

Ballotbox Diplomacy: The War Powers Resolution and the Use of Force

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The strategic problem for the United States during the lead-up to a potential military clash is maintaining the executive's ability to respond internationally while not abrogating legislative oversight of the use of force. In light of this dilemma, congressional leaders have an incentive to engage in "stage management": establishing short-term contracts with the executive that shift political risk during conflict onto the president while maintaining a final check on presidential policy.

The War Powers Resolution is a useful test of the stage management model and an alternative model that derides congressional involvement in the use of force as nothing more than symbolic politics. We find that the War Powers Resolution changed the process by which Congress opposes the presidential use of force, easing congressional collective-action problems and minimizing the electoral repercussions associated with said confrontation. Moreover, presidents have used force differently since the resolution's passage. By changing both process and outcomes, the War Powers Resolution fulfills all the requirements of a stage management contract.

The strategic problem for the United States (or any democracy) during military conflicts is maintaining the ability to respond internationally while not abrogating the domestic political process. The legislature in a division-of-powers system like the United States faces an especially acute dilemma. Congressional micro-management of military conflicts may erode crisis flexibility or create seemingly inexplicable policy changes, either of which may lead international opponents to discount American resolve. Micro-management also subjects Congress to unpredictable and significant electoral risks. Conversely, legislative abdication over the use of force allows the executive to dominate the escalation agenda, a problematic outcome should Congress not share the policy preferences of the president. The War Powers Resolution (PL 93-148, hereafter called the Act) was a congressional innovation to solve this dilemma. Passed over President Nixon's veto, the Act was a reaction to administration excesses during the Vietnam War. Its impact, however, is still being felt today.

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The Act as a piece of legislation has few defenders. On an empirical level, critics argue that the Act has not substantially affected past presidential behavior and cannot adequately restrain current presidents from involving U.S. forces in doomed peacekeeping missions. Presidents refuse to acknowledge the Act's legality (Glennon, 1990, 1994; Koh, 1990; Deering, 1991; Raven-Hansen, 1994; Fisher, 1995), resist consulting Congress before using force, and ignore the requirements for congressional authorization to use force (Sundquist, 1981; Smyrl, 1988; Blechman, 1990; Katzmann, 1990; Koh, 1990; Mann, 1990; Gibson, 1992; Hinckley, 1994; Lindsay, 1994).

The theoretic reasons Congress cannot change presidential behavior, say these critics, are twofold. First, the Act fails to solve the collective-action problems confronting the legislature. The Act's internal inconsistencies and lack of strict enforcement mechanisms make concerted congressional action impossible (Glennon, 1990:103–6; Katzmann, 1990:49–52; Koh, 1990:128; Fisher, 1995:132). Second, Congress lacks the will to use what mechanisms exist, in large part for electoral reasons (Blechman, 1990:168, 193; Koh, 1990:117, 132–3; Hinckley, 1994:80). Opposing the use of force is no less risky domestically than it was before the Act's passage. The Act is therefore yet another in a series of congressional abdications to the president over the use of force. The Act, say critics, is nothing more than symbolic politics.

The critics' arguments are strong. A wide theoretic literature documents the collective-action problems facing Congress as well as the electoral disincentives for confronting the president over foreign policy. Empirically, presidents rarely consult Congress before using force. The anomaly, however, is that since the passage of the Act the use of force by U.S. presidents has drastically changed (Fisher, 1995:133). With a few exceptions, presidents have significantly limited the duration of foreign interventions to conform to the limits set forth in the Act. In those exceptional cases, eventual congressional action has led to presidents abiding by the Act's limitations. Yet why should presidents adhere to legislative restrictions most analysts agree are toothless? If the empirical record is suspect, then perhaps so are the critics' theoretic assumptions about congressional action during military conflicts.

The alternative explanation we offer is that the Act is more than mere symbolic politics, in large part because it solves the critics' two theoretic concerns. The Act establishes parameters for desired presidential behavior and subsequent congressional action, making congressional opposition less risky electorally and easier from a collective-action perspective. Congress rarely uses the Act not because of collective-action problems or electoral fears, but rather because presidents tailor their behavior to abide by the Act's provisions, thus avoiding a series of constitutional battles over the use of force that would benefit neither branch of government.

The Act is an example of congressional "stage management": shifting the political risk during a military conflict onto the president *while maintaining a final check on presidential behavior*. Essentially, stage management turns a policy dispute such as the use of force into a short-term contracting problem, where reducing the duration or the scale of U.S. action mitigates risk for both branches of government (Dixit and Nalebuff, 1991:177). Breaking the use of force into short-term contracts makes it easier and less risky for Congress to mobilize opposition and constrain presidents from certain types of military commitments. Short-term stage management contracts thus solve legislators' collective-action problems and alleviate their electoral concerns.

For their part, presidents are constrained by short-term stage management contracts for domestic and international reasons. Domestically, stage management contracts provide Congress with legitimate procedures by which presidents can be held accountable. The Act codified into law anti-Vietnam War sentiments, but went beyond those sentiments to establish procedures by which opponents of future

Vietnam-style conflicts could voice their ire. Without the Act, any long-term or large-scale foreign intervention held the *potential* for domestic political conflict; with the Act, domestic conflict became legitimate and public through the Act's procedures. The increased likelihood of domestic conflict affects the president's international behavior by raising the specter of weakened U.S. credibility. Presidents are apparently cognizant of the fact that domestic political conflict reduces the international credibility of commitments, regardless of whether it halts those commitments (Bueno de Mesquita and Lalman, 1990; Odell, 1993). For international reasons, then, presidents have a strong interest in resolving military conflicts by short-term but decisive use of force, tailored to the Act's specifications, rather than risk the international ramifications of domestic infighting.

The policy-making process and the outcomes it generates should be different for these two competing models. As a first test, then, we examine the collective-action problems facing Congress and the electoral disincentives associated with confronting the president before and after the Act's passage to assess its impact on the policy-making process. If critics are right, similar collective-action problems should confront Congress before and after the Act. In addition, the electoral risks of confronting the president should be unchanged by the Act's passage. In essence, critics of the Act would expect Congress to restrain the Nixon administration's immediate Southeast Asia policies but do nothing more. We find, however, that the Act's design is a long-term solution to electoral and collective-action problems. Congress rejected alternative proposals that did little to alleviate these dilemmas. The Act's passage and final form thus support our stage management interpretation and cast doubts onto the critics' theoretic approach.

As a second test, we next compare the use of force before and after the Act's passage. Critics would expect no significant differences in U.S. conflict behavior (Hinckley, 1994:88, 99), yet our findings demonstrate a marked difference in the use of force since the Act, supporting the stage management approach to executive-congressional relations. We conclude this test with three short case studies often used to question the Act's viability: the 1982–83 Lebanon deployment, the 1990 deployment for Operation Desert Shield in Saudi Arabia, and the 1993 Operation Restore Hope in Somalia. In each instance the president began using large-scale force over an extended time period, providing crucial tests (Eckstein, 1975) of our hypotheses compared to the more critical interpretation of the Act. Critics of the Act would expect Congress to abdicate responsibility for crisis policy in these instances. By their view, presidential behavior should remain unchanged. However, presidential behavior changed significantly in response to congressional actions.

Our findings demonstrate that presidents respond to the War Powers Resolution by limiting the duration of international conflicts to avoid domestically costly battles with Congress as well as the international ramifications of domestic debate. This change in presidential behavior is more than simply a response to the post-Vietnam aversion to protracted low-intensity conflicts. Without the Act, we might expect the president to use overwhelming force to avoid more Vietnam-style conflicts. Presidents have done so, but not as consistently as we would expect. Moreover, presidents have strictly abided by the war powers clock when using force. Since the Act's passage, presidents have only used force once for more than sixty days without congressional authorization. The Act has thus shifted the strategy set of the executive to anticipate the legislature's preferred parameters on the use of force.¹ The resulting behavior fulfills all the requirements of congressional stage management.

¹ According to Avant (1994) the Pentagon also tailors its behavior to anticipate congressional preferences. The logic of anticipated responses is spelled out for generic policy in Weingast and Moran (1983) and McCubbins, Noll, and Weingast (1987), and by Lindsay (1994) for questions of foreign policy.

