

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

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Social Studies Senior Thesis
Bemidji State University
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April 2014

Abstract

*In September of 2013, President Obama asked Congress to take a vote that would authorize the United States to use military drones against the Syrian army and provide support for the Syrian rebels. This action by President Obama raised the question that many have been wondering since the creation of our country, who has the power to declare war and initiate hostilities against those who threaten the United States? My thesis focuses on the War Powers Resolution of 1973 and the arguments surrounding its Constitutionality, specifically the arguments supporting the Executive or Legislative branches. For my research supporting the argument for the Executive branch, I focus primarily on John C. Yoo's *The Continuation of Politics by Other Means: The Original Understanding of War Powers* which gathered a lot of attention for his controversial interpretations. The critiques of Yoo's *War Powers* argue that his research misinterprets the original intentions of the Framers' and that they actually intended for Congress the right to declare war considering that they had just finished the American Revolution because the British King held too much power. The research gathered will provide the different situations that the President is authorized to use military forces against our Country's opposition.*

Introduction

Ever since Congress passed the War Powers Resolution by overriding President Nixon's veto, its constitutionality has been debated controversial during each presidency that has followed. The argument over the topic typically revolves around a more pro-executive or pro-legislative power to declare war. The constitutional text did not clearly define what "war" and "declare" actually mean, so it has been left to scholarly interpretations to determine who the Framers' felt to whom that authority should be granted.

During the period of time in which the Constitution was drafted, war usually involved states or countries that had established governments or objectives prior to engaging in hostilities. Today, this still holds relevance as, for example, the United States could become engaged in hostilities with another country comparable in military capabilities to our own. However, the rules of war have come into question as we have entered and continue to participate in the "War on Terror" in countries where we are not facing nations or governments, but non-state actors with or without government affiliations such as terrorist organizations like Al Qaeda or the Hezbollah in Iran. We have the ability to strike against these non-state actors with computers located thousands of miles away, using drones and other technology. President Obama's administration has been able to carry out many of these drone strikes without complying with the requirements of the War Powers Resolution, standing firmly behind their position that the hostilities involved in the "War on Terror" were not considered by its drafters.

I will focus on the relevance of the War Powers Resolution of 1973 and its relevance in the "War on Terror". To do this I begin by retracing the Framers' intentions

during the Constitutional Conventions and the various interpretations made by scholars in the decades since then. Those who debate in favor of both a strong executive or strong legislative have drawn much of their support from the Constitution, the Framers', and the State constitutions that followed.

Then, I focus on the War Powers Resolution itself, and some of the events that led to its passage. During this section I focus primarily on the Gulf of Tonkin Resolution, from which the War Powers Resolution resulted. Also, I examine the Korean War Conflict in which Truman acted without the consent of Congress before deploying troops to aid and assist the Republic of Korea.

Next, my focus turns to the events that have followed its passage and the situations during each Presidency where the president finessed the War Powers Resolution. This includes: President Reagan and hostilities in Libya; President George H.W. Bush and the deployment of troops to Panama; President Clinton and hostilities in Iraq, Serbia, and Haiti; President George W. Bush and the start of the "War on Terror"; and finally President Obama's continuation of military operations in the "War on Terror".

Finally, as international law has played such a crucial role in the War Powers Resolution, particularly for Presidents, I examine Article 51 of the United Nations Charter among other international organizations. I also focus this section of my thesis on drone warfare and its relevance to the War Powers Resolution and the "War on Terror".

Literature Review

Framers' Intentions

The War Powers Resolution has left many wondering about the intentions of the Framers and how it affects the system of checks and balances. According to some scholars, the Framers intentionally wrote the war powers vaguely for future generations to interpret because of a mix of ideology, contemporary experience, and practical compromises (Gartzke, 1996, p. 261). Article 2, Section 2 of the Constitution declares the President as the Commander-in-Chief of all military forces to protect and preserve the nation or our interests. The Constitution also states, in Article I Section 8, that Congress solely has the power to declare war and make letters of marque and reprisal. This has fueled both sides in the war powers debate considering that each side is able to draw support from the Framers and the Constitution.

