

Chapter 3

War Powers

Supplemental Materials

Responses to the War Powers Resolution 1973

In the first 33 years since passage (1973-2007), presidents filed 121 reports in accordance with the War Powers Resolution. President Ford filed four in his short two-year tenure and President Carter filed only one during his four years. Reagan's eight years produced fourteen reports, and George H.W. Bush continued at the same pace, producing seven reports in four years.

Reporting accelerated with the end of the Cold War and the arrival of William J. Clinton, who produced 60 reports in eight years. By 12 June 2007, G. W. Bush filed 44 reports. But in 2004, the administration began filing "consolidated reports" covering operations in 10 or more countries, and it has not reported on Iraq since the initial report in March 2003.

It should be noted that not all reports are initiation reports; many reports satisfy the requirement to report on ongoing activities at least every six months. Thus, the large numbers partially reflect the accumulation of ongoing overseas deployments.¹

Gerald Ford (1974-1977)

President Ford made four reports. Three were about evacuating civilian personnel from Vietnam and the fourth was about retaking a captured merchant vessel, the *SS Mayaguez*. The Mayaguez incident is unique in that it cited 4(a)(1) and triggered the Resolution's time limits. As became the consistent pattern, Ford *notified* Congress *after* the decision had been made but *before* the operation had commenced, and called that *consultation*. Subsequent presidents would follow that pattern.

Jimmy Carter (1977-1981)

President Carter submitted only one report under the War Powers Resolution. He "consulted" Congress only after the failed attempt to rescue hostages from Iran. Carter deployed 19 special operations forces troops to El Salvador without authorization or report. Special operations forces are often deployed to train indigenous force and training missions do not require a WPR report. But the training role often quickly turns into an advisory role in ongoing conflicts thus constituting a gray area in reporting requirements.

Ronald Reagan (1981-1989)

President Reagan conducted several skirmishes in the Cold War, including two incidents in Lebanon, the invasion of Grenada, air strikes against Libya, persistent naval operations during the Iran-Iraq War, counterinsurgency in El Salvador, and proinsurgency in Angola and Nicaragua. The latter led to the Iran-Contra scandal late in the administration.

Lebanon (1982, 1983-1984).² Reagan sent 800 marines to Lebanon to assist in withdrawing forces of the Palestinian Liberation Organization in 1982. Reagan approved the plan on 2 July 1982 and announced it publicly soon thereafter. Later, on 6 July, Reagan held consultations with Congress. He reported to Congress the first deployment of forces into Lebanon on 24 August 1982 as the marines were landing. After mission completion, the marines withdrew on 10 September 1982.

As the level of violence rapidly escalated in Lebanon, Reagan ordered a second deployment of marines on 20 September 1982. Reagan reported on the 1200-marine deployment on 29 September but

¹ CRS, *WPR after 33 Years*, 56-77. Much of the information presented here comes directly from Appendix A of this report, and from CRS, *WPR Compliance*.

² CRS, *WPR after 33 Years*, 15-17.

without reference to 4(a)(1). Unlike the previous deployment, the second had no clear objectives, was politically contentious, and was not reported under the WPR.³ Considerable negotiations took place between Congress and the White House *after* the deployment took place. After two marines were killed, Reagan reported again on 30 August 1983 without reference to 4(a)(1), even though the conditions of the hostility clause clearly had been met.

Several bills were introduced to compel Reagan to comply with the War Powers Resolution. Congress and the president reached a compromise on 20 September 1983 specifying that the marines must be withdrawn within 18 months. Section 4(a)(1) was retroactively declared operational as of 29 August 1983. The compromise was then expressed as a joint resolution of Congress, which Reagan signed on 12 October 1983. In signing the resolution, Reagan stated

...that I do not and cannot cede any of the authority vested in me under the Constitution as President and as Commander in Chief of United States Armed Forces. Nor should my signing be viewed as any acknowledgement that the President's constitutional authority can be impermissibly infringed by statute, [or that ...] the resolution may be interpreted to revise the constitutional authority to deploy United States Armed Forces.

In less than a month, marine casualties accelerated and congressional pressure increased. On 23 October 1983, 241 marines were killed in a bombing attack. Reagan quickly cautioned that withdrawal would be perceived as weakness. Regardless, the administration announced withdrawal on 7 February 1984, and the end of mission was announced on 30 March.

Grenada (1983).⁴ On 25 October 1983, Reagan ordered a landing of forces on the Caribbean island of Grenada.⁵ Reagan signed the order at 6 p.m. on 24 October. He met with congressional leaders two hours later. The invasion began at 5:30 the following morning. The administration claimed that the military operation could be done in less than 60 or 90 days and, therefore, WPR restrictions did not apply. Rather than the constitutional requirement for Congress to authorize the use of force, the WPR was interpreted as a grant authorizing the president to do as he pleased for 60 days. Eleven members of Congress sued, but the court deferred claiming that not all congressional remedies had been exhausted.

El Salvador (1981-1983).⁶ The contest between Reagan and Congress extended beyond Lebanon to El Salvador. Reagan increased the deployment of Special Forces soldiers from 19 to 54 without authorization or report claiming that they were not being introduced into hostilities or imminent hostilities. Members of Congress again filed suit. Again, the court rejected the suit, this time because Congress had not shown that the action was subject to the Resolution. A higher court affirmed the ruling, and the Supreme Court declined to hear the appeal. Those US forces did sustain casualties.

