

UNIVERZA V LJUBLJANI
FAKULTETA ZA DRUŽBENE VEDE

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Ukrepi kongresa v primeru predsedniške enostranske uporabe vojaških sil

Congressional Checks On the Unilateral Presidential Use of War Powers

Magistrsko delo

Ljubljana, 2016

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Po 2. svetovni vojni so Združene države Amerike postale vojaška in gospodarska velesila, zaradi česar so si ameriški predsedniki dovolili po svoje interpretirati ustavne pravice. Navkljub dejstvu, da ameriška ustava pravice in dolžnosti glede vojne polaga v roke kongresa, si to pravico lastijo predsedniki. Predsedniki sami, brez privolitve kongresa, odločajo o pošiljanju ameriških vojaških sil v oborožene spopade ter o ustrahovanju drugih držav z vojaško silo. Na prvi pogled je tako vloga kongresa v odločitvah glede vojaških sil skorajda neobstoječa, vendar pa podrobna analiza različnih ameriških vojaških posredovanj kaže, da ni tako. Ameriški kongres dejansko poskuša omejiti predsednika pri odločitvah o vojaškem posredovanju, vendar ne uspe zaradi omejitev, ki so posledica pomanjkanja večine v obeh domovih ali strankarske pripadnosti.

Ključne besede: predsednik, kongres, poveljnik vojaških sil, vojna, ustrahovanje.

Congressional Checks On the Unilateral Presidential Use of War Powers

After WWII the United States became the world's military and economic superpower. In the light of the new world order the American presidents chose to interpret the constitutional powers in their own way. Despite the fact that the American Constitution clearly vests war powers in the hands of Congress, American presidents have decided to take the power to decide on the matter of war into their own hands. They have chosen to send American troops into numerous armed conflicts or have used threats of military intervention as a means of coercing other countries to abide by their rules without the consent of the Congress. The role of Congress in the matter of war at first glance seems to be non-existent, however, analysis of various U.S. military intervention shows that it is not so. The American Congress does in fact try to curb the President in his decision to go to war, but often fails due to constrictions placed by the lack of majority in both houses and partisanship politics.

Key words: president, Congress, Commander-in-Chief, war, coercion.

“If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal control on government would be necessary.”

(James Madison)

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TABLE OF CONTENTS

1	INTRODUCTION	7
2	METHODOLOGY AND HYPOTHETICAL FRAME	9
	2.1 The main research goals	9
	2.2 Hypotheses	11
	2.3 Methodology	14
3	CONSTITUTIONAL FRAMEWORK	16
	3.1 Separation of powers	16
	3.2 Powers of Congress of the United States	18
	3.2.1 Formal congressional checks	20
	3.2.2 Partisanship influence	26
	3.3 Powers of the President of the United States	30
	3.4 Interpretation of powers	31
4	DEFINITION OF CONFLICT AND COERCIVE DIPLOMACY	35
	4.1 Conflict or war	35
	4.2 Coercive diplomacy	38
	4.2.1 Coercive strategy	40
	4.2.2 Pressure points	40
	4.2.3 Coercive mechanisms	41
	4.2.3.1 Power-base erosion	41
	4.2.3.2 Unrest and popular disaffection	42
	4.2.3.3 Decapitation:	
	Threatening the leadership's personal security	42
	4.2.3.4 Weakening: Debilitating the country as a whole	43
	4.2.3.5 Denial: Preventing military and political victory	43
5	ANALYSIS OF CASE	46
	5.1 Vietnam war	47
	5.2 Cuban missile crisis	51
	5.3 Operation Power Pack:	

Military intervention in the Dominican Republic	53
5.4 The intervention in Nicaragua: The Contras	54
5.5 The Gulf war 1990-1991	57
5.6 U.S. Intervention in Somalia- Operation U.S. Relief Efforts	61
5.7 Operation Deliberate Force in Kosovo and Bosnia	64
5.8 War in Iraq	69
6 TESTING THE HYPOTHESES	74
6.1 Hypothesis 1	74
6.2 Hypothesis 2	76
7 CONCLUSION	79
8 POVZETEK	80
9 LITERATURE	83

1 INTRODUCTION

Ever since the dawn of civilization, people have fought for supremacy over land and although we have reached the time of democracy, where lines between countries have been clearly set, there are still times where countries are pushed into war. Sometimes the reasons are clearly economic, sometimes the reason is hidden behind the pretense called the fight for democracy, but oftentimes it is personal.

Founders of the American democracy have tried hard to make sure grave decisions such as those of proclaiming war would not fall into the hands of a single man, and for a reason. »...If men were angels, no controuls on government would be necessary ...« as David Hume puts it, however, we are all aware of the fact that there are no angels, and that control over those who have the control over decisions of war, has to be made.

The Founding Fathers of the U.S. Constitution have contemplated on the above issue for a long time, and quite a few essays have been written on the topic of separated government, of checks and balances. The reason for that being in the simple human nature, and the inclination of every person to abuse the power vested in him. In order to step away from the tyranny of kings and dictatorships, one must construct a government in a way which would disable any person from doing harm to the people. Therefore, the Founding Fathers have constructed a separated government of the United States of America, with three distinguished branches, each independent, but equally dependent on the other two by constant check and balances. They have broken away from the existing European models which placed the war powers in the hands of the monarch, and have placed this power into the legislative hands as »the cardinal tenet of republican ideology that the conjoined wisdom of many is superior to that of one «¹(Fisher 1995, 1). They have stated this power in the 9th Article of the American Constitution as follows: »The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war. « (Fisher 1995, 2) However, as stated in the U.S. Constitution the American President is the Commander in Chief of the U.S. armed forces, which gives him some, although, not direct power. Unfortunately, in the U.S. history only President Washington seemed to have clearly understood the Constitution in the way it was written, and gave Congress the ultimate decision over the proclamation of war. Some Presidents have interpreted their function of communicating with other nations as giving him »an upper hand in foreign affairs«

¹as cited from David Gray Adler: Foreign Policy and the Separation of Powers; The Influence of the Judiciary by Fisher, Louis; Presidential War Power (University Press of Kansas 1995)

(Fisher 1995, 21), and what is more, from this they have drawn »additional powers that extend to presidential war-making« (Ibid). Therefore, they have started to interpret the powers vested in them differently, and to their own advantage. There was many a proclamation of war, which was not authorized by the Congress, and only a few instances where the President did actually consult the Congress on the matter, even though by post proclamation or a threat. As President Jefferson once put it »...except where the Constitution expressly provide otherwise, the conduct of foreign affairs is exclusively executive« (Fisher 1995, 21), by which he clearly saw the President as the only authority which can make decisions about war.

Unfortunately, Jefferson's comment is oftentimes a misconception, which gives the President supremacy over foreign policy and provides him with the authority to act unilaterally, but could not be farther away from the intention of the Founding Fathers.

These instances of abuse or misinterpretation of Constitutional powers have led so far as to think that the Constitutional powers should be written anew, as there is too much space for interpretation and personal preference. Everything led so far that the U.S. was forced to adopt the War Power Act, which would protect the nation from such usurpations and abuses of power. Unfortunately, little did this act help, as president still tend to act unilaterally when it comes to war, without the prior approval of Congress, as the Founding Fathers have wished and stated in the U.S. Constitution.

In the light of all the previously mentioned difficulties the abuse of war powers presents, a few questions arise, which need to be answered accordingly. The first thing that springs to mind when examining the breaches of constitutional authority on war powers, is whether the unilateral decisions of presidents are in fact the result of a lack of clarity on the constitutional provisions on presidential powers. It would seem difficult to believe that the Founding Fathers, striving to prevent usurpations of powers, would leave something as important as authority on war powers as unclear as to provide possibilities of abuse. On the other hand, was it not their intention to prevent any such instances by establishing a tripartite system of government, where each branch could check the other two? And this is exactly what brings the second important questions in dire need to be answered, to the forefront. In case breaches of constitution do happen, is it not the constitutional authority of Congress to react to it? So why is it then, that the Congress seem inactive in cases of unilateral presidential decisions on war?

All of the above questions are to be examined in the following chapters, and reasons leading to reasons for such actions as well, as it is very important to understand, what drives the presidents into such decisions, and what causes the Congress to try to prevent them.

2 METHODOLOGY AND HYPOTHETICAL FRAME

2.1 THE MAIN RESEARCH GOAL

The unilateral presidential proclamation of war is often under more scrutiny than threats of use of force, which should by no means not be taken lightly, as »the ability to warn of, or threaten the use of military force is an ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy« (Powel and Waxman 2014). So why is the President's threat of use of force not taken more seriously as it can lead to war just as well? Even scholars have not taken threats as something worth much attention, and only a few legal scholars have addressed it. Louis Henkin, for example, offers only a brief mention of the issue: »Unfortunately, the line between war and lesser uses of force is often elusive, sometimes illusory, and the use of force for foreign policy purposes can almost imperceptibly become a national commitment to war. Even when he does not use military force, the President can incite other nations or otherwise plunge or stumble this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war. As a matter of constitutional doctrine, however, one can declare with confidence that a president begins to exceed his authority if he willfully or recklessly moves the nation towards war ...« (Ibid).

As it is clear from Henkin's words the threat of force is something that should be checked in the same way as the proclamation of war. Why is then that the Founding Fathers nor the legal scholars have put much emphasis on the issue in question? Is there any difference between the two at all, and what are the consequences of threats for the nation, should the president use it as a way of forming foreign policy?

All of the above questions are crucial for understanding the premise »a more complete account of constitutional war powers should incorporate the significant role of threatened use of force in American foreign policy« (Ibid) and from which the research question “Why does Congress allow the President broad discretionary power in the use of war power and coercive diplomacy” stems.

In order to understand the importance of the above statement and to provide adequate research, it is vital to first define the Constitutional framework of division on power, and to explain the reasons for it, and also look into partisan politics, which affect the outcome of many unilateral presidential decisions. Furthermore, the terms coercive diplomacy, war and threat of force need to be determined and identified.

In order to see how theoretical approaches of war and coercion are dealt with in practice, and why presidents have chosen to abuse their authority as Commander in Chief, and what kind of effect their discretion has had on their domestic political arena, we have to look into particular cases of such actions.

Empirically, analysis of 8 instances of the abuse of the authority on war powers will examine the reasons leading to the use of threat or involvement in conflict, the impact the threat or involvement has had on other adversaries and the end consequences of it. Due to the fact that partisanship always plays a vital role in Congressional checks of presidential decision, the distribution of seats in Congress and how this distribution affects Congressional reactions is to be examined. It is also vital to look at the way the Presidents used the threats, if they consulted the Congress on the matter, and whether or not they sought its authorization, and the reasons for not doing so.

Is the use of coercion in foreign diplomacy to be taken lightly, bearing in mind many instances in which the threats were used as a diplomatic strategy that have served its purpose although they haven't been carried out in the end?

Where do we draw the line as to when the President should seek Congressional authorization? Should this only be when he proclaims war on another country, when he sends troops into combat? Or should it also be in the case of use of threats, as this is very important "not only with respect to resolving the crisis at hand but with respect to other potential adversaries watching U.S. moves"? The history namely has quite a few instances that give us good proof as to why use of threats should be considered with the same scrutiny as proclamation of war; Cuban Missile Crisis and The 1991 War in Iraq being two very good examples.

2.2 HYPOTHESES

There have been much research done on the various instances where the presidents of the U.S., have sent the country into war without the Congressional approval, despite the fact that their role as the Commander in Chief does not give the authority to proclaim war on another country without the approval of the legislative branch. Furthermore, some of the presidents have interpreted their previously mentioned role as the given right. Not even the War Powers Resolution, which was established as a means to prevent the executive branch to do so, has stopped them from continuously sending the U.S. armed forces into combat. Their sole authority which is stated in the U.S. constitution and gives them the authority in connection to foreign policy is as follows: “He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties...” (United States Constitution 2016). However, the presidents have openly reinterpreted their authority in order to act unilaterally and to serve their personal political objectives.

Although very common, open reinterpretation of the role of the Commander in Chief of the U.S. armed forces and open proclamations of war on other states is not the only instance of presidential unilateral actions, when it comes to foreign diplomacy. Another instance, however, not any less dangerous, is coercive diplomacy or the use of the threat of war as a means of influencing foreign governments when it comes to important decisions. Coercive diplomacy, although often neglected when it comes to political studies, is according to Stephen Kaplan used quite often and can lead into full-scale war. It is “and ordinary and essential element in the toolbox of that branch of government empowered to formulate and implement foreign policy.” (Powel and Waxman 2014) Although compared to proclamations of war there has never been a lot of attention set on this kind of foreign policy, the line between the two is quite elusive or illusory as Louis Henkin observes, and continues by saying that even when the president “does

not use military force, [he] can incite other nations or otherwise plunge this country into war, or force the hand of Congress to declare or to acquiesce and cooperate in war.” (Kaplan 1977)

Throughout the history of the U.S. there has only been one political study that had dealt entirely with coercive diplomacy, whereas there is a myriad of those that deal with wars that have been unilaterally proclaimed by the U.S. presidents. In 1976 the Brookings Institution completed a study of “the use of discrete military moves to influence particular foreign situations” (Ibid). The study analyzed 226 instances between the years 1946 and 1977 in which the U.S. armed forces, or their intended moves, were used as a means to influence the decisions of foreign governments. The study has shown that coercive diplomacy is a type of diplomacy that should by any means not be taken lightly as “it fails more often than it succeeds” (Ibid). What is more, the cases ranging from U.S. interventions in Somalia and Kosovo to the negotiations with North Korea during Clinton’s administration, according to Robert Art, all indicate that “coercive diplomacy by the U.S. only succeeded in meeting its policy objective 20 percent of the time” (Ibid). Therefore, it is safe to say that coercive diplomacy, where the cost can in many instances be greater than its benefits, should be under the same scrutiny as the country’s engagement in war, as in the end as Art claims “the policy makers should not resort to coercive diplomacy, unless [they] are prepared to go to war if it fails.” (Ibid)

H1: Presidential discretionary power in the use of war powers and coercive diplomacy is the result of the lack of Constitutional clarity on the issue.

The Founding Fathers have put much thought into establishing the government safe from usurpations, and have therefore created a tripartite system of government, where every branch would be able to stop any unilateral use of power by means of checks and governments. It has already been stated above that the presidents have on a numerous occasions managed to find ways to circumvent the system and act unilaterally, especially when it comes to the use of U.S.

armed forces. The first hypothesis deals with unilateral proclamations of wars, however, as the second hypothesis states, coercive diplomacy is just as important and serious threat, and is also often used as a means of the presidents to achieve their personal agendas in foreign policy. The role of the Congress and legislative, as well as judiciary branch for that matter is to make sure that such usurpations would not take place, however, there have been many occasions where Congress has failed to stop the executive from acting unilaterally. Congress is often forced, as it is stated above, to cooperate in such decisions, however, in most cases when it comes to the proclamation of war.

Unfortunately, partisan politics “has a great influence and plays a vital role in congressional inactivity when it comes to the lack of legislative constraints on presidential powers” (Howell and Pevehouse 2007a). Partisanship can explain many instances in which the Congress decided not to react to the presidential unilateral decisions, usually when they majority of the seats in Congress belongs to the party supporting the president, however, when that is not the case, they can “exert a great deal of influence over the conduct of war. They can enact laws that dictate how long military campaigns will last, control the purse strings ...” (Ibid). Research on the instances of presidential unilateral decisions from the past century have shown that partisan divisions in Congress can define the politics regarding war in ways that can sometimes be very surprising. It is not only by enacting laws and controlling the budget, but also by influencing media and public opinion. However, when they seem to “sit back and do nothing”, this may be a consequence of contemplating the possible “charge of undermining the troops” (Ibid), and therefore seem to turn a blind eye or quietly support a potentially ludicrous operation.

H2: The Congress allows broad presidential discretionary power because of the lack of political will or partisan division.

2.3 METHODOLOGY

The research will be dealt with theoretically and analytically, first by looking into the constitutional grounds on the authority of the U.S. executive as well as the legislative branch, in order to establish Constitutional framework. The next step will be to establish the meaning and concept of war according to different theories, which will help distinguish between interventions and full-scale wars, in order to only focus on the examples viable for this research question. The next theoretical background will be that of coercion as a type of political methods, however, only used in terms of foreign policy, as other types of coercions do not pertain to the research question at hand. The last step of the theoretical part of this thesis will be to establish the influence of American Congress in preventing the unilateral presidential actions and the possible outcomes of the Congress' actions as well as inaction. In connection to Congressional actions in instances of presidential unilateral decisions a broader insight into the War Powers Act will be made.

The second part of this thesis will be analytical, as I will analyze various cases to establish, whether Congress has acted when the president acted unilaterally, both when proclaiming war and when using coercion, to influence foreign governments. Due to the fact that existing theoretical approaches only tend to focus on the formal institutional relationships between the president and Congress, I will examine informal practice and the strategic use of coercive threat. It is vital to look at the way the Presidents used the threats, whether they consulted the Congress on the matter, whether or not they have sought their authorization, and the reasons for not doing so.

As the end of WWII marks the beginning of a new world order and the supremacy of the U.S. especially in military and foreign affairs, only cases which occurred after 1945 will be analyzed. They will help shed light on the underlying reasons of unilateral presidential decisions

and use of coercion in foreign policy, and what is even of greater importance, how Congress attempted to execute their constitutional authority on war powers.