John Yoo is recognized as an advocate for a strong executive role in the right to declare war. In his essay, *The Continuation of Politics by Other Means: The Original Understanding of War Powers*, Yoo examines possible influences on the framers including political theorists, the British Monarchy, and the first State Constitutions. The theorists that Yoo discusses in particular are John Locke, William Blackstone, and Montesquieu. Locke is known as an advocate for the separation of powers between the legislative, executive, and federative branches. According to Yoo, Locke believed that the executive held the right to make war because the size of the legislative branch could be too slow in response to unforeseen circumstances (Yoo J. C., 1996, p. 200). Montesquieu held a similar theory as Locke, separating the government into three separate branches establishing a system of checks and balances. Montesquieu argued in support of the executive in the declaration of war because the checks and balances

provided the legislative branch with the ability to terminate the funding for the military or terminate the authority of the executive (Yoo J. C., 1996, p. 201). Blackstone created an incorporated version of Locke and Montesquieu's theories concluding that the executive, as the nation's representative in foreign affairs, held the right to make war.

Yoo also examines the influence that the British Monarchy had on the Framers prior to drafting the Constitution. He considers the British model and their history of checks and balances as an outline for the Framers while deciding the war powers in the Constitution. For example, the monarch was the commander in chief over all military forces but Parliament controlled the funding and held the power to impeach the King's ministers to hold him accountable for his actions (Yoo J. C., 1996, p. 217).

Opponents of Yoo dismiss the influence of the British model because the Framers were so adamant about the dangers of having a strong executive. According to Louis Fisher, the Framers recognized that nearly all of the European countries had vested the executive with most of the foreign policies and that this defied their principle of self-government and popular sovereignty (Fisher, 2011, p. 182). Fisher also argues that there is no evidence of Locke or Blackstone's writings being of influence on the Framers. Blackstone promoted the executive exclusively with all foreign relations including the ability to make treaties. The Constitution explicitly states that the power to issue letters of marque and reprisal is placed in Congress, not the President. Despite Yoo's interpretations of the Framers' intentions while writing the Constitution, it seems more likely that they were trying to establish a government that did not resemble the one against whom they were in revolt.

According to some pro-executive scholars, the delegates at the Constitutional Convention never actually mentioned what the limitations were on the executive's war powers (Pious, 2007, p. 68). Hamilton warned that a weak executive implied a weak execution of government and that war power was an adjunct to the executive power; however, in Alexander Hamilton's Federalist No. 69, while comparing the president's power in war with the British King, he said that it meant the president held the highest command while leading the military in the right direction (Kober, 2011). Strong executive supporters have often drawn from Hamilton's writings in their arguments; however, he never thought that a British scheme of government would work for the United States and that the Senate should have the sole authority to declare war (Fisher & Adler, 1998, p. 7).

Madison believed that the Constitution assigned all war and foreign affairs to the legislative branch with the only exception being the President's role as Commander-in-Chief (Pious, 2007, p. 70). The Commander-in-Chief clause has been the foundation for the strong executive argument in the war powers debate because it gives the President the authority over all military forces. This clause only allows the President the authority to repel sudden attacks on the United States and to direct the nation in times of war (Adler, 1988, p. 9). Some have argued that Congress has the ability to control the Commander-in-Chief, so in a situation where the President abuses this role, funding can be terminated and the President could be impeached. According to Yoo, the Commander-in-Chief clause not only gives the President power over all military and foreign affairs, but all the powers that were granted to the British King (Yoo J. C., 1996). Janet Cooper Alexander, in her essay response to Yoo, dismissed this interpretation explaining that it is actually

Congress that has the power to call and raise armies, provide military forces and operations, and regulate the land and naval forces (Alexander, 2012).

War Powers Resolution of 1973

The advancement in military technology and the ability for the military to be ready in an instant reduced the need of the President to communicate with Congress for consent and allocating funds prior to mobilizing any force. The Cold War with the Soviet Union required a standing army in case of an imminent attack; so mobilizing military forces was no longer lengthy process for the President (Gartzke, 1996, p. 262). After World War II, it became more apparent that Presidents were acting independently with military operations instead of consulting Congress prior to engagement. This forced Congress to pass the War Powers Resolution of 1973 to ensure that future President's consulted the legislature prior to engaging in hostilities, as required by the Constitution. Perhaps the two most influential conflicts that forced Congress to take action against the executive branch were the Korean War and the Gulf of Tonkin Resolution.

