

**PRECEDENT SUPPORTING THE CONSTITUTIONALITY OF  
SECTION 5(b) OF THE WAR POWERS RESOLUTION**

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the explicit language of the Constitution for large-scale military operations on nine occasions. Congress has “declared war” five times: the War of 1812, the Mexican–American War, the Spanish–American War, World War I, and World War II.<sup>20</sup> The other four authorizations include the Gulf of Tonkin Resolution for the Vietnam War in 1964, the Gulf War to expel Iraqi soldiers from Kuwait in 1991, the response to the September 11 terror attacks in 2001, and the approval to use force against Iraq in 2002.<sup>21</sup> Prior to the Korean War in 1950, government officials, courts, and scholars concurred that the President must obtain authorization from Congress before ordering the use of military force in all hostilities other than self-defense.<sup>22</sup>

*B. Historical Examples: Exigent Circumstances*

James Madison affirmed that the President could only unilaterally order military force to “repel sudden attacks” on the U.S. and that Congress had to approve any other use of force.<sup>23</sup> The Framers delineated this exigent circumstance as a safeguard during intervals when Congress might not be in session.<sup>24</sup> In *Martin v. Mott*, the Supreme Court held that lacking congressional consent, the President has only “a limited power, confined to cases of actual invasion, or of imminent danger of invasion.”<sup>25</sup> In *Ex Parte Milligan*, Justice Chase affirmed that the President possesses “inherent authority” to command the U.S. military into battle only when there is a threat to national sovereignty.<sup>26</sup>

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20. Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*,

Consider two prominent early examples in which the Executive did initiate unilateral actions related to war for imperatives, and the contention that ensued over the appropriate interpretation of those exigencies. In June 1807, British warships attacked the Chesapeake off the coast of Virginia, and the Jefferson Administration contracted to purchase timber for one hundred gunboats and materials for gunpowder.<sup>27</sup> Three months after the purchases, President Jefferson acknowledged Congress's appropriations power and recognized that authorization was required for the acquisition, but he justified his actions as necessary to defend the nation against the imminent possibility of war with Britain.<sup>28</sup> He presumed Congress would authorize the purchases had it been in session;<sup>29</sup> Congress agreed and paid for the resources.<sup>30</sup> The Chesapeake attack was a preliminary hostility that led Congress to declare war on Britain in the War of 1812.<sup>31</sup> The purchase was for an emergency situation to defend the country against an imperial power, and it did not involve ordering soldiers into hostilities.

President Abraham Lincoln's orders during the American Civil War present the most prominent case of a President unilaterally prescribing military operations without congressional approval. The Civil War also presents the most persuasive example in American history of a nation-threatening emergency. In 1861, the Confederate Army initiated war against northern states when Congress was not in session.<sup>32</sup> Relying on the Militia Act of 1795 and the Insurrection Act of 1807, Lincoln recruited 75,000 new militia and obstructed Southern ports.<sup>33</sup> Additionally, Lincoln executed actions that were not sanctioned by existing legislation.<sup>34</sup> For example, the President

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*Ex Parte* Milligan, 71 U.S. 2, 139 (1866) (Chase, C.J., concurring)).

27. ABRAHAM D. SOFAER, WAR, FOREIGN AFFAIRS AND CONSTITUTIONAL POWER 171–72 (1976).

28. Thomas Jefferson, *Annual Message to Congress* (Oct. 27, 1807), in 17 ANNALS OF CONG. 14–17 (1807).

29. *Id.*

30. Act of Dec. 18, 1807, ch. 4, § 2, 2 Stat. 451.

31. ANGUS KONSTAM, SCOURGE OF THE SEAS: BUCCANEERS, PIRATES, AND PRIVATEERS 171–72 (2007).

32. Barron & Lederman, *supra* note 8, at 997; David P. Currie, *The Civil War Congress*, 73 U. CHI. L. REV. 1131, 1185 (2006).