The 8 examples will vary according to the area, the length, casualties and final outcome of the military involvement, in order to see whether any of the mentioned criteria influenced the decision of Congress to intervene, and how they limited the authority of the President and his further decision making on the matter.

Therefore, I will examine each case and answer each of those questions just listed. The main analysis will be answering the question, what was the nature of Congressional response when the President issued a threat or acted unilaterally. The use of threat or proclamation of war and the nature of the response are likely to have been affected by the distribution of seats in Congress, and partisan politics. Therefore, it is vital to analyze each case in terms of distribution of seats and whether the President had a majority in Congress or not.

The above mentioned data used for the analysis will be collected from various sources and will comprise of examples of the involvement of U.S Army in conflicts abroad from 1950 to 2011. The secondary data for the selection of examples will be available data on the death-toll, the duration and the final outcome. The additional data will provide additional information that will in the end help establish, whether death-toll and the duration have affected the reaction of Congress in addition to the partisan politics. In the cases of the use of coercion the data will only include the final outcome (whether it lead to full-scale war in the end or not), and the reaction of the Congress and the distribution of seats in Congress.

As each military conflict is unique in terms of reasons leading to it, the participants, military strategy, etc., it will be interesting to see if any of the examples share some common ground, except the obvious.

The examples will provide the answers set out in the theoretical part on why presidents chose to breach the constitutional authority, and whether Congress abdicated their authority or not. As the cases will vary completely, they might provide common data, which could be the culprit behind all of the unilateral decisions of presidents or inactions of Congress. The cases will also provide us with more information on how and why Congress reacted to each involvement, and how this affected the end result.

The analyzed cases will provide the necessary answers to the questions set out at the beginning of this thesis. It will provide necessary evidence on whether the presidents simply exploit the lack of constitutional clarity on the issue of war powers, whether they violate the authority stated in the Constitution; and whether or not the Congress simply turns the blind eye when they do so.

3 CONSTITUTIONAL FRAMEWORK

3.1 SEPARATION OF POWERS

“The accumulation of all powers, legislative, executive and judicia[l] in the same hands, whether of one, a few, or many, and whether hereditary, self–appointed, or elective, may justly be pronounced the very definition of tyranny” as stated by James Madison, raises questions about the sort of government, which would be safe from abuse of power.

The Framers of the Constitution took the above question seriously, as they were also aware of the danger that absolute power to one person would lead to monarchy instead of democracy. In order to avoid such a thing from happening they followed the Montesquieu doctrine of separation of power. Montesquieu namely formulated “the tripartite division of government functions in a recognizably modern form..., and also established the idea of three branches of government- executive, legislature, and judiciary.” (1748) What is more, he advocated that each of the previously mentioned branches should exercise only its own functions.

He was quite explicit on the above idea when saying: “When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty.

Again, there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end to everything, were the same man, or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals.” (Ibid) Furthermore, he was in favour of placing positive checks of control over each of the three branches by the other two branches.

The above mentioned checks and balances are obviously followed in the Madisonian model, which states that “a desire for power, influence, and authority is embedded deeply in human nature” (Madison 1788a). This desire or ambition must therefore “be made to counteract ambition” as Madison states in Federalist No. 51. He further explains this by saying “...in other words, since Congress is not dependent on the Presidency or the courts for either its authority or its election to office, members will jealously guard its power from encroachment by the other two branches and vice versa.” (Ibid)

The Framers as well as Madison clearly follow Montesquieu’s doctrines as stated in the Federalist no. 48 »it is agreed on all side, that the powers properly belonging to one of the apartments, ought not to be directly and completely administered by either of the other departments. It is equally evident, that neither of them ought to possess directly or indirectly, an overruling influence over the other in the administration of their respective powers.« (Madison 1788b) By this he is in favour of a government that would be separated and connected at the same time, by a system of mutual control and influence also known as checks and balances, which serve a purpose of overseeing the work of each of the branches, to avoid usurpations, as well as preventing one branch from becoming too powerful as to destroy the system.

The Founding Fathers accepted the tripartite system of government established by Baron de Montesquieu and the Madisonian model in the first three articles of the U.S. Constitution.

Article I describes the design of the Legislative branch of the Government, namely the Congress, the separation of powers, the election of the representatives of both the Senate and the Congress, and the processes of the adoption of laws, and ultimately enumerates the powers vested in the Congress. (U.S. Constitution 2016)

Article II describes the design of the executive power, which is the President of the U.S. It also enumerates the powers vested in the executive branch, the election of the president, etc. (Ibid)

Article III describes the design of the third branch of the government- the judicial branch. (Ibid)

For the purposes of investigating the underlying premise of this thesis, only the legislative and executive powers as stated in the U.S. Constitution will be looked at in more detail.

3.2 POWERS OF THE UNITED STATES CONGRESS

Article I of the U.S. Constitution states, that “all legislative powers herein shall be vested in Congress of the United States, which shall consist of a Senate and the House of Representatives.” (Ibid)

In Section 8 the following powers vested in Congress are stated as follows:

The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof. (Ibid)

3.2.1 FORMAL CONGRESSIONAL CHECKS

As is seen in the Constitution of the United States of America the control over the military has been “dispersed across the various branches of government... granting Congress the more substantial responsibilities of raising armies and declaring war” (Howell and Pevehouse 2007b, Loc 416). However, there have been many instances where the presidents have taken over the previously mentioned control over the military from the Congress. In cases where the use of the military was not justified or used as stated in the constitution, formal sanctions have been provided by the Congress as well as the presidents. One president completely changed this practice.

In the new era in which the United States have become a major military and economic superpower, the role of the President has changed drastically, and the Founding Fathers of the American Constitution have failed to foresee it. All of a sudden such a powerful country, faced with the new challenges “required a powerful, determined, and rapid responses that only a president could manufacture” (Howell and Pevehouse 2007b, Loc 424).

In the light of the new set role of the president of the U.S. some started to interpret the war powers to their own liking. The president who set new rules in the area of war powers and the precedent for all the future presidents, was President Harry Truman. By declaring the Korean War a “police action”, he no longer required a congressional approval and could intervene militarily on his own accord. With this new found way of unilateral decision making President Truman changed the course of war proclamations and coercion in American foreign policy. What the Founding Fathers tried so hard to prevent, has now happened and as Arthur Schlesinger sums up perfectly, “by the early 1970s the American President had become on issues of war and peace the most absolute monarch...” (Howell and Pevehouse 2007b, Loc 444).

What the Founding Fathers tried to prevent while writing the Constitution and have obviously failed at was supposed to be amended by the War Powers Resolution, which was passed in 1973 and which would “reassert congressional prerogatives over foreign policy”. (Ibid) However, not even this succeeded in preventing the presidential unilateral decisions of war, as every president since Richard Nixon had blatantly ignored it.

There have been many occasions of military initiatives from Grenada, Lebanon, Haiti, among many, which have been launched without prior Congressional approval despite the WPR², and what is more the Presidents have always found a way to circumvent the resolution, especially in cases of smaller military operations.

When looking at the broader aspect of Congressional checks one might think that the Congress lost its control over the army completely. However, Howell and Pevehouse claim that this is not entirely true, and that the Congress still controls presidential decisions on the matter, although on a smaller scale. They claim that the Congress has maintained an important role in shaping domestic politics preceding military actions, and consequently even influence the Presidents in their decisions whether to go on a military mission abroad or not. This influence is greatly marked by partisan politics, and partisan politics plays an immense role in American politics. (Ibid)

Despite the above mentioned influence of partisan politics on foreign policy decisions, there are still many instances in which Congressional actions are scarce and are in the eyes of many critics considered inaction. One of the most common reasons for its so-called inaction are the possible accusations that the Congress is “undermining troop morale and catering to the enemy” (Howell and Pevehouse 2007b, Loc 502) if they try to stop the military venture. This is why in many such occasions the Congress is rather seen as doing nothing, than to be faced with such charges. A very good example of such “inaction” is the deployment of American troops to Haiti in 1994, where the Congress did not react to the unilateral decision of President Clinton. A political commentator perfectly summed up this Congressional inaction by saying that “there’s bipartisan criticism of going into Haiti; there’s also bipartisan support in supporting the troops now that they’re there.” (Howell and Pevehouse 2007, Loc 513)

Furthermore, the above mentioned reason for Congressional inaction is by far not the only one. The reason behind the previous one is the fact that the members of Congress virtually have no chance to oppose the President on his decision before the troops have already been deployed.

² War Powers Resolution: is a federal law intended to check the president's power to commit the United States to an armed conflict without the consent of the U.S. Congress. The Resolution was adopted in the form of a United States Congress joint resolution. It provides that the U.S. President can send U.S. Armed Forces into action abroad only by declaration of war by Congress, "statutory authorization," or in case of "a national emergency created by attack upon the United States, its territories or possessions, or its armed forces."

The War Powers Resolution requires the President notify Congress within 48 hours of committing armed forces to military action and forbids armed forces from remaining for more than 60 days, with a further 30-day withdrawal period, without a Congressional authorization for use of military force or a declaration of war by the United States. The resolution was passed by two-thirds of Congress, overriding a presidential veto.

The Congress is unfortunately at a disadvantage when it comes to the information regarding foreign news. The President has a myriad of consultants and staff that provides much greater accessibility to information about crisis abroad. Before these pieces of information reaches the Congress, and before they convene on the matter, the President has long but authorized the deployment of American troops, and they might even be positioned abroad. Taking into consideration the previously mentioned possibility of being accused of undermining the troop morale, the Congress refuses to take any direct action against the President on his unilateral decisions.

All of the above stated facts from information accessibility to the actual ability to act unilaterally, the president is according to Paul Peterson “the most potent force in the making of foreign policy, with Congress being a secondary political player”. (Howell and Pevehouse 2007b, Loc 565)

However, looking at the matter from a different perspective and in more depth, it becomes clear that even though the Congress does not sanction the President for his unilateral decisions directly, they are still left with some possibilities of indirectly influencing the course and final outcome of such presidential decisions. As the Congress is the legislative branch of the government it can and must pass laws that may in turn constrain presidential war powers if it so wishes. One of the most important ways with which the Congress can hinder the President in his military ventures is the appropriation process. Appropriation of funds and duties of the armed forces is a viable instrument that affects the unilateral presidential decisions greatly. According to Howell and Pevehouse there were numerous cases in the past 70 years of American history “when Congress asserted its prerogatives over matters involving war, and presidents promptly adjusted their behaviour.” (2007b, Loc 587)

It has become obvious that assessing Congressional checks on the presidential power has to go beyond the reactions made by Congress, as they might not be as straightforward and as blatant as one might expect, however, they still serve its purpose and actually make a difference. In most cases scholars only look upon the most evident checks the Congress put on presidential unilateral use of the military, but have managed to overlook the check that were not as common. It turns out that in many instances, when it actually seemed that the Congress has turned a blind eye, it has in fact put some unconventional pressure or restriction on the president, which resulted in the withdrawal of military units, or have resulted in ending the military mission prior to its conclusion.

As has been mentioned before, the Congress is at an obvious disadvantage regarding the access to information and the ability to react unilaterally and quickly, and has therefore been “a reactive institution”. (Howell and Pevehouse 2007b, Loc 779) Jim Hoagland summarizes this relationship between the Congress and the President by saying that even though there are instances in which the Congress has authorized the Presidential decision of military intervention, they almost always only react to the President’s decisions by supporting or opposing it.

Despite a common belief that by its inaction the Congress is in fact supporting the President in his military ventures, and in some cases they do, but there are many in which just the opposite holds true. According to Howell and Pevehouse the Congress “hasn’t supported presidential military venture openly and in unison since the Spanish-American War”. (2007b, Loc 779) This might not come as a surprise since partisan politics play a vital role in expressing political support, and as it will be seen in the analytical part of this thesis, there are very few examples if any, where the president had a majority in Congress.

In such cases one might wonder, why would a President even decide on a military venture when he is in fact facing Congressional disapproval? One possible claim would be that the power to act unilaterally is too tempting not to use. However, the Presidents might also face a problem that is often overlooked, and that might even put them in “Congressional shoes”. One of the many roles bestowed on the president is to deal with foreign policy and to represent his country abroad. In the era of globalisation, when trouble stirs elsewhere, this might also affect other countries. As Howell and Pevehouse observe “presidents may anticipate the domestic fallout of failing to redress amounting foreign crisis”. (2007b, Loc 790)

Lyndon Johnson was one of the presidents faced with such a political dilemma during his presidency. When trouble started stirring in South Vietnam the key members of Congress felt it necessary to address the ever rising threat of Communism in that area, and consequently. Although reluctantly the President had to react and he sent advisors to South Vietnam. As Howell and Pevehouse state “Johnson feared a Congressional backlash if he did not demonstrate leadership in the face of Northern Vietnamese aggression ...” (Ibid), and has therefore responded to a foreign crisis against his will.

Despite Johnson’s reservations about a military response, we cannot in fact say that the Congress was the leading cause for this military venture and that the president has merely done what he was instructed to. In the political arena nothing is ever so simple and there is always

some prior event that leads to the reaction in question, and President Johnson's decision was no exception. As Howell and Pevehouse point out, this was only the continuation of Kennedy and Eisenhower's policy and his own concern about the ever growing Chinese aggression in the area. (2007b, Loc 801) However, this is still one of the rare cases in which the president of the U.S. was actually persuaded by the Congress to intervene in a foreign crisis, and therefore had full support of the Congress.

To move away from the above example of Congressional pressure of responding to a foreign crisis, as this is not the focal point of this thesis, let us return back to alleged congressional inaction. There is a myriad of instances in the U.S. history in which the presidents have acted unilaterally and sent troops abroad, and during which the Congress did not respond although their opposition was obvious. Usually the Congress reacted to such actions when the troops were already in the area, or even more commonly, when the intervention was prolonged and became costly. In cases where the military interventions were short and inexpensive "the presidents usually could rest assured that Congress would remain quiet" (Howell and Pevehouse 2007b, Loc 818). Even if the Congress had any reservations about a military action abroad, they did not voice their concern, especially if it turned out to be short and successful.

On the other hand, the presidents may sometimes pull back and abandon their military plans if they realize that the Congress will try to fight them on their decisions. As has been pointed out before, such instances may lack evidence on Congressional action, however, they still proved to be efficient enough to stop the unilateral decisions of a president. David Mayhem perfectly summarizes the unseen constraints on presidential actions by saying, that "often the voicing of the public opinion has policy effects without any laws being passed: presidents, ..., take action to avoid it" (Howell and Pevehouse 2007b, Loc 752).

To sum it up, Congress rarely used its power to openly oppose president's plans for a military intervention, and it is even less likely to do so, before the troops are already in the area of conflict. When the Congress reaches a conclusion to react to a unilateral presidential decision, because it believes that the mission has exceeded a reasonable duration, it will only try to limit the scope and the duration of the mission, or voice concerns about it to the public.

The latter reaction of Congress to unilateral decisions of the president, may seem unimportant at first, but might have even a bigger effect on the president as the formal constraints. The members of Congress can voice their disagreement with presidential decisions through public debates. If the opposition party holds the majority of seats in Congress and opposes presidential

decisions entirely, it can greatly diminish the chances of re-election of the president and his party, which may in turn force the president to reassess his decision, and what is more, even end a military intervention prior to its accomplishment.

A very good example of such informal Congressional action is the American involvement in the Indochina War in the 1950s:

In the beginning France requested the U.S. for assistance in form of money and material, which fell on fertile ground with President Eisenhower at the time, as he saw Indochina as “an area of strategic importance to the United States (Howell and Pevehouse 2007b, Loc 872). However, when later on assistance of U.S. armed forces was demanded by the French, Pres. Eisenhower had some reservations on the matter. The reason behind his reservations was the fact that members of Congress were publicly expressing their concerns about the American involvement in the war. As was later stated in the report by the Armed Services Committee, “Congressional opposition put a brake on a possible unilateral U.S. intervention. (Howell and Pevehouse 2007b, Loc 883)

Based on all the previous examples the main consideration that we have to take into account, when examining Congressional (in)action, is the scale of military intervention. As has been seen above, the smaller scale interventions rarely attract any attention, as they do not need much finances and the prospect of involvement in a longer combat is scarce. In such cases the members of Congress will find it unnecessary to loose energy in trying to convince the public of the folly of a military venture. After all, the intervention might end even before a real debate on the issue would begin. On the other hand, though, longer and more expensive military ventures with a higher probability of escalating into a full-scale war, do attract attention of Congress and consequently the American public as well, if the Congress so chooses.

So why is the support of the Congress and the general public so important to the President, if he already has the ability and the power to act unilaterally? The reason lies in the influence that public and Congressional opinion had on the adversaries and allies alike.

If the President lacks support of the Congress and the public, the adversaries may become bolder and will consequently not break under the threat he makes, and what is more, be even more willing to get involved in a full-scale war with the U.S. On the contrary, the allies might in the absence of domestic support have concerns about committing their troops. Although this is

connected to the informal constraints the Congress possesses, this issue will be dealt with in the section dealing with coercion.

3.2.2. PARTISAN INFLUENCE

Congress, although a legislative unit, does not act as one, and is highly decentralized as it consists of 535 individuals, divided among house and senate and a number of committees and subcommittees, each pursuing those policies, which will enable them higher chances of re-election. Therefore, the quote “Congress does not check the presidential power; individuals within it do” (Howell and Pevehouse 2007b, Loc 1095) perfectly sums it up.