In response to North Korea's invasion of South Korea in 1950, President Truman decided to send American troops to the Republic of Korea answering the United Nations call for assistance. Truman did not seek a congressional declaration of war nor did he consult with any leaders of Congress before sending the troops claiming that the situation did not provide adequate time (Paul, 2008). Americans, both financially and in lives lost, did not anticipate the duration and cost of the Korean War, and the blame fell solely on President Truman because he acted without consulting Congress.

A similar situation occurred during Lyndon B. Johnson's presidency when deciding the United States involvement in Vietnam. Unlike Truman, President Johnson

had considered seeking congressional approval but decided against it fearing that his request would be denied. Instead, President Johnson introduced the Gulf of Tonkin Resolution, which passed with ease through Congress and allowed him to use any measure necessary (Paul, 2008). As the Vietnam war dragged on longer and costlier than expected by Americans, Congress decided that it was time to challenge the executives war-making powers (Paul, 2008, p. 673). The tensions that followed between the two branches of government eventually led to the drafting of the War Powers Resolution of 1973 to prevent the executive from abusing their war-making powers.

The War Powers Resolution did not pass immediately, as President Richard Nixon vetoed the bill because he considered it a shared power between the president and Congress (Fisher & Adler, 1998, p. 4). Additionally, Nixon believed that the bill intruded on the President's responsibilities as the Commander-in-Chief of the armed forces. Congress was able to override the President's veto, however, reaching the necessary two-thirds majority allowing the bill to become law.

The War Powers Resolution of 1973 includes three procedures to ensure that the President is not abusing his power as Commander-in-Chief: consultation with Congress, executive reports to Congress, and congressional action in matters involving military forces (Burgin, 1992, p. 219).

Consultation Procedure of the WPR

Section 3 of the War Powers Resolution requires the President to consult Congress prior to using Armed Forces in any instance where hostilities have already begun or are clearly about to begin. Two issues in particular have surrounded this procedure of the Resolution; first, there seems to be a disagreement about the definition

of “consultation” between the executive and the legislative branches. “Presidents have tended to treat it as a synonym for notification after the fact” (Fisher & Adler, 1998, p. 3). For example, there was confusion between President Reagan’s administration and Congress after he issued an order to send troops into Grenada, hardly consulting Congress other than informational briefings. The second issue involved with the consultation procedure are the situations in which consulting is required (Burgin, 1992, p. 221). The Resolution clearly states that in any instance requiring U.S. Armed forces, however, the executive branch has managed to avoid this procedure multiple times post-1973.

Executive Reporting Procedure

The executive reporting procedure of the WPR requires the President to submit reports to the Speaker of the House and President pro tempore of the Senate within forty-eight hours of armed forces being sent into a hostile situation (Burgin, 1992, p. 221). Section 4(a) of the Resolution further explains in three parts when a report must be submitted: (1) into hostilities or where hostilities are clearly indicated, (2) when armed troops are sent into foreign nation’s territory, water, or airspace while equipped for combat, or (3) where armed troop numbers increase significantly when troops are already located in a foreign nation (Burgin, 1992, p. 221).

Time Limitations of the WPR

The War Powers Resolution requires for the President to end troop deployment within sixty days unless Congress declares war, authorizes the President’s actions, or adds an extension to the time limit. Some presidents have attempted to side-step this procedure of the War Powers Resolution by claiming their actions under International

Law, for example, President Reagan claimed that the hostilities involving Libya and the “Line of Death” were in response to Article 51 of the UN Charter (Burgin, 1992).

However, according to Section 4(a)(1) of the War Powers Resolution, the clock-triggering process begins within sixty-days of the required executive reporting.

Since the Passage of the WPR

Following the passage of the War Powers Resolution, each presidency has encountered situations where the law has played a role, sometimes being ignored by the executive. Presidents Ford and Carter took office after the Vietnam War, which prevented them from using armed forces in any situation that was not absolutely necessary. President Ford used military force only a couple of times, and Carter used military forces in a failed attempt to rescue the hostages in Iran (Fisher & Adler, 1998, p. 10).

The presidencies of Reagan and Clinton saw perhaps the most frequent situations in which the WPR should have been used, but both Presidents George H.W. Bush and George W. Bush also had issues with the WPR. During Reagan’s presidency, he deployed troops to Lebanon, invaded Grenada, performed airstrikes in Libya, and maintained naval operations in the Persian Gulf without ever seeking Congressional approval (Fisher & Adler, 1998, p. 10).

