

# Policy Analysis

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## *Congress Surrenders the War Powers Libya, the United Nations, and the Constitution*

by John Samples

### Executive Summary

Since the Cold War the United States has fought three major wars. Congress authorized each of these wars. The president has also initiated several limited wars. These limited wars have not been explicitly approved by Congress as required by Article I of the Constitution. A review of the history of making limited wars suggests several conclusions. First, the president has assumed a de facto power to begin and pursue a limited war, understood as a struggle where no American combat deaths are expected. Second, Congress has at times been highly critical of such wars but also highly deferential to the president in cases where the wars were brief and popular. Third, an active and critical

Congress can shape the president's choices and decisions about such wars. Fourth, the public is often skeptical about limited wars and strongly supports congressional approval of such undertakings. Finally, until recently, presumed presidential authority under the Constitution was more important than the approval of international institutions in legitimating limited wars. In Libya the approval of the United Nations Security Council and other international institutions was essential to legitimating the war according to the Obama administration. This incremental transfer of the war powers to international institutions contravenes the republican nature of the United States Constitution.

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## **Introduction**

The United States Constitution vests the power to “declare war” in Congress, leaving to the executive the power to “repel sudden attacks.”<sup>1</sup> By the middle of the last century, the nation had drifted far from the original understanding. President Truman waged the Korean War absent congressional authorization, and President Johnson prosecuted the Vietnam War with minimal congressional authority.<sup>2</sup> Presidents also used force abroad on multiple occasions without congressional approval. This growth of executive power, along with failure in Vietnam, led Congress to enact the War Powers Act over the veto of President Nixon.

The post-Cold War era has been different and more complex. Presidents have continued to claim a largely unfettered power to initiate and to make war as they see fit. But their practice of war has been different. Presidents have sought (and received) congressional support for the three wars similar to Korea and Vietnam. The Persian Gulf,<sup>3</sup> Afghanistan,<sup>4</sup> and Iraq<sup>5</sup> wars all involved (and were expected to involve) troops in combat and thus, casualties. Both wars involving Iraq followed national debates that ended with congressional statements of support or authorization for the war. The authorization for war in Afghanistan came quickly, with little debate, as might be expected in the immediate aftermath of the September 11 attacks. The Bush administration campaigned for several months to gain congressional assent to the 2003 invasion of Iraq.

Since the end of the Cold War, presidents have initiated smaller wars in Bosnia, Somalia, Kosovo, and most recently, Libya. The Clinton administration also expected to make war in Haiti but found that the threat of force sufficed to change that regime. Clinton also used force several times against Iraq. Congress did not constitutionally approve any of these actions *ex ante* although one chamber or another did offer support in some cases. In four of five of these cases, the Office of Legal Counsel (OLC) in the Justice Department advised the president that the practice of war-making by

his predecessors justified acting absent congressional approval.

The OLC notwithstanding, practice cannot trump fundamental law in a constitutional democracy. “We the People” establish a Constitution to empower government and to constrain its practice.<sup>6</sup> In this way, a constitutional democracy strives to live under the rule of law. The rule of politics, in contrast, defines the Constitution through what politicians do.<sup>7</sup> Law becomes over time a function of, not a constraint on, the practice of politics.

Practice cannot trump constitutional text, but it still may merit study. Though law should dominate practice, it might be the case that government officials believe that practice informs and reveals the law. The study of the practice of war-making, for example, might indicate how the law might develop, constitutional propriety notwithstanding. A study of the practice of war-making might be undertaken to advise policymakers to intervene in a path of development to retain or restore constitutional propriety. The study of the practice of war-making might affirm rather than negate constitutional law.

In the United States, starting and fighting a war may be done in four ways:

1. Congress authorizes a war which is then initiated and made by the executive (as we have seen, this is the “constitutionalist” position).
2. The executive initiates and makes a war at his discretion (the “presidentialist” position).
3. The United Nations Security Council (or other relevant international body) authorizes a war which is then initiated and made by the executive (“weak internationalism”).
4. The United Nations Security Council (or other international body) authorizes a war which is then obligatory for the executive to initiate and make (“strong internationalism”).<sup>8</sup>

This policy analysis examines the practice of limited wars in the post-Cold War

era. During the Cold War such limited wars could be justified as a response to Soviet aggression. After the Soviet threat dissolved, such wars required a new justification and perhaps a different kind of practice. Here I define “practice” more broadly than does the OLC. The latter concentrates on the actions of presidents and legal replies by Congress in limited wars. That concentration ignores ways Congress can limit presidential discretion beyond its formal legal powers. Moreover, the OLC briefs overlook the role of public opinion in the practice of war-making. Given the importance of public support in U.S. politics, this exclusion distorts their account of the practices at issue.

For the conflicts enumerated here, I provide a brief framework for understanding each case and examine the actions of presidents and Congress in the context of public opinion. I then examine the similarities and differences between Libya and the earlier cases. A struggle between the constitutionalist and presidentialist positions (positions 1 and 2 above, respectively) informs each case including the recent war in Libya. However, I argue that Libya is also different in an important way. It represents an additional step toward “weak internationalism” (position 3 above), a move that has been obscured by the continuing and traditional debate between the constitutionalists and the presidentialists about the war powers clause. I then contend that weak internationalism contravenes values central to American republicanism. This analysis closes with some proposed ways to counter this trend.

## Somalia

In early 1992 the ruler of Somalia, Mohammed Siad Barre, was driven from power after a 22-year reign. A civil war ensued among well-armed clans. The fighting, along with an acute drought, led to famine. In July the United Nations Security Council endorsed a plan to airlift food and medicine to Somalia. The relief effort did not work. Armed gangs stole much of the food and medicine.<sup>9</sup>

Some in Congress sought a U.S. intervention in Somalia. A senior Republican senator, Nancy Landon Kassebaum of Kansas, called for a UN security force to protect food shipments. A Select Committee on Hunger chaired by Democrat Tony Hall of Ohio also favored a UN force to protect food shipments. The George H. W. Bush administration, in contrast, said peacekeepers should not be deployed until there was a ceasefire. In early August the Senate approved a resolution demanding that President Bush urge the UN to secure food shipments to Somalia. The House of Representatives concurred a week later.<sup>10</sup> The public was not engaged in the Somalian question.<sup>11</sup>

The Bush administration relented slowly. In September the president announced that four ships and 2,100 marines would supply offshore support for UN peacekeepers in Somalia.<sup>12</sup> Later in November, with no public notice, the outgoing president offered the UN Secretary General a large U.S. contingent to dampen conflict in Somalia. In December Bush announced that up to 28,000 U.S. soldiers would go to Somalia as part of the UN effort.<sup>13</sup> Bush claimed that only the United States had the resources to carry out this mission to “save thousands of innocents from death.”<sup>14</sup> As Bush said in his speech announcing the undertaking: “I can state with confidence we come to [Somalia] for one reason only: to enable the starving to be fed.”<sup>15</sup> House Speaker Thomas S. Foley (D-WA) agreed with Bush, citing the “grave humanitarian consequences” of inaction.<sup>16</sup> Some important members of Congress remained cautious.<sup>17</sup>

Once announced, majorities of the public supported the Somalian effort. From December 1992 to March 1993, no fewer than 71 percent of the public supported a relief effort involving American troops in that nation.<sup>18</sup> Even at the start, when support for the mission was high, a strong majority said the effort should undertake only a limited role of relieving misery.<sup>19</sup> Another survey found support for “humanitarian assistance” and majority opposition to the United States disarming the factions in Somalia.<sup>20</sup> A majority doubted the

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United States should try to solve Somalia's long-term problems.<sup>21</sup>

President Bush sought advice regarding his power to order troops to Somalia. The Office of Legal Counsel at the Department of Justice, the traditional adviser to presidents on such questions, offered an opinion that played down the potential for fighting. The U.S. military was engaging in "the distribution of humanitarian relief in Somalia." The humanitarian task might require the troops to "engage in more purely military actions, such as self-defense and the creation of safe corridors for the provision of aid." But the military actions would be humanitarian in nature. The War Powers Resolution was not relevant.<sup>22</sup>

The OLC concluded that President Bush had the authority to deploy the troops absent explicit agreement from Congress. It argued that the president could order troops into foreign lands to protect important national interests, including protecting the lives and property of Americans (such as those living in Somalia or engaged in the relief effort there). The national interest extended also, so said the OLC, to defending the lives and property of foreign nationals. Finally, the OLC contended "maintaining the credibility of United Nations Security Council decisions, protecting the security of United Nations and related relief efforts, and ensuring the effectiveness of United Nations peacekeeping operations can be considered a vital national interest." The UN resolution, however, was not "a precondition" for the mission.<sup>23</sup> The UN action was a permission that created a national interest, not a law creating a duty.

Congress eventually more or less approved of the mission. On February 4, 1993, the Senate approved by voice vote.<sup>24</sup> The voice vote meant no individual senator need take responsibility for the mission. The Senate vote and the voices of skepticism came two months after the deployment.<sup>25</sup> Almost four months after the Senate approval, the House authorized U.S. participation in the UN mission to Somalia by 243 to 179. Some House members queried the administration about the relevance of the War Powers Act. The administration argued that

the law was not applicable because the Bush administration had not intended to engage in combat and no hostilities had taken place up to that point.<sup>26</sup> The administration would reiterate this position later, even after fighting had broken out in Somalia.<sup>27</sup>

In early summer 1993 the Somalia mission changed. The fighters of Mohamed Farrah Aidid, a Somali gang leader, attacked the UN peacekeeping force, leaving 23 Pakistani soldiers dead and 59 wounded.<sup>28</sup> U.S. soldiers led a series of attacks in June that culminated in a full assault on the headquarters of Aidid. The battle led to the death of 5 UN soldiers and 60 civilians. President Clinton saw the full assault as a response to the earlier attack on peacekeepers: "Aidid's forces were responsible for the worst attack on U.N. peacekeepers in three decades. We could not let it go unpunished."<sup>29</sup> At this point, the United States was at war in Somalia with a native armed faction.

