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War Powers Legislation

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I. INTRODUCTION

The Ninety-Second Congress has been marked by the unusual drama of a vigorous and persistent effort by the Legislative Branch to confront the President, eyeball to eyeball, over the primary issues of war and peace.¹ Nowhere has the contest been joined in a more fundamental way, reaching to the very core of the division of powers between the two political branches, than in the bold thrust by several senators to codify the rules governing the circumstances in which the United States may go to and remain in war.²

No less than 19 senators have introduced or cosponsored one of five different bills or joint resolutions seeking to define the instances when the President may use or deploy the Armed Forces of the United States.³ Taken singly or severally, these measures purport to mark the sole conditions under which the President can initiate military hostilities and to restrict his authority to continue any such hostility beyond a brief period unless and until he has obtained a new and specific authorization from Congress.⁴

³ Mr. Javits has introduced S. 731 for himself, Mr. Bayh, Mr. Mathias, Mr. Packwood, Mr. Pell, Mr. Spong, Mr. Weicker and Mr. Williams. Mr. Bentsen has introduced S. 1880 for himself and Mr. Byrd of W. Va. Mr. Taft has introduced S.J. Res. 18. Mr. Eagleton has introduced S.J. Res. 59 for himself, Mr. Inouye, Mr. McGovern, Mr. Montoya, and Mr. Stevenson. Mr. Stennis has introduced S.J. Res. 95 for himself, Mr. Mansfield, and Mr. Roth. On December 6, 1971, after this article was submitted, Senators Javits, Stennis, Eagleton, and Spong agreed to introduce a comprehensive redraft of S. 731. The substantive provisions of this bill, S. 2956, are essentially the same as those in S. 731, with the addition of language borrowed from S-J. Res. 59 providing that authority to use the Armed Forces shall not be inferred from a treaty or appropriation act. S. 2956 was ordered favorably reported by the Senate Committee on Foreign Relations the next day, December 7.
⁴ See discussion pp. 2-6, infra.
It is the purpose of this article to examine the validity of such a legislative approach and, in so doing, to test its practical soundness.

II. DESCRIPTION OF WAR POWERS BILLS

First, it is necessary to know what the War Powers Bills attempt to do. Accordingly, we might start by reviewing the bill, S. 731, introduced by Senator Javits. The other measures then can be discussed in relation to how they differ from S. 731.

In its first section, the Javits bill provides that the “use of Armed Forces of the United States in military hostilities in the absence of a declaration of war [shall] be governed by the following rules . . . .” These rules are (1) the President shall initiate military hostilities only in four prescribed circumstances; (2) the President shall report promptly to Congress whenever military hostilities commence; (3) in no event shall such hostilities be sustained beyond thirty days unless Congress enacts legislation to this end; and (4) the President’s authority to sustain such hostilities may be terminated short of thirty days by joint resolution of Congress.

The four situations in which the President is limited to using the Armed Forces are:

1. to repel a sudden attack against the United States, its territories, and possessions;

2. to repel an attack against the Armed Forces of the United States on the high seas or lawfully stationed on foreign territory;

3. to protect the lives and property, as may be required, of United States nationals abroad; and

4. to comply with a national commitment resulting exclusively from affirmative action taken by the executive and legislative branches of the United States Government through means of a treaty, convention, or other legislative instrumentality specifically intended to give effect to such a commitment, where immediate military hostilities by the Armed Forces of the United States are required.”

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5 S. 731, supra note 2, at 1, lines 3-5.
6 Id. at 1-2, lines 7-13.
7 Id. at 2, paragraph B, § 1.
8 Id. at 2, paragraph C, § 1.
9 Id. at 2-3, paragraph D, § 1.
10 Id. at 1-2, paragraph A, § 1.
In addition, S. 731 creates a system by which legislative proceedings shall be expedited whenever a bill or resolution is introduced continuing any military hostility initiated in one of the above four instances or terminating any such hostility. Finally, S. 731 expressly waives its application to hostilities undertaken before its enactment.

By comparison, S.J. Res. 59, introduced by Senator Eagleton, limits the President to committing U. S. forces to action only in three of the four circumstances outlined in S. 731, omitting any authority for the President to comply with a treaty commitment. In fact, S.J. Res. 59 specifically mandates that no "treaty previously or hereafter entered into by the United States shall be construed as authorizing or requiring the Armed Forces of the United States to engage in hostilities without further Congressional authorization."

Another distinguishing feature of the Eagleton resolution is found in its express declaration that "authorization to commit the Armed Forces of the United States to hostilities may not be inferred from legislative enactments, including appropriation bills which do not specifically include such authorization."

In addition, S.J. Res. 59, unlike S. 731, includes a definition of the term "hostilities." In this way, S.J. Res. 59 not only applies to "land, air, or naval actions," but also to the deployment of American forces abroad "under circumstances where an imminent involvement in combat activities with other armed forces is a reasonable possibility." United States military advisors accompanying "regular or irregular" troops of a foreign country on any combat mission are similarly reached by the definition.

If a governing Congressional authorization exists, of which the resolution itself appears to be one, the President is authorized to order American forces into a third country with which we are not then engaged in hostilities when in hot pursuit of fleeing enemy forces or when a clear and present danger exists of an imminent attack on our forces by enemy units located in such third country.

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11 Id. at 3, § 5.
12 Id. at 4, § 3.
13 S.J. Res. 59, supra note 2, pp. 4-5, § 3.
14 Id. at 2-3, § 1.
15 Id. at 3, lines 9-12, § 2 (emphasis added).
16 Id. at 6-7, § 6.
17 Id. beginning at line 25, p. 6, and ending on line 2, p. 7.
18 Id. at 7, lines 2-6.
19 Id. at 7, lines 6-11.
20 Id. beginning at line 12, p. 3, and ending on line 7, p. 4, § 2.
One remaining difference between the Javits bill and the Eagleton resolution is the requirement in S.J. Res. 59 that the President shall report periodically on the status of any authorized hostilities,\(^{21}\) rather than solely at the onset of such actions.\(^ {22}\)

The third War Powers legislation, S.J. Res. 95 by Senator Stennis, is essentially similar to the provisions contained in S. J. Res. 59. The organization of sections is shifted somewhat, and Senator Stennis explicitly adds authority for the President "to prevent or defend against an imminent nuclear attack on the United States,"\(^ {23}\) thereby making precise what is broadly allowed under the other proposals. Finally, S.J. Res. 95 refers to "armed conflicts"\(^ {24}\) instead of "hostilities."\(^ {25}\)

But the main substantive difference between the two joint resolutions lies in the absence from S.J. Res. 95 of an explicit disavowal saying a national commitment cannot arise from a treaty\(^ {26}\) and its omission of the "hot pursuit" provision of S.J. Res. 59.\(^ {27}\) One change in the Stennis resolution which could become important in different circumstances is its non-application solely to the Vietnam conflict.\(^ {28}\) This could mean that if war should break out at some fresh spot in the world, the action would be within the scope of the proposal's limitations even though it had started before the proposal was enacted. But in the event an unexpected military venture should develop before S.J. Res. 59 became law, the action would not be limited by the statute.\(^ {29}\)

S. 1880,\(^ {30}\) introduced by Senator Bentsen, is almost identical with S.J. Res. 95, and the above summary is adequate to describe its provisions.\(^ {31}\)

The fifth War Powers legislation is S.J. Res. 18, proposed by Senator Taft. It is most like S. 731 in that it defines four circumstances similar to those of that bill in which the President is restricted

\(^{21}\) Id. at 5, lines 13-19, § 4.

\(^{22}\) See note 7, supra.

\(^{23}\) S.J. Res. 95, supra note 2, at 2, paragraph B, § 2.

\(^{24}\) Id. at 5-6, § 7.

\(^{25}\) See S.J. Res. 59, note 16 supra.

\(^{26}\) See S.J. Res. 59, note 14 supra.

\(^{27}\) See S.J. Res. 59, note 20 supra.

\(^{28}\) S.J. Res. 95, supra note 2, at p. 5, § 6.

\(^{29}\) S.J. Res. 59, supra note 2, at p. 7, § 7. Nor would the fresh hostility be covered by S. 731. See note 12 supra.

\(^{30}\) Supra note 2.

\(^{31}\) See text accompanying note 16 to note 29 supra.
to using military force. Unlike S. 731, however, the Taft resolution
does not restrain the period of such hostilities to thirty days. Nor
does it include any procedure for the speedy consideration of legisla-
tion seeking to terminate the action. Furthermore, S.J. Res. 18
extends solely to situations involving the commitment of forces "to
combat," while S. 731 may possibly be construed to reach a much
broader category of troop movements and uses.

Furthermore, S.J. Res. 18 does not contain any provision
exempting prior hostilities from its restrictions. It does contain a
detailed part authorizing the continued deployment of United States
troops in Vietnam so long as necessary to accomplish a withdrawal
of our forces and the assumption by South Vietnam of its own de-
fense.

III. CONSTITUTIONALITY OF WAR POWERS BILLS

A. Fundamental Issues

It is immediately evident that each of the War Powers Bills
purports to lay down rigid boundaries which supposedly will govern
the situations when the President may and may not use United States
military forces abroad. Four of the five measures attempt to
specify for how long our troops can be committed even in the
limited situations where the President is allowed to act.

But what is the source of Congressional authority over the
decision of when and where to wage war? Does the Constitution
unequivocally deposit the controlling power over military matters
with Congress? Is there a line of court decisions clearly supporting
the view that Congress can forbid the sending of troops outside the
country? Does historical practice bear out the doctrine of Congres-

sional supremacy over the use of force in foreign affairs? Or are the

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32 S.J. Res. 18, supra note 2, at 2-3, paragraph 1-4, Part I. And see
note 10 supra.
33 Cf. S. 731, supra note 8.
34 Cf. S. 731, supra note 11.
35 S.J. Res. 18, supra note 2, at 2, line 10, Part I.
36 S. 731 refers only to "military hostilities" and does not specify whether
a purpose of combat is necessary to constitute a hostility. See text accompa-
nying note 5 to note 12 supra. But cf. remarks of Senator Javits when he in-
troduced his bill in which he refers to "combat hostilities" and "combat
37 Cf. S. 731, supra note 12.
38 S.J. Res. 18, supra note 2, at 3-4, Part II.
39 See text accompanying note 5 to note 39 supra, note 40 infra.
40 Id.
War Powers Bills founded upon misplaced emotions and unproven postulates?