Stage Management

Legislators worry about international conflicts because the presidential use of force closely resembles a loss of congressional power to the executive branch. To some extent the president has an advantage relative to Congress: he possesses agenda-setting power (i.e., he can initiate a military conflict) and he may initially control hidden information about the conflict. In addition, the tools of legislative control, such as the *ex ante* selection of agents or *ex post* rewards and punishments, may not effectively constrain the president.² Retribution against the defense budget or individual administration officials is tricky business, especially when divisions exist within the legislature over these measures. The Iran-Contra hearings, for instance, demonstrated that seemingly draconian measures often amount to little actual punishment.

Congress is thus faced with a dilemma. Electoral incentives, partisanship, and inter-chamber rivalry make deriving stable congressional preferences difficult, to say nothing of acting on those preferences.³ Abdicating all control over foreign policy to the president, however, also seems politically unpalatable when the president has dissimilar policy preferences. We call the solution to this dilemma congressional “stage management.”

Stage management is a form of delegation between bargainers of equal power. At least one side to a stage management contract is anxious to achieve agreement though worried about the other side’s defection. Absent a stage management contract, each bargainer has the power to unilaterally alter policy in the short run. What’s more, that party can maintain policy changes absent extraordinary efforts to reestablish the status quo ante by the other party. Stage management contracts prevent such unilateral policy making when it is to the long-run detriment of both parties, or when the extraordinary measures necessary for the aggrieved party to reestablish the status quo ante hurts both parties to the dispute. In either instance, the aggrieved party may force a stage management contract onto a reluctant bargaining partner, or both sides may realize that a stage management contract is in their collective interests.

Stage management contracts are not principal-agent relationships. Sanctioning unilateral defection is more difficult for stage management bargainers, before a contract exists, than it is for principals in a principal-agent relationship. Stage management bargainers have not hired their counterparts as a principal might hire an agent to accomplish a specific task. Strategies designed to prevent agency loss because of adverse agent selection or moral hazard will not work in a stage management situation.

The two most common solutions to agency problems, tailoring agent incentives and the use of sanctions, are ineffective or highly costly absent a stage management

² The legislature, however, cannot lose shared control over foreign policy unless it loses agenda control, faces major problems of hidden information, and cannot contract with the executive branch (i.e., bring intra-governmental sanctions to bear at least retrospectively (Heller, 1993; McCubbins and Noble, 1995)). The Act strengthens the legislature’s control in all three areas.

³ House members are the most parochial in their constituencies and have the shortest time horizons for judging programs. Senate members are less parochial and have six-year terms, but one third of the chamber faces election every two years (Mayhew, 1974; Jacobson, 1990). Divided government makes it harder to initiate major new commitments, but easier to maintain them (Cox and Kernell, 1991; Fiorina, 1991). For example, withdrawing from previous foreign policy commitments may be harder for a president because the opposition need only control one legislative chamber to block legislation authorizing a new policy direction. The precise impact of divided control depends on the level of political consensus in the electorate (Barone, 1990:167–81; Cowhey, 1993a, 1993b). Partisanship is important because members with similar partisan affiliations have an incentive to maintain their party reputation (Cox and McCubbins, 1993), as partisan identification has a significant impact on mass voting patterns (Campbell, Converse, Miller, and Stokes, 1960). Foreign policy is certainly not an easy vehicle for partisan credit taking, yet foreign policy can ignite powerful retrospective punishment by voters (Aldrich, Sullivan, and Borgida, 1989; Nincic, 1990; Popkin, 1991).

contract. For example, one way for Congress to change presidential incentives would be to change the country's electoral rules. Such a change could also, however, have a significant negative impact on congressional careers. Congress could also impose sanctions on the president without a stage management contract, such as through legislation, changing budgetary levels, or impeachment. These sanctions, however, require veto-proof majorities in both chambers of Congress or are high risks politically whether they succeed or fail.

Stage management contracts thus change the policy-making process (from a unilateral to a collective process) in the hopes of changing domestic bargaining outcomes to better reflect congressional preferences. Stage management contracts establish procedures under which any long-term change in policy by one party to the contract must have the other party's acquiescence. They solve incentive and sanctioning problems while incorporating both the political uncertainties facing Congress and the time and informational constraints of modern politics, including but not limited to international crises.⁴ To accomplish that task, stage management contracts must meet five legislative goals.

First, the contract should improve congressional information for making a choice. Stage management contracts are designed to unearth costly hidden information either possessed by the executive or available to it.⁵ For instance, contracts might require executive reports given particular circumstances or according to a fixed timetable. Better information facilitates Congress's decision to support a long-term change in policy or maintain the status quo ante.

Second, the contract should allow Congress to frequently reevaluate the terms of delegation. One way the legislature does this is by creating short-term contracts with the executive, allowing Congress to frequently revisit the policy in question as it gets more information. This removes the take-it-or-leave-it character of presidential actions, such as committing troops or initiating an executive agreement. Short-term contracts provide the legislature with the opportunity to halt initiatives before they escalate beyond the point of no return, thus reducing the electoral risks of confronting the president. For instance, legislation could require explicit congressional authorization before a general authority is used innovatively, or Congress might stipulate that large presidential initiatives be reviewed yearly as part of the appropriations process with continuation of the project conditioned on the executive meeting congressionally determined milestones. In this way, Congress requires the executive to request legislative approval at each stage of the initiative before it can proceed.

Stage management contracts serve a third goal of minimizing the requirements for congressional action should that action be necessary to reestablish the status quo. The contract makes it easier for the aggrieved party to resist long-term changes to the status quo. Examples include procedures that require congressional action for an initiative to continue rather than congressional action before the initiative is halted, fast-track procedures for legislative action, or the use of legislative vetoes and concurrent resolutions to halt policy initiatives. Each procedure biases executive policy toward the status quo unless there is widespread legislative support for change.

A fourth congressional goal is to provide the executive with incentives to choose strategies that minimize congressional risks. One way of doing that is to require

⁴ Delegation is most likely to occur on issues where Congress either cannot reach agreement on policy goals or does not possess adequate information (especially about political costs and benefits) to make a decision (McCubbins and Page, 1987).

⁵ In principal-agent relations, Congress does this through institutional "fire-alarms" and administrative procedures (McCubbins and Schwartz, 1984; McCubbins, Noll, and Weingast, 1987). See Lohmann and O'Halloryn (1994) on delegating authority over trade policy.

prominent declarations of intent and responsibility by the executive branch, which forces the disclosure of information by the president and removes ambiguity about a politically salient executive branch position. Both measures improve reporting. More important, they alter the political compensation system of the executive branch. Public executive declarations of intent allow Congress to assess the likely ramifications of the president's initiatives, and to take appropriate actions in response (with high potential costs for the president). Moreover, declarations of intent commit the president, as the public is unlikely to reward a president who breaks well-publicized promises. Because of such associated costs, public declarations of intent are likely to be more than cheap talk. The anticipation of required declarations should make the executive cautious in his choice of policies.⁶

Fifth and finally, stage management contracts related to international affairs have the goal of keeping the chances of international success high unless there is a positive decision by Congress to reverse policy. This translates into allowing the executive flexibility to react to world events, but within parameters specified in the contract. Policies within that acceptable range are highly credible from a domestic perspective, in that they have full congressional support.

Collective Action and Electoral Disincentives

Our first test of the symbolic politics and stage management models involves tracing the policy-making process before and after the Act. While the Act was a response to the Vietnam War, the Act was designed as a stage management contract because previous efforts to constrain the president had failed, dating as far back as the inter-war period. There were two reasons for this failure: the growing collective-action problems facing an increasingly decentralized Congress and the electoral difficulties associated with confronting the president over foreign policy issues. We argue that both problems were addressed by the War Powers Resolution—the vehicle for congressional stage management.