violated congressional appropriations statutes by advancing expenditures from the public treasury for purchasing arms, transporting troops, and procuring other items, without preapproval from Congress.<sup>35</sup> Perhaps his most contentious maneuver involved detaining Americans suspected of treason without upholding the right of habeas corpus because the detentions were purportedly “necessary to preserve the nation.”<sup>36</sup>

When Lincoln justified these actions, the President repeatedly acknowledged that Congress possessed the final word,<sup>37</sup> that he was responsible for operations without statutory authority, and that he proceeded by necessity to ensure that “the Government was saved from overthrow.”<sup>38</sup> Although Congress ratified most of Lincoln’s orders within months of his actions,<sup>39</sup> Congress also restricted Executive power. The Habeas Corpus Act of 1863<sup>40</sup> and the Posse Comitatus Act of 1878<sup>41</sup> addressed the dangers of suspending habeas corpus and utilizing the military for domestic policing operations in the future. With regard to heeding existing confines of authority, Professors Barron and Lederman note:

[President] Lincoln himself never once asserted a broad power to disregard statutory limits, not even during his well-known exercise of expansive executive war powers at the onset of hostilities or when confronted with statutes that challenged his own tactical choices later in the war.<sup>42</sup>

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man was the government of the United States . . . [which] makes this the paragon of all democratic, constitutional dictatorships.”).

35. Barron & Lederman, *supra* note 8, at 1002.

36. *Id.* at 999; *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 101, 135 (1807) (Defendants were charged with treason for waging war against the United States, and the Court held that it is Congress’s plenary power to suspend the writ of habeas corpus and that there was insufficient evidence to hold the defendants.).

37. Barron & Lederman, *supra* note 8, at 998.

38. *Id.* at 1003 (citing CONG. GLOBE, 37th Cong. 2d Sess. 2383 (1862)).

39. *Id.* at 1003–05.

40. *Id.* at 1007–08.

41. Posse Comitatus Act, § 15, 20 Stat. 145, 152 (1878) (The Act was designed to

### C. *Recent Ambiguity in War Power Actions*

If the President possessed a unilateral war power authority from the Constitution beyond defending the nation, U.S. historical records would not contain querulous congressional scrutiny and contrite presidential explanations. Nonetheless, more recently, Presidents have unilaterally ordered troops into dozens of military conflicts short of being designated a “war,”<sup>43</sup> and endorsed a multitude of covert operations that sometimes necessitated military confrontation.<sup>44</sup> Additionally, there have been hundreds of cases in which the President deployed armed forces outside the U.S. (without congressional authorization and when there was a risk of hostility), and sometimes these deployments erupted into conflict.<sup>45</sup> From precedent, one might construe that Congress’s constitutional war powers authority has perceptively waned.<sup>46</sup> The Constitution requires Congress to declare war and to endorse lesser grades of military confrontation.<sup>47</sup> However, no President has gone to Congress for an official “Declaration of War” since Franklin Roosevelt in 1941, and there have only been four congressional authorizations to use military force for large-scale military hostilities.<sup>48</sup>

Alternatively, the lack of congressional authorization for small-scale military confrontation may not be compelling evidence that the Executive has deliberately transgressed congressional power, or that such precedent should garner a perception that the President has an inherent authority to unilaterally initiate hostilities. Generally

43. MICHAEL J. GLENNON, *LIMITS OF LAW, PREROGATIVES OF POWER: INTERVENTION AFTER KOSOVO* (2001); Mary L. Dudziak, *Law, War, and the History of Time*, 98 CALIF. L. REV. 1669, 1703–04 (2010); CONGRESSIONAL RESEARCH SERVICE, *INSTANCES OF USE OF UNITED STATES ARMED FORCES ABROAD, 1798–2008* (Richard F. Grimmett ed., 2009); Bradley & Goldsmith, *supra* note 20, at 2050 (“[M]ost uses of military force in U.S. history, including significant military engagements such as the Korean War and the Kosovo bombing campaign, have been initiated without express congressional authorization.”).