B. Textual Arguments in Support of Legislation

The task of presenting arguments for the constitutional standing of the War Powers legislation has largely been assumed by Senator Javits. On March 5 of this year, he inserted a thorough brief on his bill, incorporating a discussion of the textual arguments and decided cases, into the Congressional Record.41

His brief argues that:

"Article I, Section 8 confers on Congress the major war powers—the powers to provide for the common defense; to declare war; to raise and support an army and navy; to make rules for the government and regulation of the land and naval forces; to provide for calling forth the militia to execute federal laws, suppress insurrections and repel invasions; and to provide for organizing, arming, disciplining and governing the military—and the authority to make all laws necessary and proper to the execution of such powers."42

From this, the brief concludes "that the role of war policy formulation was intended for Congress and that the role of the President was to be the faithful execution of Congressional policy."43 Thus, the executive power as Commander in Chief is seen as only a ministerial function,44 derived from the experience of the framers of the Constitution with the conduct of the Revolutionary War.45 Like General George Washington, whose commission from the Continental Congress insisted upon Congressional control of that war,46 the

41 See A Brief on S. 731, to Make Rules Respecting Military Hostilities in the Absence of a Declaration of War, 117 Cong. Rec. (daily ed.) at S2527-S2531 (March 5, 1971), and see Javits, supra note 36.
42 Brief, supra note 41, at S 2528.
43 Id.
44 Id.
45 Id. See also Javits, supra note 36, at S 1205-S 1206.
"President, as Commander in Chief was intended to be the executive arm of Congress, carrying out its policy directives in the prosecution of military hostilities." 47

The concept held by Senator Javits has received support from Professor Richard B. Morris, who recently assured the Senate Committee on Foreign Relations "it is a fair inference from the debates on ratification and from the learned analysis offered by the Federalist papers that the warmaking power of the President was little more than the power to defend against imminent invasion when Congress was not in session." 48

Not all commentators agree. Professor Quincy Wright wrote in 1969:

"I conclude that the Constitution and practice under it have given the President, as Commander-in-Chief and conductor of foreign policy, legal authority to send the armed forces abroad; to recognize foreign states, governments, belligerency, and aggression against the United States or a foreign state; to conduct foreign policy in a way to invite foreign hostilities; and even to make commitments which may require the future use of force. By the exercise of these powers he may nullify the theoretically, exclusive power of Congress to declare war." 49

It is clear the above statement is not principally a modern day concept, erected in awe at the vast scope of Presidential conduct over the last twenty years. 50 Professor W. W. Willoughby, author of a

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47 Brief, supra note 41, at S 2529. The textual arguments of the Javits brief are reminiscent of the battle Jefferson and Randolph lost to Washington and Hamilton over the power of the President to "declare" on "the question of war or peace." When President Washington boldly issued a proclamation of neutrality on April 22, 1793, during the outbreak of war between France and Great Britain, it was a clear defeat for the position argued by Jefferson that only Congress could proclaim neutrality. To Jefferson, since Congress alone had the power to declare war, it alone had the power to declare we were not at war. Washington's rejection of Jefferson's narrow reasoning is generally credited with establishing early the principle of Presidential primacy in the making of foreign policy. See C. Rossiter, ALEXANDER HAMILTON AND THE CONSTITUTION 84-85 (1964).


50 Wright took the same position in 1920. See Wright, Validity of the Proposed Reservations to the Peace Treaty, 20 Col. L. REV. 134-36 (1920).
famous three volume work on constitutional law, reached the same finding in 1929. Willoughby declared that the power of the President to send United States forces outside the country in time of peace “when this is deemed necessary or expedient as a means of preserving or advancing the foreign interests or relations of the United States” is a “discernionary right constitutionally vested in him, and, therefore, not subject to congressional control.”

The late Professor Edward Corwin, who was selected by Congress to edit the congressionally sponsored Constitution Annotated, also recognized the President’s authority to commit military forces abroad on his own initiative. In 1944, he wrote that this power “had developed into an undefined power—almost unchallenged from the first and occasionally sanctified judicially—to employ without Congressional authorization the armed forces in the protection of American rights and interests abroad whenever necessary.”

In truth, there exists much informed opinion from which one might doubt the restrictive view held by the advocates of War Powers legislation. Contrary to the position asserted by a sponsor of one of these bills, there is no uniform viewpoint or visible weight of opinion establishing that “the proposals are constitutional.”

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52 E. CORWIN, CONSTITUTION ANNOTATED (1952).
53 Another well-known constitutional authority states the President “possesses the organizational authority to resort to the use of force to protect American rights and interests abroad and to fulfill the commitments of the nation under international agreements.” B. SCHWARTZ, COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES, Part I, Vol. II at 196 (1963).
54 Corwin, Who has the Power to Make War?, N. Y. Times, July 31, 1949 at 14 (Magazine).

C. Cases Used in Support of Legislation

Regardless of theoretical arguments, what have the courts decided? According to the brief offered by Senator Javits, they have held unfailingly that Congress may curb the Executive’s employment of military force, a claim we shall now test.

Three of the cases relied upon by the War Powers brief construe the application of early statutes applicable to the undeclared Naval War of 1798 to 1800, between the United States and France. In point of fact, all of the cases were decided after the event, subsequent to the close of hostilities and had no bearing whatsoever on the conduct of an ongoing war.

The first of these cases, Bas v. Tingy (also cited as The Eliza), involved the factual determination of whether the term “enemy,” as used by Congress, referred to French privateers. The sole purpose of the Court’s exercise was aimed at determining whether the owner of the Eliza had to pay salvage under a special federal law relating to the recapture of ships from the “enemy,” rather than under a general statute which provided for payment of a much lesser amount. It is true three justices made sweeping references to the limits which Congress might set on hostilities, but these statements were in no way necessary to the decision of the case.

Talbot v. Seeman, decided a year later, involved the same statutes and included a declaration by Chief Justice Marshall to the effect that “the whole powers of war” were “vested in Congress.” Though heavily relied upon by sponsors of the War Powers legislation, the decision imposed absolutely no restriction upon the Executive’s conduct of an ongoing war. What the Court would decide in the event Congress sought to shackle the President’s discretion in the middle of an actual conflict presents a far different situation than the minor incident settled by this case.

The third case, The Flying Fish, construed the meaning of a Federal law providing for forfeiture of American vessels employed in commerce with France. While the statute empowered American

57 See Brief, supra note 41, at S2529-S2530.
58 See Appendix “A,” infra, at 88.
60 Id. at 39-45.
61 Also cited as The Amelia, 5 U.S. (1 Cr.) 1 (1801).
62 Id. at 28.
63 Also cited as Little v. Barreme, 6 U.S. (2 Cr.) 170 (1804).
war ships to seize United States trading ships going into French ports, President Adams directed the navy to capture United States vessels both going into and coming from French ports. After the war was over, the Court held the seizure of a Danish vessel upon leaving a French port was unlawful.

Plainly the Court's discussion of the conflict between the Presidential order and the Act of Congress was dictum. Neither the President nor Congress had directed the seizure of neutral vessels. The capture of a Danish ship was not permitted under either claim of authority. Further, the case was not aimed at stopping the President from using American forces. It turned on the civil obligations of the commander of one American frigate, not on the respective roles of Congress and the President in the making of war.64

Another significant factor downgrading the relevance of the above three cases has been raised by Professor John Norton Moore. Speaking before the Senate hearings on War Powers legislation, Professor Moore advised the committee "these cases involved an issue squarely within a specific grant of authority to Congress. That is, the power 'to make Rules concerning Captures on Land and Water.' Under the circumstances it hardly seems surprising or relevant that a congressional act concerning rules for capture was preferred by the Court to a presidential interpretation of that act."65

Further question has been raised about this early line of cases by Secretary of State William P. Rogers, who reminded the Senate Committee on Foreign Relations that they were "decided before the doctrine of 'political questions' was formulated by Chief Justice Marshall in Foster v. Neilson, 27 U.S. (2 Pet.) 253 (1829) and . . . a similar case would probably never reach decision on the merits today."66

Indeed, one of the sponsors of S. 731 writes: "Also, it is conceded that should war powers legislation be enacted and result in a confrontation between the President and the Congress, there is little chance of judicial interpretation."67

64 Id. at 179. In fact, there never has been any Supreme Court holding in time of war which shackled the President's ability to use the forces at his disposal to carry on that hostility. See Ratner, The Coordinated Warmaking Power — Legislative, Executive, and Judicial Roles, 44 So. Cal. L. Rev. at 486 (1971).
65 See Moore, supra note 46, at S 6469. And see U.S. Const., Art. I, 3 8.
66 See Rogers, supra note 55 at n.45, S 7201.
67 Spong, supra note 56, at 27. The Supreme Court has consistently refused to tackle cases directly challenging the legality of Presidential military decisions during an on-going war. For example, the Court has turned away
Chronologically, the next decision relied upon in the War Powers brief is the Prize Cases, 68 a Civil War judgment regarding the legality of President Lincoln's blockade against the Confederacy. It is claimed this case proves "the Court's insistence upon Congressional authorization as the basis of Presidential war powers." 69 Yet Justice Grier, who wrote the Court's opinion, carefully explained the issue was not whether Congress had authorized the blockade, but whether the President, acting alone, possessed a right to take military action "on the principles of international law, as known and acknowledged among civilized States?" 70

In upholding President Lincoln's right to meet the insurrection, the Court said: "If a war be made by invasion of a foreign nation, the President is not only authorized but bound to resist force by force. He does not initiate the war, but is bound to accept the challenge

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69 There are earlier cases which indicate the Supreme Court will not consider issues arising out of any statute purporting to regulate the President's deployment of troops. In Mississippi v. Johnson the Court held it had no power to restrain acts of either Congress or the President regarding the use of troops, 71 U.S. 475 (1866). Some half century later the Court held that the propriety of what may be done in the exercise of the power to conduct foreign relations "is not subject to judicial inquiry or decision." Oetjen v. Central Leather Co., 246 U.S. 297, 302 (1918).

Then in 1950, the Court stated:

"Certainly it is not the function of the Judiciary to entertain private litigation—even by a citizen—which challenges the legality, the wisdom, or the propriety of the Commander-in-Chief in sending our armed forces abroad to any particular region . . . The issue tendered . . . involves a challenge to conduct of diplomatic and foreign affairs, for which the President is exclusively responsible." Johnson v. Eisentrager, 339 U.S. 763, 789 (1950).


In light of the probable application of the "political question" doctrine to the war powers legislation, Senator Goldwater has charged: "[I]t may incite one of the gravest Constitutional crises in American history." Testimony of Senator Goldwater before Hearings on War Powers Bills, supra note 46, inserted in 117 Cong. Rec. (daily ed.) S5637-S5647 (April 26, 1971) at S5637.? 67 U.S. (2 Black) 635 (1863).

