UNIVERSITY OF CALIFORNIA SAN DIEGO

In the Shadow of Congress

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by

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DEDICATION

Alla mia famiglia, Italiana e Americana.

EPIGRAPH

It is the singularly unfair peculiarity of war that the credit of success is claimed by all, while a disaster is attributed to one alone.

(Tacitus, *Agricola*)

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This dissertation began even before I stepped foot on UCSD's campus. My interest in the war powers began in law school at UCLA, especially during the counter-ISIS campaign starting in the second half of 2014. President Obama was reluctantly dragged back into the Middle East after winding down the Iraq war three years prior. Republicans, especially, criticized the President for withdrawing too early, and for dismissing the metastasizing ISIS threat as a "JV team." While Obama's fellow Democrats in Congress were more hesitant to support re-intervention in Iraq, they followed the lead of their President. By the time the Obama administration initiated its intervention, it was obvious that the overwhelming majority of lawmakers on both sides of the aisle supported the bombing of ISIS targets. Nevertheless, an immediate debate began over the constitutional authority of President Obama to conduct the airstrikes. Many of the same members of Congress that so vociferously pushed the administration into intervening suddenly complained about the lack of authorization the administration had for the use of military force. The administration finally asked for a formal Authorization for the Use of Military Force (an "AUMF") at the end of 2014, but few members of Congress seemed excited to actually vote on a measure.

While in law school, I had the opportunity to serve as a legal intern for the House Committee on Foreign Affairs during the summer of 2015 and then for a few weeks during the winter of 2015-2016. Freshly off courses on foreign relations law and national security law in the fall semester of 2015, I was well acquainted with many of the draft AUMF's circulating on the Hill at the time. As a law student seeing lawmakers nearly universal in their support for the on-going campaign against ISIS, I thought it merely a matter of time before some sort of authorization would pass. On a very cold walk back to the O'Neill House Office Building from lunch one January afternoon, a congressional staffer burst my naïveté: why would a member of Congress go on the record in favor of a use of force—especially after so many were so hurt by their votes in favor of the Iraq War—if they could just get the President to act unilaterally? The logic behind this flippant remark serves as the core of this dissertation.

Two professors at law school, in particular, helped cultivate my interest in the relationship between international security and law. First, Kal Raustiala's class on Public International Law not only introduced me to legal restrictions on the use of military force (both constitutional and international), but also—and more importantly—to how a scholar of political science would think about questions of law. I later served as a research assistant for Kal in the spring of 2017, and as a UCSD PhD himself, I have no doubt that my own graduate school experience was made possible by his letter of recommendation. Second, Jon Michael was a great adviser for my thesis (or, as the school called it "significant analytical writing"—SAW). Jon's class is where I first began examining AUMF's in depth, and the final exam, in fact,

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While I thus was able to acquire a deep subject matter knowledge of the war powers from my legal studies, studying political science at UC San Diego is what has allowed me to, perhaps, same something new about the war powers. UCSD has no law school, and in the world of political science is perhaps one of the furthest departments possible from the normative and descriptive focus—using qualitative case studies—that makes up the vast majority of legal scholarship. UCSD Political Science has, instead, made its name on rational choice (i.e., game theoretic) models and the use of quantitative data. Coming from a legal background, this was a difficult adjustment to make at first—and there was more than one occasion on which I questioned whether I would even be able to study a topic I in which interested utilizing these methods. In the end, however, I have come to fully appreciate the enormous benefit there is in applying a novel methodology to a seemingly well-worn subject. In fact, given the quasi-game theoretic terms politicians use when discussing the war powers (doing X will encourage the President to act recklessly, or doing Y will undercut the President and embolden adversaries), it seems obvious now that a rational choice approach is a highly useful way to study the war powers.

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ABSTRACT OF THE DISSERTATION

In the Shadow of Congress

by

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In virtually every military crisis encountered by the United States, questions of the authority under which the President is acting (and whether the legislature should grant some kind of authorization) are heavily debated in Congress and in the press. Despite this, political science has given little attention to the war powers debate in domestic politics and even less to the effect such internal discussion has on perceived American credibility internationally. This project proposes a theory of how the war powers have worked in actual practice since the end of the Second World War, and then demonstrates the explanatory value of the theory through both quantitative and qualitative evidence. In contrast to the conventional wisdom of an "Imperial Presidency" and the irrelevance of congressional war powers since 1945, this project suggests questions of war powers have consistently featured prominently in both executive branch decision-making and in the perceived credibility of American threats in the eyes of U.S. allies and adversaries.

Introduction

"I am the Commander-in-Chief of the United States, *and I say when we go to war*"

—Character of John F. Kennedy, *Thirteen Days* (2000).

The decision to enter armed conflict is perhaps the most consequential a country can make, and yet it is widely believed to be amongst the least controlled democratically in the United States (Schlesinger 1973, Lowande & Rogowski 2021). A conventional wisdom holds that while the destructive potential of war has exponentially increased over time, democratic power over war has simultaneously decreased (Wills 2010). As the possible consequences of armed conflict have grown ever larger, democracy's grip on the dogs of war have grown ever weaker. A virtual cottage industry of work by jurists, social scientists, historians, journalists, and politicians has argued that the leader of the United States occupies an "Imperial Presidency" ready, willing, and able to use military force regardless of the will of Congress (Schlesinger 1973). Lawyers, for example, desire for the law to matter from a normative perspective, but often reluctantly conclude it *de facto* does not in this context. Presidents regularly assert they have the power to bring the nation into a major war absent congressional approval, and courts consistently decline to adjudicate war powers cases when brought by members of Congress or the military. Great debate exists over the original intent of the Framers of the Constitution (Yoo 1996, Barron & Lederman 2008) as well as the normative question of who *should* have the power to take the nation to war, but it is a near consensus view that Presidents in reality have nearly unlimited power when it comes to the choice of initiating the use of force: the Imperial Presidency, while perhaps regrettable, is deemed a fact of life. On the political science side of the literature, social scientists similarly assume that the formal powers of Congress matter little for the use of military force. Instead, they argue that *if* Congress matters, its influence occurs through non-legal means——and is, in any case, quite small compared to the power of the Presidency (Howell & Pevehouse 2007).

This purported lack of congressional influence is often attributed to the exigencies faced by the United States starting with the beginning of the Cold War (Ely 1995, Burns 2019, Griffin 2013). Rapid changes in technology—perhaps, most importantly, the development of

nuclear weapons—meant that the United States faced an international environment in which a standing military was a clear necessity (Wills 2010, Schlesinger 1973). In prior history, the lack of a large peacetime army had prevented Presidents from engaging in conflict unsupported by Congress. Having a massive and capable military at their disposal after 1945, however, Presidents after World War II could unilaterally decide to commit U.S. forces to combat operations. This postwar change in the balance of power between the political branches of the American government is deemed so great it has been characterized as being a new "constitutional order" similar in magnitude to an amendment to the Constitution (Griffin 2013).

Lawmakers, journalists, academics, and everyday Americans ever since have widely bemoaned this Imperial Presidency. Congress attempted to reform the relationship significantly in a series of proposed bills in the later years of the Vietnam War, and ultimately overwhelmingly passed the War Powers Resolution in 1973 over a veto from President Nixon. Nevertheless, virtually all Presidents since the bill's passage have denied the constitutionality of the act, and military force has frequently been utilized by American Presidents over the past fifty years without formal approval from Congress. The act is now widely considered to have failed in its original purpose (Bauer & Goldsmith 2020, Lindsay 1994).[1] Observers even frequently assert the War Powers Resolution actually strengthened presidential power instead of constraining it, and commentators across the political spectrum have broadly complained of the continuing problem of presidential imperialism and yet found little success in solving it. Progressive liberals and democratic socialists have sought to implement much stronger constraints on the executive branch in order to rein in foreign wars, a common cause they find with right-wing "America First" conservatives making up the Trump-led wing of the Republican party. Libertarians and constitutional conservatives, likewise, have complained that the clear command of the Constitution—that only the Congress shall have the power to declare war—has been widely violated for decades. Center-left Democrats, such as Senator Tim Kaine, have for years attempted to reform the war powers architecture in Washington, but also to little avail. Two former Secretaries of State even led a high-profile, bipartisan blue ribbon commission to reform the war powers in 2007, and yet even this failed to alter the status quo.[2]

[1] "It has been a failure for a number of reasons. First, most presidents have not accepted its constitutionality. Second, the executive branch has interpreted the sixty-day window before it needed to secure congressional authorization as an effective authorization to use force within that window. Third, as noted earlier, presidents have interpreted the "hostilities" trigger for requiring congressional authorization opportunistically to cover, at most, only extended engagements of U.S. troops that pose a serious risk of U.S. casualties and escalation. Fourth, Congress has acquiesced in almost every context where the executive branch has emasculated the War Powers Resolution through interpretation or defiance," (Bauer & Goldsmith 2020, pg. 286).

[2] "How America Goes to War — Miller Center," January 21, 2021. https://millercenter.org/issues-policy/foreign-policy/national-war-powers-commission."Over 14 months, the commission met seven times, interviewing more than 40 witnesses. The commission then issued its unanimous report to the President and Congress, calling for the repeal and replacement of the War Powers Resolution of 1973 with the proposed War Powers Consultation Act. In the following months, Secretaries Baker and Christopher briefed President Obama and testified before the House Foreign Affairs Committee and the Senate Foreign Relations Committee about the

There is, thus, not only a widespread belief in the existence of an Imperial Presidency, but also widespread dissatisfaction with this state of affairs, and yet little success in ameliorating the perceived problem.

Proponents of the Imperial Presidency thesis particularly emphasize the following: Congress has not formally declared war since the Second World War, and even while the legislature has formally authorized the use of force on a few occasions since 1945 (via statutory authorizations for the use of military force), the vast majority of uses of force are undertaken without formal approval from Congress. Moreover, even on the rare occasion postwar presidents have sought authorization from Congress, they have consistently maintained in public that they did not constitutionally require Congress's sanction. The judicial branch, for its own part, has been highly reluctant to rule against the executive on matters involving national security and consistently declares the war powers to be non-judiciable. Lawmakers themselves are incentivized to "sit on the sidelines" and avoid responsibility for use of military force decisions, and face steep collective action problems even when they do seek to have their voices heard. Presidential first-mover advantages (Howell 2003, Schultz 2003), incentives to accrue power (Howell & Brent 2015), and an ability to avoid legal constraints via creative legal theories (Savage 2015) have all encouraged a massive accumulation of the war power in the White House. A leading scholar of the war powers, Jack Goldsmith, recently summed up the conventional wisdom as:

> "In short, our country has—through presidential aggrandizement accompanied by congressional authorization, delegation, and acquiescence—given one person, the president, a sprawling military and enormous discretion to use it in ways that can easily lead to a massive war. That is our system: One person decides," (Goldsmith 2020).

This dissertation, however, challenges the common belief of an unconstrained executive. It instead suggests that congressional sentiment, and the law, has had a major effect on executive decision-making throughout the postwar era. While Presidents have virtually unlimited discretion over use of force decisions, they worry greatly over the liability they undertake when acting absent sufficient political cover from Congress. Specifically, the White House frets over "loss costs"—political costs assessed on the executive for a use of force undertaken unilaterally that ends poorly. The fear of these loss costs deters Presidents from utilizing military force absent a sufficient level of congressional support for the endeavor. Instead of an Imperial President, this deterrence yields a Congressionally Constrained President.

The research presented below demonstrates that Congress continues to play an important role in shaping the decisions of Presidents and the outcomes the United States can achieve in conflicts internationally. It argues that while Presidents consistently make broad

proposed legislation."

assertions of power in public, they privately worry greatly about their political vulnerability should a use of force end poorly. This fear of congressional attack after a less-than-successful military action creates strong incentives for the executive to take congressional opinion into account when making the initial intervention decision. Even when acting unilaterally, this causes Presidents to tailor uses of force to be in rough conformity with the wishes of Congress. Moreover, Presidents are privately unwilling to enter the largest uses of force (i.e., full scale wars) absent formal approval from the legislature. This domestic strategic constraint, in turn, then has implications for international crisis bargaining: because the amount of force a President is willing to employ is proportional to congressional support for the use of force, adversary assessments over American intentions and credibility are based to a substantial extent on the sentiment they see emanating from Congress.

A First Cut: The Imperial Presidency

Introducing the competing narratives of the Imperial Presidency thesis and that of Congressional Constraint is well illustrated by a prominent example: the 1962 Cuban Missile Crisis. Perhaps more than any episode in the postwar period, the October crisis illustrates the purported logic, and potential necessity, of the Imperial Presidency. When unmistakable evidence of offensive Soviet strategic missiles was identified in the middle of October, Congress was not even in session and, indeed, most lawmakers were strewn about the country in their home districts. Given the critical time pressures and need for secrecy presented by the crisis, only a decisive executive branch had the ability to respond to the threat. Alexander Hamilton famously argued for a strong presidency in Federalist #70, citing a need for "energy in the executive" allowing for "decision, activity, secrecy, and dispatch." If there were ever a need for such attributes, the Cuban Missile Crisis was it. The stakes could hardly have been higher: war would potentially have led to the deaths of hundreds of millions of Americans, Russians, and others, and the probability of war was estimated by Kennedy to be "between one out of three and even," (Allison & Zelikow 1999, pg. 1).

The thirteen days of the October crisis were preceded by a September 4, 1962 statement unilaterally issued from the President warning Moscow against sending offensive weapons to Cuba. Upon confirming the presence of Soviet nuclear-armed surface-to-surface missiles in Cuba on October 16, Kennedy organized a group of advisers—the Executive Committee of the National Security Council or EXCOMM—from the executive branch. Notably absent from this group was any representative of the legislature. While the President and his advisers kept in (limited) contact with congressional leaders during the crisis, this was almost exclusively in the form of informing lawmakers what had already been decided by the White House. A decade before writing the *Imperial Presidency*, Arthur Schlesinger served as a high-level adviser in the

Kennedy White House and recalled of the crisis "there was no legislative consultation, there was most effective executive consultation...[b]ut Congress played no role at all...It was only after he had made his decision that Kennedy called in congressional leaders. The object was not to consult them but to inform them," (Schlesinger 1973, pg. 175).

The crucial decision-making during the crisis thus occurred absent any congressional representation in-the-loop. Graham Allison—one of the foremost experts on the crisis—writes "What direct role did Congress play in these decisions? Zero—none at all," (Allison 1987). For example, key decisions to publicly announce the discovery of the missiles and to create a naval blockade around the island were made without consulting lawmakers. Instead, the decision was made solely within the executive branch and announced to Congress a couple of hours before Kennedy likewise announced the presence of the missiles and the U.S. response to the American public and the world via a televised address on October 22. Allison emphasizes the lack of direct congressional involvement in the crisis—"One man alone decided. He consulted with a dozen associates of his own choosing—none of them whom came from congress," (Allison 1987). Broad claims to presidential power were also made in the crisis. For instance, Kennedy clearly stated that he had the unilateral authority as Commander-in-Chief to act decisively in the crisis, and publicly disclaimed any necessity of securing any kind of authorization from Congress (Fisher 2013). Weeks prior to the acute crisis, when answering questions from reporters on potential American responses to possible Soviet provocations on Cuba, Kennedy denied needing formal authorization from Congress even when risking world war—"As President and Commander-in-Chief I have full authority now to take such action."[3] Weeks later during the actual crisis, Secretary of State Dean Rusk recalls the decision to enact a quarantine around the island was made by EXCOMM alone. Rusk recounted that during a subsequent meeting with prominent members of Congress on October 22, "no one present questioned whether Kennedy had constitutional authority to initiate a quarantine. No one suggested that Kennedy come to Congress for authorization," (Rusk, Rusk & Papp 1991, pg. 235).

A leading expert on congressional influence in foreign policy, James Lindsay, gives the episode as evidence of congressional decline and presidential ascendancy in foreign policy after the Second World War, writing, "when Kennedy imposed a naval quarantine on Cuba during the missile crisis, he did so on his own authority as commander in chief and without congressional approval or consultation," (Lindsay 1994, pg. 23). Likewise, Louis Fisher—perhaps the leading authority on the war powers—interprets Kennedy's actions and proclamations during missile crisis as substantial expansions of presidential power (Fisher 2013). Hence, many argue

[3]Kennedy, John F. "News Conference 43, September 13, 1962", State Department Auditorium, Washington, D.C., 1962. John F. Kennedy Presidential Library and Museum. Accessed March 27, 2023. https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-press-conferences/news-conference-43

that when the two superpowers came to the closest danger of thermonuclear war ever experienced in the world, Congress—the branch of government formally and exclusively endowed with the power to declare war—was seemingly nowhere to be found. Schlesinger himself wrote that "Congress played no role at all" and that the crisis was perhaps "proof of the proposition that the nuclear age left no alternative to unilateral presidential decision," (Schlesinger 1973, pg. 173-74).

Advocates of strong presidential power have come to see the crisis as evidence of the need for a strong, independent commander-in-chief, while those who normatively favor democratic control over use of military force decisions bemoan the potentially dangerous precedent the 1962 encounter created. From a positivist perspective of the war powers, it is generally concluded that Congress exercised little control in the crisis. Celebrated presidential scholar Richard Neustadt would testify to a Senate committee only a few months after the confrontation in the Caribbean that "when it comes to action risking war, technology has modified the Constitution."[4]

A Second Cut: Congressional Constraint

The standard understanding of the 1962 crisis thus seemingly well illustrates a modern Imperial Presidency: Congress's influence was negligible to nonexistent. A far different interpretation of congressional potency in the crisis, however, is also possible. Even when Presidents act unilaterally—and even when they make decisions absent direct congressional input—congressional sentiment is not far from the minds of White House decision-makers. Policy-makers in the executive branch are well aware of the pain and punishment lawmakers can inflict upon the executive, especially in the case of American deaths, and often are driven to act—or not act—by anticipated reactions on the Hill. Thus, even when lawmakers are not "in the room", they are very much "on the mind". In the case of the Cuban Missile Crisis, while ultimate decisions were made by EXCOMM and the President alone, the contest between Kennedy and Khrushchev very much took place in the shadow of Congress. While Congress was not precisely found amongst the decision-makers in the process, its influence actually manifest itself greatly in the encounter as both the American and Soviet leaders were well aware of the constraints the U.S. President was acting under.

First, there was the direct effect of congressional constraint: the White House felt severely constrained in its options by congressional sentiment and actions. For example, Kennedy had issued his original September 4 public threat against Soviet introduction of mis-

[4]He argued "the President, perforce, becomes the only such man in the system capable of exercising judgment under the extraordinary limits now imposed by secrecy, complexity and time." "Administration of National Security." U.S. Senate Subcommittee on National Security Staffing and Operations. Washington, D.C., March 25, 1963.

siles precisely due to pressure from Congress (Fursenko & Naftali 1998, pg. 204)—specifically charges from Republican Senator Keating and others on the floor of the Senate that the Soviets were introducing ground-to-ground missiles into Cuba (May & Zelikow 2002, pg. 36-37).[5] Republicans Senators so firmly supported strong action against Cuba, in fact, that they tried to pass a virtual declaration of war against Cuba a full month before the acute crisis in late October (Zelizer 2009). While the language of the so-called Cuba Resolution was tempered slightly at the request of the administration in an attempt to avoid a security spiral in the Caribbean, the resolution was nonetheless widely interpreted to be an expression of approval by lawmakers to use military force against Cuba. A front page article in the *New York Times* on September 20 characterized it as "sanctioning the use of force, if necessary,"[6] and another front page article from the next day similarly characterized the vote as a "resolution endorsing the use of force" by Congress.[7] Notably, leaders in Congress specifically passed the measure as a joint resolution—i.e., a measure with full legal effect—in order to avoid any later questions over the authority of the President in the situation.[8]

Moreover, once the missiles were discovered in mid-October, part of the White House's decision to publicly announce the evidence of the weapons was due to anticipated pressure from Congress (May & Zelikow 2002, pg. 64-65). The choice of blockade—or, rather, a "quarantine"—of the island was also influenced by lawmakers. Indeed, members of Congress had actually been the original proposers of this idea (Allison & Zelikow 1999).[9] Still further, while Kennedy publicly proclaimed that he had the constitutional authority to take virtually any military measure in the crisis unilaterally, he came to appreciate the Cuba Resolution once the acute crisis began and often cited it both privately and publicly as giving him authority to act (May & Zelikow 2002, pg. 377). Moreover, regarding the possibility of airstrikes or

[5] "The Republican Party grabbed the administration by this vulnerability. The months preceding the Cuban missile crisis were also months before the off-year congressional elections, and the Republican Senatorial and Congressional Campaign Committee had announced that Cuba would be 'the dominant issue of the 1962 campaign.' What the administration billed as a 'more positive and indirect approach of isolating Castro from the developing, democratic Latin America,' Senators Kenneth Keating (R-N.Y.), Barry Goldwater (R-Ariz.), Homer Capehart (R-Ind.), Strom Thurmond (D-S.C.), and others attacked as a 'do-nothing' policy. In contrast to the administration's inaction, which was allowing additional Soviet arms shipments to Cuba, critics called for a blockade, an invasion, or simply 'action.'" (Allison & Zelikow 1999, pg. 532). Schlesinger also notes the pressure from congressional Republicans to act (Schlesinger 2002, pg. 732-733). See also *U.S. Forces Soviet Missiles Out of Cuba* (1963), available at https://library.cqpress.com/cqalmanac/document.php?id=cqal62-1326379&type=toc&num=24.

[6] Frankel, Max. "2 Senate Groups Back Force on Cuba If Necessary to Prevent Aggression." *New York Times*, September 20, 1962.

[7] "Resolution to Curb Cuba Adopted by Senate, 86-1." *New York Times*, September 21, 1962.

[8] Hulme, M. Patrick. "Congress, the Cuba Resolution and the Cuban Missile Crisis" *Lawfare*, April 22, 2021.

[9] By the time a blockade was discussed in the White House "The blockade idea was already being discussed by Kennedy's opponents on Capitol Hill, as a way of responding to the flow of Soviet conventional arms to Cuba. McNamara had alerted the Navy to the possible need for a blockade at the beginning of October," (Allison & Zelikow 1999, pg. 411). "The idea of blockading Cuba had acquired, for Kennedy administration insiders, the stigma of having a 'certain Capehartian ring to it.' This was why, after choosing a type of blockade option on October 20, Kennedy walked out on the balcony of the White House with a few aides and remarked sardonically, 'Well, I guess Homer Capehart is the Winston Churchill of our generation.'" (Allison & Zelikow 1999, pg. 532)

invasion if the quarantine failed to produce the desired results, Kennedy wanted Congress (then on recess) to be in Washington "before any major action is taken," and requested that they be available to convene on a mere eight hours notice (May & Zelikow 2002, pg. 377).

Second, there was then the effect of these perceived constraints on the President in the eyes of the Kremlin. Khruschev's perceptions of the pressure on Kennedy influenced how far the Soviet leader thought he could push the U.S. President. Indeed, Moscow had closely watched the domestic U.S. reaction for months. In March 1962, for example, Soviet intelligence believed an invasion of Cuban by the United States was not imminent because "Kennedy would not risk a military operation before the November congressional elections, because of his concern that it would be used against him by the Republicans," (Fursenko & Naftali 1998, pg. 160). By the summer of 1962, it became clear, however, that Republicans were quite in favor of a tough stance on Cuba.[10] Khrushchev openly worried about "Congressmen [who] want to attack Cuba"[11] and specifically noted the Cuba Resolution when passed.[12] He wondered not only about Republicans in Congress—at this point, he knew they were hawkish on the question of Cuba—but also Kennedy's own copartisans in the legislature. Were even Democrats now willing to support the use of military force (Fursenko & Naftali 1998, pg. 208)? Leaders in the Kremlin were also clearly aware of an upcoming congressional election in November 1962. In order to not force Kennedy into a difficult position, Khrushchev famously promised the American administration to not force a crisis until after the 1962 midterm elections (Allison & Zelikow 1999, Fursenko & Naftali 1998, 197).[13]

Both the formal and informal actions of lawmakers—e.g., votes and speeches—were closely watched by policy-makers in Moscow. Soviet Foreign Minister Andrei Gromyko specifically noted the Cuba Resolution and other congressional actions in a White House meeting with President Kennedy on October 18 (Sorensen 1965, pg. 690). And after Kennedy publicly announced the presence of the missiles on October 22, Khrushchev recalls in his memoirs, "Republican Party leaders began speaking out, and then the Democrats joined in. They be-

[10] Closer to October, Soviet Foreign Minister Andrei Gromyko "was convinced that the invasion lobby was losing steam. He noted that the Gallup organization...had just published a poll indicating a majority against a U.S. invasion. Moreover, the fact that Congress had just recessed until after the November elections meant that 'pressure on Kennedy from this extremist group would lessen.' " (Fursenko & Naftali 1998, pg. 232)

[11] *Foreign Relations of the United States*, 1961–1963, Volume X, Cuba, January 1961–September 1962, eds. Louis J. Smith and David S. Patterson (Washington: Government Printing Office, 1997), Document 416, https://history.state.gov/historicaldocuments/frus1961-63v10/d416 Document available at https://s3.documentcloud.org/documents/20618665/kruschev-concerned-about-hawks-in-congress.pdf.

[12] *Foreign Relations of the United States*,1961–1963, Volume VI, Kennedy-Khrushchev Exchanges, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1996), Document 56, https://history.state.gov/historicaldocuments/frus1961-63v06/d56. "What is going on, for example, in the U.S. Congress? ... Very serious consequences may have the resolution adopted by the U.S. Senate on the Cuban question. The contents of that resolution gives ground to draw a conclusion that the U.S. is evidently ready to assume responsibility for unleashing thermonuclear war."

[13] *Foreign Relations of the United States*, 1961–1963, Volume X, Cuba, January 1961–September 1962, eds. Louis J. Smith and David S. Patterson (Washington: Government Printing Office, 1997), Document 415, https://history.state.gov/historicaldocuments/frus1961-63v10/d415.

gan demanding decisive action on the part of their government...They tried to intimidate us by saying that the United States would not tolerate this and would be forced to intervene, to use force, taking advantage of its military superiority relative to Cuba," (Khrushchev & Khrushchev 2007, pg. 334). Soviet decision-makers thus closely followed the domestic politics of the United States and substantially based their understandings of U.S. intentions and credibility based on sentiment they saw emanating from Capitol Hill.

Third, higher-ordered beliefs about Congress's constraining effect on the President were also evident in the crisis. In other words, American leaders believed that adversaries closely watched the domestic politics of the United States, and that Soviet perceptions of congressional actions affected the White House's own bargaining with the Kremlin. In this case, overwhelming support expressed by Congress provided a bargaining advantage for the White House (McManus 2017). In his October 18 meeting with the Soviet Foreign Minister (i.e., after the missiles were secretly discovered by the United States, but before this was publicly announced on October 22) the President specifically reminded the foreign minister "how the American people and the Congress felt on this matter."[14] Four days later in his personal letter to Chairman Khrushchev after announcing the presence of Soviet missiles in a national oval office address, Kennedy emphasized: "It was in order to avoid any incorrect assessment on the part of your Government with respect to Cuba that I publicly stated that if certain developments in Cuba took place, the United States would do whatever must be done to protect its own security and that of its allies. *Moreover, the Congress adopted a resolution expressing its support of this declared policy.*" Arthur Schlesinger—the same Arthur Schlesinger who wrote *the Imperial Presidency* in 1973—wrote an internal postmortem of the episode for the administration on final day of the crisis.[15] In seeking to explain what had led to an abatement of the crisis, his very first argument was that a successful settlement had been "made possible by the unity of the American people (Including Republicans) behind a firm policy." The Cuba Resolution was considered to be so successful in coercive effect, in fact, that it served as an inspiration for a similar resolution authorizing the use of force in Vietnam less than two years later: infamous Gulf of Tonkin Resolution.

Thus, while Congress may not have been in the room present for decision-making during the acute thirteen days of the crisis, it was hardly without influence in the encounter. The Kennedy Administration was under enormous pressure from Congress to act forcefully, and it undertook many actions at the explicit urging of Congress, or under the implicit anticipation of what Congress would demand. Moreover, it is clear that Moscow paid close attention to

[14]Foreign Relations of the United States, 1961–1963, Volume XI, Cuban Missile Crisis and Aftermath, eds. Edward C. Keefer, Charles S. Sampson, Louis J. Smith and David S. Patterson (Washington: Government Printing Office, 1996), Document 29, https://history.state.gov/historicaldocuments/frus1961-63v11/d29.

[15]Post Mortem on Cuba, Memorandum from Arthur Schlesinger to the President, October 29, 1962, https://nsarchive2.gwu.edu/nsa/cuba_mis_cri/19621029mortem.pdf.

formal and informal Congressional actions in the crisis and based many of its threat perceptions on what it observed from lawmakers. Lastly, the White House believed the Kremlin was precisely up to this, and thus used Soviet perceptions of congressional support for force as a strong bargaining advantage. While crisis bargaining takes place between international leaders, the will of Congress is baked into the American leader's own utility function: decision-making in the White House—and in the adversary state—thus takes place under the shadow of Congress's own sentiment.

A Presidency Constrained

This dissertation proceeds as follows: the first chapter introduces a general theory of how and when Congress can influence the crisis behavior of both the President and U.S. adversaries, and presents a simple formal model demonstrating this dynamic. The second part of the chapter then extends the model to specifically consider how congressional force authorizations—i.e., questions of constitutional war powers—affect the relationship. Overall, the model(s) suggest that despite the parade of the maladies frequently cited by skeptics of congressional influence, the legislature strongly effects both presidential decision-making and adversary behavior in crises. It predicts that congressional constraint on the executive will be manifest in two ways. First, Presidents will only enter the largest uses of force (full scale wars) when acting pursuant to formal congressional authorization. Second, even for smaller uses of force undertaken unilaterally, Presidents will still be substantially constrained by informal congressional sentiment.

The second chapter then moves on to a quantitative analysis of key hypotheses derived from the model in the first chapter. A novel dataset of "congressional support scores" measuring support, or opposition, in the legislature to military intervention in one hundred fifty postwar crises is introduced and utilized. The data suggests that the level of force Presidents are willing to utilize is closely constrained by sentiment in Congress: far from having an Imperial President, congressional support appears to be a necessary condition for the use of military force. The size of this effect is far greater than the modest and statistically weak effects found in the previous literature.[16] The statistical analysis also suggests that congressional support has a large effect on crisis outcomes, and reverse causation is unlikely to explain this association.

The third, fourth, and fifth chapters consist of qualitative case studies demonstrating the logic of the model. Chapter Three applies a disconfirmatory Large-N Qualitative Anal-

[16] As explained in Chapter 2, this is due to a simple innovation in measurement: directly measuring congressional preferences based on speech data rather than simply assuming co-partisans to the president support the use of force and opposition party members oppose it. Because partisan measurements only weakly correlate with support or opposition to the use of force, this measurement substantially underestimates the effect of Congress.

ysis (Goertz & Haggard 2021) approach to a core claim of the Imperial Presidency thesis: Presidents are willing and able to conduct major armed conflict absent the formal approval of the legislature. Focusing on the generalization, "If a President was actually willing to conduct major combat operations, then they possessed, or expected to imminently receive, formal congressional authorization", it demonstrates that after the anomalous Korean War there are *no* clear cases of Presidents willing to sustain sizable American combat fatalities absent express congressional approval.[17] While Chapter Three thus focuses on positive cases, Chapter Four shifts the analysis to negative cases in which intervention did not occur. In contrast to the LNQA approach of Chapter Three, Chapter Four consciously selects cases that seemingly demonstrate the deterrent causal process theorized (Goertz 2017). Seven cases—each taking place in a different presidential administration, and with a focus on hawkish Presidents least likely to respect constitutional boundaries—demonstrate the widespread avoidance of conflict specifically due to a lack of formal authorization. With Chapter Three finding no clear cases of Presidents willing to undertake major combat operations absent formal congressional approval since the Korean War, and Chapter Four illustrating several instances of conflict avoided due to a lack of such authorization, the chapters together suggest formal authorization still maintains an important role in use of force decision-making in the postwar era.

Lastly, the fifth chapter extends the analysis to also focus on perceptions in the watching world abroad. The Vietnam War is selected as a "least likely" case against which to test the theory given that the period from the beginning of the Cold War until the end of the Vietnam War and the passage of the War Powers Resolution in 1973 is considered the zenith of the Imperial Presidency. Using archival research—including primary sources in both Chinese and Vietnamese—this chapter examines (i) congressional influence on presidential decision-making, (ii) international perceptions of American credibility based on congressional behavior, and (iii) higher ordered considerations (i.e., White House concerns about international perceptions of American credibility based on congressional behavior). Looking at a series of crises from 1954 to 1975, evidence supports the expectations of the theory and contradicts the Imperial Presidency thesis. No U.S. President in the time period was actually willing to initiate a major use of force in Southeast Asia absent formal authorization from Congress, and U.S. adversaries were consistently well aware of the domestic constraints facing the President. Indeed, Hanoi's entire strategy was based upon a belief in legislative constraint over the President.

Altogether, the manuscript suggests the Congress is far more influential in the use of military force context than often realized—and will likely to continuing playing a prominent role well into the future. Despite a widespread belief in an Imperial Presidency, we actually

[17]Note here the importance of defining "major combat operations" as the key scope condition. As explained in Chapter 3, the motivation is to separate full scale war from much more minor episodes involving low casualty risk.

have a Congressionally Constrained executive.

Chapter 1

Theory of War Powers Politics

> *[I]n the final analysis, politics, rather than law, rules in the struggle between president and Congress," (Cox 1984, pg. xix).*

A conventional wisdom surrounding Congress in the use of military force context is that the legislature *de facto* has little power. While the Constitution clearly endows the legislative branch with the power to declare war, the legislature has not formally declared war since the Second World War, and hundreds of uses of force have been undertaken absent any kind of vote of approval from lawmakers. Even the strongest proponents of the existence of congressional influence in foreign policy concede that Congress's power to formally authorize the use of military force matters little. Congressional influence, instead, is argued to occur through informal channels, to be bounded by substantial scope conditions, and even then, to be quite small in comparison to the power of the President (Howell & Pevehouse 2007, pg. 9-10). As James Lindsay succinctly puts it, "Congress plays at best a small role in crisis policy" (Lindsay 1994, pg. 153).

The Imperial Presidency

> "Although international crises raise the possibility of war, members of Congress find themselves excluded from decisions on crisis policy. Presidents insist they have the independent authority to initiate the use of force, a position that has been implicitly buttressed by the reluctance of the courts to confront the war powers issue. In turn, practical, normative, and electoral concerns generally leave members of Congress with little choice but to follow the President's lead."—*Congress and the Politics of U.S. Foreign Policy* (Lindsay 1994, pg. 147)

It is widely believed Congress has little influence in use of military force decisions. Across policy areas, foreign and domestic, Presidents have strong incentives to accrue and utilize unilateral powers. The gap between the great expectations placed on the presidency and the few formal powers expressly given to the position forces occupants of the office to

accrue power (Howell & Brent 2015). The U.S. Constitution is notoriously vague, and this lack of clarity creates opportunities for assertions of presidential power (Moe & Howell 1999).

Presidential power, moreover, is not consistent across policy areas. It is widely recognized that executives have more discretion over foreign policy than domestic matters (Wildavsky 1966, Canes-Wrone, Howell & Lewis 2008, Lowande & Shipan 2021, pg.10). Not only do Presidents have more *de jure* constitutional power in foreign affairs,[1] but they additionally maintain several structural advantages that enhance their power *de facto* as well. These include not only greater agenda setting powers and first mover advantages, but also informational advantages (Canes-Wrone, Howell & Lewis 2008). Electoral incentives additionally make members of Congress less interested in taking the lead on foreign policy (Canes-Wrone, Howell & Lewis 2008), and instead encourage lawmakers to simply focus on avoiding blame (Weaver 1986). It is common to see assertions even of congressional "abdication" when it comes to foreign policy (Marshall & Haney 2022).[2]

Even amongst this higher discretion Presidents have in foreign affairs in general, it is the power over war that sees executive power reach its apex (Lowande & Shipan 2021, Dearborn 2021, Howell & Pevehouse 2007, pg. 222). While there are several policy areas in which Presidents face incentives to claim ever-increasing power—and other political actors have weak incentives to prevent such accretion of authority (Howell, Shepsle & Wolton 2021)—such extraordinary claims to power are most evident in the war powers context (Lindsay 2003). While courts give more deference to the executive in foreign affairs compared to domestic matters (Charney 1989), they refuse even to hear cases challenging the President's power over war initiation (Ramsey 2018). Because of this, the executive branch is free to self-police its authority in this area. Unsurprisingly, this had led to enormous assertions of power as the "Presidential conception of what their constitutional powers are has vastly expanded over the course of American history" (Lindsay 2020*a*). Congress, furthermore, fails to assert its own prerogatives because "members of Congress fear making politically risky decisions on war and peace,"(Lindsay 2003, pg. 138).

To be sure, a burgeoning literature in political science over the past two decades has suggested that Congress does sometimes matter in the U.S. use of force context, but it is argued that this is through *informal* means and only under certain circumstances. For example, even while arguing in favor of congressional influence, Howell and Pevehouse concede that Congress remains a definite "secondary political player" in the war powers context (Howell & Pevehouse 2007, pg 9).[3] Moreover, while much of the first wave of this work focused on

[1] *U. S. v. Curtiss-Wright Corp.*, 299 U.S. 304 (1936).

[2] "Thus, over time Congress has largely lost the zero-sum struggle for power with presidents in the shaping of US foreign policy," (Marshall & Haney 2022, pg. 663).

[3] "[L]et there be no mistake about it: Presidential power reaches its apex when the nation stands on a war footing" (Howell & Pevehouse 2007, pg 222). The authors lower expectations of congressional influence to a

partisan politics and the strength of the President's party in Congress (Howell & Pevehouse 2007, Kriner 2010), more recent work has called this into question and suggested that, when it comes to supporting the use of force, ideology matters more than copartisanship with the President (McManus 2017, Bendix & Jeong 2022). Overall, results have been mixed: findings have tended to have modest effect sizes and lack strong statistical significance. Results are often sensitive to model specification, the time period considered, the data set utilized, or the dependent variable being explained.[4] Moreover, the formal war power of Congress—i.e., a vote to legally authorize the use of military force—is considered to be so inconsequential that political scientists fully omit authorization status from statistical models.[5]

Curiously, this omission of formal war powers questions from the political science literature is in strong tension with the reported experiences of Presidents and senior lawmakers. A conventional wisdom argues that no postwar President ever decided against using force due to a mere lack of formal congressional approval (Griffin 2013), but there is actually strong historical evidence in contradiction of this.[6] Moreover, while Truman famously entered the Korean War absent a formal vote of the legislature, subsequent Presidents have consistently rejected the option of entering a major war unilaterally (often, specifically citing Truman's experience as *anti*-precedent).[7] Still further, formal authorization from Congress not only appears to affect the willingness of the President to utilize military force above a certain magnitude, but is also often connected with deterrence and compellence in the minds of politicians.[8] President

bare minimum of "whether Congress in *any* material fashion, constrains the Presidential use of force" (Howell & Pevehouse 2007, pg 10, emphasis added).

[4]For example, while Howell and Pevehouse (2005, 2007) find an association between unified government and an increased proclivity to use force, Gowa finds no relationship when utilizing a more extended time period (Gowa 1998). Many of the findings in this line of literature have not replicated at conventionally accepted levels of statistical significance when utilizing data from the Correlates of War project. While Howell Pevehouse (2005, 2007) and Kriner (2010) have found that copartisan strength in Congress predicts the number and duration of major uses of force, McManus (2017) finds such composition has no effect on the outcome of U.S. MIDs. Conversely, while McManus (2017) finds that the number of Republicans in Congress predicts more successful MIDs for the United States, Howell and Pevehouse (2005, 2007) and Kriner (2010) find no relationship between the number of Republicans and presidential proclivity to use force. More recently, scholarship has suggested that *both* copartisanship with the occupant of the White House and being more hawkish (i.e., Republican) predict support for the use of military force (Bendix & Jeong 2022, Böller 2021).

[5]One close exception is Kriner (2010), who includes congressional votes in some models. Formal authorization—i.e., a joint resolution going through the entire bicameralism and presentment process—is not included, however.

[6]Chapter 4 presents seven crises—Indochina (1954), the Six Day War (1967), Vietnam after the Paris Peace Accords (1973), the Fall of Saigon (1975), the Caribbean Basin (1980's), Iran (2006), Syria (2013)—in which a lack of formal authorization from the legislature appears to have substantially driven the decision not to intervene.

[7]Not only has every major war since Korea (Vietnam, Gulf War, Afghanistan, Iraq) been fought pursuant to an Authorization for the Use of Military Force by the legislature, but there is strong evidence in many of these cases war would not have been waged had the legislature rejected the proposal. Moreover, Chapter 3 shows that even when including major crises in which the adversary of the U.S. backed down prior to conflict, such as in Cuba (1962), or in the Berlin crises (1958 and 1961), there is not a single clear case of a President willing to execute full scale war unilaterally after the Korean War.

[8]Even Schelling paid extensive attention to the Formosa Resolution—an AUMF—in *Arms and Influence* (1966).

Obama, for instance, argued that U.S. actions would be more effective in Syria if Congress formally authorized the use of force.[9] Likewise, several future Democratic presidential candidates reported voting for the 2002 Authorization for the Use of Military Force against Iraq because they thought it would increase President Bush's bargaining leverage. More recently, some lawmakers have advocated giving President Biden the authority to defend Taiwan in order to deter a potential attack from the People's Republic of China (Luria 2021). Such a logic connecting coercion and the war powers even appears to have existed during the Trump Administration: during the 2017 nuclear crisis with North Korea, there were thoughts of securing congressional authorization in order to coerce the DPRK.[10] What explains this divergence between well accepted theories in political science suggesting massive unilateral power on the part of the President,[11] and the reluctance of Presidents since the Korean War to engage in full scale war unilaterally?

The Missing Element: Loss Costs

Victory has a hundred fathers and defeat is an orphan—John F. Kennedy[12]

While the literature makes a strong case that there is little Congress can do *ex ante* to stop a determined President from using military force, Congress's ability to punish the President *ex post*—and the President's anticipation of this (Kriner 2010)—is often overlooked. Moreover, the risk of such attacks is amplified by performance on the battlefield: while it might be unwise to attack a popular President after a clear victory, it is an overwhelming temptation after military failure. For the sake of simplicity, these will be referred to as "loss costs."[13]

Kriner (2010, 2018), Howell and Pevehouse (2005, 2007), McManus (2017), and others have highlighted the mechanisms through which lawmakers can erect serious obstacles toward

[9] https://obamawhitehouse.archives.gov/the-press-office/2013/08/31/statement-President-syria. Some have argued that Obama intentionally asked for authorization knowing that Congress would turn him down (Burns & Stravers 2020, Yarhi-Milo 2018, e.g.). I show in Chapter 4 that there is little evidence of this in the recollection of the events by those present for the decision. To the contrary, by all accounts—including those in favor of bypassing Congress (Rice 2019, e.g.)—the overwhelming majority of advisors believed congressional approval would be forthcoming (Kerry 2019, Power 2019, Rhodes 2019). Moreover, there are several theoretical reasons why even a President with no intention of actually using force would nonetheless not want to publicly broadcast this to a watching adversary.

[10] "If it gets to be a mature threat...don't let us [Congress] just sit on the sidelines and bitch and moan... call the congressional leadership up and say, 'I may have to use force here. Let me tell you why I want your backing for authorization to use force against North Korea.' If we had a vote that was decisive and you had that authority in your back pocket, it may prevent you from having to use it." —Senator Lindsey Graham (R-SC) to President Trump (Woodward 2019, pg. 129).

[11] See, e.g., Howell on unilateral Presidential power in general (2003, 2021) and Schultz (2003) on the war powers in particular.

[12] Kennedy, John F. "The President's News Conference, April 21, 1961", State Department Auditorium, Washington, D.C., 1962. The American Presidency Project. Accessed March 27, 2023. https://www.presidency.ucsb.edu/documents/the-Presidents-news-conference-213

[13] These are distinct from audience costs. Fearon's audience costs refer to cost of *backing down* in a crisis (Fearon 1994). Here, loss costs are assessed when *following through*, and losing.

Presidents using military force. These go well beyond direct actions such as funding cut-offs for military operations (McManus 2017, Jeong 2020), but include indirect attacks through informal means. One mechanism of particular influence is through affecting public opinion (Howell & Pevehouse 2007, Christenson & Kriner 2020). Members of Congress are able to use hearings, investigations, media appearances, and legislative measures in order to impose these costs (Kriner 2010, Kriner 2014). In addition to attacks on policy grounds, charges of unconstitutional behavior can also be levied (Kriner 2018). The general public highly dislikes the use of military force absent congressional approval—and this is even the case when there is strong support for the underlying intervention (See Appendix I). Reeves and Rogowski note not only that Americans dislike unilateral action across policy dimensions, but are perhaps clearest in their displeasure when it comes to the initiation of military conflict absent congressional approval (Reeves & Rogowski 2022). Because the Constitution clearly endows Congress alone with "the power to declare war"—and an overwhelming majority of Americans across the political spectrum believe that military operations should only be taken pursuant to formal congressional approval (Kriner 2014, Christenson & Kriner 2020)—these attacks can resonate broadly with the American public. Members of Congress can even threaten the President with impeachment during unilateral uses of force.[14]

Congress can resist more asymmetrically, as well. Economic aid, for example, often accompanies U.S. military interventions, and it is not uncommon for the legislature to threaten withholding such spending. In this way, it can exercise its "power of the purse" while not taking the potentially risky move of cutting off funding to U.S. troops.[15] Lawmakers can even use issue-linkage to go after policy areas fully unrelated to the military intervention, "upending congressional action on other aspects of the President's policy agenda" (Howell 2013) or otherwise force the President to waste political capital defending their use of force (Kriner 2010).

Less well explored—though seemingly well recognized by scholars of the Presidency and American foreign policy[16]—is the way in which victory and defeat affect Congress's incen-

[14]See, for example, Friedersdorf, Conor. "A Resolution to Impeach Is Ready If Obama Goes to War Without Congress." The Atlantic, March 12, 2012. https://www.theatlantic.com/politics/archive/2012/03/a-resolution-to-impeach-is-ready-if-obama-goes-to-war-without-congress/254366/—and such threats are not limited to members of the opposing party. "Kucinich: Libya Action 'impeachable' - POLITICO." Accessed March 27, 2023. https://www.politico.com/story/2011/03/kucinich-libya-action-impeachable-051668.

[15]Kissinger, for example, writes that in the months prior to the Fall of Saigon the administration wanted to interdict North Vietnamese supplies and manpower entering the South, but feared that Congress would retaliate by withholding aid to Saigon (Kissinger 1999). Congress can utilize other powers as well to coerce the White House. In 1979, for example, prominent members of the Senate pushed the Carter Administration to take a strong stand against the presence of a Soviet brigade in Cuba by threatening to not ratify SALT II (Carter 1982).

[16]"During those periods when dangers gather abroad...Presidents struggle mightily to forecast the likelihood of military success and to discern Congress's likely reaction *in the event of failure*," (Howell & Pevehouse 2007, pg. 232, emphasis added). Similarly, Schultz argues using military force without Congressional authorization "amplifies the political risks *in the event that things go badly*," (Schultz 2017, emphasis added). As James Lindsay put it, "the very fact they [Congress] are poised to *pile on in defeat* exerts an important constraining

tives and ability to impose such costs, and the implications this entails. While a determined Congress could theoretically impose costs regardless of the outcome of the use of force, lawmakers are much more likely to be motivated into attacking the President upon American defeat. The more the outcome of an intervention diverges from a clear victory, the more opportunity lawmakers will have to criticize the foreign policy acumen of the President, for example. Because the President is inescapably the Commander-in-Chief, they will be held responsible for the consequences of military action whenever undertaken. Members of Congress, however, have the option of sitting on the sidelines. And because politicians are often motivated more by blame avoidance than by being able to take credit for positive outcomes (Weaver 1986), this is an attractive option. But this has a serious implication: by not taking a position *ex ante*, members of Congress are much more free to attack a President for failure *ex post*. Were the outcome of war easy to predict, such a threat might be inconsequential. The fundamental nature of war, however, is risk (Clausewitz 1976, Gartzke 1999).[17] If the likely outcome of a conflict were obvious to all from the beginning, it is unlikely war would actually occur (Blainey 1973, Reed 2003).[18]

Two factors, in particular, will influence the size of these *ex post* costs assessed by the legislature on the executive upon American failure: (1) the scale of the use of force,[19] and (2) congressional sentiment regarding the potential use of force *ex ante*.[20] Larger uses of force—costing more blood and treasure—will be more likely to incentivize and trigger a broader congressional response (Howell & Pevehouse 2007). American combat deaths, in particular, will motivate increasing attention and resistance. While a drone strike absent American casualties will give a President little pause, actions involving American death—and certainly anything approaching full scale war—will make a President think twice before acting unilaterally.

Congressional sentiment toward the use of force will also scale the size of these potential loss costs. Members of Congress can have varying individual preferences over different foreign policy objectives.[21] Of course, the value a lawmaker places on a particular priority might simply depend on what they believe their constituents want (Mayhew 1974), their own ideology (Jeong 2018, McManus 2017), or even on whether the President is a copartisan or

and shaping effect...knowing that Congress might hang you in two weeks has a way of concentrating the minds of Presidents and their advisers," (Lindsay 2003, pg. 158, emphasis added).

[17]Hannibal noted to Scipio Africanus at the end of the Second Punic War, "Nowhere less than in war do results match men's hopes," Livy, *The History of Rome*, book 30 chapter 30.

[18]See also Slantchev (2003).

[19]The scale of force employed will be denoted f below.

[20]Congressional sentiment over the (potential) use of force will be denoted β below.

[21]Speaker Pelosi, for example, has recently been classified as a "China Hawk" for her long tenure criticizing the human rights record of the Chinese Communist Party and her support for Taiwan. Notably, she felt so strongly over the issue she defied the wishes of President Biden when she visited Taiwan in August of 2022. At the same time, Speaker Pelosi led the charge against President Bush's surge strategy in Iraq in 2007—making her an "Iraq Dove." President Nixon similarly noted that many "Vietnam Doves" in 1973 were concurrently "Israel Hawks" during the Yom Kippur War (Nixon 1986).

not (Schultz 2001, Howell & Pevehouse 2007, Kriner 2010). Ultimately, why particular members support or oppose particular military interventions is an empirical question beyond the scope of this manuscript. What is important is that Congress—in the aggregate—can have sentiment in favor of or opposed to a particular potential use of force. Congress might be virtually unanimous in favor of the use of force (e.g., in the Korean War) or nearly unanimous in opposition (such as in Vietnam after the Paris Peace Accords). Congress can be split along party lines (as it was in regard to the 2007 Surge in Iraq), or split with significant opposition and support in both parties (as it was in the 2013 Syria "red line" crisis). Moreover, while congressional sentiment could be revealed in a roll-call vote, it need not be.[22] For example, it was recognized during the counter-ISIS campaign that Congress overwhelmingly supported the operation despite not formally authorizing it.

Congressional sentiment in favor of the use of force will dampen the possible loss costs faced by the President *ex post*. First, if many of members of Congress favored the operation from the beginning, it will simply be more difficult for them to attack a President later[23] because those who originally supported an intervention will be subject to charges of

[22]There is an interesting question of whether congressional sentiment, in the aggregate, is closer to Jervis' "signals" or "indices" (Jervis 1970). Framed another way, is expressed congressional sentiment more like Presidential rhetoric or a public opinion poll? The former will be discounted as cheap talk because a leader clearly has strong incentives to misrepresent (Fearon 1995). A genuine public opinion poll, in contrast, is more likely to fall in the category of "indices" because it seems unlikely individual citizens are going to to misrepresent their true feelings in some convoluted attempt to trick an American adversary.

On the one hand, members of Congress might be more similar to the President, given their status as high profile politicians. On the other hand, several factors seem likely to distinguish the speech of the President from that of lawmakers: (1) the President controls the military, (2) there is only one President, and (3) Presidents and lawmakers have different incentives regarding the outcomes of crises. First, while Presidents have actual control over the use of military force, legislators do not. Presidents say what they will or will not do—they make threats. Individual members of Congress say what the *President* should or should not do—they have no ability to carry out threats themselves. Moreover, while the President has control of what they themselves might choose to do with the military in the future, members of Congress have to simply trust that the President will not do something reckless with the military in the future.

Second, "Congress" is 535 individuals, the President is 1. The marginal cost to the United States of the President saying the "wrong" thing in a crisis is enormous; the marginal cost to the United States of any given member of Congress saying the "wrong" thing in a crisis is vanishingly small (it is slightly higher for congressional leadership, although still not nearly at the same level as the President). An adversary will certainly be listening to what the President is saying. They will likely also be listening, as well, to what Congress *as a whole* is saying—but the chances they are listening to any particular member at any given time are small. Congress thus faces a collective action problem.

Lastly, a President very much internalizes the outcome of the crisis—they are the Commander-in-Chief: success and failure will be disproportionately attributed to them. A defeat for the United States is *per se* a defeat for the President; A defeat for the United States is only a defeat for a lawmaker if they took a high-profile stand in favor of the use of force. Indeed, an American defeat could actually pay off handsomely for a member of Congress if they vocally opposed it from the beginning.

Altogether, while Presidents clearly have strong incentives to bluff in crises, it is not clear individual members of Congress do. To the contrary, they are much more motivated by domestic politics, which is comparatively far more salient for them (Goldfien, Joseph & McManus N.d.). Their incentives are to be seen as making good choices by their individual constituents—to follow public opinion. Thus, whereas Presidents are incentivized to stand firm in a war progressing poorly rather than back down (consider Johnson and Nixon in Vietnam or Bush in Iraq), members of Congress—and congressional sentiment in the aggregate—are incentivized to follow public opinion (as it did during Vietnam and Iraq). There thus seems to be an argument congressional sentiment is more like public opinion—an index—than Presidential rhetoric—a signal.

[23]For example, even when unilaterally entering the Korean War, the Truman Administration paid close

hypocrisy and "flip-flopping".[24] Second, if members of Congress who vocally supported an operation then turned their swords on a President who fulfilled their wishes, this would make it much more difficult for them to encourage a President to act in the future. Lastly, it is also a possibility that members of Congress genuinely value a foreign policy objective—and in the event of a bump-in-the-road are more likely to help a President through to a successful finish than to simply opportunistically attack the President and abandon their support for the endeavor. Altogether, these suggest congressional sentiment in favor of the use of force *ex ante* will partially blunt the potential for damaging attack *ex post*.

Conversely, when congressional sentiment is highly opposed to the intervention, Presidents face much higher anticipated costs upon failure. Having voiced disapproval from the beginning, lawmakers will be in the perfect position to highlight their own competence and heighten their own political status by attacking the President. The political risk faced by a President contemplating military action in the midst of strong congressional opposition to the use of force will thus be much higher.

Note, however, that even while anticipated loss costs might lessen when congressional sentiment is in favor of the use of force from the beginning, they will not be eliminated completely. Even if congressional sentiment favored the intervention *ex ante*, it is easy to foresee attacks for waging "unconstitutional war" later on if the formal, legally binding consent of the legislature was not obtained.[25] And in a long, bloody conflict, members of Congress who previously supported an operation will face increasing temptations to defect from their position. This will not be limited to opportunistic members of the opposition party, but can also come from frustrated copartisans of the President eager to leap from a sinking-ship. Rivals for party leadership—and the Presidency—might become increasingly hungry to strike once they smell blood in the water.[26]

Presidents contemplating war thus not only face a threat abroad, but also one waiting back home if things go poorly. Kennedy famously noted that "defeat is an orphan", but the

attention to informal congressional sentiment at the time. A White House aid recalled: "A good deal of my work during this period involved documentation of the extent of bipartisan support for the decision to commit American forces to Korea. By the end of the week, it became apparent that American ground troops would have to be committed. What was also evident was that some Republicans were already starting an attack of major proportion on the President's decision. On of my major tasks was to document the background of Republican and Democratic statements on Korea in light of subsequent effort to make a partisan issue out of 'Truman's war.' " (Hechler 1996, pg. 150).

[24]See, for example, Chris Massie, Andrew Kaczynski, and Nathan McDermott. "Top Republicans Who Opposed Syria Attack under Obama Are Now Praising Trump's Strike" CNN, April 7, 2017. https://www.cnn.com/2017/04/07/politics/kfile-top-republicans-syria-trump/index.html.

[25]The Korean War had overwhelming bipartisan support from the beginning, but Truman still suffered vicious attacks for "violating the Constitution" by not receiving formal congressional approval for the use of force.

[26]Note, for example, the 1972 Democratic Presidential nominee, George McGovern, was highly opposed to the Vietnam War despite it being initiated by a Democratic President. Similarly, Donald Trump helped distinguish himself from other Republicans in the 2016 field by arguing that the Iraq War was a disaster and that Bush "lied" about Iraq possessing weapons of mass destruction.

reality is military loss will always have at least one parent: the President. The question is whether they can offset some of this burden on those with the potential to attack them later.

A Role for Formal Authorization

> "[M]en are persuaded to go to war in one temper of mind, and act when the time comes in another...I call upon those whom my words may convince to maintain our united determination, even if we should not escape disaster"—Pericles (*History of the Peloponnesian War*)[27]

Given the existence of potential loss costs, Presidents are incentivized to find ways to mitigate and minimize them. If the magnitude of loss costs are a function of the scale of the force employed, then one option would be for Presidents to "pull their punches" and utilize less military power than might otherwise be optimal. Perhaps this would entail utilizing airstrikes instead of ground operations, for example. In other cases, this may even mean simply avoiding intervention altogether (Schultz 2017). Either way, however, this incentive to use less force leads to a trade-off: less force employed can mean less of a probability of victory.[28] Thus, while under certain circumstances the solution of "pulling punches" may be an attractive option, it is far from a panacea.

Another solution is to try to minimize Congress's ability to impose loss costs *ex post* by increasing support *ex ante*. One clear way to do this is to utilize the strategy of "going public"(Kernell 2007)—appealing to the general public in order to put pressure on members of Congress. For any use of force beyond the most minor operations, presidential administrations undertake great effort to increase public support for the intervention—often through, e.g., presidential addresses or actions such as international coalition building or acquiring international authorization for the use of force (Chapman 2011). But while the President has the advantage of the "bully pulpit", success is far from certain. The Bush Administration, for example, attempted to garner public support for a threatened strike on Iran in 2007, but was severely thwarted in its efforts.[29] Clinton, similarly, attempted to sustain support for the U.S. effort in Somalia after the "Black Hawk Down" incident of 1993, but was unable to do so (Clinton 2005).[30] Securing international support or legal authorization from an international institution can help boost public opinion (Chapman 2011) and yields some sense of legitimacy to an operation (Kreps 2019), but is also far from guaranteed.

The problem, moreover, with all of these options—even when successful—is that

[27] Thucydides. *Thucydides Translated Into English.* Clarendon Press, 1881, pg. 88.

[28] Of course, in the case where no force is employed, it means no chance of victory.

[29] See Chapter 4.

[30] As another example, Ford made several high profile addresses in the spring of 1975 in order to secure more military aid for the crumbling government of South Vietnam, and even asked for formal authorization for the use of military force to evacuate Vietnamese individuals at special risk of persecution. All, however, was to no avail.

none of them address a more fundamental issue faced by the President: support today does not guarantee support into the future. While a short term boost in public approval for an operation might mute congressional criticism in the near term, American casualties will put ever heightening pressure on members of Congress to attack the President.

Facing the possibility of congressional defection in the future, the Commander-in-Chief must thus figure out a way to resolve this underlying commitment problem on the part of lawmakers. Prior to the initiation of Operation Desert Storm in January 1991, former President Nixon crafted a private letter to President Bush partially addressing this exact question. The ex-President wrote that the Commander-in-Chief's "most difficult challenge" at that point was neither in sustaining a fragile international coalition nor even in dealing with the Iraqi army. Rather, Bush's most important problem was "how to get a public declaration of support from Congress for military action." One option was to invite congressional leaders to the White House for a meeting, and to privately ask them for their support. This was obviously less than perfect, however, because it would be easy for legislators to lie about their support (or opposition) later on. A better alternative would be to get high-profile "supporters of military action" in the Senate and House to sign a public "letter of support" for the operation. This course of action was, nevertheless, also suboptimal—presumably because it would still leave Bush vulnerable to charges of unconstitutional or illegal war *ex post*. Instead, the best option for the President would be to acquire formal authorization for the use of military force from both houses of Congress before launching an attack—"the preferable way would be a joint resolution."[31]

Hence, the gold standard Presidents have settled on in the postwar era is to have Congress formally approve the use of military force before entering major military operations. These legal instruments are often referred to as Authorizations for the Use of Military Force ("AUMF"). Lawmakers who vote to authorize the use of force undertake the most high-profile and public endorsement possible, and thus are the most entrapped by their position later on even if the intervention sours.[32] In seeking to explain President Obama's unexpected request for congressional authorization to use military force in Syria in 2013, for example, Kriner argues congressional authorization effectively ties domestic lawmakers' hands and impedes their ability to later impose costs on the President over a less-than-successful use of force (2014).[33]

[31]Nixon, Richard M. Letter to George H. W. Bush. December 25, 1990. Richard Nixon Foundation.

[32]See, for example, *Presidential Ad: "Windsurfing" George W. Bush vs. John Kerry.* 2004. https://www.youtube.com/watch?v=2QpS2Am51Wo. See also *Hillary Clinton Defends Her Iraq War Vote — Hardball — MSNBC, 2016.* https://www.youtube.com/watch?v=PNt3yfeQmA0

[33]Nzelibe similarly argues "congressional authorization acts as a political 'insurance policy' that partially protects the President against the possible political fallout from failed military engagement," (2007). This mechanism applies far beyond the modern American context, as well. Consider Thucydides commentary on the reaction of the Athenian assembly upon learning of the disaster in Sicily: "But when they had taken it in [the annihilation of the Sicilian Expedition], they turned their anger on the orators who had joined in promoting the expedition—as if they had not voted for it themselves," Thucydides, Book VIII, 1-1. The Greek historian

Johnson, for instance, specifically sought the Gulf of Tonkin Resolution prior to the Vietnam War because he believed "only if Congress was in on the takeoff would it take responsibility for any 'crash landing' in Vietnam," (Beschloss 2018, pg. 506). Similarly, George H.W. Bush sought formal approval prior to the Gulf War so that if things started going poorly Congress could not abandon the President—or, as he more colorfully put it: "paint their asses white and run with the antelopes,"(Hess 2006, pg. 96). After the 9/11 terrorist attacks, the Bush administration sought formal congressional authorization so that "it would be more difficult for Democrats or Republicans to squawk later about President Bush taking action if the full Congress authorized it from the beginning," (Gonzales 2016, pg. 128-129). Presidents thus seek formal congressional authorization in order to substantially lessen the possibility of loss costs later on.

Modelling the War Powers

With a set of actors—the President, lawmakers, and even international observers—pursuing different objectives, and yet strategically interdependent, the wars powers lends itself well to formal modelling. Interestingly, even non-technical politicians and policymakers tend to unwittingly speak of the war powers relationship in quasi-game theoretic terms—arguing, for example, that certain actions or legal regimes will hurt a bargaining position, or that others will enhance credibility. They argue that certain congressional resolutions will "send a signal" to U.S. adversaries, or that others will "undermine the President." Some argue that greater congressional control will lead to less war, while others claim too much influence from the legislature will encourage aggression.[34] Nonetheless, there have been few direct attempts to formally analyze the strategic environment facing the President, the Congress, and U.S. adversaries in the context of the war powers.[35] Formal theory has examined the effect of opposition party support or opposition in international crises (Schultz 1998, Schultz 2001, Ramsay 2004)[36] but the specific question of war powers—when Presidents act unilaterally, and

thus discounted the validity of these attacks on Athenian military leaders by members of the assembly ex post, because these members had voted in favor of the expedition ex ante.

[34]Richard Nixon, Veto of the War Powers Resolution Online by Gerhard Peters and John T. Woolley, The American Presidency Project, https://www.presidency.ucsb.edu/node/255456. For a more recent example, consider this debate between Senators Ted Cruz and Tim Kaine over repealing the 2002 AUMF authorizing the use of force against Iraq. *"He Is Mistaken": Ted Cruz Argues With Tim Kaine On Senate Floor*, 2023. https://www.youtube.com/watch?v=oUwsQJiQaFI. Both Senators seek to lessen the likelihood of conflict, and both maintain that congressional actions will have an effect on the probability of conflict. They disagree, however, on the direction of this relationship. Cruz maintains more authority will deter potential attackers, while Kaine argues that more authority will lead a President into an unnecessary conflict.

[35]Models somewhat related to the war powers include works by Schultz (2003) and Gartzke (1996).

[36]Formal work in political science thus far has not extensively explored the effect of Congress on crisis behavior. Schultz's *Democracy and Coercive Diplomacy* (2001) argues that the behavior of domestic opposition parties affects threat credibility and that democracies will make more selective, effective threats than non-democracies. Ramsay builds on Schultz's thesis by showing that future accountability at the ballot box and a desire to

when they seek congressional support—has not been addressed (Waxman 2013, Waxman 2014).

The model here attempts to "stack the deck" against finding congressional influence over the use of military force, and includes all the maladies frequently bemoaned by critics of the war powers *status quo*. We assume away respect for norms or the Constitution, and instead make relatively cynical, self-interested assumptions about the relevant actors in the war powers context:

- **Unilateral Action by the President:** Here we assume that the President possesses the ability for unilateral action—and, indeed, in this case we make even stronger assumptions of executive discretion than normally taken in the literature (Howell 2003). While Howell's Unilateral Politics Model gives the legislature and the judiciary the opportunity to overturn the policy set by the President (Howell 2003, pg. 29), here we assume that neither Congress nor the courts have any such opportunity. In this model, the President effectively has unlimited discretion over the policy.[37]

  In the first version of the model introduced, Congress is not even involved in the decision leading up to the use of military force. In the extended model allowing for statutory authorization for the use of military force (AUMF), Congress can be asked for formal authorization prior to actual conflict, but even here the choice of asking for such permission is the President's alone to make. The President maintains the option of simply bypassing Congress in the process of going to war, and Congress is given no chance to interfere with this choice *ex ante*. Moreover, even if the President chooses to seek congressional approval, the executive can still choose to employ as much military force as they see fit *regardless of whether Congress approves or rejects the President's request.* The President alone makes the final decision over the use of military force.

- **An Opportunistic Congress:** In the first, simple version of the model (i.e., absent authorizations for the use of military force), Congress sits on the sidelines and is assumed only to act *ex post*—specifically, in the event of military defeat. Thus acting opportunis-

gain valuable recognition as competent in foreign policy generates the costly signal that drives the information transmission generated by opposition party support (Ramsay 2004). Both Schultz and Ramsay thus focus on a mechanism by which opposition party support (opposition) increases (decreases) executive credibility. While insightful and surely applicable to a certain extent in the American context, these models are nonetheless suboptimal for specifically understanding the war powers question in the United States. The set-up of an executive and an opposition party, for example, seems to be more reflective of a Westminster system than a Presidential system in which interbranch rivalry—especially in the war powers context—can be sometimes be quite prominent even amongst copartisans. In the U.S. context, the war powers question is by definition one between political branches, not political parties. Moreover, these models assume the clear and public expression of opposition party support or opposition, while in the U.S. context often such position taking is far from clear prior to a contemplated intervention. Moreover, the very choice to hold a formal public vote over the use of force is *per se* the outcome of a strategic process assumed away in these models. In the American context, whether a contemplated use of force should be voted on is perhaps *the* core question of the war powers debate.

[37] In the war powers context, formal presidential power flows from the Commander-in-Chief clause of the Constitution—giving them more discretion than in other contexts (Dearborn 2021).

tically, it strikes when it sees Presidential vulnerability and avoids acting otherwise. We thus assume the legislature merely exploits misfortune for political gain.

In the extended version of the game—introducing the possibility of formal authorization for the use of military force—we similarly assume that, *ceteris paribus*, Congress would rather not approve the use of force even if it supports the military intervention from a policy perspective. While the legislature can have its own preferences, the best case scenario for it is when it can "have its cake and eat it too"—i.e., have its preferred policy enacted without having to actually vote on the deployment. Congress thus seeks to avoid the risk of blame whenever possible (Weaver 1986).[38]

- **An Absent Judiciary:** Arguments that certain uses of military force are "illegal" or "unconstitutional" amount to little because the usual actors responsible for constitutional and statutory adjudication are unable or unwilling to intervene in the war powers context. The judiciary has consistently refused to hear cases related to the extent of Presidential war initiation authority under a series of non-judiciability doctrines. While members of Congress and the military have sought to enjoin military actions through lawsuits prior to or during certain military interventions, courts have utilized the political question doctrine, as well mootness and ripeness, to avoid adjudicating the legal questions (Ramsey 2018). Notably, this judicial avoidance includes both the constitutional war powers and the statutory 1973 War Powers Resolution. We thus assume that the War Powers Resolution is irrelevant, and that legal claims against the President engaging in war outside the authorities of the office are immaterial.

- **No Agency Problems:** Others have suggested that even where courts might refuse to make a judgment on the merits of a case, lawyers *within* the executive branch can (Goldsmith 2012). Every use of military force has to be legally justified by the executive branch,[39] and it is theoretically possible constitutionally committed attorneys within the executive branch could refuse to justify uses of force they believe to be illegal. Nevertheless, the Attorney General and the President have the authority to overrule the legal findings of these lawyers, and—in any case—these lawyers are ultimately servants of the executive branch, not unbiased adjudicators. It is because of these incentives that even those who argue in favor of the independent influence of executive branch lawyers in

[38] Consider recent remarks by Senator Tim Kaine—a longtime leader on war powers issues: "War votes are the toughest you'll ever cast... any war vote is a very, very tough vote. And so members of Congress are like "well look, if we can just say 'yeah the president, you start' and then if we like it and it goes well we're with you, and if it goes badly how dare you." Kaine, Tim. "Keynote: Ending the Legal Authorization for War in Iraq." Presented at The Iraq War at 20 Years, Cato Institute, March 16, 2023. https://www.cato.org/multimedia/events/iraq-war-20-years-keynote-ending-legal-authorization-war-iraq.

[39] Today, this is almost always the responsibility of the Department of Justice's Office of Legal Counsel, or "OLC". In prior decades, this responsibility sometimes fell to the State Department or other executive agencies.

national security law concede that they have little influence in the use of military force context (Goldsmith 2012). Here, we assume that lawyers within the administration fail to serve as any constraint on the executive.

Moreover, while bureaucrats beyond lawyers could conceivably serve as a constraint on presidential policymaking (Lowande & Rogowski 2021) in the war initiation context, we assume such obstacles do not exist. It is not inconceivable, for example, that members of the military might refuse certain orders for moral, policy, or legal reasons (Esper 2022), but we omit such possibilities from the model. If the President gives the order to "go", the military acts.

- **A "Standing Army":** The model essentially assumes that the President can use *any* amount of force. While the United States traditionally held a mistrust of standing armies[40] and demobilized its military after major wars, it has maintained a massive peace-time military since the end of the Second World War and the beginning of the Cold War (Ely 1995). One common argument is that because it is Congress that raises and supports the armed forces, peacetime Presidents prior to the middle of the twentieth century had little army to utilize absent legislative action to fund additional forces. In the postwar era, however, the consistent existence of the standing army has removed this legislative veto-point on executive action. While in reality the executive still lacks the ability to raise whatever force structure they might desire—Donald Rumsfeld famously lamented "You go to war with the Army you have, not the Army you might want or wish you had"—the President nonetheless possesses "a sprawling military and enormous discretion" (Goldsmith 2020). Here, we assume a President can utilize whatever force they see fit.

Note that if any of these assumptions are too strong when compared to reality, these objections would only serve to suggest constraints on the executive which are even greater than those implied by the model. Perhaps, for example, it is too cynical to assume Congress would only punish the President upon defeat, or that executive branch lawyers are willing to justify any potential use of force, or that courts are unwilling to enforce the War Power Resolution. These are all plausible grievances with the model, but are immaterial to the ultimate conclusion. The model biases heavily against a finding in favor of congressional influence, and where it might depart from the nuances of reality it does so in a way that underestimates congressional power. Nevertheless, it shows that even under these strong assumptions favoring unilateral power and an Imperial Presidency, Congressional Constraint emerges as a powerful force.

[40] See, e.g., *The Federalist Papers*.

MODEL I: The Unilateral Use of Force

We first consider a President contemplating the unilateral use of military force—i.e., without securing formal, legal approval for the use of force from Congress.[41] Specifically, we construct a simple formal model of crisis bargaining taking account of loss costs.

The model takes a standard bargaining game and makes three small amendments. First, in contrast to a standard model in which the choice is a binary decision between fighting and not fighting, here the President not only gets to choose between war and peace, but also selects the amount of force (f) to be used.[42] Second, and related, the cost of fighting here is a function of how much force the President chooses to actually utilize—in contrast, again, to the standard model which gives a fixed cost to fighting (usually "c"). Lastly, an additional term is added to the President's war payoff utility function to account for loss costs.

Sequence of Moves

The extensive form of the game is illustrated in Figure 1.1, below. Two countries, the United States—who is represented by the President (P)—and an adversary state (S_2) compete over an issue space equal to one. P begins the interaction by proposing a deal (d, where $0 \leq d \leq 1$) to S_2 for the division of the good. After viewing P's proposed deal, d, S_2 then decides whether to accept the deal or to reject it and go to war. If S_2 rejects the deal, the President selects an amount of force (f, where $0 \leq f \leq F$) to employ and war occurs. The probability of victory for the United States will be a function of the amount of force the President chooses to employ (f) and the power of the adversary (t), using the common contest function $p = \frac{f}{f+t}$. After conflict occurs, Congress (C) then has the ability to impose a penalty on the President after viewing the result of the contest.

Payoffs

The President (P) and the Adversary State (S_2) both value the object being bargained over at a normalized value of 1. Congress's (C) value of the object—i.e., congressional sentiment—in contrast, is given by an exogenous parameter, β. It is possible for Congress to value the objective more than the President (in which case $\beta > 1$), less than the President ($\beta < 1$), or as much as the President ($\beta = 1$).

If S_2 accepts the deal offered (d), the game ends peacefully with the President thus receiving a payoff of d, Congress receiving βd, and S_2 receiving $1 - d$. If, instead, the deal is rejected and conflict occurs the payoffs of the actors will involve the following components:

[41] In the following section, we allow the President to consider seeking such congressional authorization.

[42] An endogenous choice over the amount of force to employ is a key consideration in warfare, because in "real war" states almost never choose to fully employ their maximum effort (Clausewitz 1976).

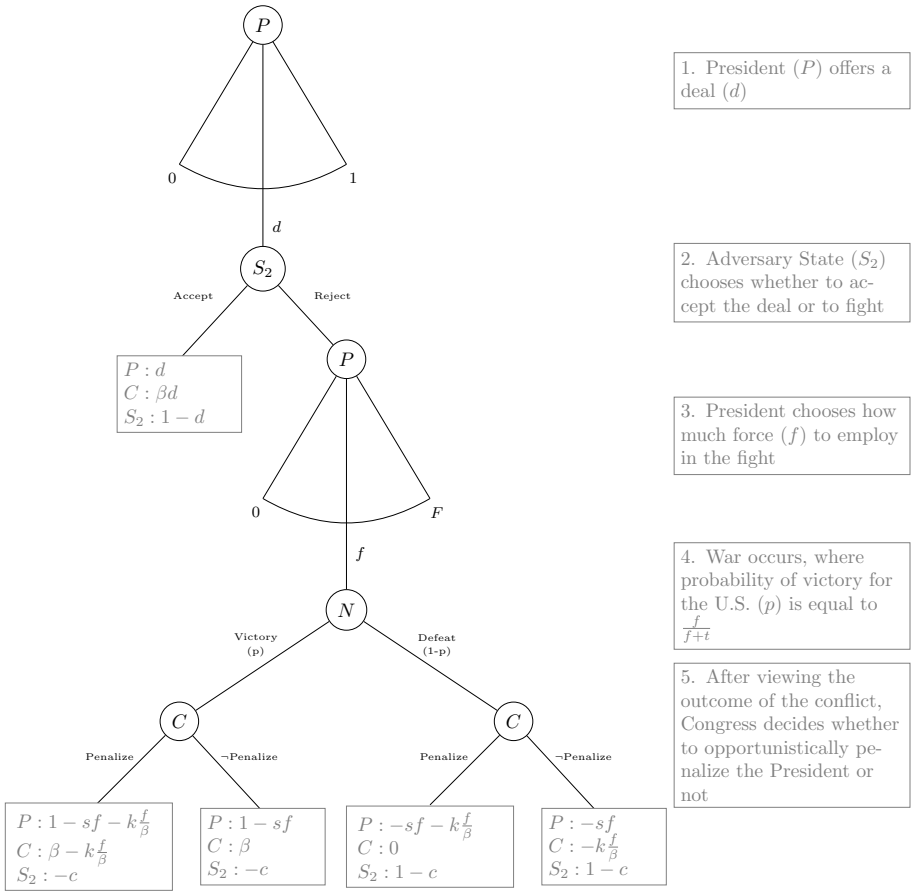

Figure 1.1 Bargaining Model with Loss Costs

- **Value of object:** The value of the object being fought over, as described above, is normalized to 1 for the President and the Adversary State, while Congress values it at β.

- **The Cost of Fighting:** Because the President selects how much force (f) to employ, the projected cost of fighting for the President is proportional to the force utilized. A casualty sensitivity parameter—s—is multiplied by the amount of force used (f) to yield the President's costs of fighting: sf. While the President has thus internalized the cost of fighting, we assume that Congress has not done so since it has not formally authorized the use of force.[43] Lastly, S_2 maintains the standard cost of fighting parameter, c.

- ***Ex Post* Penalty ("Loss Costs"):** Here we assume the legislature has the ability to impose a penalty on the executive after watching the outcome of the conflict. The size of this potential penalty will be equal to:

$$k\frac{f}{\beta}$$

[43]This will be the topic of the next section.

Where f is the amount of force utilized, β is congressional sentiment, and k is a scaling parameter. As discussed above,[44] the potential penalty will be directly proportional to the amount of force employed and inversely proportional to congressional sentiment—more support for the use of force will give a President more political cover while greater opposition will increase the risk they face. Thus, f is in the numerator and β is in the denominator.[45] Note that S_2 is not subject to this potential cost.

Assuming a deal has been rejected and conflict occurs, each actor will pay its cost of fighting (sf, 0, and c, for the President, the Congress, and the Adversary State, respectively). If the United States is victorious, the President and the Congress will additionally receive their values for the objective (1 and β, respectively), while S_2 will receive 0. In contrast, if the United States is defeated, the President and the Congress will receive no utility from the object while S_2 will receive its value (1).

Lastly, the possible *ex post* penalty will be factored into the payoffs of the American actors. Congress chooses whether to assess the penalty or not: if it does so, the President pays it (that is, $k\frac{f}{\beta}$). Congress's own incentives to penalize the President, however, are determined by whether victory or defeat has occurred. If victory has been achieved, it will be very unpopular and politically difficult for Congress to attack the triumphant Commander-in-Chief. We thus assume if it chooses to do so, it will also be harming itself and have to pay the penalty as well ($k\frac{f}{\beta}$). American defeat, however, creates far different incentives. Members of Congress will be incentivized to attack the executive both for foreign policy incompetence and for violating the Constitution. Such attacks will be popular and low cost for the legislature. Failing to make such attacks will be, in comparison, costly for the legislature as they leave such a prime opportunity unrealized and seemingly acquiesce in what is perceived by the public as egregious behavior on the part of the President. Congress, therefore, pays the penalty ($k\frac{f}{\beta}$) if it does not penalize the President after defeat. All payoffs are shown in the extensive-form game found in Figure 1, above.

Facing these incentives, Congress will thus choose to impose such an *ex post* penalty after defeat, and avoid doing so after victory. This penalty can therefore be thought of as "*loss* costs". Moreover, because we know precisely what Congress's choice at each node will be, the extensive form game can be simplified substantially. Knowing that p represents the probability of victory (and, conversely, $1-p$ represents the probability of defeat), we can simplify each actors' expected war payoff as depicted in Figure 2, below.

Note that while Congress does not appear even to be acting in the game below (Figure 1.2), this is only because we have collapsed the more extensive version shown in Figure 1.1.

[44] See "The Missing Element: Loss Costs".

[45] Note that while f is endogenously selected by the President in the model, β is an exogenous parameter.

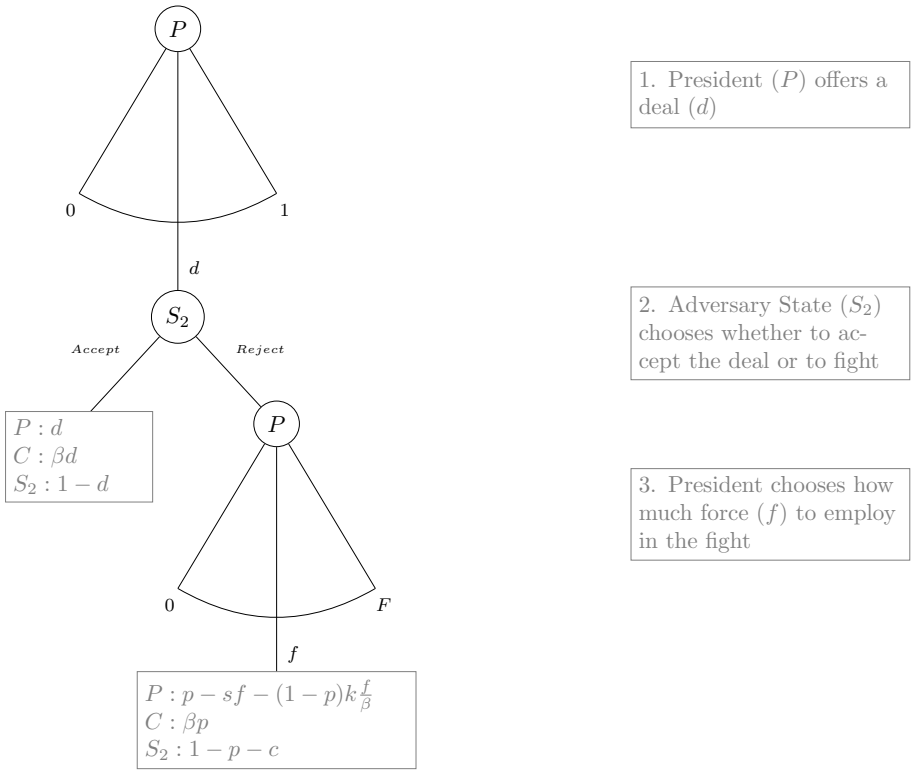

Figure 1.2 Bargaining Model with Loss Costs (Simplified)

Congress is choosing to assess a penalty upon the President after American defeat. This influence is now found in the President's war payoff function (specifically, where we see "$-(1-p)k\frac{f}{\beta}$"). Recall, further, that β (which represents congressional sentiment) is influencing the size of the loss costs the actors expect the President to suffer. Therefore, both (1) the existence and (2) the magnitude of these possible loss costs is a manifestation of congressional influence. As we will see, Congress's expected penalization of the President upon defeat is going to drive the behavior of the President in terms of the amount of force they will be willing to use. Moreover, this will then affect $S_2's$ expected war payoff and, thus, the deals it is willing to entertain. While it may not immediately appear like Congress is a relevant actor in the interaction between the President and the Adversary State, this is because Congress's influence has been "priced in" to the President's payoff function. The behavior of the President and the Adversary State is taking place in the shadow of Congress.[46]

Solution and Results

Assuming perfect and complete information, the game can be solved simply utilizing backward induction. The step-by-step solution is provided in Appendix II, but will be briefly

[46]To reiterate, this is occurring in two ways: first, Congress's prospective attack on the President in defeat is driven by its strategic choice given its incentives. Second, the *size* of these loss costs is affected by congressional sentiment, β.

outlined here.

Looking at Figure 1.2, we start with the President's decision over how much force to employ. The President has two competing incentives: on the one hand, more force utilized entails a greater chance of victory (due to the contest function $p = \frac{f}{f+t}$). On the other hand, more force utilized entails more casualties (internalized by the President as sf) and greater loss costs to be suffered upon defeat ($k\frac{f}{\beta}$). The President will then select the amount of force that maximizes their expected utility based on these constraints. Note that this amount of force might be 0 (i.e., they simply choose not to intervene).

Knowing the amount of force the President will choose to employ—which then affects the probability of victory in the contest—the Adversary State will be able to calculate its expected payoff from war. Knowing S_2 is making this calculation, the President will calibrate the deal to maximize their own "slice of the pie" (d), while avoiding conflict. The President will offer a deal that makes S_2 indifferent between accepting the deal and going to war, and S_2 will accept the offer. Because there is perfect and complete information, there is no actual risk of war. Nonetheless, the model effectively illustrates how loss costs influence both the amount of force the President will be willing to utilize and the outcomes of crises.[47]

Key comparative static results are depicted below. Plotted on the left below is the amount of force, f^*, the President will employ as a function of congressional sentiment over the use of force β.[48] As the plot shows, f and β exhibit a positive relationship: as β increases, f^* increases. This implies that as congressional sentiment increasingly supports the use of force, the President will correspondingly increase the amount of force they employ. Conversely, increasing congressional opposition to the use of force (decreasing β) leads to the employment of less force. In other words, the increasing threat of punishment upon defeat—moderated by the size of the force employed—is driving the President to "pull their punches."

The plot on the left thus yields the following hypotheses:

> **Hypothesis 1** *The President will be more likely to engage in combat when there is greater support for the use of military force in Congress. (DV : binary variable—use/ not use force) (Chapter 2)*

> **Hypothesis 2** *The President will be more likely to use more force when there is greater support for the use of military force in Congress. (DV : continuous variable—scale of use force) (Chapter 2)*

The plot on the right, above, shows the deal, d^*, that the U.S. will receive as a function of β. As was the case with f^*, above, d^* and β exhibit a directly proportional relationship:

[47] "Models of complete and perfect information are an appropriate and useful tool for studying questions of distribution and welfare, even when they do not produce a positive probability of conflict," (Morrow & Sun 2020, pg. 263).

[48] Parameters as follows (unless otherwise noted): $k = .5, s = 0.15, t = 0.6, c = 0.2$.

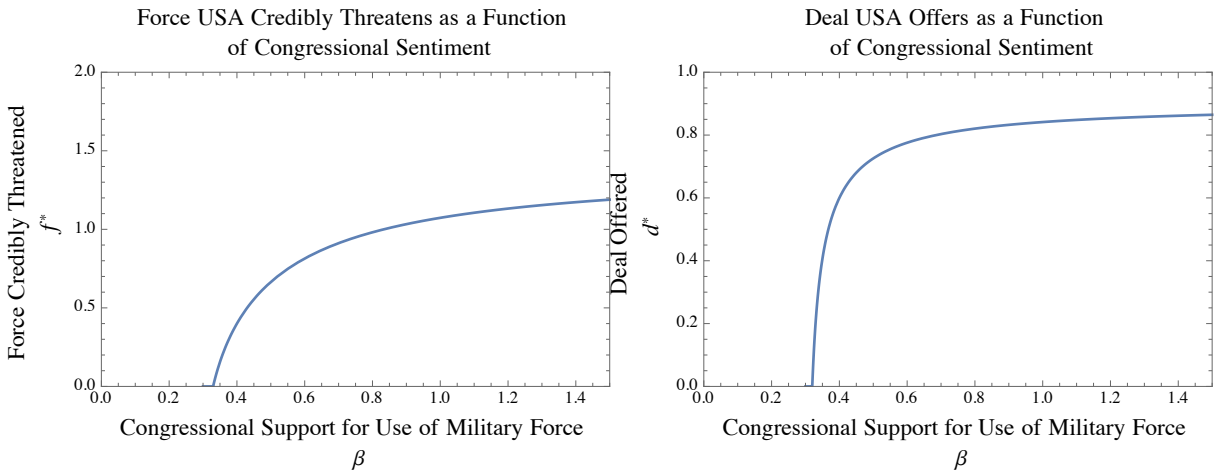

Figure 1.3 U.S. Force Threatened and Deal Received as a Function of Congressional Sentiment

as β increases, d^* increases. This is, of course, consistent with conventional understandings of coercive diplomacy: the deal one can receive is proportional to the amount of force they can credibly threaten to employ. This yields the following hypothesis:

> **Hypothesis 3** *Crises in which the Congress exhibits greater support for the use of American military force will be more likely to yield better outcomes for the United States. (DV : ordered categorical variable—outcome) (Chapter 2)*

Note that under perfect and complete information war does not occur (both sides adequately understand the likely outcome of the contest and each other's cost of fighting, and thus are able to find a deal better for both sides than war (Fearon 1995)). Because of this, f can be said to represent the amount of force the U.S. credibly threatens to employ—not that actually is employed. Nonetheless, this credible threat of force drives the bargaining outcome even when war does not occur. Thus, this predicted effect of congressional sentiment on outcome should exist regardless of whether the crisis matures into actual combat or not.[49]

These simple comparative static results have an important implication: because congressional sentiment, by way of the loss cost mechanism, is influencing the maximum amount of force a President will be willing to employ, congressional will is affecting the policy implemented by the President even when the President is acting unilaterally. Thus, even when acting without formal authorization from Congress, congressional sentiment is still constraining the decision of the President.

[49]See, for example, McManus's *Statements of Resolve* (2017), which makes little distinction between crises that escalate to actual uses of force and those that stay sub-kinetic.

MODEL II: Formal Congressional Authorization

We now introduce the possibility of formal authorization from the legislature into the game. Formal approval from the legislature refers to either a declaration of war or a statutory, legally binding Authorization for the Use of Military Force (AUMF). Because declarations of war have fallen into disuse across the world since World War II (Fazal 2012, Irajpanah & Schultz 2021), here we will primarily refer to AUMF's.

It is a common misconception that statutory AUMF's are somehow inferior to true declarations of war (Bradley & Goldsmith 2005).[50] Some emphasize that AUMF's are not perfectly equivalent to declarations of war (Beschloss 2018, Howell 2003, pg. 1, for example), but the differences are minor and irrelevant for the purposes considered here. From a formal-legal perspective, jurists and all three branches of the federal government[51] agree that statutory authorizations for the use of military force can be used as valid substitutes for formal declarations of war from a constitutional perspective.[52]

More importantly, either instrument requires a public, high-profile vote by both houses of Congress. This formal endorsement has two major consequences: first, it removes all constitutional doubt that the President has the power to undertake the operation. This eliminates an otherwise powerful criticism from the arsenal of opponents. Second, by having members of Congress publicly fix their name to the operation, it changes the lawmakers' own incentives over the long term. Their political fortunes become tied to the success of the intervention, and they thus have a vested interest in supporting it over time. Additionally, if the war ends in failure the vote makes it more difficult for lawmakers to attack the President for having poor judgement in foreign policy, because they themselves voted in favor of the operation. For the sake of simplicity, we assume that securing formal authorization *ex ante* removes the possibility of loss costs *ex post*.[53]

[50] "[A] declaration of war is not required in order for Congress to provide its full authorization for the President to prosecute a war. An authorization of military force can be sufficient and, in fact, may even be necessary," (Bradley & Goldsmith 2005).

[51] The Supreme Court itself has recognized AUMF's as a substitute for declarations of war as far back as 1800 in *Bas v. Tingy*. Congress's 1973 War Powers Resolution, likewise, specifically enumerates declarations of war and AUMF's as equivalent formal authorizations. Lastly, the executive branch—including the Department of Justice's Office of Legal Counsel—has consistently found AUMF's to be a valid form of congressional approval for the use of military force. Moreover, the United States passed several AUMF's decades before its first Declaration of War in 1812—suggesting that even the Framers of the Constitution (many of whom were in Congress in the first decades after the ratification of the Constitution) concurred on this point.

[52] The main difference between the two instruments is their effect under *international* law: declarations of war change the legal regime operating between two states from that of peace to war, while AUMF's have no automatic international legal effect.

[53] Another way of thinking about this is $k = 0$ when an AUMF has been secured.

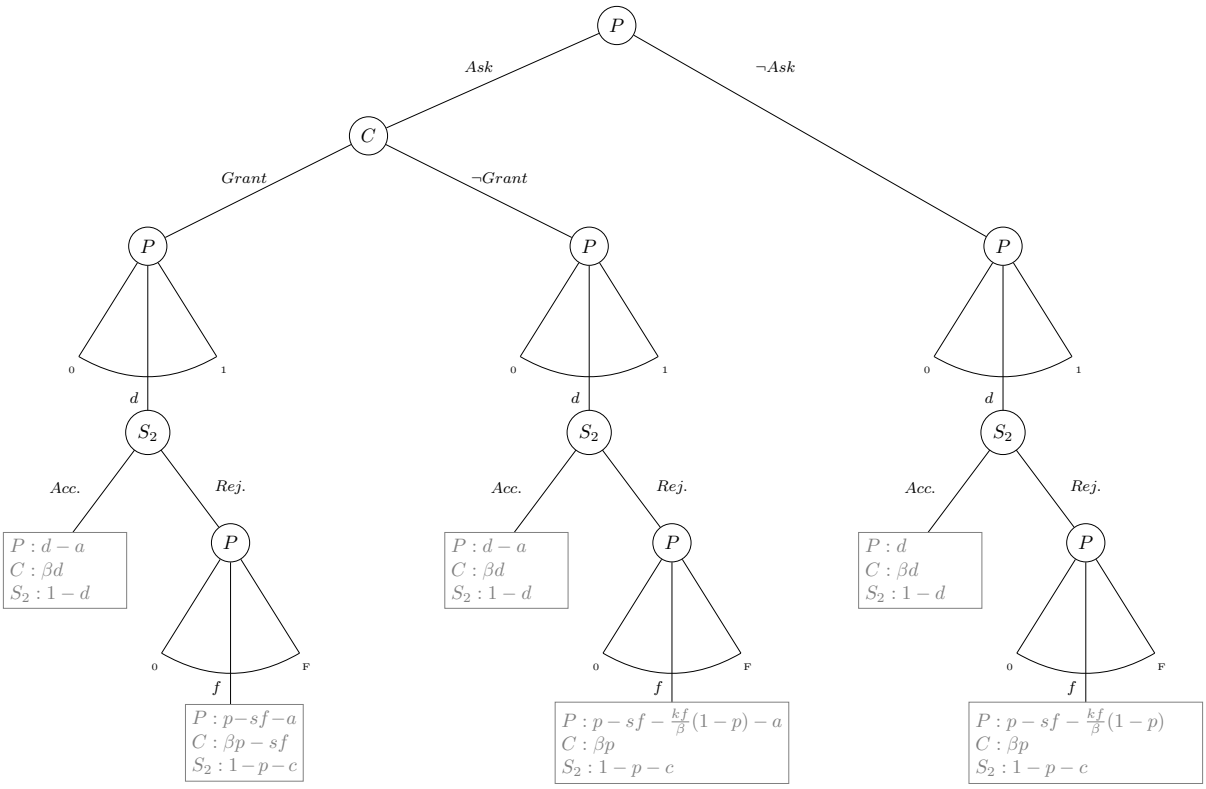

Figure 1.4 Bargaining Model with Loss Costs and Possibility of Formal Authorization from Congress

Sequence of Moves

As in the first game presented above, there are in total three players in this game—P, C, and S_2. Now, however, there is a possibility Congress will take an action prior to the bargaining process. The sequence of plays is as follows. First, the President (P) decides whether to ask Congress (C), for formal authorization to use military force. The President, as is well recognized, of course always has the option of simply bypassing Congress entirely. If they do so, the actors will then be in a subgame identical to the "unilateral" game analyzed in the section above.[54] Indeed, there are substantial incentives to act unilaterally because seeking approval is not cost free. Instead, asking for formal authorization entails a cost, a.[55] The benefit of securing such approval is substantial, however, as it eliminates the possibility of Congress imposing loss costs on the President.

[54]Notice, therefore, that the subgame on the right—i.e., after the President selects $\neg Ask$—is identical to the game shown in Figure 1.2.

[55]Costs consists of, among other things, a) the precedent it may set for future uses of force and the implicit recognition that the President lacks the authority to use force unilaterally, b) the risk of looking "weak" or "indecisive", c) the time and effort needed to lobby for an AUMF, and d) the possible embarrassment of being rejected. These factors could be made more explicit in the model—such as, for example, updating adversary beliefs about the President's type—but doing so adds exponential complexity. Thus, for the current version of the model we simply treat them as an exogenously fixed asking cost, a.

If the President chooses to seek formal congressional approval, C then decides whether to grant such authorization. By granting authorization, however, C is forced to put some "skin in the game." As explained above, the President will always internalize a sensitivity to casualties (sf) regardless of whether the use of force is authorized. Now, if Congress formally approves the use of force, it too is penalized for higher casualty counts and is subject to that as a cost of fighting (sf).

Thereafter—regardless of whether P asked for authorization, and, if so, whether C granted such authorization—the same bargaining game explained in the section above takes places. P decides a deal to offer the adversary state (d, where $0 \leq d \leq 1$). If S_2 accepts d, the game ends with payoffs (d, βd, $1-d$), plus other costs accrued,[56] for P,C, and S_2, respectively. If S_2 refuses the demand, then P must decide f, the amount of military force to use against S_2, where $0 \leq f \leq F$ (F being the size of the standing army at the President's disposal). As was the case in the game described above, the probability of victory increases with the amount of force employed by the United States, and is here specifically determined via the contest function $p = \frac{f}{f+t}$, where t is the amount of military force S_2 can bring to bear. Thereafter, the conflict takes place.[57]

Payoffs

The payoffs of each player are most easily described in comparison to those seen in the original "unilateral" game presented above. First, notice that if the President simply chose to not ask ($\neg Ask$) Congress and act unilaterally (the subgame on the right), the payoffs are precisely the same as those found in the first game. Second, consider what happens if the President seeks approval but is rejected by the legislature (the middle subgame). Here, all of the payoffs are precisely the same as those in the original "unilateral" game, except for the fact the President additionally pays the cost of asking, a.

Lastly, consider the situation in which the President has sought formal approval and Congress has granted it (the subgame on the left). Payoffs here differ from the original "unilateral" game in the following ways: first, the President pays the cost a of asking. Second, loss costs have been eliminated. By securing formal congressional approval *ex ante*, Congress is no longer able to attack the President later for an "unconstitutional" use of force. Moreover, given their votes in favor of the operation, it will make it much more difficult for legislators to attack the President on policy grounds. Because of this, the entire loss cost term (i.e., $-(1-p)k\frac{f}{\beta}$) has been eliminated from the President's payoff when fighting with the formal approval of Congress. Lastly, as alluded to above, Congress now also suffers a cost of fighting (sf) if

[56] I.e., a, if the President sought approval.

[57] The President always has the option of deploying $f = 0$: not using any force.

force is actually used after legislative authorization is given. Because in this case Congress has formally affixed its approval to the operation, Congress can no longer metaphorically "wash it hands" of the conflict and "sit on the sidelines".

Perfect and Complete Information: Solution and Results

First, we assume a situation in which information is perfect and complete. As with the "unilateral" model, the step-by-step solution for the game is included in Appendix II. Several key points will be discussed here.

The most important result is that the President is willing to utilize more force when acting pursuant to formal authorization for the use of military force ("AUMF") than when acting unilaterally. The intuition here is straightforward: from the previous model we saw that increasing loss costs incentivized Presidents to "pull their punches", or perhaps to not even intervene at all. When acting pursuant to an AUMF, however, Presidents no longer have to worry about loss costs and thus are willing to utilize more force.

The plot on the left in Figure 1.5, below, shows the amount of force a President will be willing to use at different levels of adversary power. The orange curve represents a President operating under an AUMF, while the blue line signifies one operating unilaterally. Notice that when the adversary is very weak, there is no meaningful difference between the executive acting unilaterally and the one acting under formal congressional approval. In this case, the executive is quite certain the U.S. will prevail (given the massive power imbalance) and can use relatively little force to achieve a high chance of victory. In this case, loss costs are quite small, and the executive has few qualms about unilateral action.

A different story unfolds, however, as adversary power grows. As the President faces stronger adversaries, they will begin "pulling their punches": increasing force risks higher loss costs, and the adversary's power makes defeat a substantial possibility. Eventually, the executive will be so deterred from unilateral action that they simply will not intervene. Acting pursuant to formal approval from the legislature, however, provides substantial political cover to the executive and incentivizes them to utilize more force.

Moreover, because the amount of force employed affects the probability of victory, this then affects the deal the U.S. can expect—depicted in the plot on the right.[58] Here, the deal achieved by the President is shown as a function of adversary power—again, with the blue line representing unilateral action and the orange line symbolizing crises in which the Congress has provided formal authorization for the use of military force. When acting unilaterally, the threat that Congress will punish the President for a use of force that ends poorly effectively hurts the executive's bargaining position. Again, this is increasingly the case as adversary

[58] Unless otherwise noted, $k = .5$, $s = 0.15$, $t = 0.6$, $c = 0.2$, $\beta = 1$

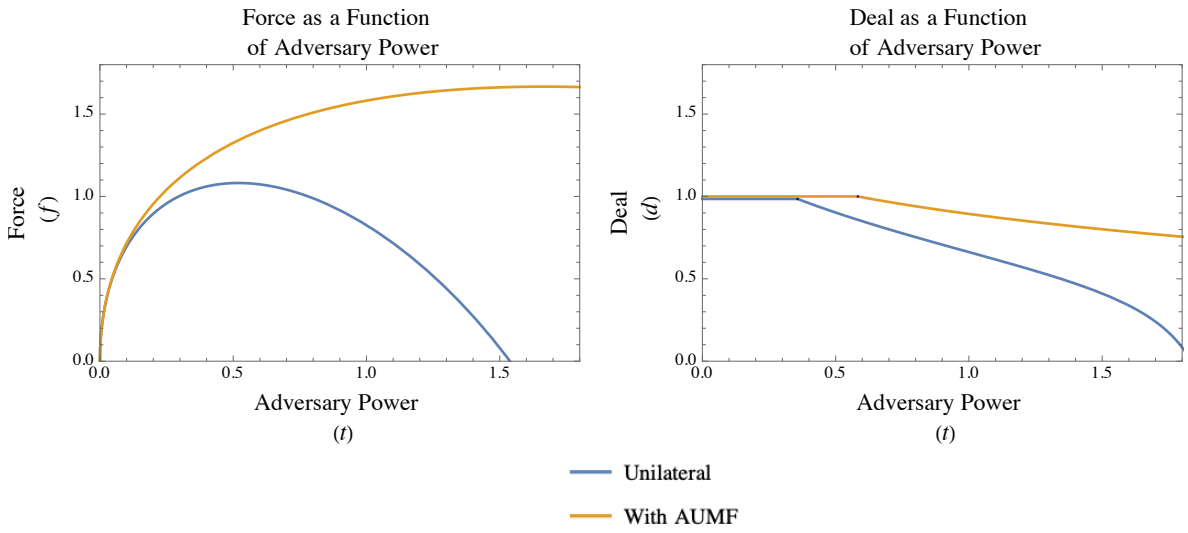

Figure 1.5 Force Employed and Deal Received as a Function of Adversary Power (t), Unilaterally and with AUMF

power increases. These two plots of comparative statics yield the following hypotheses:

> **Hypothesis 4** *Ceteris paribus, the presence of formal authorization for the use of military force will make a President more likely to engage in combat (DV : binary variable—use/ not use force) (Chapter 2)*

> **Hypothesis 5** *Ceteris paribus, the presence of formal authorization for the use of military force will make a President more likely to use more force (DV : continuous variable—scale of use of force) (Chapter 2)*

> **Hypothesis 6** *Ceteris paribus, the presence of formal authorization for the use of military force will yield better outcomes for the United States. (DV : ordered categorical variable—outcome) (Chapter 2)*

The second main takeaway from the model is that with complete and perfect information—and thus, in this model, no actual chance of war—Congress will always grant authorization for the use of force. The simple intuition here is that because there is zero probability of war, and because Congress is only hurt by authorizing the use of force if it is actually used, Congress knows it will never actually have to suffer the possible consequences of authorizing the use of force. It is therefore always optimal to give the President the extra bargaining leverage formal approval creates because—in this version of the model—there is no downside to doing so.

A possible illustration of this type of reasoning is the infamous Gulf of Tonkin Resolution (1964) prior to the Vietnam War. Starting in the mid 1950's, Presidents routinely sought formal authorization for the use of military force when facing major crises (see Chapter 3). The first joint resolution authorizing the use of force was the 1955 Formosa Resolution, passed during the First Taiwan Strait Crisis. The resolution was considered such a success in

"strengthening the President's hand" and deterring war[59] that lawmakers sought to emulate it in the Middle East after the Suez Crisis (1957), and then with a resolution for Cuba shortly before the Cuban Missile Crisis (1962). As seeming successes with these resolutions piled up, lawmakers paid less attention to their implications and the possibility of actual war.[60] Thus, by 1964 lawmakers were quite well acquainted with these "area resolutions" and thought passing a sweeping resolution would help deter North Vietnamese adventurism at little cost.[61] Of course, in this instance, war did end up occurring. Years later, members of Congress would claim that they did not think they were voting for a war, while at the same time admitting that the clear language of the resolution authorized a major conflict.

Incomplete information model

Asymmetric information is now introduced here with a specific goal in mind: to create a real risk of war, and to see how this affects Congress and the President's behavior with regard to formal use of force resolutions. As we saw in the complete information version of the model, because there is no actual probability of war, Congress is more than happy to support the President with a resolution improving the bargaining position of the United States. Because the downside risk for legislators is non-existent (they do not have to worry about the cost of conflict), they always vote in favor.

To create a risk of war, we assume that the U.S. does not know the adversary state's cost of war, c, with certainty. The distribution of types for S_2 is continuous over the interval $c \in [c^{max}, c^{min}]$, where $0 < c^{min} < c^{max} < 1$ and where c is drawn randomly by nature (N), a non-strategic player. S_2, in contrast, is perfectly and completely informed of Congress and the President's actions and payoffs. This imperfect information version of the game is solved using the Bayesian Perfect Equilibrium solution concept. As with the previous versions introduced, the full solution to the game is provided in Appendix II. Alternatively, one can investigate the effect of incomplete information over the "loss cost" by using a slightly modified game, available in Appendix III.

Discussion

Unlike in the complete information version of the game, here there is a positive probability of war under certain parameters. Because of this, Congress does not always grant

[59] And seventy years later, the historical evidence suggests it was a success (Pang 2019).

[60] Indeed, this does seem to be the interpretation of many prominent members of Congress. For example, Senator Claiborne Pell would recall in his introduction to the 1964 volume of the Executive Sessions of the Senate Foreign Relations Committee "the Congress had deliberated long and hard over comparable resolutions concerning Formosa [(1955)], the Middle East [(1957)], Cuba [(1962)], and Berlin [(1962)]... Perhaps the successful outcome of those earlier episodes had dispelled congressional fears that such resolutions were "predated declarations of war," and that congressional intent must be carefully delineated" (pg. VI).

[61] See extensive analysis of the Vietnam War in Chapter 5.

authorization, as it now faces the possibility of having to share responsibility in an actual armed conflict. Moreover, because Congress does not always grant authorization, the President does not always seek it. Indeed, in equilibrium, the President will only seek authorization when Congress will grant it.

> **Hypothesis 7** *Presidents will only seek authorization when they think it is likely to be given, and will consciously avoid asking Congress when prospects for passage are low. (Chapters 3 & 4)*

Thus, when commentators note that it is quite rare for Congress to reject a presidential request for authorization[62]—often suggesting Congress simply "rubber stamps" these requests (Burns 2019)—this needs to be put into context. Because seeking authorization is not cost free, the White House is incentivized to only make its desire for authorization known when it is relatively certain it will be approved.[63] A good analogy for this dynamic is veto bargaining (Cameron 2000). While presidential vetoes are relatively rare, this is not because the President lacks power over legislation. Rather, it is because Congress considers the likelihood of a veto when crafting legislation—consciously trying to avoid passing legislation that will obviously be vetoed. In the war powers context, the roles are simply reversed. The President will only propose an AUMF they think has a high likelihood of passage, and consciously avoid going to Congress otherwise. There is strong evidence the Reagan Administration avoided seeking authorization for the use of force in the Caribbean Basin in the 1980's, for example, because congressional resistance was obvious.[64] Similarly, Nixon avoided having Congress ratify the Paris Peace Accords—which would have included, at minimum, an implicit grant of authority to enforce the agreement—because congressional support seemed unlikely (Kissinger 2011*a*). Moreover, there is evidence Congress has actually rejected presidential requests for formal approval more than often recognized. Congress denied Eisenhower authorization to use force in the 1954 Dien Bien Phu crisis (Prados 2002), pushed back on Johnson's request for approval to break up the Egyptian blockade of the Straits of Tiran in 1967, refused Ford's request for authority to evacuate at-risk Vietnamese from Saigon in 1975, and balked at President Obama's request in the 2013 Syria "red line" crisis.[65] In 2015, Congress failed to pass an AUMF re-

[62] Lindsay (2013).

[63] While beyond the scope of this manuscript, Presidents clearly seem to think the mere action of asking for congressional approval can sometimes be seen as an expression of weakness. As but one example, Nixon rejected the idea of asking for a congressional reaffirmation of the Vietnam War when he came into office in January of 1969—despite the increased political cover it would grant him—because he thought it would damage the prestige of the office (Kissinger 2011*a*). Several of Obama's advisors, likewise, argued in the 2013 Syria crisis that his presidency would be fatally damaged if he were to ask for congressional authorization and then lose the vote (Kerry 2019). In a similar fashion, George H.W. Bush recognized that it would be devastating for the President to publicly request congressional approval and not receive it (Bush & Scowcroft 1999). In each of these cases—and others—simply acting unilaterally was considered far preferable to seeking authorization and not obtaining it.

[64] See Chapter 4.

[65] For more information on all of these cases, see Chapter 4.

quested by the Obama administration authorizing the counter-ISIS campaign, despite the fact congressional sentiment overwhelmingly supported the mission. In these cases, the legislature was hardly a "rubber stamp."

Moreover, this does not mean that a President acts the same regardless of authorization status. To the contrary, as the size of the threat increases, the force level employed by a President unilaterally versus under the cover of formal authorization becomes increasingly divergent. The plot illustrated in Figure 1.6, below, depicts the equilibrium amount of force employed (or—if war does not occur—the amount of force credibly threatened to be employed) as a function of adversary power (t).[66] Note that this is the same plot as that presented in Figure 1.5 on the left, but now additionally highlights the authorization status (i.e., unilateral action versus pursuant to formal congressional authorization) we will observe in equilibrium. Again, consider the orange line, which illustrates the level of force used when acting pursuant to an AUMF. Because the possibility of loss costs has been eliminated when acting pursuant to a formal resolution, the amount of force employed is efficient (at least in the sense that the President is not pulling punches simply in order to decrease their exposure to loss costs). The blue line, in contrast, illustrates the President acting unilaterally. Against weaker adversaries, the President is quite willing to act unilaterally, and the blue line barely diverges from the orange line: the same amount of force would have been used regardless of authorization status. As the size of the threat increases, however, the increasing prospect of loss costs incentivizes the President to "underdeploy". Indeed, around $t = 0.5$, unilateral force reaches its maximum. Thereafter, increasingly less force is deployed even as the size of the threat increases, and eventually $f^* = 0$: the U.S. simply does not enter the contest.

Lastly, observe that the darkened portions of the curves represents the actual amount of force (and authorization status) we will observe in equilibrium after the decisions by the President and Congress over formal authorization have been made. Smaller threats are undertaken unilaterally by the President, so the blue line is darkened up to a certain threshold threat level (on this plot, around $t = 0.55$). At this point, however, Congress becomes willing to formally authorize the intervention, and the use of force, instead, occurs pursuant to formal approval.[67] This leads to the discontinuity and sudden jump to the orange line, which is now shown as darkened from this point on to higher threat levels. This suggests that the President will act unilaterally against smaller threats, and pursuant to formal congressional approval for larger threats. Note also that the observed level of force used in equilibrium is higher when acting under formal approval than when acting unilaterally. This yields the following

[66] Unless otherwise noted, $s = 0.15, t = 0.6, c = 0.2, c^{min} = 0.0, c^{max} = 0.8, a = 0.1, beta = 1, k = 0.5$

[67] One might immediately wonder what would happen if Congress simply had no interest in authorizing the use of force—in other words, what if Congress was less supportive of the intervention (i.e., had a lower β) than assumed in this particular marginal effects plot? This is specifically analyzed below.

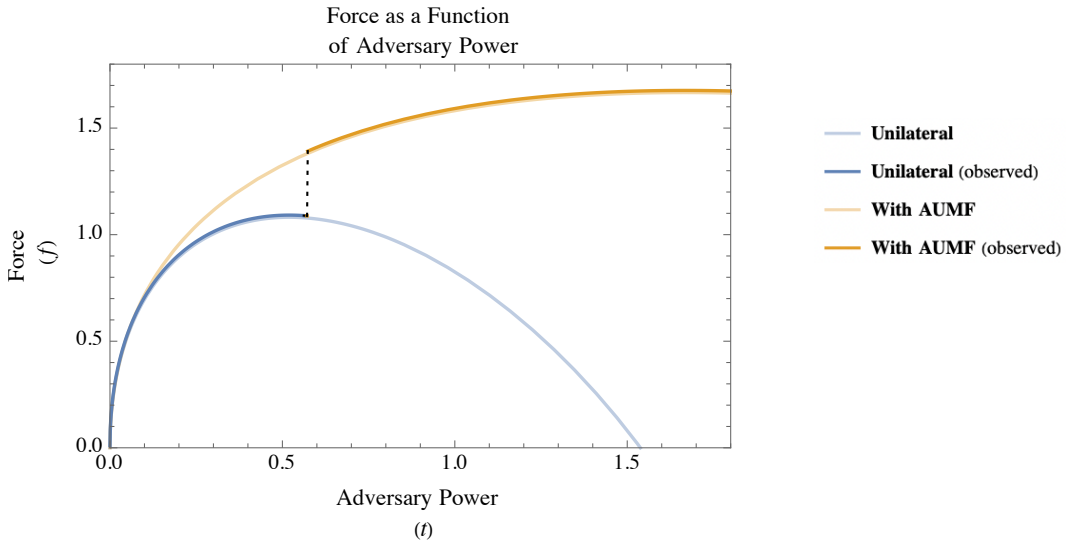

Figure 1.6 U.S. Force Employed (or, Credibly Threatened) and Authorization Status Observed in Equilibrium as a Function of Adversary Power

hypotheses:

> **Hypothesis 8** *Large observed uses of force will have formal authorization, while small uses of force will be undertaken unilaterally. (Chapters 3 & 4)*
>
> **Hypothesis 9** *Large uses of force will not be taken absent formal approval by the legislature. (Chapters 3 & 4)*
>
> **Hypothesis 10** *There will exist potential uses of force considered but avoided specifically because of a lack of formal approval. (Chapter 4)*

Notice that this leads to a seemingly paradoxical prediction: despite Congress being disinclined to assume responsibility for uses of military force, we will find that the largest uses of force against the biggest threats have formal congressional authorization while smaller uses of force against weaker adversaries will not exhibit the formal backing of the legislature.