Nicaragua (1982-1986).⁷ Nicaragua was also a point of contention between Reagan and Congress. The Boland amendment to the 1982 Defense Appropriations Act prohibited funds from being used to overthrow the Government of Nicaragua or to provoke military exchange between Nicaragua and Honduras. Reagan sought funds from the Sultan of Brunei that are rumored to have been deposited in the wrong Swiss account and lost. He also sought funds from private sources. Refusal to answer questions about the Sultan of Brunei transaction led to the inquiry that discovered Iran-Contra.⁸

Reagan conducted joint exercises in Central America and the Caribbean to intimidate Nicaragua. Exercises were announced 27 July 1983, began 8 August, and continued for several years without WPR report. Reports surfaced in the press in 1985 that options were being considered to invade Nicaragua. In response, a 1986 sense of Congress indicated that there should not be an intervention into Nicaragua. Still, US helicopters carried Honduran forces to the Nicaraguan border area and Congress responded by

³ James Burk, "Public Support for Peacekeeping in Lebanon and Somalia: Assessing the Casualty Hypothesis," *Political Science Quarterly* (spring 1999): 53-78, 72.

⁴ CRS, *WPR after 33 Years*, 17.

⁵ Michael Rubner, "The Reagan Administration, the 1973 War Powers Resolution, and the Invasion of Grenada" *Political Science Quarterly* 100, no. 4 (winter 1985-1986): 627-647.

⁶ CRS, *WPR after 33 Years*, 12-14.

⁷ CRS, *WPR after 33 Years*, 14-15.

⁸ Crenson and Ginsberg, *Presidential Power*, 218-219

prohibiting US personnel from entering Nicaragua and from assisting within 120 miles of the Nicaraguan border.

Libya (1986). On 14 April 1986, Reagan initiated Operation El Dorado Canyon, a punitive strike on Libya in retaliation for terrorist acts. After issuing the order, Reagan met with congressional leaders from 4 to 6 p.m. on 14 April. During the meeting, he announced that aircraft were on their way and should arrive at about 7 p.m. The administration formally reported to Congress on 16 April.

President Reagan's level of consultation with Congress prior to the Libya bombing was somewhat unique. In January 1986, Reagan submitted Executive Order 12543, which decreed that a state of emergency existed between the United States and Libya. After that, the president did not petition Congress for an authorization to use force, justifying his actions as commander-in-chief, which he claimed were unquestioned.⁹

Persian Gulf tanker reflagging (1987-1988).¹⁰ During the Iran-Iraq War (1980-1988), Reagan put US forces in harm's way in the Persian Gulf, without request or authorization. Instead, he reported isolated incidents under the Resolution.¹¹ Foreign commercial ships were reflagged as US vessels and then provided protection by US Navy combatant ships in the Gulf. The Reagan White House did report to Congress, but only after the *USS Stark* was attacked on 17 May 1987 by Iraqi aircraft killing 37 sailors, and even then not in accordance with the Resolution. In this case, 111 members of Congress filed suit. The court dismissed the suit, refusing to resolve what it characterized as a political dispute among legislators.

George H.W. Bush (1989-1993)

President Bush's primary uses of force included the invasion of Panama, restoring Kuwaiti sovereignty after invasion by Iraq, and humanitarian intervention in Somalia. A possible military intervention in Haiti was avoided.

Panama (1989-1990). Congress was favorably inclined to depose Panamanian president Manuel Noriega. Before adjourning between 22 November 1989 to 23 January 1990, Congress encouraged the president to apply diplomatic pressure to that end. Bush made the decision to invade Panama to capture its president, to protect 35,000 American citizens, and to restart the democratic process.¹² The president made the decision at a 6 p.m. meeting on 19 December 1989, while Congress was adjourned, and later notified some members of Congress. The invasion began within a few hours at 1 a.m. on 20 December. The formal report to Congress was filed the next day. An additional 14,000 troops were added to the 13,000 already in Panama. Panamanian president Manuel Noriega surrendered on 3 January 1990. Deployed forces were withdrawn by 13 February, leaving the original 13,000 in place. The operation was quick and enjoyed popular support.

Iraq (1990-1991).¹³ On 2 August 1990, Iraq invaded Kuwait. On 7 August, Bush deployed forces to defend Saudi Arabia and notified Congress. An official report under the War Powers Resolution was submitted on 9 August. Bush denied that hostilities were imminent. Discussions between the White House and Congress followed the deployment and reporting.

⁹ David B. Cohen and Chris J. Dolan, "Revisiting El Dorado Canyon: terrorism, the Reagan administration, and the 1986 bombing of Libya," *White House Studies*, 22 March 2005. Robert P. Watson, ed., *Focus on US Presidents, Presidency and Presidential Actions* (New York: Nova Science Publishers, 2007), 25-54.

¹⁰ CRS, *WPR after 33 Years*, 18-21.

¹¹ CRS, *WPR after 33 Years*, 59. Several exchanges of fire occurred and were reported separately during 1987 and 1988. On 21 September 1987, US helicopters fired on Iranian mine layers; a WPR report was filed on 23 September. On 8 October, US helicopters returned fire from small Iranian naval vessels; a WPR report was filed on 10 October. On 15 October, a US flagged ship was fired upon and the US destroyed an armed Iranian platform on 19 October; a WPR report was filed on 20 October. On 14 April 1988, the *USS Samuel B. Roberts* hit a mine; the White House met with congressional leaders to discuss options, and on 18 April, armed Iranian oil platforms were attacked; a WPR report was filed on 19 April. On 3 July 1988, the *USS Vincennes* and *Elmer Montgomery* sank an approaching Iranian small watercraft and then shot down an Iranian passenger aircraft; a WPR report was filed on 4 July 1988. On 12 July 1988, US Navy helicopters exchanged fire with Iranian small craft; a WPR report was filed on 14 July.

¹² CRS, *WPR after 33 Years*, 21-22.

¹³ CRS, *Declarations and Authorizations*, 14-16.