The June fighting woke Congress up. In early September the Senate debated a resolution about the incipient war. Sen. Robert Byrd (D-WV) proposed a bill that would have cut off funding for the effort within a month absent explicit congressional consent to the war. The Senate ultimately rejected the Byrd amendment in favor of a nonbinding resolution asking the president to report to Congress by October 15 on his goals in Somalia and to garner congressional authorization for the mission by November 15. In late September, the House of Representatives passed an identical resolution and also rejected a more constraining alternative.<sup>30</sup>

The congressional response, though weak, vitiated the administration's commitment to aggressive peacekeeping. The day before the House vote, Clinton told the UN General Assembly that "the United Nations simply cannot become engaged in every one of the world's conflicts." He also stated that a "date certain" should be set for withdrawing from the peacekeeping mission. More generally, Clinton now spoke about the dangers of peacekeeping and "the need to have a strict sense of limitations and conditions" before beginning such efforts.<sup>31</sup>



## **After the October 3 disaster in Somalia, public support for the mission quickly vanished.**

Then came disaster. On October 3, 1993, Army Rangers attacked an Aidid outpost. Eighteen Americans died and almost 80 were wounded. The losses were the worst for the Army since Vietnam.<sup>32</sup> Initially a majority of Americans wished to send more troops to punish those responsible for killing American soldiers.<sup>33</sup> The United States could well have become more deeply involved in Somalia, not least because, by his own account, President Clinton “wanted Aidid to pay.”<sup>34</sup>

But it was not to be. Congressional opposition to the Somalia mission grew. One hundred and forty-two House Republicans sent Clinton a letter three days after the raid insisting that he pull out U.S. forces. Democrats also criticized the administration. An immediate withdrawal seemed possible.<sup>35</sup>

Congressional resistance affected public opinion. In late June, after the initial violence, even general questions detected a bare majority in support of the mission.<sup>36</sup> After the October 3 disaster in Somalia, public support for the mission quickly vanished. Majorities soon rejected being there,<sup>37</sup> thought the mission was a mistake,<sup>38</sup> and disapproved of sending more troops.<sup>39</sup> Majorities or (when more than one alternative was given) pluralities wanted to withdraw troops quickly.<sup>40</sup> By December the number desiring a quick end had risen slightly.<sup>41</sup>

The president adapted to the changed political circumstances. At first, Clinton did indeed send more troops to Somalia, almost doubling their number. But he also promised that “all American troops will be out of Somalia no later than March 31 [1994], except for a few hundred support personnel in non-combat roles.” The Senate voted to enact Clinton’s promised deadline by eliminating most funding after March 31.<sup>42</sup> In early November, the House approved the defense appropriations bill by a voice vote. Clinton was locked in to deliver on his promised withdrawal.<sup>43</sup> The congressional resistance to the intervention after October 3 had constrained the president, who feared greater limits on the mission and higher political costs, the latter imposed by members of his party.<sup>44</sup>

Looking back, most Americans thought going into Somalia was the “right thing.”<sup>45</sup> But we should be wary of drawing conclusions from questions that perhaps measure national pride more than policy opinion. At the time, 60 percent of the public also agreed that “nothing the US could accomplish in Somalia is worth the death of even one more US soldier.”<sup>46</sup> Fifty-two percent thought it was mistake to get involved in the first place.<sup>47</sup> The nation also remained evenly divided on the question of whether the mission had been worth its cost.<sup>48</sup> The loss of American lives became a political constraint on foreign adventures, especially those benefitting foreign nationals.

From the start, the Bush administration (including the Office of Legal Counsel) obscured the risks attendant upon the mission to Somalia. The troops were there to use force to protect the delivery of food and supplies. Once the public discovered the risks, support for the mission evaporated. The public, unless beguiled, was unwilling to pay for humanitarian sentiment in the currency of American blood.

These political lessons would appear again in later limited wars. Presidents learned to refuse to call the use of force a “war.” Presidents could make war on their own account if the use of force was not a war, and of course, if the intervention was not a war, most people might not worry that troops might be killed. This obscurity about the risks of interventions might suggest the interests at stake were small, since the undertaking had to be free of costs. Presidents perhaps believed otherwise, but they were unwilling to persuade Congress or the public.

## **Haiti**

From 1957 to 1986 Haiti was ruled by two members of the Duvalier family. In late 1990, following four years of military rule, Jean Bertrand Aristide, a Roman Catholic priest, won a presidential election but was ousted by a military coup in September 1991. Aristide demanded the United States help him return to power in

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Haiti. In July 1993 the UN Security Council passed a resolution imposing an oil and arms embargo on Haiti to pressure the military government to return Aristide to power. That same month, the Haitian military agreed that Aristide would be restored as president by the end of October.<sup>49</sup>

President Clinton sent American engineers to begin rebuilding the nation as part of the agreement; their ship was met by armed resistance at the Haitian port. Clinton sent U.S. ships to enforce the UN blockade.<sup>50</sup> Clinton acted as if he needed no approval from Congress to use force, but Congress did little in response.<sup>51</sup> The Senate did approve a “sense of Congress” resolution that the U.S. military should not be involved in combat in Haiti absent prior approval from Congress or a detailed report from the president prior to committing troops. The House affirmed this amendment,<sup>52</sup> and 1993 ended with the military still in control of Haiti. The president had not ordered an invasion, and Congress had done little to preclude one.

In 1994 *Congressional Quarterly* remarked, “Support for Aristide and dramatic action in Haiti was not widespread in Congress.” Yet Congress could not speak with one voice against an invasion. In May the House opposed the use of force in Haiti.<sup>53</sup> A month later, in a different vote, a majority in the House voted against the amendment.<sup>54</sup> A number of Democratic House members changed their minds over that month, deciding in the end to support the head of their party and the U.S. military’s commander-in-chief.<sup>55</sup>

Clinton and the United Nations tightened the sanctions against Haiti. The president’s representatives spoke for the first time of vindicating democracy in Haiti through American force. Congress sensed a momentum building toward invasion. The Senate eventually passed another “sense of the Senate” resolution stating that a UN Security Council resolution was not sufficient backing for an invasion.<sup>56</sup> A more vigorous assertion of congressional authority—an amendment requiring the president to obtain congressional approval before invading Haiti—was defeated handily.<sup>57</sup>

Clinton went forward with a plan to invade Haiti.<sup>58</sup> Clinton also sought the support for an invasion from several nations in Latin America.<sup>59</sup> He called up the Army reserves and made ready to launch Operation Uphold Democracy. Clinton did not seek congressional approval, and Congress did not try to stop him.

Once again the president turned to the Office of Legal Counsel for legal justification. OLC argued that Congress had essentially authorized the action provided the president gave certain information to the legislature. He had done so, which suggested the invasion was constitutional. In regard to the War Powers Resolution (WPR), the OLC concluded that the law sought “to prevent the United States from being engaged, without express congressional authorization, in major, prolonged conflicts such as the wars in Vietnam and Korea, rather than to prohibit the President from using or threatening to use troops to achieve important diplomatic objectives where the risk of sustained military conflict was negligible.” Since the conflict in Haiti was not expected to be either long or bloody, the WPR did not apply. Finally, the OLC argued the Haiti invasion was not “war” in a constitutional sense: “‘war’ does not exist where United States troops are deployed at the invitation of a *fully legitimate government* in circumstances in which the nature, scope, and duration of the deployment are such that the use of force involved *does not rise to the level of ‘war.’*”<sup>60</sup> In sum, an armed conflict involving the (likely successful) invasion of another nation did not, according to the OLC, constitute a war.

A similar argument justified the Somalia mission. In late 1992, however, everyone involved appeared to expect that troops would defend the delivery of food and supplies. The OLC opinion stretched the limited war scenario to the invasion of another nation to change its government. The expected probability of success, according to OLC, transformed the invasion from a war into a nonwar for legal purposes.

The invasion went forward despite little support in Congress. The public also offered

little support. Just before Clinton spoke and acted, a plurality of Americans affirmed “the United States should not send military troops to Haiti at all, in order to restore a democratic government there.”<sup>61</sup> More than two-thirds of respondents at the time felt no national interests were at stake in Haiti.<sup>62</sup> Unlike the president, strong majorities of Americans thought the United States had no obligation to restore democracy in Haiti.<sup>63</sup> In any case, a majority doubted that an invasion would actually restore democracy there.<sup>64</sup> The invasion came off peacefully thanks in part to a delegation led by former president Jimmy Carter, who visited Haiti at the last moment.

For all of Congress’s failings, the public still strongly supported requiring Clinton to gain congressional approval before invading Haiti and after occupying it. No fewer than two-thirds of the public supported such congressional approval and as many as 80 percent did so.<sup>65</sup> Congress did not press the point at the moment of attack, but it might have. The mission enjoyed little support, and the process leading to the invasion had contravened public expectations.

Moreover, even the success of the mission did little to change public views. One month later a large majority opposed having the American troops in Haiti; the same would be true six months later.<sup>66</sup> The mission had been from the start undertaken and pursued in the teeth of public opposition. That opposition existed and grew even without American deaths in combat. Congress had done little to give that opposition effective voice.<sup>67</sup>

President Clinton ordered the invasion of Haiti to restore a government to power. He ignored Congress and public opinion in pursuing what might have been expected to be a war. Yet there was not war. No American troops were killed during the invasion. The expected war immediately became an occupation. The president had risked war (and unpopularity) in Haiti. He tried to declare war without congressional approval and yet did not. Clinton did prove that a president could de facto invade a nearby nation in defiance of congressional and public opposi-

tion. Whether that war could have been sustained politically after Americans died will never be known.

## Bosnia

War in the former Yugoslavia followed the fall of communism in Eastern Europe. The formerly communist-run country splintered into smaller republics, including Croatia, Slovenia, and Bosnia-Herzegovina. What remained of the erstwhile federation was controlled by Serbia. Led by President Slobodan Milosevic, Serbia attempted to assert territorial and political dominance over the newly formed neighboring republics, especially Bosnia-Herzegovina. Open warfare erupted in 1992 after Bosnia-Herzegovina declared its independence from the Serbian-run Yugoslavian federation.<sup>68</sup>

### Initial American Responses

American officials initially tried to keep away from the war. But media stories about “ethnic cleansing” by Serbs fostered calls for action in Congress.<sup>69</sup> Military leaders warned that involvement in the war could be costly and extended. But both chambers of Congress passed resolutions supporting humanitarian efforts anyway. Two months later, lawmakers offered cash to refugees and authorized the president to sell military equipment to Bosnia.

The Bush administration appeared ambivalent. President Bush remarked in July 1992: “The United States is not going to inject itself into every single crisis, no matter how heart-rending, around the world. I am not interested in seeing one single United States soldier pinned down in some kind of a guerrilla environment.”<sup>70</sup> Nonetheless, the administration solicited a UN authorization to use force to assure that relief aid would reach Bosnia. The president said that food and medicine should be provided to Bosnia-Herzegovina “no matter what it takes.”<sup>71</sup>

Early on, the public seemed more willing than the Bush administration to use force in Bosnia. In August 1992, 46 percent of the

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public wanted both air attacks and “ground action” against Serbia.<sup>72</sup> By the end of the year, support for going into Bosnia to deliver relief supplies had increased.<sup>73</sup> On the eve of Bill Clinton’s inauguration, a majority (54 percent) favored “sending U.S. ground forces to restore peace and humanitarian aid in Bosnia.”<sup>74</sup> A large majority also favored U.S. aircraft enforcing a no-fly zone in Bosnia.<sup>75</sup> Only 15 percent saw no national interest at stake in Bosnia, while twice that portion, a plurality, thought military intervention was justified to stop “ethnic cleansing.”<sup>76</sup>

As a candidate for the presidency, Bill Clinton had called for airstrikes to protect Bosnian Muslims. As president though, he moved more cautiously. An early proposal by the administration included committing troops to help enforce a ceasefire agreement. The president told a group near Detroit in February 1993 that this plan did not imply “committing our ground troops now or anything like that.”<sup>77</sup>

Congress passed resolutions. Both chambers enjoined the president to work toward an immediate end to the UN arms embargo against Bosnia. Absent the embargo, the Muslims could arm themselves. These resolutions also advised the president to undertake airstrikes against Serb positions. Senate leaders from both parties supported these proposals. At this time in early 1993, the administration did not favor airstrikes.<sup>78</sup> Other congressional leaders went further. Sen. Richard Lugar (R-IN) called for a large multinational military to intervene in the civil war.<sup>79</sup> Clinton refused to put American lives in danger. Instead, American airplanes began dropping supplies to Bosnian Muslims from a high altitude to “virtually assure the complete safety” of American personnel.<sup>80</sup>