69 See Brief, supra note 41, at S2529.

70 Prize cases, 67 U.S. (2 Black) 635, 671 (1863).
without waiting for any special legislative authority."71 In the author's opinion, this case, far from indicating a superior role for Congress, points to the presence of a duty on the President to answer certain challenges against the nation without waiting for Congress to baptize them with a name.72

Another case cited in support of the War Powers bills is Ex parte Milligan,73 in which the Court held that neither Congress nor the President could authorize the trial of a civilian before a military tribunal in a State which had been loyal to the Union during the Civil War. Though the case did involve limits on the power of the President, as well as on that of Congress, the Court's language might well be read as restricting the authority of Congress to impede the President's command of military decisions once hostilities break out. Four of the justices remarked upon the power of Congress in time of war as follows: "This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and the conduct of campaigns. That power and duty belong to the President as commander-in-chief."74

Another case which may actually enlarge upon the President's power, but has been cited as authority for the War Powers legislation,75 is United States v. Midwest Oil Company.76 This case considered the validity of a Presidential decree which withdrew from private acquisition all public lands containing petroleum. The President had issued the order even though Congress had passed a law making these same lands free and open to purchase by United States citizens.77

Nevertheless, the Court found that the Executive had been making similar orders contrary to Acts of Congress for a long time

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71 Id. at 668.
72 Professor Schwartz claims: "The language of the high Court in the Prize Cases is broad enough to empower the President to do much more than merely parry a blow already struck against the nation. Properly construed, in truth, it constitutes juristic justification of the many instances in our history (ranging from Jefferson's dispatch of a naval squadron to the Barbary Coast to the 1962 blockage of Cuba) in which the President has ordered belligerent measures abroad without a state of war having been declared by Congress," B. SCHWARTZ, THE REINS OF POWER at 98 (1963). And see text accompanying note 114 to note 149 infra.
73 71 U.S. (4 Wall.) 2 (1866).
74 Id. at 139.
75 See Brief, supra note 41, at S 2530.
76 236 U.S. 459 (1915).
77 Id. at 466-67.
and, as a result, had acquired a power to do what it had been doing.\textsuperscript{76} As we shall see in a later part of this article, the Midwest doctrine may thereby be applicable to support the practice of Presidents to commit United States troops overseas without Congressional direction.\textsuperscript{77}

The remaining decision relied on in the War Powers brief is the "Steel Seizure"\textsuperscript{80} case which arose out of President Truman's attempted takeover of the nation's major steel mills. Though the Court held, six to three, the President lacked authority on his own to take possession of private property, even on the ground of his role as Commander in Chief, it is plain the Court's majority treated the case as a domestic issue far removed from matters of day-to-day fighting in a theater of war.\textsuperscript{81}

Justice Jackson appears to have expressed the mood of the Court aptly when he wrote:

"We should not use this occasion to 'circumscribe,' much less to contract, the lawful role of the President as Commander-in-Chief. I should indulge the widest latitude of interpretation to sustain his exclusive function to command the instruments of national force, at least when turned against the outside world for the security of our society."\textsuperscript{82}

Accordingly, it is believed the "Steel Seizure" case is mistakenly cited as being applicable to any situation regarding the use of United States troops outside the country for the protection of American interests. In the words of Secretary of State William P. Rogers, "the precise issue in that case was not the President's authority to conduct hostilities but the scope of his power over a clearly domestic matter—labor management relations."\textsuperscript{83}

A somewhat analogous decision, inspiring a multitude of opinions and touching on the fringes of the President's War Powers, with no direct limit on his right to deploy forces, is the New York Times case\textsuperscript{84} relating to the publication of the so-called Pentagon

\textsuperscript{76} Id. at 460-70, 474.
\textsuperscript{77} See text accompanying note 142 to note 149 \textit{infra}.
\textsuperscript{80} Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952).
\textsuperscript{81} Id. at 587.
\textsuperscript{82} Id. at 645.
\textsuperscript{83} See Rogers, \textit{supra} note 55, at 5 7198.
\textsuperscript{84} New York Times Co. v. United States, 403 U.S. 713 (1971).
Papers. In this case, Justice Douglas, joined by Justice Black, aimed a thrust at the President by proclaiming "[n]owhere are presidential wars authorized." But this view was not taken up by any other member of the Court's majority, nor is it decisive of the Court's ruling.

D. Source of President's Powers over Military and Foreign Affairs

Numerous authorities have described in detail the vast scope of the President's authority to employ force abroad. In general, these observers point to four distinct powers of the President as the root of his independent authority. The powers are centered in his acquisition of all the "Executive Power" of a great and sovereign nation in his mandate to initiate and conduct foreign policy, in his right and duty to "take care that the laws be faithfully executed," and in his designation as Commander in Chief.

The very first sentence of article II of the Constitution reads: "The Executive Power shall be vested in a President of the United States of America." As Solicitor General Erwin Griswold has recently noted, the grant of Executive power "is not a merely passive grant."

It was Alexander Hamilton who first used this grant in arguing that the President's role in international matters is a positive one. In fact, Hamilton claimed this clause had vested in the President the inherent powers held by any sovereign nation, including the right to form policy which "may, in its consequences, affect the exercise of the power of the Legislature to declare war." The Hamiltonian concept of inherent powers over foreign affairs appears to have influenced Chief Justice John Marshall, who in 1800 while still a Member of the House of Representatives, conceived the familiar quote: "The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."

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55 Id. at 722.
56 See text accompanying note 49 to note 56 supra pp. 8-9. And see note 55 supra.
58 See text accompanying note 96 to note 100 infra.
59 See text accompanying note 101 to note 108 infra.
60 See text accompanying note 110 to note 113 infra.
62 Griswold, supra note 55, at S 12968.
63 See CORWIN, supra note 87, at 217-20.
64 Cited in CORWIN, supra note 87, at 218.
65 ANNALS, 6th Cong., col. 613 (1800).
In 1971, Justice Harlan, Chief Justice Burger, and Justice Blackmun breathed fresh life into Marshall's characterization by writing: "From that time, shortly after the founding of the Nation, to this, there has been no substantial challenge to this description of the scope of executive power." The reference by these three justices to the President's "constitutional primacy in the field of foreign affairs" was echoed in the same case by Justice Thurgood Marshall who declared: "[I]t is beyond cavil that the President has broad powers by virtue of his primary responsibility for the conduct of our foreign affairs and his position as Commander-in-Chief." All four justices cited with approval the landmark case of United States v. Curtiss-Wright Export Corp., in which the Supreme Court had embraced the doctrine of "inherent" powers over the conduct of foreign affairs. There the nation's highest tribunal held it was dealing with "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress . . . ."

The third pertinent power of the President is derived from his duty and right to execute the laws, an implicit authority which often is overlooked in contemporary discussions of the war powers. Professor Quincy Wright has remarked on this authority:

The duty to execute the laws is not limited to the enforcement of acts of Congress and treaties of the United States, but includes also "the rights, duties and obligations growing out of the constitution itself, our international relations, and all the protection implied by the nature of the government under the constitution." Corwin has described the implications of this doctrine as follows:

Thanks to the same capacity to base action directly on his own reading of international law—a capacity which

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97 Id. at 741.
98 Id. at 741-42, 756.
100 Id. at 319-20.
101 Wright, supra note 50, at 134-35.
And see In re Neagle, 135 U.S. 1, 64 (1889), cited by Wright in discussion.
the Court recognized in the *Neagle* case—the President has been able to gather to himself powers with respect to warmaking which ill accord with the specific delegation in the Constitution of the war-declaring power to Congress.\(^{102}\)

Thus, the implied power of the President to interpret for himself the scope of our international obligations has enabled him to validly exercise powers which might otherwise appear to have been left to the proper authority of Congress.\(^{103}\)

It has also been judicially determined that "the President's duty to execute the laws includes a duty to protect citizens abroad. ..."\(^ {104}\)

Thus said Justice Nelson, who sitting as a district judge in 1880 upheld the authority of the President to take whatever action he determines proper to protect "the lives, liberty, and property" of the citizen abroad, without awaiting word from Congress.\(^ {105}\)

The corollary right of a citizen abroad "to demand the care and protection of the Federal government over his life, liberty, and property" was subsequently recognized by the Supreme Court,\(^ {106}\) which expressly included this protection among the privileges and immunities of citizenship guaranteed by the Constitution.\(^ {107}\)

Not only is there persuasive domestic law on the issue of intervention abroad for the protection of citizens, but J. Reuben Clark, citing several international authorities, claims:

> There is considerable authority for the proposition that such interposition by one state in the internal affairs of another state for the purpose of affording adequate pro-

\(^{102}\) E. Corwin, *supra* note 87, at 240-41.

\(^{103}\) Corwin has also written:

> But the President may also make himself the direct administrator of the international rights and duties of the United States, or of what are adjudged by him to be such, without awaiting action either by the treaty-making power or by Congress, or by the courts. *Id.* at 239.

W. Willoughby observed:

> It is also to be noted that the powers constitutionally vested in the President with regard to the control of the foreign relations of the United States makes it possible for him to bring about a situation in which, as a practical proposition, there is little option left to Congress as to whether it will or will not declare war or recognize a state of war as existing. W. Willoughby, *supra* note 51, at 1558.

\(^{104}\) See Q. Wright, *The Control of American Foreign Relations* 306 (1922); Durand v. Hollins, 8 F. Cas. 111 (4 Blatch 451, CCSD NY 1860).

\(^{105}\) Durand v Hollins at 454.


\(^{107}\) U.S. Const. amend. XIV.
tection to the citizens of one resident in the other as well as for the protection of the property of such citizens, is not only not improper, but, on the contrary, is based upon, is in accord with, and is the exercise of a right recognized by international law.\textsuperscript{108}

In addition, the right of the nation to defend itself, as well as its citizens, is clearly established in both international and domestic law.\textsuperscript{109}

A fourth source of the President's powers in the field of war making rests upon his designation as Commander in Chief.\textsuperscript{110} This power has been succinctly defined to encompass "the conduct of all military operations in time of peace and of war, thus embracing control of 'the disposition of troops, the direction of vessels of war and the planning and execution of campaigns,' and to be "exclusive and independent of Congressional power."\textsuperscript{111}

What little judicial holdings there are on this power suggest it is largely an unfettered one. For example, in 1866, the Supreme Court pointedly stated: "Congress cannot direct the conduct of campaigns."\textsuperscript{112} In 1897, the High Court affirmed a decision by the Court of Claims which held: "Congress cannot in the disguise of 'rules for the government' of the Army impair the authority of the President as Commander in Chief."\textsuperscript{113}

E. Historical Overview of President's War Powers

Some twenty-five years ago, James Rogers, a former Assistant Secretary of State wrote: "It must be evident that the control of foreign policy and of the armed forces left to the President by the

\textsuperscript{108} J. Clark, Right to Protect Citizens in Foreign Countries by Landing Forces, 25 (3d rev. ed. with supp. appendix up to 1933: 1934).
\textsuperscript{109} See Q. Wright, supra note 104, at 307; Spong, supra note 56, at 24; Moore, The Lawfulness of Military Assistance to the Republic of Viet-Nam, The Vietnam War and International Law; AM. SOC'Y OF INT'L L. 237 (1968); id. at 583-603; Memorandum by U. S. Dept. of State, The Legality of United States Participation in the Defense of Viet-Nam, (March 4, 1966); B. Schwartz, supra note 72, at 175.
\textsuperscript{110} U.S. Const. art. II, § 2, cl. 1.
\textsuperscript{111} Q. Wright, supra note 50, at 134; W. Willoughby, note 51 supra, at 157.
\textsuperscript{112} Ex parte Milligan, 71 U.S. (4 Wall) 2 at 139. See also holding by Court of Claims that "In time of war, the Commander in Chief has the same powers as other civilized governments, and the exercise of them needed no ratification to give them effective force." The Court was speaking of the undeclared war in the Philippines. Warner, Barnes and Co. v. United States, 40 Ct. Cl. 1, 32 (1904).
\textsuperscript{113} Swaim v. United States, 28 Ct. Cl. 173, 221, aff'd 165 U.S. 553 (1897).
Constitution and reinforced by a century and half of augmentation, reduces the reservation of the power to 'declare war' to a mechanical step, sometimes even omitted."114 What had happened to allow Rogers to assert such a bold claim? It was his discovery, unknown and unnoticed by most Americans, that "[t]he Executive has used force abroad at least a hundred times to accomplish national purposes without reference to Congress."115