Sensing a presidential end run during the force build-up phase, called Operation Desert Shield, Congress introduced legislation for a congressional consultation group. The Senate and House announced establishment of the group on 23 October 1990. Bush met with the group on 30 October but mentioned no plan to send additional forces. Congress adjourned, and Bush quickly ordered 150,000 troops to deploy on 8 November. He filed a report on 16 November, again disclaiming that hostilities were imminent. Forty-five Democrats sought a judicial order on 20 November 1990 to prevent the offensive use of force without congressional authorization. The court refused. By the end of the year, there were 350,000 troops deployed.

On 8 January 1991, President Bush requested congressional “support,” not “authorization.” When asked about congressional authorization during a 12 January 1991 press conference, he famously responded, “I don’t think I need it.” Congress spared the president a constitutional crisis by providing authorization. When signing it into law, Bush added

As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President’s constitutional authority to use the Armed Forces to defend vital US interests or the constitutionality of the War Powers Resolution.

At a later Party convention in Texas, Bush was asked why he was successful in war but not in matters of the economy. He answered the question by saying, “I didn’t have to get permission from some old goat in the United States Congress to kick Saddam Hussein out of Kuwait.”

The decision to initiate the offensive phase, Operation Desert Storm, was made during a presidential morning meeting on 15 January 1991. The secretary of defense and chairman of the Joint Chiefs of Staff signed the executive order that evening approving operations to begin the next day. Desert Storm began on 17 July 1991 (the ground attack commenced 24 February) and ended 28 February 1991.

Operations against Iraq continued under the same open-ended authorization until the October 2003 invasion by the next Bush president.

Haiti (1992). The United States had backed rightwing dictators Francois “Papa Doc” and Jean-Claude “Baby Doc” Duvalier for almost three decades. Three unelected military presidents ruled from 1987 to 1990 when Jean-Bertrand Aristide was elected president with almost 70 percent of the popular vote. The leftwing Aristide initiated democratic reforms that were countered by military death squads. In September 1991, a military coup led by army general Raoul Cedras replaced President Aristide. President Bush averted a military intervention choosing instead an economic embargo including the return of escaping refugees to Haiti.

Somalia (1992). After losing reelection to Bill Clinton, Bush ordered forces into Somalia on 4 December 1992, and he spoke with some members of Congress. In support of a UN resolution, the mission was to establish a secure environment for humanitarian assistance operations to starving Somalis caught in the chaos following the collapse of the official government. The plan was to withdraw US forces after transitioning to UN peacekeeping forces. Forces arrived on 8 December, and the president submitted his initial report on 10 December. There were 25,000 US forces deployed by mid January.

Bill Clinton (1993-2001)

President Clinton filed a record 60 reports in accordance with the provisions of the War Powers Resolution. Over half involved the Balkans. About one quarter involved operations in Africa and one tenth in Haiti. Single reports were filed with respect to operations in Cambodia, Afghanistan, Iraq, and Yemen, and three were filed regarding East Timor. Early in the Clinton administration, consultation was conducted in the spirit of the Constitution and the War Powers Resolution, but that faded quickly. While Bush had rejected congressional authorities, Clinton publicly acknowledged congressional authority, promised consultation, and then delivered a *fait accompli*. The contest between executive and legislative was as apparent as was the contest between parties.

Clinton inherited ongoing conflicts in Somalia and Haiti. The American public had been more supportive of humanitarian assistance than of peacemaking and peacekeeping.¹⁴ None of these are precise terms, and to forces on the ground, there are differences of nuance only. An important distinction separates these missions whether or not it can be precisely articulated. The public and the parties sense the distinction, however, and they care.

Somalia (1993-1994).¹⁵ Clinton inherited the Somalia mission in January 1993. The Senate and House considered several initiatives throughout February and March but gave no authorization for UN humanitarian assistance. Congress asked for consultation and expressed the president's need to receive authorization. On 3 March 1993, the UN secretary general recommended to the Security Council that the mission should be to establish security, achieve national reconciliation, and develop a democratic state. A UN resolution was adopted on 26 March. UN forces undertook peacemaking and peacekeeping, to end civil war, capture warlords, and begin the process of nation building. Lead transitioned from the United States to the UN in mid May.

On 5 June, UN forces were attacked by Somali militia believed under control of warlord Mohamed Farah Aideed, killing 23 Pakistani peacekeepers. On 10 June, Clinton reported that a US quick response force had responded. US forces attacked targets associated with Aideed from 12 to 16 June, and operations continued through the summer—many aimed at capturing Aideed, a national hero to many. Clinton ordered a missile strike against a radio station and weapon storage sites without report.

Events forced Clinton to withdraw from Somalia. The Black Hawk Down episode occurred 3 to 4 October 1993. The already unpopular deployment became even more so, and Congress began to act. Clinton consulted for 2 hours with congressional leaders on 7 October. He followed on 13 October with a 33-page report. To avoid a constitutional show down, Clinton announced that troops would be withdrawn by 31 March 1994, and Congress moved to withhold appropriations from the promised date forward.

The Somalia experience quickly produced two shifts in Clinton's foreign policy. The first was an increased reluctance to engage in third-world conflicts, like those in Rwanda. The second was a preference for "cruise missile diplomacy" over "boots on the ground."

Rwanda (1994).¹⁶ An ethnic conflict erupted in Rwanda between Hutu and Tutsi in April 1994. Several hundred thousand Rwandans, mostly Tutsi, were killed. Millions fled, swelling refugee camps. Clinton supported Belgian demands for withdrawal of UN forces. Official use of the word "genocide" was scrupulously avoided. Clinton ordered airdrops of food and supplies to refugees and in July sent 200 non-combat forces to the capital's airport to support supply distribution.