First, the congressional committee system evolved in such a way as to exacerbate collective-action problems. Changes toward an ever more decentralized structure made it increasingly difficult for Congress to remain unified when confronting the president.⁷ Congress faced relatively minor collective-action problems between the Civil War and the revolt against Speaker Joseph Cannon. Congressional action vis-à-vis the president was controlled by the Speaker of the House and the Senate leadership. The Speaker overcame collective-action problems by controlling committee assignments and legislative referrals, and by chairing the Rules Committee. By the 1890s, the majority leader in the Senate had much the same powers (Smith and Deering, 1990:34). Collective-action became more difficult as the number of players increased in the aftermath of the Cannon revolt, when committee chairs and party leaders shared legislative decision making. The Speaker no longer appointed members to the Rules Committee nor served on it, and party leadership now made committee assignments. Negotiations with the president involved more congressmen. The 1946 Legislative Reorganization Act further devolved decision-making authority in Congress, ushering in the era of strong committee chairs. Standing committees had more autonomy due to their newly created staffs and their powers to oversee executive agencies. Committee chairs controlled most legislation

⁶ Providing the executive with incentives to chose a strategy matched to congressional incentives is the reverse of Neustadt's (1960) idea that the president's power is the power to persuade. The literature on presidential political incentives to use force fails to consider adequately the role of *ex ante* and *ex post* constraints by Congress (Ostrom and Job, 1986; Gaubatz, 1991).

⁷ This summary is based on Smith and Deering (1990). Cox and McCubbins (1993:254–60) trace these same developments but suggest less severe collective-action problems for the House majority party leadership.

in their jurisdiction, and policed their subordinates by controlling subcommittee assignment and determining subcommittee chairs. Instead of one person or a small cadre of party leaders controlling policy, independent (and sometimes conflicting) decisions were being made by each committee. The 1970 Legislative Reorganization Act again aggravated collective-action problems when it mandated that floor and committee roll-call votes be made public. Neither the party leadership nor committee chairs could expect to control votes when each congressperson's actions were subject to unprecedented constituent scrutiny. Collective-action problems had grown between the Civil War and the Act.

The second problem facing Congress was that previous efforts to constrain the president had failed, in large part because of electoral disincentives associated with enforcing congressional edicts. Threats to constrain the president were only as credible as the likelihood of their being implemented. Before the Act, however, congresspersons opposing the president's foreign policy faced electoral repercussions if they enforced their constraints.⁸ Congress could stop a war by withholding or rescinding military appropriations, yet this was a very blunt instrument which affected other U.S. interests. In addition, the budget process was slow, cumbersome, and subject to a presidential veto, making it an impractical constraint on short-term presidential behavior when compared to the Act, as we will discuss later. Most important, using defense appropriations to restrain the president subjected Congress to claims of abandoning U.S. soldiers on the field of battle.⁹ The most famous example was Teddy Roosevelt's use of the navy to show the flag abroad. Roosevelt was unfazed by a threatened funding cutoff, since to do so would have meant abandoning the fleet halfway around the world.

There were other reasons for congressional inactivity, all related to electoral disincentives. No one in Congress wanted blame for a foreign policy disaster, which meant giving the executive some flexibility to respond to changing international circumstances. The ill-fated Neutrality Acts made Congress wary of blanket prohibitions on U.S. involvement in foreign conflicts, for fear of being blamed for allowing another Holocaust. Prohibitions on using force except against specified foes were also difficult to enforce when there was some ambiguity as to who the foe was. The 1957 Middle East Resolution, for example, allowed the president to use force in the Middle East if one of those countries was faced with a communist invasion. Yet Eisenhower threatened to call his 1958 intervention in Lebanon a response to communism had congressional Democrats opposed his actions, and no one in Congress wanted to be perceived as supporting communism.¹⁰

The War Powers Resolution solves both problems. It achieves the goals of stage management by decreasing the prerequisites for congressional action as well as by casting the issue of declaring long-term war as one of the institutional prerogatives of the legislature, an issue on which there is often bipartisan agreement precisely because protecting the influence of the legislature serves the interests of all members. The Act weakens any possibility of true presidential agenda control by removing the take-it-or-leave-it character of his initiatives. The Act's reporting requirements reduce hidden information once a conflict has started and force the executive to publicly declare his intent. By providing Congress with numerous avenues to sanction the president, the Act reinforces the congressional power to negotiate binding contracts with the executive over future policy.

⁸ Lindsay (1994:35) argues that "challenging the administration on foreign policy poses significant electoral risks to members of Congress."

⁹ Banks and Raven-Hansen (1994) review the history and summarize the problems of using appropriations to constrain presidential behavior.

¹⁰ *Foreign Relations of the United States, 1958–1960* (1964:221); *Congressional Record* (1958:13978).

Consider first whether the War Powers Resolution was a solution to the congressional collective-action problems of the early 1970s. The Act was only possible through a series of political compromises between moderate Senate Republicans and newly elected House Democrats. Passed by a Democratic Congress that did not think the White House paid sufficient heed to its foreign policy preferences, it also enjoyed support from many Senate Republicans. Clement Zablocki, the moderately conservative Democratic chair of the National Security Policy Subcommittee of the House Foreign Affairs Committee, and Jacob Javits, a liberal Republican member of the Senate Foreign Relations Committee, were its legislative sponsors. Those compromises have led critics to portray the Act as especially weak legislation. Critics claim the Act's imprecise definitions and exclusion clauses allow presidents to circumvent the Act's requirements, necessitating overwhelming congressional majorities to implement the Act's constraints. In essence, say critics, the Act does nothing to alleviate legislative collective-action problems.

Present-day critics claim that under the final version of the Act the president need only report the introduction of U.S. forces into hostilities or imminent hostilities when he deems such reports possible. The Act was *meant* to be toothless, say critics, because of key defects in section 4 (Glennon, 1990:103–6; Katzmann, 1990:49–52; Koh, 1990:128; Fisher, 1995:132). Its three clauses require the president to submit a report within forty-eight hours if forces are deployed that: A) face imminent or active hostility; B) are combat equipped and not deployed solely for supply, replacement, repair, or training; or C) represent a significant addition to prior levels of combat-ready forces. Under section 4(A) Congress must authorize the use of force within sixty days or the deployment will be automatically terminated (the president may certify the military necessity of an additional thirty days for an orderly withdrawal). Yet despite the Act requiring disclosure and then describing a reversion point automatically banning force, the law has a loophole. The president could report that a deployment falls under sections 4(B) or 4(C) rather than section 4(A), and there is no automatic clock for withdrawal under 4(B) or 4(C). Congress is thus forced to muster a veto-proof majority to start the 60-day clock; the same hurdle Congress would face when constraining the president without the Act. The Act, say critics, does nothing to facilitate congressional action.

The key to the critics' argument is whether the prerequisites for congressional action have remained unchanged after passage of the War Powers Resolution. Effective contracting necessitates that Congress be able to easily start the 60-day war powers clock and force a withdrawal should the president refuse to abide by that time limit or other congressional stipulations.¹¹ Congressional options are detailed in Table 1.

From a congressional perspective, the best-case and least-likely scenario is one in which the president himself starts the 60-day clock by reporting to Congress using section 4(A) of the Act. Congressional enforcement then requires a mere one-chamber majority. Enforcement is more difficult if the president does not report under section 4(A), though still not insurmountable. Congress can block the use of force at any time by passing a concurrent resolution to that effect, utilizing section 5(C) of the Act. While the 1983 *INS v. Chadha* ruling has called into question many legislative vetoes, the Supreme Court failed to rule section 5(C) unconstitutional, and lower courts have affirmed the right of Congress to deny the president the war powers through a majority vote in each congressional chamber.¹² Section 6 of the

¹¹ House and Senate conferees drafted the Act recognizing this as the bill's fundamental component (Collier, 1994:60).