### **Peacekeeping Debate**

As the Bosnian situation grew more complex in April 1993, Clinton engaged Congress, as indicated by a *Congressional Quarterly* report:

Clinton and his senior aides consulted in hours of meetings with members of Congress on several options: limited

airstrikes by the United States and its allies on Bosnian Serb artillery emplacements; airstrikes on other economic or military targets in Bosnia or in Serbia; and pressing the United Nations to lift the embargo that prevented Bosnia’s Muslim-led government from obtaining weapons. After an exhaustive 2½-hour White House meeting attended by a group of about 20 senior lawmakers April 27, Republicans and Democrats said they were equally impressed with the president’s willingness to hear them out.<sup>81</sup>

Should the members have been so impressed? Ryan Hendrickson notes, “In practice . . . the Clinton administration only paid lip service to the idea of consultation” since the president had already decided to engage in peacekeeping in Bosnia prior to consulting with Congress.<sup>82</sup>

A significant number of members of Congress insisted on constitutional propriety. Ninety-one House members and a few senators said in a letter to the president that Clinton should seek congressional authorization to wage war in Bosnia.<sup>83</sup> This advice reflected public opinion in April 1993 and later. Gallup found that a large majority (84 percent) said the president should gain congressional approval to attack Bosnian Serbs from the air.<sup>84</sup> Two years later, support for congressional approval remained high (79 percent).<sup>85</sup>

The public had favored action in Bosnia at the beginning of Clinton’s administration. This support was fleeting. By late April 1993 a decisive majority said “we should not get militarily involved” in Bosnia.<sup>86</sup> Peacekeeping remained popular for a while; almost 70 percent agreed that the United States should contribute a substantial number of troops to a possible United Nations peacekeeping force in Bosnia.<sup>87</sup> Even that support would fade: in October 1993, a majority opposed sending troops for peacekeeping duty.<sup>88</sup> That response no doubt reflected the debacle in Somalia in early October. By February 1994 Gallup found that 59 percent of respondents thought the



United States had no interests at stake in Bosnia.<sup>89</sup> The intervening disaster in Somalia had revealed the actual costs of interventions.

### **Airstrikes and After**

The troubles continued in Bosnia in 1994. Clinton decided to support airstrikes to deter Serbian war-making. Congress did not authorize the attacks. The attacks worked initially; the Serbs drew back. Diplomats went to work. Yet soon the Serbs were back on the offensive, and Clinton called for more airstrikes by NATO. Congress refused to go along. Many members of Congress, especially Republicans, feared the airstrikes would lead to a sustained engagement in the Balkans.<sup>90</sup> Clinton did not seek congressional approval to renew airstrikes. He did inform Congress of the renewed bombings which were said to be justified by a concern for the welfare of UN personnel.<sup>91</sup> The president's actions were authorized by his own broad interpretation of the presidential power to make war. Congress, however, did not challenge Clinton on constitutional grounds; some prominent members even encouraged him to escalate the war against Serbia.<sup>92</sup>

The public gave contradictory signals about the bombing. The public remained strongly opposed to ground troops being introduced to stop Serb attacks.<sup>93</sup> By February 1994, as the airstrikes began, Gallup found that 59 percent of respondents thought the United States had no interests at stake in Bosnia.<sup>94</sup> However, presidential action had an effect: the opposition to airstrikes became more muted and a plurality of Americans favored them in early 1994.<sup>95</sup> By April a clear majority favored attacks from the air.<sup>96</sup> At the same time, most thought neither interest nor moral obligation counseled American engagement in Bosnia.<sup>97</sup>

The new GOP majority in the House did not change matters much in early 1995. The GOP House immediately passed the National Security Revitalization Act which required congressional approval for any agreement between the president and the UN Security Council. The bill also stipulated that American troops must serve under a U.S. commander and that Congress must be informed

beforehand about any UN Security Council requests for more funding for peacekeeping missions.<sup>98</sup> In the Senate the new majority leader Robert Dole introduced the Peace Powers Act of 1995.<sup>99</sup> The bill would have increased the president's de jure war-making discretion while restraining his ability to involve the nation in peacekeeping. For that reason, Clinton was expected to veto the bill. None of these proposals had enough support to override an expected Clinton veto.

### **Clinton Goes It Alone**

In late August 1995 the United States participated in much more extensive NATO bombing of the Bosnian Serbs. Clinton carried out these attacks without seeking approval from Congress. Nonetheless, Congress made no formal effort to stop the president.<sup>100</sup> These airstrikes ultimately led to a ceasefire in October and the start of peace talks in November. The question of American troops on the ground arose again. The Senate voted to call upon the president to seek advance approval for a deployment. Clinton resisted, referring to the prerogatives of his office.<sup>101</sup>

And at the end of October, just before peace talks began, the House of Representatives approved a resolution rejecting the president's promise to use 20,000 U.S. troops for peacekeeping in Bosnia. The resolution had bipartisan sponsors and support; the president's party divided almost evenly on the question. The president backed down a bit and assured Congress there would be time between the signing of a peace agreement and the deployment of troops for congressional debate and approval. House Republicans did not believe Clinton. A week after the first resolution, the House passed a second to stop deployment in Bosnia absent explicit congressional approval for its funding.<sup>102</sup>

Then came the peace accord on November 21, 1995. The effort to stop the deployment halted with it. Clinton offered Congress an ultimatum: either support the mission or repudiate the president's credibility in foreign negotiations. Congress, predictably, blinked. Many in the House concluded that Clinton

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was determined to carry through with the deployment and that Congress had no way to stop him. Some worried about credibility in foreign affairs. No one could say for sure that cutting funding would not harm the troops. The House sent a letter to Clinton asking him not to send ground troops. The Senate rejected the earlier House resolution prohibiting deployment by a vote of 22 to 77. The House considered another bill to the same end, which was barely rejected. Congress was reduced in late 1995 to voting on bills that accepted the deployment in fact, rejected the mission in words, and expressed total support for the troops.<sup>103</sup>

The OLC opinion on Bosnia dealt with the question of whether the president could order troops into a peacekeeping mission. The opinion did not treat the question of the president's power to bomb Serbia. The OLC concluded that Clinton could order troops into Bosnia, since the parties in conflict agreed to peacekeeping and the likelihood of prolonged hostilities was low. Finally, the OLC argued that the president had long had the power to deploy troops to protect the national interest; in Bosnia, the vital national interests were all tied to the UN.<sup>104</sup>

The public in the summer of 1995 remained supportive of sending troops related to UN peacekeeping.<sup>105</sup> Other polls showed division on the question.<sup>106</sup> To add to the confusion, by late 1995 more than 60 percent of the public opposed committing troops to a Bosnian peacekeeping force. However, 60 percent also supported Clinton's decision to do so. Just over a quarter of the population supported his decision as commander-in-chief to commit the troops even though they opposed the policy itself.<sup>107</sup> It may be conjectured that by deciding to commit to the mission, Clinton created support for it. The Bosnian mission did not respond to a clear demand from the public. Once it started, the public supported it not on its merits but rather on the fact that the president had acted.

This support for peacekeeping existed as long as there was a peace to be kept. Surveys in that period found that even 25 dead Americans would turn two-thirds of the public against

the undertaking. The prospect of more deaths produced slightly more disapproval for the policy.<sup>108</sup> One might wonder what the prospect of even one American death might do to support for the Bosnian mission. Gallup did not pose that question to the public.

In late 1996 Clinton announced that the planned one-year stay in Bosnia would be extended by 18 months. The extension was necessary, Clinton claimed, to create the conditions for rebuilding Bosnia. Members of Congress, especially Republicans, protested the decision. But it was another *fait accompli*.<sup>109</sup>

In 1997 the House tried to bring the Bosnia mission to a close by withholding funding after its announced end in 1998. The final bill approved by the Senate was much weaker. While limiting the stay in Bosnia, the final version permitted the president to waive the limit by telling Congress why he planned to keep troops in Bosnia and for how long.<sup>110</sup>

In December 1997 Clinton announced for the second time that he would not abide by his previously announced deadline to remove troops from the Bosnian peacekeeping mission. Now no deadline would be honored. He asked for almost \$2 billion to fund the Bosnia effort. The House cut the peacekeeping funding out of the defense appropriations bill. Sen. Kay Bailey Hutchinson and Robert Byrd sought to reduce the number of troops in Bosnia. The Appropriations Committee removed the peacekeeping funding from the defense bill; the full Senate restored it on a voice vote. Hutchinson also tried to reduce the number of troops in Bosnia, to no avail. Joseph Lieberman said, "Where the rubber meets the road, [senators] are going to respect the commander in chief's power to decide."<sup>111</sup> The mission also attracted more support from the public in 1997 and 1998. Of course, "not one American soldier was killed by hostile fire" from 1996 to 2004 in Bosnia.<sup>112</sup>

Finally, in the spring of 1998, Rep. Tom Campbell (R-CA) introduced a resolution entitled Removal of United States Armed Forces from the Republic of Bosnia and Herzegovina. The proposed resolution would have required the president to withdraw American troops

from Bosnia within 60 days absent congressional approval for their engagement. The resolution also called for a judicial judgment about the constitutionality of the War Powers Act. The resolution failed 193 to 225. House Democrats generally supported Clinton; only 13 voted for the resolution. The Republican House leadership did little to gain support for the Campbell effort. Forty-three Republicans, including the chair of the House International Relations Committee, ended up voting against the resolution.<sup>113</sup>

## Kosovo

Just as the pacification and occupation of Bosnia began, civil war broke out in another part of the former Yugoslavia. Kosovo had been an independent province of Serbia until 1989, when Belgrade asserted dominance. Ethnic Albanians, a majority in Kosovo, resisted for some years, leading to armed struggle by a rebel group, the Kosovo Liberation Army. As the fighting grew fiercer, many Albanians fled. In the summer of 1998, NATO made plans to intervene against the Serbs.<sup>114</sup>

At first members of Congress seemed ready to involve the nation once again in a civil war within Serbia. In the spring and summer of 1998, Congress adopted resolutions condemning the Serbs.<sup>115</sup> A “sense of Congress” resolution followed that indicted the Serbian leader for war crimes and genocide.<sup>116</sup> (Congress did not, however, resolve that the president should send troops to protect the Albanians in Kosovo). More than most, these resolutions were simply sentiment absent action, empty gestures. Congress did include economic sanctions against Serbia in an omnibus spending bill late in the year.