A 12 April report was filed on the deployment of troops to Burundi for a possible evacuation of non-combatants from Rwanda. No other reports were filed. In a September anticipatory move, Congress prohibited the expenditure of funds for military operations in or around Rwanda after 7 October 1994. The international response was similarly reserved.

Iraq (1993).¹⁷ In response to an assassination attempt against George H.W. Bush in a trip to Kuwait, Clinton ordered a cruise missile strike against intelligence headquarters in Baghdad. The 26 June attack was reported to Congress two days later.

Haiti (1993-1994).¹⁸ In September 1991, a military coup led by army general Raoul Cedras replaced the elected Haitian president, Jean-Bertrand Aristide. As conditions worsened following President Aristide's overthrow by General Cedras, thousands fled to the United States in 1993. Adopting the Bush policy he formerly criticized, Clinton returned the refugees so as not to encourage more.

Under pressure, on 3 July 1993, Cedras agreed to Aristide's return on 30 October. The UN and the Organization of American States would verify compliance. Training and construction units from Canada and the United States began to arrive on 6 October. A second contingent arriving on 12 October

¹⁴ Burk, *Casualty Thesis*, 72.

¹⁵ CRS, *WPR after 33 Years*, 30-32, 61, 63. CRS, *WPR Compliance*, 11-12.

¹⁶ CRS, *WPR after 33 Years*, 42-45, 62, 65.

¹⁷ CRS, *WPR after 33 Years*, 61.

¹⁸ CRS, *WPR after 33 Years*, 42-45, 62, 63, 64. CRS, *WPR Compliance*, 9-11.

withdrew when met by armed Haitian civilians. The UN Security Council authorized restoration of the embargo on 13 October.

On 18 October, Senator Robert Dole offered an amendment to an appropriations bill requiring authorization and certification that there was a threat to US security or citizens. Congressional leaders and the administration negotiated the amendment's language. On 20 October, Clinton submitted a report stating that US warships were in the region supporting the UN embargo on Haiti. Congress complained that it did not authorize the deployment and was not consulted.

Throughout the summer, Congress considered several measures imposing restrictions on the president's use of force. Neither restrictive nor authorizing legislation was passed. Clinton reported continued deployment of forces on 20 April 1994. On 24 May, Defense Authorization legislation included a sense of Congress that no action should be taken unless the president certified clear and present danger to US citizens or interests. On 10 June, Clinton announced additional steps to tighten the embargo. On 31 July, the UN authorized all necessary means to be employed to remove Cedras. This was the authorization that Clinton had sought. But on 3 August, the Senate voted unanimously that a UN Resolution did not constitute presidential authority. Clinton replied that he would welcome the "support of Congress," but denied that he needed it.

On 15 September 1994, Clinton publicly announced that it was time for the Haitian military to step down. In the face of a Congress united in opposition to a US intervention, Clinton publicly announced the call up of reserves and ordered two carriers to the region. The following day he sent a delegation that successfully negotiated the end to military rule. In an 18 September address to the nation, Clinton announced an agreement allowing 15,000 UN troops to begin entering by 19 September and for the military to step down by 15 October. Clinton credibly claimed that the solution was achieved only because of the threat of US military force. Congress immediately commended the president and delegation and encouraged the prompt and orderly withdrawal of US forces as soon as possible.

The administration reported the deployment of 1500 as part of the build up on 21 September. Marines killed 10 armed Haitians on 24 September, and the hostilities clause threshold was met. On 3 October, a sense of Congress said that the "President should have sought congressional approval before deploying US forces to Haiti" and supported a prompt and orderly withdrawal as soon as possible. Clinton signed it into law on 25 October 1994. American forces escorted Aristide into the capital on 15 October 1994.

Force levels peaked at 21,000. By the end of March 1995, most US forces were replaced by UN forces, and a year later, only 300 remained. In December 1997, Clinton ordered an indefinite presence. September 1999 legislation prohibited funding beyond 31 May 2000, and troops were withdrawn by late January 2000.

Bosnia and Herzegovina (1992-1994).¹⁹ The Republic of Bosnia and Herzegovina, commonly referred to simply as Bosnia, declared its independence from Yugoslavia in December 1991. Conflict was already apparent, and the UN had authorized an arms embargo since 25 September 1991. Bosnian Serbs, supported by Serbia, wanted to remain in the Yugoslav federation, and they were better militarily equipped than Bosnian Muslims and Croats. The Serbs were dominant in the countryside and were able to besiege the cities. The capital, Sarajevo, was under siege from 5 April 1992 until 29 February 1996. The Bosnian Serbs had consolidated the blockade by 2 May 1992. As a counter, the Sarajevo airport was opened to UN assistance operations in late June.

There was no consensus on a course of action. The Western European powers tended towards an arms embargo to starve the conflict. Clinton preferred lifting the embargo and bombing Serb supply lines, but initially deferred to European allies. The US Congress tended to prefer lifting the embargo to allow the poorly equipped Muslims and Croats to defend themselves.

Both the Senate and House urged the president on 11 August 1992 to take action through the UN. The Senate resolution added that no troops should be inserted into hostilities without clear objectives. The House resolution included language to authorize humanitarian relief. But no authorization to use force was given to the president. On 13 August, the UN authorized member nations to use all measures to facilitate delivery of humanitarian assistance to Sarajevo.

¹⁹ CRS, *WPR after 33 Years*, 32-39. CRS, *WPR Compliance*, 3-4.