¹² A 1983 Supreme Court ruling in *Crockett v. Reagan* raised the possibility that section 5 represented an unconstitutional legislative veto, though it refused to reach a definitive conclusion. A 1990 lower court ruling in *Dellums v. Bush*,

TABLE 1. Congressional Actions to Constrain the Presidential Use of Force

<i>Policy Options</i>	<i>Requirements</i>	<i>Implications</i>
Halting the Use of Force		
Section 4(A) Section 5(B)	One-chamber simple majority	If the president reports under Sec. 4(A), Congress can end the deployment after 60–90 days by failing to authorize additional time.
Section 5(C)	Two-chamber simple majorities	Congress can block the use of force at any time by passing a concurrent resolution to that effect, so long as the Supreme Court does not rule this unconstitutional. A lower court has upheld the constitutionality of this action.
Section 5(C) Section 9	Two-chamber veto- proof majorities	Congress can block the use of force at any time by passing a joint resolution to that effect, assuming the Supreme Court has ruled a concurrent resolution unconstitutional.
New legislation, authorization or appropriation bills	Two-chamber veto- proof majorities	Congress can block the use of force at any time by enacting new legislation or amending existing legislation to that effect.
Starting the War Powers Clock		
Judicial review	Lawsuit supported by a two-chamber simple majority	Congress can seek a declaratory finding that the president has failed to notify Congress of the use of force under section 4(A) of the Act, or that the president must have congressional authorization before undertaking an offensive war. A lower court has refused to rule on these cases unless the suit is supported by a congressional majority.
Section 4(A)	Two-chamber veto- proof majorities	In the absence of a presidential report that a conflict fits under section 4(A), Congress can start the 60–90 day clock by passing a joint resolution.

Act further expedites action by providing for a fast-track legislative process for any concurrent resolution. Should the courts rule section 5(C) an unconstitutional legislative veto, Congress would be forced to pass either a veto-proof joint resolution using sections 5(C) and 6, or pass veto-proof legislation to that effect. Yet even then, section 9 stipulates that the Act would remain valid should section 5 be ruled unconstitutional.¹³

It is more difficult for Congress to unilaterally start the war powers clock than it is to halt the use of force. The legislature has two options. It can pass a veto-proof joint resolution to start the 60-day clock, requiring a two thirds majority in each chamber. Alternately, Congress can ask the courts to rule that U.S. troops face imminent hostilities, thus starting the clock. Again, however, this suit requires

however, stated that Congress could prevent the presidential use of force by passing a concurrent resolution of dissent. Because of these ambiguities, the *Chadha* decision did little to reduce uncertainty over future judicial action on the Act's constitutionality. Glennon (1990) exemplifies the contradictory interpretations of this section of the Act when he states that the congressional power to prevent the use of force is "clearly constitutional" (p. 93), though section 5(C) is "clearly invalid" (p. 98). For a legal history see Koh (1994).

¹³ The 1973 Congress could not have known of the various court rulings that would affect section 5, though section 9 is evidence that they anticipated a legal challenge. The discussion at the end of House of Representatives (1973a) implies that Democrats on the Foreign Relations Committee thought a legal challenge to the Act would fail.

majority support in both congressional chambers for proper legal standing, to say nothing of the concurrence of the courts.¹⁴

The important point remains that the Act reduces the prerequisites for congressional action. In most instances, starting the war powers clock or halting the use of force is possible with a simple majority of Congress, compared to the super-majorities required to cut off funds for military deployments. The Act is a more attractive option than is using the power of the purse, which may explain why Congress often threatens to use the Act and rarely threatens to cut off funding.

Regardless of how one sets the odds for a successful legislative challenge using the War Powers Resolution, the situation is ripe for a domestic confrontation should an international crisis escalate. While this has to worry political and foreign policy strategists in both branches, it creates domestic and international incentives for cooperation. The alternative is for Congress to either give up any influence over crisis policy or wrest all control from the executive. Neither is tenable when compared to the benefits of stage management.

In addition to solving collective-action problems, the Act also minimized electoral disincentives to confront the president by legitimizing domestic opposition to the use of force. Members of Congress can now cloak their actions in U.S. law rather than appearing unpatriotic, as was the case in the pre-Vietnam era. The Act is a procedural tool that legitimizes congressional criticism, even to the extent of providing greater legal standing in the federal courts for opponents of the president.¹⁵ Moreover, the Act makes criticizing the executive more likely by stressing a cleavage between the executive and legislature and thus increasing the homogeneity of congressional preferences. Both trends reinforce the possibility of a congressional challenge to certain kinds of military policies.¹⁶ Both trends were visible during the Act's passage.

Congress considered war powers legislation only after failed attempts to pass budgetary restraints on the war, reflecting the reality of U.S. politics at that time—unless the Congress had a veto-proof majority its only way to stop combat was to fail to authorize funds for troops.¹⁷ Most members of Congress considered such actions to be very risky politically.¹⁸ While a significant percentage of Democratic (and moderate Republican) voters did not like the Southeast Asian wars, and criticized congressional passivity, many voters supported these conflicts, and others on the fence might blame Congress if legislative action resulted in a military setback.

Congress did not immediately take up war powers legislation. Certainly the president thought it unnecessary. Democrats lacked the votes to unilaterally force a stage management contract on the president despite being the majority party in both chambers. Conservative Democrats such as chairman Zablocki still dominated

¹⁴ In *Crockett v. Reagan*, the Court specified that it was not qualified in that specific instance to decide whether U.S. forces faced imminent hostilities. In *Dellums v. Bush*, a lower court ruled that U.S. forces faced imminent hostilities against Iraq immediately preceding the Gulf War. The possibility of a court ruling in favor of Congress would significantly lower the threshold for congressional success in enforcing short-term contracts with the executive, however unlikely critics may predict such favorable rulings (Charney, 1990; Glennon, 1990; Henkin, Glennon, and Rogers, 1990; Hall, 1991; Koh, 1991, 1994; Ely, 1993; Fisher, 1995:194–9).

¹⁵ Our argument is consistent with that of Kratochwil (1991), in which he argues that procedures have an effect independent of the consensus that produced them.

¹⁶ Cox and McKelvey (1984) have shown that it is harder to change the status quo (in this instance, to go to war on a sustained basis) if the preferences of veto subgroups become more homogenous within each group and more diverse between groups.

¹⁷ There was a partial exception. The Cooper-Church Amendment of the 1971 Special Foreign Assistance Act forbade the use of funds for waging war in Cambodia. It passed, however, only after the withdrawal of U.S. forces from Cambodia.

¹⁸ Senator Javits made this point repeatedly to explain why legislative action had to take some form other than withholding the budget. Hinckley (1994:88–99) and Fisher (1995:123–4) describe the early 1970s court battles surrounding the use of appropriations as a policy instrument.

the House and were reluctant to confront the president on foreign policy. Senate Democrats were constrained in their choice of legislation by their weak control (56–44) of the Senate. Avoiding a Republican filibuster required enacting legislation acceptable to at least some Republicans, and Senate Republicans were not yet willing to break ranks with the President. Instead, the Senate concentrated on the passage of the Cooper-Church amendment and the repeal of the Gulf of Tonkin Resolution. For its part, the House passed weak legislation (H. J. Res. 1355) at the end of the 1970 session requiring presidential consultations with Congress during international crises.¹⁹ The same held true during the 92nd Congress, with both houses of Congress passing weak war powers legislation.²⁰

The following year marked a turning point in the House, where new intra-chamber sanctions may have outweighed electoral disincentives associated with confronting the president. That is, House and Senate Democrats became more homogenous as a group. In January 1973, at the opening of the 93rd Congress, the Democratic caucus reformed both the House committee system and the powers of the party leadership, reflecting the new dominance of liberal House Democrats (Rohde, 1991:20–8; Cox and McCubbins, 1993). These reforms may have pushed Zablocki, who had faced criticism from the Democratic party for his permissive stance toward the recalcitrant president, toward introducing more restrictive war powers legislation (H. J. Res. 542)—more along the dictates of the liberal Democratic party caucus (House of Representatives, 1982:117).²¹ House Republicans were not subject to these caucus sanctions, and repeatedly tried to weaken the bill's major provisions (House of Representatives, 1982:125). The major provisions of the House and Senate bills, and the conference legislation they produced, are listed in Table 2.²²

The actions of Democratic members in passing the Act come as no surprise from an electoral perspective. In the short term, they had electoral incentives to constrain Nixon, a Republican president on the verge of impeachment. Using the Act, Democrats could halt the Indochina war without being labeled unpatriotic, as their actions would be cloaked in U.S. law. In the long term, the Act also significantly reduced the Democrats' prerequisites for action, allowing the Democrats to successfully oppose the president even if some Democratic members felt electoral pressure to break party ranks and support the president. The Act would theoretically allow congressional Democrats to curtail the use of force after sixty days by maintaining a bare majority in one congressional chamber. This was a fairly safe bet for the Democrats, who had controlled the House of Representatives in all but two of the previous twenty-one Congresses.