This astonishing total was evaluated by Professor Corwin, who stated: "While inviting some pruning, the list demonstrates beyond peradventure the power of the President, as Chief Executive and Commander in Chief, to judge whether a situation requires the use of available forces to support American rights abroad and to take action in accordance with that decision."116

Clearly "little wars are not a phenomena new to the national experience,"117 as some authorities, obsessed by the Vietnam war, would have us believe.118 Indeed, by April of 1971, Senator Barry Goldwater informed the Senate War Powers hearing that research at his direction had "turned up 153 such actions."119 The Goldwater study is a continuing one and a fresh review of the subject by the author in preparation for future testimony by Senator Goldwater reveals there are at least 192120 separate military engagements initiated by the Executive branch without a declaration of war from 1798 to 1971.121

The list seems particularly imposing since its total consists of hostilities where actual fighting took place, landings were made on foreign soil, or United States citizens were evacuated. No precedents are listed involving mere deployment of forces or draft simply to maintain an American presence, even if the deployment constituted an

115 Id. at 56.
116 E. CORWIN, supra note 54, at 14.
118 See, e.g., Commager, supra note 48, principally at § 3355, and Morris, supra note 48, at § 3359.
119 See Goldwater, supra note 67, at § 5637.
120 See appendix A infra.
121 Other itemized lists of U.S. military operations abroad are: J CLARK, supra note 108, at 51-130 (78 incidents without declarations of war and not later disavowed or repudiated); J. ROGERS, supra note 114, at 93-123 (139 such incidents); State, infra appendix A at 36 (135 such incidents); and Legislative Reference Service, Library of Congress, BACKGROUND INFORMATION ON THE USE OF UNITED STATES ARMED FORCES IN FOREIGN COUNTRIES (1970 Revision) at 50-57 (152 such incidents).
alert accompanied by an advanced state of readiness, except for some eight instances in which the risk of war was particularly grave. Nor have any military operations been offered as precedents which were subsequently disavowed or repudiated by the Executive.\textsuperscript{122}

Are these precedents "minor undertakings"\textsuperscript{123} and "short-lived"\textsuperscript{124} as charged by some critics? Are the incidents confined to the Western Hemisphere and contiguous territory up to "the last twenty years or so," with the solo exception of the Boxer Expedition, as claimed by Henry Steele Commager?\textsuperscript{125} The author believes the record stands for itself. We might note first that out of the 192 actions listed, 100 occurred outside the Western Hemisphere,\textsuperscript{126} 85 of them taking place before "the last twenty years or so."\textsuperscript{127} To which fact, we might add that 81 hostilities constituted actual combat operations or ultimatums tantamount to the use of force.\textsuperscript{128}

Ninety-three engagements continued for longer than 30 days.\textsuperscript{129} No more than 81 of the precedents,\textsuperscript{130} less than half, could arguably have been initiated with the support of a legislative instrumentality. At least 43 of the precedents\textsuperscript{131} were "calculated and ideological"\textsuperscript{132} in the sense that they committed the United States outside its own territory in order to advance major, long-range national interests stretching far beyond the immediate protection of its citizens or territory.

Were the operations minor? In 1854, at a time when American forces did not exceed 50,000 men, Commodore Perry took 2,000 of them to the other side of the world in order to pressure Japan into reaching a commercial treaty with us.\textsuperscript{133} Between 1899 and 1901, the United States used 126,468 troops to put down the Philippine Insurrection.\textsuperscript{134}

\textsuperscript{122} See appendix A infra, note 3 at 110.
\textsuperscript{123} See appendix D infra at 114.
\textsuperscript{124} See appendix F infra at 116.
\textsuperscript{125} Id.
\textsuperscript{126} See appendix G infra at 117.
\textsuperscript{127} Id.
\textsuperscript{128} See appendix C infra at 112.
\textsuperscript{129} Id.
\textsuperscript{130} See appendix A infra at 92.
\textsuperscript{131} Id. at 98.
After World War I had ended, we landed 5,000 soldiers at Archangel, Russia, and 9,000 more in Siberia, to aid the anti-Bolsheviks and to forestall Japanese expansionist plans in Siberia. From 1926 to 1933, United States Marines fought more than 150 battles in Nicaragua and lost 97 men in seeking to foil what has been referred to as the “first attempt of Communism to infiltrate Latin America.”

In 1927, the United States had 6,000 troops ashore in China and 44 naval vessels in its waters. In numerous other instances, the United States has put ashore hundreds and even thousands of forces on foreign lands.

Put in the perspective of their own times, it is believed these interventions cannot be classified as “minor.” Rather, the author would agree with the assessment of Professor Henry Monaghan that:

"[W]ith 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. Whatever the intention of the framers, the military machine has become simply an instrument for the achievement of foreign policy goals, which, in turn, have become a central responsibility of the presidency."

Further, the author believes Professor Monaghan is correct in telling us that “history has legitimated the practice of presidential war-making.” In Monaghan’s words, “A practice so deeply embedded in our governmental structure should be treated as decisive of the Constitutional issue.”

With this historical record in back of us, the principle laid down by the Supreme Court in Midwest Oil gains added relevance. Here the Court had announced “that in determining the meaning of a

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135 Id. at 102.
136 Id. at 103. See R. Dupuy and W. Baumer, supra note 117 at 168.
137 Appendix A infra at 104.
138 Id. generally.
140 Id. at 29.
141 Id. at 31. See generally Griswold, supra note 55.
142 United States v Midwest Oil Co., 236 U.S. 439 (1915).
statute or the existence of a power, weight shall be given to the usage itself—even when the validity of the practice is the subject of investigation.”

Certainly, the deployment of forces abroad on the initiative of the President alone is a “long-continued practice” extending backward far longer than the usage found to be valid in the Midwest Oil case. Furthermore, Congress has known of and acquiesced in the President’s usage for nearly a century and a half now, part of the time arguably in the face of a limiting Congressional statute.

One instance when it is clear the President violated the terms of a Congressional statute attempting to govern his power to deploy troops abroad is the experience of the nation under the Selective Service Act of 1940. The law expressly provided that no draftees

143 Id. at 473.
144 Presidents had issued orders withdrawing public lands from private acquisition over a period of 80 years. Id. at 469. In comparison, Presidents have been sending troops abroad on their own initiative for more than a century and a half. See appendix A infra generally.
146 The statute reads in pertinent part:
“From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress . . .” (Emphasis added.) H. R. 4867, approved June 18, 1878, § 15 (45th Cong.) 20 Stat. 152.

It is true the law was aimed primarily at the use of troops in suppressing domestic violence or insurrection, but on its face it extends to all use of the Army, without any geographical limitation, for the purpose of executing the laws. As we have seen, the President’s right to execute the laws includes a power to enforce international obligations as well as domestic laws. See discussion supra pp. 17-18.

Furthermore, it was evident to Congress the law it was debating would be applicable to circumstances much broader than the posse comitatus situation described in the act. Members of both Houses indicated their awareness of the provision’s reach to situations involving the employment of troops against foreign dangers. See remarks of Senator Matthews where he speaks of “foreign wars” 7 Cong. Rec. 4297 (1878) and remarks of Senator Hoar, id. at 4303. One proposed amendment, introduced and defeated during floor debate in the House of Representatives, would have exempted from the law the use of forces “on the Mexican border or in the execution of the neutrality laws elsewhere on the national boundary lines.” Id. at 3849.

In these circumstances and in view of the broad language of the statute, the author believes it can reasonably be interpreted as purporting to limit the use of the Army in the international theater as well as the domestic one. Thereby the doctrine of constitutional interpretation announced in Midwest Oil would squarely provide additional support buttressing the legality of the President’s use of troops abroad. Section 15 of H. R. 4867 was repealed in 1956 and restated in broader form as the new section 1385 of title 18, U.S.C. (70 A Stat. 626).

146 54 Stat. 885.
were to be employed beyond the limits of the Western Hemisphere, except in territories and possessions of the United States.  

Notwithstanding the Congressional prohibition, President Roosevelt deployed our troops, including draftees, to occupy Iceland and Greenland several months before World War II had been declared. Iceland, however, is over 2,300 miles away from the closest point in the United States and is invariably placed in the section on Europe in any prominent world atlas. If nothing more, the incident shows Presidents will ignore Congressional limitations when they believe vital American interests are undeniably at stake.

IV. POLICY CONSIDERATIONS

Regardless of the legality or illegality of the War Powers legislation, are the measures wise or proper from a practical standpoint? Can any Member of Congress, or Congress collectively, foresee all contingencies that may arise in the future? Might the War Powers legislation unwittingly turn the tables on its sponsors by exciting a situation or pushing a reluctant President into broader action than he wishes? A partial answer might be evident from the fact that many of the same authorities who have testified in favor of the general concept of War Powers legislation nevertheless have uttered grave concerns about the wisdom of these measures in practice.

For example, McGeorge Bundy warned "no single rule is likely to meet all our needs, and in particular I think it is dangerous to try to deal with the future by legislating against the past." Alexander Bickel has confessed: "Codification seems to me difficult, heavily

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147 Id. § 3(e), at 886. Congressional debate on the 1940 Selective Service law shows that when Congress referred to the "Western Hemisphere" it definitely meant only that area of North, Central, and South America which "we have long engaged to protect under the Monroe Doctrine."

The provision is also an unlikely precedent for War Powers legislation because its author, Senator Lodge, conceded on the Senate Floor, "This is a pious hope." It was openly recognized by him and others that Congress could not constitutionally restrict the President's deployment of forces. See 86 Cong. Rec. 10092, 10103, 10105, 10116, 10129, 10295, 10391, 10742, 10794-10798, and especially 10895-10914, 76th Cong. 3d Sess. (1940).

148 See appendix A infra at 105.

149 Corwin also argues the U.S. agreement to turn over 50 reconditioned destroyers to Britain in 1940 "was directly violative of at least two statutes ...." E. CORWIN, supra note 87 at 288-89. And see appendix A infra at —, and Senate Comm. on Foreign Relations, S. Rep. No. 797, 91st Cong., 1st Sess. (1969) 14-15.

150 See testimony of McGeorge Bundy, Congress, the President, and the War Powers, supra note 55, at 3.
prone to error, quite possibly dangerous, and unnecessary."\(^{151}\) William D. Rogers remarked: "I think the Javits proposal requiring the President in effect to get out if Congress does not act within 30 days is dangerous."\(^{152}\)

These thoughts have been refined and expanded by others who are in outright opposition to passage of War Powers legislation.\(^{153}\) Secretary of State William P. Rogers cautioned those who might conceive of the War Powers legislation as serving the end of peace by saying: "Moreover, requiring prior congressional authorization for deployment of forces can deprive the President of a valuable instrument of diplomacy which is used most often to calm a crisis rather than enflame it."\(^{154}\)

To which he added:

"There is another consideration. To circumscribe presidential ability to act in emergency situations—or even to appear to weaken it—would run the grave risk of miscalculation by a potential enemy regarding the ability of the United States to act in a crisis. This might embolden such a nation to provoke crises or take other actions which undermine international peace and security."\(^{155}\)

Professor James MacGregor Burns, the recipient of a Pulitzer Prize for his skills as a political historian, has gone further. He has testified that any legislation which would encumber the President's ability to respond and adjust to changing world situations as he determines proper will remove the one essential ingredient preventing World War III—flexibility.\(^{156}\) Dr. Burns warned that imposing artificial restrictions on Executive discretion "may not lead to peace but to war, as foreign adversaries estimate that the United States will not

\(^{151}\) See testimony of Alexander Bickel, *Congress, the President, and the War Powers*, supra note 55, at 45.