Secretary of Defense William Cohen claimed a right to carry out airstrikes to protect ethnic Albanians from Serbian forces absent approval from NATO, the UN, or the U.S. Congress. Secretary of State Madeleine Albright reached the same conclusion<sup>117</sup> based on Article 51 of the UN Charter, which provides for individual or collective self-defense.<sup>118</sup> Both officials were

proposing attacking a sovereign state. Yet, according to Article 2 of the Charter of the United Nations, “the Organization is based on the principle of the sovereign equality of all its Members.”<sup>119</sup> Congress offered few protests against these claims of authority. Later the president’s national security advisor and a State Department official would argue that the constitutional power of the commander in chief authorized the use of force without congressional approval.<sup>120</sup>

Congress divided once again over the wisdom of intervening.<sup>121</sup> Rep. Tillie Fowler (R-FL) offered an amendment to prohibit the Kosovo deployment.<sup>122</sup> Doubts about the Kosovo intervention were widespread in the House of Representatives but not widespread enough. The Fowler amendment was defeated handily. The House later supported American troops in Kosovo as part of a NATO peace-keeping mission.<sup>123</sup>

The Senate was more hawkish than the House and more favorable to the president. He reciprocated by meeting with some senators prior to the beginning of the bombing of Serbia. These meetings were designed to show concern for Congress without actually involving it in the decision to go to war. Clinton also told Congress during this period of his intent to use force. Clinton’s meetings paid off. On March 23, 1999, the Senate supported a resolution stating that “the President of the United States is authorized to conduct military operations and missile strikes against the Federal Republic of Yugoslavia.” Sixteen Republicans and 42 Democrats supported the resolution. NATO and the United States went to war shortly thereafter against Yugoslavia.<sup>124</sup>

A few days after the bombing began, Clinton sent a letter to Congress arguing that he had undertaken the air strikes against Serbia “pursuant to my constitutional authority to conduct US foreign relations and as Commander in Chief and Chief Executive.” He also mentioned Yugoslavia’s putative violation of UN Security Council resolutions and the UN Charter.<sup>125</sup> In fact, NATO and the United States did not seek UN authorization for the air attacks of March 1999,<sup>126</sup> presumably because it could not be

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obtained. This war was undertaken by the U.S. president at his discretion; it was not legitimated or authorized by the UN Security Council. In his letter, Clinton also did not mention Senate approval of the attacks. That vote of support was politically useful but not constitutionally necessary, from the president's point of view.<sup>127</sup> The president did not seek an opinion about the war from the Office of Legal Counsel at the Department of Justice.

An overwhelming majority of House Republicans refused to support Clinton's policy. Rep. Tom Campbell (R-CA) invoked part of the War Powers Act and forced the House to vote on two resolutions, one ordering a withdrawal of American forces and the other declaring war on Yugoslavia. The House leadership added two others: one authorizing the air war and the second demanding congressional approval before ground troops were sent to Kosovo. Only the last of these passed. The approval for the air war failed in a tie vote.<sup>128</sup> Senate leaders refused to consider an explicit resolution granting approval to use force. They feared a divisive debate. The air war continued and the question of ground troops persisted into May. The House rejected an amendment prohibiting funding of an invasion of Yugoslavia.<sup>129</sup>

By June 1999 the NATO bombing had had an effect: Serbia relented.<sup>130</sup> After a truce, NATO peacekeepers entered Kosovo to return refugees and to begin reconstruction. Speaking after the war ended, Clinton made it clear that the United States had sought (and was seeking) to overthrow Serb leader Miletovic. He also noted that no American soldiers had died in combat.<sup>131</sup> American planes dropped about 23,000 bombs and missiles on Yugoslavia in the spring of 1999.<sup>132</sup> The NATO attacks supported by President Clinton are thought to have killed about 600 soldiers and 500 civilians. They "were the most aggressive and sustained use of military force during the Clinton presidency."<sup>133</sup>

Congress later tried to control spending on peacekeeping in Kosovo. In the spring of 2000 the Senate Armed Services Committee approved an amendment cutting funds for Kosovo unless Congress authorized the ef-

fort.<sup>134</sup> The amendment was later removed from the spending bill after Republican presidential candidate George W. Bush spoke out against it as a "legislative overreach on the powers of the presidency."<sup>135</sup>

## **Iraq**

The United States fought two major wars with Iraq in 1991 and 2003. Between those two conflicts, the U.S. president used force against Iraq several times. These attacks were episodic and were largely supported by both Congress and the public.

In 1993 ex-president George H. W. Bush visited Kuwait. Prior to his visit, officials uncovered a plot to assassinate Bush, a plan linked to Iraq leader Saddam Hussein. In June 1993 President Clinton responded to the plot by ordering 23 precision-guided missile strikes on Iraqi military posts. Clinton justified his decision by appealing to Article 51 of the United Nations Charter (which recognizes a right of national self-defense) and to the constitutional powers of the presidency. Members of Congress said little critical of Clinton's decision or its justification. Sixty-one percent of the public approved of the attacks.<sup>136</sup>

President Clinton again used force against Iraq three years later. The United States had supported the Kurds in northern Iraq for some time. However, the Kurds at this time were divided. In 1996 one Kurdish faction appealed to the Hussein regime for support against another faction which had accepted arms from Iran. Hussein responded by attacking the Kurdish cities allied with Iran. In turn, Clinton fired 44 cruise missiles against Iraqi military installations. Clinton justified the response by arguing that Hussein threatened his own people and the stability of the region. The president's congressional defenders argued UN Security Council Resolution 688 legitimated the attacks. The resolution had passed in 1991 and authorized member states to take all necessary measures to protect the Kurds. In 1996 all but one of the permanent members of the UN Secu-



rity Council—Great Britain—denied that the 1991 resolution justified the use of force. As with the response to the plot against Bush, Congress remained silent and supportive. A majority of the public (58 percent) approved of Clinton’s handling of the situation.

In 1998 Saddam Hussein refused to allow weapons inspections by a UN team as provided for by the UN Security Council resolution at the end of the 1991 war. Hussein eventually relented after an intervention by the secretary general of the UN. After this dispute the UN Security Council passed Resolution 1154, which stated that if Iraq did not comply with past resolutions, it would face the “severest consequences.” The Clinton administration argued that 1154 justified the use of force against Iraq. Yet UN Security Council resolutions legitimating force usually say nations may use “all necessary means” to implement a resolution. Resolution 1154 did not use such language, and other members of the Security Council at that time denied the resolution legitimated the use of force.<sup>137</sup>

In late 1998 Iraq once again denied the UN inspection team access to certain sites. The United States and Great Britain responded with “Operation Desert Fox” which included four days of bombings of military targets. President Clinton said two UN Security Council resolutions and one U.S. law, all from 1991, legitimated this use of force. Congress played no role in the decision to (briefly) declare war on Iraq. Some in Congress criticized the president’s motives given his impeachment imbroglio, but Congress largely seemed to support the attacks. The public was even more supportive than it had been in the cases of the Kurds and the Bush plot. Two polls found that 67 and 74 percent of Americans approved of Operation Desert Fox.<sup>138</sup>

After Operation Desert Fox, the United States enforced no-fly zones in Iraq more rigorously. From 1999 to 2000 the U.S. military used force over 100 times enforcing the no-fly zones. Congress did not seek to approve the president’s decisions.<sup>139</sup>

The use of force in Iraq from 1993 to 2000 differs from the other cases considered here.

Congress was more deferential than in other cases, and the public more supportive. These examples from Iraq were also much briefer than the extended campaigns in Bosnia, Kosovo, and Libya. Historians may one day see these uses of force as hot points in a colder part of a long war between the United States and Iraq, a war that began with the invasion of Kuwait and possibly ended with the pacification of the Iraqi insurgency in 2008. Legally, however, President Clinton’s arguments that 1991 resolutions and laws justified the use of force years later seem dubious. Members of the UN Security Council denied that interpretation of earlier resolutions. As for the 1991 resolution approving war with Iraq, as Ryan Hendrickson observed, “It is difficult to conclude that in 1991 Congress intended that all commanders in chief to follow President Bush would have unlimited authority and discretion to use force against Iraq anytime they desired.”<sup>140</sup> However, Congress did not step forward to deny Clinton’s claims about the 1991 law. Congress remained silent largely because of the popularity of the attacks on Saddam Hussein.

## Libya

In mid-February 2011 protesters in Libya began opposing the Qaddafi regime that had ruled that nation for four decades. The protests in the cities of Benghazi and Zentan were violent and sought to oust Qaddafi.<sup>141</sup> They quickly spread to the capital of Tripoli where the government responded violently.<sup>142</sup> Over the next week, civil war in Libya began in earnest.<sup>143</sup> On February 25 the government fired on protestors in the capital while a rebel commander claimed 2,000 troops were ready to attack Tripoli.<sup>144</sup> The claim was credible; several cities in eastern Libya had fallen to the rebels, and the Qaddafi regime appeared in trouble. But the government’s fortunes improved over the next two weeks as its control over air power put the rebels on the defensive.<sup>145</sup> By the middle of March the regime seemed at the point of retaking the lost cities in the east and ending the civil war.<sup>146</sup>

**Legally, President Clinton’s arguments that 1991 resolutions and laws justified the use of force years later seem dubious.**

**In OLC's view, neither the Constitution nor the War Powers Resolution was relevant since the war in Libya was legally speaking, not a "war."**

### **American Ambivalence**

Would outsiders intervene? The *New York Times* reported that the U.S. defense secretary Robert Gates was "concerned about getting into another war in the Middle East and worried about the political fallout of the United States attacking yet another Muslim country, even on behalf of a Muslim population."<sup>147</sup> The director of national intelligence opined that the Qaddafi regime would eventually win their civil war. However, other members of the Obama administration favored regime change. The secretary of state set up a meeting with a rebel leader. The national security advisor outlined ways to drive Qaddafi from power short of a military attack. Anonymous sources assured leading journalists that "the president does not think Qaddafi will prevail."<sup>148</sup> The president then appointed a special representative to the rebels as the slide toward intervention continued.<sup>149</sup> The president himself said, "Muammar el-Qaddafi has lost the legitimacy to lead, and he must leave."<sup>150</sup> He did not say whether the United States military would be willing to use force to bring about his departure.

### **The Path to Intervention**

Then, as the rebel cause seemed lost, the Arab League invited non-Muslim nations to impose a no-fly zone in Libya.<sup>151</sup> This invitation to intervene turned out to be crucial.<sup>152</sup> The United States pushed a United Nations Security Council resolution authorizing the use of force.<sup>153</sup> The Security Council passed a resolution backing a broad use of force on behalf of the Libyan rebels.<sup>154</sup> The Obama administration would later argue that the UN resolution legitimated (i.e., made lawful) its participation in the war in Libya.<sup>155</sup>

In part, the UN resolution and the American support for it embraced a proposed international "Responsibility to Protect" civilians from their government, articulated in 2005 in a UN World Summit "outcome document" which is not legally binding. Section 139 of this document states

The international community, through the United Nations, also has the respon-

sibility to use appropriate diplomatic, humanitarian and other peaceful means . . . to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the [UN] Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>156</sup>

The UN resolution (and subsequent action by the Obama administration) thus related to a prior UN promise to protect civilians.<sup>157</sup>

Shortly after the UN Security Council acted, President Obama demanded that Qaddafi cease firing, abandon occupied cities, and stop attacking civilians. Absent compliance by Qaddafi, the United States and its allies would attack his forces.<sup>158</sup> He did not comply, and air attacks by the United States and its European allies began. The Obama administration took care to assign leadership to Britain and France, the two nations that had pushed the hardest for the intervention. The president promised that no ground troops would be used.<sup>159</sup>

The OLC opinion on the Libyan war predictably approved Obama's decisions. It emphasized that the war served U.S. interests by deflecting the putative threat to regional stability and by preserving the credibility and effectiveness of the United Nations Security Council. The OLC emphasized that the mission would be "limited in nature, scope, and duration." In OLC's view, practice and precedent indicated that the president could undertake limited wars at his discretion. Neither the Constitution nor the War Powers Resolution was relevant since the war in Libya was legally speaking, not a "war."<sup>160</sup> Later after the war had been going on for three months and no longer seemed "limited in nature, scope,

and duration,” the Obama administration would say that war-making had ended within the original 60-day period.<sup>161</sup> The *New York Times* reported shortly thereafter that the U.S. military had conducted 90 missile attacks on Libya after the purported end of the attacks.<sup>162</sup> Later, the State Department’s legal adviser argued that the Libyan venture was a limited war: “limited in mission, exposure of U.S. troops, risk of escalation, and military means employed” and hence, not subject to the strictures of the War Powers Resolution or the Constitution.<sup>163</sup> The legal argument that the war was not a war persuaded few. Yet as we have seen, it did connect to earlier presidential claims of discretion to make war.

