

The War Powers Resolution of 1973 and its Relevance in the “War on Terror”

Samuel Day

Dr. Patrick Donnay-Faculty Sponsor

Spring 2014

Why did I choose this topic?

- I wanted to know how the War Powers Resolution applied to the “War on Terror” as we have been and continue to be involved with non-state actors, such as Al Qaeda.
- As modern warfare has developed, unmanned drones are able to carry-out airstrikes without putting any troops on the ground.
- Does drone warfare apply to the “hostilities” referred to in the War Powers Resolution?

What is the War Powers Resolution?

- The War Powers Resolution of 1973 is a law that requires the President to seek a declaration of war by Congress before sending U.S. Armed forces into hostilities in a foreign state.
- The President is allowed to repel sudden attacks against our nation, our territories, and our national interests prior to consulting with Congress.
- 3 procedures of the War Powers Resolution include: consultation process, submission of executive reports, and time limitation

Consulting with Congress

- Section 3 of the WPR states that the President shall consult with Congress in every possible situation where U.S. armed forces are introduced into hostilities or where hostilities are imminent by the circumstances.
- Two specific issues regarding the consultation process:
 - Actual definition of “consulting” prior to engaging in hostilities or situations where hostilities are imminent.
 - Situations in which consulting is actually required by the War Powers Resolution.

Executive Reporting of the WPR

- Section 4(a) of the WPR requires the President to submit a written report within 48 hours of armed forces being sent:
 1. Into hostilities or into situations where hostilities are imminent
 2. Into territory, airspace, or waters of a foreign nation
 3. In numbers that significantly increase combat-ready U.S. armed forces already located in a foreign nation
- The report must explain the reasoning for using armed forces, under which constitutional and legislative authority, and estimated duration of the hostilities.

Time Limitation of the WPR

- Section 5(b) of the WPR states that within 60 days of the submission of the executive report the President must end the deployment of forces, unless Congress:
 1. Has declared war
 2. Has authorized the President's action
 3. Has extended the 60-day time period
 4. Cannot convene because of an attack of the United States
- Technically, failure to submit a report does not delay or stop the clock-triggering process because it takes effect if a report was required by Section 4(1).

Where did the WPR come from?

- Framers' Intent
- Gulf of Tonkin Resolution

Framers' Intent

- Section 2(a) of the WPR states that one of the purposes of the law is to fulfill the intent of the framers of the Constitution.
- Article II, Sec. 2 of the Constitution states that the “President shall be Commander in Chief of the Army and Navy of the United States”
 - All branches of government agree that the executive has the constitutional authority to repel sudden attacks against our nation and our national interests.
- Article I, Section 8 of the Constitution gives Congress the sole and exclusive authority to initiate military hostilities, from all-out, total war, as well as lesser acts of armed force.

Gulf of Tonkin Resolution

- President Lyndon B. Johnson had considered going before Congress for approval to introduce U.S. Armed forces in Vietnam, but feared that his request would be denied.
- Instead, the Gulf of Tonkin Resolution was passed in 1964
- According to late Senator Morse, this gave the President “war-making powers in the absence of a declaration of war. I believe that to be a historic mistake” (Paul, 673).
- Increased tension between the executive and legislative branches of government over war-making

Passing the WPR

- Following Vietnam, Congress needed to reassert its power to declare war and prevent future President's from abusing their executive power as the Commander in Chief.
- President is granted the power to repel sudden attacks but must consult with Congress immediately afterwards.
- The “Heart of the Resolution” requires the President to terminate any deployment within the 60-day time period unless otherwise authorized by Congress.
- The WPR was meant to fulfill the intentions of the Framers' to prevent the executive from abusing their power.