Secretary of State Warren Christopher announced on 10 February 1993 the administration's pursuit of a diplomatic solution that would include ground forces for peacekeeping. The United States began humanitarian air drops on 28 February. The UN authorized member states to use all measures to enforce no-fly zones and safe havens on 31 March. As part of NATO, US air forces began enforcing the no-fly zone on 12 April and the president reported to Congress the next day.

On 27 April, Clinton consulted for two hours with more than 20 congressional leaders and received a wide range of views. He began consultation with allies on 2 May for a cease fire. No consensus was reached within Congress. No consensus was reached between the legislative and executive branches. And no consensus was reached between the United States and its European allies.

On 10 June 1993 Christopher publicly announced that 300 troops would be deployed as part of UN peacekeeping forces to Macedonia to prevent the conflict from spreading. The associated report to Congress was made on 9 July.

During talks with the UN and NATO, Clinton suggested that the United States might provide 25,000 troops as part of a peacekeeping force of 50,000. On 23 September 1993, Senator Bob Dole announced his intention to offer an amendment to prohibit troop deployments without prior congressional approval. The Defense Appropriation Act for FY94 included a non-binding sense of Congress statement that no funds should be obligated for such operations without prior approval. On 5 October, the administration promised consultation and not to send troops without congressional support.

At a NATO summit on 11 January 1994, Clinton repeated an August threat of air strikes on Serbia. On 17 February 1994, the president reported that 60 aircraft were authorized for air strikes. Three additional WPR reports were filed in March, April, and August about subsequent air strikes. Congress called for its greater involvement. In May, Senators Dole and George J. Mitchell separately offered amendments authorizing air operations and lifting of the arms embargo. There was no House action.

On 30 September, the Defense Appropriations Act for FY95 contained a sense of Congress statement that no funds should be used for peacekeeping forces without prior congressional authorization. A 5 October 1994 sense of Congress urged an end to the embargo.

By November 1994, through massive human rights abuses, dislocations, and consolidation of territory, the Serbs appeared close to achieving their goals. The administration changed strategy to emphasize negotiation of a peace settlement.

The Arrival of the 104th Congress. The 104th Congress was convened 4 January 1995. The new Republican Congress, armed with the so-called contract with America, was against US troops under UN command and against UN peacekeeping. As far as the Republicans were concerned, the United States had moved too far toward "globalism." Those sentiments were punctuated by the recent tragedy in Somalia.²⁰

The Soviet Union was no longer a unifying threat, and a strongly ideological Republican majority in Congress was pitted against a Democratic president initially weak in foreign policy and further weakened by events in Somalia, Haiti, and Bosnia. If ever there would be conditions favoring restoration of congressional over presidential war powers, this was it. In the Senate, the Republican Party's presidential aspirations for Robert Dole and Newt Gingrich's leadership in the House caused Congress to flail and then fail. Presidential candidates need to appear presidential and not obstructionist. While speaker of the house, Gingrich argued for a stronger hand for the presidency²¹ as did John McCain in the Senate. Establishing a balanced budget took legislative priority over asserting congressional war powers.

Bosnia and Herzegovina (1995).²² On the first day of the 104th Congress, Dole introduced a bill to halt the embargo, Mitchell offered a similar bill. By early April 1995, evidence was pressing that Bosnian Serbs had committed massive human rights abuses. Opponents claimed that UN and NATO operations had failed.

On 24 May 1995, Clinton reported the continued use of force. American forces participated in NATO air strikes on 25 and 26 May 1995 and on 11 July 1995, but no WPR reports were made, and no congressional complaint was lodged. Human rights abuses continued. Air Force pilot Scott O'Grady was

²⁰ Ryan C. Hendrickson, "War Powers, Bosnia, and the 104th Congress," *Political Science Quarterly* 113, no. 2, (1998): 241-258.

²¹ Hendrickson, *War Powers*, 246.

²² CRS, *WPR after 33 Years*, 32-38.

shot down and a safe haven was overrun. A massive August bombing ensued and was met with congressional silence.²³

Joining the Senate, the House introduced a bill to terminate the arms embargo in late July. With Senate and House concurrence to end the embargo, the president vetoed the legislation on 11 August 1995. Even with supermajority numbers in both houses, the veto was not challenged.²⁴

September 1995 was a month of congressional movement. The president reported air operations against Bosnian Serbs on 1 September 1995. The House put forward language prohibiting the obligation of further funds early in September, and the Senate proposed language at the end of the month that there should be no use of funds without prior authorization. Neither limiting nor authorizing legislation was passed.

Clinton's Bosnia policy was the subject of mounting criticism. On 17 and 18 October, Secretary of State Warren Christopher, Secretary of Defense William Perry, and Chairman, Joint Chiefs of Staff John Shalikashvili testified before Senate and House committees and discussed the potential for 20,000 troops as part of a NATO peacekeeping force. Christopher announced that the president would not be bound by congressional restrictions. In a 19 October letter from Clinton to Senator Robert Byrd, the president maintained that

[w]hile maintaining the constitutional authority of the Presidency, I would welcome, encourage and, at the appropriate time, request an expression of support by the Congress.

On 30 October, the House offered another sense of House that there should be no force deployment without prior authorization. On 13 November, in a letter to Speaker of the House Newt Gingrich, Clinton said that he would send a request for a congressional expression of support to deploy troops as part of a NATO Implementation Force (IFOR), but that he still reserved his constitutional prerogatives. On 17 November, the House passed HR 2606 to prohibit funds. On 4 December 1995, Secretary of Defense Perry announced the initial deployment of an advance force of about 1400 for IFOR. Clinton formally reported the deployment on 6 December and the deployment of an additional 3000 support troops to the region prior to the accord.

Peace talks were begun anew at Wright-Patterson Air Force Base near Dayton, Ohio and continued from 1 to 21 November 1995. Two days before peace talks began, the House voted 315-103 that "the President should not assume he could send troops abroad without authorization from Congress."