44. *See generally* WILLIAM BLUM, *KILLING HOPE* (2004); Matthew Fleischman, Note, *A Functional Distribution of War Powers*, 13 N.Y.U. J. LEGIS. & PUB. POL’Y 137, 157 (2010); Bradley & Goldsmith, *supra* note 20, at 2067.

45. HENKIN, *supra* note 15, at 100 (2d ed. 1996); U.S. Dep’t of State, *The Legality of the United States Participation in the Defense of Vietnam*, 75 YALE L.J. 1085, 1101 (1966) (125 uses of force by 1966).

46. *See generally* PETER IRONS, *WAR POWERS* (2005); Treanor, *supra* note 20, at 696 (listing scholars who advocate a pro-executive war powers balance and noting that it could be favorable for the president to have strength and flexibility without being undermined by legislators).

47. *See supra* Parts II.A–B.

48. *See supra* Part II.A.

speaking, the American military has undertaken a more global presence since World War II with Congress's assent, and U.S. soldiers are commonly stationed in many foreign countries.<sup>49</sup> The President has not always sought congressional approval when deployments were not expected to result in conflict or when only low-

**III. CONTEXT OF THE WAR POWERS RESOLUTION**

U.N. Charter requires members to provide armed forces and other assistance by special agreement,<sup>58</sup> and the Security Council did request that all member States render assistance accordant with the resolutions.<sup>59</sup> However, the Korean War was not U.N.-controlled and progressed into a U.S. war with primarily the U.S. providing troops.<sup>60</sup> Later Presidents and other States did not adopt Truman's interpretation of a per se obligation to furnish military support when the Security Council authorizes a use of force.<sup>61</sup>

Second, there was paltry opposition from Congress when Truman took unilateral action.<sup>62</sup> After U.S. soldiers were dispatched, some congressional Republicans argued that it was not a "war," that troops had been deployed over one hundred times when there was a risk of war, and that the Commander in Chief should be given discretion.<sup>63</sup> Democrats underscored that circumstances necessitated countenancing the President with political unity.<sup>64</sup> However, the second Red Scare, or "McCarthyism," commenced shortly before the

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Korean War and affected the domestic milieu.<sup>65</sup> Members of Congress or citizens who challenged the Executive's interpretation of "communist threats" or the use of military action to confront a communist adversary could have been exoriated or subjected to Un-American Committee proceedings.<sup>66</sup> As an example of presidential temerity during the Red Scare, in 1951, after dispatching soldiers into combat in Korea, Truman declared he possessed unilateral authority to "send troops anywhere in the world" without congressional authorization.<sup>67</sup> Later Presidents were not so bold.<sup>68</sup> McCarthyism impacted millions of government and private sector employees for nearly ten years,<sup>69</sup> but was later renounced as a suppressive overreaction that chilled First Amendment rights. Accordingly, Truman's unilateralism during the Korean War should not confer precedential significance to "inherent authority" war power theorems. Later interpretations of the President's war power rarely incorporated the national embarrassment of McCarthyism. Instead, once the Executive claims a power, it may not want to relinquish that authority<sup>70</sup> irrespective of the context underlying the precedent that ostensibly conveyed expansionism.

### *B. The Vietnam War*

Similar to the 2003 Iraq War, the congressional authorization for the Vietnam War was premised on scanty facts. The Vietnam War launched after an alleged attack in the Gulf of Tonkin<sup>71</sup> that never occurred. The Johnson Administration conveyed false information to

outright lies.”<sup>73</sup> In a statement to Congress near the end of the Vietnam War, Senator Fulbright remarked: “Insofar as the consent of this body is said to derive from the Gulf of Tonkin Resolution, it can only be said that the resolution, like any other contract based on misrepresentation, in my opinion, is null and void.”<sup>74</sup> Congress repealed the Gulf of Tonkin Resolution in January 1971,<sup>75</sup> but the Vietnam War had already prolonged for seven years. During this time, Americans demarcated between those who staunchly supported U.S. soldiers fighting communism in Asia,<sup>76</sup> and those who dissented against the draft and accentuated that the Vietnamese people had been embroiled in a long liberation movement to end French colonialism.<sup>77</sup>