Such diversity and conflict of interests may result in difficulties reaching a consensus when enacting laws, which is why the Congress might often seem inactive when checking presidential actions. However, the distribution of seats in Congress changes in the middle of presidential term, which may result in a more unified or even further divided Congress. In times of unity the Congress actually has a chance of challenging the president on his unilateral war actions.

Howell and Pevehouse tried to find viable indicators that would predict, when the Congress would oppose the president, and have found 3 conditions under which congressional opposition emerges: the opposing party to the president’s, retains a majority within Congress, military operations grow in size, and the operations focus on nations that are strategically important to the U.S. (Ibid).

Looking at the above 3 conditions it is likely that the best indicator of congressional support would be partisanship with 3 further reasons under which the members of the same party are more likely than not to support the president in his military decisions. According to Howell and Pevehouse, these 3 reasons are common worldviews, the content and credibility of signals, and shared electoral fortunes. (2007b, Loc 1137)

The first reason known as “common worldviews” is basically the fact that members of the same party are likely to have the same view in topics such as human rights violations, threats to national trade interests, U.S. casualties, etc.), but may even distinguish in others. Therefore, the president is likely to propose those military interventions for which he is confident that a majority of his party will support. As the opposition party may distinguish itself from the president’s in the views in questions “this may evoke pointed criticism from members of the

opposition party when he embarks on any specific venture” (Howell and Pevehouse 2007b, Loc 1137).

The contents and credibility of signals is connected to the president’s advantage in terms of access to the information regarding a foreign crisis, which was already discussed in the previous chapter. It means that it is less likely that the president will be suspected of withholding viable information by his own party members, however, he might be by the opposition. A very good example of the mentioned suspicion of withholding information was the reluctance of the Republicans to approve the use of force in Kosovo in 1999 as proposed by President Clinton. As stated by Howell and Pevehouse, the Republicans did not trust the President, as they believed that he was withholding information on the real conditions in the area, and that “his administration lacked the skills needed to effectively diffuse the Balkan crisis” (2007b, Loc 1159), and were therefore reluctant to support his military action.

The third reason influencing the support of the presidential actions is the so-called “shared electoral fortunes”, which means that the chances of re-election rise and fall according to the success or failure of the military venture. Therefore, it is clear that the members of the same party will support their president if they believe that the venture will be successful; and the members of the opposition are likely to oppose the venture if it seems to be a failure, as this would in turn raise the stakes of their re-election.

All of the above reasons are clear indicators of partisanship dynamics in Congress, and how each party supports its president, as it sees certain benefits in doing so. A very good example of such dynamics is Clinton’s mission in Somalia, which was actually initiated by his predecessor President Bush three months prior. Even though Democrats expressed great concerns about U.S. military engagement in the conflict during Bush’s term, they supported the President, when he came out of their party lines. This example clearly shows that in many cases personal convictions easily give way to partisan politics. (Howell and Pevehouse 2007b).

All of the above discussed reasons should be taken into consideration and closely examined when looking at Congressional reaction to unilateral presidential use of force. And this is exactly what will be done in the analytical part of this thesis- in each of the examined uses of force, partisanship division in Congress will be looked upon and examined in terms of how it affected the reaction of Congress.

Politicians refuse to work on issues which do not apply to the interests of their constituents, on whose support they rely during election. As Howell and Pevehouse observe this has “obvious and important implications for our expectations about congressional checks on presidential war powers”. (2007b, Loc 1258) This means that if matters involving war do not reach a certain point of importance, the politicians are likely to ignore it in order to support other issues that bear more importance for them and their constituents. Therefore, if military interventions are very short or do not have any important consequences for the nation, members of Congress usually do not react to it, even if the president acted unilaterally. This can change rapidly if the military casualties rise or if there is a prospect of involvement in a full scale war. Historical data on the issue clearly show that only short-term interventions lack congressional action, whereas all important and large scale military operations were in fact checked by Congress through some kind of appropriations bills or media debate.

Although very important, domestic politics may not play as much role in congressional checks than international one, “one might argue that some international factors make intervention a foregone conclusion, erasing partisan dynamics that could discourage a deployment”. (Howell and Pevehouse 2007b, Loc 1301).

Concentrating on international politics and how it affects domestic politics in presidential decision making, Wallace and Pevehouse are leaning on the approach of Bueno de Mesquita³ and complement it with both structural and contextual factors, structural factors being alliances and trade, and contextual ones consisting of partisan politics.

According to the above mentioned approach a very important factor in foreign politics is the so-called balance of power among the states involved in the conflict. And taking these terms into consideration the United States have had a military disadvantage ever since WWII, which is in fact the time span relevant for this thesis. According to scholars, military alliances (e.g. NATO, other pacts) play an important role in the balance of power. It is therefore safe to make the assumption that the states involved in the same pact, by rule avoid attacking fellow states, and usually become allies in international conflicts. (Howell and Pevehouse 2007b) however, pacts are also made in order to facilitate military support from members of the same pact in case one of them is facing a threat. More recent work by Brett Leed, however, suggests

³ Bueno de Mesquita approach: in his model, state leaders may or may not initiate war due to personal risk propensities (Howell and Pevehouse 2007b, Loc 1373)

that “alliances do enhance extended deterrence, and that defensive alliances reduce the propensity of states to attack”. (Howell and Pevehouse 2007b, Loc 1315)

As noted by Howell and Pevehouse, the U.S., despite their obvious upper hand in military and trade, do in fact have reservations regarding the interference into conflicts, where Russia is involved. The reason for this lies in the history between the two great nations, as Russia might in fact be the only nation that can challenge the U.S.’ position as the military power. (Howell and Pevehouse 2007b) in such instances the Congress may even step up and challenge the president in his war actions, only to avoid conflict with Russia.

Another very important aspect of international politics is that of international trade. The Congress, or even more so individual members of Congress will react to a military intervention if they believe it will harm trade and in turn the consumers. This translates, that if their constituents are likely to be negatively affected by a U.S. military intervention, they will try to prevent it, in order to avoid disastrous consequences at the next elections, which leads us back to partisanship in politics.

No matter how delicate an issue trade might be for the individuals, it can also be a powerful tool of coercion, as the U.S. is one of the world leading countries in trade, it can use it to its advantage when coercing its adversaries. However, this is a point that will be discussed further in one of the following chapters of this thesis, and will therefore be left aside at the moment.

To sum up the above paragraphs, despite the fact that presidents following Truman’s lead have taken their position as Commander in Chief in accordance to their own understanding of the Constitution, and have therefore on many occasions acted unilaterally when sending U.S. troops into war or conflict and Congress seemed to turn a blind-eye, there are still certain factors that have to be taken under scrutiny when making the previous assumption.

The president acts according to what information is at his disposal on the matter and with the consideration of possible congressional reactions to his unilateral decisions. In case he still sends the troops abroad, after taking everything into account, the Congress has ample opportunities and many a reason to stop him. Whether it chooses to do so or not depends on various factors, partisanship being the paramount one. On one hand the president can only predict the duration and scope of one military action, whereas it is the Congress’ job to react if it deems necessary. On the other hand, Congress has many domestic issues at its hands, and

might choose to look away from the unilateral war decision, but may act strongly if it starts to interfere with their political agenda.

All in all, politics is complicated and demanding, and the U.S. government consists of at least 535 men, who are still not angels, with each of having their own agenda in mind, and this makes a unison voice when preventing unilateral decision of one man so much more demanding or even impossible.

3.3 POWERS OF THE PRESIDENT OF THE U.S.A.

As written in Article II, Section 2 and Section 3 of the U.S. Constitution the powers vested in the President are as follows:

- Section 2:

The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.
(Presidential Powers: An Introduction 2016)

- Section 3:

He shall from time to time give to the Congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States. (Ibid)

3.4 INTERPRETATION OF POWERS

Article II of the American Constitution simply states, that »the executive power shall be vested in a president of the United States«. According to Scott C. James, “The presidential office was left purposefully to be shaped by the live touch of history” (James 2009, 4). He was implying that in the course of history, every president interpreted the above mentioned law and the lines stated in the Article II, according to his own self-interest. A very good example of his was when during the presidency of Andrew Jackson, his co-called “little bank war”, “procuded several novel constitutional doctrines; such as that the presidency is an equal and autonomous branch of government, that only the president speaks with a national voice, and that the president is the responsible head of administration”. (James 2009, 11) The reason that Article II is easily interpreted and changed according to one's self-interest lies in the fact that the Constitution only merely enumerates particular powers as to “exemplify the general grant of power contained in the vesting clause, and to delineate a set of specific limitations on that grant ...” (James 2009, 6). As was previously mentioned, the only and the highest law of the president is the “Welfare of the people”, however, the danger of different interpretations of this is omnipresent. As Jefferson once put it “circumstances do sometimes occur, which make it a duty in officers of high trust, to assume authorities beyond the law ...” (James 2009, 8). Such an example occurred not long ago when President George W. Bush proclaimed war on Iraq with the explanation that he was protecting the American nation from further acts of terror. The fact the American President was the Commander in Chief of the American armed forces made it possible for him to send troops to Iraq, even if the Congress would not support it.

The Framers probably did not have in mind that the President would abuse his power in order to serve his personal interest, and have therefore divided the government into three different, however, equal branches. Despite the fact that in his essays Madison quite often warned the Framers of the easily corrupted human nature, the Framers believed that the separation of powers would be enough to provide necessary limitations on presidential powers. However, as has been mentioned before “the welfare of the people” can easily be interpreted as one pleases and can easily be bended to one's own interests. What is more, whenever the president believes that it is his responsibility to protect the well-being of his constituents he is “bound by neither congressional law nor constitutional rule” (James 2009, 9).

The reasons for the above mentioned problems of the American presidency lie in the fact that the powers of the American president are not explicitly stated in the Constitution, and what is not written down can be subjected to personal interpretation and what is more, said that what is not written cannot be forbidden or unconstitutional. The question then is, whether enumerating the powers would solve the above problem, or is this problem simply impossible to solve?

Before continuing with the task of finding a solution for the above mentioned problem of Presidential unilateral actions in the area of war powers, it is important to look at the presidential powers as enumerated in Article II, Section II of the U.S. Constitution.

The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

(U.S. Constitution 2016)

As is seen in Article II of the U.S. Constitution the power of the American President does not lie entirely in his post as Commander-in-Chief, there are other important positions that the president holds and with which he/she can influence the politics of the United States. One of his most important tasks is the power of influencing the legislative branch and consequently policy-making, but the power that is of importance for his thesis is his power to make treaties and to conduct foreign relations.

The latter mentioned case, which is not described in more detail in the Constitution, allows the president “minor use of force to conduct certain low-intensity operations and limits congressional ability to interfere with such use, except in extreme cases of presidential abuse.”

(Uyeda 1995, 814)

Despite the fact that the Framers of the Constitution tried to prevent unilateral war decisions, sometimes such measures are necessary in order to achieve certain diplomatic success, under the simple condition that such interference of U.S. army does not amount to war.

To turn back to the actual allocation of authority as it is stated in the U.S. Constitution, it is safe to claim that that it definitely lacks conclusiveness on the matter. Professor John Norton More has identified several models to describe the balance of power in direct connection to the above problem. The models include: “concurrent presidential authority (i.e. the President shares the war-making authority with Congress), exclusive congressional authority (i.e. the President may not use any military force in the absence of congressional approval), requirement of congressional authorization for sustained hostilities involving combat forces, and presidential authority for defensive wars, but not for offensive wars” (Uyeda 1995, 807)

The first mentioned model, which also includes the last one is based on the premise, that the president has military authority, however, only in case of defensive wars. This theory, when applicable to the current era, however, faces many flaws. The simple distinction between offensive and defensive war being the biggest dilemma. The second and today often applicable dilemma is that any war can be spun as a defensive one, if the President so wishes. The reason for the latter mentioned misuse of the term defensive war may lie in the fact that the UN Charter “specifically outlaws offensive wars” (Uyeda 1995, 809), therefore, any country would try to present a war as defensive as opposed to offensive. At this point an example used many times

already can be mentioned once again, as a perfect illustration of such doing, namely that of President Truman and the Korean War. The following summary of his actions at the UN displays the above mentioned issue perfectly:

“The Security Council called upon all members of UN to render every assistance to the UN in the execution of this resolution. In these circumstances I have ordered US air and sea forces to give the South Korean government troops cover and support.”, “...the occupation of Formosa by Communist forces would be a direct threat to the security of the Pacific area and to the U.S. forces performing their lawful and necessary functions in the area.” (Fisher 2004, 97)

With the words that clearly stated that this was a defensive, rather than offensive attack, President Truman nevertheless violated the U.N. Participation act, which clearly states that every such interference is subjected to the state law, and in this case, to congressional approval by a 2/3 majority. What is more, he even committed US forces before the Council actually called upon the members for military action. What is more, it later became clear that what was by Truman construed as supporting the UN was in fact an American war, as “the UN exercised no real authority over the conduct of the war”. (Fisher 2004, 99)

In the above case, and in many others as history reports, president Truman has obviously misread and falsified the constitution, or blatantly decided to ignore articles, that obviously deny the fact that the President has sole authority. Even the NATO treaty clearly states that “its provisions shall be carried out by the Parties in accordance with their respective constitutional processes” (The NATO treaty 2016), which translates into the fact that any allied support must first be approved by the U.S. Congress. Therefore, the case in point has become the precedence for many other presidential unilateral decision of war.

However, there are still some evidences that in fact speak in favour of the presidential unilateral decisions, and some of the have already been mentioned in the preceding chapter. To quickly revise it, those facts are the presidential precedence in terms of information available, and the disadvantage of a large number of people and the long lasting decision process in Congress. According to Uyeda the president has better ability to determine the more fitting foreign policy than the Congress. What is more, the President is supposed to be better equipped with the ability to be decisive, secretive, which are according to Uyeda, in fact required for a successful ending of a low intensity conflict. (Uyeda 1995, 812)

In 1917 Professor More came to a very interesting conclusion when examining war powers during the 18th and 19th century, during which there were approximately 100 deployments of

U.S. troops, out of which only a few had been approved by Congress. Despite the above mentioned reasons that in fact speak on behalf of presidential unilateral decisions, the Congress still has the uppermost authority in the area, however, as prof. Moore points out, “areas in which Congress does not have exclusive authority, such as foreign relations, suggest the existence of some independent power within the executive branch. This inherent presidential authority allows the minor use of force ..., and limits congressional ability to interfere ...” (Moore as cited in Uyeda 1995, 814)

As it is seen, the President has in fact got prerogative over foreign relations, and it is in fact of paramount importance to be able to react briskly if foreign relations demand it, and truth be told, getting involved in a low intensity conflict is sometimes the only viable solution. According to some, not being able to do so, would have even graver outcome. The only question that still remains is the scope of unilateral decisions regarding war. When is it in fact in favor of foreign relations, and when does the President clearly misuse his powers and position?

4 DEFINITION OF CONFLICT and COERCIVE DIPLOMACY

4.1 CONFLICT OR WAR

In order to examine the reasons for engaging in international conflict we must first establish what a conflict or war is, and what is the driving force behind it. To help us establish what conflict is in terms of international affairs and what types there actually exist, one has to look upon the work of one of the most famous theoreticians of war- Clausewitz.

When looking upon his theory we have to bear in mind the era which influenced his work, an era of dynasties, where international conflict was based on “the competing claims of the dynastic succession” (Sharma 2015, 3). The author of the article, from which the previous citation is taken, summarizes the above idea perfectly by saying that “to the end the claimants pursued their goals with tools that fell far short of mobilizing the totality of social forces in pursuit of individual objectives” (Ibid).

Clausewitz witnessed the war first hand and up close which gave him a great insight into its theory and had therefore began to understand that “an army was a reflection of the society that produces it and that war was a social phenomenon that could not be understood without reference to the longer context of social organisation” (Sharma 2015, 5). What is more, he

defined war as “the continuation of politics by other means” (Sharma 2015, 8), which summarizes the underlying agenda of international politics, which uses war and conflict to achieve their own objectives. Furthermore, he believed that “the key to understanding restraints on actual violence in conflict is politics ...” (Ibid). Through his ideas it becomes clear that conflict and politics are so intertwined and correlated, that it is sometimes difficult to say, which leads which; is conflict shaped by politics or is conflict that shapes politics? It is safe to say that politicians have long used war and the threats of war as means of shaping international politics, however, it is sometimes difficult to pinpoint the actual decisions that have done so. When we discuss Clausewitz and his theory of war, we see that he engages into defining the different types of war, however, does not discuss the reasons behind the decisions to engage in war. The author dealing with Clausewitz’s theory answers the question of why individuals choose to engage in war, by saying that their motivation is “the true belief in the superiority of one social system over another, or simply... for more narrowly selfish reasons” (Sharma 2015, 10). This statement can be taken as the reason behind the unilateral presidential decisions throughout the U.S. history. He even takes the above statement a step further by claiming that “more institutions are threatened with change the greater the mobilization and greater the violence” (Ibid). This holds true in the case of Bush’s unilateral decision after the 9/11 attacks, where the threat was obviously very big and therefore the counterattack even more so.

Moving away from the reasons leading to war and towards the typology of war, we come to the classification of war. Based on the fact that international war is under scrutiny in this thesis, we shall leave the internal wars aside and concentrate on the international ones.