The Dayton Accords were to be signed in Paris on 14 December 1995. The day before was busy in both houses of Congress. The majority of the public was opposed to the UN deployment. Still, House and Senate Republicans voted to "support the troops but not the policy" on 13 December 1995. The House measure included the language "unequivocally supports the men and women of the United States Armed Forces who are carrying out their mission in support of peace in Bosnia and Herzegovina with professional excellence, dedicated patriotism and exemplary bravery." Senate language included "Congress opposes President Clinton's decision to deploy" troops to Bosnia, but "Congress strongly supports" the troops. A resolution sponsored by Dole and McCain calling for equipment and training support to Muslim-Croat Federation included "unequivocally supports the men and women of our Armed Forces," and "notwithstanding reservations expressed about President Clinton's decision." But nothing passed both houses.²⁵

Dole's presidential aspirations prevented him from appearing obstructionist and unpresidential. Gingrich yielded to the president, owing on the one hand to his belief in a strong presidency and on the other hand to the balanced budget battle looming in November and December. The balanced budget took priority over reestablishing congressional war powers.

²³ Hendrickson, *War Powers*, 248.

²⁴ S.21, introduced on 4 January 1995 passed by a vote of 69-29. H.Res.204 introduced on 28 August 1995 passed by a vote of 298-128.

²⁵ Hendrickson, *War Powers*, 251-255.

On 21 December 1995, Clinton reported the deployment of 20,000 troops for IFOR, plus another 5000 mostly to Croatia, and another 7000 support forces to deploy to the region. In December 1996, Clinton promised another 8500 ground troops for the Stabilization Force (SFOR).

Two and a half years later, on 18 March 1998, a resolution introduced by Representative Tom Campbell to remove forces was defeated.

Haiti (1997-2000). In December 1997, Clinton ordered an indefinite troop presence in Haiti. In September 1999, the FY00 Defense Authorization bill prohibited funding troops beyond 31 May 2000. By the end of January 2000, all US forces were withdrawn.

Iraq (1998-2001). Clinton reported actions enforcing sanctions against Iraq under P.L. 102-1 rather than under the WPR. Between 16 and 23 December 1998, military and industrial targets—particularly those thought capable of producing weapons of mass destruction—were subjected to a bombing campaign without report.

Afghanistan and Sudan (1998).²⁶ In response to terrorist attacks on embassies in Kenya and Tanzania, thought to be by Osama bin Laden, Clinton ordered missile strikes on 20 August 1998 against a pharmaceutical plant in Sudan and training camps in Afghanistan. Both were thought to be under the control of bin Laden. Intelligence indicated a meeting to be held at the training camp and that bin Laden would be in attendance. A WPR report was filed on 21 August. No consultation took place, and no authority had been granted for these reprisals.

Kosovo (1998-2000).²⁷ The breakup of Yugoslavia produced the Federal Republic of Yugoslavia (FRY) from the former republics of Serbia and Montenegro. The new republic's southern province of Kosovo was almost entirely Muslim Albanians who preferred their independence. The Serbs, however, saw Kosovo as sacred territory and deployed forces to quell the uprising in the spring of 1998. Hundreds of thousands were displaced, and Slobodan Milosevic would later be tried for war crimes and the slaughter of Kosovar Albanians. The administration used the word "genocide" more freely than in Rwanda.

In support of the ethnic Albanians, Clinton threatened air strikes against Serbia. That course of action was opposed by Russia and China and likely would have produced a veto in the UN. Without UN sanction, and without congressional authorization, Clinton ordered air strikes. NATO began a massive air campaign on 24 March 1999. The administration reported to Congress on 26 March.

Congress attempted throughout April and May to constrain the president's use of force and to prevent deployment of ground forces. Eighteen members of Congress, led by Representative Tom Campbell, filed suit in federal district court to force the president to get authorization for the air war. The House passed a bill to prohibit funds for ground forces without prior authorization. Additional measures were considered to limit the expenditure of funds. A proposal in the House to declare a state of war against FRY was almost unanimously defeated. In the Senate, McCain's proposal to authorize all uses of force was defeated. Still, on 20 May, Congress submitted for presidential signature an emergency supplemental with billions for operations in Kosovo.

On 25 May 1999, the 60th day had passed since commencement of the air war and no 30-day extension had been requested. The president cited the alleged constitutional defects of the War Powers Resolution. Both the House and Senate considered authorizing air and missile strikes.²⁸ The Senate leaned toward air operations. The House was split. No prohibitive or authorizing legislation was passed.

The constitutional process had worked its way to completion and denied the authorization to use force. Clinton continued air operations regardless. It was the "first time in our history that a president has waged war in the face of a direct congressional refusal to authorize the war."²⁹

An agreement was reached on 10 June 1999 that included a cease-fire, withdrawal of Yugoslav military and paramilitary forces, and the creation of a UN peacekeeping force (KFOR). On 12 June, Clinton

²⁶ CRS, *WPR after 33 Years*, 66.

²⁷ CRS, *WPR after 33 Years*, 39-41, 67. CRS, *WPR Compliance*, 4-5.

²⁸ The Senate voted 58-41 in favor of air and missile strikes on 23 March 1999. The House voted a 213-213 tie on 28 April 1999.

²⁹ David Gray Adler, "The Clinton Theory of the War Power," *Presidential Studies Quarterly* 30, no. 1 (March 2000): 155-168.

reported that 7000 US peacekeeping forces were deployed to KFOR with an additional 1500 sent to the region in support.