### **Progress and Stalemate**

The attack on Qaddafi’s forces initially destroyed most of his air defenses.<sup>164</sup> The attacks had stopped the rout of the rebels; they did not change the regime. NATO took over command of the operation even as its members squabbled over goals and tactics.<sup>165</sup> As always, the European leadership said little about the reality of the war: the United States launched most of the cruise missiles and dropped about 75 percent of the ordnance on Libya in the first part of the war.<sup>166</sup> The rebels began to advance under allied air cover.<sup>167</sup> Time soon revealed that “the rebel military, as it sometimes called, is not really a military at all.”<sup>168</sup> The war in Libya settled into a stalemate based on the hope that time, circumstances, and luck would bring an end to the Libyan regime.<sup>169</sup> Remarkably, a few weeks into the campaign, the secretary of defense denied that the Libyan civil war posed any threat to the vital interests of the United States.<sup>170</sup> Finally, five months after the U.S. intervention in Libya, the rebel forces captured the Qaddafi compound in Libya.<sup>171</sup>

### **Congress Goes Missing in Action**

For more than two months, the debate about U.S. intervention in the Libyan civil war took place almost exclusively within the Obama administration, with Secretary Gates and a skeptical military being pitted against Secretary of State Clinton and allied hawks

within the administration interested in enforcing a universal jurisdiction to protect foreign nationals.<sup>172</sup>

As in the 1990s a few senators (McCain, Lieberman, and Kerry) called for the use of force.<sup>173</sup> On March 1 the Senate appeared to endorse a resolution urging “the United Nations Security Council to take such further action as may be necessary to protect civilians in Libya from attack, including the possible imposition of a no-fly zone over Libyan territory.”<sup>174</sup> The foregoing language, however, was added at the last moment by the sponsors of the resolution. Up to that point, the resolution had been limited to a condemnation of Libya’s human rights record. The senators who voted for the resolution probably did not realize it also contained a call to protect Libyan civilians, words that could be construed to support attacking Libya. For this reason, we should doubt the validity of the resolution as an authorization of military action.<sup>175</sup>

President Obama acted after the Security Council resolution; he did not consult with Congress about going to war. In his letter to Congress on March 21, Obama spoke of keeping Congress fully informed about the mission. He apparently did “discuss” his planned assault with a few members of Congress.<sup>176</sup> However, House Democrats would later reveal that the Obama administration had told them nothing about the Libyan intervention prior to the president’s decision to attack.<sup>177</sup> Congress was irrelevant to the actual decision to go to war.

Initially, the president claimed he was acting consistent with the War Powers Resolution. His administration argued that their attack on Qaddafi was authorized by the War Powers Resolution as an “emergency,” defined as an imminent threat of a humanitarian catastrophe.<sup>178</sup> Yet the War Powers Resolution stated that the president could only introduce troops into hostilities pursuant to “a national emergency created by attack on the United States, its territories or possessions, or its armed forces.”<sup>179</sup> Threats to the lives of foreign nationals are not mentioned in the law as authorizing the use of force by the president.<sup>180</sup>

**The legal argument that the war was not a war persuaded few.**

**The War Powers Resolution requires withdrawal of troops after 60 days if Congress has not approved of the use of force by a president.**

Congress offered a divided response.<sup>181</sup> Sen. Rand Paul (R-KY) offered a resolution restating the views of Sen. Barack Obama that the presidents could not unilaterally make war under the Constitution. The Senate tabled Paul's resolution by a vote of 90 to 10.<sup>182</sup> As the war went on, criticism in Congress continued. A few members, generally the same ones that had urged going to war, attacked Obama for not bringing about regime change in Libya. Most members seemed concerned about the high cost and ambiguous goals of the mission.<sup>183</sup> Other members worried about the intentions of the rebels.<sup>184</sup> Doubts notwithstanding, Congress did little concretely to stop the attacks. In particular Congress did nothing to cut funding for the war in Libya.<sup>185</sup> The House did pass an amendment to the fiscal 2012 Defense Authorization Bill that would preclude sending U.S. soldiers to Libya except to rescue other U.S. soldiers.<sup>186</sup>

On May 19 the War Power Resolution's 60-day limit on the use of force in Libya expired. Nothing much happened. The *New York Times* focused on the possible defection of Libya's oil minister on the day the deadline passed.<sup>187</sup> Six senators sent Obama a letter asking whether he intended to abide by the War Powers Resolution.<sup>188</sup> Many in Congress appeared eager to avoid mentioning the deadline or the president's conduct. A few members introduced resolutions requiring the president to seek approval for the mission. Obama sent Congress a letter asking for a resolution of support for the war. For all practical purposes the War Powers Resolution did not exist. As one law professor put it, Obama was "not even bothering to go through the motions."<sup>189</sup>

**Congress Engages**

Yet all was not well for the president in the legislative branch. Two weeks later, Congress roused itself to a small debate and a vote on the Libyan undertaking. Rep. Dennis J. Kucinich (D-OH) had introduced a bill requiring withdrawal of the U.S. military from the Libya operation within 15 days. It seemed possible Kucinich's bill would pass. The Speaker of the House, John Boehner (R-OH), offered an

alternative proposing "that the administration provide, within 14 days, detailed information about the nature, cost, and objectives of the American contribution to the NATO operation, as well as an explanation of why the White House did not come to Congress for permission to continue to take part in the mission." Congress made no effort to enforce these demands.<sup>190</sup> Boehner was an unlikely critic since he had declared the administration had fulfilled its obligations under the War Powers Resolution.<sup>191</sup> In any case, the Senate was unlikely to go along with even Boehner's modest complaint.

A week later the House passed an amendment to a Defense construction bill that said none of the money in question could be spent "in contravention of the War Powers Act."<sup>192</sup> The next day the Speaker sent a letter to Obama asking for a legal defense of the president's ignoring the War Powers Resolution. The Speaker was quick to affirm the importance of American leadership. Yet the letter did indicate a growing unhappiness in Congress about the war.<sup>193</sup>

The War Powers Resolution requires withdrawal of troops after 60 days if Congress has not approved of the use of force by a president. The executive may ask for an additional month; if he does, the War Powers Resolution permits a president to use force for up to 90 days without congressional approval. As the 90-day deadline passed, Congress began voting on the Libyan venture. The House of Representatives ultimately passed two resolutions. The first rejected authorizing the war by a vote of 295 to 123; 70 Democrats voted against their president on that resolution. The second bill would have defunded military actions apart from ancillary efforts like search and rescue, aerial refueling, intelligence, and so on. This bill would have ended the U.S. part of the war while supporting NATO's efforts. Speaker Boehner backed this second bill; it failed 238 to 180 as 89 Republicans supported Obama while only 36 Democrats deserted him.<sup>194</sup> The House had signaled both opposition to and support for the Libyan war; it would neither authorize nor stop the venture.



In contrast, the Senate moved toward endorsing the war in Libya. The Senate Foreign Relations Committee passed a resolution to authorize the war for one year while precluding the use of ground troops.<sup>195</sup> This resolution, however, did not reach the Senate floor. It was pulled by the Senate majority leader who apparently lacked enough votes to invoke cloture and bring the resolution to a vote. Many Republican senators wanted to focus on debt issues.<sup>196</sup> The war was perhaps not salient enough to those elected officials, at least compared to debt and deficits.

What can be said about the performance of Congress regarding the Libyan war? As in the 1990s, the House and Senate were divided about the war with the latter being more hawkish. At the same time, the House GOP leadership was willing to protect a Democratic president's alleged prerogatives if necessary. Yet there were also differences from the limited wars of the 1990s. In general, Congress was more passive than in the past until the War Powers Resolution deadlines passed. Congressional criticism of the conduct of the war may have contributed to presidential restraint in using force. However, the president wished to be seen as turning the war over to NATO early in the contest. Public unhappiness with the costs of two futile wars in the region may offer a better explanation of Obama's reticence.

### Public Doubts

The public offered initially lukewarm support for the war; as time passed, even that dwindled. Asking whether the use of force by the United States was the "right decision" often yielded plurality support for the war, prior to the advent of fighting or a few weeks in.<sup>197</sup> But as we have seen, the American public is loath to admit the nation has done anything other than the "right thing" even when they oppose a war. Yet when respondents were offered a choice about Libya in March and later in May 2011, between saying the war was the "right thing" or that the United States "should not be involved," the latter was the most frequent response in each case, with 47 and 48 percent respectively.<sup>198</sup> By early June the

"should not be involved" answer had been embraced by 59 percent of the public.<sup>199</sup> In April bare majorities reported favoring the United States being part of the NATO effort.<sup>200</sup> The no-fly zone itself attracted variable support in March, ranging from overwhelming to divided.<sup>201</sup> The public was again ambivalent.

The polling results also offered clear answers to some questions, answers that may have concerned the White House. Most people thought the United States had no clear goal for being in Libya.<sup>202</sup> A majority agreed with Secretary of Defense Gates that the United States had no vital interest in the Libyan conflict.<sup>203</sup> A substantial majority also said the United States had no responsibility to do something about the fighting in Libya.<sup>204</sup> One in five thought the United States had a "moral obligation" to stop the violence.<sup>205</sup> Over 60 percent said removing Qaddafi would not be worth fighting and dying for.<sup>206</sup> Finally, the polling showed overwhelming rejection of the use of U.S. ground troops in Libya.<sup>207</sup> On that point at least, President Obama's promises (and a congressional resolution) were in line with public opinion.

As in the past, the public continued to support Congress's role in authorizing wars. Fifty-five percent of the public thought Congress, not the president, should have "final authority for deciding whether the United States should continue its use of military force in Libya."<sup>208</sup> Another 58 percent thought Obama was wrong to go to war without consulting Congress.<sup>209</sup> The public believed in Congress's rightful powers more than most members of that institution did, judging by their silence and indifference in March and April 2011.