The reason for this perplexing outcome is precisely because of Congress's incentives to avoid taking a formal position on the use of force, however. Because *ceteris paribus* Congress would rather not vote on a use of force, it will only do so when it realizes that it will make a big enough difference to offset the additional risk it undertakes by putting "skin in the game." Notice that as the size of the threat increases, the difference in force employed by a President unilaterally compared to that utilized when acting pursuant to authorization (i.e., the difference between the blue and orange lines) becomes increasingly large. Congress knows that its authorization allows the President to move from the blue line to the orange line. At low values of t, the difference is so minimal that Congress simply prefers the White House to act unilat-

erally.[68] Against the largest levels of t however, Congressional approval makes an enormous difference. If Congress sufficiently values the use of force, it will approve the operation and the intervention will be undertaken. Otherwise, the President—acting unilaterally—is forced to use a very low level of force, or, in many cases, simply use no force at all.

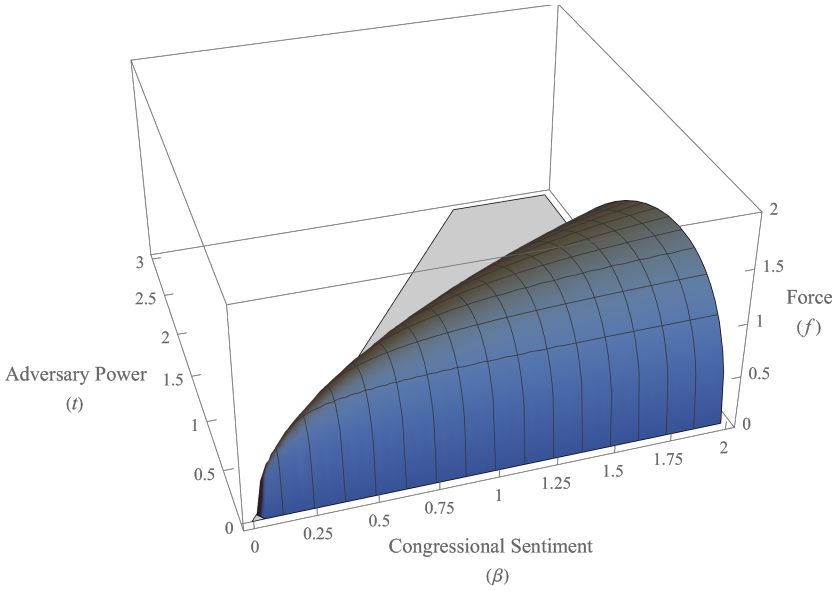

Figure 1.7 Force Employed as a Function of Adversary Power (t) and Congressional Sentiment (β)—Unilateral Force Only

We can also see how this dynamic changes at different levels of congressional sentiment in favor of the use of military force (β). First, we limit our consideration to unilateral uses of force in Figure 1.7, above. As noted above in the discussion of Model I, we see that Congress can actually maintain reasonable influence over the use of military force even when the President acts unilaterally. Figure 1.7 essentially takes the blue line from Figure 1.6 (representing force employed unilaterally) and adds a third dimension: congressional sentiment (β). While still maintaining the same "upside-down-U" shape, we see that the figure narrows substantially at lower levels of congressional support (near $\beta = 0$), and conversely widens significantly when there is more congressional support for the use of force (near $\beta = 2$). The maximum amount of force the President will be willing to employ is thus proportional to congressional sentiment for the operation, even when acting unilaterally.

Now, allowing for the possibility of formal authorization for the use of military force in Figure 1.8, we see a similar pattern as that shown by the darkened portions of the curves

[68]Consider, for example, the Obama Administration's effort to receive explicit approval for its Counter-ISIS campaign: the size of the effort was relatively small, and it was already well underway before authorization was requested in early 2015. Congress thus had little incentive to give formal approval when the administration was already doing what Congress wanted. More recent efforts to update the 2001 AUMF would fall under a similar logic. Since the White House is by-and-large already undertaking the small counter-terrorism operations members of Congress generally support, there is no incentive for members of Congress to put their own "skin in the game" with a new AUMF.

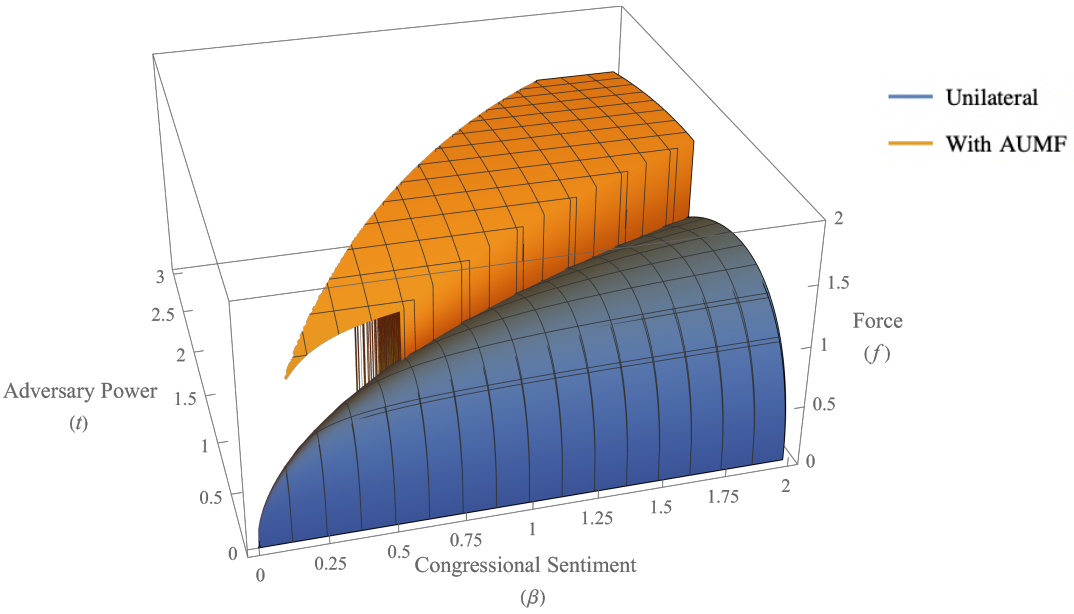

Figure 1.8 Equilibrium Force Employed (and, Authorization Status) as a Function of Adversary Power (t) and Congressional Sentiment (β)—AUMF Option Included

in Figure 1.6. At the front of the figure, we see the same blue conical object representing uses of force undertaken unilaterally. At a certain threshold, however, we see a step (technically, a discontinuity) up to a much higher level of force. This orange upper-shelf in the back consists of uses of force undertaken pursuant to formal congressional approval.

Note that one of the major differences between Figures 1.7 and 1.8 is the additional surface area covered in Figure 1.8. This suggests that more threats will be responded to when AUMF's are a possibility. Moreover, note that at every level of congressional sentiment, the presence of an AUMF greatly expands the amount of force to be used against the largest threats.

A key takeaway from Figure 1.8 is that formal authorization for the use of force will have an effect well beyond simply exposing congressional attitudes over the use of force.[69] In simpler terms, formal congressional authorization *matters*. Prior to the Gulf War, for example, President Bush was well aware that a formal vote authorizing the use of force would be highly divisive and that the vast majority of Democrats would oppose it (Bush & Scowcroft 1999). In this sense, the immediate floor debates and vote over the resolution in early January 1991 served only to reinforce this fact. Viewed through the lens of Schultz's seminal model (Schultz 1998), this would have undermined U.S. signalling. Viewed through the theory presented here, however, the passage of the AUMF—even if revealing a clear domestic split in the U.S.—would have made the President far more comfortable using major military force. The reason,

[69]This is a restatement of Hypotheses 4, 5, and 6: a President is more likely to use force, to use more force, and to win when acting pursuant to formal congressional approval—and even after controlling for informal congressional sentiment.

again, is simple: the AUMF would have eliminated possible loss costs—a fact well recognized by the President and his advisors (Bush & Scowcroft 1999, Meacham 2015). Bush would privately admit after the vote in his diary, "The big burden, lifted from my shoulders, is this Constitutional burden—the threat of impeachment...All that cleared now by this very sound vote of the Congress,"(Meacham 2015).[70]

Similarly, even in cases in which Congressional sentiment is nearly unanimous in favor of the use of force, Presidents will still seek formal authorization if they expect the operation to be large in scale and lengthy in time. After the 9/11 terrorist attacks, for example, it was no secret that the United States was unified in its determination to strike back. While the Bush administration felt it was perfectly justified in acting unilaterally, there was no serious consideration of acting without congressional authorization.[71] Instead, it sought to secure long term buy-in and monetary support from Congress by securing formal approval.[72]

Adversary Perceptions

Lastly, all the analysis provided up to this point—arguing that congressional sentiment and formal authorization status both affect the amount of force a President will employ—suggests U.S. adversaries would have a strong interest in paying attention to congressional sentiment and formal actions. The North Vietnamese, for example, paid close attention to Congress throughout the Vietnam War (Asselin 2017).[73] Similarly, in the run-up to the Gulf War, Saddam Hussein seemingly had doubts about Bush's actual willingness to start a war absent legal approval from Congress:

> "[Congress is] going to stand there and tell him they are not going to take responsibility and that he would have to do it and bear full responsibility on his own. Would he be able to do that?"—Saddam Hussein (Woods, Palkki & Stout 2011, pg. 38)

> **Hypothesis 11** *U.S. Adversaries will pay close attention to congressional sentiment and authorization debates in the U.S. when assessing American intentions and credibility (Chapter 5)*

Moreover, realizing that the adversary is up to this, Presidents will face strong incentives to portray an image of themselves as an Imperial President prepared to act regardless of the will of Congress (Jervis 1970, Schlesinger 1973). For example, as Saddam pondered whether the American President was bluffing or not, Bush repeatedly declared he was ready, willing,

[70] See extensive discussion of Gulf War in Chapter Three.

[71] Alberto R. Gonzales Interview, October 14–15, 2010, George W. Bush Oral History Project, Miller Center, University of Virginia, available at https://millercenter.org/the-presidency/Presidential-oral-histories/alberto-r-gonzales.

[72] Turning Point: 9/11 and the War on Terror, Episode 2 (2021)

[73] See extensive treatment of Vietnam War in Chapter 5.

and able to initiate the use of force against Iraq absent congressional approval. Most famously, Bush would proclaim he "didn't have to get permission from some old goat in Congress to kick Saddam Hussein out of Kuwait."[74] Yet, privately, Bush was highly distressed at the prospect of entering a major war absent the sanction of the legislature. He specifically noted his fears of impeachment in his diary several times (Meacham 2015),[75] and requested formal authorization from congressional leaders on at least seven occasions behind closed doors (Woodward 1991).

It is clear that the sharp distinction between Bush's private thoughts and public rhetoric was substantially driven by concerns of maintaining a credible threat in the eyes of Iraq. When privately begging congressional leaders for formal approval for the use of military force, Bush "show[ed] a group of legislators a clipping from an Iraqi newspaper purporting to describe congressional opposition to war." (Zaller 1994, pg. 265). Concerns about credibility in the eyes of the adversary are similarly seen in the President's public remarks:

> "Q. Do you think you need such a [congressional] resolution? And if you lose it, would you be bound by that?"
>
> "The President. I don't think I need it...Saddam Hussein should be under no question on this: I feel that I have the authority to fully implement the United Nations resolutions." —The President's News Conference on the Persian Gulf Crisis (January 09, 1991)[76]

Hypothesis 12 *Presidents will publicly downplay the effect of congressional sentiment and formal authorization on their willingness to use force, while privately being highly concerned about it (Chapter 3,4,5)*

Conclusion

> *But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others.... Ambition must be made to counteract ambition.*—Federalist 51

Critics of the *status quo* state of the war powers bemoan the poor incentives political actors have in maintaining an appropriate balance of control over the power to initiate armed conflict, and proclaim that Congress has "abdicated" its power over war and peace (Hendrickson 2002, Fisher 2013, Schlesinger 1973, Burns 2019, Griffin 2013). Proposed solutions often include calls for members of Congress to essentially ignore self-interest and to

[74]George Bush, Remarks at the Texas State Republican Convention in Dallas, Texas. Online by Gerhard Peters and John T. Woolley, The American Presidency Project, available at https://www.presidency.ucsb.edu/documents/remarks-the-texas-state-republican-convention-dallas-texas.

[75]Meacham, Jon. "The Hidden Hard-Line Side of George H.W. Bush." POLITICO Magazine, November 12, 2015. https://www.politico.com/magazine/story/2015/11/jon-meacham-book-george-h-w-bush-213347/

[76]George Bush, The President's News Conference on the Persian Gulf Crisis. Online by Gerhard Peters and John T. Woolley, The American Presidency Project, available at https://www.presidency.ucsb.edu/documents/the-presidents-news-conference-the-persian-gulf-crisis.

"reassert" their power over war. Unsurprisingly, efforts to amend the war powers relationship have consistently failed.[77]

But the Framers of the Constitution were quite clear-eyed about the fact they were setting up a government of humans, not angels.[78] Here, vice becomes virtue: self-interest is not a bug in the system; it is the key to the system's long term functioning. In the war powers context, it is precisely Congress's ability to opportunistically attack a President for a less-than-successful military action that encourages Presidents to closely consider congressional sentiment—and, for the largest uses of force, to only act if they can secure formal congressional authorization. Congress's incentives to sit on the sidelines and "snipe" at the President motivate the executive to only utilize a level of force commensurate to the amount of support in Congress for the endeavor. Thus, congressional incentives to avoid responsibility and to opportunistically attack the President *ex post* do not lead to an Imperial Presidency; instead, they lead to precisely the opposite—a Congressionally Constrained executive.

The next chapters will empirically assess key predictions from the theory, starting with a quantitative analysis of the effect of congressional sentiment and formal legal authorization on a President's willingness to use force, and on the outcomes of U.S.-relevant crises. Chapters 3 and 4 then examine the relationship between a President's willingness to enter a major war and formal authorization, finding that while there are no clear cases of a willingness to prosecute a major war unilaterally after the early 1950's, there are many cases where force was avoided due to a lack of formal approval. Chapter 5 then examines international perceptions and reactions to the domestic war powers contest in the United States, showing that even during the purported zenith of the Imperial Presidency—the Vietnam War—U.S. allies and adversaries put great weight on the sentiment and actions of the legislature when assessing American credibility. Presidents are incentivized to feign imperiality, but in reality are substantially constrained by congressional sentiment.

[77] See, for example, *Lawfare*. "What Happened to Post-Trump Reform?," March 28, 2022. https://www.lawfareblog.com/what-happened-post-trump-reform. See, also "How America Goes to War — Miller Center," January 21, 2021. https://millercenter.org/issues-policy/foreign-policy/national-war-powers-commission.

[78] Federalist 51.

Chapter 2

Quantitative Assessment

This chapter quantitatively tests Hypotheses 1-6 from Chapter 1. The theory presented in the previous chapter suggested that the level of force a President would be willing to employ in a given crisis—and, thus, also to credibly *threaten* to employ—will be substantially affected by the level of support in Congress for the potential use of force. Internationally, this implies the outcomes achieved by the United States in crises will be substantially affected by support in Congress for the intervention.

Part I of this chapter introduces a novel dataset of congressional sentiment toward the use of force in approximately 150 crises[1] since the end of the Second World War. This dataset required the hand-labelling of roughly twenty-five thousand congressional floor speeches, and took nearly two years to complete. Artificial intelligence—Open AI's GPT models and others—are also utilized as a robustness check for the human labelled data. Part II then tests hypotheses in which the use of force is the outcome variable. It finds that both informal congressional sentiment and formal legal authorization for the use of military force predict a President using force—and more force—in a crisis. Part III, in contrast, focuses on the hypotheses related to the outcome of the crisis. It similarly finds that congressional sentiment and legal authorization predict better outcomes for the United States. The section also addresses the possibility of reverse causation, and shows that it is unlikely to be driving this result.

[1]The dataset actually includes over 190 crises, but to avoid concerns of researcher bias in case selection the chapter presents results yielded on a subset of 141 of these crises corresponding to a seemingly neutral definition. Specifically, this includes all ICB crises in which the U.S. was at least coded as economically involved with one of the crisis actors. See discussion below. Rerunning the results on the full dataset yields nearly identical results.

Part I: Measuring Congressional Support for the Use of Military Force

While congressional support for, or opposition to, the employment of American military force in a crisis is theoretically quite important (Schultz 2001, for example), actually measuring it is difficult. One technique commonly utilized in the literature is to use the proportion of Congress made up of copartisans of the President (Howell & Pevehouse 2007, Kriner 2010) or Republicans (McManus 2017) as a proxy for congressional support. Both of these proxies, however, have significant drawbacks. First, as shown below, both of these measures only very roughly correlate with, e.g, the few use of force votes that do exist. It is not difficult to identify major cases in which non-copartisans gave greater support to the President in using force (e.g., Vietnam under Johnson, or the Afghanistan surge under Obama), or in which otherwise hawkish Republicans opposed the use of force (e.g., Haiti or Bosnia under Clinton). Moreover, the fixed nature of these proxies does not readily allow for a change in congressional support during a crisis[2] or across crises occurring within the same congressional session.[3] Furthermore, the composition of Congress is easily observable *ex ante* and thus is less likely to affect the outcome of crises we observe.[4]

There is no consensus over whether ideology or partisan politics drives the foreign policy preferences and behavior of members of Congress. In other words, if one has to choose between utilizing the "% copartisans" and "% Republicans" proxies, it is not immediately clear which is more appropriate. While Howell and Pevehouse argue that partisan politics is key (2007), more recent work by McManus (2017) and Bendix and Jeong (2022) suggests that ideological beliefs are predominant. Others show that *both* are important (Böller 2021).

Another commonly utilized method of capturing congressional sentiment over a given issue—the analysis of roll call votes—is also of relatively limited utility because members of Congress are quite reluctant to vote on use of military force decisions. This means that the vast majority of crises lack any relevant vote from which we could deduce congressional sentiment. In order to measure congressional sentiment over potential uses of force in a much broader set of crises than the select few in which formal votes are taken, we instead focus on what members of Congress *say*. Even when Congress declines to formally vote on the use of military force, members of Congress frequently make their positions publicly known through their rhetoric—

[2]For example, congressional support for U.S. military operations in Somalia in the early 1990's declined rapidly in the fall of 1993.

[3]For example, in 1973 the same Congress that was highly adverse to re-engagement in Vietnam was quite willing to take a strong stand supporting Israel in the Yom Kippur War (Kissinger 2011*b*).

[4]I.e., whatever effect the composition of Congress might have should be "priced in" to the decision to start a crisis, but is less likely to affect the outcome of the crisis (Fearon 1994). Moreover, note that prominent theories about the effect of opposition party signalling on crisis outcomes (Schultz 1998, Schultz 2001) cannot even be tested with proxies such as these because they give us no information about the stance of the opposition party.

Table 2.1 Competing Measures of Congressional Support for the Use of Military Force

	% Congress Copartisan	% Congress Republican	Roll Call Votes	Congressional Support Scores
Coverage:	Universal	Universal	Low	High
Difficulty to Measure:	Low	Low	Medium	High
Easily Observable *Ex Ante*:	Yes	Yes	Sometimes	Sometimes
Captures Intraparty Heterogeneity:	No	No	Yes	Yes
Can Measure Opposition Party Stance:	No	No	Yes	Yes
Allows for Change over Course of Crisis:	No	No	Only if multiple votes	Yes
Allows for Different Sentiment in Different Concurrent Crises:	No	No	Only if multiple votes	Yes
Correlates Well with Actual Use of Military Force Votes:	Weakly	No	-	Strongly
Correlates Well with Public Opinion Polls in Crises:	No	No	-	Strongly

be it on cable news, through op-eds, via press releases, or by way of speeches on the floor of the Senate. To give one recent example, Congress declined to vote on the use of force against ISIS in the mid-2010's—even after President Obama asked it to do so. Nonetheless, members of Congress at the time conveyed near unanimous support in favor of striking the terrorist group. While members of Congress differed perhaps in the tactics and operations to be employed, there was little disagreement that the group needed to be degraded and ultimately destroyed. It is not uncommon to see congressional sentiment over the use of military force expressed in a similar fashion in other crises: absent formal vote, but well articulated in speech and text. The next sections describe how a new dataset was created in an attempt to capture congressional sentiment over the use of force in crises since the Second World War.

Identifying U.S.-relevant crises in the Postwar Period

First, a "universe" of cases in which the use of American military force might have reasonably been considered must be defined. The Interstate Crisis Behavior dataset contains around seventy crises in which the U.S. is deemed to have been a "crisis actor" (Brecher, Wilkenfeld, Beardsley, James & Quinn 2023, Brecher & Wilkenfeld 2000), but we need to also consider "dogs not barking"—i.e., cases in which military action was considered but decided against. To give one example, the U.S. is not considered by the ICB dataset to have been a crisis actor during the 1975 Fall of Saigon, but this was not due to any lack of serious

consideration.[5] In order to capture cases in which the U.S. might reasonably be considered to have had a substantial security interest, but in which it ultimately decided against intervention, we additionally include all ICB crises in which at least one crisis actor experienced economic—or greater—involvement by the United States in the crisis. Economic involvement in a conflict suggests the U.S. had *some* interest in the outcome of the crisis, even if its interest was not great enough to justify direct kinetic military intervention. Requiring this minimal level of U.S. involvement in the crisis helps eliminate cases in which the U.S. had negligible interests involved. In the ICB dataset, this includes cases in which UNSINV is rated at "4" or higher at the actor-level, and thus also includes cases of higher U.S. involvement, such as propaganda involvement, covert involvement, U.S. semi-military involvement (military aid or advisors, without participation in actual fighting) and cases in which American military forces were directly involved.[6] This yields 141 crisis between 1945 and 2016.[7]

In order to measure congressional sentiment over the possible use of force in these crises, we focus on floor speeches in the congressional record. While other sources—such as press releases, op-eds, interviews, and speeches outside Congress—can obviously also be used to convey opinions over possible uses of force, focusing on speeches available in the Congressional Record allows us to consult a single source whose relevance has seemingly remained high over the past eighty years.

Consider the following examples of floor speeches expressing support or opposition to the potential use of military force in Table 2.2, below. The first four examples convey sentiment in favor of the use of force. Sometimes sentiment over the use of military force is conveyed during debate over legislation authorizing (or prohibiting) the use of force—as is the case in the example excerpt from the First Taiwan Strait Crisis. More often, however, such sentiment is conveyed outside the context of the consideration of specific legislation. For each of the other speech excerpts—related to the 2011 Libyan intervention, the counter-ISIS campaign beginning in 2014, and the 2019 Venezuela crisis[8]—a policy preference is being conveyed even if a specific congressional resolution is not being considered. Sometimes the support for the

[5]Indeed, there is good reason to believe the administration's omission to use force was substantially due to congressional opposition to re-engagement in Indochina after the 1973 Paris Peace Accords.

[6]For similar approaches in identifying U.S. opportunities to use military force, compare to *Assessing Trade-Offs in U.S. Military Intervention Decisions: Whether, When, and with What Size Force to Intervene* (Frederick, Kavanagh, Pezard, Stark, Chandler, Hoobler & Kim 2021) and *Informing the Leader: Bureaucracies and International Crises* (Schub 2022).

[7]As a robustness check, a more inclusive list of U.S. crises was developed which includes non-interstate crises (e.g., Somalia in the early 1990's or ISIS in the mid-2010's) and crises occurring after 2016. Cases from the ICB dataset in which the U.S. was not coded as being even "economically" involved, but for which we nonetheless have evidence that American intervention was considered, are also added. For example, we know from memoirs and news reporting that the White House closely followed the Russian invasion of Georgia in 2008, but consciously ruled out direct intervention. Altogether, this yields a grand total of over 190 crises. When including all of these additional cases, the results are substantially similar to those presented in the manuscript.

[8]Esper (2022).

use of force is quite explicit, as illustrated by the McCain excerpt from 2011. Other times, intervention may not be specifically called for, but the implicit sentiment conveyed is clearly quite hawkish. In the Graham excerpt from the ISIS crisis, for example, the Senator never actually directly calls for intervention, but the sentiment in favor of the use of force is clear.

Table 2.2 Speech Examples: Supporting the Use of Military Force

	Supporting Force
First Taiwan Strait Crisis (1955)	"[T]here can be no question that we should say to the world that we now propose to make our position clear. We must say that we will not be parties to the placing of Formosa and the Pescadores in unfriendly hands." —Senator Walter George (D-GA)
Libya (2011)	"[I] urge the President of the United States to take long overdue action to prevent the massacres that are taking place in Libya as we speak" —Senator John McCain (R-AZ)
ISIS (2014)	"Like it or not the American military is second to none. The special forces capability we have can really be decisive in this fight. To every American, this is not only about them over there: this is about us here. The better and the sooner that ISIL is defeated, the more decisive ISIL is defeated." —Senator Lindsey Graham (R-SC)
Venezuela (2019)	"We cannot let evil triumph in Venezuela. It would be a failure of leadership with disastrous consequences... It is becoming clear that we will have to consider the use of American military assets ... Our safety, national security, and the peace of our hemisphere demand that we take action." —Senator Rick Scott (R-FL)

The next four speech excerpts (Table 2.3, below) come from the same four crises, but instead convey sentiment in opposition to the use of military force. As is the case for sentiment in favor of the use of force, sentiment opposed to military intervention can occur in the context of debate over congressional legislation—as depicted in the example from the First Taiwan Strait crisis. Another common focus of opponents to utilizing force is that such action violates the Constitution. Thus—as shown by Dennis Kucinich's opposition to the 2011 Libya Intervention—lawmakers can attack the authority of the executive (Christenson & Kriner 2020). Alternatively, as shown by the excerpts from the 2014 ISIS and 2019 Venezuela crises, legislators can focus on policy criticism instead of constitutional attacks (Christenson & Kriner 2017).

Note, further, that in each of the examples, below, copartisans of the President *opposed* the use of military force. This is especially notable in the first three examples because there were simultaneously opposition party legislators that supported the President in the use of force. Even seemingly close ideologues and allies of the President can have vastly different positions on the possible the use of military force. Matt Gaetz—whom the Washington Post dubbed the "Trumpiest Congressman"—frequently opposed the use of military force by the

Table 2.3 Speech Examples: Opposing the Use of Military Force

	Opposing Force
First Taiwan Strait Crisis (1955)	"every Senator who votes for this resolution is authorizing the President ... to send troops anywhere —possibly thousands of miles into the mainland of China...[I am] not going to vote at this time to give a blank check to the President"—Senator William Langer (R-ND)
Libya (2011)	"Madam Speaker. we are in the midst of a foreign policy and constitutional crisis. The administration has committed our Nation to a war against Libya in violation of the Constitution of the United States." —Rep. Dennis Kucinich (D-OH)
ISIS (2014)	"I completely agree with the cautionary notes that have been cited about just sending in the U.S. military to do it. I think the risks there are enormous, and it would not be successful because it would unite... a fair number of Sunnis and radicals against us"—Rep. Adam Smith (D-WA), Chairman of the House Armed Services Committee
Venezuela (2019)	"The organizing principle of American policy seems to be the need to drive Maduro from power. What if Maduro is not really in power right now? What if the people who are really calling the shots in Venezuela are a group of transnational criminal organizations...? And what if their entire purpose is to draw the United States into an ill-advised war?...certainly, as a Congress, we need to be very critical in our thinking to not get our Nation in another ill-advised war." —Rep. Matt Gaetz (R-FL)

Trump Administration while otherwise being one of the closest allies to the Administration.[9]

The Stanford Social Science Data Collection provides parsed speeches from the congressional record from 1873 through 2016 (Gentzkow, Shapiro & Taddy 2018). In order to, first, identify potentially relevant congressional speeches, the congressional record was searched for a specific keyword(s) during the time period of the crisis and the three months prior to the beginning of the crisis.[10] The total number of "matches" for all crises by all members of Congress was nearly one hundred thousand.

Automated text analysis tools—such as supervised machine learning—are not well suited for measuring policy prescriptions (Schub 2022), so qualitative hand-coding was employed.[11] This, however, made the manual review of all speeches beyond the resources available. In order to decrease the number of speeches to a more manageable level, speeches from key foreign policy leaders in Congress were identified for review. Committee assignments were identified for each lawmaker in each Congress by using data from Canon, Nelson, and Stewart

[9]Barbash, Fred. "Matt Gaetz, the 'Trumpiest Congressman,' Cites Principles for Bucking President on War Powers. Kevin McCarthy Is 'Very Shocked.'" Washington Post, January 10, 2020. Available at https://www.washingtonpost.com/nation/2020/01/10/gaetz-war-powers/.

[10]McManus (2017) similarly includes presidential speeches not only from the time period of the dispute, but also prior to it.

[11]As described below, both supervised machine learning—using a series of Transformer models from the HuggingFace library—and zero-shot classification using GPT 3.5 were utilized as robustness checks. While the hand-labelled data proved to have the highest performance (see validation section below), even when utilizing these alternative techniques, the overall findings proved to be substantially similar.

(1998) on assignments prior to the Legislative Reorganization Act of 1946 (taking effect the next year), and data from Stewart and Woon (2017) for assignments from 1947 to 2017. Such key foreign policy leaders were identified as the following:

Senate:

- Senate Majority Leader
- Senate Minority Leader
- Chairman and Ranking Member of Foreign Relations Committee
- Chairman and Ranking Member of Armed Services Committee
- Chairman and Ranking Member of Intelligence Committee
- Chairman and Ranking Member of Appropriations Committee
- All Members of Senate Foreign Relations Committee
- All Members of Senate Armed Services Committee

House of Representatives:

- Speaker of the House
- House Minority Leader
- Chairman and Ranking Member of Foreign Affairs Committee
- Chairman and Ranking Member of Armed Services Committee
- Chairman and Ranking Member of Intelligence Committee
- Chairman and Ranking Member of Appropriations Committee

In total, this amounted to approximately forty lawmakers in any given Congress, and for a total of roughly twenty-five thousand speeches. Notably, despite making up only 7-8% of all members of Congress, these foreign policy leaders were responsible for roughly one quarter of all speeches containing the keyword(s) during the relevant crisis time periods. All such "matches"—thus containing both the keyword(s) and being spoken by a key foreign policy leader in Congress—were then read by an individual from a team of undergraduate research assistants and hand-labelled as supportive of the use of military force, opposed to the use of military force, or neither/ irrelevant.[12]

Of these roughly twenty-five thousand potentially relevant speeches, 15% were deemed to be supportive of the use of military force, 12% were deemed to be opposed to the use of military force, and the other 73% irrelevant.[13] Speech coders were thus quite discerning in deciding whether a speech actually contained sentiment regarding the use of military force. For each crisis, an overall "congressional support score" was created by simply calculating:

$$\textbf{Congressional Support Score} = \frac{\text{Speeches in Favor Use of Force}}{\text{Speeches in Favor Use of Force} + \text{Speeches Against Use of Force}}$$

[12]While the vast majority of speeches were labelled by a single coder, 10% of the speeches were labelled by a second coder in order to determine the intercoder reliability of the task. With a Cohen's Kappa of 0.60, there was moderate to substantial agreement. Moreover, because of the way the aggregate "congressional support score" for each crisis is calculated (it excludes speeches marked "irrelevant"), the primary worry is not if one coder judged a speech irrelevant and another did not. Rather, the largest threat was if one coder marked a speech as in favor of the use of force and another marked it as opposed to the use of force. This was found to be the case in less than 2% of speeches.

[13]Schub, for example, removes from the corpus all text-portions he deems to be non-pertinent to his theory (Schub 2022, pg. 7).

For crises in which the United States ended up actually utilizing military force, speeches were limited to those made before combat commenced.[14] This simple calculation yielded a congressional support score (CSS) ranging between 0 (uniform opposition) and 1 (uniform support) for each crisis. This is then re-centered at 0, so that scores with a positive value signify overall support in Congress, while scores below 0 suggest there is more opposition in the legislature.[15] Moreover, to guard against one or two preference outliers amongst elite lawmakers driving the sentiment score, speeches are weighted by speaker. Crises with few speakers also are "penalized" so that they are not given extreme values based on the sentiment of just a couple of legislators. Throughout the results presented below, we will require a minimum of five lawmakers to speak before assigning the raw score calculated as shown above. Crises with less than five speakers have their polarity prorated toward 0.[16]

Description of the Data

The plot below shows the concentration of congressional attention across the world in the time period since World War II. The map seemingly suggests legislators have been quite attentive to the major trends of American foreign policy in the time period. A clear ring, for example, is seen around the Sino-Soviet bloc—reflecting congressional attention to crises over Berlin, in the Middle-East, and in East Asia during the Cold War (with large amounts of attention seen in spots such as Korea, Vietnam, and in the Taiwan Strait). Cold War attention to Cuba and Central America (primarily Nicaragua and El Salvador) is also seen. Focus on former Yugolsavia—including crises in Bosnia and Kosovo—is also evident, as is clear attention to the greater Middle East region, in line with major interventions in Somalia in the early 1990's and in Iraq and Afghanistan in the early 2000's.

The histograms in Figure 2.2, below, depict key metrics of the speech data. The first shows the total number of relevant speeches given in Congress for specific crises. Note that the histogram follows a power law distribution, with many crises having less than ten relevant

[14]This is specifically done in order to see where members stood before the use of force commenced. This restriction can be relaxed, and similar statistical results are still yielded.

[15]I.e. -0.5 corresponds to uniform opposition, +0.5 corresponds to uniform support, and 0 corresponds to overall neutral (or, perfectly split) sentiment in Congress.

[16]I.e., if 5 lawmakers in this elite subset gave speeches uniformly opposing a potential intervention, this will meet the threshold to yield the lowest possible sentiment: -0.5. If only one lawmaker spoke, however, it would be more difficult to deduce overall congressional sentiment. In this case, since there is only one out of the five required, we divide the valence by 5—yielding a congressional support score of -0.1.

There are, of course, many different cutoffs one could use. 10, 20, 40, and even 0 were all tried and yielded nearly identical results. Data utilizing this 5-member cutoff is presented here for two reasons: first, it yielded the best model fit statistically. Second, while it seems important to have *some* cutoff—it would be peculiar to have a single member speak out against an operation and then assume all of Congress was in opposition to it—it also seems intuitive that there would be diminishing returns to speaking out when several of your colleagues already have and there is a uniform consensus. Thus, if five members of this group of lawmakers speak out unanimously in favor of an operation (or in opposition to it), and there is no dissent whatsoever from any other member, it seems more reasonable to conclude that this is a well represented view.

Figure 2.1 Bargaining Model with Loss Costs

speeches from the sample of lawmakers. The tail of the distribution is quite long, with some crises having over three hundred relevant floor speeches from foreign policy leaders in Congress.

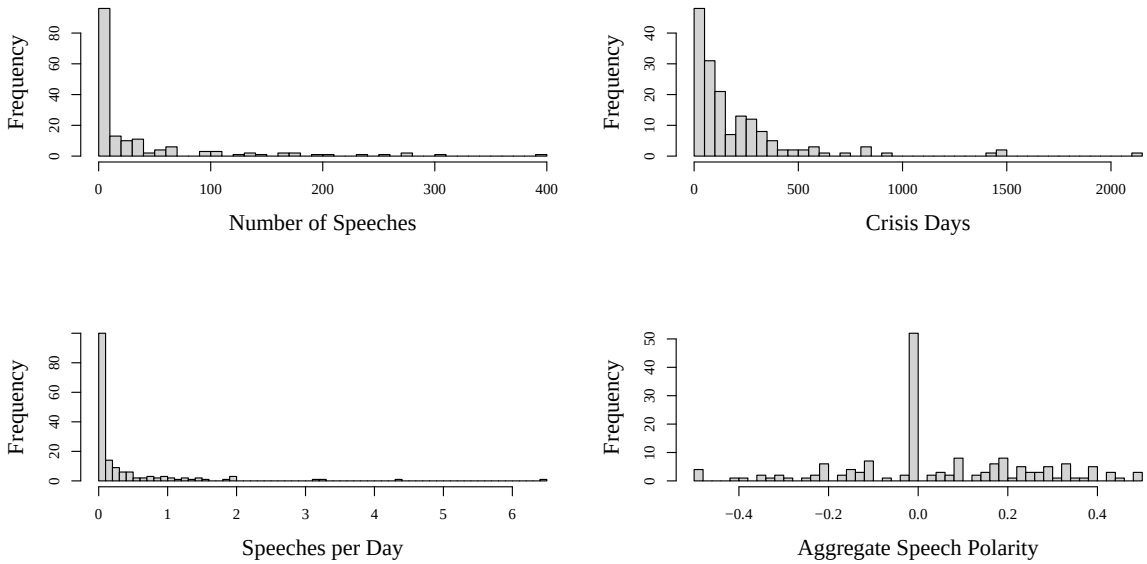

Figure 2.2 Histograms of Speech Data

Because the number of speeches, however, is likely highly correlated with the temporal length of the crisis, it is important to also consider the distribution of crisis days. Like the number of speeches, the distribution of crisis days follows a power law distribution. Roughly a third of the crises are less than fifty days long, while the majority are longer than this benchmark. In order to determine the relative magnitude of congressional sentiment targeted toward the potential use of military force in each crisis, a speeches-per-crisis-day metric is calculated for each crisis.[17] Again, a power law distribution is evident, with many crises having relatively less attention in congressional speeches.

Lastly, a histogram of the calculated congressional support scores is presented. Note again that scores are re-centered at 0, so that while a score of 0 equates to balanced or neutral overall sentiment, a negative score—with a minimum of -0.5—corresponds to aggregate congressional sentiment against the use of military force. Similarly, positive scores—with a maximum of 0.5—equate to average congressional sentiment in favor of the use of military force. The modal—and median—crisis has neutral polarity (0), primarily due to roughly one quarter of the crises having no relevant speeches from foreign policy leaders in Congress.[18] Aside from this collection of crises at 0, we see crises of varying congressional support across the range of sentiment from -0.5 all the way to +0.5. A sample of representative crises is shown below in Table 2.4, and in general evinces some face validity given conventional understandings of congressional and popular will in each of these events.

As might be expected from the enormous rally-around-the-flag effect witnessed after the 9/11 terrorism attack, the invasion of Afghanistan receives a very high Congressional Support Score. Similarly, the initial intervention in the Korean War in 1950 garnered significant bipartisan support—a fact recognized by politicians at the time and historians in later decades, despite the fact the Truman administration chose not to seek formal authorization from Congress (Acheson 1969, Schlesinger 1973, Blomstedt 2016). The invasion of Iraq in 2003 had strong—though far from uniform—support in Congress as nearly all Republicans and around half of Democrats supported the operation. George W. Bush actually had substantially greater support for the 2003 action than his father had in 1991 against the same enemy (with CSS's of 0.287 and 0.132, respectively). Notably, the elder Bush faced much stronger resistance from Senate Democrats, and the formal authorization vote from Congress only passed the upper chamber by a handful of votes (Bush & Scowcroft 1999). More recently, President Obama balked at enforcing a "red line" in Syria in 2013 when congressional support (CSS of 0.088) proved to be lower than expected.

Nixon and Kissinger threatened the Soviets with intervention during the Yom Kippur

[17] Note, this only includes speeches found to be *relevant* to whether force should or should not be used.

[18] Additionally, some crises with relevant speeches happened to have equal amounts of positive and negative sentiment conveyed, resulting in a neutral polarity score.

Table 2.4 Examples of Crises by Congressional Support Score

Afghanistan (2001)	0.455
Korea (1950)	0.426
Iraq (2003)	0.287
Panama (1989)	0.262
Vietnam (1964)	0.257
Cuba Missile Crisis (1962)	0.245
Libya (2011)	0.200
Gulf War (1991)	0.132
Syria Red Line (2013)	0.088
Yom Kippur War (1973)	-0.125
Haiti (1994)	-0.211
Iran (2007)	-0.220
Bangladesh War (1971)	-0.500
Angola (1975)	-0.500

War in 1973, but Congress was opposed to an American intervention just as it extricated itself from Vietnam—a fact well-recognized by the White House at the time (Nixon 1986). Congressional resistance to using military force in Haiti in 1994 was acknowledged by President Clinton (Clinton 2005), and memoirs from the Second George W. Bush Administration make clear the pressure they felt from Congress (Bush 2011, Gates 2015)—especially a then Chairman of the Senate Foreign Relations Committee, Joe Biden—to not use military force against Iran. On the far-negative end of the spectrum, possible American interventions in South Asia and Southern Africa in the 1970's were virtually uniformly opposed by lawmakers. In the case of the Bangladesh War, Nixon and Kissinger attempted to feign a willingness to use the U.S. Seventh Fleet in the Indian Ocean, but the strong resistance in Congress led Indians observers to call the bluff (Kissinger 2011*a*, Blechman & Kaplan 1978). In Angola in 1975, Congress was so opposed to U.S. intervention that legislators even banned military aid to groups in the country (Stevenson 2007).

Partisan differences can also be examined. Plotted below is a subset of roughly fifty of the most prominent crises in postwar U.S. foreign policy, organized by level of support for the use of force ranging from uniform opposition (CSS = -0.5) to uniform support (CSS = +0.5). The plot on the left shows not only the overall Congressional Support Score in the crisis, but also scores specific to political parties in Congress. Dark gray points indicate the

overall score in Congress, while blue points represent sentiment among Democrats and red among Republicans.

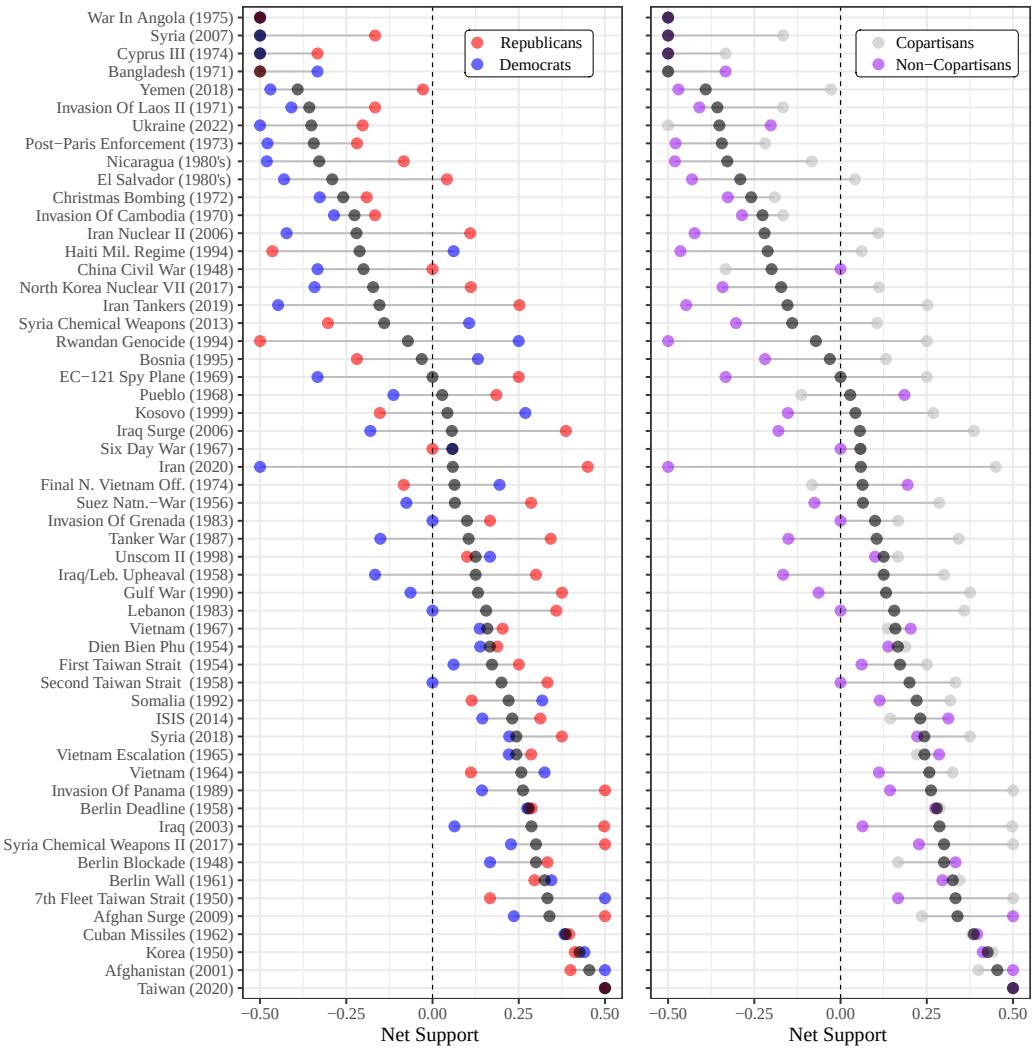

Figure 2.3 Examples of Crises—Overall Congressional Support Score, and Party Breakdown

Several crises have seen overwhelming opposition in Congress to the use of force, and hence little difference between parties. For example, while there exists debate in the legislature over U.S. support for the Saudi war effort in Yemen, there has been a consensus that *American* forces should not be utilized in the conflict. Similarly, while George W. Bush considered striking into Syria in 2007 (both because of its nascent nuclear weapons program and the route it served for foreign fighters pouring into Iraq) (Bush 2011), there was little support in Congress for an intervention as Democrats were firmly opposed to the possibility and little support existed even amongst congressional Republicans. In other crises, the parties were similarly strong in their support for the use of force. For example, in the successive Berlin crises under Eisenhower and Kennedy, there was virtually no difference in party support for taking a strong stand in

the face of Khrushchev's ultimatums. Similarly, the initial invasion of Afghanistan received enormous support from both Republicans and Democrats. Other actions evinced a clear split in sentiment between Democrats and Republicans. For example, Bush's decision to "Surge" U.S. forces after the 2006 midterm elections received solid support amongst Republicans but strong opposition from Democrats. More recently, Trump's strike against Soleimani in early 2020 evinced hyper-partisan reactions with Democrats and Republicans being nearly uniform in their opposition and support, respectively.

The plot on the right, in contrast, again separates lawmakers by party but focuses on whether the President was of the same party of not. Dark gray points again indicate the overall score in Congress, while light gray points correspond to lawmakers of the same party as the President and purple points represent lawmakers in the opposition party. While copartisans tend to give more support for the use of force than non-copartisans, there are clear counter-examples to this. For example, support for Obama's Surge in Afghanistan announced in late 2009 saw much stronger support among Republicans than Democrats (Woodward 2010). Non-copartisans can allow attack a President for omitting to act. Republicans famously attacked the Truman administration for the Nationalist failure in the Chinese Civil War and waged a campaign asking "Who lost China?" And while Democrats for the most part supported the Obama administration's anti-ISIS campaign launched in the second half of 2014, congressional Republicans pushed the intervention much more forcefully (taking the President to task for calling the group the "J.V. Team", and resisting Democratic efforts to pass a use of force resolution that would have seemingly limited the Presidents powers in the conflict).

More common, however, is copartisan support for the use of military force and attacks from non-copartisans. President Clinton, for example, encountered stiff opposition from Congressional Republicans toward interventions after the infamous Battle of Mogadishu—a sentiment manifesting in GOP opposition to intervening in the Rwandan Genocide in 1994, the occupation of Haiti later that same year, and the deployment of several thousand U.S. peacekeepers to Bosnia at the end of 1995 (Clinton 2005). Only a few years before, in the "Tanker War" in the Persian Gulf during the late 1980's, copartisan Republicans had, for the most part, supported the Reagan Administrations re-flagging and escort of Kuwaiti oil tankers while Democrats had shown significant opposition to the move. More recently, Republicans strongly supported President Trump's "maximum pressure" campaign against Iran—including his risky targeted killing of Iranian General Qasem Soleimani in early 2020—while Democrats opposed starting a war with Iran.

Validation

While the plots and accompanying narrative above provide some face validity to the scores, there are obvious concerns about how accurate a measure of congressional sentiment this method might actually produce. Several drawbacks clearly make this method imperfect: speeches from less than 10% of congressional members are even considered; speeches from Senators are disproportionately represented in the sample; many members of Congress give no relevant speech at all. Validation is thus key to increasing our confidence in the ability of this method to sufficiently measure congressional sentiment over the use of military force. Two strategies of validation are presented here: first, a test of face validity is presented by comparing Congress Support Scores taken during successive "crises" in the Vietnam War with floor votes and public opinion polls during the conflict. Second, a more systematic test of the scores is presented by comparing them to over sixty roll call votes and public opinion polls related to the use of military force in crises since World War II. The evidence presented suggests that Congressional Support Scores adequately capture congressional sentiment in these crises, and far outperform any available alternative measurement—including proxies commonly utilized in the literature.

The Vietnam War

Examining the Congressional Support Score data in the context of the Vietnam War is useful because the well-known experience in Vietnam provides a helpful background context against which to test the validity of the measurement technique. Depicted on the plot below is the calculated Congressional Support Scores over a series of crises ranging from the 1964 Gulf of Tonkin Incident to the signing of the Paris Peace Accords in January 1973 and the passage of the Cooper-Church Amendment in the summer of 1973 prohibiting the use of the American military in Southeast Asia. The solid line represents the Congressional Support Scores yielded in these successive crises. The overall trend is familiar: support for the war was high at the beginning of the conflict, and gradually dropped until the end of the war in 1973. As is well recognized, the drop from aggregate support to opposition occurs around the Tet Offensive in 1968 (Rusk, Rusk & Papp 1991).

As a test of convergent validity, the estimated Congressional Support Scores are plotted in comparison to measures of public support for the war. Specifically, this data comes from a series of Gallup polls taken from 1965 to 1973 (twenty-three in total) asking respondents "In view of the developments since we entered the fighting in Vietnam, do you think the U.S. made a mistake sending troops to fight in Vietnam?".[19] This particular times series of data

[19] https://news.gallup.com/poll/2299/americans-look-back-vietnam-war.aspx

has been utilized widely in the literature examining public support for the Vietnam War (Gelb & Betts 2016, Lunch & Sperlich 1979, e.g.).[20]

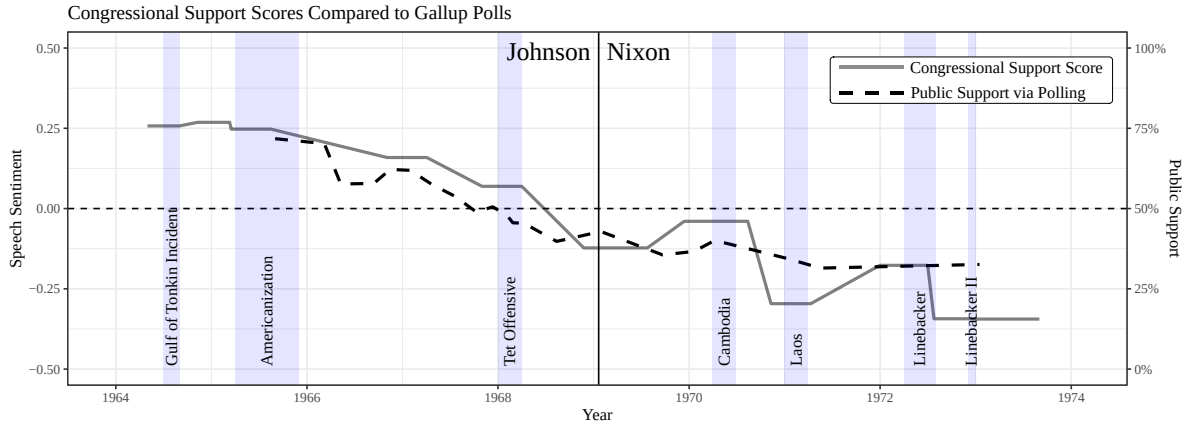

Figure 2.4 Congressional Support Scores Compared to Gallup Polls of Public Support

As can be seen from the plot in Figure 2.4, the two trend lines closely follow each other. While support in the public at the beginning of the Americanization of the conflict in 1965 was relatively higher (around 75%), this gradually faded over time. By the end of American involvement in the conflict in 1973, support had dropped to around 25%. This closely follows the trend illustrated by the Congressional Support Scores, and thus suggests the calculated proxy for sentiment amongst legislators is performing as expected.

Another test of face validity of is to compare the congressional support scores to vote shares in Congress for key votes during the Vietnam War. Plotted below is, again, the Congressional Support Score estimates—with the general trend in dark gray and estimates separated by party in red (Republicans) and blue (Democrats). Key votes are shown as black dots. These votes included the most prominent resolutions passed in the conflict, including the 1964 Gulf of Tonkin Resolution, a 1965 defense supplemental specifically used by the administration as a proxy for congressional support, votes on the Cooper-Church Amendment after the Cambodian Incursion in the Spring of 1970, the Mansfield Amendment passed by the Senate in 1971, and votes in both Houses on the 1973 Case-Church Amendment that finally cut off all funding for operations in Southeast Asia by U.S. forces.[21] Like public opinion, we would expect a fair measure of congressional sentiment to vary alongside use-of-force vote shares.

Similar to the public opinion data, the vote shares supporting the war in Vietnam

[20] Just as the Congressional Support Score metric is calculated by dividing positive sentiment by all sentiment expressed (positive or negative), the public support metric plotted here is calculated by dividing the number of respondents who disagreed that the Vietnam War was a mistake (i.e., those who supported the war) by all respondents who either agreed or disagreed with the statement.

[21] Two other key votes identified by Congressional Quarterly Almanac are also included: rejections of proposals in 1966 and 1967 to repeal the Gulf of Tonkin Resolution and to ban the use of force in North Vietnam, respectively.

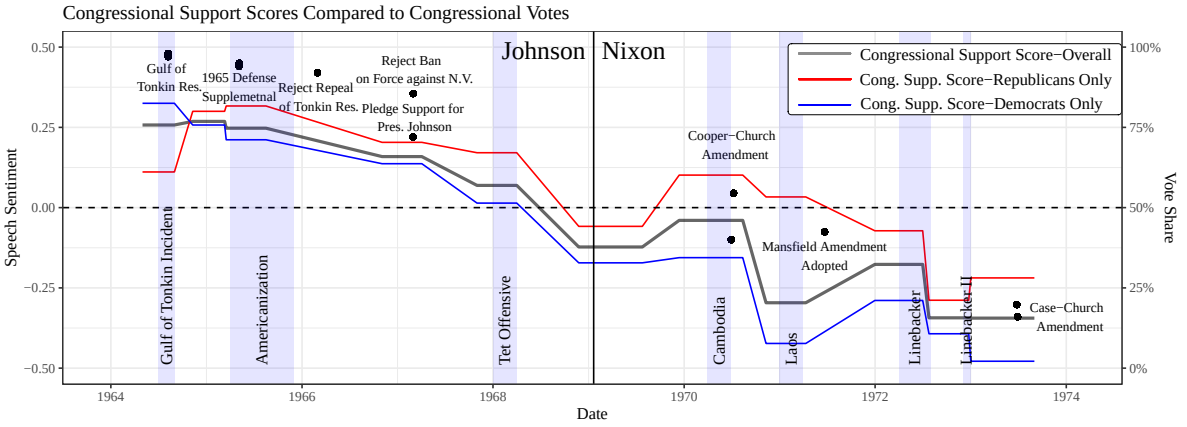

Figure 2.5 Level of Force Employed by Support in Congress for Use of Military Force in Crisis

start quite high but decline sharply over time. The trend shown by the Congressional Support Score data closely follows this. Note that while the point estimates do not perfectly align—for example, vote shares seem consistently higher than the Congressional Support Score yielded in the first three years of the war—it is not necessarily the case that this reflects "error" in the Congressional Support Score estimates. Instead, there is a strong argument that the Congressional Support Score estimates potentially better reflect congressional sentiment than the vote share data. Specifically, it is well recognized in the historiography of the Vietnam War than many of those lawmakers who voted in favor of the Gulf of Tonkin Resolution in August 1964 had serious reservations about getting involved in a war in Southeast Asia (Gibbons 2014). This lack of uniform support for the war is much better captured by the Congressional Support Score data than by looking at simple vote shares, because the speech data utilized to estimate these scores takes account of reservations expressed by the speaker. Thus, while merely looking at vote shares—especially at the beginning of the war—paints a misleadingly high picture of congressional sentiment of the war, the Congressional Support Scores arguably more accurately capture the feelings in Congress at the time.

The Congressional Support Score estimates, moreover, closely follow the vote shares exhibited in key votes later in the war, including votes on the 1970 Cooper-Church amendment to ban the use of American ground forces in Cambodia and the 1971 Mansfield Amendment passed by the Senate—a non-binding but high-profile vote declaring it to be the policy of the United States to "terminate at the earliest practicable date all U.S. military operations" in Southeast Asia. The 1973 Case-Church Amendment formally barred all funding of U.S. military operations Vietnam, and its overwhelming passage corresponds closely to the highly negative sentiment expressed in Congress toward the use of force at the time.

The party trend lines, as well, conform to the conventional wisdom of the conflict: the parties were relatively similar in their support for the conflict (with hawkish Republicans

supporting the war under Lyndon Johnson) until Richard Nixon came into office. At this point, support from Democrats quickly evaporated as the lack of a copartisan in office allowed them to return to their more dovish predispositions and call for an end to the conflict.[22] Republicans, in contrast, stayed more supportive of the war as a fellow Republican now occupied the White House. Thus, we see a large divergence between Republicans and Democrats between 1970 and 1972. Republicans were, on balance, supportive of the 1970 Cambodian Incursion while Democrats opposed it, for example. By 1973 and the signing of the Paris Peace Accords, however, members of both parties were highly opposed to American re-intervention in the conflict (Kissinger 2011*b*).

Systematic Tests: Votes and Polls

The underlying benchmarks utilized in the Vietnam example—roll call votes and public opinion polls—can also be utilized more systemically across the crises in the dataset. As noted, roll call votes are relatively rare. While there are approximately 65 roll call votes related to the use of force in the postwar period, this includes both houses of Congress and thus covers only around 20% of all crises. Separately, public opinion polls were identified for 67 of the crises (35% of the dataset). The Congressional Support Score data and alternative proxies one might consider for congressional sentiment toward the use of force are then tested against these benchmarks.

Use-of-Force Votes

A way to more systematically "test" how well this approach works is to compare the congressional support score yielded by the speech data to the handful of roll call votes we do have regarding use of military force decisions. How well these scores predict vote outcomes can then be examined both in an absolute sense and in relationship to other commonly used measures.

Each of the figures below plots on the X-axis the percent of lawmakers in favor of the use of force in sixty-five roll call votes in postwar crises. The votes include, for example, authorizations for the use of military force in the early Cold War (Formosa, the Middle East, Cuba, and Southeast Asia), and more recent AUMF's such as those passed prior to the Gulf War and the 2001 and 2002 AUMF's. Also included are prominent votes against the use of force, such as the 1973 Case-Church Amendment banning the use of military force in Southeast

[22]Senator Robert Kennedy—seen as the likely Democratic nominee for President in 1968 before his assassination the same year—was highly critical of the Johnson Administration's war effort, and Senator George McGovern—the 1972 presidential nominee for the party—was a long critic of the Vietnam War.

Asia.[23]

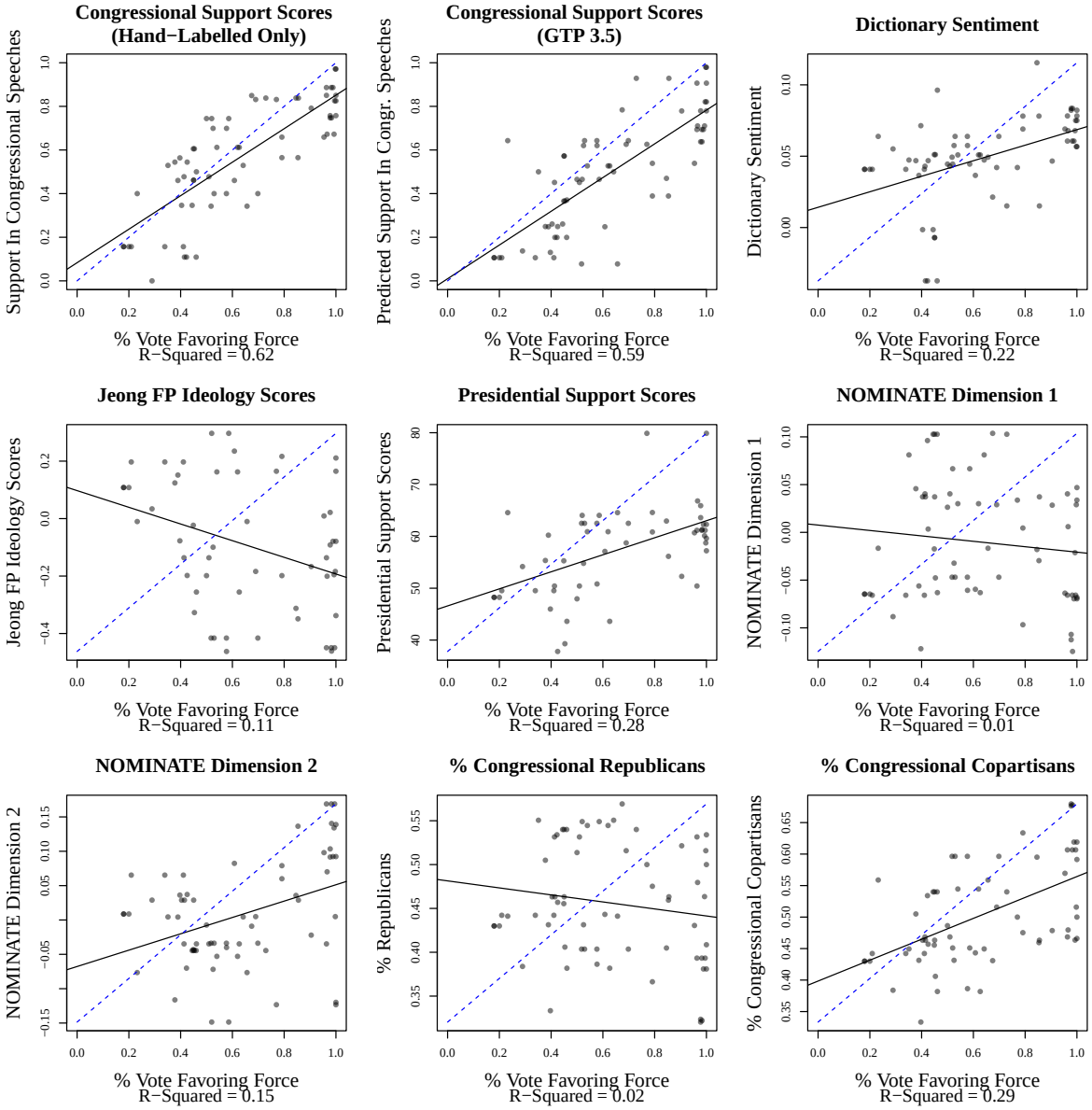

Figure 2.6 Accuracy of Competing Measures in Predicting Use of Military Force Votes

The Y-axis for each of the nine figures, in contrast, varies and consists of different possible metrics used as a proxy for congressional support for the use of military force. An optimally performing measure of congressional support would (theoretically) provide a trend line from the bottom left of the square to the top right (represented by the blue dashed line in each plot), with observations close to the line. Given the continuous nature of the variables on each plot, ordinary least squares regression is used to determine how well each measure predicts use of force vote share. A black trend line for the observations is shown in each figure, and a simple R-squared metric is presented below each plot. The R-squared is a useful measure

[23]For resolutions opposing the use of force, the votes shares are, of course, "flipped".

of how well each variable performs as a proxy for congressional support.

The first plot in the upper left corner shows how well the "congressional support scores" from the speech data predict vote share in these key war votes. Recall, these handlabelled speeches only include those given by foreign policy leaders in Congress. While predictions are clearly imperfect,[24] the R-squared of 0.62 is relatively high. The black trend line is quite close to the blue dashed line representing a "perfect" trend line, and the observations are relatively close to the line. More importantly, looking either at the plot or the R-squared, the proxy clearly outperforms each of its potential competitors.

The second plot similarly utilizes congressional speeches, but attempts to extend the analysis beyond foreign policy leaders—in other words, to include speeches by all members of Congress. Members outside the elite group of foreign policy leaders have much less influence over foreign policy, but given their sheer numbers it is not inconceivable that their opinions could alter the findings yielded by the hand-coded labels of speeches by congressional leaders. A series of deep learning models were tested for their performance in predicted vote shares, and the best performing model was found by utilizing simple zero-shot classification by Open AI's GPT 3.5 (ChatGPT), presented in the top-center plot, above. Congressional support scores were calculated as described above, but with the predicted labels given by GPT 3.5 instead of those given by human research assistants. While the trend line of the data diverges from the ideal line more than in the first plot, the R-squared of 0.59 is still quite high.[25]

The third plot (top right) utilizes the predicted sentiment of speeches from the popular "sentimentr" package in R. This utilizes a standard dictionary method to create an overall polarity score for a speech based off of positive-sentiment and negative-sentiment words and phrases. Standard sentiment packages and dictionaries such as these have a difficult time deciphering support and opposition to the use of military force because politicians advocating for military action often do not utilize "happy" words. This proxy performs far worse than the first two, with a much lower R-squared (0.22). Others have utilized custom dictionaries to

[24] Note, however, that even when the sentiment score does not closely match the vote share, it is not necessarily the case that the sentiment score is the metric missing the true congressional opinion at the time. For example, it is well understood that several of the members of Congress who voted in favor of the 1964 Gulf of Tonkin Resolution had serious reservations. The congressional support score shows this, while the actual vote does not.

[25] Another way to approach the problem of considering speeches from non-foreign policy leaders in Congress was to utilize a supervised model (trained on the hand-labelled speeches) to predict labels for the approximately 75% of congressional speeches that were made by legislators outside the group that was hand-labelled. To this end, a series of Transformer models from the HuggingFace library were trained and tested on the hand-labelled speeches. After hyperparameter tuning, the models were compared for out-of-sample predictive accuracy. Ultimately, a DistilRoBERTa base model was found to maximize predictive accuracy while minimizing computation time. The speech classifications (i.e., whether a speech was in favor of or opposed to the use of force, or whether it was irrelevant) from the model were then used as predicted labels for the non-hand-labelled speeches. Aggregate congressional support scores were then calculated using these labels. Note that others have recently shown (Schub 2022, for example) supervised and dictionary methods are not optimal for determining policy prescriptions—the very task explored here—and that hand-labelling is more appropriate (Schub 2022, pg. 8-10). Nonetheless, while this measure does not perform as well as the scores from the hand-labelled data alone, they were not bad, with an R-squared of 0.46.

good effect in the use of force context (McManus 2017), but for a different aim. McManus uses the dictionary method to measure statements of resolve from Presidents by utilizing both a customized dictionary from prior work (Wood 2012) and additional terms added for her specific purpose. The major difference between presidential rhetoric and congressional speech, however, is that Presidents in a crisis tend to avoid conveying a lack of resolve publicly—regardless of their private thoughts or intentions (Fearon 1995). Thus, because the rhetoric tends to only go in one direction, McManus can reasonably argue that the word "fail" will much more likely be used by the President to say "we will not fail" than "we will fail" (McManus 2017, pg. 211).[26] Members of Congress, on the other hand, are much more willing to speak out against the use of force. The word "fail" in a congressional speech very well could be used in a context conveying opposition to the use of force. It is partially for this reason that others have recently argued dictionary methods are not well suited to determining policy prescriptions in speech data (Schub 2022).

Foreign policy ideal point estimates from Jeong are tested in the next figure (middle row, left) (Jeong 2018, Jeong & Quirk 2019). These scores are available for each member of Congress from 1945-2010, and are intended to represent the hawkishness or dovishness of each member. The median score can be used to represent the hawkishness of the Congress as a whole, and thus plausibly represent congressional support for the use of military force in a crisis occurring during that congressional session. This measure turns out to be a poor proxy, however. Not only is the R-squared quite modest—at 11% compared with the 62% yielded by the speech data—but the predicted relationship is actually in the wrong direction. Here, the more "hawkish" Congresses are predicted to be more opposed to the use of force.

A series of other off-the-shelf metrics are similarly tested, including presidential support scores (Lewis, Poole, Rosenthal, Boche, Rudkin & Sonnet 2022), and NOMINATE dimensions 1 and 2 (Lewis et al. 2022).[27] Of these, presidential support scores perform the best, yielding an R^2 of 0.26, and in the correct direction. Nominate Dimension 1, however, exhibits little relationship with supporting the use of force in these key war votes, while Dimension 2 yields an R^2 of only 0.16. Again, the "congressional support score" estimates from the speech data thus yield a better proxy of vote share in actual use of force votes than any of these possible alternatives.

Lastly, we consider two key metrics that have been used in the political science literature as deliberate proxies for congressional support for the use of force. The first is the partisan composition of Congress, in terms of Democrats vs. Republicans. The theory behind this measure is that Republican members of Congress have a reputation for being more hawkish

[26] "For example, Presidents often say, 'we will not fail,' but almost never say, 'We will fail.' Therefore, 'fail' is considered to be a word associated with resolve." (McManus 2017, pg. 211)

[27] Again, the median scores for Congress as a whole at that time are utilized.

than their counterparts across the aisle.[28] Arguably, using the percent of Congress made up of Republicans can be viewed as a proxy for how supportive Congress is for the use of military force (McManus 2017). Interestingly, however, with an R^2 of 0.02 (and in the wrong direction) the partisan composition of Congress seems to exhibit little relationship with congressional support for the use of force revealed in roll call votes. Others have recently noted that while Democrats have a reputation of being more dovish than their Republican counterparts, the actual empirical evidence of this claim is limited (Kertzer, Brooks & Brooks 2021).

Second, others have focused not on the absolute partisan composition of Congress, but instead on the amount of copartisans a President has on the Hill (Howell & Pevehouse 2007, Kriner 2010).[29] Howell and Pevehouse find that a larger number of copartisans in Congress predicts an increased likelihood of initiating major uses of force in the postwar period (2007).[30] Kriner similarly finds the duration of American uses of force are predicted by the percent of the legislature composed of lawmakers in the President's party (2010). The proportion of Congress made up of presidential copartisans does yield a positive relationship with the support shown for the use of force in roll call votes, and this measure seemingly outperforms each of its off-the-shelf competitors. Nonetheless, with an R^2 of 0.29 this still leaves much of the variance unexplained and suffers from many of the drawbacks highlighted above.

Public Opinion Polls

A similar test of performance can be undertaken by comparing the potential proxies to public support polls taken during the crises. While congressional sentiment need not necessarily align with that in the public at large, institutional incentives for lawmakers mean that the two measures should correlate.

The plots below test the same nine proxies for their performance in predicting public support for military intervention in each of sixty-seven crises, ranging from the 1948 Berlin Airlift to the 2022 crisis in Ukraine. Note that while some of these crises are also covered by the roll call votes explored above, the majority are not. Thus, this is a substantially different test of performance than that analyzed above.

In general, each of the proxies has a more difficult time predicting public opinion than congressional roll call votes—although this is not surprising given that congressional sentiment need not perfectly align with popular sentiment, and roll call votes would thus likely be a

[28] As but one example, consider the Afghanistan "surge" early in the Obama Administration. Obama anticipated "There won't be universal applause on Capitol Hill", because "Everyone knew that the Democrats were going to be the biggest naysayers, and the Republicans the biggest supporters," (Woodward 2010, pg. 326).

[29] Recent research suggests both copartisanship with the President and Republican Party identification separately predict support for the use of force by members of Congress (Böller 2021).

[30] Gowa, however, finds no relationship between divided government and proclivity to use military force (Gowa 1998).

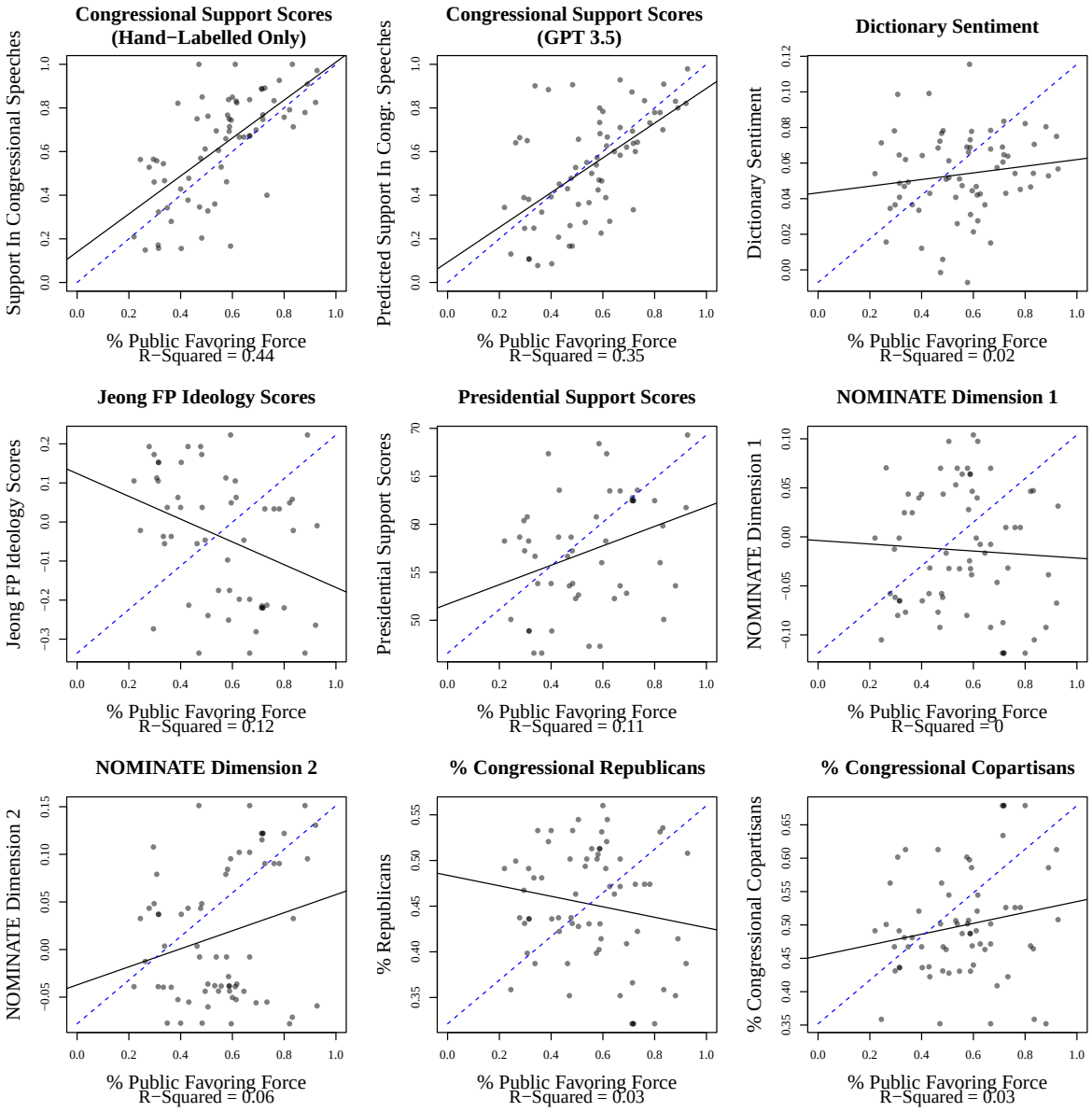

Figure 2.7 Accuracy of Competing Measures in Predicting Public Support for the Use of Military Force

better proxy than public opinion polls. Nevertheless, the relative performance of each of the nine proxies reflects a similar pattern as the prior figure: the Congressional Support Scores far outperform any of the potential other measures.

The scores derived from the hand-labelled data of Foreign Policy Leaders in Congress (top left) yields an R-squared of 0.43, while those yielded by utilizing GPT 3.5 to consider all speeches (top center) exhibits slightly worse performance with an R-squared of 0.35.[31] Of the other seven measures, the next closest performance is given by Presidential Support Scores with a R-squared of 0.11. The rest of the available proxies either barely correlate with public opinion—dictionary based sentiment analysis (R-squared of 0.02), NOMINATE Dimension 1 (R-squared of 0.00), NOMINATE Dimension 2 (R-squared of 0.06), % Copartisans (R-squared of 0.03)—or correlate negatively with public opinion votes. Foreign policy ideology scores and the percent of Republicans in Congress both show a negative correlation with public support for the use of military force in these historical crises.

In sum, each of the potential off-the-shelf proxies for congressional support for the use of force is substantially outperformed by the scores derived from the speech data—regardless of whether we use roll call votes or public opinion polls as our baseline to measure proxy performance. While these "congressional support scores" are imperfect, they are far better than any other measure currently available. Because those scores yielded by simply utilizing the hand-labelled speeches of foreign policy leaders had the best performance in predicting vote shares or public opinion, these are utilized analysis below. Analyses were rerun utilizing the scores yielded by the GPT 3.5 labels and were found to be very similar.[32]

Part II: Congressional Support and Presidential Willingness to Use Force

Now having a measure of congressional sentiment over the potential use of force, we first consider the relationship between congressional support and the willingness of the President to employ American combat power. The Imperial Presidency thesis suggests that the standing army—and other factors—makes Congress irrelevant, while the model presented in the last chapter implied that the maximum amount of force a President would actually be willing to employ would be proportional to the amount of support displayed by Congress for the operation (Hypotheses 1, 2, 5, & 6).

The first set of hypotheses thus focus on the use of force as the dependent variable.

[31] Those yielded by utilizing the DistilRoBERTa base model described above to predict labels for the non-hand-labelled speeches exhibited similar performance with an R-squared of 0.38.

[32] Similarly, the scores yielded by utilizing the DistilRoBERTa base model were also utilized and yielded similar results.

This can be operationalized as either whether (binary) force is used, or how much (continuous) forced is used. Starting with informal congressional sentiment, we have:

> **Hypothesis 1** *The President will be more likely to engage in combat when there is greater support for the use of military force in Congress. (DV: binary variable—use/ not use force)*

> **Hypothesis 2** *The President will be more likely to use more force when there is greater support for the use of military force in Congress. (DV: continuous variable—scale of use force)*

The next two hypotheses are analogous to Hypotheses 1 and 2, but instead focus on the effect of formal authorization rather than informal sentiment. The model presented in Chapter 1 suggested that the presence of a legally binding joint resolution passed by Congress would give the President substantial political cover should the use of force end poorly—thus encouraging the President to use force and use more force, even when already accounting for informal congressional sentiment.

> **Hypothesis 4** *Ceteris paribus, the presence of formal authorization for the use of military force will make a President more likely to engage in combat (DV : binary variable—use/ not use force)*

> **Hypothesis 5** *Ceteris paribus, the presence of formal authorization for the use of military force will make a President more likely to use more force (DV : continuous variable—scale of use of force)*

Figure 2.8 depicts U.S.-relevant crises plotted by the sentiment expressed in Congress for the use of force versus the amount of force actually employed.[33] The Y-axis ranges from crises in which the U.S. took no action whatsoever (or, when it limited its reaction to mere diplomatic protest) to full scale war involving more than one thousand U.S. combat fatalities. Crises above the horizontal dashed line represent conflicts in which American forces engaged in actual combat, while those below the line consist of crises in which American action was limited to that short of armed conflict. Actions short of armed conflict are arranged in order of escalating risk of American casualties.

First, note that lack of observations in the upper left quadrant of the figure. This quadrant is where we should see evidence of the Imperial Presidency—i.e., Congress expressing opposition to the use of force, but the Commander-in-Chief choosing to use it anyway. Instead,

[33]Note that if the ICB dataset split a war into multiple crises—the Korean and Vietnam Wars, for example—only the first crisis is included on the plot. In the case of Korea, congressional support remained quite strong through the end of the conflict, while for Vietnam congressional support slowly eroded from strong support to strong opposition. Consistent with the theory, as opposition in Congress grew, crisis responses by American Presidents became more and more tailored to avoid American casualties (e.g., the 1971 Laos intervention or the Linebacker and Linebacker II operations in 1972 that lacked American "boots-on-the-ground").

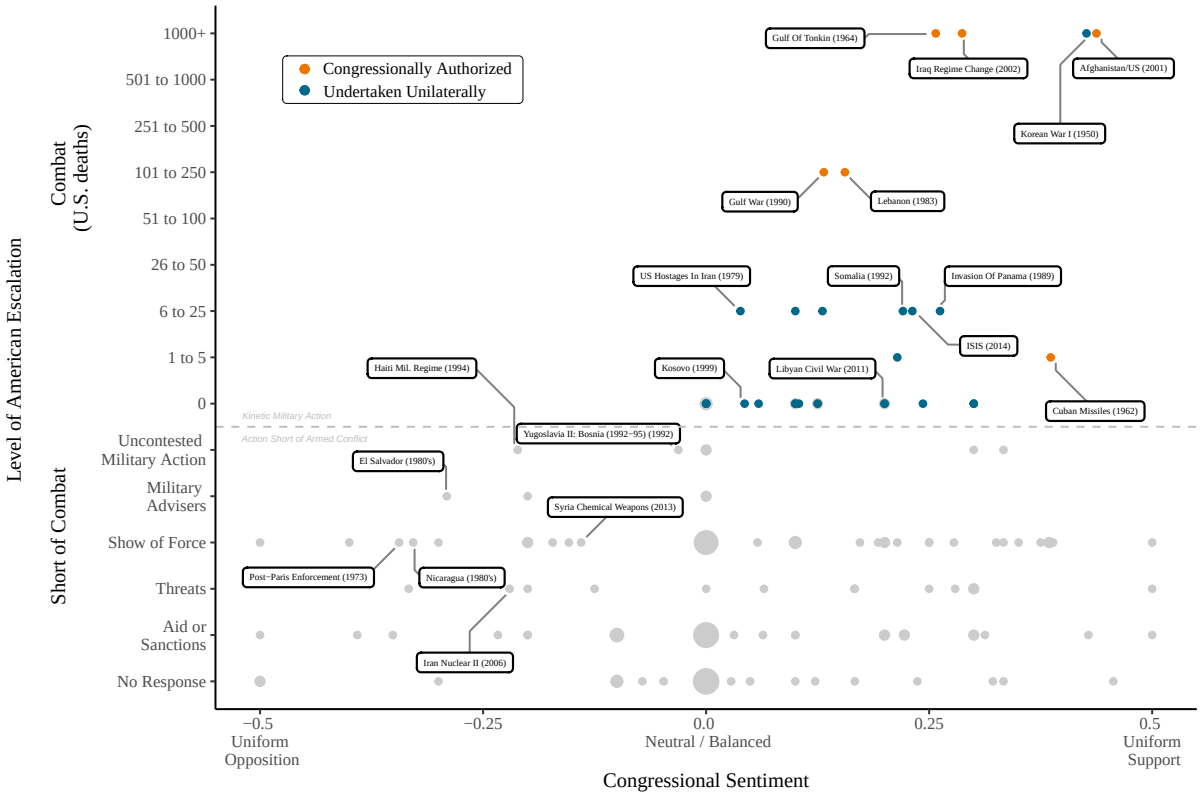

Figure 2.8 Level of Force Employed by Support in Congress for Use of Military Force in Crisis

we see no evidence of this when it comes to initial use of force decisions.[34] Instead, we see that—almost without exception—American engagement in combat was only undertaken when it was supported by a majority in Congress *even if members of Congress did not formally vote on the use of force.* The 1999 Kosovo and 2011 Libya interventions are good illustrations of this. While neither received formal, legally binding, approval from Congress, both had

[34]The place where we do find more evidence of it is in a major war that Congress initially supported but then turned against—e.g., Vietnam and Iraq. But because we are only considering the decision to enter conflict here, decision-points made after war has already begun are excluded. The Vietnam sentiment shown in the plot above includes sentiment around the Gulf of Tonkin incident and in the first seven months of 1965. Congressional support for the war was quite high—overwhelmingly in favor, albeit with a substantial minority in strong opposition—through the initial escalations in 1965 and beyond (Gelb & Betts 2016). Once Congress turned against the war by the time of Nixon's inauguration in 1969, we see Nixon continue the fight rather than simply withdraw—but even here there is strong evidence that Nixon's willingness to sustain casualties was conditioned by congressional support or opposition. As Congress turned against the war, Nixon rapidly reduced the number of American soldiers in Southeast Asia and consequently reduced American casualties immensely. Nixon created an uproar when he launched an incursion in Cambodia in 1970, but the action was actually authorized by the Gulf of Tonkin Resolution (Ely 1995) and was aimed at *reducing* American casualties (Kissinger 2011*a*). Notably, when faced with a similar situation in Laos the next year—this time, however, facing a congressional ban on ground troops instead of the arguable authorization he had for Cambodia—Nixon consciously avoided a similar operation. Some of Nixon's most infamous actions—Operations Linebacker I & II—were *air* operations aimed at minimizing U.S. casualties. Lastly, likely the clearest evidence of all that even Nixon was not the Imperial President he claimed to be was his inability to act against North Vietnamese violations of the 1973 Paris Peace Accords (Kissinger 2011*a*). Nixon consciously sought to convey an image of an Imperial President, but it should be recognized he had strong incentives to do so (Jervis 1970). See Chapter 5 for an extensive discussion of the Vietnam War.

clear bipartisan support. The Korean War—notably the *only* major use of force undertaken by a President without formal approval—had enormous congressional support across political parties.

When facing a lack of congressional support, in contrast, Presidents appear highly reluctant to engage in operations anticipated to create American combat fatalities. While Clinton deployed military force in two crises with little congressional support—the 1994 Haiti intervention clearly contradicted the will of Congress, while the post-Dayton Accords deployment to Bosnia had divided support (Schultz 2003)—neither yielded a single American fatality, nor even saw American troops actually engaged in combat.[35] Consider, in contrast, the administration's quick pullout from Somalia once support evaporated in the legislature after the "Black Hawk Down" incident, or the White House's omission to intervene in the Rwandan genocide due to anticipated resistance from Congress (Clinton 2005).

One developing methodology to test for the existence of a strong constraint on the President by Congress is Necessary Condition Analysis (Dul 2015). Because this is a less well-known technique, it is presented in Appendix IV. The core result from the analysis is that informal congressional sentiment does appear to be a very strong candidate as a necessary condition for the escalation level the President chooses to reach. Multivariate statistical models similarly suggest a strong relationship between congressional support for the use of military force and a President's willingness to actually engage in combat. Below, Table 2.5 presents a series of probit models utilizing robust standard errors in order to account for heteroscedasticity in the data. The unit of observation is the crisis-dyad.[36]

Dependent Variable

Here, the dependent variable is binary: whether the United States actually engages in combat or not in the crisis. This was determined by utilizing the ICBe dataset (Douglass, Scherer, Gannon, Gartzke, Lindsay, Carcelli, Wilkenfeld, Quinn, Aiken, Navarro, Lund, Murauskaite & Partridge 2022).

Independent Variables

Congressional Sentiment: As described above, the "congressional support score" is measured by dividing speeches in favor of the use of force by all speeches relevant to the use of

[35] In the case of Bosnia, the Clinton administration notably refused to deploy ground troops during the actual fighting. Instead, it delayed any deployment until after the Dayton Peace Accords in 1995. Moreover, while House Republicans were mostly against the deployment, it had significant support in the Senate—most notably from soon-to-be Republican presidential candidate Bob Dole (Hendrickson 2002).

[36] Thus, if the U.S. faces two adversaries in the same crisis, this will yield two separate observations. All tables are rerun utilizing individual crises as the unit of observation, and this yields very similar results.

force, in support or in opposition. In crises that saw U.S. forces engaged in combat, speeches are limited to those that occur before combat commences.[37]

Legal Status: The formal legal status regarding the use of force in the crisis. Specifically, this additional explanatory variable is coded as "1" if force has been formally authorized by the legislature via a legally binding joint resolution, "-1" if force has been formally prohibited via a legally binding joint resolution, and "0" otherwise.[38]

Congressional Copartisans: The percent of Congress made up of Representatives and Senators of the same political party as the President, measured in the year the crisis is triggered.

Congressional Republicans: The percent of Congress made up of Republicans Representatives and Senators, measured in the year the crisis is triggered.

Relative Capabilities: In order to create an estimate of the proximate distribution of power (i.e., adjusted for distance), we simply divide a state's power by the distance[39] to the location of potential conflict.

$$Proximate\ Distribution\ of\ Power = \frac{\frac{State\ 1\ CINC}{distance_1}}{\frac{State\ 1\ CINC}{distance_1} + \frac{State\ 2\ CINC}{distance_2}} \tag{2.1}$$

Note that accounting for the loss-of-strength gradient when measuring relative power greatly increases model fit. Nonetheless, models rerun using the more conventional measure of relative power (i.e., $\frac{State\ 1\ CINC}{State\ 1\ CINC\ +\ State\ 2\ CINC}$) yield substantially similar results.[40]

Year: To account for possible trends over time, the start year of the crisis is included.

Political Polarization: Political polarization in Congress is measured by taking the difference in party mean ideological ideal points. Specifically, this consists of the distance between NOMINATE Dimension 1 averages for each party (Lewis et al. 2022). This is calculated for each chamber of Congress separately, so the average of House and Senate polarization is utilized.

Presidential Approval: Percent of Americans approving of the President's job performance in the Gallup Poll most proximate to the date the crisis is triggered.

[37] This is important, because information tends to be revealed once conflict begins (Baum & Potter 2008, Wagner 2000), and members of Congress could change their position as a certain outcome comes to look more likely.

[38] Alternative coding schemes were also run as robustness checks. These included a simple binary coding—"1" if force has been formally authorized by the legislature via a legally binding joint resolution and "0" otherwise—and a five-point ordinal scale also taking account of non-binding legislation. (Binding joint resolutions authorizing the use of military force were coded as a "2", while resolutions lacking legal force—yet still supporting the use of force—are coded as "1". In contrast, legally binding prohibitions on the use of force were coded as "-2", while congressional resolutions clearly opposed to the use of force but lacking legal force were coded as "-1". Crises in which there were no relevant resolutions regarding the use of American military force were coded as "0".) Substantially similar results were yielded in each case.

[39] Note the "distance" measured here is that between a state's capital and the location of potential conflict. It is not the distance between the two capitals and thus differs for both states.

[40] One can also use log(distance) instead of raw distance in calculating the proximate distribution of power. Again, this still yields substantially similar results.

Unemployment Rate: Monthly unemployment rate from U.S. Bureau of Labor Statistics.

Cold War: Following Howell and Pevehouse (2007), a dummy variable for crises occurring prior to 1990.

U.S. to Crisis Distance: Distance between Washington, D.C. and the location of the crisis.

Concurrent War: Dummy variable with a value of "1" if the crisis takes place at the same time as a major war for the United States. This includes crises occurring contemporaneous to the Korean, Vietnam, Gulf, Afghan, and Iraq Wars.[41]

Crisis Part of Continuing War: Dummy variable with a value of "1" if the crisis takes place as part of a continuing major war for the United States. For the purposes of the ICB dataset utilized here, this only applies to crises in the Korean and Vietnam Wars that took place after the initial North Korean invasion of South Korea and the Gulf of Tonkin incident, respectively. As a robustness check, these cases can also simply be dropped from the dataset—in which case similar results are still found.

Table 2.5 Effect of Congressional Support on Willingness to Use Force (Binary DV)

	(1) Congr. Sent.	(2) AUMF	(3) % Copart.	(4) % Repub.	(5) All
Congressional Sentiment	2.295***				2.031**
	(0.622)				(0.689)
Legal Status		1.799***			1.815***
		(0.324)			(0.332)
% Copartistans			1.324		2.401
			(1.301)		(2.084)
% Republicans				0.473	2.869
				(2.313)	(3.683)
Relative Power	0.779	0.675	0.457	0.433	0.985
	(0.498)	(0.506)	(0.420)	(0.419)	(0.583)
Year	0.040	0.031	0.019	0.016	0.064
	(0.022)	(0.032)	(0.024)	(0.023)	(0.033)
Political Polarization	-5.839	0.603	-1.066	-0.918	-6.237
	(5.175)	(6.912)	(5.153)	(5.256)	(6.937)
Presidential Approval	0.007	0.004	0.007	0.007	0.004
	(0.005)	(0.007)	(0.005)	(0.005)	(0.007)
Unemployment Rate	-0.107	-0.006	-0.052	-0.046	-0.049
	(0.087)	(0.085)	(0.082)	(0.088)	(0.091)
Cold War	-0.382	0.250	-0.276	-0.285	0.274
	(0.583)	(0.725)	(0.594)	(0.606)	(0.736)
Distance from U.S.	-0.000	0.002	-0.000	-0.000	0.001
	(0.004)	(0.004)	(0.004)	(0.004)	(0.004)
Concurrent War	0.086	0.339	0.129	0.185	0.259
	(0.304)	(0.335)	(0.301)	(0.300)	(0.338)
Crisis Part of Continuing War	2.972***	3.631***	2.608***	2.524***	4.318***
	(0.523)	(0.581)	(0.427)	(0.431)	(0.676)
Observations	210	210	210	210	210
AIC	179.578	157.967	190.389	191.187	155.421
BIC	216.396	194.785	227.208	228.005	202.280

Standard errors in parentheses
* $p < .05$, ** $p < .01$, *** $p < .001$

[41] Ending with the final pullout of U.S. forces from Iraq in December 2011.

Results

The results are displayed in Table 2.5. The first model tests the relationship between informal congressional sentiment over the use of force (i.e., the "congressional support score"), and whether force ends up being utilized in the crisis. Notably, the relationship is highly significant, and in the anticipated direction. The only other covariate that shows a significant relationship with employing force is if the crisis is part of an ongoing war for the United States. It is, of course, quite intuitive that if American forces are already committed to a war, they will be used in response to a new crisis within the conflict. Other variables—including the relative capabilities of the U.S., political polarization, and presidential approval—exhibit no relationship with the dependent variable.

The second model uses a similar model specification, but utilizes formal authorization status instead of congressional sentiment. Similar to the first model, we see that formal congressional approval (or prohibition) of the use of force strongly predicts whether force is actually utilized. The third and fourth models use alternative measures of congressional support utilized in the literature. Following Howell and Pevehouse (2007) and Kriner (2010), Model 3 uses the percent of Congress consisting of copartisans of the President as a proxy for congressional support. While the coefficient is in the expected direction, it is insignificant even at the $p < 0.1$ level. Following McManus (2017), Model 4 uses, instead, the percent of Congress made up of Republicans. This measure is, again, in the anticipated direction but far from significant. The newly introduced congressional support scores from the speech data thus seem to much better predict the use of force than other measures utilized in the literature.

The final model includes all four of these potential measures of congressional support for the use of military force, and yields similar results. Congressional Support Scores and legal authorization are both highly significant predictors of the use of military force, while the percent of presidential copartisans and Republicans in the legislature are insignificant predictors. The findings of this table thus confirm Hypotheses 1 & 4: Presidents are more likely to engage in combat when there is greater support for the use of military force in congressional sentiment (H1) and when they have legal authorization from Congress to do so (H4). In contrast to the Imperial Presidency thesis, we thus find strong evidence that the decision to use military force is highly congruent with the will of the legislature.

While Table 2.5 utilizes a binary dependent variable (use of force/ no use of force), one can also utilize a continuous measure representing the scale of the use of force (including, as its minimum value, no use of force) in order to test Hypotheses 2 & 5. Here, the dependent variable is the scale of U.S. combat involvement in the crisis. This was determined by utilizing the ICBe dataset (Douglass et al. 2022) and coded on a "0" to "9" scale as follows:

0. No combat

1. 0 U.S. combat deaths
2. 1-5 U.S. combat deaths
3. 6-25 U.S. combat deaths
4. 26-50 U.S. combat deaths
5. 51-100 U.S. combat deaths
6. 101-250 U.S. combat deaths
7. 251-500 U.S. combat deaths
8. 501-1000 U.S. combat deaths
9. Over 1000 U.S. combat deaths

Note the difference between a coding of "0" and "1" is that for a coding of "0", U.S. forces did not engage in combat, while for a "1", U.S. forces engaged in combat but suffered no combat fatalities.

Two tables analogous to Table 2.5, but with the "scale" of the use of force as the dependent variable, are provided in Appendix IV. The first utilizes OLS, while the second treats the dependent variable as an ordered categorical variable and utilizes an ordered probit regression. Both present nearly identical results, and the results are similar to those yielded by the models with the binary dependent variable. Both find congressional sentiment and legal status to be significant and in the anticipated direction. % Copartisans, while insignificant when utilizing the binary dependent variable, now exhibits significance when considering the scale of the use of force.[42] It loses significance, however, once congressional sentiment and legal status are included in the model.

Figures 2.9 & 2.10, below, plot the marginal effect of congressional sentiment on the predicted scale of the use of force from the OLS model. Figure 2.9 utilizes the full dataset,[43] while Figure 2.10 runs the same model specification but on a smaller sample consisting only of actual uses of force. Figure 2.9 shows a significant yet modest effect of congressional sentiment, but it should be kept in mind that the great majority of crises do not even end up escalating to the use of force. Notice, for example, the plethora of crises in the bottom-right quadrant of the Figure 2.8 scatter plot. In many of these cases, force was not even necessary because the adversary backed down in the crisis. Take, for example, the two Berlin crises under Eisenhower and Kennedy, respectively. In both of these cases, congressional sentiment strongly favored a strong stand, and the Presidents acted accordingly. Yet in neither of these cases was force actually required because the Soviets backed down before effectively blockading West Berlin as threatened.

Figure 2.10, accordingly, limits the observations to those in which force was utilized[44]—ranging from uncontested military action yielding neither combat nor casualties (e.g.,

[42] While Howell and Pevehouse find no relationship between % Copartisans and the use of force when including "minor" uses of force, they do find a relationship when subsetting the data to only include larger interventions (Howell & Pevehouse 2007).

[43] Specifically, Table A2, Model 5 in Appendix IV.

[44] Another option is to not simply drop all crises in which force was not utilized, but to only drop those

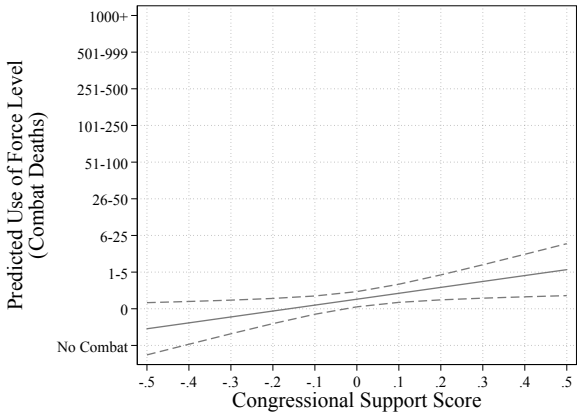

Figure 2.9 Predicted Force Employed by Level of Congressional Support (All Crises)

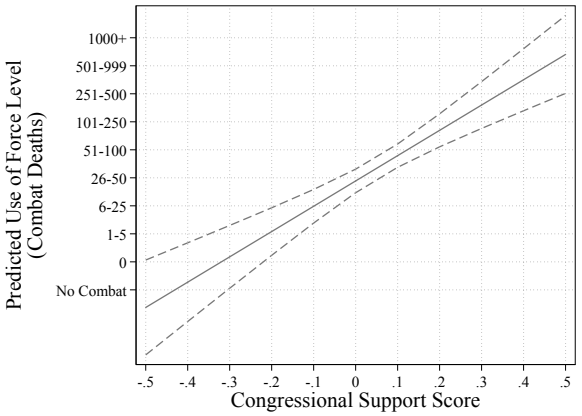

Figure 2.10 Predicted Force Employed by Level of Congressional Support (Uses of Force Only)

Haiti 1994) all the way to full scale wars such as Vietnam or Korea. Here, the predicted effect is massive: when Congress is fully opposed to the use of force, force is not undertaken, while when Congress is uniformly in support of an operation, the President is willing to undertake full scale war involving thousands of combat deaths.

Figures 2.11 & 2.12 similarly depict the predicted marginal effect from the OLS model[45] of legal authorization on the scale of the use of force. Figure 2.11 utilizes the full dataset, while Figure 2.12 limits the sample to those consisting of actual uses of force.

Both figures depict large effects. When considering all crises in Figure 2.11, it appears that Presidents do not use force in disputes in which the use of force has been forbidden. Consider Vietnam after Congress passed the Case-Church Amendment in the Summer of 1973, which prohibited the use of military assets in Southeast Asia. While the Nixon Administration tried to publicly exude a willingness to defy the ban and use force to uphold the Paris Peace Accords, it privately acknowledged it was not actually willing to do so (Kissinger 2011*b*). When force is formally authorized, in contrast, Presidents are much more willing to employ the full might of the U.S. military.

Figure 2.12—limited to actual uses of force—exhibits a similar story. Formally authorized uses of force are much larger than those that lack such authorization. Recall that after the Korean War in the early 1950's every full scale war fought by the United States occurred pursuant to formal congressional approval (Griffin 2013).

Figure 2.9-2.12 thus provide strong evidence in favor of Hypotheses 2 & 5: Presidents are more willing to utilize a larger amount of force in crises with greater informal congressional

in which force was not utilized and the U.S. still "won" (e.g., again, the Berlin crises). This yields results somewhere in between the two presented plots: a clear and significant upward trend, but not as large as that found in the "uses of force only" plot.

[45]Specifically, Table A2, Model 5 in Appendix IV.

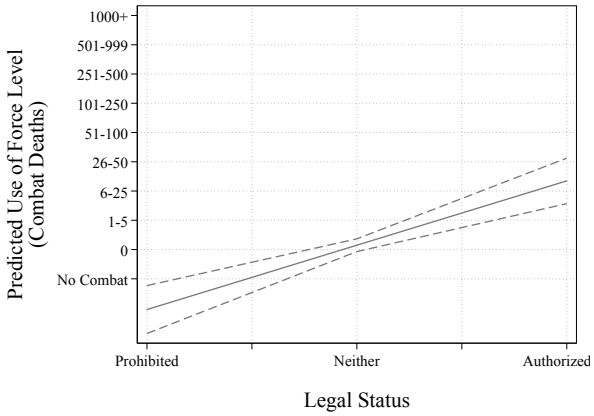

Figure 2.11 Predicted Force Employed by Legal Status (All Crises)

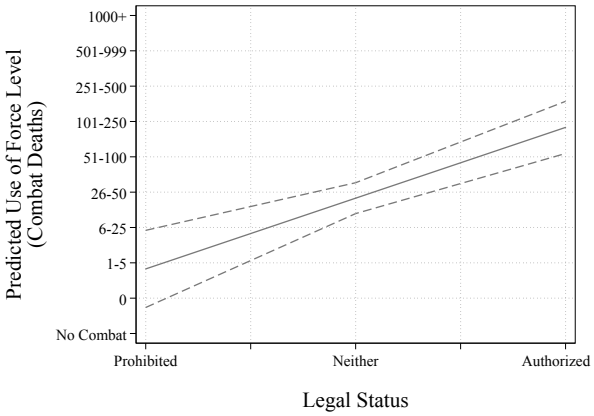

Figure 2.12 Predicted Force Employed by Legal Status (Uses of Force Only)

support, and similarly use more force when they have formal legal authorization from the legislature.

One possible criticism of the analysis presented above is that perhaps Congress and the President simply want the same thing, and that the close relationship between congressional support and use of American force is simply spurious: the President is making their decision regardless of Congress's wishes, and it just so happens the President never wanted to use force when Congress also had no desire for it.[46] A plethora of cases studies in the following three chapters directly investigate this and provide unambiguous evidence: Congress and the President frequently disagree over the wisdom of a potential use of force. The White House constantly attempts to keep a pulse on attitudes on the Hill to see what legislators might support or oppose, and adjusts its own plans and proposals in light of this anticipated congressional reaction. Chapter 4, specifically, provides strong evidence of several cases in which a lack of congressional authorization deterred Presidents from intervening in conflicts.

Part III: The Effect of Congress on Crisis Outcomes

Next, we consider the effects of the domestic war powers contest on foreign policy. The model presented in the previous chapter suggested that a President's disinclination to employ American military force above a certain level (given a specific level of congressional support) would have an effect internationally (Hypotheses 3 and 6). This set of hypotheses, therefore, now focuses on the outcome of the crisis as the dependent variable.

As implied by the model, the amount of force a President is willing to employ should be proportional to the amount of support in Congress for the use of American military force.

[46]The model presented in Chapter 1 is fundamentally a deterrence model. As is well recognized, deterrence is hard to observe—e.g., maybe the Soviets never had any intention of attacking Western Europe.

Anticipating this, bargains between the U.S. and adversaries will be reached under the shadow of congressional sentiment (i.e., threats to use major military force in the face of congressional opposition will not be viewed as credible, and factored into the bargaining position of states).

Hypothesis 3 *Crises in which the Congress exhibits greater support for the use of American military force will be more likely to yield better outcomes for the United States. (DV: ordered categorical variable—outcome)*

Again, while this hypothesis focuses on informal sentiment in Congress, the next looks at the formal legal status of the use of force. Hypothesis 6 suggests that the formal legal status of a possible use of force would have an effect even beyond the informal sentiment conveyed in Congress.

Hypothesis 6 *Ceteris paribus, the presence of formal authorization for the use of military force will yield better outcomes for the United States. (DV: ordered categorical variable—outcome)*

If crises mature to the point where military force is used, the amount of power the United States actually employs will be tempered by congressional sentiment. Thus, in these actual conflicts, congressional support will affect the likelihood of victory. Furthermore, congressional sentiment will have an effect even short of actual armed conflict. If U.S. adversaries understand the political limitations congressional sentiment has on the President, the bargains they are willing to entertain will be effected by the sentiment they witness emanating from the legislature. Thus, regardless of whether a crisis reaches the point of actual combat on the part of American forces, congressional sentiment should affect the outcome of the crisis for the United States.[47] Below, a series of ordered probit models is presented to test Hypotheses 3 & 6. The unit of observation is the crisis-dyad from the dataset described above.

Dependent Variable

Here, the dependent variable is the outcome of the crisis from the perspective of U.S. interests. Following McManus (2017), this is coded as a three-level ordered variable. Here, victory is coded a "1", compromise or stalemate as a "0", and defeat as a "-1". Where the U.S. is coded as a crisis actor in the ICB dataset, the outcome coding for the United States is used. Where the United States is not a direct actor (e.g., the 1975 Fall of Saigon), the outcome coding for the U.S. ally or protégé is used.

[47] Crises in which the U.S. utilizes force and those resolved short of force are also analyzed separately, in Appendix IV.

Independent Variables

Most variables are already described above, with the exception of the following:

Speeches per Day: This variable simply consists of a ratio created by dividing the number of speeches relevant to the use of military force in the specific crisis by the number of days in the crisis. This thus serves as a proxy for the amount of attention given in Congress to the crisis.

Crisis Days: Simple measure of days between beginning and end of crisis.

Polity Score: Polity2 score that measures political regime type on a 21-point scale ranging from -10 (hereditary monarchy) to +10 (consolidated democracy).

Level of U.S. Involvement: The level of U.S. involvement in a crisis attempts to measure the amount of fatalities the U.S. has incurred or risks incurring in a crisis. Codings from the International Crisis Behavior events (ICBe) dataset (Douglass et al. 2022) were used to determine the most escalatory action undertaken by the United States in the course of the crisis (Note that this is the same variable displayed on the Y-axis of the Figure 2.8 scatter plot). This was coded on a 15-point ordinal scale as follows:

1. No military action taken (e.g., mere diplomatic protest)
2. Aid or sanctions utilized
3. Threats absent deployments
4. Show of force or military exercise
5. Military advisors outside of combat
6. Uncontested military action (e.g., occupation without resistance)
7. 0 U.S. combat deaths
8. 1-5 U.S. combat deaths
9. 6-25 U.S. combat deaths
10. 26-50 U.S. combat deaths
11. 51-100 U.S. combat deaths
12. 101-250 U.S. combat deaths
13. 251-500 U.S. combat deaths
14. 501-1000 U.S. combat deaths
15. Over 1000 U.S. combat deaths

Note that combat—i.e., actual hostilities—only exists at codings 7 and above, while codings 1-6 consist of measures short of actual armed conflict on the part of American forces.

Results

A series of ordered probit regressions is presented in Table 2.6, below. The first model simply includes the congressional support score in a crisis as the sole explanatory variable, and confirms the expected relationship between congressional support for the use of military force and successful crisis outcomes for the United States.[48] The second model similarly does so, but

[48]Recall that speeches are limited to those made prior to the use of force. The potential for reverse causation is considered in detail below.

with legal authorization instead of informal congressional support. The third model includes both congressional sentiment and legal authorization as explanatory variables. This model suggests that each explanatory variable has an independent contributory effect on conflict outcome, and gives tentative evidence in favor of Hypotheses 3 & 6. Not only does more supportive congressional sentiment predict better outcomes (H3), but the U.S. is more likely to achieve victory in crises that are formally authorized by Congress, even after controlling for informal congressional sentiment (H6).

Table 2.6 Relationship between Congressional Support and Crisis Outcome

	(1)	(2)	(3)	(4)	(5)	(6)
Congressional Sentiment	1.423***		1.140***	1.367***	2.052***	1.965***
	(0.370)		(0.345)	(0.355)	(0.474)	(0.483)
Legal Status		0.908***	0.805***	1.063***	1.247***	1.075***
		(0.222)	(0.223)	(0.226)	(0.239)	(0.228)
Speeches per Day				-0.301	-0.345	-0.440
				(0.189)	(0.231)	(0.312)
Crisis Days				-0.001*	-0.001*	-0.001*
				(0.000)	(0.000)	(0.000)
Relative Power				0.864**	1.007**	0.948**
				(0.279)	(0.316)	(0.324)
% Copartistans					-6.218***	-6.449***
					(1.881)	(1.915)
% Republicans					-9.076**	-9.200**
					(2.850)	(2.845)
Year					-0.002	-0.000
					(0.017)	(0.018)
Political Polarization					-1.166	-1.688
					(3.378)	(3.524)
Presidential Approval					-0.005	-0.005
					(0.004)	(0.004)
Unemployment Rate					-0.187**	-0.177*
					(0.070)	(0.070)
Cold War					-1.010*	-0.967*
					(0.455)	(0.465)
Distance from U.S.					-0.008	-0.007
					(0.004)	(0.004)
Concurrent War					0.288	0.246
					(0.225)	(0.224)
Crisis Part of Continuing War					-0.389	-0.888*
					(0.342)	(0.451)
Adversary Polity Score					-0.025	-0.022
					(0.020)	(0.020)
U.S. Escalation Level						0.075
						(0.050)
Observations	210	210	210	210	210	210
AIC	422.128	412.940	406.687	392.018	380.569	378.801
BIC	432.170	422.982	420.076	415.448	440.817	442.396

Standard errors in parentheses
* $p < .05$, ** $p < .01$, *** $p < .001$

The fourth and fifth models include additional controls in order to test the robustness of the findings. For example, it might be important to control for how many speeches related to the possible use of American military force were actually given in the crisis. To this end, "speeches per day" and "crisis days" variables are included in the fourth model. Relative power is also included in the model, as this has a strong potential to affect the outcome of a crisis. Unsurprisingly, relative power exhibits a positive relationship with the probability of

victory, but even after controlling for these factors little changes with regard to the relationship between congressional support and conflict outcome.

The fifth model additionally controls for a variety of other variables, including the possibility of a time trend by year, the amount of presidential copartisans and Republicans in Congress, and political polarization. Other domestic factors such as presidential approval and the U.S. unemployment rate are also included, as is the Polity2 score (i.e., regime type) of the adversary in the dyad. Distance between the U.S. and the crisis is also controlled for because this is one of the best predictors of U.S. success in international disputes (Hulme & Gartzke 2021). Dummy variables are additionally included for the Cold War, whether the crisis takes place concurrent to a full scale U.S. war somewhere else on the globe, and whether the crisis is part of an ongoing war. Notably, congressional sentiment and formal authorization still predict better outcomes for the U.S. even after including all of these possible confounds.

Note that the coefficient on congressional support has actually grown stronger, while the coefficients on the percent of Republicans and copartisans in Congress is actually negative—the opposite of what one might expect given the evidence that Republicans and presidential copartisans are more likely to support the use of force (Böller 2021). This actually makes sense, however, because it is showing that rhetoric "against type" is stronger than rhetoric "with type": support given by Republicans or copartisans is not as informative as support given by Democrats or non-copartisans.[49]

The last model additionally controls for the level of U.S. involvement in the conflict, but this variable shows no significant relationship with conflict outcome. Of special note, moreover, is the lack of major effect any of the preceding controls has on the relationship between congressional support and conflict outcome. In each model, the coefficients for the congressional support score and formal authorization are in the anticipated direction and significant at the 0.001 level.

Given the difficulty of interpreting coefficients of an ordered probit regression, marginal effects plots are helpful in visualizing the effect of these key variables on the predicted probability of a "victory" outcome for the United States. Using Model 5 from Table 2.6, the two plots below show the marginal effect of congressional sentiment and formal authorization, respectively, on the likelihood of victory. It is helpful, furthermore, to include the plots side-by-side in order to see the relative effect of each.

Figure 2.13 represents the marginal effect of congressional sentiment on crisis outcomes. Note the steep upward trend of the line. Crises occurring under uniform opposition in Congress are highly unlikely to end in victory for the United States (predicted probability of less than 20%). During the 1971 Bangladesh War, for example, Nixon sent the Seventh Fleet

[49]This logic is similar to that laid out by Schultz (1998).

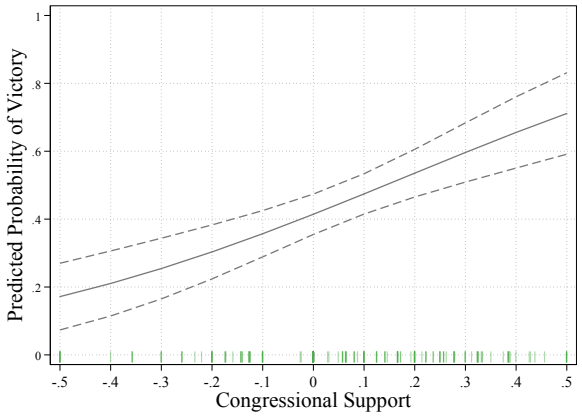

Figure 2.13 Predicted Probability of Victory by Level of Congressional Support

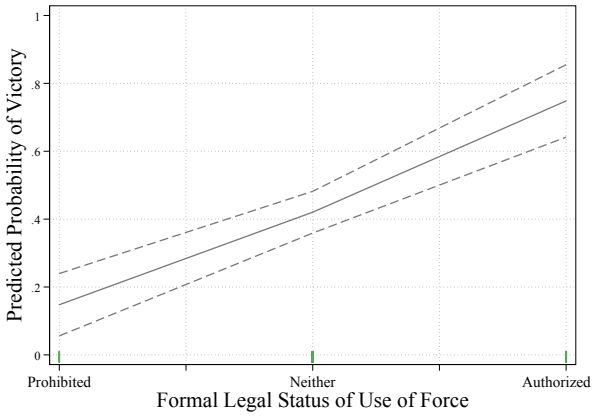

Figure 2.14 Predicted Probability of Victory by Legal Status

into the Indian Ocean in order to seemingly threaten intervention. Congress, however, was virtually unanimous in opposition not only to direct U.S. military involvement, but even to providing economic aid to Pakistan. Strong congressional resistance helped convince India of the non-credible nature of the threat (Blechman & Kaplan 1978). As congressional support increases, however, the likelihood of U.S. victory increases dramatically. When support reaches its maximum, the predicted probability of victory is roughly 75%. Figure 2.13 thus confirms Hypothesis #3—greater congressional support is associated with more preferable outcomes for the United States.

Figure 2.14, likewise, suggest a similar story for formal authorization (or prohibition). Note, first, the strong relationship between legal status and crisis outcome. When the use of force is prohibited, it is nearly impossible for the President to succeed in the crisis. Consider, for example, Nixon and Ford's inability to prevent the Fall of Saigon after the Case-Church amendment banned the use of force in Vietnam after the summer of 1973. On the other hand, the U.S. is very successful in crises in which Congress has formally authorized the use of force. This confirms Hypothesis # 6: even after controlling for informal congressional support, the presence of formal authorization for the use of military force yields better outcomes for the United States.