\(^{152}\) See testimony of Attorney William D. Rogers, *Congress, the President, and the War Powers*, supra note 55, at 58.

\(^{153}\) See testimony of Professor Abram Chayes, who supports legislative efforts to end the Indochina War, but nevertheless vigorously opposes as unconstitutional "bills that seek to lay out a detailed blueprint in advance to govern the relations between the President and the Congress in the exercise of the national war power in all possible contingencies." *Congress, the President, and the War Powers*, supra note 55, at 135.

\(^{154}\) Rogers, supra note 55, at 81-82.

\(^{155}\) Id.

\(^{156}\) See testimony of Dr. James MacGregor Burns, *Congress, the President, and the War Powers*, supra note 55, at 81-82.
respond to a threat to world peace because of legislative restrictions on the executive." 157

The fear expressed by Dr. Burns was recently taken up by former Under Secretary of State George W. Ball, who is credited with being a dove in the high ranks of the Johnson Administration. Mr. Ball reminds us that the Neutrality Acts adopted in the aftermath of World War I "very probably" impeded the United States from taking firm steps which would have averted World War II. 158 This illustration leads Mr. Ball to ask how does one draft a statute that will make it possible for Congress to play a role "in shaping fundamental decisions that may lead to war without inhibiting the President in doing whatever is necessary" to avert some future catastrophe parallel to World War II. 159

Senator Barry Goldwater sounded the same alarm in his appearance before the War Powers hearings. He charged the legislation "will undermine the credibility of our most basic defense agreements such as NATO. With one swipe, our 42 defense pacts will be chopped into 30-day wonders, if that." 160

Senator Goldwater argued: "Thereby, the proposed bill will place all our treaty obligations in a state of permanent doubt. No ally can ever know if the United States will stand by it for more than 30 days; and even then, it cannot be certain whether Congress will shut off our aid sooner." 161 But there is another side to the coin. If Congress has the right to legislate concerning the rules of war as is argued by the sponsors of War Powers legislation, 162 Congress also possesses the power to order the President into broader hostilities than he wishes. This development could actually occur under a

157 Id. Consider the observation of former Ambassador Charles W. Thayer, that:

It was due largely to the erratic, occasionally irresponsible actions of the ancient Greek assemblies that the city-states' diplomacy was ineffective and defensive collaboration against the Eastern aggressors impossible. Despite growing recognition by Congress and the public of the purpose, methods and needs of an effective diplomacy, so long as the consistent pursuit of long-range interests and aspirations is periodically sacrificed to passing whims inspired by fleeting emotions in Washington, the danger persists of a twentieth century repetition of the Greek debacle. W. THAYER, DIPLOMAT 80 (1959).

158 See Ball, supra note 55, at S 12621.

159 Id.

160 Goldwater, supra note 67, at S 5637.

161 Id.

162 See generally Brief, supra note 41.
provision of these bills in their present form which establishes a procedure for expedited consideration by Congress of legislation designed to sustain hostilities beyond 30 days.\textsuperscript{163}

The danger can be tested against actual history. For example, if the War Power legislation had been in effect at the time of the Cuban missile crisis,\textsuperscript{164} Congress would have been required to act swiftly on the matter of continuing the deployment of forces in the Caribbean once the 30-day period possibly allowed by the legislation had expired. Under the telescoped parliamentary procedure created by the legislation, this vote likely would have occurred (Congress then having been in session) within a matter of a few days. Thus, Congress would have voted right at the peak of emotional excitement and public concern over the missile threat.

One can easily suppose in the setting of the time—with enemy missiles being aimed at cities holding 80 million American citizens, with reports arriving of attacks on American reconnaissance planes, and with the killing of an American pilot over Cuba\textsuperscript{165}—that a majority in Congress, with one eye on elections only weeks away, would have favored legislation directing an all-out bombardment of Cuba or even an invasion.

As Senator Goldwater observed: "Those who look to Congress as the ultimate haven of peaceful thinking might thumb through the pages of Robert Kennedy's short manuscript on the Cuban Missile Crises."\textsuperscript{166} In this book, the late Senator Kennedy recounts that of all the deliberations which preceded his brother's broadcast to the nation on the crisis, his session with the leaders of Congress "was the most difficult meeting."\textsuperscript{167}

According to Robert Kennedy:

Many Congressional leaders were sharp in their criticism. They felt the President should take more forceful action, a military attack or invasion, and that the blockade was far too weak a response. Senator Richard B. Russell of Georgia said he could not live with himself if he did not say in the strongest possible terms how important it was that we

\textsuperscript{163}See generally text accompanying note 10 to note 36 supra. And see S. 731, \$2; S. 1880, \$4; S.J. Res. 59, \$4; and S.J. Res. 95, \$ 4, all supra note 2.

\textsuperscript{164}See appendix A infra at 107.

\textsuperscript{165}See R. KENNEDY, THIRTEEN DAYS (1969) at 35, 36, 68, 97, and 107.

\textsuperscript{166}Goldwater, supra note 67, at S 5638.

\textsuperscript{167}KENNEDY, supra note 165, at 33.
act with greater strength than the President was contemplating.

Senator J. William Fulbright of Arkansas also strongly advised military action rather than such a weak step as the blockade.\(^{166}\)

In light of this illustration, Senator Goldwater asks: "Is it not possible Congress might, when confronted with dramatic pressure for making an immediate decision, vote in favor of a military strike? Are the Members of Congress more immune to emotional, impulsive reactions than other humans?"\(^{169}\)

In the event Congress should decide to steer our nation into expanded hostilities, the authors of War Powers legislation would leave the President no exit. Their whole argument for the power of Congress to pass such legislation is squarely based upon the proposition that Congress controls the War Powers and that the President must faithfully carry out the directives enacted by Congress.\(^{170}\) According to the brief offered by Senator Javits, "the President has no right to contravene such legislation."\(^{171}\)

There is another problem. What about the ability of the President to respond to specific, sudden emergencies? Is the assurance of Irving Brant correct that the War Powers legislation "does not interfere in the least with the handling of any emergency, from minor property damage to nuclear holocaust?"\(^{172}\)

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\(^{166}\) Id. at 53-54.

\(^{169}\) Goldwater, supra note 67, at S 5638.

\(^{170}\) See generally testimony of Commager and Morris, supra note 48; testimony of Professor Alexander Bickel, inserted in the Cong. Rec. supra note 48; testimony of Professor Morris, supra note 48; testimony of Senator Javits, 117 Cong. Rec. (daily ed.) S 12387 (July 28, 1971). See generally, Brief, supra note 41.

\(^{171}\) See Brief, supra note 41, at S 2528. In case the President should veto any such legislation shoving him into an expanded war, he would be put in the unenviable position of facing a Congress which (1) would likely claim he had thereby deprived himself of any authority to act at all in the hostility concerned and (2) could vote to override his veto.


Compare the position of Ambassador Thayer, who views the Foreign Service dangerously handicapped under present Congressional practices, let alone under the complications added by War Powers legislation. For example Thayer recites:

In his Memoirs, President Truman indicates how the Greek Civil War was very nearly lost to the Communists because of the time needed to get the necessary Congressional action.

The first warning that the British, then on the verge of bankruptcy, would have to withdraw from Greece not later than April 1, 1946, was telephoned to the President by the State Department on
Perhaps reference to some actual situations will provide an answer. Oddly enough, the proposal introduced by a Senator from New York, himself Jewish, as well as the other War Powers legislation, would prohibit the United States from acting to defend the state of Israel. This result occurs because under the Javits bill, the President may act to comply with a national commitment only if the commitment results exclusively from a "legislative instrumentality specifically intended to give effect to such a commitment..." 173

But this country has no legislative commitment to defend the security of Israel. There is no treaty or convention or resolution authorizing the United States to assist in preserving Israel's independence. 174 Senator Goldwater has set the scene:

Friday, February 21. Four days later Congressional leaders were notified that some sort of action would be essential. But it was not until seventy-five days later, that the House on May 9, finally approved the measure. Meantime the Communist guerrillas had almost succeeded in overthrowing the Greek government. C. W. Thayer, supra note 157, at 78-79.

173 S. 731, supra note 2, at § 1A (4).

174 Secretary of State Rogers contends "such a restriction could seriously limit the ability of the President to make a demonstration of force... to deploy elements of the Sixth Fleet in the Mediterranean in connection with the Middle East situation," which is exactly what President Johnson did in 1967. See Rogers, supra note 55, at S7199, and see discussion infra pp. 32-33; Moore, supra note 46, at S6470; S. Comm. on Foreign Relations, note 149, at 26.

Representative Zablocki, Chairman of the House Subcommittee hearings on war powers in 1970, told Senator Javits during the latter's appearance at the hearings: "Let us say that as a result of renewed hostilities in the Middle East the President finds it necessary to intervene on the side of Israel. Your bill does not seem to fit that contingency since the United States has no formal treaty or pact with Israel."

Senator Javits replied: "I would hope that long before any such terribly untoward situation would develop in the Middle East... this would have been adopted as a NATO responsibility and then it would come under the fourth item of my own bill." See Congress, the President, and the War Powers, supra note 55, at 400-401.

Thus, from Senator Javits' own admission the President could not act independently in defense of the people of Israel under his bill, but would have to await either a decision by NATO to take collective action in support of Israel (no one else has suggested Israel is a NATO obligation) or legislative action by Congress.

No authority considers the Middle East Resolution to be pertinent, apparently because it (1) does not grant any authority to employ force, but simply states a policy that "the United States is prepared to use armed forces," (2) does not apply unless the aggressor country is "controlled by international communism," and (3) provides the employment of force "shall be consonant with the treaty obligations of the United States" and we do not have any defense treaty with Israel. Pub. Law 85-7, a joint resolution to promote peace and stability in the Middle East, approved March 9, 1957 (71 Stat. 2).
No matter that Arab fanatics may be seeking to make good on their aim of shoving the Israelis into the sea. No matter that approximately 20,000 Soviet personnel may be manning SA-3 missile sites and advanced jet fighters while massive Egyptian tank forces mount an invasion on disputed Sinai territory . . . . Regardless of the humanitarian exigencies and the dire consequences on European security, the War Powers Bill prohibits an immediate response by the United States to forestall an Arab conquest of Israel.\textsuperscript{175}

Senator Goldwater has added:

Oh yes, we might rush in Air Force transport planes to whisk our own citizens out of danger. We might even send a contingent of marines into cities where our embassies and legations are located to aid them.