The United States intervention in Libya is similar in some ways to earlier post-Cold War interventions. As in Somalia and the former Yugoslavia, the United States has intervened in a civil war for humanitarian reasons. The "common defense" promised in the U.S. Constitution had been extended this time to Libyan nationals living in the eastern part of that nation. As in the 1990s the president decided to intervene without clear authorization from Congress, which in turn did little more than

**A majority agreed with Gates that the United States had no vital interest in the Libyan conflict.**

**In the case of Libya, the president himself said a *current* UN resolution legitimated his war-making.**

complain about presidential malfeasance. Like earlier cases, the Office of Legal Counsel blessed the presidential power of war-making. The war in Libya was expected to be limited enough to not be a war. Neither the War Powers Resolution nor the Constitution was relevant. As in earlier cases, the “effectiveness and credibility” of the United Nations created an interest that putatively justified a limited war. As in Kosovo, the bombing campaign went on longer than expected. As with all interventions after Somalia, policymakers were wary of engaging U.S. troops in combat. As in earlier wars, the public was decidedly against putting American lives at risk to protect foreigners.

**Weak Internationalism**

Libya was also different than earlier interventions. Members of Congress had little to say one way or another prior to the war; the president acted quickly and then informed Congress. President Obama resolutely ignored the War Powers Resolution, more than President Clinton had. Obama also generally ignored Congress, and Congress was largely passive during the first two months of the war, which suggests that more than a few Republicans supported the policy toward Libya.<sup>210</sup> For the first 60 days or more of the war, neither the president nor Congress acted as if the latter should legitimate the use of force by the United States.

But the president, unlike some of his predecessors, was unwilling to initiate and make war on his own account. In Libya, President Obama was wary of making war in a third (or fifth if we include Pakistan and Yemen) Muslim nation.<sup>211</sup> He sought legitimacy for the war by soliciting supporting resolutions from the Arab League and United Nations Security Council. Arguably, those institutions, and not the U.S. Congress, held a veto over American war-making. Of course, those institutions did not refuse to endorse the war so we cannot know for sure whether international support was necessary for the United States to enter the Libyan war. It is clear that the president emphasized the UN’s role. At the beginning of his letter to Congress announcing Ameri-

can participation in the war, Obama noted the fighting was authorized by the UN and supported by other nations.<sup>212</sup> In a later report to Congress, we learn that it is the president’s view that the war in Libya was “legitimated by” a UN Security Council Resolution.<sup>213</sup> That resolution in turn reflected an earlier open-ended commitment to protect civilians from their government (the “Responsibility to Protect” doctrine).

President Obama was not the first post-Cold War president to appeal to international institutions and the welfare of foreign nationals to justify a war. As early as the Somalian intervention, the OLC had cited the defense of foreign nationals as an interest justifying presidentialist war powers. It also said UN agreement was not a precondition for American action in Somalia. In Operation Desert Fox and other uses of force against Iraq, President Clinton had referred to UN resolutions enacted years earlier.

In the case of Libya, however, the president himself said a *current* UN resolution legitimated his war-making. That which makes lawful the use of force presumably serves as a precondition for a war. In Libya, the president did indeed seek authorization to use force. The legitimacy provided by that authorization, however, did not come from a domestic political institution like Congress. The war in Libya was different because it fit neither a constitutionalist nor a purely presidentialist point of view on the war powers. It was something different, a war that grounded presidential discretion in international institutions.

The Obama administration also stated that the UN Security Council Resolution regarding Libya limited the use of force “solely to protect civilians and civilian populated areas under attack or threat of attack and to enforce a no-fly zone and an arms embargo.”<sup>214</sup> Those limits were not observed as the fighting developed; the United States and its allies provided air support for Libyan rebels in a successful effort to change the Libyan regime. The Libyan example suggests that while the UN Security Council may hold power over the start of a war, it cannot control the scope of actual fighting.

## Analysis and Proposals

In practice the United States appears to be developing a post-Cold War regime that distinguishes between wars proper and limited wars. In wars proper, soldiers are expected to die in fighting that may persist for a long time. They are wars that might turn out to be similar to Vietnam or Korea. Although presidents protest and claim a power to initiate wars proper, in the end they seek congressional approval to undertake such wars. We have also discovered why they do so. The public values the lives of American soldiers. They also believe it is vital, when American lives are at risk, that the president get approval from Congress to use force. For this reason, a presidentialist position on the power to make wars proper might be defended but not acted upon. Presidentialism in a war proper would risk political disaster ab initio.

This analysis has examined the development of wars that are expected to be limited in scope and duration. However, the practice of such wars suggests they are defined not by limits on their scope or duration (some went on long beyond initial hopes) but rather by the expectation that few, if any, combat deaths are likely. A limited war is fought from the air to preclude casualties. Politically, a president can ignore public views on congressional approval of fighting because a limited war involves no combat deaths and hence is not salient for the public. The executive makes traditional “presidentialist” claims about how such limited wars may begin. Presidents both argue that limited wars do not require congressional approval and act on that claim.

A limited war might seem to be a funny kind of war. After all, it is a use of force that must not put any American soldiers in harm’s way. Politically, however, the limited war concept seems well adapted to its circumstances. After showing early enthusiasm for the Somalia and Bosnia missions, the public has been at best ambivalent toward limited wars for humanitarian ends. Most often, majorities or pluralities report no sense of obligation to get involved in foreign fighting. Significant ma-

majorities oppose sacrificing American lives for the “common defense” of foreigners.

If one believes limited wars should be fought and yet cannot be authorized by “constitutionalist” processes, then a “presidentialist” view of limited war powers makes domestic political sense. The president might act to begin and prosecute limited wars in the national interest without undue constraint from public opinion (or Congress) either at the start or as the war continues. Such wars would be paternalistic in that the president would give the public policies it does not want but are good for it (or the nation) in the shorter or longer run.

Yet this argument for presidentialism begs important questions, especially for a president like Obama who comes from a political tradition that values international institutions. After all, what is good for the American public (whether they know it or not) might be bad for other nations or the world in general. A president might require external authorization to initiate a war precisely because he was acting in the interests of the United States. Hence, a body that speaks for other nations or the world in general would be the proper institution to authorize the use of force by an American president. The Arab League and the UN Security Council functioned in this way in the Libyan case. Indeed, even if Congress did authorize a limited war, from this point of view, the UN should still have a veto over the use of force; Congress may reflect the public’s desire to impose losses on other nations. For the “weak internationalist,” both the president and Congress might be too parochial to legitimate a limited war, or properly irrelevant.

The weak internationalist argument prompts several objections. The U.S. Constitution empowers Congress to tax and spend for the common defense. Put aside the question of whether Libyan nationals may be afforded the benefits of the common defense. The power to tax has a long historical and normative tie to representation. In part, giving the power to declare war to Congress in Article I reinforces the tie between defense spending and representation. Shifting the power to legitimate

**Significant majorities oppose sacrificing American lives for the “common defense” of foreigners.**

**Libya is a limited war fought for no vital interest at the command of a president who sought legitimacy for the war from international institutions.**

war to a body like the United Nations Security Council vitiates the connection between taxation and representation in the United States. Representatives of foreign nationals do not represent American taxpayers; Americans do not cast ballots in elections to select governments who serve on the UN Security Council. Weak internationalism weakens representative (and constitutional) democracy in the United States.

Some might object that weak internationalism provides for representation of American taxpayers. The president must be re-elected. Voters may remove from office a president who pursues an unpopular limited war. But limited wars seem tailor-made to avoid accountability in an election. Voters usually focus on the health of the economy. Voters focus on wars that involve casualties. As we have seen, a limited war is defined by the expectation that American troops will not suffer any casualties. In other words, a limited war, so far as it is limited, will not be salient for voters. Presidents then have a free hand to initiate and make war within the boundary set by the nature of a limited war.

What will the future practice of limited wars look like? Libya is a limited war fought for no vital interest at the command of a president who sought legitimacy for the war from international institutions while ignoring Congress. In this way, President Obama has quietly moved the practice of limited wars toward presidentialism in service to weak internationalism. This change is incremental; it is too soon to say that weak internationalism provides the regime for the exercise of the war powers in the United States. But Obama has taken an important step in Libya, and the next president may well be more inclined to see the UN as more an authorizer than a national interest. At least a weak internationalist president could appeal to current claims by Obama to justify his declaration of a future limited war; such is the way practices become norms and law. By acting “as if” international approval mattered, President Obama has strengthened the expectation that international institutions should legitimate an American use of force.

This incremental move toward weak internationalism has several problems. It essentially “amends” the U.S. Constitution and transfers the power to declare war to an external body that does not represent American taxpayers. The move also contravenes settled and persistent public views about war-making. There is no question that this innovation should be resisted. The question is how it might be effectively rejected.

History suggests the courts are unlikely to intervene in the war in Libya or future limited wars. They have not done so with regard to the war powers clause in Article I. Claims that the UN legitimates limited U.S. wars are not obviously justiciable. In any case, such limited wars will be treated as a political question to be decided by the other branches. Is there hope that Congress might act?

Congress provides representation by controlling spending on wars. By defunding a war, Congress essentially exits the policy. Should that happen, weak internationalism is rendered irrelevant; the UN Security Council could authorize a war that a U.S. president could not make. What about the alternative? If Congress does not defund a war, does that constitute authorization and hence, representation? In limited wars, Congress has often refused to defund the military for fear of harming American troops (or perhaps, for fear of appearing to be against the welfare of the troops). By initiating hostilities, a president can thus define a war in a way that makes defunding unlikely. In this situation, Congress offers a view on the welfare of American soldiers but not on the war in which they are engaged. In other cases (e.g., Libya), the House has refused both to defund (or partially defund) the war and to authorize it. In this case, Congress chose neither to exit nor to enter the war. It decided to not decide. In cases where the public is ambivalent, such nondecisions may represent public opinion. In cases where the war is either supported or opposed by majorities, such nondecisions would appear to be failures of representation. Congressional ambivalence also contravenes the longstanding majoritarian preference for congressional



authorization of wars, limited or otherwise. By not deciding, Congress is ignoring the public's views about proper procedure if not about the wisdom of a war.

But political representation has other facets. It has given voice to public dissatisfaction about wars proper and limited wars. Congress "has historically been actively engaged in debates over the proper conduct of major military initiatives. It has proposed, publicly debated, and voted on various legislative initiatives to authorize or curtail the use of force." Congress has also held hearings about the conduct of limited and proper wars.<sup>215</sup> Many believe that such legislative actions have little effect on the president. Yet such actions can affect the cost-benefit calculations of the president in pursuing or failing to pursue a limited war. Congress can raise the costs of a policy by shaping and mobilizing public opinion against a war, thereby increasing the cost in political capital a president must pay to sustain a policy. Congressional actions also signal disunity (or unity) to foreign actors, who in turn act on their expectations, thereby raising the costs of a limited war. Congressional actions also affect presidential expectations about how the conduct of a war will be received in the legislature; Congress can thus influence presidential policies without directly overturning them.<sup>216</sup> Systematic evidence indicates that since 1945 Congress has been able to influence presidential policies through these means.<sup>217</sup> Although short of constitutional propriety, congressional voice can matter in war-making.

How might congressional voice matter in regard to the current and future practice of limited wars? Congress can constrain presidents by affecting public opinion and thereby raising the costs for presidential policies.