Signalling vs. Brute Force

It is possible, further, to analyze whether actual uses of force drive this observed relationship between congressional support (informal and formal) and conflict outcome, or whether a signalling process is also playing out in crises that terminate short of armed conflict. In other words, can U.S. adversaries observe the domestic debate in the U.S. over the potential use of force, and react accordingly?

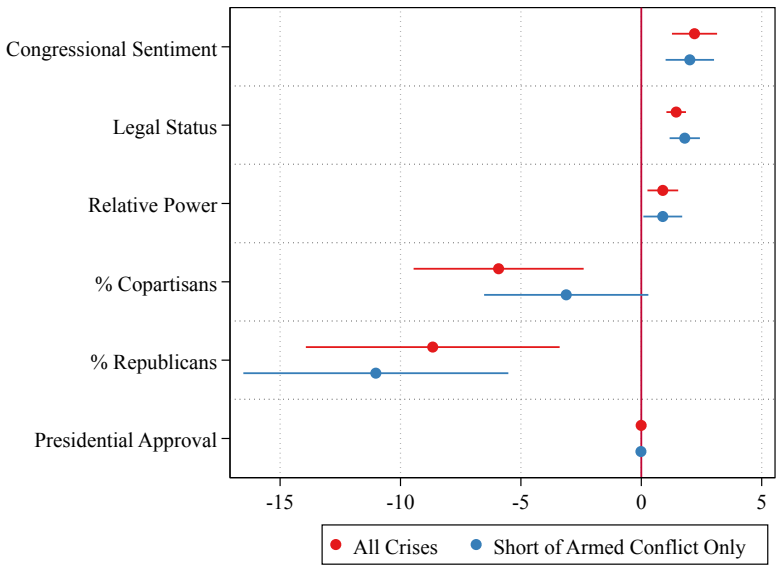

Figure 2.15 All Crises vs. Crises Short of Armed Conflict Only (Model 5, Table 2.6—Other Controls Omitted from Coefficient Plot)

The coefficient plot below uses the same model specification as Model 5 in Table 2.6, but omits all but the illustrated control variables from the presentation. The plot illustrates the coefficients and confidence intervals on two different populations. The first—in red—includes all crises (i.e., both actual U.S. uses of force and those resolved short of U.S. intervention). It is thus identical to Model 5 in Table 2.6. In contrast, the second model—in blue—corresponds to a subset of crises that only includes those short of armed intervention by the United States.

The most striking feature of the coefficient plot is that coefficients and confidence intervals are quite similar. Even when only considering crises in which the U.S. did not intervene, we still see strong positive effects of both informal congressional sentiment and formal authorization status on crisis outcome. In the First Taiwan Strait Crisis, for example, the U.S. and the P.R.C. did not actually engage in combat with one another, but Congress was nonetheless important to the outcome of the crisis. Prior to the crisis, Chinese leadership felt that the United States was unlikely to precipitate a major fight—especially given the results of the 1954 midterm elections, which saw Democratic gains (Pang 2019). In January, however, Congress passed a formal authorization for the use of military force to protect Taiwan and a series of small islands off of the Chinese coast. This congressional action convinced Chinese leaders that the U.S. would be willing to go to war over the islands, and they soon terminated the crisis thereafter (Pang 2019, Zhang 1993).

Reverse Causation

While the discussion above demonstrates a strong correlation between congressional support and the outcome of crises for the United States, one concern might be the possibility of reverse causation. In other words, there is a chance that the relationship noted between legislative support and victory could simply be due to Congress foreseeing the *ex post* outcome and then *ex ante* expressing sentiment in line with that prediction. Note, however, that relative power—presumably the most easily observable indicator of the likelihood of success—has already been controlled for, and that the speeches utilized in calculating congressional sentiment are limited to those made *prior* to the use of force. This should give us some confidence that reverse causation is not the primary explanation for the observed associations, but it is nonetheless theoretically possible for lawmakers to look far into the future and make accurate predictions.

It is worth taking a minute to flesh out precisely what this alternative explanation might be. One version of it might be that members of Congress are trying to claim credit for good outcomes (Mayhew 1974). This credit claiming explanation, however, runs into the immediate problem of what precisely legislators would be trying to claim credit for when reverse causation posits that Congress is not actually affecting the outcome. This explanation would then have to rely on highly unsophisticated voters, who would give credit to lawmakers for an outcome over which they had no effect. A more plausible alternative explanation would be that the *ex ante* position-taking (Mayhew 1974) of members of Congress would be used by voters in order to assess the foreign policy competence of these legislators (Ramsay 2004). However, in this case, voters would likely not be myopically focused on whether the U.S. "won" a contest, but rather more holistically assess the outcome of the dispute in comparison to the cost involved. Given the enormous power of the United States, it is rare to find a crisis it cannot "win" if it wanted to—the more pertinent question is whether the objective is worth the cost paid in achieving it. In both Vietnam and Afghanistan, for example, there is little doubt the U.S. could have maintained the status quo had it merely applied its military power in defending Saigon or Kabul. What allowed for the final capitulation of the U.S. client, instead, was a decision that the cost of fighting was no longer worth the objective (Clausewitz 1976). Similarly, it can hardly be said the United States "lost" the Iraq War—Saddam's government was successfully overthrown, and a new government put in place. Yet, it is widely recognized *ex post* that the war was not worth the enormous price it ended up costing. Displaying competence in foreign policy thus not only involves a simple calculation of the probability of victory, but also a projection of what the price of victory might actually be, and a comparison of that price to the value of the outcome. These are not only difficult calculations to make *ex ante*, but inherently involve major value judgments—bluntly, how many American lives is an objective

worth?[50] Thus, it is not clear how plausible an alternative explanation involving members of Congress simply trying to guess whether the U.S. will "win" or "lose" a conflict really is when it seems their constituents would care about factors such as the cost of fighting.

But even supposing members of Congress might simply be trying to "guess" the outcome, there are several other reasons why reverse causation is unlikely to be the major driver of the results. On the one hand, there is little doubt that members of Congress do attempt to assess the prospect of victory when deciding whether to support an intervention or not. Indeed, it would be grossly negligent for them not to. However, it is not immediately clear members of Congress are actually able to predict conflict outcomes with great precision. First, one of the major criticisms often levied by advocates of the Imperial Presidency is that members of Congress tend to *lack* good information about conflicts, and are swindled by sly executives into supporting unwinnable contests (Schuessler 2015).[51] Indeed, it is well recognized in the literature that legislators are at an informational disadvantage when it comes to foreign policy (Canes-Wrone, Howell & Lewis 2008). It would be a curious case if these legislators that lacked good information nonetheless were able to make such good predictions of conflict outcome.

Second, the selection incentives members of Congress face are also held by the two other strategic players: the President and the U.S. adversary. If U.S. victory or defeat were overwhelmingly obvious, there would be little incentive for the President or the U.S. adversary to precipitate the crisis in the first place. Indeed, crises and wars are most likely to unfold when the outcome is *not* obvious (Blainey 1973, Reed 2003). Thus, given this general difficulty actors have in predicting crisis outcomes, combined with the specific difficulty lawmakers have in acquiring information in foreign policy, it is not clear that members of Congress are able to easily foresee conflict outcomes.

A good test of this is to limit the data to actual uses of force, because in these cases we know the President *ex ante* thought intervention was a good idea. Below, we again run Model 5 from Table 2.6,[52] but this time limit the observations to those that involved the use of American force.

Figures 2.16 and 2.17 depict the marginal effect plots for congressional sentiment and formal authorization, respectively. Compared to the models run on the full set of crises, the confidence intervals and the shapes of the curves change slightly, but the large effect

[50]The effect of these personal judgments on support or opposition to a potential use of force also helps explain why there often tends to be such heterogeneity in Congress over intervention decisions. If the only concern was "victory" or "defeat", and legislators all had access to similar information, we would expect sentiment to be rather homogenous.

[51]Consider, for example, popular explanations of the Gulf of Tonkin Resolution and the Vietnam War.

[52]The "Distance from U.S." variable has been removed from the model specification in order to allow convergence while using the small sample size. While distance predicts U.S. crisis outcomes, including this variable is almost certainly an over-specification because distance proxies for either the loss of resolve or loss of strength over distance (Hulme & Gartzke 2021). Resolve in this model is essentially already included in the congressional support score, while distance adjusted power is already included in the "relative power" variable.

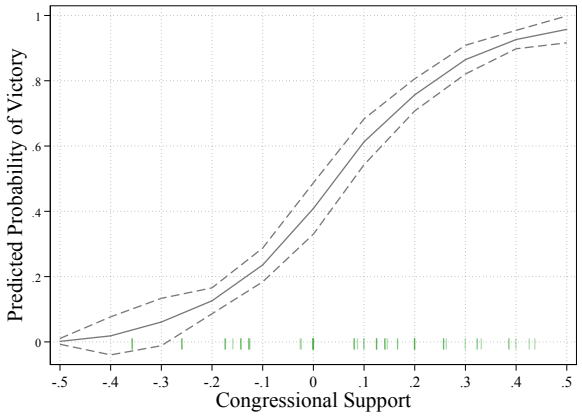

Figure 2.16 Predicted Probability of Victory by Level of Congressional Support (Uses of Force Only)

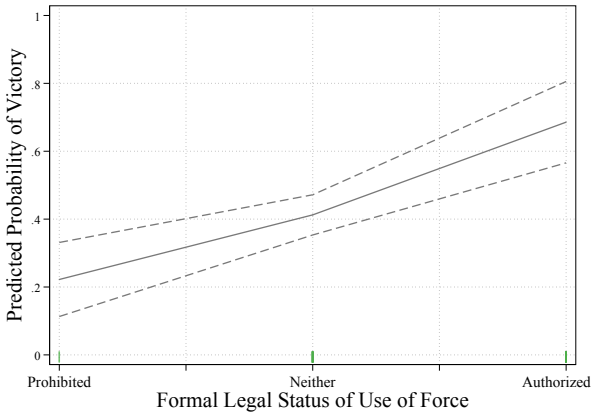

Figure 2.17 Predicted Probability of Victory by Legal Status (Uses of Force Only)

sizes are still seen: informal congressional sentiment and formal authorization for the use of military force strongly predict better outcomes for the United States. In this case, because we know the President thought intervention was worthwhile (they chose to do so, after all) reverse causality would be implausible. If the finding here were due to Congress simply making good guesses—supporting uses of force it knew would end in victory and opposing those it believed likely to end in defeat—this would imply that Congress had better information than the President: a highly unlikely proposition. (Matching can also be utilized, and is provided in Appendix IV. The matched sample technique, while imperfect, also yields results consistent with congressional sentiment affecting crisis outcomes.)

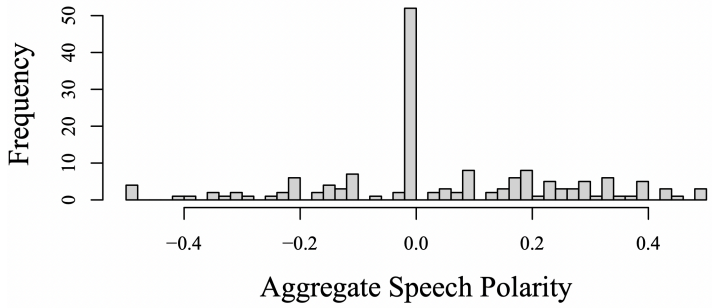

Figure 2.18 Distribution of crises by aggregate congressional sentiment

Third, if the outcome of these crises was so obvious—and members of Congress were motivated to simply support obvious victories and oppose obvious defeats—we would expect to see relative homogeneity in congressional opinion as everyone knew victory (or defeat) was likely. Relative homogeneity in opinion would look like a "U" when viewing the distribution of congressional support scores in the population of crises because many disputes would have (close to) uniform support or opposition. Yet, empirically, we see that the distribution looks

more like a uniform distribution broken by a large concentration in the middle (Figure 2.18, above)—exactly the opposite of what reverse causation would expect.[53]

We can, furthermore, consider when members of Congress make speeches. If lawmakers were simply speaking in favor of obvious wins and opposing obvious losses, we would expect members of Congress to give the most attention to conflicts in which the outcomes were most easily foreseen and avoiding comment otherwise. Conflict outcomes should be most easily foreseen at the extremes of relative power, and most difficult to predict around power parity. Figure 2.19, below, plots the predicted number of speeches per day by the relative power of the United States in the dyad. Again, we observe precisely the opposite pattern of what reverse causation would predict: members of Congress give *more* speeches when relative power is closer to parity (where relative power is close to 0.5) and relatively fewer speeches when there is a great disparity in effective power between the United States and an adversary. See "Explaining the Magnitude of Congressional Sentiment Expressed" in Appendix IV.

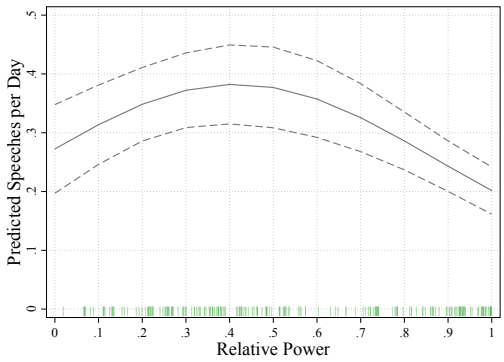

Figure 2.19 Relationship between Relative Power and Number of Speeches per Day

Further still, one can consider the polarity of the sentiment expressed in speeches and its relationship to the distribution of power in a crisis. If members of Congress were merely attempting to associate themselves with obvious victories and disclaim obvious defeats, we would expect to see a positive relationship between the relative power in the conflict dyad and the average polarity of speeches related to the crisis. In other words, we would expect positive rhetoric in crises in which the U.S. had a power advantage, and rhetoric against the use of force when the U.S. was at a relative power disadvantage. Figure 2.20, below, plots predicted congressional sentiment in crises by the relative U.S. power in the dyad. Once again, we empirically observe the opposite of what reverse causation would predict: speeches are relatively more positive when the U.S. is at a power disadvantage and more negative when there is overwhelming American power. See "Explaining the Polarity of Congressional

[53]This wide distribution in congressional opinion during crises is, instead, more consistent with lawmakers having imperfect information over the probability of victory and the cost of fighting, and as well as differing values over the objective.

Sentiment Expressed" in Appendix IV.

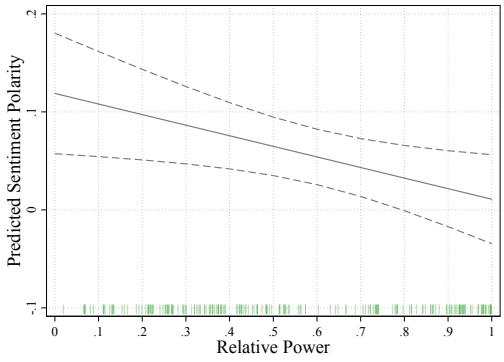

Figure 2.20 Relationship between Relative Power and Polarity of Speech Sentiment

The alternative explanation of reverse causation thus has many problems. Theoretically, it is unclear why voters would reward members of Congress who had no impact on the outcome of the crises, or—in the alternative—focused merely on "victory" or "defeat" while paying no attention to the cost of fighting. Moreover, it is not obvious conflict outcomes can be predicted particularly well *ex ante* by lawmakers, if crises and wars are most likely to occur when it is not obvious who will win, and when we commonly assume legislators have relatively poor information about how a potential conflict will proceed (Canes-Wrone, Howell & Lewis 2008). Lastly, the great heterogeneity observed in congressional opinion over the use of force, the greater attention given to conflicts closer to parity, and the negative correlation between relative power and congressional sentiment are all highly inconsistent with what one would expect if reverse causation were driving the results displayed in Table 2.6. These patterns are, instead, more consistent with serious congressional debate over U.S. national interests, weighing the predicted costs of fighting with outcomes that are not easily foreseeable.

As a final note, we should return to the widely observed phenomenon—often highlighted by proponents of the Imperial Presidency—that members of Congress *dislike* voting on use of military force decisions and rarely do so. This, of course, would not be the case if outcomes were easy to predict, and lawmakers simply sought to associate themselves with the outcome *ex ante*.

Conclusion

This chapter has quantitatively tested the first six hypotheses derived from the model in Chapter 1 and found strong evidence for each. Presidents are more willing to utilize force—and more force—when there is greater informal congressional support for the use of force. Moreover, formal legal authorization from Congress increases a President's willingness to em-

ploy force, even when controlling for informal sentiment. Lastly, the U.S. is more likely to achieve better crisis outcomes—victory—in disputes that garner congressional support, measured either through informal congressional rhetoric or formal authorization.

The conventional wisdom of the Imperial Presidency argues that developments after the Second World War, such as the advent of the standing army, have created an executive willing and able to utilize military force regardless of Congress's own wishes. The evidence presented above, however, suggests that the amount of power Presidents are willing to employ is substantially limited by congressional sentiment over the use of force. Moreover, the results suggest these political constraints on the Presidency are not only perceived by the White House, but also by adversaries abroad.

Chapter 3

The Korea War Powers Antiprecedent

> "I don't ask for their permission"[1]—Harry Truman

> "I took the position from the first day I was President until the last day I was President that I never wanted to go in and make any commitments of troops and men and bodies without the Congress going in with me."[2]—Lyndon Johnson

Introduction

The last chapter suggested that Presidents are highly constrained by Congress when making the decision to utilize military force. This chapter focuses on the question of *formal* congressional authorization, and suggests that such explicit congressional approval is *de facto* a necessary condition for major war. The Imperial Presidency thesis holds precisely the opposite: Presidents since Wold War II have been willing to initiate full-scale war unilaterally. As is well recognized, Presidents since Truman—including those both before and after the passage of the 1973 War Powers Resolution—have either explicitly or implicitly claimed to be unrestrained legally when it came to the decision to initiate the use of military force (Schlesinger 2004, Savage 2015). The theory presented in Chapter 1, however, suggested a different mechanism of constraint: politics (Posner & Vermeule 2013). Specifically, Presidents would realize they had the legal ability to initiate a major use of force unilaterally, but would be deterred from doing so because of the massive political costs should the use of force end poorly.

The Korean War is a key case because it was a full scale war undertaken pursuant to

[1] Beschloss (2018), pg. 472.

[2] Oral history transcript, Lyndon B. Johnson, interview S-IX, 8/12/1969, by William J. Jorden, LBJ Library Oral Histories, LBJ Presidential Library, accessed March 31, 2023, https://www.discoverlbj.org/item/oh-lbj-19690812-66-1wj.

the President's Article II powers alone and absent formal approval from Congress. Proponents of the Imperial Presidency thesis thus often explicitly cite the importance of a Korea war powers precedent. The Congressional Constraint thesis suggests the opposite: administrations after Truman's—indeed, many in the Truman administration itself—came to see the decision to not secure formal congressional authorization as a major political blunder and thus as an anti-precedent not to be followed.

Korea

In the literature on the war powers, the Korean War is frequently cited as *the* watershed case that ushered in a massive growth of presidential power in the postwar era. Moreover, the historical record is clear: the Truman administration—and especially Truman himself—explicitly sought to set a strong precedent by conducting the Korean War absent formal approval from Congress (Beschloss 2018, Blomstedt 2016, Acheson 1969). The decision to proceed unilaterally was undertaken after extensive deliberation, and precedent-setting was the key driver of the choice. Notably, Truman's decision was not driven by lack of Congressional support for the mission: to the contrary, sources agree that congressional authorization would have easily been secured had the administration merely asked for it (Beschloss 2018, Schlesinger 2004, Acheson 1969, Johnson 1971, Blomstedt 2016).

The Korean War began with the sudden invasion of South Korea by North Korean forces in June 1950, and Truman soon after ordered U.S. air and naval forces, and later ground forces, to help defend South Korea. The events surrounding Truman's decisions to intervene and to not seek congressional authorization are well documented both by historians (Blomstedt 2016, Beschloss 2018) and those actually present (Acheson 1969). Truman considered asking for congressional approval but declined to do so on the advice of Secretary of State Dean Acheson, instead opting to rely solely on his Article II powers as Commander-in-Chief (Beschloss 2018, Schlesinger 2004, Acheson 1969, pg. 538). Formal approval from Congress had indeed been discussed at length within the administration,[3] and while it was recognized

[3]The Department of Defense had drafted a joint resolution by July 2nd to send to Congress. Memorandum for the Record of a Meeting with Secretary of the Army Pace, Secretary of the Air Force Thomas Finletter, Major General James H. Burns, W. Averell Harriman, and Major General William F. Dean, July 3, 1950. Folder: July, 1950. Collection: Dean G. Acheson Papers. Harry S. Truman Library, available at https://www.trumanlibrary.gov/library/personal-papers/memoranda-conversations-file-1949-1953/july-1950-0?documentid$=$8$&$pagenumber$=$1. On July 3rd a meeting was held at Blair House in which Secretary of State Dean Acheson made a recommendation to the President that "the President go before Congress sometime in the near future to make a full report to a Joint Session of the Congress on the Korean situation. It was proposed that this report to the Congress would be followed by the introduction of a Joint Resolution expressing approval of the action taken in Korea." Memorandum of Conversation with President Harry S. Truman, Secretary of Defense Louis Johnson, Secretary of the Treasury John Snyder, Secretary of Agriculture Charles Brannan, Postmaster General Jesse Donaldson, Senator Scott Lucas, Secretary of the Army , July 3, 1950. Folder: July, 1950. Collection: Dean G. Acheson Papers. Harry S. Truman Library, available at https://www.trumanlibrary.gov/library/personal-papers/memoranda-conversations-file-1949-1953/july-195

such a measure from Congress would help in case the going got tough[4] Truman deemed the precedential value of unilateral action to be the more important consideration.[5] As the first American President with a large standing military and a perceived international order anchored by the new United Nations to uphold, the opportunity to set a precedent of acting without waiting for congressional approval became an attractive option.[6]

Truman justified his action by arguing "we have to be able to respond quickly in circumstances of this era" and that seeking authorization would "weaken[] the power of the Presidency" (Beschloss 2018, pg. 461-62). Cabinet members were likewise clearly of the mind that the decision made in this crisis would be precedent-setting. One cabinet secretary "said that we were going along a new road and making a historical record."[7] while another agreed that "we were treading new ground."[8] A dissenting White House aid later recalled:

> "I urged him to get a joint congressional resolution supporting his action in Korea. This would have had almost unanimous approval at the time. But he said that he would not do so because it would make it more difficult for future presidents to deal with emergencies...He always kept in mind how his actions would affect future presidential authority...He said that as long as he sat in the Oval Office his greatest responsibility was to protect the authority of the president against the inroads of Congress," (Heller 1980, pg. 50)[9]

0-0?documentid$=$6$&$pagenumber$=$1.

[4]As one participant noted "[w]hile things are going well now there may be trouble ahead." Ibid. Acheson similarly "felt that such a resolution would be helpful during the time ahead." Memorandum of Telephone Conversation with Secretary of Defense Louis Johnson, July 3, 1950. Folder: July, 1950. Collection: Dean G. Acheson Papers. Harry S. Truman Library, available at https://www.trumanlibrary.gov/library/personal-papers/memoranda-conversations-file-1949-1953/july-1950-0?documentid$=$7$&$pagenumber$=$1 Assistant Secretary of State for Far Eastern Affairs and future Secretary of State Dean Rusk additionally argued that "clear Congressional support would help abroad." Ibid.

[5]Another possible drawback—controversy in Congress—was discussed but seems unlikely to have been dispositive. A bipartisan consensus supported strong action in Korea and sources uniformly agree that formal congressional authorization would have been passed virtually unanimously had the administration merely sought it (Beschloss 2018, Schlesinger 2004, Acheson 1969, Johnson 1971, Blomstedt 2016). A Senator present "said if there should be a row in Congress that would not help abroad," but he "did not think that Congress was going to stir things up" at that point. Memorandum of Telephone Conversation with Secretary of Defense Louis Johnson, July 3, 1950. Folder: July, 1950. Collection: Dean G. Acheson Papers. Harry S. Truman Library, available at https://www.trumanlibrary.gov/library/personal-papers/memoranda-conversations-file-1949-1953/july-1950-0?documentid$=$7$&$pagenumber$=$1.

[6]Of course, many of the foreign policy initiatives taken by the Truman administration in the new postwar world were novel. His Secretary of State Dean Acheson, for example, appropriately entitled his memoir "Present at the Creation". Indeed, relying on U.N. approval in lieu of congressional approval was not only an opportunity simply unavailable to previous Presidents, but it could actually be argued that the President of the United States had the affirmative *duty* to enforce the mandates of the United Nations without waiting for Congress. This is precisely the legal argument the Administration did make.

[7]*Foreign Relations of the United States*, 1950, Korea, Volume VII, eds. John P. Glennon and S. Everett Gleason (Washington: Government Printing Office, 1976), Document 205. https://history.state.gov/historicaldocuments/frus1950v07/d205.

[8]Ibid.

[9]Acheson similarly would explain Truman's decision to forego formal approval in his memoir by writing "His great office was to him a sacred and temporary trust, which he was determined to pass on unimpaired by the slightest loss of power or prestige. This attitude would incline him strongly against any attempt to divert criticism from himself by action that might establish a precedent in derogation of presidential power to send our forces into battle" (Acheson 1969, pg. 539).

Because the White House was thus unwilling to actively seek authorization—and because Congress was in no mood to approve the action on its own accord—the war was conducted absent formal congressional approval (Blomstedt 2016). The Korean conflict would last three years, and yield nearly forty thousand U.S. combat fatalities.

Subsequently, scholars have virtually uniformly pointed to the Korean precedent as a landmark precedent in presidential power over war. Arthur Schlesinger wrote in his seminal book *The Imperial Presidency* that with the Korean War in 1950 Congress fully "relinquished the war-making power" (Schlesinger 2004, pg. xv). Likewise, Wildavsky's "The Two presidencies" features the Korean War as a key piece of evidence (Wildavsky 1966). More recent accounts of the war powers relationship cite the Korean War as a watershed moment in the purported expansion of presidential war powers (Fisher 1995, Burns 2020, Dudziak 2019, Fisher 2013, Griffin 2013, Schlesinger 2004, Stevenson 2020, Howell 2005, Head & Boehringer 2020, Prakash 2020, Crouch, Rozell & Sollenberger 2020, Savage 2015, and many others). When Truman declined to seek formal congressional authorization for the Korean War in 1950 he was able to inaugurate a new "constitutional order" (Griffin 2013, pg. 53) and dramatically expand presidential power (Lindsay 2020*b*, Burns 2019, pg. 170-73).[10] As Prakash puts it, "From this unprecedented presidential war sprung forth a monumental, unwritten amendment to the Constitution," (2020, pg. 13).

Evidence of the Korea Precedent and the Imperial President

With the intent of the Truman administration clear, and the endorsement of scholars virtually unanimous, the significance of the Korea precedent—and the existence of the Imperial Presidency—is rarely seriously questioned. Curiously, however, all major wars (Vietnam, Gulf War, Afghanistan, and Iraq) since the Korea precedent have occurred only after the President sought and received formal approval from Congress. The next chapter, furthermore, explores many cases in which a lack of formal approval seemed to deter action by the White House. These pieces of evidence beg the question of how much of a precedent Korea really was: are Presidents actually willing to enter full-scale wars unilaterally? There are three classes of cases cited as evidence of the precedent:

1. Actual unilateral uses of force since Korea.
2. Full scale wars after Korea in which it is asserted the President *would have* acted unilaterally even though they did not.
3. Major crises after Korea in which it is asserted the President *would have* acted unilaterally had the enemy not backed down (for example, the Cuban Missile Crisis).

[10] See also Schlesinger (1973), Griffin (2013), Fisher (2013), Silverstein (1997), and Prakash (2020).

The first set of cases—actual unilateral uses of force since 1950—is first considered and shown to provide little evidence of any precedent. Each of these cases was more that three orders of magnitude smaller than the Korean War, and thus can hardly be claimed as proof of the precedent. The next two sets of cases—actual wars and major crises in which the U.S. adversary backed down—are then considered chronologically. From these cases, a clear pattern becomes apparent: while presidents often publicly claimed a willingness to use force unilaterally, they privately rejected utilizing the Korean precedent because they saw it as politically unfeasible.

Realized Unilateral Uses of Force since 1950

Perhaps the most widely cited evidence of the Korean precedent, the Imperial Presidency, and a purported growth in presidential war power after the Second World War is the many instances in which Presidents have used military force absent formal approval from Congress. It is common to see in the literature publications bemoaning a parade of cases in which the President clearly acted absent formal approval (Barron 2016, Schlesinger 1973, Fisher 2013, Burns 2020, e.g.). Frequently cited are cases such as the intervention in the Dominican Republic (1965), the *Mayaguez* incident (1975), the invasions of Grenada (1983) and Panama (1989), the deployment of troops to Haiti (1994) and Bosnia (1995), air campaigns in Kosovo (1999) and Libya (2011), the campaign against ISIS (2014), strikes against Syria (2017, 2018), or logistic support for Saudi Arabia's war in Yemen in the late 2010's—to name but a few. Unquestionably, there have been many uses of force undertaken unilaterally by the executive since 1950.

Curious, however, is the lack of full scale *war* undertaken unilaterally after Truman. The essence of the Korean precedent, and the core claim of the Imperial Presidency thesis, was that Presidents were willing and able to conduct *war* without formal approval from Congress (Schlesinger 1973).[11] Nevertheless, each full-scale war waged by the United States after Korea occurred pursuant to formal approval from the legislature. Plotted below is all U.S. uses of force since 1898.

As can be seen, both before and after the Korean War Presidents undertook many

[11]Subsequent usages of the term "Imperial Presidency" have expanded well beyond its original usage to possibly include virtually any Presidential action undertaken unilaterally (Moe & Howell 1999, e.g.), but the original usage of the term was focused on foreign affairs in general, and most prominently over the power to initiate war (Schlesinger 1973). One could argue that the actual argument of the Imperial Presidency thesis was the *frequency* of uses of force and not with regards to full-scale wars. But this would be a significant movement-of-the-goal-posts. Cases such as Korea, Vietnam, and the potential outcome of the Cuban Missile crisis (i.e., a thermonuclear war) featured prominently, while small interventions were given little attention (Schlesinger 1973). Moreover, "counts" of U.S. uses of force—especially those in the 19th Century—massively undercount American uses of force by ignoring military engagements with Native American tribes and nations. Given the extreme frequency of these encounters in the 18th and 19th centuries, it is not obvious there has actually been an increase in the frequency of American uses of force.

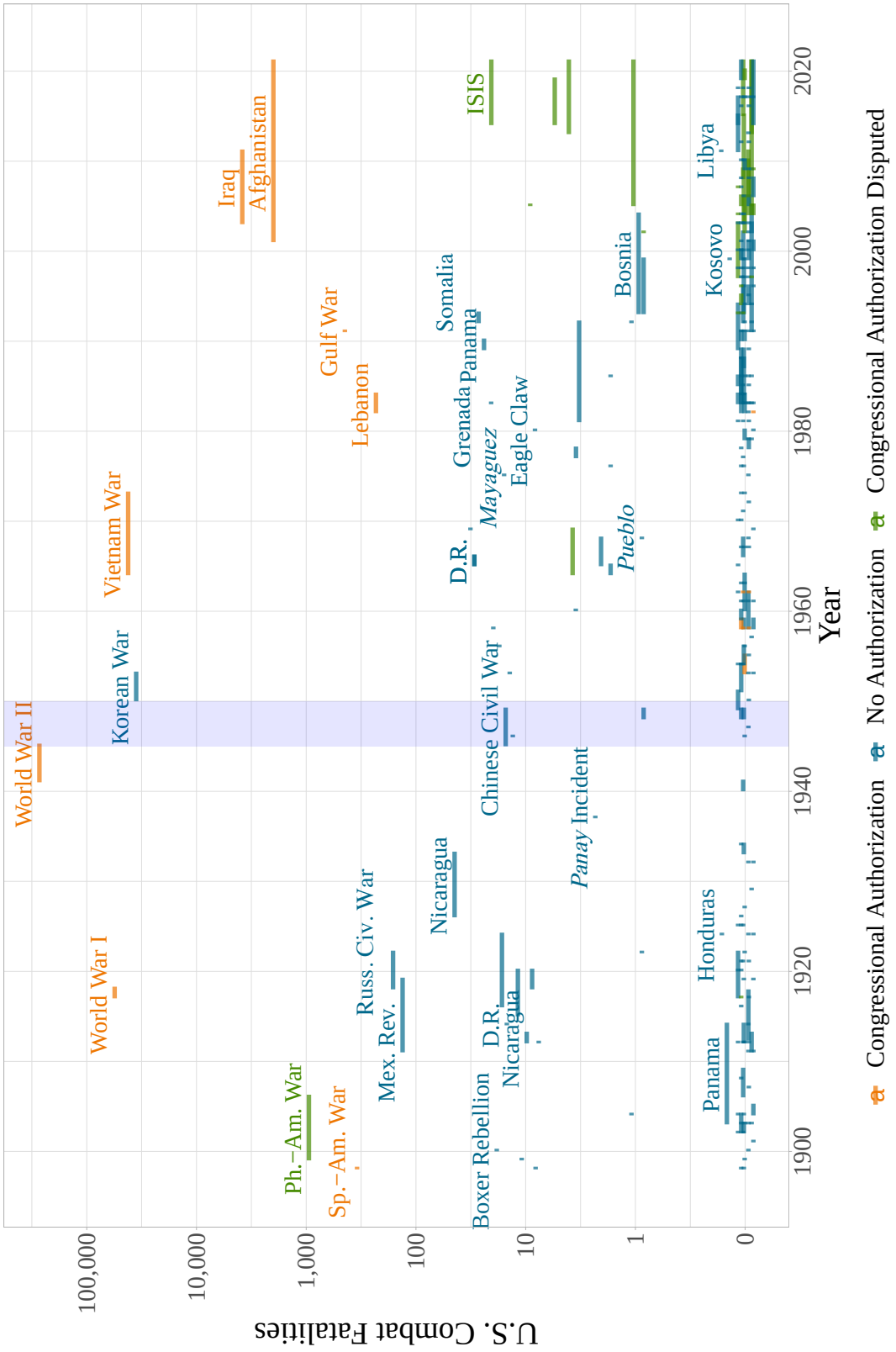

Figure 3.1 American Uses of Force by Authorization Status since 1898

unilateral uses of force. Each of these cases, however, was clearly orders of magnitude smaller than full-scale war. Indeed, since 1950, none of these interventions experienced even one one-thousandth the number of combat deaths suffered in the Korea War. E.g., neither the 1999 Kosovo nor 2011 Libya air campaigns involved a single U.S. combat fatality, and American participation in the war in Yemen did not even involve any direct combat role.

Table 3.1 Unilateral uses of Force

Conflict	Year(s)	U.S. Combat Deaths	Compared to Korea
Korea	**1950-'53**	**33,739**	
Dominican Republic	1965	10	0.03%
Mayaguez	1975	16	0.05%
Grenada	1983	18	0.05%
Panama	1989	23	0.07%
Somalia	1992-'94	29	0.09%
Haiti	1994-'95	No Combat	0.00%
Bosnia	1995	No Combat	0.00%
Kosovo	1999	0	0.00%
Libya	2011	0	0.00%
ISIS	2014-present	21	0.06%
Syria Strikes	2017,'18	0	0.00%
Soleimani Strike	2020	0	0.00%

While these cases provide strong evidence that Presidents will undertake smaller military actions unilaterally, these cases thus do not serve as proof of an Imperial Presidency willing to wage full-scale war absent the approval of Congress. Counterfactuals, instead, are often used in arguing in favor of the Imperial Presidency and the importance of the Korea war powers precedent.

Counterfactuals I: Wars Undertaken with Authorization Would Have Been Undertaken Unilaterally

More promising are the next two groups of cases: counterfactuals involving actual wars and major crises, respectively. While all four major wars waged since Korea have been undertaken pursuant to formal congressional approval (Vietnam, Gulf War, Afghanistan, and Iraq), it is theoretically possible that some—or all—of these endeavors would have been undertaken regardless. As evidence of a purported willingness to act unilaterally, scholars frequently point to the statements of Presidents and their administrations. Indeed, in each of these wars, the White House clearly asserted that the President had the constitutional power to act regardless of Congress's own actions. In presidential signing statements on AUMF's, for example, the executive often writes that while they welcome the expression of congressional support, they did not actual legally require it. Presidents and their lawyers have indeed been forceful in publicly asserting expansive views of presidential war powers since 1950 (Crouch, Rozell & Sollenberger 2020). Indeed, virtually every President in the postwar era has clearly and publicly articulated the view that they had the power to commit U.S. armed forces to large

scale military operations absent congressional approval—a point often emphasized by jurists (Goldsmith & Bradley 2018, Griffin 2013). When requesting the infamous Gulf of Tonkin Resolution, Johnson publicly stated that he did not believe he needed it from a legal perspective (Beschloss 2018). George H.W. Bush proclaimed he did not need to "get permission from some old goat in Congress to kick Saddam Hussein out of Kuwait." Similarly, when George W. Bush asked for authorization to use military force against Iraq in 2002, the administration maintained that such congressional action was not constitutionally required.

Even while recognizing that wars after Korea each saw a President seek congressional authorization before initiating combat operations, proponents of the Imperial Presidency thesis interpret this as a mere political nicety. As Griffin puts it "[a]lthough presidents may have acquired the habit of going to Congress [for major uses of force], this does not mean any president ever truly acknowledged a constitutional requirement to do so, instead viewing such authorizations as *politically convenient*" (Griffin 2013, pg. 240, emphasis added). Griffin summarizes a widespread conventional wisdom when he concludes, "Presidents have thus not based their decision-making around the assumption that Congress could effectively veto a military proposal," (Griffin 2013, pg. 240).[12]

Nonetheless, there are reasons to be skeptical of mere statements (especially those made in public) as proof of an Imperial Presidency absent more evidence. As is well recognized in the bargaining and coercion literature, states and leaders have very strong incentives to exaggerate their willingness to use force. When Presidents know adversaries are listening, they are likely tempted to bluff a willingness to use force. While legal scholars and historians have seemingly given great importance to these statements by administrations, political scientists would raise the immediate concern over whether this was merely cheap-talk.

Each of the full-scale wars waged by the United States after the Korean War—i.e., the Vietnam War, the Gulf War, and the Wars in Afghanistan and Iraq—are considered. In order to error on the side of over-inclusiveness (and to provide proponents of the Imperial Presidency thesis the benefit of the doubt), two other episodes are also included: the 1970 Cambodian Incursion and the intervention in Lebanon in the early 1980's. While neither can truly be considered a war per se, both saw substantial American combat fatalities and have

[12] A very similar example can be found in Henry Monaghan's "Presidential War-Making": "The occasions on which presidents have refused to take military action abroad because of a lack of prior congressional authorization are few in number and increasingly rare. From the beginning of our constitutional history, Presidents have both deployed the armed forces abroad and committed them to actual hostilities without explicit congressional authorization... Moreover, no recent president has refused to commit the armed forces to actual hostilities because of a lack of congressional approval, as the conduct of Truman in Korea, Johnson in the Dominican Republic, and Kennedy, Johnson and Nixon in Southeast Asia demonstrate.... with ever-increasing frequency, presidents have employed that amount of force that they deemed necessary to accomplish their foreign policy objectives. When little force was needed (e.g., in our incursions in Latin America), little was used; when larger commitments were necessary, they too were forthcoming... Congress has seldom objected on legal grounds, and so the only limitation upon presidential power has been that imposed by political considerations. That is the teaching of our history," (Monaghan 1970, pg. 25-27).

been pointed to by proponents of the Imperial Presidency thesis (Schlesinger 1973, e.g.).

Counterfactuals II: Major Crises in which the Adversary Backed Down Would Have Otherwise Seen War Undertaken Unilaterally

Additionally, authors sometimes point to near-war crises in which a President seemed willing to enter a major conflict unilaterally. Investigating major crises in which the U.S. adversary backed down allows us to increase the number of relevant cases. The claim here is that "if the adversary had not backed down, the President would have gone to war"—and perhaps unilaterally.

The case most often cited in this regard the Cuban Missile Crisis (Schlesinger 2004, e.g.). For example, shortly prior to the Cuban Missile Crisis, Kennedy proclaimed that he did not need authorization from Congress to act because "[a]s President and Commander-in-Chief I have full authority" to "do whatever must be done to protect [our] own security and that of [our] allies" regardless of Congress's own actions.[13] Similarly, Kissinger claims in his memoir that Nixon would have ordered U.S. forces into the Middle East during the Yom Kippur War had the Soviets not backed down in their threat to intervene. Concerns of bluffing and cheap talk, however, need to be considered in these crises. Specific attention needs to be paid to whether 1) the President would actually have used major military force and 2) if so, whether there is evidence they would have done so unilaterally.

To identify such possible uses of force, the International Crisis Behavior (ICB) dataset was examined for crises in which the United States was substantially involved. In order to subset this list to possible major uses of force (i.e., those in which conflict approaching full-scale war could be reasonably expected in the event of actual kinetic engagement) only those involving a great power (USSR/Russia and China) are included. Furthermore, because evaluating these non-actualized uses of force entails answering a counter-factual (specifically, had the adversary not backed down, would have the President been willing to employ U.S. forces absent formal congressional authorization?) close attention must be made to how close the crisis came to actual maturation. Best practices for utilizing counterfactuals hold that shorter time-horizons are preferable (Levy 2015). Thus, crises in which the states came to the very brink of conflict are best.

The Cuban Missile Crisis is the most obvious case to include, as it is frequently cited as a near-miss crisis. Similarly, the two Berlin crises under Eisenhower and Kennedy saw American Presidents take a firm stand over the city behind the Iron Curtain and seemingly risk war with the Soviet Union. On the other side of the world, the first two Taiwan Strait

[13]Kennedy, John F. "News Conference 43, September 13, 1962", State Department Auditorium, Washington, D.C., 1962. John F. Kennedy Presidential Library and Museum. Accessed March 27, 2023. Available at https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-press-conferences/news-conference-43.

crises involved serious consideration of the use of nuclear weapons (Ellsberg 2017) and actual combat between a U.S. client and the People's Republic of China. Contemporaneously, the United States presented a clear willingness to intervene in the Middle East after the 1956 Suez crisis in order to prevent Soviet advances in the region. Two decades later, Kissinger asserts in his memoirs that the Nixon Administration was perhaps willing to dispatch troops to the Middle East in the 1973 Yom Kippur War, and while it is not completely clear how far the Clinton administration was willing to go to defend Taiwan in the event of attack in 1995-96, the event is also considered. Adding these to the list of actual full-scale wars fought by the United States since the end of the Second World War yields the following list:

Table 3.2 Crises in which President Was Seemingly Willing to Employ Major U.S. Force (Actualized wars in bold)

Crisis	**Year**	**Willing to Intervene at Major Scale?**	**Formal Authorization**
Korea	1950-53	Yes	No
1st and 2nd Taiwan Strait Crises	1954-58	Yes	Yes
Middle East Crises	1956-58	Yes	Yes
Berlin	1958-59	Yes	Planned
Berlin	1961	Yes	Planned
Cuba	1962	Yes	Yes
Vietnam	1964-73	Yes	Yes
Cambodian Incursion	1970	Yes	Debatable
Yom Kippur War	1973	Likely no	Unclear
Lebanon	1983-84	No	Yes
Gulf War	1991	Yes	Yes
Third Taiwan Strait Crisis	1995-96	Unclear	Planned
Afghanistan	2001	Yes	Yes
Iraq	2003	Yes	Yes

Note that actualized uses of force are in bold while major crises settled short of war are in standard font. Many of the crises are from the early Cold War period after the Korean War, and these are especially helpful cases for two reasons. First, we have exceptionally good access to the transcript evidence of decision-making during this time period via sources such as the *Foreign Relations of the United States*. Second, given that the period from the Korean War until the end of the Vietnam War and the passage of the 1973 War Powers Resolution is considered to be the height of the Imperial Presidency (Schlesinger 1973, Ely 1995), these should should cases in which we are least likely to find executives viewing formal congressional authorization as a necessary condition.

The Historical Record

This list of wars and crises are now considered chronologically. While this thus mixes actual wars and mere crises together, a chronological analysis is helpful to illustrate the development of executive branch thinking on this issue as administrations often used prior incidents

to guide their reasoning and actions.

Altogether, this should capture the universe of cases in which Presidents were willing to enter major conflict[14]—either because they actually did so (in the case of actualized wars) or because the evidence suggests they were willing to do so before the adversary backed down (in the case of major crises). Because none of these events actually involved a President conducting a full scale war unilaterally, we examine a counterfactual for each. For the actualized wars, we ask "would have the President engaged in full scale war even absent formal approval from Congress?" Here, evidence of whether the White House treated formal authorization as a nice-to-have or a need-to-have is important. For crises settled short of war, the counterfactual we examine is "had the adversary not backed down, would have the President entered a major war unilaterally?" For these cases, private contingency planning is most helpful.

The Imperial Presidency thesis suggests formal approval is superfluous, and at best of marginal value to the White House. The Congressional Constraint thesis, in contrast, suggests that formal authorization is highly important—effectively a political necessity—for administrations entering major conflict. As a proposed necessary condition, this means that a single post-1950 case (in which clear evidence suggests a willingness to follow the Korea precedent is present) would be sufficient to disprove the Congressional Constraint thesis. On the other hand, the absence of a single clear case in the seven decades following the Korean War would suggest the Imperial Presidency thesis greatly exaggerates Presidents' willingness to actually act unilaterally in the use of military force context.

The Post-Korea Reaction:

While the Korean War became instantaneous precedent of large scale warfare undertaken unilaterally, it also very quickly became seen by decision-makers in the executive branch as *anti-precedent*[15] and successors to Truman consciously sought not to follow its example. Most tellingly, Truman's immediate successors were among the most emphatic on securing formal congressional approval before entering major conflict. Eisenhower asked for congressional

[14]To be more specific, the universe of cases in which Presidents were willing to enter major conflict, and got close enough to doing so that their decision-making could actually be examined. It seems obvious, for example, that if Canada invaded New York the President would be willing to fight to defend American soil. This is not a helpful counter-factual, however, because it is so far removed from actual events it is difficult to determine how the actual decision-making process would have proceeded.

[15]In constitutional law, decisions of the Supreme Court are legally binding precedent that can only be overturned by future Supreme Court decisions—a rare occurrence that the Court usually tries to avoid (See discussion in *Planned Parenthood v. Casey*)—or by formal constitutional amendment. Some decisions of constitutional law by the Supreme Court, nonetheless, are later seen as shameful or wrongly decided and nearly universally cited as anti-precedent: what-not-to-do. Perhaps the most infamous example of anti-precedent is the *Korematsu* decision which upheld the constitutionality of detaining Japanese-Americans during the Second World War. While never formally overturned and thus technically still the law, *Korematsu* is only cited in the negative. To say a legal argument is similar to *Korematsu* is not to say it is consistent with precedent and thus likely to be a winning argument, but rather that the argument is shameful, immoral, and sure to be a poor strategy.

approval for the use of force on at least three separate occasions and seemingly avoided one possible use of force (in Indochina after the French failure at Dien Bien Phu) because of a lack of formal approval.[16] Likewise, When President Johnson was considering the first major escalations of the Vietnam War, he specifically cited what happened to Truman in Korea as a reason to ask for the Gulf of Tonkin Resolution (Beschloss 2018). He similarly cited the Korean example in the negative when contemplating military intervention in the crisis in the Middle East 1967 (Oren 2003).

Even the Truman administration itself seemingly came to realize the folly of its decision. As the Korean War dragged on, the administration began searching for ways to increase congressional involvement *before* decisions were made (Blomstedt 2016, pg. 106). Republicans were able to make substantial gains in the 1950 midterms by decrying "Truman's War", and criticism was not even limited to the opposition party. Truman complained in his diary, for example, that "There are liars, trimmers and pussyfooters on both sides of the aisle in the Senate and the House."[17]

After the Chinese intervention in the fall of 1950, the administration came to the reluctant conclusion that it needed to declare a national emergency. This time, however, it proactively sought congressional involvement and had a high-profile meeting with congressional leaders at the White House on December 13. At this point, however, it was too late to lock-in congressional support and prevent opportunistic political attacks—Truman was trying to close the stable door after the horse had bolted. While most members of Congress on both sides of the aisle agreed that an emergency declaration was needed, Congress's strongest attacks against the administration foreign policy (the so-called "Great Debate" of 1951) began only days later. The famous scholar of the presidency Richard Neustadt was working at the White House at the time and specifically recalled the aftermath of the meeting:

> "Soon after it broke up, a White House usher came to Murphy's office with a memorandum found under the cabinet table. This was a document of several pages addressed by the staff of the Senate Minority Policy Committee to Senators Taft and Wherry, the Republican leaders... It dealt with the contingency (which had not arisen) that the President might use that meeting to seek pledges of bipartisan support for the Administration's future conduct of the war. This, the memorandum argued, ought to be resisted at all costs. *By the Easter Recess the war could have taken such a turn that Republicans might wish to accuse Truman of treason and should be free to do so.*" (Neustadt 1974, pg. 383. Emphasis added.)[18]

[16] Eisenhower sought authorization from Congress for the 1954 Indochina crisis, 1955 Taiwan Strait crisis, and in 1957 for the Middle East. Still further, Eisenhower noted that formal authorization would be a necessary condition of intervening in Indonesia in 1958, and in his post-presidency privately recommended to Kennedy that he get formal authorization if crises in Laos and Taiwan in 1962 escalated further.

[17] Truman diary entry, November 30, 1950, PSF: Longhand Notes File, November 30, 1950 folder, Truman Papers.

[18] Acheson also recalls this incident in his memoir: "The Republicans...remained unusually silent and noncommital during the meeting. After it ended...a paper on the stationery of the Republican Policy Committee...was

We also see a seeming change in policy within the Truman administration with regards to the largest possible uses of military force by the spring of 1951. In framing its nuclear doctrine, the administration held that "If time and circumstances permit, the Congress would pass and the President would approve a Joint Resolution ...authorizing and directing the President to employ the entire military forces of the United States and the resources of the Government to carry on war. A resolution in these terms would clearly authorize the President to use atomic weapons."[19]

The Korean War would prevent Truman for running for reelection (Beschloss 2018), and indeed drove Truman to receive the lowest presidential approval (22%) of any president since 1945. Fellow Democrat and Chairman of the Senate Foreign Relations Committee Tom Connally later admitted that not securing congressional authorization at the outset was a mistake as a "matter of political strategy," (Blomstedt 2016, pg. 51). A White House aid present for the initial decision to forego congressional approval later described the incident: "We of the staff had served [the President] poorly by not...seeking congressional involvement in the opening days of the conflict. It was soon too late. We had 'Truman's War' to deal with." (Blomstedt 2016, pg. 37). Another aid admitted that he too "was convinced that the president had made a mistake" in not securing formal congressional approval at the beginning of the war (Heller 1980, pg. 50). Assistant Secretary of State John Hickerson similarly lamented in 1952 that "I felt this might have been a mistake and that our position right now might be easier if the President had in June 1950 requested from Congress full war-time powers."[20]

Thus, the lesson learned from Truman's decision to enter the Korean conflict unilaterally was (1) that "loss costs" existed and (2) that these could be mitigated by securing congressional authorization from the outset. Such an understanding was widely shared at the time across political parties. As discussed below, both Eisenhower and Johnson explicitly pointed to the Korean example as anti-precedent, and it is also clear Kennedy and Nixon interpreted the situation similarly.[21] Moreover, rejections of the Korean precedent would be driven not only by witnessing Truman's experience in the Korean War, but also two other

found. It advised against Republican involvement in the proclamation of a national emergency, which was described as designed to gain additional powers for the President, in order to preserve the party's position in case of possible impeachment proceedings," (Acheson 1969, pg. 627).

[19] "Procedures to be followed in the event the President of the U.S. is called upon to decide whether nuclear weapons should be used in a war situation." Department Of State, 10 Apr. 1951. U.S. Declassified Documents Online. Accessed 13 July 2022.

[20] Memorandum of conversation, Department of State, 1 August 1952, Papers of Harry S. Truman, staff member and office files, Korean War file, Department of State: background file, 1947–1950, box 6, folder 11, legal basis of US and UN action, HSTL.

[21] During the 1962 Laos crisis, fellow Democrats pointed to the Korean War as a reason for the Kennedy to secure congressional authorization prior to engaging in significant combat (see Chapter 5)—a suggestion that was incorporated into the administrations formal plans for the crisis. Similarly, during the First Taiwan Strait Crisis then Vice President Nixon argued in favor of securing formal authorization from Congress in order to avoid Truman's mistake in Korea.

closely related constitutional confrontations between Congress and the White House in the same time period. The so-called "Great Debate" erupted in Congress in early 1951 when the Truman administration announced its plans to send four Americans divisions to Europe absent congressional approval (Carpenter 1986).[22] The Senate ended up endorsing the deployment, but declared future deployments would require congressional approval. Moreover, 1953-54 also saw the near passage of a constitutional amendment (the so-called "Bricker Amendment") to curtail the President's power over executive agreements.[23] The extremely narrow defeat of the amendment by a single vote in the Senate in early 1954 made it clear that Congress maintained a formidable power to hurt the presidency should it decide it desirable. Indeed, during the 1954 Indochina Crisis, the Eisenhower Administration chose to not air its internal beliefs that the President could legally utilize military force unilaterally due to concerns from the recent Bricker Amendment debate (Prados 2002).

First and Second Taiwan Strait Crises (1954-58):

Soon after the 1954 Geneva Accords regarding former French Indochina were agreed to, another foreign policy crisis erupted in the Asia-Pacific. Chiang Kai-shek and the KMT had lost the Chinese Civil War to the CCP in 1949 and evacuated to Taiwan. While the U.S. had at first seem ready to let Taiwan fall to CCP forces as well, after the invasion of South Korea by communist forces the U.S. began using military assets to deter an attack across the Taiwan strait (Christensen 1996). The First Taiwan Strait Crisis involved PRC attacks on ROC-held minor islands laying off mainland China—the so-called "offshore islands" of Quemoy and Matsu, among others.

At a September 12, 1954 meeting of the National Security Council, Admiral Radford argued that it would be necessary to attack PRC airfields on the mainland in order to defend Quemoy island, but Eisenhower replied that "to do that you would have to get Congressional authorization, since it would be war. If Congressional authorization were not obtained there would be logical grounds for impeachment. Whatever we do must be done in a Constitutional manner."[24] Secretary Dulles likewise argued that "if we act without Congress now we will not

[22] "The president said that he himself did not really care whether the resolution passed or not because he had no intention of sending more than six divisions; but he was going to fight the resolution's passage to the maximum degree because he was not going to be responsible for the establishment of a precedent which might embarrass a successor, fifty or one hundred years hence. President Truman understood very clearly what it meant to be president of the United States." (Heller 1980, pg. 409).

[23] "The amendment expressed, in legal form, a widely shared resentment (particularly among Republican congressmen) that ... President Truman, by his decision to commit American troops to Korea, had abused their executive authority." Robert F Randle, Geneva 1954· The Settlement of the Indochinese War (Princeton University Press, 1969).

[24] *Foreign Relations of the United States*, 1952–1954, China and Japan, Volume XIV, Part 1, eds. David W. Mabon, Harriet D. Schwar, John P. Glennon (Washington: Government Printing Office, 1993), Document 293. https://history.state.gov/historicaldocuments/frus1952-54v14p1/d293.

have anyone in the United States with us."[25] Part of the reasoning behind this seems to be that getting congressional authorization would allow the U.S. to commit more force to the situation: "The President said that the Council must get one thing clear in their heads, and that is that they are talking about war. If we are to attack Communist China, he was firmly opposed to any holding back like we did in Korea. We have no authority to do this except by obtaining it from Congress."[26]

Interestingly, at a National Security Council meeting three days prior, the Attorney General had made clear that this was not so much a legal problem as it was a political one. One participant "inquired whether, if the recommendations of Admiral Radford and the majority of the Joint Chiefs of Staff were adopted, it would be necessary to seek authority from Congress to carry out this course of action. The Attorney General replied that of course the President can and must do whatever is necessary for the defense of the United States, but it was highly advisable, policy-wise, to seek Congressional authority if time permitted."[27]

Specifically, the administration worried over exposing itself to Congressional criticism for acting unilaterally like Truman had.[28] In a January 24$^{\text{th}}$ message to Congress, Eisenhower asked "the Congress to participate now, by specific resolution, in measures designed to improve the prospects for peace."[29] The President laid out his reasoning by stating:

> "Authority for some of the actions which might be required would be inherent in the authority of the Commander-in-Chief. Until Congress can act I would not hesitate, so far as my Constitutional powers extend, to take whatever emergency action might be forced upon us in order to protect the rights and security of the United States. However, a suitable Congressional resolution would clearly and publicly establish the authority of the President as Commander-in-Chief to employ the armed forces of this nation promptly and effectively for the purposes indicated if in his judgment it became necessary. It would make clear the unified and serious intentions of our Government, our Congress and our people. Thus it will reduce the possibility that the Chinese Communists, misjudging our firm purpose and national unity, might be disposed to challenge the position of the United States, and precipitate a major crisis which even they would neither anticipate nor desire."[30]

Thus, both internally and publicly the Eisenhower administration was willing to make

[25] Ibid.

[26] Ibid.

[27] *Foreign Relations of the United States*, 1952–1954, China and Japan, Volume XIV, Part 1, eds. David W. Mabon, Harriet D. Schwar, John P. Glennon (Washington: Government Printing Office, 1993), Document 289. https://history.state.gov/historicaldocuments/frus1952-54v14p1/d289.

[28] *Foreign Relations of the United States*, 1955–1957, China, Volume II, eds. Harriet D. Schwar and John P. Glennon (Washington: Government Printing Office, 1986), Document 26. https://history.state.gov/historicaldocuments/frus1955-57v02/d26.

[29] *Foreign Relations of the United States*, 1955–1957, China, Volume II, eds. Harriet D. Schwar and John P. Glennon (Washington: Government Printing Office, 1986), Document 34. https://history.state.gov/historicaldocuments/frus1955-57v02/d34.

[30] Ibid.

expansive claims of presidential power,[31] yet was clearly cognizant of the *political* importance both domestically and internationally of securing congressional authorization. The First Taiwan Strait crisis dissipated shortly after the passage of the Formosa Resolution and the Sino-American Mutual Defense Treaty (Pang 2019, Zhang 1993).

The 1954-55 crisis was primarily motivated on the Chinese side by a desire to prevent an American commitment to Chiang's government on Taiwan (Christensen 1996) in order to recover the island. Given the clear American commitment after the first crisis, the 1958 crisis had slightly different motivations. One interpretation is that Mao sought to mobilize domestic support in the midst of the disastrous Great Leap Forward (Christensen 1996), while others argue that the PRC was testing the American commitment not to Taiwan proper but to the "offshore islands" of Quemoy and Matsu (Whiting 1975). These small islands fell outside of the mutual defense treaty, but did fall under the authority granted by the Formosa Resolution if the President judged that they were sufficiently related to the defense of Taiwan (Halperin 1966). While the administration recognized that a clear statement of an intent to defend the "offshore islands" would be the best way to avoid a war, it was reluctant to publicly announce a commitment to the because of concerns of reckless behavior on the part of Nationalist forces, as well as negative reactions from Congress and allies to such a commitment (Halperin 1966). As the crisis escalated, the administration increasingly sent signals that it would defend the island, but was highly focused on doing so in a way that was consistent with the Formosa Resolution (Eisenhower 1965, Halperin 1966).

Middle-East (1955-58):

A crisis began brewing in the Middle East after President Nasser of Egypt nationalized the Suez Canal in late July 1956. While U.S. allies in London and Paris began considering intervention options, in the United States it was immediately recognized that this presented a constitutional problem:

> "It is our basic view Nasser should not now be presented with, in effect, an ultimatum requiring him to reverse his nationalization action under threat of force. We believe it is most unlikely he would back down and that war would accordingly become inevitable.
>
> In this connection it must be borne in mind that, under existing circumstances, our President has no authority to commit United States to military action. This would require Congressional authorization. Congress...would probably grant requested authority only under most compelling circumstances. Unless and until there is clearer evidence that Nasser's action will actually impede vital traffic through Canal...we doubt Congress would give the authority."[32]

[31] Eisenhower emphasized in his memoirs that he had not conceded that the president alone could have acted in the First Taiwan Strait crises (Eisenhower 1963).

[32] *Foreign Relations of the United States*, 1955–1957, Suez Crisis, July 26–December 31, 1956, Volume XVI,

This was not simply an excuse conveniently created in the midst of the crisis, but was well recognized by U.S. policymakers a year in advance. A planning document on possible contingencies in the Middle East from October 1955 declared that any "blockade or military intervention would require Congressional authorization."[33] This requirement had even been communicated to the U.S.'s British allies at the time, with the Secretary of State stating that "the Executive Branch of the Government in the United States could not make a commitment that we would take armed action in the future" without congressional approval.[34] The reasoning, moreover, for this decision was explicitly political, not legal:

> "[T]he Vice President [Nixon] inquired whether an embargo could be established against an aggressor in the Middle East by the Executive Branch of the Government on its own initiative and without Congressional authorization. [The National Security Advisor] replied that he understood this to be the case...The Attorney General commented that whether or not the Executive Branch could *legally* resort to a blockade without further specific Congressional authorization, a serious *policy* question remained as to whether we would want to do so."[35]

Notably, the planning rejected the Truman precedent of relying on a U.N. resolution in lieu of formal congressional approval. It specifically only permitted "military forces with Congressional authority in response to a UN resolution or the request of a victim of aggression." In other words, while either a U.N. resolution or a request from a local state comprised one necessary condition, congressional authorization was considered necessary under either circumstance—a U.N. resolution was no substitute for legislative approval.[36]

A similar planning document from March 1956 makes clear "The Executive Branch will prepare a draft of a Joint Congressional Resolution which would authorize the President to use military force if necessary."[37] In April 1956 Eisenhower specifically stated he would "he would not act to send troops to the Middle East in the event of war without Congressional authority."[38] At the end of July—shortly after the Egyptian announcement—Eisenhower would

eds. Nina J. Noring and John P. Glennon (Washington: Government Printing Office, 1990), Document 28. https://history.state.gov/historicaldocuments/frus1955-57v16/d28.

[33] *Foreign Relations of the United States*, 1955–1957, Arab-Israeli Dispute, 1955, Volume XIV, eds. Carl N. Raether and John P. Glennon (Washington: Government Printing Office, 1989), Document 340. https://history.state.gov/historicaldocuments/frus1955-57v14/d340.

[34] *Foreign Relations of the United States*, 1955–1957, Arab-Israeli Dispute, 1955, Volume XIV, eds. Carl N. Raether and John P. Glennon (Washington: Government Printing Office, 1989), Document 358. https://history.state.gov/historicaldocuments/frus1955-57v14/d358.

[35] *Foreign Relations of the United States*, 1955–1957, Arab-Israeli Dispute, 1955, Volume XIV, eds. Carl N. Raether and John P. Glennon (Washington: Government Printing Office, 1989), Document 361. https://history.state.gov/historicaldocuments/frus1955-57v14/d61. Emphasis added.

[36] *Foreign Relations of the United States*, 1955–1957, Arab-Israeli Dispute, 1955, Volume XIV, eds. Carl N. Raether and John P. Glennon (Washington: Government Printing Office, 1989), Document 340. https://history.state.gov/historicaldocuments/frus1955-57v14/d340.

[37] *Foreign Relations of the United States*, 1955–1957, Arab-Israeli Dispute, January 1–July 26, 1956, Volume XV, eds. Carl N. Raether and John P. Glennon (Washington: Government Printing Office, 1989), Document 222. https://history.state.gov/historicaldocuments/frus1955-57v15/d222.

[38] *Foreign Relations of the United States*, 1955–1957, Arab-Israeli Dispute, January 1–July 26, 1956, Volume

reiterate that point: "Military support from us would require Congressional action, and a request for such action...would not be well received."[39] Thus, in August 1956 the Secretary of State would inform his British counterpart on the possibility of American support for a British intervention "Without adequate preparation of public opinion, we could not associate ourselves in a military undertaking," specifically pointing out "that for that we would require Congressional authorization, which under present circumstances would be most difficult to obtain."[40]

France and the United Kingdom attempted to regain control of the canal via the cover of an Israeli attack in the 1956 Suez Crisis, but the encounter ended in embarrassment for the West as the United States forced its allies to withdraw. In the aftermath of the crisis, a Soviet intrusion into the Middle East was feared by the U.S. administration, however. While the U.S. had opposed French and British plans to regain control of the region, it likewise opposed communist influence in the area. In setting a new "Eisenhower Doctrine", the administration sought to clearly publicize the American commitment to the region. At a November meeting of the National Security Council, Admiral Radford stated "that in his view the Congressional Resolution with respect to Formosa had actually prevented a war in the Far East. So, likewise, a Congressional Resolution conferring similar powers on the President to deal with the Soviets in the Middle East might have the similar result of preventing a world war."[41] Radford reiterated at another meeting "that some form of Congressional resolution would be necessary to put the Soviet Union on notice that there is a line beyond which they cannot go."[42]

At a White House meeting on January 1st Eisenhower likewise "cited his belief that the United States must put the entire world on notice that we are ready to move instantly if necessary...The President believed that if the Administration had that kind of authority it might never have to be used."[43] At the same meeting a member of Congress asked if the President did not already have power to carry out these proposals without seeking Congressional authorization. Eisenhower replied that "greater effect could be had from a consensus of

XV, eds. Carl N. Raether and John P. Glennon (Washington: Government Printing Office, 1989), Document 240. https://history.state.gov/historicaldocuments/frus1955-57v15/d240.

[39] *Foreign Relations of the United States*, 1955–1957, Suez Crisis, July 26–December 31, 1956, Volume XVI, eds. Nina J. Noring and John P. Glennon (Washington: Government Printing Office, 1990), Document 34. https://history.state.gov/historicaldocuments/frus1955-57v16/d34.

[40] *Foreign Relations of the United States*, 1955–1957, Suez Crisis, July 26–December 31, 1956, Volume XVI, eds. Nina J. Noring and John P. Glennon (Washington: Government Printing Office, 1990), Document 41. https://history.state.gov/historicaldocuments/frus1955-57v16/d41.

[41] *Foreign Relations of the United States*, 1955–1957, Volume XVI, Suez Crisis, July 26-December 31, 1956, eds. Nina J. Noring and John P. Glennon (Washington: Government Printing Office, 1990), Document 626. https://history.state.gov/historicaldocuments/frus1955-57v16/d626.

[42] https://history.state.gov/historicaldocuments/frus1955-57v13/d338.

[43] *Foreign Relations of the United States*, 1955–1957, Volume XII, Neart East Region; Iran; Iraq, eds. Paul Claussen, Edward C. Keefer, Will Klingaman, Nina J. Noring, and John P. Glennon (Washington: Government Printing Office, 1991), Document 182. https://history.state.gov/historicaldocuments/frus1955-57v12/d182.

Executive and Legislative opinion,"[44] and thus requested formal authorization to intervene in the Middle East.

Likewise, at a Senate foreign relations committee meeting the next day, Secretary Dulles was asked whether unilateral presidential commitments could just ask effectively deter aggression in the region and responded by arguing that "statements by the President act as a temporary shot in the arm, but these people are very sophisticated now. They know that unless Congress shares, in effect, in these declarations, they do not amount to very much, and cannot dependably make their plans in reliance upon them," (Waxman 2019). And while some have asserted that AUMF's have been rubber stamped by Congress, Waxman notes that "the proposed Middle East resolution elicited several months of intense debate and was modified before Congress passed it." (Waxman 2019).

Soon after Suez, a series of other crises broke out across the Middle East. 1957 saw the attempted overthrow of the western-aligned King of Jordan, as well as a confrontation between NATO member Turkey and Soviet-aligned Syria. The next year saw even more serious upheaval in Lebanon and Iraq. When the crisis broke out in Lebanon in 1958, Eisenhower pondered the idea of asking Congress for *additional* authorization.[45] While Marines were dispatched to the coastal nation absent additional approval, Eisenhower made clear that intervention in Syria or Iraq would require renewed authority from Congress.[46] Given the clear planning of the administration in 1955 and 1956 to only intervene pursuant to congressional authorization, its securing of formal authorization in early 1957, and the discussed possibility of seeking even further authorization in 1958, the evidence clearly shows the Eisenhower administration saw formal approval by Congress as the sine qua non of intervention in the Middle East in the late 1950's.

Berlin 1958-59

The Berlin crises under the Eisenhower and Kennedy administration have been the focus on much scholarship on crises and credibility (Press 2005, Lupton 2020), and also serve as useful cases for the theory examined here. Perhaps second only to the Cuban Missile crisis, the crises over Berlin involved the highest risk of general war between the Cold War blocs during the half-century long confrontation.

[44] Ibid.

[45] *Foreign Relations of the United States*, 1958–1960, Volume XI, Lebanon and Jordan, eds. Louis J. Smith and John P. Glennon (Washington: Government Printing Office, 1992), Document 30. https://history.state.gov/historicaldocuments/frus1958-60v11/d30.

[46] *Foreign Relations of the United States*, 1958–1960, Volume XI, Lebanon and Jordan, eds. Louis J. Smith and John P. Glennon (Washington: Government Printing Office, 1992), Document 131. https://history.state.gov/historicaldocuments/frus1958-60v11/d131; *Foreign Relations of the United States*, 1958–1960, Volume XI, Lebanon and Jordan, eds. Louis J. Smith and John P. Glennon (Washington: Government Printing Office, 1992), Document 127. https://history.state.gov/historicaldocuments/frus1958-60v11/d127.

A crisis over the divided city of Berlin came to the fore in the late 1950's as skilled workers from East Germany sought to escape the communist state and relocate to the West. Much of this brain drain was occurring through foot traffic into West Berlin. The Soviet Union threatened to sign a separate peace treaty with East Germany, putting Western access to West Berlin into doubt. By the late 1950's, the growing nuclear arsenals on both sides of the Iron Curtain not only gave the American President apocalyptic destructive power at the metaphorical "push of the button", but also created the need for a quick response by the executive. In this sense, these should be easy cases for the Imperial Presidency thesis.

As early as January 1959, the administration was considering a resolution from Congress:

> "This Soviet estimate of bipartisanship would be confirmed and reinforced by a strong Congressional resolution on Berlin if such resolution could be obtained without difficulty and with essentially unanimous support. However, the estimate might actually be weakened if there were long debate with substantial differences of view or if there were any serious defection in support."[47]

At a January 14th appearance of Secretary Dulles before the Senate Foreign Relations Committee, the chairman offered "a strongly-worded Senate Resolution or Joint Resolution". The Secretary welcomed the idea of a broadly worded resolution declaring support for for standing firm in Berlin, but argued that a more specific resolution detailing what the U.S. would do if the Soviets followed through with their threat would not be helpful at the present time.[48] Given the extremely delicate nature of the crisis the administration sought to avoid unnecessary provocation. The strategy it pursued was one of "not much noise but carry[ing] a big stick", and avoiding saber rattling.[49]

> "Secretary [Dulles] has...misgivings...about a joint resolution expressing determination to stand on our rights in Berlin, I have a feeling that he would be equally or even more concerned about another aspect of the matter if the resolution were to be a "Formosa type". If I correctly understand this description to mean one authorizing the use of U. S. military forces, I believe the Secretary would want to be very sure that the content or effect of such a resolution would not turn the tables on ourselves, from the present situation. This, as I understand it, is that the President and others have made clear that the initiative and responsibility for an, use of force in connection with our rights to be in Berlin and to have access thereto, will be on the Communists, not on us."[50]

[47] January 9, 1959. "Possible Congressional Resolution on Berlin" Memo from Assistant Secretary Merchant to Secretary of State.

[48] Executive Sessions of the Senate Foreign Relations Committee, volume XI, Washington, 1982, pages 5–14

[49] *Foreign Relations of the United States*, 1958–1960, Volume VIII, Berlin, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 205. https://history.state.gov/historicaldocuments/frus1958-60v08/d205.

[50] February 27, 1959. Memo from Joseph N. Greene.

By March of 1959, Eisenhower had "emphasized that he does not at this time desire a resolution in the Senate. When Mr. Rayburn called attention to the fact that the proponents point to the efficacy of the Taiwan Straits resolution, the President stated that this is a different type of matter."[51] Others within the administration disagreed with this, however. A March 19 memo to the acting Secretary of State argued that "To create maximum deterrence we should now repeat the firm note struck in the President's speech in a Congressional resolution and drop any pretense of business as usual in our military posture. This is the most serious crisis since World War II and we should act accordingly."[52]

The Administration nonetheless kept a close pulse on congressional sentiment during the crisis, and found it to be consistently firm in its support.[53] Indeed, the administration was taking heat for not acting firm enough. Given that on several occasions Congress offered resolutions of support to the White House,[54] the administration would have had every reason to believe one would be forthcoming if it became needed at a future point. In an April discussion of the possibility of the crisis leading to general war, concerns about "prerogatives of the Commander-in-Chief vis-à-vis the U.S. Congress" were considered moot because Congressional support was so strong.[55] A checklist created to comply with a request made by the President at an April NSC meeting—later provided to the Secretary of Defense—made clear that if "decision has been made to adopt general war measure" the administration would "alert congressional leaders to the imminent likelihood of war, and *seek Congressional authorization for use of forces.*"[56] Thus, while Eisenhower sought to avoid unnecessary escalation via the passage of a congressional resolution, the administration explicitly planned to secure it if the crisis matured to the point the use of force was needed.

[51] *Foreign Relations of the United States*, 1958–1960, Volume VIII, Berlin, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 205. https://history.state.gov/historicaldocuments/frus1958-60v08/d205.

[52] *Foreign Relations of the United States*, 1958–1960, Volume VIII, Berlin, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 233. https://history.state.gov/historicaldocuments/frus1958-60v08/d233.

[53] *Foreign Relations of the United States*, 1958–1960, Volume VIII, Berlin, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 205. https://history.state.gov/historicaldocuments/frus1958-60v08/d205.

[54] Executive Sessions of the Senate Foreign Relations Committee, Volume XI, Washington, 1982, pages 5–14. https://books.google.com/books?id=T8q0wAEACAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

[55] *Foreign Relations of the United States*, 1958–1960, Volume VIII, Berlin Crisis, 1958-1959, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 268. https://history.state.gov/historicaldocuments/frus1958-60v08/d268.

[56] Emphasis added. Memorandum for the Secretary of Defense: Berlin Contingency Planning, August 12, 1960. Memorandum from N. F. Twinning, Chairman of Joint Chiefs of Staff, to Secretary of Defense. https://nara-media-001.s3.amazonaws.com/arcmedia/research/1961-berlin-crisis/932006-3-4-16/Memo-For-SecDef-Berlin-Contingency-Planning.pdfLater in May while the sides discussed having a meeting between the American and Soviet leaders, Eisenhower though it advantageous to have the summit with Khrushchev while Congress was in session in Washington, in case anything were to"come up wherein Congressional backing would be of value." *Foreign Relations of the United States*, 1958–1960, Volume VIII, Berlin Crisis, 1958-1959, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 337. https://history.state.gov/historicaldocuments/frus1958-60v08/d337.

Eisenhower's consistent and emphatic assertions that Congress's power to authorize conflict be utilized in other crises also is relevant. Not only did Eisenhower request formal authorization in the Taiwan and Middle East crises, but also seemingly declined intervention in Southeast Asia in 1954 because of a lack of authorization form Congress (see chapters 4 & 5). Moreover, during a mini-crisis involving the Netherlands and Indonesia in 1958, the administration likewise stated formal authorization would be a prerequisite for intervention.[57] In his post-presidential years, Eisenhower would recommend Kennedy acquire congressional authorization should force need to be used in Laos[58] or in the Taiwan strait in 1962.[59] Given the administration's close consideration of possible resolutions in the winter of 1958-59, the official checklist created in the Department of Defense listing formal congressional authorization for the use of military force as a requirement,[60] and Eisenhower's consistent behavior in other crises, the weight of the evidence strongly suggests that if the crisis had reached the point of actual combat in Berlin, a resolution would have been sought and secured.

Truman's immediate successor was, therefore, clearly opposed to following the Korean precedent and instead insisted on congressional approval whenever crises arose. The original author of the Imperial Presidency thesis, Arthur Schlesinger, found Eisenhower to have been something of an empirical anomaly because of his seeming fidelity to the separation of powers and Congress's role in authorizing the use of force, although he also pointed out that the administration claimed unilateral authority for its intervention in Lebanon in 1958 based on Article II and not on the Middle East AUMF recently passed (Schlesinger 2004, pg. 162). Schlesinger wrote: "as the years had passed, [the Eisenhower administration] had seemed to seek resolutions less because it really thought Congress had the authority or wisdom in the premises than because a resolution, by involving Congress in the takeoff, might incriminate it in a crash landing," (Schlesinger 2004, pg. 163).

It is, of course, possible that Eisenhower was simply an anomalous outlier, even if there does seem to be evidence the administration was ready at key moments to make expansive claims of presidential war power if necessary. Even succeeding Presidents, however, also failed to follow Truman's example and clearly had congressional authorization in mind when contemplating large uses of military force.

[57] *Foreign Relations of the United States*, 1958–1960, Volume XVII, Indonesia, eds. Robert J. McMahon and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 337. https://history.state.gov/historicaldocuments/frus1958-60v17/d159.

[58] *Foreign Relations of the United States*, 1961-1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 363. https://history.state.gov/historicaldocuments/frus1961-63v24/d363.

[59] Memorandum for the Record: Briefing of General Eisenhower in Gettysburg, Pa., June 22, 1962.

[60] Memorandum for the Secretary of Defense: Berlin Contingency Planning, August 12, 1960. Memorandum from N. F. Twinning, Chairman of Joint Chiefs of Staff, to Secretary of Defense. https://nara-media-001.s3.amazonaws.com/arcmedia/research/1961-berlin-crisis/932006-3-4-16/Memo-For-SecDef-Berlin-Contingency-Planning.pdf.

Berlin 1961

When another crisis over Berlin erupted soon after a new President was sworn, the new administration followed a similar strategy as its predecessor. The Kennedy White House sought to follow a strategy outlined by former Secretary of State Dean Acheson to "[keep] early steps in a low key". Notably, Acheson himself—the same individual who had recommended Truman proceed unilaterally in Korea in 1950[61]—this time consistently advocated going to Congress for authorization and resolutions of support. Acheson saw congressional support as a *sine qua non* of success.[62]

The former Secretary of State argued that "preparations for non-military pressure", such as congressional resolutions, were "of vital importance." Indeed, while much of his recommendations focused on military preparations, he deemed political actions such as this to "probably be more credible than preparations for military action" and that they would likely "have a substantial effect on Soviet intentions."[63] As early as June, Acheson had pointed out that the administration should seek "supporting resolutions in the Congress" and noted that "Considerable preparation of the American people and Congress would be required."[64] He reiterated a few weeks later that "The President will need to seek funds and authority from the Congress."[65]

Notably, the administration faced the question of how to legally go about calling up reserve forces (Schlesinger 2002, Sorensen 2013). Two options were available: first, the President could act unilaterally by way of declaring a national emergency. Second, the President could specifically ask Congress to authorize the action.[66] The hawks—Acheson and

[61] Similar to other members of the Truman administration, Acheson seems to have evolved in his beliefs about the importance of congressional involvement. While testifying before Congress on Eisenhower's proposed Mideast Resolution in 1957, Acheson praised the administration's efforts at working with the legislature even while substantially disagreeing with the policy: "The President, by laying· before the Congress this question of American policy in the Middle East and inviting its free discussion, has given the clearest possible demonstration of the strength and vitality of our democratic system. His act should not be diminished by suggestions from any quarter that the full consideration needed for wise action be curtailed or that perfunctory approval of the Administration's proposal is the proper and necessary performance of Congressional duty." Text of Acheson Statement Before House Hearing on Proposed Middle East Policy, January 10th 1957, *New York Times*.

[62] "If these allies, especially the Federal Republic, were to weaken, the plan here developed would fail: While the United States could still launch nuclear warfare, there is very grave doubt that our own Congress and people would support initiation of a general war which arose over Berlin and was disapproved by the Germans themselves." *Foreign Relations of the United States*, 1961–1963, Volume XIV, Berlin Crisis, 1961-1962, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 49. https://history.state.gov/historicaldocuments/frus1961-63v14/d49.

[63] Ibid.

[64] *Foreign Relations of the United States*, 1961–1963, Volume XIV, Berlin Crisis, 1961-1962, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 42. https://history.state.gov/historicaldocuments/frus1961-63v14/d42.

[65] *Foreign Relations of the United States*, 1961–1963, Volume XIV, Berlin Crisis, 1961-1962, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 49. https://history.state.gov/historicaldocuments/frus1961-63v14/d49.

[66] Memorandum for the Secretary of Defense: Berlin Contingency Planning. June 26, 1961. L. L. Lemnitzer, Chairman, Joint Chiefs of Staff. https://nara-media-001.s3.amazonaws.com/arcmedia/research/1961-berlin-crisis/932006-3-4-16/Memo-For-SecDef-June-26-1961.pdf.

Johnson—preferred the former, while most other advisors preferred going through Congress (Schlesinger 2002). While not technically a formal authorization for the use of military force, having Congress give its express approval for the reserve call-up—clearly understood by all involved to be an expression of support for standing firm in Berlin—created congressional buy-in. Ted Sorensen recalled that Kennedy's decision was made with "a large psychological and political element in it." Sorensen himself had personally advocated for a "Congressional Resolution underlining our commitments to aid and protect the people of Berlin and their right of self-determination."[67] When the War in Vietnam escalated in 1965, holdovers from the Kennedy administration recalled that the 1961 decision was "far and away the best" method of calling up the reserves because "it assure[d] Congressional participation and support."[68]

But even the hawks who advocated unilaterally declaring a national emergency still saw the benefit of getting congressional buy-in in some other form. Vice President Johnson, for example, argued that Kennedy should call-up the reserves unilaterally, but then have Congress officially endorse the action. Johnson argued that Congress and the White House needed to "close ranks,"[69] and later as President himself would be nearly as obsessive as Eisenhower about securing formal congressional approval before major military action. And, as noted above, the other hawk advocating a national emergency—Acheson—was adamant the administration get formal support from the legislature. Thus, *everyone* sought formal congressional buy-in in some form or another.[70] Many of the influential members of the Kennedy Administration had either been in Congress or served in the Truman administration during the Korean War and had come to ex post see the decision to act unilaterally in June 1950 as foolish.[71]

[67] Memorandum to the President: The Decision on Berlin, July 17, 1961, Theodore Sorensen.

[68] *Foreign Relations of the United States*, 1964–1968, Volume III, Vietnam, June-December 1965, eds. David C. Humphrey, Edward C. Keefer, Louis J. Smith, and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 80. https://history.state.gov/historicaldocuments/frus1964-68v03/d80.

[69] *Foreign Relations of the United States*, 1961–1963, Volume XIV, Berlin Crisis, 1961-1962, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 67. https://history.state.gov/historicaldocuments/frus1961-63v14/d67.

[70] Indeed, the administrations contingency plans show that even if an emergency were unilaterally declared by the President, *it would seek a supporting congressional resolution.* Memorandum for the Secretary of Defense: Berlin Contingency Planning. June 26, 1961. L. L. Lemnitzer, Chairman, Joint Chiefs of Staff. https://nara-media-001.s3.amazonaws.com/arcmedia/research/1961-berlin-crisis/932006-3-4-16/Memo-For-SecDef-June-26-1961.pdf.

[71] The administration was aware of the Korea precedent. A Democratic Senator discouraged unilateral action when it came to substantial uses of military force: "Senator LONG. Mr. Secretary, it seems to me from hindsight that when President Truman decided to put American forces in Korea he would have been wise to come to Congress for a resolution im mediately, because with the events that followed there was a great division among the American people as to the wisdom of that deci sion, both the wisdom of going in and the wisdom of fighting a limited war...I am inclined to think that this country would be in a lot better shape if we went into this thing with a united effort rather than be in the position where Members of Con gress, including myself, have a right to second-guess, to say whether we are together in this effort....This silence-gives-consent business does not work too well when the thing starts going poorly." Executive Sessions of the Senate Foreign Relations Committee. Volume XIV, pg 467-468.

Rusk responded that "the administration is very much aware of that matter...the President is trying to keep in close touch with the leadership of the Congress, and will undoubtedly have this point you made very much in mind."

In a July 25, 1961 televised address to the nation, the President specifically asked for congressional authority to call-up the reserves, declaring "I shall not hesitate to ask the Congress for additional measures, or exercise any of the executive powers that I possess to meet this threat to peace."[72] Later that week, near unanimous votes in both houses of Congress would pass Senate Joint Resolution 120, giving the President the authority to call up 250,000 reservists "for the purpose of meeting a possible crisis in Berlin or elsewhere." When the Soviets responded the next month by erecting the Berlin Wall, Congress remained strongly supportive of the President's policies.[73] Similarly, when concerns over Berlin were raised again in 1962 shortly prior to the Cuban Missile Crisis, Congress passed House Concurrent Resolution 570, which declared that "the United States is determined to prevent by whatever means may be necessary, including the use of arms, any violation of those rights by the Soviet Union directly or through others, and to fulfill our commitment to the people of Berlin." The administration believed congressional support for the reserve call-up was "changed the atmosphere. There was no war, and the Soviets lifted their deadline on the signing of a peace treaty with East Germany."[74]

Other crises, as well, gives us clues as to what the administration may have considered had war been the outcome of the crisis. In planning for a possible intervention in Laos in 1962, internal policy planning made clear that while the introduction of peacekeepers could be undertaken pursuant to mere congressional consultation, combat would only be undertaken pursuant to formal congressional approval. Similarly, the administration stated to Congress in early 1962 that while it was comfortable sending military advisers to Vietnam absent formal congressional authorization, if American troops were to escalated their mission into a direct combat role "the President undoubtedly would not hesitate to seek an appropriate resolution."[75] Moreover, while Kennedy's tenure was cut short by his assassination, most of his top foreign policy and defense advisors carried out their duties well into the Johnson administration. As noted below, in 1964 these carry-over advisors—including the Secretary of States (Rusk), Secretary of Defense (McNamara), and National Security Adviser (Bundy) would all argue that formal congressional approval was a clear *necessity* before significant combat in Vietnam. Kennedy's Vice President himself also had a firm belief in securing congressional

[72] John F. Kennedy, Radio and Television Report to the American People on the Berlin Crisis. Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/node/235247.

[73] Dean Rusk, recorded interview by Dennis J. O'Brien, March 13, 1970, John F. Kennedy Library Oral History Program, available at https://www.jfklibrary.org/sites/default/files/archives/JFKOH/Rusk%2C%20David%20Dean/JFKOH-DDR-04/JFKOH-DDR-04-TR.pdf.

[74] *Foreign Relations of the United States*, 1961–1963, Volume XIV, Berlin Crisis, 1961-1962, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1993), Document 304. https://history.state.gov/historicaldocuments/frus1961-63v14/d304.

[75] *Foreign Relations of the United States*, 1961–1963, Volume II, Vietnam, 1962, eds. John P. Glennon, David M. Baehler, Charles S. Sampson, and Glenn W. LaFantasie (Washington: Government Printing Office, 1990), Document 108. https://history.state.gov/historicaldocuments/frus1961-63v02/d108.

approval before utilizing substantial military force.[76]

Given the unanimous recognition that congressional buy-in was important even in a step short of escalation to full scale war (i.e., in calling up the reserves), and the administration's plan to seek congressional approval prior to intervening in Laos less than a year later—along with the subsequent actions of his advisers and Vice President after Kennedy's death—the weight of the evidence suggests Kennedy would have sought formal approval for the use of force had the Berlin crisis led to war.

Cuba (1962):

While the Cuban Missile Crisis did not end in a major use of force, decision-makers were aware of the substantial possibility that it could have (Allison & Zelikow 1999). Given the lack of congressional role in much of the internal decision-making undertaken during the acute crisis, as Graham Allison has emphasized (1987), this then might appear problematic to advocates of congressional control over the use of force. Nevertheless, it would be quite a stretch to argue that Kennedy was acting contrary to the will of Congress during the episode. Indeed, Congress had demanded that the White House respond more strongly to the build-up on the island before the "Thirteen Days" of October 1962 and much of the White House's maneuvering during the crisis can be read as reacting to pressure from congressional Republicans. Indeed, some historians argue that Kennedy was acting under a fear of impeachment if he did not act forcefully enough (Zelizer 2009).

By the summer of 1962, there was already a growing suspicion that the Soviets were covertly introducing strategic weapons into Cuba, although concrete evidence had yet to be discovered. While some Republicans sought to pass a clear war authorization to use force against the island, Democrats successfully softened the language of the resolution in order to avoid unnecessary escalation when there was still little hard evidence of strategic weaponry.[77] The White House had been involved in the process and its own language was used in the resolution.[78] Kennedy himself was in contact with congressional leaders, urging them to pass a less provocative resolution as "the only way to head off [Republicans] giving us something

[76]Johnson would recall after his own presidency that he had "advised President Eisenhower on the Formosa and Middle East Resolutions that he ought to get a commitment...of the Congress that if he had to go in, to have the Congress go in with him." Oral history transcript, Lyndon B. Johnson, interview S-IX, 8/12/1969, by William J. Jorden, LBJ Library Oral Histories, LBJ Presidential Library, accessed March 27, 2023, https://www.discoverlbj.org/item/oh-lbj-19690812-66-1wj.

[77]Note that this is similar to the logic of Eisenhower in the 1958-59 Berlin crisis—formal authorization was seen as counterproductive *at that point*, but was nonetheless seen as a necessary condition should it come to the use of force.

[78]See Kennedy, John F. "Telephone Recordings: Dictation Belt 3B.1. Congressional Resolution on Cuba — JFK Library." Accessed March 27, 2023. https://www.jfklibrary.org/asset-viewer/archives/JFKPOF/TPH/JFKPOF-TPH-03B-1/JFKPOF-TPH-03B-1.

much worse."[79] Importantly, the behavior of the Cubans and Soviets themselves was driven by a fear of an American invasion to oust Fidel Castro after the failed Bay of Pigs invasion the year prior. A clumsily worded resolution hence had the potential of driving the very behavior Congress sought to deter. Congress and the administration therefore sought a resolution that was "firm but not threatening" in order to avoid a tragic security spiral.[80] It attempted to convey a message that the U.S. sought to only make sure nuclear weapons did not make it on the island, but had no intention to otherwise invade the country. Congress thus stated in the 1962 Cuba Resolution:

> "the United States is determined to prevent by whatever means may be necessary, including the use of arms ... in Cuba the creation or use of an externally supported military capability endangering the security of the United States[.]"[81]

Some emphasize that the resolution did not specifically state that the President was given the authority to use military force but, instead, simply focused on conveying the clear resolve of Congress.[82] Regardless, the resolution was clearly meant to have a strong effect: while the bill had originally been introduced as a non-legally binding concurrent resolution in both houses, it was intentionally altered into a legally binding joint resolution—i.e., having full legal effect—before passage. Congressional leadership specifically recommended:

> "that this statement be passed in the form of a joint resolution which would require the signature of the President. Thus the determination expressed in the resolution would be joined in not only by the Congress but also by the President ... [t]he force of the declaration would be further strengthened. Furthermore, the use of a joint resolution makes it possible to avoid constitutional arguments over the relative powers of the President and the Congress respecting the use of American Armed Forces... it is important in the current instance that they not obscure...the essential unity of purpose, not only of the Congress, but of the President and American people as well."[83]

Thus passed as a legally binding law, the Cuba Resolution of 1962 would be cited alongside the 1955 Formosa Resolution and 1957 Middle East Resolution as a precedent for subsequent congressional authorizations for the use of military force—most notoriously the 1964 Gulf of Tonkin Resolution.[84]

[79] Ibid.

[80] Situation in Cuba: Hearings Before the Committee on Foreign Relations and the Committee on Armed Services, United States Senate, Eighty-seventh Congress, Second Session, on S. J. Res. 226 [and Others] Monday, September 17, 1962. United States: U.S. Government Printing Office, 1962.

[81] Public Law 87-733 (1962).

[82] When Congress sought to repeal the area resolutions passed in the 1950's and 60's concurrent with the repeal of the Gulf of Tonkin Resolution, the Cuban Resolution was included on this list—suggesting that Congress itself thought it as similar to the Formosa, Middle-East, and Gulf of Tonkin Resolutions.

[83] Situation in Cuba: Hearings Before the Committee on Foreign Relations and the Committee on Armed Services, United States Senate, Eighty-seventh Congress, Second Session, on S. J. Res. 226 [and Others] Monday, September 17, 1962. United States: U.S. Government Printing Office, 1962.

[84] The Soviets clearly paid attention to the passage of the resolution as Khrushchev specifically noted the

Once the acute Cuban Missile crisis started on October 16 after aerial photography clearly provided evidence of Soviet missile deployments, the administration came to appreciate the political cover provided by the Cuba Resolution. Indeed, the administration both privately and public repeated the assertion that the resolution authorized the President to take military action against the perceived threat. The plan the administration ultimately adopted to respond to the discovery of Soviet missiles was a "[b]lockade with no warning and no advance notice such as a declaration of war, with the President *depending upon existing Congressional resolutions for authority.*"[85] The administration believed "the President had ample constitutional and *statutory* authority to take any needed military measures."[86] At one point, when favoring airstrikes to a blockade, Kennedy stated authority for such action came from the resolution—"President seemed inclined to act promptly if at all, without warning, targeting on MRBM's and possible airfields. Stated *Congressional resolutions gave him all authority he needed.*"[87] Moreover, while ultimately a "quarantine" of the island was chosen over more escalatory airstrikes, the contingency plans for airstrikes included "calling the Congress to meet in special session...to consider what further action may be necessary at that time."[88] Thus, the administration was considering asking for even *further* approval beyond the resolution—such as a full-fledged declaration of war—should more escalation occur. Indeed, Kennedy had specifically asked congressional leaders keep lawmakers on stand-by—being able to convene on eight hours notice—so that Congress could act "before any major action is taken," (May & Zelikow 2002, pg. 377). Even Schlesinger concedes in the *Imperial Presidency* that "had the crisis exploded into war, Congress would no doubt have acted at once," (Schlesinger 1973, pg. 175-76).

Kennedy likewise cited the congressional resolution twice in his famous Oval Office address as a basis for his authority in ordering the blockade, and also specifically cited the resolution in his letter to Chairman Khrushchev on October 22nd, 1962 (May & Zelikow 2002, pg. 190). Moreover, when Kennedy briefed congressional leaders during the crisis, Congress

piece of legislation in a letter from the Soviet leader to Kennedy dated September 28th, 1962. *Foreign Relations of the United States*, 1961–1963, Volume VI, Kennedy-Khrushchev Exchanges, eds. Charles S. Sampson and Glenn W. LaFantasie (Washington: Government Printing Office, 1996), Document 56. https://history.state.gov/historicaldocuments/frus1961-63v06/d56.

[85] *Foreign Relations of the United States*, 1961–1963, Volume XI, Cuban Missile Crisis and Aftermath, eds. Edward C. Keefer, Charles S. Sampson, Louis J. Smith, and David S. Patterson (Washington: Government Printing Office, 1996), Document 27. https://history.state.gov/historicaldocuments/frus1961-63v11/d27.

[86] *Foreign Relations of the United States*, 1961–1963, Volume XI, Cuban Missile Crisis and Aftermath, eds. Edward C. Keefer, Charles S. Sampson, Louis J. Smith, and David S. Patterson (Washington: Government Printing Office, 1996), Document 31. https://history.state.gov/historicaldocuments/frus1961-63v11/d31.

[87] *Foreign Relations of the United States*, 1961–1963, Volume XI, Cuban Missile Crisis and Aftermath, eds. Edward C. Keefer, Charles S. Sampson, Louis J. Smith, and David S. Patterson (Washington: Government Printing Office, 1996), Document 23. https://history.state.gov/historicaldocuments/frus1961-63v11/d23.

[88] Air Strike Scenario, October 20, 1962. National Security Files: Countries: Cuba, NSC Meeting Paper, 10/20 - 21/62, Box 54. Indeed, the planning stated that the President would make a public announcement "recalling the Congress to a special session to meet on Tuesday morning" the evening before the strikes were to commence.

requested stronger action including offensive operations against the missile sites in Cuba or full invasion instead of a mere quarantine of the island (May & Zelikow 2002, Zelizer 2009). Indeed, when actually planning for the possible use of sustained airstrikes against the island, Kennedy and his National Security Advisor noted the authority given by the resolution from Congress.[89]

Thus, because Congress had passed a strong joint resolution specifically referring to the use of armed force a few weeks before the crisis, and because Kennedy was acting under strong pressure from Congress to take even *stronger* action, the missile crisis can hardly be cited as a clear example of an Imperial President willing to start a major war unilaterally. Instead, consistent with the Congressional Constraint thesis, the administration was made more comfortable risking major war because formal support from Congress was already in hand once the acute crisis began.

Vietnam (1964-73):

The Vietnam War is often cited for its purported lack of congressional authorization,[90] and Johnson publicly claimed that he did not require formal approval from Congress to engage in warfare. Privately, however, the evidence actually strongly supports the opposite: the Johnson Administration would not have engaged in substantial combat without formal legislative approval in hand. The Johnson administration, like that of Eisenhower, explicitly saw congressional authorization as a *sine qua non* for the use of major military force.

Months prior to the August 1964 Gulf of Tonkin incident, the administration was considering increasing military action in Southeast Asia and explicitly contemplated asking for a congressional authorization to such an end. Inspired by the seeming successes of the Taiwan, Middle-East, and Cuba resolutions, administration officials reasoned that a congressional resolution could effectively deter aggression and make an actual use of force unnecessary.[91] "Even this early in the Johnson administration," National Security Adviser Walt Rostow said subsequently, "word had gotten back to the bureaucracy that Johnson disapproved of Truman's failure to seek a congressional resolution in the Korean War. We understood that, should the occasion arise, he intended to be governed by Eisenhower's precedent in the Formosa and Middle East resolutions, where broad congressional support was sought before policies that

[89] *Foreign Relations of the United States*, 1961–1963, Volume XI, Cuban Missile Crisis and Aftermath, eds. Edward C. Keefer, Charles S. Sampson, Louis J. Smith, and David S. Patterson (Washington: Government Printing Office, 1996), Document 23. https://history.state.gov/historicaldocuments/frus1961-63v11/d23.

[90] This is not true—even strong critics of the war concede the Gulf of Tonkin Resolution was a formal authorization for the use of military force (Ely 1995).

[91] "McCone suggested the resolution itself would be a deterrent. E.g., the Middle East resolution gotten long before needed. Lodge asked what the resolution might say. Sullivan read from draft ("to use all measures on request"). They come from Middle East resolutions." *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 189. https://history.state.gov/historicaldocuments/frus1964-68v01/d189.

might lead to military confrontations were carried out," (Gibbons 2014, pg. 231).

On May 22, 1964 three months before the Gulf of Tonkin incident Johnson's National Security Advisor, McGeorge Bundy, noted that in a memo to the President that "The preliminary consensus is that such a resolution is *essential* before we act against North Vietnam."[92] A mere two days later—ten weeks before the Gulf of Tonkin incident—there was even a possible resolution drafted.[93] A Department of Defense planning document from the same day explicitly stated that "military actions would start *only* after appropriate assurances were obtained of Congressional support for such actions."[94] Indeed, the document listed a series of steps to be taken before engaging militarily in Vietnam, including:

> "[step] 5. President spell out plans (probably in specific terms) to Congressional leadership and lay groundwork for appropriate expression (probably in general terms) by Congress of its support.
>
> [Step] 6. Groundwork of item 5 followed by implementing steps, such as Presidential speech or message to Congress, to *obtain appropriate Congressional expression of support.*"[95]

Similarly, in a May 25th memo from Bundy to Johnson in an "outline of the proposed sequence of actions" Bundy listed the acquisition of a congressional resolution as being prior to even initial strikes against North Vietnam.[96] A week later at a meeting involving the Secretaries of Defense and State, the National Security Advisor, and the Chairman of the Joint Chiefs of Staff, Secretary McNamara described a joint resolution as a "requirement" and that in order to "make major deployments, make guarantees, anticipate escalation, and call up some reserves" that "[t]he political foundation [of congressional approval] is *required.*"[97]

The administration was highly strategic when considering if and when to ask for authorization. In a May 25th memo from Bundy to Johnson, the NSC strategized the timing of requesting a resolution (considering upcoming civil rights legislation and the Republican convention for the 1964 election).[98] McNamara, likewise, specifically suggested mid-July as

[92] Emphasis added. *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 167. https://history.state.gov/historicaldocuments/frus1964-68v01/d167.

[93] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 169. https://history.state.gov/historicaldocuments/frus1964-68v01/d169.

[94] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 171. https://history.state.gov/historicaldocuments/frus1964-68v01/d171.

[95] Ibid.

[96] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 173. https://history.state.gov/historicaldocuments/frus1964-68v01/d173.

[97] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 189. https://history.state.gov/historicaldocuments/frus1964-68v01/d189.

[98] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer,

the proper time to request authorization.[99] The administration was very concerned about the political climate in which the resolution was requested because, as Dean Rusk noted "It would be disastrous if Congress refused to vote a resolution proposed by the Administration."[100] Furthermore, seeking a resolution, even if successful, would not be cost-free—"a Congressional resolution would require a major public campaign by the Administration...This is not a small undertaking, and it would have heavy implications."[101]

Notably, the administration clearly did not deem a major use of military force possible absent congressional approval. In a June 10th meeting involving the top foreign policy decision-makers (including the Secretaries of State and Defense and the National Security Advisor, among others) the group considered the actions that could be taken without a congressional resolution. While the movement of U.S. assets into the region and "even air defense actions in Southeast Asia" could be undertaken unilaterally, "McCone said that putting U.S. troops on the ground in Southeast Asia would require a Congressional resolution."[102] There was even a specific meeting at the State Department on June 15th to discuss "the actions that would remain open to us in varying combinations in the event that we do not now decide on major military operations against North Vietnam and do not now decide to seek a Congressional Resolution."[103] Thus recognizing substantial limits on military action absent congressional approval, the memo argued that the remaining possible military actions would be constrained to limited deployments (not *combat*), reconnaissance, and at the most aggressive end of the spectrum "Small-scale reconnaissance strike operations, after appropriate provocation, in North Vietnam", to initially be undertaken by South Vietnamese, and not American, air assets.[104] There was little doubt that "[a resolution] would give additional freedom to the Administration in choosing courses of action."[105] Thus, in the minds of the administration, a Congressional

Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 173. https://history.state.gov/historicaldocuments/frus1964-68v01/d173.

[99] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 201. https://history.state.gov/historicaldocuments/frus1964-68v01/d201.

[100] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 210. https://history.state.gov/historicaldocuments/frus1964-68v01/d210.

[101] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 211. https://history.state.gov/historicaldocuments/frus1964-68v01/d211.

[102] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 210. https://history.state.gov/historicaldocuments/frus1964-68v01/d210.

[103] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 215. https://history.state.gov/historicaldocuments/frus1964-68v01/d215.

[104] Ibid.

[105] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 211. https://history.state.gov/historicaldocuments/frus1964-68v01/d211.

resolution was the *sine qua non* of major combat operations.

Congressional support for any such resolution was uncertain, however, because there was a worry that General Khanh's illegitimate leadership in South Vietnam would adversely affect the possibility of a resolution.[106] Bundy specifically relayed to the President that "it is agreed that no such resolution should be sought unless careful Congressional soundings indicate rapid passage by a very substantial majority."[107] More specifically, the Presidents advisors believed "the risks outweigh the advantages, unless and until we have a firm decision to take more drastic action than we currently plan."[108] Thus, in early June it was decided no major military action would be undertaken.

The Gulf of Tonkin incident, however, soon provided the impetus the White House needed in order to gain congressional approval. While the incident may have been quite small, the crisis it created could be used by the administration to argue for the formal approval it deemed a necessary condition for major combat operations. Special Assistant Douglass Cater noted that "the logic behind the resolution troubled him somewhat ... The logic that troubled him was how an attack on US forces specifically justified a resolution in favor of maintenance of freedom in SE Asia." National Security Advisor McGeorge Bundy, in reply, "jokingly told him perhaps the matter should not be thought through too far. For his own part, he welcomed the recent events as justification for a resolution the Administration had wanted for some time."[109]

The idea was to "take the occasion of these incidents and the perhaps transient unity they bring about in U.S. public opinion and the Congress, to move on to force Hanoi to cease its aggression and to return, essentially, to compliance with the 1954 and 1962 Accords."[110]

Beschloss notes that Johnson believed "Truman had erred in failing to ask Congress for approval" and that "only if Congress was in on the takeoff would it take responsibility for any 'crash landing' in Vietnam" (Beschloss 2018, pg. 506). When deciding to propose what would become the Gulf of Tonkin resolution to the Hill, Johnson noted that from a constitutional perspective he did not believe congressional approval would be necessary to respond to the attack on the Maddox, but that "I think it is a lot better to have it, in light

[106] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 213. https://history.state.gov/historicaldocuments/frus1964-68v01/d213.

[107] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 211. https://history.state.gov/historicaldocuments/frus1964-68v01/d211.

[108] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 212. https://history.state.gov/historicaldocuments/frus1964-68v01/d212.

[109] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 290. https://history.state.gov/historicaldocuments/frus1964-68v01/d290.

[110] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 296. https://history.state.gov/historicaldocuments/frus1964-68v01/d296.

of what we did in Korea" (Beschloss 2018, pg. 513). Not only did Johnson, thus, have a similar view to Eisenhower in Truman having made a serious mistake, but indeed even based the Gulf of Tonkin resolution off of Eisenhower's 1957 Middle East resolution.[111] Johnson stated that while it might be necessary to escalate the conflict, he did not want to do so absent congressional authorization (Beschloss 2018, pg. 514).

> "Johnson proudly kept a copy of the [Gulf of Tonkin] resolution in his wallet throughout his presidency. While defending his military struggle in Vietnam, he would yank out the slip of paper and wave it at interlocutors... the President told [Secretary of State Dean] Rusk,'I would keep those 502 Congressmen right chained to me all the time with that resolution," (Beschloss 2018, pg. 518).

A Republican congressman who decided to be absent for the vote similarly "insisted that Presidents obtained such votes of support 'to seal the lips of Congress against future criticism'" (Beschloss 2018, pg. 517). Johnson later stated that "He had asked for the Tonkin Resolution...because he knew that members of Congress would 'run when the going gets tough' and wanted them 'tied, bound and delivered beforehand'"(Beschloss 2018, pg. 541). Johnson consistently sought congressional buy-in whenever significant combat was anticipated, and he would later recall after the conclusion of his presidency:

> "I took the position from the first day I was President until the last day I was President that I never wanted to go in and make any commitments of troops and men and bodies without the Congress going in with me....I didn't want to go in at all, commit troops and make policy and have men killed unless I did so with the knowledge and with the consent of the Congress."[112]

Johnson would refuse to intervene in the Middle-East crisis in 1967 absent formal authorization from Congress[113] and similarly balked at the idea of responding militarily against North Korea during the *Pueblo* affair without "more than a toast" from Congress. Given Johnson's behavior in other crises and the transcript evidence from the beginning of the Vietnam war, the overwhelming evidence thus suggests substantial combat operations in Vietnam would not have been undertaken absent formal authorization from Congress.[114]

[111] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 278. https://history.state.gov/historicaldocuments/frus1964-68v01/d278.

[112] Oral history transcript, Lyndon B. Johnson, interview S-IX, 8/12/1969, by William J. Jorden, LBJ Library Oral Histories, LBJ Presidential Library, accessed March 27, 2023, https://www.discoverlbj.org/item/oh-lbj-19690812-66-1wj.

[113] See Chapter Four.

[114] See much more extensive discussion of Vietnam War in Chapter 5. Specifically, on the possibility of seeking further authorization beyond the 1964 Gulf of Tonkin Resolution when debating the Americanization of the war in the summer of 1965, congressional leadership on both side of the war (both hawks and doves) advised Johnson to *not* seek further authorization.

Nixon and the Cambodian Incursion (1970)

Nixon's ground incursion in Cambodia in the Spring of 1970 is specifically addressed here because it is often cited as evidence of the Imperial Presidency and did involve numerous American fatalities. Indeed, the invasion of Cambodia in 1970 is the only case after the Korean War in which more than 30 Americans died and, as some argue (e.g., Schlesinger (1973)), lacked formal congressional authorization.

Even this oft cited case, however, has problems for proponents of the Imperial Presidency thesis. To begin with, it is far from clear that the action fell outside the scope of the 1964 Gulf of Tonkin Resolution (Ely 1995). The incursion was inextricably linked to the Vietnam War[115] given that the targets of the operation were limited to the North Vietnamese Army and Viet Cong forces—and not, as some at the time feared, Cambodian forces much deeper inside the country. Moreover, the Gulf of Tonkin Resolution itself had specified the whole of Southeast Asia (and not Vietnam exclusively) as its area of coverage. In fact, in the Johnson administration's original bargaining with Congress over the jurisdiction of the resolution, there was discussion over whether action as far away as *Burma* could be interpreted as permitted under the law.[116] Action in far closer Cambodia and Laos was foreseen by the drafters even as the specific enumeration of which countries were authorized by the resolution was explicitly rejected as too constraining.[117] Moreover, Congress repealed the resolution in response to the Cambodian incursion—suggesting it covered the country. Lastly, in perhaps the most extensive and well-cited legal analysis of the Vietnam War, Yale law professor John Hart Ely—no fan of Nixon or presidential unilateralism—found that the incursion was indeed legally covered by the Gulf of Tonkin Resolution (Ely 1995).

As a comparison, the administration refused to use ground forces in a very similar situation in Laos absent congressional approval because of a 1969 law[118] that prohibited the use of ground combat forces in that country.[119] When specifically asked by the Chairman of the Joint Chiefs of Staff at a private National Security Council Meeting whether Nixon "could say with assurance that there [will be] no use of ground troops in Laos", the President responded that "there will be none without going to Congress."[120] Thus, Nixon appeared only

[115] Notably, the Congressional Research Service itself does not recognize this as a separate military conflict, and thus classifying it as a completely separate use of force or war on its own seems questionable.

[116] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 280. https://history.state.gov/historicaldocuments/frus1964-68v01/d280.

[117] Ibid.

[118] Halloran, Richard. "Ban Sought on Troops for Cambodia", New York Times, April 11, 1970 https://timesmachine.nytimes.com/timesmachine/1970/04/12/121521636.pdf?pdf_redirect$=$true$&$ip$=$0.

[119] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 194. https://history.state.gov/historicaldocuments/frus1969-76v06/d194. See also Stevenson (2007).

[120] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 194. https:

willing to utilize troops in Cambodia because the incursion was quite limited geographically, plausibly fell under the Gulf of Tonkin Resolution, and was not explicitly banned by Congress (as it later would be).

Lastly, even if one were to consider this a conflict wholly separate from the Vietnam War, it is hard to make the case that the Cambodian campaign was a clear counter-example to the general rule of Presidents not undertaking major wars absent congressional approval because the incursion caused far less than 1% of the fatalities suffered by American forces during the war in Southeast Asia. Ultimately, even if one were to nonetheless categorize Nixon's Cambodian campaign as a unilateral war, the fact that this relatively underwhelming case would be the *strongest* challenge to the proposition seems less to undermine the theory than to actually testify to the strength of it.

The Yom Kippur War (1973):

Like the 1956 Suez Crisis and the 1967 Six Day War, the October War in 1973 brought the super-powers into near-conflict as proxy forces engaged in overt warfare in the Middle East. The 1973 conflict is a particularly interesting case because the War Powers Resolution spurred by the experience of a war on the other side of the continent happened to be passed through Congress during the crisis. In an attempt to maintain a deterrence of Soviet deployments in the Middle East, Nixon and Kissinger sought to publicly convey little worry over congressional actions, even as the White House internally fretted deeply about problems such as the new law, the crisis, and the threat of impeachment.

The Yom Kippur War started with an Egyptian surprise attack on Israeli positions in the Sinai Desert. Immediate setbacks by Israeli forces led to calls for American support, but the White House limited such support to arms deliveries. The United States and the Soviet Union both sought to encourage a cease-fire, but the Nixon administration threatened military force once the Soviets suggested placing Soviet troops in the Middle East to enforce the agreement. Most famously, the White House ordered a DEFCON 3 nuclear alert for U.S. forces in an attempt to signal resolve to the Soviets and prevent any incursion into the area. As Kissinger noted, he "warned that any Soviet military intervention regardless of pretext would be met by American force" (Kissinger 2011*b*). Publicly, the President sought to cultivate a reputation of defiance as Congress simultaneously sought to pass the War Powers Resolution and to pursue

//history.state.gov/historicaldocuments/frus1969-76v06/d194. Note too that the Cambodian incursion itself might have somewhat of an anti-precedent status as even in the Nixon administration replicating the Cambodian situation was seen as something to be avoided. When a crisis erupted in the Middle East in the fall of 1970, Nixon's advisors specifically sought to avoid another "Cambodia". Likewise, U.S. grounds forces were not used to accompany ARVN forces into Laos in 1971. Later administrations likewise sought to avoid following the example. For instance, when the Bush administration faced a seemingly analogous problem of insurgent sanctuaries in Syria and Iran during the Iraq War, the opportunity for similar incursions was foregone (Cheney & Cheney 2011, Gates 2015).

impeachment charges against him for the Watergate scandal. But the White House was well aware that its willingness to act (both in reality, and as perceived by its adversaries) was being undermined by clear congressional opposition to military action. Kissinger later admitted, "It would have been a more convincing threat had I made it on any other day. For that very day the Congress passed the so-called War Powers Act, whose purpose was to reduce Presidential discretion in committing American military forces" (Kissinger 2011*b*).

The administration was aware from the beginning of the war that there was little appetite in Congress for direct American intervention. From an October 10th meeting with Congressional leaders, Nixon noted that:

> "It was clear that none of these men, not even the most ardently pro-Israel among them, was enthusiastic about the prospect of a Mideast war that might involve American participation. Mike Mansfield said, 'Mr. President, we want no more Vietnams.'" (Nixon 1990, pg. 924).

