

# War Powers, International Alliances, the President, and Congress

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Though the United States has been involved in numerous foreign conflicts in the post-World War II era, none of them garnered an official declaration of war from Congress. Instead, presidents have used their perceived war-making powers to send troops into battle and to dictate the length and terms of U.S. military involvement around the world. As a result, the balance of war-making power between Congress and the president has been the source of increasing controversy in the postwar era, especially during the longest and most controversial conflicts. In this essay, we address the battle between the president and Congress over contemporary war-making powers, with an emphasis on the constitutional framework, as well as the tactics that were employed by the two presidents Bush to gain an upper hand on Congress during the first and second wars with Iraq. We also discuss the international consequences of the use of presidential war-making powers during those two conflicts.

As with many of the contemporary controversies surrounding the balance of power between Congress and the president, the question of who has the power to make war cannot be resolved by the text of the Constitution alone. The ambiguity of the Constitution has led to a high-stakes fight for control over America's involvement in international conflicts. Article I, section 8, gives Congress **the power to declare war**, and to determine the size and scope of the military. Meanwhile, the president's most important war power derives from his role, per article II, section 2, as "**commander in chief**" of the military. Within this sparse framework, the legislative and executive branches continually jockey over the limits of their powers, and their obligations to each other, during the undeclared wars and other military operations that have been the hallmark of the post-World War II era.

Until the mid-twentieth century, the Constitutional framework provided suitable guidance to keep Congress and the president from fighting extensively over war

powers. Beyond the wars that were officially declared by Congress—the War of 1812, the Mexican-American War, the Spanish-American War, and the two world wars—the relatively small peacetime standing military left the president with limited options for use of the military. During the Cold War era, however, presidents were able to initiate and sustain a deployment of troops anywhere in the world, sometimes leading directly to conflict, as a result of the increased size of the military. These involvements were often quick—for example, President Carter’s failed attempt to rescue hostages from Iran in 1980, or President Reagan’s 1983 invasion of the tiny country of Grenada. However, the president’s asserted war powers under the commander-in-chief clause have also been the basis for controversial, protracted conflicts such as the Korean War, the Vietnam War, and the current war in Iraq and its aftermath.

At the end of U.S. involvement in Vietnam in 1973, a large congressional majority believed that presidents Johnson and Nixon had far exceeded the presidential war-making authority envisioned by the founders under the commander-in-chief clause. To restore what it viewed as the proper balance, Congress passed the **War Powers Resolution** over Nixon’s veto. The resolution requires the president to report to Congress within 48 hours after deploying U.S. troops into direct hostilities, or into “situations where imminent involvement in hostilities is clearly indicated by the circumstances.” The report must provide justification for the engagement and set forth its “estimated scope and duration.” It also requires follow-up reports no less frequently than every six months. The most controversial clause in the War Powers Resolution sets a 60-day deadline after the reporting of an engagement for the president to obtain a resolution of war or at least an express authorization for the use of military force from Congress. If the deadline is not met or extended, the president must end the engagement. The resolution also requires the president to consult with Congress “whenever possible” throughout the process, a provision intended to increase consultation but which presidents might, at their discretion, use to prevent communication until after action is taken.

To varying degrees, post-Vietnam presidents have been willing to comply with parts of the War Powers Resolution. At the same time, however, they insist that the resolution is unconstitutional. In particular, they view the deadline for obtaining Congressional permission as an unacceptable encroachment on their commander-in-chief powers. Though courts have never adjudicated the constitutionality of the resolution, its opponents take encouragement from a 1983 Supreme Court ruling (*INS v. Chadha*) that disallowed a “**legislative veto**”—the nullification of presidential or executive-agency action by congressional resolution. In light of this precedent, it is

widely assumed that the War Powers Resolution would meet a similar fate were it ever brought before the Supreme Court.

Presidents have repeatedly expressed that they feel no formal obligation to follow what they believe to be a clearly unconstitutional law. As a result, they have often ignored Congress entirely when deploying U.S. forces in small-scale conflicts. For conflicts that promise to be long and costly, however, presidents have clear strategic incentives, beyond the law, to gain at least some form of permission from Congress. For example, it is widely believed that the public will be more likely to support the use of force if Congress—the people's branch—gives the conflict its stamp of approval after sufficient public deliberation. Also, putting members of Congress on the record as authorizing the use of force effectively preempts future criticism, even if the war turns out to be longer or costlier than anticipated.