For a better understanding of what war actually is and what types of war we distinguish from, a typology established by David Singer and Mel Small and based on distinguishing war from other types of violence shall be used. They have defined war in terms of violence, as they believed that “war is impossible without violence, and the taking of human life is the primary and dominant characteristic of war” (Small and Singer 1982). Their definition was based on the status of the participants, and battle-related fatalities and is therefore as follows “sustained combat, involving organized armed forces, resulting in a minimum of 1,000 battle-related fatalities within a twelve-month period” (Ibid).

The use of the term sustained combat is vital here, as it excludes massacres as one-sided violence as well as no combat operations as wars. (Small and Singer 1982, 14) They explained the reason, why the threshold of fatalities under which an armed conflict is considered war is

1,000 per year of combat, by saying that “This was defined to include not only those personnel killed in combat but those who subsequently died from combat wounds or from diseases contracted in the war theatre. It should also be noted that these figures include not only personnel of the system member but native troops from the colonies, protectorates, and dominions who fought alongside them” (Small and Singer 1982, 48–49).

The typology by Singer and Small does not include only inter-state and extra-state wars but also civil wars, however, the latter will be excluded at this point as they are not of any importance to this thesis.

The inter-state wars are according to Singer and Small defined as wars “in which territorial state that qualifies as a member of the interstate system* is engaged in a war with another system member.” (Small and Singer 1982, 4)

Extra-systemic or later on extra-state wars are those “in which the interstate system member engaged in war with a political entity that way not a system member”. This type of war is further divided into “imperial” and “colonial” war. (Ibid)

Their typology was slightly modified and updated in 1994, as there was a need to introduce other types of armed conflicts, which could not be classified according to the original COW categories. The reason for the growing need of modification of the COW categories was an increasing number of non-state factors that have the motivation and the capacity to engage in warfare both within traditional states and across state borders”. (Small and Singer 1982, 8)

However, when talking about wars we cannot expect them to be completely straightforward and easily classified into one of the above mentioned classifications, as they tend to change throughout their course in terms of participants and their characters. A very good example of such a transition of war is the Vietnam War, which started as a civil war in 1960, and changed into an internationalized civil war in 1961, when the U.S. got involved. Furthermore, the type of conflict altered into “a conflict between two system members” when the U.S. forces started bombing North Vietnam. Therefore, this war is a perfect example of the transition from civil to inter-state war. (Small and Singer 1982, 25)

Another similar example of conflict transition in which the U.S. played a significant role is that of 2001, when the U.S. took over the fighting against the Taliban government in Afghanistan. In this case the U.S., as the outside state, intervened against the rebels- the Taliban government, and took up the bulk of the fighting, and consequently changed the war into “an extra-state war

between a state and a non-state actor outside the intervener's territory". (Small and Singer 1982, 26)

What is more, the transition of war can work both ways, and an inter-state war can easily be changed into an extra-state war. An example of such reversed transition again includes the U.S., and its role in the war against Saddam's regime in Iraq. The U.S. took part in the "Coalition of the Willing" against the regime of Saddam Hussein in Iraq. However, when Iraq was defeated and withdrew from the war, the coalition continued fighting against the Iraqi resistance, and the inter-state war turned into extra-state war. (Ibid)

The above classification will be used later on in the analytical part of this thesis, where a number of conflict into which the U.S. have been involved will be looked upon and analysed.

4.2 COERCIVE DIPLOMACY

In today's world filled with different nationalities and overflowing with people, the fight for natural resources and the ever rising intolerance combined with the appetite for more land, wars have become an inevitable part of everyday foreign policies. Despite the fact that the majority of world population reject wars, political leaders still resort to it, when trying to prove their supremacy. But there are also times, when full-scale war is not the only solution and is avoided at all costs, as the political leaders recognize, that it could be a risky solution. This is where another solution spurs, one that shouldn't by any means be underestimated- coercion.

According to many historical data, coercion has become a viable tool in foreign diplomacy in the last few decades, especially in the case of the United States. So what is coercion?

According to Byman and Waxman, coercion is "the use of threatened force, and at times the limited use of actual force to back up the threat, to induce an adversary to behave differently ...". (Byman and Waxman 2002, 30)

Alexander L. George offers a very detailed definition of coercive diplomacy, which is coercion used in diplomacy. He states that it "refers to a defensive strategy that attempts to persuade an opponent to stop or undo an aggressive action. This strategy involves the threat of force or a limited exemplary use of force as a means of restoring peace in a diplomatic crisis." (1997, ix)

The main goal of coercion is to force the adversary⁴ to succumb to whatever demands the coercer⁵ states at the beginning of coercion, and through any possible means necessary (air strikes, economic sanctions, etc.). It is in fact a very demanding process, which requires the coercer to establish the adversary's pressure point and to act accordingly, and by all means maintain its escalation dominance. In one of the previous chapters the dominance of the United States in military power and economic might have already been mentioned. And due to this fact among others, the United States has often resorted to this way of solving foreign crises. In case the U.S. would not have dominated in the two mentioned areas, the use of coercion would not be a very good use of strategy. Although the coercer may find coercion a good solution based on its dominance, this does not necessarily mean that the adversary will yield to its demands. On the contrary, some adversaries "may try to impose costs on the coercing power" (Byman and Waxman 2002, 38). This might in the end lead into full scale war, or the adversary might break the alliance on the coercing side. Therefore, the use of coercion, as innocent as it may seem, is a highly demanding procedure, which does not secure a peaceful ending to a conflict, but might escalate to a full-scale war.

The uncertainty of the extent of coercion is the issue that needs more scrutiny and nonetheless tighter control. Coercion has become the grey area in the American Constitution, as the Framers did not explicitly state it as one of the possible uses of military power, as it did not exist at the time. Due to the lack of constitutional framing, the Presidents can freely and without congressional consent use coercion as a mechanism in foreign diplomacy. As has been pointed out so frequently already, any use of military power by one person is a sign of alarm, and should be prohibited, coercion being no exception. As coercion can only be the beginning of a longer conflict between two or more states, it should by no means be taken lightly, as it entails the same dangers as any proclamation of war.

Although many uses of coercions did not end in the escalation of conflicts, but have in fact brought it to an end, it still causes alarm, as there are no safety laws enacted. The president can use coercion at any time in any given moment, without the approval of Congress, and the Congress on the other hand has no lever to prevent it.

In order to fully understand the importance and the underlying danger of the use of coercion in foreign diplomacy, it is vital to examine it in terms of pressure points, coercive mechanisms

⁴ Adversary-a group that opposes or attacks, an enemy

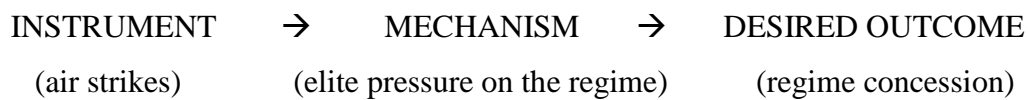
⁵ Coercer- the country or a group of countries enforcing ultimatums to an opposing country

and possible responses. The following analysis of coercion is entirely based on the work of Daniel Byman and Matthew Waxman.

4.2.1 COERCIVE STRATEGY

A coercive strategy is “the means-end chain expected to produce the desired result” (Byman and Waxman 2002, 27)

Below is a simple diagram of the previously mentioned chain and its parts.



INSTRUMENT- the means of threatening to inflict costs on an adversary,

MECHANISM- the process by which the threat of infliction of costs generates adversary responses,

OUTCOME- the overall goal

4.2.2 PRESSURE POINTS

A pressure point is something that is important to the adversary and which the coercer can use as a threat.

The pressure points may vary by regime:

- In the case of a democratic regime: Successful coercion focuses largely on the opinion of the majority or the economic health.
- In an authoritarian regime: coercion requires an elite-based strategy- sanctions that affect the entire country may fail or even have negative results if they do not affect the elites as well

4.2.3 COERCIVE MECHANISMS

Coercive mechanisms are important for the better understanding of the dynamics of coercion, and can in fact help understand why certain coercions were successful and others weren't. According to Byman and Waxman, mechanisms are "the crucial middle link of the means-end chain of coercive strategy". (2002, 48)

There are a few mechanisms that are commonly used in a coercive strategy and which differ according to the situation in which coercion is used.

4.2.3.1 POWER-BASE EROSION

This coercive mechanism attempts to undermine adversary's support among the individuals, whose support is necessary for the regime to exist. The power base, however, varies from regime to regime. In a democracy the power base are representatives of the elected party, whereas in an authoritarian regime it can be the military, key tribes, etc.

According to Byman and Waxman, the power base is such a vital pressure point for the coercer, because "the same groups of individuals to a regime's survival ... can also topple the regime" (2002, 60). In many cases the leadership may in fact concede under the threat of the power-base erosion, because they fear its criticism or being replaced.

A very good example of a successful and at the same time hazardous coercion based on the erosion of the power base is U.S.' attempt to coerce Iraqi leader Saddam Hussein.

Saddam's power base was in fact quite a small one, as he relied entirely on his family members, only select tribes, Baath party officials, and military officers; which is why the U.S. chose the previously mentioned tactics. The goal of the coercer was for Iraq to comply with UN resolutions to end the program of developing weapons of mass destruction. The allied forces of the U.S. and the U.K. used threats of bombing as a powerful coercion, whereas Saddam in reply harassed UN inspectors and refused to cooperate. However, "the combination of military defeat, popular and military rebellions, political isolation in both the Arab and international context, and a comprehensive economic embargo created massive fissures in Saddam's power base" (Byman and Waxman 2002, 62), which in turn led Saddam to concede to the demands due to the fear of losing support of his power base.

4.2.3.2 UNREST: popular disaffection

This mechanism is usually used when undermining the elite does not bear any results. In such cases putting pressure on the civilian population may be the next step. Such a strategy is rarely successful, especially in the cases of authoritarian regimes, where the civilian population usually does not have enough power to influence the decisions of the regime's leader. However, in some cases the suffering of the civilian population due to bombings, sieges and embargoes, may in fact influence the leader as he may be susceptible to their well-being and afraid of losing their support. Such instances may be that "civilian suffering may undermine the adversary's capacity to fight ..." (Byman and Waxman 2002, 64).

To better understand the reason why the use of possible civilian suffering can force an adversary to concede, one has to look at some possible reasons that might affect him. The first reason, which only applies in a small number of cases, is the concern of the leader for the well-being of his people. However, in most autocratic regimes the leader might even use his own people as a strategy of his counter coercion.

The second and more viable reason is that the suffering of the people may well be a political concern, and the third reason being the possibility of a revolt of the general population and its demand for his removal.

An example of the latter reason for concession is the war between Iraq and Iran, where both parties used attacks on the general population as a means of undermining the other country's morale. According to Byman and Waxman this caused "the Iranian morale to plummet as a result" (2007, 67), as the Iraqi army successfully increased its attacks on the Iranian people. "The fear of losing political support for the revolution in general propelled Iran's decision makers to consider concession." (Byman and Waxman 2002, 68)

4.2.3.3 DECAPITATION: threatening the leadership's personal security

This mechanism is the most direct one as it aims to influence the policy choices of the adversary by threatening their lives. What is more, it can have even greater effects, because "such an attack can spur the replacement leadership to adopt more conciliatory policies that would otherwise have been chosen" (Byman and Waxman 2002, 73).

Example of the use of such a mechanism is again the Gulf War, in which the U.S. used the threat of Saddam's decapitation. Even though, this threat was not menacing enough for Saddam to leave Kuwait, it did convince the Iraqi leaders not to use chemical and biological weapons. (Byman and Waxman 2002, 73)

Although this mechanism proves to be very successful in terms of achieving the desired objectives of the coercer, it does raise some moral and ethnic issues. According to the Executive Order 12333 assassination is prohibited, however, as every law this can also be subjected to interpretation by those trying to use it. Another concern that is not moral and not subject to interpretation is the fact that even U.S. leaders can at one point be coerced in the same manner, which is why this mechanism is often avoided, despite the enticing end result.

4.2.3.4 WEAKENING: debilitating the country as a whole

This mechanism in contrast to all previously mentioned, does not focus on the individual or the elite, but is oriented towards the country as a whole, and focuses on the destruction of the infrastructure, communications, etc. In such cases the leadership may concede because it fears losing support from the power base or the general population which in fact cares about the well-being of the country.

4.2.3.5 DENIAL: preventing military and political victory

According to Pape, "denial strategies seek to thwart the enemy's military strategy for taking or holding its territorial objectives, compelling concessions to avoid futile expenditures of further resources" (Pape 1996, 69). This type of coercion tries to convince the adversary that it cannot succeed in achieving their military goals. According to Byman and Waxman, "the use of sponsorship of guerrilla warfare to exhaust a foe can be a form of denial." (2002, 79).

An example of the previously mentioned form of denial is the 1974 Iranian funding of the Kurdish guerrilla against Iraq. In 1975 Iraq namely recognized its impossible victory against the Kurdish guerrilla as long as Iran supported them, and consequently agreed to Iran's demands. (Byman and Waxman 2002, 79)

For a better understanding of coercive strategy and its vital parts there is a chart, describing four examples in terms of establishing the coercer, the adversary, coercer’s goals, coercer’s key mechanisms, adversary’s key mechanisms, the final outcomes, and the possible undesired consequences that might have arisen in due course.

Table 4.1: Coercive mechanisms as used in foreign policy

COERCER	ADVERSARY	DATE	COERCER'S GOALS	COERCER'S KEY MECHANISMS		OUTCOMES	
						DESIRED	UNDESIRED
The USA	Cuba and USSR	1962	To force Soviets to withdraw from Cuba	Weakening		Soviets withdrew their missiles	US withdrew missiles from Turkey
The USA	Iran	1987-88	To secure free flow of oil	Weakening, denial	ADVERSARY'S MECHANISM: Denial	Iran limited the attacks on tankers	Occasional Iranian attacks
The USA	Libya	1986	To end Libya's support for terrorism	Decapitation of the power base		May have enhanced credibility with the allies regime	Temporary surge in Libyan-supported terrorism attempts
The USA	Vietnam	1972	To bring about cease fire	Denial; weakening	ADVERSARY'S MECHANISMS: Denial, weakening	Hanoi agreed to a temporary cease fire	Protracted effort required

Source: (Byman and Waxman 2002, 54–55)

Coercion may well be a very powerful tool to be used in foreign diplomacy, however, it also comes with a great amount of risk stemming from its unpredictability. No matter how well informed the coercer is about the pressure points of the adversary, and how well they are enacted, the counteractions of the adversary can never be fully expected. The responses to a coercion are therefore one of the main reasons why coercion in foreign diplomacy should be fully controlled, and should by no means be at disposal for unilateral use. There are ample opportunities on the side of the adversary to respond to coercion by defiance in terms of increasing repression and causing even more civilian suffering, by knowing that this is U.S. policy makers’ major concern. The reason why policy makers are concerned about civilian suffering again lies in the realm of politics and its costs. When talking about repression and civilian suffering, we cannot deny the fact that even coercers often use civilian in the same matter to secure their goals. In many cases of coercion, civilian suffering is used to produce erosion in the adversary’s power base. This strategy can directly lead to the concession of a regime and to its replacement, which is exactly what the coercer’s primary goal is usually. Due to the fact that the power base varies from state to state, it is sometimes difficult to predict the final outcome of coercion, however, if the execution of threats would in fact affect the power

base, this would prompt it to force the adversary to yield to the coercer's demands, or they simply assist with the change of the regime.

There are various examples providing data on coercion, however, not even two cases are identical. In diplomacy every instance has its own pitfalls and it is up to the ones dealing with the crisis in question to fully understand what can be done, and what is even more important-what is at stake. Each time a country uses coercion as means of dealing, of pressuring another country, there is a chance that it can fail and have even more devastating consequences than any other diplomatic solution. As has been mentioned so many times before, there is no recipe as to which coercive mechanism ought to be used in any given instance. Diplomatic crises vary so immensely that what worked in one case can fail miserably in another. According to Byman and Waxman, "the ideal mechanism (or combination of mechanisms) varies according to the vulnerability of the regime and the particulars of the crisis in question" (2002, 85), which is why the case should be subjected to immense scrutiny and every possible outcome weighed considerably, before engaging in coercion of any kind. This is also the main reason why coercion should be put under the same scrutiny and legal limitation as formal proclamation of war, as in the worst case scenario it can result in a full-scale war.

5 ANALYSIS OF CASES

There is no better way to test the theory on cases from history, which provide us with all the necessary examples to test the previously set hypothesis. To refresh our memory, we will firstly quickly look at the hypothesis which will serve us as stepping stones in the following analysis. The hypothesis used for this analysis is as follows: **“The Congress allows broad presidential discretionary power because of the lack of political will or partisan division.”**

Leaning on the above hypothesis, I have chosen a few examples of U.S. military involvement in foreign crises after WWII, and on which I have found considerable data to be able to conduct the analysis. The examples vary in terms of length, number of soldiers involved, as well as in terms of Congressional authorization and the lack thereof. Due to the fact that I have discussed coercion as a type of foreign diplomacy, which has been on the rise since WWII, and which lacks considerable legal constraints, there are also examples, where direct military involvement is lacking, however, the imminent threat of a possible involvement still existed. The main part of the analysis will of course be establishing the reaction of Congress and the support or the lack of it, and president’s reaction to it, as this will either prove or refute the above hypothesis. What is very important when examining the reaction of Congress to the unilateral presidential war decisions or coercive strategies, is also the distribution of seats in Congress and the influence of partisanship politics. According to a study done by David Brady, Joseph Cooper and Patricia Hurley, the propensity of the president towards involvement in a foreign military venture, rises when his party is “relatively large and unified, and confronts a relatively small and divided opposition party ... Conversely, when the president’s party is relatively small and divided, and the opposition party is large and more unified, the president’s freedom to use force abroad should decline.” (Howell and Pevehouse 2007, Loc 1585) For the aforementioned reasons, the distribution of seats in Congress, will be one of the main parts of the analysis of each of the chosen cases, in order to validate the above mentioned study.