In an October 15th conversation between Kissinger and the Chairman of the Senate Foreign Relations Committee, the Senator privately inquired as to whether the administration felt there was "any authority without asking Congress to send troops in there."[121] Specifically, the Senator argued that while the Eisenhower Doctrine (the 1957 Middle East Resolution) was still technically on the books, it was no longer applicable. "I mean maybe these lawyers can straighten it out but its long since passed out of that era it was so long ago."[122] Kissinger assured the Senator that the administration had no plans to deploy ground troops absent formal approval—"I can tell you Mr. Chairman that this is not our intention."[123] But because the Senator was about to consult with a Soviet delegation and because Kissinger did not want to diminish the *threat* of American intervention by admitting no such deployment would occur without a congressional vote, Kissinger warned the Senator to keep the information private, saying "I don't know whether that is a happy thing to tell [the Soviet official] right now because that might - might liberate some of the adventuristic" tendencies of the Soviets or their Arab allies.[124] Thus, Kissinger wanted to intentionally "[leave] open what we would do if Soviet troops showed up", in order to deter any such adventurism.[125] Nonetheless, Kissinger reiterated his private assurance to the Senator that "the President would not want to do this without congressional support."[126] Bluffing was clearly the intent of Kissinger and Nixon: on that same day, future National Security Adviser Brett Scowcroft remarked to Kissinger

[121]Henry Kissinger and Senator J. William Fulbright, Chairman of Senate Committee on Foreign Relations, 15 October 1973, 9:50 a.m. Richard Nixon Presidential Library and Museum. Henry A. Kissinger Telephone Conversation Transcripts (Telcons). Chronological File. Box 23. October 14-16, 1973.
[122]Ibid.
[123]Ibid.
[124]Ibid.
[125]Ibid.
[126]Ibid.

that Nixon "made it sound like we were sending in troops and the press got it that we were considering intervention."[127] Kissinger privately explained that "We can't say on background we are not considering intervention, we are worse off."[128]

Similarly in an October 24th phone call between Kissinger and White House press secretary Ron Ziegler, Kissinger instructed the press to not be told the use of U.S. troops had been ruled out, despite the fact they already had been internally.[129] In a NSC meeting that same day, Director of Central Intelligence William Colby and Kissinger discussed that "we cannot go without a commitment from Congress."[130] In an October 29th phone call between Nixon and Kissinger, Kissinger noted that he told members of Congress "this constant attack on domestic authority" i.e., the War Powers Resolution "is going to have the most serious consequences for our foreign policy."[131] Nixon agreed with Kissinger saying "it is totally true" while simultaneously lamenting that he himself could not publicly admit as such, admitting "I have to deny that *publicly*."[132] Thus, while Nixon may have succeeded in publicly cultivating a reputation of acting imperially, it seems that in the October crisis this was intentionally cultivated bluffing.[133]

Kissinger would claim ex post that Nixon was willing to land troops in the region during the crisis. In his memoirs, for example, he asserts:

> "Despite the War Powers Act passed a few days earlier, Nixon was determined to match any Soviet troop buildup in the area and leave it to the Congress to terminate his move — as the new law made possible," (Kissinger 2011*b*, loc. 12387).

Similarly, in a conversation with Israeli Prime Minister Golda Meir on November 1st, Kissinger asserted:

> "The Congress doesn't want American troops in the Middle East. Hatfield submitted a resolution saying no American troops can be sent to the Middle East...When the Soviets were on the verge of landing troops, the people here didn't want U.S.

[127]Henry Kissinger and Brent Scowcroft, 15 October 1973, 1:15 p.m. Richard Nixon Presidential Library and Museum. Henry A. Kissinger Telephone Conversation Transcripts (Telcons). Chronological File. Box 23. October 14-16, 1973.

[128]Ibid.

[129]Henry Kissinger and Ron Ziegler, 24 October 1973, 3:50 p.m. Richard Nixon Presidential Library and Museum. Henry A. Kissinger Telephone Conversation Transcripts (Telcons). Chronological File. Box 23. October 24, 1973.

[130]*Foreign Relations of the United States*, 1969–1976, Volume XXV, Arab-Israeli Crisis and War, 1973, eds. Nina Howland, Craig Daigle, and Edward C. Keefer (Washington: Government Printing Office, 2006), Document 269. https://history.state.gov/historicaldocuments/frus1969-76v25/d269.

[131]Henry Kissinger and Richard Nixon, 29 October 1973, 11:55 a. m. Richard Nixon Presidential Library and Museum. Henry A. Kissinger Telephone Conversation Transcripts (Telcons). Chronological File. Box 23. October 27-29, 1973.

[132]Emphasis added. Ibid.

[133]Nixon also pointed out that "The antiwar sentiment [at the time] was largely limited to Indochina. While some media critics irresponsibly charged that I called an alert of United States forces during the Yom Kippur War in October 1973 solely to divert attention from Watergate, there was overwhelming support in the Congress for the massive airlift and other military actions I took to save Israel. But Vietnam was different," (Nixon 1986).

> troops there. We would have landed troops in the Sinai if we had to, but could never do it again."[134]

Contemporary evidence shows this was clearly a bluff, however: Kissinger spoke with Nixon the day after the alert and seemingly joked "Mr. President, you were prepared to put forces in as you were prepared to go to nuclear war in Pakistan."[135] Kissinger was referring to the last time the administration had communicated a threat to the Kremlin with regards to activities in the wider Middle East region during the 1971 Bangladesh War. At the time, the White House was concerned Indian success in former East Pakistan would lead to an attack on West Pakistan, and sent an aircraft carrier into the Bay of Bengal. Kissinger plainly admits the administration was bluffing in that case—"However unlikely an American military move against India, the other side could not be sure; it might not be willing to accept even the minor risk that we might act irrationally," (Kissinger 2011*a*, pg. 1137).[136] By comparing his threats for American ground troops in the Yom Kippur War to the threat of nuclear intervention in the 1971 Bangladesh War, Kissinger was thus admitting that the threat during the October 25th alert was a bluff. This was, of course, consistent with the strategic *image* of a madman they tried to cultivate for Nixon. Kissinger readily admitted a few months later that "I get a lot of praise for great foreign policy but you and I know it is 90% bluff right now" (Kadura 2016, pg. 174).[137]

Moreover, Nixon had only five months prior given in to congressional pressure not to resume bombing of North Vietnamese units violating the recently concluded Paris Peace Agreements (Kissinger 1999, Kadura 2016).[138] Given that the ongoing Watergate crisis made the President unwilling even to restart bombing in Vietnam to enforce the Paris Peace Accords, it seems farfetched that he would really be willing to initiate something like a full-scale ground war in the Middle East absent substantial congressional backing. Indeed, the administration at the time was seeking massive aid packages for Israel from Congress, and a landing of U.S. troops would almost undoubtedly put this in jeopardy. From 1973 to 1975, one of Congress's

[134] *Foreign Relations of the United States*, 1969–1976, Volume XXV, Arab-Israeli Crisis and War, 1973, eds. Nina Howland, Craig Daigle, and Edward C. Keefer (Washington: Government Printing Office, 2006), Document 305. https://history.state.gov/historicaldocuments/frus1969-76v25/d305.

[135] *Foreign Relations of the United States*, 1969–1976, Volume XXV, Arab-Israeli Crisis and War, 1973, eds. Nina Howland, Craig Daigle, and Edward C. Keefer (Washington: Government Printing Office, 2006), Document 277. https://history.state.gov/historicaldocuments/frus1969-76v25/d277.

[136] Kissinger admitted "We are running a tremendous bluff in a situation in which we are holding no cards" (Kissinger 2011*a*, pg. 1121). Kissinger wrote that Nixon had no intention of becoming militarily involved in South Asia (Kissinger 2011*a*, pg. 1117).

[137] Kissinger is thus inconsistent in his rhetoric with different parties and even in his memoir. While assuring Senator Fulbright troops would not be introduced without congressional backing, he told Meir they would have been. Note that this was not the first time Kissinger gave Congress once assurance and an American partner another: at the beginning of 1973, Kissinger had assured South Vietnam that the U.S. would respond militarily if the North violated the Paris agreement, and simultaneously assured Congress it would not (Kadura 2016). In the case of Vietnam, history revealed the assurance to Congress was actually the true one.

[138] See Chapters 4 and 5.

most potent tools in deterring renewed military action in Southeast Asia was its threat to cut off aid to Saigon should this happen (Kissinger 1999, Kissinger 2011*b*). An analogous threat seems quite likely in the case of Israel in 1973. The preponderance of the evidence thus suggests that the Nixon Administration was far from actually willing to directly intervene in the October War, and that much U.S. behavior was based on conscious bluffing. Nixon and Kissinger, instead, privately recognized that American military action on a substantial scale was not in the cards and thus relied on other tools to resolve the crisis in a manner consistent with U.S. interests.

Lebanon (1983-84):

The Lebanon intervention in the early 1980's was self-evidently *not* intended to be a major military action involving hundreds of American fatalities (Reagan specifically noted in his memoirs "No one wanted to commit our troops to a full-scale war in the Middle East." (Reagan 2011)) and thus would technically be outside of the scope of the theory examined here. It is nonetheless worth examining because it *did* end up costing hundreds of lives due to the Beirut barracks bombing. Indeed, it is the only intervention in the postwar era that resulted in fatalities at levels comparable to a major war without actually being one. Moreover, scholars have pointed out that the Reagan Administration sought to expand the power of the presidency in many areas (Crouch, Rozell & Sollenberger 2020). Given that the deployment was not intended to even be a major war, in conjunction with the White Houses desire to push back against post-Vietnam restriction on presidential power, Lebanon should be an easy case for the Imperial Presidency thesis.

Indeed, proponents of the Imperial Presidency thesis point out that the Reagan Administration maintained that the War Powers Resolution was unconstitutional, and in his signing statement of the Lebanon AUMF Reagan wrote:

> "...in signing this resolution, [] I do not and cannot cede any of the authority vested in me under the Constitution as President and as Commander in Chief of United States Armed Forces. Nor should my signing be viewed as any acknowledgment that the President's constitutional authority can be impermissibly infringed by statute, that congressional authorization would be required if and when the period specified in section 5(b) of the War Powers Resolution might be deemed to have been triggered and the period had expired, or that section 6 of the Multinational Force in Lebanon Resolution may be interpreted to revise the President's constitutional authority to deploy United States Armed Forces."

The administration, however, seemed to have every intention of following the war powers resolution in practice. When forces were originally deployed in 1982, administration policy was that "The U.S. forces will be deployed in accordance with the War Powers Act"

and that the administration had "no intention whatever of introducing American forces into a basically conflict situation"[139]

Greater concerns about risk to American forces did not come about until almost a year after a bombing outside of the U.S. embassy in April and the death of two U.S. Marines in late August. Members of Congress began demanding that the administration admit U.S. forces were now engaged in "hostilities", and thus subject to the sixty-day clock of the War Powers Resolution. Publicly, the administration refused—but privately it was realized that U.S. forces would have to escalate or depart. Reagan wrote in his diary on September 11th:

> "our problem is do we expand our mission to aid the army with artillery air support. This could be seen as putting us in the war... I've ordered the use of naval gunfire. My reasoning is that this can be explained as protection of our Marines hoping it might signal the Syrians to pull back. I don't think they want a war with us. *If it doesn't work then we'll have to decide between pulling out or going to Congress making a case for great involvement*" (Emphasis Added).

Thus, in Reagan's mind any kind of serious escalation—including fighting well short of full-scale war—would have required congressional approval. That week, the administration then began lobbying Congress for such approval. The administration sought open ended approval, but congressional Democrats pushed for an 18 month time limit on the authorization. Ultimately, the administration agreed to the time limit in the resolution, but still maintained the President had a constitutional power beyond that authorized in the statute.[140]

Nonetheless, as a practical matter Reagan gave congressional leaders strong assurances not only of future consultation, but of neither escalating nor extending the American commitment without *additional* formal authorization:

> "It would be my intention to seek [further] Congressional authorization...if circumstances require any substantial expansion in the number or role of U.S. armed forces in Lebanon. In addition, regarding the Administration's intentions with respect to the 18-month time period, I can assure you that if our forces are needed in Lebanon beyond the 18-month period, it would be my intention to work together with the Congress with a view toward taking action on mutually acceptable terms."[141]

While the administration would prove willing to conduct short and highly limited operations against Libya and Grenada[142] unilaterally, Reagan evinced no actual willingness

[139] Department of State, Background Briefing on President Reagan's Speech Regarding Lebanon, Monday, September 20, 1982, 4:30 P.M.

[140] "A Reluctant Congress Adopts Lebanon Policy." In *CQ Almanac 1983*, Vol. 39. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1984. http://library.cqpress.com/cqalmanac/cqal83-1198422.

[141] Reagan, Ronald. Letter to Congressional Leaders on United States Participation in the Multinational Force in Lebanon, September 27, 1983, Ronald Reagan Presidential Library, available at https://www.reaganlibrary.gov/archives/speech/letter-congressional-leaders-united-states-participation-multinational-force.

[142] A country one tenth the size of Rhode Island.

to engage in major combat operations outside of formal congressional authorization. Reagan would write that one of his principles guiding the application of military force was:

> "Before we commit our troops to combat, there must be reasonable assurance that the cause we are fighting for and the actions we take will have the support of the American people and Congress,"(Reagan 2011).

Gulf War (1991):

The Gulf War would be the first full-scale war fought by the United States after the national nightmare of Vietnam. Bush would publicly claim he needed no authorization from Congress in order to prosecute the war—most famously asserting he didn't "have to get permission from some old goat in Congress to kick Saddam Hussein out of Kuwait." Privately, however, a far different story took place as the President spent over four months attempting to figure out a way to secure congressional authorization and fretting deeply over the possibility of having to act unilaterally. The White House decision-making closely follows the prediction of the model, with Bush and his advisers clearly recognizing the potential Loss Costs, and clearly considering and then rejecting Truman's Korean War precedent.

The Gulf crisis began for the United States when Iraq invaded neighboring Kuwait on August 2, 1990. Congressional opinion reacted strongly against the attacked, and by August 5, President Bush had publicly committed "This will not stand, this aggression against Kuwait." In line with near unanimous congressional sentiment,[143] Operation Desert Shield—the deployment of American and allied military forces in the desert between Iraq and Saudi Arabia—began a few days later.

While the administration would make several public statements effectively asserting a willingness and ability to act unilaterally, Bush's Chief of Staff would later disclose that from the first National Security Council meeting on August 2nd, discussions over the possible use of military force recognized congressional support was necessary:

> "there was a recognition that if it came to [the use of American military force], it had to come about *only after the President created a support for that amongst the public and the Congress*...there had to be support in the political environment and in the public, if it came to the need for use of force. Therefore, that was always a parallel part of the evaluation of each step."[144]

Notably, Bush had considered the precedents of Truman and Johnson in Korea and Vietnam respectively—i.e., whether to seek congressional authorization if it came to the use of

[143] "Gulf Crisis Grows into War with Iraq." In *CQ Almanac 1990*, Vol. 46. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1991. http://library.cqpress.com/cqalmanac/cqal90-1118567.

[144] John H. Sununu Interview, June 8-9, 2000, George H.W. Bush Oral History Project, Miller Center, University of Virginia, available at https://millercenter.org/the-presidency/presidential-oral-histories/john-h-sununu-oral-history-062000.

military force or not. Bush consciously chose to follow Johnson's example. National Security Adviser Brent Scowcroft reported "the President said that he'd been reading Lyndon Johnson and one of the things that stuck in his mind from Lyndon Johnson was 'Don't undertake a major adventure without having the Congress behind you.'"[145] A diary entry from September 13—over four months prior to the initiation of Operation Desert Storm—shows Bush's efforts to learn the lessons of Vietnam: "My gut wonder is, how long will they be with us? How long will the Senate stay supportive, or the House? Once there starts to be erosion, they're going to do what Lyndon Johnson said: they painted their asses white and ran with the antelopes," (Hess 2006, pg. 96). By September 11th, Bush would realize:

> "I wanted to find a way to get Congress on board with an unmistakable show of that support for what we were doing, and what we might have to do. Early in September I had asked [White House Counsel] Boyden Gray to look into how Lyndon Johnson had handled Congress at the time of the Gulf of Tonkin Resolution in 1964. Johnson had worked hard to get individual members of Congress, and Congress itself, to go on record in support of what he was doing in Vietnam. He...asked Congress to insist on roll calls so the record would be complete...his effort made a big impression on me, and I began to think about seeking a similar congressional vote of support,"(Bush & Scowcroft 1999, pg. 371).

The administration held frequent meetings with Congressional leaders to keep them appraised of the situation and to get a sense of congressional sentiment—over twenty meetings with congressional leadership were held over the course of the crisis (Bush & Scowcroft 1999, pg. 358). In one White House meeting on September 5 with thirty congressional leaders—most of which had been on a recent congressional delegation to Saudi Arabia—legislators continued to express their near universal support for the actions undertaken thus far by the administration (Woodward 1991, pg. 281). Even at this early point, the question of the 1973 War Powers Act and formal authorization from Congress came up. Republican Senator Cohen Bill Cohen argued that the President should "convene a special session of Congress and that we deal with the law of the land in the War Powers Act, and that you get a vote while you have the support of Congress for this operation," (Woodward 1991, pg. 281).

The administration would ultimately, over the course of several months, put great effort in securing congressional support. Actions such as going to the United Nations for formal authorization—essentially a dead process since the 1950 Korean War—was seen as a way to put pressure on Congress, while in early January 1991 Secretary of State Baker would personally meet with Iraq's Prime Minister in an "extra mile" for peace in order to assuage congressional concerns. Administration efforts to collect funding from wealthy countries not offering combat troops—most prominently Japan and a recently-unified Germany—was also

[145]PBS. "Oral History - Brent Scowcroft — The Gulf War — FRONTLINE." Accessed March 27, 2023. https://www.pbs.org/wgbh/pages/frontline/gulf/oral/scowcroft/1.html.

driven by a desire to satisfy Congress.[146] In early January 1991 when Bush made the final decision to seek congressional approval, the administration made a massive effort to rally votes (even going so far as to get foreign leaders to call members of congress) and even limited the mission (via the language of the AUMF) to allay Congressional fears.

Notably, the administrations desire to secure authorization from Congress stemmed from political considerations. Leaders in the White House—even those most in favor of going to Congress—maintained that as a legal matter the President had the power to act unilaterally.[147] Secretary of State Baker recalled in his memoirs "My view that we should seek a congressional mandate was grounded in political realities, not constitutional or legislative legalities," (Baker 1995, pg. 333). Baker later explained his reasoning using a logic quite close to the Congressional Constraint thesis:

> "There was absolutely no doubt in my mind that the president didn't have to have congressional approval for ordering troops into combat. War in the Gulf, however, wouldn't be a limited engagement like Grenada or Panama. Even if it weren't required by law, I believed that sending hundreds of thousands of soldiers into battle, with the possibility of significant casualties, but without legislative imprimatur, could well prove to be a Pyrrhic victory. Privately, I feared that if we did not obtain congressional approval, we would be unable to sustain an attack on Saddam from a practical political standpoint," (Baker 1995, pg. 334).

Thus, the size of the potential use of force—much larger than the 1983 Grenada or 1989 Panama invasions—meant that the administration was highly reluctant to act unilaterally. At the same time, Baker was not publicly airing these concerns in order to not encourage the Iraqi Regime. In appearances before congressional committees overseeing foreign relations committees on October 17 and 18, Baker "emphatically told lawmakers that the power to authorize the use of military force in the Persian Gulf remained firmly in the hands of the administration."[148] On October 29, Baker reiterated "let no one doubt: we will not rule out a possible use of force,"(Baker 1995, pg. 335).

Congressional unity began to crumble after a November 8th announcement by the administration that it would effectively double the number of American forces in the region—a sign that the "offensive" option was being considered. Woodward writes that at this point:

[146] "Gulf Crisis Grows into War with Iraq." In *CQ Almanac 1990*, Vol. 46. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1991. http://library.cqpress.com/cqalmanac/cqal 90-1118567. Domestic criticism of Germany and Japan useful in getting them to pay (Baker 1995, pg. 333) See also Bush and Scowcroft (1999, pg. 359).

[147] "Although not all of my colleagues agreed, I was convinced that President had the legal authority to act unilaterally, as a practical and political matter we would be making a big mistake to undertake a war as big as this without first securing a resolution of support from Congress. That would prove to be a task no less formidable than assembling the international coalition against Saddam Hussein,"(Baker 1995, pg. 331).

[148] "Gulf Crisis Grows into War with Iraq." In *CQ Almanac 1990*, Vol. 46. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1991. http://library.cqpress.com/cqalmanac/cqal 90-1118567.

> "Bush recalled that when he was a congressman during the Vietnam War his fellow Texan, President Lyndon Johnson, had made a mistake by not formally and officially getting Congress to vote on the war, beyond the controversial Gulf of Tonkin resolution,"(Woodward 1991, pg. 319).

National Security Adviser Brent Scowcroft was concerned, however, whether the votes were even there and thought "It would be a disaster to go to Congress and lose," (Woodward 1991, pg. 319). Bush invited congressional leaders to the White House on November 14th, and made a major effort to secure formal authorization. He noted that he wanted to publicly ask for a congressional vote, but only if it was certain to be a substantial vote in favor of an authorizing resolution (Woodward 1991, pg. 319). Bush even presented an Iraqi newspaper that described dissent among legislators over whether the U.S. should use force.[149] At the same time the President privately exerted great effort to secure congressional approval, he publicly asserted a willingness to act unilaterally. For example, on the day prior to the meeting with congressional leaders, Bush claimed to "have no hesitancy at all" to act unilaterally.

After the meeting, Bush asked his top aid for congressional relations what the prospect of a vote looked like. The aid informed Bush at that that point there was not enough support in the Senate for an AUMF.[150] The November 14th meeting convinced Bush, Baker and Scowcroft that a United Nations Security Council Resolution was needed to assuage congressional complaints that the United States was "going it alone."[151] The Senate Majority Leader, Democrat George Mitchell, had told the White House that it would be much easier to secure legislative approval after "a similar resolution was approved by the United Nations Security Council" because it would provide powerful leverage against members of Congress on the fence (Baker 1995, pg. 338). Going to the U.N. was not without controversy, however. Brent Scowcroft noted that going to the international organization was de facto a commitment to go to Congress as well—"Should we seek U.N. approval, we would certainly put ourselves in a position where it would be almost impossible politically not to go to Congress," (Bush &

[149] Ibid.

[150] "And so he pulls me into the Oval and he says, Okay, tell me. Do I have enough votes? These guys are beating up on me. I don't want war powers, but do I have enough votes to get a resolution out of the Congress to let me do what I think I'm going to have to do? And I looked at him and I said, No. We don't have enough public support. I said, I haven't done the numbers, haven't checked it out, haven't done any kind of survey, haven't had my guys test it. But I don't think you can do it. And I said, The only way I can possibly imagine you getting something out of Congress at this point—...my comment to him was, We can't do it on a straight up-and-down vote....He was asking if we had enough votes and I said, No. We don't have enough votes. I haven't checked it out. I can go do so, but I don't think you can do it. And my deal to him was the following, At this point, Mr. President, the best you can do is we can figure out how to—this is the only thing I can come up with—word something in the negative. Veto it. I can sustain a veto, but I don't know that you want to send men and women off to war with 32 votes. Period. So we've got work to do if you're ready to go to Congress to do something." Frederick McClure Interview, September 20, 2001, George H.W. Bush Oral History Project, Miller Center, University of Virginia, available at https://millercenter.org/the-presidency/presidential-oral-histories/frederick-mcclure-oral-history.

[151] "Gulf Crisis Grows into War with Iraq." In *CQ Almanac 1990*, Vol. 46. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1991. http://library.cqpress.com/cqalmanac/cqal 90-1118567.

Scowcroft 1999, pg. 402). Nevertheless, because congressional support was seen as so crucial—and because U.N. support would likely be forthcoming—the administration chose to pursue the U.N. route. Baker would later recall "From the outset, our diplomatic offensive at the United Nations was a critical component in winning over a reluctant Congress," (Baker 1995, pg. 332). A Security Council Resolution authorizing the use of force after a January 15th deadline for Iraqi compliance was thus passed on November 29. Bush privately confided to himself at the time:

> "It is only the United States that can do what needs to be done. I still hope against hope that Saddam will get the message; but if he doesn't, we've got to take this action; and if it works in a few days, and he gives up, or is killed, or gets out, Congress will say, 'Attaboy, we did it, wonderful job; wasn't it great we stayed together.' If it drags out and there are high casualties, I will be history."[152]

Bush met with congressional leadership the next day and again made his plea for a congressional resolution authorizing the use of force. Bush had privately written in his personal diary two days prior "I want the Congress involved. The big debate goes on about the declaration of war, but the big thing is, we need them,"(Bush & Scowcroft 1999, pg. 28). The argument put forth by the White House was that the U.S. should use the six-week window between the passage of the U.N. resolution and the January 15 compliance deadline to reach a negotiated settlement with Iraq. A congressional resolution would make the U.S. threat far more credible—Baker argued "The threat of force is not the same as the use of force. *You've got to give us the threat as a diplomatic tool.*" (Woodward 1991, pg. 333, emphasis added). Bush asked these congressional leaders for an authorizing resolution no less than seven times in the course of the meeting, but Democratic leadership refused to consider an authorizing resolution until much closer to the January 15 deadline (Woodward 1991, pg. 335).

That same day, the administration announced it would go an "Extra Mile for Peace", having Baker and Iraq's Foreign Minister Tariq Aziz meet face to face and attempt to resolve the issue. Notably, the specific purpose of this highly public effort was to "strengthen congressional and public support," (Bush & Scowcroft 1999, pg. 419). Bush confided in his diary "we need to have, for domestic consumption in the United States, a high level meeting where Saddam Hussein is told exactly how strongly we feel about this" (Meacham 2015, pg. 453). Baker similarly recalled "Our main purpose in 'going this last mile' was to show Congress, the American people, and history, that we were still looking for ways to avert a war, not start one," (Baker 1995, pg. 334).

It was recognized, however, that such an effort would not be cost-free. Scowcroft worried "a willingness to negotiate with Iraq could signal that the Bush administration lacked

[152]Meacham, Jon. "The Hidden Hard-Line Side of George H.W. Bush." POLITICO Magazine, November 12, 2015. Available at https://politi.co/2P9YrNy.https://www.politico.com/magazine/story/2015/11/jon-meacham-book-george-h-w-bush-213347.

resolve."(Hybel & Kaufman 2006, pg. 90 FN 60). Allies and partners, for example, were upset about this planned sit down with Aziz, however. The Saudi ambassador "complained that Saddam would interpret Bush's decision as an act of cowardice and would delay agreeing to meet with Baker until just before the UN deadline." (Hybel & Kaufman 2006, pg. 90). Other Arab allies (Hess 2006) and the British (Sununu 2015, pg. 144) were also displeased with the announcement because they thought it made US look weak. Freedman and Karsh write that most partners "were alarmed at this sudden announcement" and that Saddam was "ecstatic" at the announcement, interpreting it as an American climb-down (Freedman & Karsh 1994, pg. 236). Even Saddam realized, however, that the move was only made in an effort to gain congressional support (Freedman & Karsh 1994, pg. 237).

Baker also agreed to appear before a congressional hearing in early December in order to make the case for congressional authorization (Baker 1995, pg. 339). Baker made an appeal for "fullest support of Congress" for the administration's policy to work. Baker asked Congress to transmit an unmistakable signal to Saddam: "Get out of Kuwait now, or risk all."[153] Democrats were quick to accuse the administration of rushing to war and not giving sanctions enough time to work, however. Congressional uproar also occurred when Secretary of Defense Dick Cheney testified he did "not believe the president requires any additional authorization from the Congress" in order to initiate military action against Iraq.

Throughout the next month the administration held a series of private meetings with Congress, awaiting the meeting between Aziz and Baker in Geneva in early January. In early December, Bush wrote the White House Counsel asking how to "fully involve Congress" (Bush 2014*a*). The White House Counsel's office provided Scowcroft with a memorandum outlining the legal reasoning used by Truman in the Korean War—relying on the argument that congressional authorization was not necessary because U.N. authorization was already in hand.[154] The administration clearly chose not to follow this precedent and, instead, decided, to pursue the example laid out by Johnson in seeking congressional buy-in. Presidential historian Jon Meacham shows that Bush noted the possibility of impeachment five times in the month prior to the war's beginning. Using precisely the logic outlined by the Congressional Constraint thesis, Meacham writes that in private, Bush "fretted that Congress might impeach him a) if he launched full-scale military operations in the absence of congressional approval and b) if the ensuing war went badly."[155] On December 12, for example, Bush noted:

[153] "Gulf Crisis Grows into War with Iraq." In *CQ Almanac 1990*, Vol. 46. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1991. http://library.cqpress.com/cqalmanac/cqal90-1118567.

[154] Memorandum, Rademaker and Rostow to Scowcroft, "Involving Congress in our Persian Gulf Policy/ Declaring War against Iraq & Alternatives", December 11, 1990, ID 9009720, FG031, WHORM: Subject File, Bush Presidential Records, George Bush Presidential Library. Availabe at https://bush41library.tamu.edu/files/persian-gulf/41-FG031-205219/41-fg031-205219.pdf.

[155] Meacham, Jon. "The Hidden Hard-Line Side of George H.W. Bush." POLITICO Magazine, November 12,

"I'm convinced that they'll support us the Congress provided it's fast and surgical...But if it's drawn out and long, well then you'll have all the hand wringers saying,'They shouldn't have done it,' and they'll be after my neck on, perhaps, impeachment for violating the Constitution."[156]

On December 14, he wrote:

"We still aren't out of the woods—the Congress still isn't on board—but the recent polls show the American people much more supportive than I thought they would've been. I cannot say that I have made the determination to pull the trigger, but I can tell you ... that if they aren't out by January 15th, I'm going to have to make that decision real fast," (Bush & Scowcroft 1999, pg. 427).

After two more meetings with Congressional leaders on December 20 , Bush wrote:

"'I'm convinced that I'm going to have to make the decision [alone], and I'm going to have to take the heat. I'm going to have to share credit with Congress and the world if it works quickly, [with] acceptable loss of life—whatever that is—and a quick defeat for Saddam; but if it drags out, not only will I take the blame, but I will probably have impeachment proceedings filed against me,"(Bush & Scowcroft 1999, pg. 428).

In a private letter to his children on New Year's Eve 1990, Bush confided:

"When I came into this job I vowed that I would never ring my hands and talk about "the loneliest job in the world" or ring my hands about the "pressures or the trials". Having said that I <u>have</u> been concerned about what lies ahead...Senator Inouye of Hawaii told me "Mr. President, do what you have to do. If it is quick and successful everyone can take the credit. If it is drawn out, then be prepared for some in Congress to file impeachment papers against you"—that's what he said, and he's 100% correct," (Bush 2014*a*, pg. 497-498. Underline in original.).

Notably, Bush realized that much of the problem was not so much that pivotal members in Congress (e.g., moderate democrats) did not support the U.S. mission, but rather that they were scared to go on the record in favor of a use of force that could end up proceeding poorly. Senator Inouye—a Democract—was actually very supportive of Bush's actions,[157] although he publicly advocated giving more time for sanctions to work.[158] The Senator seemingly preferred Bush act unilaterally and argued the President had the legal power to initiate combat on his own accord.[159] Other members of Congress felt similarly—"They won't admit

2015. Available at https://politi.co/2P9YrNy.https://www.politico.com/magazine/story/2015/11/jon-meacham-book-george-h-w-bush-213347.

[156] Ibid.

[157] "Congressional Delegation on Persian Gulf — C-SPAN.Org." Accessed March 27, 2023. https://www.c-span.org/video/?15422-1/congressional-delegation-persian-gulf.

[158] "User Clip: Inouye Dole — C-SPAN.Org." Accessed March 27, 2023. https://www.c-span.org/video/?c5030498/user-clip-inouye-dole.

[159] "User Clip: Inouye Dec 19 — C-SPAN.Org." Accessed March 27, 2023. https://www.c-span.org/video/?c5030504/user-clip-inouye-dec-19.

it, but there are a lot of people here [in Congress] who would like the president to do something, and then they could take credit or place blame," said Democratic Representative Wayne Owens.[160]

By late December, Bush had made a final decision he would seek formal authorization from Congress.[161] The White House, again, held a meeting with congressional leadership on January 2 and pleaded for formal authorization. The mood of legislators was becoming more supportive given the imminent meeting of Baker and Aziz in Geneva, although it was realized that a roll call vote would be very close (Bush & Scowcroft 1999, pg. 438). Bush describes losing sleep in his diary,[162] and Scowcroft described it as the singular most stressful moment of the entire war.[163] Once the Geneva meeting was held and it became clear Iraq was not serious about diplomacy, "opposition on the Hill began to crumble," (Baker 1995, pg. 344).

On January 7 Scowcroft urged Bush to ask for congressional authorization (Woodward 1991, 357-358), and the next day the White House held a final cabinet level meeting to decide whether to publicly request approval from the legislature. There was widespread recognition that the president did not need authorization from a legal stand point, and that it would be "catastrophic"[164] if he were to publicly ask for a resolution and then fail to receive one. Nonetheless, virtually all of those present—including the legal advisers—thought Bush had to seek authorization given the political fall-out otherwise risked if he were to act unilaterally (Barr 2022, pg. 81). The only adviser clearly opposed was Secretary of Defense Cheney, who argued Congress would not approve the request and this would be disastrous. The President, Vice President, Secretary of State, National Security Adviser, Attorney General, White House Counsel, and Chairman of the Joint Chiefs of Staff all agreed Congress authorization needed to be sought. Aid Richard Haass would recall the President and Secretary of State "felt it was

[160] "Gulf Crisis Grows into War with Iraq." In *CQ Almanac 1990*, Vol. 46. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1991. http://library.cqpress.com/cqalmanac/cqal90-1118567.

[161] "The President had been hanging out at Camp David, the troops were moving, we were getting close to January. I walk back into my office the first day back. I get there early, about an hour before the staff meeting. There was this one envelope on my desk because I'd cleaned it before I left. And it was, To be opened by, an eyes-only kind of a deal. And I open it up, and in it is a personally typed memo from Camp David on stationery to me and Sununu and Scowcroft that basically says, I want a resolution. This is what I want it to be. And he had the first draft, which he had typed on his typewriter that day. And that's when Ginny Lampley and I knew what our marching orders were for the next few days. Ultimately that piece of paper became the beginning of the United Nations thing that we did that was short of a declaration of war, but allowed us to do the UN stuff." Frederick McClure Interview, September 20, 2001, George H.W. Bush Oral History Project, Miller Center, University of Virginia. Available at https://millercenter.org/the-presidency/presidential-oral-histories/frederick-mcclure-oral-history.

[162] (Bush & Scowcroft 1999).

[163] Brent Scowcroft Interview, August 10, 2000, George H. W. Bush Oral History Project, Miller Center, University of Virginia. Avaiable at https://millercenter.org/the-presidency/presidential-oral-histories/brent-scowcroft-oral-history-part-ii.

[164] "Seeking a resolution and failing would have been catastrophic. The President's hands would have been tied. Realistically, we couln't have used force in the face of explicit congressional disapproval" (Baker 1995, pg. 37).

essential politically."[165]

After the decision was made to formally seek congressional approval, Bush publicly sent a letter to Congress, requesting that both houses "now to go on record supporting the position adopted by the UN Security Council," specifically asking for a "Resolution stating that Congress supports the use of all necessary means to implement" the removal of Iraq from Kuwait. The administration then went all-out in its lobbying of members of Congress. The President, Vice President, Cabinet Secretaries all personally communicated with members of Congress in an attempt to whip as many votes as possible. Scowcroft recalled "My most vivid memory of it was calling Congressman after Congressman, and Senator after Senator, explaining to them how important it was, and we worked as hard as it's possible to work to get that vote."[166] Bush "spent much time on the phone with undecided members of both parties and met individually with a number of them" (Hess 2006, pg. 101).

After extensive debate on the authorizing resolution, both houses would ultimately approve the 1991 AUMF. The vote in the Senate was particularly close, with a final vote of 52 to 47. Ultimately, however, the adminsitration's biggest concern was merely securing majorities so that it would have formal, legal authorization for the use of force.[167] Bush confided in his diary that night:

> "The big burden, lifted from my shoulders, is this Constitutional burden the threat of impeachment...All that cleared now by this very sound vote of the Congress...I now have the constitutional authority, and no fear of fighting battles in the court over impeachment, or over the abuse of power," (Meacham 2015, pg. 455).

Bush signed the 1991 authorization for the use of military force against Iraq into law on January 14, and Operation Desert Storm began three days later.[168]

The timeline above highlights many of the key events in the course of the crisis. On the right, public events and actions are noted. On the left, private thoughts and discussions are

[165] Richard Haass Interview, May 27, 2004, George H.W. Bush Oral History Project, Miller Center, University of Virginia. Available at https://millercenter.org/the-presidency/presidential-oral-histories/richard-haass-oral-history.

[166] PBS. "Oral History - Brent Scowcroft — The Gulf War — FRONTLINE." Accessed March 27, 2023. https://www.pbs.org/wgbh/pages/frontline/gulf/oral/scowcroft/1.html.

[167] "[O]ur objective was just to get a majority. If we got a majority, we're fine." Frederick McClure Interview, September 20, 2001, George H.W. Bush Oral History Project, Miller Center, University of Virginia. Available at https://millercenter.org/the-presidency/presidential-oral-histories/frederick-mcclure-oral-history.

[168] After the widely successful execution of the war—a clear, overwhelming victory with only a few hundred American combat deaths—Bush and others would reiterate the public claim that the President had not been legally required to go to Congress, and that had the vote not come out in the administration's favor the President would have still proceeded with the engagement. There are reasons to be skeptical of these post hoc claims, however, given that this certainty of victory was not known by key decision-makers ex ante. Given the great lengths the administration went to in order to secure congressional support, and Bush's own admissions in his diary, he certainly felt the pressures outlined by Congressional Constraint. It is also a possibility the administration would have gone ahead with the six week air campaign—a relatively low casualty operation—unilaterally, but would have not ordered the ultimate ground campaign. The casualty ground operation was ordered much later, and Baker had even at one point felt out whether Congress would be willing to authorize air attacks alone if it was not willing to embrace a broader AUMF (Woodward 1991).

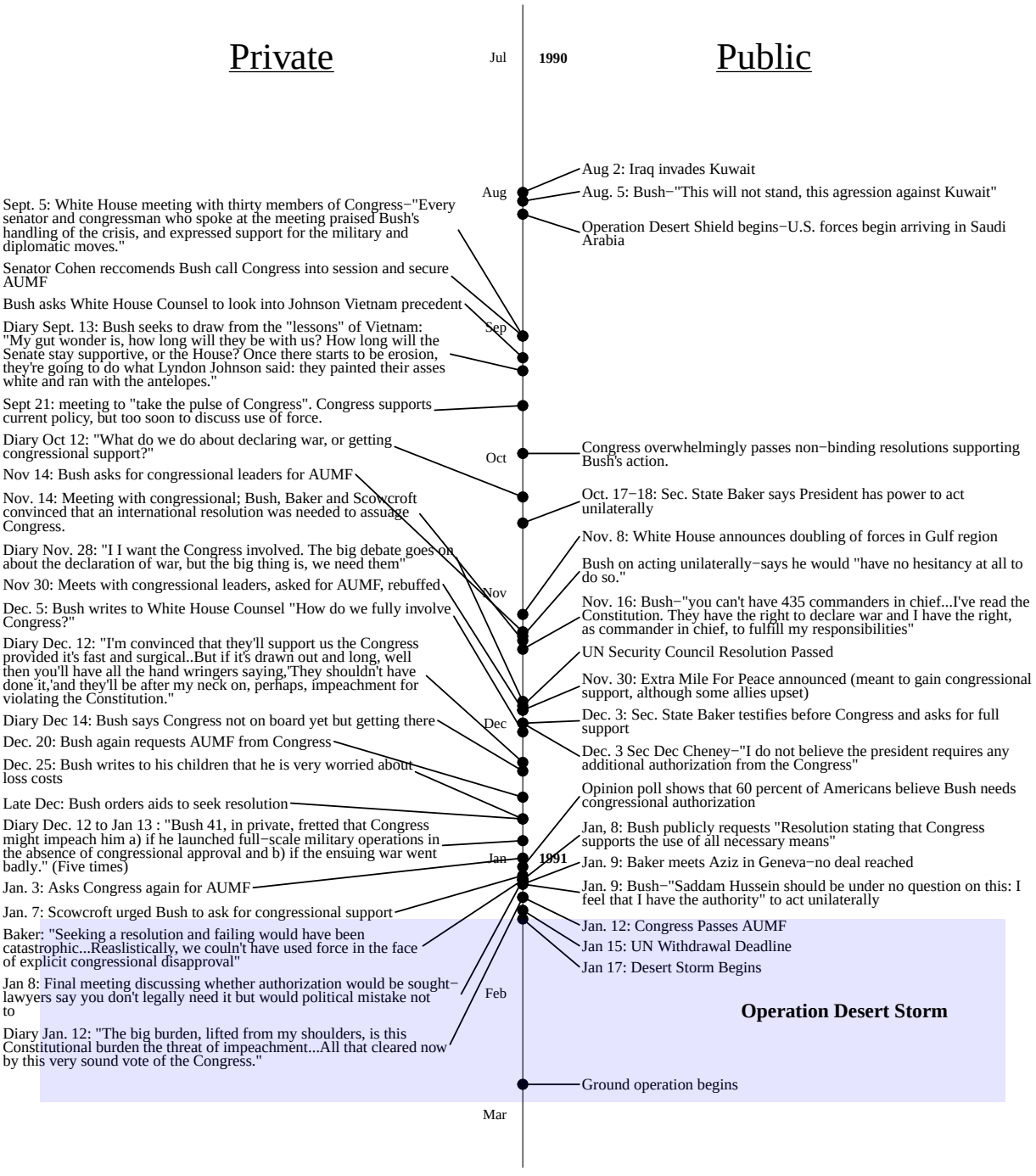

Figure 3.2 Timeline of Gulf War (1990-91)

recorded. Note that if one only considers the public statements and actions on the right, it very much appears consistent with the Imperial Presidency thesis: the administration consistently maintains that it does not need formal approval from Congress to proceed with the use of military force. Once the private thoughts and conversations on the left side of the timeline are considered, however, a very different story becomes apparent. Outside of the view of the public—and, most importantly, the view of the adversary—the President and his advisers were well aware that a sufficient level of congressional support would be necessary should the crisis end in the use of force. Indeed, the timeline shows that the White House spent over four months strategizing its actions in order to gain as much congressional support as possible, with the eye toward an eventual formal authorization. Bush's private diary and other sources show that decision-makers were very cognizant of loss costs, and were extremely reluctant to actually utilize substantial military force unilaterally.

Third Taiwan Strait Crisis (1995-96):

The Third Taiwan Strait Crisis—like the prior two—provides little evidence in favor of the Imperial Presidency. Congress was far more hawkish than the administration in the crisis, and the administration repeatedly promised to furnish a joint response with Congress—as required under the Taiwan Relations Act—if military force we needed to be utilized. While the crisis did not reach the same escalation level as those witnessed in the first two crises (1954-55 and 1958), the major missile tests undertaken by China made war a distinct—even if remote—possibility. Then Deputy Assistant Secretary of Defense for Asia and the Pacific Kurt Campbell recalled the crisis as being "very tense, very stressful...far and away the most stressful experience I have encountered since I was in government."[169]

The Clinton administration on several occasions had proven willing to utilize the military absent formal approval from Congress. It conducted a significant air campaign against Serbia in 1999 without formal sanction from the legislature, and in deploying troops to Haiti (1994) and Bosnia (1995) it seemed to even perhaps contradict the informal sentiment of Congress (especially so in the case of Haiti). Notable, however, is that none of the interventions yielded a single U.S. combat fatality—indeed, in the cases of both Bosnia and Haiti combat did not even occur. Casualties suffered in Somalia (1993), in contrast, forced the administration to pull out and anticipated congressional resistance deterred serious contemplation of intervention in the Rwandan Genocide (1994) (Clinton 2005). There was thus little evidence the Clinton Administration was willing to act unilaterally when it came to a major use of force that risked heavy U.S. combat fatalities.

[169]PBS. "Dangerous Straits." Frontline, October 18, 2001. https://www.pbs.org/wgbh/pages/frontline/shows/china/interviews/campbell.html.

Indeed, the Third Taiwan Strait Crisis was similar to the Cuban Missile Crisis in that pressure from Congress—especially Republicans—seems to have pushed a reluctant administration into the crisis (Goldstein & Schriver 2001). Most famously, the crisis erupted in 1995 after Congress (against the wishes of the Administration) urged President Lee of Taiwan to give a speech at his alma mater, Cornell, in 1995. The crisis escalated in the early Spring of 1996 when the PRC announced military exercises around the islands coinciding with a March 1996 election in Taiwan.

The U.S. relationship with Taiwan is unique in that while there exists no formal defense treaty committing Washington to the defense of Taiwan, there is a legal framework laid out by the 1979 Taiwan Relations Act. Thus, the conversation between the White House and the Hill took place within the context of the act. The text of that act requires:

> (c) "The President is directed to inform the Congress promptly of any threat to the security...[of] Taiwan and any danger to the interests of the United States arising therefrom. The President and the Congress shall determine, in accordance with constitutional processes, appropriate action by the United States in response to any such danger."

Of specific interest here is the clause "in accordance with constitutional processes." The Taiwan Relations Act (TRA) was written soon after the 1973 War Powers Resolution, and the legislative history of the act shows the terms meaning to be that of congressional authorization. The Senate Foreign Relations Committee Report of the TRA, for example, stated that "Any American response to such dangers would be determined through and limited by U.S. constitutional processes...Congress had the power to declare war, would partner with the President on any response short of that, and that a military response must comply with the War Powers Resolution," (Gold 2017, pg. 154). Similarly The House Committee on Foreign Affairs report stated that "The President and Congress would *jointly* determine the U.S. response to such threat 'in accordance with constitutional processes,'" (Gold 2017, pg. 199).

During the crisis, the Administration assured Congress on multiple occasions that it was fully committed to fulfilling the TRA, and this included making a decision together with the Congress.[170] Kurt Campbell and Winston Lord, Assistant Secretary Department of State for East Asian and Pacific Affairs, frequently communicated the actions and intentions of the administration at congressional hearings. Time and again the administration would promise to strictly follow the requirements of the Taiwan Relations Act. While the witnesses frustrated some members of Congress with the administration's policy of "strategic ambiguity"—refusing to speculate about precisely what the U.S. might do in response to a PRC attack on Taiwan—

[170] "U.S.-Taiwan Relations" February 7, 1996. C-SPAN. Accessed March 27, 2023. https://www.c-span.org/video/?69767-1/us-taiwan-relations.

the witnesses left no ambiguity about the administration coming to Congress in the event of an attack: "I can assure you the first thing we would do would be to be up here on Capitol Hill and fashion a bipartisan, *joint* response to something of such grave seriousness."[171]

The House of Representatives—against the wishes of the administration—would pass a hawkish House Concurrent Resolution 148:

> "the United States, in accordance with the Taiwan Relations Act and the constitutional process of the United States, and consistent with its friendship with and commitment to the democratic government and people of Taiwan, *should assist in defending them against invasion, missile attack, or blockade by the People's Republic of China.*"

Indeed, the administration had specifically objected to this language as threatening the One China Policy laid out in the Three Communiques and the Taiwan Relations Act. Secretary of State Warren Christopher had expressed:

> "the Administration cannot support the resolution as it is currently formulated. Paragraph 7 ... in stating that the United States should "assist in defending" Taiwan against invasion, missile attack or blockade by the PRC, could be interpreted as expressing an opinion taking us beyond the carefully formulated undertakings embodied in the TRA. Although the PRC military exercises have been provocative and have raised tensions in the area, they have not constituted a threat to the security or the social or economic system of Taiwan. It is our understanding that the Taiwan authorities agree with our assessment of the situation. Should there be a threat to Taiwan's security, we would promptly meet our obligation under the TRA to consult with Congress on an appropriate response."[172]

Internal White House planning shows that this was more than public rhetoric.

> "Q: What would the U.S. do if Taiwan were attacked.
>
> -It is the policy of the United States to consider a direct attack on Taiwan as a threat to the interests of the United States that would carry with it grave consequences. It would be inappropriate to discuss U.S. contingency planning in greater detail.
>
> -We would, of course, consult with Congress about U.S. responses as required under the Taiwan Relations Act."[173]

Thus, as reiterated by Lord at a congressional hearing, if hostilities appeared likely "the Administration would immediately meet its obligations under the Taiwan Relations Act

[171]Ibid. Emphasis added.

[172]Barbara Larkin. Response to Lee H. Hamilton. Congressional Record March 19, 1996, p. H2344. Accessed: March 27, 2023. Available at https://www.congress.gov/104/crec/1996/03/19/CREC-1996-03-19-pt1-PgH2342.pdf.

[173]Email Re: Taiwan from Robert Suettinger to Alan Kreczko, March 6, 1996. Available at https://clinton.presidentiallibraries.us/items/show/101141.

to consult with Congress on an appropriate response"[174] Campbell stated that the Administration's active solicitation of congressional input and participation was "not only due to TRA requirements, but because it is not possible for any Administration to maintain a China policy....without the active involvement and support of Congress."[175]

Some have noted that the resolution did not fully pass the House and Senate until after the deployment of two carrier battle groups by the White House (Yarhi-Milo 2018), but this overlooks the fact that both deployments came *after* the resolution was introduced in the House. Moreover, it was clear even for months before this that Congress took a much more hawkish view with regards to the Chinese threat than the White House did.[176] Members of Congress at the time even averred that the administration had only sent the carrier strike groups to the region after congressional prodding, with one arguing "The decisive action taken by the administration was no doubt prompted by the congressional action taken on the resolution now pending"[177]

There are other reasons to suspect the Clinton Administration would not have engaged in a major war unilaterally even when it had acted without formal congressional approval in other circumstances. The current legal test utilized by the Department of Justice's Office of Legal Counsel (OLC) for the use of military force rests on a distinction between "war in the constitutional sense" and smaller operations risking less casualties. This legal test originates from the first Clinton Administration (Damrosch 2000)—shortly prior to the Third Taiwan Strait crisis. Similarly, in 1999 while the Administration undertook the Kosovo air campaign against Serbia absent formal congressional authorization, Clinton himself made a clear distinction between an air campaign risking few—if any—casualties and actual ground combat. In a letter to Republican Speaker of the House Dennis Hastert, Clinton wrote:

> "[W]ere I to change my policy with regard to the introduction of ground forces, I can assure you that I would fully consult with the Congress. Indeed, without regard to our differing constitutional views on the use of force, *I would ask for Congressional support before introducing U.S. ground forces into Kosovo into a nonpermissive environment.*"[178]

[174] Crisis in the Taiwan Strait: Implications for U.S. Foreign Policy. Hearing Before the Subcommittee on Asia and the Pacific, the Committee on International Relations, House of Representatives, One Hundred Fourth Congress, Second Session, March 14, 1996. Volume 4, pg. 9. Available at https://books.google.com/books?id=bUnRCr4MpIwC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

[175] Ibid, pg. 60.

[176] "U.S.-Taiwan Relations" February 7, 1996. C-SPAN. Accessed March 27, 2023. https://www.c-span.org/video/?69767-1/us-taiwan-relations.

[177] Crisis in the Taiwan Strait: Implications for U.S. Foreign Policy. Hearing Before the Subcommittee on Asia and the Pacific, the Committee on International Relations, House of Representatives, One Hundred Fourth Congress, Second Session, March 14, 1996. Volume 4, pg. 9. Available at https://books.google.com/books?id=bUnRCr4MpIwC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false.

[178] *New York Times*. "Crisis in the Balkans; In Clinton's Words: 'Speak With a Single Voice,'" April 29, 1999. https://www.nytimes.com/1999/04/29/world/crisis-in-the-balkans-in-clinton-s-words-speak-with-a-single-voice.html.

The administration's often reiterated commitment to fulfilling the Taiwan Relations Act—and its specific assurances that it would fashion a "joint" response with Congress—alongside the very hawkish sentiment emanating from Capitol Hill during the crisis suggest the Administration would have come to Congress for authorization to use military force in the event it were needed.

Afghanistan (2001):

Immediately after the 9/11 attacks, there was already public debate over what the president could do in response to the attack absent express congressional approval.[179] The George W. Bush administration asked for Congress's formal authorization for the use of military force the day after the attacks, despite the fact that Bush's legal team believed that the President already inherently had constitutional powers greater than that granted by the legislation (Zelizer 2009, pg. 442). The White House Counsel recalled in his memoirs:

> "as a simple legal matter, the expert lawyers on our team and I were convinced that the Constitution granted the president the power to protect our country in response to the attacks. A congressional resolution, however, would strengthen his legal authority and, we hoped, avoid politics becoming a factor. In other words, it would be more difficult for Democrats or Republicans to squawk later about President Bush taking action if the full Congress authorized it from the beginning." (Gonzales 2016).

He would later elaborate "the general feeling was that an authorization to use military force would signify congressional support both politically and monetarily and it would support the president's constitutional authorities as Commander-in-Chief"[180] Specifically asked whether there was "any internal dissension in the White House about proceeding apart from an AUMF as a way of exercising, showing that in fact the President" was willing and able to act unilaterally (as Cheney advocated with regards to Iraq in both 1991 and the next year) Gonzales noted "I don't recall there being any serious discussion that we go forward without anything from Congress...I don't recall there being discussions about going forward without any authorization or approval from Congress."[181]

Bush's Chief of Staff, Andrew Card, similarly recalls "The president knew that he was going to have a military response the question is do you need to have congressional authority?...The president wanted to get Congress's buy-in, and there was a debate about "what does that mean?" and he could've probably argued that he didn't need their buy-in, but he

[179] See, for example, https://youtu.be/o0vRHbb0z78?t=9558. For coverage of AUMF debate, see https://youtu.be/6U_588PD91I?t=2719.

[180] Turning Point: 9/11 and the War on Terror, Episode 2 (2021).

[181] Alberto R. Gonzales Interview, October 14, 2010, George W. Bush Oral History Project, Miller Center, University of Virginia. Available at https://millercenter.org/the-presidency/presidential-oral-histories/alberto-r-gonzales.

wanted to get their buy-in."[182] President Bush met with congressional leaders on September 12th and requested formal approval— "At that meeting, the congressional leaders were eager to give the president the tools he needed to defend the country and to punish those responsible for killing innocent Americans. Although we had not yet prepared a formal document, they expressed bipartisan support for a congressional resolution authorizing the president to use all necessary force to defend our country," (Gonzales 2016, pg. 125).

Nonetheless, despite the overwhelming support for passing an AUMF and unprecedented public support for action (Bush had the highest presidential approval rating in history), Congress refused to simply rubber stamp whatever the President requested. The original draft of the AUMF requested by the White House included language authorizing the President to *preempt* threats, but this language was explicitly rejected by Congress and removed from the final bill.

Actually initiating a preemptive war unilaterally after such exact language had been expressly rejected from Congress would have clearly made the administration vulnerable to political attack.[183] Note, too, that receiving the slightly narrowed AUMF instead of acting unilaterally after the 9/11 attacks would also put the administration in a more difficult legal position in claiming a right to preventive war. Justice Jackson's influential tripartite framework from the *Steel Seizure Case* suggests that while a President may have room for maneuver when Congress has been silent on a matter, if Congress has instead considered and expressly rejected a specific delegation of power to the President (in this case, preemptive war) while passing a resolution, a President is likely acting outside of the authority of the office.[184] Jackson's analysis in *Youngstown* was, furthermore, explicitly on the minds of the the White House counsel and others at the time.[185]

Thus, even though Bush had enormous popular support—making unilateral action much easier (Christenson & Kriner 2020)—and despite the fact the administration had to settle for an authorization substantially narrower than what it had originally proposed, the administration nonetheless supported the passage of an authorizing resolution and gave little

[182]Turning Point: 9/11 and the War on Terror, Episode 2 (2021).

[183]An Office of Legal Counsel opinion explicitly noted that "the Joint Resolution is somewhat narrower than the President's constitutional authority. The Joint Resolution's authorization to use force is limited only to those individuals, groups, or states that planned, authorized, committed, or aided the attacks, and those nations that harbored them. It does not, therefore, reach other terrorist individuals, groups, or states, which cannot be determined to have links to the September 11 attacks. Nonetheless, the President's broad constitutional power to use military force to defend the Nation, recognized by the Joint Resolution itself, would allow the President to take whatever actions he deems appropriate to *preempt* or respond to terrorist threats from new quarters." *The President's Constitutional Authority to Conduct Military Operations Against Terrorists and Nations Supporting Them*, 25 Op. O.L.C. 188 at 213 (1977). Emphasis added.

[184]Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952), Jackson concurring.

[185]Alberto R. Gonzales Interview, October 14, 2010, George W. Bush Oral History Project, Miller Center, University of Virginia. Available at https://millercenter.org/the-presidency/presidential-oral-histories/alberto-r-gonzales.

thought to undertaking a major military intervention unilaterally.

Iraq (2003):

A year later in the run-up to the Iraq War, the administration again asserted that it did not constitutionally require congressional authorization to invade Iraq, but also "sensed that the mission was large enough that it would be politically dangerous to ignore Congress." (Zelizer 2009, pg. 459). Hess writes:

> "Like his father, Bush II sought congressional support for political reasons, while refusing to acknowledge its constitutional necessity. Like his father, Bush II *could not ignore* the pressures from congressional leaders, including many Republicans, demanding that Congress's constitutional role in war making be recognized," (Hess 2006, pg. 103).

Like virtually all administrations in the postwar era, the Bush Administration publicly maintained that it did not need authorization to use military force. Indeed, from a purely *legal* perspective, the administration had a much stronger case for war than other presidents had had in past crises. While Truman, Johnson, and Bush 41 would have had to solely rely on their Article II presidential powers had they entered their respective wars unilaterally, Bush Jr. had multiple existing statutes to point to for authority. First, there was the 1991 AUMF from the Gulf War that was still binding law. Second, there was the more recent 1998 Iraq Liberation Act which declared "it should be the policy of the United States to seek to remove the Saddam Hussein regime from power in Iraq and to replace it with a democratic government." Lastly, there was an attempt by the administration to claim that the 2001 AUMF authorizing the use of force against the perpetrators of the 9/11 attacks was also a source of authority. A legal memorandum written by the Office of Legal Counsel (in part, citing the Korea precedent) agreed that the President had the power to use military force to conduct regime change in Iraq solely based on his inherent Article II powers (Bybee 2002, pg. 8-9). Unsurprisingly, the White House Counsel also found the President to have all the authority necessary:

> "[Alberto] Gonzales concluded that the authority to invade Iraq rests on three legs: the 1991 resolution endorsing the Persian Gulf war, a Congressional resolution enacted just after the Sept. 11 attacks and the President's role as commander in chief."[186]

Note too that there was substantial precedent of using military force against Iraq under the 1991 resolution over the decade after the Gulf War. No-Fly zones in the southern and northern parts of Iraq had been maintained by the U.S., U.K., and France since the

[186]Neil A. Lewis With David E. Sanger. "Bush May Request Congress's Backing on Iraq, Aides Say." *The New York Times*, August 29, 2002. https://www.nytimes.com/2002/08/29/world/bush-may-request-congress-s-backing-on-iraq-aides-say.html.

end of the Gulf War, and actual combat was not a rarity as Iraqi forces frequently tried to shoot down coalition aircraft. President Clinton ordered cruise missile strikes in Baghdad in 1993 in response to an assassination attempt on former President Bush, and in 1996 launched Operation Desert Strike against Iraqi air defense targets. In 1998, Clinton launched a major four day bombing campaign, Operation Desert Fox, against some one hundred targets in Iraq "to 'degrade' Saddam Hussein's ability to produce weapons of mass destruction."[187] Thus, by 2002 there had already been a decade of precedents in undertaking military action against Iraq without seeking renewed congressional approval.

But while even as late as August 2002 the administration had maintained that (renewed) congressional authorization was unnecessary, outcry from congressional leaders including Republicans created political pressure to not act unilaterally. Pennsylvania Senator Arlen Specter stated "It's a matter for Congress to decide. The president as commander in chief can act in an emergency without authority from Congress, but we have time to debate, deliberate, and decide" (Hess 2006, pg. 106). Former Senator and recent Republican presidential candidate Bob Dole likewise argued that the President "should seek congressional approval, even though he has the authority needed...Consultations with Congress are essential, but not adequate when armed conflict is the issue" (Hess 2006, pg. 106). Pundits, too, opined that Bush would be acting unconstitutionally if he were to launch an invasion without congressional approval.[188]

Senior advisor Karl Rove reported that there was indeed a robust debate in the administration over whether Congress needed to be approached for approval, with Vice President Dick Cheney and some of his aides arguing that the President should avoid it. Nonetheless, by the end of August 2002, "a consensus had been reached among Mr. Bush's advisers" that congressional approval needed to be sought.[189] While Bush saw that it was not strictly necessary, he nonetheless thought the country and his own position would be "better served by a broader range of support."[190] Phil Zelikow, one of the key drafters of the 2002 National Security Strategy of the United States and Executive Director of the 9/11 Commission, believed that simply relying on the 9/11 AUMF was politically unviable because if he tried such a course his "political exposure" would have been "colossal" because he would have had "no political

[187] "BBC News — Saddam's Iraq: Key Events." Accessed March 27, 2023. http://news.bbc.co.uk/2/shared/spl/hi/middle_east/02/iraq_events/html/desert_fox.stm.

[188] Stuart Taylor. "An Invasion of Iraq Requires the Approval of Congress." The Atlantic, September 1, 2002. https://www.theatlantic.com/politics/archive/2002/09/an-invasion-of-iraq-requires-the-approval-of-congress/378094/.

[189] Neil A. Lewis With David E. Sanger. "Bush May Request Congress's Backing on Iraq, Aides Say." *The New York Times*, August 29, 2002. https://www.nytimes.com/2002/08/29/world/bush-may-request-congress-s-backing-on-iraq-aides-say.html.

[190] Karl Rove Interview, November 8, 2013, George W. Bush Oral History Project, Miller Center, University of Virginia. Available at https://millercenter.org/the-presidency/presidential-oral-histories/karl-rove-oral-history-part-ii.

base underneath him at all".[191] Nicholas Calio, Bush's Assistant for Legislative Affairs who was in charge of the White House's relationship with Congress later stated:

> "We were going to pursue a resolution because the President felt it needed if this was going to happen there needed to be a vote, there needed to be a debate on it. I think the Vice President was arguing that we really did not need to get a new resolution to move forward and the President did not agree with that, he thought that we had to do that."[192]

The White House was under no illusions about the severe political risks it would be taking by acting alone. As the *New York Times* reported at the time:

> "Despite confident assertions by the White House this week that the president has all the legal authority and Congressional approval he needs for an invasion of Iraq, [administration] officials said there was in fact *widespread recognition* that it would be unwise to attack without a new expression of support from Congress."[193]

Thus, despite the fact the administration had a reasonable legal argument for its ability to wage war against Iraq not only pursuant to its Article II powers but also three separate statutes, it chose to spend considerable time and effort lobbying members of Congress for a formal authorization for the use of military force against Iraq—an effort which took over a month to complete. The White House was clearly of the mind that while unilateral action might be legally possible, it would be politically impossible: "One official said that while there may be a by-the-book legal argument, 'it's very hard to get away with it in a political sense.'"[194]

The administration expended substantial political capital lobbying for the resolution, and the *New York Times* described the final AUMF passed in October 2002 as a "hard-won victory for Mr. Bush"[195] that "reflected weeks of lobbying and briefings by the administration."[196] Additionally, as in the case of the 2001 AUMF, the administration did not receive

[191]Philip Zelikow Interview, July 28, 2010, George W. Bush Oral History Project, Miller Center, University of Virginia. Available at https://millercenter.org/the-presidency/presidential-oral-histories/philip-zelikow-oral-history-part-i. Zelikow also stated, "[T]his is my point of view on how these things work out in practice. The President did not have a sufficient political base in the [9/11] AUMF to have launched an invasion of Iraq from a standing start. You see, think about all the weeks of mobilization that would have been involved, the call-up of Reserves. Meanwhile probably the strikes they're already launching. Then just work out how that is going to feel week in and week out. The President has not gotten any congressional approval for this. Again, maybe he could have pulled it off ... Indeed maybe this could have worked for a little while. But then of course if you get into even a little trouble, the political base underneath you to handle the trouble is extremely slender."

[192]Nicholas E. Calio Interview, March 14, 2013, George W. Bush Oral History Project, Miller Center, University of Virginia. Available at https://millercenter.org/the-presidency/presidential-oral-histories/nicholas-e-calio-oral-history.

[193]Emphasis added. Neil A. Lewis With David E. Sanger. "Bush May Request Congress's Backing on Iraq, Aides Say." *The New York Times*, August 29, 2002. https://www.nytimes.com/2002/08/29/world/bush-may-request-congress-s-backing-on-iraq-aides-say.html.

[194]Ibid.

[195]Mitchell, Alison, and Carl Hulse. "Threats and Responses: The Vote; Congress Authorizes Bush to Use Force Against Iraq, Creating a Broad Mandate." *The New York Times*, October 11, 2002. Available at https://www.nytimes.com/2002/10/11/us/threats-responses-vote-congress-authorizes-bush-use-force-against-iraq-creating.html. Emphasis added.

[196]Ibid.

precisely the text it wanted. Democrats not only required consultation and reporting based on references to the 1973 War Powers Resolution (something Presidents had long considered to be an infringement of their Article II powers) but also that the administration make a "good faith" effort to seek support from the United Nations (Hess 2006, pg. 121-13). Thus, even after the AUMF was passed in October of 2002, the administration would spend a further five months attempting to secure further authorization from the United Nations in an effort to comply with this requirement. Given the substantial energy the administration thus put into lobbying for congressional authorization, it stands to reason that the political benefit the administration believed it would receive from the approval of the legislature was quite substantial.[197] Indeed, administration insiders later opined that the invasion would not have been undertaken absent this new authorization from Congress.[198] In his biography of his father, Bush 43 praised his dad for going to Congress before commencing Operation Desert Storm—"I admired the way Dad handled the situation," (Bush 2014*b*, pg. 204). Writing of his own war against Saddam a decade later, Bush 43 wrote "Like Dad, I went to Congress," (Bush 2014*b*, pg. 208).[199]

Implications

The above analyzed crises suggest the following generalizations. First, administrations have indeed *publicly claimed* very broad unilateral war powers. This is widely pointed out by proponents of the Imperial Presidency, and is certainly seen in the cases. Second, however, Presidents since Truman have *privately* been highly reluctant to utilize such unilateral powers. Indeed, after the Korean War there is no single clear case of a President actually willing to enter a major use of force—i.e., a war—unilaterally. Third, the reason President's have been so reluctant to actually utilize the powers they publicly claim is political, not legal. We saw consistent evidence that administrations felt they were legally free to initiate major uses of force. Their worry, instead, was political—if they did not get Congress "on the record" from the beginning, they would be highly exposed to congressional attack in the event the use of force turned out poorly ex post: Loss Costs.

If it is the case that Presidents are able but unwilling to use major military force absent congressional approval, this would have major policy implications. First, it would suggest that Congress's power to authorize the use of force is far from a "dead letter" but actually quite

[197] In other words, the only reason it would put in all this costly time and effort would be if it calculated it would receive a benefit even larger than this cost.

[198] Philip Zelikow Interview, July 28, 2010, George W. Bush Oral History Project, Miller Center, University of Virginia. Available at https://millercenter.org/the-presidency/presidential-oral-histories/philip-zelikow-oral-history-part-i.

[199] Bush 43 explained his father's decision to get congressional approval as political, not legal—"Dad and his advisers believed that Article II provided sufficient authority for him to proceed on his own, but he decided that it would be prudent to put Congress on record," (Bush 2014*b*, pg. 203).

important even in the postwar era. Second, it would imply that there still exists a meaningful constraint on the executive in initiating wars. Notably, this is not a legal constraint so much is a strategic constraint driven by political considerations.

Supporters of the Imperial Presidency thesis might counter that while presidential reluctance to engage in major conflict unilaterally might be true, Congress simply "rubber-stamps" such requests (Burns 2019, e.g.). By this line of reasoning, congressional approval serves as little check on the executive because even if congressional approval is perceived as a necessity it is so easy to acquire that it *de facto* serves as no constraint at all. Some have argued, for example, that Congress almost always grants authorization when formally requested (Lindsay 2013). Others have argued that perhaps congressional authorization is a check on the executive, but the White House can effectively use deception to get whatever authorization it seeks (Schuessler 2015).

Such obsequiousness by Congress is not likely to actually be the case, however. First, those bemoaning a lack of congressional control over the use of force often also argue that Congress *avoids* having to take a position on uses of force. It cannot simultaneously be the case that Congress "rubber stamps" AUMF's on the one hand and avoids voting on AUMF's on the other. Indeed, the evidence seems clearly to support the latter and refute the former. Members of Congress as early as the Korean War realized the possibility they could "have their cake and eat it too" by encouraging the president to undertake an intervention, but not publicly committing themselves to the endeavor beforehand in case the war took a turn for the worst. As recently as the 2013 Syria and 2014 ISIS crises, members of Congress not only exhibited an ability to deny a presidential request, but there was even clear evidence that members who had been vocally calling for intervention declined to "put their money where their mouth was" and vote in favor of a formal resolution. Ceteris paribus, members of Congress would rather *not* vote on war authorizations.

It is also simply not the case that Congress will approve any AUMF requested by the President (see next chapter). We have clear evidence that Congress rebuffed presidential proposals in 1954 over Indochina, 1975 over Vietnam, and in 2013 over Syria. In some cases, it is true that Congress overwhelmingly passes force authorization: such as in 1964 for Vietnam or in 2001 after the 9/11 attacks. Yet, we also see cases where this is not what happened: Congress put Eisenhower's request for the Middle-East passed through heightened scrutiny, Bush 43's request for Iraq in 2002 met far more resistance than the 9/11 AUMF less than a year prior, and Bush 41's request for the Gulf War barely passed in the Senate.

Conclusion

In the seven decades since the 1950 unilateral intervention in the Korean conflict, not a single President has again actually entered a major conflict without first securing formal congressional approval. Moreover, even expanding the universe of cases to include crises in which Presidents seemed *willing* to use major force, we still find little evidence that any President after Truman was willing to do so absent formal congressional approval. Thus, the real precedential value of the Korean conflict was not as Schlesinger (1973), Griffin (2013), Fisher (2013), Dudziak (2019) and Stevenson (2020), among others, have argued that the President could take the nation into a major war without congressional authorization, but rather that, in failing to have members of Congress formally commit themselves to a use of force at the outset, a President left themselves dangerously exposed to opportunistic criticism by political opponents as the conflict endured (Kriner 2014). If true, this would suggest that the presidency it not as powerful in the use of force arena as conventionally believed and that Congress's power to authorize conflict has still remained quite relevant in the postwar era. In short, it would suggest that the mere "political reasons" Presidents ask for AUMFs are actually so strong that they *de facto* prevent true presidential war.

Chapter 4

The Dogs that Didn't Bark

> "[Military force was not the answer, especially given the inevitable congressional opposition...[M]ilitary force inside Venezuela was a non-starter" (Bolton 2020, pgs. 249, 274).

The last chapter suggested that there was little evidence of presidents willing to actually engage in full-scale war absent formal congressional authorization after the Korean War. This attempted to look at the universe of positive cases in order to make a generalization: if President's are willing to engage in full scale war, then they have—or are expecting to soon have—formal congressional approval. The focus on this chapter, instead, is on the *negative* cases. Specifically, it seeks to show cases in which *force was avoided because of a lack of formal congressional approval.* These cases are important to examine because the Imperial Presidency thesis suggests they should not exist.

In contrast to the last chapter, in which the universe of positive cases was attempted to be located and tested, here the case selection is much more deliberate (Goertz 2017). Specifically, we seek to identify cases in which all possible confounding factors seem to suggest a willingness to intervene, but for a lack of congressional approval. In other words, we attempt to locate cases in which a lack of congressional approval was the cause of the unwillingness to intervene.

Omissions to use force are almost always overlooked in debates over the war powers. As an illustration, one might consider a high-profile, blue-ribbon "National War Powers Commission" of 2008-09.[1] The report itself fully fell victim to selecting on the dependent variable. In its appendix of "An Overview of facts relevant to war powers issues in selected conflicts

[1] "How America Goes to War — Miller Center," January 21, 2021. https://millercenter.org/issues-policy/foreign-policy/national-war-powers-commission. "Over 14 months, the commission met seven times, interviewing more than 40 witnesses. The commission then issued its unanimous report to the President and Congress, calling for the repeal and replacement of the War Powers Resolution of 1973 with the proposed War Powers Consultation Act. In the following months, Secretaries Baker and Christopher briefed President Obama and testified before the House Foreign Affairs Committee and the Senate Foreign Relations Committee about the proposed legislation."

since World War II", it only includes uses of force the United States actually undertook, and thus the possibility of uses of force avoided do to a lack of congressional support are assumed out of the dataset. The Congressional Constraint thesis is most clearly observed, however, in precisely these non-uses of force.

The point of the cases here is two-fold. First, it is to illustrate that negative cases exist: proponents of the Imperial Presidency thesis explicitly assert or implicitly assume that a President would not be deterred from intervening by a mere lack of authorization from Congress. Providing several illustrative cases shows that empirically this is simply not true—history is full of examples of Presidents seeking to utilize force but not doing so because of a lack of authorization from Congress. Second, the cases also illustrate *why* Presidents are deterred from acting when they otherwise would like to. The cases show that the concerns outlined by the Congressional Constraint thesis are the most plausible explanation: Presidents realize that they leave themselves highly vulnerable to political attack should they use force unilaterally.

Here, we consider seven potential uses of military force seemingly avoided due to a lack of approval from Congress. Each comes from a different administration, ranging from Eisenhower to Obama. Notably, several of the cases include episodes under hawkish presidents least likely to respect constitutional boundaries, and who proved willing to skirt legal restrictions in other contexts—for example, Nixon (Watergate), Reagan (Iran-Contra), and Bush Jr. (Enhanced Interrogation Techniques). If we can identify illustrative cases across seven different presidencies, including those least likely to respect constitutional boundaries, this would suggest congressional constraint on unilateral action in the use of force context is quite widespread.

Table 4.1 Negative Cases

	Evidence President Desired to Use Force?	**President Willing to Use Force Unilaterally under Other Circumstances?**	**Legal Perspective**
Indochina (1954)	Yes	Seemingly So	Permitted
Six Day War (1967)	Yes	Yes	Permitted
Enforcing the Paris Agreement (1973)	Yes	Yes	Permitted
Fall of Saigon (1975)	Yes	Yes	Permitted
Caribbean Basin (1980's)	Yes	Yes	Permitted
Iran (2007)	Yes	Seemingly So	Permitted
Syria (2013)	Yes	Yes	Permitted

Alternative Explanations

In order to persuasively argue that a case shows a President being deterred by Congress from acting when he would otherwise like to use force, it is imperative that alternative explanations for the decision are considered and eliminated. Three will receive specific focus: 1) a lack of interest in intervening, regardless of Congress's own position, 2) a President's personal respect for the Constitutional separation of powers, and 3) the legal advice decision-makers receive from executive branch lawyers.

Simply Did Not Want To Intervene in the Crisis, Regardless of Congress

The first and most obvious alternative explanation for non-intervention in these crises is that the White House simply did not want to intervene for a variety of other plausible reasons—e.g., lack of strategic interest, belief that the operation would fail, etc. Simply put, there are theoretically an infinite number of reasons a president might decline to intervene in a crisis, and the vast majority have nothing to do with Congress. For any of the cases to be viable, it needs to be demonstrated that the administration actually had a genuine interest in intervention.

Personal respect for constitutional separation of powers

Even assuming the weight of the evidence suggests a President desired to intervene in a crisis and a lack of congressional approval seemed to be the sticking point, it is plausible that the reason formal authorization was the sine qua non was not due to the political considerations put forth by the Congressional Constraint thesis, but, rather, because the specific president in the case had a personal commitment to the separation of powers outlined in the Constitution. To give a specific example, many expected President Obama to show much more restraint than his predecessor, George W. Bush, given his campaign promises and professional background in legal education (Savage 2015).

It is important to note that this alternative explanation is individual specific—i.e., some presidents would be affected by this, while others would not. It is thus a first image explanation of the war powers. The Congressional Constraint thesis, in contrast, is focused not on the specific individual but rather on the strategic political situation *every* individual in the office faces when confronting a major crisis. It is thus a second image explanation of the war powers.

This leads to important differing predictions when we compare individual presidents in their war powers practice, for example. If a personal commitment to the separation of powers were at play, we would think that certain individuals—most likely cases being Eisen-

hower and Obama—were simply more respectful of Congress's constitutional role, while other individuals—for example Nixon, Reagan, and Bush 43—were less so. This "constitutional commitment" alternative explanation would suggest a homogeneity in responses within a presidency and heterogeneity between presidents: the Obamas of the world would consistently respect Congress's choice, while the Bush's[2] of the world will consistently disregard the legislature. The Congressional Constraint thesis, in contrast, suggests heterogeneity in crises within a presidency (dependent of the size of the contemplated use of force) and homogeneity between presidents *when contemplating similar uses of force.* In other words, it would suggest the Obamas and Bush's of the world would actually act relatively similarly with regards to the war powers given the same situation.[3] The best way to test whether "personal constitutional commitment" drove the outcome is to look at how the President acted in other crises. Specifically, are there other times when the President did prove willing to claim broad unilateral war powers in their presidency.

Legal Advice

Lastly, given that war powers question are, in reality, answered *within* the executive branch, it is possible that principled lawyers self-enforced constitutional restrictions on the White House (Goldsmith 2012). Indeed, the pattern of larger uses of force consistently having authorization while smaller uses of force lack authorization is consistent with the legal test employed by the Office of Legal Counsel over the past three decades. Thus, even if a president wanted to use force, and even if a personal commitment to the constitution was not forcing them to respect Congress's prerogatives, it is possible that lawyers *within* the government effectively stopped a use of force from happening. Thus, in each case the legal position of the administration will be taken into account. In more recent cases, these legal opinions over possible uses of force are crafted by the Office of Legal Counsel, while further back in time we find advice given by the Department of Justice more generally or even the State Department. Regardless, it is possible to look at the legal position held by the executive branch during the crisis and see if this somehow prevented the use of force from occurring.

[2] 43, that is.

[3] An important caveat here in defining the "same situation" is that the value assigned to the object being fought over is the same. It is easy to imagine a situation in which one personality thought an objective was valuable while another thought it was less so—e.g., Bush and Obama's clearly different valuations of invading Iraq. The "same situation", instead suggests that *assuming both personalities value the objective equally*, their approach to war powers questions would be similar. In other words, even the Obamas of the world will act unilaterally under certain circumstances—e.g., Libya 2011—while even the Bushes and Nixon of the world will "feel the heat" of congressional loss costs.

Indochina (1954): Dien Bien Phu and the Geneva Conference

As shown in Chapter Three, while the Truman administration had sought to set a precedent of unilateral action in the Korean conflict, political onlookers quickly came to see it as political anti-precedent. By the time Eisenhower encountered his first major crisis after the cessation of hostilities on the Korean peninsula—the 1954 Indochina crisis—several major developments had made it clear that "presidential war" would be an enormously risky undertaking. First, there was the congressional reaction to the Korean War itself. Despite supporting the use of force, Republicans soon pounced on the opportunity to decry "Truman's War" (Beschloss 2018), and were able to use the line to their advantage in the 1950 and 1952 elections. Attacks were arguably so successful that they caused Truman to forego the opportunity to run for re-election in 1952 (Beschloss 2018). Second, there had been the "Great Debate" of 1951, which erupted in Congress over Truman's plans to send four Americans divisions to Europe absent congressional approval (Carpenter 1986). The Senate ended up endorsing the deployment, but declared future deployments would require congressional approval. Lastly, 1953-54 saw the near passage of a constitutional amendment—the so-called Bricker Amendment—to curtail the president's power to create executive agreements. The extremely narrow defeat of the amendment—by a single vote in the Senate in early 1954—made it clear that Congress maintained a formidable power to hurt the presidency should it decide it desirable. Thus, Truman's immediate successor, Eisenhower, consistently sought Congress's formal approval when considering major military interventions. As the respected war powers scholars Louis Fisher notes:

> "When international emergencies arose, Eisenhower sought the backing of Congress. He did not want to 'expose himself to the kind of criticism that Taft and other Republicans had leveled against Truman for entering the Korean War without consulting Congress,'" (Fisher, 2013, pg. 117, quoting Ambrose 1984).

As the French faced defeat in Vietnam in 1954, the Eisenhower administration considered military intervention in Indochina but sought to gain Congress's formal commitment so as to not repeat Truman's mistake four years earlier in Korea (Herring & Immerman 1984, Hitchcock 2018). After it became clear that congressional approval would be contingent on the commitment of British assets to assist in the situation—a commitment that would not be forthcoming—the administration chose to not intervene in the crisis (Herring & Immerman 1984, Hitchcock 2018) . Even in his seminal "Two Presidencies" article, Wildavsky, recognized the non-intervention in Indochina in 1954 as a success for Congress over the executive in foreign policy.[4]

[4] "In that instance President Eisenhower deliberately sounded out congressional opinion and, finding it negative, decided not to intervene—against the advice of Admiral Radford, chairman of the Joint Chiefs of Staff" (Wildavsky 1966, pg. 27).

The transcript evidence likewise supports this view. In a memorandum of the discussion at a meeting of the National Security Council held on March 25, 1954 notes that Eisenhower "was clear that the Congress would have to be in on any move by the United States to intervene in Indochina" and further elaborated that "It was simply academic to imagine otherwise." On an April 5th phone call with Secretary Dulles, Eisenhower said that intervention "In the absence of some kind of arrangement getting support of Congress, would be completely unconstitutional and indefensible." On April 6th, Eisenhower reiterated that "if we tried such a course [i.e., intervention], we would have to take it to Congress and fight for it like dogs, with very little hope of success." The State Department did draft a joint resolution for Congress, but congress made it clear it would not be approving the use of U.S. forces unless the United Kingdom and France were committed to contributing their own resources. Thus, U.S. intervention did not occur—at least in part—because of a lack of congressional approval (Hitchcock 2018, Fisher 2013).

Legal Position

The Indochina crisis provides an interesting example of a war powers jurisprudence within the executive branch. In a March 1954 legal memorandum, the Attorney General had argued that intervention in Southeast Asia *would* require formal authorization from Congress. Eisenhower and Secretary of State Dulles explicitly rejected this, however, and by early June—when intervention after the fall of Dien Bien Phu was contemplated, the legal position had changed. Now, it was argued that the president could intervene unilaterally. Thus, the executive branch had come to the conclusion that from a purely legal standpoint intervention could be justified. The Department of Justice had ultimately concluded that such an action would be with the President's Article II powers as commander-in-chief (Prados 2002).

Personal Dedication to Separation of Powers

While Eisenhower frequently sought—or planned to seek—formal authorization from Congress when crises arose,[5] there are several reasons to suspect this was done more for instrumental political reasons than as a reflection of a deep respect for the separation of powers. First, Dulles and Eisenhower's conversation over the March legal memo from the attorney general explicitly show this—when prodded to give greater respect for Congress's role, Eisenhower (and Dulles) rejected this.[6] Nonetheless, they recognized that from a political perspective they did not want to publicly air this internal belief—especially given the recent near-passage of the Bricker Amendment.

[5]See Chapter Three.
[6]See Chapter Five.

While Eisenhower expressed grave reservations privately about the consequences should he intervene unilaterally, he publicly asserted the broad presidential powers his successors would similarly claim. Vice President Nixon created a stir when he stated in an April 16th speech that "if to avoid further Communist expansion in Asia and Indochina, we must take the risk now by putting our boys in, I think the Executive has to take the politically unpopular decision and do it." At a subsequent news conference, a question was put to Ike about a congressional measure under consideration "seeking to limit the President's authority to dispatch troops anywhere in the world without the consent of Congress" (Eisenhower 1963, pg. 353). Eisenhower responded that such a legislative measure would be inappropriate and that "such an artificial restriction would damage the flexibility of the President in moving to sustain the interests of the United States wherever necessary" —he also went so far as to explicitly state he would veto any such measure that came across his desk (Eisenhower 1963, pg. 353). Moreover, as other scholar have pointed out, Eisenhower significantly expanded presidential powers over covert operations in his tenure (Goldsmith 2012).

Thus, as other scholar have already noted, the lack of intervention in Indochina in 1954 appears to have been substantially driven by Congress's refusal to formally authorize the mission (Wildavsky 1966, Fisher 2013, Prados 2002, Hitchcock 2018). Given the administration's clear rejection of executive branch lawyers that congressional authorization might be legally necessary, it is clear that neither a personal respect for the separation of powers nor legal advice drove this decision. Instead, the most plausible explanation of that Eisenhower sought to avoid the substantial political risk unilateral intervention entailed.

The Six Day War (1967):

In 1967, the Johnson administration contemplated using force in a growing crisis in the Middle East (Bohn 2015). When Egyptian forces closed the straits of Tiran on May 23 1967, Johnson's National Security Advisor Walt Rostow reports "Johnson had no doubt that he had to reopen the Straits" (Oren 2003, pg. 139). The problem, however, was that this would likely entail substantial military action. Secretary of State Dean Rusk wrote in his memoirs that "[f]orcing the strait would have required a major military operation. . . conducting a naval operation in those narrow waters might have meant bombing Arab airfields to ensure the safety of our fleet,"(Rusk, Rusk & Papp 1991, pg. 385). Consistent with Johnson's oft privately repeated position that he would not undertake a substantial use of force unilaterally, a secret memo from the same day (May 23) confirms Johnson's position:

> "On Congressional matters the Secretary indicated that the President considers it vital that we have Congress with us on each important move...The White House

has been strongly advised by members of Congress that we obtain a joint resolution of support for USG actions if there is going to be actual fighting,"[7]

Johnson's recollection of the Middle East crisis in his memoirs, furthermore, corroborates this:

> "Before U.S. military forces could be involved in any way, I was determined to ask Congress for a resolution supporting such a move. I was convinced that Congress would approve the resolution if there seemed to be no alternative, but such a vote of confidence would not be easy to obtain. There were those on Capitol Hill who would willingly exploit the situation for political advantage,"(Johnson 1971, pg. 295).

In his communications with the Prime Minister of Israel, Johnson warned that "I cannot act at all without [the] full backing of Congress."[8] Likewise, in conversations with the Israeli Foreign Minister, the president warned that he would be "of no value to Israel if he does not have the support of his Congress, the Cabinet and the people. Going ahead without this support would not be helpful to Israel."[9] While the Foreign Minister pressed the president with an argument about the credibility of not upholding past proclamations of U.S. presidents regarding freedom of passage and freedom of the seas, Johnson responded by saying "We are fully aware of what three past Presidents have said but this is not worth five cents if the people and the Congress did not support the President."[10]

Of course, there is the possibility that the U.S. President was simply using Congress as a convenient excuse to not intervene given that these communications were with a foreign government. It does seem, however, that "Tonkinitis"[11] really had taken over the political scene in Washington. Internal U.S. communications, for example, seem to confirm a genuine reluctance to commit to a major military action absent congressional approval. A private note from Johnson's National Security Adviser to the President refers to a congressional resolution

[7]Foreign Relations of the United States, 1964–1968, Volume XIX, Arab-Israeli Crisis and War, 1967, eds. Harriet Dashiell Schwar and Edward C. Keefer (Washington: Government Printing Office, 2004), Document 48. https://history.state.gov/historicaldocuments/frus1964-68v19/d48.

[8]Foreign Relations of the United States, 1964–1968, Volume XIX, Arab-Israeli Crisis and War, 1967, eds. Harriet Dashiell Schwar and Edward C. Keefer (Washington: Government Printing Office, 2004), Document 139. https://history.state.gov/historicaldocuments/frus1964-68v19/d139.

[9]Foreign Relations of the United States, 1964–1968, Volume XIX, Arab-Israeli Crisis and War, 1967, eds. Harriet Dashiell Schwar and Edward C. Keefer (Washington: Government Printing Office, 2004), Document 77. https://history.state.gov/historicaldocuments/frus1964-68v19/d77.

[10]Ibid.

[11]I.e., regret for having passed the Gulf of Tonkin resolution authorizing the use of military force in Vietnam. Other contemporary observers agree this assessment. William Quandt, who worked on the National Security Council staff at the time, observed "Vietnam was a powerful background element in...American thinking in the 1967 crisis...Congress, which had supported the Gulf of Tonkin resolution, was turning against the war, and over and over again Johnson referred to Congress and what happened in Vietnam. There's even a phrase in one of the documents about "Gulf of Tonkinitis" as a kind of disease that has infected the Congress," (Takeyh & Simon 2016).

as a "requirement" for military action.[12] In a memorandum from Secretary of State Rusk and Secretary of Defense McNamara to President Johnson the two Secretaries opined that "a Joint Congressional resolution would be politically necessary before US military forces are used in any way."[13] And in an interesting comparison of congressional versus international authorization, the secretaries stated that military "action would be undertaken only after measures in the United Nations had been exhausted and after Congressional approval had been obtained."[14] Thus while the mere act of going to the U.N.—regardless of whether authorization was actually obtained—was seen as sufficient, congressional approval was seen as a sine qua non.

Scholars of the Six Day have interpreted administration decision-making as such, as well. Oren writes in *Six Days of War* that "congressional approval of the plan" was "the absolute prerequisite for its execution,"(Oren 2003, pg. 106). Johnson refused to intervene unilaterally because of the possible political consequences—even specifically referring to the Korean anti-precedent. Johnson "recall[ed] how Congress had never forgiven Truman for Korea,"(Oren 2003, pg. 113). Oren discusses the administration's problems with Congress at length. The Vice President, Secretary of State, and Secretary of Defense proposed an intervention to members of Congress on May 30 but were immediately rebuffed:

> "They came with the draft of a joint resolution authorizing the president 'to take appropriate action, including use of the Armed Forces of the United States, to secure effective observance of this right [of free passage] in concert with other nations.' Congress was not impressed. The Senate Foreign Relations Committee, deeply afflicted with what Rusk called 'Tonkin Gulfitis' showed no sympathy whatsoever for [the intervention proposal]. Senators Mike Mansfield, William J. Fulbright, and Albert Gore were particularly adamant that the administration not lead the nation into a second Vietnam, and that the Middle East crisis be resolved solely within the UN framework. Even the most pro-Israel senators—Robert Kennedy and Jacob Javits——expressed reservations about the convoy idea. After canvassing nearly ninety congressmen, a dispirited Rusk and McNamara reported to the president: 'While it is true that Congressional Vietnam doves may be in the process of conversion to [Israeli] hawks...an effort to get a meaningful resolution from the Congress runs the risk of becoming bogged down in acrimonious dispute,'" (Oren 2003, pg. 140).

The President was thus unable to intervene in the crisis, and the Six Day Way broke out a few days later on June 5. A similar logic played out a year later on the other side of the world when North Korean forces captured the *USS Pueblo* in 1968. Even in a situation

[12]Foreign Relations of the United States, 1964–1968, Volume XIX, Arab-Israeli Crisis and War, 1967, eds. Harriet Dashiell Schwar and Edward C. Keefer (Washington: Government Printing Office, 2004), Document 131. https://history.state.gov/historicaldocuments/frus1964-68v19/d131.

[13]Foreign Relations of the United States, 1964–1968, Volume XIX, Arab-Israeli Crisis and War, 1967, eds. Harriet Dashiell Schwar and Edward C. Keefer (Washington: Government Printing Office, 2004), Document 103. https://history.state.gov/historicaldocuments/frus1964-68v19/d103.

[14]Ibid.

involving the protection of American lives—an area generally regarded even by critics of presidential war powers as legitimately exercised absent congressional approval—Johnson did not want "to exercise power and authority without the support and approval of the Congress."[15] Advisers such as Secretary of Defense McNamara emphasized a need to find "something to get a vote on in the Congress"[16] before crossing the Rubicon. Deputy Secretary Nitze likewise felt it might be "necessary for us to ask Congress for additional authority to take military action in order to make clear to the Soviets that they must not misunderstand our attitude."[17] Indeed, Johnson was so concerned about getting "more than a toast"[18] from Congress before acting that he sought out the advice of President Eisenhower as how to associate Congress with any action ultimately undertaken.[19]

Thus, while in public Johnson made expansive claims to presidential power, in private he fretted frequently about how to get Congress involved in major foreign policy decisions in order to avoid harmful criticism later on. While the evidence thus suggests Johnson refused to intervene in the Middle East in 1967 specifically due to a lack of formal authorization from Congress, the preponderance of the evidence suggest this was for political and not legal reasons. Given Johnson's unilateral intervention in the Dominican Republic in 1965, as well as his repeated assertions that he was not legally or constitutionally required to initiate the war in Vietnam, it is unlikely a personal respect for the separation of powers drove the hesitance to intervene unilaterally. Moreover, there is no evidence executive branch lawyers argued there was a legal problem with unilateral action (again, the same lawyers argued Johnson needed no authorization in Vietnam). Political reasons, instead, were cited by Johnson in his own telling of the incident in his memoirs: he wanted a congressional resolution because "There were those on Capitol Hill who would willingly exploit the situation for political advantage," (Johnson 1971, pg. 295). As Johnson would admit, his logic followed closely to that highlighted by the Congressional Constraint Model—"I have always tried to put Congress in on the take-off as well as on the landing."[20]

[15]Foreign Relations of the United States, 1964–1968, Volume XXIX, Part 1, Korea, eds. Karen L. Gatz and David S. Patterson (Washington: Government Printing Office, 2000), Document 228. https://history.state.gov/historicaldocuments/frus1964-68v29p1/d228.

[16]Foreign Relations of the United States, 1964–1968, Volume XXIX, Part 1, Korea, eds. Karen L. Gatz and David S. Patterson (Washington: Government Printing Office, 2000), Document 225. https://history.state.gov/historicaldocuments/frus1964-68v29p1/d225.

[17]Foreign Relations of the United States, 1964–1968, Volume XXIX, Part 1, Korea, eds. Karen L. Gatz and David S. Patterson (Washington: Government Printing Office, 2000), Document 217. https://history.state.gov/historicaldocuments/frus1964-68v29p1/d217.

[18]Foreign Relations of the United States, 1964–1968, Volume XXIX, Part 1, Korea, eds. Karen L. Gatz and David S. Patterson (Washington: Government Printing Office, 2000), Document 228. https://history.state.gov/historicaldocuments/frus1964-68v29p1/d228.

[19]Foreign Relations of the United States, 1964–1968, Volume XXIX, Part 1, Korea, eds. Karen L. Gatz and David S. Patterson (Washington: Government Printing Office, 2000), Document 239. https://history.state.gov/historicaldocuments/frus1964-68v29p1/d239.

[20]Foreign Relations of the United States, 1964–1968, Volume XXIX, Part 1, Korea, eds. Karen L. Gatz and David S. Patterson (Washington: Government Printing Office, 2000), Document 228. https://history.state.go

Enforcing the Paris Agreement (1973)

The Nixon Presidency provides a very hard test for the Congressional Constraint thesis because the President was perceived to be willing to counter the wishes of Congress and even to act illegally. The Congressional Constraint thesis, however, suggests that much of this widespread perception was based more on "bark" than on "bite", and that the White House had strong incentives to greatly exaggerate its willingness to act unilaterally. In the case of the Nixon Administration specifically, it is already well recognized the White House put great effort into attempting to mold adversary perceptions of the President—most famously through Nixon's infamous "madman theory" (McManus 2019). Nixon had, indeed, proven himself quite willing to go against congressional sentiment in the Vietnam War on multiple occasions—most obviously the Cambodian incursion in 1970, but also in the bombing campaigns of 1972. Notably, however, these were actions in a war already underway. When it came to starting a new conflict, the administration exhibited much less bravado.

Indeed, even in the administration's first full-fledged crisis, the administration was forced to not respond due to congressional opposition. This major foreign policy test came in the Spring of 1969 when North Korea shot down an American reconnaissance aircraft and killed thirty-one American services members. Nixon and Kissinger had both wanted to respond with military action, but Congressional resistance—expected to be especially fierce given the ongoing war in Vietnam—deterred the administration from taking action (Nixon 1990, pg. 385). Nixon's ultimate lack of response is especially notable because reputations for resolve are disproportionately influence by actions early in a leader's tenure (Lupton 2020)—a fact clearly not lost to Nixon (Nixon 1990).

Fear of congressional backlash likewise prevented a response by the administration to violations of the Paris Peace Accords it had worked so hard to achieve in Vietnam. After the conclusion of the agreement in January 1973, Nixon consciously sought to convey his intent to resume bombing if the pact was violated. The president was so fiercely regarded that major American newspapers assumed he would do so and preemptively criticized the president for it. In truth, however, it was a bluff (Kissinger 2011*b*). Even before Case-Church amendment (which in the Summer of 1973 would prohibit all U.S. military action in Southeast Asia) and the War Powers Resolution later in 1973, Nixon privately revealed that it would be virtually impossible even to start bombing again absent congressional approval. Furthermore, he fretted that the North Vietnamese knew this, and thus would not be deterred by the threat of it once the last POW's were out— "after we get everybody out, and after we've withdrawn everything, then you damn near have to get congressional approval to do something,"[21] (Brinkley & Nichter

v/historicaldocuments/frus1964-68v29p1/d228.

[21]Foreign Relations of the United States, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds.

2015, pg. 250). As North Vietnamese violations of the agreement began almost immediately after the peace was announced, the Defense Department concluded in late February that a resumption of bombing would likely bring Hanoi back in compliance, but that "such measures posed a high political risk," (Kadura 2016, pg. 66).

In order to placate the South Vietnamese enough to sign onto the accords, Nixon had given assurances that U.S. bombers would enforce the agreement should North Vietnamese aggression reappear. Privately, however, Nixon knew this would be quite difficult. On March 20th he confided to soon-to-be White House Chief of Staff Al Haig that it would be nearly impossible to restart bombing in Vietnam once all U.S. POW's were returned:

> "NIXON: And, of course, we have, as you know, we've assured Thieu that we would do things. But, do you have any serious doubts in your own mind that we'd really—we would really have to go to their aid, in this case, with—if—let's face it: one of the reasons we were able to do what we were able to do is because they had the prisoners, and we had some troops there. Now, when they're all out, when all the prisoners are out, you're going to have one hell of a time.
>
> HAIG: That's right.
>
> NIXON: I mean, without going to the Congress, right?
>
> HAIG: No, I agree with that, sir—
>
> NIXON: Hitting the North, now—now in the—in the event—in the event there's a massive reinstitution, and so forth, of the—of military actions, that's something else again. But I'm speaking now that the idea that, well, by doing something now, that indicates we might be trigger-happy later. I don't think that argument is quite as strong as Henry has—see, he's thinking as to how it used to be, and not as to how it will be, I think... But my point is: it was more believable before, because we had people there. But, at a time when we don't have anybody there, it's going to be damn tough.– they're smart enough to know that we will have to get some sort of approval," (Brinkley & Nichter 2015, pg. 250-51).

Of course, this was a political problem more than a legal one: The administration had publicly maintained that it had the legal authority to resume the bombing at any time should it be needed to enforce the accords (Kissinger 2011*b*). Kissinger recommended air strikes to the president on several occasions in March 1973 as the North Vietnamese began testing American resolve, but amongst the heightening pressure of the Watergate scandal, the president only ordered paired down attacks or refused them outright (Kissinger 2011*b*).

Nixon addressed the nation on March 29th to announce the return of the last American POWs, and took the occasion to warn North Vietnamese leaders that "they should have no doubt as to the consequences if they fail to comply with the Agreement."[22]. But, again,

Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 33. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d33.

[22]Richard Nixon, Address to the Nation About Vietnam and Domestic Problems. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. Available at https://www.presidency.ucsb.edu/documents/address-the-nation-about-vietnam-and-domestic-problems.

privately the administration was highly concerned about what using force would mean for it domestically. A letter from Scowcroft to Kissinger gave options for countering NV violations, but "[l]argely driven by domestic/political considerations" recommended against anything that would entail a high risk of POWs or American combat deaths.[23]

Similarly, Kissinger would write in April "If we didn't have this damn domestic situation, a week of bombing would put this Agreement in force" (Kissinger 2011*b*, pg. 326). He told Haig, "I don't see how we can get anything done in this climate. I mean supposing we start bombing. This will crystallize all the Congressional opposition...I have no doubt that if it weren't for this mess we'd back them off" (Kissinger 2011*b*, pg. 326). The political risk of unilateral action was also quite high by Late April, as one Gallup poll showed that Americans 76 to 13 held Nixon needed formal authorization from Congress before using force in Vietnam again.[24]

Nixon's domestic problems with regards to Vietnam would only get worse. By midsummer, Congress would vote to fully prohibit the use of U.S. military assets in Southeast Asia via the Case-Church Amendment. Nixon formally responded to the legislation, saying

> "I can only hope that the North Vietnamese will not draw the erroneous conclusion from this Congressional action that they are free to launch a military offensive in other areas of Indochina. North Vietnam would be making a very dangerous error if it mistook the cessation of bombing in Cambodia tor an invitation to fresh aggression or further violations of the Paris Agreements. The American people would respond to such aggression with appropriate action."

. Yet Nixon by that time had come to agree to not intervene without Congress's formal backing. While at first vetoing the legislation, the President committed to a compromise deal that would permit bombing in Cambodia for six more weeks but after which "if military action is required in Southeast Asia" he would ask for "Congressional authorization and will abide by the decision that is made."[25]

While the administration knew it would not be able to respond absent congressional authorization—which was unlikely to come—it still attempted to deter North Vietnamese action. In September, Kissinger admitted "If there is a massive offensive, we will do our best to overcome Congressional difficulties and do something. Our Congress has acted most irresponsibly, and I consider the bombing cut-off disastrous. This clearly changes the attitude

[23]Foreign Relations of the United States, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 41. https://history.state.gov/historicaldocuments/frus1969-76v10/d41.

[24]Gallup Organization, Gallup Poll 869, Question 4, USGALLUP.869.Q04, Gallup Organization, (Cornell University, Ithaca, NY: Roper Center for Public Opinion Research, 1973), Survey question. https://ropercenter.cornell.edu/ipoll/study/31087834/questions#0929c881-cc91-42f5-9f31-d15316cd764d.

[25]Richard L. Madden. "Nixon Agrees to Stop Bombing by U.S. in Cambodia by Aug. 15, with New Raids Up To Congress." *The New York Times*, June 30, 1973, sec. Archives. https://www.nytimes.com/1973/06/30/archives/nixon-a-grees-to-stop-bombing-by-us-in-cambodia-byaug-15with-new.html.

of the North Vietnamese. On the other hand, the Vietnamese suspiciousness is playing into our hands. *They don't completely understand the restrictions placed on us by Congress. President Nixon has fooled them so often that they are probably more concerned then you believe.*"[26] For example, the Administration left B-52s in the Guam—"hoping that Hanoi might feel some uncertainty about our constitutional procedures"—as a bluff (Kissinger 2011*b*). Nixon "basically attempted to continue deterring the North Vietnamese by drawing on the reputation for tough and unpredictable action that he and Nixon had built up during the preceding years"(Kadura 2016, pg. 83).[27] Kissinger would later sum up the episode as "With respect to the violations of the Paris Agreement we had used the rhetoric of hawks, but were forced to be doves. For the first time we had threatened and not followed through" (Kissinger 2011*b*).

Nixon and Kissinger thus admit that they were deterred from enforcing the Peace Accords due to a lack of formal congressional authorization—and this was the case even before the funds cut-off in August 1973. This was not a legal problem, especially prior to the cut-off, because, as Kissinger notes, that administration had already found it had the legal authority to do so (Kissinger 2011*b*). Moreover, given Nixon's actions in many other policy areas, it is implausible that a personal respect for the separation of powers drove the decision. Clearly, instead, potential political fall-out served as the deterrent that drove the omission to sue force.

Nixon sought to cultivate an image of himself as an Imperial President, but the mask would come off once he faced the prospect of having to initiative the use of force absent Congress. Two decades later, Nixon would write a letter to George H.W. Bush weeks before he made his fateful decision over whether to initiate the Gulf War unilaterally. While Bush was publicly claiming a willingness to act absent congressional authorization, Nixon did not encourage this. To the contrary, he wrote "What we need is a united front at home to match the united front we have abroad in support of the U.N. resolution authorizing the use of force."[28] He acknowledged that getting "a public declaration of support from Congress for military action" was Bush's "most difficult problem", but nonetheless highly encouraged it. In

[26] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 108. https://history.state.gov/historicaldocuments/frus1969-76v10/d108.

[27] "To make the best of the situation and achieve their minimum objectives, Kissinger and his NSC staff laid out plans for post–August 15 measures that could still be taken in Indochina. Together with the State and Defense departments, lengthy studies of the legal implications of the inhibitive legislation were prepared...The national security adviser and his aides repeatedly accused the State Department and the Pentagon of being unimaginative in finding loopholes in the bills and of wanting to retreat...Kissinger urged Nixon not to withdraw any B-52 bombers from Southeast Asia since "further reductions now or in the immediate aftermath of the bombing cutoff would indicate American helplessness as a result of the congressional action and *eliminate any doubt* as to whether we would request bombing authority at a later time in Cambodia, Laos, South Vietnam, or North Vietnam." Nixon agreed with Kissinger, who basically attempted to continue deterring the North Vietnamese by drawing on the reputation for tough and unpredictable action that he and Nixon had built up during the preceding years".

[28] Nixon, Richard M. Letter to George H. W. Bush. December 25, 1990. Richard Nixon Foundation. https://www.nixonfoundation.org/2018/09/christmas-letter-president-bush-guidance-gulf/.

line with Presidents since Truman, Nixon plainly stated "The preferable way would be a joint resolution."[29] Nixon, thus, saw congressional buy-in as a political must.

The Fall of Saigon (1975):

While the United States had managed to extricate itself from direct involvement in the conflict in Southeast Asia after the 1973 Paris Peace Accords, the invasion of South Vietnam by the North in 1975——in direct violation of the peace agreement——created a renewed Vietnam crisis for the United States. When concluding the Paris Peace Accords in 1973, Nixon had secretly promised the South Vietnamese regime that the United States would use military force to defend South Vietnam if the North threatened the survival of Saigon (Barron 2016, pg. 350). Funding cut-offs and restrictions on the use of force made by Congress effectively prevented the new president—and continuing national security advisor—from fulfilling this agreement. Because Congress had repealed the Gulf of Tonkin resolution at the beginning of the decade——and additionally placed a ban on combat operations in Southeast Asia in the summer of 1973——the Ford administration found itself in a bind not faced by Johnson when escalating combat in Vietnam a decade earlier. As Ford would demonstrate later in 1975 during the *Mayaguez* incident, however, he was not per se unwilling to use military force unilaterally in Southeast Asia. Moreover, courts had demonstrated only a few years earlier that they were quite unwilling to adjudicate war powers cases against the president. Yet the president and his administration proved unwilling to intervene in any major way on this occasion because of the necessary scale of the contemplated operation and the backlash this would create in Congress if unsuccessful.

The weight of the evidence strongly suggests that Ford would have otherwise been quite inclined to intervene in Southeast Asia to forestall the final capitulation of Saigon. Ford was a faithful supporter of the Vietnam from beginning to end—even holding himself out to be more hawkish than Lyndon Johnson (Ford 1979, pg. 83), and arguing that the U.S. failure was because the United States had not used "our military powerfully," (Ford 1979, pg. 249). Moreover, once sworn in as President, in his first address to Congress he specifically stated "In Indochina, we are determined to see the observance of the Paris agreement on Vietnam."[30] Ford also appointed many prominent foreign policy hawks to top positions. He not only kept

[29]Ibid. If Bush could not manage that, Nixon suggested others ways to get members of Congress on the record in support of the operation—"get supporters of military action like Dole and Aspin to get signatures on a letter of support for you to use force." Failing that, Nixon offered as a last resort a tactic he has used in 1972 "I met with a bipartisan group of leaders...and spent about thirty minutes telling them what I had decided, asking them for their support."

[30]Gerald R. Ford, Address to a Joint Session of the Congress. Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/documents/address-joint-session-the-congress.

Kissinger in his cabinet, but also brought Donald Rumsfeld and Dick Cheney into the White House. Additionally, he made specific commitments to South Vietnam to intervene if it came under attack:

> "Almost immediately after becoming President in August of 1974, I wrote [President Thieu...[and] reaffirmed US support for the South Vietnamese...I specifically indicated that I, as President, would carry out the policy of my predecessors involving South Vietnam."[31]

This specific assurance was in reference to a promise from Nixon to Thieu to "react vigorously" should North Vietnam violate the accords. More specifically, he publicly committed to supporting the cause of South Vietnam, frequently urging Congress to approve more aid for the country and stating "we cannot turn our backs on these embattled countries" (Ford 1979, pg. 250). Ford frequently argued that American credibility would be affected by a communist takeover of the area (Kadura 2016, Ford 1979, pg. 250).[32] He explained after his presidency "I had to look at it from the point of view of what I felt was the best interest of the United States, which was that the South Vietnamese had to prevail against the Communist North Vietnamese."[33] As another point of comparison, Ford's opponent for the 1976 Republican nomination, Ronald Reagan, openly advocated for airstrikes against North Vietnamese forces to save Saigon even into April of 1975.[34]

Kissinger recounts specifically presenting the option of abandonment to Ford,[35] but Ford explicitly rejected this option.[36] This was despite the fact Ford had the reasonable possibility of avoiding blame for the loss since he was not in the White House prior to December 1973 (Croco 2011).[37] Indeed, Kissinger gave Ford considerable credit for supporting South

[31] "Vietnam: A Television History; End of the Tunnel, The (1973 - 1975); Interview with Gerald R. Ford, 1982." Accessed March 28, 2023. https://openvault.wgbh.org/catalog/V_28856C3736014745B1A911AB8B69F4C0.

[32] "I, obviously, recognized there was a possibility it might fail, but the odds, in my opinion, were that with our backing of sufficient magnitude, President Thieu and his government would be able to sustain themselves." Ibid.

[33] Ibid.

[34] Synd 8 4 75 Ronald Reagan on Vietnam Situation, 2015. Available at https://www.youtube.com/watch?v=-OnrmAFLSKc.

[35] April 3, 1975: "[Kissinger:] You have the option, though. You can say you weren't a part of this awful mess. You feel it has to come to an end and you are just able to get all out the one s who want to get out. The President: To tell the American people we are going to bug out at this late date—I just can't do it. Kissinger: The McGovern trend is beginning to win. The Paris agreement wasn't bad if it had been kept. It was working well until last summer. The President: My determination is to stay with it. Ask for the money and authority to evacuate. Then if everything happens as we foresee, I will have done my best." Memorandum of Conversation, Ford, Kissinger, and Scowcroft, 3 April 1975, Box 10 Memoranda of Conversations - Ford Administration, National Security Adviser. Memoranda of Conversations, 1973-1977, Gerald R. Ford Library. Available at https://www.fordlibrarymuseum.gov/library/document/0314/1553015.pdf.

[36] "You do have an option as a new President. You could let it go—and not be blamed, at least through '76.", but "Ford never considered that option." (Kissinger 1999, pg. 474).

[37] Notably, while Joe Biden in the face of a similar situation with the Fall of Kabul in 2021 would try to claim credit for strategic wisdom in ending a war, Ford omitted to do the same even in a political situation in which abandonment was a far more popular position.

Vietnam even when it became politically unfashionable to do so. Even within the month before the Fall of Saigon, Ford had publicly been lobbying Congress for 722 million dollars in military aid for the South. Similarly, in oral history interviews, Kissinger, Rumsfeld, Cheney, and others dismiss the possibility Ford gave less than full effort in seeking to secure aid for South Vietnam. Instead, the overwhelming consensus among close advisors was that Ford tried to do as much as he could to get support for South Vietnam and explicitly rejected the option of avoiding responsibility for the conflict.

By early 1975, it was well recognized that North Vietnam was violating pledges made in the Paris Peace Agreement. The administration had considered intervention, but realized the reaction from Congress would make it impossible. Kissinger, for example, "personally [favored] a three to four day strike against the north", but conceded that this would appear to violate the Case-Church Amendment and thus "would be a disaster and a mistake." Specifically, the main political risk was that this would prevent Congress from passing aid for South Vietnam the administration desperately sought—"We couldn't get any money at all if we did that."[38] Ford also attributed domestic politics for his inability to intervene militarily:

> "The South Vietnamese probably hoped that we would undertake a broad scale, major military operation, including the bombing, but that was not a practical expectation from *the environment that existed in the United States* at that time."[39]

Later, in April, once the final Fall of Saigon appeared imminent, the administration faced the question of evacuation. Indeed, at a meeting of the national security council on April 9, Ford asked whether putting into effect "an evacuation proposal for our own people and for 200,000 others, would ... require violation of the law or the agreement of Congress if we need to use force."[40] Kissinger stated that "My own personal view is that you would have to ask Congressional authority to take forces in. It is not like Cambodia. It will last longer. Even if we have the consent of the GVN, we will have to fight Vietnamese. If that is your decision, this will require U.S. forces."[41] Kissinger clarified that even while there might be some legal wiggle room—the president had the inherent authority to protect Americans, and the war powers resolution could be argued to have superseded any statutory bans on combat in the region —it was the political consequences of the action that were the real question.

[38] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 191. https://history.state.gov/historicaldocuments/frus1969-76v10/d191.

[39] Emphasis added. "Vietnam: A Television History; End of the Tunnel, The (1973 - 1975); Interview with Gerald R. Ford, 1982." Accessed March 28, 2023. https://openvault.wgbh.org/catalog/V_28856C3736014745B1A911AB8B69F4C0.

[40] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 212. https://history.state.gov/historicaldocuments/frus1969-76v10/d212.

[41] Ibid.

The political considerations highlighted by the Congressional Constraint thesis were clearly visible in the decision-making in the crisis. Ford noted that while there seemed to be informal support for an operation, there was little willingness to go on record in support of the operation: "It is great for people to say this...to the effect that we can go ahead. But, of course, if it does not work it is we who are in trouble."[42] He later reiterated "If we have a disaster, Congress will evade the responsibility. Let us get some language. I am sick and tired of their asking us to ignore the law or to enforce it, depending on whether or not it is to their advantage."[43] Indeed, Ford had clearly stated in a conversation the day earlier that "We need authority from the Congress to evacuate."[44] Ford recalls a April 14 meeting the Senate Foreign relations Committee, in which the message was "get out, fast"—"I knew I had to chart an exceedingly careful course of action to keep the situation from disintegrating virtually overnight. But with this on-the-record political pressure from the [Senate] Foreign Relations Committee the stakes were higher than ever" (Ford 1979, pg. 255).

In a speech on April 10th, 1975 Ford requested economic and military aid for South Vietnam and for "Congress to clarify immediately its restrictions on the use of U.S. military forces in Southeast Asia"[45] in order to evacuate Vietnamese who had helped in the war. On April 17th Secretary of Defense James Schlesinger made clear in a meeting discussion operational plans that a certain large-scale option was impossible because "we have no authority under the law to use U.S. forces other than to evacuate Americans" and that the use of American forces to evacuate Vietnamese would require "Congress [giving] us the authority"[46] After Congress rejected Ford's requests—Senator Church opining that helping evacuate non-Americans "could involve us in a very large war"[47] —evacuations were essentially limited to Americans, with only the "incidental" evacuation of Vietnamese being considered permissible. In the end, the U.S. would be able to evacuate around forty-five thousand at-risk Vietnamese.[48] —less than five percent of the "over a million" it had considered endangered.[49]

[42] Ibid.

[43] Ibid.

[44] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 211. https://history.state.gov/historicaldocuments/frus1969-76v10/d211.

[45] https://www.fordlibrarymuseum.gov/library/speeches/750179.asp.

[46] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 236. https://history.state.gov/historicaldocuments/frus1969-76v10/d236.

[47] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 232. https://history.state.gov/historicaldocuments/frus1969-76v10/d232.

[48] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 276. https://history.state.gov/historicaldocuments/frus1969-76v10/d276.

[49] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 232. https://history.state.gov/historicaldocuments/frus1969-76v10/d232.