Campbell's suit, filed on 30 April 1999, was dismissed on 8 June. The lower court held that the members lacked standing. Campbell appealed on 24 June, and on 18 February 2000, an appeals court affirmed the lower court's decision. On 18 May, 30 members joined Campbell in appealing the ruling. Without comment, the Supreme Court refused to hear the case on 20 October.

The president waged without authority the most "intensive and sustained" air campaign since Vietnam. Congress chose to "support the troops" through appropriations, but "not the policy" through authorization. The court looked the other way.

Yemen (2000). Two days after the 12 October 2000 attack on the *USS Cole* in the port of Aden, Yemen, Clinton reported the deployment of an incident response force including medical and security forces.

George W. Bush (2001-2009)

The Bush administration continued the high operating tempo after campaigning on a resistance to interventions. In his eight years, Bush filed 39 reports compared to Clinton's record 60 filings. But the administration began the practice of submitting semi-annual consolidated reports covering multiple ongoing operations making further comparison meaningless. Bush also continued the Clinton practice of reporting operations in support of sanctions against Iraq under P.L. 102-1 rather than under the WPR.

Seventeen of the 39 reports were semi-annual consolidated anti-terrorism reports. Seven reported on operations in Bosnia and another six on Yugoslavia/Kosovo and three on East Timor. Single reports were filed on the initiation of operations in Afghanistan and Iraq, but subsequent reports were folded into the consolidated reports. The remainder of WPR reports covered deployments to protect or evacuate embassy personnel from Cote d'Ivoire, Liberia and Mauritania, Haiti, and Lebanon.

Beginning 24 September 2001 and continuing semiannually, a single anti-terrorist report was filed covering multiple operations. Beginning 20 March 2004, the consolidated semi-annual report covered operations in Afghanistan, Bosnia, Kosovo, Haiti, Georgia, Djibouti, Kenya, Ethiopia, Yemen, and Eritrea. Iraq was added to the 4 November 2004 report. By 2002, standard language developed, including "maritime interdiction operations on the high seas" and "combat-equipped and combat-support forces" deployed to "a number of locations in the Central, Pacific, European, and Southern Commands' areas of responsibility." The newly established Africa Command was added in December 2008. Standard language also included military forces for training to enhance the counterterrorist capabilities of partner nations.

Terrorist Attacks against the United States (2001).³⁰ The events of 11 September 2001 provided President Bush almost carte blanche. Consultation between the White House, both houses of Congress, and congressional leadership from both parties produced Senate Joint Resolution 23, "The Authorization for the Use of Military Force." The resolution was passed 14 September 2001 almost unanimously (98-0 and 420-1) and signed into law on 18 September, P.L. 107-40. The statute authorized the president

... to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.

Authorizing the use of force against organizations and individuals was without precedent. Past legislation authorized the use of force against named nations or unnamed nations in a named region. When signing the legislation, Bush noted,

I maintain the longstanding position of the executive branch regarding the President's constitutional authority to use force, including the Armed Forces of the United States and regarding the constitutionality of the War Powers Resolution.

³⁰ CRS, *WPR after 36 Years*, 39-42.

On 24 September 2001, the president reported deployments of combat-equipped and combat-support forces to the Central Command's and Pacific Command's areas of responsibility. The report included the caveat that additional deployments could follow and that he could not predict the scope, duration, or nature of necessary actions.

Afghanistan (2001).³¹ On 9 October 2001, Bush reported that two days earlier US forces "began combat action in Afghanistan against al-Qaeda terrorists and their Taliban supporters." The response was linked to the events of 9/11 and as "part of our campaign against terrorism" was "designed to disrupt the use of Afghanistan as a terrorist base of operations." All subsequent reporting was included in the consolidated semi-annual anti-terrorist report.

Iraq (2003).³² On 4 September 2002, the president met with congressional leadership from both houses and both parties. He announced that he would be seeking congressional "support" and would also speak to the United Nations. He addressed the UN General Assembly on 12 September. Seven days later, the White House transmitted draft legislation to the House and Senate. Debate ensued in the Senate from 4 to 11 October. Legislation passed in the House with greater than a 2 to 1 majority (296-133) on the 10th and in the Senate with a 3 to 1 majority (77-23) the next day. The president signed into law, P.L. 107-243, "Authorization for the Use of Military Force against Iraq Resolution of 2002" on the 16th. The statute authorized the president to

1. defend the national interests of the United States against the continuing threat posed by Iraq; and
2. enforce all relevant United Nations Security Council resolutions regarding Iraq.

The use of force required the president to first communicate to Congress that diplomatic and other peaceful means would not achieve the objectives, but it did not require a linkage of Iraq to the events of 9/11.

When signing, the president added that

my request for it did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President's constitutional authority to use force to deter, prevent, or respond to aggression or other threats to U.S. interests or on the constitutionality of the War Powers Resolution.

On 21 March 2003, Bush reported that he had directed US forces to commence operations against Iraq two days earlier. All subsequent reporting was included in the consolidated semi-annual anti-terrorist report.

Barack H. Obama (2009- 2017)

The Obama administration continued the previous administration's practice of submitting semi-annual consolidated reports covering "ongoing operations overseas." Reports were consistently filed in June and December, each with a common core and small variations. As of June 2011, the Obama administration submitted 5 WPR reports.³³ Obama also continued the Bush practice of using generic language including operations in the area of responsibility for all of the regional combatant commands and for "maritime interception operations." Ongoing operations in Iraq and Afghanistan were included in the semi-annual consolidated report.

Some highly visible operations went without explicit WPR report or congressional challenge—the responses to hostage taking off the Somali Coast and the raid to kill or capture bin Laden in Abbottabad, Pakistan. But military operations against Libya received considerable attention.