But when our forces are called upon to act for broader purposes—for reasons of vital strategic interests such as saving another nation’s people from annihilation—the war powers bill will halt our forces short. This would be carrying out a national commitment.\textsuperscript{176}

Nor is the scenario described by Senator Goldwater an implausible one. The United States has already intervened once in the Arab-Israeli crisis in a way that would be specifically curbed under any of the pending War Powers legislation.\textsuperscript{177} This incident occurred in June of 1967, during the six-day Middle East war, after President Johnson had heard over the hotline that Russia “had reached a decision that they were prepared to do what was necessary, including using the military” to stop the advance of Israeli troops into Arab territory.\textsuperscript{178}

As President Johnson understood it at the time “unless the Israelis halt operations within the next five hours the Soviets will take necessary action, including military . . . .” In response President Johnson reports he ordered the U. S. 6th Fleet to move to within 50 miles off the Syrian coast as “a sign that the Soviet Union would have to deal with us.”\textsuperscript{179}

\textsuperscript{175} Goldwater, \textit{supra} note 67, at S 5637.
\textsuperscript{177} See appendix A \textit{infra} at 109.
\textsuperscript{179} Id.
Though the preceding illustration refers solely to Israel, the identical problem exists under the Javits bill in the case of any other country with which the United States has no national commitment sanctified by action of Congress.

Another situation in which the President would be barred from taking independent action under most, if not all, of the War Powers legislation is the deployment of troops or equipment to back up United States foreign policy objectives in times of great crises, such as the recurrent Communist pressures on free Berlin. In this connection, the Department of the Navy has compiled a list of what it calls 55 “wars/near wars” since 1946, in which naval units were involved, alerted, or redeployed. All of these movements at the initiative of the President would be prohibited under the War Powers legislation to the extent that they back up a national commitment to a foreign country, with the single exception of commitments specifically dependent upon a treaty or convention which could be implemented for 30 days under the Javits bill alone.

One more example, pinpointing a need for broad Executive discretion, is the 1964 Congo rescue effort which saved 2,000 persons, including about 60 Americans, who were being held hostage by Congolese rebels. Former Secretary of State Rusk has described the incident:

On one occasion, a large number of Europeans, including the staff of the American Consulate and other American private citizens, were being held as hostages by a savage group in the Eastern Congo called Simbas. Private negotiations with the Simbas over a period of weeks had failed to release the hostages. Threats of execution and brutal torture mounted. We and the Belgians decided (with

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180 See Rogers, supra note 55, at S 7199.
182 See S. 731, supra note 173; S.J. Res. 59, supra note 2, § 2; S.J. Res. 95, supra note 2, § 3; and S. 1880, supra note 2, §3, which prohibits the President from interfering a right to act under any law unless that law “specifically authorizes the use of such forces in armed conflict.” See also S.J. Res. 18, which prohibits deployments to fulfill a treaty obligation qualified by constitutional limitations or conditions. Since nearly all United States defense treaties “limit” or “condition” our responsibility to act to steps which are “in accordance with” our own “constitutional processes,” S.J. Res. 18 would seem designed to preclude Presidential initiatives under all such agreements. See S. Rep. No. 794, 90th Cong., 1st Sess. 15. (1967).
183 See appendix A infra at 108.
the approval of the government of the Congo) to drop
Belgian paratroopers into the area by American aircraft in
order to rescue these hostages who were in a truly desperate
situation. There could not have been action by the Con-
gress without alerting the Simbas as to what was up; the
result would almost certainly have been the summary execu-
tion of American Consular Officers and a considerable
number of American citizens. 184

As compelling as the humanitarian interests are in the Congo
situation, it is doubtful the joint rescue mission would have been
permitted under the rigid lines set by the War Powers legislation.
Insofar as the military operation affected 97% of the persons
evacuated, it would not have been legal under these proposals be-
cause the individuals were not United States citizens. 185 Of course, if
the proposals could be construed broadly enough to permit the
President to employ troops in another country under the guise of
protecting Americans abroad, even though the main purpose or
result reaches far beyond that end, the President can initiate the
use of force in nearly every conceivable situation without running
afoul of the proposals. Today United States citizens can be found
in every nation of the world, including Communist China, a fact
which would enable the President to employ force abroad at any place
he determines necessary under the excuse of protecting our citizens.

This discussion should not be concluded without referring to a
fundamental question posed by some critics of Presidential initiatives.
The flavor is caught in the statement by Henry Steele Commager
who claims that, with the exception of the Civil War and perhaps the
Korean War:

"[T]here are no instances in our history where the use of
war making powers by the Executive without authority of
Congress was clearly and incontrovertibly required by the
nature of the emergency which the nation faced but that
on the contrary in almost every instance the long run
interests of the nation would have been better promoted by
consultation and delay." 186

184 Unpublished letter of Dean Rusk in personal files of Senator Gold-
water.
185 See testimony of Professor Moore where he warns S. 731 would
prohibit "humanitarian intervention similar to the joint United States-Belgian
operation in the Congo if the intervention were not for the protection of
United States nationals." Moore, supra note 46, at S6470.
186 Commager, supra note 48, at S 3357.
It is difficult to answer matters of subjective judgment. But we know of one instance in which Secretary Rusk believes "consultation and delay" would have led to the massacre of some 2,000 human beings.\textsuperscript{167} Would these persons and their families conclude the use of military forces was not clearly required?

If you will ask the citizens of the Southwest whether they think it was necessary for Presidents Tyler and Polk to deploy American troops in Mexican territory to protect the people of what was then the independent Republic of Texas and what is now the State of Texas,\textsuperscript{168} you might get a pretty vocal and unanimous reply to the question. Or if you will consider the stakes riding on a swift American response to Russian brinkmanship during the Cuban missile crisis, when inaction would have left the United States impotent to remove missiles which were being aimed at American cities holding 80 million citizens,\textsuperscript{169} most would agree "second-thoughts" would have made a terrible difference to the well-being of these 80 million citizens.

The truth is that we just cannot predict what chain of events might have been instituted if we had failed to act in each of these 192 military incidents. To study them under a microscope might be worthwhile for a scholar located in an ivy-covered classroom, but for a President, faced with 20th Century reality, even a week's delay might see the overrun of an important friendly nation or the rise of an irremovable threat to national safety.

V. CONCLUSION

The verdict of history, reinforced by occasional judicial pronouncements, convinces the author that the President possesses a broad authority of independent initiative over the use of military force outside the United States. It is settled beyond question under both domestic and international law, that he can deploy fleets, land troops, order airlifts, or conduct battles in order to protect or rescue United States citizens and officials, together with their property.\textsuperscript{190} It is equally obvious he can employ the military forces against an outside enemy who attacks United States territory or poses an imminent threat of such an attack.\textsuperscript{191}

\textsuperscript{167}See text accompanying notes 185-86 Supra.
\textsuperscript{168}See appendix A infra at 91, 92.
\textsuperscript{169}See KENNEDY, supra note 165, at 35-36.
\textsuperscript{190}See text accompanying note 104 to note 108 supra.
\textsuperscript{191}See text accompanying note 109 supra.
The author believes any legislation which seeks to lay down rules restricting in advance the President's ability to use military forces in these circumstances is illegal. The Constitution does not allow Congress to prohibit the President from acting in these defensive situations; nor does it permit Congress to impose statutory limitations on the period of time during which the President may act in these conditions. To this extent, the War Powers legislation is clearly unconstitutional.\textsuperscript{192}

The President possesses authority which stretches far beyond that of making an \textit{ad hoc}, limited response to an emergency where there is a widely recognized and immediate threat to the safety of United States citizens or the integrity of United States territory. Whenever the President, as the primary author for foreign policy and the exclusive Commander in Chief of United States forces determines there is a future danger to the ultimate preservation of the United States and its citizens which is highly probable of arising either as a direct or indirect result of a present crisis, he may commit United States forces on his own authority in any way he deems fit for the purpose of defending the future security of this country and its two hundred and ten million citizens.\textsuperscript{193}

In the highly complex, interrelated society of the Twentieth Century, where the sudden domination of an ocean strait, or control of a critical resource, or deployment of a radically new weapon, might install an aggressive nation in a position of exclusive superiority from which it might dictate terms to all other countries, the Eighteenth Cen-

\textsuperscript{192} Even Professor Bickel, who otherwise endorsed War Powers legislation, cautioned: "I don't think the President can be deprived of his power to respond to an imminent threat of attack (as well as to the attack itself); or of his power to respond to attacks and threats against our troops wherever they may be, as well as against our territory; or of the power to continue to see to the safety of our troops once they are engaged, even if a statutory 30-day period has expired." Bickel, \textit{supra} note 170, at S12390.

Almost all commentators grant that the Founding Fathers purposefully left with the President at least "the power to repel sudden attacks." \textit{See}, e.g., Note, \textit{The War-Making Powers: The Intentions of the Framers in the Light of Parliamentary History}, 50 \textit{Boston U. L. Rev.} 1 (1970).

\textsuperscript{193} Senator Goldwater has put the same view in these words: "I am convinced there is no question that the President can take military action at any time he feels danger for the country or for its freedoms or, stretching a point, for its position in the world." Goldwater, \textit{supra} note 67, at S5639. \textit{See generally} text accompanying note 86 to note 155 \textit{supra}.

And see position of Bernard Schwartz that: "The unwritten constitutional law of presidential power (if not the text of the basic document) has all but vested in the highest officer the virtual authority to make war whenever deemed necessary to protect the interests of the United States." B. SCHWARTZ, \textit{supra} note 72 at 177.
tury concept of repelling "sudden attacks" must be broadened to encompass defense against threats which are probable of becoming irremovable once allowed to develop unchallenged out of present moves. The crucial test in the modern world has to be whether the damaging consequences to United States security are equally grave and equally likely to happen in the natural flow of events as the "sudden attack" which the Framers of the Constitution comprehended in their personal experience.

It is strange indeed that many of the same political liberals who make highly moving appeals for expanding the scope of federal jurisdiction and obligation on behalf of urban relief, hyphenated-Americans, and other social-welfare causes, deny their own preachments about a "living Constitution" when it comes to the President's ability to defend America's freedoms. Their unbending reliance upon brief debates at the Constitutional Convention as conveying the final meaning of the clause "to declare War" marks these commentators as the "strict constructionists" of all time.194

The advocates of War Powers legislation have, in general, allowed their repulsion over the tragedy of Vietnam to misguide them into a strained and rigid interpretation of the Constitution which is both wrong and unrealistic. Weaving through almost all testimony in support of War Powers legislation is the theme that there must not be "another Vietnam."195 In fact, when Senator Javits introduced his bill, his opening sentence declared: "[T]he most compelling lesson of the 1960's for the United States is our need to devise procedures to prevent future undeclared wars as in Vietnam."196

The ironical error about using Vietnam as the reason for curbing Presidential initiatives is that Congress itself has been deeply involved with expansion of the Vietnam conflict each step of the way.197 Senator Goldwater has documented at least 24 acts of Congress supporting our continued presence in Vietnam, both before and after the much discussed Gulf of Tonkin Resolution.198

194 See, e.g., text accompanying note 41 to note 50 supra; Javits, supra note 36; Morris, supra note 48; Commager, supra note 48; and Bickel, supra note 170.

195 See generally, Bickel, supra note 170 at S12388; Commager, supra note 48, at S3353; testimony of McGeorge Bundy, inserted in the Cong. Rec. by Senator Javits, 117 Cong. Rec. (daily ed.) S5629 (April 26, 1971).