Thus, American military intervention to enforce the 1973 Paris Peace Accords, and then—-with the Fall of Saigon in 1975—a substantially larger evacuation effort were avoided because of a lack of Congressional authorization. It is unlikely that a personal respect by President Ford for the separation of powers drove this decision, however. Ford had voted against the passage of the War Powers Resolution in 1973 and personally "questioned its practicality and constitutionality" (Ford 1979, pg. 252). After departing office Ford was an outspoken critic of congressional restraints on presidential war power, stating, for example:

> "I vigorously opposed the War Powers Resolution because I thought it was impractical on the one hand and unconstitutional on the other. . . .I think the War Powers Resolution is a clear-cut illustration of the Congress encroaching, overreaching, beyond the constitutional limits set by our forefathers."[50]

Instead of accepting the conventional wisdom of an "Imperial Presidency", Ford criticized what he had perceived to become an "Imperiled Presidency".[51] Furthermore, while Ford faced legal restrictions not faced by his predecessors—most specifically the June 1973 Case-Church Amendment and the November 1973 War Powers resolution—it was widely recognized at the time within the administration the problem was fundamentally more political than legal. In fact, with the passage of the War Powers resolution after the Case-Church Amendment, the White House realized it had a creative legal argument available to it that would permit action in Southeast Asia. A standard canon of statutory interpretation—*leges posteriores priores contrarias abrogant*—holds that if two statutes seemingly conflict, the one implemented more recently prevails. Thus, the argument would be that while Case-Church Amendment banned military operations in Southeast Asia, the more recently passed War Powers Resolution implied the president could utilize force for sixty days unilaterally. Hence, an argument was available that the President could actually use military force unilaterally in Southeast Asia due to the War Powers Resolution.[52] Moreover, the Legal Adviser to the Department of State contended the President had constitutional authority as Commander-in-Chief to direct forces into combat unilaterally pursuant to certain circumstances, including when acting "To implement and administer the terms of an armistice or cease fire designed to terminate hostilities involving

[50] "Vietnam: A Television History; End of the Tunnel, The (1973 - 1975); Interview with Gerald R. Ford, 1982." Accessed March 28, 2023. https://openvault.wgbh.org/catalog/V_28856C3736014745B1A911AB8B69F4C0.

[51] Nixon, Richard M., and Gerald R. Ford. "Nation: Two Ex-Presidents Assess the Job." Time, November 10, 1980. Available at https://content.time.com/time/subscriber/article/0,33009,949031,00.html.

[52] "Kissinger: The problem is not under the War Powers Act, as I see it. It is under the Indochina Restrictions, where the issue becomes more difficult. Elsewhere, it would appear to be easy to use U.S. forces for this purpose. President: Which of these was approved last? Kissinger: We went through that at the time of this legislation and determined that the War Powers legislation superseded the other. But the Administration of your predecessor took the position at the time that it would not claim this. However, despite this kind of issue, the question is whether it would be politically acceptable for us to do this." *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 212. https://history.state.gov/historicaldocuments/frus1969-76v10/d212.

the United States"[53] In other words, the President had the legal authority to uphold the Paris Peace Accords and to intervene in Vietnam to do so. When it came to the specific question of evacuation, a legal opinion was also provided by a future Supreme Court Justice Scalia, arguing for the Office of Legal Counsel that the President certainly had the constitutional power to evacuate Americans, but that the power to evacuate foreign nationals was less clear.[54] Scalia's memo concluded, however, that the limited "use of troops merely to safeguard an evacuation would not constitute 'the involvement of United States military force in hostilities'" and thus run afoul of the Case-Church prohibition. Thus the legal restrictions really only involved a question of what would be considered "politically acceptable."[55]

Ford own actions, as well, showed a willingness to utilize military force in Southeast Asia under the same legal restrictions. Within a few weeks of the Fall of Saigon, the president ordered Marines to retake the ship *Mayaguez* in Cambodia absent formal congressional approval. This operation, however, was much smaller than that needed either to forestall the North Vietnamese invasion of the South in the winter of 1974-75 or to undertake the much larger evacuation contemplated during the Fall of Saigon in April 1975. Thus, the worries of a political backlash if a large operation proceeded poorly—Loss Costs—drove the outcome. As Ford argued, he wanted a vote because "If we have a disaster, Congress will evade the responsibility."[56] Otherwise, "if it does not work it is *we* who are in trouble."[57] Thus possessing congressional authorization neither for enforcing the Paris Peace Accords nor evacuating at-risk Vietnamese, Ford was forced to allow the Fall of Saigon and only evacuate a small fraction of endangered South Vietnamese nationals during the final capitulation.

The Carribbean Basin (1980's)

The Reagan administration consistently pushed the boundaries of presidential power (Crouch, Rozell & Sollenberger 2020) and frequently denied the constitutionality of the War Powers Resolution. Reagan proudly proclaims in his memoirs, for example, that before the 1983 Invasion of Grenada "We didn't ask anybody, we just did it," (Reagan 2011).

The administration's own actions in the Caribbean Basin illustrate the White House had a very strong interest in American influence in the region. Aside from the overt action in Grenada, Reagan constantly pushed for aid to Contra rebels in Nicaragua over both terms in

[53] Hearings on War Powers: A Test of Compliance, Before the House Comm, on International Relations, 94th Cong., 1st. Sess. (Part VI) 90 (1975).

[54] *Use of Troops in Vietnam and Cambodia*, Unpublished Op. O.L.C. (1975), available at https://knightcolumbia.org/documents/nmrt2oh7mn.

[55] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 212. Available at https://history.state.gov/historicaldocuments/frus1969-76v10/d212.

[56] Ibid.

[57] Ibid.

office—the administration was so determined, in fact, to exert influence in Central American that it went so far as to undertake an illicit program that would be exposed in the Iran-Contra scandal. The Administration would similarly send military advisers to El Salvador, and undertake several provocative military exercises with Honduras. Recollections by top decision-makers in White House, and the transcript evidence available, provide further evidence that the Administration, and the President himself, had a strong desire to influence events in the region and often considered the use of American military force in pursuit of this objective.

Nevertheless, the White House would ultimately refrain from the actual direct employment of American military forces in combat (aside from Grenada), consistent with the Reagan Doctrine. The administration, instead, focused primarily on providing overt and covert aid to local actors rather than "Americanize" conflicts. The Reagan Doctrine itself, however, can clearly be seen as a product of congressional and popular resistance to the use of military force. An influential strategy document—deemed "required reading" in a memo from the CIA director to Secretary of State Shultz, Secretary of Defense Weinberger, the Ambassador to the United Nations (Kirkpatrick), and the National Security Advisor (Clark)—put it bluntly:

> "Three successive Presidents have tried to grapple with the Soviet offensive in the Third World...in virtually every instance, the US reaction has been principally through covert action—out of fear (or realism) that overt US involvement was *not sustainable politically at home.*
>
> A US counterstrategy in the Third World needs to be based on domestic and foreign realities:
>
> -The Vietnam Syndrome is a reality; the *Congress will not support or allow the use of US combat forces in the Third World.* As El Salvador has shown, even a training role is suspect...the Executive Branch must collaborate more closely in the setting of strategy with key members and committees of Congress. Too often opportunities to counter the Soviets have been lost by clashes between the two Branches, often by last minute, poorly thought out or poorly explained initiatives from the Executive. The independent stand of Congress is a fact of life, and any effort to counter the Soviets in the Third World will fail unless the Congress is made a party to the Executive's thinking and planning—all along the way. This is anathema to Constitutional purists in the Executive who see foreign policy as the necessary preserve of the Executive (and I am one of those), but it is reality and if we do not accommodate to it we will have no success against the Soviets in the Third World."[58]

Thus, it was well recognized inside the Administration that—despite its broad assertions of presidential power—Congressional support was a de facto political necessity for military action. This effective limit on unilateral action was most apparent in Central America—

[58] *Foreign Relations of the United States*, 1981–1988, Volume III, Soviet Union, January 1981–January 1983, eds. Kathleen B. Rasmussen and Adam M. Howard (Washington: Government Printing Office, 2021), Document 41. Available at https://history.state.gov/historicaldocuments/frus1981-88v04/d41.

prominently El Salvador and Nicaragua—and the wider Caribbean Basin—such as in Suriname—during Reagan's tenure.

Secretary of State Alexander Haig consistently advocated for a strong push in the region, and yet even Haig himself realized that a bigger operation would be politically impossible without Congressional approval. He wrote in his memoir "I never envisaged the landing of Marines in Central America...there was no popular consensus to support such an act, and in any case, it was not possible under the War Powers Act without the consent of Congress. Every realistic being knew that such consent would only be given in the case of catastrophe," (Haig & Luce 1984, pg. 124). Thus, a lack of popular and legislative support was seen by the Secretary of State as constraining the ability of the executive branch to utilize American military forces in combat.

Strategy documents from the beginning of the administration exhibit a logic of Congressional Constraint as well. Less than a month after taking office, a National Security Council meeting discussed options for dealing with a perceived communist thrust in Central America. It was bluntly put that "sustained U.S. support for El Salvador will obviously require the cooperation of the Congress." A great portion of the discussion considered whether military advisors would trigger the War Powers Resolution. While the administration formally maintained that the act was unconstitutional, it realized "Nonetheless, the continuation of this MTT [military adviser] program in El Salvador would not be viable in any event in the face of a formal Congressional mandate for its termination, whatever the constitutionality of that action."[59] In other words, even while the Administration argued it had the legal power to act, it realized that *de facto* it would not be able to do so without congressional support. In the end, the most escalatory action the administration would undertake would be to merely add 20 military advisers to the 19 already present in the country from the Carter administration (Weed 2019). Even when Congress failed to pass a legal limit of 55 advisers in 1983, the administration as a practical matter never exceeded that number (Weed 2019).

Nicaragua—and support for the Sadinista government from Cuba and the Soviet Union—was of particular concern to the administration. At the second meeting of the National Security Council of the Reagan Administration on February 11th, possible actions were considered. Even the most hawkish among the advisers—Haig—recognized that "The American people won't support another Vietnam situation where US troops are stationed in Central America", and thus suggested that Cuba become the focus of the administration.[60] But when the possibility of "military action" against the Castro regime was considered, it was recognized that "the problem with military action is that as it escalates, Congressional checks come into

[59]Collection: Executive Secretariat, NSC: Meeting Files Folder Title: NSC 00003 18 Feb 1981 (1 of 2)
[60]NSC 2, Feb. 11, 1981, available at http://www.thereaganfiles.com/19810211-nsc-2.pdf.

play."[61] In a major National Security Council meeting in November 1981, plans were presented on the possible use of military force to interdict supplies flowing from Cuba to Nicaragua and ultimately into El Salvador (Scott 1996). Reagan, however, rejected the idea that the use of American military force was a realistic possibility:

> "The President observed that what worries him most is this: if the [American] people won't support the leader and the cause, then there will be failure. The President then said it was clear the press would like to accuse us of getting into another Vietnam. How can we solve this problem with Congress and public opinion being what they are? We are talking about an impossible option."[62]

The president thus explicitly declined the option of using American military force because of opposition in the legislature and in the general American population. Instead, Reagan sought other options and specifically suggested the possibility of covert action. Thus being deterred from undertaking direct military action, the administration was forced toward the "lowball option" of covert action in order to avoid "a strong popular aversion to the direct use of American military power" and "a Congress still reluctant...to approve even the dispatch of American military advisers to the region" (Kagan 1996).

Even in a worst case scenario—a Nicaraguan attack on one of its neighbors—the Reagan Administration planned direct American military intervention as only a last resort, and even then to avoid the use of ground troops. National Security Decision Directive 59 states that "To maximum extent possible, any direct use of U.S. military force should be confined to use of air and sea support for Honduras forces."[63] In the same document, the President made clear provisions of the War Powers Resolution would be followed and that particular attention needed to be paid to developing "public and congressional support for U.S. policies toward the region."[64] Administration reluctance to introduce American troops continued even after Reagan's landslide re-election in 1984. Even while threatening military intervention should other policy option fail, the administration still privately conceded that "Without support from Congress...military involvement in Nicaragua is most unlikely."[65]

Thus deterred by congressional opposition from the use of force in Central America, the administration was forced into utilizing other foreign policy tools. The administration's determination to intervene in Nicaragua was so strong, it proved willing to engage in illegal activity to do this. In the Iran-Contra scandal, it was revealed that the administration had

[61]NSC 2, Feb. 11, 1981, available at http://www.thereaganfiles.com/19810211-nsc-2.pdf.

[62]NSC 24, Nov. 10, 1981, available at https://www.thereaganfiles.com/19811110-nsc-24.pdf.

[63]National Security Decision Directive 59, October 5, 1982, available at https://irp.fas.org/offdocs/nsdd/nsdd-59.pdf.

[64]National Security Decision Directive 59, October 5, 1982, available at https://irp.fas.org/offdocs/nsdd/nsdd-59.pdf.

[65]Brinkley, Joel, and Bill Keller. "Nicaragua and the U.S. Options: An Invasion Is Openly Discussed." *The New York Times*, June 5, 1985, sec. World. https://www.nytimes.com/1985/06/05/world/nicaragua-and-the-us-options-an-invasion-is-openly-discussed.html.

illegal provided the Contras with aid in violation of the Boland Amendment. The Boland Amendment itself was a manifestation of Congress's ability to deter the use of military force by the President—then Secretary of State Schultz describes how a six-month long planned joint exercise between Honduran and U.S. forces off both coasts of Nicaragua had moved Congress into passed the First Boland Amendment in the first place (Shultz 1993, pg. 311).

The administration's most major use of force in the region came further east in 1983 with the invasion of Grenada. Yet, even this episode can hardly be pointed to as firm evidence Reagan was willing to engage in full-scale war unilaterally. Several factors made the Grenada episode a unique situation not particularly out-of-line with the actions of other Presidents. First, the proximate cause for the intervention was the risk of American hostages on the island after a coup—a situation widely sought to be avoided due to the still-recent Iran Hostage Crisis. While there was immediate skepticism amongst congressional Democrats that an actual threat to American lives existed in Grenada—and that this was just pretext for a desire by the White House to eliminate the leftist government of the island—after a congressional fact-finding mission was sent to the island, Democrats agreed that the operation was necessary and justified. The Democratic Whip would state, "Under the circumstances, the majority—and I would say, the very large majority—feels that under the circumstances the President acted correctly to protect American lives."[66] Moreover, the scale of the operation should be considered: the quick invasion of was hardly a full-scale military engagement. Total American combat fatalities numbered eighteen, and the tiny island is one tenth the size of Rhode Island.

The Reagan Administration had sought to eliminate growing Cuban and Soviet influence on Grenada prior to the invasion, but the intervention was only decided on after there had been a concrete threat to American lives. It is unlikely that such military action would have been undertaken without the threat to U.S. citizens, however. For example, when confronted with a similar threat of Cuban and Soviet influence (but no threat to American lives) in a country close to Grenada—Suriname—during the same year, the administration proved unwilling to intervene without congressional support. The Administration "considered this an emergency situation to stop a new Soviet foothold in our front yard, giving the Soviets a chokehold on the mouth of the Caribbean,"[67] and yet was ultimately deterred by Congress from intervening.

Secretary of State Schultz recalls the discussion of action against Suriname at length

[66]Smith, Hedrick. "O'Neill Now Calls Grenada Invasion 'Justified' Actions." *The New York Times*, November 9, 1983, sec. World. https://www.nytimes.com/1983/11/09/world/o-neill-now-calls-grenada-invasion-justified-action.html.

[67]William P. Clark Interview, August 17, 2003, George W. Bush Oral History Project, Miller Center, University of Virginia. Available at https://millercenter.org/the-presidency/presidential-oral-histories/william-p-clark-oral-history.

in his memoir:

> "All options seemed to close one by one...the insertion of a commando U.S. Delta Force unit would have been politically explosive at home...The Vietnam War had left one indisputable legacy: massive press, public, and congressional anxiety that the United States—at all costs—avoid getting mired in "another Vietnam"...any direct military action would require the president enter the as-yet-uncharted thicket of the War Power Act...The political price in the United States would be excessively high," (Shultz 1993, pg. 293-295).

Notably, the use of American troops had been explicitly considered, but then ultimately rejected:

> "President Reagan was willing to consider use of American troops...but I could not conceive of this being successful: opposing political pressures would be too strong...the final blow came in March [1983] when Tom Enders went up to the Hill to explore with the intelligence committees the possibility of a covert operation against Bouterse. He ran into a buzz saw,"(Shultz 1993, pg. 296).

The Administration ultimately decided that "under no circumstances would U.S. soldiers be sent in," (Kengor & Doerner 2007, pg. 210). Reagan and his National Security Adviser reasoned "not to carry out an invasion with U.S. troops: they wanted to avoid such an operation at all costs, consistent with the Reagan doctrine," (Kengor & Doerner 2007, pg. 216). The Reagan Administration was not, of course, against using military force *per se*—it utilized military force, for example, in the Middle East on several occasions. The key difference in the Caribbean Basin, however, was the lack of congressional support for combat operations.[68]

The Administration's reticence to undertake military action absent congressional approval was clearly due neither to a personal respect for the separation of powers nor legal advice from executive branch lawyers. The Administration constantly stated it believed the War Powers Resolution to be unconstitutional,[69] and specifically rejected a narrow reading of the President's constitutional powers to initiate conflict unilaterally.[70] It was instead a political "reality" that the congressional support was important. For example, Secretary of Defense Weinberger clearly believed that the War Powers Act was unconstitutional, noting "Every president who has ever been subjected to it believed it to be unconstitutional, and I

[68] "In deciding to send the military into the Middle East, the administration did not face the same domestic political constraints when it considered using military power to blockade Cuba or quarantine Central America. Congress and the American people were generally supportive of the announced policy, stemming from a perception that if the matter was allowed to get further out of hand, far greater risk to US vital interests might result,"(Yoshitani 2012).

[69] *Legal Assessment of the War Powers Resolution*, Unpublished Op. O.L.C. (1993), available at https://s3.amazonaws.com/kfai-documents/documents/7bcac9cf82/20220902_Legal-Assessment-of-the-War-Powers-Resolution-National-Security-Council.pdf#pdfjs.action=download.

[70] *Overview of the War Powers Resolution*, 8 Op. O.L.C. 271 (1984), available at https://www.justice.gov/sites/default/files/olc/opinions/1984/10/31/op-olc-v008-p0271_0.pdf.

do not think that any president could support it and feel able to carry out his oath of office." (Weinberger 1989) Nevertheless, Weinberger himself would lay out in his "Weinberger Doctrine" (later evolved into the more famous "Powell Doctrine") that "U.S. troops should not be committed to battle without a reasonable assurance of the support of U.S. public opinion and Congress."

Thus, much of the Reagan's vast assertions of presidential war power were more bark than bite. Oliver North, the individual at the center of the Iran-Contra scandal, would argue in his memoir that "instead of strengthening the office of the presidency, [Reagan] actually weakened it. He just wasn't forceful enough when it came to fighting for the constitutional prerogatives of the Executive Branch", specifically, failing to "challenge[] the War Powers Resolution" and an "imperial Congress" (North & Novak 1991, pg. 173-74).

Iran 2007:

Like Reagan, George W. Bush is considered to have been hawkish and willing to push the limits of presidential power. Thus, the administration serves as a hard case for the Congressional Constraint thesis and an easy case for the Imperial Presidency.

As sectarian violence and insurgency reached unprecedented levels in Iraq in 2006, the administration explored the possibility of striking Iran due to its support for Shiite groups in Iraq as well as its nuclear weapons program. Despite strong proponents of such action in the White House and advice to take at least limited action, by 2008 the administration had internally abandoned such plans.

The key to determining why the administration abandoned plans to directly attack into Iran is the 2007 National Intelligence Estimate (NIE) released in late November 2007. By all accounts, the release of the NIE was the immediate cause of the administration giving up serious thoughts of direct action. Congress had demanded the production of an NIE in the first place, and an anticipation of a Congressional leak forced the administration to publish the NIE *in spite of the highly damaging information it contained* from the perspective of the White House. Congressional opponents of strikes against Iran were quick to pounce on the findings and create a political atmosphere in which it was impossible for the administration to act against Iran *despite the fact it internally felt the NIE to, if anything, confirm their worst fears*. Thus, congressional opponents of strikes in Iran were able to deter the White House from taking action it otherwise desired.

Motivations to Attack: Nuclear Weapons, Support for Terrorism, and Proxy Killing of Americans in Iraq

There were several reasons the administration was interested in using military force against Iran. First, there was the issue if its nuclear weapons program. During his 2002 State of the Union address, Bush had specifically labeled an "Axis of Evil" consisting of Iraq, Iran, and North Korea seeking weapons of mass destruction and threatening the peace of the world. Bush would eventually authorize Operation Olympic Games and the Stuxnet attack in Iran precisely in order to stunt Tehran's efforts to build nuclear weapons.

Moreover, Iran was not only believed to be pursuing the development of nuclear weapons, but was also classified by the United States as a state sponsor of terrorism since 1984. Even more directly, foreign fighters and other support for insurgencies in Iraq were entering the country from Iran. Much of the insurgent activity in Iraq was resourced by Iran.[71] As Secretary Rice would later recall "American soldiers were dying in huge numbers, because the Iranians had really stepped up" delivery of IEDs (Sayle et al. 2019, pg. 282). General John Abizaid–Commander of Central Command—likewise characterized it as "Iranians actually killing American soldiers by proxy" (Sayle et al. 2019, pg. 211). General Stanley McChrystal recalled "Iranian-made roadside bombs built and deployed at his command were claiming the lives of U.S. troops across Iraq."[72] Even opponents of direct military action against Iran conceded this point. Admiral William Fallon—later forced to retire from Central Command because of his resistance to a military confrontation with the Islamic Republic, remembered "the Iranians were funding every entity inside Iraq. It was in their interest to get us out, and so they decided to kill as many Americans as they could."[73] Given Tehran's pursuit of nuclear weapons, along with its support of terrorism and its direct support for insurgents killing Americans in Iraq, there was thus a strong desire in the White House to take action against Iran (Crist 2012).

Congressional Resistance

By 2006, however, the worsening situation in Iraq and the shadow of congressional midterms hung over the mind of decision-makers. Democrats had turned against the war and were clearly against expanding Middle East wars further. Even before the 2006 elections, the White House contemplated what the anticipated congressional reaction would be to action

[71] "The Iranians over time had increased their training and material support to various Iraqi Shia militias that were increasingly targeting and killing Americans." (Sayle, Engel, Brands & Inboden 2019, pg. 339).

[72] McChrystal, Stanley. "Iran's Deadly Puppet Master." Foreign Policy (blog), January 1, 2019. https://foreignpolicy.com/gt-essay/irans-deadly-puppet-master-qassem-suleimani/.

[73] Hersh, Seymour. "Preparing the Battlefield." *The New Yorker*, June 29, 2008. https://www.newyorker.com/magazine/2008/07/07/preparing-the-battlefield.

against Iran.[74] The situation was explicitly compared Reagan's fighting with Congress over Nicaragua, but Cheney vowed "whatever a Democratic Congress might do next year to limit the President's authority, the Administration would find a way to work around it."[75]

Immediately after the new Congress was sworn in January of 2007, Democrats—now in control of both houses—began bringing up the war powers issue with regards to a potential action against Iran.[76] Perhaps even more surprisingly, even some Republican members of Congress brought up similar concerns as well.[77] At a Senate Foreign Relations Committee hearing in January, Chairman Joe Biden pressed the Secretary of State over the issue of presidential power:

> **Senator BIDEN.** Secretary Rice, do you believe the President has the constitutional authority to pursue, across the border into Iraq or Syria, the networks in those countries?
>
> **Secretary RICE.** Well, Mr. Chairman, I think I would not like to speculate on the President's constitutional authority or to say anything that certainly would abridge his constitutional authority, which is broad, as Commander in Chief. I do think that everyone will understand that the American people and, I assume, the Congress, expects the President to do what is necessary to protect our forces.
>
> **Senator BIDEN.** Madam Secretary, I just want to make it clear, speaking for myself, that if the President concluded he had to invade Iran or Syria in pursuit of these networks, I believe the present authorization—which granted the President the right to use force in Iraq—does not cover that, and he does need congressional authority to do that. I just want to set that marker.[78]

Senator Jim Webb also brought up a similar question to Rice.

> "The question that I have for you goes back to the Presidential finding on the resolution that authorized force in 2002. And there is a sentence in here which basically says that, "This resolution does not constitute any change in the position of the executive branch with regard to its authority to use force to deter, prevent, or respond to aggression or other threats to United States interests outside of Iraq." This phrase went to situations outside of Iraq. And this is a question that can be answered either, you know, very briefly or through written testimony, but my question is: Is this the—is it the position of this administration that it possesses the authority to take unilateral action against Iran, in the absence of a direct threat, without congressional approval?"[79]

[74] Hersh, Seymour. "The Next Act." *The New Yorker*, November 27, 2006. https://www.newyorker.com/magazine/2006/11/27/the-next-act.

[75] Ibid.

[76] Hersh, Seymour M. "The Redirection." *The New Yorker*, February 25, 2007. https://www.newyorker.com/magazine/2007/03/05/the-redirection.

[77] Ibid.

[78] "Securing America's Interest in Iraq: The Remaining Options." Washington, D.C., January 11, 2007. https://www.foreign.senate.gov/imo/media/doc/011007_to_020107_Transcript_Securing%20Americas%20Interest%20in%20Iraq2.pdf.

[79] Ibid. Bush's signing statement to the 2002 AUMF stated "I sought an additional resolution of support from the Congress to use force against Iraq, should force become necessary. While I appreciate receiving that

Webb was specifically worried about "the notion that the executive branch has the power to conduct a preemptive war, as opposed to a preemptive attack."[80] Biden followed up Webb by stating:

> I also want to make it clear, as chairman of the committee, that I feel very strongly that the authorization of the use of force, and the provision that the Senator read from it, explicitly denies you the authority to go into Iran. Let me say that again. Explicitly denies you the authority to go into Iran. We will fight that out if the President moves, but I just want the record to show— and I would like to have a legal response from the State Department, if they think they have authority to pursue networks or anything else across the border into Iran and Iraq. That will generate a constitutional confrontation here in the Senate, I predict to you. At least I will attempt to make it a confrontation.

Criticism, furthermore, was not limited to Democrats. Republican Senator Chuck Hagel specifically compared the situation to that in Cambodia in 1970 and disapproved of the administration's stated policy.[81] In a written response, the administration stated:

> You also ask what authority might be relevant in connection with a hypothetical military operation in Iran. As this Administration has said, we are not planning to invade Iran. For over two years, we have actively pursued a diplomatic strategy to address Iran's nuclear program, and we remain committed to resolving our concerns with Iran diplomatically. Of course, the Constitution charges the President to protect the United States and the American people. As Commander in Chief, he must be able to defend the United States, for example, if U.S. forces come under attack. Whether and how to do so in any specific situation would depend on the facts and circumstances at that time. Administration officials communicate regularly with the leadership and other Members of Congress with regard to the deployment of U.S. forces and the measures that may be necessary to protect the security interests of the United States and will continue to do so.[82]

Outside of the hearing, other members of congress made similar arguments. Senate Majority Leader Harry Reid, for example, specifically "warned the White House not to take

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support, my request for it did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President's constitutional authority to use force to deter, prevent, or respond to aggression or other threats to U.S. interests or on the constitutionality of the War Powers Resolution." George W. Bush, Statement on Signing the Authorization for Use of Military Force Against Iraq Resolution of 2002 Online by Gerhard Peters and John T. Woolley, The American Presidency Project. https://www.presidency.ucsb.edu/documents/statement-signing-the-authorization-for-use-military-force-against-iraq-resolution-2002.

[80] "Securing America's Interest in Iraq: The Remaining Options." Washington, D.C., January 11, 2007. https://www.foreign.senate.gov/imo/media/doc/011007_to_020107_Transcript_Securing%20Americas%20Interest%20in%20Iraq2.pdf.

[81] Ibid.

[82] Ibid.

military action against Iran without seeking approval from Congress."[83] Accordingly, Biden[84] and Webb[85] separately introduced bills preventing a unilateral attack against Iran. The White House clearly perceived the push back from Congress, even as it tried to maintain a credible threat with Iran. Then Secretary of Defense Robert Gates recalls of early 2007:

> "The trouble was that the Iranians were not the only ones getting nervous. A number of members of Congress and commentators worried publicly whether the Bush administration was getting ready to launch another war, a worry that only grew every time we announced some new nefarious act by the Iranians...I underscored that "we are not planning for a war with Iran." On February 15, I said, "For the umpteenth time, we are not looking for an excuse to go to war with Iran." (Gates 2015, pg. 180)

Summer Plans, Smaller Plans

By the summer of 2007, the administration was still seeking ways to use military force against Iran, although at a more limited scale than originally planned in a hope a smaller operation would incur more support—or at least less resistance—from Congress and the public:[86]

> "the President and his senior advisers have concluded that their campaign to convince the American public that Iran poses an imminent nuclear threat has failed (unlike a similar campaign before the Iraq war), and that as a result there is not enough popular support for a major bombing campaign."[87]

Nonetheless, the administration appeared determined to act and began considering justifications for action:

> "During a secure video conference that took place early this summer, the President told Ryan Crocker, the U.S. Ambassador to Iraq, that he was thinking of hitting Iranian targets across the border and that the British 'were on board'...Bush ended

[83]Mazzetti, Mark. "Leading Senator Assails Bush Over Iran Stance." *The New York Times*, January 20, 2007, sec. Washington. https://www.nytimes.com/2007/01/20/washington/20intel.html Such arguments over a lack of authorization for the use of military force against Iran were, moreover, not limited to legislators. Earlier in 2007, Stanford CISAC and Hoover fellows for example, publicly argued Congress needed to block the White House from attacking because the administration would otherwise claim the legal authority to do so: "[T]he president and vice president subscribe to what some call the "unitary executive," which is a fancy way of saying they believe that Congress cannot prevent the president from doing almost anything he wants...When Bush signed the Iraq war resolution, he issued a statement challenging the constitutionality of the War Powers Act, indicating that he could take the nation to war without obeying its restrictions."Weiss, Leonard, and Larry Diamond. "Congress Must Stop an Attack on Iran." *Los Angeles Times*, February 5, 2007. https://www.latimes.com/archives/la-xpm-2007-feb-05-oe-weiss5-story.html.

[84]Curry, Tom. "Biden Prepares New Bill on Bush War Powers." NBC News, January 22, 2007. https://www.nbcnews.com/id/wbna16710690.

[85]Jim Webb. (2007, March 27). Senator Jim Webb Introduces Iran Amendment [Press release]. http://coherentbabble.com/Congress/WebbPR-32707.pdf.

[86]See, e.g., Inside Iraq - Threat of War in Iran - 05 Oct 07 - Part 1, 2007. https://www.youtube.com/watch?v=A1c-u0fTze0.

[87]Hersh, Seymour M. "Shifting Targets." *The New Yorker*, October 1, 2007. https://www.newyorker.com/magazine/2007/10/08/shifting-targets.

> by instructing Crocker to tell Iran to stop interfering in Iraq or it would face American retribution...At a White House meeting with Cheney this summer, according to a former senior intelligence official, it was agreed that, if limited strikes on Iran were carried out, *the Administration could fend off criticism by arguing that they were a defensive action to save soldiers in Iraq. If Democrats objected, the Administration could say, 'Bill Clinton did the same thing; he conducted limited strikes in Afghanistan, the Sudan, and in Baghdad to protect American lives.'*"[88]

"The capital had been buzzing for a year with speculation about whether Bush and Cheney would decide on one last, big confrontation before they left office—or whether the Israelis, concerned that Bush was too bogged down in Iraq to pay attention to a growing Iranian threat, would execute an attack on Iran themselves...The left was convinced that Bush and Cheney would attack," (Sanger 2009, pg. 10).

> "The revised bombing plan for a possible attack, with its tightened focus on counterterrorism, is gathering support among generals and admirals in the Pentagon. The strategy calls for the use of sea-launched cruise missiles and more precisely targeted ground attacks and bombing strikes, including plans to destroy the most important Revolutionary Guard training camps, supply depots, and command and control facilities.
>
> "Cheney's option is now for a fast in and out—for surgical strikes," the former senior American intelligence official told me. The Joint Chiefs have turned to the Navy, he said, which had been chafing over its role in the Air Force-dominated air war in Iraq. "The Navy's planes, ships, and cruise missiles are in place in the Gulf and operating daily. They've got everything they need—even AWACS are in place and the targets in Iran have been programmed. The Navy is flying FA-18 missions every day in the Gulf." There are also plans to hit Iran's anti-aircraft surface-to-air missile sites. "We've got to get a path in and a path out," the former official said." A Pentagon consultant on counterterrorism told me that, if the bombing campaign took place, it would be accompanied by a series of what he called "short, sharp incursions" by American Special Forces units into suspected Iranian training sites. He said, "Cheney is devoted to this, no question."[89]

It was unclear, however, it such an operation could actually be kept limited when the Iranians themselves would have ample opportunity to escalate the conflict in Iraq.[90] Despite this, some administration insiders expressed a belief that the operation would go ahead.[91] Notably, however, the administration was beginning to sense the political heat it would face it

[88] "The former intelligence official added, 'There is a desperate effort by Cheney et al. to bring military action to Iran as soon as possible.'" Ibid.

[89] Ibid.

[90] Zbigniew Brzezinski, the former national-security adviser, who said that he had heard discussions of the White House's more limited bombing plans for Iran. Brzezinski said that Iran would likely react to an American attack "by intensifying the conflict in Iraq and also in Afghanistan, their neighbors, and that could draw in Pakistan. We will be stuck in a regional war for twenty years." Ibid.

[91] "Podhoretz recently told politico.com that he had met with the President for about forty-five minutes to urge him to take military action against Iran, and believed that "Bush is going to hit" Iran before leaving office." Ibid.

it were to actual carry out such an attack.[92] Then Secretary of Defense Robert Gates confided in late summer that "absent an Iranian military attack on U.S. forces or our allies, if the president launched another preventive war in the Middle East, he would likely be impeached," (Gates 2015, pg. 185).

Nonetheless, there were still efforts by legislative allies of the White House to create political cover for action against Iranian forces harming the situation in Iraq. In September, Republican Jon Kyl and and then-Independent Joe Lieberman proposed an amendment to the 2008 National Defense Authorization Act callings on the administration to designate Islamic Revolutionary Guard Corps as a terrorist organization. Originally, it included clauses stating:[93]

> (3) that it should be the policy of the United States to combat, contain, and roll back the violent activities and destabilizing influence inside Iraq of the Government of the Islamic Republic of Iran, its foreign facilitators such as Lebanese Hezbollah, and its indigenous Iraqi proxies;
>
> (4) to support the prudent and calibrated use of all instruments of United States national power in Iraq, including diplomatic, economic, intelligence, and military instruments, in support of the policy described in paragraph (3) with respect to the Government of the Islamic Republic of Iran and its proxies;

There was a worry, however, the legislation could be interpreted as authorizing the use of force against Iran.[94]Even after such aggressive language was removed from the amendment,[95] Webb warned "it could be read as a backdoor method of gaining Congressional validation for military action"[96] and that amendment's attempt to categorize the Iran's IRGC as "a foreign terrorist organization would, for all practical purposes, "mandate" the military option against Iran. "It could be read as tantamount to a declaration of war. What do we do with terrorist organizations? If they are involved against us, we attack them."[97] Republican Senator Chuck Hagel, likewise, feared the Bush administration might use the Senate resolution on Iran as cover for a military attack.[98]

[92] "the politicians are saying, 'You can't do it, because every Republican is going to be defeated, and we're only one fact from going over the cliff in Iraq.' But Cheney doesn't give a rat's ass about the Republican worries, and neither does the President." Ibid.

[93] Ambinder, Marc. "The Politics Of Lieberman-Kyl, Part 1." *The Atlantic*, October 11, 2007. https://www.theatlantic.com/politics/archive/2007/10/the-politics-of-lieberman-kyl-part-1/50654/.

[94] Ibid.

[95] See, for example, Lieberman and Webb on Lieberman-Kyl Amendment, 2007. https://www.youtube.com/watch?v=67Mwwi2clzM.

[96] Corley, Matt. "Webb: Lieberman And Kyl's Hawkish Iran Amendment Is 'Cheney's Fondest Pipe Dream.'" Think Progress, September 25, 2007. https://archive.thinkprogress.org/webb-lieberman-and-kyls-hawkish-iran-amendment-is-cheney-s-fondest-pipe-dream-3384d2473897/.

[97] Ibid.

[98] "I voted against that resolution for that very reason...It's a very dangerous resolution." Farley, Robert, and Eugene Kiely. "Fact Check: Hagel's Record on Iran." *USA Today*. Accessed March 30, 2023. https://www.usatoday.com/story/news/politics/2013/01/10/fact-check-hagel-iran/1823651/; Kessler, Glenn. "The Ironies of Hagel's 'No' Vote on Iran's Revolutionary Guards." *Washington Post* (blog), February 1, 2013. https://www.washingtonpost.com/blogs/fact-checker/post/the-ironies-of-hagels-no-vote-on-irans-revolutionary-guards/2013/01/31/bfdf7686-6c04-11e2-ada0-5ca5fa7ebe79_blog.html.

Many in the public at the time perceived the administration as building toward an attack on Iran,[99] especially when in mid-October Bush warned that "WWIII" might break out with Iran.[100] However, members of Congress clearly signalled to the White House that the amendment did not constitute constitutionally sufficient authorization for the use of military force. Thirty Senators sent a letter to the White House stating:

> Dear President Bush:
>
> ...We wish to emphasize that no congressional authority exists for unilateral military action against Iran. This includes the [Lieberman-Kyl Amendment]. This amendment, expressing the sense of the Senate on Iran, and the recent designation of the Quds Force of the Iranian Revolutionary Guard as a Specially Designated Global Terrorist, should in no way be interpreted as a predicate for the use of military force in Iran.
>
> We stand ready to work with your administration to address the challenges presented by Iran in a manner that safeguards our security interests and promotes a regional diplomatic solution, but we wish to emphasize that offensive military action should not be taken against Iran without the express consent of Congress.[101]

Senator Obama similarly introduced a resolution saying that any offensive military action against Iran would have to be explicitly authorized by Congress, and clarified that nothing approved so far provided that authority.[102] A similar action by Hillary Clinton—competing with Obama and others for the Democratic presidential nomination—likewise garnered attention.[103] Similarly, Biden repeatedly vowed to impeach Bush if he did attack Iran, arguing that the threat of impeachment could deter Bush from acting unilaterally:[104]

> "I think the best deterrent is for the president to know, even at the end of his term, we would move and move to follow through with that so his legacy would be marred for all time if he acted in what was clearly, clearly an impeachable offense,"[105]

Biden similarly stated publicly on another occasion:

[99] Grotto, Andrew. "Building a Case Against Iran." Center for American Progress (blog), September 28, 2007. https://www.americanprogress.org/article/building-a-case-against-iran/.

[100] Spetalnick, Matt. "Bush: Threat of World War III If Iran Goes Nuclear." *Reuters*, October 17, 2007. https://www.reuters.com/article/us-iran-bush/bush-threat-of-world-war-iii-if-iran-goes-nuclear-idUSN1732974320071017.

[101] Letter from Senators to President Bush on Iran, November 1, 2007, https://www.iranwatch.org/sites/default/files/us-congress-iranletter-110107.pdf.

[102] *NBC News*. "Obama Introduces Iran Resolution," November 2, 2007. https://www.nbcnews.com/id/wbna21594008.

[103] Webb, Jim. *The New York Times*. "Opinion — Congress and War," October 14, 2007, sec. Opinion. https://www.nytimes.com/2007/10/14/opinion/lweb14congress.html.

[104] C-SPAN. "In 2007, Joe Biden Says George Bush Should Be 'Impeached' If He Goes To War In Iran." Accessed March 30, 2023. https://www.c-span.org/video/?c4818777/user-clip-2007-joe-biden-george-bush-impeached-war-iran.

[105] Memoli, Mike. "Biden Once Warned a President: War with Iran without Congressional Approval Is Impeachable." *NBC News*, June 20, 2019. https://www.nbcnews.com/politics/2020-election/biden-once-warned-president-war-iran-without-congressional-approval-impeachable-n1019041.

> "[T]he president has no authority to unilaterally attack Iran. And I want to make it clear, I want it on the record, and I want to make it clear, if he does, as Chairman of the Foreign Relations Committee and former Chair of the Judiciary Committee, I will move to impeach him."[106]

Release of the 2007 NIE

Back in late 2006, just as "members of Congress became concerned that the administration was preparing to go to war with Iran," Congress required in the 2007 National Defense Authorization Act that it be provided a "comprehensive National Intelligence Estimate on Iran,"(Treverton 2021). Congress's demand of a National Intelligence Estimate (NIE) for Iran was significant because an NIE about Iraq's weapons program in 2002 had persuaded many legislatures to vote in favor of using force against Iraq five years prior.[107]

> "we received a National Intelligence Estimate that judged with "high confidence" that Iran had halted its suspected nuclear weapons program in the fall of 2003. Anyone who read that assessment would be shocked, since the implications of this finding were very different from those of the estimate presented two years prior. More worrisome to us, though, was the manner in which the phrasing of the 2007 NIE seemed to downplay the equally significant judgments contained within it. The mere fact that a nuclear weapons program had even existed in Iran, regardless of when—or indeed whether—it was halted, suggested to us that the country's supreme leader had intended to pursue nuclear weapons at some point in time. Furthermore, if the assessment was accurate, it had developed this program in defiance of its obligations under the Nuclear Non-Proliferation Treaty,"(Rice 2011, pg. 617).

NIEs were not written for public audiences nor intended to be published, but it became immediately clear that the language of the NIE would be leaked by Congress soon anyway. Hadley later opined the NIE was "a Greek tragedy, one that couldn't be avoided. The document was not written to be public...But the problem was that the 2005 conclusion was on the public record, so when the estimate went to the Hill, there were bound to be cries that the administration was withholding evidence, that it was again trying to manipulate public opinion," (Treverton 2021).

This was despite the fact the administration did not believe the NIE—including less Hawkish advisers such as Rice and Gates. Gates recalled "most of us didn't believe the estimate...at that particular moment, the case that they had stopped weaponization was pretty persuasive, but as far as I was concerned, it was irrelevant, because it was a decision that could

[106]Linkins, Jason. "Biden Warned In 2007 That He'd Impeach Bush For Waging War Without Congressional Approval." *HuffPost*, March 23, 2011.

[107]Mazzetti, Mark. "U.S. Finds Iran Halted Its Nuclear Arms Effort in 2003." *The New York Times*, December 4, 2007, sec. World. https://www.nytimes.com/2007/12/04/world/middleeast/04intel.html.

be reversed in 24 hours."[108] Rice similarly opined:

> "The key statement was buried in the middle of the declassified version of the estimate: 'Iran's civilian uranium enrichment program is continuing.' This finding struck at the heart of the argument: the technical capabilities that Iran was actively pursuing through a civilian program could be converted clandestinely to produce nuclear weapons. Given its past pursuit of a secret nuclear weapons program, it would not be unreasonable to assume that Tehran might intend to pursue one again. *But we knew that in the public sphere this conclusion would be overshadowed by the NIE's more prominently featured assessments.*
>
> In the NSC, we debated for several weeks precisely what to do about the estimate. Given the failed intelligence of the Iraq war, we were suspicious of its assessments. The Vice President argued briefly that we should simply reject the NIE. But that didn't seem feasible, given the failure to find WMD in Iraq and what that had done to our credibility regarding intelligence. So the President decided to declassify the estimate's main findings and release them before they leaked. At least that way we could provide context for the information.
>
> When we released the declassified version of the NIE in December, few of our closest allies accepted its central findings—not the British, not the French, and most especially not the Israelis. All told us that they believed the estimate to be wrong...And the poorly constructed NIE, today universally recognized as flawed, did damage to our diplomatic efforts." (Rice 2011)

Bush recalled "Despite the fact that Iran was testing missiles that could be used as a delivery system and had announced its resumption of uranium enrichment, the NIE opened with an eye-popping declaration: 'We judge with high confidence that in fall 2003, Tehran halted its nuclear weapons program.' The NIE's conclusion was so stunning that I felt certain it would immediately leak to the press. As much as I disliked the idea, I decided to declassify the key findings so that we could shape the news stories with the facts. The backlash was immediate," (Bush 2011, pg. 418-19). Congressional opponents of military action were quick to seize the opportunity.[109] Biden, then Chairman of the Senate Foreign Relations Committee, released a statement saying:

> "The conclusions of the National Intelligence Estimate (NIE) on Iran's nuclear intentions and capabilities are, figuratively speaking, explosive...the international community has a significant window of opportunity in which to act to avoid the stark choice between going to war or accepting a nuclear Iran. But the Bush Administration has long lacked a comprehensive strategy to take advantage of this window. Instead of continuing its obsession with regime change and irresponsible talk of "World War III," we need a policy that focuses on conduct change."[110]

[108]Robert Gates Interview, July 8, 2013, George W. Bush Oral History Project, Miller Center, University of Virginia, https://millercenter.org/the-presidency/presidential-oral-histories/robert-gates-oral-history.

[109]https://www.youtube.com/watch?v=0xpfpciJzBU.

[110]Curry, Tom. "Biden Prepares New Bill on Bush War Powers." NBC News, January 22, 2007. https://www.nbcnews.com/id/wbna16710690. Joseph Biden. (2007, December 3). Statement by Senator Joseph Biden on NIE Report [Press release]. https://www.iranwatch.org/library/government/united-states/congre

Senator Obama stated of the NIE:

> "By reporting that Iran halted its nuclear weapon development program four years ago because of international pressure, the new National Intelligence Estimate makes a compelling case for less saber-rattling and more direct diplomacy. The juxtaposition of this NIE with the president's suggestion of World War III serves as an important reminder of what we learned with the 2002 National Intelligence Estimate on Iraq: members of Congress must carefully read the intelligence before giving the President any justification to use military force."[111]

The Military Option is Abandoned

Even though the Administration believed the report was incorrect, it was realized that the use of force had become politically impossible after it was published. Damage control was attempted by having the National Security Adviser brief the press on the report,[112] and foreign policy experts attempted to help the administration publicly as well. Kissinger, for example, argued "we could be witnessing not a halt of the Iranian weapons program—as the NIE asserts—but a subtle, ultimately more dangerous, version of it that will phase in the warhead when fissile material production has matured."[113] Nonetheless, the damage was already done. A CRS report recalled, "The dramatic shift in analytical conclusions received extensive attention from the media and Members of Congress given Iranian policies in the region."[114] A contemporary news story explained:

> "the first casualty of the NIE's conclusions appears to be the military option... "There is no possible way that the United States could now use unilateral military force in the wake of this estimate. I don't think the political calculus in this country or that of our allies abroad would tolerate it,"[115]

Similarly, an article in the *New York Times* reported:

> "Rarely, if ever, has a single intelligence report so completely, so suddenly, and so surprisingly altered a foreign policy debate here.
>
> An administration that had cited Iran's pursuit of nuclear weapons as the rationale for an aggressive foreign policy — as an attempt to head off World War III, as President Bush himself put it only weeks ago — now has in its hands a classified document that undercuts much of the foundation for that approach.

ss/members-letters-reports-statements/statement-senator-joseph-biden-nie-report Senator Biden also made media appearances decrying the administration's hawkish position in the wake of the NIE release. See, for example, *Joe Biden Discusses the NIE and Iran*, 2007. https://www.youtube.com/watch?v=sQqglI4RdKw.

[111]Yglesias, Matthew. "Iran NIE Reax." *The Atlantic*, December 4, 2007. https://www.theatlantic.com/politics/archive/2007/12/iran-nie-reax/47245/.

[112]The White House. "Press Briefing by National Security Advisor Stephen Hadley," December 3, 2007. https://georgewbush-whitehouse.archives.gov/news/releases/2007/12/20071203-10.html.

[113]Henry A. Kissinger, "Misleading the Iran Report," *Washington Post*, December 13, 2007, p. A35.

[114]Best, Richard A. "Intelligence Estimates: How Useful to Congress?" Congressional Research Service, January 6, 2011. https://sgp.fas.org/crs/intel/RL33733.pdf.

[115]Shuster, Mike. "NIE Report May Block Military Force Against Iran." NPR, December 5, 2007, sec. Iran's Nuclear Ambitions. https://www.npr.org/templates/story/story.php?storyId=16913077.

> The impact of the National Intelligence Estimate's conclusion — that Iran had halted a military program in 2003, though it continues to enrich uranium, ostensibly for peaceful uses — will be felt in endless ways at home and abroad."[116]

It was at this point that any serious consideration of a military option evaporated (Crist 2012). After the release of the NIE, Gates told the president that a surprise attack on Iran would be "very dangerous" because it would risk "a further conflict in the Gulf and all its potential consequences", specifically amplified by a lack of congressional support (Gates 2015, pg. 192). The President seemingly agreed with the Secretary of Defense, reporting the NIE "tied my hands on the military side. There were many reasons I was concerned about undertaking a military strike on Iran, including its uncertain effectiveness and the serious problems it would create for Iraq's fragile young democracy. But after the NIE, *how could I possibly explain* using the military to destroy the nuclear facilities of a country the intelligence community said had no active nuclear weapons program?" (Bush 2010). Talk of overt military strikes against Iran's facilities thus ended within the administration at this point.(Crist 2012).

Similar to the decision-making of the Reagan administration with regards to Nicaragua, once action was made politically impossible at the overt level, the covert option was turned to. It seems that the NIE was the cause of this turn: it"came in the same period in which the Administration was coming to terms with" the NIE.[117] Notably, the White House *did* allow the use of small special operations teams in Iran—a move some argued was driven by a desire to avoid congressional oversight.[118] However, this actually received substantial support from the Democratic leadership in Congress.[119] "Congress agreed to a request from President Bush to fund a major escalation of covert operations against Iran."[120] In the late Spring of 2008, Cheney and others would again call for strikes.[121] Likewise, the Israelis would again approach the President with the request to attack Iran. But after the NIE, Bush was firm in his opposition "I am unequivocally against an attack", even banging on the table and stating "do you know what no means? No is no."[122]

Given the administration's infamously broad claims to presidential power it is unlikely that a personal respect for constitutional separation of powers drove Bush's decision. Through its use of signing statements and broad advocacy of the Unitary Executive Theory (Crouch,

[116]Myers, Steven Lee. "An Assessment Jars a Foreign Policy Debate About Iran." *The New York Times*, December 4, 2007, sec. Washington. https://www.nytimes.com/2007/12/04/washington/04assess.html.
[117]Hersh, Seymour. "Preparing the Battlefield." *The New Yorker*, June 29, 2008. https://www.newyorker.com/magazine/2008/07/07/preparing-the-battlefield.
[118]Ibid.
[119]Ibid.
[120]Ibid.
[121]John Bolton: We Must Bomb Iran Now, 2008. https://www.youtube.com/watch?v=__jVRnmmHJs.
[122]Bergman, Ronen, and Mark Mazzetti. "The Secret History of the Push to Strike Iran." *The New York Times*, September 4, 2019, sec. Magazine. https://www.nytimes.com/2019/09/04/magazine/iran-strike-israel-america.html.

Rozell & Sollenberger 2020), the administration was quite willing to vigorously expand the limits of presidential power. Furthermore, it is highly unlikely executive branch lawyers prevented action from occurring. The OLC under the administration published an opinion in 2002 taking a broader view of the war powers than any other administration in the Cold War era. The memo had asserted that the full invasion of Iraq could have been undertaken unilaterally by the President. This would imply that limited strikes—such as those contemplated against Iran—would be well within the executive's Article II powers. Additionally, given the actual attacks on U.S. soldiers in attack with materials provided by Iran, it would have been a straight forward case for an executive branch lawyer to argue the President's Article II powers of self-defense justified strikes into Iran. This justification of self-defense was specifically considered by senior administration officials, using the argument ""Bill Clinton did the same thing; he conducted limited strikes in Afghanistan, the Sudan, and in Baghdad to protect American lives."[123] Thus, had the administration wanted to legally justify a strike against Iran, this would not have been difficult for it to do.

In the end, it therefore seems that the political consequences of an attack were what drove the outcome. Indeed, the weight of the evidence suggests congressional deterrence of presidential action seemed to have been effective. General Jack Keane, an advisor to the President on the Surge strategy in Iraq and the threat from Iran, later recalled "President George W. Bush's national security team had asked Bush to authorize the destruction of two bases in Iran where Soleimani's forces were training foreign fighters. *But Bush had refused, Keane said. Bush said he thought he would be impeached if he struck inside Iran,*" (Woodward 2020, emphasis added).

Syria "Red Line" Crisis (2013):

After having set a "red line" threatening military against Syria if chemical weapons were used in its civil war, the Ghouta chemical attack of August 2013 created an international crisis for the Obama Administration. Obama's own advisors originally believed he was willing to use military force against Syria without congressional approval, but shortly before strikes were to begin (and after a forty-five minute walk with his Chief of Staff), he announced he would be postponing the strike in order to ask congress to first authorize the use of force. The President seemed to balk at intervening unilaterally once congressional support proved to be softer than anticipated.

Commentators and scholars have offered different interpretations of the episode. Even amongst political scientists, there has been a wide divergence in analyses of the crisis—

[123]Hersh, Seymour M. "Shifting Targets." *The New Yorker*, October 1, 2007. https://www.newyorker.com/magazine/2007/10/08/shifting-targets.

specifically *why* President Obama sought congressional approval for the use of military force when he had the option of simply acting unilaterally. Some argue Obama knew Congress would deny him formal approval (Yarhi-Milo 2018, pg. 1), and publicly asking for congressional authorization was a way in which the President could discharge accrued audience costs by blaming Congress (Burns & Stravers 2020).[124] Others argue, instead, that Obama sought congressional approval in order to *increase* audience costs (Lupton 2020, pg. 21), or that having congressional approval otherwise increased the credibility of Obama's threat to intervene (Harvey & Mitton 2016). The Congressional Constraint thesis suggests a rather simple answer: President Obama realized he could intervene unilaterally, but that if things turned out poorly he would be highly exposed to political attack from Congress. Congressional authorization would give the President political cover in effectively blunting these potential Loss Costs (Kriner 2014), and thus made the difference in choosing to intervene or not. In the aftermath of the crisis, it was quite clear the President had been quite reluctant to intervene unilaterally, but the reason for this needs to be analyzed. It could have either been the case that the President simply did not want to intervene, period, or, alternatively, that he would have intervened but the political risk he would have been undertaking in acting unilaterally deterred him from doing so. The weight of the evidence seems to suggest the latter: the President had a sincere interest in intervening, but was highly worried about the political risk unilateral action would have entailed.

Obama's own advisors believed he had originally been willing to use military force against Syria unilaterally (Kriner 2014). After the August 21 Ghouta sarin attack, there was widespread agreement in the White House that the U.S. needed to respond forcefully (Rice 2019, Kerry 2019). Notably, this even included advisors who had previously been Syria-doves reluctant to intervene, such as Chairman of the Joint Chiefs of Staff Martin Dempsey and Secretary of Defense Chuck Hagel (Kerry 2019, pg. 526). Obama had publicly repeated several times that "Assad must go" and that the use of chemical weapons would be a "red line" that would trigger U.S. military intervention. After the Ghouta attack, the conversation between Obama and his advisors focused on "how—not whether—we would strike," (Kerry 2019, pg. 528). The issue of Congress had come up, but most advisers agreed consultation would be sufficient—formal authorization would not be worth the effort. The administration began briefing members of Congress on their strike plans and received general support. Kerry recalls "I got the sense that the Senate leaders actually preferred we act without" a formal vote (Kerry 2019, pg. 530). Obama had already ordered military forces to the region, and the U.S. began joint planning with British forces. As late as a few hours before Obama decided he would seek congressional approval, the President had already agreed the U.S. needed to act

[124]Note this explanation assumes relatively unsophisticated voters who would not realize that the President could simply act unilaterally—as Obama had done two years earlier in Libya.

military and had even already approved the military targets to be struck (Rice 2019, pg. 362)

The key event that caused the President to reassess his willingness was, ironically, an analogous use of force vote in the United Kingdom. Prime Minister David Cameron had asked for a vote approving the expected U.K. action alongside the U.S., but when the vote was held on August 29, the Prime Minister's measure narrowly lost. It was only after this vote failed——and Prime Minister David Cameron agreed to honor this vote——however, that Obama decided to ask for congressional authorization. Secretary of State Kerry recalls Obama "absolutely believed a response was warranted but wanted Congress to authorize the use of force so that they'd be in it for the duration," (Kerry 2019, pg. 533).

Given that Obama had been willing to intervene in Libya in 2011 without formal congressional approval, it is somewhat curious as to why he would not be willing to act unilaterally in Syria only a few years later. One explanation is that the effort in Syria would have actually been of a higher scale than that in Libya, given both the much more capable nature of Syrian air defense systems and the potential for escalation given Russian and Iranian backing for the Syrian regime (Rice 2019). National Security Advisor Susan Rice wrote that "[t]o sustainably degrade [Syria's] military capacity, given Assad's external backing and robust air defenses, would have required a long-term air campaign against a far-better-equipped and more sophisticated army than Qaddafi's," (Rice 2019, pg. 369). She writes that Obama wanted congressional approval because he "foresaw that a night or two of bombing might not change Assad's calculus and that a more sustained military action might be needed to achieve our objectives," (Rice 2019, pg. 364). Furthermore, not only would the task itself require more assets, but the U.S. would also be fighting alongside less partners able to meaningful alleviate the American burden. While the U.K., and other NATO allies, had contributed substantially to the Libya campaign, Britain had now backed out of the Syrian effort. Only France would be joining the U.S. in the effort.

Moreover, Obama believed that the Libya intervention—undertaken unilaterally—had hurt him politically at home, that it had not gone well, and that "failing to plan for the day after" was the "worst mistake" of his presidency (Kenealy 2022, pg. 26). In other words, Obama suffered Loss Costs after the Libya intervention. Obama's Chief of Staff—who encouraged the idea of going to Congress—clearly also had the experience of Libya on his mind. He later similarly described the Libya intervention as Obama's worst mistake.[125] Kenealy notes:

> "Reflecting on the tug-of-war with Congress over Libya, McDonough felt that one could draw a straight line from the unsatisfactory results of that intervention,

[125]Bowdoin. "Bringing Government to Bowdoin: Former Chief of Staff Talks to NYT's Katie Benner '99." September 24, 2018. https://www.bowdoin.edu/news/2018/09/bringing-government-to-bowdoin-former-chief-of-staff-talks-to-NYTs-Katie-Benner.html.

> undertaken without congressional approval, and the administration's decision to ask for congressional authorization before a prospective intervention in Syria two years later. He later said of any military intervention: 'You simply can't do it without Congress on your side,'" (Kenealy 2022, pg. 26).

McDonough later gave no hint that Obama went to Congress knowing it would turn him down. Instead, McDonough's reasoning was similar to that suggested by the Congressional Constraint thesis: the decision came from a recognition that it was highly important politically to have the legislature in on the action with the White House. McDonough himself had extensive experience working with legislators on issues of foreign policy, having worked for the House Foreign Affairs Committee and as a foreign policy advisor in the Senate (Kenealy 2022, pg. 9). Thus, like Lyndon Johnson, McDonough's experience on the Hill had convinced him of the political reality that support from legislators was highly important. During a similar chemical weapons crisis in 2017 under the Trump administration, McDonough suggested the new administration "make sure leaders on Capitol Hill" have access to the intelligence the White House possessed, reasoning that it was critical to see if there were "bipartisan support for military action" because "plans go awry...and you can't leave the President unprepared" and that a President needed to get "all hid ducks in a row" domestically before initiating the use of force.[126] McDonough had a phrase he would specifically use—Congress needed to "wear the jacket" with the President. Consistent with the theory presented in Chapter One, McDonough wanted Congress to share responsibility if things went wrong.

Adviser Ben Rhodes similarly writes that he was of the opinion at the time that "if [Obama] attacked Syria without congressional authorization, the Republicans would come after him, and it would be impossible to sustain any military engagement in Syria. If we got congressional authorization for an attack on Syria, everyone would be in on the action...If we couldn't, we shouldn't act," (Rhodes 2019, pg. 235).

Did Obama believe Congress would decline authorization?

A widespread belief exists that Obama only sought congressional approval once it became clear such approval would not be forthcoming. This not only has a major theoretical problem (specifically, a President would severely undermine their bargaining position with an adversary if it were revealed Congress opposed the use of force), but it also sharply contradicted by the actual evidence available.

First, advisers themselves overwhelmingly expected congressional approval to be forthcoming when the President sought it. One of the most pessimistic advisors guessed that there was a forty percent chance Congress would reject the proposal (i.e., authorization was

[126] *Denis McDonough Reflects on Obama's Handling of Syria*, 2017. https://www.youtube.com/watch?v=s114c2RonVQ.

more likely than not) and the vast majority were far more optimistic[127]. The Vice Present, Secretary of State, and Secretary of Defense—each former Senators—all expected the President to receive formal authorization (Kerry 2019, pg. 534). Secretary of State John Kerry—a long time Senator—recalled:

> "I assumed we would receive congressional consent...My respect for the Senate Foreign Relations Committee and Senate prerogatives in particular made me think [approval would be granted]; surely, I thought, with Israel supporting military action, and given the brutality of Assad's attacks and the narrow scope we were discussing, Congress would vote to hold Assad accountable. I did caution the president that the Republican Congress could always decide to screw him just for the sake of politics...But I concluded that Congress would have to do exactly what most of its members had been saying they wanted to do in Syria for two years now. Hagel and Biden agreed," (Kerry 2019, pg. 534).

Of all Obama's top advisers, only National Security Adviser Susan Rice was seriously concerned about Congress failing to support the President (Rice 2019, Rhodes 2019).

Table 4.2 Administration Recollections of Crisis

	Did Obama ask for authorization anticipating it to be rejected?	**Personal Beliefs About Chance of Approval**
V.P. Biden	Obama "didn't go to Congress to get himself off the hook."	Yes, would be approved
Sec. State Kerry	No suspicion of this	Yes, would be approved
Sec. Def Hagel	No suspicion of this	Yes, would be approved
NSA Rice	"President Obama later told me that he was not certain we would prevail in Congress but thought we had a fighting chance"	No, would not be approved
U.N. Amb. Power	"Had [Obama] known he would fail, I did not believe he would have" asked	Uncertain but deferred to those with congressional experience (Biden, Hagel, & Kerry)
Adv. Rhodes	No suspicion of this	Yes, would be approved

Second, every high-raking official within the administration has consistently denied Obama went to Congress expecting to have his proposal turned down. The U.N. Ambassador Samantha Power writes in her memoir "Had [Obama] known he would fail, I did not believe he would have chosen" to publicly ask for congressional approval (Power 2019, pg. 383-384). Power stated:

> "there's revisionism out there now which is really and truly false, that he went to Congress in order to fail. No. You do not, if you are the Commander in Chief, want to show the world that you can't mobilize domestic democratic support for something you believe is in your national security interest–that's not your goal."[128]

[127] Entous, Adam, Janet Hook, and Carol E. Lee. "Inside the White House's Head-Spinning Reversal on Chemical Weapons." *Wall Street Journal*, September 16, 2013, sec. World. https://www.wsj.com/articles/SB10001424127887323527004579077401049154032.

[128] *Samantha Power on Disagreeing with Barack Obama, Syria and Being an Idealist*, 2019. https://www.youtube.com/watch?v=OrrHNcbvFxo.

Then-Vice President Joe Biden also bluntly rejected the idea that Obama had purposely asked Congress only when he new failure was imminent:

> "Obama "didn't go to Congress to get himself off the hook. He had his doubts at that point, but he knew that if he was going to do anything, he better damn well have the public with him, or it would be a very short ride."[129]

Then Secretary of Defense Chuck Hagel was later specifically asked whether "the administration's wish to go to Congress came *after* the decision to not launch the strikes" (emphasis added), to which Hagel responded "No, we talked about it before. And John Kerry, others—especially those of us who had had experience in a Congress, certainly the president—understood the significance of having the Congress with the president on any kind of a military action."[130] Others in the administration—even those who were less supportive of intervening in Syria—likewise express there was no evidence of this:

> "To this day, many believe that going to Congress was just a cynical move by the president to pass the buck and avoid strikes. I never believed this to be true, and remain unaware of any evidence to prove such an assertion. Although Obama asked for congressional support—and, given the risks of action against Syria's chemical weapons, believed it important to have a show of unity—he always made clear he would act without it."[131]

Lastly, while the administration sought authorization when it believed it had a reasonable chance of being acquired, it quickly asked for the vote to be postponed once it became clear approval would not be given (Power 2019, pg. 383).[132] Thus, the political considerations outlined in the Congressional Constraint thesis appear to have driven Obama's reticence to act unilaterally. It is clear that legal advice from executive branch lawyers was not decisive—the Office of Legal Counsel itself had written a memo finding that the use of force was legally permissible (Savage 2017).[133] Ben Rhodes was more blunt—legally, it was not necessary to go Congress because "it's not like the lawyers couldn't have come up with a theory." (Savage 2017).

More plausible is the argument that Obama's personal respect for the constitutional separation of powers drove the outcome. President Obama came into office promising to respect constitutional boundaries, in perceived contrast to his predecessor (Savage 2015). The

[129] Goldberg, Jeffrey. "The Obama Doctrine." The Atlantic, March 10, 2016. https://www.theatlantic.com/magazine/archive/2016/04/the-obama-doctrine/471525/.

[130] "Former Defense Secretary Chuck Hagel: 'More War' Will Not Fix Syrian Conflict." *NPR*, February 2, 2016, sec. National Security. https://www.npr.org/2016/02/02/465321637/former-defense-secretary-chuck-hagel-more-war-will-not-fix-syrian-conflict.

[131] Chollet, Derek. "Obama's Red Line, Revisited." POLITICO Magazine, July 19, 2016. https://politi.co/2H2Pcih. https://www.politico.com/magazine/story/2016/07/obama-syria-foreign-policy-red-line-revisited-214059/.

[132] "Based on all the available evidence, President Obama realized there was no point in going forward with a congressional vote to authorize strikes. We were clearly going to lose in the House, perhaps by a sizable margin, and we would possibly lose in the Senate as well."

[133] See also Goldsmith, Jack. "The New OLC Opinion on Syria Brings Obama Legal Rationales Out of the Shadows." *Lawfare*, June 1, 2018. https://www.lawfareblog.com/new-olc-opinion-syria-brings-obama-legal-rationales-out-shadows.

Table 4.3 Timeline of 2013 Syria Crisis

August 21	Ghouta chemical attack (Sarin–1400 killed)
August 24	President Obama tell aids he is leaning toward strikes—Pentagon moves warships into region
August 29	U.K. Prime Minister Cameron Loses Military Force in Parliament
August 30	After South Lawn walk with Chief of Staff, Obama announces to advisors he will seek congressional approval
August 31	President Obama Publicly asks for Congressional Authorization
September 1-10	Administration Lobbies Congress for Approval
September 4	Senate Foreign Relations Committee Approves AUMF
September 5	Putin and Obama meet privately at St. Petersburg for the G-20 Summit, agree to remove chemical weapons from Syria
September 5-11	U.S. news outlets published informal "whip counts" showing lackluster support in House
September 9	Administration announces effort to rally public opinion with the President appearing on six national news interviews on Sept. 9 and announces a formal White House address on Sept. 10 to make case for intervention
September 9	Breakthrough agreement to remove chemical weapons publicly announced
September 10	Obama announces in formal WH address he has asked Congress to "postpone" vote while negotiations take place
September 14	U.S. and Russia Announce deal reached

44th President had taught Constitutional law and had publicly declared as a candidate that a President could not initiate military action, other than self-defense. Indeed, in deciding to ask for Congressional authorization in 2013, Obama specifically cited his prior statement. Nevertheless, while this was potentially a motivation, it was likely of marginal importance. Obama had proven in his first major use of force—the 2011 Libya intervention—that he was quite willing to act unilaterally once in office. In 2014, Obama would again prove this willingness when he initiated a campaign against ISIS in the Middle East. Thus, if President Obama had a special respect for the Constitution some other Presidents lacked, it does not seem to have been a major factor. Political calculations, thus, seem to have been the major driver. Obama was highly cognizant of the Loss Costs he suffered from the poor results of the 2011 Libya Intervention, and sought to avoid a similar situation against a much better armed state with the backing of other powers—including a nuclear-armed Russia.

Conclusion

The preceding seven cases thus give evidence that many presidents—including the most hawkish and least likely to respect constitutional boundaries—have seemingly faced situations in which a lack of formal approval from Congress proved decisive in deterring a decision for intervention. The existence of these cases is highly inconsistent with the Imperial Presidency thesis—if formal authorization from Congress is of little value, then the mere lack of it should not deter intervention. Empirically, however, we see there are several examples precisely of this deterrence in action.

The reason for Presidents being deterred from intervention by a lack of formal authorization, moreover, seems to be highly consistent across these negative cases. Some have argued that the extent of presidential power is heavily influenced by who holds office—in other words, that a personal commitment to the separation of powers will prevent executive overreach. The cases suggest this is of relatively limited utility, however as it did not appear to be decisive in any case. Notably, while some have argued this prevented Eisenhower from acting unilaterally (Fisher 2013, e.g.), the evidence suggests Eisenhower was actually quite willing to make broad assertions of power when it was permissible politically. Obama's presidency, as well, was expected by many to exert more restraint than that of his predecessor, but by the end of the 44th President's tenure, many were asking how much different its power claims were to that of the 43rd (Savage 2017).

More recently, legal scholars especially advocated for the role of constitutionally faithful lawyers in the executive branch restraining presidential overreach. Legal opinions seemed to provide little restraining effect in any case, however. In the case of Indochina in 1954, for

example, when the Attorney General wrote a memo suggesting the president lacked the power to intervene, the administration rejected this and came to the conclusion the president did have the power. Likewise, even under the extreme restrictions placed on combat operations in Southeast Asia after 1973, the White House considered simply deploying creative legal arguments that essentially had one restriction eliminate another. As is well recognized, Presidents and their lawyers have been quite expansive in their claims of presidential power over time.

The consistent deterrence to unilateral action in these cases was, instead, the political fall-out expected in Congress. Eisenhower and Johnson both clearly pointed to Truman's experience in the Korean War as a situation to be avoided. Nixon and Kissinger clearly realized that unilateral intervention in order to defend the integrity of the Paris Peace Accords was politically impossible, while Ford clearly saw the danger of Loss Costs if he intervened in the Fall of Saigon. The Reagan and Bush 43 administrations both faced situations in which they were deterred by Congress even as they publicly asserted massive expansions in presidential power. Most recently, the Obama administration clearly believed that it would be leaving itself far more exposed to political attack in the event of a poor outcome if it acted unilaterally.

Thus, the evidence suggests not only that Presidents are often deterred from unilateral military action by a lack of formal authorization from Congress, but that the key mechanism of this deterrent effect is anticipated political fallout in the legislature. The absence of formal authorization for the use of military force, while consistently averred by Presidents as being legally insignificant, has nonetheless served as a strong deterrence against unilateral action throughout the postwar time period.

Chapter 5

Feigning Imperiality: International Actors and the Vietnam War

> *In sum, there are military moves that we can take that would contribute to a continuing impression of firmness as we try to keep the Laos negotiations moving and to preserve our options concerning Viet-Nam. But it is at least doubtful that any combination of the moves listed above would in fact do the trick...* [and been seen as] *a continuing demonstration of US firmness... The action that most commends itself for this purpose is an immediate Congressional Resolution.*
>
> — NSA Bundy to President Johnson

> *Le Duan's regime had done its homework on Washington...[It] knew...that any presidential administration would have a tough time sustaining a war in Vietnam without popular and congressional approval...[The] diplomatic front in Hanoi's strategic calculus...eventually became more important than the ground war in the South.*
>
> —Pierre Asselin, *Vietnam's American War*

> *What has brought us to this point is the President's firmness and the North Vietnamese belief that he will not be affected by either Congressional or public pressures. Le Duc Tho has repeatedly made these points to me*[1]
>
> — Henry Kissinger

While the preceding chapters focused on the decision-making internal to the United States, this chapter extends the analysis to also focus on the watching world abroad. Broadly, this would not only include enemies, adversaries, and competitors, but also friends, allies, and partners. The specific focus of this chapter, however, will be on the perceptions and strategic responses of U.S. adversaries to varying levels of congressional support for the use of military force.

[1] *Foreign Relations of the United States*, 1969–1976, Volume XLII, Vietnam: The Kissinger-Le Duc Tho Negotiations, eds. John M. Carland and Adam M. Howard (Washington: Government Printing Office, 2010), Document 43. https://history.state.gov/historicaldocuments/frus1969-76v42/d43.

Reputation, Resolve, and Credibility

Domestic politics have long been argued to have an effect on international crisis bargaining. While seemingly overlooked in the more recent literature on deterrence and credibility, early deterrence theorists even gave specific attention to the formal congressional authorization. Schelling, for example, in *Arms and Influence* specifically points to the 1955 Formosa Resolution[2] and argues a congressional resolution was a way to "get a nation's honor, obligation, and diplomatic reputation committed to a response," (1966, pg. 49).[3] Similarly, in *Deterrence and Defense* Snyder argued that formal congressional authorization for the use of military force made threats from the President more credible (Snyder 1961).[4]

While more recent work has focused on domestic "audience costs" (Fearon 1994) or electoral competition and opposition party behavior (Ramsay 2004, Schultz 1998), the model here is most closely related to McManus's argument that adversaries calculate a U.S. President's "ability to follow through" with a threatened action (McManus 2017). McManus argues that targets of presidential "statements of resolve" weigh the military balance, domestic "veto players", and a president's security in office when analyzing the veracity of the threat (McManus 2017). The focus here is, of course, on the mechanism through which the most important domestic "veto player"—Congress—influences presidential decisions over the potential use of military force. The model considered here shares many consistent features with McManus's, but goes further by incorporating both the possibility of asking for formal approval as well as the possibility of acting unilaterally.

[2] See Chapter Three.

[3] "In addition to getting yourself where you cannot retreat, there is a more common way of making a threat. That is to incur political involvement, to get a nation's honor, obligation, and diplomatic reputation committed to a response. The Formosa resolution of 1955, along with the military assistance agreement then signed by the United States and the National Government of the Republic of China, should probably be interpreted that way. It was not mainly a technique for reassuring Chiang Kai-shek that we would defend him, and it was not mainly a quid pro quo for something he did for us. It was chiefly important as a move to impress a third party. The primary audience for the congressional action was inside the Soviet bloc. The resolution, together with the treaty, was a ceremony to leave the Chinese and the Russians under no doubt that we could not back down from the defense of Formosa without intolerable loss of prestige, reputation, and leadership. We were not merely communicating an intention or obligation we already had, but actually enhancing the obligation in the process. The congressional message was not, "Since we are obliged to defend Formosa, we may as well show it." Rather: "In case we were not sufficiently committed to impress you, now we are. We hereby oblige ourselves. Behold us in the public ritual of getting ourselves genuinely committed" (Schelling 1966, pg 49-50).

[4] "Threats supported by express Congressional approval tend to carry more weight than those made by the Executive branch without formal Congressional sanction. Thus the Formosa Resolution of 1955 and the Eisenhower Doctrine of 1958 (expressing our determination to defend countries in the Middle East against Communist-controlled aggression) gained deterrent potency by their expression as Congressional resolutions. The Congressional action put the world on notice that the expressed intentions had the strong support of the American public; furthermore, it removed in advance any possible question regarding the President's authority to order the use of military forces in these areas without waiting for a specific Congressional authorization," (Snyder 1961, pg. 250).

Case Selection:

A series of crises making up the U.S. involvement in Vietnam and Southeast Asia between the 1950's and 1970's are selected for study in this chapter. There are several reasons why these cases were chosen. First, analyzing the perceptions and strategic decisions of U.S. adversaries requires one to have sufficient access to the decision-making process of the relevant political and military actors. This eliminates crises with highly secretive actors such as North Korea, as well as more recent crises in which decision-making is kept confidential many years before declassification. In the case of Vietnam, we not only have excellent access to decision-making on the American side, but also have good access to decision-making in North Vietnam. While in more recent U.S. cases classification denies us access to most of the primary sources of interest, the *Foreign Relations of the United States* and material from presidential libraries gives us nearly unfettered access to U.S. decision-making at the highest level through the 1970's. Adversary sources on the conflict, as well, are relatively good because of the plethora of memoirs and histories of the events published by Vietnamese sources after their final victory in 1975. Several historians, as well, have dug deep into the Vietnamese archives and written extensively on the Vietnam War from the perspective of Hanoi (Nguyen 2016, Asselin 2018, e.g.).

Second, analyzing a succession of crises in a prolonged conflict is desirable because it allows us to control for several potential confounding variables that would otherwise be present if one were to compare unrelated cases. Specifically, alternative theories of credibility include the national interest at stake (Press 2005), international reputation costs (Sartori 2007), audience costs (Fearon 1994), and the military balance (McManus 2017, Mearsheimer 1983). Given that all of the following crises examined occur in the same area of Southeast Asia, the national interest and international reputation costs involved should be relatively constant across crises. Likewise, while there may have been minor fluctuations in the balance of power between communist Vietnamese forces and the U.S., there was never any doubt to either side that U.S. power was predominant *if fully implemented.*

In the case of the war in Southeast Asia, the International Crisis Behavior dataset lists eighteen separate crises as making up the protracted conflict history of the war in Southeast Asia from 1953-1989. While not all of these are particularly relevant to the theory explored—some coming, for example, prior to or after significant U.S. involvement in the region—eleven appropriate crises are identified. These range from the serious consideration of the Eisenhower to intervene in 1954 to the Fall of Saigon in 1975. We thus not only have a quick succession of relatively similar cases, but also have substantial variation in the independent variable of interest—congressional support or opposition to the use of force. While there was widespread congressional support for the war in the mid 1960's—the 1964 vote on the Gulf of Tonkin Res-

olution, for example, garnered nearly unanimous support—by the end of the conflict statutes had been passed affirmatively banning the use of combat forces in the region. Several high profile votes and other congressional actions were taken in the interim, given us a clear picture of Congress's sentiment over the war.

Third, the cases making up the Vietnam War should be "hard cases" for my theory. The period from the beginning of the Cold War until the end of the Vietnam War—i.e. from the later 1940's to the mid-1970's—is considered the zenith of the Imperial Presidency (See, e.g., Lindsay 1994, pg. 147).[5] Even more than the Korean War, the Vietnam War is cited as one of the major pieces of evidence in favor of the thesis of the imperial presidency (Burns 2019, Griffin 2013, Schlesinger 1973, Ely 1995, Silverstein 1997).[6] Like in the case of Korea in 1950, when contemplating the use of military force in Southeast Asia in the 1950's, 60's, and 70's, American presidents boasted massive standing militaries at the ready. And while Truman had to create a new precedent when acting unilaterally in Korea, in the crises analyzed here extending from 1954-1975, Presidents and their advisors had the clear precedent of the Korean conflict at their disposal. Indeed, much of the inspiration for the Imperial Presidency thesis was motivated by the American experience in Southeast Asia. Arthur Schlesinger published *The Imperial Presidency* in 1973, clearly in response to the war in Vietnam and the perceived excesses of presidential power under the Johnson and Nixon administrations in the conflict. Likewise, John Hart Ely's *War and Responsibility* focuses almost exclusively on the war in Indochina. Furthermore, the Presidents themselves (especially Johnson and Nixon) should provide difficult tests for the Congressional Constraint thesis. Yarhi-Milo finds, for example, that Lyndon Johnson was one of the highest rated self-monitors of the postwar Presidents (Yarhi-Milo 2018, pg. 75). Combined with his hawkish inclinations, this should have made him highly inclined to respond militarily to provocations—and, thus, to act regardless of Congress's own sentiment. Nixon, as well, should present a very tough case. As John Lewis Gaddis writes, Nixon "happened to be the American president least inclined—ever—to respect constraints on his own authority" and believed "that the requirements of national security. . ..outweighed whatever obligations of accountability, even legality, the presidency demanded," (Gaddis 2007, pg. 171). This would suggest Nixon should be a "least likely" case to actually feel constrained by the legislature. Thus, if the evidence suggests the Congressional Constraint thesis applies even in the Vietnam War with as ruthless presidents as Johnson and Nixon, it should *a fortiori* apply in many other cases.

There is, further, another reason the Vietnam War serves as a "hard case" for the

[5] *Legal Assessment of the War Powers Resolution*, Unpublished Op. O.L.C. (1993), available at https://s3.amazonaws.com/kfai-documents/documents/7bcac9cf82/20220902_Legal-Assessment-of-the-War-Powers-Resolution-National-Security-Council.pdf#pdfjs.action=download.

[6] Indeed, Schlesinger titled his chapter on the war in *The Imperial Presidency* "The Presidency Rampant."

theory. The theory assumes that U.S. adversaries have some idea of what taking place domestically in the United States—pushing harder when they see congressional resistance to presidential initiatives, and taking threats more seriously when they view congressional support for intervention. While the telecommunications revolution over the past century means that today it is quite easy to simply log onto the internet and read the *New York Times* or view cable news emanating from the United States, this is a very recent development. By selecting a series of cases in the early part of the postwar period, we pick the period in which news from abroad was far more difficult to come by. Given the relatively limited capabilities of communist forces in Southeast Asia—as well as the global limitations of telecommunications before cable television and the internet—this should be a difficult case. If we find evidence that even the communist revolutionaries in the 1950's and 60's were able to find ways to access information on U.S. domestic politics, then we should expect similar behavior in situations in which such information was far easier to come by—i.e., virtually all other cases in more recent history.

Lastly, given the prominence of the Vietnam War in American historical memory, war powers jurisprudence, and military history, these are very well-known cases. If one were to utilize an obscure case, there might be an incentive to simply cherry-pick supporting evidence and disregard disconfirming data in the comforting knowledge that few other scholars would know enough about the case to challenge the interpretation (Goertz 2017). The Vietnam War—including such infamous episodes as the Gulf of Tonkin incident, the Tet Offensive, the Cambodian incursion, the Christmas Bombings, and the Fall of Saigon—in contrast, is the antithesis of obscure.

The Imperial Presidency and the War in Vietnam

A typical narrative in war powers history suggests that while Presidents prior to the Second World War sought congressional authorization before utilizing military force, after 1945 Presidents quickly usurped Congress's power over war. Truman's "police action" in the Korean War is highlighted, but the American experience in Vietnam is often considered to be still greater evidence of an Imperial presidency. Schlesinger argued that in the decades after World War II Congress "relinquished the war-making power. Truman fought in Korea, Lyndon B. Johnson in Vietnam, and Richard M. Nixon in Cambodia without believing that their dispatch of troops into combat required explicit congressional authorization...The Imperial presidency reached a twentieth century climax with Nixon" (Schlesinger 2004, pg. XV-XVI). Specifically, while Korea showed a "Presidency Ascendant", Vietnam displayed a "Presidency Rampant" (Schlesinger 1973). More recent scholarship in the Imperial Presidency line of literature agrees: Burns, for example argues that the decision for war in Vietnam War exhibited

even less constraint that Truman's decision in Korea (Burns 2019, pg. 176). The Vietnam War is often, hence, seen as the apex of executive unilateralism. A belief in an unconstrained executive in Vietnam specifically spawned Schlesinger's original *Imperial Presidency*, and the War Powers Resolution, in 1973. It is, hence, quite common to see the Vietnam War cited as strong evidence of the Imperial Presidency thesis, and it is conventional wisdom that the Vietnam War stands as a first class example of presidential imperialism (Schlesinger 1973, Fisher 2013, Burns 2019).

One should note, however, that this is only one of two conventional wisdoms over the Vietnam War specifically relevant to the topic analyzed here. The second conventional wisdom relates to North Vietnam's strategy in the war: Hanoi realized it could not win on the battlefield, but instead utilized a strategy of holding out long enough to spawn domestic dissent in the United States that would then constrain the President. More recent work by the most prominent historians focused on Hanoi's perspective of the war, moreover, has consistently confirmed this interpretation of the war (Asselin 2018, Nguyen 2016).[7] These two conventional understandings of the conflict, however, exhibit a clear tension: the first suggests the President was unconstrained, while the second suggests he was not—indeed that Hanoi knew he was not and that communist leaders based their entire strategy on this belief. It is difficult to reconcile these two conventional wisdoms.

Congressional Constraint vs. the Imperial Presidency: Expectations of the Theories

While the previous two chapters focused on domestic perceptions of Presidents being constrained by Congress, here the analysis is expanded to also consider international perceptions. Fundamentally, three types of evidence will be sought: direct domestic constraint, international perceptions of domestic constraint, and higher-ordered beliefs and concerns.

1. Direct Domestic Constraint

Direct domestic constraint refers to the whether the President and White House feel and act constrained by congressional sentiment or formal authorization. This is essentially the same exercise performed in Chapters Three and Four. Here the inquiry consists of asking whether decision-makers in the executive branch are monitoring congressional opinion and

[7] Moreover, the anti-war movement at large was not the specific focus of Hanoi. Instead, Lien-Hang Nguyen notes that leaders in North Vietnam were focused on the legislature, "keeping track of domestic developments in the United States...figuring out where Congress stood, who were the main anti-war Senators, what bills were being proposed. The focus was more about the situation in Congress, and what sort of pressure they could put on the President." *Geopolitics with Granieri: Vietnam's War - Unearthing the Perspective from Hanoi*, 2018. https://www.youtube.com/watch?v=MhOKkMMwBl0&t=2620s.

adjusting their policy choices based on this sentiment. This is effectively a domestic politics question: does the President feel constrained by Congress? Are they limiting their options based on the sentiment of the legislature? The Congressional Constraint thesis suggests that there will be heavy evidence of congressional sentiment constraining White House decision-making. The Imperial Presidency thesis, in contrast, suggests that the will of lawmakers will be of marginal importance at best—congressional opposition to an action will do little to deter the executive from undertaking it.

2. International Perceptions of Domestic Constraint

Evidence of international perceptions of domestic constraint is also considered. Here, the question is whether U.S. adversaries and allies perceive the President as being constrained by congress. Are U.S. adversaries basing their judgments of American intentions and credibility based on the sentiment they see emanating from the legislature? Do they feel the U.S. will not take a certain action because Congress is opposed to it? The Congressional Constraint thesis suggests that international actors will be more or less understand the constraints placed on the White House by Capitol Hill. Thus, they should put effort into figuring out what sentiment on the Hill is, and then adjust their beliefs of American intentions and resolve subject to this constraint accordingly. The Imperial Presidency thesis, in contrast, would suggest that allies and adversaries would be better advised to place their attention elsewhere, since—according to the theory—Congress has little constraint over the executive. This would imply international actors should give little credence to the will of Congress due to its lack of restraining effect on the President.

3. Higher-Ordered Beliefs and Concerns

While the second factor—international perceptions—focuses on *beliefs* about the first factor—domestic constraint—this last factor goes even one step further and asks about evidence of beliefs about beliefs about domestic constraint. To give a concrete example, do we see worries in the White House about how a certain action might affect an adversary's (or ally's) perception of the President's willingness to respond to certain provocations? While there already exists literature in political science asking this question from the more general perspective of a reputation for resolve (Dafoe, Zwetsloot & Cebul 2021), here the inquiry is particularly focused on congressional sentiment and the war powers. Hence, do we find evidence of executive branch decision-makers worrying about how congressional sentiment—or whether they seek formal authorization (or not)—will affect the credibility of their threats?[8] Moreover,

[8]Even ancient history gives evidence of such logic: "Nicias [the Athenian commander in chief], however, while agreeing that their situation was a very sorry one, did not want to have their weakness revealed in anything

do we see evidence of Presidents attempting to shape a certain image[9] of themselves—most likely, consciously pretending to care little about Congress?

The Congressional Constraint thesis suggests we should find evidence of this: Presidents are well aware they are being watched, and realize they will be at a substantial bargaining disadvantage if they are perceived as being highly sensitive to congressional sentiment and war powers questions. Thus, we should see evidence of Presidents attempting to "feign Imperiality"—pretending to be Imperial in order to deceive international actors of the true congressional constraint they face. Evidence of feigning Imperiality is particular important because it would help explain the difference between the actual evidence in the historical data shown in Chapter Two (Presidents seem constrained by Congressional sentiment) and the widespread belief to the contrary (the Imperial Presidency). The Imperial Presidency thesis would suggest we would not likely see much evidence of this: if the President is truly unconstrained by Congress, there would be no need to consciously "bluff" a willingness to act unilaterally or otherwise in the face of congressional opposition.

Background to Vietnam: Korea and Subsequent Criticisms

A war in another part of East Asia—the Korean Peninsula—provided a backdrop for much of the American conflict in Southeast Asia. The war not only was the first to pit American forces against communist forces in direct combat, but also was the first open conflict to take place in the emerging U.S.-P.R.C. rivalry in East Asia. Most relevant for the purposes explored here, the conflict was utilized by American adversaries in Southeast Asia as a learning opportunity.

Just as American Presidents learned from the Korean War that it was politically unwise to undertake a substantial military engagement unilaterally,[10] communist leaders in Vietnam learned from observing the war in Northeast Asia that a President would have a difficult time sustaining a war without congressional authorization (Asselin 2017, pg. 120). Beijing—the key patron of communist forces in Vietnam in the 1950's and 60's—took away a similar lesson from the Korean conflict. *People's Daily* for example, closely followed the "Great Debate" in Congress in early 1951, and even specifically cited Gallup polls showing popular opposition to the war. Mao Zedong specifically advocated focusing on inflicting casualties on American forces (as opposed to other strategic options) because this would dampen public support for the President's war effort. The Korean War thus taught communist leaders in

that was publicly said, nor to have the enemy learn by report that there had been a general vote for withdrawal, since they would in that case have much less chance of leaving unobserved whenever they might wish to do that." Thucydides, Book VII, 48-1.

[9] Jervis (1970).

[10] See Chapter Three

East Asia that U.S. President were constrained by congressional and public opinion.

1954: Dien Bien Phu and the Geneva Conference

After the Korean armistice in the summer of 1953, U.S.-China competition in Asia moved toward the ongoing war between colonial French forces and Viet Minh rebels in Indochina. During the Korean conflict (1950-53), the United States had given economic support to the French counter-insurgency effort in Southeast Asia, but avoided direct American participation. By early 1954, however, direct U.S. intervention became a more pressing possibility. That year would first see the famous siege of French forces at Dien Bien Phu, and then the subsequent Geneva Conference of 1954 that divided Vietnam into two states: a communist North and a Western-backed South. The following analysis will thus split the 1954 Indochina crisis into to parts: i) the period from the beginning of 1954 up to the final capitulation at Dien Bien Phu on May 7, 1954, and ii) the period between from May 7 to the conclusion of the Geneva Conference on July 20.

Dien Bien Phu (to May 7th)

Consistent with American policy in Southeast Asia since 1950, most Americans sought to avoid direct American involvement in Indochina at the beginning of 1954. The administration even generated criticism when it sent a mere 200 Air Force technicians to Vietnam—outside of direct combat—to assist with the French effort. A reporter noted on February 10 that there was "some uneasiness in Congress that sending these technicians to Indochina will lead eventually to our involvement in a hot war there." Eisenhower responded that his actions were intended to prevent a war, not to lead to one.[11] But even the year prior, the administration had warned communist forces over the possibility of U.S. intervention. Secretary of State Dulles, for example, on September 2, 1953, stated before the American Legion convention:

> "Communist China has been and now is training, equipping, and supplying the Communist forces in Indochina. There is the risk that, as in Korea, Red China might send its own army into Indochina. The Chinese ·regime should realize that such a second aggression could not occur without grave consequences which might not be confined to Indochina. I say this soberly in the interest of peace and in the hope of preventing another aggression miscalculation."

On February 16, Under Secretary of State Walter Bedell Smith specifically noted higher ordered concerns to a closed door session with the Senate Foreign Relations Senate

[11] "A Chronology of the Administration's Policy on Indo-China." *The New York Times*, May 4, 1954, sec. Archives. https://www.nytimes.com/1954/05/04/archives/a-chronology-of-the-administrations-policy-on-indochina.html..

Committee. While the administration had "no intention of putting ground soldiers into Indochina," it did not want to admit this publicly. "I wish we did not have to tell them [our adversaries]...I wish to God that we could leave that suspicion or that fear in their minds,"[12] (Prados 2002, Hitchcock 2018). Nonetheless, Bedell Smith promised "We would not go into any all-out war anywhere or even approach it without coming to the Congress and placing the situation squarely before the Congress and asking for its decision."[13]

Nevertheless, the public was growing concerned over the possibility of U.S. intervention after taking cues from several prominent Senators warning of this possibility. On March 10, a reporter specifically asked the President at a press conference: "Mr. President, Senator Stennis said yesterday that we were in danger of becoming involved in World War III in Indo-China because of the Air Force technicians there. What will we do if one of those men is captured or killed?" Ike responded that "there is going to be no involvement of America in war unless it is a result of the Constitutional process that is placed upon Congress to declare it. Now, let us have that clear. And that is the answer."[14] Thus, Eisenhower seemed to suggest U.S. military force would not be used in Southeast Asia absent formal authorization from Congress.

A week later, however, Eisenhower seemingly backtracked on this issue. Another reporter asked Eisenhower a follow-up question to his March 10 remarks—"does that mean that if an aggression came, one, say, like the aggression in Korea in 1950, that you would hold up action until Congress debated the matter and then declared war?" Eisenhower responded:

> "...Last week we were talking about Indochina, and I believe the question was concerning the possibility of one of our men, or one or two, getting killed, and what that would mean. I tried to reply very emphatically, and I still don't back away from the generalization I made in this general sense. But let us take an extreme case: suppose, while we are sitting here, right at this minute, there came a message flashed over the United States that coming up from the south somewhere were a great fleet of airplanes, and we had positive evidence that they were intent upon spreading destruction in the United States.
>
> Now, if there is anyone here or any citizen of the United States who would hold me guiltless if I said, "We will sit here and try to get in touch with Congress," well, then, I don't know who they are. That is an extreme case, and we must be careful not to make generalizations just in terms of taking care of extremes...
>
> But when you come down to the matter of self-preservation, quick reaction to a threat against your life, I believe there is a rule that applies to nations exactly as it does to the individuals: *you don't call a policeman if your life is actually in danger;*

[12] Walter Bedell Smith testimony, February 16, 1954, U.S. Senate, *Executive Sessions of the Senate Foreign Relations Committee*, vol. VI, 111.

[13] Ibid.

[14] "A Chronology of the Administration's Policy on Indo-China." *The New York Times*, May 4, 1954, sec. Archives. https://www.nytimes.com/1954/05/04/archives/a-chronology-of-the-administrations-policy-on-indochina.html..

if you have nothing else to do but run, you at least try to do your best..."[15]

Thus, while Eisenhower in general seemed to feel formal congressional authorization was appropriate before entering a sizable conflict, he certainly did not believe this was the case under all circumstances. But when specifically asked about the Truman's unilateral intervention in Korea, Eisenhower seemed to disclaim the action of his predecessor:

> "Q. Mr. Folliard: Mr. President, the argument was made in 1950 that speed was very urgent, that it was necessary to move very quickly.
>
> THE PRESIDENT. Well, I don't remember exactly about that...if I recall, the first order was that there would be air support given to the South Koreans, the Republic of Korea troops; so there was plenty of time then to discuss what further action you would take, plenty of time to discuss it by Congress, I should think.
>
> I am not trying to judge or to pass judgment on what happened. I am merely saying that there arise occasions in the handling of anything that is as complicated as a great country such as ours in its relationships with other countries, that you can't always predict exactly how you will handle a thing.
>
> We must, once in a while, trust to the judgment of humans and of people; that is why Government is so much dependent upon the people holding it."[16]

Eisenhower noted that from a practical standpoint, "you can't carry on a war without Congress. They have to appropriate the money, provide the means, the laws, and everything else." At the same time—again, from a very practical standpoint—he argued that "any President should be worse than impeached, he should be hanged, I should say, if he didn't do what all America would demand that he do to protect them in an emergency."[17] Thus, Eisenhower's approach to the war powers appears to have been built on pragmatism—not idealistic notions of constitutional fidelity.

By March 22, however, the possibility of American intervention was becoming more grave. A proposal for intervention alongside France and the U.K. was proposed—termed "United Action." There was significant criticism in Congress during the Korean War that the U.S. was pulling more than its fair share of the weight, and that allies should have contributed more significantly. It is clear that the Eisenhower Administration took congressional sentiment quite seriously:

> "...the President, Dulles and Radford met with a selected group of Republican congressional leaders...for the purpose of discussing united action (including approval by Congress) prior to further conferences with General Ely [of France]...the congressional leaders present at the meeting responded favorably to the idea, and this led

[15]Dwight D. Eisenhower, The President's News Conference. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. https://www.presidency.ucsb.edu/documents/the-presidents-news-conference-353

[16]Ibid.

[17]Ibid.

to a memorandum on this subject by Dulles which was approved by Eisenhower and by congressional leaders of both parties. The memo was then submitted to ambassadors of allied countries, and was incorporated in Dulles' speech on March 29th,"(Gibbons 2016, pg 176-78).

Indeed, between March 22 and 29 The possibility of intervention was discussed with leaders of both parties in Congress, by members of both foreign policy committees of Congress, and by major U.S. allies (Gibbons 2016, pg. 178).

War Powers Opinion from the Department of Justice

A March 23 opinion provided by the Attorney General argued that intervening in Indochina would probably legally require congressional approval. The memo focused on U.S. defense commitments throughout the world and noted that most treaties included the language "in accordance with its constitutional processes"—arguing, in effect, this meant Congress would have to approve any sizable response. Moreover, regardless of any legal or constitutional requirement, it was argued that from a political perspective authorization would be "necessary":

> "Apart from the difficult question of the President's constitutional authority to act in such cases, without prior approval by the Congress, it is clear that the effectiveness of such measures as he might decide to take would in large part depend upon congressional endorsement. Such endorsement would avoid the consequences of possible conflict between the executive and legislative branches. Present such a conflict, it may be impossible for the President to carry out for any long period of time the foreign policy objectives of the United States, dependent as they are on congressional appropriations and various legislative authorizations. An atmosphere of cooperation and collaboration, whether constitutionally required or not, is obviously both desirable and necessary from a practical standpoint. To use the language of Secretary Dulles, supra, while the constitutional debate may be important, it is 'perhaps more academic than it is practical.'"[18]

The memo argued if that such approval were likely necessary for the defense of treaty allies, then it was all the more so necessary for the defense of states—such an in Indochina—where the U.S. did not have a pre-existing defense treaty. Notably, one of the core arguments of the memo was that this point of view—congressional authorization was needed—was said to be the point of view of the Eisenhower Administration.[19] It is ironic, then, that Dulles and Eisenhower would explicitly reject this view the next month.

[18] Summary of authority conferred upon the President by the Constitution to use the armed forces in dealing with aggression threatening the security of the U.S. White House, 23 Mar. 1954. U.S. Declassified Documents Online, Accessed 13 July 2022.

[19] "It would seem, however, fair to say that the present Administration, without expressly denying the existence of [broad unilateral power], is of the view...that the President should not employ the armed forces of the United States to repel an attack upon a party to a mutual defense treaty, without first obtaining the approval of Congress."

Nevertheless, Eisenhower and Dulles were adamant that, from a political perspective, congressional approval was a sine qua non. At a National Security Council meeting on March 25 Eisenhower was "clear that the Congress would have to be in on any move by the United States to intervene in Indochina. It was simply academic to imagine otherwise."[20] Gibbons writes of the meeting:

> "President continued to criticize the military judgment and decisions of the French relative to the battle of Dien Bien Phu, and appears to have rejected any thought of using U.S. forces in that battle, he also seems to have been increasingly more determined to prevent the fall of Indochina, and to use U.S. forces, if necessary, in order to do so. In response to a suggestion from Secretary of Defense Wilson that the U.S. 'forget about Indochina for a while'...The President expressed great doubt as to the feasibility of such a proposal, since he believed that the collapse of Indochina would produce a chain reaction which would result in the fall of all of Southeast Asia to the Communists,"(Gibbons 2016, pg. 178).

Eisenhower thus had a genuine interest in intervention—worries of congressional intransigence were more than mere pretext. Secretary Dulles commented that the Attorney General "was presumably preparing an opinion with respect to the prerogatives of the President and of the Congress in the matter of using U.S. military forces to counter aggression, and he hoped that the Attorney General would hasten completion of his report," whereupon the President suggested "that this might be the moment to begin to explore with the Congress what support could be anticipated in the event that it seemed desirable to intervene in Indochina." Dulles, however, said that "a lot more work" was needed before the executive branch would be ready to discuss the subject with Congress.[21]

Three days later, on March 28, the White House began its process of "going public" in order to garner public and legislative support for the use of force (Kernell 2007, Logevall 2013). The New York Times reported that "a public education offensive was under way, led by Dulles, to explain to the public 'what is at stake in Indochina.' According to Richard Rovere in The New Yorker, Dulles had undertaken 'one of the boldest campaigns of political suasion ever undertaken by an American statesman,' in which congressmen, journalists, and television personalities of all stripes were being 'rounded up in droves and escorted to lectures and briefings' on the crucial importance of achieving victory in Vietnam,'" (Logevall 2013). It is clear that by March 29th, Eisenhower was expecting imminent military action to be necessary. Nixon recalls in his memoirs:

> "At a congressional leadership meeting at the end of March, Eisenhower said that if the military situation at Dien Bien Phu became desperate he would consider

[20]Foreign Relations of the United States, 1952–1954, Indochina, Volume XIII, Part 1, eds. Neil H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document 646. https://history.state.gov/historicaldocuments/frus1952-54v13p1/d646.

[21]Ibid.

> the use of diversionary tactics, possibly a landing by Chiang Kai-shek's Nationalist forces on China's Hainan Island or a naval blockade of the Chinese mainland. Very simply, but dramatically, he said, 'I am bringing this up at this time because at any time within the space of forty-eight hours, it might be necessary to move into the battle of Dien Bien Phu in order to keep it from going against us, and in that case I will be calling in the Democrats as well as our Republican leaders to inform them of the actions we're taking,'" (Nixon 1990, pg. 151).

That same day, Dulles gave a high-profile, public speech on the "Threat of Red Asia" in which he declared:

> "Under the conditions of today, the imposition on Southeast Asia of the political system of Communist Russia and its Chinese Communist ally, by whatever means, would be a grave threat to the whole free community. The United States feels that that possibility should not be passively accepted but should be met by united action. This might involve serious risks. But these risks are far less than those that will face us a few years from now if we dare not be resolute today."

The speech provoked significant concern in Congress (Gibbons 2016, 181).[22] The speech even drew attention on the floor of the Senate the next day when a Democratic Senator (Douglas of Illinois) gave support to the administration. Other Senators "expressed uncertainty about the situation, and urged the administration to provide more information to Congress." (Gibbons 2016, pg. 181). At a press conference on March 31, Eisenhower responded to a question about "United Action", specifically asking whether this would include American ground combat troops. Consistent with its New Look policy (Kaplan 1991), Eisenhower sought to reassure a domestic audience skeptical of major intervention, saying "I can conceive of no greater disadvantage to America than to be employing its own ground forces, and any other kind of forces, in great numbers around the world, meeting each little situation as it arises," (Gibbons 2016, pg. 181-82). Intervention at Dien Bien Phu, if it were to occur, would utilize air and sea assets only. Even so, the administration was adamant that Congress be on board for the potential use of force.

> "Dulles informed Attorney General Brownell that something fairly serious had come up after the morning NSC meeting. Dulles was working on it with Legal Adviser [Herman] Phleger. Dulles indicated that if there was to be a meeting with Congressional leaders the following day, he would like to have something to show them," (Gibbons 2016, pg. 184).

In other words, Dulles was having a resolution drafted to propose to Congress. The next day Dulles presented the draft AUMF to Eisenhower, who agreed with its language. Nevertheless, the two agreed that "the tactical procedure should be to develop first the thinking

[22] "Efforts to create uncertainty in the minds of other nations, however, frequently create uncertainty at home as well. Thus, the administration's use of united action to keep the Communists guessing about possible U.S. military moves also created concern in Congress and the public," (Gibbons 2016, pg. 175).

of congressional leaders without actually submitting in the first instance a resolution drafted by ourselves."[23]

Reflecting higher-ordered concerns, Dulles suggested the passage of the resolution would have a strong effect on both adversaries and allied. For adversaries of the United States, the resolution was "designed to be a deterrent." For allies and partners, it was projected to "give us a strong position with which to develop strength in the area by association not merely with France and the Associated States, but also with Thailand, Indonesia if possible, the UK (Malaya), the Philippines, Australia and New Zealand."[24] Secretary of Defense Wilson argued that the congressional resolution "was designed to 'fill our hand' so that we would be stronger to negotiate with France, the UK and others."[25] Higher ordered beliefs were clearly on the mind of other executive branch decision-makers as well. Then Director of the Policy Planning Staff of the State Department, Robert R. Bowie, recalled years later "The resolution...was an excellent device, like the united action speech, for ambiguity, because it suggested the United States was united, that it would have a point at which it will resist, without committing us to when, or under what circumstances, or anything else. So it was a wonderful device for vaguely threatening the Chinese and the Soviets and the Vietnamese without being a bluff that anybody could call,"[26] Thus, consistent with the model presented in Chapter 1, decision-makers thought a resolution would have strong deterrent value. The operative language of the April 2 draft resolution prepared by the Department of State read as follows:

> "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled
>
> That the President of the United States be and he hereby is authorized, in the event he determines that such action is required to protect and defend the safety and security of the United States, to employ the Naval and Air Forces of the United States to assist the forces which are resisting aggression in Southeast Asia, to prevent the extension and expansion of that aggression, and to protect and defend the safety and security of the United States.
>
> This Resolution shall not derogate from the authority of the Congress to declare war and shall terminate on June 30, 1955, or prior thereto if the Congress by concurrent resolution shall so determine."

Notably, the first AUMF actually passed by Congress after the Second World War would not come until the year during the First Taiwan Strait crisis. This "Formosa" Resolution would then serve as the basis for successive AUMFs, including the 1964 Gulf of Tonkin Resolution. Given the similarity in language between the 1955 Formosa Resolution and this draft, however, it appears that even the 1955 resolution had a predecessor from a prior crisis.

[23]Ibid.
[24]Ibid.
[25]Ibid.
[26]CRS Interview with Robert Bowie, May 5, 1983 (U.S. Government and the Vietnam War: Executive and Legislative roles and Relationships, Part I, pg. 194).

April 3, 1954: "The Day We Didn 't Go to War"

Saturday, April 3 would prove to be a pivotal date in the crisis. Secretary of State Dulles and Chairman of the Joint Chiefs of Staff Radford met in secret session at the State Department with eight congressional leaders representing both parties. A *Washington Post* article from June 7, 1954 described the meeting:

> Dulles said the President had asked him to call the meeting. He said he felt that it was indispensable at this juncture that the leaders of Congress feel as the administration did on the Indochina crisis. Radford said the administration was concerned with the rapidly deteriorating situation.
>
> Dulles said that the President wanted him to take up with the congressional leaders action by Congress, but action short of a declaration of war or the use of ground troops. Dulles said that if Congress would permit the President to use air and naval power, then a way could be found to prevent broadening of the conflict. He said it was felt that the necessary air and naval power was already in the area and that Congress should shoulder its responsibility in the crisis. Radford suggested that if Congress passed a joint resolution giving the President general power to act, it would be possible to make a single air strike to relieve the embattled fortress of Dien Bien Phu, then under siege for 3 weeks. Radford explained the urgency by saying he was not even certain...whether the fortress was still holding out at that very moment...
>
> Radford spoke of using the approximately 200 planes... [he] was asked whether such action would be war. He replied that we would be in the war. He was asked whether, if the strike did not succeed in relieving the fortress, we would follow up. He replied "Yes." He was asked whether land forces would then also have to be used. He did not give a definite answer."[27]

A memorandum recording the substance of the meeting recalls:

> "The Secretary then said that he felt that the President should have Congressional backing so that he could use air and seapower in the area if he felt it necessary in the interest of national security. Senator Knowland expressed concurrence but further discussion developed a unanimous reaction of the Members of Congress that there should be no Congressional action until the Secretary had obtained commitments of a political and material nature from our allies. The feeling was unanimous that 'we want no more Koreas with the United States furnishing 90% of the manpower.'
>
> Both the Secretary and Admiral Radford pointed out that the Administration did not now contemplate the commitment of land forces. The Congressmen replied that once the flag was committed the use of land forces would inevitably follow."[28]

Congressional leaders thus refused to approve the resolution unless clear commitments were made by U.S. allies—most importantly the British and the French. Two days later on

[27] Roberts, Chalmers. "United States Twice Proposed Indochina Airstrikes." *Washington Post*, June 7, 1954.

[28] Foreign Relations of the United States, 1952–1954, Indochina, Volume XIII, Part 1, eds. Neil H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document 686. https://history.state.gov/historicaldocuments/frus1952-54v13p1/d686.

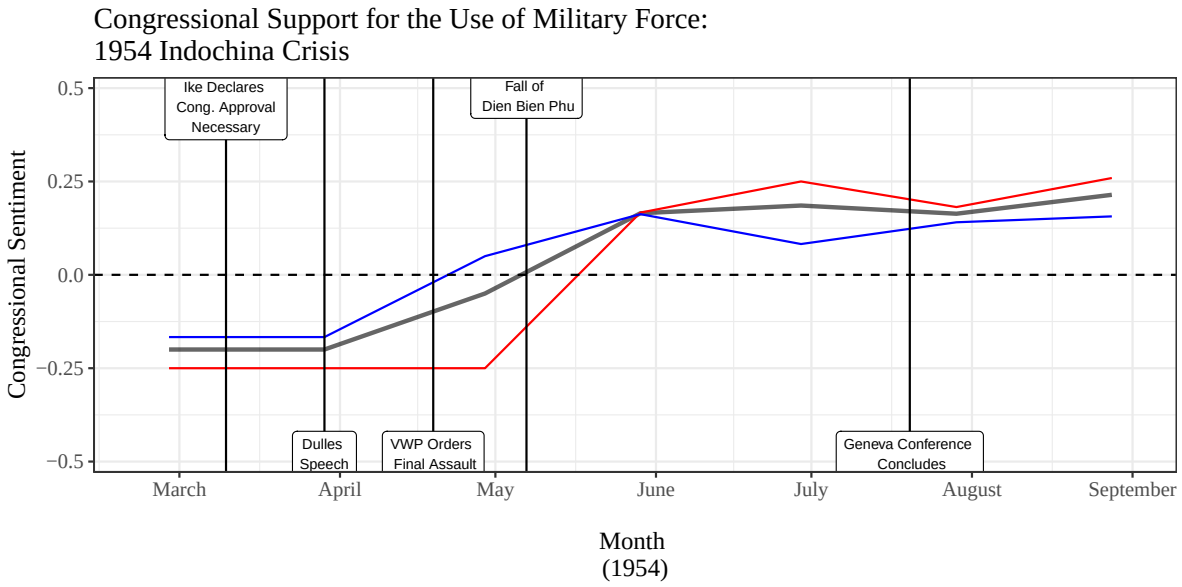

Figure 5.1 Crisis in Indochina (1954)

April 5, as intervention was still debated in the White House, Eisenhower noted that even with an intervention limited to airstrikes, "such a move [i.e., U.S. intervention at Dien Bien Phu] is impossible. In the absence of some kind of arrangement getting support of Congress, [it] would be completely unconstitutional and indefensible."[29] Dulles reported that Radford was "quite reconciled to fact that it is political impossibility at present time—has no idea of recommending this action." The President suggested "taking a look to see if anything else can be done—but we cannot engage in active *war*."[30] A Planning Board report from the next day contemplated a major intervention by the United States—with hundreds of thousands of ground troops—and concluded that congressional approval would be the first necessary step (Gibbons 2016, pg. 198). That same day the President noted, "As far as he was concerned...there was no possibility whatever of U.S. unilateral intervention in Indochina, and we had best face that fact. Even if we tried such a course, we would have to take it to Congress and fight for it like dogs, with very little hope of success."[31]

Publicly, however, the administration sought to not convey this to the adversary. On April 7 Eisenhower gave what would become known as the Domino Theory Speech. In arguing why the United States had a crucial interest in Vietnam, he stated:

"First of all, you have the specific value of a locality in its production of materials

[29]Foreign Relations of the United States, 1952–1954, Indochina, Volume XIII, Part 1, eds. Neil H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document 694. https://history.state.gov/historicaldocuments/frus1952-54v13p1/d694.

[30]Ibid.

[31]Foreign Relations of the United States, 1952–1954, Indochina, Volume XIII, Part 1, eds. Neil H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document .705. https://history.state.gov/historicaldocuments/frus1952-54v13p1/d705.

> that the world needs. Then you have the possibility that many human beings pass under a dictatorship that is inimical to the free world. Finally, you have broader considerations that might follow what you would call the 'falling domino' principle. You have a row of dominoes set up, you knock over the first one, and what will happen to the last one is the certainty that it will go over very quickly. So you could have a beginning of a disintegration that would have the most profound influences...the possible consequences of the loss are just incalculable to the free world."[32]

On April 13, the National Security Council met again, and—among other topics—the March 23 war powers memo of the attorney general was discussed. One lawyer found it to be a "masterful piece of work" in arguing that the President would likely need congressional authorization in order to use military force even in defense of an ally with which the United States had a mutual defense treaty (and thus, all the more so in the case of a region in which the U.S. fully lacked such an agreement such as in Southeast Asia). The memo was not universally accepted, however. Vice President Nixon, for example, specifically asked whether the memo would imply that Truman's action in Korea four years prior was improper. When the Attorney General replied that it indeed would, Radford took issue with the opinion. Nevertheless, political considerations under-girded even much of the Attorney General's "legal" analysis. For example, when noting that a President may (or may not) be legally required to secure authorization before acting to defend an ally, he argued that "In any event...he should not do so even if he were legally free, since the effectiveness of the measures he decided to take would so largely depend on Congressional support."[33]

Publicly, however, the administration kept up its tough words. Two days later, Radford made very public remarks again threatening American intervention in Southeast Asia—"The free nations cannot afford to permit a further extension of the power of militant communism in Asia...[Indochina's] loss would be the prelude to the loss of all Southeast Asia and a threat to a far wider area."[34]

Nixon Creates a Stir

Vice President Nixon created a major political controversy when in a background talk to the American Society of Newspaper Editors on April 16, he stated:

> "If, to avoid further communist expansion in Asia and Indochina, we must take the risk now by putting our boys in, *I think the Executive has to take the politically unpopular position and do it*," (Eisenhower 1963, pg. 353, footnote 4).

[32] Foreign Relations of the United States, 1952–1954, Indochina, Volume XIII, Part 1, eds. Neil H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document 716. https://history.state.gov/historicaldocuments/frus1952-54v13p1/d716.

[33] National Security Council, 14 Apr. 1954. U.S. Declassified Documents Online. Accessed 13 July 2022.

[34] "A Chronology of the Administration's Policy on Indo-China." *The New York Times*, May 4, 1954, sec. Archives. https://www.nytimes.com/1954/05/04/archives/a-chronology-of-the-administrations-policy-on-indochina.html..

The Vice President thus suggested the White House might act absent congressional approval. The comment, at first, was only reported anonymously to the wider press. The *New York Times*, for example, ran a front page article the next day describing the comments from a "high administration source."[35] Congressional reaction, however, was immediate. Republican and Democratic Senators said it was "far beyond the Eisenhower-Dulles policy as they understood it." A member of the Senate Foreign Relations Committee even specifically asked that the anonymous figure step forward so that Congress could question him.[36] When the *New York Times* revealed the next day it was Vice President Nixon that had been the anonymous official, it noted "the disclosure coincided with the development in Congress of much concern, considerable resistance and some scattered support for the possible use of United States ground forces" in Vietnam.[37] The newspaper interpreted the speech as a trial balloon–"the consensus was that Mr. Nixon was testing the reaction of the public and Congress." In the end, even several Republican Senators outright opposed the proposition.[38] Nixon recalls in his memoir:

> "I was concerned that Eisenhower might be upset over the incident, but he told me that if he had been confronted with a hypothetical question under similar circumstances he probably would have answered it the same way."(Nixon 1990, pg. 153)

In a meeting with Congressional Republicans, one member of Congress said that "the suggestion that American boys might be sent to Indochina 'had really hurt,' and that he hoped there would be no more talk of that type,"(Nixon 1990, pg. 153). Eisenhower pushed back against this, however:

> "The President, however, immediately stepped in and said he felt it was important that we not show a weakness at this critical time and that we not let the Russians think that we might not resist in the event that the Communists attempted to step up their present tactics in Indochina and elsewhere...He also pointed out that it was not well to tell the Russians everything as to what we would or would not do,"(Nixon 1990, pg. 153).