Methods and Analysis

Reagan Administration vs. the War Powers Resolution

During President Reagan’s tenure, Senator Jacob Javits, who helped passed the War Powers Resolution, discussed his disappointment in President Reagan and administration for failing to comply with the requirements of the Resolution after the

release of American hostages held captive by terrorists in Beirut (Rubner, 1987).

Opponents of the War Powers Resolution, such as former Senator Bob Dole, believed that the drafters of the resolution did not anticipate hostilities with terrorist organizations or other non-state actors. Instead, they believed that the drafters had only considered the conventional warfare at the time with state-backed opponents (Rubner, 1987).

Two military confrontations between American and Libyan forces in the spring of 1986 intensified the relationship between the War Powers Resolution and terrorists organizations. The Reagan administration deployed a naval task force of thirty ships, thousands of troops, and fighter jets to the Gulf of Sidra where Colonel Qaddafi had previously warned about the “Line of Death”, forbidding foreign ships from crossing (Rubner, 1987). After Libyan forces attacked the American ships for crossing the “Line of Death”, the American forces retaliated and then retreated out of the Gulf.

The Reagan administration failed to comply with the War Powers Resolution by failing to consult with Congress prior to deploying the naval forces in a hostile area or where hostilities were imminent. President Reagan also failed to comply with section 4(a)(1) of the WPR, requiring a written report from the executive, by submitting a report that claimed the events were conducted under international law (Burgin, 1992). By filing his report under international law, specifically Article 51 of the UN Charter, and by omitting the WPR, he did not trigger the sixty-day clock.

The second military confrontation between the American and Libyan forces occurred also occurred in the spring of 1986, following bombings in West Berlin by Libyan terrorists. The American forces carried out an eleven-minute aerial attack against strategic Libyan targets associated with the terrorist bombing (Rubner, 1987). Once

again, President Reagan and his administration failed to comply with the War Powers Resolution. The President did not consult with Congress until after he had already given approval for the aerial bombings, and in doing so he undermined the basic intentions of the WPR (Rubner, 1987, p. 206). Despite Reagan's failure as the executive to adhere to the provisions of the WPR, many legislators accepted his justification of the raids due to terrorists acts carried out by the Libyans (Rubner, 1987).

In April of 1986, Senate Majority Leader Dole and other Congressmen introduced a measure that included a broad definition of terrorism and allowed for the President to disregard some of the procedures of the WPR, such as the consultation procedure (Rubner, 1987, p. 213). The Libya bombings during Reagan's administration had gathered much support for an anti-terrorism bill but none were introduced that followed the procedures of the War Powers Resolution because they commonly removed limits on the President's authority with American armed forces (Rubner, 1987, p. 213).

George H.W. Bush vs. the War Powers Resolution

In December of 1989, President George H.W. Bush used his executive power to invade Panama in an attempt to restore democratic processes diminished by General Noriega without consulting Congress prior to action (Burgin, 1992, p. 232). Even though President Bush did not follow the Resolution's procedure of consulting Congress prior to hostilities, the administration was hardly reprimanded for their lack of compliance. Prior to the Gulf War in 1991, Congress passed resolutions for defensive action supporting Kuwait, but never actually authorized war (Paul, 2008, p. 674). The U.N. had established a deadline date for Iraq to withdraw troops from Kuwait, and Congress eventually voted to support this deadline that allowed Bush to deploy armed forces.

Clinton Administration vs. the War Powers Resolution

In February of 1998, President Clinton nearly approved an order that would allow for heavy airstrikes against Iraq in an attempt to strongly influence Saddam Hussein into allowing UN inspectors to search for weapons of mass destruction. This was interrupted by then UN Secretary, General Kofi Annan, who was able to reach a settlement with Hussein before the United States conducted the missile strikes (Fisher & Adler, 1998). When the Secretary of State, Madeleine Albright, was asked why Clinton ordered military action against Iraq, she responded: “We are talking about using military force, but we are not talking about a war. That is an important distinction” (Fisher & Adler, 1998, p. 20). However, the Constitution clearly grants Congress the power to initiate hostilities, despite the type of force.

President Clinton’s administration was perhaps the first presidency that understood the capabilities of terrorist organizations and non-state actors with the development of new warfare. During his presidency, the government increased law enforcement resources for counterterrorism significantly. This increase in preventative measures against terrorist attacks helped convict four men associated with the 1993 World Trade Center bombing, and prevented nearly a dozen terrorists from bombing the United Nations Headquarters (Masci & Jost, 2001, p. 832).