A majority of Republicans, on the other hand, wanted nothing more than a symbolic reprimand of Nixon. They did not want a Democratic House constraining future Republican presidents as this could reflect badly on the party. Indeed, Republican support for each iteration of the Act varied with the stringency of the proposed constraints on presidential action, as shown in Table 3. For example, House legislation requiring presidential consultation with Congress (H. J. Res. 1355 or H. J. Res. 1) received much greater Republican support than did later, more stringent efforts giving Congress a veto over presidential actions (H. J. Res. 542).

¹⁹ Chairman Zablocki would only agree to a bill that would pass muster with the Nixon administration, perhaps believing that war powers legislation would be ineffective without agreement from the executive, or perhaps doubting the House's ability to override a promised presidential veto. A Republican initiative (S. 3964) was introduced by Senator Javits, though it fell well short of the proposals supported by many House Democrats (House of Representatives, 1982:60–1, 84, 93).

²⁰ The House bill (H. J. Res. 1) was again constrained by Zablocki to only require presidential consultation with Congress. The Senate passed the reintroduced Javits bill (S. 2956), with only slight modifications.

²¹ The Zablocki bill was initially designated H. J. Res. 2.

²² We do not include sections or subsections of the Act in Table 2 when the two congressional chambers were in agreement, such as in sections 1, 4(A-C), and 6 (House of Representatives, 1973b; Fisher, 1995:128–31).

TABLE 2. House and Senate Differences on War Powers Legislation

<i>Section</i>	<i>House (H. J. Res. 542)</i>	<i>Senate (S. 440)</i>	<i>Conference Version</i>
2(A) and 2(B)	-na-	Establishes the constitutional prerogatives of Congress and the president in foreign affairs	Senate version
2(C)	-na-	Establishes the emergency powers of the president	Senate version
3	Requires presidential consultation with the leadership and committees of Congress	-na-	The president consults "with Congress"
4	Presidential reports trigger congressional action	Presidential reports do not trigger congressional action	The president makes an initial report within 48 hours of a deployment, provides additional information when requested, and reports every 6 months
5(A)	Reconvene Congress if 30% of members so petition	-na-	House version
5(B)	End force after 120 days	End force after 30 days	End force after 60 days
5(C)	Concurrent resolution terminates the use of force before time limit ends	Joint resolution terminates the use of force before time limit ends	House version
7	Ensures that the war powers clock cannot expire while Congress is adjourned	-na-	Senate version
9	-na-	If part of the Act is ruled invalid, not all sections are invalidated	Senate version

The Act was only possible because congressional Democrats succeeded in persuading moderate Senate Republicans to impose unilaterally a stage management contract on the president. The Act appealed to moderate Senate Republicans more concerned with upholding the Senate's foreign policy prerogatives and less with defending their party's president.²³ In the short run, non-ideologue Republican senators were under pressure to correct President Nixon's conspicuous violation of congressional edicts over the Indochina war. In the long run, the Act guaranteed senators from both parties a voice in foreign policy through the concurrent resolution. The Act could thus translate into electoral gains. The ability to pass judgment on an opposition president's use of force had the potential for large electoral

²³ An explanation of Republican behavior based on abandonment of a beleaguered president does not explain the voting pattern of Senate Republicans. Fifteen Republican members ran for reelection in 1974. Of those, only seven supported the president's position on the War Powers Resolution in 1972, before the Watergate scandal emerged on the national agenda. During the November 7, 1973 veto override, at the climax of the Watergate scandal, again only seven senators voted with the president (*Congressional Quarterly Almanac*, 1972:22-S; 1973:50-S, 73-S, 76-S).

TABLE 3. Voting Patterns on War Powers Legislation

<i>Legislation</i>	<i>Vote Total</i>	<i>Democratic Vote</i>	<i>Republican Vote</i>	<i>Vote Date</i>
House Consideration				
H. J. Res. 1355	288–39	152–36	137–3	1970
H. J. Res. 1	voice vote	–na–	–na–	August 2, 1971
H. J. Res. 542	244–170	172–61	72–107	July 18, 1973
Conference Report	238–123	163–38	75–85	October 12, 1973
Veto Override	284–135	198–32	86–103	November 7, 1973
Senate Consideration				
S. 2956	68–16	40–3	28–13	April 13, 1972
S. 440	72–18	50–4	22–14	July 20, 1973
Conference Report	75–20	49–6	26–14	October 10, 1973
Veto Override	75–18	50–3	25–15	November 7, 1973

payoffs, especially if a senator was contemplating someday running for higher office and needed to demonstrate foreign policy expertise.²⁴

With help from moderate Republicans, the Senate again passed the Javits bill, designated S. 440, with a significant bipartisan majority. The conference committee which met to reconcile the bills succeeded in writing compromise legislation, designated the War Powers Resolution, in early October. President Nixon vetoed the bill on October 24, 1973, but was overridden with thirteen votes to spare in the Senate and four votes in the House.

In sum, the Act's provisions solved the foreign policy dilemma of the early 1970s according to the predictions of the stage management model. The Act redressed an imbalance in executive-legislative relations, dampened partisan battles in Congress, and played to senatorial concerns over their role in foreign policy. The Act allowed Congress to enforce short-term contracts with the president by establishing procedures that at the time were seen as more than symbolic reprimands of the president. In this way, the Act established an incentive structure for the president whereby he must anticipate congressional concerns or face powerful opposition. From this perspective, the passage of the Act demonstrates that Congress was quite serious about solving its collective-action problems, reversing the electoral disincentives of confronting the president, and ultimately constraining the president's conflict behavior.

The Use of the War Powers Resolution

Critics deem the Act ineffective, citing congressional complaints that reporting and consultation are only done after forces are deployed. The 1986 bombing of Libya,

²⁴ These incentives were attractive to moderate Republicans, especially in the Senate. Republican senators scored an average 23.9 on the Americans for Democratic Action (ADA) scale. Republican senators voting in favor of the veto override scored an average of 34 on the ADA scale, while those voting against the Act scored a low average 7.7 rating. The average for Republican House members was 16.5, with those in favor of the Act scoring 29.6 and those opposed scoring an average 5.2. The Republican Senate leadership supported the veto override on war powers, including two thirds of the Senate Republican Caucus Committee on Committees, almost two thirds of the Caucus Policy Committee and six of eleven members of the Republican leadership (with one abstention). Levels of support in the House Republican leadership were much lower. In contrast, the entire Democratic leadership in the Senate and 24 of the 29 Democratic leaders in the House (with four opposed and the Speaker not voting) supported the veto override. Leadership identities are from *Congressional Quarterly Almanac* (1973:62, 79–80). ADA scores are from Barone, Ujifusa, and Matthews (1974).

for example, was the subject of consultation only after the planes were launched. Critics also note that Congress almost never formally invokes the War Powers Resolution. The stage management argument, on the other hand, claims that congressional use of the Act, or even a threat to use the Act, has changed presidential behavior to conform to congressional preferences.

To test the empirical question of whether presidential behavior has changed since the passage of the Act, we examine the conduct of U.S. security policy since the Act's inception and compare it to the use of force during periods of similar length at the turn of the century and again after World War II. Critics would expect no significant differences between periods in executive-congressional relations during the use of force. A stage management perspective, however, would expect such differences in presidential behavior following the Act. After the Act, presidents should not engage in lengthy uses of force without explicit congressional authorization. Presidents should instead abide by the terms of the contract. Any deviations from the contract should generate a congressional response that aligns the use of force with congressional preferences.