A few days later on April 20$^{\text{th}}$, Nixon made clear "The aim of the United States is to hold Indo-China without war involving the United States if we can. We have learned that if you are, weak and indecisive, you invite war. You don't keep Communists out of an area by

[35]Huston, Luther A. "Asian Peril Cited High Aide Says Troops May Be Sent If the French Withdraw U. S. Weighs Role in Indo-China War." *The New York Times*, April 17, 1954, sec. Archives. https://www.nytimes.com/1954/04/17/archives/front-page-1-no-title-asian-peril-cited-high-aide-says-troops-may.html..

[36]Ibid.

[37]Morris, John D. "Nixon Is Revealed as Author of Stir over Indo-China; Vice President Told Editors U. S. Might Intervene with Troops If the French Quit." *The New York Times*, April 18, 1954, sec. Archives. https://www.nytimes.com/1954/04/18/archives/nixon-is-revealed-as-author-of-stir-over-indochina-vice-president.html..

[38]Ibid.

telling them you won't do anything to save it."[39] Thus, the threat of unilateral intervention was purposefully left as a possibility in order to keep communists forces guessing of U.S. intentions, even while privately Eisenhower had concluded it would be politically impossible.

On April 19th, Dulles met with Eisenhower to discuss the Justice Department's paper on presidential war powers prepared March 23 and discussed at the National Security Council on April 13. Dulles recalled in a memo:

> "I said I thought it [Justice's memo] was unduly legalistic. I thought that the heart of the matter was that the Government of the United States must have the power of self-preservation. If Congress was in session and in a position to act to save the Union, concurrent action would be the preferred procedure. If the danger was great and imminent and Congress unable to act quickly enough to avert the danger, the President would have to act alone. The President agreed, stating that, in his judgment, the President would have to take the responsibility of carrying out the will of the people. If he made a mistake in this respect, then he was subject to impeachment, and repudiation by the Congress. The President thought, however, that it was unwise to ventilate this problem at the present time in view of Bricker Amendment problems. I said I wholly agreed. I had expressed my views merely as views which I thought should be in the background of the NSC thinking and planning," (Gibbons 2016, pg. 211).

Thus, while the March 23 Department of Justice memo had suggested the President would likely legally require formal authorization from Congress prior to using force in Indochina, Dulles and Eisenhower explicitly rejected this interpretation. It was ex post political consequences ("If he made a mistake...he was subject to impeachment, and repudiation by the Congress."), not personal fidelity to the constitution, that drove Eisenhower's realization unilateral intervention was not a realistic possibility (instead, being merely "academic").

Nevertheless, it was recognized that formal authorization would be *politically* essential. Even so, Dulles expressed the point of view that this could not be emphasized publicly at that point—"we do not want to let the Communists know ahead of time what our plans are, nor do we want to lessen our pressure on Indochina—at present [the] Communists do not know whether we will attack if they move ...and we want to leave it that way...one cannot explain everything to our own people, as it also explains things to the enemy,"(Prados 2002, pg. 143-144).

Thus, the administration kept up the saber-rattling publicly. On April 15, 1954 Chairman of the Joint Chiefs of Staff, Admiral Radford, remarked to the American Society of Newspaper Editors that:

> "The free nations cannot afford to permit a further extension of the power of militant communism in Asia. In the interests of preventing aggression, full advantage

[39] "A Chronology of the Administration's Policy on Indo-China." *The New York Times*, May 4, 1954, sec. Archives. https://www.nytimes.com/1954/05/04/archives/a-chronology-of-the-administrations-policy-on-indochina.html..

should be taken of the fact that non-Communist Asia has a considerable potential for development of defensive military forces...[Indochina's] loss would be the prelude to the loss of all Southeast Asia and a threat to a far wider area."

On April 26 in another meeting with congressional leaders, the administration raised the question of American intervention without the support of allies "but the Members of Congress strongly opposed such a course."[40] At a news conference of on April 29, 1954 Eisenhower received several questions regarding Dien Bien Phu and the Geneva Conference. He restated his position that "we would not get into a war except through the constitutional process which, of course, involves the declaration of war by Congress."[41] However, at that same conference he was asked about a rider introduced—in reaction to Nixon's April 16 comments—in the House that "would restrict the President's authority to send troops to Indochina or anywhere else in the world without the prior approval of the Congress."[42] Eisenhower responded that "I believe in this day and time, when you put that kind of artificial restriction upon the Executive, you cannot fail to damage his flexibility in trying to sustain the interests of the United States wherever necessary."[43] In his memoirs, Eisenhower writes that he would have "vetoed the bill if presented and made this known."[44] Thus, while privately recognizing formal authorization would be politically required before intervening, Eisenhower specifically refused to have this requirement put into public law. Nevertheless, the administration would be hamstrung from intervening to save the French garrison due to congressional resistance.

The Adversary's Perspective

By the beginning of 1954, Communist Chinese and Vietnamese forces began focusing on the threat of U.S. intervention as their foremost concern. Logevall writes:

"[O]n this point, available DRV internal sources are clear: At the start of 1954, it was American policy more than French policy that was of chief concern to Ho Chi Minh and the Politburo. The United States was now the principal enemy, not France. Should President Dwight Eisenhower choose to further increase his involvement in the French cause, perhaps by sending ground troops to the war theater, or by ordering air strikes on Viet Minh positions, it would have enormous implications for the balance of military forces,"(Logevall 2013, pg. 426-27).

Communist leaders, accordingly, kept a close pulse on domestic politics in the United States. *People's Daily*, for example, explicitly picked up Eisenhower's March 10 statement

[40]Roberts, Chalmers. "United States Twice Proposed Indochina Airstrikes." *Washington Post*, June 7, 1954.
[41]Dwight D. Eisenhower, The President's News Conference. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. https://www.presidency.ucsb.edu/documents/the-presidents-news-conference-351.
[42]Ibid.
[43]Ibid.
[44]Eisenhower (1963), pg. 353.

that he would not intervene in Southeast Asia without formal authorization from congress, and his subsequent March 17 statement in which he asserted that he would be willing to act unilaterally under certain circumstances. The March 22 article in *People's Daily* noted:

> "At the same time, the American militant group is step by step toward the road of direct participation in the Indochina War. U.S. President Eisenhower recently hinted at two press conferences that the United States wanted to formally participate in the war. At a press conference on March 10, when a reporter asked what the United States would do if the U.S. Air Force personnel in Indochina were captured or killed, Eisenhower said: "Without Congress exercising its constitutional rights to declare war, our country...will not be involved in the war." This means that the US government may use the killing of US Air Force personnel who are currently participating in the war in Indochina as an excuse to obtain the approval of the US Congress to formally participate in the Indochina War. At the press conference on the 17th, Eisenhower further said: "We cannot make generalizations about whether to declare war through Congress." He said: "It is impossible to predict exactly what will finally happen in the future"...
>
> However, the series of dangerous measures and blind risk intentions taken by the American militant group, Not only did it not intimidate anyone, but it caused great dissatisfaction among the American people. This sentiment was reflected in the US Congress...U.S. Democratic Congressman Smith said: "In view of the actions (the U.S. government) has taken in Indochina so far, our people are currently asking whether we may be involved in the war because we are already in Military assistance has been expanded there. We have recently sent military aircraft and personnel there." He said: *"The country is very concerned about our policy, fearing that it might lead to another undeclared war."*[45]

Other U.S. adversaries were clearly aware of the domestic political chatter occurring at the time as well. In an April 11 article, *Nhan Dan* warned that "Perhaps the American Congress will suddenly convene to make a big decision on Vietnam." Quoting American Senators, it stated:

> "Senator Thomas Burke of the Ohio State stated that in the face of 'the predicament in Indochina, President Eisenhower will have to convene a special session of Congress.' He added that the 'current attitude of the British people' and France forced us to come to a resolution. Will we intervene directly in Indochina alone or will we just drop everything? I believe that if the president trusts Congress and lets it know all the affairs and views of the government, the new Republicans and Democrats will support the government.
>
> Mr. Russell Long said he was ready to support the government. He made it clear that: If the government decides to directly participate in the Indochina war, it must ensure that the United States will intervene to liberate the Indochinese people, not to protect the French colonial interests."

Aside for a handful of Senators supporting action, Congress as a whole dampened prospects of American intervention. In an article published on the front page of the *New York*

[45] "The American militant group obstructs the restoration of peace in Indochina", *Xinhua News Agency*, March 22, 1954.

Times on April 16, for example, it was reported that Chairman of the Joint Chiefs of Staff Radford and Secretary of Defense Wilson conveyed to the Senate Foreign Relations Committee that "there was no suggestion that any intervention by the United States, even in the form of sea and air aid, was in sight, in spite of the reported presence of United States aircraft carriers in the Gulf of Tonkin"[46] That same day, *People's Daily* ran a story specifically noting Nixon's controversial comments suggesting the administration would intervene without Congress:

> "US Vice President Nixon gave another speech on April 16. Nixon stated that the United States was firmly opposed to negotiations to stop the war in Indochina. He even openly threatened that the United States was prepared to send its own troops to participate directly in the Indochina War, in order to coerce France into fighting in Indochina instead of implementing an independent policy at the Geneva Conference...In response to Nixon's war clamor, some reactionary US senators also made a series of talks. Nixon's speech reflected the adventurous policy of the US government to expand the war in Indochina."[47]

The subsequent negative reaction to Nixon's speech was also followed by Beijing.

> "US Vice President Nixon's call to send US troops to directly interfere in the Indochina War caused panic among some people within the US ruling group...The United Press said: This is because people still remember the long list of casualties and the unpopular Korean War....Chicago Tribune editor and publisher McCormick said: 'Nixon's suggestion is almost crazy. He talks like a nonsense idiot.' He said: 'No matter what happens, we shouldn't be in Indochina'...Gannett, the publisher of 22 newspapers in [New York] state, also warned: 'If we get involved in the vortex there (Indochina), it will be worse than North Korea.'"[48]

April 20th article from *Nhan Dan* proclaimed "The President of the United States is about to submit to Congress a project resolution authorizing the sending of American troops" to Southeast Asia:

> "Senator Knowland, the Republican majority leader in the Senate, on Saturday expressed his conviction that President Eisenhower would ask Congress to support sending US troops to Indochina...where such measures may be necessary to keep the Union states from falling into Communist hands...Senator William Knowland continued: "I don't believe we're going to send ground troops to Indochina and it's possible that we wouldn't need to send forces there if China understood that a resistance would be unleashed against them. But if there is any doubt in that regard, I believe that China will attack. Senator Knowland made it clear that the possibility of sending troops to Indochina was not discussed between the government and group leaders in congress, but the possibility of sending air and naval convoys was contemplated."

[46] White, William S. "U.S. Chiefs Paint Confident Picture on World Defense"; Wilson and Radford Reassure Senate Group on Position at a Secret Session." *The New York Times*, April 16, 1954, sec. Archives. https://www.nytimes.com/1954/04/16/archives/u-s-chiefs-paint-confident-picture-on-world-defense-wilson-and.html.

[47] "The American militant group actively plans to expand the Indochina War", *People's Daily*, April 24, 1954.

[48] "Is the United States seeking peace or expanding war?", *People's Daily*, April 28, 1954.

The same article also quoted a prominent Democratic Senator:

> "Democratic Senator Mansfield declared that An American intervention in Indochina could trigger a Third World War...Talking about a sudden US intervention, Mr. Mansfield added that: If we enter the war in Indochina, people will greatly push China to enter the war, in important circumstances...Beijing will decide to start a war in Korea.
>
> Conclusion: Senator said: All of that leads to a Third World War, including Russia's support for China."

On April 24, Xinhua (新华) specifically cited a Gallup poll in the United States showing popular opposition to the use of force in Indochina:

> The Gallup Poll Institute recently announced after conducting an investigation on the Geneva Conference: "Our investigation has consistently shown that public opinion is strenuously opposed to the idea of sending US troops to the war"...55.7 percent of the those polled opposed armed forces going to Indochina...46.4% resolutely said: "Anyway, don't let us get involved in the war." The strong opposition of the American people to US interference in the war in Indochina made the American ruling group uneasy. What they are particularly worried about is that this may make it difficult for them to defraud the American people's votes in the US Congressional elections to be held in November this year. Certain American politicians therefore also disapprove of 'reckless actions' in the 'election year'.[49]

It is clear that this connection between congressional elections in November and the credibility of the American intervention threat was more than mere propaganda in the public newspaper. Even privately, discussions between top Chinese and Vietnamese communist officials centered around the idea that "America's non-intervention policy is only a temporary phenomenon, and this will only be maintained until the coming November, when the U.S. Congress holds elections."[50]

According to Chinese sources, it was in early April that communist forces understood that two American aircraft carriers had arrived in the Gulf of Tonkin and were conducting military exercises. Furthermore, they understood that the Chairman of the Joint Chiefs of Staff, Admiral Radford, was openly threatening to use U.S. Air Force B-29's in a large scale bombing campaign—to perhaps include use of atomic weaponry—to relieve French forces at Dien Bien Phu. They were also well aware of Dulles's March 29 speech and Eisenhower's Domino Theory speech. Nonetheless, Chinese and Vietnamese commanders believed these threats to only be bluffs aimed at tricking their forces into advancing on the periled French position. By mid-April "some PAVN officers wavered in their resolve to occupy Dien Bien Phu

[49] "The American people oppose the U.S. intervention in the Indochina War", *Xinhua News Agency*, April 27, 1954.

[50] Chen, Jian. "China and the Indochina Settlement at the Geneva Conference of 1954." In *The First Vietnam War: Colonial Conflict and Cold War Crisis*, by Mark Atwood Lawrence and Fredrik Logevall. Cambridge, Mass: Harvard University Press, 2007.

partly because of the exhaustion of their troops and the coming monsoon season and partly because of the threat of American air intervention made by Admiral Arthur Radford, chairman of the U.S. Joint Chiefs of Staff," (Zhai 2000, pg. 48). But "After analyzing the situation, Wei Guoqing and the Viet Minh leaders felt that the true purpose of Washington's threat was to compel the Viet Minh to withdraw from Dien Bien Phu,"(Zhai 2000, pg. 49). Wei Guoqing, the head Chinese military advisor to the Vietnamese Communists "believed that the American warning was just an empty threat to make the Vietnamese Communists give up the current offensive. Since the Vietnamese had achieved a superior position in the battlefield, Wei stressed, they should not yield to the American threat and lose this opportunity,"(Chen 2001, pg. 137). Thus, communist forces decided on April 19 to commence their final offensive on Dien Bien Phu early the next month (Chen 2001, pg. 137).

Even after communist forces made their decision to order a final assault on the outpost, U.S. adversaries kept close attention to internal political in the United States—for example, specifically noting speeches of top American officials. A May 9 *People's Daily* article specifically noted:

> "A month ago, when U.S. Secretary of State Dulles clamored to use 'joint operations' to deal with the struggle of the Indochina people for independence, U.S. President Eisenhower immediately expressed 'full agreement.' Then, U.S. Vice President Nixon also clamored that the United States would send troops and participate directly in the Indochina War. However, according to a telegraph from Washington on April 29 by the U.S. Information Service, Eisenhower said: The United States will not participate in the Indochina War and that it can find some practical way to get along with each other in Indochina. According to a report from the United Press News Agency in Washington on April 28, Nixon also said that the main goal of the Eisenhower administration was 'not to send American soldiers to Indochina or anywhere else in the world to fight.'"

Thus, the while the Administration attempted to appear resolved for its international audience, congressional and popular resistance to a significant use of force—and potential war—in Southeast Asia forced the White House to tone down its messages. These signs of irresolution were then picked up by American adversaries in order to judge American involvement was mere bluff.

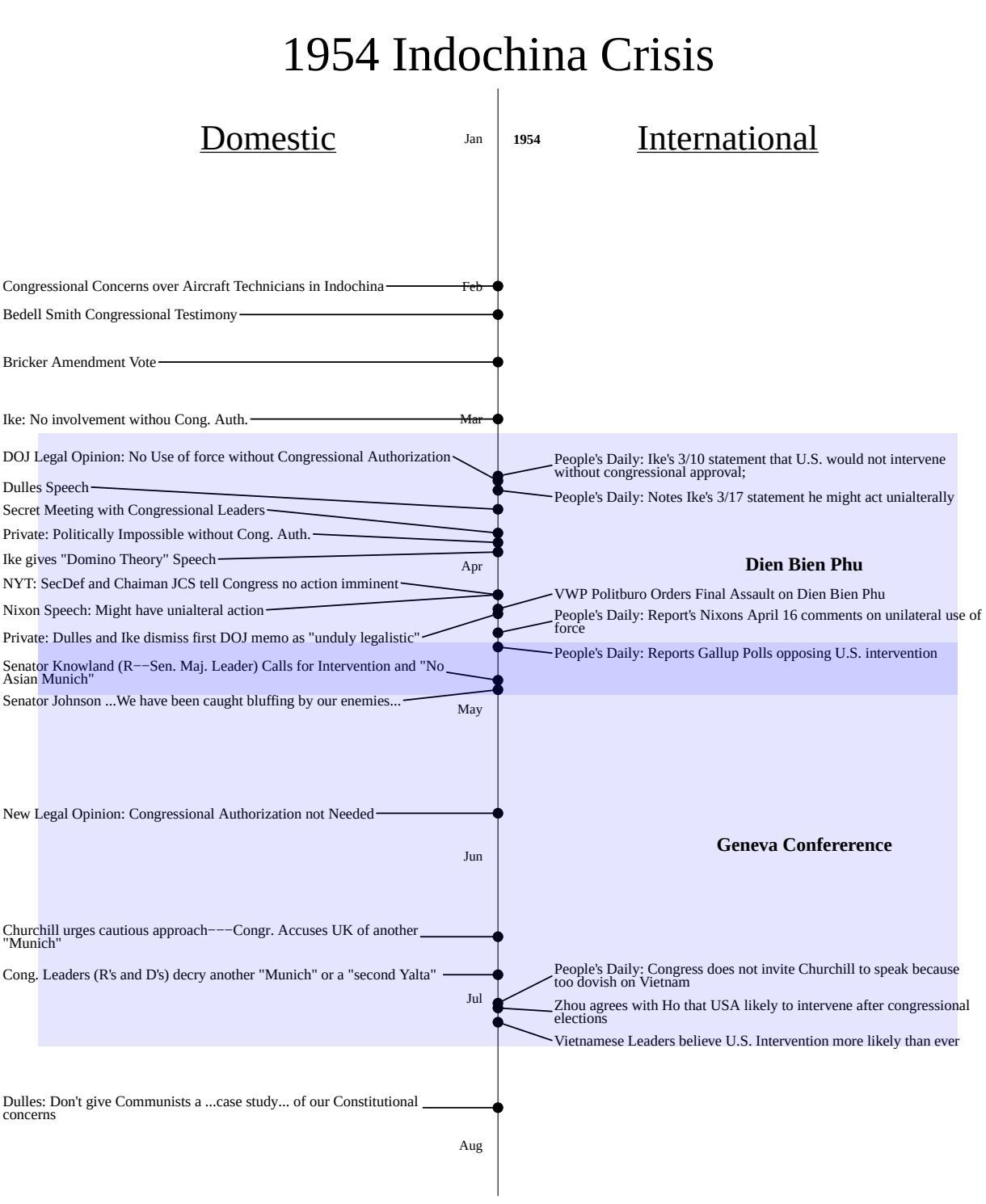

Figure 5.2 Timeline of Indochina Crisis (1954)

After Dien Bien Phu (Early May to Late July):

The garrison at Dien Bien Phu ultimately surrendered on May 7, but even days prior the outcome was obvious to outside observers. U.S. contingency planning now considered intervention in Indochina more broadly. In other words, while Operation Vulture would potentially have been limited to airstrikes (albeit, massive airstrikes) in support of French forces, intervention after the surrender of French forces entailed a much larger potential dedication of U.S. forces—including ground forces. Nevertheless, there were still many in the administration that supported this eventuality. Moreover, it was realized that the United States should signal this resolve in order to accomplish a favorable settlement at Geneva through coercion, rather than actually have to directly create the outcome via brute force. Part of this signalling effort would include the passage of an AUMF. One administration official opined:

> "I feel that we should now take the ultimate policy decision that we will not permit the complete fall of Indo-China. This, of course, means a decision that we will, if necessary, use U.S. combat forces to prevent the complete fall, and the authorization should be obtained from Congress for the Commander-in-Chief to use U.S. combat forces, if essential, and to the minimum extent necessary, and with maximum assistance obtainable from other free nations, to prevent the complete fall of Indo-China to Communist domination, because of the disastrous consequences which would follow such an event.
>
> *If we make this ultimate decision promptly, and receive from Congress at an early date this last ditch authority, then we have a policy of strength at the end of the string. We can proceed more effectively to attain a more desirable result through either the accord of our friends, or the concessions and compromise of the Communists, or both."*[51]

Thus, the passage of a joint resolution from Congress authorizing the use of military force was not solely designed as a domestic measure to give the President the necessary political cover to use force, but also to publicly convey this publicly to U.S. adversaries—inducing them to take the U.S. intervention threat more seriously and thus offer concession more favorable to U.S. interests.

The Fall of Dien Bien Phu also forced the United States to reassess where it stood on the war in Indochina. The U.S. representative at Saigon wrote:

> "it [was] necessary that there be a frank stocktaking of our joint assets and a candid reappraisal of where we stood. If for constitutional reasons or climate of feeling in Congress or fact of elections this year, it was not possible for US to come in either in guaranteeing an armistice or in backstopping renewed hostilities with something more than end-item support, at least we should face the facts calmly and draw necessary conclusions."

[51] Foreign Relations of the United States, 1952–1954, Indochina, Volume XIII, Part 2, eds. Neal H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document 829. https://history.state.gov/historicaldocuments/frus1952-54v13p2/d829, emphasis added.

Helpfully, however, congressional opinion was beginning to shift from its opposition to the use of force in the earlier part of the year. While congressional support was lackluster prior to the Fall of Dien Bien Phu, it reversed substantially thereafter. Earlier in the year, Senators Stennis and Mansfield, for example, complained vociferously over a mere 200 air force mechanics (outside of the combat zone). By May 4, however, the Senate Majority Leader (Knowland-R) was calling for intervention and no "Asian Munich." This support was not limited to Republicans—then Senate Minority Leader Lyndon Johnson proclaimed on May 6, "We have been caught bluffing by our enemies, our friends and Allies are frightened and wondering, as we do, where we are headed," (Gibbons 2016, pg. 224). Others in Congress argued that the U.S. needed "to put the Communist world on notice that Southeast Asia is not to be had for the asking."[52]. Thus, Asselin recognizes "After the fall of Dien Bien Phu, hawks in Congress pressed the President to take a firmer stance against communist expansion in Asia,"(Asselin 2018, pg. 72).

Even while the administration saw a greater threat to U.S. interests than ever before, it still feared intervening absent legislative sanction. Possible uses of force absent formal congressional authorization were discussed, but these were all extremely limited. One idea, for example, proposed creating an "international volunteer air group"—similar to the Flying Tigers in China prior to American entry into World War II.[53] Another was to expand the role of the Air Force technicians already deployed to the region. Nixon recalls:

> "On May 20 the NSC discussed the possibility of keeping the two hundred American mechanics in Vietnam past June, but Eisenhower dismissed the idea. First, he said, the French were already going back on their word to keep up the fighting. Second, he said that such an extension would make our future relations with Congress very difficult, because he had given a solemn pledge that the mechanics would come out by June 15, and he intended to honor his pledge," (Nixon 1990, pg. 155).

Thus, whatever force the White House might have been willing to deploy absent congressional sanction, it was quite minor. U.S. allies were now also well aware of the "constitutional" problem faced in the United States. The top American diplomat in Saigon wrote back to Washington that on May 15 the head French General in Indochina repeatedly "questioned me closely as to attitude of Congress, effect of elections in November, and when next new Congress would convene."[54] Similarly, on May 24 the head American representative at Geneva wrote that the French negotiators were worried:

[52] https://www.govinfo.gov/content/pkg/GPO-CRECB-1954-pt5/pdf/GPO-CRECB-1954-pt5-7-1.pdf

[53] "This was a proposal for creating an 'international volunteer air group' for combat in Southeast Asia. This group, which would consist of U.S. and other volunteers, would be equipped with three squadrons of F-86 fighters. Secretary Dulles inquired whether the proposed air group would be under the ultimate control of the President. Mr. Cutler replied in the negative, indicating that we would have no responsibility for the group, which would be developed along the lines of General Chennault's 'Flying Tigers' in the second World War. This would mean, said Secretary Dulles, that our volunteers could join the air group without Congressional approval. The answer seemed to be in the affirmative," (Gibbons 2016, pg. 225).

[54] *Foreign Relations of the United States*, 1952–1954, Indochina, Volume XIII, Part 2, eds. Neal H. Petersen

> "that US intervention would be limited essentially to naval and air support, that there was strong feeling in Congress against use of ground forces and that joint resolution might be passed prohibiting their use on continent of Asia. Bonnet felt US military might be less interested in saving Associated States than in A-bombing China. I told him Congressional resolution authorizing naval and air support would be major accomplishment. Navy included marines, now a major military force,"[55]

Such limits on congressional authority were reflected in a new draft resolution provided on May 17th:

> "*The President is authorized to employ Naval and Air forces of the United States to assist friendly governments of Asia to maintain their authority as against subversive and revolutionary efforts fomented by Communist regimes, provided such aid is requested by the governments concerned. This shall not be deemed to be a declaration of war and the authority hereby given shall be terminated on June 30, 1955, unless extended.*"[56]

Thus, not only U.S. adversaries but even allies believed the credibility of the U.S. intervention threat depended on the position of Congress. Realizing this, key figures in the United States began pushing for Congress to act. A general testifying before Congress on May 26 stated, "there is nothing more tangible that this country can do at the present moment to reassure these peoples of our intentions than for the Congress to authorize" the use of force (Gibbons 2016, pg 236). There was even pressure from the French for the administration to merely announce it would act unilaterally in order to enhance deterrence.[57]

Contemporaneously, the legal analysis utilized by the administration internally had already begun to evolve. A briefing book from June 1 reconsidered the question of the President's constitutional war powers, and exhibited a substantial shift from the March 23 memo.[58] Now, it allowed for a much more expansive assertion of presidential power.

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and John P. Glennon (Washington: Government Printing Office, 1982), Document 893. https://history.state.gov/historicaldocuments/frus1952-54v13p2/d893, emphasis added.

[55] *Foreign Relations of the United States*, 1952–1954, The Geneva Conference, Volume XVI, eds. Allen H. Kitchens, Neal H. Petersen, and John P. Glennon (Washington: Government Printing Office, 1981), Document 589. https://history.state.gov/historicaldocuments/frus1952-54v16/d589.

[56] *Foreign Relations of the United States*, 1952–1954, Indochina, Volume XIII, Part 2, eds. Neal H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document 903. https://history.state.gov/historicaldocuments/frus1952-54v13p2/d903.

[57] "What French feel they are asking for now is not, in fact, a new commitment from US but assurances that US reaction will come within a matter of hours and even, if possible, in time to meet attacking Chinese planes. Schumann said he felt that only circumstances in which Chinese would make such an attack would be if they felt that US, for one reason or another, was not in a position to respond promptly and effectively. Therefore, Schumann suggested that if it should be impracticable to obtain preliminary approval of such military action from US Congress, it might be equally useful to have a clear warning from either the Secretary or the President that a massive Chinese air attack would meet with US opposition. Schumann said he felt certain that if Chinese realized that an air attack would cause US intervention they would never take the risk of mounting such an attack." *Foreign Relations of the United States*, 1952–1954, Indochina, Volume XIII, Part 2, eds. Neal H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document 935. https://history.state.gov/historicaldocuments/frus1952-54v13p2/d935.

[58] Studies with Respect to Possible U.S. Action regarding Indochina. NSC 5421. TOP SECRET. Declassified July 22, 1980. National Security Council, 1 June 1954. U.S. Declassified Documents Online.

> "There can be no doubt that in many situations the President has authority to send armed forces outside the United States, and to exercise other emergency powers, without prior action or authorization of Congress...we have seen that frequently in our history, without prior authority of Congress, Presidents have ordered our troops to take action or maintain positions abroad for the protection of American lives and property, to resist aggression under international law, to repel threats to our national safety and security, and to defend the United States, its commerce and its honor."[59]

The memorandum essentially argued that formal authorization from Congress was not a legal necessity, but that it was nonetheless a good idea. With formal authorization from Congress, there would be no doubt the President had authority to act. The opinion argued that while smaller actions could clearly be undertaken unilaterally, larger uses of force created a more difficult question:

> "If however, the world is faced with serious aggression at the start, it may be desirable, whether or not constitutionally required under our democratic form of government, for the President to call upon Congress to examine the situation and to make further forces and authority available, as well as the full use of war powers as are needed to meet the emergency.
>
> This does not mean that the constitutional power of the President is limited by the mere possibility that our adversaries may convert our peaceful aims and defensive action into a full scale war. There is no constitutional doctrine to this effect, and there can be none if this nation is to survive. The constitutional power of the President obviously extends to situations where the risk of war exists as well as to those where it does not. Indeed in such situations it has been exercised in such a way as to prevent war."[60]

Thus, while it was recognized that "it may be desirable" to secure formal authorization from Congress, it was not legally or constitutionally required. The June 1 report also included a draft authorization. The operative language was displayed as follows:

> "the President of the United States be, and he hereby is authorized, in the event and manner that he deems proper, to use the naval and air forces of the United States, and should he find it necessary, land forces for the purpose of assisting the governments of Viet Nam, Laos and Cambodia in their efforts to suppress the insurrectionary and aggressive actions of the Viet Minh League
>
> ...That if, the President should determine that any other nation is about to commit an overt act of aggression in respect of the lawful governments of Viet Nam, Laos and Cambodia, or any of them, or other states in Southeast Asia, such intervention in behalf of the Viet Minh League (1) by way of land, naval, or air forces, whether such forces be allegedly volunteer or officially connected with such nation, or (2) by way of substantial increases in amounts of war materials being furnished the said Viet Minh League, then the President is hereby authorized to take such steps as

[59]Ibid.
[60]Ibid.

he deems necessary, including the use of the aforesaid armed forces of the United States where necessary, to counter such overt acts of aggression."[61]

Nevertheless, in order to incentivize the French to comply with U.S. demands for greater autonomy for the states of Southeast Asia, the White House refused to publicly threaten intervention. President Eisenhower told a June 2 press conference that he had not reached any decision to ask Congress for a vote[62] and at a news conference of June 8, the Secretary of State "included the point that the United States did not intend to deal with the Indochina situation unilaterally, nor did the Administration intend to seek additional authority from Congress to act in the matter" at that point.[63]

Nevertheless, the administration and its allies in Congress vociferously opposed attempts to constrain presidential authority by legislators. When asked whether the President had the power to "take any action he wished in case Indochina fell or some other country fell, without coming to Congress", a State Department official representing the administration replied that "the President did have this constitutional power, and had used it in 'scores of cases' in the past," (Gibbons 2016, pg. 247). Citing higher ordered beliefs, the State Department official's primary objection to any apparent restriction on the President's authority to use force—even if merely a statement of policy without legal effect—was that it would "have an adverse effect abroad," (Gibbons 2016, pg. 247). Senator Javits—the author, ironically, of the 1973 War Powers Resolution twenty years later—argued against any language restraining presidential power saying, "All you are doing by writing a thing like this in the bill...is to demonstrate to the world the lack of confidence in the President, and to demonstrate to the world that the United States is unsure of the world because we want to tie his hands somehow," (Gibbons 2016, pg. 247).

By June 16, the French Ambassador would complain that "the impression was general that there was no hope of U.S. intervention and that the Communists knew it."[64] One of the problems pointed out by the American side was that an intervention after the Fall of Dien Bien Phu entailed far more U.S. ground assets—four or five divisions—"whereas six weeks ago it had appeared that sea and air forces with a token land force would have been sufficient."[65] Nevertheless, the U.S. Secretary of State "repeated that the situation had changed. He stated that he had no doubt Congress is prepared to respond to a Presidential request and that...we

[61] Ibid (Draft Joint Resolution).
[62] Roberts, Chalmers. "United States Twice Proposed Indochina Airstrikes." *Washington Post*, June 7, 1954.
[63] *Foreign Relations of the United States*, 1952–1954, Indochina, Volume XIII, Part 2, eds. Neal H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document 955. https://history.state.gov/historicaldocuments/frus1952-54v13p2/d955.
[64] *Foreign Relations of the United States*, 1952–1954, Indochina, Volume XIII, Part 2, eds. Neal H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document 979. https://history.state.gov/historicaldocuments/frus1952-54v13p2/d979.
[65] Ibid.

had no objection to the French using the possibility of our intervention for negotiating purposes with the Communists."[66]

For the next month, the United States would thus bluff a willingness to intervene in order to help French and British negotiators at Geneva.[67] As the July 20 deadline for an agreement approached, Dulles and Eisenhower discussed how they might increase their allies' bargaining leverage:

> "Sunday, July 18, 1954—5:00 p.m.
>
> I told the President that the cables which I have received this morning from Geneva indicated a likelihood that there would be an armistice concluded and that *I thought it might be useful to interject from here the idea that, if these negotiations failed, the United States would take so serious a view of the situation* that the President would feel under a duty to make a report to the American people. *I said that the knowledge that we would take this grave view of the situation would itself tend to buck up Mendes-France on the one hand and also lead the communists to make some concessions on the other hand.*
>
> *The President raised the question of possibly going to a Joint Session of Congress. I said that I doubted whether this was advisable* at the present time as *we were not yet in a shape to ask for any authority from Congress* whereas if he made a talk to the American people, he could speak in terms of personally supporting a presentation of the situation to the United Nations as a threat to the peace, and he could do so directly or with U.S. support through others, *without Congressional authorization.* Also I felt that at this juncture the important thing was to let the Geneva Conference know that the President would take a very grave view of the failure of the Conference as creating a likelihood of the war being intensified and enlarged, both in terms of the area of combat and of the belligerents...The President agreed with this procedure."[68]

Adversary Perceptions

It is unclear how well communist leaders understood the specifics of the war powers debate in the U.S., but it is clear they saw the U.S. intervention decision as a function of

[66] Ibid.

[67] "Although the U.S. private position was, by late June, to abide by a settlement which partitioned Vietnam and provided for 'the ultimate reunification of Vietnam by peaceful means'...our public posture at the Conference left unclear to the communists just what terms would in fact be acceptable to us. For our part, united action was a dead issue by mid-June, but the communist negotiators could not have known this. As a result, they may well have been influenced toward a settlement by the belief that further prolongation of talks, would only reinforce Western unity, perhaps coalesce a united response in Indochina previously unobtainable by the U.S., and very likely bring the three Indochinese states into the proposed American security treaty." The Pentagon Papers, Part III: The Geneva Accords (1969), pg. A-34. Available at https://nara-media-001.s3.amazonaws.com/arcmedia/research/pentagon-papers/Pentagon-Papers-Part-III.pdf.

[68] *Foreign Relations of the United States*, 1952–1954, Indochina, Volume XIII, Part 2, eds. Neal H. Petersen and John P. Glennon (Washington: Government Printing Office, 1982), Document 1066. https://history.state.gov/historicaldocuments/frus1952-54v13p2/d1066.

congressional politics. Zhou Enlai even specifically quoted Ho Chi Minh in advising to Pham Van Dong that "America's non-intervention policy is only a temporary phenomenon, and this will only be maintained until the coming November, when the U.S. Congress holds elections"[69]

Vietnamese communists also clearly recognized the two-level game being played out between Congress and France. A Nhan Dan article from May 25 Article, for example, noted that Americans officials at the Geneva conference were threatening American intervention, but also that Congress was demanding more concessions from the French (to the Vietnamese, Cambodians, and Laotians forming new independent states) before they would approve this action.[70]

Chinese newspapers, as well, closely followed domestic political developments in the United States. This time, however, hawkish sentiment appeared to be much more dominant than prior to the fall of Dien Bien Phu. A July 11 *People's Daily* article, for example, specifically noted Congress's snub of Winston Churchill on June 25:

> "Churchill and Eden arrived in Washington on June 25, the representatives of the US Congress said that this time they would disregard the existing traditions and would not ask Churchill to speak in Congress...It is said that this was mainly caused by a report by Eden in the House of Commons on June 23. Aiden once said that the Southeast Asian aggression group planned by the United States is 'not a panacea.' Churchill said in conversations with US congressmen that he supports Eden's views."[71]

This perception of greatly increased domestic hawkishness in the United States had an effect. The Vietnamese clearly worried about pushing too hard in negotiations out of a fear of an American intervention.[72] "Left to run its course the war could easily take a turn for the worse, Truong Chinh, Ho, and other DRVN leaders thought, particularly if Washington decided to intervene," (Asselin 2018, pg. 70). Concluding an agreement at Geneva thus became an imperative.[73]

During a special meeting of the VWP Central Committee held in on early July, Ho explained that:

> "finalizing a settlement represented the only way to avoid US intervention and protect the long-term interests of the Vietnamese Revolution. Secretary Truong Chinh,

[69] Chen, Jian. "China and the Indochina Settlement at the Geneva Conference of 1954." In *The First Vietnam War: Colonial Conflict and Cold War Crisis*, by Mark Atwood Lawrence and Fredrik Logevall. Pg. 260. Cambridge, Mass: Harvard University Press, 2007.

[70] "America is ready to intervene in D.D. American circles in Geneva said: 'If the conference fails, the US will directly intervene in Indochina'", *Nhan Dan*, May 25, 1954.

[71] "America and its 'friends'", *People's Daily* , July 11, 1954.

[72] "[M]ost importantly, the chilling prospect of American intervention, convinced DRVN decision-makers to suspend their military struggle and try to settle their differences with France diplomatically...Despite reservations of their own, DRVN leaders accepted the Geneva accords because they hoped their implementation would preclude American military intervention," (Asselin 2018, pg. 13).

[73] "Without an agreement in Geneva, he thought, there would be no international limitations on what Washington could do in Indochina. Precluding American intervention thus became as compelling a reason to negotiate seriously for DRVN leaders as getting the French to stop fighting," (Asselin 2018, pg. 74).

> a loyal disciple of Ho at that time, seconded him on these points, claiming that the *likelihood of American involvement was higher than ever*. Getting a deal done on imperfect but reasonable terms, Truong Chinh argued, constituted their best chance to avoid war against an even more powerful enemy than France...The resolution also cautioned that unless a negotiated settlement was achieved promptly, Washington would *probably intervene directly* and cause the balance of forces to "change to our disadvantage,"(Asselin 2018, pg. 76).

Logevall similarly concludes:

> "America's tough words...had had their effect. The threat of direct U.S. military involvement caused nervousness in Beijing and Moscow and helped persuade the Viet Minh to accept concessions in the final agreement—the sources make that clear," (Logevall 2013, pg. 612).

It is somewhat perplexing why communist forces would find the U.S. threat in April non-credible, but in June and July would find the possibility of U.S. intervention much more likely. After accurately calling the American bluff in spring, combined with the fact American intervention in summer would likely involve a much more substantial troop contribution by the U.S.—Dulles expressed that while "six weeks earlier American air and naval power and a token land force' would have been enough, now four or five U.S. divisions would in all likelihood be required" (Logevall 2013, pg. 573)—one might naturally conclude that actual chance of U.S. intervention after Dien Bien Phu fell was negligible. Nonetheless, Chinese and Vietnamese estimations of American intervention had actually increased.

The most plausible explanation for the outcome is the domestic politics in general, and politics in Congress specifically, that were at play in the different time periods. In later winter and early spring, public expression from Congress mostly seemed opposed to U.S. involvement. Senators Stennis and Mansfield, for example, were vocal in their opposition to sending 200 air force mechanics to aid the French in Indochina, arguing that this might get the U.S. into a shooting war it had no interest in. Members of Congress also complained about being left out of the loop. After the Fall of Dien Bien Phu, however, Congress began exhibiting much more hawkish sentiment. On the Democratic side of the aisle, for example, Senator Lyndon Johnson stated on May 6th "We have been caught bluffing by our enemies". As Dien Bien Phu fell, the New York Times reported "Democrats Open All-Out Assault on Administration Foreign Policy."[74] The New York Times described it as "An all-out Democratic attack on the Eisenhower Administration's foreign policy, the first such attack since the President took office."[75] Johnson stated that the situation constituted a "stunning reversal" and

[74]White, William S. "Democrats Launch Attack On Dulles' Foreign Policy; Truman and Johnson Lead Assault—Latter Fears U.S. 'Naked and Alone' Democrats Open All-Out Assault On Administration Foreign Policy." *The New York Times*, May 7, 1954, sec. Archives. https://www.nytimes.com/1954/05/07/archives/democrats-launch-attack-on-dulles-foreign-policy-truman-and-johnson.html.

[75]Ibid.

that "American foreign policy has never in all its history suffered such a stunning reversal."[76] Johnson's speech was "the first public indictment of the Administration in world affairs by any member of the Democratic Congressional hierarchy". Johnson described the moment as a painful "picture of our country needlessly weakened in the world today".[77] Democratic Senators Lehman, Gillette, and Green expressed similar sentiment. Democratic Senator Gillette "accused the Administration of falling into a diplomatic disaster' in Geneva leading to the collapse of American leadership among the free nations."[78]

Table 5.1 Indochina 1954

Subcrisis	Time Period	Public Congressional Sentiment	Perceived Credibility	Outcome
Dien Bien Phu	March to early May	Congressional concerns over mere 200 technicians	Low	Ignore Threat
Geneva	Mid May Through July	Congressional Demands for Firmer Stand After Fall of DBP	Moderate	Negotiate with Concessions

Data from congressional speeches (described in Chapter 2) confirms the change in rhetoric prior to and after the Fall of Dien Bien Phu. From February to May, overall sentiment in Congress, amongst both Democrats and Republicans, was opposed to U.S. intervention. By the end of May, however, both Democrats and Republicans were much more hawkish in their sentiment. Thus seeing that the White House was no longer constrained by Congress—and indeed, being attacked by the legislature for not doing enough—communist leaders now took the U.S. threat far more seriously.

The administration, moreover, was highly conscious that domestic debate over war powers affected the crisis credibility of the United States. After the end of the Geneva conference, Dulles gave "considerable thought to the possibility of issuing a statement about certain heretofore unclarified aspects of the Indochina matter", but realized there would be significant disadvantages in doing so: "Perhaps more important is that it gives the Communists a 'case study' of how we operate in these matters from the standpoint of our own Constitution...This might tempt them in the future to try to make some close calculations—perhaps miscalculations—to our disadvantage."[79] Thus, while the administration was privately recognizing that its ability to intervene was severely limited absent formal authorization from Congress, this was a reality it did not want to broadcast to adversaries.

[76] Ibid.
[77] Ibid.
[78] Ibid.
[79] *Foreign Relations of the United States*, 1952–1954, Indochina, Volume XIII, Part 2, eds. Neal H. Petersen and John P. Glennon (Washington: Government Printing Office, 2010), Document 1101. https://history.state.gov/historicaldocuments/frus1952-54v13p2/d1101.

Laos (1961-1962)

Even after the 1954 Geneva Accords divided former French Indochina into four states—North Vietnam, South Vietnam, Laos, and Cambodia—small scale fighting continued. By the time John F. Kennedy came into office, Laos—neighboring North Vietnam to the west—had become the battleground of focus. Close advisor to the President Ted Sorensen wrote, "In a round of conferences with his own advisers during his first two months in office, Kennedy devoted more time and task force studies to this subject [Laos] than to any other," (Sorensen 2013, pg. 640). Indeed, in a January 19, 1961 meeting with the new President the day before his inauguration, the situation in Laos was conveyed by the departing Eisenhower to be the most pressing issue for the next administration (McNamara & VanDeMark 1996). Kennedy wrote of the meeting: "I came away from that meeting feeling that the Eisenhower administration would support intervention—they felt it was preferable to a communist success in Laos," (Rust 2014, pg. 23). While Eisenhower had an influence over Republicans in Congress, others gave Kennedy a different opinion on the matter. Mike Mansfield of the Senate Foreign Relations Committee advised the new President to limit U.S. involvement in Laos (Rust 2014, pg. 23).

By March, Kennedy had chosen to pursue the diplomatic route fist, but considered the threat so grave as to keep consideration of military force alive. A close adviser to President Kennedy, Ted Sorensensen, wrote:

> "Kennedy insisted that a cease-fire precede negotiations. *He warned that the United States would otherwise, however unwillingly, be required to intervene militarily on the ground to prevent the takeover of Laos by force.* He saw to it that this message was conveyed to the Red Chinese through the ambassadorial channel in Warsaw; that it was conveyed by the British—after he personally saw Macmillan at Key West—to their Soviet co-chairman of the Geneva Conference; and that it was conveyed by Nehru and Ambassador Thompson to Khrushchev. He conveyed it himself to Soviet Foreign Minister Gromyko in their first meeting at the White House," (Sorensen 2013, 642).

According to Arthur Schlesinger—future author of *The Imperial Presidency*, but a Kennedy adviser at the time—Kennedy wanted peace but knew the threat of force was needed to force such an outcome: "Kennedy's objective remained a political settlement...But, unless the Russians believed that he was ready to go down this road [the use of military force], there would be no incentive for them to accept a political solution," (Schlesinger 2002, pg. 333). Coercive diplomacy thus became the policy of the United States.

In a show of force, Kennedy placed U.S. forces in Okinawa and Japan on alert on March 21, and additionally "dispatched a five-hundred-man helicopter unit to the Thai air base nearest to Laos, sent stockpiles of U.S. supplies and equipment in Thailand to bases near Laos,

and ordered the three aircraft carriers of the Seventh Fleet into the Gulf of Siam," (Hall 1994, pg. 97). Nevertheless, the President has highly reluctant to actually utilize military force in Laos. Future Ambassador to the United Nations (and famous critic of the Vietnam War) during the Johnson Administration, George Ball recalls of March 1961:

> "[Kennedy] met with the Congressional leadership, and they made it very emphatic to him that, to put American military force into Laos just was not on...I think [Congressional reaction] was the deciding factor as far as the President was concerned."[80]

Nevertheless, on March 23, 1961 Kennedy publicly threatened U.S. intervention at a press conference.[81] The press conference not only sought to put communist forces on notice—such warnings had already been passed repeatedly through multiple private channels—but also to garner domestic support in the United States, and to make this public mobilization visible to U.S. adversaries:

> "The position of this Administration has been carefully considered, and we have sought to make it just as clear as we know how, to the governments concerned...we strongly and unreservedly support the goal of a neutral and independent Laos, tied to no outside power or group of powers, threatening no one, and free from any domination...if in the past there has been any possible ground for misunderstanding of our desire for a truly neutral Laos, there should be none now...
>
> No one should doubt our resolutions on this point. We are faced with a clear and one-sided threat of a change in the internationally agreed position of Laos...
>
> My fellow Americans, Laos is far away from America, but the world is small...The security of all Southeast Asia will be endangered if Laos loses its neutral independence. Its own safety runs with the safety of us all, in real neutrality observed by all...I know that every American will want his country to honor its obligations to the point that freedom and security of the free world and ourselves may be achieved."[82]

Kennedy further noted that "the Secretary of State informed the members and leaders of the Congress, and the House and Senate, in both parties, of the situation and brought them up to date."[83]

Despite Kennedy's threat and call for an immediate ceasefire, North Vietnamese forces on April 11 expanded a military campaign in southern Laos in order to aid the Pathet Lao (Guan 1997, pg. 179). In response, Kennedy ordered "four hundred 'civilian' Special Forces personnel in Laos to put on their military uniforms and join the Royal Lao Army units at

[80]George W. Ball, recorded interview by Larry J. Hackman, February 16, 1968, pg. 8, John F. Kennedy Library Oral History Program. https://www.jfklibrary.org/asset-viewer/archives/JFKOH/Ball%2C%20George%20W/JFKOH-GWB-03/JFKOH-GWB-03.

[81]John F. Kennedy, The President's News Conference. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. https://www.presidency.ucsb.edu/node/236187.

[82]Ibid.

[83]Ibid.

the front lines. The U.S. State Department announced this change in policy. By accepting the increased risk of U.S. casualties in Laos, Kennedy hoped to make his threat of military intervention more potent and credible," (Hall 1994, pg. 99).

Nevertheless, adviser to the president Roger Hilsman recalled that during this time period "At home Kennedy was assailed from all sides...From both the press and Congress there was opposition to the commitment of American troops...when the President consulted the leaders of both parties, he found that they were also united in opposing any commitment of American troops to Laos. The failure to transmit a much stronger signal of American Intentions than putting our advisers in uniform probably cost the Lao troops fighting the Communists dearly," (Hilsman 1967, pg. 134).

By April 24 Beijing, Hanoi, and Moscow agreed to reconvene a conference at Geneva but fighting on the ground did not stop (Hall 1994, Schlesinger 2002). Indeed, as early as April 19, Soviet Minister of Foreign Affairs, Andrei Gromyko had promised an immediate ceasefire, but only four days later North Vietnamese and Pathet Lao troops captured another key city (Guan 1997, pg. 190). By April 26, it was realized that while a substantial intervention against the wishes of Congress was not a realistic possibility, the administration would have to bluff a willingness to intervene in order to prevent the fall of Laos to communist forces. According to the notes of a White House meeting, there was "general agreement" among Kennedy's top advisers that direct U.S. military intervention "would be unjustified, even if the loss of Laos must be accepted." Nevertheless, "*the possibility of a strong American response [was] the only card left to be played in pressing for a cease-fire, and accordingly the President explicitly refused to decide against intervention at this time.*" (Rust 2014, pg. 37).

The next day, Kennedy called leaders from Congress to the White House for a briefing on the situation in Laos. Admiral Burke made the case for US military intervention, warning "strongly and repeatedly throughout meeting...that unless US prepared intervene militarily in Laos, all Southeast Asia will be lost."[84] Nevertheless, Burke admitted that military operations would be extremely difficult. He opined that the United States "must be prepared for [a] tough, long, and hard war, which may well involve war with China."[85] The lawmakers thereafter unanimously opposed intervention in Laos (Rust 2014, pg. 37). A memo recounting the meeting reported the congressional attitudes:

> "While expressing different shades of views, with Mansfield at one end of spectrum and Bridges at other, there was complete unanimity and strong view among all that, even recognizing possible consequences to our position in remainder Southeast Asia, we should not introduce US forces into Laos. In addition to military problem,

[84] *Foreign Relations of the United States*, 1969–1976, 1961–1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 65. https://history.state.gov/historicaldocuments/frus1961-63v24/d65.

[85] Ibid.

> Congressional group also seemed strongly influenced by general impression among them that Laotians unwilling to fight for selves. However, it appeared there would probably be considerable support for introduction US forces into Thailand and South Viet-Nam."[86]

Deputy Under Secretary for Political Affairs U. Alexis Johnson recalled that "the result of the meeting was that there was strong...resistance by the Congressional leaders to any intervention. Although from then on we went through various maneuvers, we went through various feints, I would call them, of a military kind, and of a political kind, it was quite clear in the minds of all of us that, whatever happened, we were not going to militarily intervene."[87]

At that same time, Kennedy explained to the British prime minister that he "face[d] a difficult political dilemma....For, if they sought a political settlement and Laos in the end went over to the Communist side, their Republican opponents would be quick to accuse them of appeasement. Equally, if they were obliged to authorise military intervention, they would be criticised on the basis that, as in Korea, a Democrat Government had embarked on war."[88] Thus, while bluffing a willingness to intervene, the Kennedy Administration was aware of the criticism Truman received for intervening unilaterally in Korea and sought to not expose itself to the same criticism.

Again, at a May 1 White House meeting amongst Secretary of Defense Robert McNamara, Secretary of State Dean Rusk, and others, the lack of support from Congressional leaders for intervention was specifically noted.[89] When a U.S. ally inquired as to the likely American response if the Geneva conference collapsed, Vice President Johnson admitted "that because of [the] present state of American public opinion it is not possible to speak with finality at this time. [The] US Congress believes [the] public is in no frame of mind to send American boys to fight in Laos," (Henry 2022, pg. 181).[90] Similar concerns over congressional and popular support animated the administration's decision-making with regard to neighboring Vietnam. A planning paper from the Public Affairs staff of the State Department written in July 1961 declared that:

> "Before we could use force or publicly announce our decision to use force...American public opinion would have to be conditioned to support such action. The Congress would also have to be fully informed and convinced of the necessity for such action,"(Gibbons 1986, pg. 56).

[86] Ibid.

[87] U. Alexis Johnson, recorded interview by William Brubeck, November 7, 1964, pg. 10, John F. Kennedy Library Oral History Program.

[88] CAB 128/35 Original Reference CC 1 (61)-75 (61), 1961 17 Jan-19 Dec http://filestore.nationalarchives.gov.uk/pdfs/large/cab-128-35.pdf.

[89] *Foreign Relations of the United States*, 1961–1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 73. https://history.state.gov/historicaldocuments/frus1961-63v24/d73.

[90] Citing Bangkok's 2096 to Washington, May 19, 1961, PPK, NSF, TaC, Box 242a, JFKPL.

Ted Sorensen recalls in his memoirs of the Kennedy White House that despite Kennedy's private reluctance to intervene, publicly "he did not alter his posture (which combined bluff with real determination in proportions he made known to no one) that the United States would have to intervene in Laos if it could not otherwise be saved. That posture, as communicated by his March 23 news conference, by an order for American military advisers in Laos to don their uniforms and by further preparations to send a contingent to Thailand, helped persuade Khrushchev not to overplay his hand," (Sorensen 2013, pg. 464). Thus, while in reality Kennedy was unwilling to intervene in the face of congressional opposition, he publicly bluffed a willingness to do so in order to maintain a deterrent threat against U.S. adversaries.

Certain members of Congress, moreover, seemed to actively support this public threat of unilateral action by the President. In a May 7 appearance on ABC, for example, Senate Majority Leader Mansfield (D-Montana) and Senator George Aiken (R-Vermont)—both members of the Senate Foreign Relations Committee—expressed the position that although the President would confer with Congress before using the armed forces in Southeast Asia, he had the power under the Constitution to deploy troops as necessary even without formal congressional approval. Mansfield was specifically asked "Do you think the Congress would approve of sending troops to any of these [SEATO] countries?" and replied "I am quite certain that the President would confer with the necessary individuals in the Congress before any action was undertaken, but we must remember that under the Constitution, the President is charged with the conduct of our foreign policy, and he is the Commander in Chief of our armed services," (Gibbons 1986, pg. 30-31).[91]

On May 3 the immediate need for a decision by the President was deferred by a ceasefire agreed to in Laos. On May 12, a fourteen nation 'International Conference on the Settlement of the Laotian Question" was opened in Geneva (Rust 2014, pg. 37). A May 3 strategy paper for the Geneva Conference, nonetheless, still saw congressional support as key, stating:

> "To achieve these objectives we need: a) dramatic presentations at the Conference; b) military, political, economic, and psychological reinforcement in Laos, Thailand, and Viet-Nam before and during the Conference; and c) *mobilization of Congressional support and public opinion to strengthen the hand of the American*

[91] Gibbons writes of a similar conversation regarding neighboring Vietnam. In October 1961 "Symington and Diem also discussed the question of U.S. combat forces, and Symington took the same position that Mansfield and Aiken had taken earlier in the year, namely, that a decision to send U.S. forces was within the discretion of the President. (According to the cable, Symington added: "without referring it to Congress.") He also told Diem that once such a force was committed, "no responsible member of Congress would rise to ask that we back down." Symington, who later became a strong opponent of the war, made another interesting observation. He said that Congress did not like to be asked to "reaffirm" the President's power to use the armed forces before the President makes a decision to do so. Presumably he was basing this statement on the reluctance of Members of Congress to go on record in favor of the use of U.S. forces, preferring to let the President suffer whatever political consequences might attend such a decision."(Gibbons 1986, pg. 102).

negotiators."[92]

Despite the formal agreement for ceasefire in early May, communist forces continued their attacks throughout the Laotian countryside (Hall 1994, pg. 100). In early June Pathet Lao forces captured a base of the Royal Laotian Government (Guan 1997, pg. 194). Unlike in 1954 where communist delegates at Geneva perceived the U.S. as quite willing to walk away, in the summer of 1961 Zhou Enlai argued that the conference would not break down—despite the ceasefire violations—because the Americans did not want the conference to collapse (Guan 1997, pg. 199). An uneasy, often-violated truce would exist until the end of 1961.

By January 1962, communist forces again renewed their offensive—this time around Nam Tha. In a February 21 meeting with congressional leaders, "The President said that in the last seven months the only thing that has prevented the military overrunning the Royal Laotian Government forces has been...the threat of U.S. intervention...It is the opinion of the Chiefs of Staff that in a very short period of time the Pathet Lao and the others could overrun the country unless the U.S. and its allies intervene." Congressional leaders were clearly not excited, however, at the prospect of using force in Laos. The Senate Majority Leader, Mike Mansfield, thought that it might end in a war "far worse than when we got involved in Korea." Senator Fulbright, Chair of the Senate Foreign Relations Committee, agreed with Mansfield's sentiment, saying "I would not like to have us become formally involved." The Speaker of the House concurred that "it would be disastrous to become committed in Laos." Thus, overt intervention in Laos was considered a non-starter for the White House. Nevertheless, reflecting higher-ordered concerns, Kennedy "indicated that it would weaken our position to tell in advance about our plans."[93]

The White House was also receiving congressional criticism over the shaky legal basis for its actions in Southeast Asia—especially its dispatch of thousands of military advisers to South Vietnam. On March 14, 1962 the administration responded to a series of Senate Foreign Relations Committee inquiries, including the legal basis of the operations it was undertaking in the region:

> "Q. No. 3. (Unclassified) Would it be appropriate under the Constitution for the President to submit to the Congress a resolution covering the situation in Viet-Nam which would be comparable to the Formosa Resolution of 1955 and the Middle East Resolution of 1957?
>
> Answer:... the President has power under the Constitution to take the actions *presently* being carried on in Vietnam...On two occasions in the past, where it

[92] *Foreign Relations of the United States*, 1961–1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 81. https://history.state.gov/historicaldocuments/frus1961-63v24/d81.

[93] *Foreign Relations of the United States*, 1961–1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 297. https://history.state.gov/historicaldocuments/frus1961-63v24/d297.

seemed possible that the President would wish to commit United States forces to *combat* operations, President Eisenhower decided to invite Congress to associate itself with his exercise of his constitutional functions as Commander-in-Chief, primarily in order to provide a convincing demonstration of United States unity on the issues there involved. We have not thought that such action has been called for *to this point.* However, should circumstances develop in which a formal expression of Congressional support seems desirable, the President undoubtedly would not hesitate to seek an appropriate resolution.

...

Q. No. 4. (Unclassified) To what extent are the actions by United States military personnel in South Viet-Nam considered to be **combat** actions?

Answer: (Unclassified) As the President said in his Press Conference on February 14, "We have not sent **combat** troops in the generally understood sense of the word." The United States is assisting Vietnamese combat units with training, logistic, transportation and advisory personnel.

The nature of the activities in which United States military personnel are engaged in Viet-Nam is dictated by the very character of guerrilla war. Hostilities are not concentrated in any well-defined area; rather, fighting is likely to break out sporadically and without warning in any part of the country. The "front" is not fixed as in the classical situation; the front literally is everywhere. In these circumstances, as indicated in Question 1 above, the President has ordered our military personnel in Viet-Nam to fire back in self-defense if fired upon.

As noted above, United States military personnel in Viet-Nam are noncombatants. In the seven years since 1955 violence in Viet-Nam has claimed about 26,000 casualties. Of these, fifteen have been American personnel (four killed, ten wounded, one missing). Despite our increased activities in Viet-Nam, we would hope that these casualties can continue to be kept at a minimum."[94]

Thus, while the Kennedy Administration was willing to undertake small scale operations by "military advisers" outside substantial combat (albeit, with some casualties and fatalities) unilaterally, it rejected the Korean precedent and would have sought formal congressional authorization for combat operations. Thus, as in 1961, in the first few months of 1962, Congress was opposed to U.S. intervention in Laos. Attitudes began to change, however, after a heavy Pathet Lao attack launched against Nam Tha on May 6. A White House meeting on May 10 discussed the situation. A briefing paper argued that the U.S. deterrence of communist advances was failing:

"We believe that the deliberate violation of the cease-fire in Laos and the continuing military encroachments raise the possibility that the Communists may move on toward a military takeover of most of the country. We believe that fear of US intervention has in the past been the principal factor deterring the Communists from more aggressive military actions in Laos. We also believe recent actions imply a downgrading in their estimate of the risk of US intervention to check them

[94] *Foreign Relations of the United States*, 1961–1963, Volume II, Vietnam, 1962, eds. John P. Glennon, David M. Baehler, Charles S. Sampson, and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 108. https://history.state.gov/historicaldocuments/frus1961-63v02/d108.

and that a further downgrading is likely unless the United States takes action to reestablish the deterrent."[95]

By May 11 Kennedy, in contrast to his attitude in May 1961, was much more seriously contemplating intervention in May 1962. He had even "asked an aid to prepare a memo on the Formosa (1955) and Middle East (1957) Resolutions, with the intent of possibly sending a draft resolution to the Hill for approval prior to intervention"(Gibbons 1986, pg. 116). The next day, fellows Democrats—Senators Long, Symington, and Sparkman—advised the Secretary of State that if the U.S. was going to intervene militarily on any substantial scale there should be action by the legislature in the form of a joint resolution. They all concurred that it had been a error for Truman to become involved in the Korean war without such an authorizing resolution: "this silence-gives-consent business does not work too good...when the thing starts going poorly," Long said (Gibbons 1986, pg. 117).

Not only did the direct threat of loss costs drive the administration's thinking on securing formal authorization, but also higher ordered concerns with regards to deterrence. For example, an administration document listing steps to be taken to "make crystal clear to the communists our determination not to permit a military takeover of the territory" listed "develop[ing] appropriate bipartisan political support for the introduction of American forces into Laos for the purpose of enforcing an effective cease-fire—for example, by means of Congressional action similar to the Formosa Resolution."[96] The President clearly had the perceived credibility of the American intervention threat in mind, for example on May 13 asking "that in any press coverage, the question of our military intentions with respect to Laos be left open. The President desired to maintain vis-à-vis the Communist bloc an attitude of 'veiled ambiguity'."[97]

Like Eisenhower in 1954, Kennedy sought not to convey weakness in front of adversaries. Indeed, the topic was specifically mentioned in a meeting between the Director of Central Intelligence and former president Eisenhower during at Kennedy's request on May 13. Eisenhower suggested the U.S. would strengthen its position "by not disclosing under any circumstance our true intentions in Laos (that is whether we will or will not commit U.S. Forces). In other words, we must evidence willingness to supply a deterrent to improve our negotiating position."[98] Eisenhower also expressed belief in the "importance of some type of a

[95] *Foreign Relations of the United States*, 1961–1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 351. https://history.state.gov/historicaldocuments/frus1961-63v24/d351.

[96] *Foreign Relations of the United States*, 1961–1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 359. https://history.state.gov/historicaldocuments/frus1961-63v24/d359.

[97] *Foreign Relations of the United States*, 1961–1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 362. https://history.state.gov/historicaldocuments/frus1961-63v24/d362.

[98] *Foreign Relations of the United States*, 1961–1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and

joint resolution" from Congress for the situation.[99]

Kennedy's initial response to the action was to conduct another show of force. On May 12, the Seventh Fleet was sent to the Gulf of Siam and U.S. armed forces elsewhere in the Pacific were put on standby alert. On May 15th, Kennedy announced 5,000 U.S. Marines would be sent to Thailand to protect its territorial integrity.

In a meeting that same day with congressional leaders, the administration again laid out the case for its major troop deployment to Thailand. In general, congressional leaders approved of the move, but were concerned that Laos might be a distraction from more important locations such as Cuba or Berlin.[100] Kennedy agreed he would "not order U.S. military forces into Laos without further exhaustive study and consultation with Congressional leaders.[101] Similarly, a June 1 memo to the Secretary of State outlining plans in the event of military intervention states that "Presidential action would be preceded by consultation with the Congressional leadership. This consultation could result in a Joint Resolution, similar to the "Middle-East Resolution", if the leadership so desires."[102]

Moreover, the actually planning documents for an American intervention into Laos make clear that if U.S. forces served only as peacekeepers, mere congressional consultation would be sufficient—but if U.S. forces were to be engaged in actual combat, formal congressional authorization would be sought. Contingency planning from late May 1962 considered a variety of possible scenarios, depending on the success or failure of negotiations at Geneva. One contingency plan (The "Military Occupation of Southern Laos") required that "Domestically, the sanction of the United States Congress will be obtained before military action is initiated and steps will be taken to assure maximum national support for the execution of this plan." Likewise, a slightly smaller operation (The "Military Occupation of Laos Panhandle Only") would still seek formal approval: "The United States Government domestically will seek advance Congressional authorization for its action and will muster the greatest possible national support for its action."[103] Planning included the president appearing before Congress to formally request such approval, and even included a draft of the resolution. This scenario was likewise explicitly based on the "assumption" that "the sanction of the United States Congress will be obtained before military action is initiated." Contingency planning for a mere

Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 363. https://history.state.gov/historicaldocuments/frus1961-63v24/d363.

[99] Ibid.

[100] *Foreign Relations of the United States*, 1961–1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 368. https://history.state.gov/historicaldocuments/frus1961-63v24/d368.

[101] Ibid.

[102] *Foreign Relations of the United States*, 1961–1963, Volume XXIV, Laos Crisis, eds. Edward C. Keefer and Glenn W. LaFantasie (Washington: Government Printing Office, 1994), Document 383. https://history.state.gov/historicaldocuments/frus1961-63v24/d383.

[103] pg. 64.

peacekeeping action, however, viewed formal congressional approval as unnecessary: "While Congressional consultation would be required in this contingency, no Congressional resolution would be sought" because "No combat would be anticipated."[104]

Adversary Perceptions

While the Kennedy Administration thus sought to publicly convey a willingness to intervene in order to deter adventurism by communist forces, Beijing and Hanoi clearly recognized the resistance in Congress to an actual introduction of American forces into Laos in 1961. Zhou Enlai, for example, had echoed congressional sentiment when he noted in mid-April that "if Washington launched a partial war in Laos... it would encounter a conflict worse than the Korean War" (Zhai 2000, pg. 97). *People's Daily* specifically noted the April 27 meeting between the White House and congressional leaders in several articles, and specifically noted opposition to U.S. intervention from a Democratic Senator in a May 16 article. U.S. adversaries in 1961 thus perceived the domestic opposition Kennedy faced and discounted the threat of intervention accordingly. By early 1962, Zhou Enlai was thus encouraging the Pathet Lao to make advances on the battlefield (Zhai 2000, pg. 104).

By May 1962, however, Hanoi and Beijing had picked up on the changing sentiment in Congress after the attack on Nam Tha. *People's Daily* noted the May 15 meeting with congressional leaders in an article the next day, and May 19 article reported:

> At a press conference held on the 17th, Kennedy further revealed that the United States occupied Thailand and expanded its conspiracy to interfere in Laos. He yelled that he "has shown the great danger of shooting warfare in Asia." He said that it is impossible to say when the US military [would leave] Thailand. On the same day, Russell, Chairman of the US Senate Armed Services Committee, yelled, "It is necessary for the US forces currently strengthening Thailand's defenses to cross the border into troubled Laos."

Beijing thus paid close attention not only to statements from President Kennedy, but also from congressional leaders.[105] By June 1, *People's Daily* was reporting that the Kennedy Administration would be expanding the U.S. military presence in Laos.

Negotiated Outcome

W. Averell Harriman, the leader of the American delegation to Geneva, summed up the International Agreement on the Neutrality of Laos (1962) as "a good bad deal." Despite the formal agreement, North Vietnam maintained thousands of troops on the ground in Laos. The de facto control of the eastern portion of Laos would be crucial to the war effort in other parts of Indochina as it was used for the Ho Chi Min trail.

[104] pg. 86.

[105] Similarly, *People's Daily* would report on the activities of legislatures in other states—such as in the Parliament of the U.K. during the Laos crisis.

According to Zhai (2000), Soviet, North Vietnamese and PRC were all worried about threat of U.S. intervention. Nonetheless, greatest of threat was not agreed upon. The Nam Tha incident in 1962 showed that communist forces were quite willing to push the envelope, and the final outcome of the conference was not a great victory for the United States. Hilsman, writing soon after the actual events, confirms Zhai's analysis: "The Chinese Communists...although quite clearly wanting to avoid a war and fearing the consequences of an American intervention...apparently had a higher estimate than the Soviets of the risk that could be run before the United States would actually be provoked. But the Chinese still appeared willing to run high risks even when they recognized them as high,"(Hilsman 1967, pg. 132).

Ultimately, lack of information given off by Congress in public helped avoid undermining Kennedy's position, but the lack of clear support likewise made it difficult to earn a good deal at the bargaining table. Indeed, it seems that Soviet pressure on Vietnamese and Laotian forces to make a deal was what forced the agreement—not any true belief on the ground of an imminent American threat. Soviet consideration of issue linkage with simultaneous crises in Berlin and Cuba, for example, incentivized it to push less hard in a less critical area such as Laos in order to perhaps get better deals in these more important areas. "Kruschev was of the view that a settlement of the Laotian issue would appeal to Kennedy and thus improve the atmosphere for Berlin," (Guan 1997, pg. 199). The Vietnamese would later describe the agreement as being "forced down our throats by the Russians," (Guan 1997, pg. 201). Sorensen argued that the May 1962 maneuvers worked—the "Pathet Lao stopped, convinced that the United States meant business" (Sorensen 1965, pg. 647), but Blechman and Kaplan argued that communist forces on the ground only stopped their advance do to expected counter-pressure from the Soviet Union (Blechman & Kaplan 1978, pg. 173).

America's Vietnam War (1964-1973)

While the United States would avoid major combat operations in both 1954 and in the 1961-1962 Laos crisis, continued communist advances against South Vietnam created a dilemma for the Kennedy and Johnson administrations. By the time of his death, Kennedy had ordered 16,000 American military advisors into South Vietnam. While they officially were not involved in combat, the lack of a clear "front line" in Vietnam meant that these American soldiers often found themselves in combat situations.

Americanizing the Conflict (1964-1968)

Kennedy's assassination in late November 1963 was preceded three weeks prior by the assassination of South Vietnam's own leader, Ngo Dinh Diem. By the time Johnson was sworn in as President, the situation in South Vietnam had grown desperate. It was well understood within the administration that Johnson would seek formal congressional approval before using military force, however.[106] Walt Rostow later recalled "Johnson disapproved of Truman's failure to seek a congressional resolution in the Korean War. We understood that, should the occasion arise, he intended to be governed by Eisenhower's precedent in the Formosa and Middle East resolutions, where broad congressional support was sought before policies that might lead to military confrontations were carried out," (Gibbons 2014, pg. 231). Even as early as February 1964, the administration was actively strategizing how it could secure an authorization for the use of military force in Southeast Asia. A memo to the Secretary of State argued:

> We believe there is a fair chance that compliance can be enforced without substantial military engagement if there is a united expression of determination by the Executive and Congressional branches of the Government, backed by our people...if our objective is compliance with the 1954 and 1962 Agreements——and not the invasion of North Viet Nam or China——we may be able to achieve it without major military operations, but only if we are united, determined, and prepared for any level of escalation.[107]

It explained that:

[106] "I was determined, from the time I became President, to seek the fullest support of Congress for any major action that I took, whether in foreign affairs or in the domestic field. I believed that President Truman's one mistake in courageously going to the defense of South Korea in 1950 had been his failure to ask Congress for an expression of its backing. He could have had it easily, and it would have strengthened his hand. I had made up my mind not to repeat that error, but always to follow the advice I myself had given President Eisenhower. Concerning Vietnam, I repeatedly told Secretaries Rusk and McNamara that I never wanted to receive any recommendation for actions we might have to take unless it was accompanied by a proposal for assuring the backing of Congress," (Johnson 1971, pg. 115).

[107] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 43. https://history.state.gov/historicaldocuments/frus1964-68v01/d43.

"The essentials of a Congressional Resolution are:

- To call attention to the continued violation of the 1954 and 1962 Accords;
- To reaffirm the United States commitment to Southeast Asia under the Manila Pact;
- To reaffirm the United States commitment, made by three Presidents, to the continued independence of the people of South Viet Nam;
- To call on the President to use all the means at our command to enforce compliance with the 1954 and 1962 Accords."[108]

Nevertheless, for the time being, U.S. forces remained in their "adviser" capacity. As described in Chapter Three, Johnson—and his advisors—saw formal authorization for the use of military force as the sine qua non before major combat would be entered. Again in May 1964, the administration would consider seeking authorization from Congress to utilize military force in Vietnam. National Security Adviser McGeorge Bundy would express in late May "that such a resolution [(an AUMF)] is essential before we act against North Vietnam."[109] Nevertheless, the Administration was very cognizant about not seeking authorization if it would not be passed, with Bundy arguing to the President "no such resolution should be sought unless careful Congressional soundings indicate rapid passage by a very substantial majority."[110] Dean Rusk agreed: "It would be disastrous if Congress refused to vote a resolution proposed by the Administration."[111]

Moreover, higher ordered beliefs also drove the decision to seek formal authorization, as the White House hoped the resolution would encourage communist forces to back down. As the National Security Advisor and Secretary of Defense contemplated how to deter North Vietnamese violations of the 1954 and 1962 accords in June 1964, McGeorge Bundy opined:

> "In sum, there are military moves that we can take that would contribute to a continuing impression of firmness as we try to keep the Laos negotiations moving and to preserve our options concerning Viet-Nam. But it is at least doubtful that any combination of the moves listed above would in fact do the trick...[and been seen as] a continuing demonstration of US firmness...The action that most commends itself for this purpose is an immediate Congressional Resolution."[112]

[108] Ibid.

[109] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 167. https://history.state.gov/historicaldocuments/frus1964-68v01/d167.

[110] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 211. https://history.state.gov/historicaldocuments/frus1964-68v01/d211.

[111] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 210. https://history.state.gov/historicaldocuments/frus1964-68v01/d210.

[112] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 214. https://history.state.gov/historicaldocuments/frus1964-68v01/d214.

Similarly, after the Gulf of Tonkin incident, Bundy on August 5 sought to "take the occasion of [the Gulf of Tonkin] incidents and the perhaps transient unity they bring about in U.S. public opinion and the Congress, to move on to force Hanoi to cease its aggression and to return, essentially, to compliance with the 1954 and 1962 Accords."[113] Even after finally securing formal authorization for the use of force in August 1964, the administration did not commit major combat forces to Vietnam until the next year.

Even in early 1965, Johnson was concerned over whether the Gulf of Tonkin Resolution was sufficient for a substantial escalation. Early on February 7, 1965, Viet Cong forces attacked a U.S. air base at Pleiku, killing seven Americans and injury over one hundred. Johnson authorized Operation Flaming Dart in response, leading to air attacks against communist forces over the next three weeks. Soon after, a more sustained bombing campaign in the North—Rolling Thunder—began, and would continue for the next three years. A NSC meeting in February also contemplated the possible need for an additional congressional resolution in addition to the Gulf of Tonkin Resolution.[114] In this escalation of the war, Johnson met with former President Eisenhower to discuss the possibility of seeking additional authorization from Congress:

> "The President next referred to the Resolution the Congress had passed following the Tonkin Gulf incident, giving him authority to act. He asked General Eisenhower whether he thought that Resolution was strong enough, and ample to fill the need. General Eisenhower said that it had sounded to him very much like the Formosa Resolution which had left a large area of discretion and flexibility to The President, and that he thought that this is the way it should be. The President commented that the Formosa Resolution had been the model for this one."[115]

Having the agreement of arguably the most senior leader of the opposition party, the administration thus decided against seeking renewed authorization in early 1965. After the first American ground combat troops landed at Da Nang on March 8 and a substantial escalation in U.S. forces in Vietnam was contemplated in late string and early summer, the question of renewed authorization again came up. Even in June, Johnson was still considering asking for additional congressional[116] The Senate Majority Leader (Mansfield)—a dove skepti-

[113] *Foreign Relations of the United States*, 1964–1968, Volume I, Vietnam, 1964, eds. Edward C. Keefer, Charles S. Sampson, and John P. Glennon (Washington: Government Printing Office, 1992), Document 296. https://history.state.gov/historicaldocuments/frus1964-68v01/d296.

[114] *Foreign Relations of the United States*, 1964–1968, Volume II, Vietnam, January–June 1965, eds. David C. Humphrey, Ronald D. Landa, Louis J. Smith, and Glenn W. LaFantasie (Washington: Government Printing Office, 1996), Document 76. https://history.state.gov/historicaldocuments/frus1964-68v02/d76.

[115] *Foreign Relations of the United States*, 1964–1968, Volume II, Vietnam, January–June 1965, eds. David C. Humphrey, Ronald D. Landa, Louis J. Smith, and Glenn W. LaFantasie (Washington: Government Printing Office, 1996), Document 133. https://history.state.gov/historicaldocuments/frus1964-68v02/d133.

[116] *Foreign Relations of the United States*, 1964–1968, Volume II, Vietnam, January–June 1965, eds. David C. Humphrey, Ronald D. Landa, Louis J. Smith, and Glenn W. LaFantasie (Washington: Government Printing Office, 1996), Document 347. https://history.state.gov/historicaldocuments/frus1964-68v02/d347.; Document 343. https://history.state.gov/historicaldocuments/frus1964-68v02/d343.

cal of escalation in Vietnam—specifically advised Johnson at the time against seeking further authorization:

> "With respect to another Congressional resolution on the situation, I cannot see the value of it at this point whether it originates here or with you...if you make another request, at this time, in connection specifically with the use of ground forces, I am concerned at the possible reaction. It is not nearly as predictable as in the past when the requests have been for support of policy in general terms or for funds. A request at this time could set off a wave of criticism and of demands for inquiries which, in the end, even though a resolution were overwhelmingly approved, would not in any way strengthen your hand, render your task easier or make your burden of responsibility lighter."[117]

The problem thus was not that Congress would not have approved such a resolution in the summer of 1965—Arthur Schlesinger similarly admits in *the Imperial Presidency* that "Johnson could certainly have obtained congressional authorization beyond the Tonkin Gulf resolution for a limited war in Vietnam in 1965," (Schlesinger 1973, pg. 181)—nor even that the administration was unwilling to ask for it. Rather, members of Congress preferred not to again formally vote on one, communicating to the White House their preference for simply sticking with the Gulf of Tonkin Resolution. McNamara similarly recalls reporters asked about getting renewed authorization, but Senators had argued against this—hawks and doves both agreed another vote would be bad (McNamara & VanDeMark 1996, pg. 191). As in February, Johnson again consulted Eisenhower on the idea of needing additional approval, and the former President again opined it was unnecessary (Gibbons 2014, pg. 69). Dean Rusk similarly recalled in his memoir that the administration wanted to ask Congress for renewed authorization every year, but Congress pushed back against the idea (Rusk, Rusk & Papp 1991).

Nevertheless, even when deciding against the idea of securing additional authorization on top of the Gulf of Tonkin resolution, the Johnson Administration clearly paid close attention to informal congressional sentiment when deciding whether to Americanize the war in the summer of 1965. In a memorandum from the McGeorge Bundy to President Johnson, the National Security Adviser specifically analyzed domestic political support in the United States. Bundy wrote:

> "The most vocal current comment on the Vietnam situation is coming from the Congress. Senators Morse and Gruening remain convinced that we must pull out. There is another group, somewhat larger, which could be termed "reluctant realists" whose viscera says get out but whose heads tell them the present policy is

[117] *Foreign Relations of the United States*, 1964–1968, Volume II, Vietnam, January–June 1965, eds. David C. Humphrey, Ronald D. Landa, Louis J. Smith, and Glenn W. LaFantasie (Washington: Government Printing Office, 1996), Document 341. https://history.state.gov/historicaldocuments/frus1964-68v02/d341.

> unavoidable. Senators Mansfield, Church and Fulbright seem to fall in this category. Once again, the problem is one of offering a plausible alternative that would assure the existence of a non-Communist South Vietnam.
>
> The most recent Congressional development is the attack spearheaded by Representative Melvin Laird who states that unless we go for total victory we shouldn't commit U.S. ground troops. He threatens withdrawal of Republican support in the House. It is too early to judge the appeal of this maneuver.
>
> Despite obvious Congressional disquiet, Congressional support has been demonstrated in the 512-2 vote last August on the Southeast Asia Resolution and in the votes approving the President's request for a supplemental Vietnam appropriation (408-7 and 88-3)."[118]

On July 27, Johnson met with congressional leaders over the critical decision to either Americanize the war or to "get out." Congressional leaders overwhelmingly supported the President's inclination to substantially increase the American commitment.[119] Gibbons, in his history of congressional-executive relations in the Vietnam conflict, writes of Johnson's July 27 meeting with Congress in which the critical decision to escalate was made:

> "After the President's comments and statements by Rusk, McNamara, and Lodge, congressional leaders voiced their support for sending additional troops to Vietnam....Those present at the meeting appear to have understood and to have accepted the fact that the decision being made by the President with their concurrence or acquiescence could involve the United States in a long, costly and possibly inconclusive land war in Asia, despite the President's emphasis on negotiations...Senator Mansfield was the only leader at the meeting who opposed the sending of more troops, but he said that as a Senator and as majority leader he would support the President's position," (Gibbons 2014, pg. 428-430).

After Johnson made a high profile, televised address announcing a major escalation in the U.S. commitment to Vietnam on July 28, Senate Majority Leader Mansfield praised Johnson's engagement with Congress, saying "I know of no President who has consulted more with Congress than has Lyndon B. Johnson," (Gibbons 2014, pg. 445). A clear majority in Congress supported the White House's choice for escalation (Gibbons 2014). Robert McNamara recalled in his memoir:

> "In Congress approximately ten senators and seventy representatives could be counted severe critics—including such influential figures as William Fulbright, Mike Mansfield, and Wayne Morse—but, on the whole, the legislative branch remained supportive," (McNamara & VanDeMark 1996, pg. 216).

[118] *Foreign Relations of the United States*, Volume III, Vietnam, June–December 1965, eds. David C. Humphrey, Edward C. Keefer, Louis J. Smith, and Glenn W. LaFantasie (Washington: Government Printing Office, 1996), Document 33. https://history.state.gov/historicaldocuments/frus1964-68v03/d33.

[119] *Foreign Relations of the United States*, Volume III, Vietnam, June–December 1965, eds. David C. Humphrey, Edward C. Keefer, Louis J. Smith, and Glenn W. LaFantasie (Washington: Government Printing Office, 1996), Document 94. https://history.state.gov/historicaldocuments/frus1964-68v03/d94.

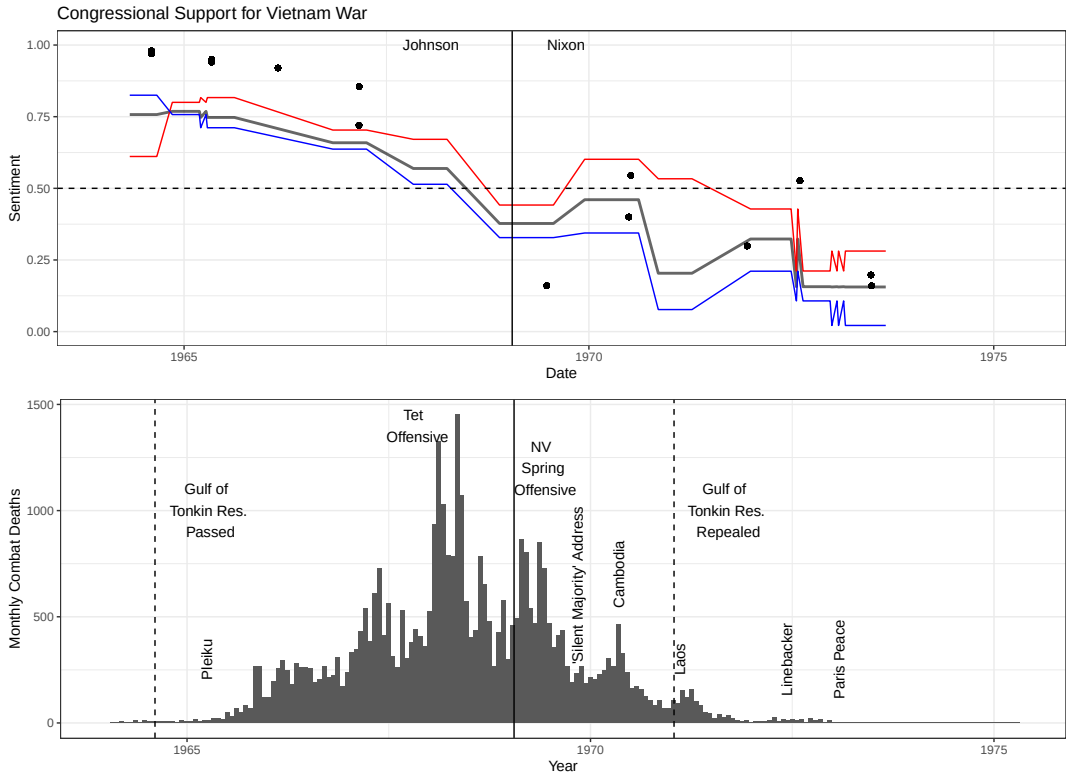

Figure 5.3 Support in Congress for Vietnam War and Casualties over Time

Gibbons' official history of congressional involvement in the war—commissioned by the Senate Foreign Relations Committee and conducted by the Congressional Research Service—found that "[S]trong bipartisan support for the war" existed at the time of the escalation and would continue through 1967 (Gibbons 2014, pg. 671).

Gibbons's finding, moreover, matches the results yielded by examining the "congressional support scores" described in Chapter 2, plotted in Figure 5.3, above. The black points on the plot represent the share of a congressional vote that supported the use of force, while the gray, red, and blue lines represent the overall congressional sentiment (gray), Republican sentiment (red), and sentiment amongst Democrats (blue). In line with Gibbons's findings—and those of others (Gelb & Betts 2016)—congressional support for escalation in Vietnam was quite robust. While it is true that certain members of Congress that voted for the Gulf of Tonkin Resolution were actually against escalation (note the difference between the sentiment curves and the actual dots in 1964 representing the votes of the Gulf of Tonkin Resolution), congressional sentiment was still overwhelmingly in favor of escalation—-across parties—even if it was far from unanimous.

Moreover, while some have argued that the war was somehow illegitimate because of controversy surrounding the Gulf of Tonkin incident (specifically whether a second attack even

occurred), this seemingly assumes that the Gulf of Tonkin incident in itself was a necessary condition for the Vietnam War (a proposition few would support). Given the administration's efforts to secure authorization from at least February 1964 and its internal, oft-repeated assertions that it would be politically impossible to commence substantial combat operations without legislative authorization, it is likely the administration would have simply used some other opportunity to gain authorization. Moreover, while Johnson seriously considered securing *further* authorization, it was either the leader of the opposition party (former President Eisenhower) or congressional leaders themselves that discouraged this—instead arguing the Gulf of Tonkin Resolution was more than sufficient. The Senator Majority Leader (Mansfield) himself, while disinclined to support escalation, told Johnson a new resolution would still be "overwhelmingly approve[d]", but that Congress would prefer not to have the vote. Thus, it is hard to argue that Johnson lacked congressional support when he chose to Americanize the war in Vietnam.

Adversary Perceptions

Prior to the passage of the Gulf of Tonkin Resolution in August 1964, U.S. adversaries perceived the U.S. threat as weak given a lack of domestic support for the use of force (Asselin 2018). On June 29, 1964, for example, Zhou Enlai noted "Everywhere the American people are saying that they do not want war. The United States deployment of troops to South Vietnam aroused much domestic opposition."[120]

After the passage of the congressional resolution, adversary perceptions changed substantially. In fact, after the passage of the Gulf of Tonkin Resolution, leaders in Hanoi updated their beliefs—"the Politburo predicted that the US might send 'hundreds of thousands' of troops to the South," (Porter 2018). The North Vietnamese clearly interpreted the passage of the Gulf of Tonkin Resolution as a credible sign that the United States was ready, willing, and able to deploy massive military power to Southeast Asia. But, instead of backing down—as Washington has hoped, and had believed to be the case with other adversaries when similar resolution were passed in 1955, 1957, and 1962—North Vietnam chose to meet the challenge and escalate the conflict even further.[121] Vietnam War expert Pierre Asselin writes:

> "Shortly after the Tonkin Gulf incident and ensuing congressional action, Le Duan and the Politburo convened to decide their next move...whereas Hanoi could be

[120]Cable from the Chinese Foreign Ministry, 'Premier Zhou Talked about the Relationship between China-Soviet Difference and the National Liberation Movement', June 29, 1964, Wilson Center Digital Archive, https://digitalarchive.wilsoncenter.org/document/121188.

[121]It should not be completely surprising that some U.S. adversaries met with a formal congressional authorization for the use of military force will refuse to back down—even when interpreting it as a credible threat. This is because those states that are most likely to be resolved enough to stand firm even in the face of a credible threat are also the ones most likely to escalate a crisis to the point of Congress passing a formal authorization for the use of military force in the first place (See, e.g., Fearon (2002)).

> patient before, that changed after Congress passed the Gulf of Tonkin Resolution. Time suddenly became of the essence for DRVN leaders...[and] in September 1964 [Le Duan] and the Politburo fatefully chose to deploy combat units of the DRVN's own armed forces, the PAVN, to the South...The Politburo thus settled on total war to achieve Southern liberation and national reunification."

Asselin argues that the North Vietnamese closely connected domestic politics in the United States with threat credibility: they believed the President to be substantially constrained by congressional and popular opinion:

> "By their reading of American political history, presidential administrations could only do as much as the people allowed them to do...Armed with these understandings, it devised strategies and tactics intended less to attrit US forces—to kill as many troops as it could—than to destroy the willingness of the American people to support the war, of Congress to finance it, and of the White House to prosecute it...it also knew, *largely on the basis of its interpretation of the recent war in Korea, that any presidential administration would have a tough time sustaining a war in Vietnam without popular and congressional approval.* The centrality of that diplomatic front in Hanoi's strategic calculus...eventually became more important than the ground war in the South...it aimed to defeat the United States by using circumstances outside Vietnam to deny Washington the ability to win," (Asselin 2018, pg. 119-120).

By April of 1965—soon after the first arrival of American ground combat troops at Da Nang—North Vietnam instituted a mass mobilization campaign to prepare for the expected confrontation with the United States (Asselin 2018, pg. 120). By the summer of 1965, Hanoi and Beijing were also aware that while the U.S. was choosing to escalate, this was not without controversy. Communist leaders were even attuned to the "war powers" issues faced by the President. Zhou En Lai noted to Ho Chi Minh "The United States continues to send large numbers of reinforcements and still is in a difficult situation. This is going to become an issue for the Congress and the Constitution, one dragging in the issue of a declaration of war."[122] North Vietnamese Deputy Prime Minister Le Thanh Nghi recounted in his discussions with other socialist leaders in the summer of 1965:

> "Only if Vietnam has great resolve and China also has great resolve will the enemy have to revise his calculations, and only then will the enemy fear us. Vietnam has a spirit that does not fear death, that does not fear sacrifice, and that is why for the past several months the Americans have had to reconsider their plans. However, we should also be vigilant, because every time the enemy makes a new escalation in the war, he also begins to talk about peace in order to deceive U.S. domestic public opinion."[123]

[122]Record of Conversation between Premier Zhou Enlai and Chairman Ho Chi Minh, June 15, 1965, Wilson Center Digital Archive, https://digitalarchive.wilsoncenter.org/document/165383.

[123]Lê Thanh Nghi, 'Report on Meetings with Party Leaders of Eight Socialist Countries', 1965, Wilson Center Digital Archive, https://digitalarchive.wilsoncenter.org/document/134601.

1964−65 Escalation in Vietnam

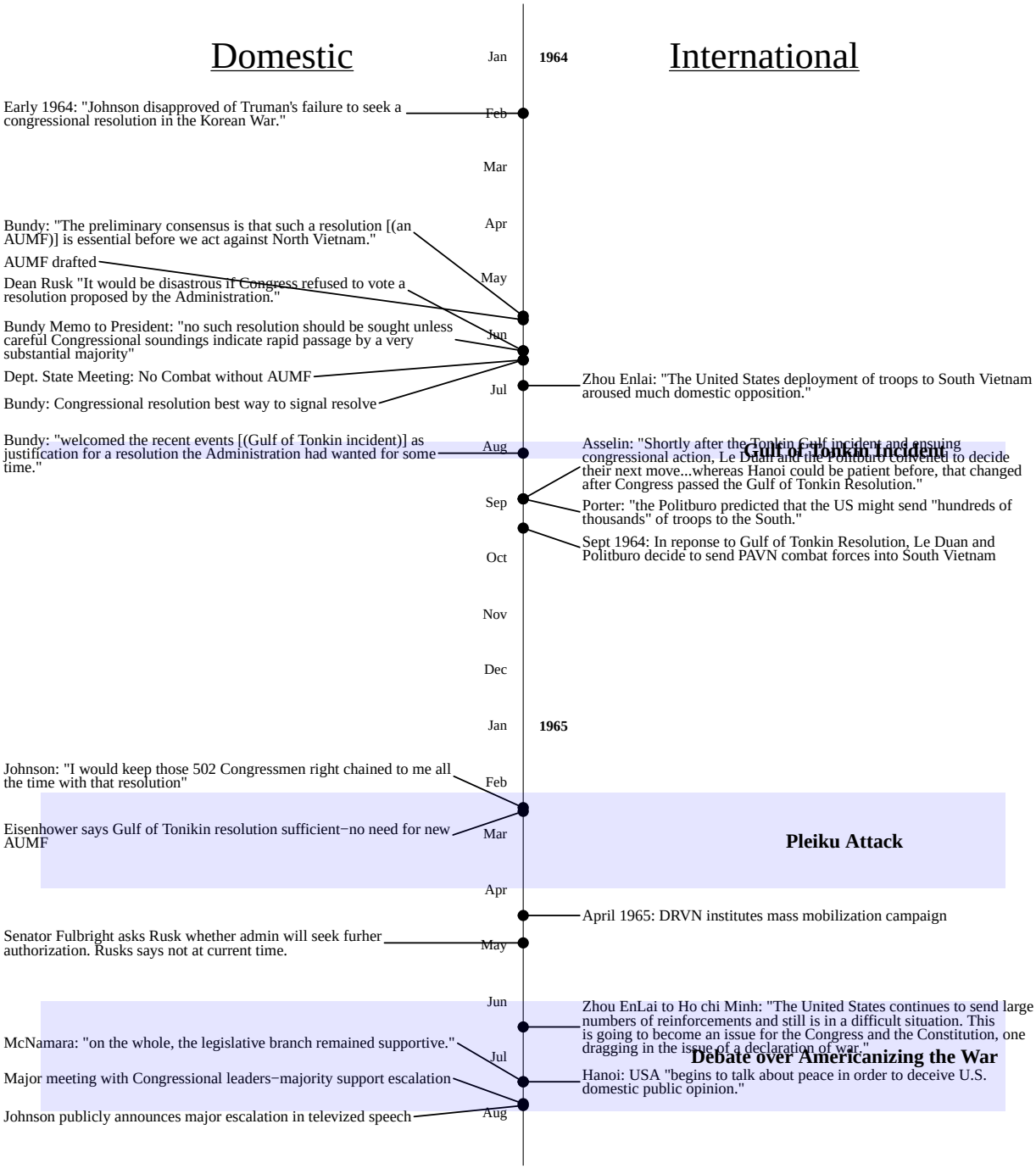

Figure 5.4 Timeline of Vietnam Escalation (1964-65)

Thus, domestic politics in the U.S. were seen as key. In early 1967, a report by Nguyen Duy Trinh to the 13th Plenum of the Central Committee of the Communist Party of Vietnam showed that:

> The concrete goals of our application of the "fighting while talking, talking while fighting," stratagem are:
>
> ...
>
> 2. To exacerbate the enemy's *domestic problems* and his international difficulties in order to limit his ability to expand the war in South Vietnam and to escalate his attacks against North Vietnam.[124]

Vietnamese leaders were thus well aware of the domestic politics taking place in the United States, and indeed specifically attempted to influence them. In clear contrast to the Imperial Presidency thesis, Hanoi wagered that the President could *not* do whatever he wanted.

The Tet Offensive

While support for the war in Vietnam has been gradually waning over time, the Tet Offensive launched in January 1968 created a wholly new crisis in domestic support for the war. Secretary of State Dean Rusk recalled in his memoirs that prior to Tet "Politically, although support for our policies were eroding, we still had the support of Congress and the country. But after Tet things changed," (Rusk, Rusk & Papp 1991, pg. 475).

Johnson had a meeting with his most senior foreign policy advisers on February 12, and in contemplating a reaction to Tet, much of the conversation focused on contemporaneous criticism from Congress and the expected reaction of the legislature toward possible next steps by the executive. There was even (again) consideration of seeking renewed authorization from Congress. Secretary of Defense McNamara opposed such a mover, however—"I do not think it wise to go to the Congress asking for additional legislation."[125] The next day, in a phone call between the President and the Secretary of State, the President contemplated how to deal with congressional criticism:

> "Now I think we have to try first to see if there are any initiatives——political or diplomatic——that we can get in the mill that will cover that front a little bit for us where we are just not static and doing nothing. We ought to see if there is anything possible there. I think the second thing we ought to see is what would be the best legislative approach to this thing before we act on additional troops. *We're going*

[124] Report by Nguyen Duy Trinh to the 13 Plenum of the Central Committee of the Communist Party of Vietnam, January 23, 1967, Wilson Center Digital Archive, https://digitalarchive.wilsoncenter.org/document/113973.

[125] *Foreign Relations of the United States*, Volume VI, Vietnam, January–August 1968, eds. Kent Sieg and David S. Patterson (Washington: Government Printing Office, 2002), Document 70. https://history.state.gov/historicaldocuments/frus1964-68v06/d70.

> *to have to act*——we're going to have to call them up and we don't want to assume the burden of having an affirmative resolution because they can filibuster it and we can't get it passed and then that would be a failure and that would fold."[126]

Johnson thus sought to react to Tet with another massive infusion of troops. By the end of February, General Westmoreland (Commander of MACV—all U.S. military forces in Vietnam) and General Wheeler (Chairman of the Joint Chiefs of Staff) officially requested another 206,000 U.S. troops be deployed to Vietnam. The problem this time—unlike past escalations—is that popular and congressional opinion had reached a breaking point and now opposed such a move. Johnson thus reacted to the proposed troop increase by instructing the principals of the National Security Council to consider their options:

> "I wish you to develop by Monday morning, March 4, recommendations in response to the situation presented to us by General Wheeler and his preliminary proposals. I wish alternatives examined and, if possible, agreed recommendations to emerge which reconcile the military, diplomatic, economic, congressional, and public opinion problems involved,"(Johnson 1971, pg. 393).

Specifically, Johnson focused on congressional problems:

> "What actions would we have to ask Congress to take? What problems could be expected on the Hill?...What problems would we face with public opinion?"(Johnson 1971, pg. 393).

In the March 4 meeting, it was realized that Congress would have to cooperate if the U.S. were to further escalate—and even if the White House took a far less escalatory option well short of the two hundred thousands additional troops requested. For example, Congress would be needed at a minimum to pass legislation extending troop enlistments.[127] The potential—again—of renewed authorization from Congress was considered and rejected. Secretary of State Dean Rusk opined that "I would go to Congress for specific actions [e.g., enlistment extensions] not for a statement of policy such as the Tonkin Gulf Resolution. We do not want a general declaration." Johnson seemingly agreed, but was even worried about asking for extensions—"In the Senate we face a real problem. Anything that requires any authority may result in a filibuster." Johnson later admitted in his memoirs that the anticipated congressional reaction had caused him to "moderate" his initial reaction.[128]

[126] Emhasis added. *Foreign Relations of the United States*, Volume VI, Vietnam, January–August 1968, eds. Kent Sieg and David S. Patterson (Washington: Government Printing Office, 2002), Document 111. https://history.state.gov/historicaldocuments/frus1964-68v06/d111.

[127] *Foreign Relations of the United States*, Volume VI, Vietnam, January–August 1968, eds. Kent Sieg and David S. Patterson (Washington: Government Printing Office, 2002), Document 104. https://history.state.gov/historicaldocuments/frus1964-68v06/d104.

[128] "At the meeting on March 12...I also requested a new sounding of opinion from Congress, especially from men on the Armed Services committees. I told them that they had moderated my judgment at our meeting on March 4. At that time I had almost been ready to call up a large number of reserves, not for Vietnam alone but to strengthen our overall military position; to ask Congress for the authority to call additional selected reservists,"(Johnson 1971, pg. 406).

The next day, Johnson and advisers considered congressional strategy. Specifically, he asked that a friendly Senator be inquired whether certain actions might be supported:

"See if he can swallow:
—a call-up of reserves
—authority to call specialists
—extension of enlistments.
If he can, let's see if he can "march it through" the Senate and the Congress."[129]

On March 6, Johnson met with congressional leaders not only to gauge congressional sentiment after Tet, but also to give a lengthy explanation of his reason in asking for the Gulf of Tonkin Resolution in the first place.[130] The next day, Johnson had a lengthy conversation over congressional sentiment with Senator Richard Russell.[131] At this point, members of Congress who had voted in favor of the Gulf of Tonkin Resolution began claiming they were lied to. Johnson noted, "Fulbright is just trying to justify his position of not wanting to be for the war and being an ass in voting for Tonkin Gulf. That's all—that's what he's trying to do."[132] It was thus becoming clear, however, that Congress was firmly opposed to any substantial troop increase.

Rusk appeared before the Senate Foreign Relations Committee on March 11, making the case for the administration's planned escalation. Rusk recalls in his memoir, "Viewers watching the hearings probably thought that those senators were trying to cut my liver out" (Rusk, Rusk & Papp 1991, pg. 478). It was thus clear by this time that Congress was firmly opposed to major escalation. The next day, the Chairman of the Joint Chiefs of Staff advised Westmoreland that there was substantial opposition in Congress to a troop increase:

- "Leaks to the press have resulted in a rash of stories, reflected in debate in the Congress, that you have asked for an additional 206,000 troop augmentation.
- There is substantial opposition in the Congress to any further deployment of forces to South Vietnam. Moreover, prominent Senators are demanding

[129] *Foreign Relations of the United States*, Volume VI, Vietnam, January–August 1968, eds. Kent Sieg and David S. Patterson (Washington: Government Printing Office, 2002), Document 105. https://history.state.gov/historicaldocuments/frus1964-68v06/d105.

[130] "I sent up the resolution on Southeast Asia because I told the Security Council members that I was not going to commit troops or get into any compromising position with these folks unless I had the approval of Congress. I had a thorough study and review of the law and precedent in this area. My legal advisors told me how many times we had gone into an area without the consent of Congress and without a declaration of war. I told them that I did not want to follow that procedure." *Foreign Relations of the United States*, Volume VI, Vietnam, January–August 1968, eds. Kent Sieg and David S. Patterson (Washington: Government Printing Office, 2002), Document 109. https://history.state.gov/historicaldocuments/frus1964-68v06/d109.

[131] *Foreign Relations of the United States*, Volume VI, Vietnam, January–August 1968, eds. Kent Sieg and David S. Patterson (Washington: Government Printing Office, 2002), Document 111. https://history.state.gov/historicaldocuments/frus1964-68v06/d111.

[132] *Foreign Relations of the United States*, Volume VI, Vietnam, January–August 1968, eds. Kent Sieg and David S. Patterson (Washington: Government Printing Office, 2002), Document 111. https://history.state.gov/historicaldocuments/frus1964-68v06/d111.

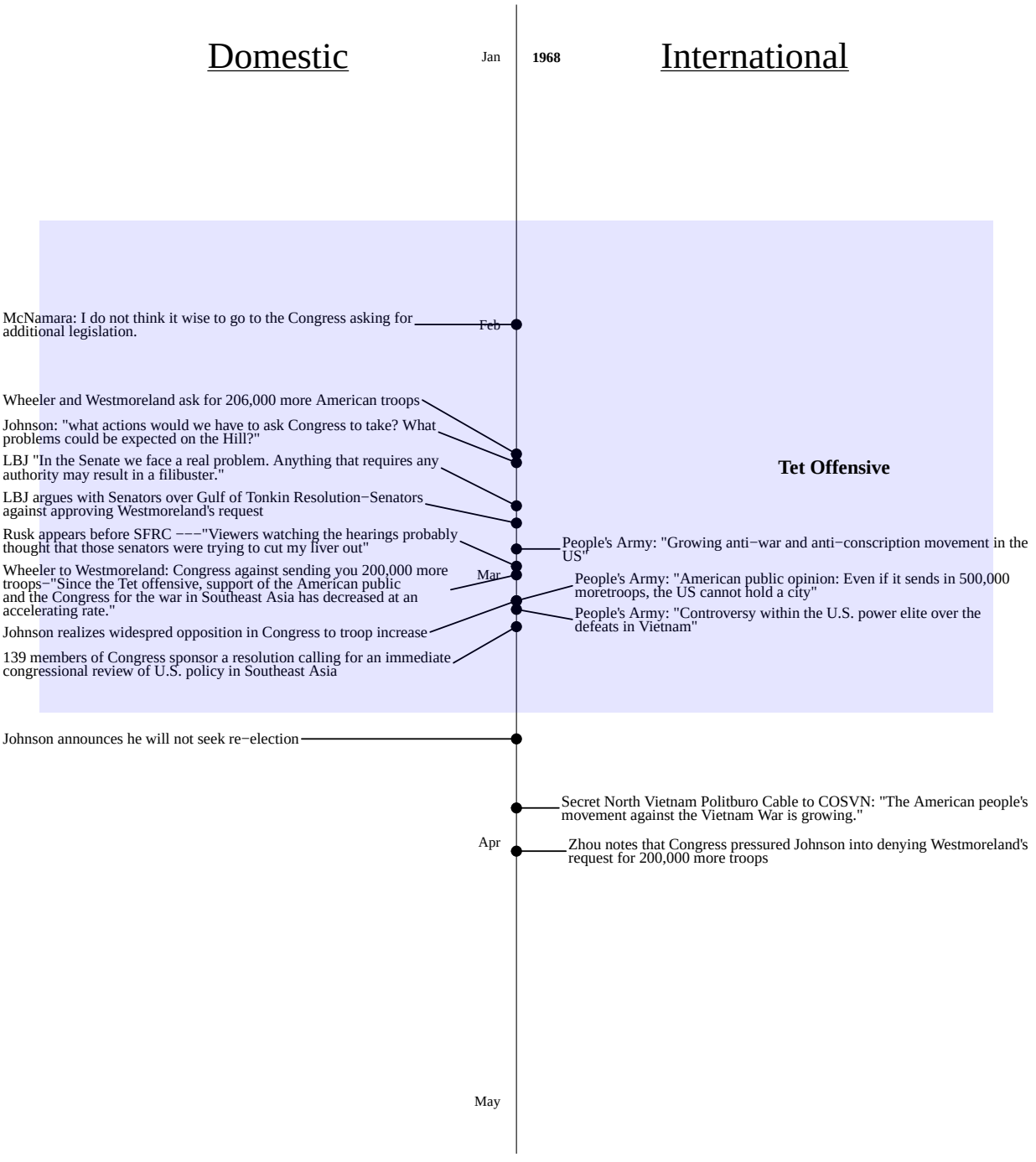

Figure 5.5 Timeline of Tet Offensive and Aftermath (1968)

that the President seek Congressional approval before undertaking further deployments of U.S. troops.

- A great many knowledgeable Congressmen and news media personnel know full well that the CONUS reserve cannot support any substantial additional deployment without a call-up of reserves."[133]

By March 30, general Wheeler had to notify general Westmoreland that the two hundred thousands troops requested were simply not in the cards:

> 'Since the Tet offensive, support of the American public and the Congress for the war in Southeast Asia has decreased at an accelerating rate. Many of the strongest proponents of forceful action in Vietnam have reversed their positions, have moved to neutral ground, or are wavering. If this trend continues unchecked, public support of our objectives in Southeast Asia will be too frail to sustain the effort,"(Katsiaficas 1992, pg. 105).

Johnson admits in his memoirs that the Administration (again) massively scaled down its response to Tet due to expected congressional and public opinion. Johnson recalled, "Critics of our policy had become more and more vocal," (Johnson 1971, pg. 415). Thus, the decision of the President was clearly taking congressional sentiment into account. Indeed, it was well recognized in the Administration that the opinion of legislators had been a primary factor preventing more escalation. In a March 29 meeting, the new Secretary of Defense, Clark Clifford, "reviewed the deliberations he and Mr. Rusk had had over the past days with the President concerning our course of action with respect to Vietnam. He emphasized the point that *unanimous advice from all sides was that the American people and the Congress would no longer support a policy of merely more of the same.*"[134]

The White House's minimally escalatory response to the Tet Offensive was thus driven in major part due to opposition in Congress and the general population to any further escalation of the war. While Johnson had at first been inclined to respond massively to Tet, he admits in his memoirs that *twice* in March 1968 he significantly moderated his planned response due to congressional opposition.

Adversary Perceptions

In March, Vietnamese newspapers were already reporting the domestic reaction in the U.S. toward the unexpected offensive across South Vietnam. Articles pointed out a "Growing anti-war and anti-conscription movement in the US" and ""Controversy within the U.S.

[133] *Foreign Relations of the United States*, Volume VI, Vietnam, January–August 1968, eds. Kent Sieg and David S. Patterson (Washington: Government Printing Office, 2002), Document 122. https://history.state.gov/historicaldocuments/frus1964-68v06/d122.

[134] Emphasis added. *Foreign Relations of the United States*, Volume VI, Vietnam, January–August 1968, eds. Kent Sieg and David S. Patterson (Washington: Government Printing Office, 2002), Document 166. https://history.state.gov/historicaldocuments/frus1964-68v06/d166.

power elite over the defeats in Vietnam". One article specifically proclaimed "American public opinion: Even if it sends in 500,000 more troops, the US cannot hold a city." In mid-March the U.S. Secretary of Defense had worried that:

> "The enemy may feel he is doing so well politically that he need not do anything militarily. They see:
>
> - Debate in the Senate
> - The New Hampshire primary
> - Quarrels over the war in Congress"[135]

The Secretary of Defense's concerns were warranted, as communist leaders did indeed sense weakness because of Congress. Zhou lists, inter alia, Congress's refusal to approve Westmoreland's troops requests in arguing Johnson's position was weak and to demand more (Zhai 2000). Zhou Enlai pointed out the Pham Van Dong on April 13:

> "After the Tet Offensives, the US tried to cover up its difficulties. After [General] Wheeler visited Saigon, he returned to Washington and talked with President Johnson and [General] Westmoreland. They had to admit their difficulties...Westmoreland then asked for an additional 200,000 troops but the US Congress and government refused...Primary elections in some states showed that the number of expected votes for Johnson had decreased to only 38%. ...The proposals for more troops, tax increase, and an increase in expenditures for the Vietnam War were not accepted by the US Congress."[136]

Thus, not only was Johnson quite constrained in his response to Tet by Congress, but communist forces were quite in tune with these constraints faced by the President. Five days earlier, a Secret North Vietnam Politburo Cable to COSVN wrote:

> "The situation in the United States during this presidential election year is becoming increasingly bleak for Johnson. The Vietnam War has had a powerful impact on the U.S. political, social, and financial scenes. Johnson is now facing tremendous difficulties in sending additional troops to Vietnam. If he decides to send a large number of additional troops, he will have to mobilize the reserves, request additional funds, and increase taxes...Meanwhile, the opposition, and especially the candidates who are running for president, have strongly criticized Johnson's Vietnam policies. They demand an end to the bombing of North Vietnam, they demand that the U.S. talk to the NLF, they oppose increasing the U.S. troop strength in South Vietnam, and they oppose any escalation of the war. The "hawks," on the other hand, have been placed on the defensive and they are not speaking out

[135] *Foreign Relations of the United States*, Volume VI, Vietnam, January–August 1968, eds. Kent Sieg and David S. Patterson (Washington: Government Printing Office, 2002), Document 142. https://history.state.gov/historicaldocuments/frus1964-68v06/d142.

[136] Westad, Odd Arne, Chen Jian, Stein Tonnesson, Nguyen Vu Tung, and James Hershberg. "77 Conversations between Chinese and Foreign Leaders on the Wars in Indochina, 1964-1977." Cold War International History Project. Washington, D.C.: Woodrow Wilson Center for International Scholars, May 1998. https://www.wilsoncenter.org/sites/default/files/media/documents/publication/ACFB39.pdf.

> as much as before. [Senator Eugene] McCarthy's victories in several election primaries, Robert Kennedy's entry into the presidential race, and [Richard] Nixon's criticism of Johnson's Vietnam policy have caused Johnson even more concern. The American people's movement against the Vietnam War is growing."[137]

Communists forces thus clearly understood the domestic and congressional constraints faced by the President—and, indeed, accurately attributed Johnson's inability to escalate further to opposition in the legislature. Hanoi would finally agree to begin peace talks with Washington in Paris beginning in May 1968 as the U.S. declared it would end all bombing in North Vietnam north of the border areas used as staging areas for attacks into the South. By the fall of 1968, communist decision-makers analyzed the possible new presidents of the United States after the upcoming presidential election. They recognized that:

> "These are the fundamental similarities between the positions of the different American ruling cliques, between the positions of the Republican Party and the Democratic Party, and between [presidential candidate Richard] Nixon and [Vice President Hubert] Humphrey. However, there are also some differences between these two individuals: Humphrey emphasizes peace, advocates ending the bombing of North Vietnam and withdrawing American troops, and has talked about a coalition government in which the NLF will participate. This is basically Johnson's position, although Humphrey is less rigid on certain points. As for Nixon, he advocates negotiating from a position of strength, he opposes ending the bombing of North Vietnam, and he ignores the National Liberation Front. Generally speaking, his position is one of continuing stubbornness."[138]

Specifically they recognized Nixon "at some point in time and at some certain level, he might do something that would complicate the situation." Nevertheless, the perceived even a hawkish Nixon as being constrained: "Nixon cannot go against the interests of the ruling clique and the American public, which are to end the war."[139]

Nixon

By the time Richard Nixon was sworn in as President on January 20, 1969, the Vietnam War had reached its peak. Support for the war in both Congress and the general public had decreased considerably in the aftermath of the Tet Offensive, and would remain low for the rest of the conflict. At the same time, most Americans opposed a simple unilateral withdrawal of U.S. forces, and instead supported Nixon's abstract idea of a "Peace with Honor". With the clear desire in Congress and among the American people for a de-escalation of the

[137]Secret North Vietnam Politburo Cable, April 8, 1968, Wilson Center Digital Archive, https://digitalarchive.wilsoncenter.org/document/113978.
[138]Secret North Vietnam Politburo Cable No. 320, October 10, 1968, Wilson Center Digital Archive, https://digitalarchive.wilsoncenter.org/document/secret-north-vietnam-politburo-cable-no-320.
[139]Ibid.