196 Javits, supra note 36, at S1204.


This view has received judicial verification as well. The U. S. Court of Appeals for the Second Circuit ruled on April 20, 1971, that: "The Congress and the Executive have taken mutual and joint action in the prosecution and support of military operations in Southeast Asia from the beginning of those operations."¹⁹⁹

In concluding, the author does not wish to leave the impression he believes Congress and the public are helpless to influence decisions on current and prospective foreign military policies. For one thing, a free press admonishing and criticizing the policy of an Executive or the Congress can mobilize public opinion in sufficient strength to change the course of action. Vietnam shows us that much.

For another, Congress can refuse to raise an Armed Force of the size an "activist" President requires to intervene at several points across the globe. As a foreshadow of events to come, the 92nd Congress has for the first time set an annual numerical ceiling on the total authorized active duty strength levels of each of the regular forces.²⁰⁰

Next, Congress can and must make individual determinations about specific military actions as they develop every time it votes on appropriations to continue these actions.²⁰¹ In this manner, Con-


²⁰⁰ During Floor debate on the military draft extension law, Senator Stennis, Chairman of the Senate Committee on Armed Services, asserted this is the first time Congress has set numerical strength levels on the regular forces, as distinguished from the Reserves, and including volunteers, officers, and inductees. See remarks of Senator Stennis, 117 Cong. Rec. (daily ed.) at S9589 (June 21, 1971).


²⁰¹ For example, following a trip to Saigon in May, 1964, Secretary of Defense McNamara brought back recommendations for increases in American assistance, specifically including an increase in the size of the American advisory personnel and a larger air force for South Vietnam. President Johnson asked for, and obtained, from Congress an additional $125 million in military aid funds earmarked for these purposes. Pub. L. 88-633, 78 Stat. 1009, 1010; Pub. L. 88-634, 78 Stat. 1015 (1964).

In 1965, less than nine months after Congress passed the Gulf of Tonkin Resolution, President Johnson sent to Congress an appropriation request specifically and solely related to the war in Vietnam. In it he asked for $700 million to support an increase in the number of troops in South Vietnam. The House of Representatives approved the money by a vote of 408 to 7 and the Senate approved it by a vote of 88 to 3. 111 Cong. Rec. 9282-9284; Pub. L. 89-18, 79 Stat. 109 (1965).

In each of these instances Congress was confronted with a policy decision
gress will be making its decision in the setting of the precise emergency or problem at hand. It will not be trying to erect rules for every kind of predictable and unpredictable event to come in the long-range future, but will be dealing with known facts and a specific request for a certain number of dollars or a certain number of helicopters, fighter aircraft, or other weapons.

Finally, both Congress and the President can adhere to the Constitutional expectation that the two political branches of our
to expand the defense commitment in Vietnam in the future. These were not requests for funds to cover past expenses, but to support future policy. Here is the kind of clear-cut decision on a specific issue in which the author believes Congress can play a proper and important role in shaping the advance course of the nation's activities or in shifting present trends, if it wishes.

William H. Rehnquist contends that "at the very heart of the Presidential power as Commander-in-Chief is his sole authority to determine the tactics and strategy which shall govern the way in which hostilities once commenced are conducted." Senate Comm. on Foreign Relations, Documents Relating to the War Power of Congress, the President's Authority as Commander-in-Chief and the War in Indochina, 91st Cong., 2nd Sess. 177 (July 1970).

Thus a distinction should be made between the decision of Congress to cut or reject an appropriation of funds for the conduct of hostilities and the attempt by Congress to dictate rules governing the deployment of forces. For example, the Senate Committee on Foreign Relations was acting within the authority of Congress in October when it voted to reduce the funds sought by the Nixon Administration for military and economic assistance in Cambodia from $341 million to $250 million. Senate Comm. on Foreign Relations, Rep. No. 92-404 at 46-47, 92d Cong., 1st Sess. (1971).

On the other hand, the author believes Congress would have improperly invaded the President's sphere as the primary source of foreign policy and Commander in Chief had it passed the so-called "End the War Amendment," which called for a total withdrawal of U.S. troops from Vietnam by December 31, 1971. This would be an effort by Congress to "direct the conduct of campaigns," something the Supreme Court said, in Ex parte Milligan, that it cannot do. For text of amendment, see 117 Cong. Rec. (daily ed.) at S8760 (June 10, 1971). Cf. Mansfield Amendment no. 427, which simply declares a policy of withdrawal from Vietnam and "requests" the President to implement it. See text at 117 Cong. Rec. (daily ed.) S15111 (Sept. 27, 1971).

In some current instances, Congress has passed quasi-restrictions on the deployment of forces with the acquiescence of the President. Section 843 of The Department of Defense Appropriations Act, 1971, is a case in point. P. L. 91-668. This provision prohibits "the introduction of American ground combat troops into Laos or Thailand," but it was not opposed by the Administration. Nor had the Administration earlier opposed a restriction against the introduction of U.S. ground combat troops or advisors into Cambodia when this provision was placed in the Supplement Foreign Assistance Authorization Act for 1971. See Pub. L. 91-652; and Congressional Research Service, Library of Congress, Legislation Enacted by the 91st Congress to Limit United States Military Involvement in Southeast Asia, March 30, 1971.

So long as the President agrees to comply with the limitation (each of these two restate a previously announced intention of President Nixon), the language will have the full force and effect of law. However, it is the author's view that the President could legally defy these and similar restrictions on the use of American forces whenever he determines it is vitally necessary to defend American security.
government must spend an enormous amount of time working with each other to avoid the possibility of an impasse at moments of crisis. The Secretary of State, Secretary of Defense, and other ranking decision-makers in each administration must be willing to meet with committees and subcommittees of Congress hundreds of times if necessary trying to work together.

For its part, Congress must have the sense of mind and political courage to shape a recognizable position from which the President can be guided. This means the pertinent committees must develop an almost unanimous view on important issues, so that the President can clearly know the position of the Senate, or the House, as a corporate body, rather than having to choose from among the individual points of view of a hundred or so different members. Thereby, the two branches could better move in unison according to the true anticipation of our Founding Fathers.

APPENDIX

A. CHRONOLOGICAL LIST OF 192 U.S. MILITARY HOSTILITIES1 ABROAD WITHOUT A DECLARATION OF WAR

1798-1800: Naval War with France.

When John Adams became President in 1797, he faced the serious problem of strained relations between France and the United States, in which France had made it a practice to seize American merchant ships and to manhandle their crews. Adams first attempted to negotiate a settlement, but, when the French demanded exorbitant bribes and loans, his envoys rejected the proposals and departed.

Adams, thereupon, asked Congress for the power to arm merchant ships and take other defensive measures. Congress responded by creating a Navy Department, voting appropriations for new warships, and authorizing the enlistment of a "Provisional Army" for the duration of the emergency. In July, 1798, the French treaties and consular conventions were abrogated. The result was a "quasi-war," during which neither country declared war. The American Navy attacked only French warships and privateers and fought primarily for the protection of commerce. Some ninety French ships were captured during this naval war. In 1800 a convention was agreed to and peace was achieved. State, 2.

1800: West Indies.

On April 1, U. S. Marines participated in the action between the U. S. schooner Enterprise and a Spanish man-of-war brig in the West Indies. USMC, I, 40.

1 The list includes only actual battles, landings, or evacuations. Deployments to maintain an American presence, or alerts bringing an advanced state of readiness are not included, except for seven or eight incidents when the risk of war was unusually grave. No military operations known to have been subsequently disavowed or repudiated have been included. The list was prepared with the direction of U. S. Senator Barry Goldwater and is published with his consent.

2 Authority for each of the listed hostilities is given at the end of its description. The reference is to one of the sources in the author's SOURCES FOR COMPILATION which follows this section of the Appendix.
1801-1805: War with Tripoli.

During the early years of the Republic, the United States, following the practice of several European nations, paid tribute to North African pirates. Shortly after Jefferson became President, the Pasha of Tripoli, dissatisfied with the apportionment of tribute, declared war on the United States (May 1801). Jefferson thereupon sent warships to the Mediterranean. After naval actions and landings under Commodore Preble, an inconclusive treaty of peace with Tripoli was signed in 1805. Congress passed various enabling acts during the conflict but never declared war. State, 3.

1806: Mexico (Spanish territory).

Captain Z. M. Pike, with a platoon of troops and on the orders of General James Wilkinson, invaded Spanish territory at the headwaters of the Rio Grande, apparently on a secret mission. State, 16.

1806-1810: Gulf of Mexico.

American gunboats operated from New Orleans against Spanish and French privateers. State, 16.

1810: West Florida (Spanish territory).

Governor Claiborne of Louisiana, on orders from the President, occupied with troops disputed territory east of the Mississippi as far as the Pearl River. No armed clash occurred. State, 16.

1813: West Florida (Spanish territory).

On authority granted by Congress, General Wilkinson seized Mobile Bay with 600 soldiers; a small Spanish garrison gave way without fighting. State, 16.

1813-1814: Marquesas Islands, South Pacific (claimed by Spain).

U. S. Marines built a fort on one of the islands to protect three captured prize ships. State, 16.

1814-1825: Caribbean Area.

There were repeated engagements between American ships and pirates both ashore and offshore about Cuba, Puerto Rico, Santo Domingo, and Yucatan. In 1822, Commodore James Biddle employed a squadron of two frigates, four sloops of war, two brigs, four schooners, and two gunboats in the West Indies. The United States sunk or captured 65 vessels. Marine detachments participated in at least 14 of these actions. State, 16.

1815: Second Barbary War (Algiers).

In 1812 an Algerian naval squadron operated against American shipping in the Mediterranean. In one attack an American merchantman was captured and its crew imprisoned. In March, 1815, Congress passed an act that authorized the use of armed vessels "as may be judged requisite by the President" to provide effective protection to American commerce in the Atlantic and the Mediterranean. A naval squadron of 10 vessels under Commodore Stephen Decatur attacked Algiers, compelling the Dey to negotiate a treaty. Decatur also demonstrated at Tunis and Tripoli. All three states were forced to pay for losses to American shipping, and the threats and tribute terminated. State, 3.

1816-1818: Spanish Florida.

During the "First Seminole War," U. S. forces invaded Spanish Florida on two occasions. In the first action, they destroyed a Spanish fort harboring raiders who had made forays into United States territory. In the second, Generals Jackson and Gaines attacked the Seminole Indians because their land was a haven for escaped slaves and border ruffians. In the process of pursuing the Indians, United States forces attacked and occupied Spanish posts. State, 17.
1817: Amelia Island (Spanish Territory).
Under orders from President Monroe, U. S. forces landed and expelled a group of smugglers, adventurers, and freebooters. State, 17.

1818: Oregon.
The U.S.S. Ontario landed at the Colombia River and in August took possession. Russia and Spain asserted claims to the area. Rogers, 96.

1820: West Africa.
Marines participated in the capture of seven slave schooners by the U. S. corvette Cyane off Cape Mount and the Gallinos River on the west coast of Africa during the period from April 5 through 12. USMC, I, 64.

1820-1822: West Coast of South America.
Marines were aboard three of the U. S. ships stationed off the west coast of South America from 1820 until May, 1822, to protect American commerce during the revolt against Spain. USMC, I, 65.

1822: Cuba (Spanish Territory).
U. S. naval forces landed on the northwestern coast of Cuba and burned a pirate station. State, 17.

1823: Cuba (Spanish Territory).
Between April and October naval forces made a number of landings in pursuit of pirates, apparently incident to Congressional authorization which became operative in 1822. State, 17.