Nonetheless, prior to the end of the Vietnam War the U.S. executed bombing campaigns and launched a ground troop invasion into Cambodia in the spring of 1970.<sup>78</sup> When Nixon was later queried over his failure to apprise Congress of the bombing operations, he claimed Congress had no “right or need to know.”<sup>79</sup> Assistant

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73. Fisher, *supra* note 15, at 1210 (citing TAKING CHARGE: THE JOHNSON WHITE HOUSE TAPES, 1963–1964, at 88, 95, 213–14, 370, 380 (Michael R. Beschloss ed., 1997); 110 CONG. REC. 18, 549 (1964) (statement by Rep. Fascell); H.R. MCMASTER, DERELICTION OF DUTY: LYNDON JOHNSON, R

Attorney General William Rehnquist wrote a memorandum to Nixon and opined that the Vietnam War could legally encroach into Cambodia as a means of self-defense for US troops.<sup>80</sup> Rehnquist explained that “by crossing the Cambodian border to attack sanctuaries used by the enemy, the United States has in no sense gone to war with Cambodia.”<sup>81</sup> Congress disagreed after learning of incursions into contiguous countries and sought to prevent “the introduction of American ground combat troops into Laos or Thailand” in the Department of Defense Appropriations Act of 1970,<sup>82</sup> and to thwart incursions into Cambodia in the Special Foreign Assistance Act of 1971.<sup>83</sup>

The 1971 Act stated that “none of the funds authorized or appropriated pursuant to this or any other Act may be used to finance the introduction of United States ground combat troops into Cambodia, or to provide United States advisors to or for Cambodian military forces in Cambodia.”<sup>84</sup> In April 1973, members of Congress brought suit to discontinue bombing operations. The lower federal courts issued an injunction to halt the bombing, claiming Nixon acted unconstitutionally in expanding the Vietnam War, but four months later the U.S. Supreme Court held that the case involved an unreviewable political question.<sup>85</sup>

### *C. Result: The War Powers Resolution*

In response to negative public sentiment over the Vietnam War and actions in Cambodia, Congress adopted the WPR in 1973, which ostensibly cramped perceptions of presidential discretion in the use of

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80. IN THE NAME OF DEMOCRACY, *supra* note 78, at 193–94; Tiefer, *supra* note 13, at 309.

81. IN THE NAME OF DEMOCRACY, *supra* note 78, at 194.

82. Department of Defense Appropriations Act of 1970, Pub. L. 91-171, § 643, 83 Stat. 469, 487 (1969); Department of Defense Appropriations Act of 1972, Pub. L. 92-204, § 742, 85 Stat. 716, 735 (continuing prohibition) (1971).

83. Special Foreign Assistance Act of 1971, Pub. L. No. 91-652, § 7(a), 84 Stat. 1942, 1943 (1971).

84. *Id.*; Peter Raven-Hansen & William C. Banks, *Pulling the Purse Strings of the Commander in Chief*, 80 VA. L. REV. 833, 916 (1994) (arguing that the action was a “tactical

force.<sup>86</sup> Nixon vetoed the Resolution, but the veto was significantly overridden and became law.<sup>87</sup> Senator Eagleton explained: “We in Congress were frustrated with our failure to override eight successive Presidential vetoes, and, considering the tremendous pressures then created by the Watergate scandal, it is understandable how this Congress overrode President Nixon’s war power veto.”<sup>88</sup>

Section 2(a) of the WPR states that the “purpose of this joint resolution is to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities . . . .”<sup>89</sup>

Many Presidents have preferred not to outright accede that the Resolution may impose restrictions on military actions that the Executive would elect to take unilaterally, and as implicit in the commander-in-chief authority.<sup>94</sup> But there is division over the level of compliance. Some scholars advance that Presidents have ignored and violated the Resolution,<sup>95</sup> and others disagree and maintain that Presidents have respected the provisions.<sup>96</sup> Petitioners challenged certain sections of the WPR as unconstitutional,<sup>97</sup> but Courts have refused to consider these cases.<sup>98</sup> Perhaps section 5(b) is the most controversial, but Presidents have largely complied with the provision's constraints.<sup>99</sup> Section 5(b) states:

(b) Within sixty calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States

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94. John C. Yoo, *War and the Constitutional Text*, 69 U. CHI. L. REV. 1639, 1664 (2002).