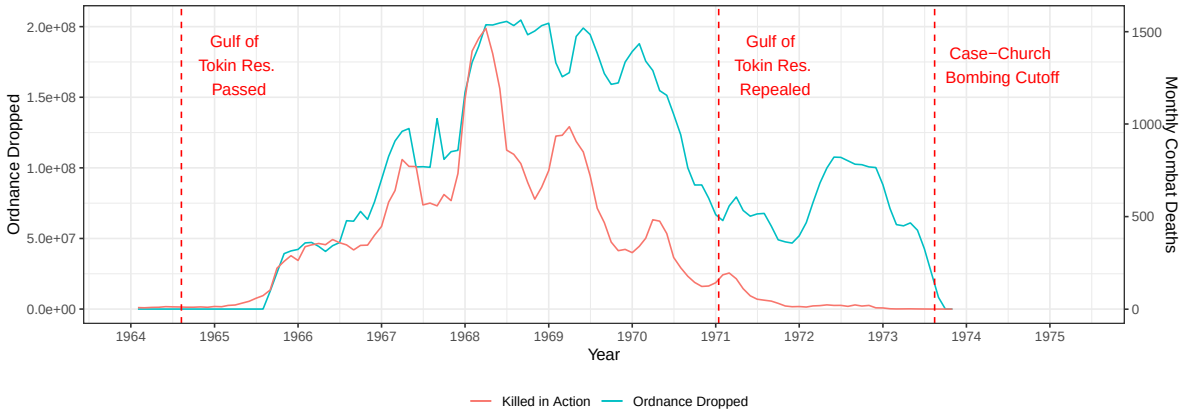

Figure 5.6 Combat Casualties Compared to Bombing Intensity in Vietnam War

war, Nixon soon announced a policy of "Vietnamization" as part of the Nixon Doctrine. As part of this plan, renewed focus would be put on training South Vietnamese forces to fight the war themselves, allowing the U.S to retrench form the conflict. Over the court of four years, the Nixon Administration withdrew hundreds of thousands of American troops from Southeast Asia, and yet kept up bombing efforts. In this sense, less casualty intensive airstrikes were attempting to substitute from the grounds forces leaving Vietnam.

While proponents of the Imperial Presidency thesis have argued Nixon essentially ignored Congress (Schlesinger 1973), the evidence presents a far different story. Certainly, there are points when Nixon took actions unpopular with Congress and even hid information from lawmakers (the 1969 bombings of Cambodia being the prime example[140]). At the same time, virtually all of the major decisions made by Nixon took anticipated congressional reaction into account, and there are a plethora of "roads not taken" due to expected blowback from the legislature.

Nixon obviously talked tough, and certainly put great effort into shaping an image of himself as Imperial. Nevertheless, as Chapter 1 suggested, it should be kept in mind the Presidents have strong incentives to feign Imperiality—most importantly in order to maintain a good bargaining position with their adversary. At the same time, Nixon—just like any other individual in the office of the Presidency—would have been undertaking enormous political risk by actually *acting* Imperially. Historians have explicitly pointed this out with regards to Nixon, and specifically in the case of his policy toward Vietnam. Writing about a contemplated massive escalation in 1969, Burr and Kimball write that "Despite Nixon's tough talk, he often wavered when confronted with a dramatic military decision against which large segments of Congress and the public would object," (Burr & Kimball 2015, pg. 98). Jervis similarly noted

[140]This also happened to be the single military campaign included in the impeachment accusations made against the President in 1974.

"Nixon often talked very tough, probably to try out ideas and impress others (and himself), but in the end settled for less confrontational courses of actions," (Jervis 2004). Other authors have, in general, pointed out a dichotomy between Nixon's public "facade" and his actual private decision-making (Dallek 2007). While Nixon proclaimed he would not let his decisions "be affected by the public or Congress", he and his closest advisers privately admitted that maintaining congressional support was crucial to the war effort.[141]

Once Nixon came into office in 1969, there was even consideration of asking Congress for renewed authorization.[142] Moreover, conscious of its own sensitivity to congressional opposition, the administration explicitly kept congressional reaction in mind as part of its negotiating strategy.[143] Nixon was aware from early on that much of Congress was now against the war and even the remaining supporters did not have an unlimited appetite. When discussing Vietnam policy in his first year in office, the new President knew he would "catch hell from the Hawks as well as the Doves if we followed the long road."[144]

Facing the two irreconcilable goals of (1) "getting out" of Vietnam, yet (2) not losing the war,[145] part of the Nixon administration's strategy from the beginning was to cultivate a reputation for extreme preferences—the infamous "madman theory" (McManus 2019). It should be noted that, in a sense, the Imperial Presidency and madman theory are two sides of the same coin. Knowing that they faced such large domestic political constraints, Presidents—and Nixon perhaps more than any other—went to great lengths to cult a reputation not only for madness but for Imperiality. Consider the administration's interpretation of the Christmas

[141] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 136. https://history.state.gov/historicaldocuments/frus1969-76v06/d136.

[142] " I certainly think now—though I did not propose it then—that he should have demanded an authorization from the Congress in 1969 to conduct the war he inherited when he assumed the Presidency, giving the Congress the choice of pursuing the existing strategy or ending our involvement. In his first term, Nixon took too much on his own shoulders in his effort to end a war he had not started, in the face of harassment by many who had brought about the original involvement, and against constant Congressional pressures that deprived our strategy of impetus and our diplomacy of flexibility. Nixon refused such a course in 1969...because he believed it incompatible with the responsibilities of a President. In 1969 he thought it an abdication to ask the Congress to reaffirm his authority to conduct a war that was already taking place." (Kissinger 2011*b*, pg. 304-05) See also *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 136. https://history.state.gov/historicaldocuments/frus1969-76v06/d136.—The Secretary of Defense "stated that we should get a vote now from the Congress, and that he believes that 18 months from now no US forces will actually be engaged."

[143] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 46. https://history.state.gov/historicaldocuments/frus1969-76v06/d46.

[144] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 136. https://history.state.gov/historicaldocuments/frus1969-76v06/d136.

[145] Jervis called this Nixon's "dilemma"—"domestic pressures made it necessary for Nixon to reduce American involvement, but this would simultaneously reduce American leverage over North Vietnam and, unless Vietnamization could fully succeed, in the absence of agreement, would leave the South at the North's mercy," (Jervis 2004).

Bombings (Linebacker II) in achieving a negotiated settlement in the January 1973 Paris Peace Accords:

> "[W]e thought that the Vietnamese mind-set was such that they might be in a mood to make concessions, because they're worried about the madman, even though we knew secretly that we didn't have as much potential leverage as they thought we did"—Winston Lord[146]

> "What has brought us to this point is the President's firmness and the North Vietnamese belief that he will not be affected by either Congressional or public pressures. Le Duc Tho has repeatedly made these points to me"—Henry Kissinger[147]

Thus, the American interpretation of its bargaining with Hanoi was thus it was highly advantageous to feign[148] extreme preferences, so that it would appear the resolve of the President was so great as to even overcome the painful costs of congressional opposition. To a certain extent—as recognized by the administration—this seemingly worked. Le Duc Tho at one point began buying into the existence of an Imperial Presidency—"the President has the authority to order all branches of the service to use bombs and shells to destroy our country."(Kimball 2004, 285). Other Vietnamese communists saw through the veneer, however. Nguyen Co Thach, for example, caught on to the feint Nixon was attempting. At one point the North Vietnamese were sent a letter saying Nixon was mad—but Nguyen did not believe Nixon was actually willing to aggressively escalate in Vietnam because the President would have to"to pay a big price, a big political price," (Kimball 2004, 286).

The 1969 Spring Offensive

Almost immediately after Nixon's inauguration, communist forces launched the 1969 Spring Offensive. Nixon recalls in his memoirs:

> "We had wondered whether a new President and a serious new peace overture would produce a breakthrough that would end the Vietnam war. The North Vietnamese gave us the answer in February when they launched a small-scale but savage offensive into South Vietnam. It was a deliberate test, clearly designed to take the measure of me and my administration at the outset,"(Nixon 1990, pg. 380).

The administration was also well aware that North Vietnamese perceptions of trouble at home in the U.S. influenced their own negotiating strategy. Four days after Nixon's inauguration, the embassy in Saigon wrote:

[146](Kimball 2004, pg. 283).

[147]*Foreign Relations of the United States*, 1969–1976, Volume XLII, Vietnam: The Kissinger-Le Duc Tho Negotiations, eds. John M. Carland and Adam M. Howard (Washington: Government Printing Office, 2017), Document 43. https://history.state.gov/historicaldocuments/frus1969-76v42/d43.

[148]"[E]ven though we knew secretly that we didn't have as much potential leverage as they thought we did" (Kimball 2004, pg. 283).

> "One of the last messages I received from the outgoing administration referred to "excessive and unrealistic public and Congressional expectations" as requiring us to push ahead as rapidly as possible. I think we should be clear in our minds that the negotiations will be arduous, complex, difficult and probably long (unless we want agreement at any price). I hope the new administration can find some ways to get that message across to our Congress and our public. Such an effort would in itself have a very salutary effect on the enemy."[149]

Thus, Nixon not only saw an interest in defending South Vietnam, but—and perhaps even more importantly to him—an interest in establishing his own reputation for resolve in Vietnam. This was especially important because Nixon was new to office and thus had a strong interest in shaping perceptions of his reputation early—he knew the first impression was the most important (Lupton 2020). The administration first considered resuming bombing of North Vietnam directly. Operation Rolling Thunder had been paused the year prior under the Johnson Administration in an attempt to encourage Hanoi to come to the bargaining table. Outgoing Johnson Administration officials had thus advocated a renewed bombing of the North after Hanoi launched the offensive. The Nixon Administration wanted to *avoid* this, however. Kissinger recalls:

> "No one in the new Administration, however, could anticipate a resumption of the bombing of the North with anything but distaste...None of us had the stomach for the domestic outburst we knew renewed bombing would provoke—even if it were the direct result of North Vietnamese betrayal of the understandings that had led to the bombing halt,"(Kissinger 2011*a*, pg. 314).

Thus, striking the Cambodian sanctuaries was not a simple expansion of the war—it was done in order to avoid the much more escalatory step of renewed bombing of the North.[150] The 1969 Spring Offensive thus spurned the secret bombings of Cambodia in 1969:

> "On March 4 I passed on to the President without comment a Laird memo recommending against proposals by the Joint Chiefs to attack North Vietnam. Laird was far from a "dove"; in normal circumstances his instincts were rather on the bellicose side. He would have preferred to aim for victory. But he was also a careful student of the public and Congressional mood...He therefore navigated with great care between his convictions, which counseled some military reaction, and his political instinct, which called for restraint. He opposed bombing North Vietnam; he became a strong supporter of the attack on the Cambodian sanctuaries. (His only

[149] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 7. https://history.state.gov/historicaldocuments/frus1969-76v06/d7.

[150] "Thought then turned to bombing of the North Vietnamese sanctuary areas in Cambodia, for reasons exactly the opposite of what has been assumed; it was not from a desire to expand the war, but to avoid bombing North Vietnam and yet to blunt an unprovoked offensive which was costing 400 American lives a week...The first suggestion came from General Wheeler. When Laird on January 30 had expressed doubt that a renewed bombing of the North was politically supportable, Wheeler proposed, as an alternative, attacks on the complex of bases that the North Vietnamese had established illegally across the border in Cambodia." (Kissinger 2011*a*, pg. 315-16).

> disagreement had to do with public relations policy; he did not think it possible to keep the bombing secret, on practical, not on moral, grounds.) The President, following a similar logic, ordered a strike against the Cambodian sanctuaries for March 9," (Kissinger 2011*a*, pg. 245).

Thus, the primary reason the administration chose not to retaliate directly against North Vietnam was expected congressional outcry. The Secretary of State (Rogers) was even more worried about Congress. Kissinger recalls of a March 16 meeting:

> "The Oval Office meeting followed predictable lines. Laird and Wheeler strongly advocated the attacks. Rogers objected not on foreign policy but on domestic grounds...Rogers feared that we would run into a buzz saw in Congress just when things were calming down...After the meeting, the Joint Chiefs sought to include additional attacks on North Vietnamese troop concentrations violating the Demilitarized Zone. Laird and I agreed that it was more important to keep Rogers with us and the proposal was not approved,"(Kissinger 2011*a*, pg. 246-47).

Thus, again, bombing of North Vietnam—even limited to the area near the DMZ—was avoided due to concerns over congressional reaction. These secret bombing operations against the Cambodian sanctuaries would together become known as the "Menu Operations' and would continue for months. On the one hand, the administration was "going around" Congress by keeping the bombings secret from the vast majority of legislators. On the other hand, some legislative leaders were made aware of the operations.[151] Additionally, a very similar logic played out when a crisis erupted with North Korea the next month. In April, North Korea has shot down an American surveillance plane in international air space, *killing 31 Americans*. Nixon and Kissinger both felt it imperative that the U.S. strike back against Pyongyang for such an enormous provocation and massive loss of American life. Yet, in the end, the administration was forced into responding highly asymmetrically to North Korea's attack on American forces by escalating bombing in Cambodia due to congressional resistance to the use of force in Korea while another war in Asia was already underway (Kissinger 2011*a*, Nixon 1990). Thus, the secret bombings of Cambodia were not merely an administration acting regardless of the will of Congress—instead, much of the decision-making reflected clear deterrence via anticipated Congress blowback of striking North Vietnam or North Korea.

Nixon's realization that he was politically constrained by congressional opinion was also manifest in his interactions with allies. In a meeting with South Vietnamese President

[151] "[W]e were wrong, I now believe, not to be more frank with Congressional leaders. To be sure, President Nixon and I gave a full briefing in the Oval Office on June 11, 1969, to Senators John Stennis and Richard Russell, Chairmen of the Senate Armed Services and Appropriations committees. Senate Minority Leader Everett Dirksen was also informed. In the House, Representatives Mendel Rivers and Leslie Arends, the Chairman and a ranking minority member of the House Armed Services Committee, as well as Minority Leader Gerald Ford, were briefed. Laird briefed key members of the Armed Services and Appropriations committees of both houses. Not one raised the issue that the full Congress should be consulted. This was at that time the accepted practice for briefing the Congress of classified military operations. Standards for Congressional consultation, too, have since changed, and this is undoubtedly for the better," (Kissinger 2011*a*, pg. 332).

Thieu in June 1969, Nixon confided "that we have a difficult political problem in the U.S. and that he appreciated Saigon's understanding for his domestic problems." Nixon described "the Congressional situation and the importance of the 1970 elections. The U.S. domestic situation is a weapon in the war."[152]

The U.S. Senate had expressed frustration in June when it passed the 1969 National Commitments Resolution:

> "Whereas accurate definition of the term "national commitment" in recent years has become obscured: Now, therefore, be it Resolved, That:
>
> 1. a national commitment for the purpose of this resolution means the use of the Armed Forces of the United States on foreign territory, or a promise to assist a foreign country, government, or people by the use of the Armed Forces or financial resources of the United States, either immediately or upon the happening of certain events, and
>
> 2. it is the sense of the Senate that a national commitment by the United States results only from affirmative action taken by the executive and legislative branches of the United States Government by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment."

Ironically, the U.S. "commitment" in Vietnam almost certainly fulfilled the standard set out by the resolution. Not only has lawmakers provided a statute (the Gulf of Tonkin Resolution), but had also ratified the SEATO treaty a decade prior. Thus, the American war in Southeast Asia met the criteria set out by the resolution in two separate ways.

When considering a massive escalation against North Vietnam in the fall of 1969, Nixon was once again deterred by expected congressional opposition— "the president worried more about the political, congressional, and international fallout should he launch highly visible attacks against North Vietnam,"(Burr & Kimball 2015, pg. 178).[153] By this point, Hanoi was well aware of the domestic difficulties faced by Nixon in the United States, and explicitly made exacerbating these problems a priority. COSVN Resolution 9 from July 1969 argued that victory would:

> "depend[] principally on the strength of our attacks in the military, political and diplomatic fields, especially our military and political attacks, and on the extent of

[152] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 81. https://history.state.gov/historicaldocuments/frus1969-76v06/d81.

[153] "Nixon was concerned about holding public and congressional opinion in his favor for an extended period after launching the November Option"(Burr & Kimball 2015, Pg. 248).

"The discussion at this meeting encapsulated the reasons for Nixon's decision to cancel the November Option: his concerns about holding public and congressional support should he attack North Vietnam; his uncertainty about the probable success of such an offensive"(Burr & Kimball 2015, Pg. 263-64).

> military, political, economic and financial difficulties which the war causes to the Americans in Viet-Nam, in the U.S.A. itself, and over the world"[154]

While Hanoi had begun engaging in peace talks with the United States in 1968, much of this was for political effect: "In the words of Nguyen Khac Huynh, a veteran Vietnamese diplomat involved in the Paris talks, Hanoi was carrying out 'diplomacy and peace talks' to rally "international friends" and embolden the anti-war movement of the American people. The ultimate goal of these [appearing to offer diplomacy] efforts, Huynh confessed, was to "corner Nixon" (Asselin 2018, pg. 179).

Cambodia & Laos 1970-71

While public and congressional opinion by this point in the war had come to believe that introducing ground troops in Vietnam four years prior was a mistake, there was also little desire for unilateral withdrawal from the conflict (Gelb & Betts 2016). In the aftermath of Nixon's famous "Silent Majority" speech in November 1969, the House of Representatives overwhelmingly passed (334-55) a resolution supporting Nixon's efforts to achieve a "peace with justice" in Vietnam.[155] Nixon also notes in his memoir that a majority of Senators similarly signed a letter supporting the Vietnam policies laid out by the President in the speech (Nixon 1990, pg. 410).

Buildup to the Cambodian Incursion

One particular problem for the administration was the mass of sanctuaries utilized by communist forces just over the border in Cambodia. The Johnson Administration has refrained from attacking these sanctuaries in order to avoid charges of expanding the war, but the bases proved to be a serious problem. The positions allowed North Vietnamese and Viet Cong forces to attack deep into South Vietnam—a huge vulnerability illustrated in the 1968 Tet Offensive, as well as the 1969 Spring Offensive—and then simply retreat back across the border into Cambodia knowing U.S. forces were unable to pursue them. The situation became especially acute for the Nixon Administration as it began withdrawing hundreds of thousands of American troops from South Vietnam, leaving the remaining all the more vulnerable to such attacks from the Cambodian sanctuaries. Nixon saw the incursion as necessary in order to not only protect American lives as major troop withdrawal continued, but also to demonstrate American credibility. After having made an explicit threat to communist forces over action in

[154] Resolution Issued by the 9th Conference of COSVN, July 1969, available at https://hv.proquest.com/pdfs/003233/003233_001_0846/003233_001_0846_From_1_to_99.pdf.

[155] "Congress Debates Vietnam Issue, Resolutions Adopted." In CQ Almanac 1969, Vol. 25. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1970. http://library.cqpress.com/cqalmanac/cqal69-1247005.

Cambodia on April 20th, he believed that "failure to deal with the enemy action would have eroded the credibility of the United States before the entire world."[156]

In December 1969, Congress had passed prohibitions on the introduction of ground forces into Laos and Thailand. The administration had actually endorsed such congressional action, claiming that it was consistent with the policy of the White House.[157] Notably, Cambodia was absent from this ban—although there were efforts in early 1970 to expand the prohibition to it as well.[158] Nixon, Kissinger, and others realized, however, that there would be substantial opposition to the ground incursion from some in Congress. For example, prior to the President's final decision, they only met with one committee chairman—Senator John Stennis of the of Senate Armed Services Committee—knowing he knew would be sympathetic, but expecting a negative response from others. Kissinger and Nixon recall in their memoirs that it was well recognized ex ante congressional opposition from some corridors would be fierce (Kissinger 2011*a*, Nixon 1990, pg. 451).The White House was, thus, aware prior to the Cambodian incursion that there would be substantial congressional pushback. On April 28$^{\text{th}}$, Nixon noted he "had taken into consideration, in arriving at his decisions, the probable adverse reaction in some Congressional circles and some segments of the public."[159] Thus, the president has "priced" congressional opposition into his decision. Nixon recalls in his memoirs briefing bipartisan leadership shortly before he would announce the decision on national television: "I said I understood that many of them would oppose the decision I had made. I knew how they felt about it, and I respected their feelings," (Nixon 1990, pg. 451).

Legally, the administration was on imperfect, but nonetheless relatively solid, ground. Future Chief Justice of the Supreme Court William Rehnquist was tasked with providing the legal rationale for the intervention. Rehnquist argued in a May 14 legal memo that Senate ratification of the SEATO treaty and Congress's passage of the Gulf of Tonkin Resolution in 1964 provided the legal authority for the incursion.[160] A May 22 memo follow-up memo argued that while attacking into Cambodia itself did not have proximate and specific approval from Congress, it was not a new "war", bur, rather, merely the "sort of tactical decision traditionally confided to the Commander in Chief in the conduct of armed conflict."[161] Another memo—apparently secret—went even further: it suggested that *even if Congress were to expressly*

[156]Richard Nixon, Address to the Nation on the Cambodian Sanctuary Operation. Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/node/239816.

[157]Halloran, Richard. "Ban Sought on Troops for Cambodia." *The New York Times*, April 12, 1970, sec. Archives. https://www.nytimes.com/1970/04/12/archives/ban-sought-on-troops-for-cambodia.html.

[158]Ibid.

[159]*Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 267. https://history.state.gov/historicaldocuments/frus1969-76v06/d267.

[160]*Presidential Authority to Permit Incursion Into Communist Sanctuaries in the Cambodia-Vietnam Border Area*, 1 Op. O.L.C. Supp. 313 (1970), available at https://www.justice.gov/file/20821/download.

[161]*The President and the War Power: South Vietnam and the Cambodian Sanctuaries*, 1 Op. O.L.C. Supp. 321 (1970), available at https://www.justice.gov/file/20826/download.

forbid grounds troops in Cambodia (which it would do via the Cooper-Church Amendment effective early the next year), the President could *still* undertake this "tactical" decision pursuant to his Article II powers as Commander-in-Chief.[162] Thus, the administration faced a political, not legal, problem.

Reflecting higher-ordered concerns, the White House worried that the possible direct gains of the expedition might be wiped out by the increased encouragement Hanoi might have from witnessing a wild congressional uproar. A few days prior to the commencement of the operation, Secretary of Defense Laird argued to the President that putting ground troops in Cambodia thus might not bring Hanoi closer to the U.S. bargaining position, but actually encourage a harder line by the North:

> "In fact, Hanoi might use the projected actions, especially if the US is heavily involved on the ground, to arrive at an opposite conclusion. On the premise that added US ground involvement may arouse strong US popular and Congressional disapproval, Hanoi might retrench from any negotiating plans that otherwise would have been contemplated."[163]

The Administration knew that the North Vietnamese were aware—and indeed, trying to manipulate, congressional opinion. In a January discussion over bombing the Ho Chi Minh trail in Laos, Kissinger "said that in considering the North Vietnamese reaction it was important to separate what they said in public from what they actually believed. Knowing about our Congressional problems, they would undoubtedly publicize any B-52 strike, and we might have to face the problem of how to deal with criticism from the Hill."[164]

The Administration faced the difficult task of convincing the adversary that its threats were credible while simultaneously publicly pronouncing massive troop withdrawals. Kissinger argued that "the United States had to pose a credible threat for as long as possible" (Kissinger 2003, pg. 149) Nixon, likewise, struggled with the intervention decision given the large expected domestic blowback, but ultimately argued that "the simple fact of showing the Communists that we intended to protect ourselves and our allies" overwhelmed any argument to the contrary (Nixon 1990, pg. 451).

[162] Memorandum to the Honorable John F. Lehman: National Security Council Re: Cooper-Church Amendment, May 11, 1970.

[163] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 263. https://history.state.gov/historicaldocuments/frus1969-76v06/d263.

[164] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 172. https://history.state.gov/historicaldocuments/frus1969-76v06/d172. Similarly, in March "Mr. Kissinger asked if Congressional opposition to bombing was really important. We were faced with a Communist offensive, and our tactical air could not operate. What objection could there be to B-52 raids? Mr. Green said we could not disregard Congressional opposition. The enemy knows that this is a soft spot and will put out propaganda blaming us for escalation." *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 203. https://history.state.gov/historicaldocuments/frus1969-76v06/d203.

1970 Cambodian Incursion

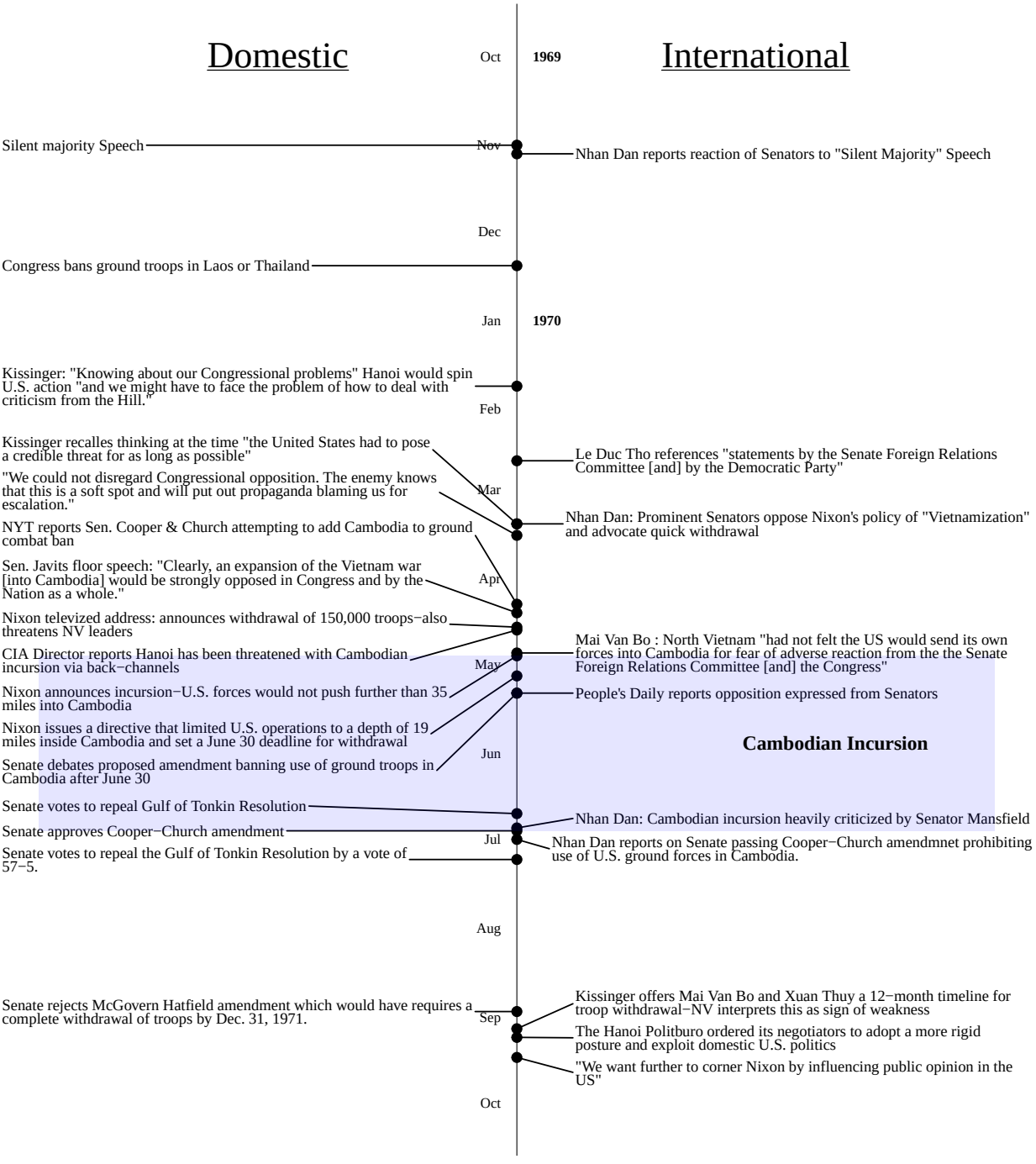

Figure 5.7 Timeline of Cambodian Incursion (1970)

Interestingly, the United States had attempted to warn Hanoi prior to the incursion that it would intervene across the border if the North Vietnamese were too provocative. According to the Director of Central Intelligence, the following word was passed to North Vietnamese negotiators in Paris in late April:

> "The US and the GVN have long felt that Vietnam internal security problems can never be really solved so long as the Communists have sanctuaries in nearby Cambodia. Hence, the US and the GVN have long itched to attack these sanctuaries and the Communist troops resting or refitting in them. Recent events in Cambodia have considerably whetted American and South Vietnamese appetites, but the US (particularly) has felt the Vietnamese Communist muscle flexing in neutral Cambodia was giving Hanoi such a propaganda black eye worldwide—particularly within the US itself—that the United States Government was reluctant to see the waters muddied by allied military involvement in the Cambodian-VC/NVA fight. However, if the VC/NVA forces make further military moves against Phnom Penh, the US is set to take prompt advantage of world opinion focus on Cambodia's plight in the face of North Vietnamese invasion and clear up the sanctuary problem by attacking VC/NVA forces from the rear."[165]

Similarly, in a televised address to the nation on April 20$^{\text{th}}$ announcing massive troop withdrawals over the subsequent months, Nixon specifically condemned North Vietnamese troops "now conducting overt aggression against Cambodia":

> "I again remind the leaders of North Vietnam...they will be taking grave risks should they attempt to use the occasion to jeopardize the security of our remaining forces in Vietnam by increased military action in Vietnam, in Cambodia, or in Laos...If I conclude that increased enemy action jeopardizes our remaining forces in Vietnam, I shall not hesitate to take strong and effective measures to deal with that situation. My responsibility as Commander in Chief of our Armed Forces is for the safety of our men, and I shall meet that responsibility."[166]

The North Vietnamese delegation, however, specifically found the threat to be non-credible because of the anticipated blowback it would create for the White House in Congress and in the public. *Nhan Dan* had published an article in mid-March specifically pointing out resistance in Congress even to Nixon's Vietnamization policy, with several Senators, instead, advocating something closer to unilateral withdrawal. It pointed out that Senator Fulbright wanted Nixon to withdraw due to too many deaths, Mansfield wanted Nixon to just let the Vietnamese handle their own affairs, and that Proxmire wanted Nixon to stop U.S. involvement in Vietnam because "Nixon was hiding the huge expenses being throwing into the war."[167]

[165] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 242. https://history.state.gov/historicaldocuments/frus1969-76v06/d242.

[166] Richard Nixon, Address to the Nation on Progress Toward Peace in Vietnam. Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/node/241144.

[167] "Many US senators condemned Nixon's policy of 'Vietnamization'" *Nhan Dan*, March 1970.

Similarly, at a February 21 meeting between Kissinger and Le Duc Tho, the North Vietnamese negotiator specifically referenced "statements by the Senate Foreign Relations Committee [and] by the Democratic Party" as a reason why he found the American's peace proposal out of line with facts-on-the-ground.[168] Thus, the day prior to the April 30 American incursion, Mai Van Bo would state that North Vietnam "had not felt the US would send its own forces into Cambodia for fear of adverse reaction from the Senate Foreign Relations Committee, the Congress, public opinion and eventually the electorate at the polls.'"[169]

consistent with the model, therefore, North Vietnam's anticipation of strong opposition from Congress caused it to refuse to budge from a hard negotiating position. While Hanoi correctly anticipated a harsh reaction from Capitol Hill, it underestimated Nixon's willingness to absorb this punishment (although it also appears Nixon overestimated his own ability to do so). This led to an unwillingness to compromise that forced Nixon to back up his threat with real action and actually order the incursion.

The Cambodian Incursion: April 30 to June 30

Nixon announced the incursion in an April 30 White House Address, and the congressional reaction to the announced incursion was immediate, as expected (Nixon 1990, pg. 454-455). Kissinger recalls:

> "The tidal wave of media and student criticism powerfully affected the Congress. From not unreasonable criticism of the President's inadequate consultation, opposition escalated to attempts to legislate a withdrawal from Cambodia and to prohibit the reentry of American troops. On May 13, debate began in the Senate on the Foreign Military Sales Bill, to which Senators Frank Church and John Sherman Cooper proposed an amendment prohibiting the extension of U.S. military aid to, and U.S. military activities in, Cambodia after June 30...Senate debate and parliamentary skirmishing lasted seven weeks, until on June 30 the Senate approved the Cooper-Church amendment in a 58-37 roll call vote...the pattern was clear. Senate opponents of the war would introduce one amendment after another, forcing the administration into unending rearguard actions to preserve a minimum of flexibility for negotiations. Hanoi could only be encouraged to stall, waiting to harvest the results of our domestic dissent," (Kissinger 2003, pg. 169).

It even proved to affect Nixon more than he himself had anticipated, however, and he almost immediately began taking steps to actually curtail the mission. While the original mission had already been quite limited—only moving (at a maximum) 35 miles into Cambodia—even this was cut back dramatically. Kissinger writes of the intervention:

[168] *Foreign Relations of the United States*, 1969–1976, Volume XLII, Vietnam: The Kissinger-Le Duc Tho Negotiations, eds. John M. Carland and Adam M. Howard (Washington: Government Printing Office, 2006), Document 3. https://history.state.gov/historicaldocuments/frus1969-76v42/d3.

[169] *Foreign Relations of the United States*, 1969–1976, Volume VI, Vietnam, January 1969–July 1970, eds. Edward C. Keefer and Carolyn Yee (Washington: Government Printing Office, 2006), Document 242. https://history.state.gov/historicaldocuments/frus1969-76v06/d242.

> "Soon after his April 30 speech, Nixon started pressing for token, and then for substantial, withdrawals from the sanctuaries. The June 30 deadline began as an improvised and very approximate Nixon projection for Congressional leaders of how long the effort would last; it was soon made sacrosanct. At another Congressional briefing he suddenly introduced a limit of [nineteen miles] for US penetrations...The President was coming dangerously close to the perennial error of our military policy in Vietnam: acting sufficiently strongly to evoke storms of protest but then by hesitation depriving our actions of decisive impact. The limitations of time and geography placed on our forces' operations helped only marginally to calm the Congress and the media but certainly kept us from obtaining the operations' full benefit. The base areas by then extended over hundreds of square miles; hidden caches could not be discovered except by systematic searches; it then took some time to remove what was found. The time limit did not permit a thorough search. And the geographical restraints simplified the enemy's planning: He simply withdrew his forces and some of his caches to areas declared safe by us."

Thus, while Nixon had proven to be more willing to tempt the wrath of Congress than Hanoi had predicted, the President privately curtailed the scope of the operation as he sought to relieve congressional criticism. Nixon was so traumatized by the reaction from Congress and the broader public that it provoked him into perhaps one of the most bizarre episodes in presidential history, when a delusional Nixon went out to the Lincoln Memorial at 4 am to argue about the intervention with student protesters.

One of the primary objectives announced by the Nixon Administration prior to the action was the capture of COSVN—the North Vietnamese headquarters in the South. U.S. armed forces came "dangerously close to seizing COSVN headquarters, and capturing caches of secret Vietnamese documents on strategy and tactics. This would have set back by months resistance activities in the deep South, by exposing cadres secretly operating among civilians, spies working in Saigon, and revealing other sensitive information," (Asselin 2018, pg. 238). Yet congressional and public pressure was so great that the President was forced to abandon the operation even as American forces came within close reach of this target. A battalion commander on the ground in Cambodia witnessed first hand the disastrous effect Nixon's sudden curtailment of operations had on achieving U.S. objectives in the country, recalling:

> "According to our intelligence, we're less than three miles from the North Vietnamese Headquarters—meaning, *we'll be there before nightfall.* But just as we're closing in on our objective, I get a call from division headquarters *telling me to halt in place*—'do not got any further!' Don't go any further? Doesn't make any sense to me tactically, and I was pretty upset about it.
>
> I called and I said 'Who in the hell is making this kind of dumb decision?'—'You know I'm within five kilometers of my objective, and we can be there by nightfall.' I said 'What's going on?' and finally, the division commander got on the phone and said 'Anderson, shut up and listen! Your orders are halt in place, and don't go any further.'

> I found out later that President Nixon reported to the American people that our objectives in Cambodia are limited. I am absolutely speechless.[170]

By the beginning of June, Nixon had succumbed to the pressure and publicly announced the wrapping up of the operation. Despite the private knowledge in the White House that much of the operation's fundamental goals were not completed—and despite being believed to be within reach—Nixon publicly announced that "[a]s of today I can report that all of our major military objectives have been achieved" and that the operation had "been the most successful operation of this long and very difficult war."[171] But, while publicly the administration tried to portray the operation as a resolved President successfully overcoming the opposition of an enfeebled legislature, privately the Commander-in-Chief had in fact backed down once he ran into a congressional buzz saw. In reaction to the incursion, Congress would repeal the Gulf of Tonkin resolution and, via the Cooper-Church Amendment, ban the use of ground troops in Cambodia in the future.

The administration did seem to at least somewhat successfully convince North Vietnamese decision makers that the president was able to tolerate congressional pain. Assellin writes, "The invasion made Le Duan reel when he realized how far Nixon was prepared to go to get peace with honor," (Asselin 2018, pg. 238). At the same time—as feared by some American policy-makers prior to the incursion—U.S. adversaries paid close attention to the reaction from some members of Congress. A May 13 article in *People's Daily* chronicled:

> "Nixon's brazen launch of a war of aggression against Cambodia was also strongly criticized by some leading figures within the American ruling group...Fulbright, chairman of the Foreign Affairs Committee of the US Senate, said that US intervention in Cambodia was 'an obvious, deliberate, and totally mindless decision to expand the war' and 'a serious development.' Senate Democrat Mansfield said that the week Nixon made his decision was 'a week of frustration, annoyance, and depression.' Former Democratic Vice President Humphrey said, 'This is indeed a serious and dangerous military decision that will bring uncertain consequences.' The United States 'now faces the prospect of expanding war in Southeast Asia and causing unrest, protests and riots in the country.' The Senate Foreign Affairs Committee has requested to meet with Nixon to discuss with him the decision to invade Cambodia. This is the first time the Senate Foreign Relations Committee has taken such an action in 51 years after the US Congress and the President had a dispute over whether the United States would participate in the League of Nations. The Associated Press said, *'Congress has already signaled that a storm is coming.'"*

By the end of June, *Nhan Dan* was, similarly, reporting on the outcry from U.S. senators and paid the close attention to the passage of the Cooper-Church Amendment, which

[170]Interview of Lt. Col. James Anderson, Battalion Commander in First Cavalry Division, during Cambodian Incursion. *Vietnam in HD*, episode 5 (2011).

[171]Richard Nixon, Address to the Nation on the Cambodian Sanctuary Operation. Online by Gerhard Peters and John T. Woolley, The American Presidency Project. https://www.presidency.ucsb.edu/node/239816.

would ban the use of ground troops in Cambodia in the future. In September in Paris, Kissinger offered the communist negotiators a 12-month timeline for troop withdrawal, an offer that was interpreted by North Vietnam as a sign of weakness: "deducing that the increased antiwar sentiment in the United States after the invasion of Cambodia forced Nixon to change his policies" (Nguyen 2016, pg. 186). In response to the perceived domestic problem on Nixon's part, the "Hanoi Politburo ordered its negotiators to adopt a more rigid posture, exploit the peace movement, and stick to Hanoi's demands for the removal of all U.S. troops by 30 June 1971 and the overthrow of Thieu On 17 September 1970," (Nguyen 2016, pg. 187). Zhou Enlai and Pham Van Dong agreed:

> "we have to influence the anti-war public opinion in the US that includes not only the people at large but also the political, business, academic, and clerical circles to ensure a stronger support by them...we want further to corner Nixon by influencing public opinion in the US."[172]

Laos

In December 1970, Congress thus both repealed the Gulf of Tonkin Resolution, and via the Cooper-Church Amendment added Cambodia, in addition to Laos and Thailand, to the list of states in which the United States was prohibited from deploying ground forces. By this point, Hanoi's strategy was firmly "influencing U.S. domestic opinion to increase pressure on American leaders to end the war," (Nguyen 2016, pg. 199). At the same time, there was a worry Nixon's position was less vulnerable than before because far fewer Americans were dying than in previous years and because American negotiators were effectively utilizing the POW issue in their negotiations in Paris (Nguyen 2016, pg. 200).

In order to cutoff supplies traveling down the Ho Chi Minh trail and to create more time for an American withdrawal, planners proposed a South Vietnamese incursion to the town of Tchepone in southern Laos—joined only by American air assets—in early 1971. Nixon opined that the operation might "prove decisive in the overall conduct of the war," (Dallek 2007, pg. 258). It was realized, however, that a defeat for South Vietnamese forces would be disastrous. Secretary of State Rogers argued "a ARVN defeat would be very costly to us," while Nixon agreed that "the operation cannot come out as a defeat," (Dallek 2007, pg. 258).

On January 18, 1971 the White House considered the plan:

> "The President then remarked that from the military standpoint, the operation made great sense. Domestically, it would pose a problem since the charge would be made that the U.S. was expanding the war into Laos. The President asked if there were any known legislative inhibitions to the U.S. support visualized. Secretary [of Defense] Laird responded negatively. The President continued that it was probable

[172]Discussion between Zhou Enlai and Pham Van Dong, September 17, 1970, Wilson Center Digital Archive, https://digitalarchive.wilsoncenter.org/document/113104.

that we should accept the heat this spring. If it goes in February, then perhaps by April 15 we could make a terminal statement.

The President then asked Secretary [of State] Rogers for his view. The Secretary stated that he was aware of no legislative inhibitions since they only involved the use of U.S. ground forces. Also, the new legislation made great emphasis on providing authorities to prevent rebuilding of the sanctuaries. Director Helms added that even Senator Fulbright agreed with the need to prevent that. Secretary Rogers continued that, in his view, the real problem involved U.S. casualties and whether or not they might go up."

Nixon even subsequently asked if South Vietnamese helicopters, instead of American, could be used to ferry South Vietnamese troops in the operation. When that proved to be impossible, efforts were still made to minimize U.S. direct involvement.[173] On January 27, there was even a suggestion from Secretary Laird that the White House secure formal authorization from Congress for the operation. The President argued this was unnecessary given that only air assets were involved. Nixon also stated "The important thing was not to acquire public support but to prevent a Congressional offensive against Presidential authority."[174] In a February 2 memo, Kissinger listed the pros and cons of the operation, focusing *first* on the anticipated domestic reaction:

"1. Domestic Reaction

[Pros]

- By taking domestic heat now, will be buying insurance that withdrawals can be successfully continued at a time when militarily much more vulnerable.
- U.S. involvement with air not ground combat troops.
- There are no legislative inhibitions to planned U.S. involvement.
- Operation consistent with Nixon Doctrine.

[Cons]

- Segments of Congress and general public will be extremely critical of operation, calling it an expansion of war and violation of Laotian neutrality.
- U.S. support of ARVN required to insure success.
- U.S. helo losses in Laos will fuel domestic reaction."[175]

[173] *Foreign Relations of the United States*, 1969–1976, Volume VII, Vietnam, July 1970–January 1972, eds. David Goldman Erin Mahan, and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 109. https://history.state.gov/historicaldocuments/frus1969-76v07/d109.

[174] *Foreign Relations of the United States*, 1969–1976, Volume VII, Vietnam, July 1970–January 1972, eds. David Goldman Erin Mahan, and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 112. https://history.state.gov/historicaldocuments/frus1969-76v07/d112.

[175] *Foreign Relations of the United States*, 1969–1976, Volume VII, Vietnam, July 1970–January 1972, eds. David Goldman Erin Mahan, and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 116. https://history.state.gov/historicaldocuments/frus1969-76v07/d116.

Operation Lam Son 719 began on February 8. South Vietnamese forces, fighting essentially alone, suffered immediate setbacks absent their American allies on the ground. Ultimately, the administration realized that the operation could only be successful if American forces were introduced, but forbid this option due to the congressional ban. Notably, this was despite the fact the administration had a legal argument available to it that it could ignore the congressional ban on ground troops. In other words, the administration prioritized following the letter of the law over actual victory in the operation. In the end, it was privately recognized in the White House the operation was "basically a disaster."[176]

The incursion drew limited criticism due to the absence of American ground forces (and, therefore, American casualties). Congressional Quarterly reported that the operation "provoked months of debate and criticism in Congress, but the reaction was moderate compared with the aftermath of the Cambodia invasion of 1970."[177] Nonetheless, Congress's lack of enthusiasm for the war attracted Hanoi's attention. A March 1 article in *Nhan Dan* proclaimed "Democratic Party accuses Nixon of escalating the war and demands the withdrawal of all American troops by end of 1971." On June 22, Senate adopted the Mansfield amendment—a non-binding resolution urging the removal of all American troops from Vietnam. A binding version of the bill was later rejected, however. Cheng Guan Ang writes "According to Luu Van Loi, if the amendment had been accepted, Hanoi would know exactly the constraints placed on Nixon and Hanoi would then find it unnecessary to negotiate a ceasefire or fix a deadline for the cessation of infiltration into South Vietnam," (Ang 2002, pg 72 -73). Congressional opposition thus encouraged North Vietnam to push harder in its dealings with Kissinger in Paris. Nguyen argues that in July 1971 the "antiwar movement in the spring both in Congress and on the streets, controversy over the Calley trial, and the publication of the Pentagon Papers, convinced the VWP it could press harder at negotiations,"(Nguyen 2016, pg. 212).

> "A few days later, Le Duan telegrammed Tho and Thuy in Paris twice with urgent instructions. The first telegram emphasized the need to coordinate the three spheres of the VWP's war effort: the military, political, and diplomatic struggles. In the second telegram, the first secretary went into more concrete detail by identifying the two objectives of the diplomatic struggle as, first, inciting the antiwar movement in Congress and on the streets in order to force Nixon to withdraw troops from Vietnam and, second, toppling the puppet Saigon government,"(Nguyen 2016, pg. 213).

Thus, Vietnamese leaders not only believed the President to be constrained by Congress, but had so much faith in the relationship they sought to actually influence the American leg-

[176]Diary of H.R. Haldeman, March 23, 1971, https://www.nixonlibrary.gov/sites/default/files/virtuallibrary/documents/haldeman-diaries/37-hrhd-audiocassette-ac06a-19710323-pa.pdf.

[177]"Laos Invasion Draws Limited Criticism from Congress." In CQ Almanac 1971, Vol. 27. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1972. http://library.cqpress.com/cqalmanac/cqal71-1253295.

islature in order to restrain the executive.

Figure 5.8 Timeline of Laos Incursion (1971)

1972: The Easter Offensive and the Christmas Bombings

The Administration continued its massive troop withdrawals from Vietnam over 1971 and by the beginning of May 1972, only 69,000 U.S. service members were left in the country.[178] When Nixon had come into office, there were over half a million U.S. troops in country, and in the summer of 1972 the last American ground comb at troops would leave.

Announced	Number	From:	Down to:	Effective	Troops per Day
June 8, 1969	**25,000**	549,500	524,500	August 31, 1969	294
September 16, 1969	**40,500**	524,500	484,000	December 15, 1969	445
December 15, 1969	**50,000**	484,000	434,000	April 15, 1970	410
April 20, 1970	**150,000**	434,000	284,000	May 1, 1971	398
April 7, 1971	**100,000**	284,000	184,000	December 1, 1971	418
November 12, 1971	**45,500**	184,500	139,000	February 1, 1972	555
January 13, 1972	**70,000**	139,000	69,000	May 1, 1972	636
April 26, 1972	**20,000**	69,000	49,000	July 1, 1972	299
June 28, 1972	**10,000**	49,000	39,000	September 1, 1972	152
August 29, 1972	**12,000**	39,000	27,000	December 1, 1972	126

Figure 5.9 Troop Withdrawal under Nixon Administration

At the same time, Nixon and Kissinger sought to alter the landscape of geopolitics through their historic opening to China. President Nixon himself arrived in Beijing in February 1972.

The Easter Offensive And Operation Linebacker

North Vietnam launched a massive, conventional attack against the South on March 30. While planning Easter Offensive, Hanoi predicted the U.S. might redeploy forces to Vietnam if Saigon was on edge of defeat, or Nixon might use the North Vietnamese attack in a public relations campaign in the U.S. to then target Hai Phong and industrial targets around Hanoi (Nguyen 2016, pg. 244). By April 3, the United States declared Hanoi to be in flagrant violation of not only the 1954 accords, but also of the 1968 understanding that had led to the bombing halt and the end of Operation Rolling Thunder. The next day, Nixon approved his administration's first use of B-52's against North Vietnam. In an April 26 address to the nation, Nixon specifically recognized Hanoi's hopes that Congress would paralyze him:

> "The Communists have failed in their efforts to win over the people of South Vietnam politically... Their one remaining hope is to win in the Congress of the United States and among the people of the United States the victory they cannot win among the people of South Vietnam or on the battlefield in South Vietnam."[179]

[178] "Vietnam Peace Terms." In CQ Almanac 1972, Vol. 28. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1973. http://library.cqpress.com/cqalmanac/cqal72-1249432.

[179] Richard Nixon, Address to the Nation on Vietnam. Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/node/254714.

In this vein, in a May 2 meeting between Kissinger and Tho, the North Vietnamese Negotiator specifically referenced statements from Senator Fulbright and Pentagon Papers controversy (Ang 2002, pg. 98). By May 8, with the enormous size of the Hanoi's attack into the South clear, President Nixon announced the commencement of Operation Linebacker against North Vietnam. The operation consisted mostly of the resumption of large scale bombing against targets in North Vietnam, with Hanoi itself targeted for the first time. Hai Phong—North Vietnam's main harbor—was also mined. Kissinger recalls the reaction of Democratic Senators:

> "For the moment, the explanations and the signals were overwhelmed by Congressional and media outrage. Senator William Proxmire denounced the President's action as 'reckless and wrong.' Senator Mike Mansfield was convinced that our decision would protract the war. Senator George McGovern called for Congressional action: 'The President must not have a free hand in Indochina any longe...The nation cannot stand it. The Congress must not allow it...The political regime in Saigon is not worth the loss of one more American life.' Senator Edmund Muskie thought the President was 'jeopardizing the major security interests of the United States,'" (Kissinger 2011*a*, pg. 1478).

The condemnation was not universal, however. In a congressional hearing on April 17, one Republican Senator, George Aiken, declared:

> "In 1965, I opposed the start of the bombing on North Vietnam when I thought the United States was clearly the aggressor. Today, I feel that by committing their entire military strength into the invasion of a neighboring country, that North Vietnam is the aggressor. I would not want to stand idly by and see two million people butchered in South Vietnam."[180]

Likewise, the House Foreign Affairs Committee—unlike its Senate counterpart—supported Nixon's May 8 announcement and passed a resolution stating such a position.[181] In fact, the public was surprisingly supportive of the move—a fact recognized by Hanoi (Nguyen 2016, pg. 252). The Chairman of the Joint Chiefs of Staff had recognized almost a month prior "Congress is more behind us on this one than ever before."[182] In fact, "[c]ongressional leaders hit [the Administration] for not doing enough,"[183] in immediate reaction to the North Vietnamese offensive.

[180] "'73 Foreign Aid Authorization Dies in Conference." In CQ Almanac 1972, Vol. 28. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1973. http://library.cqpress.com/cqalmanac/cqal72-1250890.

[181] "Vietnam Peace Terms." In CQ Almanac 1972, Vol. 28. CQ Almanac Online Edition. Washington, D.C., United States: Congressional Quarterly, 1973. http://library.cqpress.com/cqalmanac/cqal72-1249432.

[182] *Foreign Relations of the United States*, 1969–1976, Volume VIII, Vietnam, January–October 1972, eds. John M. Carland and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 74. https://history.state.gov/historicaldocuments/frus1969-76v08/d74.

[183] *Foreign Relations of the United States*, 1969–1976, Volume VIII, Vietnam, January–October 1972, eds. John M. Carland and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 75. https://history.state.gov/historicaldocuments/frus1969-76v08/d75.

Nevertheless, Hanoi found other encouraging signs in U.S. domestic politics. In mid-July, Hanoi recognized the nomination of George McGovern—a staunch anti-war Senator—as the Democratic presidential nominee as particularly fortuitous: "We now have more ways to exploit the contradictions between the two U.S. parties and to force Nixon to offer a settlement favorable to us,"(Nguyen 2016, pg. 264). North Vietnamese negotiators continued to see domestic politics as Nixon's weak spot—even despite major U.S. achievements internationally in engaging Beijing and Moscow (Nguyen 2016, pg. 264). Notably, on August 23 the last U.S. ground combat troops departed Vietnam.

The Christmas Bombings (Linebacker II) and The Paris Agreement

Kissinger and Tho continued their negotiations in Paris, and came close to forging a deal in October, but were ultimately unsuccessful. While The U.S. and North Vietnam came to a potential agreement that the U.S. would withdraw all its forces (and Hanoi would be able to leave its in place in the South) if North Vietnam gave up its demand that South Vietnamese President be deposed, Saigon was unwilling to go along with the plan. Kissinger returned to Washington, proclaiming on October 26 that "Peace is at hand." Similarly, "Tho returned to Hanoi to brief the Politburo on developments in Paris. In his estimation, Washington preferred to continue the war rather than settle it. Under the circumstances, Hanoi's best bet was to do nothing, to wait for Congress, the American public, and the international community to pressure Nixon into ending the war on the terms already agreed upon," (Asselin 2018, pg. 200).

On November 11, Nixon would defeat the anti-war McGovern in a historic landslide, winning forty-nine out of fifty states. A week later—as an inducement to his reluctant South Vietnamese allies—Nixon sent a private assurance to president Thieu in Saigon, pledging "to take swift and severe retaliatory action" if North Vietnam were to violate the proposed peace treaty.

Nixon recalled knowing the Administration was coming down to the wire:

> "[I]t was not a question of lacking sympathy for Saigon's predicament; but we had to face the reality of the situation. If we did not end the war by concluding a settlement at the next Paris session, then when Congress returned in January it would end the war by cutting off the appropriations. I had already informed Thieu that I had canvassed the staunchest congressional supporters of my Vietnam policy regarding the October terms, and they had unanimously avowed that if Thieu alone were standing in the way of accepting such terms, they would personally lead the fight against him when Congress reconvened," (Nixon 1990, pg. 724).

Ironically, while it was recognized it would be impossible to continue the fighting in the face of Congressional resistance, Nixon wrote that in order to get a deal, they would need

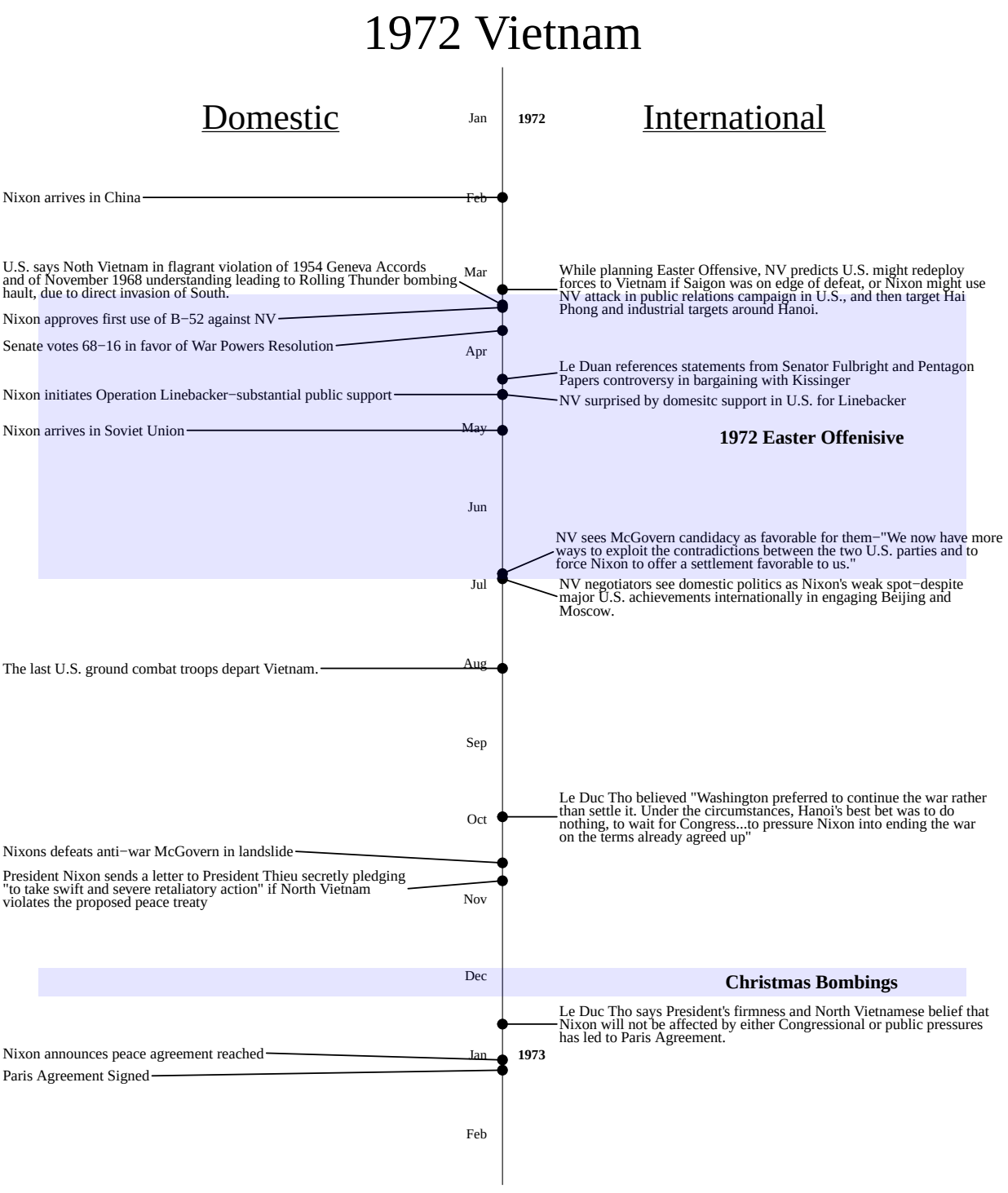

Figure 5.10 Timeline of Linebacker and Linebacker II (1972)

to "convince the North Vietnamese that we would stay in and continue fighting unless they agreed to a settlement,"(Nixon 1990, pg. 724). Nixon thus had to *feign* Imperiality. Kissinger recalls similar reasoning:

> "we would not again be able to get such terms except through military exertion of a scale and duration which the Congress and public would never sustain...But Hanoi had become greedy. Encouraged by the evident discord between Washington and Saigon, probably perceiving accurately what the new Congress would do in January, the North Vietnamese thought that they could take everything, make us cave in, and demoralize Saigon...Saigon, for its part, would see no point in flexibility; with Congress undoubtedly pressing cutoffs of funds it would run no additional risks by sticking to its course,"(Kissinger 2011*b*, pg. 1797).

Nixon thus decided to conduct a fierce, maximum-effort bombing campaign against the North: the so-called "Christmas bombings" (Operation Linebacker II). Kissinger writes:

> "We knew that there was no support for military action elsewhere in the Administration, and that it would provoke a violent uproar in the Congress and the media...Nixon reasoned, correctly, that he would pay a serious domestic price for lifting the self-imposed bombing restrictions; but it would become unmanageable only if he failed. He preferred a massive brief effort to a prolonged inconclusive one,"(Kissinger 2011*b*, 1797).

Nixon noted during the bombings that in Congress there were "critical outbursts from members of both parties. Republican Senator William Saxbe of Ohio said that 'President Nixon...appears to have left his senses on this issue.' And Mike Mansfield said that it was a 'stone-age tactic.' (Nixon 1990, pg. 738). As the bombings continued, the administration became sensitive even to single losses of bombers—noting that these would create congressional outcry.[184] Nonetheless, Nixon believed he had a freer hand than in the past because there were "no draftees to Vietnam, low casualties, etc, means the American people are not going to be shocked,"(Kadura 2016, pg. 18). Low casualties meant the President had a freer hand.

Nonetheless, the bombings continued and in the course of twelve days 20,000 tons of bombs were dropped on the North—effectively wiping out all economic gains made since Johnson's 1968 bombing pause (Asselin 2018). Asselin writes that the bombings forced Hanoi to conclude Nixon was a "madman" (Asselin 2018, pg. 202). Kissinger, in reporting the final conclusion of a deal with Hanoi to Nixon on January 9, noted "What has brought us to this point is the President's firmness and the North Vietnamese belief that he will not be affected by either Congressional or public pressures. Le Duc Tho has repeatedly made these points to me."[185] At the same time, the Administration privately warned South Vietnam of its problems

[184] *Foreign Relations of the United States*, 1969–1976, Volume IX, Vietnam, October 1972–January 1973, eds. John M. Carland and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 209. https://history.state.gov/historicaldocuments/frus1969-76v09/d209.

[185] *Foreign Relations of the United States*, 1969–1976, Volume XLII, Vietnam: The Kissinger-Le Duc Tho Negotiations, eds. John M. Carland and Adam M. Howard (Washington: Government Printing Office, 2017), Document 43. https://history.state.gov/historicaldocuments/frus1969-76v42/d43.

with Congress and that the President, in fact, would not be able to actually keep up such efforts after the new Congress convened in January. Nixon was able to secure Thieu's reluctant approval by sending a private letter to the South Vietnamese leader privately pledging to "react strongly in the event the agreement is violated" by North Vietnam on January 14. Similarly, Kissinger told South Vietnamese leaders on January 12 the U.S. would still be present in the region to deter North Vietnam:

> "It is not true we will withdraw totally. We will keep the Air Force in Thailand. People say we will never use it. But people said we would never resume bombing, mine North Vietnam, or use B–52's. We always do what people say we would never do."[186]

Nixon was thus able to announce on national television on January 23, 1973 that a peace agreement had been reached. Four days later the agreement was officially signed.[187] The United States was out of Vietnam.

Enforcing the Peace Accords: 1973-74

The conclusion of the Paris Peace Accords was hardly the end of the story, however. While U.S. forces were leaving Vietnam, Saigon still remained vulnerable. The 1954 and 1962 agreements, moreover, had clearly shown that agreements in Southeast Asia were hardly guaranteed to be observed. Effective deterrence of North Vietnamese adventurism was therefore needed. Thus, in the words of Kadura, Washington still faced a "war after the war" (Kadura 2016).

> "A central part of the strategy for Indochina was based on the idea of persuading Hanoi to refrain from any major offensive for a decent interval of some years. In order to accomplish this, Nixon and Kissinger sought to employ positive and negative incentives for Hanoi to abandon its plans for conquest: the prospect of the normalization of US–North Vietnamese relations and economic aid were meant

[186] *Foreign Relations of the United States*, 1969–1976, Volume IX, Vietnam, October 1972–January 1973, eds. John M. Carland and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 272. https://history.state.gov/historicaldocuments/frus1969-76v09/d272.

[187] Kissinger notes in his memoirs: "From the perspective of a decade it is possible to argue that Nixon would have been well advised to seek formal Congressional approval of the Paris Agreement, as a basis for enforcing it. I certainly think now—though I did not propose it then—that he should have demanded an authorization from the Congress in 1969 to conduct the war he inherited when he assumed the Presidency, giving the Congress the choice of pursuing the existing strategy or ending our involvement. In his first term Nixon took too much on his own shoulders in his effort to end a war he had not started, in the face of harassment by many who had brought about the original involvement, and against constant Congressional pressures that deprived our strategy of impetus and our diplomacy of flexibility. Nixon refused such a course in 1969 and did not consider it in 1973 because he believed it incompatible with the responsibilities of a President. In 1969 he thought it an abdication to ask the Congress to reaffirm his authority to conduct a war that was already taking place. In 1973 he was convinced that to ask a hostile Congress to give him authority to enforce the Agreement would be a confession that he had no authority to resist while the Congress was deliberating, and would thus invite an all-out North Vietnamese assault. He therefore proceeded to do what in his view the national interest required, in effect challenging the Congress to forbid it," (Kissinger 2011*b*, pg. 304-5).

to serve as carrots, while the possibility of renewed US bombings was intended to provide the necessary stick for successful deterrence," (Kadura 2016, pg. 21).

Thus, according to Kissinger, the plan was to intervene with air and sea power should the North decide to launch another all-out invasion of the South (Kadura 2016, pg. 32). Congressional resistance to resumed U.S. participation was already clear, however. Just as the new Congress was sworn in early January 1973, Democratic members of the House of Representatives voted 154 to 75 to cut off U.S. funds for the war in Vietnam once all U.S. forces were withdrawn and POWs returned—a vote reported in *Nhan Dan* the next day. In a twist of duplicity, Kissinger had told Congress no commitment had been made to defend South Vietnam, but told South Vietnam that the administration would intervene militarily (Kadura 2016).

A month after the announcement of the peace agreement, there were already signs that the accords would not hold up. A Department of Defense study privately concluded that a resumption of the Linebacker II bombings would probably end infiltration and could force the North Vietnamese into compliance with the Paris Agreement, but such measures posed a high domestic political risk for the administration (Kadura 2016, pg. 66). By March 20, well before the Case-Church Amendment barring operations in Indochina and the War Powers Resolution, Nixon argued that it would virtually impossible even to start bombing again absent congressional approval. Furthermore, he fretted that the North Vietnamese knew this, and thus would not be deterred by the threat of it once the last POWs were out:

"NIXON: After we get everybody out, and after we've withdrawn everything, then you damn near have to get congressional approval to do something...And, of course, we have, as you know, we've assured Thieu that we would do things. But, do you have any serious doubts in your own mind that we'd really—we would really have to go to their aid, in this case, with—if—let's face it: one of the reasons we were able to do what we were able to do is because they had the prisoners, and we had some troops there. Now, when they're all out, when all the prisoners are out, you're going to have one hell of a time.

HAIG: That's right.

NIXON: I mean, without going to the Congress, right?

HAIG: No, I agree with that, sir—

NIXON: Hitting the North, now—now in the—in the event—in the event there's a massive reinstitution, and so forth, of the—of military actions, that's something else again. But I'm speaking now that the idea that, well, by doing something now, that indicates we might be trigger-happy later. I don't think that argument is quite as strong as Henry has—see, he's thinking as to how it used to be, and not as to how it will be, I think... But my point is: it was more believable before, because we had people there. But, at a time when we don't have anybody there, it's going to be damn tough—they're smart enough to know that we will have to get some

sort of approval [from Congress]."[188]

In a separate conversation the same day, Nixon lamented:

> "if you hit now, is that the idea being that, well, if you hit now, with the POWs still there, that sort of puts them on notice that, maybe, we might do it again. That's going to evaporate, in, in my opinion. I mean, we have to be candid about what—what's really going to happen, due to the fact that the Congress will, will insist upon an approval of any major strike—I mean, with any strikes—after the withdrawal is complete... But, as far as the use of American air power against North Vietnamese forces coming into the South, unless there is a raw, naked invasion [unclear] it'd be terribly—it would be impossible, really, to get it without a Congressional uproar. You see, that's the, the point of that. The, the argument that you can make—the, the arg—it's, it's a very nice argument to say that, "Well, by, by hitting now, we demonstrate that the President is the kind of guy who will use power." Fine. It may demonstrate we'll use it now, but it does not necessarily demonstrate we'll use it later....[after] the last American leaves there, the whole feeling of Congress and the country would be, "Now, for Christ's sakes, we're out of Vietnam. Let's don't go back in."[189]

Nixon and Scowcroft agreed they were being tested: the North Vietnamese wanted "to see what they can get away with; to see how far they can go."[190] Nevertheless—and despite Nixon's obsession with his reputation for resolve—Kadura writes that by April "Nixon's predicament and lack of political capital would prevent him from ordering the necessary military response to address the continuing North Vietnamese cease-fire violations," (Kadura 2016, pg. 70). In an April 11 letter from Scowcroft to Kissinger, the future National Security Adviser gave options for countering North Vietnamese violations, but "[l]argely driven by domestic/political considerations" recommended against anything that would entail a high risk of POWs or American combat deaths.[191]

In an April 17 meeting, many in the administration sought to conduct a sizable strike against North Vietnamese force inside South Vietnam, but were ultimately deterred: "If the strikes last more than three days, we have domestic problems. The first day our critics are confused, but after three days they start getting rough." Kissinger reiterated that the major difficulty in launching the strike would be "the possibility of new POWs and the domestic

[188] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 33. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d33.

[189] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 34. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d34.

[190] Ibid.

[191] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 41. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d41.

1973 Post−Paris Peace

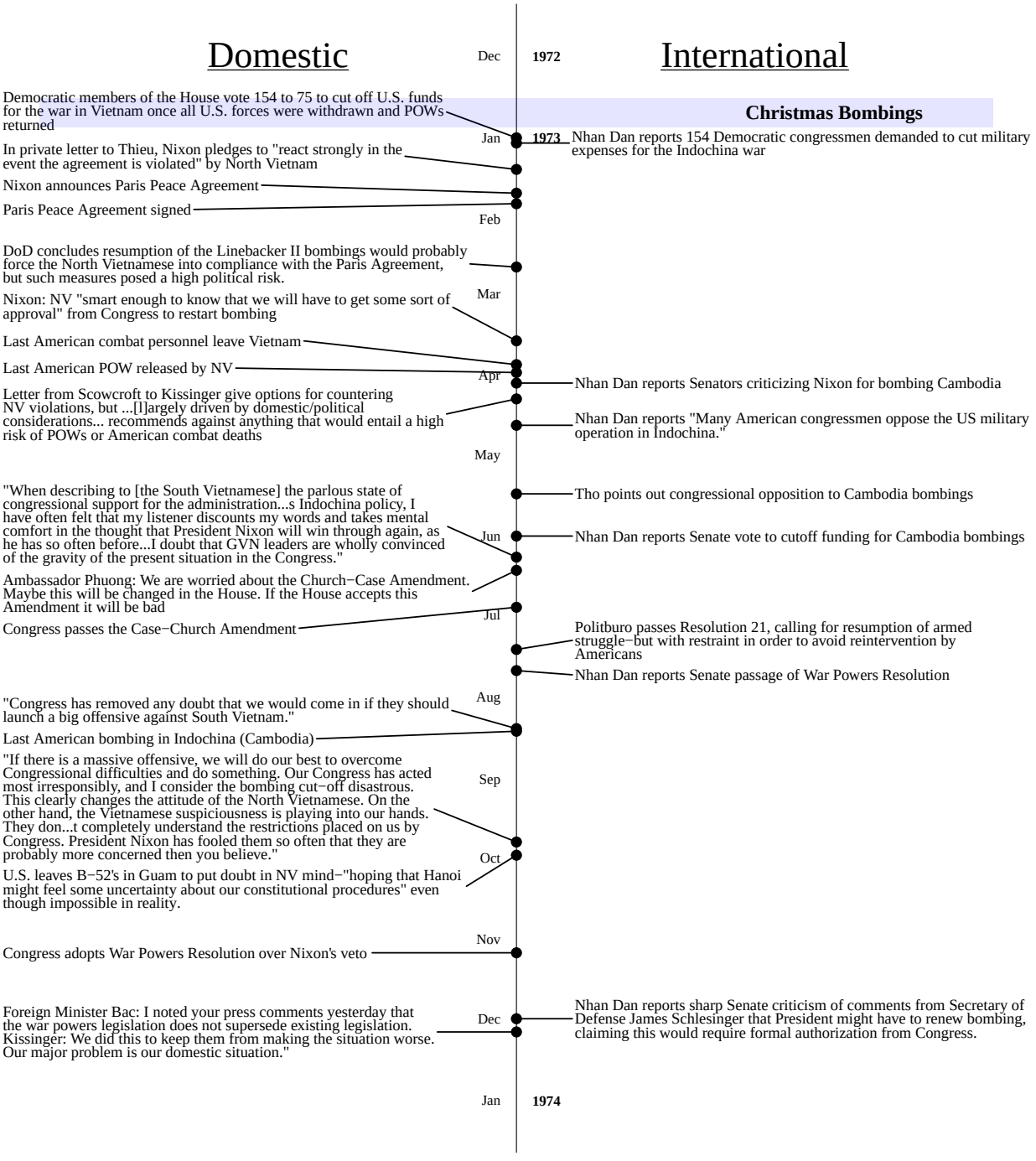

Figure 5.11 Timeline of Paris Peace Agreement and Aftermath (1973)

uproar that will develop."[192] Military planners ultimately suggested that a minimum of seven days of bombing would be necessary. Kissinger recalls is his memoir: "on April 17 I did not see how I could urge Nixon to put his diminishing prestige behind the new prolonged bombing campaign that the situation required...this represented a sea change" in U.S. policy. Now, it meant that "sooner or later South Vietnam" would be on its own (Kissinger 2011*b*, pg. 325-326).

Hanoi was acutely aware of the congressional resistance constraining Nixon and the White House from intervening. *Nhan Dan* bluntly reported in an April 21 article that "Many American congressmen opposed the US military operation in Indochina." Le Duc Tho on May 17 similarly specifically pointed to congressional opposition to smaller bombing missions over Laos and Cambodia:

> "Le Duc Tho: You have given air support to the troops of the Vientiane administration, launching encroaching operations against the regions under the control of the Pathet Lao in violation of the Agreement on Laos. With regard to Cambodia, you have stepped up very fierce air attacks in Cambodia, and the U.S. Senate and the House of Representatives are opposed to the air attacks in Cambodia by the Nixon Administration.
>
> Kissinger: May I recall to the Special Advisor a rule we discussed three years ago that should be enforced? You have been consistently wrong in your assessment. You will be wrong again. But other than that let us not discuss it.
>
> Le Duc Tho: Let me finish the first sentence. Considering the bombing of Cambodia as an illegal act, therefore, the Senate and the House of Representatives refuse to appropriate funds to carry out these attacks in Cambodia. I just point out this fact that the stepped up bombing of Cambodia is a wrong deed: not only we are opposed to that but even the American people are opposed to the bombing in Cambodia. This is what I wanted to mention.
>
> Kissinger: The American people are our problem, not the Special Advisor's."[193]

Kissinger recalls of the meeting, "He knew I was bluffing and let me feel it,"(Kissinger 2011*b*). In fact, en route to his May 17 meeting with Tho, Kissinger received an intelligence report specifically detailing Viet Cong instructions to their soldiers in the South: "Even if President Nixon remains in office...he will not dare to apply such strong measures as air strikes or bombing attacks in either North or South Vietnam, because the US Congress and the American people will violently object,"(Kissinger 2011*b*, pg. 327). Thus, communist forces were well aware of the political constraints on the President *even before the funding cutoff in*

[192] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 43. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d43.

[193] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 49. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d49.

the summer of 1973. Moreover, this point was well recognized by the White House: Kissinger closely connected congressional activity with the perceived credibility of the United States:

> "Just as it did in the years of peace negotiations, Hanoi was orchestrating its moves with our domestic politics. It had plenty of evidence for its shrewd judgment. Beginning in early May, antiwar measures in the Congress that had usually been blocked in the House of Representatives began to pass. For example, on May 10, the House of Representatives voted 219–188 to cut off funds for the bombing of Cambodia. On May 31, the Senate voted the same by a margin of 63 – 19,"(Kissinger 2011*b*).

Kissinger admits "With respect to the violations of the Paris Agreement we had used the rhetoric of hawks, but were forced to be doves. For the first time we had threatened and not followed through,"(Kissinger 2011*b*). South Vietnamese allies were also worried about the credibility of the U.S. deterrent given Congress—explicitly mentioning this to Kissinger on June 15.[194]

Internally, the administration knew that the ban on the continued bombing in Cambodia would undermine peace efforts. Nixon sent a letter to congressional leaders arguing that "I can only hope that the North Vietnamese will not draw the erroneous conclusion from this Congressional action that they are free to launch a military offensive in other areas in Indochina"[195] Nixon wanted to do more, but Kissinger argued "the danger, Mr. President, if you ask for an extension and then get voted down, then the signal is even stronger."[196] In a June 26 conversation between Kissinger and soon to be Secretary of Defense James Schlesinger, the two noted the predicament:

> "K: It is getting impossible to do anything in Indochina.
>
> S: That is right. We can't [inaudible] the bombing should the North Vietnamese resume the bombing [fighting?].
>
> K: Or the mining.
>
> S: Well, the mining I have to check on. That may be sufficiently gray area that it is possible, but the Resolution was pretty well [inaudible].
>
> K: That finishes us.

[194] https://history.state.gov/historicaldocuments/frus1969-76v10/d85 On June 10 the Acting Ambassador to Vietnam noted to Kissinger "There is also a tendency in Saigon to place an almost superstitious trust in the luck of President Nixon...When describing to Lam and others the parlous state of congressional support for the administration's Indochina policy, I have often felt that my listener discounts my words and takes mental comfort in the thought that President Nixon will win through again, as he has so often before. In short, I doubt that GVN leaders are wholly convinced of the gravity of the present situation in the Congress."https://history.state.gov/historicaldocuments/frus1969-76v10/d73.

[195] Public Papers of the Presidents of the United States: Richard Nixon, 1973, p. 686, available at https://quod.lib.umich.edu/p/ppotpus/4731942.1973.001/740?page=root;rgn=full+text;size=100;view=image

[196] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 97. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d97.

S: That's right. We have run out of string on this one."[197]

On June 29, Congress finally passed the Case-Church Amendment banning *all* U.S. military action in Indochina after August 15.[198] This ban not only covered all geographic locations—both Vietnams in addition to Cambodia and Laos—but even forbid air and sea action. At the same time, Congress was attempting to pass a version of the War Powers Resolution (that would ultimately pass over Nixon's veto in November). *Nhan Dan*, for example, specifically noted the passage of one version of the bill in July—further solidifying Hanoi's judgment that the President would be constrained by Congress. Less than a month later, the Politburo would pass Resolution 21, calling for resumption of armed struggle—but with restraint in order to avoid re-intervention by Americans.

August 7 Kissinger again commented that "the Congress has removed any doubt that we would come in if they should launch a big offensive against South Vietnam."[199] In a September 23 conversation between Kissinger and the acting foreign minister of South Vietnam, Kissinger promised:

> "If there is a massive offensive, we will do our best to overcome Congressional difficulties and do something. Our Congress has acted most irresponsibly, and I consider the bombing cut-off disastrous. This clearly changes the attitude of the North Vietnamese. On the other hand, the Vietnamese suspiciousness is playing into our hands. *They don't completely understand the restrictions placed on us by Congress.* President Nixon has fooled them so often that they are probably more concerned than you believe. It is important that you show confidence and behave strongly."[200]

In the same conversation, the acting foreign minister of South Vietnam asked what the U.S. could do to enforce the terms of the Paris Peace Accords. Kissinger informed the minister that the executive's hand were tied by the legislature:

> "Mr. Duc: There have been continuing violations by the other side, and there has been no withdrawal from Laos or Cambodia. What can be done about this?
>
> Sec. Kissinger: If it were not for domestic difficulties, we would have bombed them. This is now impossible."[201]

[197] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 87. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d87.

[198] Asselin writes "Despite the US Congress' recent decision to bar further US combat operations in the region, the [VWP Central] Committee worried that Nixon, who had proven impervious to congressional and public pressure in the past, might redeploy combat troops or, more likely, renew the bombing of the North," (Asselin 2018).

[199] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 100. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d100.

[200] Emphasis added. *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 108. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d108.

[201] Ibid.

By the end of October, with a war occurring in the Middle East, the U.S. began removing B-52's from Guam. Kissinger recalls:

> "the Joint Chiefs of Staff ordered the return of Guam-based B-52s to the United States. They were there as a vestige of the Vietnam War, to deter resumption of the fighting in Indochina. Congressional action in the summer of 1973 had made this impossible. *But hoping that Hanoi might feel some uncertainty about our constitutional procedures, we had not moved the planes*, recognizing that we could not fool these experts in protracted warfare for long. Now we used the opportunity to end this empty game," (Kissinger 2011*b*, pg. 591. Emphasis added).

On November 7, both houses of Congress would vote to override Nixon's veto of the new War Powers bill—further limiting the President's ability to act unilaterally. Asselin writes that upon learning of the resolution's passage, "Hanoi cheered. It saw the act as a clear legal sanction against the resumption of US combat operations in Indochina that would make it nearly impossible for Nixon to reintroduce forces in Vietnam whatever transpired in the South," (Asselin 2018, pg. 223). On December 12, *Nhan Dan* noted sharp Senate criticism of comments from Secretary of Defense James Schlesinger that the President might have to renew bombing in Vietnam, with Senators stating this would require formal authorization from Congress. There was a legal question whether the war powers resolution—coming *after* the funding cutoff in the summer, would actually *allow* the President to respond in Vietnam so long as the intervention lasted less than sixty day. The Administration did not air this possible loophole in public, however.[202] Kissinger concluded in February 1974 "I get a lot of praise for great foreign policy, but you and I know it is 90% bluff right now." (Kadura 2016, pg. 174).

At the same time, North Vietnamese analysts were clearly aware congressional actions were making it much more difficult for the President to act. *People's Army* reported on November 23:

> "Even the usually undisturbed U.S. Congress is now seething with constant struggles to demand curtailment of the U.S. President's power. Although the congressional resolution forcing the executive to end the bombing in Cambodia after 15 August was not the only resolution of that type, there have not been many such resolutions in U.S. history. The aspirations for peace of the broad masses of U.S. people is a factor that has forced the Nixon administration to change, to a certain measure, the trend of its actions and its speech."[203]

[202] "Foreign Minister Bac: I noted your press comments yesterday that the war powers legislation does not supersede existing legislation.

The Secretary: We did this to keep them from making the situation worse. Our major problem is our domestic situation. But we will do what can be done. We will give you some capacity to mine North Viet-Nam's harbors. We did not go through all this agony to have the cease-fire agreement broken. We will do what we need to do—reconnaissance over North Viet-Nam, the dispatch of a carrier to the Gulf of Tonkin—to keep Hanoi worried." *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 118. https://history.state.gov/historicaldocuments/frus1969-76v10/d118.

[203] Files of North Vietnam assessing the world situation at the end of 1973, February 1974, available at https://hv.proquest.com/pdfs/003233/003233_006_0687/003233_006_0687_From_1_to_116.pdf.

The Fall of Saigon: 1974-75

On August 9, 1974, Richard Nixon resigned from the office of the Presidency. Four days later, Hanoi concluded internally that congressional resistance to Vietnam War is what led to Nixon's resignation.[204] In a resolution, the Politburo argued that "In South Vietnam, we need to exploit Nixon's fall to step up our struggle against the U.S. and the Saigon Government on all fronts—political, military, and diplomatic."[205]

Nevertheless, Kissinger tried to maintain the bluff—telling Tho in mid-August that "President Ford, as you must be aware, has been a firm supporter of President Nixon's policy in Indochina for five and one-half years...I must convey to you that President Ford is a man with a keen sense of American honor."[206] Kadura writes of Kissinger's private thinking, however, in August 1974:

> "As had been the case since the summer of 1973, Kissinger knew that Washington's hands were tied and that real deterrence had become impossible. This observation was reaffirmed by Kissinger's aides, Richard Kennedy and William Stearman. The two National Security Council (NSC) staffers outlined various limited diplomatic and military actions that they believed were still available to Washington in order to threaten Hanoi (for example, flying regular reconnaissance missions over North Vietnam). However, Stearman and Kennedy concluded that "one thing we must keep in mind is that if our hand is forced we run the risk of seriously diminishing what credibility our residual Southeast Asia military presence does have...The options listed above could in our opinion raise serious doubts in Hanoi as to our probable reaction to any major offensive actions,"(Kadura 2016, pg. 122).

Thus, within the administration, it was well recognized that the White House's options were highly constrained by Congress and that deterrence was failing. By the end of September, Hanoi had concluded the United States would not return to Vietnam "even if you offer them candy,"(Asselin 2018, pg. 225). By November, North Vietnamese analysts were arguing:

> "The U.S. has suffered losses and been forced to withdraw its troops. Even though the U.S. remains stubborn, it is encountering great problems in both its foreign and domestic policies. It is experiencing inflation and is in danger of an economic crisis. The Ford Administration is not strong and is encountering fierce opposition in the Congress."[207]

[204] Politburo Resolution No. 236-NQ/TW, August 13, 1974, Wilson Center Digital Archive, https://digitalarchive.wilsoncenter.org/document/175861.

[205] Ibid.

[206] Telegram, Scowcroft to Colonel Oveson, August 19, 1974, National Security Adviser, Kissinger-Scowcroft West Wing Office Files, 1969–1977, Box 34, GRFL.

[207] Guidance (No. 288) on Implementing the Resolution of the Central Military Party Committee in Combat and Force-Building Missions in 1975, November 13, 1974, Wilson Center Digital Archive, https://digitalarchive.wilsoncenter.org/document/175865.

On January 7 Phuoc Binh fell to Communist forces, which had initiated an assault on the province in early December. North Vietnam saw this as test of American resolve—"We tested Ford's resolve by attacking Phuoc Long in January 1975. When Ford kept American B-52's in their hangers our leadership decided on a big offensive against South Vietnam."[208] The administration understood this at the time, and sought to respond with military deployments and aid:

> "[Kissinger:] The only thing North Vietnam knows is massive brutality. There are signals we can give, but all it would cause is a little hell here. B–52's to Guam or Thailand... We could put a carrier into the Tonkin... We could move F–4's to Clark.
>
> Another problem is that South Vietnam doesn't have mines. They could mine if things get out of control. But the DOD lawyers oppose it on the basis of Article 7 of the Paris Agreement. That is insane. North Vietnam hasn't obeyed Article 7 at all. My people want to be able to claim we have obeyed Article 7.
>
> President: I think we should do it."[209]

Within a few days, however, the administration began questioning even this military posturing as concern began to be raised that the deployments would arouse such opposition in Congress as to undermine the credibility of the threat the actions were meant to convey in the first place. Kissinger noted:

> "I still think the moves in Southeast Asia are right, but Defense is so opposed to them that they would leak them and cause us an enormous problem with the Hill. Then you would have to say a thousand ways what you would *not* do. This is the worst way to deal with the North Vietnamese."[210]

A January 13 top-secret memo to the Secretary of Defense similarly argued "each option [for signaling to Hanoi] should be carefully evaluated as to how it would likely be received by Congress and by the American public. Unfavorable public or Congressional reaction to our efforts could be counterproductive since it might become apparent that we could not follow through with any action to back our 'signals.'"[211]

Nonetheless, the North Vietnamese seemed to have already concluded by this point that the U.S. would not intervene, given comments from the Department of Defense about

[208] https://www.govinfo.gov/content/pkg/CREC-1995-08-04/html/CREC-1995-08-04-pt1-PgH8514.htm.

[209] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 159. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d159.

[210] Emphasis in original. *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 161. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d161.

[211] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 162. https://test.history.state.gov/historicaldocuments/frus1969-76v10/d162. Notably, this particular portion of the memo was specifically highlighted for attention.

living up to the letter of the 1973 Cooper-Church Amendment barring the use of force in Southeast Asia (Văn 1977, pg. 22). Throughout the period, North Vietnamese leaders were aware of Congressional action. *Nhan Dan* reported on January 19, for example, the Democratic Senators such as McGovern were against even aid for Saigon—to say nothing of direct American intervention.

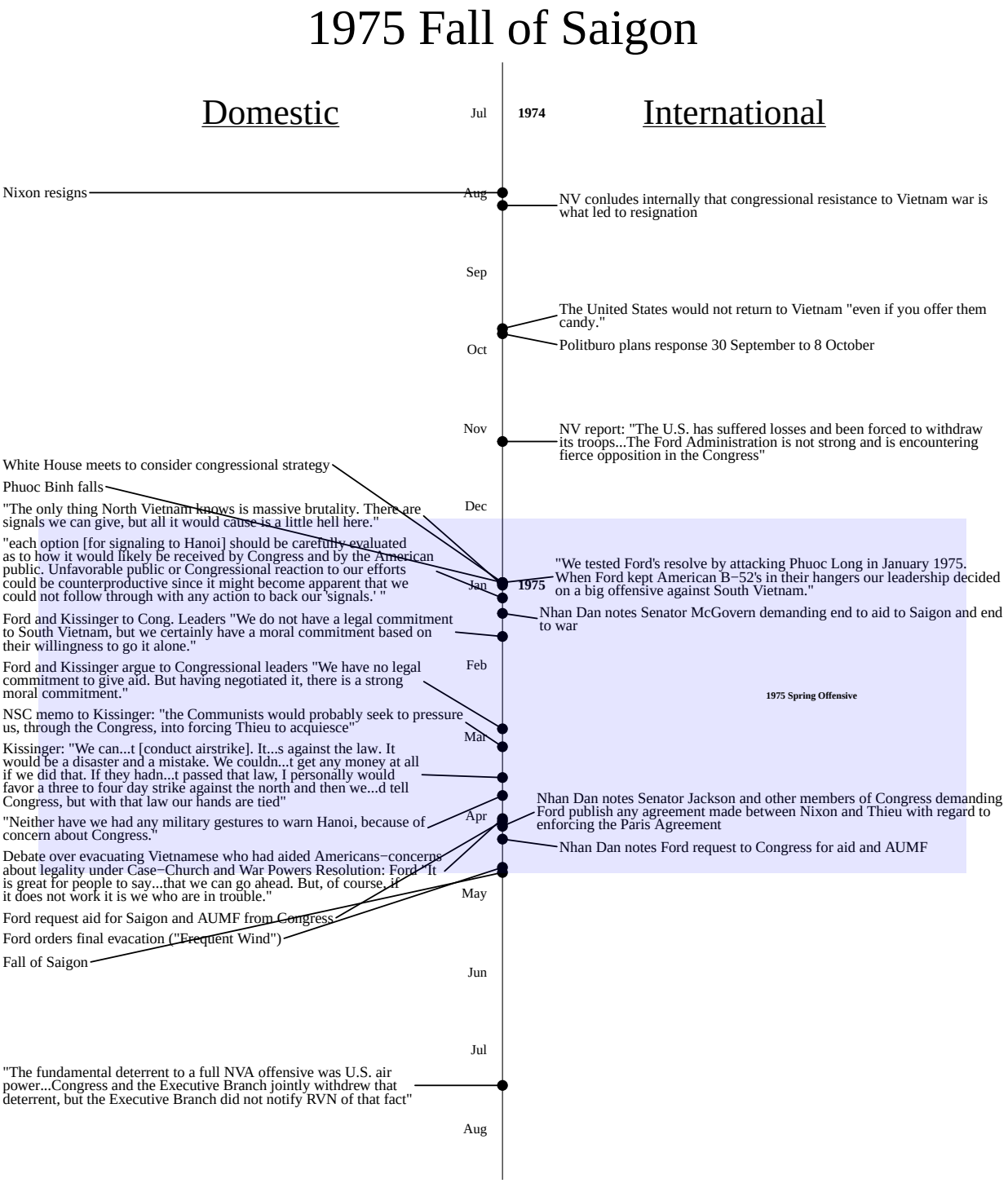

Figure 5.12 Timeline of Fall of Saigon (1974-75)

Ford and Kissinger again met with congressional leaders on January 28 about the crisis and possible aid for South Vietnam and Cambodia. The administration told congressional leaders, "We do not have a legal commitment to South Vietnam, but we certainly have a moral commitment based on their willingness to go it alone. There was a moral commitment that if the Government of Vietnam permitted us to get out and get our prisoners back, the Congress would provide what was required"[212]

It was realized, however, that congressional opposition was too strong and that Hanoi knew it. On March 12 a memo from a National Security Council staffer to Kissinger argued that "the Communists would probably seek to pressure us, through the Congress, into forcing Thieu to acquiesce" to communist demands.[213] On March 24 when a State Department official suggested the U.S. use force to intervene, Kissinger lamented "We can't. It's against the law. It would be a disaster and a mistake. We couldn't get any money at all if we did that. If they hadn't passed that law, I personally would favor a three to four day strike against the north and then we'd tell Congress, but with that law our hands are tied"[214] A week later, a staffer complained the U.S. had not even "had any military gestures to warn Hanoi, because of concern about Congress."[215]

By the beginning of April, it was becoming clear that the final collapse of South Vietnam would occur in a matter of weeks. Consideration then moved from preventing the Fall of Saigon to planning for evacuations. Notably, questions over the war powers came up—especially because of the Case-Church Amendment barring the use of military force in the region, as well as the more recently passed War Powers Resolution. The question was what kind of action was permitted, given these acts:

> "Kissinger: The problem is not under the War Powers Act, as I see it. It is under the Indochina Restrictions, where the issue becomes more difficult. Elsewhere, it would appear to be easy to use U.S. forces for this purpose.
>
> President: Which of these was approved last?
>
> Kissinger: We went through that at the time of this legislation and determined that the War Powers legislation superseded the other. But the Administration of your predecessor took the position at the time that it would not claim this.

[212] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 168. https://history.state.gov/historicaldocuments/frus1969-76v10/d168.

[213] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 185. https://history.state.gov/historicaldocuments/frus1969-76v10/d185.

[214] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 191. https://history.state.gov/historicaldocuments/frus1969-76v10/d191.

[215] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 199. https://history.state.gov/historicaldocuments/frus1969-76v10/d199.

> However, despite this kind of issue, the question is whether it would be politically acceptable for us to do this...
>
> President: It is great for people to say this...to the effect that we can go ahead. But, of course, if it does not work it is we who are in trouble."[216]

Thus, while the Administration was aware that it had an available legal argument that it *could* use force—i.e., that the more recent War Powers Resolution overrode the Case-Church ban on operations in Southeast Asia—it realized that the problem it faced was fundamentally more political than legal. Indeed, Ford clearly recognized the problem of loss costs ("It is great for people to say this...to the effect that we can go ahead. But, of course, if it does not work it is we who are in trouble"). Ford thus decided to try to cover his political flank by going to the legislature. On April 10, Ford went before Congress and made a final plead both for $722 million in military aid for Saigon and for formal authorization to evacuate at-risk South Vietnamese:

> "I ask the Congress to clarify immediately its restrictions on the use of U.S. military forces in Southeast Asia for the limited purposes of protecting American lives by ensuring their evacuation, if this should be necessary. And I also ask prompt revision of the law to cover those Vietnamese to whom we have a very special obligation and whose lives may be endangered should the worst come to pass.
>
> I hope that this authority will never have to be used, but if it is needed, there will be no time for Congressional debate."

Nhan Dan, notably, specifically reported on Ford's request to Congress. On April 12, the North Vietnamese newspaper wrote of the dissent in Congress against helping Saigon—specifically noting, for example, that Senator Jackson and other members of Congress demanded Ford publish any agreement made between Nixon and Thieu with regard to enforcing the Paris Agreements. Ultimately, Congress would grant neither the aid nor the authority request of the President. Ford would order the final evacuation of Saigon on April 28, and the ultimate fall of the capital of South Vietnam would occur on April 30. In the end, only 5% of the South Vietnamese considered at-risk due to their association with Americans forces were able to be evacuated.[217]

A Department of Defense memo from July attempted to explain the Fall of Saigon:

> "The fundamental deterrent to a full NVA offensive was U.S. air power, not RVN capabilities. Congress and the Executive Branch jointly withdrew that deterrent, but the Executive Branch did not notify RVN of that fact. President Nixon secretly assured Thieu, in return for signing the Paris Accords, that the U.S. would strike back with full force if NVN massively violated the ceasefire. The Executive

[216] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 212. https://history.state.gov/historicaldocuments/frus1969-76v10/d212.

[217] See Chapter Four.

> Branch acquiesced in—perhaps even abetted—the Congressional effort to nullify that deterrent. Mr. Ford said in 1973 that, if bombing were again necessary, the President would request it; in 1975 Mr. Ford did not request it."[218]

Conclusion

Despite a widespread belief that the Vietnam War represented the zenith of an Imperial Presidency ready, willing, and able to act regardless of Congress's own desires (Schlesinger 1973, Fisher 2013, Burns 2019), historians of the Vietnam War have closely documented Hanoi's attempts to interpret domestic American politics—especially Congress—and react accordingly (Asselin 2018, Nguyen 2016, Ang 2002). Throughout the conflict in Southeast Asia, U.S. adversaries looked to the legislature when attempting to analyze American credibility, and ultimately were able to take advantage of a highly constrained executive in order to finally capture Saigon in 1975.

The following patterns with regard to Congress and the war powers are illustrated in the above cases. First, domestically, of the five presidents faced with the possibility of military intervention in Southeast Asia from 1954 to 1975—Eisenhower, Kennedy, Johnson, Nixon, and Ford—*none* was willing to *initiate* a substantial use of military force unilaterally. Eisenhower seemingly declined intervention at Dien Bien Phu specifically due to a lack of formal authorization from Congress, while Kennedy's plans for a possible Laos intervention made clear that it would not be undertaken unilaterally. Johnson's own recollections and the contemporary transcript evidence make clear that the Korean precedent was to be avoided at all costs—intervention without formal approval from Congress was a non-starter. Nixon, of course, proved willing to take such actions as the 1970 Cambodian Incursion or the 1972 mining of Haiphong absent renewed authorization from Congress, but these involved actions in a war long underway. When it came to re-initiating the use of military force in Vietnam after the January 1973 Paris Peace Accords, Nixon and Kissinger proved unable even to conduct significant airstrikes absent renewed authorization from Congress. Lastly, Ford—a long-time hawk and consistent supporter of the war—proved unable to enforce the Paris Peace Accords, or even to undertake a more substantial evacuation of at-risk South Vietnamese individuals without formal authorization from Congress.

At the same time, these Presidents often *claimed* they were willing to act unilaterally. Given the recent debacle of the Korean War and the Bricker Amendment vote, Eisenhower often stated the U.S. would not become involved in Indochina absent a congressional vote—but at certain points in the crisis he and his administration clearly asserted a willingness to

[218] *Foreign Relations of the United States*, 1969–1976, Volume X, Vietnam, January 1973–July 1975, eds. Bradley Lynn Coleman and Edward C. Keefer (Washington: Government Printing Office, 2010), Document 283. https://history.state.gov/historicaldocuments/frus1969-76v10/d283.

act unilaterally. Most specifically, the President clearly threatened to veto any legislation that would have narrowed his powers to initiate conflict as Commander-in-Chief. Unlike Eisenhower, Kennedy gave no such public statements of gaining congressional authorization and, indeed, actively attempted to convey an image of being willing to act unilaterally. And, yet, the private planning shows that congressional authorization would have been sought had an actual intervention in Laos in 1962 been undertaken. Lyndon Johnson clearly claimed in public that he did not need authorization from Congress in order to conduct the war in Vietnam—a point often emphasized by scholars of the Imperial presidency (Beschloss 2018, Griffin 2013)—but the evidence is very clear that the administration would *not* have actually been willing to undertake any kind of substantial combat role absent some kind of formal approval from the legislature. Nixon, perhaps most infamously, made incredibly wide claims to presidential power—at one point asserting "when the president does it...that means that it is not illegal." And yet, in the final analysis, even the Nixon Administration was deterred from acting unilaterally to uphold the Paris Peace Accords it worked so hard to forge.

The wide gulf between what Presidents *claimed* they had the power to do, and what they proved actually *willing* to do, is best explained by the higher ordered concerns: Presidents are well aware their adversary is listening, and thus have very strong incentives to feign a willingness to act unilaterally, or otherwise in opposition to congressional sentiment. Even during the 1954 Indochina crisis, the Eisenhower administration was clearly cognizant that what it said in public could, and would, be overheard and analyzed by communists leaders in China and Vietnam. Hence, when there was a domestic uproar when then-Vice President Nixon suggested the White House might unilaterally deploy troops to Vietnam, Eisenhower (despite privately being unwilling to actually intervene without congressional authorization) actually supported Nixon's move—"he felt it was important that we not show a weakness at this critical time and...it was not well to tell the Russians everything as to what we would or would not do," (Nixon 1990, pg. 153). The Kennedy administration, likewise, clearly had higher ordered concerns in mind when it purposefully bluffed a willingness to intervene in Laos in 1961-1962.[219] Perhaps most clearly of all, Nixon and Kissinger were well aware that presenting an image of a "madman"—with preferences so strong as to overcome any political cost—would create substantial bargaining advantages. Hence, an image of an "Imperial" President would enhance deterrence even as privately the administration recognized in 1973—especially after U.S. POWs were returned home—that it would be impossible to intervene again absent formal congressional authorization. Lastly, the Ford administration was so concerned about how the war powers relationship with Congress might undermine deterrence that it purposefully avoided even military deployments that would cause public congressional consternation. Thus, it seems

[219]It was only *after* the attack on Nam Tha that intervention was actually seriously considered by the President.

that higher-ordered concerns—worries about the beliefs of one's adversaries and allies—has led successive White Houses to publicly make extraordinary claims to presidential war power while privately being unwilling to actually act unilaterally.

Another common theme seen throughout the U.S. experience in Southeast Asia in the 1950's to the 1970's is that informal congressional sentiment still played a major role in presidential decision-making, even when specific formal congressional authorization was seen as unnecessary. For example, while Johnson did not seek additional authorization after the 1964 Gulf of Tonkin Resolution, it was clear that informal congressional sentiment was nearly always on the mind of the President. When making the key decision to Americanize the war in the spring and summer of 1965, the White House went to great lengths to determine what congressional sentiment was and to discuss the options with congressional leaders. While there certainly were key Senators that vigorously opposed the move, it is clear that the overwhelming majority of both houses supported it. When further escalations were made over the next two years, this was always pursuant to a background of congressional support—and when congressional support finally transformed into congressional opposition after the 1968 Tet Offensive, Johnson clearly changed and curtailed his decision in response. Nixon, likewise, considered but rejected the idea of asking for renewed formal authorization from Congress when coming into office in 1969, but—again—paid close attention to informal congressional sentiment in his decision-making. As soon as the 1969 Spring Offensive was launched, Johnson Administration officials suggested Nixon end the recent bombing pause of North Vietnam. The new administration, however, specifically was deterred from doing so because of expected congressional backlash—opting, instead, to bomb North Vietnamese sanctuaries in Cambodia. As similar dynamic played out a few months later when North Korea killed 31 American servicemen. When it came to the 1970 Cambodia ground incursion, the White House was well aware the move would around enormous opposition in certain sections of Congress, and priced this expectation into the decision. For example, the plan was purposefully limited to the border region in Cambodia that clearly threatened South Vietnam—and to *not* pursue North Vietnamese units far deeper in Cambodia fighting Cambodian forces. Moreover, once the incursion began, Nixon clearly collapsed under the pressure and repeatedly limited the operation even further under pressure from legislators—going so far as to not even capture one of the prime goals of the operation (COSVN) even when it was within easy reach. Similarly, when facing a very similar problem the next year in Laos, the White House closely followed a Congressional prohibition on ground troops in Laos despite having a legally available argument that the President's powers as Commander-in-Chief could override such a prohibition. The Administration prioritized following this congressional ban so much, in fact, that it proved willing to do so even at the cost of watching its South Vietnamese allies suffer horrendous casualties and virtual defeat:

Nixon and Kissinger would privately admit it was "basically a disaster."[220] More broadly, Kissinger notes that many of Nixon's massive troop withdrawals from 1969-1972 occurred due to congressional pressure. Nixon proved more willing to buck congressional opposition when it came to air operations—Linebacker II being a prime example—but this was due to the far lower U.S. casualties such operations would predictably entail compared to ground combat. Moreover, even air operations seemed to be beyond reach once American POWs were returned in 1973. The administration's near complete inability to enforce the Paris Peace Accords it worked so hard to forge clearly demonstrates the President's de facto constraint by Congress. Thus, it appears on balance that even Nixon—perhaps the most Imperial of Presidents—saw his decision-making substantially constrained by sentiment in Congress.

Lastly, the American experience in Vietnam clearly shows that—as expected by the higher-ordered concerns expressed by successive administrations—U.S. adversaries were well aware of the domestic constraints faced by Presidents, and followed congressional activity quite closely. Even as far back as the early 1950's, communist forces in China and Vietnam knew of the domestic debates taking place in the United States over the war powers. The controversy over Truman's decision to undertake the Korean War unilaterally was known and understood by U.S. adversaries in the region. Asselin writes that Hanoi "knew, largely on the basis of its interpretation of the recent war in Korea, that any presidential administration would have a tough time sustaining a war in Vietnam without popular and congressional approval," (Asselin 2018, pg. 120). During the 1954 Indochina Crisis, *People's Daily* and *Nhan Dan* both extensively covered the domestic war powers debate in the United States. *People's Daily* went so far as to quote statements from Eisenhower as to under what circumstances he would or would not act unilaterally. Communist leadership, more importantly, also explicitly took congressional politics into account when assessing the credibility of American intervention threats. Ten years later, Hanoi would drastically update its assessment of American intentions when it viewed Congress pass the Gulf of Tonkin Resolution in August 1964. Throughout the "American War", leaders in North Vietnam frequently quoted domestic developments in the United States, and explicitly even tried to influence congressional opinion in Washington. In negotiating with Kissinger in Paris, communists leaders likewise pointed to congressional and popular opinion in the United States when determining how far to push Kissinger and other American negotiators. At the ultimate conclusion of the conflict, Hanoi cited congressional resistance to re-engagement in Vietnam as a reason to risk a final assault on Saigon in early 1975. Thus—as is already well recognized amongst experts on Hanoi's perspective of the war (Nguyen 2016, Asselin 2018)—U.S. adversaries paid close attention to the legislature when assessing American credibility.

[220]Diary of H.R. Haldeman, March 23, 1971, available at https://www.nixonlibrary.gov/sites/default/files/virtuallibrary/documents/haldeman-diaries/37-hrhd-audiocassette-ac06a-19710323-pa.pdf.

Overall, these patterns suggest that even in the war in Vietnam—often the hand-selected example of a purported Imperial Presidency—the White House was actually significantly constrained by congressional opinion. If congressional constraint thus existed even in Vietnam, such de facto limits on executive freedom have likely existed more broadly in the postwar period.

Conclusion

The preceding chapters have suggested that Congress even today substantially constrains the executive's use of military force decisions. First, even if a President has *de facto* unlimited discretion over the choice to use military force, and even if neither Congress nor the courts can directly alter the chosen policy of the executive, Congress still maintains substantial influence over use of military forces decisions. The primary mechanism of this influence is Loss Costs—the penalty a President expects to receive for a use of force undertaken unilaterally that then ends poorly. Because the size of these costs are scaled by both the amount of force utilized (i.e., blood and treasure spent) and Congress's informal sentiment toward the use of force, the amount of force a President will be willing to employ—even when acting unilaterally—is limited by the support or opposition there exists in Congress for the proposed intervention. Moreover, the existence of these lost costs then gives Presidents an incentive to seek formal authorization for the use of military force—especially when it comes to the largest operations they might contemplate: full scale war. Indeed, the theory argues that Presidents will be fully unwilling to enter major war unilaterally.

The second chapter provided a novel measure of informal congressional sentiment toward the possible use of military force: Congressional Support Scores (CSS). While members of Congress have strong incentives to avoid formally voting on the potential use of the armed forces, they are often still quite vocal in their individual position-taking in crises. Speech data from the congressional record is thus utilized in order to measure this informal sentiment in Congress. These CSS's derived from hand-labeled speeches of foreign policy leaders in Congress are shown to be far superior to any other proxy in predicting congressional and popular sentiment toward the use of military force. The scores suggest that support in Congress is a necessary condition in degree for the use of military force: successively higher scales of use of military force are only chosen by the executive when a minimum, commensurate level of congressional support is present. In other words, Presidents appear to be closely constrained in how much force they are willing to employ by sentiment in the legislature. Congressional support or opposition to the use of military force, moreover, appears to effect the outcome of crises as adversaries understand this constraint on the executive and adjust their expectations

accordingly.

Presidents, moreover, are unwilling to enter the largest conflicts absent formal approval form Congress. While Presidents publicly assert a willingness to conduct even major military operations unilaterally, Chapter Three demonstrated that after the example of the Korean War, there are no clear cases providing evidence of an executive actually willing to enter full scale war alone. Instead, presidents consistently recognized that while they could technically do so, they would be leaving themselves exposed to enormous political fallout should the use of force end poorly. Thus, *de facto* Presidents will not enter full scale wars unilaterally. Chapter Four demonstrated, on the other hand, that there are actually many instances of Presidents purposefully avoiding full scale war—and even engagements well short of this threshold—merely due to a lack of formal authorization from Congress. Together, the findings of Chapters Three and Four suggest formal authorization from Congress continues to play a key role in use of force decision-making.

Lastly, the final chapter examined how this domestic interaction between Congress and the President was viewed internationally. If the President is truly constrained by Congress, then international actors would have very strong incentives to pay close attention to lawmakers and to base analyses of American credibility at least partially on sentiment they see emanating from the legislature. Chapter Five specifically examined the conflict that is often purported to be the zenith of the Imperial Presidency: the Vietnam War. The chapter not only found strong evidence that successive White Houses actually were quite attentive to congressional opinion when making use of force decisions, but that Hanoi and Beijing were quite well aware of this as well. Indeed, Congressional Constraint of the President was so effective that it ultimately led to deterrence failure and the Fall of Saigon in 1975. Overall, the evidence presented suggests the postwar Presidency in the use of military force context is better classified as Congressionally Constrained than as Imperial.

The Cult of the Imperial Presidency

In spite of the foregoing evidence, it is a widely held belief that the President is substantially unconstrained by Congress when it comes to decisions over military intervention. What explains the gap between this conventional wisdom and the actual evidence? The following "errors" are quite common in discourse regarding the war powers, and together drive much of the analysis purporting to find evidence of an Imperial Presidency.

1. **Falsely Equating Congressional Authorization with Declarations of War:** It is very common to see authors bemoan the fact that the United States has not officially declared war since World War II. Declarations of War are one type of formal congressional

authorization, but not the only type. Since the 18th century—indeed even before the first declaration of war by the United States—Congress has utilized statutory authorizations for the use of force to formally approve military action. Indeed, even the father of the Imperial Presidency thesis himself, Arthur Schlesinger, realized this and praised it is as a fully legitimate form of legal approval (Schlesinger 1973).

2. **Falsely Equating a lack of Congressional Authorization with a lack of Congressional Support:** Other authors make a false equivalence between a lack of formal congressional authorization and a lack of informal congressional support for an intervention. Yet, in many cases, nothing could be farther from the truth. Indeed, it is actually quite common to have members of Congress overwhelmingly call for an intervention to occur and then omit to formally authorize the use of force. As Chapter Two illustrated, virtually every use of force undertaken absent formal approval from Congress nonetheless has strong *informal* support amongst lawmakers.

3. **Insufficient Attention Paid to the Scale of Uses of Force:** Another common unstated assumption undertaken in much of the literature is a lack of distinction made between full scale wars and much smaller uses of force—often not even involving a single American combat fatality. For example, as evidence of a presidential willingness to enter war unilaterally, authors will point out historical uses of force such as interventions in the Dominican Republic (1965), Grenada (1983), Panama (1989), Bosnia (1995), or Libya (2011). Yet, each of these uses of force yielded not even one percent of the combat fatalities the U.S. has suffered in its full-scale wars since World War II.[221]

4. **Cheap Talk—Paying Too Much Attention to What President's are *Saying*, and Not What They Are Actually *Doing*:** Scholars often point out, as well, that Presidents and their lawyers make extremely broad claims to power. For example, some argue that while Presidents early in American history also frequently undertook military action unilaterally, modern Presidents are different because they make broader claims to power. While executives even in the earliest decades of the Republic engaged in unilateral military action, "at no time did the executive claim 'inherent' power to initiate military actions." (Schlesinger 2004, Sofaer 1976, pg. 377-379).

   But claims are just that: claims—actual action also needs to be considered. Especially in the use of force context, executives have strong incentives to bluff (Jervis 1970, Fearon 1995). As the preceding three chapters demonstrated, higher-ordered concerns often drove Administrations to publicly feign a willingness to act unilaterally.

[221] See Chapter 3

5. **Insufficient Attention to how the Presence of an International Audience Effects Congressional and Executive Behavior:** Scholars of the American presidency, for example, have long argued in favor of the existence of "Two Presidencies"—strong congressional deference to the executive in foreign policy—partially based on evidence that votes supported by the President in foreign affairs have a much higher success rate than those in domestic matters (Wildavsky 1966). The presence of an international audience in the context of foreign affairs votes, however, makes this interpretation quite problematic: Presidents and members of Congress, especially when in disagreement over a policy, have strong incentives to simply avoid a vote they know will be deleterious to the U.S. position internationally. To give a concrete example, some point out that in the Vietnam War Congress did not vote to formally bar funding for the conflict until *after* the 1973 Paris Peace Accords ended U.S. involvement, despite there being substantial opposition to the war since 1970. The interpretation is that Nixon Administration was simply able to continue on with the conflict for three years despite Congressional opposition. Overlooked, however, is the bargaining going on behind the scenes: on several occasions when it became clear Congress might have the votes to cut off the funding for the war, the administration agreed to massive troops withdrawals from Southeast Asia (Kissinger 2011*a*). In other words, both the White House and Capitol Hill realized that such a vote would hurt the U.S. position internationally, and thus concluded a private bargain out of public sight. Yet on these occasions—when the administration was forced to remove hundreds of thousands of troops out of South Vietnam—it can hardly be said Congressional influence was minimal.

6. **Selecting on the Dependent Variable:** Lastly, perhaps the worst sin of all has been the almost total lack of attention paid to "dogs not barking" in the war powers literature. Analyses of the wars powers nearly universally take uses of force that actually occurred as the unit of analysis, yet this methodological choice inherently biases the conclusion drawn. The clearest possible evidence against the Imperial Presidency thesis would be a situation in which a President for all other reasons sought to use force, but did not do so because of a lack of congressional support or approval. In this situation, no war would have occurred. Thus, if one only looks at wars that actually happened, they have fully eliminated the possibility of identifying the strongest possible evidence of congressional constraint of presidential war powers.

Some of these factors are related to measurement—war declarations vs. AUMFs, formal congressional authorization vs. informal congressional support, and the scale of a use of force. Others are related to theory—cheap talk, the effect of international audiences on the domestic strategic environment, and selecting on the dependent variable. When these factors

are taken into account, however, a very different picture of the postwar Presidency emerges: while Presidents in public make enormously broad claims to power, in private they realized they are *de facto* constrained by Congress. This suggests use of military force decisions are actually relatively responsive to the desires of the legislature—a much more optimistic conclusion than that often given in analyses of the war powers. Instead of having an Imperial Presidency, the United States has a Congressionally Constrained President.

Normative Implications

The normative implications of the Congressional Constraint thesis can also be examined. Examining how "good" or "bad" this postwar status quo is requires first setting out the behavior we see as desirable. Often, proponents of wars powers reform implicitly (or, explicitly) assume that three following desiderata are more or less equivalent:

1. Congressional constraint on the executive
2. Formal congressional approval for the use of force
3. Less conflict and a more restrained foreign policy

For example, commentators often point out the many uses of force are undertaken unilaterally, and from this conclude that there is little congressional constraint on the use of military force, and that more constraint would lead to less U.S. participation in armed conflict.[222] These three desires are not equivalent, however, and it is quite possible to have one without the others. The foregoing dissertation for example, is good news for those especially valuing the first desideratum—congressional constraint over the executive in U.S. foreign policy—as it suggests there has actually been much more than commonly believed. This implies that U.S. foreign policy in general, and the use of military force specifically, is far more democratically controlled in our nation than often understood.

For those hoping for a return to the Framers' vision of having force only used (with rare exception) pursuant to formal authorization from Congress[223]—the second desideratum—the news is clearly much more negative: we are likely to continue seeing many unilateral uses of force well into the future. Members of Congress have strong incentives to avoid formally authorizing the use of force, and absent some major reform, this is unlikely to change. Smaller uses of force—i.e., the vast majority of uses of force—will continue to be undertaken absent formal authorization from Congress. Nevertheless, there is a silver lining for those seeking formal votes from the legislature. While Presidents consistently claim the power to initiate

[222] Progressive, libertarian, and even some conservative political groups in Washington make precisely this argument.

