

The War Powers Resolution (1973): Implications for Today

Anne Stemmerman
Westwood Middle School

Suggested Grade Level: High School; American History/Government

General Directions:

The following question is based on the accompanying documents. Some of these documents have been edited for the purpose of this exercise. Study each document and answer the question(s) attached to the document. You will be using these documents and your answers to respond to an essay relating to the topic.

Assignment:

You are required to compose a four to five paragraph essay that incorporates facts from the documents in addition to your knowledge of the primary historical period in American History: 1973 to present time

Question: Is the War Powers Resolution of 1973 unconstitutional? In other words, which branch of the United States government should have the power to commit US Armed Forces into hostilities, the Executive or the Legislative?

Historical Overview:

Following the Cold War, United States Presidents have, with regularity, committed US Armed Forces into combat without declaration of war or specific authorization from the United States Congress (Article I, Section 8). Some of those hostilities have included American presence overseas in the following areas: Indochina (Vietnam, Laos, etc), Mayaguez, Iran, El Salvador, Honduras, Lebanon, Grenada, Libya, Panama, Persian Gulf, Yugoslavia, and most recently, Afghanistan and Iraq.

Congress became uneasy following the United States presence in Korea and particularly in Vietnam. The War Powers Resolution (P.L. 93-148) was passed over President Nixon's veto in November, 1973 to allow Congress and the Executive Office to jointly determine the participation of US Armed Forces in situations of armed conflict allowing more Congressional participation while not limiting the President's authority to call for forces to protect the country. The Resolution requires the President to notify Congress of the participation of American Armed Forces into hostilities (or imminent hostilities) within 48 hours and such participation to cease within 60-90 days unless continuance is authorized by Congress. The President is to provide to Congress information about the reasons for involvement and the anticipated timeframe of troop commitment. Additionally, the President must report to Congress on a regular basis but no less than every six months.

From 1973 through 2003 there have been 111 such reports ranging from full engagement to embassy evacuations. From 1990, the United States has moved towards overseas combative participation via the United Nations Security Council resolutions. The question now has been raised in regards to the application of the War Powers Resolution and the participation of American forces in UN actions. The Congressional controls are more limited under utilization of UN actions than the under the War Powers Resolution.

Following the terrorist attacks on the World Trade Center and Pentagon, September 11, 2001, Congress passed the Senate Joint Resolution 23 which in effect expanded the scope of presidential powers, in particular the authorization of military action against "organizations and person" (unnamed and undetermined). Furthermore, President Bush reported to Congress that he was unable to determine the length and scope of military deployment nor "the actions necessary to counter the terrorist threat to the

United States." The Iraq Resolution (P.L. 107-243, 2002) provides clear authorization for any presidential action of force against the country of Iraq.

Every President since 1973 has challenged the constitutionality of the War Powers Resolution stating that executive power is restrained; Congress has argued that the power to commit troops is a legislative power under the Constitution.

Document 1: Article I, Section 8 of the United States Constitution:

The Congress shall have power....

...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; ...

Question: What Congressional powers are contained within Article I, Section 8 as described above?

Document 2: Article II, Section 2 of the United States Constitution

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.

Question: What executive powers are contained within Article II, Section 2 as described above?

**Document 4: President Kennedy's Television Interviews on Vietnam
September 2 and 9, 1963**

(a) CBS Interview, September 2

MR. CRONKITE. Mr. President, the only hot war we've got running at the moment is of course the one in Viet-Nam, and we have our difficulties here, quite obviously.

PRESIDENT KENNEDY. I don't think that unless a greater effort is made by the Government to win popular support that the war can be won out there. In the final analysis, it is their war. They are the ones who have to win it or lose it. We can help them, we can give them equipment, we can send our men out there as advisers, but they have to win it—the people of Viet-Nam—against the Communists. We are prepared to continue to assist them, but I don't think that the war can be won unless the people support the effort, and, in my opinion, in the last 2 months the Government has gotten out of touch with the people

...But I don't agree with those who say we should withdraw. That would be a great mistake...[The United States] made this effort to defend Europe. Now Europe is quite secure. We also have to participate—we may not like it—in the defense of Asia.

(may also be viewed at: www.youtube.com/watch?v=uG7jjF6xuKM)

Question: What is President Kennedy's rationale for committing the United States to "assist" in Vietnam?

Document 5: The War Powers Act of 1973

SEC. 2. (a)

It is the purpose of this joint resolution to fulfill the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities,

SEC. 2. (c)

The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) specific statutory authorization, or (3) a national emergency created by attack upon the United States, its territories or possessions, or its armed forces

SEC. 3.

The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities or into situation where imminent involvement in hostilities is clearly indicated by the circumstances, and after every such introduction shall consult regularly with the Congress until United States Armed Forces are no longer engaged in hostilities or have been removed from such situations.

Question 1: In Section 2(a) what is the purpose of the Resolution?

Question 2: In Section 3, what are the requirements of the President?

Document 6: Senate Joint Resolution 23, titled the "Authorization for Use of Military Force

The joint resolution authorizes the President "to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons."

Question: What powers are given to the President under this Resolution?

Document 7: Editorial Cartoon, Milwaukee Journal, 1973



'Imagine! Congress trying to curb my right to conduct unconstitutional wars! Why, that's unconstitutional!'

Question: Why would the Executive Branch object to the War Powers Resolution?