5.1 VIETNAM WAR

Duration: November 1955 – April 1975- 19 years 180 days

Reasons for involvement:

The U.S. Government viewed its involvement as a way of preventing a Communist takeover of South Vietnam.

As has been mentioned above, the distribution of seats and to which party the majority of seats belongs to can be a vital reason for the presidential decision to military interfere in a foreign dispute. In the case of the Vietnam war it is clearly seen by the distribution of seats at the beginning of the conflict, that the president's party firmly held a majority in both the House and the Senate, which gave president Kennedy a good starting point for his decision. It is also seen that as the conflict and the U.S. involvement in it prolonged without any major success, Democrats started to lose seats in both the House and Senate, which can be easily interpreted as the result of the public pressure. This probably also led to the election of a Republican president. One of the possible reasons why the U.S. were involved in the conflict for such a long time, and why the Congress did not try to influence the president to withdraw, until the casualty sensitivity took its toll and the Congress no longer supported the war, was probably due to the fact, that since the majority in Congress belonged to the Democrats, and the Democratic president got involved in the conflict in the first place, the Democrats could not start to criticize the president from the opposing party for something they had supported from the get go.

Casualties: 58, 220 dead, 1,626 missing

Distribution of seats in Congress:

Table 5.1: Distribution of seats in Congress

YEAR	DEMOCRATS		REPUBLICANS	PRESIDENT
1963- 1965	House	258	176	J.F. Kennedy D
	Senate	67	33	Lyndon B. Johnson D

1965 – 1967	House	295	140	Lyndon B. Johnson D
	Senate	68	32	
1967 – 1969	House	248	187	Richard Nixon R
	Senate	64	36	
1969 – 1971	House	243	192	Richard Nixon R
	Senate	58	42	
1971 – 1973	House	255	180	Richard Nixon R
	Senate	54	44	
1973 - 1975	House	242	192	Richard Nixon R
	Senate	42	192	Gerald Ford R

Military strategy:

In the case in question the coercer's goal was to bring about ceasefire by using denial as a common coercive mechanism, which according to Pape "seek to thwart the enemy's military strategy for taking or holding its territorial objectives, ..." (1996, 69). The U.S.A. used air strikes in order to achieve the adversary's concession, however, failed in its plan due to lack of resources and also due to their casualty sensitivity. Due to this weak spot the U.S. policy makers more often than not in their fear of the possibility of losing support for the operation, try to avoid putting U.S. personnel in harm's way, which makes air attacks the perfect military tool. What is more, their casualty sensitivity can in many cases be seen as a weakness, which the adversary can easily use in his own advantage, and may not take the U.S. threats quite as serious. Ho Chi Minh warned the U.S.: "You can kill ten of my men for everyone I kill of yours. But even at those odds, you will loose and I will win." (Byman and Waxman 2002, 143) Minh's calculation held some truth, as the U.S. soon withdrew from Vietnam to avoid any more casualties, as the pressure from the public already endangered the mission.

Congressional checks:

President Lyndon B. Johnson planned major attacks on the North in 1964, however, he feared that the public would not support his intentions. However, luck was on his side, after the rebels have controlled half of the South, one of the Republican nominees began to criticize Johnson's administration for not acting more aggressively. After the attack on the U.S. destroyer Maddox, President Johnson submitted a resolution the Southeast Asia Treaty Organization as his justification to use any necessary measures to repel any attack.

Senate endorsed the proposed resolution by the President in hope that a bipartisan support would deter him from going to war. The same happened in the House, which unanimously voted for the resolution. The approval of the Gulf of Tonkin Resolution provided President Johnson with the power to take "all necessary measures to repel any armed attack against the forces of the U.S. and to prevent further aggression". (Fisher 2004, 131) The resolution also enabled him to use force as a means of assisting not only South Vietnam, but also Cambodia and Laos.

Some sceptics in Congress feared that the approval of the resolution is in fact "the abdication of congressional duties" (Ibid), however, President Johnson assured them, that although he believes that such a decision lies solely in the hands of the Commander-in-Chief, it is still his responsibility to give Congress a chance to verify his decision or dismiss it.

After the war began to escalate, President Johnson voiced his concern about the inability of winning the war, and after his re-election, he planned on widening the scope of the war by raising the number of troops.

The rising number of American casualties and the consequent casualty sensitivity of the United States, finally forced Congress into action. Despite the initial lack of opposition to the war, things began to change, when the newly elected President Nixon decided to widen the war in Cambodia and Laos. Congress finally began to oppose the war with a variety of bills, aimed at restricting funds for "all combat activities in Southeast Asia in 1973" (Fisher 2004, 135), which eventually brought the war to an end.

The most important congressional check that arose during the Vietnam War, is the resolution that was supposed to curb the unilateral decisions of the president regarding war- the War Powers Resolution of 1973.

After the war in Vietnam did not seem to be any closer to its end, the members of Congress had tried to find ways to control the President in his role as Commander-in-Chief, so that no such instances would ever occur.

In 1970 the House passed a resolution in which they stated, that “the President in certain extraordinary and emergency circumstances has the authority to defend the US ... without specific prior authorization by the Congress”. (Fisher 2004,145) However, he is still required to present to Congress the reasons for his action, and why he did not seek congressional authorization. The Senate, on the other hand, decided to add exact conditions under which the President can act unilaterally, and further stated a 30-day time limitation for the ending of the military mission, unless the Congress authorizes otherwise.

The time limit was set in the bill with the sole intention to prevent any further cases of prolonged military actions, such as the War in Korea and in Vietnam.

After the Resolution was presented to the President, he immediately vetoed it, as he “believed it encroached upon the President’s constitutional responsibilities as Commander-in-Chief”. (Fisher 2004, 147) In turn both houses succeeded in overriding the presidential veto. According to Fisher, the support for the WPR was not as much a constitutional matter, as it was “based on partisan motivation” (Ibid), and due to the fear that if the bill had not passed, that would support the idea of Pres. Johnson and Nixon alike, of their constitutional authority as a President to decide on matters of war. What is more, Fisher is convinced that for some members of Congress, overriding the veto was a chance at Nixon’s impeachment. (Ibid)

End result:

Despite adversary’s counter coercion mechanism to diminish the U.S. credibility of their threats, Hanoi eventually agreed to a temporary ceasefire. The ceasefire was only temporary and the war was prolonged, however, despite President Nixon’s attempt to re-engage into war, the Congress was reluctant to do so. The Vietnam War ended on April 30th 1975, when the North Vietnamese Army came to the Presidential Palace in Saigon.

5.2 CUBAN MISSILE CRISIS

Duration: October 16 – 28 1962

Reasons for involvement:

A failed military invasion of Cuba undertaken by the CIA- sponsored paramilitary group led to the Cuban request to Nikita Khrushchev to place nuclear missiles in Cuba to prevent any further harassment by the USA. Later on the USA established a military blockade preventing any further missiles being transported to Cuba.

Military strategy:

The U.S. choose the mechanism of weakening as its coercive strategy. Washington imposed unilateral sanctions against Cuba in order to achieve their goals. However, this strategy seemed to be ineffective, as the Soviet Union provided aid for the Cubans.

In order to increase their threat, the U.S. resorted to yet another coercive mechanism- the threat of nuclear attack. According to Byman and Waxman the U.S. intelligence informed the president that the Soviet Union was at the time unprepared for a nuclear strike, and that the U.S. could in fact launch a nuclear strike first without the fear of Soviet retaliation. They claim that “nuclear dominance allowed President Kennedy to stake out a demanding public profile, as he knew that the costs of escalation would weigh more heavily on Moscow.” (2002, 104)

Casualties: 1 US spy aircraft shot down, 1 aircraft damaged

Distribution of seats in Congress:

Table 5.2: Distribution of seats in Congress

YEAR	DEMOCRATS		REPUBLICANS	PRESIDENT
1962	House	262	175	J.F. Kennedy D
	Senate	64	36	

Congressional checks:

In the case of the Cuban Missile Crisis President Kennedy completely took over foreign policy and bypassed the Congress in all of his decisions. The entire crisis was dealt with in secrecy, as Kennedy “did not want the American people to know about the crisis until he made a decision”. (Gopalan 2010) According to Gopalan, the Congress was completely excluded from the foreign policy decision making, due to the fact that at the beginning of the crisis it demanded a more aggressive approach to the crisis, involving all possible measures. On October 22nd, 1962, the Republicans “advocated for immediate all out military action ...” (Ibid)

Despite the constant criticism of Congress on the matter, and the Republican demand, President Kennedy chose to take an alternate approach, and proceeded with a blockage of Cuba.

What is more, the Kennedy administration decided to conceal important information regarding the crisis from Congress, as to eliminate them from the process. The reason for such a decision was, that the president was afraid that the politicians would be too preoccupied with the wishes and demands of their constituents, and would therefore disagree with the embargo on Cuba, as it might affect their constituents.

Kennedy’s decision to withhold viable information from Congress, is a mechanism that presidents often resort to in order to have an upper hand in foreign matters, and has already been discussed in one of the previous chapters. In this case it provided the president to form the foreign policy without the meddling of Congress, and had only informed them about the embargo he enforced on Cuba.

President Kennedy chose to circumvent the Congress and to exclude them from the decision making, due to their aggressive stance towards the crisis, and because he feared an escalation, which could possibly lead to nuclear war.

Judging by the peaceful end of the crisis, the President chose the correct path, and what is more, succeeded in raising U.S. credibility in the world, something that not even the Congress could hold against him.

End result:

All offensive missiles were withdrawn from Cuba. Kennedy also removed nuclear missiles from Turkey as a part of his secret agreement with Khrushchev.

5.3 OPERATION POWER PACK- Military intervention in the Dominican Republic

Duration: April 28 1965 – September 1966

Reasons for interventions:

It was an U.S. intervention to prevent American lives and property after a civil strife broke out, and consequently the U.S. government was afraid that the Communist Party would take control of the Dominican Republic.

Military strategy:

Initially the U.S. military was sent to the Dominican Republic in order to rescue American citizens once the Dominican Republic government officials warned that they could not ensure the safety of foreign citizens. 42, 000 American troops participated in the intervention, which was aimed to rescue Americans and people of other nationalities out of the military zone, and later to secure an area containing a number of foreign embassies, which was proclaimed an International Security Zone. U.S. forces began to withdraw on 26th May 1966.

Casualties: 47 killed, 283 wounded

Distribution of seats in Congress:

Table 5.3: Distribution of seats in Congress

YEAR	DEMOCRATS		REPUBLICANS	PRESIDENT
1965-1966	House	295	140	Lyndon B. Johnson D
	Senate	68	32	

Congress openly supported Pres. Lyndon’s decision to intervene in the Dominican Republic, due to geopolitical and strategic reasons. “While critics of the intervention would downplay the significance of the relatively small island of Hispaniola, the economic, geographic and military facts of the Caribbean Basin display a clear picture of why the U.S. was willing to risk letting the nuclear genie out of the bottle.” (Gopalan 2010)

5.4 THE U.S. INTERVENTION IN NICARAGUA- The Contras

Duration: from 1979 to the early 1990's

Reasons for the intervention:

The U.S. saw the Sandinista regime as a threat to their economic interests and national security, and started to oppose the Nicaraguan Government. When Ronald Reagan assumed his presidency, he accused the Sandinistas of aiding the guerrillas in San Salvador by providing them with arms. The Reagan administration was “determined to prevent the Sandinista regime in Nicaragua from continuing to ship arms to the guerrillas in El Salvador.” (George 1997, 47)

This U.S. intervention is one of the many cases of coercion undertaken by the U.S. government in order to achieve their objective, in this case “the destabilizing and replacing the Sandinista regime by means of economic and the creation of the Contra guerrilla army to overthrow it.” (George 1997, 48) Although we have come across many instances in which coercion succeeded, the Contra Affair is one of the instances that clearly show, how coercion can have a negative outcome and is not successful in achieving its goals. The reasons why the goal was not achieved in this case is that the Reagan administration used an approach which combined pressure and negotiation, and what is more, the administration disagreed on the policy objectives. Another very important part of the failure of this coercion approach was, that in this case it did not destabilize the Sandinista, as it was intended, but has actually strengthened their resistance. What is more, the coercive strategy of Reagan administration also lacked a very important part, and that is the urgency of the adversary to comply with the demands. Therefore, the threats of the administration lacked credibility, which in turn empowered the adversary even more.

One of the previous chapters also deals with the importance of domestic political as well as public and international support, when it comes to coercive diplomacy or military intervention. Despite the administration's great endeavors to portray the Sandinista regime as an U.S. threat, nobody was convinced, and this led to a constant battle for the funding of the Contras. According to George, “the absence of sufficient, sustained congressional support drove the administration to seek alternative sources of funds, ... that backfired when the Iran-Contra scandal erupted.” (1997, 50)

Military strategy:

In order to coerce the Sandinista regime to resign, the U.S. policy was to support the insurgency as the main mechanism of coercion. This meant to financially support the Contras, which would fight and eventually overthrow the Sandinista regime. This mechanism was especially attractive as it does not involve U.S. army, which in turn means that there is no threat of casualties.

Distribution of seats in Congress:

Table 5.4: Distribution of seats in Congress

YEAR	DEMOCRATS		REPUBLICANS	PRESIDENT
1979- 1981	House	277	158	Jimmy Carter D
	Senate	58	41	
1981- 1983	House	242	192	Ronald Reagan R
	Senate	46	53	
1983- 1985	House	269	166	Ronald Reagan R
	Senate	46	54	
1985- 1987	House	253	182	Ronald Reagan R
	Senate	47	53	
1987- 1989	House	258	177	Ronald Reagan R
	Senate	55	45	
1989- 1991	House	260	175	George W.H. Bush R
	Senate	55	45	

When looking at the distribution of seats in Congress it is interesting to observe that the President's party never held a majority in Congress, which would be suspected when bearing in mind that the Congress initially supported the intervention. What is more, through the years the opposing party even lost quite a few seats in both houses, however, gained back its majority in the final year, which would to be expected after a scandal such as the Iran-Contra Scandal.

Congressional checks:

As can be seen from the above analysis of the distribution of seats in Congress throughout the involvement in the conflict, the President obviously enjoyed support from both parties, as the Congress after two years of the President's plea to approve funds to support the contras, finally approved his decision to intervene in Nicaragua. In order to enable that they "appropriated \$27 million for non-military aid to 15,000 contras". (CQ Almanac 1985) When the aid expired in 1986, Reagan requested a renewal, but was initially faced with resistance from the House. However, they changed their view on the matter 2 months later, under the condition that the CIA or the Defense Department are not to distribute the appropriated aid.

From the beginning of the crisis, Democrats were against helping the contras, but have agreed to give the President "a benefit of a doubt, and a chance" (Ibid), to solve the crisis in Nicaragua.

When President Reagan requested for additional \$14 million for military aid, the Congress was not in favor of his request. Therefore, Reagan proposed a 60-day cease-fire and negotiations, which Democrats saw as a "dirty trick", whereas the Republicans believed it to be a needed change.

The Congress was divided on the aid, as "House democratic leaders adamantly opposed giving any directly to the contras, and Reagan and the Republicans insisted on symbolic support for them". (Ibid) Furthermore, Democrats had enough seats in the Senate to frequently oppose the bills for the contras aid.

When Nicaraguan president Ortega sought aid in Moscow, the atmosphere in Congress started to change, and the Democrats tried to "revive proposals for humanitarian aid to the rebels". (Ibid) As the Senate was controlled by the Republican, they had easily approved 38 million in non-military aid. The Democrats tried to amend the bill to restrict the nature of the aid, in which they eventually succeeded with some minor compromises. (Ibid) The support for the contras raised a lot of objections from the public as well as the Congress, especially because the contras

often violated human rights. Therefore, the Congress “placed limits on funding and on the type of activities the U.S. could support ...” (Byman and Waxman 2002, 119)

In the end the appropriation bill consisted of \$27 million in non-lethal aid to the contras, which both houses approved.

Due to the lack of viable proof of the necessity for further support of the contras and no results, the congressional support for the mission started to decrease and eventually resulted in the limitation of funding. This prompted the president to search for funds elsewhere- hence the affair that was the demise of the Reagan administration.

End result:

In 1984 the Sandinista government filed a suit in the International Court of Justice (ICJ) against the United States (Nicaragua v. United States), which resulted in a 1986 judgment against the United States. The ICJ held that the U.S. had violated international law by supporting the contras in their rebellion against the Nicaraguan government and by mining Nicaragua's harbors. (History 2016b)

The main problem with choosing such a mechanism of coercion is that the coercer usually does not possess direct and complete control over the insurgency and the situation itself. Such cases have often lead to instances of brutalities by the insurgency, and what is more, it may even cause a civil war to break out, and cause even more trouble than the region ever witnessed.