In February of 1994, U.S. aircrafts were used to shoot down Serbian aircraft and bombed Serbian military positions; followed by the deployment of 20,000 troops to Bosnia (Yoo J. C., 1996, p. 297). Clinton did not ask for congressional authority claiming that his constitutional authority and title as Commander-in-Chief allowed him to do so (Yoo J. C., 1996). In 1994, Clinton wanted to participate in an intervention in

Haiti, which brought again the war powers into question. Members of Congress passed resolutions to participate in the intervention because most members opposed the U.S.'s involvement, but Clinton refused to seek Congressional approval claiming that it would restrict his successors and proceeded to order the intervention (Paul, 2008, p. 675).

George W. Bush's administration vs. the War Powers Resolution

Following the events of September 11th, 2001 law enforcement agencies had already determined the Osama Bin Laden was the man responsible for the attacks and that he was harboring somewhere in or near Afghanistan behind the Taliban regime. The Bush administration pressured Pakistan to cutoff support to the Taliban by closing its borders and allowed for American forces to use the country as a strategic military area (Masci & Jost, 2001).

Congress passed the Authorization for the Use of Military Force (AUMF) on September 18th, 2001 in response to the attacks of 9/11. This statute authorized the President to use all necessary and appropriate force against the nations, organizations, or individuals that participated in the attacks. This allowed for President Bush and later President Obama to use force against terrorists associated with Al Qaeda without complying with the requirements of the War Powers Resolution.

By October of 2001, American and British forces started aerial strikes against Afghanistan targeting bin Laden's training camps and also Taliban's military bases in an attempt to weaken the terrorist networks. Gaining support for the invasion of Afghanistan was not difficult following the attacks of September 11, 2001, even gathering support out of the Middle East from countries like Pakistan (Masci & Jost, 2001, p. 834).

President Bush did not consult with congressional leadership nor did he attempt to declare war against Iraq before hostilities began in March of 2003. His administration insisted that Iraq had weapons of mass destruction without providing proper evidence and the invasion has proved to be costly in terms of money and time. His administration also failed to comply with the reporting requirement in the War Powers Resolution of 1973, which is meant to formally notify Congress the purpose of the military operations (Paul, 2008). Because President Bush did not request a declaration of war from Congress, he legally carried out these operations despite the length and costs of Operation Iraqi Freedom.

Obama Administration vs. the War Powers Resolution

In March of 2011, President Obama ordered aerial strikes against Qaddafi forces in Libya using missiles and unmanned drones that lasted well past the sixty-day limit requirement of the War Powers Resolution. Despite this violation of the WPR's time limit, President Obama and his administration denied this violation because the hostilities involved were not included in the Resolution (Druck, 2012). Congressional leadership was consulted regularly throughout the military attacks even though they never gave approval of the use of force.

The Obama Administration compared the operation to past military operations carried out by the executive branch, for example, Libya with the Reagan administration or Kosovo under the Clinton administration. According to Legal Adviser Koh, the hostilities as defined under the War Powers Resolution, does not include missions of limited military means that do not put U.S. forces in imminent danger (Koh, 2012). For example, there were no U.S. ground troops that were put in Libya that would become

involved in hostilities if events turned sour. Standing firmly behind his decision in the Libya aerial attacks, President Obama made clear that there were no U.S. casualties or fighting between ground troops (Druck, 2012). Some opponents of the Libyan campaign have targeted the financial costs to American taxpayers, but considering the costs of the ‘War on Terror’ in throughout the Bush administration, this argument did not gather much support.

The situations in which the procedures of the War Powers Resolution have been ignored by the executive branch have brought different types of proposals to the law. Many of these have been reactive proposals, or proposals introduced following a certain event relating to the Resolution itself. For example, after Reagan’s administration failed to report the deployment of military advisers to El Salvador, legislators forbid U.S. forces from El Salvador with limitations (Burgin, 1992, p. 227). Prospective proposals usually include suggestions to amend the War Powers Resolution to better define the procedures within the law hoping to prevent the President from evading its provisions. Prospective proposals have also taken form in repealing the War Powers Resolution and drawing up a new act to replace it (Burgin, 1992, p. 228).