95. See Richard F. Grimmett, Cong. Research Service, *War Powers Resolution: Presidential Compliance 2* (2004), available at <http://www.fas.org/man/crs/IB81050.pdf>; ELY, *supra* note 74, at 61; MICHAEL GLENNON, CONSTITUTIONAL DIPLOMACY 103–07 (1990); BARBARA HINKLEY, LESS THAN MEETS THE EYE: FOREIGN POLICY MAKING AND THE MYTH OF THE ASSERTIVE CONGRESS 99 (1994)(.521r)-14.1(166e)-2.6(h66e)-2.6n L. 74,4)2166e4)

Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such sixty-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such sixty-day period shall be extended for not more than an additional thirty days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.<sup>100</sup>

Section 5(b) references section 4(a)(1), which specifies the conditions that require the Executive to terminate the use of force (which are also the conditions for which a report was presumably submitted 60 days earlier): “In the absence of a declaration of war, in any case in which United States Armed Forces are introduced—(1) into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances.”<sup>101</sup> Given the historical consensus on war powers sharing between the President and Congress under the Constitution, section 5(b) should not elicit too much dismay.<sup>102</sup> The provision seeks to address military missions that Congress has not officially authorized, but has involved hostilities or is likely to involve combat. It merely reaffirms Congress’s authority to authorize or curtail hostilities, including conflict that may erupt but may not have been anticipated at the time the military was deployed.

There are examples of situations where WPR applicability is ambiguous, and force might be employed in a manner inconsistent with constitutional war powers and jurisprudence. Suppose a President reasonably perceives that no “imminent involvement in hostilities is clearly indicated by the circumstances”<sup>103</sup> and deploys soldiers outside U.S. borders. The WPR is not applicable. However, if unanticipated confrontation erupts or potential hostilities become apparent, the President must provide official notice of: “(A) the circumstances necessitating the introduction of United States Armed

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100. WPR, *supra* note 9, at § 5(b).

101. *Id.* at § 4(a)(1).

102. *See supra* Parts II.A–B.

103. WPR, *supra* note 9, at § 2(a).



restriction that automatically mandates that military forces be withdrawn once the time frame runs.<sup>110</sup> If Congress did nothing before the period expired, the President would lack authority in the military conflict in question.<sup>111</sup>

turns into substantial hostilities? Congress has preempted the field for this contingency with the WPR and the President is without authority even if the President contends there were unexpected events after the initial deployment. The WPR put the President on notice before deployments were issued.

In short, since the WPR applies anytime armed forces are introduced into “hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances,”<sup>113</sup> the lack of conflict since the WPR was adopted, particularly of an intense and prolonged nature, may evince compliance with section 5(b). Also, the 1991 Gulf War, the 2001 invasion of Afghanistan, and the 2003 Iraq War were the first large-scale deployments of troops into hostilities since the Vietnam War and they were authorized by Congress.<sup>114</sup> The fallout from the Vietnam War and the adoption of the WPR ostensibly impelled an abrupt reversal in presidential perceptions about unilateral action. Professors Barron and Lederman wrote:

In the wake of the Watergate revelations, Nixon’s impeachment, and the public outrage over President Ford’s pardon of the disgraced former president, President Carter took office in a context notably hostile toward claims of unchecked executive authority. Not surprisingly, the Carter Administration’s approach to preclusive war powers did not seek to capitalize on the ground that had been laid by the Truman, Nixon, and Ford Administrations. Instead, Carter appeared to push in the opposite direction.<sup>115</sup>

#### IV. MOMENTARY INTERVENTIONS

##### A. *Ronald Reagan and George H.W. Bush*

High-tech weaponry and military prowess, particularly when applied in confrontations involving drastic power disparity, produced new dimensions for U.S. armed conflict during the 1980s. But those operations were dissimilar from actions entailing express congressional approval. Operations involving nominal U.S. soldier

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113. WPR, *supra* note 9, at § 2(a).