5.5 THE GULF WAR 1990-1991

Reasons for involvement:

The Gulf Crisis of 1990-91, was according to Fred Halliday “one of the more significant international crises of the post-1945 epoch” (Halliday 1994, 109), due to a vast number of armed forces (close to 1 million) being involved in a significant case of inter-state conflict, not to mention the fact that much of the international community was somehow diplomatically involved. (Ibid)

There are many different reasons, or better say speculations, about why Saddam Hussain invaded Kuwait in August 1990, such as: “Kuwait had no legal status; the borders between Kuwait and Iraq were wrongly drawn; Kuwait had damaged Iraqi’s economic interests by taking oil from the Iraq part or Rumalia oilfield” (Halliday 1994, 114). The latter assumption that the fight over oil was the main culprit behind Saddam’s invasion of Kuwait, is by far the most plausible one, as Saddam in one of his speeches prior to the invasion, “accused neighboring Kuwait of siphoning crude oil from the Ar-Rumaylah oil fields located along their common border.” (History 2016a)

Arab powers were concerned by Saddam’s actions and have therefore requested the U.S. and other Western nations to intervene. In response to their plight the UN Security Council demanded that Saddam withdraws his forces out of Kuwait by mid-January 1991, and his refusal to do so, sparked the Gulf War. The war began with a massive air attack called Operation Desert Storm led by the U.S. The air attacks forced Saddam to increase the number of his troops in Kuwait to 300,000 men, and to declare jihad against the coalition forces in order to gain support from other Muslim states. As a countermeasure to Saddam’s increase in forces, the coalition continued its efforts by a massive ground attack in Kuwait and Southern Iraq on 24th February. They defeated the Iraqi forces in 4 days, and liberated Kuwait. Therefore, the Operation Desert Storm was believed to be a great success, and President Bush declared a cease-fire on 28th February, which is also the official end-date of the war. However, the successful operation did not completely terminate conflicts in the region, which in a few years led to the Iraq War of 2003.

Military strategy:

The U.S. and other members of the coalition, used coercive diplomacy, namely air attacks and threat of ground invasion, to force Saddam to withdraw his troops from Kuwait and to meet the demands of the UN Security Council. President Bush used the so-called “carrot and stick” approach in coercive diplomacy, the “carrot” being the assurance that the U.S. would not attack Iraq if Saddam chose to leave Kuwait. According to George, “the strategy of coercive diplomacy was stretched to its limits and it is not surprising that it could not produce a peaceful settlement of the crisis.” (George 1994, 59–64) The reason why the administration chose to use such an extreme approach was due to the president’s extreme confidence that the overwhelming military power of the coalition would be enough for the victory with minimal casualties. The threat, however, had an opposite effect on Saddam, as the administration had anticipated, when

believing that such a threat would cause popular unrest, which would in turn cause a rift in Saddam's power base. To the contrary, dictators such as Saddam, do not depend on the popular support, and are willing to risk their own people to achieve their means, what is more, he believed it to be the means to end Iraq's isolation. According to Byman and Waxman, "the U.S., ironically, has proven more sensitive in its actions to the suffering of the Iraqi people". (2002, 148) As Saddam's leadership placed civilians in a bunker, believed by the U.S. intelligence to be a command center, which was later bombed by U.S. F-117. As dozens of civilians died in that bunker, President Bush suspended all attacks on Baghdad. This was the exact proof; that "U.S. decision makers respond to the adversary counterstrategies almost as predictably as they create the conditions for such strategies". (Ibid)

Saddam was aware of the weak spots of the U.S. and planned to use them to the fullest extent possible. As Ho Chi Minh during the Vietnam War exposed the U.S. casualty sensitivity in the Vietnam War as their weakest spot, so did Saddam upon his invasion of Kuwait, when he said: "Yours is a society which cannot accept 10,000 dead in one battle." (Freedman and Karsh 1993, 276) However, what Saddam did not expect, was the administration already "prepared for upwards 10,000 casualties in the lead-up Desert Storm". (Byman and Waxman 2002, 144)

Massive ground invasion of the coalition forces in the end forced Saddam to withdraw from Kuwait and to accept some of the other UN Security Council demands.

Casualties:

-coalition: 147 killed in combat, 467 injured; of which 89 U.S. soldiers were killed and 38 were MIA

-civilians: 1,000 Kuwaiti civilians, 3,664 Iraqi civilians

Distribution of seats in Congress:

Table 5.5: Distribution of seats in Congress

YEAR	DEMOCRATS		REPUBLICANS	PRESIDENT
1990-91	House	260	175	George H.W. Bush R
	Senate	55	45	

Congressional checks:

In November, when President Bush decided to intervene militarily in Kuwait, he did not seek congressional authorization for his actions. What is more, he pressed the UN Security Council to authorize military intervention as a multinational mission. For this purpose, he assembled a large coalition comprising of Saudi Arabia, Kuwait, the United Arab Emirates, Japan, Germany, France, Great Britain and others, who were willing to financially support the mission. According to James A. Baker, Secretary of State in the Bush administration, “those financial contributions would go directly to the Defense Department as gifts to be later allocated as the administration determined”. (Fisher 2004, 169) However, Senator Robert C. Byrd (D-W.Va) intervened, so that the contributions would end up at the Treasury Department, which was controlled by the Congress.

When in November, the UN Security Council passed Resolution 678⁶, American troops had the necessary authorization for the commitment in Kuwait, as Secretary of Defense Dick Cheney claimed before the Senate Armed Services Committee on December 3, 1990. In his opinion, the approval of the Security Council was enough for the President to send troops to Kuwait. (Fisher 2004, 171)

In response to his claim the Democrats adopted a resolution according to which President needs prior approval from Congress, unless American lives are at risk. 54 members of Congress even took the case to court, and this might have influenced the President to ask Congress for support in his military mission. The newly convened Congress initially rebuffed President’s request for support. There was heated debate over the constitutional right of the president to send troops to combat, and many a resolution was offered by Democrats demanding a congressional role in the decision. They stated in a statement, that “the decision to go to war should not be left to one man”. (CQ Almanac 1992) On the other hand, Republicans offered a resolution allowing exactly that.

Despite initial disagreement with Presidential decision, and despite the division among congressmen, on January 12, 1990, Congress voted (Senate 52-47; House 250-283) for the

⁶ UN Security Resolution 678 authorizes all Member States co-operating with the Government of Kuwait, unless Iraq on or before January 15, 1991 fully implements, as set in paragraph 1, the mentioned resolutions, to use all necessary means to uphold and implement resolution 660 and all subsequent resolutions and to restore international peace and security in the area.

authorization of U.S. troops to engage in the war, and help oust Saddam out of Kuwait. This was “a historic action [which] marked the first time since WWII that Congress had directly confronted the issue of sending large numbers of American forces to combat”. (Ibid)

Although President Bush eventually caved in to the demands of Congress to seek their support, he publicly expressed his opinion on the matter after the war, when he stated, that he “didn’t have to get permission from some old goat in the United States Congress to kick Saddam Hussein out of Kuwait”. (Fisher 2004, 172)

In Fisher’s opinion, Bush’s belief in his ultimate authority as the Commander-in-Chief was groundless. “In a war of the magnitude contemplated in the Persian Gulf, President Bush needed authority, not merely support from Congress”. According to him, the UN Security Council Resolution “were insufficient legal sanctions”, as the UN Charter cannot negate the authority vested in Congress by the U.S. Constitution. (Fisher 2004, 172–173)

What initially began as a simple congressional declaration of reservations regarding the war in Kuwait, eventually became a dispute about, who is authorized to determine, whether the troops would be engaged in combat or not.

5.6 U.S. INTERVENTION IN SOMALIA- Operation U.S. Relief Efforts

Duration: December 5, 1992 – March 1994

Reasons for involvement:

After Said Barre, a Somali strongman and leader of the regime, which was supported by the Soviets, fled the country in 1991, regional warlords began to fight for supremacy over the region and food supplies, that eventually pushed its people to face famine and brutal fighting among the clans. “On December 3, 1992 the UN Security Council adopted Resolution 794 to authorize the use of peacekeeping troops to address the deteriorating crisis.” (Fisher 2004, 177) The situation and hardship of the Somali people prompted the administration of George H.W. Bush to agree to the assistance of the relief efforts to deliver food from Kenya.

Following general Mohammad Farrah Aideed's defiance of the Security Council, his demands of the withdrawal of all peacekeeping units, and his ambush of the Pakistani peacekeepers, the U.S. tried to capture him, based on Chapter VII of the Charter of the United Nations⁷. This plan immediately changed the role of U.S. forces in Somalia from peacekeeping to combat under the command of the UN. The change in the objective of the mission and the means of achieving it caused a major rift between the coalition members, as Italy strongly opposed it. General Aideed used the rift in the coalition by using small-scale attacks on the UN personnel, which caused even stronger objections from Italy.

Military strategy:

At first the U.S. used their expertise in logistics without having to engage its troops on the ground. However, after the objective of the mission changed from the peacekeeping one to capturing Aideed, the U.S. started using the threat of decapitation of the main faction leader by using air strikes and raids. Unfortunately for the coercing side, air attacks resulted in coalition fragmentation, which in the end undermined the threat of the coalition as a whole, and resulted in early U.S. withdrawal. (Byman and Waxman 2002, 153)

Number of casualties: 53 killed, 153 wounded

⁷ Chapter VII UN Charter: Article 44: When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45: In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Distribution of seats in Congress:

Table 5.6: Distribution of seats in Congress

YEAR	DEMOCRATS		REPUBLICANS	PRESIDENT
1991- 1993	House	267	167	George H.W. Bush R
	Senate	56	44	
1993- 1995	House	258	176	Bill Clinton D
	Senate	57	43	

Congressional checks:

On the day, when President Bush agreed to the peacekeeping mission in Somalia, the Justice Department encouraged him, that he possessed the necessary authority to do so. According to Attorney General Robert Jackson, “Bush had authority to commit troops overseas without specific prior Congressional approval on missions of good will or rescue, for the purpose of protecting American lives or property or American interests.” (Fisher 2004, 178-179) Based on the UN Security Council resolution, Congress supported the president in his decision to send troops to Somalia, however, Senate Majority Leader George Mitchell pointed out, that this resolution does not carry the same weight or is not substitute for any congressional authorization. (Fisher 2004, 179)

According to CQ Almanac, “some lawmakers were urging President Clinton to seek congressional authorization for continued participation of U.S. troops in Somalia in accordance with the WPR.”⁸ (CQ Almanac 1993), as President Clinton was firm in his conviction that the mission needed a set date for the troops withdrawal.

Therefore, Foreign Affairs Chairman Hamilton proposed an amendment, which would invoke the provisions of the WPR with a withdrawal period of one year, which is in contrast to 60 days,

⁸ The War Powers Act of 1973 requires that a president seek congressional approval when troops faced imminent involvement in hostilities. (WPR, p. 485)

considerably longer. Due to afore mentioned fact republicans opposed his proposed amendment, “on the grounds, that it gives open-ended authority to the president” (Ibid).

Although President Bush at the beginning of the peacekeeping mission promised the American public, as well as Congress, that the American soldiers would stay out of harm’s way, and would therefore provide only air assistance in the mission, things drastically changed on October 3, 1993, when 18 American soldiers were killed. This immediately caused a change in congressional support for the mission, and they soon demanded immediate U.S. withdrawal from Somalia.

Only a few days after the death of 18 U.S. soldiers in Mogadishu, and after Congress demanded of the President to withdraw troops from Somalia before there are any more casualties, President Clinton announced “that the U.S. would increase the U.S. forces in Somalia to provide a more muscular presence, but he also pledged that all U.S. troops will be out of Somalia no later than March 31 ...” (Ibid) In order to force president Clinton to comply with their demand, Congress exercised its power of the purse and threatened cutting off funding after the final date of withdrawal.

The discord between the two parties on the due date of U.S. withdrawal from Somalia, caused a lot of debate and blockages of bills from both sides, each party trying to enact their own idea- Democrats supported the president on his proposed date of March 31, 1994, whereas the Republicans pushed for a prior date. However, in the end a unified government prevailed, as both parties became aware that pushing for a quick withdrawal might cause even more harm to the troops, and as House Speaker Thomas S. Foley observed, “for the good of the American position around the world”. (Ibid)

5.7 OPERATION DELIBERATE FORCE IN KOSOVO AND BOSNIA

Duration: 30th August – 20th September 1995

Reasons for involvement:

Operation Deliberate Force was an air campaign conducted by NATO in order to achieve peace in the Balkans. According to Robert C. Owen, “the UN and NATO launched it as a peace operation without any formal declarations of war.” (Owen 2000, xxii)

Two years of turning a blind eye to the crisis in the Balkans, U.S. decision not to intervene started to take its political toll, and the U.S. government decided to intervene in the conflict and to push NATO into a “more forceful action against the Bosnian Serbs”. (Owen 2000, 20) After the bomb explosion in a Sarajaveo marketplace, causing 68 civilian deaths, “the U.S. proposed retaliatory air strikes against the Bosnian Serbs.” (Ibid)

When NATO threatened Milošević with air strikes, Clinton’s administration was undecided about what kind of military forces the U.S. would send to conflict. Secretary of Defense William Cohen recommended that no ground forces be used, which is according to Byman and Waxman in accordance with the U.S. policy not to engage ground forces in a foreign conflict due to its casualty sensitivity, however, they were more than willing to assist with air strikes. (Byman and Waxman 2002)

The afore mentioned U.S. casualty sensitivity became well-known to their adversaries and Milošević was no exception. In an interview, he bluntly acknowledges that “NATO is not willing to sacrifice lives to achieve our surrender. But we are willing to die to defend our rights as an independent sovereign nation.” (Byman and Waxman 2002, 144) Based on this assumption he defied NATO’s demands for his surrender despite the undisputed fact that the odds were not in his favor. The actuality of the situation eventually led to his secession, as he was unable to inflict casualties on NATO forces, as their key mechanisms were air strikes. Although they were unable to retaliate for the air strikes by inflicting casualties, they “detained peacekeeping personnel on the ground”. (Byman and Waxman 2002, 145)

A few years later, when NATO forces pondered on introducing ground forces to Kosovo as a viable threat, Milošević finally met NATO’s demands. According to Byman and Waxman, the reason for his final surrender was the threat of losing his only policy objective- the control of Kosovo, and what is more, there was also a possibility of losing other parts of Serbia. (2002, 101)

Distribution of seats in Congress:

Table 5.7: Distribution of seats in Congress

YEAR	DEMOCRATS		REPUBLICANS	PRESIDENT
1995	House	204	230	Bill Clinton D
	Senate	48	52	

Congressional checks:

At the beginning of U.S. involvement in NATO peace mission in Bosnia, Clinton reported to Congress that the U.S. troops would participate in humanitarian airlifts, as a part of a multilateral force, but would by no means introduce any ground forces. According to Fisher, President Clinton said that “he welcomed and encouraged congressional authorization of any military involvement in Bosnia.” (2004, 183)

Since the beginning of President Clinton’s decision of involving U.S. troops in Bosnia, Congress was not keen on supporting the unilateral decision of the President. Therefore, Congress considered restrictions, which would block President’s initiatives. In response to congressional amendment Clinton “objected that they would infringe on his constitutional authority to make foreign policy and deploy troops”. (Fisher 2004, 183) Clinton’s ultimate opinion on his responsibility to consult Congress on matters of deployment was, that he is in a way entitled to consult Congress, but in his opinion the President has the ultimate constitutional authority on such decisions. In his message to the Congress he expressed “his grave concern about a number of amendments designed to restrict the use of American troops ... He was fundamentally opposed to amendments that improperly limit [his] ability to perform [his] constitutional duties as Commander-in-Chief, which may well have unconstitutional provisions.” (Fisher 2004, 184) What is more, he was even convinced that such amendments are unprecedented, which is in complete discord with constitutional principles.

When U.S. jets shot down Serbian bombers over Bosnia in February, Clinton reported to Congress, that the U.S. troops are involved in the mission, and he justified their involvement by saying that “the authority under which air strikes can proceed, is NATO acting out of area

pursuant to U.N. authority, which requires the common agreement of our NATO allies” (Fisher 2004, 185). With these words he explained, that in his opinion, he in fact does not need congressional authority, as the U.S. obligations to NATO supersede that of the U.S. constitution.