[223] That this was the intent of the Framers is not without dispute (Yoo 1996).

major conflict unilaterally,[224] it appears full scale wars will only be undertaken pursuant to formal approval. Critics might bemoan the fact this is due to political (and not truly *legal*) reasons, but these "mere" political reasons (loss costs) are so strong as to perhaps serve as a more potent and more durable constraint than any legal barrier ever could be: even leaders with crafty lawyers and little respect for institutional norms will still be forced to follow this pattern. This serves as a strong deterrent to major war undertaken unilaterally and, again, is likely to be the case well into the future.

Lastly, for those hoping for a more restrained U.S. foreign policy, the news is also mixed. Since the end of the Cold War, and especially since the perceived poor outcomes of the wars in Iraq and Afghanistan, there has been a growing chorus amongst academics and even policymakers in Washington calling for a grand strategy of restraint (Gholz, Press & Sapolsky 1997, Posen 2015, Walt 2018, Colby 2021, *inter alia*). Advocates of restraint sometimes suggest that the Imperial Presidency is to blame for excessive American military intervention, and that reigning in this unconstrained executive will lead to a more restrained foreign policy. The findings discussed here have both positive and negative implications for restrainers. On the one hand, reigning in the Imperial Presidency is not a magic bullet that will lead to a fundamental change in U.S. foreign policy. Indeed, Congress already has been exercises this constraining effect and the foreign policy we have observed is the outcome of that existing constraint. This manuscript has argued that the Imperial Presidency is more myth than reality—and consider the fact that each of the wars cited by restrainers as major blunders (Vietnam, Iraq, and often Afghanistan) actually had formal authorization from Congress. Thus, congressional control is not a panacea: lawmakers can make poor decisions, just as executives can. On the other hand, the news is more optimistic—it suggests Congress does have the power to constrain the President in the use of military force. It is quite common to see groups decrying the Imperial Presidency lobbying members of Congress to support a more restrained foreign policy. If one takes the Imperial Presidency thesis seriously, however, this is paradoxical: if Congress has so little power over foreign policy, what is the point in lobbying it? The good news for restrainers is, hence, that Congress does have significant power to restrain the President in use of military force decisions, and that changing the minds of Congress has the potential to change U.S. foreign policy. Therefore, for those seeking to reduce American interventions in the world, the focus should not be on somehow reforming the war powers (procedure) but instead directly aiming to persuade members of Congress and the public of the virtues of a new vision of U.S. grand strategy directly (substance). The problem is not changing the system to better reflect the desires of Congress; it is getting Congress to change

[224]The recent OLC jurisprudence on this point is more complex. Recent opinions have suggested that "war in the constitutional sense" might require formal authorization. This was never the position of the administration in any of the wars undertaken since World War II, however.

its desires.

Reforming the War Powers

Nevertheless, the potential to reform the war powers status quo can also be considered. The above analysis has essentially assumed that statutory restrictions on the use of military force—most famously, the 1973 War Powers Resolution—are basically meaningless (see "Modelling the War Powers" in Chapter One), and instead argued that substantial congressional constraint comes from political loss costs.[225] Despite this, the findings have strong implications for recent (and, not-so-recent) efforts to reform the war powers. As discussed in the introduction, there is widespread dissatisfaction with the state of the war powers across the political spectrum. The War Powers Resolution is widely considered to be a failure (Bauer & Goldsmith 2020, Lindsay 1994),[226] and, indeed, the extremities of both parties—progressive Democrats and "America First" Republicans—find common cause over a perceived need to reign in presidential war powers.[227] Even more moderate members of both parties find reasons to give support to such reform efforts—Virginia's Tim Kaine, for example, has long made a congressional reassertion of wars powers prerogatives a strong priority. For over two decades since the passage of the 2001 (9/11) and 2002 (Iraq) AUMF's, there have been calls to repeal or replace these measures, and in the five decades since the passage of the 1973 War Powers Resolution, there have been consistent calls for an updated framework. For example, in 1988 the Senate Foreign Relations Committee specifically established a Special Subcommittee on War Powers which led to a new "Use of Force Act" introduced by a then-Senator Joseph Biden (Glennon 2009).[228] In the mid-1990's, Republicans introduced a "Peace Powers Act" that would have repealed the time limit set by the War Powers Resolution, yet restricted a

[225] In essence, the war powers status quo is simply that the President has the option—but *de facto* no requirement—to seek congressional approval before using military force. They always maintain the option of simply acting unilaterally. See "Modelling the War Powers" in Chapter One. The sixty-day clock of the War Powers Resolution is considered more or less unimportant because Presidents have the de facto ability to simply ignore the clock (and indeed have done some in engagements such as Kosovo (1999) and Libya (2001)).

[226] See also Dole, Robert. "S.5: The Peace Powers Act of 1995 (Press Release)," March 21, 1995. Dole Archive Collections.https://dolearchivecollections.ku.edu/collections/press_releases/s-press_038_009_023.pdf.

[227] Wu, Nicholas. "Freedom Caucus and Progressives Lock Arms — and That Could Be Bad News for McCarthy." POLITICO. April 6, 2023. https://www.politico.com/news/2023/04/06/freedom-caucus-progressives-mccarthy-00090444. Adragna, Anthony, and Burgess Everett. "Not Just Ukraine: GOP Splinters on Iraq War Repeal." POLITICO, March 22, 2023. https://www.politico.com/news/2023/03/22/republicans-iraq-war-00088411.

[228] "the bill, among other things, would fundamentally alter the conceptual scheme of the War Powers Resolution by authorizing the use of force in certain narrowly defined circumstances. The effect of authorization (as opposed to the War Powers Resolution's approach of limitation) would be to bring the new resolution's constraints within the ambit of early war powers cases decided by the Marshall Court, which held that the president is bound to respect congressionally imposed limits when Congress authorizes the use of force. In addition, Senator Biden's bill would repair the reporting requirement and direct the courts not to dismiss such a case as presenting a political question insofar as that is constitutionally permissible." (Glennon 2009, pg. 7)

President's ability to introduce forces pursuant to U.N. missions.[229] A committee from the Constitution Project in 2005 recommended that the War Powers Resolution be replaced, and that Congress pass a law making clear that the President could only use force unilaterally under a restrictive definition of self-defense (Glennon 2009). In 2008, a "National War Powers Commission" issued a report calling for the replacement of the 1973 War Powers Resolution with a "War Powers Consultation Act" that would require Congress "to vote up or down on significant armed conflicts within 30 days."[230] More recently, a bipartisan National Security Powers Act introduced in 2021 proposed even stricter requirements—a twenty day limit on unilateral uses of force and a binding funding cut-off thereafter.[231] There have thus been no shortage of reform proposals, and yet reform efforts have proven rather Sisyphean.[232]

The arguments of this dissertation possibly help explain why this is the case. First, it is unlikely Congress will pass meaningful reform given its incentives to avoid actually voting on uses of military force. Considering that lawmakers attempt to steer clear of going on-the-record in these decisions, it is unclear what would propel sizable majorities[233] in both houses to pass a law forcing themselves to go on-the-record in the future. Backseat-driving (Gartzke 1996) is a preferable position for many members of Congress.[234] Second, because Presidents have actually been substantially constrained politically in the use of force context, there has simply been no great impetus for change. It might be an exaggeration to say "the ends justify the means", but when the ends are seen as "good enough"—or close enough to what Congress wants—there is simply little incentive to put great effort into changing the means.[235]

Third, almost any reform would face similar problems faced by the current War Powers Resolution: potential unconstitutionality and non-judiciability. Regardless of the text

[229]Dole, Robert. "S.5: The Peace Powers Act of 1995 (Press Release)," March 21, 1995. Dole Archive Collections.https://dolearchivecollections.ku.edu/collections/press_releases/s-press_038_009_023.pdf.

[230]"How America Goes to War — Miller Center," January 21, 2021. https://millercenter.org/issues-policy/foreign-policy/national-war-powers-commission.

[231]Pomper, Tess Bridgeman, Stephen. "A Giant Step Forward for War Powers Reform." *Just Security*, July 20, 2021. https://www.justsecurity.org/77533/a-giant-step-forward-for-war-powers-reform/.

[232]As John Hart Ely recognized in *War and Responsibility* nearly three decades ago: "That Congress has lost its intended constitutional position in deciding on war and peace is hardly a new discovery. The usual suggestion, however, has taken the form of a halftime pep-talk imploring that body to pull up its socks and reclaim its rightful authority. That would be terrific, but unfortunately it seems unlikely to happen. Decisions on war and peace are tough, and more to the point they're politically risky. Since 1950 Congress has seen little advantage in making them," (Ely 1995, pg. 52).

[233]There is a substantial likelihood that meaningful reform would require overriding a veto, as was required in 1973 for the War Powers Resolution.

[234]Traditional scholars of the war powers see this avoidance of responsibility as a severe malady that limits congressional influence over use of force decisions. This dissertation argues this avoidance behavior has the effect (whether intended or not) of constraining the President by forcing them to fear ex post attack by uncommitted lawmakers. Consequentially, this gives Congress influence over use of force decisions by the White House.

[235]Similarly, many of the proposed requirements in many of the bills put forward simply codify practices already undertaken. For example, many focus on consultation with Congress prior to the use of force. Yet, Presidents overwhelmingly already consult with members of Congress before using force for precisely the reasons set forth in this dissertation. This was the case both before and after the 1973 War Powers Resolution. Presidents are thus already heavily incentivized to undertake many of the requirements proposed. Hence, some of the proposals are analogous to requiring citizens to breathe air.

of any new statute, a new law would undoubtedly face charges of infringing on the President's Article II powers as Commander-in-Chief. Put simply, Congress cannot by mere statute alter the constitutional powers of the President. It would thus be relatively straightforward for Presidents and executive branch lawyers to take the position that any new law were without effect. This executive branch decision would then be, de facto, the final say on the binding nature of the act as courts almost always refuse to adjudicate war powers cases. After fifty years, for example, we still have no clear ruling that the 1973 War Powers Resolution is constitutional.

There are two possible ways to overcome this last hurdle, however. First, war powers reform could take the form of an actual constitutional amendment. This appears exceedingly unlikely given the exceedingly high procedural hurdles this would imply, but would alleviate the constitutional uncertainties that would plague any statutory reform. Second, there are perhaps more creative ways Congress could force an end to a use of force. Tess Bridgeman and Steve Pomper, for example, advocate that a new statute "flip the script" by using Congress's uncontested power of the purse to automatically cease funding of operations unapproved by Congress. This new reform would "institute an automatic funds cut-off at the expiration of the termination clock to create a strong 'remedy for non-compliance (defunding) that the current statute lacks.'"[236] Bauer and Goldsmith similarly suggest utilizing a funding restriction in order to enforce the provisions of a new war powers act (Bauer & Goldsmith 2020). This proposal might succeed in giving even statutory reform actual "bite", but for the reasons cited above, such substantial reform is still unlikely to be undertaken by Congress.

Despite the low likelihood of significant reform, we can nevertheless consider how a different institutional arrangement might affect the behavior of both political actors within the U.S., as well as crisis bargaining internationally. As introduced in Chapter One, for the last eight decades we effectively have had a system in which a President has the option of seeking congressional approval, but nevertheless always maintains the ability to act unilaterally. This is depicted in Figure 1.4. Supposing one could wave a magic wand and alter this, we might consider how one clear alternative—the requirement of congressional authorization prior to any use of force—might function. This would, effectively, alter the extensive form game depicted in Figure 1.4 by limiting the amount of force the President could employ in the second and third subgames (i.e., if the President's request is rejected or when acting unilaterally) to zero. In other words, the President would not be able to use force unilaterally—and consequently would not be able to credibly *threaten* to use force unilaterally. This would imply that any bargaining undertaken absent formal authorization from Congress would essentially have the

[236]Pomper, Stephen, and Tess Bridgeman. "2022 Update: Good Governance Paper No. 15: War Powers Reform." *Just Security*, January 21, 2022. https://www.justsecurity.org/79933/2022-update-good-governance-paper-no-14-war-powers-reform/.

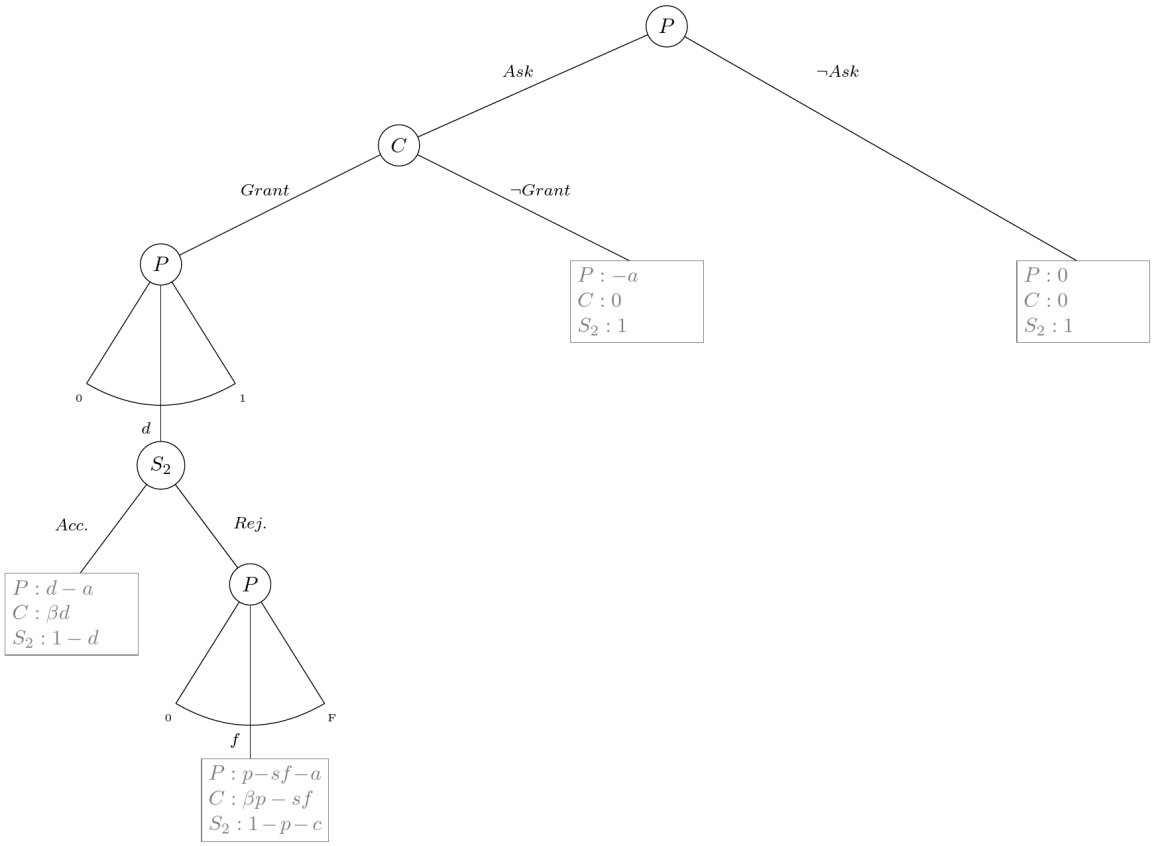

Figure 5.13 Bargaining Model with Requirement of Formal Authorization from Congress

adversary take the whole pie—enemies of the United States would know that the President would be unable to respond and thus push as hard as possible in negotiations (or, simply take the good with uncontested military force). This altered institutional arrangement is depicted in Figure 5.13.

A very restrictive legal regime like this would, clearly, undermine deterrent bluffs. U.S. Presidents have often feigned imperiality in attempts to coerce adversary states. Presidents, for example, feigned a willingness to intervene unilaterally in Laos in the early 1960's, in the Middle East in 1970 and 1973, in Suriname in 1983, against Iran in the late 2000's, and against North Korea in 2017. Not every bluff of imperiality has worked, but many have. The image of the Imperial Presidency has thus often served U.S. interests, but such threats would be much less possible under a very restrictive war powers regime. To the extent that bluffs such as these allow U.S. power projection, such influence would therefore be severely dampened.

Nevertheless, not all consequences would be negative. First, the President would still clearly be able to act when approved by Congress. Moreover, because Congress would perfectly understand that the President—and thus the United States—could not respond unilaterally, it would have much stronger incentives than it currently does to step up to the plate and actually

vote on use of force decisions. Under the current legal regime, members of Congress realize than in many circumstances they can simply sit on the sidelines because the President will nonetheless be forced to intervene unilaterally. Under the alternative institutional arrangement considered here, though, this would simply not be an option: a failure to vote in favor of a use of force would per se entail no use of force. Thus, we would see Congress not only voting in favor of the use of force under the circumstances it would do so under the current regime, but would actually do so more often under the considered alternative.

This implies an interesting twist, however, likely not considered by strong proponents of strict reform: in those cases in which unilateral actions would have been undertaken in the status quo arrangement, but would be congressionally authorized in the alternative regime considered here, we would see substantially larger interventions undertaken. Loss costs, as shown in Chapter One, have a dampening effect on the amount of force Presidents utilize. Once Presidents are protected from these, such self-restraint will go away. Thus, while advocates of strict reform often suggest it will lessen the proclivity to intervene, it might have the unintended consequence of substantially enlarging the scale of interventions that are undertaken.

Nonetheless, such an alternative legal regime would likely substantially alleviate information problems—a key source of conflict (Fearon 1995). Interestingly, this would seem to imply a restrictive legal regime over the President would—as advocates of war powers reform argue—make war less likely, but not for the reason often implied. Many proponents of formal congressional approval before using force argue that such a requirement would simply make it more difficult to go to war—leading to less war. The bargaining model of war, however, suggests that such a restriction on the executive would simply encourage an adversary to push harder in negotiations—making its direct effect on the probability of war indeterminate. To the extent, however, that asymmetric information over the loss costs faced by a President created an information problem leading to costly conflict (see alternative model in Appendix III), congressional authorization would eliminate this source of uncertainty and thus theoretically prevent conflict in some circumstances.[237] In sum, such a change to a much more restrictive legal regime would likely have the effect of decreasing the probability of war, but at the cost of also decreasing American influence in the world and increasing the scale of interventions that are undertaken.

[237]It could, however, resolve one potential information problem (the magnitude of the loss costs faced by the President) while exacerbating another. Uncertainty over Congress's own value of the objective (β) might serve as a greater source of asymmetric information—perhaps even unknown by individual members of Congress—leading to further information problems. It would likely be difficult to accurately estimate what 535 members of Congress would vote to authorize or not.

Legislatures and World Politics

The preceding work has suggested that the President of the United States, often considered one of the most powerful executives in the world on matters of foreign policy, is actually substantially constrained by the American Congress. Moreover, there is reason to suspect that the loss cost mechanism examined here applies broadly to democracies—and perhaps even beyond. Traditional scholars of the American war powers, for example, often draw a sharp contrast between the U.S. Constitution's endowment of Congress with the power to declare war and the British system in which the Crown alone possessed this power. Thus, from the perspective of constitutional law, the United States and the United Kingdom have opposite legal endowments when it comes to the war powers: one gave it to the legislature, the other avoided giving it to parliament (Strong 2018). American scholars complain that the American system has devolved into something more like the British system, but overlook the fact that the British system has itself over recent years curiously morphed into something looking more like the U.S. system. Indeed, the two systems have seen relatively close convergence in actual practice: the largest uses of force are only undertaken pursuant to a formal vote of the legislature, while smaller uses of force are conducted absent such a vote. One possible explanation for this striking development in the British system in the past twenty years is precisely the loss costs mechanism investigated here: Prime Ministers, just like Presidents, seek to have Members of Parliament on-the-record ex ante in order to avoid attack ex post. If true, this would be especially interesting due to the lack of distinction between executive and legislative powers in a Westminster system. Future research could thus investigate how broadly a loss costs mechanism might apply across states. It is even possible something analogous is found in autocratic regimes.[238]

The effect of democratic constraint on executives has broader implications for world politics, more generally—as is widely recognized by the vast literatures related to democratic peace and audience costs. While earlier work focused on the effect of institutional constraints found in democracies (Lake 1992, Bueno de Mesquita & Lalman 1992, Siverson 1995, Morgan & Campbell 1991), work in the 1990's and early 2000's argued that informational effects of democracy were more important (Fearon 1994, Schultz 1998, Schultz 1999, Schultz 2001). More recently, however, others have argued than democracies are not unique in their ability to generate audience costs (Weeks 2008), and that there is less empirical support for democratic credibility that these theories would imply (Downes & Sechser 2012, Schlesinger & Levy 2021, Lupton 2020, Kertzer, Renshon & Yarhi-Milo 2021). More recent observational work, as well,

[238]Putin, for example, staged a vote of the Duma authorizing the use of force directly prior to initiating the use of military force in Ukraine in 2022. It is also possible an autocrat might find some other way—beyond a vote—of forcing elites to ex ante signal support for the use of force.

has suggested that the veracity of threats made by democracies are judged, for example, by the leader's perceived ability to follow through—and not in a way consistent with audience costs theory (McManus 2017).

The work presented here does not resolve these debates. It does speak to some of their terms, however. First, it provided strong evidence of both institutional constraint and informational effects (Schultz 1999). It showed not only that Presidents are constrained by Congress, but that this is recognized by adversaries. Thus, instead of asking "Do Democratic Institutions Constrain or Inform?" (Schultz 1999), the answer might be that democratic institutions constrain *and* inform: the executive is constrained by the legislature, and the adversary knows this. Indeed, the evidence above suggests that adversaries pay close attention to congressional speech and actions in order to determine precisely how constrained Presidents are. This suggests these two influences of democracy on crisis behavior—institutional constraint and information—both exist, and pull in opposite directions.

Second, it suggests that while institutional constraint exists, its magnitude is not constant even in the same state or under the same leader. The *de facto* leeway of the executive is, instead, a function of the size of the military deployment contemplated: Presidents are much more willing to act unilaterally for small and quick uses of force, but highly reticent to undertake major interventions with less support. This suggests that future efforts to measure democratic credibility account for the size of the intervention contemplated.

Lastly, the Congressional Constraint thesis has implications for work investigating the interaction between reputation (usually focused on a reputation for resolve) and crisis credibility. Recent work in the reputation literature argues that reputation is influence specific (Renshon, Dafoe & Huth 2018). States in which the leader has little independent influence will have reputational effects assigned more to the state as a whole (Country Specific Reputation), while leaders in states with influential executives will have more Leader Specific Reputation (Renshon, Dafoe & Huth 2018). However, this dissertation has suggested that international perceptions of leader influence are themselves an image or reputation that leaders might attempt to manipulate. Because democracies are often perceived as less credible (Kertzer, Renshon & Yarhi-Milo 2021, Lupton 2020, Renshon, Yarhi-Milo & Kertzer N.d.), American presidents have reasons to exaggerate their own influence (thus, triggering Leader Specific Reputation instead of State Specific Reputation). American executives have incentives to feign Imperiality[239] in order to gain the bargaining benefits of a stronger reputation for resolve. Future work might thus look at how effective leaders are in molding perceptions over the extent of their influence, and the consequences this entails.

[239]In other words, to pretend to be more Imperial—i.e., more unconstrained by Congress—than they privately know they are.

Appendix I: The American Public and the Imperial Presidency

The standard understanding of the war powers—the Imperial Presidency thesis—is unsurprisingly deeply disturbing to many Americans. It is common to hear charges of a President "violating the Constitution" when military force is used unilaterally, and politicians and pundits (on both sides of the aisle) are frequent to point out that the Constitution formally endows Congress with the power to declare war. Recent research has shown that the American public is deeply skeptical of unilateral action in general, and perhaps even more so in the specific case of the use of military force (Reeves & Rogowski 2022).[240] While Americans are pragmatic—they approve of unilateral military action under a narrow set of circumstances (a true emergency)—they otherwise strongly oppose action when congressional deliberation is possible. Plotted below are the results of 115 questions related to the unilateral use of military force in public opinion polls taken from 1935 to 2020.

[240]Many of the historic public opinion polls Reeves and Rogowski utilize in their book, for example, involve questions regarding war powers. They note "[w]hile the public may be more supportive of unilateral presidential action when national security is at stake...this does not translate into unlimited support for the powers of the commander in chief," (Reeves & Rogowski 2022, pg. 169).

In the overwhelming majority of cases, the public is highly opposed to unilateral action utilizing the military. The exceptions are intuitive and clear: true emergencies (i.e., as perceived by the public), when Americans are held hostage or otherwise in need of rescue abroad, or if the United States is attacked (or likely to imminently be so). For example, the public forgave Carter's rescue attempt of hostages in Tehran due to the necessity of secrecy. Similarly, when asked about abstract hypotheticals, Americans supported unilaterally action when it came to emergency situations in which there was no time to call Congress and in situations involving self-defense. There also appears to be a greater deference to the executive when it comes to wars already underway, and started under formal authorization from Congress.[241] In the most general context, however—i.e., the question of *initiating* the use of military force unilaterally, barring some kind of emergency situation—Americans are consistently strongly opposed to unilateral action. Excluding the handful of cases involving the exceptions discussed,[242] we find an average net support of a striking -40.[243] Americans highly dislike Presidents using military force unilaterally absent strong justification.

Moreover, this strong opposition to the unilateral use of force does not depend on the public's sentiment toward the specific use of force under consideration. Plotted below are those surveys in which the specific question of the respondent's policy preferences over the use of force in the crisis was also asked.[244] The gray dots represent public opinion over whether military force should be utilized, while the black dot again corresponds to public support for the President acting *unilaterally* in the situation. Observations are ordered by net approval for the United States intervening—ranging from highly opposed in cases like Syria (2013), Haiti (1994), and Southeast Asia after the Paris Peace Accords (1973) to strongly supportive in cases such as in the counter-ISIS campaign of the mid-2010's. Note, first, that in every single case there is net opposition to the President utilizing military force unilaterally. Moreover, note that opposition to unilateral action is not merely limited to those cases in which the public was simply against the intervention regardless of the process. Even in cases with overwhelming support for the intervention—for example, the counter-ISIS campaign in 2014, the 2003 invasion of Iraq, the air campaign against Serbia in 1999, and the Gulf War (once the public was satisfied the administration had exhausted diplomatic options in early 1991), the public was overwhelmingly opposed to the unilateral use of military force. Thus,

[241]The clearest examples of this would be the Cambodian Incursion in 1970 or the "Surge" in Iraq in early 2007. Even in these cases, however, public net support for unilateral action was almost always negative.

[242]That is, cases involving true emergencies and self-defense, the rescuing of Americans abroad, or decisions made well after the start of a war Congress had previously authorized.

[243]Even including these exceptions, the average support for unilateral action is still -32—far more negative than the average of -16 Reeves and Rogowski find when including all policy areas (Reeves & Rogowski 2022).

[244]On most of the surveys utilized above, questions were also presented to the respondents with regards to whether they supported or opposed the specific policy (i.e., whether to use force in not) in addition to the separate procedural question of whether the President should be able to use force unilaterally in the situation.

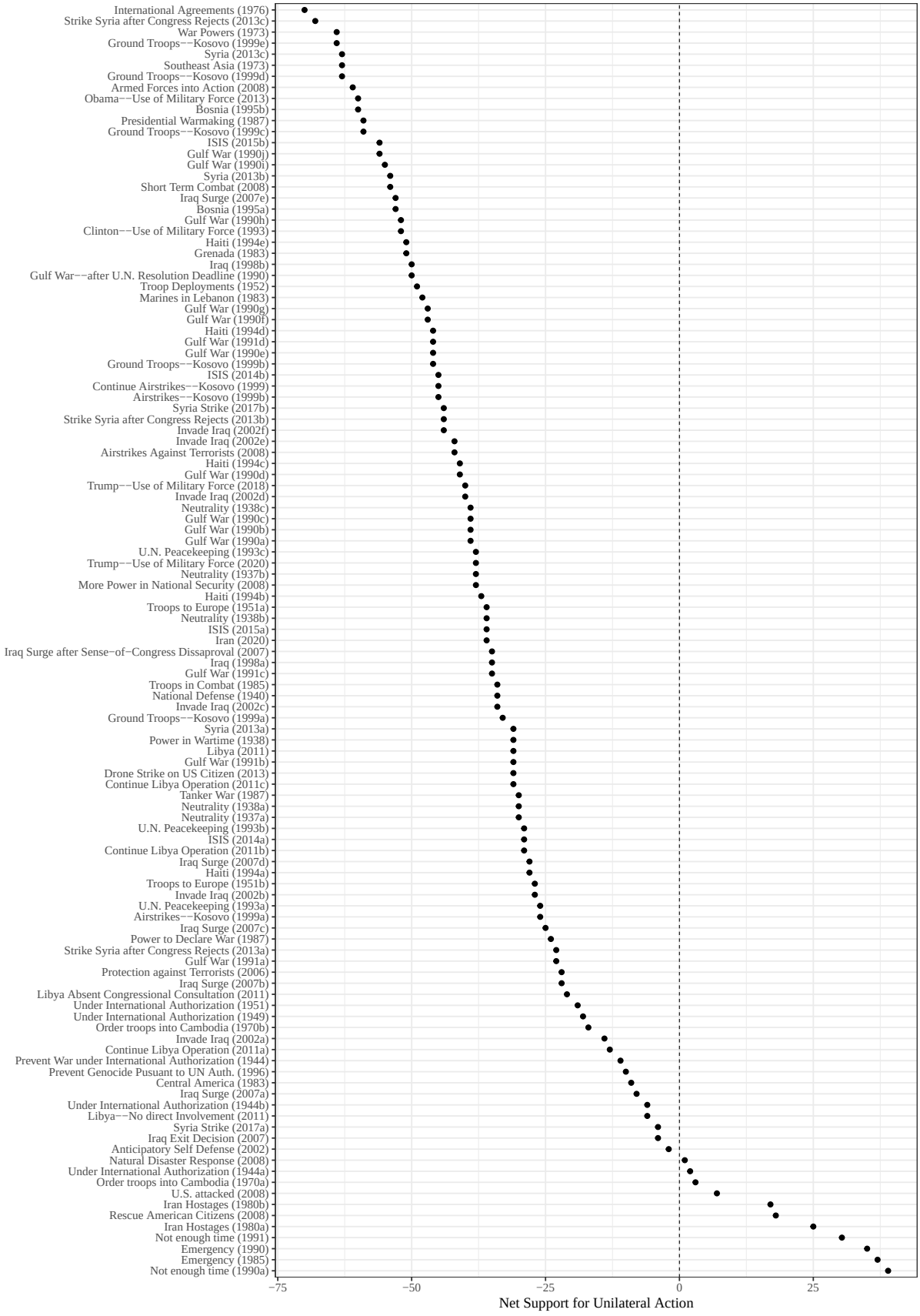

Figure A1 Net Support in Public for Unilateral Use of Force by President

even when Americans support the use of force in a crisis, they still highly dislike the President doing so unilaterally.

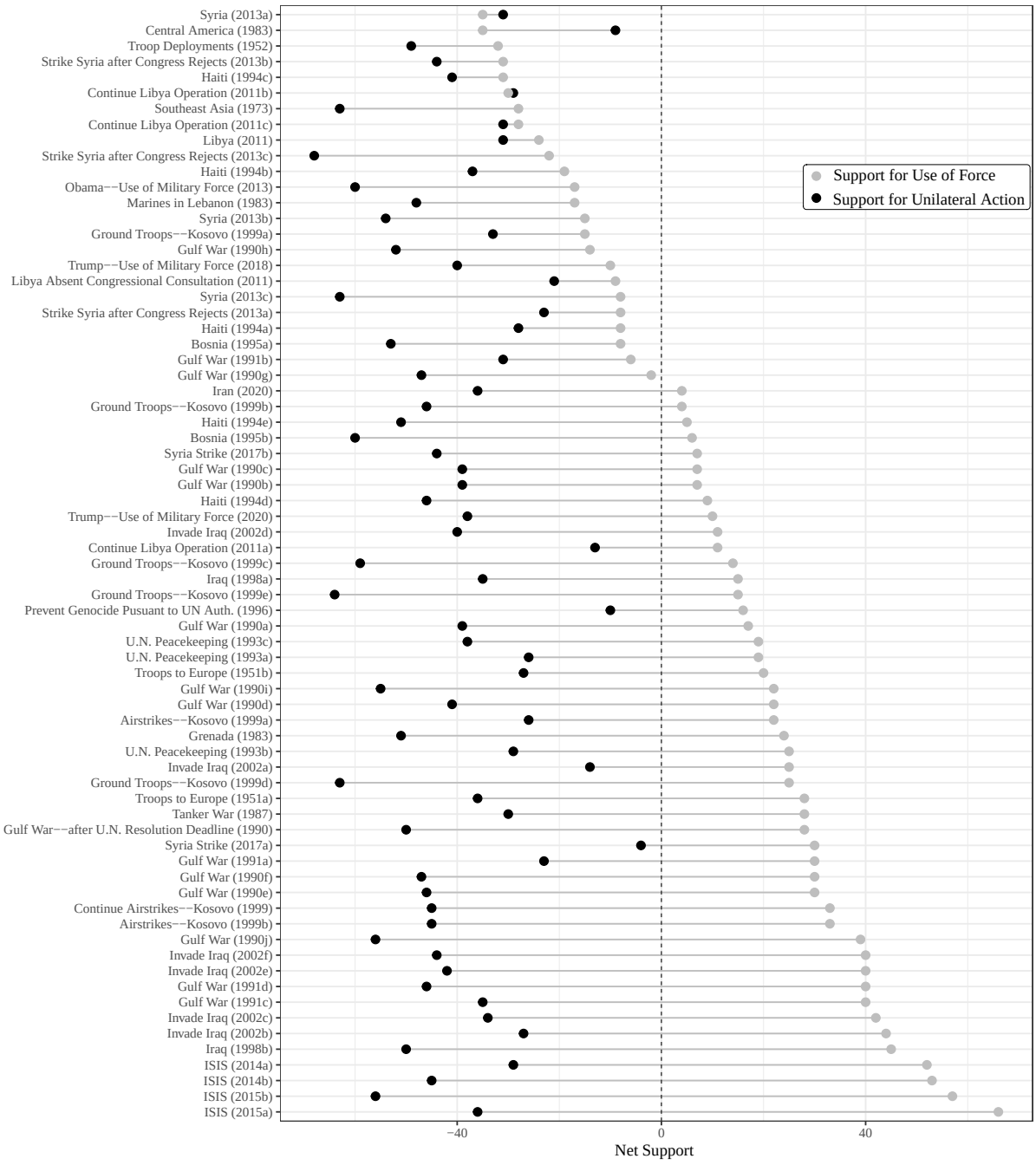

Figure A2 Net Support in Public for Unilateral Action Compared to Support for Intervention

Moreover, this is not a new phenomenon but has been a consistent feature of American politics for decades. As is well recognized, the Vietnam War spawned strong resistance to presidential power in the 1970's. Perhaps more surprisingly, even in the early Cold War—the purported pinnacle of the Imperial Presidency—there was significant opposition to unilateral

uses of force. After Truman entered the Korean War absent formal approval from Congress,[245] a "Great Debate" took place in Congress and in the public over presidential power and control of the military (and even as there was overwhelming domestic support for the policy of fighting the Korean War). Public opinion polls in early 1951 show strong net support for sending extra divisions to Europe to enhance deterrence, for example, but at the same time show strong opposition to the action being undertaken unilaterally by the President. Thus, despite the conventional wisdom of the Imperial Presidency—indeed, perhaps because of it—Americans are highly opposed to the unilateral use of force and have consistently been so since World War II.

[245] See Chapter 3.

Appendix II: Step-by-Step Solutions for Models Presented in Chapter one

MODEL I: The Unilateral Use of Force

Payoffs

As described in the text and as shown in Figure 2, the war payoffs for the actors are as follows (note Congress has been omitted because in the collapsed form of the game it has become a passive actor):

$$U^P(war) = p - sf - \frac{fk}{\beta}(1-p) \tag{.1}$$

$$U^{S_2}(war) = (1-p) - c_2 \tag{.2}$$

Complete Information Equilibrium

Having perfect and complete information, this game is solved using the subgame perfect equilibrium solution concept. Backward induction is used to determine players' best responses in equilibrium. Starting from the bottom of the game tree, the President selects the optimal amount of force to employ. We can rewrite the President's utility function from war as:

$$U^P(war) = \frac{f}{f+t} - (1 - \frac{f}{f+t})\frac{fk}{\beta} - sf \tag{.3}$$

Taking the derivative of this utility function, setting this equal to zero, and solving for f yields the amount of force that maximizes the President's war utility:

$$f^* = \sqrt{\frac{\beta t - kt^2}{\beta s}} - t \tag{.4}$$

From this, the probability of victory, p^*, when f^* force is employed, can be calculated. Given the contest function $p = \frac{f}{f+t}$, the probability of American victory at the optimal force level, f^*, is:

$$p^* = 1 - \frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}} \tag{.5}$$

Next, in order to determine the S_2's choice at the prior decision node—i.e., whether to accept the deal offered, d, or to reject it and go to war—we set S_2's payoff from accepting the deal equal to the payoff from going to war:

$$1 - d = 1 - p^* - c \tag{.6}$$

Which can be rewritten as:

$$d = p^* + c \tag{.7}$$

Thus, if the deal offered, d, is greater than or equal to $p^* + c$, the deal will be accepted by S_2. Otherwise, the deal will be rejected and war will occur. Knowing this, P will offer a deal that maximizes their own share while still avoiding war. P will thus offer d, such that:

$$d^* = p^* + c \tag{.8}$$

Substituting in Equation 5, and simplifying, this simplifies to:

$$d^* = -\frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}} + c + 1 \tag{.9}$$

MODEL II: Allowing for Formal Congressional Authorization

Complete Information Version

Having perfect information, this game is solved using the subgame perfect equilibrium solution concept.

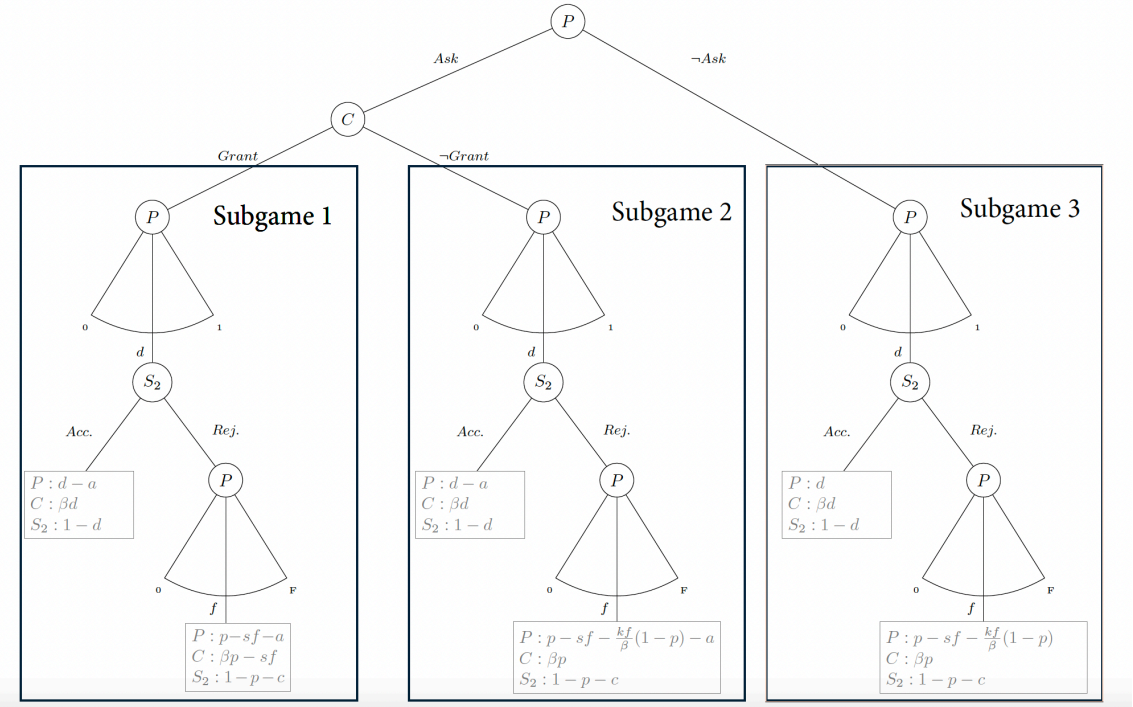

Figure A3 Bargaining Model with Loss Costs and Possibility of Formal Authorization from Congress, Subgames Highlighted

Subgame 1

The subgame on the left—that in which the President has secured formal authorization for the use of military force—is first considered. Starting from the last decision node, the President must decide how much force to employ f. Because the President's utility function at this node is $p - sf - a$, and p is given by the contest function $p = f/(f + t)$, we can rewrite the President's war payoff in the first subgame as:

$$U_1^P(war) = \frac{f}{f+t} - sf - a \tag{.10}$$

In order to find the amount of force that maximizes the President's utility at this subgame, we take the partial derivative of Equation 1 with respect to f and set this equal to

0. Solving for f we find:

$$f_1^* = \sqrt{\frac{t}{s}} - t \tag{.11}$$

Where f_1^* represents the optimal amount of force for the President to employ in subgame 1. Given that this is a game of complete and perfect information, S_2 will take this into account when making its own decision about whether to accept or reject the offer made by the President, as f_1^* directly affects S_2's war payoff by way of affecting the probability of victory. Specifically, given f_1^* and the contest function ($p = \frac{f}{f+t}$), we know the probability of victory for the United States in the first subgame is:

$$p_1^* = 1 - s\sqrt{\frac{t}{s}} \tag{.12}$$

Given this, and its own war payoff, S_2 will be able to decide whether to accept the deal proposed by the President or reject the offer. Specifically, if:

$$1 - d \geq 1 - (1 - s\sqrt{\frac{t}{s}}) - c \tag{.13}$$

S_2 will accept the offer. Otherwise, the offer will be rejected. Knowing this, the President then knows precisely the deal to offer to S_2 in order to get the best deal possible for the United States while still avoiding war. Specifically, the deal the President will offer will be:

$$d_1^* = c - s\sqrt{\frac{t}{s}} + 1 \tag{.14}$$

And S_2 will accept the deal.

Subgame 2

Subgame 2 consists of the middle subgame—that in which Congress rejected a President's request for authorization. Starting from the bottom, the President must decide how much force to employ. Notably, the decision here is slightly different from subgame 1—where an AUMF was in hand—because now the President has to take into account the blowback they are going to get from Congress if they lose unilaterally (k). Because the President's utility function at this node is $p - sf - \frac{kf}{\beta}(1-p)$, and p is given by the contest function $p = f/(f+t)$, we can rewrite the President's utility function as:

$$U_2^P(war) = \frac{f}{f+t} - \frac{fk}{\beta}\left(1 - \frac{f}{f+t}\right) - fs - a \tag{.15}$$

In order to find the amount of force that maximizes the President's utility at this subgame, we take the partial derivative of Equation 15 with respect to f and set this equal to 0. Solving for f we find:

$$f_2^* = \sqrt{\frac{\beta t - kt^2}{\beta s}} - t \tag{.16}$$

Where f_2^* represents that optimal amount of force for the President to employ in subgame 2. Given that this is a game of complete and perfect information, S_2 will take this into account when making its own decision about whether to accept or reject the offer made by the President, as f_2^* directly affects S_2's war payoff by way of affecting the probability of victory. Specifically, given f_2^* and the contest function, we know the probability of victory for the United States in the second subgame:

$$p_2^* = 1 - \frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}} \tag{.17}$$

Given this, and its own war payoff, S_2 will be able to decide whether to accept the deal proposed by the President or reject the offer. Specifically, if

$$1 - d \geq 1 - (1 - \frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}}) - c \tag{.18}$$

S_2 will accept the offer. Otherwise, the offer will be rejected. Knowing this, the President then knows precisely the deal to offer to S_2 in order to get the best deal possible for the United States while still avoiding war. Specifically, the deal the President will offer will be:

$$d_2^* = -\frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}} + c + 1 \tag{.19}$$

And S_2 will accept the deal.

Subgame 3

The only relevant difference between subgames 2 and 3 is that by fulling bypassing the Congress, the President avoids paying the cost of asking (a)—a sunk cost by the time the subgames are reached. Thus, the same equilibrium behavior will be observed in subgame 3 as in subgame 2. Therefore:

$$f_3^* = \sqrt{\frac{\beta t - kt^2}{\beta s}} - t \tag{.20}$$

$$p_3^* = 1 - \frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}} \tag{.21}$$

$$d_3^* = -\frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}} + c + 1 \tag{.22}$$

And S_2 accepts the deal offered by the President.

Congress's Decision

Notably, because Congress only has a decision if authorization is actually requested by the President, we only have to compare Congress's expected payoff's from subgames 1 and 2. If $U_1^C > U_2^C$, Congress will grant the authorization requested, and otherwise will deny the authorization. Substituting d_1^* and d_2^* into Congress's payoffs, we see that if:

$$\beta(c - s\sqrt{\frac{t}{s}} + 1) > \beta(-\frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}} + c + 1) \tag{.23}$$

Congress will grant the authorization requested, and otherwise will deny the authorization. Simplifying equation 23 and solving for β, we see that if:

$$\beta \geq 0 \tag{.24}$$

Congress will grant the authorization requested, and otherwise will deny the authorization. Given that this is true by definition here, it means that under perfect and complete information Congress *always* grants authorization.

The President's Decision

Lastly, knowing the deals that will occur at each subgame and knowing that Congress will always authorize the use of force if requested, the President has to decide whether to request authorization. Effectively, the choice comes down to whether the extra bargaining leverage gained by having a congressional authorization in hand will compensate for the cost incurred by seeking authorization. Specifically, if:

$$d_1^* - a > d_3^* \tag{.25}$$

Authorization will be requested, otherwise, it will not be. This can be rewritten and simplified to if:

$$a < \frac{t}{s\sqrt{\frac{t(\beta - kt)}{\beta s}}} - \sqrt{\frac{t}{s}}$$

Authorization will be requested, otherwise, it will not be.

Incomplete Information

Subgame 1

The very last node—where the President selects how much force to employ, f—actually involves the same decision as the complete information game. Thus:

$$f_1^* = \sqrt{\frac{t}{s}} - t \tag{.27}$$

and

$$p_1^* = 1 - s\sqrt{\frac{t}{s}} \tag{.28}$$

Because S_2 is completely informed of P's actions and payoffs, it actually knows precisely how much force the President will use if S_2 rejects the offer. Thus, S_2's decision in subgame 1 will be if:

$$1 - d_1 \leq 1 - (1 - s\sqrt{\frac{t}{s}}) - c \tag{.29}$$

S_2 will reject the offer. Otherwise, the offer will be accepted.

The United States, however, is uncertain over S_2's cost of fighting, and thus has to make a deal that balances maximizing the deal acquired while minimizing the probability of war—a risk-reward trade-off. The President knows that there is some $\bar{c}$ at which S_2 would be indifferent between accepting the deal and risking war. Setting S_2's payoff from a deal, d_1, and war, $(1-p)-c$, equal to each other and solving for c:

$$\bar{c} = d_1 + s\sqrt{\frac{t}{s}} - 1 \tag{.30}$$

The Presidents will estimate the probability that S_2 will reject the offer by comparing this $\bar{c}$ to the range of values of which the U.S. expects S_2's true type to be located ($c \in [c^{max}, c^{min}]$).

$$prob_1(rej) = \frac{\bar{c} - c^{min}}{c^{max} - c^{min}} \tag{.31}$$

Substituting in equation 30, we get:

$$prob_1(rej) = \frac{d_1 + s\sqrt{\frac{t}{s}} - 1 - c^{min}}{c^{max} - c^{min}} \tag{.32}$$

Knowing this probability of rejection, the President will have to make an offer d_1 such that their expected utility is maximized. The President's utility function in this subgame is:

$$U_1^P = prob_1(rej) * (p - sf - a) + (1 - prob_1(rej)) * (d_1 - a) \tag{.33}$$

Substituting in the variables defined above, we solve for the d_1 that maximizes the President's expected utility. We find:

$$d_1^* = \frac{1}{2}\left(c^{max} + st - 3\sqrt{s}\sqrt{t} + 2\right) \tag{.34}$$

Subgame 2

As in the first subgame of this version of the game, the President's use of force decision is the same as in the complete information version of the game. Thus:

$$f_2^* = \sqrt{\frac{\beta t - kt^2}{\beta s}} - t \tag{.35}$$

and

$$p_2^* = 1 - \frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}} \tag{.36}$$

As in subgame 1, because S_2 is completely informed of P's actions and payoffs, it actually knows precisely how much force the President will use if S_2 rejects the offer. Thus, S_2's decision in subgame 2 will be if:

$$1 - d_2 \leq 1 - p_2^* - c \tag{.37}$$

S_2 will reject the offer. Otherwise, the offer will be accepted. Similar to subgame 1, the President knows there is some c, $\bar{c}$, such that S_2 will be indifferent between accepting the deal offered, d_2, and rejecting the deal. Setting S_2's expected utilities from accepting and rejecting equal to each other, and solving for $\bar{c}$, we see:

$$\bar{c} = \frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}} + d_2 - 1 \tag{.38}$$

The President will estimate the probability that S_2 will reject the offer by comparing this $\bar{c}$ to the range of values of which the U.S. expects S_2's true type to be located ($c \in [c^{max}, c^{min}]$).

$$prob_2(rej) = \frac{\bar{c} - c^{min}}{c^{max} - c^{min}} \tag{.39}$$

Substituting in equation 38, we get:

$$prob_2(rej) = \frac{-c^{min} + d_2 + \frac{t}{\sqrt{\frac{t(\beta - kt)}{\beta s}}} - 1}{c^{max} - c^{min}} \tag{.40}$$

Knowing this probability of rejection, the President will have to make an offer d_2 such that their expected utility is maximized. The President's utility function in this subgame is:

$$U_2^P = prob_2(rej) * (p - sf - a - \frac{kf}{\beta}(1 - p)) + (1 - prob_2(rej)) * (d_2 - a) \tag{.41}$$

In order to find the optimal deal, d_2, to offer S_2, we take the derivative of the President's utility function, set it equal to zero, and solve for d_2. From this, we find that the optimal deal to offer is:

$$d_2^* = \frac{\beta^2\left(-3s\sqrt{\frac{t(\beta-kt)}{\beta s}} + c^{max} + st + 2\right) - \beta kt\left(-2s\sqrt{\frac{t(\beta-kt)}{\beta s}} + c^{max} + st + 3\right) + k^2t^2}{2\beta(\beta - kt)} \tag{.42}$$

Subgame 3

Because the only difference between subgames 2 and 3 is the sunk cost of asking for authorization (a), the equilibrium behavior follows the same calculations.

$$f_3^* = \sqrt{\frac{\beta t - kt^2}{\beta s}} - t \tag{.43}$$

$$p_3^* = 1 - \frac{t}{\sqrt{\frac{t(\beta-kt)}{\beta s}}} \tag{.44}$$

$$d_3^* = \frac{\beta^2\left(-3s\sqrt{\frac{t(\beta-kt)}{\beta s}} + c^{max} + st + 2\right) - \beta kt\left(-2s\sqrt{\frac{t(\beta-kt)}{\beta s}} + c^{max} + st + 3\right) + k^2t^2}{2\beta(\beta - kt)} \tag{.45}$$

Congress's Decision

Notably, because Congress only has a decision if actually requested by the President, we only have to compare Congress's expected payoffs from subgames 1 and 2. Substituting d_1^* and d_2^*—as well as the probabilities of rejected deals (i.e., war) into Congress's payoffs—we see:

$$U_1^C = prob_1(rej)(\beta p_1^* - s f_1^*) + (1 - prob_1(rej))(\beta d_1^*) \tag{.46}$$

$$U_2^C = prob_2(rej)(\beta p_2^*) + (1 - prob_2(rej))(\beta d_2^*) \tag{.47}$$

If $U_1^C > U_2^C$, Congress will grant the authorization requested, and otherwise will deny the authorization.[246]

[246] More extensive display of equation not presented due to space constraints. Available upon request.

The President's Decision

Lastly, knowing the deals that will occur at each subgame and knowing that Congress will always authorize the use of force if requested, the President has to decide whether to request authorization. Effectively, the choice comes down to whether the extra bargaining leverage gained by having a congressional authorization in hand will compensate for the cost incurred by seeking authorization.

First, the President will *never* seek authorization if Congress is not going to grant it. Thus, if $U_1^C < U_2^C$, then the President does not seek authorization. The simple intuition here is that because subgames 2 & 3 (i.e., asking and getting rejected vs. simply not asking) are identical other than the sunk cost a the President pays for asking, it is always better to simply avoid asking if the answer will be negative.[247]

If $U_1^C > U_2^C$—i.e. Congress would grant the request if asked—then the President will seek authorization if their utility from subgame 1 (asking and receiving) is greater than the utility from subgame 3 (not asking), where:

$$U_1^P = prob_1(rej)(p_1^* - sf_1^*) + (1 - prob_1(rej))(d_1^*) - a \tag{.48}$$

$$U_3^P = prob_3(rej)(p_3^* - sf_3^* - \frac{kf_3^*}{\beta}(1 - p_3^*)) + (1 - prob_3(rej))(d_3^*) \tag{.49}$$

Note: $prob_3(rej)$ is equivalent to $prob_2(rej)$, above.

If $U_1^P > U_3^P$, authorization will be requested, otherwise, it will not be.[248]

[247] Unexplored here—but ripe for future research—is the signalling taking place during the ask/ not ask and grant/ not grant decisions. The mere act of asking conceivable signals to adversaries that a President is a "weak" type. Thus, simply not asking might be preferred to asking and being rejected because it does not signal weakness. For tractability purposes, incomplete information over k—or some other parameter representing presidential resolve—is not directly investigated here.

[248] More extensive display of equation not presented due to space constraints. Available upon request.

Appendix III: Alternative Model—Uncertainty over Magnitude of Loss Costs

This alternative model focuses on the effect of adversary uncertainty over k, the loss costs faced by the President. Effectively, this becomes a signalling game. This is not included in the main text because it adds a lot of complexity (for example, many different equilibria which make it difficult to produce simple comparative static predictions).

We construct a simple formal model of crisis bargaining taking account of Loss Costs. We assume that two states, the President (P) of the United States and an adversary (S_2), have a dispute over control of some good, whose overall value we assume is equal to 1. The model takes a standard bargaining game and makes three small amendments. First, in contrast to a standard bargaining model in which the choice is a binary decision between fighting and not fighting, here the President not only gets to choose between war and peace, but also selects—if war is chosen—the *amount* of force (f) to be used. Second, the cost of fighting here is a function of how much force the President chooses to actually utilize—in contrast, again, to the standard model with gives a fixed cost to fighting (usually "c"). Lastly, an additional term is added to the President's war payoff utility function to account for the possibility that Congress can *ex post* impose a punishment on a President who goes to war without sufficient congressional support and then loses the conflict.

Sequence of Moves

The extensive form of the game is illustrated in Figure A2, below. Two countries, the United States and a potential adversary state (S_2) compete over an issue space equal to one. S_2 begins the interaction by proposing a deal (d, where $0 \leq d \leq 1$) to the President for the division of the good. After viewing S_2's proposed deal, d, the President then decides whether to accept the deal or to reject it and go to war. If the President accepts the deal, the game ends peacefully with the President receiving d and S_2 receiving $1 - d$. If the President rejects the deal, the President selects the amount of force (f, where $0 \leq f \leq F$) to employ and war occurs.

Payoffs

A standard bargaining model war payoff for an actor is:

$$U^P(war) = 1 * p + (1 - p) * 0 - c \tag{.1}$$

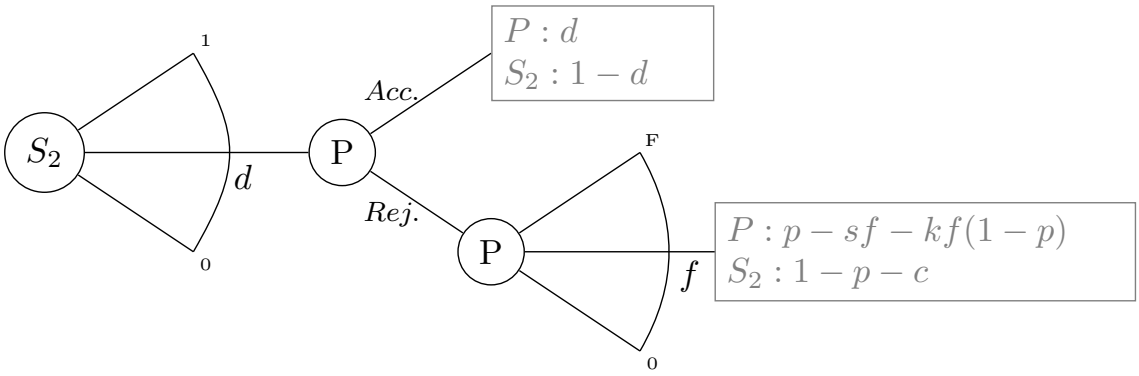

Figure A4 Bargaining Model with Loss Costs

Which can be simplified as:

$$U^P(war) = p - c \tag{.2}$$

The first amendment to the standard model is to allow the President to choose the amount of force to employ, f. An endogenous choice over the amount of force to employ is a key consideration in warfare, because in "real war" state's almost never choose to fully employ their maximum effort (Clausewitz 1976). The probability of victory for the President, p, is assumed to be a function of f using a standard contest function, $p = \frac{f}{f+t}$ (where t is the size of the threat—i.e. the power S_2 brings to bear). Thus, Equation 2 can be rewritten as:

$$U^P(war) = \frac{f}{f+t} - c \tag{.3}$$

The second amendment here will be to make the cost of fighting, usually denoted as c, dependent on the amount of force employed. Here, the force employed f is multiplied by the casualty sensitivity parameter s. Thus the President's war payoff is amended to be:

$$U^P(war) = \frac{f}{f+t} - sf \tag{.4}$$

The last alteration is to impose a penalty for loss (Loss Costs—denoted k). Like the cost of fighting, the magnitude of Loss Costs (k) are scaled by the amount of force f employed. Thus, the probably of loss, $1 - \frac{f}{f+t}$, is multiplied by f and k. Adding this to the war payoff function yields:

$$U^P(war) = \frac{f}{f+t} - (1 - \frac{f}{f+t})kf - sf \tag{.5}$$

Keeping in mind that $p = \frac{f}{f+t}$, Equation 5 can alternatively be rewritten in a more simplified form as:

$$U^P(war) = p - (1-p)kf - sf \tag{.6}$$

State 2's utility function retains that of the standard bargaining model:

$$U^{S_2}(war) = (1-p) - c_2 \tag{.7}$$

Information and beliefs

Both complete and incomplete information versions of the game will be considered. In the complete information version, both states know each others' expected payoff from war, $U^P(war)$ and $U^{S_2}(war)$. In the incomplete version of the game, S_2 is incompletely informed about the Loss Costs, k, the President faces. In other words, the adversary is uncertain how sensitive the President is to this possible ex post fallout—i.e., they know the President faces a de facto strategic constraint, but do not know the precise magnitude of this constraint.

Complete Information Equilibrium

Having perfect information, this game is solved using the subgame perfect equilibrium solution concept. Backward induction is used to determine players' best responses in equilibrium. Starting from the bottom of the game tree, the President selects the optimal amount of force to employ. Given the President's utility function from war:

$$U^P(war) = \frac{f}{f+t} - (1 - \frac{f}{f+t})kf - sf \tag{.8}$$

Taking the derivative of this utility function with respect to f yields:

$$\frac{\partial U^P(war)}{\partial f} = f(-k)\left(\frac{f}{(f+t)^2} - \frac{1}{f+t}\right) - k\left(1 - \frac{f}{f+t}\right) - \frac{f}{(f+t)^2} + \frac{1}{f+t} - s \tag{.9}$$

Setting this equal equal to zero and solving for f yields the amount of force that maximize the President's war utility:

$$f^* = \sqrt{\frac{t - kt^2}{s}} - t \tag{.10}$$

From this, the probability of victory p^* can be calculated. Given the contest function $p = \frac{f}{f+t}$, the probability of American victory at the optimal force level is:

$$p^* = \frac{s\sqrt{\frac{t-kt^2}{s}}}{kt - 1} + 1 \tag{.11}$$

Next, in order to determine the Presidents selection at the prior decision node—i.e., whether the accept the deal offered, d, or to reject it and go to war—we set the Presidents payoff from accepting the deal equal to the payoff of going to war.

$$d = \frac{f^*}{f^* + t} - (1 - \frac{f^*}{f^* + t})kf^* - sf^* \tag{.12}$$

Thus, if the deal offered, d, is greater than or equal to the President's war payoff, the deal will be accepted. Otherwise, the deal will be rejected and war will occur. Knowing this, S_2 will offer a deal that maximizes its own share while still avoiding war. S_2 will thus offer d, such that:

$$d^* = s\left(t - 2\sqrt{-\frac{t(kt-1)}{s}}\right) - kt + 1 \tag{.13}$$

Plotted below in Figure A3 is the amount of force, f, the U.S. will be able to employ as a function of k. As the plot shows, f and k exhibit an inversely proportional relationship: as k increases, f decreases.

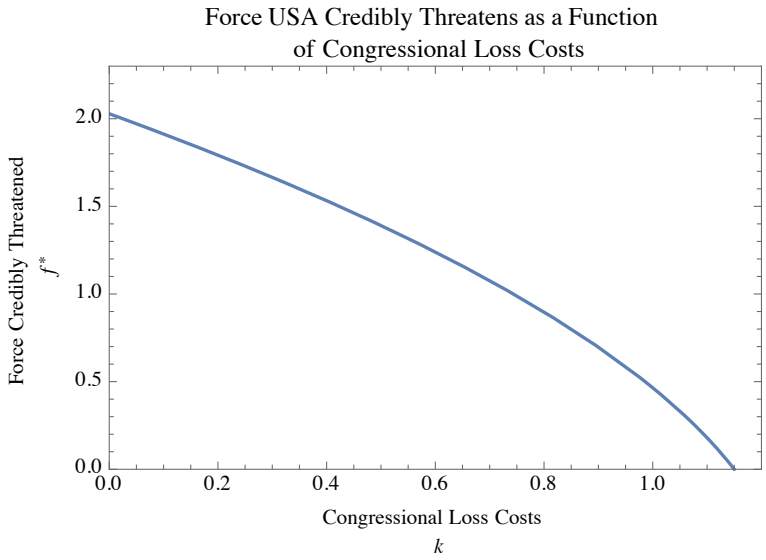

Figure A5 U.S. Force Threatened as a Function of Loss Cost Anticipated

Hypothesis 1A: The maximum amount of force a President will be willing to employ in a crisis will be inversely proportional to the loss costs anticipated, *ceterus paribus*.

Note that under perfect and compete information war does not occur (both sides adequately understand each others' cost of fighting and thus are able to find a deal better for both sides than war (Fearon 1995)). Thus, f can be said to represent the amount of force the U.S. credibly *threatens* to employ—not that actually is employed.

The next plot below shows that the deal, d, that the U.S. will receive as a function of k. As was the case with f, above, d and k exhibit an inversely proportional relationship: as k increases, d decreases. This is of course, consistent with conventional understandings of coercive diplomacy: the deal one can receive is proportional to the amount of force they can credibly threaten to employ.

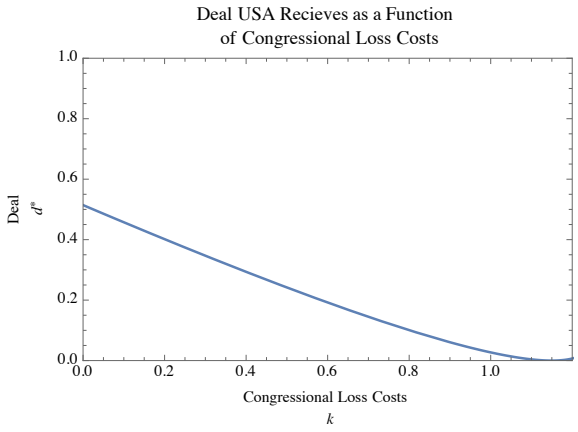

Figure A6 Deal as a Function of Loss Cost Anticipated

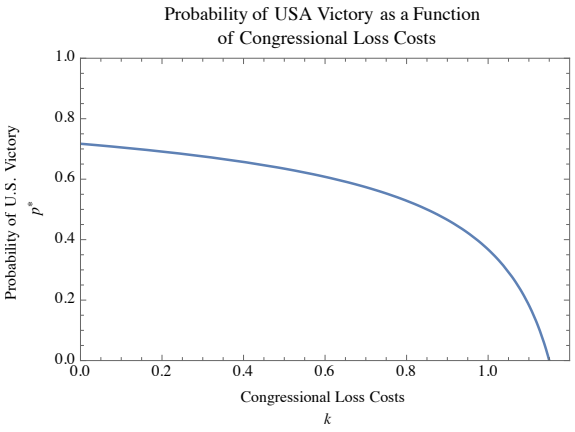

Figure A7 Probability of victory as a Function of Loss Cost Anticipated

Hypothesis 2A: The value of the deal a President will be able to reach with an adversary will be inversely proportional to the anticipated loss costs.

Thus, if a U.S. adversary perceives the President to face lower Loss Costs, the U.S. will do better in crisis bargaining (and vice versa). This gives the President incentives to publicly deny any cost of acting unilaterally. For example, in the run up to the Gulf War in the fall of 1990, President Bush repeatedly declared he was ready, willing, and able to initiate the use of force against Iraq absent congressional approval. Most famously, Bush would proclaim he "didn't have to get permission from some old goat in Congress to kick Saddam Hussein out of Kuwait."[249] Yet privately Bush was highly distressed at the prospect of using force absent the sanction of the legislature, specifically noting his fears of impeachment in his diary several times,[250] and privately requesting formal authorization from the legislature at least seven times (Woodward 1991).

In summary, the deal the U.S. can secure is proportional to the amount of force it can credibly threaten to use, which, in turn, is a function of the anticipated loss cost (And thus,

[249]George Bush, Remarks at the Texas State Republican Convention in Dallas, Texas. Online by Gerhard Peters and John T. Woolley, The American Presidency Project https://www.presidency.ucsb.edu/documents/remarks-the-texas-state-republican-convention-dallas-texas.

[250]Meacham, Jon. "The Hidden Hard-Line Side of George H.W. Bush." POLITICO Magazine, November 12, 2015. Available at https://www.politico.com/magazine/story/2015/11/jon-meacham-book-george-h-w-bush-213347.

as shown in the main text, by removing the possibility of *ex post* punishment by Congress (k), formal authorization for the use of military force improves the President's bargaining position).

Incomplete Information Equilibrium

Now we consider a situation in which asymmetric information is present. S_2 is uncertain of the President's exposure to Loss Costs (k). This uncertainty is generated by assuming that Nature first selects one of two types of President: one which faces lower loss costs (k_{low}) and one which faces higher costs (k_{high}), where $0 \geq k_{low} \geq k_{high}$. S_2 does not observe the Nature's selection, but the values of k_{low} and k_{high}, as well as the probability of nature selecting each (q and $1-q$, respectively) are all common knowledge.

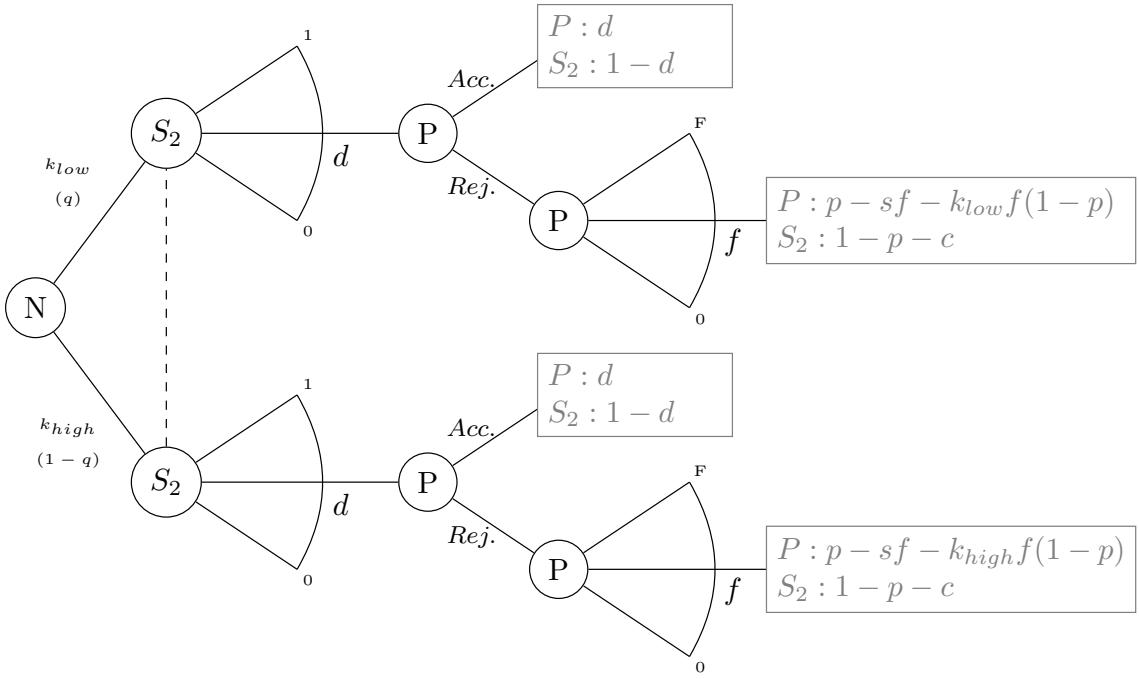

Figure A8 Bargaining Model with Loss Costs

Given that the President is fully informed of their type at each decision node, we can simply substitute k_{low} and k_{high} into equations 10 and 11 to determine the amount of force and probability of victory, respectively, for each type of President:

$$f^*_{low} = \sqrt{\frac{t - k_{low}t^2}{s}} - t \tag{.14}$$

$$f^*_{high} = \sqrt{\frac{t - k_{high}t^2}{s}} - t \tag{.15}$$

$$p^*_{low} = \frac{s\sqrt{\frac{t-k_{low}t^2}{s}}}{k_{low}t-1} + 1 \tag{.16}$$

$$p^*_{high} = \frac{s\sqrt{\frac{t-k_{high}t^2}{s}}}{k_{high}t-1} + 1 \tag{.17}$$

Unlike the complete information version of the model, above, S_2 is unable to know with certainty the deal d it can offer that will make the President indifferent between war and peace. Instead, because of its lack of precise knowledge about k, S_2 faces a risk-reward trade-off (Powell 1999) in which it prefers to offer as low a d as possible (in order to keep as much as possible for itself), but also knows that the lower the d it offers, the higher the likelihood that it will low-ball the President and cause a war. Were S_2 completely informed of the Presidents type, it would simply calibrate the deal to maximize its own share while making the President indifferent between the deal and war. Substituting in k_{low} and k_{high}, respectively, into equation 13, above, allows S_2 to calibrate the deal offered to each type:

$$d^*_{low} = s\left(t - 2\sqrt{-\frac{t(k_{low}t-1)}{s}}\right) - k_{low}t + 1 \tag{.18}$$

$$d^*_{high} = s\left(t - 2\sqrt{-\frac{t(k_{high}t-1)}{s}}\right) - k_{high}t + 1 \tag{.19}$$

S_2's decision comes down to offering the deal calibrated to the low-k type (d^*_{low}) or that calibrated to the high-k type (d^*_{high}). If S_2 offers the deal calibrated to the low-k type, it knows with certainty there will be peace: the deal satisfies the low-k type and, because the high-k type has a lower expected payoff from fighting, also satisfies the high-k type.

$$U^{S_2}(d^*_{low}) = 1 - d^*_{low} \tag{.20}$$

S_2 gets a better deal, however, if it can get the President to accept the high-k calibrated deal. This comes with the risk, however, of war if the President turns out to be the low-k type. Given that q represents the probability the President is the low-k type, S_2's expected utility of offering d^*_{high} can be expressed as:

$$U^{S_2}(d^*_{high}) = q(U^{S_2}(War_{low})) + (1-q)(1-d^*_{high}) \tag{.21}$$

S_2 thus makes its decision on which deal to offer based on whether its expected utility from risking war by offering the worse deal to the President ($U^{S_2}(d^*_{high})$) is higher than the guaranteed payoff if will receive by offering the President the better deal, ($U^{S_2}(d^*_{low})$). Intuitively, if $q = 0$ then S_2 knows with certainty it faces the high-k type President and thus

can offer d^*_{high} with no actual chance of war. On the other hand, if $q = 1$, then S_2 knows with certainty it faces the low-k type President and thus guarantees war if it offers d^*_{high}. In this case, S_2 would of course offer, instead, d^*_{low}. In between 0 and 1, there is some level of q such that S_2 is indifferent between the two offers. Let $\bar{q}$ represent the q at which S_2 is indifferent between the two potential deals. Setting equations 20 and 21 equal to one another and solving for q, we find:

$$\bar{q} = -\frac{(k_{low}t-1)\left(2s\left(\sqrt{-\frac{t(k_{low}t-1)}{s}}-\sqrt{-\frac{t(k_{high}t-1)}{s}}\right)-k_{high}t+k_{low}t\right)}{c(k_{low}t-1)+s\left(2k_{low}t\sqrt{-\frac{t(k_{high}t-1)}{s}}-2\sqrt{-\frac{t(k_{high}t-1)}{s}}+\sqrt{-\frac{t(k_{low}t-1)}{s}}-k_{low}t^2+t\right)+k_{high}t(k_{low}t-1)} \quad (.22)$$

$\bar{q}$, in other words, represents the risk level of war at which S_2 is no longer willing to offer the worse deal to the President. At level of q below $\bar{q}$, the level of risk is tolerable, even if significant. At q above $\bar{q}$, however, the risk of war is so great that S_2 chooses, instead, to simply the offer d^*_{low} and guarantee peace.

Let Δk represent the difference between k_{high} and k_{low}.[251] Figure A7, below, plots the relationship between Δk and $\bar{q}$. If k_{high} and k_{low} are equal—and thus $\Delta k = 0$—then S_2 knows the President's k with certainty and thus can calibrate a deal to it without any risk of war. In this case, $\bar{q} = 0$: no matter q, the President offers d^*_{low} and there is no risk of war.

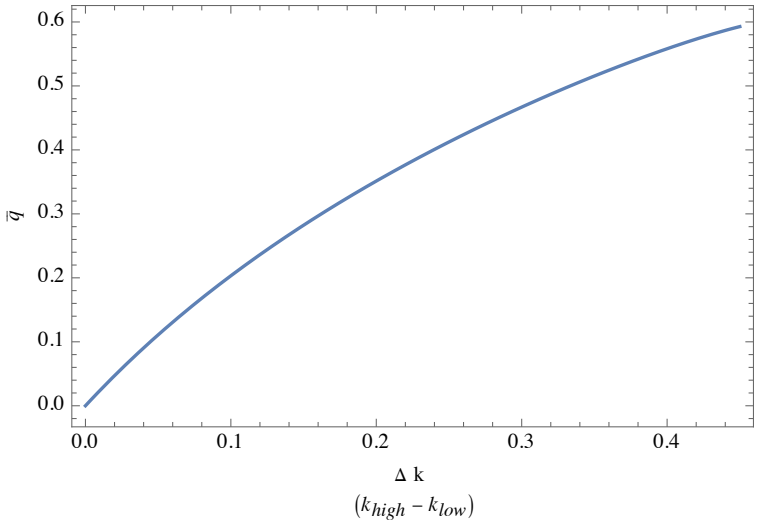

Figure A9 Risk of War as Function of Uncertainty over k

As depicted in Figure A7, however, $\bar{q}$ monotonically increases alongside increased in Δk. In other words, as uncertainty over k increases, the risk of war S_2 is willing to undertakes also increases: asymmetric information is leading to a positive probability of war.

Hypothesis 3A: Increasing *uncertainty* over the Loss Costs faced by the President will increase the probability of conflict, and vice versa.

[251] One can think of this value as representing the amount of uncertainty S_2 faces.

In this way, costly conflict can occur (or, continue) simply due to a lack of information over the loss costs faced by the President. States can also, however, gain information through fighting (Wagner 2000). Near the end of the Vietnam War, North Vietnamese leaders and negotiators tried to discern the effect of congressional resistance on Nixon's willingness to continue the fight (Asselin 2017). Negotiations broke down in late 1972 as the North Vietnamese became encouraged by a "McGovernite" Congress highly opposed to the war that was to be sworn in at the New Year (Kissinger 2011*a*, pg. 1795). Nixon, however, launched one of the most savage strategic bombing campaigns of the postwar era—LINEBACKER II—in order to convey his determination to achieve a "Peace with Honor".

> "Nixon reasoned, correctly, that he would pay a serious domestic price for lifting the self-imposed bombing restrictions; but it would become unmanageable only if he failed. He preferred a massive brief effort to a prolonged inconclusive one," (Kissinger 2011*a*, pg. 1797).

Updating their beliefs from facing a high-k type to a low-k type, the North Vietnamese conceded the bargain sought by the Americans in the Paris Peace Accords. Kissinger wrote to Nixon "What has brought us to this point is the President's firmness and the *North Vietnamese belief that he will not be affected by either Congressional or public pressures.* Le Duc Tho [North Vietnam's chief negotiator] has repeatedly made these points to me."[252] Updated beliefs over k thus allowed for peace to be reached.

The Effect of Formal Congressional Authorization

In summary, adversary beliefs about k will influence the deal they offer the President (Hypothesis 2A), and uncertainty over k can lead to inefficient war both sides would rather avoid (Hypothesis 3A). While Presidents can—and often do—use and threaten to use military force unilaterally, securing formal authorization has great potential benefits. Securing formal approval, first, eliminates k by making it much more difficult to attack the President *ex post* (Kriner 2014). This has the immediate consequence of making the President's threat of major military action more credible to U.S. adversaries. Second, to the extent that an adversary state has uncertainty over k, formal authorization eliminates this doubt and thus can lower the probability of conflict. We can now include a choice for the President over whether to seek formal authorization from Congress or not.

[252] Emphasis added. https://history.state.gov/historicaldocuments/frus1969-76v42/d43.

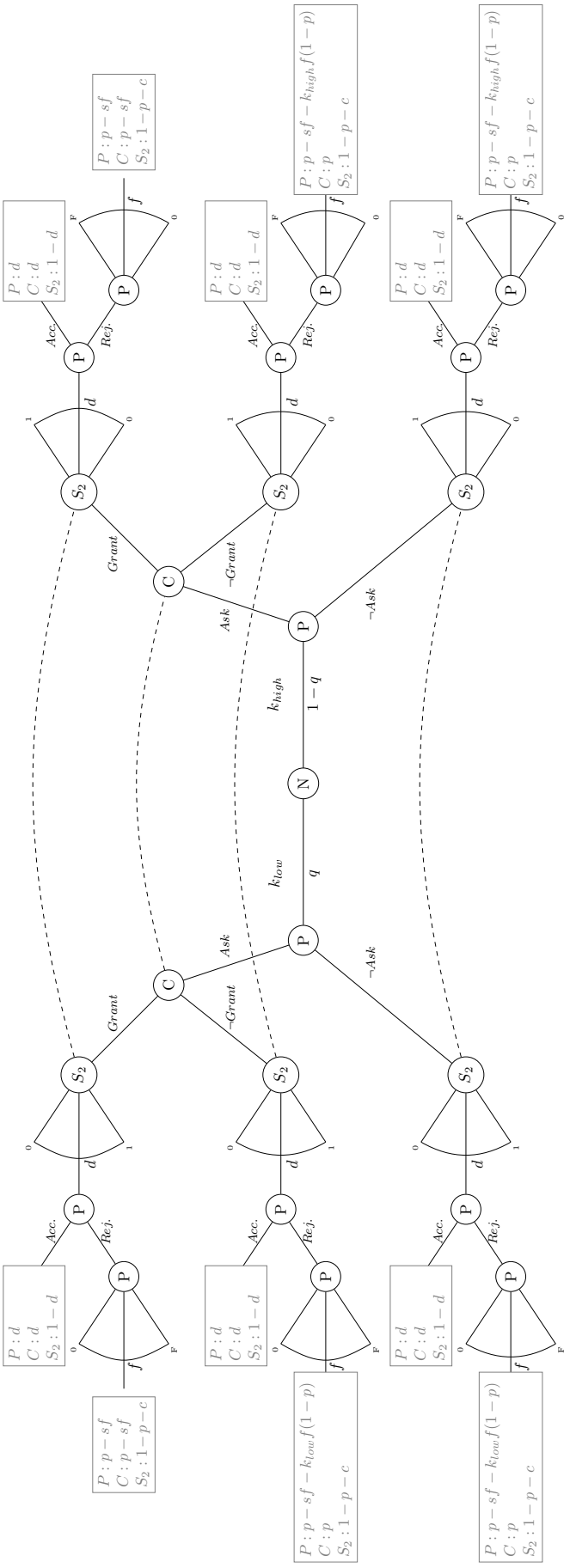

Figure A10 Full Game Tree

The game can be simplified quite a bit. First, because the only source of uncertainty is k, and because passing an AUMF eliminates k (and thus any uncertainty around it), Congress will *always* grant authorization if asked. Granting authorization both 1) gives the U.S. a better bargaining position and 2) eliminates any chance of war. Thus, Congress will always grant. Because of this, we can ignore the middle branch on each side. Moreover, because C's action is always the same, we can collapse the tree to just show that if the President requests authorization, S_2 will offer d_0^* (where 0 represents k, which is zero because authorization has been secured). Notably, this is the case regardless of which type the President is: regardless of whether the President is the low-k or high-k type, securing the AUMF has made this a moot point.

Further, the bottom subgames are essentially identical to Figure A7. Thus, we know that S_2 will be facing a risk-reward tradeoff. It can make the offer calibrated to the low-k type and guarantee peace, but would be giving too much if it turns out the President was the high-k type. Conversely, S_2 could off the deal calibrated to the high-k type, but this risks war if the President turns out the be the low-k type.

We can simplify the game into the figure below:

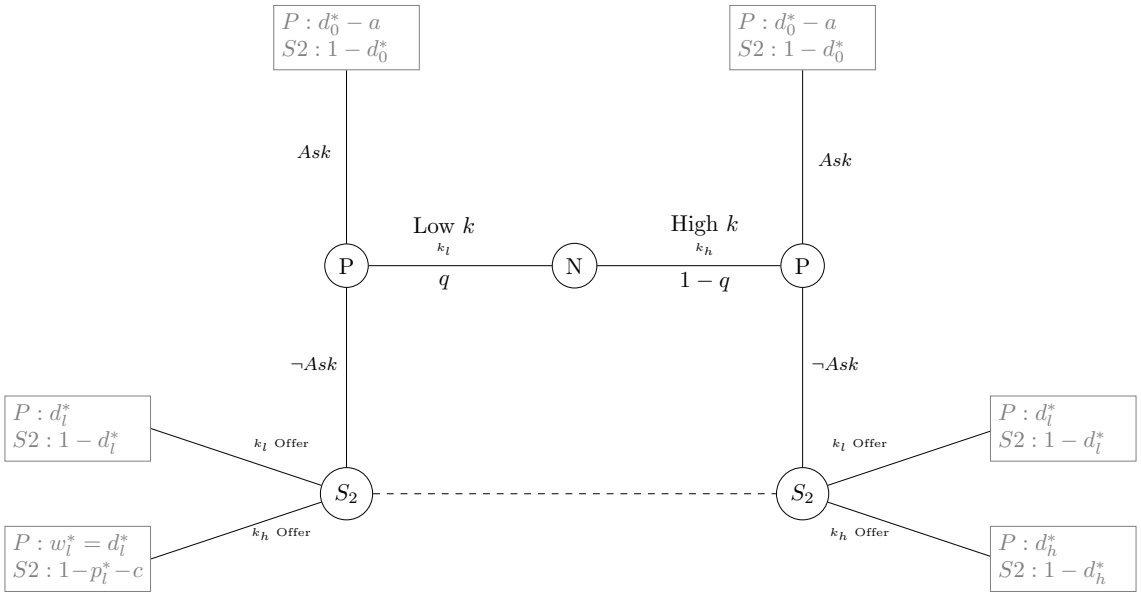

Figure A11 Collapsed Game

Recall that the deal offered will be proportional to k. Thus, we know $d_0^* \geq d_l^* \geq d_h^*$.

Pooling Equilibria

If $d_0^* - a > d_l^*$, both types Ask

First, we conjecture that there is a pooling equilibrium in which both types ask. Regardless of S_2's best response, this equilibrium will only hold if $d_0^* - a > d_l^*$.

Thus, if $d_0^* - a > d_l^*$, there will be a pooling equilibrium in which both types ask for authorization, S_2 takes either action, and believes with probability q the President is the low-k type and $1 - q$ the high-k type.

If $d_0^* - a < d_h^*$, both types do not Ask

Next, we see whether there is a pooling equilibrium in which both types avoiding asking. Assuming both types make this choice, S_2's decision will depend on its belief about the President's type. Since we are conjecturing this is a pooling equilibrium, there should be no update in beliefs. Let $\bar{q}$ be the q at which S_2 is indifferent between his options.

If $q > \bar{q}$, then S_2 will offer d_l^*. In this case, the equilibrium will hold so long as $d_0^* - a < d_l^*$.

If $q < \bar{q}$, then S_2 will offer d_h^*. In this case, the equilibrium will only hold if $d_0^* - a < d_h^*$.

Because if $d_0^* - a < d_h^*$, then it would by definition also be the case $d_0^* - a < d_l^*$, we can say that if $d_0^* - a < d_h^*$, there will be a pooling equilibrium in which both types do not ask.

Separating Equilibria

From the above, we see that if a is very low, both sides ask—and if a is very low, both sides do not ask. Now we want to know if there is a separating equilibrium.

First, consider a situation in which the low-k types acts unilaterally and the high-k type asks for authorization. If this were the case, S_2 would know with certainty that is the President did not ask, they were they low-k type. This being S_2's belief, it's best response would then be to offer d_l^*. However, for this equilibrium to hold, it would then need to be the case that $d_0^* - a < d_l^*$ (for the low-k type to not ask) and also that $d_0^* - a > d_l^*$ for the high-k type to ask. This if, of course, impossible.

There is also no separating equilibrium in which the low-k type asks and the high-k type does not. If P were to adopt such a strategy, S_2 with know with certainty it faced the high-k type if it witnessed the President ask. S_2's best reponse would then be to offer d_h^*. For this to then hold, it would have to be the case that $d_0^* - a > d_l^*$ (for the low-k type to ask) and $d_0^* - a < d_h^*$ (for the high-k type to not ask). This would require $d_l^* < d_h^*$, which is impossible. Thus, no separating equilibrium exists.

Table A1 Equilibria

	$q > \bar{q}$	$q < \bar{q}$
$d_0^* - a > d_l^* > d_h^*$	**Pooling:** Ask, Ask	**Pooling:** Ask, Ask
$d_l^* > d_0^* - a > d_h^*$	**Pooling:** $\neg Ask$, $\neg Ask$	**Mixed:** $\neg Ask$, $p(Ask) = \sigma_a$
$d_l^* > d_h^* > d_0^* - a$	**Pooling:** $\neg Ask$, $\neg Ask$	**Pooling:** $\neg Ask$, $\neg Ask$

Semi-Separating Equilibria

We consider a semi-separating equilibrium in which the low-k type does not ask, and the high-k type mixes (in other words, the strong type always acts unilaterally, and the weak type attempts to copy this sometimes). Let σ_a represent the probability the high-k President asks (and thus 1-σ_a the probability they act unilaterally). Furthermore, let σ_d represent the probability that S_2 offers d_l^* (and, thus, 1-σ_d the probability they offer d_h^*). Lastly, let r be equal to S_2's posterior belief the President is the low-k type (and, conversely, $1-r$ the posterior belief of the likelihood the President is the high-k type).

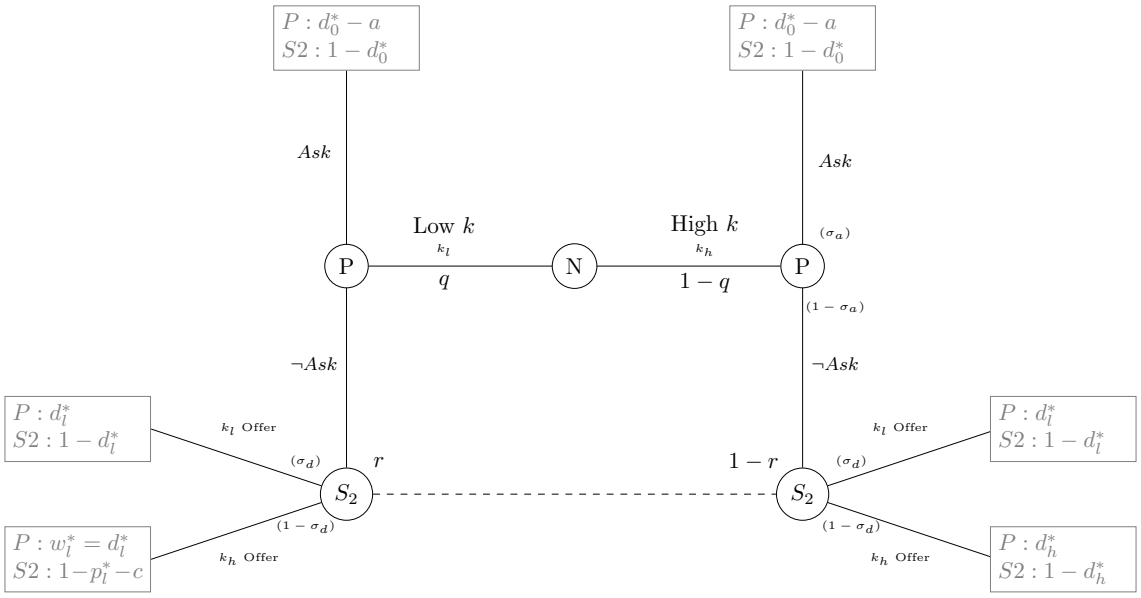

Figure A12 Collapsed Game

First, we need to figure out a mixed strategy for S_2 such that the high-k type P is indifferent between asking and not asking:

$$d_0^* - a = \sigma_d d_l^* + (1 - \sigma_d) d_h^* \tag{.23}$$

Solving for σ_d, we find:

$$\sigma_d = \frac{-a + 2s\sqrt{-\frac{t(k_{high}t-1)}{s}} +_{high} t - 2s\sqrt{\frac{t}{s}}}{2s\sqrt{-\frac{t(k_{high}t-1)}{s}} + k_{high}t - 2s\sqrt{-\frac{t(k_{low}t-1)}{s}} - k_{low}t} \tag{.24}$$

Now, we need to figure out r such that S_2 is indifferent between the two possible deals it can offer:

$$1 - d_l^* = r(1 - p_l^* - c) + (1 - r)(1 - d_h^*) \tag{.25}$$

Solving for r, we find that:

$$r = (omitted) \tag{.26}$$

Having solved for r (S_2's posterior belief about P's type), we can now figure out the mixed strategy the high-k type President can play in order to make S_2 indifferent between deals.

$$r = \frac{q}{q + (1 - q)(1 - \sigma a)} \tag{.27}$$

Solving for σ_a, we find:

$$\sigma_a = (omitted) \tag{.28}$$

In summary, if a is very low, both types will ask—and if a is very high, both types will act unilaterally. More interestingly, if a is in a more middle range, there is a possibility of a semi-separating equilibrium.

Because the variables in the model are all relative to one another, we can hold a constant and see how other variables effect this. Specifically, we might be curious as to how the size of the threat influences this. Plotted below are d_l^*, d_h^*, and $d_0^* - a$ as a function of t. $d_0^* - a$ is lower than both d_l^* and d_h^* when t is small. In other words, both types will act unilaterally when the threat is very small. On the other hand, $d_0^* - a$ is greater than both d_l^* and d_h^* when t is quite large. Thus, when the threat is very large, both types will seek congressional authorization.

It is in the middle range—where $d_l^* > d_0^* - a > d_h^*$—where it is possible to see semi-separation. If $q > \bar{q}$—i.e., if S_2 anterior beliefs about P being the low-k type are sufficiently high, both types of President will act unilaterally. However, if $q < \bar{q}$, there will be a separating equilibrium in which the low-k type acts unilaterally and the high-k type mixes. Upon seeing a President act unilaterally, S_2 will update its beliefs and think it more likely the President is the low-k type.

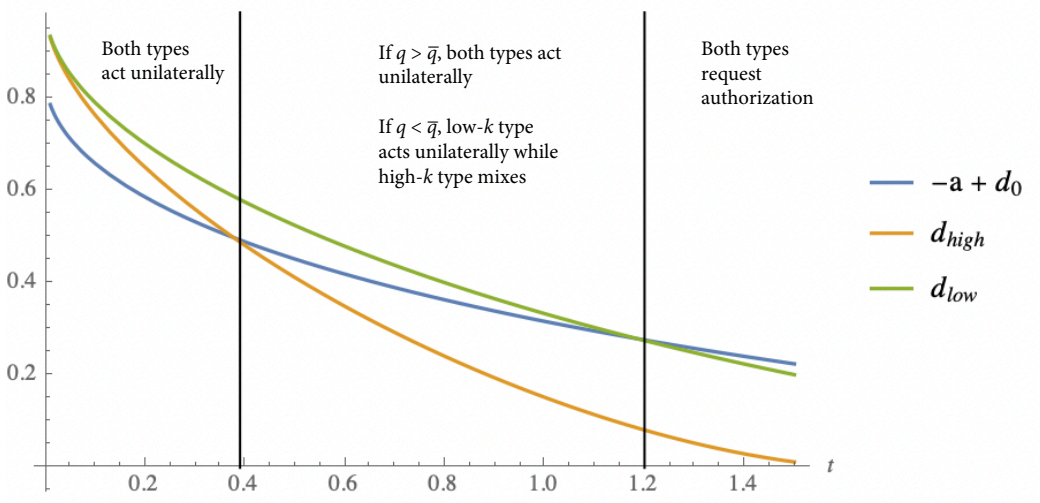

Figure A13 Utility of Unilateral Action Compared to Seeking Formal Authorization

Thus, no President is going to be blamed for asking for formal authorization when they are expecting a large conflict—George W. Bush, for example, sought and received formal congressional authorization for both the Afghanistan invasion and war in Iraq, and yet still maintained a reputation as an Imperial President. Compare this to President Obama, who was considered somewhat skittish when he sought congressional approval for the use of military force in Syria in 2013. Notably, this was after he had undertaken actions such as the 2011 Libya intervention and the killing of Osama bin Laden unilaterally. While Bush had less of a record of unilateral action, his requests for congressional approval were for major wars in which both types of President would have sought approval. Obama's precedents of unilateral action were of really little reputational value because—given their rather minor nature—both types of President would have undertaken these unilaterally. The key was the medium-sized Syria crisis—here, a true low-k President would have acted unilaterally.

Obama's first two secretaries of defense——Robert Gates and Leon Panetta——utilized precisely this logic when criticizing the Obama administration for formally asking for Congress's authorization to use force in Syria in 2013.

> "While Gates opposed an intervention in Syria and Panetta supported one, both said Obama had damaged the presidency as an institution by showing that an American President could warn that something was a "red line" but then defer to Congress," (Savage 2017, 654).

Leon Panetta argued:

> "Iran is paying very close attention to what we're doing...There's no question in my mind they're looking at the situation, and what they are seeing right now is an element of weakness."

Similarly, Kissinger recalls of Nixon's decision not to seek congressional approval of the Paris Peace Accords:

> "In 1969 he thought it an abdication to ask the Congress to reaffirm his authority to conduct a war that was already taking place. In 1973 he was convinced that to ask a hostile Congress to give him authority to enforce the Agreement would be a confession that he had no authority to resist while the Congress was deliberating, and would thus invite an all-out North Vietnamese assault. He therefore proceeded to do what in his view the national interest required."

Presidents and their advisers thus think that information can be conveyed to adversaries about presidential resolve when making the decision to ask for congressional authorization for the use of military force. No weakness (information) is conveyed when asking for approval for a large war—all types do this—and no information is conveyed when acting unilaterally for a small use of force—all types do this. Asking for approval for a medium size conflict, however, has the potential of exposing oneself as weakly resolved.

Appendix IV: Chapter Two

Necessary Condition Analysis

Statistical methods are not well suited for testing necessary conditions (Dul 2015). The underlying additive model utilized in the statistical tradition of political science essentially assumes variables are sufficient conditions in degree, with each element of a statistical model having a (potential) independent effect on the outcome. In other words, low values on certain variables in the model can be compensated for by high values on other variables in the specification. A necessary condition, in contrast, implies something quite different: the absence of the necessary condition will prevent the outcome *regardless of the values of the other variables.*

The "qualitative" tradition, in contrast, utilizes Boolean logic that takes explicit consideration of necessary conditions (Goertz & Mahoney 2012). While qualitative comparative analysis would be appropriate if one were seeking to identify different causal pathways to the dependent variable, here the specific focus is one whether one specific variable—congressional support—is a necessary condition in all pathways (Dul, Vis & Goertz 2021). Political scientists have long recognized the relevance and potential importance of necessary conditions, but relatively few have analyzed them with data larger than small-N analyses (Braumoeller & Goertz 2000, Goertz & Starr 2003). Conflict scholars have given more attention to the concept perhaps more than others.

Necessary condition analysis is a growing technique, although it is a relatively recently developed methodology (Dul 2015, Dul, Vis & Goertz 2021, Dul, van der Laan & Kuik 2020, Goertz, Hak & Dul 2013). Essentially, the technique attempts to identify a ceiling line for the data. A continuous necessary condition (i.e., a certain level of the outcome variable requires a certain level of the explanatory variable) will have a large empty space in the top left corner. That is, of course, precisely what we find when plotting congressional supports scores versus the escalation level reached by the United States. The plot below utilizes Dul's NCA package in R (Dul 2022) in order to perform necessary condition analysis (Dul 2016).

Note first the light grey line, which is the OLS line of the bivariate relationship. This is effectively what is analyzed in the quantitative section above: estimating the average effect an increase in congressional support has on the escalation level reached by the United States. Ultimately, however, this is not actually the line we are interested in. The theory presented in Chapter 1 suggested that the *maximum* amount of force a president would use would be limited by congressional support for the use of force. The bargaining model of war tells us that the possibility of a negotiated outcome short of war is often possible—and perhaps even more likely than an actual result to force. Thus, there is a substantial likelihood that in many cases the President need not actually utilize the full amount of force they were willing to use because

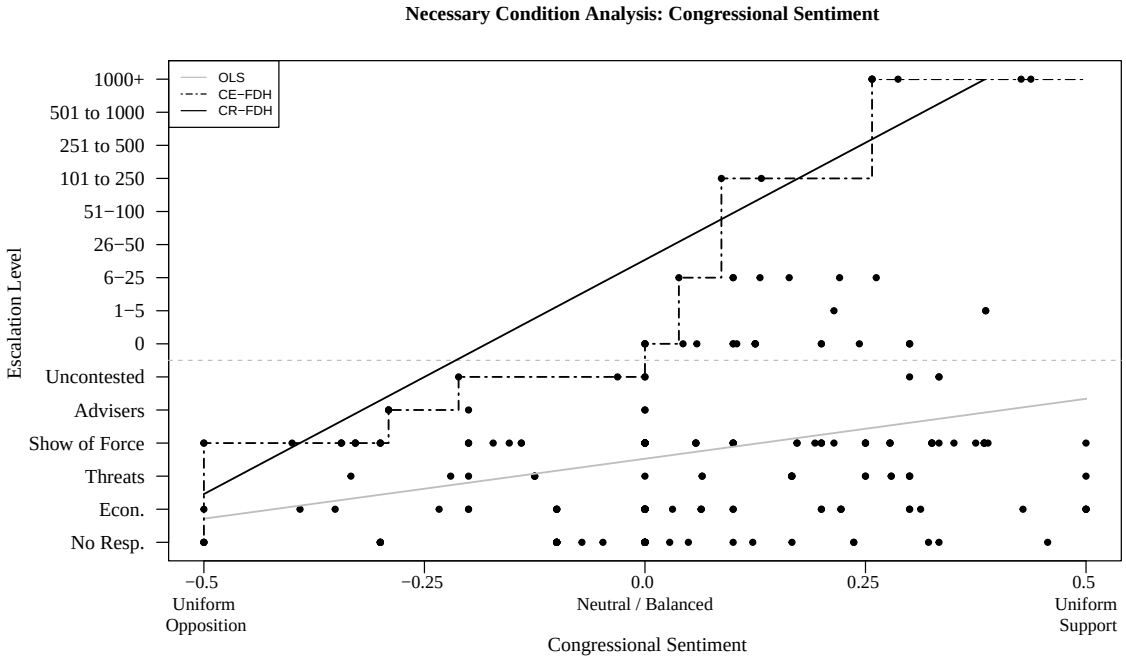

Figure A14 Necessary Condition Analysis

they were able to acquire a negotiated deal. Because of this, our focus is on the maximum amount of force a President would be willing to utilize—not the average they do utilize.

Thus, the line we are more interested in is the "ceiling" line separating the empty space in the upper left corner from the data. Presented on the plot are the two most common ways to determine this barrier: the step function CE-FDH (Ceiling Envelopment – Free Disposal Hull) and the straight line CR-FDH (Ceiling Regression – Free Disposal Hull). The CE-FDH simply follows the maximum values of the outcome variable at successively large levels of the explanatory variable. The CR-FDH basically tries to create a line separating observations from empty space by running an OLS line through the observations on the CE-FDH line. This line in then used to calculate the size of the "empty space", when can then be utilized to determine the effect size (and statistical significance) of the necessary condition. Regardless of the ceiling line utilized, the effect is large and significant at the .001 level. This suggests congressional support for the use of military force is a strong necessary condition for the level of force utilized.

Spurious Relationship?

A major concern when utilizing the additive model of statistics is omitted variable bias, and thus one has to have a well specified model with all relevant control variables before they can say with any confidence what the effect of the independent variable of interest is on

the dependent variable. Because necessary conditions sit outside of the rest of the causal chain, omitted variable bias is not a concern.

There is, however, still a concern that a relationship could be spurious.[253] Specifically, if another variable (Z) were both sufficient for the independent variable of interest (the proposed necessary condition–X) and necessary for the dependent variable (Y) (Dul 2016, Mahoney 2007). In this case, the most obvious proposed Z would be the magnitude of the threat faced by the United States. The logic of this argument would be something like bigger threats lead to more congressional support, and are also met with more escalation and force by the United States. This then could lead to an observed association between between congressional support and escalation level without any constraint causal mechanism actually operating between the two. This can possibility can be tested both by seeing whether the level of a threat is a necessary condition for the escalation level observed, and also considering whether external threats are sufficient for congressional support.

Is threat magnitude a necessary condition for escalation level?

There are two ways one could conceive of the magnitude of a threat: objectively (looking at, for example, adversary power or proximity) and subjectively (looking at how it was perceived from the administration's perspective). First, consider possible objective measures of threat. Two variables often believed to contribute to the concept of "threat" are power and proximity (Walt 1987). Both can be analyzed to see whether they meet the criteria of being necessary conditions for the outcome variable utilizing the same method introduced above. Neither, however, turn out to be necessary conditions for the level of U.S. escalation—having very small, or zero, effect size and lacking statistical significance.

More promising is the White House's subjective perception of threat. This is, of course, very difficult to measure, but it seems intuitive that Presidents would only risk American lives and resources in proportion to the importance of the foreign policy objective. For the sake of argument, let us assume that this subjective perception of threat in the eyes of the White House is a necessary condition for the escalation level reached. We then consider whether this is sufficient for congressional support.

[253] "Observing a data pattern that is consistent with the causal hypothesis is not evidence of a causal connection. Hence, it is important that identified necessary conditions are theoretically justified, namely, that it is understood how X constrains Y and Y is constrained by X. Requirements for causal inference in empirical studies for building or testing necessary cause effect relations are the same as for any other type of cause-effect relation. For example, a necessary cause is more plausible if the cause precedes the outcome and is related to the outcome and if an observed outcome cannot be explained by another cause,"(Dul 2016, pg. 33).

Is threat magnitude a sufficient condition for congressional support for the use of force?

Some might argue that an external threat to the United States will rather directly lead to a convergence in support. If this were the case, the size of the threat could conceivably be a sufficient condition for congressional support for the use of force, and the observed relationship between congressional support and escalation level could be spurious. Recent scholarship, however, suggests an external threat is *not* sufficient for congressional support for the use of force (Myrick 2021).

Another way to assess whether perceived threat is a sufficient condition for congressional support is to utilize a useful property of necessary and sufficient conditions: a single counter-example can disprove a proposition. In this case, examples in which the White House perceived a major threat and yet Congress did not converge in its support for the use of force would eliminate the possibility that a subjectively perceived threat were sufficient for legislative support. Notably, there are *many* counter-examples. These would include, for example:

- Congress's refusal to support American intervention in the 1954 Indochina Crisis (Prados 2002)
- its strong push back against a firm commitment to the so-called "offshore islands" in the Second Taiwan Strait Crisis (Halperin 1966)
- resistance to the use of troops in Laos in 1961-62
- its refusal to allow re-engagement in Vietnam under both Nixon and Ford after clear violations of the Paris Peace Accords by North Vietnam from 1973 to 1975.
- Its hamstringing of American diplomacy in, for example, Cyprus (1974) and Angola (1975)
- Strong resistance to direct American intervention in Central America and Suriname in the 1980's
- Forcing Clinton to withdraw from Somalia after the "Black Hawk Down" incident of 1993, over objections from the Clinton Administration it would severely damage American credibility
- Effectively deterring intervention in the 1994 Rwandan genocide and strong objection to the 1994 deployment to Haiti
- Strong resistance to Bush Administration plans to attack Iran in 2007.
- Resistance to intervention in Syria in 2013.

These episodes—and others—suggest it is not uncommon for the executive and the legislature to have vastly different perceptions of threat magnitude and importance. A latent concept of threat, as perceived by the White House, is thus not a sufficient condition for

congressional support. This would then eliminate the possibility that this potential Z variable was causing the apparent necessary condition relationship between congressional support and escalation level.

Thus, with this potential confound eliminated as the source of the seeming necessary condition relationship—and with a strong theoretical reasons to suspect congressional sentiment is limiting the amount of force a president is willing to utilize—we have a strong candidate for a necessary condition. Chapters Three, Four, and Five provide a series of cases that demonstrate this causal mechanism operating in a wide range of crises over the past eight decades.

Table 2.4 Replication with Scale of Force Utilized as DV

OLS

Table A2 Table 2.4 Replication with DV as Continuous Variable (OLS)

	(1) Congr. Sent.	(2) AUMF	(3) % Copart.	(4) % Repub.	(5) All
Congressional Sentiment	2.798***				1.613*
	(0.740)				(0.689)
Legal Status		2.394***			2.199***
		(0.407)			(0.389)
% Copartistans			4.849**		0.436
			(1.540)		(1.472)
% Republicans				-5.372	-4.196
				(2.835)	(2.854)
Relative Power	0.511	0.247	0.182	0.106	0.404
	(0.479)	(0.408)	(0.482)	(0.485)	(0.428)
Year	0.006	-0.022	-0.010	-0.029	-0.008
	(0.029)	(0.029)	(0.030)	(0.032)	(0.029)
Political Polarization	2.866	11.497*	6.841	10.279	8.866
	(5.862)	(5.773)	(5.713)	(6.311)	(5.496)
Presidential Approval	0.009	0.005	0.009	0.009	0.003
	(0.006)	(0.005)	(0.007)	(0.007)	(0.006)
Unemployment Rate	-0.281**	-0.086	-0.218**	-0.255**	-0.184*
	(0.085)	(0.068)	(0.081)	(0.093)	(0.073)
Cold War	0.535	1.083	0.563	0.169	0.849
	(0.622)	(0.585)	(0.666)	(0.640)	(0.529)
Distance from U.S.	0.004	0.003	0.003	0.004	0.004
	(0.004)	(0.004)	(0.004)	(0.005)	(0.004)
Concurrent War	0.598	0.807*	0.599	0.688	0.592
	(0.466)	(0.374)	(0.464)	(0.466)	(0.383)
Crisis Part of Continuing War	5.472***	5.214***	5.288***	5.046***	5.449***
	(0.688)	(0.509)	(0.653)	(0.684)	(0.539)
Observations	210	210	210	210	210
AIC	872.922	821.187	881.857	886.466	815.126
BIC	909.741	858.005	918.676	923.284	861.985

Standard errors in parentheses
* $p < .05$, ** $p < .01$, *** $p < .001$

Ordered Probit

Table A3 Table 2.4 Replication with DV as Ordered Categorical Variable (Ordered Probit)

	(1) Congr. Sent.	(2) AUMF	(3) % Copart.	(4) % Repub.	(5) All
Congressional Sentiment	3.259***				2.664***
	(0.642)				(0.662)
Legal Status		1.866***			1.949***
		(0.264)			(0.331)
% Copartistans			3.192**		4.301
			(1.227)		(2.419)
% Republicans				-1.984	2.590
				(2.179)	(3.514)
Relative Power	0.694	0.476	0.354	0.308	0.815
	(0.468)	(0.431)	(0.393)	(0.390)	(0.493)
Year	0.032	-0.001	0.004	-0.008	0.049
	(0.021)	(0.027)	(0.023)	(0.021)	(0.031)
Political Polarization	-4.384	6.603	2.493	4.497	-3.074
	(4.747)	(6.099)	(4.500)	(4.574)	(5.896)
Presidential Approval	0.008	0.003	0.007	0.007	0.003
	(0.006)	(0.006)	(0.005)	(0.005)	(0.007)
Unemployment Rate	-0.175*	-0.049	-0.094	-0.106	-0.107
	(0.078)	(0.071)	(0.073)	(0.080)	(0.085)
Cold War	-0.197	0.454	-0.030	-0.170	0.527
	(0.564)	(0.693)	(0.569)	(0.591)	(0.686)
Distance from U.S.	0.002	0.004	0.001	0.001	0.006
	(0.004)	(0.004)	(0.004)	(0.004)	(0.004)
Concurrent War	0.179	0.476	0.161	0.246	0.316
	(0.300)	(0.295)	(0.303)	(0.292)	(0.303)
Crisis Part of Continuing War	3.104***	3.120***	2.577***	2.336***	4.216***
	(0.512)	(0.493)	(0.413)	(0.393)	(0.609)
Observations	210	210	210	210	210
AIC	342.173	314.993	361.740	366.497	299.861
BIC	399.074	371.894	418.641	423.398	366.803

Standard errors in parentheses
* $p < .05$, ** $p < .01$, *** $p < .001$

Matching

Observations were matched on variables likely to be associated with the sentiment expressed in Congress and crisis outcomes—specifically the relative capabilities of the United States and the adversary state in the dyad, as well as the percent of Congress made up of copartisans. Here, coarsened exact matching was used (Iacus, King & Porro 2012, McManus 2017, pg. 83). The model is then estimated again using the matched sample, with the marginal effects plots shown below.

Note, again, that as congressional support moves from its minimum (uniform resistance) to its maximum (uniform support), the effect on the probability of victory is quite large—roughly from 0.3 to 0.7. Formal legal status also appears to have a substantial effect. As is well recognized, however, matching is an imperfect causal inference technique. The major limit of the method is that it cannot account for the possibility of unobserved variables confounding the relationship between congressional support for the use of force and conflict outcomes. Nonetheless, the results shown here are very similar to those yielded in the body of

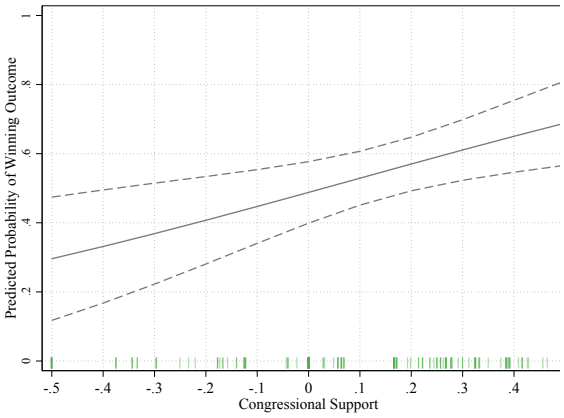

Figure A15 Predicted Probability of Victory by Level of Congressional Support (Matched Sample)

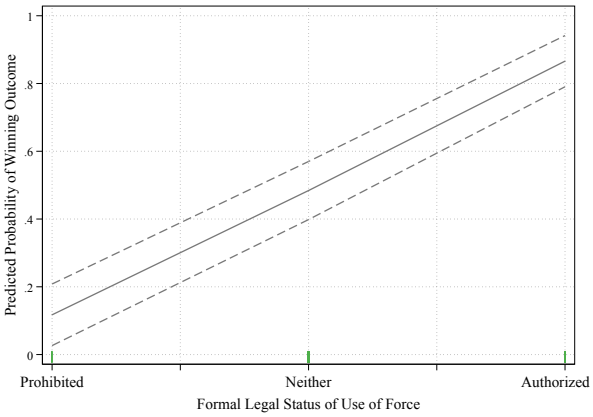

Figure A16 Predicted Probability of Victory by Legal Status (Matched Sample)

the text—suggesting, alongside the other evidence provided, that reverse causation is not the major factor yielding the strong association observed between congressional support and crisis outcome.

Explaining the Magnitude of Congressional Sentiment Expressed

Dependent Variable

Here, the dependent variable is the magnitude of the congressional sentiment expressed relevant to the use of military force. Specifically, this is operationalized as the average number of crisis-relevant speeches per day.

Independent Variables

Gravity: From the ICB dataset, the variable "identifies the most salient object of threat identified by any of the actors in the crisis."

- **(0)** Economic threat
- **(1)** Limited military damage
- **(2)** Political threat – threat of overthrow of regime, change of institutions, replacement of elite, intervention in domestic politics, subversion
- **(3)** Territorial threat – threat of integration, annexation of part of a state's territory, separatism
- **(4)** Threat to influence – threat of declining power in the global system and/or regional subsystem, diplomatic isolation, cessation of patron aid
- **(5)** Threat of grave damage – threat of large casualties in war, mass bombings as a result of a threat of grave damage.
- **(6)** Threat to existence – threat of survival of population, genocide, threat to existence of entity, of total annexation, colonial rule, occupation

Violence:

Like "Gravity" this variable comes from the ICB dataset and "identifies the extent of violence in an international crisis as a whole"

- **(1)** No violence
- **(2)** Minor clashes
- **(3)** Serious clashes
- **(4)** Full-scale war

All other variables are described in the main body of the text, above.

Table A4 Congressional Sentiment as Dependent Variable

	(1) Speeches/day	(2) Speeches/day	(3) Speeches/day	(4) Speeches/day
Relative Capabilities	-0.368***	1.160***	1.127***	0.452*
	(0.077)	(0.377)	(0.378)	(0.238)
Relative Capabilities^2		-1.368***	-1.340***	-0.607***
		(0.340)	(0.340)	(0.208)
% Congress Copartisan			0.228	
			(0.317)	
Net Approval			0.000	-0.000
			(0.001)	(0.001)
% Congress Republican				-0.458*
				(0.275)
Gravity				-0.007
				(0.011)
Violence				0.030**
				(0.013)
Level of U.S. Involvement				0.052***
				(0.005)
N	210	210	210	210
AIC	183.626	169.694	172.816	22.989
BIC	193.667	183.083	192.899	53.113

Standard errors in parentheses
* $p < .10$, ** $p < .05$, *** $p < .01$

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