Even as they ostensibly encourage congressional debate over whether to grant permission to use force overseas, presidents employ a variety of tactics to tilt the scales in their favor. For example, immediately after Iraqi forces invaded Kuwait in August 1990, President George H. W. Bush deployed a massive number of U.S. troops to Saudi Arabia. Nearly 200,000 American men and women were involved by the time Congress was brought into the picture, and another 150,000 were added during the autumn congressional recess. Despite this attempt to make war appear inevitable, bolstered by an impressive international coalition Bush had assembled during the early autumn, Congress held a vigorous, impassioned debate over whether to force Saddam Hussein's troops out of Kuwait. The House and Senate each passed the Authorization for Use of Military Force Against Iraq Resolution (AUMF) on January 12, 1991, with the Senate approving it by a razor-thin 52–47 margin. The air war began less than a week later.

During the 2002 buildup to the second war in Iraq, President George W. Bush took advantage of the electoral calendar and his post–Sept. 11 popularity to gain the upper hand in Congress. After a summer in which Iraq became the increasing focus of the Bush administration's public remarks, it made the case directly to Congress in September that Iraq was a significant threat. Though Bush requested a resolution of support for strategic reasons, he made it clear that he did not believe the War Powers Resolution required such a move. Within a few weeks, the House leadership introduced the AUMF of 2002. After a few days of debate in early October—less than a month before every House seat and one-third of the Senate would be up for election—both chambers passed the resolution overwhelmingly. Many Democrats

later expressed regret over their affirmative votes, with some attributing them to the debate's proximity to the November midterm elections.

The AUMF also provides the most striking example of how gaining Congress's permission for the use of force can preempt future criticism. By the time the 2004 presidential election was fully under way—more than a year after President Bush had declared an end to major combat operations after the fall of Baghdad—public sentiment had begun to turn against continued involvement in Iraq, with most polls showing a roughly even split between those who thought that going to war was the right thing to do and those who thought it was a mistake. In theory, Democratic presidential nominee John Kerry should have been able to make a convincing argument that Bush should be punished for taking the country to an increasingly unpopular war against Iraq under what were later shown to be false pretenses. However, Bush and his supporters had an easy retort: Kerry had read all of the relevant intelligence, taken part in a vigorous Senate debate in October of 2002, and ended up voting for the AUMF. As a result, Kerry's criticism of Bush during the campaign was far more muted than many of the vocal war critics in his party would have liked to have heard.

The president's advantages over Congress in the foreign policy realm have consequences far beyond the intragovernmental struggle over power and accountability. In recent years, the use of military force by the United States to compel other countries to abide by international norms or laws has generated criticism from members of the global community. Specifically the fear is that U.S. foreign policy in the post-Cold War era has become the pursuit of a new world order that essentially reflects American hegemony. The "war on terror," the Bush doctrine, and the war efforts in Afghanistan and Iraq have all showcased the commitment of the United States to unilateralism rather than coalition building, and raise concern about the powers of the American presidency. During the Cold War, the absence of multilateralism in U.S. foreign policy was not as problematic as it appears today. However, the strengthening of presidential authority under the second Bush administration has raised alarm in many countries around the world.

In the past, the bipolar nature of the international system and the lack of consensus found among the five permanent members of the United Nations Security Council decreased the likelihood the United States could draw on multilateral action to counter its adversaries. In contrast, the post-Cold War era is one where countries are expected to fully utilize institutions like the United Nations to garner international support and establish coalitions, rather than resorting to unilateralism. Thus, the

international community has been critical of countries that appear to circumvent these norms when dealing with global conflicts in the contemporary period. To highlight some of the differences in the international community's post-Cold War support for U.S. military action abroad, we briefly examine the cases of the Persian Gulf War (1991) and the war in Iraq (2003). Both cases effectively demonstrate how two presidents, George H. W. Bush and George W. Bush, utilized the spirit of the War Powers Resolution in consulting with Congress but then reveal how their use of presidential authority led to very disparate degrees of support from the international community.

These two examples of U.S. military action in the Middle East offer several useful bases for comparison. In both conflicts there were underlying interests in securing oil resources, a desire to remove Saddam Hussein from power, and a sense that Iraq was seeking regional hegemony and defying international law based on its invasion of Kuwait in 1990 and its continued development of a weapons of mass destruction program. The contrasting responses of President George H. W. Bush and his son George W. Bush, however, illustrate how much discretion is left to the president in the current practice of war powers. In the first Gulf War, President George H. W. Bush fully utilized the international structures in place by getting the UN Security Council to adopt Resolution 678 authorizing member states to use "all necessary means," including military force, to drive Iraq out of Kuwait and comply with international law. In accordance with the War Powers Resolution the president reported to Congress on Iraq's refusal to adhere to the Security Council resolution, and indicated he was prepared to craft a **multilateral strategy** to respond to the crisis. He did not march the troops north to Baghdad and overthrow Saddam Hussein at this time because he had neither the approval nor the support of the UN to take these initiatives at the time. The Iraq policy set forth by the Bush administration thus relied on the use of a multilateral coalition to generate a sense of domestic and international legitimacy to the military actions taken by the United States and its allies, and was acknowledged as within the acceptable parameters as determined by the global community.