Authorization for the Use of Military Force (AUMF)

This section of my thesis focuses on the Authorization for the Use of Military Force because this statute provided authorization for both Presidents Bush and Obama to use force against those involved in the attacks of September 11th. The AUMF has been used by both administrations as the basis for targeting terrorists located not only in Iraq and Afghanistan, but also Yemen, Pakistan, Syria, Libya, and even the United States.

On September 18th, 2001 Congress passed the Authorization for the Use of Military Force (AUMF) in response to the perpetrators and allies of those responsible for the attacks of September 11th. This 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” on 9/11, including those that harbored the terrorist organizations(Cronogue, 2012, p. 2). The AUMF essentially granted the President with the power to determine the actors associated with the 9/11 attacks; and also authorizes the President to use force against these said actors.

In regards to “who” the AUMF authorizes the president to use force against, the statute targets the nations, organizations, or persons responsible for the attacks(Bradley & Goldsmith, 2005). Afghanistan was the primary target of this section under the AUMF for their connection with the Al Qaeda terrorist organization, but the statute also authorized force against any other states that may have harbored or participated in the attacks. Congress intentionally left the “nations” part of the text open-ended because it was passed in a short amount of time and the information was still imperfect to directly target Afghanistan (Cronogue, 2012).

The AUMF also authorizes the president to use force against organizations that were associated with the 9/11 attacks. A significant difficulty associated with this part of the statute is actually identifying these terrorists, as most terrorist groups hide their members to blend in with civilians (Cronogue, 2012). For example, the Al Qaeda terrorist organization’s hierarchy operates through geographically dispersed, small group operatives that may be active or dormant; often referred to as “cells” (Bradley & Goldsmith, 2005).

The individuals that the President is authorized to use force against under the AUMF is also difficult to determine. The statute includes individuals who take up arms for the purpose of attacking the United States or are preparing or returning from an attack (Bradley & Goldsmith, 2005). Remember, many terrorist groups hide their members in cells to blend in with their surrounding population so determining the actual terrorist is extremely difficult. Under the AUMF, the President has the authority to determine who these characters are and is allowed to use force against them.

A recent debate over the AUMF is its relevancy today, especially in the Obama administration. The resolution was passed in 2001 and was meant to target those who were responsible for the 9/11 attacks, specifically Osama Bin Laden, Al Qaeda, and the Taliban (Cronogue, 2012). The Obama administration has been using the AUMF to justify targeted killings against terrorists who may not have any association with the 9/11 attacks, and they have stated that the statute should remain unchanged to cover potential threats against the United States (Cronogue, 2012).

International Law

From President Reagan to Bush, presidents have sidestepped the War Powers Resolution by claiming that their actions followed international law, particularly Article 51 of the UN Charter. For example, during Reagan's presidency when U.S. naval forces were engaged in hostilities with Libyan forces after we crossed the "Line of Death", the President did not follow the requirements of the WPR, instead claiming that Article 51 allowed for a hostile response to an armed attack.

Article 51 of the UN Charters states that "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs

against a member of the UN” (Heinze, 2011, p. 1071). Essentially, this authorizes the use of force in self-defense to an armed attack by another state. A debated topic in regard to this Article is its relevance to non-state actors. Following the attacks of 9/11, the United States was informing the UN Security Council that we were using military operations against the Al-Qaeda terrorist organization and the Taliban in accordance to Article 51(Heinze, 2011). Prior to 9/11, the assumption by scholars was that Article 51 only applied where an armed attack could be attributed to a state. However, nothing in the plain text of the Article requires that to be true. Following the attacks of 9/11, the United States was able to gain support from the UN Security council to engage in hostilities with those involved in the events.

NATO invoked Article 5 of the Washington Treaty on September 12th, 2001 which stated that the attacks of 9/11 an attack against all NATO members, therefore authorizing the United States to use force against those responsible. The European Union also stated their support of a response by the United States to those responsible in accordance to the UN Charter (Heinze, 2011).

War Powers Resolution and the “War on Terror”

The relevancy of the War Powers Resolution today is in question as it relates to terrorist organizations and other non-state actors. Federal law defines terrorism as premeditated, politically motivated violence typically perpetrated against civilians (Masci & Jost, 2001, p. 819). The Constitution mentions war, but does not clearly define the range of what that actually includes (Reisman, 1989, p. 778). Since the Constitutional Convention, conditions of war have drastically changed leaving today’s scholars and politicians to interpret what the Framers’ actually considered to be war. As the United

States has become involved and seemingly continues to become involved in conflicts with terrorist organizations and non-state actors, the War Powers Resolution's relevance has come into question.