We tested these expectations on a selection of military conflicts involving the United States from 1900 to 1995.²⁵ We narrowed our universe of cases to three periods of similar duration: 1900–1925, 1947–1972, and 1973–1995. We wanted to compare the periods immediately before and after the Act, and also compare the post-Act period to a non-Cold War period to see whether the Cold War consensus might explain congressional behavior. During each period, we only examined potentially contested uses of force. That is, we did not examine conflicts that had prior congressional authorization; where authorization consisted of legislation or congressional resolutions authorizing the use of force, or military appropriations for U.S. troops in the conflict area coupled with a mutual defense treaty. U.S. fighting during the Boxer Rebellion, U.S. entry into the Quemoy/Matsu combat zone, or the naval blockade during the Cuban Missile Crisis, for example, all had prior congressional authorization and did not qualify as contested uses of force. We also did not consider UN peacekeeping missions unless they lacked the above congressional authorization and actually resulted in combat. Finally, we did not consider the many combat incidents involving very small numbers of troops. These “minor” conflicts, involving less than 500 U.S. troops, failed to generate congressional action either before or after the passage of the Act and thus did not appear in our case list.

Table 4 lists presidential use of U.S. military force from 1900 to 1925 and from 1947 to 1972. In the first period, presidents used force in five major conflicts without obtaining prior congressional authorization. Each case involved active combat followed by a prolonged occupation in which U.S. forces were subject to periodic skirmishes. In each instance, the fighting and subsequent occupation lasted from two to nineteen years. In the second time period presidents used force eight times without prior congressional authorization. Again, conflicts lasted for a significant period of time in each case, with the shortest lasting two and one half months (Thailand) and the longest lasting approximately seven years (Trieste).²⁶

²⁵ Our case list was derived from numerous sources: Department of State, 1900–1990; Executive Branch, 1900–1965; House of Representatives, 1988, 1989, 1990; Jessup, 1989; Senate, 1989; Fisher, 1995; Thomason, 1995.

²⁶ Presidents had prior authorization in a number of major conflicts (500+ troops). Congressional authorization existed for U.S. military intervention in the 1900 Boxer Rebellion (authorized in the 1858 Sino-American treaty and previously appropriated U.S. river patrols in China), Cuba (1906–1909, authorized by 31 Stat 895 and 33 Stat 2248), China (1912–1941, authorized by the 1901 Boxer Protocol and 45 Stat 2), Nicaragua (1926–1933, authorized by 44 Stat 565), and Quemoy/Matsu (1958, authorized by the Formosa Resolution [H. J. Res. 117] and the 1955 Taiwan Mutual Defense Treaty). Intervention in the 1948 Berlin crisis was authorized by W.W. II occupation agreements and appropriations, while the 1953 NATO reinforcement of West Germany was authorized by the 1949 Allied Occupation

TABLE 4. Major Conflicts Before the War Powers Resolution

<i>Case</i>	<i>Initiation Date</i>	<i>Duration</i>	<i>Congressional Authorization</i>
1900–1925			
Philippines	2/1899	> 60 days (14 years)	Authorized on 3/22/99 (30 Stat 977) and 5/26/00
Colombia/Panama	1901	> 60 days (13 years)	Authorized on 2/23/04 (33 Stat 2234)
Mexico	4/9/14	> 60 days (2 years, 10 months)	Authorized on 4/22/14 (H. J. Res. 251) and again on 7/1/16 (39 Stat 337)
Haiti	7/28/15	> 60 days (19 years)	Authorized on 2/28/16 and on 6/12/16 (39 Stat 223)
Dominican Republic	5/5/16	> 60 days (8 years, 4 months)	Authorized on 2/11/18 (40 Stat 437)
1947–1972			
Trieste, Italy	9/16/47	> 60 days (7 years)	Authorized on 4/4/49 under the NATO treaty, ratified by the US Senate on 7/21/49
Korean War	6/27/50	> 60 days (3 years)	Authorized through numerous appropriations
Taiwan Straits	8/17/54	> 60 days (6 months)	Authorized on 1/29/55 (H. J. Res. 159) and by treaty on 2/9/55
Vietnam	12/12/55	> 60 days (8 years, 9 months)	Authorized on 10/10/64 (PL 88-408) and through numerous appropriation bills
Lebanon	7/15/58	> 60 days (3 months)	Unauthorized
Laos	4/19/61	> 60 days (18 months)	Unauthorized
Thailand	5/19/62	> 60 days (2.5 months)	Unauthorized
Dominican Republic	4/28/65	> 60 days (17 months)	Unauthorized

Two things stand out about conflicts during these time periods. The first point concerns conflict length. None of the unauthorized conflicts from either period lasted less than two and one half months, and most lasted years. As we will see, these conflicts were significantly longer than were conflicts occurring after the War Powers Resolution. The second noteworthy similarity is that in every instance Congress either granted the president the authority to use force after the fact or took no action whatsoever with regard to the conflict. There is not a single instance in either period of a president using force and then being overturned, or even challenged, by

Statute for West Germany and appropriations. The 1961 Berlin Wall crisis came under the auspices of the NATO treaty, which West Germany signed in 1955, and numerous appropriations for U.S. troops stationed in West Germany. Congress pre-authorized U.S. actions in the 1962 Cuban Missile Crisis by passing S. J. Res. 230 and 76 Stat 710 on October 3. Two incidents with North Korea (1968 and 1969) were covered under previous military appropriation bills funding the existing U.S. deployment to South Korea.

Congress. In sum, Congress refused to take action to constrain the president in any of these lengthy, unauthorized conflicts.

There is a marked difference in executive behavior, and the congressional response, after the passage of the Act. Table 5 lists the fourteen conflicts after the Act's passage that did not have prior congressional authorization and involved at least 500 U.S. military personnel.²⁷ Of those incidents, most lasted less than the 60-day limit detailed in the Act.²⁸ From a stage management perspective, none of those conflicts violated the time limitations of the contract. Yet even then, Congress threatened sanctions during the 1983 Grenada invasion when it appeared likely that it might exceed the 60-day war powers limit.

Four conflicts were of long duration (more than sixty days) and resulted in congressional action. Two of the four conflicts, the 1983 Lebanon deployment and the 1992 Somalia intervention, resulted in the executive withdrawing troops in direct response to congressional pressure when he exceeded the bounds of the stage management contract. Congress also acted in the other two conflicts. In both the 1987 Persian Gulf reflagging exercise and Operation Desert Shield in 1990, Congress did not force a withdrawal but did succeed in generating greater executive reporting. The prelude to Desert Storm is particularly interesting because the president requested authorization (establishing a stage management contract) after Congress threatened sanctions delineated in the Act.

Lebanon. The Lebanon deployment of 1982–83 is an example of the *ex post* veto power built into congressional stage management. In initially authorizing the deployment, Congress utilized each component of stage management. They established a time frame for the deployment, constrained its scope, gathered information, delineated a reversion point should the president exceed his writ of authority, and initiated procedures by which Congress could rescind its delegated authority.

Congress authorized the administration's deployment in the Lebanon Emergency Assistance Act of 1983 (PL 98-119).²⁹ Skeptics of congressional assertiveness often point to the long time frame of PL 98-119 and the delay in its passage as examples of congressional abdication. The bill did authorize an 18-month deployment (section 6) rather than the 60-day limit written into the original War Powers Resolution. Critics overlook the significant restraints placed on presidential action contained in this stage management contract. During the eighteen months, the administration could not change the size, location, or mission of the marines participating in the UN operation without formal congressional approval (section 4). Congress could terminate the deployment with a one-chamber majority vote should the administration obviously expand the mission. In addition, the legislation allowed Congress to terminate the deployment at any time before the 18-month time limit by passing a Joint Resolution (section 7).

This is indeed what occurred following the October 23 marine barracks bombing and the administration's military attacks against Syrian anti-aircraft emplacements (Department of State, 1985:747, 754, 776). Congressional opposition to the deploy-

²⁷ The president had preexisting congressional authorization in the 1976 Korean border incident (see above), and the 1991 Gulf War against Iraq (authorized by PL 102-1), both involving large numbers of troops (500+) in hostile or potentially hostile action. Well-known but minor uses of force (< 500 troops) during this period include the evacuations of Cambodia in 1975, Lebanon in 1976, Liberia in 1990, air support of the French in Zaire in 1978, the sending of military advisors to El Salvador in 1981, the 1983 AWAC deployment to Sudan, and the 1985 Achille Lauro rescue mission.