First, members should frame future Libyas properly. The administration will wish to frame such wars as a defense of civilians and an effort to rid the world of a longtime enemy of the United States. They will wish to focus on substance rather than procedure. This framing is likely to renew the debate between constitutionalists and presidentialists. This way of

looking at the war tends to divide Americans in general and critics of the administration in particular. Some of both groups are inclined to a presidentialist position and thus inclined to support the administration formally though opposing them on the merits.

Yet, another framing of such wars is possible. As we have seen, in Libya, the administration has adopted both presidentialist and weak internationalist positions regarding the legitimation of the use of force. Critics could raise questions not only of constitutional propriety but also of representation and taxation, issues that go to the heart of American identity. This framing of the issue would divide the war between internationalists and constitutionalists. That division would inform public debate by posing clearly an important question: Should American wars be authorized by international organizations rather than Congress? A democratic and conscious choice would preempt presidential practices that undermine representation in the United States.

Congress may also affect public opinion in other ways. Members should publicize the numerous survey findings that indicate the public strongly prefers the constitutional perspective on the war powers (i.e., congressional authorization of war). This recommendation assumes, of course, that Congress wishes to uphold its constitutional obligations in regard to war.

Congress should also represent the public's doubts about the value of limited wars. As we have seen, the public is willing to pay little for success in limited wars; yet the expected or actual costs are often obscure. In regions where the United States might wage limited war, Congress should also examine the assumption that such conflicts could be fought without U.S. casualties. Congressional hearings, for example, could ask military leaders and experts about expected casualties. Members could also highlight the costs of such wars even when no deaths are expected. Even a "presidentialist" president who is considering declaring a limited war might be forced to take account of a public with better information about the expected costs of his actions.

**Congress can raise the costs of a policy by shaping and mobilizing public opinion against a war.**

**Congress should debate whether to continue the national obligation undertaken by endorsing at the UN a “responsibility to protect” foreign nationals from their governments.**

Congress can foster a better informed public.

Congress should also concern itself with the goals, and not just the means, of limited wars. At least Congress should debate whether to continue the national obligation undertaken by endorsing at the UN a “responsibility to protect” foreign nationals from their governments. Such a debate could increase public knowledge about such obligations on the way toward an informed public judgment about their value. A joint resolution that rescinds American affirmation of the 2005 document or perhaps, just section 139 of it, would deprive future presidents of a reason to intervene to help foreign nationals, thereby pushing the nation off the path that runs from presidentialism to strong internationalism regarding war. Such a resolution might not bind legally, but if supported by the public, it would increase the costs of limited wars authorized by the United Nations alone.

Finally, Congress should enact a resolution denying that limited wars may be legitimated by international institutions. If it does not do so, a future Office of Legal Counsel could well conclude that Congress did nothing in 2011 to push back on President Obama’s claim that a limited war could be legitimated by the United Nations Security Council. In the practice of limited wars, congressional silence is taken to be consent, however improbably.

## Conclusion

The practice of limited war in the years after the Cold War does not serve the nation well. Contrary to the Constitution, such wars are declared without congressional approval. The president begins such wars and yet is constrained politically by a strict need to avoid casualties; implicitly these wars are worth fighting if they are expected to be (and turn out to be) costless with regard to American deaths in combat. In war as in life, such undertakings may turn out to be worth their marginal cost, that is, nothing. If combat deaths are avoided, however, presidents may avoid responsibility for contravening public opinion about a limited war. Respecting the congressional power to

authorize limited wars would improve the republican or representative character of American government.

Congress has not distinguished itself regarding these limits to wars. Pushed to the side, Congress is often divided and incapable or unwilling to take up its constitutional responsibilities. Its investigations and criticisms can affect the conduct of a limited war but not its inception. The public generally becomes less supportive of limited wars over time, and majorities often doubt that such conflicts are worth their cost. The public’s desire for congressional authorization of such wars goes unfulfilled. Generally, these limited wars seem half-made, conflicts presidents feel are essential to fight and yet beyond constitutional propriety. It is hard to imagine that seeking approval for these wars from international institutions will solve these republican shortcomings at home.

A congressional authorization of a limited war would have advantages beyond constitutional propriety. If such wars are worth fighting, they should attract sufficient support from Congress. After all, Congress has been at times more hawkish than the executive in the period surveyed here, and put to the choice and forced to meet its constitutional obligations, Congress might well have approved all of the limited wars examined here. If such wars are worth fighting, casualties might be inevitable, and congressional authorization would give such losses legitimacy. Of course, as we have seen in the survey data, the public might believe that limited wars are not worth fighting, and Congress might not authorize a future conflict. Perhaps that denial will pose risks for the nation. But those putative risks should be balanced against the known shortcomings of the current practice of limited wars, failures that vitiate both the Constitution and the republican character of our government.

## Notes

1. U.S. Const. art. I, § 8, cl. 11; Michael Ramsey, “Textualism and War Powers,” *University of Chicago Law Review* 69 (2002): 1543. At the Constitutional Convention, James Madison and Elbridge Gerry stated that the executive should have the power to repel sudden attacks. See “Records of the Federal Convention” at *The Founders’ Constitution*, vol. 3, art. I,

- § 8, Cl. 11, document 4, University of Chicago Press, [http://press-pubs.uchicago.edu/founders/documents/a1\\_8\\_11s4.html](http://press-pubs.uchicago.edu/founders/documents/a1_8_11s4.html). See also Ramsey, p. 1546.
2. Louis Fisher, *Presidential War Power* (Lawrence, KS: University of Kansas Press, 1995), pp. 84–87 and 115–18.
  3. “The Persian Gulf War Resolution,” January 12, 1991, <http://web.utk.edu/~scheb/library/gulfwar.htm>.
  4. “Joint Resolution to Authorize the Use of United States Armed Forces against those Responsible for the Recent Attacks Launched against the United States,” September 18, 2001, <http://www.gpo.gov/fdsys/pkg/PLAW-107publ40/html/PLAW-107publ40.htm>.
  5. “Joint Resolution to Authorize the Use of United States Armed Forces against Iraq,” October 16, 2002, <http://www.gpo.gov/fdsys/pkg/PLAW-107publ243/html/PLAW-107publ243.htm>.
  6. James Madison, “Federalist no. 51” in *The Federalist*, ed. Jacob E. Cooke (Middletown, CT: Wesleyan University Press, 1961), p. 349.
  7. This was the British understanding of their Constitution, an understanding rejected by the Americans between 1763 and 1789. See Gordon S. Wood, “The American Revolution,” in *The Cambridge History of Eighteenth-Century Political Thought*, ed. Mark Goldie and Robert Wokler (Cambridge, UK: University Press, 2006), pp. 210–11.
  8. For a statement of this position, see Thomas M. Franck and Faiza Patel, “UN Police Action in Lieu of War: The Old Order Changeth,” *The American Journal of International Law* 85 (January 1991): p. 63ff.
  9. “Bush Sends U.S. Troops to Somalia,” *CQ Almanac 1992*, 48th ed. (Washington: *Congressional Quarterly*, 1993), pp. 535–38, <http://library.cqpress.com/cqalmanac/cqal92-1108588>; see also Douglas L. Kriner, *After the Rubicon: Congress, Presidents, and the Politics of Waging War* (Chicago: University of Chicago Press, 2010), p. 29.
  10. “Bush Sends U.S. Troops to Somalia,” pp. 535–38.
  11. A Times Mirror Co. survey found on September 22 that two-thirds of Americans reported following the civil war and famine in Somalia “not too closely” or “not at all closely.”
  12. “Bush Sends U.S. Troops to Somalia,” pp. 535–38.
  13. *Ibid.*, pp. 535–38.
  14. “Presidential Address: Bush: ‘America Will Answer the Call’ on Somalia,” In *CQ Almanac 1992*, 48th ed. (Washington: *Congressional Quarterly*, 1993), p. 42-E, <http://library.cqpress.com/cqalmanac/cqal92-845-25185-1106724>.
  15. “Hill Demands Early ‘94 Somalia Withdrawal,” pp. 486–93.
  16. “Bush Sends U.S. Troops to Somalia,” pp. 535–38.
  17. *Ibid.* pp. 535–38; see also Kriner, p. 29.
  18. See Harris Poll, December 10, 1992 (75 percent in favor); NBC News survey, December 15, 1992 (74 percent in favor); Gallup Poll, December 10, 1992 (74 percent in favor); KRC Communication poll, January 17, 1993 (71 percent in favor).
  19. “Should the US troops in Somalia be limited to delivering relief supplies or should they also attempt to bring a permanent end to fighting?” Fifty-nine percent answer “limited role.” *USA Today*, December 9, 1992.
  20. “Question: Do you think the role of the US military in Somalia should be limited to assuring that food and humanitarian assistance will reach Somalia’s citizens or should the American military disarm warring factions in Somalia as well?” Results: assure assistance, 51 percent; disarm warring factions, 38 percent. KRC Communications Research, January 17, 1993.
  21. “Aside from the immediate problems of famine and food distribution, do you think that the US should attempt to solve Somalia’s long-term problems, or don’t you think so?” Sixty-seven percent respond, “do not think so.” Time/CNN poll, January 20, 1993.
  22. Department of Justice, Office of Legal Counsel, “Authority to Use United States Military Forces in Somalia,” December 4, 1992, <http://www.justice.gov/olc/presiden.8.htm>.
  23. *Ibid.*
  24. “Hill Demands Early ‘94 Somalia Withdrawal,” pp. 486–93.
  25. Ryan Hendrickson, *The Clinton Wars: The Constitution, Congress and War Powers* (Nashville: Vanderbilt University Press, 2002), pp. 25–26. Hendrickson remarks that the Senate resolution represented “a step of action and deference.”
  26. *Ibid.*, p. 27.
  27. *Ibid.*, pp. 33–34.