The attacks on September 11th, 2001 and the "War on Terror" that followed were not the first events that involved the United States and terrorism. In the decade leading up to the events of 9/11, the government recognized that threats from terrorist organizations and non-state actors were increasing significantly (Masci & Jost, 2001). As terrorism changed from politically to religiously motivated, and with the new warfare available to these organizations, the presidencies since the passage of the War Powers Resolution of 1973 have seen an increase in catastrophic events associated with terrorist organizations.

Drone Warfare and the War Powers Resolution

Drone warfare has increased the effectiveness of military strategies without putting any human soldiers in harm's way. Without putting soldiers lives at risk, the views on war have also changed because people are no longer worried about the traditional costs of war, such as: food, a draft, injuries and casualties (Druck, 2012). As new unmanned drones and other advanced warfare emerges, recent military conflicts have come without the traditional costs above. Termed the "Obama Doctrine", which is the use of air power and strikes to resolve conflicts instead of putting any soldiers on the ground, the traditional harms associated with war may become obsolete as technology continues to replace the need for soldiers (Druck, 2012, p. 228). Drones create more opportunities than ground troops do because they can circle an area undetected for an entire day before finding an opening to strike.

With this shift in mechanized warfare, the relevance of the War Powers Resolution comes into question as the executive is able to act unilaterally more frequently in attacks than before. As the public views a damaged drone or missed targets softer than ever before because there were no American lives lost, congressional enforcement of the War Powers Resolution can be expected to decline as well (Druck, 2012).

As the use of robotics and other mechanized warfare increases, the American public seems less concerned with the war-related politics because there are no ground troops put in harm's way. As a result, citizens have been slow to mobilize and the public interest has remained low. For example, a drone that fails to hit a target, accomplish a mission, or even gets shot down receives little attention from the public because we can just build a new one. With the lack of public scrutiny about the use of drone warfare, it is difficult to pressure Congress to enforce War Powers Resolution, despite the fact that that is their main priority. Since this is yet to happen, the President is able to order airstrikes unchecked and will continue to do so until Congress enforces the requirements of the War Powers Resolution.

In Table 1, I present information about the United States use of drones in the War on Terror. The information highlights the main areas of drone use by the United States since the "War on Terror" began. As you can see, President Obama has accounted for over three hundred of the drone strikes performed in Pakistan since he took office. The President and his administration stand firmly behind their position in stating that the hostilities involved with drone strikes are not applicable to the War Powers Resolution because the WPR does not consider modern warfare technology (Koh, 2012).

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	2296-3718	293-430	10-24
Civilians Killed	416-957	30-74	0-1
Children Killed	168-202	6	0
Injured	1089-1639	76-187	2-3

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

Conclusion

“The Framers placed in Congress the authority to initiate wars because they believed that executives, in their search for fame and personal glory, have a natural appetite for war”(Fisher, 2011, p. 185). Although Article 2 Section 2 of the Constitution of the United States vests the executive powers with the President, including the role as the Commander in Chief, it was only intended by the Framers that the President may act unilaterally in defending our nation, our citizens, and our interests to repel sudden attacks, as in defensively. (Fisher, 2011). Strong executive supporters, such as John Yoo, have consistently argued that the Framers’ gave Congress the power of the purse and the ability to impeach the President if the Commander in Chief clause was abused. I believe that an argument such as this neglects Article I Section 8 of the Constitution, which grants sole authority to Congress to declare war. The Framers’ intended for Congress to have the authority to declare war authority to protect our nation from an executive who

would abuse his or her power as the Commander in Chief. The ability to impeach and control funding by Congress reinforces our system of checks and balances to prevent any branch from gaining too much power.