Clinton soon claimed even more power over troop deployment as he unilaterally introduced ground troops into Bosnia, something that was not even a possibility at the beginning of U.S. intervention in Bosnia. In response to Clinton’s decision Congress again pondered the question of how to limit his authority. The author of the amendment, which would limit Presidential decision on troop deployment, Senator Judd Gregg (R- N.H.) argued, that “the power to undertake action which put American soldiers’ lives in harm’s way lies primarily and first with the President, but obviously as a Congress also play a major role, not only on the appropriation side but, more importantly, on the side of being concerned for our soldiers ...”, and that “prior to the President taking his action, he should come to the Congress and ask for our approval.” (Fisher 2004, 188) According to Fisher and based on many statements from senators, Republicans and Democrats alike, the lack of authorization from Congress was the exact reason why senators voted for the amendment and not against it, because peace negotiation were in progress, and the joint opinion of the Senators was, that that is not the time to tie the President’s hands. (Ibid)

Democrats mostly supported the president’s decision to engage U.S. forces in Bosnia, whereas Republicans were reluctant towards the engagement no matter how restricted. Regarding the matter Alan K. Simpson of Wyoming stated: “After Vietnam we never were able to right ourselves. They should not take us down that road again.” (CQ Almanac 1995)

In order to block Clinton’s unilateral decision, Congress decided to pass a bill to lift the arms embargo, which would allow Muslims in Bosnia to be able to fend for themselves, and the help of U.S. ground forces would no longer be necessary. As the bill was passed, President Clinton vetoed it with the justification that this was “the wrong step at the wrong time”. (Ibid) He further explained his veto, by saying: “I recognize that there is no risk-free way ahead in Bosnia. But unilaterally lifting the arms embargo will have the opposite effects of what its supporters intend. It would intensify the fighting, jeopardize diplomacy and make the outcome of the war in Bosnia an American responsibility.” (Ibid) Despite the fact that the bill was passed with the necessary majority to override the veto, Congress chose not to do so.

In September, when Clinton again started to push for troop deployment, the lawmakers insisted that the president should seek authorization from Congress. Senator McCain was clear on their terms, when he stated that “it would be foolish of the president not to do that, because they know we have too many ways to block it.” (Ibid) Clinton’s administration was more than aware that they would have to abide by their rules, as the price of the U.S. involvement in the mission in Bosnia was reaching \$1 billion, which would of course have to be approved by Congress.

“On October 30, the House passed a non-binding resolution that U.S. troops should not be deployed without congressional approval”, and 222 Republicans were joined by 93 Democrats in their support of the resolution. (Ibid) Later, when they voted on a legally binding legislative about the appropriation of funds for the mission, the support of the Democrats plummeted to only 28. They namely believed that the legislative blocked the President’s authority to send the troops abroad, when in reality it only meant that “he could deploy them, but only after Congress had appropriated funds specifically for that purpose”. (Fisher 2004, 188) According to Fisher, the congressional decision to make the conditions of the deployment legally binding, was “completely appropriate for a lawmaking body”. (Ibid)

Despite the President being a Democrat and despite a strong Republican objection to his decision, some Republicans voted against the legislative, as they “respect the authority of the Commander-in-Chief to conduct foreign policy”, as they believed that the attempt of Congress to “micromanage foreign policy” would be a grave threat to the American lives. (Ibid) On the other hand, however, Pat Buchanan flatly observed that Clinton lacked constitutional authority in the matter.

Later on in December the Senate passed a “multipart bill providing support for American troops but expressing reservations about sending them to Bosnia”, (Fisher 2004, 190) with which Congress shifted responsibility to the President in case something went wrong. According to Fisher, “the bill was a way for Senators to oppose Clinton’s policy but praise the soldiers who would carry it out”. (Fisher 2004, 191)

The end result was, that President Clinton sent 20,000 troops to Bosnia without Congressional approval, for what would later on became a long-extended mission.

5.8 WAR IN IRAQ

Duration: 30th March 2003 – 2011

Reasons for involvement:

The principal justification for the military operation against Iraq, offered by President Bush to the U.S. Congress in October 2002, was that Iraq possessed the weapons of mass destruction, which poses a threat to the U.S. and its interest. According to his justification, a military mission was needed in order to “defend the national security of the U.S. against the continuing threat posed by Iraq, and enforce all relevant UN Security Council resolutions regarding Iraq” (Fisher 2004, 211)

President Bush expressed his opinion on Saddam Hussein’s regime on various occasions, and his words, that he “is a man who poisons his own people, who threatens his neighbors, who develops weapons of mass destruction ...”, and that the policy of his administration is “that he goes” (Fisher 2004, 213), made it quite clear that Bush was hell-bent on changing the regime in Iraq.

However, in his address to the UN, Bush took a more lenient approach, as he described the necessary conditions under which a peaceful resolution was possible, and under which Saddam could still remain the leader of Iraq.

On October 21st, Senate passed the Iraq Resolution (77-23, with 48 Republican votes, and 29 Democratic), which would authorize the use of military force against Iraq. Nonetheless, the President still needed to persuade Congress to do the same. Therefore, the Bush administration vigorously sought support for the mission and had thus used any type of reason to support their claim that Iraq poses a threat. According to Fisher, they even tried to “establish a connection between Iraq and al Qaeda, but the report could never be substantiated”. (2004, 219) What is more, some European officials even feared that a war in Iraq would in fact increase the threat of terrorist attacks, and not the reversed.

Despite claims proving the opposite, Bush administration fought hard to convince the government and the public that al Qaeda is in Iraq. They frequently claimed to possess substantial evidence, but never quite convinced anyone. Many believed that the war against Iraq was nothing short of a family grudge against Saddam, which Bush even supported during

a campaign speech, by saying: “This is a guy that tried to kill my dad at one time”. (Fisher 2004, 214)

Another blow for the administration’s ability to convince the government of the necessity of the war, was when Iraq agreed to the visit of UN inspection team, and they could not find any evidence of a nuclear weapons program. All of a sudden, the most plausible reason for the invasion of Iraq had fallen apart.

After some fierce persuasion from the administration, the House Committee left the decision to go to war in the hand of the President, and “the legislation would decide neither for nor against the war”. (Fisher 2004, 227) A similar decision had already been reached in the case of the Tonkin Gulf Resolution of 1964, when Congress believed that their support would actually deter the President Lyndon B. Johnson from engaging into war.

When President Bush was signing the Resolution, he observed, that the signing “did not constitute any change in the long-standing positions of the executive branch on the President’s constitutional authority to use force” (Fisher 2004, 229)

President Bush now possessed all the necessary authority to commit U.S. troops to a war against Iraq. Although Congress hoped that their bipartisan support would discourage the President from such a decision, and that a peaceful end to the crisis at hand was possible, the President decided to the contrary.

President Bush and U.K. Prime Minister Tony Blair, soon declared that Iraq did not comply with all the resolutions by the UN Security Council, and that it does in fact hinder UN inspections. Despite objections by other coalition members, Bush, on March 17th 2003, ended all diplomatic endeavors for a peaceful solution to the crisis, and issued a 48-hour deadline to the Iraqi leader to leave the country. As Saddam refused to leave, he gave the U.S. and allied forces a reason enough to launch a military attack. And so on March 20th, 2003, the war against Iraq officially began.

Military strategy:

The U.S. coerced Saddam ever since the end of the Gulf War, and coercion through the power base proved to be quite successful, as Saddam agreed to UN inspections because he “feared further humiliation before his power base” (Byman and Waxman 2002, 93) As Bush’s

ultimatum did not reach a result and Saddam refused to leave Iraq, the U.S. resorted to another coercive mechanism- air attacks.

The war in Iraq began without any declaration, although Saddam's breach of Bush's ultimatum was indication enough, that the war is about to commence.

As mention previously, the main military strategy of the coalition forces (comprising of 248,000 U.S., 45,000 British, 2,000 Australian and 198 Polish soldiers) were air strikes aimed at government and military installations to gain control of Baghdad. The air attacks were a success, and despite some major resistance by the Ba'th party supporters, the coalition forces gained control of Baghdad in only 10 days. After Saddam's hometown of Tikrit also fell on April 11th, the mission was over, and President Bush declared the end of major combat on May 1st. Saddam was captured in December 2003, and later trialed and executed for crimes against humanity.

In spite of the initial success of the coalition forces, and despite the fact that one objective- the change in the Iraqi regime- was achieved, the coalition forces were still faced with restoring law and order in the country, a task that proved ever so challenging.

After the end of major combat between the coalition and the regime forces, a civil war between the Shi'ite and the Sunni militias broke out, which cost the coalition more lives than the initial mission, reaching 1,000 by the end of 2004.

In November 2008, after a few more years of fighting, and a mounting number of casualties on both sides, the new elected Iraqi parliament "redefined the legal framework for U.S. military activity", and set mid-2009 as the date for U.S. withdrawal from Iraq. As Barack Obama was elected the new president of the U.S. in 2009, he promised the U.S. as well as the Iraqi nation, that U.S. forces would be out of Iraq by August 31, 2010; and kept his word. (Encyclopaedia Britannica 2016)

Casualties:

4,497 U.S. soldiers killed, 32,226 U.S. soldiers wounded

Distribution of seats in Congress:

Table 5.8: Distribution of seats in Congress

YEAR	DEMOCRATS		REPUBLICANS	PRESIDENT
2003-2005	House	205	229	George W. Bush R
	Senate	48	51	
2005-2007	House	202	231	George W. Bush R
	Senate	44	55	
2007-2009	House	236	199	George W. Bush R
	Senate	49	49	
2009-2011	House	257	178	Barack Obama D
	Senate	56-58	40-42	

Congressional checks:

According to Fisher, U.S. government failed in its constitutional duties, when they, under partisan pressure and despite a failure to present any credible evidence to justify the military operation, “agreed to compromise language that left the decisive judgement with the President”. (2004, 235)

As the decision of going to war was exclusively in the hands of the President, so was the extent and the duration of the mission. Although the President enjoyed support of the public at the beginning of the war, the prolonged mission and the rising number of U.S. casualties took its toll on the public support. Americans and the world started to criticize Bush and his administration for the occupation of Iraq, especially as the photographs of abuse from Abu Ghraib prison made its way to the press.

In the following years Bush administration was faced with constant criticism and opposition by Democrats and the general public.

In 2007, prior to the Iraq Study Group report, which completely changed the perspective on Iraq war, President Bush planned to increase the number of troops in Iraq by more than 20,000. The debate to block his intentions and to end U.S. involvement in Iraq haunted the Congress, as Democrats tried to pass troop withdrawal bills. With a majority they held in the House, they could easily have passed it, but with the lack of 60% majority in the Senate, their goal was out of reach, as the Republicans chose not to break with their President.

Democrats nearly succeeded in their efforts, when they tried to impose restrictions on the war and to set goals for U.S. withdrawal through a bill for the allocation of the emergency money for the Iraq War. The Senate and the House did pass the bill, but unfortunately the President vetoed it.

Democrats again tried to provide and pass a bill, which would force the President to start withdrawing U.S. troops from Iraq, but failed in their attempt again, as Bush threatened to veto “a year-end omnibus spending package unless Democrats relented”. (CQ Almanac 2007)

As observed in the article from CQ Almanac, the Democratic efforts to change the course of war in Iraq, or to end U.S. presence in the area, were shattered mainly due to their small majority in Senate. As Long as the odds were in the President’s favor, Democrats could not do much to prevent any more U.S. casualties in Iraq. (Ibid)

After years fighting a war, established on shaky ground, with not visible improvement of the situation, and only with a growing number of casualties, the support for the Republicans diminished, and the nation was ready for a change. Democrats finally gained majority in Congress, and with the election of a Democratic president, the time was ripe to change the course of war in Iraq.

After the new Iraqi government redefined U.S. role in Iraq, and set a date for U.S. withdrawal, President Barack Obama with the support of the Congress and the public, promised a withdrawal of troops by the end of August 2010. The majority of the troops were out of Iraq prior to the promised date, and the formal end of the mission in Iraq was declared on December 15, 2011. (Encyclopaedia Britannica 2016)

6 TESTING THE HYPOTHESES

6.1 Hypothesis 1

The above analyzed cases of U.S. involvement in foreign crisis provide ample proof that the unilateral decision of presidents to send U.S. troops into conflict, can in fact be the result of the lack of constitutional clarity on the matter.

In most cases presidents did ask Congress for approval, not because they would believe that they are required to do so, but because they were aware that Congress has the power of the purse. As has been seen in the above analysis, presidents believe that by naming them Commander-in-Chief, the Constitution awarded them the right to decide on war, therefore giving Congress a chance to participate in the decision only enables them to express their support or the lack thereof.

Presidents have long been aware, that giving Congress the “sense” of co-decision, would be enough to easily enforce their choice without redundant amendments and objections.

On the other hand, there had also been a case in which unilateral decision of a president to coerce and keep the government out of the loop, helped in achieving a peaceful resolution to a crisis. If president Kennedy succumbed to the pressures of Congress to act more aggressively, it would lead to a nuclear war. In this case, the unilateral decision of a president was an admirable choice, however, each crisis is different, and what worked in one case, might easily have had grave consequences in the other.

To return to the hypothesis at hand, we can say that broad discretionary power in the use of war powers and coercion, can in fact be related to the lack of constitutional authority, especially when coercive diplomacy is in question.

As has been seen, presidents tend to use coercion as a means of achieving their objectives, without any congressional approval. Presidents tend to exploit their role as heads of Foreign Policy in order to coerce other nations to yield to their demands. However, this does not pose the only problem. As has been discussed in the chapter dealing with coercion, the fact that coercion has never been explicitly discussed in the Constitution, and no limitations on its use have been placed; it gives presidents ample leeway to use it whenever and however, with Congress having their hands tied by the lack of constitutional restrictions. The even bigger concern here is, that coercion can easily lead to a full-scale war, as it did in the case of Iraq. In this case President Bush tried to coerce Saddam to resign via decapitation, pressures on his

power base, and sanctions; however, it all led to a full-scale war that lasted for almost a decade and demanded a large number of American lives.

In contrast to coercion, in the case of war powers, the position of the Framers was that Congress is the authority that decides on matters of war, with the exception of some extreme situations, whereas the President is only the Commander-In-Chief of the U.S. armed forces. From the writings of the Founding Fathers and the articles of the U.S. Constitution, it is completely clear that the two branches ought to consult and collaborate on the matter or war as to reach a decision together, and not leave the decision be based on a whim of one individual.

Despite the Framers' good intentions, they could not predict every possible scenario and write down every possible explanation for the authority or the lack of it. In turn this leaves ample for interpretation by the president. Presidents behind the above analyzed cases have all cited their role as Commander-in-Chief as adequate reason for their unilateral decisions. George W. Bush took it even a step further, by stating that he is only protecting American lives and property, and that he "didn't have to get permission from some old goat in the United States Congress ..." (Fisher 2004, 172)

Despite their confidence, the presidents are well aware that they do in fact require the Congress in order for their decision to take effect, as Congress holds a very powerful trick up its sleeve- the power of the purse. To provide adequate funds for their mission, they need to give Congress the option of participating in the decision making, as was the case with the approval of interventions in Nicaragua, Somalia, Kuwait and Iraq.

Furthermore, presidents do not always find their undisputed authority in the fact that they are named the Commander-in-Chief, but also find ways to circumvent Congress in a different manner. President George H.W. Bush and Clinton have circumvented Congress with the resolutions passed by the UN and NATO. In their opinion, these resolutions superseded the U.S. Constitution, and it was their right and legal obligation to UN and NATO to help. Their claims, however, held no legal ground, as according to Fisher, UN Charter for example "cannot negate the authority vested in Congress by the U.S. Constitution" (Fisher 2004, 172–173).

As has been seen and proven, presidents will always find a way to circumvent Congress in their quest to go to war. They will refer to their position as Commander-in-Chief, they will interpret the language of the Constitution, or find some resolution to justify their right to decide

on war. The Constitution could in fact be clearer on the authority, however, the Framers could not have anticipated the change in conducting foreign policy.

6.2 Hypothesis 2

The U.S. Constitution clearly states that Congress decides on matters of war, and the President is required to obtain congressional approval before engaging in combat. As has been shown by the above analyzed examples, presidents use their role as Commander-in-Chief as legal grounds for their unilateral decisions, leaving Congress almost entirely out of the decision process.

So what is then the real role of Congress and do they in fact respond to such obvious breaches of Constitution?

At first glance it might actually seem as if Congress rarely tries to curb the President in his war quests, and that they are completely content with their role as mere bystanders. However, a closer look at the examples of unilateral presidential war powers reveals a completely different picture.

Policy making is a very complicated process, and getting the majority of Congress to agree on a matter is a very demanding task. The fact that Congress is divided into two chambers, where two parties are constantly battling over supremacy of the chambers and Congress, makes reaching a consensus almost impossible. If we add an individual with executive powers to the equation, things are fairly futile.

The president is a member of one of the two parties in Congress, and no matter how misguided his agenda is, his party rarely objects. So it is usually up to the opposing party to make a case against the president and follow it through. However, the majority is what counts in Congress, and unless you have a strong majority in both chambers, not much can be done. An example of such a predicament was the case of the Iraq war, where Democrats battled to stop the President from the beginning, but have not succeeded due to the lack of 60% majority in Senate. In the end they eventually succeeded in getting the U.S. troops out of Iraq, but that was mostly because of the election of a Democratic president.

Congress does in fact hold in its hands quite a powerful tool, with which it can control the President in his decision to go to war, and according to the above examples, they do exercise

it. But yet again partisanship is the culprit behind the idleness of Congress, which usually prolongs the decision to control the President.

An example of such a case was Reagan's aid to the Contras in Nicaragua, where the two parties could not agree on the amount of the aid and the restrictions for its use. After a few years Congress reached a united front and denied any further aid for the Contras, propelling the President to seek funds for his agenda elsewhere.

Although partisanship often prevent Congress from controlling the President, there were also two examples in which Congress acted in unison, if only to support the President. In the case of Vietnam and Iraq war, Congress had shown bipartisan support, and gave the President the role of the deciding on the war. These two cases present a very uncommon approach of Congress towards decisions on war, and they were referred to "as the abdication of congressional duties". (Fisher 2004, 131) Members of Congress simply washed their hands of the possible negative effects of the war, with the hope that the unusual bipartisan support would actually deter the President from engaging in war. Their plan failed miserably, as both wars are examples of one of the longer lasting armed conflicts in which U.S. participated.

