force.

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<sup>159</sup> See C.A.S. (March 25, 1993: 28) and the Congressional Record (December 15, 1995: S 18679).

Yet, there are only a few members, e.g. Russ Feingold (D-Wi.) who actively pursue legal clarity.

From the standpoint of effective foreign policy, the Clinton administration has been blessed with successful military operations in Haiti, Bosnia and Iraq. Similar to Reagan in Lebanon, Clinton also wisely responded to Congressional pressures after 18 U.S. Army Rangers were killed in Somalia. Consequently, Clinton has avoided a Constitutional crisis in all of these situations to date. However, this relationship is ad hoc and extremely risky. Congress avoids taking controversial positions on the use of force, and the President acts unilaterally, which Congress sometimes applauds. This formula threatens an effective foreign policy in the event that a mission goes bad, e.g. armed combat involving U.S. troops in IFOR. This practice of congressional deference could undermine U.S. foreign policy commitments and its ability to play a leadership role in collective security.<sup>160</sup>

To alleviate this problem, Senator Joe Biden's (D-Del.) "Use of Force Act" is a step in the right direction. The Act would require at minimum, notification between the branches prior to the use of force. It makes an effort to outline situations in which force could be used unilaterally by the President and would demand that Congress vote on the deployment or forfeit the war powers it has. Thus far his

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<sup>160</sup> See also Forsythe and Hendrickson (1996).



legislation is the best recommendation offered to instill a more discerning process to this aspect of American foreign policy. Without some sort of process requiring a vote in Congress, there is no reason to believe that Congress will break the norm of initial deference to the President. And, without a clearer definition of what it means to "consult" between the branches, there is no reason to expect that the President will do more than "notify" Congress prior to the use of force. The commander in chief should have the authority to act unilaterally on certain occasions, including situations requiring immediate self defense, such as an attack upon the United States or U.S. troops, or in cases of national emergencies, e.g. to rescue American hostages abroad. As the founding fathers likely recognized, it is difficult--if not impossible--to articulate all the situations when the commander in chief could use force without deliberation with Congress. However, if the American polity is to meet the founding fathers' constitutional intent of checks and balances in government, presidential unilateralism should be the exception, rather than the norm.

#### Future Research

This dissertation has added new knowledge to the war powers relationship during the Clinton administration. However, there are a number of areas of research that could provide more insight on the war powers relationship. One way in

which this study could be improved is by conducting more interviews. The interview with Senator Jim Exon (D-Ne.) and Congressman Doug Bereuter (R-Ne.) yielded some useful insights on war powers. Senator Exon reaffirmed the idea that war powers is often a "judgment call," and Congressman Bereuter described the current war powers arrangement as in a "limbo state." Thus, both members felt that the Constitution and present law are not always clear on when the President is allowed to use force unilaterally. Further interviews could potentially add to the richness of the study and may sift out clearer positions on where individual members stand on the issue. Many members also did not express their feelings on war powers on either the House or Senate floor, or in committee meetings during Clinton's major deployments. Interviews would potentially allow the researcher to gain new information, which would provide a more exhaustive set of data.

The data on members of Congress in this study could also be broadened by including more outside information and statements from individual members in other forums. While primary documents are the best source of information, there is the possibility that key statements from members of Congress were not recorded in the Congressional Record, or could have been made at times when Congress was not in session. While the searches conducted in this study were

fairly exhaustive, a broader search may have yielded a more comprehensive data base.

This study also only examined the "war powers" relationship between the White House and Congress, but could be extended into a broader analysis of the foreign policy relationship between Congress and Clinton during his first term. There was clearly a norm of deference at work during Clinton's first term for the use of force and spending authorizations for the use of force, but there was no deference when it came to U.S. payments to the United Nations. Congress was forceful, committed and effective at cutting expenditures to various U.N. agencies. To argue that the norm of deference defines the congressional/executive foreign policy interplay is inaccurate. Congress can be effective when it wants to be, especially in its foreign policy appropriating powers, which leads one to ask when does Congress defer on other foreign policy issues and when is it the most effective in other areas of foreign policy?

Finally, and perhaps most importantly, another area that needs further examination is the media's role in American foreign policy. In Somalia and Bosnia especially, the media appeared to have an impact on the President's policy and incited Congress to challenge the President's policy. Although the troubles in Rwanda were not examined in this study, this country and its genocide received tremendous media coverage, but made little impact on

Congress or President Clinton's foreign policy. What the actual impact of the "CNN effect" is needs subsequent analysis. Thus, while this dissertation adds further insight on the war powers relationship during Clinton's first term as President, it also provides a necessary starting point for future research on the use of force in American foreign policy.

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