Nixon's Veto

- President Nixon initially vetoed the WPR because he believed that it intruded upon the President's responsibility as the Commander in Chief.
- Also, Nixon believed that war-making decisions was a shared power between the President and Congress.
- The War Powers Resolution was able to gather 2/3rds majority in Congress to override Nixon's veto

Utilization of the WPR

Reagan Administration vs. the WPR

- Reagan and his administration hardly acknowledged the requirements of the WPR.
- Failed to consult Congress prior to invading Grenada in 1983
- Deployed a naval task force into the Gulf of Sidra after Qaddafi had warned about the “Line of Death”; did not submit a written report claiming actions taken under UN Charter 51

George H.W. Bush vs. the WPR

- In 1989, President George H.W. Bush authorized the invasion of Panama to restore democratic processes diminished by General Noriega
- Failed to consult with Congress prior to taking action but was hardly reprimanded because it was viewed as a success.
- Prior to the Gulf War in 1991, Congress decided to vote in favor of the U.N. and allow Bush to deploy troops to support Kuwait.

Clinton Administration vs. the WPR

- In February of 1994, U.S. aircrafts carried out a bombing campaign against Serbian aircraft and military positions.
 - Claimed constitutional authority as Commander in Chief allowed him to do so.
- Had no intentions of seeking congressional approval for the Haiti Intervention in 1994.
 - Almost deployed 20,000 U.S. Armed forces in September 1994
 - Directly conflicted with Congress' views and mandates of the WPR

George W. Bush vs. the WPR

- Following the attacks of 9/11, President Bush made clear that these were considered to be declarations of war against the United States.
 - Congress authorized for attacks against those involved in the attacks in the Authorization for the Use of Military Force (AUMF)
- Bush and his administration did not request Congress to declare war prior to the invasion of Iraq in March of 2003, nor did they consult with congressional leadership.
 - Failed to comply with the reporting requirements under the WPR

Obama Administration vs. the WPR

- In March of 2011, President Obama ordered aerial strikes against Qaddafi forces in Libya using missiles and unmanned drones.
 - Lasted well-past the 60 day time period mandated by the WPR
 - Denied this violation because the “hostilities” involved were not included in the WPR
- In September of 2013, sought congressional approval to use drone airstrikes against the Syrian government to help support the rebel forces. However, withdrew request before a vote was taken.

Authorization for the Use of Military Force (AUMF)

- Gave President Bush the legislative authorization to attack Afghanistan for the attacks of September 11, 2001.
- Authorized use of force against any nations, organizations, or individuals that participated or harbored those responsible.
- Still used by President Obama and administration to justify drone strikes

International Law and the “War on Terror”

- Article 51 of the UN Charter permits states to use force in self-defense against an armed attack
 - Attacks by non-state actors do not have to be attributed to a state for them to qualify as armed attacks under Article 51
 - Non-state actors frequently launch from failed states or territories
- NATO invoked Article 5 of the Washington Treaty which deemed the attacks of 9/11 an attack against all NATO members

Drone Warfare and the WPR

- The Obama administration claimed that the hostilities involved with unmanned drones in Libya was not applicable to the WPR because there were no U.S. armed troops on the ground.
- The drones have allowed the President to act unilaterally more frequently using drone attacks against terrorist than ever before.
- Both the Bush and Obama administrations have justified the use of drones to kill suspected terrorists under AUMF.

Frequency & Drone War Casualty Estimate

Table 1	Pakistan (2004-2014)	Yemen (2002-2014)	Somalia (2007-2014)
Total Strikes	383	61-71	5-8
Obama Strikes	332	N/A	N/A
Total Killed	2,296-3,718	293-430	10-24
Civilians Killed	416-957	30-74	0-1
Children Killed	168-202	6	0
Injured	1,089-1,639	76-187	2-3

Source: <http://www.thebureauinvestigates.com/category/projects/drones/drones-war-drones/>

Conclusion

- Article I, Section 8: Congress has the war-making power
- Congress must update the WPR to:
 - Include modern warfare like drones
 - Clearly define 'hostilities'
 - Include non-state actors

Thank you! Any Questions?