The reasons behind the many assumed idleness of Congress are many, from partisanship to the lack of majority, but there is also that of public support. Members of Congress are elected representatives of the people, and in order to get their votes at the next elections, they have to act according to their wishes. This is exactly why President Kennedy refused to inform Congress on his plans of embargo on Cuba. He knew that members of Congress would try to block his intention entirely because of their loyalty to their constituents, who might feel the economic effects of the embargo.

On the other hand, members of Congress support the President in his actions because they do not want to be regarded as unsupportive of the American troops abroad. The Operation Deliberate Force is a perfect example of the many discussed reasons for congressional action as well as idleness. Congress was namely not supportive of Clinton's idea to intervene in Bosnia, especially as he declared that he does not need their approval, and in response tried to limit his authority. However, as peace negotiations were in progress, they did support him, as they believed "it was not the time to tie President's hands". (Fisher 2004, 188)

Although Congress disapproved U.S. involvement in Bosnia, they did support the President mainly because of the troops involved there. The Senate even passed a "multipart bill providing

support for American troops but expressing reservations about sending them to Bosnia”, (Fisher 2004, 190), and gave proof of yet another example of how members of Congress shift their responsibility to the President.

As has been mentioned previously, members of Congress rely on the support of their constituents, and as such public opinion is of great value. Therefore, casualties in actions are the thing that can influence the decisions of Congress. As U.S. adversaries have already pointed out that long ago by saying, that U.S. “cannot accept 10,000 dead in one battle”, (Freedman and Karsh 1993, 276) sensitivity to casualties is what forces Congress to react.

Such a reaction was sparked by the death of 18 American soldiers in Mogadishu, Somalia, in what should have been only a peacekeeping mission. Congress immediately demanded the withdrawal of U.S. troops from the area, and what is more, threatened to cut off funding for the mission after the final date of withdrawal.

To sum it up, Congress never really sits idly by and watches as President takes American soldiers to combat. They do react according to previously discussed factors, whether it be public opposition or support, it is all a part of a very complex agenda. And even in times when it seems that it does not react, the public is unaware of the battles over amendments limiting presidential authority on Capitol Hill.

7 CONCLUSION

Since the WWII American presidents tend to interpret the authority vested in them under the position of Commander in Chief, as grounds for their ability to send U.S. troops into combat. Despite the fact that that authority lies entirely in the hands of the legislative branch, Congress has often been left out of the decision making on matters of war. Despite the lack of constitutional authority presidents lead foreign diplomacy according to their own will, and one would think that the role of Congress is to stop them from doing so, however, it often seems otherwise. Nonetheless, the Congress still plays a vital role, when it comes to sending U.S. troops into combat, as it holds the power of the purse, a very powerful tool to curb the president in his unilateral decisions. In the U.S. interventions since WWII, Congress oftentimes seemed to turn a blind eye to the presidential breach of constitutional authority, however, a closer analysis shows, that all cases Congress did react at least with floor debates, and attempts at amendments. Their apparent inaction usually stems from partisanship politics and the lack of majority in one or both houses, which frequently prevents Congress from reacting properly. What is more, their alleged lack of support for the troops and the public opinion, are additional reasons which might influence the decision to limit presidential authority in cases of war. All in all, the prospect of individual interpretation of congressional authority on war powers is enough for presidents to use war powers as they deem right, and all the mentioned roadblocks on the congressional road to limiting it, makes it so much easier to use.

8 POVZETEK

Že od začetka človeške civilizacije se bije boj za prevlado nad ozemlji in navkljub prihodu demokracije, boj traja še naprej. Očetje ameriške demokracije so si prizadevali, da pomembne odločitve, kot je vojna, ne bi sprejemala le ena oseba, saj kot pravi James Madison »če bi ljudje bili angeli, nadzor vlade ne bi bil potreben« (Federalist št. 47 1788). Zato so se Ustanovni očetje odločili, da bodo vlado razdelili na tri enakovredne veje, ki bodo nadzorovale druga drugo. S tem so se odmaknili od obstoječega evropskega modela, ki je absolutno moč postavljaj v roke monarha. Odločitev o razglasitvi vojne tako ni več pripadala eni osebi, temveč so jo zaupali skupini izbranih kongresnikov in senatorjev, kot je zapisano v 9. členu ameriške ustave: »Združene države, v kongresu zbrane, bodo imele edino in ekskluzivno pravico in dolžnost odločati o miru in vojni« (Ustava ZDA 1787). Predsedniku tako pripada le naslov poveljnika vojaških sil, kar ga ne pooblašča za odločanje o vojnem stanju, vendar si predvsem v zadnjih sto letih to pravico venomer lasti. V zadnjih desetletjih poleg samih vojnih napovedi in vojaških posredovanj vedno večjo nevarnost predstavljajo tudi grožnje vojaškega posredovanja, ki jih predsedniki brezglavo uporabljajo kot diplomatsko strategijo, brez zavedanja, da v večini primerov vodijo v oborožen spopad.

V magistrski nalogi sta bili postavljeni tezi, ki se nanašata predvsem na neutemeljeno pravico predsednika o odločanju glede vojne, ter posledično o navidezni pasivnosti kongresa, ki bi takšno samovoljnost predsednika lahko ustavil in preprečil marsikatero ameriško vojaško posredovanje v tujini.

V obdobju po 2. svetovni vojni je namreč redno prihajalo do primerov kršenja ustave s strani predsednika, ki se je samovoljno in brez potrebne odobritve kongresa odločil, da bo ameriške sile poslal v boj. Razlog za takšno ravnanje gre iskati predvsem v nejasnem jeziku ameriške ustave, ki predsedniku dodeljuje naziv poveljnika vojaških sil, obenem pa ne opredeli omejitev tega naziva. Prav zato so si ameriški predsedniki predvsem v zadnjih desetletjih dovolili vedno znova kršiti 9. člen ameriške ustave, ki odgovornost za odločitev o vojni nalaga kongresu. Dejstvo, da predsednik venomer pripada eni izmed dveh političnih strank, ki se borita za prevlado v ameriškem kongresu, takšno ravnanje še olajšuje, saj strankarska pripadnost v večini primerov omejuje delovanje kongresa.

Kot je razvidno iz analize osmih primerov, v katerih je predsednik brez predhodne odobritve kongresa ameriško vojsko poslal v oborožen spopad, kongres sprva ni nikoli javno in očitno

nasprotoval predsednikovi odločitvi. Delovanje kongresa in njegovih članov je namreč izredno kompleksno in morda navzven deluje kot nezainteresiranost oziroma pasivnost. Šele podrobna analiza odzivov kongresa in razlogov zanje prikaže dejansko sliko. Kongres je namreč v veliki večini primerov odvisen ne samo od strankarske pripadnosti, temveč tudi od večine, ki jo ima določena stranka v obeh domovih in nenazadnje od volje volivcev. Volivci in s tem širša javnost namreč lahko odločilno vplivajo na odziv kongresa, saj se člani v upanju na ponovno izvolitev odzivajo na želje in mnenja svojih volivcev. V primeru, da je javnost naklonjena vojaškemu posredovanju, kongres v večini primerov ne nasprotuje predsedniku, v kolikor pa javnost začne izražati nezadovoljstvo nad vojaškim posredovanjem zaradi žrtev med ameriškimi četami, leta začne s procesi omejevanja finančne podpore vojaškemu posredovanju. Primer, ki najbolj prikazuje prej omenjeno dejstvo je vietnamska vojna, ki je v začetku slonela na podpori kongresa, z leti neuspešnega bojevanja in čedalje večjim številom žrtev pa je v javnosti začela izgubljati podporo in kongres je bil prisiljen ukrepati. Z vrsto zahtev po umiku iz Vietnam in posledičnimi amandmaji je kongresu po skoraj dveh desetletjih uspelo ustaviti najbolj krvavo in najdlje trajajoče vojaško posredovanje v ameriški zgodovini.

Analiza primerov je tako ovrgla tezo, da so enostranske vojaške predsedniške odločitve posledica neodzivnosti kongresa, saj je iz vseh primerov razvidno, da se je kongres tako ali drugače vedno odzval na predsednikovo odločitev. Delovanje kongresa je namreč preveč zapleteno in omejeno z raznovrstnimi dejavniki, da bi javnost lahko zlahka opazila nasprotovanje in omejevanje predsedniške odločitve.

Kljub neštetim primerom v ameriški zgodovini, ki pričajo o grozljivih posledicah enostranskih predsedniških odločitev, se predsedniki vedno znova zatekajo k reševanju sporov z grožnjami in vojaškimi spopadi, pri čemer je kolesje kongresnega posredovanja prepočasno, da bi zadeve lahko pravočasno preprečili. Ne glede na zapise v ustavi, ameriški predsedniki verjamejo v svojo superiornost, ne samo na domačem političnem parketu, temveč po svetu, zaradi česar se v večini primerov brezglavo zapletejo v tuje konflikte brez zahtevanega posveta s kongresom. V duhu enotnosti in podpore predsedniku in vojaškim četam pa kongres občasno zamiži na eno oko in ne uporabi vseh sredstev za prekinitev vojaških posredovanj.

Dokler bo v ameriški ustavi zapisano, da je predsednik poveljnik ameriških vojaških sil in dokler pooblastila, ki jih ta naziv prinaša, ne bodo skrbno zapisana v ustavi, brez možnosti za interpretacijo, bodo ameriški predsedniki še naprej izkoriščali svoj naziv ter vojaške enote pošiljali v spopade brez dovoljenja kongresa. Kljub pooblastilom, ki jih ustava podeljuje

kongresu, pa bo le-ta še naprej lahko le vplival na dolžino in obseg vojaških posredovanj, nikdar pa ne bo mogel preprečiti nespametnih predsedniških odločitev.

9 LITERATURE

1. Byman, Daniel, and Matthew Waxman. 2002. *The Dynamics Of Coercion: American Foreign Policy and the Limits of Military Might*. Cambridge. Cambridge University Press.
2. Fisher, Louis. 2004. *Presidential War Power*. Lawrence. University Press of Kansas.
3. Freedman, Lawrence, and Karsh,. 1993. *The Gulf Conflict 1990-1991- Diplomacy And War In The New World Order*. Princeton. Princeton University Press.
4. George, Alexander L. 1997. *Forceful Persuasion- Coercive diplomacy as an alternative to war*. Washington, D.C. United States Institute of Peace Press.
5. Gopalan, Karthik. 2010. *Kennedy and the Cuban Missile Crisis*. Foreign Policy Journal. Dostopno prek: <http://www.foreignpolicyjournal.com/2010/08/16/kennedy-and-the-cuban-missile-crisis/> (8th August 2016).
6. Halliday, Fred. 1994. The Gulf War 1990-1991 and the study of international relations. *Review of international studies*. 20 (2). 109–130; Cambridge University Press.
7. Howell, William G., and Jon C. Pevehouse. 2007a. When Congress Stops War- Partisan Politics and Presidential Powers. *Foreign Affairs* 86(5), 95.
8. --- 2007b. *While Dangers Gather: Congressional Checks on Presidential War Powers*. Princeton. Princeton University Press. Available at: Kindle.
9. James, C. Scott. 2009. Historical Institutionalism, Political Development, And the Presidency. *The Oxford Handbook of the American Presidency*. Available at: <http://www.sscnet.ucla.edu/polisci/faculty/james/papers/HI-APD&Pres.pdf>) (10th January 2016).
10. Kaplan, P. Stephen. *Force without War: The United States' Use of the Armed Forces as a Political Instrument- Manual*. Washington D.C. The Brooking Institution.
11. Madison, James. 1788a. *Federalist No. 47*. Available at: <http://www.constitution.org/fed/federa47.htm> (12th January 2016).
12. ---1788b. *Federalist No. 51*. Available at: <http://www.constitution.org/fed/federa51.htm> (12th January 2016).

13. Montesquieu. 1748. *Spirit of Laws*. Available at: <http://oll.libertyfund.org/titles/montesquieu-complete-works-vol-1-the-spirit-of-laws> (12th January 2016).
14. Owen, Col. Robert C. 2000. *Deliberate Force- A Case Study In Affective Air Campaigning*. Alabama. Air University Press Maxwell Air Force Base. Available at: <http://www.au.af.mil/au/awc/awcgate/au/owen.pdf> (30th July 2016).
15. Pape, Robert A. 1996. *Bombing To Win, Air Power And Coercion In War*. Ithaca and London. Cornell University Press.
16. Reid Sarkees, Meredith. *The COW Typology of War: Defining and Categorizing Wars (Version 4 of the Data)*. Available at: http://cow.la.psu.edu/COW2%20Data/WarData_NEW/COW%20Website%20-%20Typology%20of%20war.pdf (20th February 2016).
17. Sharma, Vivek Swaroop. 2014. A social theory of war: Clausewitz and war reconsidered. *Cambridge Review of International Affairs*, 28(3), 327–347.
18. Small, Melvin and David J. Singer. 1982. *Resort to Arms: International and Civil War, 1816–1980*. Beverly Hills, CA: Sage. Available at: http://cow.la.psu.edu/COW2%20Data/WarData_NEW/COW%20Website%20-%20Typology%20of%20war.pdf (8th February 2016).
19. Small, Mel and David J. Singer. 2016. *The Wages of War 1816-1965: A Statistical Handbook*. Available at: http://cow.la.psu.edu/COW2%20Data/WarData_NEW/COW%20Website%20-%20Typology%20of%20war.pdf (8th February 2016).
20. Steward, Richard, W. 2016. *The United States in Somalia 1992-1994*. Available at: <http://www.history.army.mil/brochures/somalia/somalia.htm> (29th July 2016).
21. Uyeda, Mark T. 2016. Presidential Prerogative Under the Constitution To Deploy U.S. Military Forces to Low-Intensity Conflict. *Duke Law Journal*. 44 (777), 814, Available at: <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3277&context=dlj> (30th April 2016).
22. *United States Constitution*. Available at: <http://www.archives.gov/exhibits/charters/constitution.html> (20th February 2016).
23. Waxman, C. Matthew. 2014. The Power to Threaten War. *Yale Law Journal*.

24. Zeisberg, Maria. 2013. *War Powers: The Politics of Constitutional Authority*. Princeton. Princeton University Press.
25. Presidential Powers: An Introduction. 2016. *Exploring Constitutional Conflicts*. Available at: <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/prespowers.html> (29th June 2016).
26. CQ Almanac. 1985. *Congress Votes to Resume Nicaragua Rebel Aid*. Washington, DC. Congressional Quarterly. Available at: <http://library.cqpress.com/cqalmanac/cqal85-1147212>. (8th August 2016).
27. CQ Almanac. 1991. *1991 Begins With War in the Mideast*. Washington, DC. Congressional Quarterly. Available at: <http://library.cqpress.com/cqalmanac/cqal91-1111031> (29th July 2016).
28. CQ Almanac. 1993. *Hill Demands Early '94 Somalia Withdrawal*. Washington, DC. Congressional Quarterly. Available at: <http://library.cqpress.com/cqalmanac/cqal93-1104663> (29th July 2016).
29. CQ Almanac. 1995. *Bosnian War Sparks Conflict at Home*. Washington, DC. Congressional Quarterly. Available at: <http://library.cqpress.com/cqalmanac/login.php?requested=document.php%3Fid%3Dcqal95-1099599%26type%3Dtoc%26num%3D1> (29th July 2016).
30. CQ Almanac. 2007. *President Prevails on Iraq War Policy*. Washington, DC. Congressional Quarterly, 2008. Available at: <http://library.cqpress.com/cqalmanac/cqal07-1006-44915-2048031> (4th August 2016).
31. History. 2016a. *Persian Gulf War- Facts and Summary*. Available at: <https://www.history.com/topics/persian-gulf-war> (2nd August 2016).
32. --- 2016b. *Persian Gulf War- Facts and Summary*. Available at: <https://www.history.com/topics/persian-gulf-war> (2nd August 2016).
33. Encyclopaedia Britannica. 2016. *Iraq War 2003-2011*. Available at: <https://www.britannica.com/event/Iraq-War> (4th August 2016).
34. *The North Atlantic Treaty*. 2016. Available at: http://www.nato.int/cps/en/natolive/official_texts_17120.htm (29th May 2016).

35. *War Powers Resolution*. 2016. Available at: <https://www.law.cornell.edu/uscode/text/50/chapter-33> (30th April 2016).
36. Presidential Powers: An Introduction. 2016. *Exploring Constitutional Conflicts*. Available at: <http://law2.umkc.edu/faculty/projects/ftrials/conlaw/prespowers.html> (28th April 2016).
37. Wikipedia. 2016a. *Distribution of seats in congress*. Available at: https://en.wikipedia.org/Party_divisions_of_United_States_Congresses (24th April 2016).
38. --- 2016b. *The Contras*. Available at: <https://en.wikipedia.org/wiki/Contras> (2nd August 2016).
39. *UN Security Resolution 678*. 2016. Available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/575/28/IMG/NR057528.pdf?OpenElement> (3rd August 2016).
40. *Chapter VII UN Charter: Article 44*. 2016. Available at: <http://www.un.org/en/sections/un-charter/chapter-vii/> (29th July 2016).