114. *See* Damrosch, *supra* note 21, at 1408.

115. Barron & Lederman, *supra* note 8, at 1077.



fourteen were wounded in Lebanon, the Reagan Administration contended that the soldiers were not involved in activities that would fall within Congress's war power authorities.<sup>122</sup> On October 23, 1983, a truck bomb blew up the Marine barracks at Beirut International Airport and killed 241 soldiers.<sup>123</sup> Reagan sought consent to maintain U.S. military forces in Lebanon, and Congress enacted legislation to end the U.S. presence in Lebanon.<sup>124</sup> In February 1984, with 264 American military deaths, Reagan was forced to withdraw approximately 1,000 remaining U.S. Marines from Lebanon.<sup>125</sup>

On October 25, 1983, the Reagan Administration ordered the incursion of the tiny Pacific island of Grenada; several thousand U.S. soldiers quickly surmounted the light forces on the island.<sup>126</sup> Reagan held discussions with members of Congress prior to the attack,<sup>127</sup> which may not have been bona fide "consultation" as required under section 3 of the WPR.<sup>128</sup> Reagan filed a report two days after invading Grenada, stating that he was exercising his authority as Commander in Chief in a manner consistent with the WPR.<sup>129</sup> Many

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Reagan to the Speaker of the House and the President Pro Tempore of the Senate Reporting on U.S. Participation in the Multinational Force in Lebanon (Sept. 29, 1982), <http://www.reagan.utexas.edu/archives/speeches/1982/92982e.htm>.

122. John H. Kelly, *Chapter 6: Lebanon: 1982-1984*, in U.S. AND RUSSIAN POLICYMAKING WITH RESPECT TO THE USE OF FORCE 85, 101 (Jeremy Azrael & Emil A. Payin eds., Rand Corp. 1996) available at [http://www.rand.org/pubs/conf\\_proceedings/CF129/CF-129.chapter6.html](http://www.rand.org/pubs/conf_proceedings/CF129/CF-129.chapter6.html).

123. *Id.*

124. *Id.* at 102; Multinational Force in Lebanon Resolution, Pub. L. No. 98-119, § 2(b), 97 Stat. 805, 805 (1983); Vance, *supra* note 121, at 95.

125. Richard F. Grimmett, *Foreign Policy Roles of the President and Congress*, U.S. Dept. of State (June 1, 1999), <http://fpc.state.gov/fpc/6172.htm>; Stuart Taylor Jr., *Questions Raised Again on Reagan's Limits Under War Powers Act*, N.Y. TIMES Oct. 24, 1983, at A8, available at <http://www.nytimes.com/1983/10/24/world/questions-raised-again-on-reagan-s-limits-under-war-powers-act.html>; *1984: US troops withdraw from Beirut*, BBC, [http://news.bbc.co.uk/onthisday/hi/dates/stories/february/26/newsid\\_4153000/4153013.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/february/26/newsid_4153000/4153013.stm) (last visited Oct. 1, 2012).

126. NOAM CHOMSKY, HEGEMONY OR S

members of Congress dubbed the a

two-day drive from the U.S. border.<sup>137</sup> The International Court of Justice (ICJ) ruled that Reagan's several-year covert CIA operations that organized, trained, financed, and supplied Contra insurgents to overthrow the democratically-elected Nicaraguan government was a violation of international law.<sup>138</sup> Consequently, Reagan withdrew the U.S. from the ICJ's contentious jurisdiction to avoid being mandatorily hailed before the court.<sup>139</sup>