Piracy on the High Seas (2009-2011). Piracy and anti-piracy operations had been commonplace, particularly in the Strait of Malacca, but not the subject of public scrutiny. Piracy off the Somali coast, however, had become hostage taking. A commercial ship was taken hostage in April 2009, and the occupants of a private yacht were taken hostage and killed in February 2011. No consultation was

³¹ CRS, *WPR after 36 Years*, 42-44.

³² CRS, *WPR after 36 Years*, 42-44.

³³ CRS, *War Powers Resolution: Presidential Compliance*, 24 June 2011.

apparent, no specific report was filed, and there was no congressional challenge. These actions are easily included under the generic reporting of “maritime interception operations on the high seas.”

Abbottabad, Pakistan Raid (2011). The president authorized an operation to kill or capture Osama bin Laden from a compound in the city of Abbottabad, Pakistan. The operation was planned amidst considerable secrecy and successfully executed on 1 May 2011. There was no consultation apparent, no specific report was filed, and there was no congressional challenge. This operation was clearly within the authorization provided by P.L. 107-40 passed a week after 9/11.

Libya (2011).³⁴ As part of the “Arab Spring,” public demonstrations against the rule of Moammar Kadafi were met with swift reprisals. UN Security Council Resolution 1973, adopted 17 March 2011, authorized all measures to protect civilians and prevent a humanitarian catastrophe. On 21 March the president reported, “consistent with the War Powers Resolution,” that he had ordered commencement of operations two days prior to support UN strikes limited in nature, duration, and scope.

On 1 April 2011, the Office of Legal Counsel (OLC) submitted its opinion to the White House on the “Authority to use Military Force in Libya.”³⁵ The opinion cited past OLC opinions and the germane Supreme Court rulings. The opinion was made public six days later.

[The] President’s legal authority to direct military force in Libya turns on two questions: first, whether United States operations in Libya would serve sufficiently important national interests to permit the President’s action as Commander in Chief and Chief Executive and pursuant to his authority to conduct U.S. foreign relations; and second, whether the military operations that the President anticipated ordering would be sufficiently extensive in “nature, scope, and duration” to constitute a “war” requiring prior specific congressional approval under the Declaration of War Clause.

The OLC identified the national interests to be the preservation of “regional stability” and the United Nations Security Council’s “credibility and effectiveness.” It further concluded that the degree of involvement anticipated did not constitute a war.

On 20 May 2011, day 60 of operations, the White House sent to congressional leaders a letter, not a WPR report, reporting that military operations initiated on 21 March were transitioned to NATO on 4 April. Since then the US was in a supporting role, providing intelligence, logistics, search and rescue capabilities, and suppression of enemy air defense capabilities. Since 23 April, the United States provided unmanned aerial vehicles as well. Rather than consultation, the report cited the supportive language in a bipartisan resolution drafted by Senators John Kerry, McCain, Leven, Feinstein, Graham, and Lieberman.

The House considered the president’s actions toward Libya on 3 June 2011. It voted for language preventing deployment of units on the ground without prior authorization; it noted that no authorization was sought or granted; and it reminded the president of congressional authority to withdraw funds. The measure passed by almost a 2 to 1 majority. On the same day, the House voted against language that would direct the president to withdraw US forces already committed. The measure was defeated by the same 2 to 1 majority.³⁶ Congress, and many others, draws a line between projecting air power from off shore and putting “boots on the ground.”

Twelve days later, on 15 June, Obama submitted a report, not a WPR report, detailing actions in Libya to date. It included a paragraph labeled “Legal Analysis” consistent with the earlier OLC opinion.

Given the important U.S. interests served by U.S. military operations in Libya and the limited nature, scope and duration of the anticipated actions; the President had constitutional authority, as Commander in Chief and Chief Executive Officer and pursuant to his foreign affairs powers, to direct such limited military operations abroad. The President is of the view that the current U.S. military operations in Libya are consistent with the War Powers Resolution and do not under that law require further congressional authorization, because U.S. military operations are distinct from the kind of

³⁴ CRS, *Presidential Compliance*, 1-4.

³⁵ <http://www.justice.gov/olc/memoranda-opinions.html>.

³⁶ H.Res. 292 was passed with a 268-145 vote. H.Con.Res. 51 to direct the withdrawal of US forces was defeated 148-265.

“hostilities” contemplated by the Resolution’s 60 day termination provision. U.S. forces are playing a constrained and supporting role in a multinational coalition, whose operations are both legitimated by and limited to the terms of a United Nations Security Council Resolution that authorizes the use of force solely to protect civilians and civilian populated areas under attack or threat of attack and to enforce a no-fly zone and an arms embargo. U.S. operations do not involve sustained fighting or active exchanges of fire with hostile forces, nor do they involve the presence of U.S. ground troops, U.S. casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by these factors.

In regards to receiving congressional support, the president’s report again referred to the draft resolution from Senate leaders.

The Administration has repeatedly indicated its strong support for the bipartisan resolution drafted by Senators McCain, Kerry, Lieberman, Levin, Feinstein, Graham, and Chambliss that would confirm that both branches are united in their commitment to supporting the aspirations of the Libyan people for political reform and self-government.

Rather than rely on what had become the traditional presidential response—claiming the unconstitutionality of the WPR and the president’s unquestioned constitutional authorities—the Obama administration argued in the gray area more clear in the bifurcated pre-WWII system. Prior to the National Security Act of 1947, Congress had the authority to declare war and raise an army, and the War Department stood by to organize, train, and equip that army. And through the State Department, the president could use Navy Department resources to conduct foreign affairs, including coercive diplomacy below the threshold of declared war, without much congressional interest. The unification of the armed forces under a single Defense Department obfuscated that somewhat rational distinction.