²⁸ The 1993 Bosnia case study does not appear in Table 5 because Congress successfully constrained the president before he could use force (*New York Times*, April 28, 1993:A4, May 1, 1993:A6, May 11, 1993:A5).

²⁹ The resolution passed the House (270–161) and the Senate (54–46) on September 29. It was signed into law October 12, 1983. The debate preceding its passage is described by Blechman (1990:181–2).

TABLE 5. Major Conflicts After the War Powers Resolution

<i>Case</i>	<i>Initiation Date</i>	<i>Duration</i>	<i>Congressional Actions</i>
1973–1995			
Cyprus	7/74	< 60 days (2 days)	none
Danang	4/5/75	< 60 days (3.5 weeks)	none
South Vietnam	4/29/75	< 60 days (1 day)	none
Mayaguez incident	5/13/75	< 60 days (2 days)	none
Iran	4/24/80	< 60 days (1 day)	none
Gulf of Sidra, Libya	8/19/81	< 60 days (1 day)	none
Lebanon	8/25/82	< 60 days (3.5 weeks)	none
Lebanon	9/19/82	> 60 days (18 months)	See text.
Grenada	10/25/83	< 60 days (1 month)	The House passed H. J. Res. 402 to start the war powers clock, though the Senate took no action.
Libya	3/23/86	< 60 days (3 weeks)	none
Persian Gulf	5/17/87	> 60 days (16 months)	Congress demanded executive reports, and some members filed a court suit, all of which led to greater executive reporting on the reflagging exercise.
Panama	12/20/89	< 60 days (1 week)	none
Kuwait (Desert Shield)	8/28/90	> 60 days (4 months)	See text.
Somalia	12/3/92	> 60 days (15 months)	See text.

ment grew throughout the fall, and by the middle of January 1984 a majority in both chambers of Congress seriously questioned the efficacy of a U.S. military commitment in Lebanon. With the administration showing no signs of addressing congressional concerns by changing its Lebanon policies, a bipartisan coalition in the House and Senate agreed to end U.S. participation in the UN Multinational Force (MNF). In the face of certain congressional defeat, and lacking public support for the operation, the Reagan White House drafted plans in the beginning of February to withdraw U.S. ground forces (Department of State, 1986:572; Gallup, 1984). By February 21, the marines were being redeployed to U.S. warships, to the accompaniment of renewed, though short-lived, naval bombardments of Syrian positions. The U.S. formally terminated its participation in the MNF on March 30, 1984, following Lebanon's rejection of its peace treaty with Israel. Congress had used short-term stage management contracts to force the president to abandon an escalating foreign policy commitment.

Somalia. Congress enacted two stage management contracts during the U.S. deployment to Somalia. Congress initially supported Operation Restore Hope, the U.S. contribution to the UN mission in Somalia, dubbed UNITAF.³⁰ UNITAF was

³⁰ "President Bush's Speech to the Nation," reprinted in *Foreign Policy Bulletin* (hereafter called *FPB*), vol. 3, no. 4–5:21–22. When informing Congress of his actions, Bush stated that U.S. forces were not facing actual or imminent hostilities because they had seen no signs of organized resistance. See "Letter from President Bush to Congressional Leaders," *FPB*, vol. 3, no. 4–5:27.

initially successful in distributing food to famine-struck areas and decreasing violence, and U.S. soldiers were being replaced by UN peacekeepers (Senate, 1993:3–9, 26–7). The Senate unanimously passed a resolution (S. J. Res. 45) on February 4, authorizing the president to use all necessary means to establish a secure environment for humanitarian relief. The resolution provided congressional authorization under the War Powers Resolution to continue the deployment. The House passed a similar resolution (243–179) on May 25, though it gave the president a broader mandate while setting a 12-month time limit on the deployment.³¹ While the chambers never achieved a compromise on the language of the two resolutions, congresspersons later saw S. J. Res. 45 as an endorsement of U.S. policy satisfying the terms of the War Powers Resolution.

Congressional support evaporated after repeated clashes between UN troops and followers of Somali warlord Mohammed Farah Aideed, in accordance with the expanded UN mission (renamed UNOSOM II).³² The 12-month House authorization seemed to be leading to an ever-expanding commitment.³³ A compromise measure, in essence a second contract, was worked out with the administration in which the president agreed to notify Congress of the specific objectives behind the deployment by October 15, and then seek a vote on the policy by November 15.³⁴ The agreement specified important components of stage management, increasing the information available to Congress and facilitating future congressional action. The measure passed the Senate with broad support (90–7) on September 9.

President Clinton agreed to the congressional demands, setting a 6-month limit on U.S. participation in UNOSOM II and four broad goals for U.S. troops.³⁵ At the same time, however, he sharply increased the firepower and number of troops deployed to Somalia following a failed raid on an Aideed compound.³⁶ Clinton had broken his side of the agreement. An outraged Senate scheduled an October 14 vote to cut off funds for U.S. troops by January 1.³⁷ To avoid the vote, the administration was forced to again limit its goals in Somalia and agree to a March 31 withdrawal. Congress had again forced the president to abandon an escalating foreign policy commitment using a stage management contract.

Desert Shield. In Operation Desert Shield, Congress initially supported President Bush's deployment of troops to Saudi Arabia and was not eager to press for use of the Act.³⁸ From the perspective of a stage management policy, there were few political risks involved in supporting the defensively oriented Desert Shield, and

³¹ The House version reflected support for the broader UN mission contained in UN S/RES/814, passed on March 26. For a discussion of the projected content of the UN resolution, see House of Representatives (1993:10).

³² UN S/RES/814 passed on March 26. UNOSOM II efforts began in May, and included disarming all factions, training a civilian police force, creating a unified coalition government from all the various factions throughout the country, and instituting a working legal system (UN DPI/1321/Rev. 4:7–9; *FPB*, vol. 3, no. 6:46–8).

³³ Doubts as to the wisdom of the operation had grown in the House of Representatives during the summer (House of Representatives, 1994). The administration did nothing to quell this suspicion. Defense Secretary Les Aspin was quoted on August 28 as saying there would be no quick or easy way out of the conflict in Somalia (*New York Times*, August 29, 1993:A1).

³⁴ Excerpts of the Senate debate are reprinted in *FPB*, vol. 4, no. 3:19–25.

³⁵ Clinton scheduled a March 31 withdrawal. The four policy goals are listed in "President's Message to Congress," *FPB*, vol. 4, no. 4–5:49.

³⁶ The existing deployment of 4,400 troops was augmented by an additional 5,300 soldiers, 104 tanks, and over 50 armored personnel carriers. A carrier battle group was also stationed off the Somali shore to provide air support and additional reinforcements. Over 20,000 U.S. military personnel were now participating in UNOSOM II. See UN DPI/1321/Rev. 4:13–4; and "President Clinton's Television Address to the Nation," *FPB*, vol. 4, no. 3:32–4.

³⁷ The vote was contained in an amendment to the 1994 Defense Authorization bill introduced by Senator Byrd.

³⁸ For example, the Senate passed (97–0) a resolution (S. Res. 318) supporting the president's actions immediately following the invasion. H. J. Res. 658 and S. Con. Res. 147 also demonstrate congressional support (*Congressional Quarterly Almanac*, 1990:34400–41).

support could always be withdrawn should the policy deteriorate (Zaller, 1994:8). In addition, it was hard to argue that U.S. troops faced imminent hostilities after Iraqi troops dug into their Kuwaiti positions. The president was complying with all existing legislation dealing with defensive uses of U.S. force abroad, with Congress being kept informed throughout the initial deployment.³⁹

The administration's November decision to roughly double the number of troops deployed in Saudi Arabia raised an outcry from congressional Democrats. In addition to numerous congressional hearings on the subject, some in Congress filed suit in the DC Circuit Court to prevent the administration from using force without congressional authorization. Judge Harold Greene refused to rule on the case itself, based on the doctrine of ripeness, but in doing so established the requirements for future congressional actions. First, he stated that the proposed offensive in Kuwait made section 4(A) applicable to Desert Storm should Congress decide to start the 60-day war powers clock. He also affirmed the rights of Congress to halt the use of force using a concurrent resolution. Based on this ruling, the Senate Judiciary Committee believed it had legal justification to begin impeachment proceedings if Bush used force either in the absence of proper authorization or in the face of a congressional prohibition (Senate, 1991:168, 172, 178, 201–8; *Congressional Quarterly Almanac*, 1990:739).