As for the domestic level repercussion, Professor Harold H. Koh called Iran-Contra "the tip of a much larger iceberg that crystallized during the Vietnam War . . . [and that] exposed systemic" problems in American foreign policy and deficiencies in legal frameworks recently enacted by Congress to oversee the Executive.<sup>140</sup> Investigations revealed that the Nicaraguan Contras were apparently involved in drug trafficking<sup>141</sup> and severe suppression of civilian opposition.<sup>142</sup> Colonel Oliver North testified about the Reagan Administration's covert support for the Contras, admitted that he "misled the Congress" about that assistance, and contended "I still to this day, counsel, don't see anything wrong with taking the Ayatollah's money and sending it to support the Nicaraguan freedom fighters."<sup>143</sup> President Reagan avoided serious backlash by "claiming

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ignorance.”<sup>144</sup> Thus, although the Reagan Administration provided financial and military assistance to a long-term foreign hostility, it did not implicate the WPR because this assistance evidently did not entangle U.S. military soldiers in combat. However, the financial assistance did violate congressional appropriations restrictions, which triggered a criminal investigation.

President Bush sought authorization from Congress that was congruous with WPR requirements before taking action in the 1991 Gulf War, and before deploying troops to Somalia.<sup>145</sup> Bush notified congressional leaders prior to the invasion of Panama in 1989 even though Congress was not in session.<sup>146</sup> However, the action was assuredly unsurprising given the media coverage. Possible actions against President Noriega were front page news stories for months prior to the action, and included crazy episodes of officials leaking “covert” operations against Noriega to the press and newspapers choosing to publicize the operations prior to execution.<sup>147</sup> It also seems unusual to regard Panama as an invasion when the U.S. military had stationed between 10,000 and 60,000 troops at fourteen bases in Panama since World War II.<sup>148</sup> The House passed a resolution in support of the invasion with a 389-to-26 vote.<sup>149</sup>

#### *B. CNN Effect*

Scholars contend that global news operations have impelled leaders to deploy force for momentary interventions. Policymakers react to television news and evolving populace perceptions influenced by media operations: “television coverage, primarily of horrific humanitarian disasters . . . forces policy makers to take actions they

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d=all; Eric Lane, Frederick A.O. Schwarz, Jr., & Emily Berman, *Too Big a Canon in the Preside w3*

otherwise would not have taken, such as military intervention.”<sup>150</sup> Gow and Holbrooke stated that “the CNN effect . . . is believed to have directed the political agenda in Western Europe and North America toward peacekeeping operations in Iraq, Bosnia, Haiti, Rwanda, and Somalia.”<sup>151</sup> In terms of whether the U.S. Congress formally authorizes action, if the media instills a cognitive impact on the populace that endorses an action and the President orders a military operation without congressional approval, perhaps it becomes more taxing for Congress to later convincingly object due to solid populace approval for the military involvement. Moreover, the circumstances generating military engagement were no secret to Congress because the foreign affaio9Pecr on



human rights abuses were on the international diplomatic agenda and news, and heightened public sensibility seemed to endorse action to prevent a possible humanitarian calamity.<sup>163</sup>

In 1999, President Clinton initiated bombing operations on Yugoslavia, and provided an informational report, consistent with the WPR requirements, prior to the action and continued to impart congressional updates during seventy-nine days of bombing operations.<sup>164</sup> Clinton justified his immediate authority for action on NATO deliberations.<sup>165</sup> In *Campbell v. Clinton*, plaintiffs contended that the President's orders were unconstitutional, but the court held that the case was nonjusticiable because the plaintiffs lacked standing.<sup>166</sup> Members of Congress provided a barrage of diverse positions both on the bombing and on entry of troops,<sup>167</sup>

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the Commander in Chief.”<sup>185</sup> Alternatively, the Supreme Court has invalidated many presidential wartime acts “precisely because they lacked congressional authorization.”<sup>186</sup>

Since the 1980s, high-tech weaponry and power disparity extended U.S. capability of employing force with lessened expectation of U.S. casualties; while during the 1990s global media operations broadcasted humanitarian catastrophes to stir populist