My reason for examining the Korean Conflict and the Gulf of Tonkin Resolution was to provide to specific examples that, not only led to the passage of the War Powers Resolution, but also were examples of what the Framers intended to protect our citizens from in Article I Section 8. President Truman answered the United Nations call for assistance to protect the Republic of Korea from a North Korean invasion. This unilateral action by the President cost more financially and in American casualties than expected; and was carried out without consulting Congress prior to deploying our troops. More significantly, through the Gulf of Tonkin Resolution, President Lyndon B. Johnson was granted a 'blank check' to use all means necessary to resolve the situation in Vietnam. This not only gave the President the resources necessary for war, but also did not require him to consult with Congress throughout the entire conflict. The Vietnam War has had a lasting impact on our nation still to this day, and I believe that this was a situation that our Framers were trying to prevent in the first place.

Section 2(a) of the War Powers Resolution states that the purpose of its passage was to fulfill the intent of the Framers, however, the three procedures required by the Resolution has been debated since its passage as unconstitutional. President Nixon believed that the WPR intruded upon the President's right as the Commander in Chief and also believed that war making should be a shared power between the President and Congress. As my research has shown, almost all of the Presidents since the War Powers Resolution has passed have failed to comply with at least one of its procedures.

President Reagan failed to comply with the procedures on multiple occasions, but I focused primarily on the hostilities involving Libya because after failing to consult with Congress and to submit a written report, Reagan claimed to be acting in accordance with international law, and therefore, the War Powers Resolution was not relevant. Despite the fact that Reagan held naval training exercises inside the “Line of Death”, where hostilities were clearly imminent due to Colonel Qaddafi’s warning, Reagan hardly briefed or consulted with Congress on the matters.

President George H.W. Bush failed to consult with Congress prior to invading Panama to restore a democratic process that was destroyed by General Noriega. Neither Congress, nor the public, reprimanded President Bush because the hostilities were viewed as a success, despite failing to comply with the Resolution’s procedures. He did, however, receive approval from Congress to assist the United Nations in the Gulf War against Iraq, driving them out of Kuwait oil fields.

President Clinton, like Reagan, hardly followed the procedures of the War Powers Resolution because he believed that it violated his right as the Commander in Chief. He was able to carry out aerial strikes against Serbian aircraft and military operations without consulting Congress, submitting reports, and going beyond the 60-day time period. The United States almost became involved in a Haiti Intervention, which Clinton had absolutely no intentions of going before Congress for approval before taking action.

Both the Bush and Obama administrations have been using military operations in the “War on Terror” under the Authorization for Use of Military Force (AUMF). This applies only to those who participated or harbored those responsible for the attacks of September 11th, 2001. The President was given the right to determine the organizations,

nations, or individuals that fall under those requirements; however, both administrations have used it as an excuse to carry out operations outside of Afghanistan. The AUMF has become ever more controversial during President Obama's administration because it has allowed him to carry out drone strikes and other military operations over a decade later.

International law has provided a few Presidents with the opportunity to avoid the War Powers Resolution on multiple occasions, specifically using Article 51 of the UN Charter that against allows for a state to use armed force in a response to an armed attack. Nothing in the plain text of Article 51 requires that the armed attack must be attributed to a state, so in an instance where non-state actors attack the United States that President would have the ability to respond in accordance with this law.

With the increase in the use of unmanned drones during the Obama administration, I believe Congress must update the definition of 'hostilities' in the War Powers Resolution. Because unmanned drones were not considered during the drafting of the WPR, they must update the text to more clearly define which hostilities trigger the procedural process. According to Section 3 of the Resolution, in any possible instance where hostilities are engaged or are clearly imminent the President must consult with Congress. However, President Obama and his administration have been able to avoid compliance with the Resolution because the hostilities are not clearly defined.

In conclusion, the War Powers Resolution of 1973 has been controversial during most of the presidencies since it became a law. In nearly every situation where hostilities involving United States armed forces occurred, presidents have failed to comply with the procedures of the Resolution by denying that the hostilities were applicable or claiming to be acting in accordance with International Law. As new technological warfare, such as

unmanned drones, have allowed both President Bush and President Obama to act unilaterally more frequently than ever before. Congress must update the text in the War Powers Resolution, specifically the term “hostilities”, to include these modern warfare operations to prevent future presidents from abusing their executive powers. The use of drones have the potential to escalate a situation that would require the use of ground troops in the future, costing Americans much more financially and in terms of casualties.

Congress must seriously consider the relevance of the Authorization for the Use of Military Force (AUMF) in the “War on Terror”. Understandably, some of the participants responsible for the attacks of September 11th are still at-large, however, the statute perpetually allows for the President to determine “who” those participants are and the type of force that should be used against them.

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