The administration subsequently requested, and Congress eventually passed, legislation (PL 102-1) authorizing the use of force on January 12, 1991, though not in the unequivocal form hoped for by administration supporters.⁴⁰ The legislation established a classic stage management contract by invoking the War Powers Resolution.⁴¹ The bill constituted congressional authorization to use force within the meaning of section 5(b) of the Act. Yet in passing the resolution, Congress stipulated: "Nothing in this resolution supersedes any requirement of the War Powers Resolution." By this choice of wording, Congress ensured a regular flow of information on the war, and reserved the right to halt the war using a concurrent resolution should the conflict appear unwinnable. President Bush objected to this section of the resolution, though he was forced to agree to it if he wanted congressional authorization to use force.⁴²

To summarize this section, critics often point to congressional hesitancy to use the Act as a sign that Congress lacks the will to confront the president in this issue area. Our evidence shows that congressional behavior varies depending on the duration of military action. Congress has acquiesced to the use of force so long as the administration's action is swift or small scale. Such deployments raise little likelihood of future Vietnam-style conflicts and do not necessitate congressional action. Without exception, however, long-term conflicts were met with either congressional threats or legislative action with the potential to start the war powers clock. That is, Congress has implemented restraints or threatened to restrain the president using the Act or similar legislation when U.S. deployments lead to the long-term and large-scale use of force. The long and large-scale use of force is a sufficient condition for congressional action.

³⁹ "President's Letters to the Speaker of the House and the President Pro Tempore of the Senate, August 9, 1990," *FPB*, vol. 1, no. 2:11; Zaller, 1994.

⁴⁰ The vote was 250–183 in the House and 52–47 in the Senate. Before the vote, Republican Senator Orrin Hatch, a supporter of the administration policy, predicted, "If the vote is close, Saddam Hussein can conclude that he can divide the country if he will only hold out. If we fail to back the President, war will become inevitable." *FPB*, vol. 1, no. 4–5:43. Opposition statements are reprinted in *FPB*, vol. 1, no. 4–5:41–8; and in Freedman and Karsh (1993:291–3).

⁴¹ Secretary of State James Baker thought such a contract vital to the success of Desert Storm, and there was even discussion within the administration of voluntarily starting the war powers clock (Baker, 1995:334–9).

⁴² "President's Statement on Signing Resolution Authorizing Use of Military Force Against Iraq, January 14, 1991," *FPB*, vol. 1, no. 4–5:51; "President's Letter to Congressional Leaders, January 18, 1991," *FPB*, vol. 1, no. 4–5:55.

Critics might argue that this behavior was caused by the underlying post-Vietnam consensus. The post-Vietnam consensus can indeed explain differences in conflict length between Tables 4 and 5. Yet the consensus argument cannot explain why presidents abide by the specific time limits of the Act after its passage. Without the Act we might still expect to see decisive presidential uses of force, but with conflicts lasting more than sixty days. Instead, the presidential use of force complies with the 60-day limit with one exception, the Persian Gulf reflagging exercise. Moreover, absent a decline in collective-action problems and electoral disincentives facing Congress, the post-Vietnam consensus cannot explain the change in organized congressional behavior between those same time periods. We are in essence making the counterfactual claim that congressional opposition to Vietnam-style engagements would not be as effective at constraining presidential behavior without the War Powers Resolution. The Act changed the policy-making process, giving domestic opposition procedures with which to overcome collective-action problems and safely vocalize their displeasure to domestic audiences. Presidents changed their behavior during this same period.

Conclusions: Reforming the Act

Many claim that the War Powers Resolution is ineffective at constraining the presidential use of force. We argue that congressional and presidential behavior since 1973 does not undercut the viability of the Act. Rather, the events of the past two decades show that the Act is a vital piece of legislation. Critics cite as their evidence the fact that Congress has enacted the War Powers Resolution only once in twenty years, during the Lebanon crisis of 1983.⁴³ These criticisms are misleading because they do not account for “correct” congressional and presidential behavior should the Act be strictly adhered to by the president. Granted, presidents rarely consult Congress before using force. Presidents do, however, abide by congressional mandated time limits when using force.

The War Powers Resolution may appear to be nothing more than symbolic politics. After all, it does not easily prevent the use of force for short periods of time, but there is little incentive for Congress to do so under most circumstances. The Act’s procedures changed the policy-making process, allowing Congress to overcome its collective-action problems when confronting the president. For the most part, the requirements for using the Act are less demanding than those associated with passing budgetary or statutory constraints. The Act also reduced the political risks for the average congressional member of challenging the president. We would not expect such procedures had Congress wanted to engage in symbolic politics.

As process changed, so did outcomes. The use of force after the Act is significantly different than it was before the Act, despite seeming congressional passivity. The Act biases presidents toward conflicts of limited duration and Congress toward inactivity. Should presidential behavior produce long-term conflicts, these can be rectified without Congress actually enacting the War Powers Resolution. All Congress need do to produce correct presidential behavior is threaten to use the provisions of the Act. Moreover, such behavior should be very unlikely if presidents are concerned about the Act’s provisions. This predicted behavior is in fact what has happened, as our empirical results demonstrate.

We have argued that the War Powers Resolution achieves all the goals of stage management. The Act solves the foreign policy dilemmas of both Congress and the president. It allows the president to respond internationally while giving Congress

⁴³ To this point, only Koh (1994) has specifically recognized the reference to the War Powers Resolution contained in the legislation authorizing the Gulf War.

a final check on presidential behavior. As such, reforming the Act (Glennon, 1990:111–8; Collier, 1994:75–9) is both internationally counterproductive and politically unlikely, despite the recent mood of the Republican Congress.

Strengthening the Act would hurt presidential credibility in future conflicts. The tighter the restrictions on presidential actions contained in the Act, such as the financial restrictions contained in Senate Majority Leader Robert Dole's 1995 proposed "Peace Powers Act," the easier and more likely it is that Congress will oppose presidential foreign policy initiatives when those initiatives might involve armed conflict. More stringent requirements might therefore lead the international community to discount the likelihood of an American military response when such a response is contingent on congressional ratification. A strengthened Act might therefore weaken U.S. credibility and lead to aggression from international opponents. From an international perspective, then, reforming the Act could very well produce the large, long-term conflicts the Act was designed to prevent.

Domestically, a succession of failed reform efforts demonstrates the congressional preference for stage management as opposed to sole control over war powers by either the president or Congress. In 1973, Congress could have made all military actions subject to the Act but rejected this as unworkable and too controversial to build a veto-proof majority. Congress could also have created a more structured process of compulsory presidential reports and provided for expedited congressional deliberation without an automatic presumption of withdrawal. This was the unsuccessful proposal of Senators Byrd, Nunn, Mitchell, and Warner in 1988. Finally, Congress could simply abdicate all responsibility to the president, yet the Republican Congress failed to repeal the War Powers Resolution on June 7, 1995.

Reforming the Act might satisfy critics who argue that Congress must reassert its constitutional prerogatives over war powers, yet circumstances might arise where Congress wants the president to take immediate action to forestall a larger future conflict. The Act as written allows presidents to respond to those emerging international crises. The Act's existing reporting and consultation procedures also allow Congress to obtain information once a conflict has begun. Finally, the Act allows Congress to set time limits during higher-profile conflicts. Short-term contracting for particular periods of authorization thus has *reinforced* presidential flexibility during the initial periods of a conflict while restraining more long-term executive initiatives. All this is to the advantage of Congress.

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