28. "Hill Demands Early '94 Somalia Withdrawal," pp. 486-93.
29. "Clinton's News Conference; Excerpts from Clinton's News Conference at the White House," *New York Times*, June 18, 1993, A18.
30. "Hill Demands Early '94 Somalia Withdrawal," pp. 486-93.
31. Ibid.
32. Ibid. The events were captured in the book and motion picture *Black Hawk Down*, <http://library.cqpress.com/cqalmanac/cqal93-1104663>.
33. Kriner, p. 31.
34. Quoted in Kriner, p. 31.
35. "Hill Demands Early '94 Somalia Withdrawal," in *CQ Almanac 1993*, 49th ed. (Washington: *Congressional Quarterly*, 1994), pp. 486-93, <http://library.cqpress.com/cqalmanac/cqal93-1104663>.
36. CBS News/New York Times Poll, June 28, 1993.
37. NBC News survey, October 6, 1993 (34 percent think the United States should be involved; 74 percent thought so in December 1992).
38. *USA Today*, October 6, 1993 (52 percent think it was a mistake to send troops to Somalia).
39. *USA Today*, October 6, 1993 (57 percent disapprove of sending more troops).
40. NBC News, October 6, 1993, and CBS News/New York Times Poll, October 6, 1993. See also Time/CNN, October 8, 1993 (89 percent support quick withdrawal), and CBS News/New York Times Poll, October 8, 1993 (60 percent support withdrawing quickly).
41. CBS News/New York Times Poll, December 7, 1993 (61 percent support quick withdrawal).
42. "Hill Demands Early '94 Somalia Withdrawal," pp. 486-93.
43. "Hill Demands Early '94 Somalia Withdrawal," pp. 486-93.
44. Kriner, p. 31.
45. New York Times/CBS News poll, December 11, 1995.
46. Time/CNN poll, October 8, 1993.
47. Gallup Poll, October 7, 1993.
48. CBS News/New York Times Poll, October 6, 1993 (an even 44 percent agree was and 44 percent agree was not worth the cost).
49. "Attempts Fail to Reinstate Haiti's Aristide," *CQ Almanac 1993*, 49th ed. (Washington: *Congressional Quarterly*, 1994), pp. 499-501, <http://library.cqpress.com/cqalmanac/cqal93-1104698>; see also Hendrickson, pp. 43-45.
50. Ibid., pp. 499-501.
51. Sen. Don Nickles (R-OK) introduced a bill to prevent U.S. participation in UN operations. Sen. Jesse Helms (R-NC) sought an amendment requiring prior congressional approval of funding a Haitian operation; 19 senators saw merit in the amendment, 81 did not. See Hendrickson, p. 47.
52. "Attempts Fail to Reinstate Haiti's Aristide," pp. 499-501.
53. "Clinton's Haiti Gamble Pays Off," *CQ Almanac 1994*, 50th ed. (Washington: *Congressional Quarterly*, 1995), pp. 449-51, <http://library.cqpress.com/cqalmanac/cqal94-1102463>.
54. Ibid., pp. 449-51; see also Hendrickson, p. 52.
55. Several Democratic members of Congress did oppose a Haitian invasion, see Hendrickson, p. 54.
56. "Clinton's Haiti Gamble Pays Off," pp. 449-51.
57. Hendrickson, pp. 55-56.
58. "Presidential Address: Clinton Offers Justification for Invasion of Haiti," *CQ Almanac 1994*, 50th ed. (Washington: *Congressional Quarterly*, 1995), pp. 27-D-28-D <http://library.cqpress.com/cqalmanac/cqal94-843-25141-1102058>.
59. Hendrickson, pp. 56-58.
60. Department of Justice, Office of Legal Counsel, "Deployment of United States Armed Forces into Haiti," September 24, 1994, [www.justice.gov/haiti.htm](http://www.justice.gov/haiti.htm); see also Hendrickson, p. 61. Emphasis added.
61. See Gallup Poll, September 7, 1994. Public opposition dated from at least the previous October, see Gallup Poll, Question 17, October 10, 1993.
62. Time/CNN Poll, September 21, 1994 (68 percent don't feel national interests at stake). See also Washington Post/ABC News Poll, August 7, 1994 (59 percent do not think America's vital interests are at stake in Haiti).
63. New York Times/CBS News Poll, September 11, 1994 (61 percent think United States has no responsibility to restore democracy in Haiti).



64. Gallup Poll, Question 19, September 25, 1994.
65. Washington Post/ABC News Poll, August 7, 1994 (80 percent think Clinton should seek approval for military action in Haiti); ABC News, September 11, 1994 (78 percent think Clinton should seek permission from Congress for military action in Haiti); Time/CNN Poll, September 21, 1994 (67 percent think Clinton should take military action only with authorization from Congress); Time/CNN Poll, October 7, 1994 (67 percent think Clinton should seek congressional approval).
66. Gallup Poll, Question 27, October 9, 1994 (58 percent disapprove); Gallup Poll, Question 35, March 29, 1995 (58 percent disapprove).
67. Eventually Congress would prohibit spending on the Haitian deployment. See "Dispute over Weapons Labs Nearly Shoots Down Defense Authorization," *CQ Almanac 1999*, 55th ed., (Washington: *Congressional Quarterly*, 2000), pp. 9-3-9-25, <http://library.cqpress.com/cqalmanac/cqal99-0000201151>.
68. "Bosnian War Remains Intractable," *CQ Almanac 1994*, 50th ed. (Washington: *Congressional Quarterly*, 1995), pp. 446-49, <http://library.cqpress.com/cqalmanac/cqal94-1102453>.
69. "Hill Supports Use of Force to Aid Bosnia," *CQ Almanac 1992*, 48th ed. (Washington: *Congressional Quarterly*, 1993), pp. 532-34, <http://library.cqpress.com/cqalmanac/cqal92-1108581>.
70. Ibid.
71. Ibid.
72. Gallup Poll, Question 14, August 7, 1992.
73. Gallup Poll, Question 13, December 6, 1992.
74. Gallup Poll, Question 9, January 15, 1993.
75. Gallup Poll, Question 9, January 29, 1993.
76. Gallup Poll, Question 10, January 29, 1993.
77. "Administration Struggles with Bosnia Policy," *CQ Almanac 1993*, 49th ed. (Washington: *Congressional Quarterly*, 1994), pp. 493-99, <http://library.cqpress.com/cqalmanac/cqal93-1104683>.
78. Ibid., pp. 493-99.
79. Floyd D. Spence (R-SC), the senior Republican on the House Armed Services Committee, fired one of the strongest salvos against involvement at a committee hearing March 4. "Why should we get involved?" Spence asked. "Who appointed us designated hitter? . . . Are we putting ourselves in a position where we will have little alternative but escalation if the conflict widens?" In Ibid.
80. Ibid.
81. Ibid.
82. Hendrickson, p. 92.
83. "Administration Struggles with Bosnia Policy," pp. 493-99.
84. Gallup Poll, Question 6, May 6, 1993.
85. Gallup Poll, Question 6, October 22, 1995.
86. Gallup Poll, Question 14, April 24, 1993.
87. Gallup Poll, Question 8, May 6, 1993.
88. Gallup Poll, Question 16, October 10, 1993.
89. Gallup Poll, Question 11, February 7, 1994.
90. "Bosnian War Remains Intractable."
91. Hendrickson, p. 76.
92. Ibid., pp. 78-79.
93. Gallup Poll, Question 5, February 7, 1994; see also Gallup Poll, Question 7, February 7, 1994.
94. Gallup Poll, Question 11, February 7, 1994.
95. Gallup Poll, Question 7, February 7, 1994.
96. Gallup Poll, Question 33, April 18, 1994.
97. Gallup Poll, Question 46, June 6, 1995.
98. Hendrickson, pp. 81-82.
99. The bill sought to repeal the 1973 War Powers Resolution, to put limits on the president's power to place U.S. troops under foreign command, and to reduce funding for peacekeeping missions. Dole sought to restrain peacekeeping costs by forcing the administration to identify sources of funding for a mission prior to its beginning. See Carol J. Doherty, "Foreign Policy: Dole's Blueprint Takes Aim at Relationship with U.N.," *CQ Weekly* (January 7, 1995): 44-45, <http://library.cqpress.com/cqweekly/WR406894>. House National Security committee chairman Floyd D. Spence (R-SC), and International Relations committee chairman Benjamin A. Gilman (R-NY), proposed similar restric-

- tions on U.S. support for peacekeeping.
100. Hendrickson, p. 85.
101. "Bosnian War Sparks Conflict at Home," *CQ Almanac 1995*, 51st ed. (Washington: *Congressional Quarterly*, 1996), pp. 10-10-10-15, <http://library.cqpress.com/cqalmanac/cqal95-1099599>.
102. Ibid.
103. Ibid.
104. United States Department of Justice, Office of Legal Counsel, "Proposed Deployment of United States Armed Forces into Bosnia," November 30, 1995, <http://www.justice.gov/olc/bosnia2.htm>.
105. Gallup Poll, Question 44Ba, June 6, 1995; Gallup Poll, Question 38, September 24, 1995.
106. Gallup Poll, Question 5, October 22, 1995.
107. Gallup Poll, Question 25, December 18, 1995. (Twenty-seven percent answer "U.S. should not send troops to Bosnia, but because the President is Commander-in-Chief you support his decision" and 33 percent answer "the United States should send troops to Bosnia and you support the President's decision.")
108. Gallup Poll, Questions 8A, 8B, 8C, and 8D, October 22, 1995.
109. "GOP Takes Small Steps to Limit President's Bosnia Policy," *CQ Almanac 1996*, 52nd ed. (Washington: *Congressional Quarterly*, 1997), pp. 9-13-9-14, <http://library.cqpress.com/cqalmanac/cqal96-092714>.
110. "Congress Backs Off on B-2, Bosnia," *CQ Almanac 1997*, 53rd ed. (Washington: *Congressional Quarterly*, 1998), pp. 9-17-9-26, <http://library.cqpress.com/cqalmanac/cqal97-0000181094>.
111. "Defense Bill Clears Minus 'Readiness' Funds; Clinton Looks to Supplemental," *CQ Almanac 1998*, 54th ed. (Washington: *Congressional Quarterly*, 1999), pp. 2-20-2-32, <http://library.cqpress.com/cqalmanac/cqal98-0000191021>.
112. R. Cody Phillips, *Bosnia-Herzegovina: The U.S. Army's Role in Peace Enforcement Operations 1995-2004* (Washington: Government Printing Office, 2005), p. 38.
113. Hendrickson, pp. 93-94.
114. "Kosovo Policy, 1997-1998 Legislative Chronology" (2002), *Congress and the Nation, 1997-2001*, vol. 10 (Washington: CQ Press, 2002), <http://library.cqpress.com/cqpac/catn97-97-6345-324621>.
115. Ibid.
116. "By mid-1998, Clinton was actually facing pressure from Congress to become more active in the defence of Kosovo, a mainly ethnic-Albanian province of Serbia. In June 1998, Trent Lott (Mississippi), Majority Leader in the Senate, urged Clinton to do 'something pretty quickly, stronger than we've done so far' to protect the population of Kosovo from attack by the forces of Yugoslav President Slobodan Milosevic." John Dumbrell, *Clinton's Foreign Policy: Between the Bushes, 1992-2000* (London, New York: Routledge, 2009), p. 92.
117. Hendrickson, pp. 119-20.
118. "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nation." *Charter of the United Nations*, <http://www.un.org/en/documents/charter/chapter7.shtml>.
119. See <http://www.un.org/en/documents/charter/chapter1.shtml>. See also Karl R. DeRouen, *Historical Encyclopedia of U.S. Presidential Use of Force, 1789-2000* (Westport, CN: Praeger, 2001), p. 290.
120. Hendrickson, p. 122.
121. "Lawmakers Conflicted Over U.S. Involvement in Kosovo Peacekeeping Effort," *CQ Almanac 1999*, 55th ed. (Washington: *Congressional Quarterly*, 2000), pp. 14-19-14-26, <http://library.cqpress.com/cqalmanac/cqal99-0000201118>.
122. Ibid.
123. Ibid.
124. Hendrickson, pp. 128-29.
125. Ibid., p. 129.
126. David N. Gibbs, *First Do No Harm: Humanitarian Intervention and the Destruction of Yugoslavia* (Nashville: Vanderbilt University Press, 2009), p. 202.
127. Hendrickson, p. 127. (Clinton sent a letter to Congress stating "without regard to our differing views of the Constitution about the use of force, I ask for your legislative support as we address the crisis in Kosovo.")
128. "Lawmakers Conflicted Over U.S. Involvement in Kosovo Peacekeeping Effort," pp. 14-19-14-26.
129. Ibid.
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