In contrast, the 2003 war in Iraq did not gain the support of the UN Security Council and was largely a unilateral effort by President George W. Bush. This **unilateralist strategy** can be seen on two levels, in the sense that he did not consult with allies and that his actions were rather declaratory with minimum consultation with Congress (Dumbrell 2002, 284). Global leaders warned that preemptive war and "American-led military action was illegitimate, threatened the future of the United Nations, undermined international support for the 'war on

terrorism,' and created new threats to international peace and security" (Dombrowski and Payne 2003, 395). The "coalition of the willing" that supported U.S. initiatives in Iraq was negligible in both size and relative power and was not an attempt at true multilateralism. UN Resolution 1441, indicating Iraq was in material breach with regard to its WMD program, had been carefully worded so as not to permit an American military operation to enforce Iraq's compliance. Instead, the Security Council was only willing to reopen discussions of weapons inspections and engage in further fact-finding. The terrorism rhetoric used by the second Bush administration established the urgent need for a U.S. response, and further served the president's unilateralist efforts by instilling a sense of danger in waiting for other actors to give legitimacy to the U.S.-led war.

The battle between the unilateralists and multilateralists with regard to U.S. foreign policy raises concerns about presidents whose actions promote American exceptionalism. The idea that the United States operates with an authority above supranational institutions like the UN gives the impression that the country and the president have the ability to engage in reckless foreign policy behavior with few repercussions. The post-Cold War increase in UN action raises concerns about whether the War Powers Resolution should be amended to either facilitate or restrain the president's ability to supply troops for UN missions without congressional approval (Grimmett 2004). Until then, the two cases of U.S. military action in the Middle East demonstrate important comparisons in how multilateralism and unilateralism are viewed by the global community and how they are used to establish the legitimacy of American foreign policy.

## Bibliography

- Dombrowski, Peter, and Rodger A. Payne. "Global Debate and the Limits of the Bush Doctrine." *International Studies Perspectives* 4(4) (2005): 395–408.
- Dumbrell, John. "Unilateralism and 'America First'? President George W. Bush's Foreign Policy." *The Political Quarterly* 73(3) (2002): 279–87.
- Grimmett, Richard. "The War Powers Resolution After Thirty Years." *Congressional Research Service (CRS) Report for Congress*, March 11, 2004.
- INS v. Chadha* 462 U.S. 919, 1983.

# Study Information

## Key terms:

1. **Commander in chief:** The constitutional power of the president to manage and deploy troops in military conflict. This power means that the president is largely responsible for carrying out war strategy once war has begun.
2. **Power to declare war:** The constitutional power of Congress to make the decision regarding whether the nation should enter a war. This power is designed as a way to make certain that the decision to enter war is not made lightly or by one executive leader.
3. **Legislative veto:** A congressional technique that provisionally grants the president authority to engage in government conduct ordinarily reserved for Congress with the provision that if the Congress does not approve of the presidential action, it might veto that action. The legislative veto is an inherent part of the War Powers Resolution, but it is of questionable constitutional status since the Supreme Court ruling in *INS v. Chadha*.
4. **Multilateral strategy:** Utilizing international structures in conducting international wars, often including working with the United Nations or numerous nations in the international community before deciding to enter a war. President George H. W. Bush used such a strategy in the 1991 Persian Gulf War.
5. **Unilateral strategy:** Engaging in a war without relying on international coalitions to carry out the war. President George W. Bush pursued such a strategy in waging the war in Iraq, arguing that in combating terrorism, multilateralism was not a necessary precondition for entering conflict.
6. **War Powers Resolution:** An action in Congress intended to set limitations on the presidential power to make war. While it set limits on undeclared wars, it really never functioned as designed. However, it remains a guide by which the decision to enter war is measured.

## Sample free-response question:

Of all the decisions government makes, none has a greater impact than the decision to enter armed conflict. In your essay, do the following:

- (a) Discuss a way in which the War Powers Resolution might limit foreign wars.
- (b) Identify why the legislative veto aspect of the resolution might jeopardize the legality of the resolution.
- (c) Identify one advantage the president has over Congress and identify one advantage Congress has over the president in war making.
- (d) Discuss how unilateral and multilateral approaches to war making illustrate presidential discretion in war powers.