1824: Cuba (Spanish Territory).
In October, the U.S.S. Porpoise landed sailors to pursue pirates during a cruise authorized by Congress. State, 17.

1825: Cuba (Spanish Territory).
In March, British and American forces landed on two offshore Cuban islands to capture pirates who were based there. The action appears to be incident to Congressional authority. State, 17.

1827: Greece.
Apparently acting pursuant to legislation, in October and November, United States forces from the U.S.S. Warren and the U. S. schooner Porpoise engaged in seven actions against pirate vessels off Greece and made landings on three Greek Islands. State, 17.

1828: West Indies.
In December, incident to legislation, Marines participated in the capture of the Argentinean privateer Federal by the U. S. sloop Eric at St. Bartholomew Island, W. I. USMC, I, 67.

1830: Haiti.
On June 5, marines participated in the capture of the slave brig Fenix by the U. S. schooner Grampus off Cape Haitien, Haiti. USMC, I, 67.

1831-1832: Falkland Islands (Argentina).
American forces under Captain Duncan of the U.S.S. Lexington landed to investigate the capture of three American sailing vessels. The Americans succeeded in releasing the vessels and their crews and dispersed the Argentine colonists. State, 17.

1832: Sumatra.
A force of 250 men from the U.S.S. Potomac landed to storm a fort and punish natives of a town for an attack on American shipping and the murder of crew members. State, 18.
1833: Argentina.

Between October 31 and November 15, at the request of American residents of Buenos Aires, a force of 43 marines and sailors landed from the U.S.S. Lexington to protect American lives and property during an insurrection. State, 18.

1835: Samoan Island.

On October 11, eighty marines and sailors burned the principal village on the island to avenge harsh treatment meted out to American seamen. Paullin, 729.

1835-1836: Peru.

Marines from the U.S. Brandywine landed at various times at Callao and Lima to protect American lives and property during a revolt, and to protect the American Consulate at Lima. State, 18.

1837: Mexico.

On April 16, marines joined in the capture of a Mexican brig-of-war by the U.S.S. Natchez off Brasos de Santiago for illegal seizure of two American merchantmen. USMC, I, 70.

1839: Sumatra.

In January, American forces from the U. S. sloop John Adams and the U. S. frigate Columbia landed at Muckie, Sumatra, to protect American lives and property and to punish natives of two towns for attacking American ships. USMC, I, 70.

1840: Fiji Islands.

American forces totaling 70 officers and men, landed on July 12 and 26 to punish natives of two towns for attacking American exploring and surveying parties. State, 18.

1841: Samoan Islands.

On February 25, an American force of 70 marines and seamen from the U.S.S. Peacock landed to avenge the murder of a seaman. They burned three native villages. USMC, I, 71.

1841: Drummond Island (Kingsmill Group, Pacific Ocean).

On April 6, marines from the U.S.S. Peacock landed and burned two towns to avenge the murder of a seaman by natives. State, 18.

1843: China.

In June and July, a clash between Americans and Chinese at the Canton trading post led to the landing of 60 sailors and marines from the St. Louis. Paullin, 1095-1096.

1843: West Africa.

In November and December, four U. S. vessels from Commodore Perry's squadron demonstrated and landed various parties (one of 200 marines and sailors) to discourage piracy and the slave trade along the Ivory Coast and to punish attacks made by the natives on American seamen and shipping. In the process, they burned villages and killed a local ruler. The actions appear to have been pursuant to the Treaty of August 9, 1842, with Great Britain relative to the suppression of the slave trade. State, 18.

1844: Mexico.

President Tyler deployed our forces to protect Texas against Mexico, anticipating Senate approval of a treaty of annexation, which was rejected later in his term. Corwin, 245.
1844: China.
On June 18, Marines from the U. S. sloop *St. Louis* went ashore at Canton, China, to protect American lives. USMC, I, 72.

1845: African coast.
On November 30, Marines joined in the capture of the slave bark *Pons* by the U. S. sloop *Yorktown* off Kahenda, Africa. The action was consistent with the Treaty of 1842. USMC, I, 72.

1846: Mexico.
President Polk ordered General Scott to occupy disputed territory months preceding a declaration of war. Our troops engaged in battle when Mexican forces entered the area between the Nueces and Rio Grande Rivers. The fighting occurred three days before Congress acted. U.S., 378.

1849: Smyrna (Now Izmir, Turkey).
In July, the U.S.S. *St. Louis* gained the release of an American seized by Austrian officials. State, 18.

1850: African coast.
On June 6, Marines joined in capturing a slave ship by the U. S. brig *Perry* off Luanda, Africa. The action was consistent with the Treaty of 1842. USMC, I, 77.

1851: Turkey.
After a massacre of foreigners (including Americans) at Jaffa, the U. S. Mediterranean Squadron was ordered to demonstrate along the Turkish coast. Apparently, no shots were fired, but the display amounted to compulsion. State, 19.

1851: Johanna Island (East of Africa).
The U.S.S. *Dale* delivered an ultimatum, bombarded the island, and landed a force to punish the local chieftain for the unlawful imprisonment of the captain of an American whaler. State, 19.

1852-1853: Argentina.
Several landings of marines took place in order to protect American residents of Buenos Aires during a revolt. State, 19.

1853: Nicaragua.
American forces landed at Greytown and remained for two days (March 11-13) to protect American lives and interests during political disturbances. State, 19.

1853: China.
On September 11, a small Marine force from the U. S. steamer *Mississippi* boarded a Siamese vessel in the Canton River and put down a mutiny. USMC, I, 78.

1853: West Coast of Africa.
In accordance with the Treaty of 1842, on December 3, Marines joined in the capture of the slave schooner *Gambrill* by the U. S. frigate *Constitution* off the Congo River on the west coast of Africa. USMC, I, 78.

1853-1854: Japan.
Commodore Matthew C. Perry led an expedition consisting of four men-of-war to Japan to negotiate a commercial treaty. Four hundred armed men accompanied Perry on his initial landing at Edo Bay in July, 1853, where he stayed for ten days after refusing to leave when ordered. He then sailed south, landing a force at the Bonin Islands, where he took possession, and at the Ryukyus, where he established a coaling station. In March,
1854, he returned to Edo Bay with ten ships and 2,000 men, landed with an escort of 500 men, and after six weeks signed a treaty with Japanese authorities at Kanagawa. The whole campaign was on executive authority. State, 19.

1854: West Coast of Africa.

Pursuant to the Treaty of 1842, on March 10, Marines joined in the capture of a slave brig by the U. S. brig Perry off the west coast of Africa. USMC, I, 78.

1854: China.

American and British forces consisting of 150 English sailors, 60 U. S. sailors, and 30 merchant sailors landed at Shanghai on April 4 and stayed until June 7 to protect their nationals during a battle between Chinese imperial and revolutionary troops. State, 19.

1854: Greytown, Nicaragua.

In July, the commander of an American naval vessel demanded reparation after an American official was injured during a riot. When this was not forthcoming, the vessel bombarded the town. Foreign property, including British and French, was destroyed. President Pierce defended the action of the American commander in his annual message to Congress. State, 19.

1854: Okinawa.

On July 6, a force of 20 Marines from the U. S. steamer Powhatan went ashore on Okinawa and seized a religious shrine in punishment of persons who murdered an American. On November 17, Marines and seamen from the U. S. sloop Vincennes went ashore again at Okinawa to enforce treaty provisions. USMC, I, 78.

1855: China.

There were two brief actions by U. S. warships, the first a landing in May at Shanghai to protect American interests there, the second an attack in August at Hong Kong against pirates. State, 20.

1855: Fiji Islands.

In September and October, marines from the sloop-of-war John Adams landed four times to seek reparations for depredations against Americans and to force natives to honor a treaty. The landing parties fought skirmishes and burned some villages. USMC, I, 79.

1855: Uruguay.


1856: Panama, Republic of New Granada.

U. S. forces landed and stayed two days to protect American interests, including the Isthmian railroad, during an insurrection. (By the treaty of 1846 with New Granada, the United States had acquired the right to protect the Isthmus and to keep it open, in return for guaranteeing its neutrality.) State, 20.

1856: China.

In October and November, the U. S. warships Portsmouth and Levant landed 280 officers and men to protect American interests at Canton during hostilities between the British and the Chinese and in response to an unprovoked assault upon an unarmed boat displaying the U. S. flag. The Americans took and destroyed four Chinese forts. State, 20.
1858: Uruguay.
Forces from two U. S. warships landed in January to protect American lives and property during a revolt in Montevideo. The action was taken in conjunction with the forces of other powers at the request of the local government. State, 20.

1858: African coast.
On September 8, Marines joined in the capture of a ketch laden with slave food by the U. S. sloop Marion off the southeast coast of Africa. The action was consistent with the Treaty of 1842. USMC, I, 80.

1858: Fiji Islands.
On October 6, about 60 marines and sailors from the U.S.S. Vandalia landed to punish natives for the murder of two American citizens and engaged in a fierce conflict with 300 native warriors. State, 21.

1858-1859: Turkey.
American citizens were massacred in 1858 at Jaffa and mistreated elsewhere. In the face of Turkish indifference, the Secretary of State asked the U. S. Navy to make a display of force along the Levant. State, 21.

1858-1859: Paraguay.
From October 1858, to February, 1859, an American expedition went to Paraguay to demand redress for an attack on a naval vessel in the Parana River during 1855. Apologies were forthcoming after a display of force, which amounted to compulsion. Congress authorized the action. State, 21.

1859: African coast.
On April 21 and 27, Marines joined in the capture of a slave ship near the Congo River, Africa. The action was consistent with the Treaty of 1842. USMC, I, 81.

1859: Mexico.

1859: China.
On July 31, forces from the U.S.S. Mississippi landed at Woosung and Shanghai, where they remained until August 2, to protect American interests and restore order. The American consul had called on the ship for assistance. State, 21.

1860: Kissembo, West Africa.
On March 1, 40 Marines and seamen from the sloop-of-war Marion landed twice to prevent the destruction of American property during a period of local unrest. State, 21.

1860: Colombia (State of Panama).
On September 27, the Marine guard from the sloop U.S.S. St. Mary's landed to protect American interests during a revolt. This may have been authorized pursuant to the Treaty of 1846. State, 21.

1863: Japan.
On July 16, when Japanese shore batteries at Shimonoseki fired on a U. S. merchant ship, the U.S.S. Wyoming retaliated by firing on three Japanese vessels lying at anchor. The shots were returned, and, by the time the action was over, there were casualties on both sides.
1864: Japan.
From July 14 to August 3, U. S. forces protected the U. S. Minister to Japan when he visited Yedo concerning some American claims against Japan. The forces also were designed to impress the Japanese with American power. LRS, IV, 52.

1864. Japan.
Between September 4 and 8, naval forces of the United States, Great Britain, France, and the Netherlands jointly forced open the Straits of Shimonoseki, which had been closed in violation of commercial agreements. Shore batteries were destroyed and 70 cannon seized. State, 21.

1865-1866: Mexican border.
In late 1865, General Sheridan was dispatched to the Mexican border with 50,000 troops to back up the protest made by Secretary of State Seward to Napoleon III that the presence of over 25,000 French troops in Mexico "is a serious concern to the United States." In February, 1866, Seward demanded a definite date be set for withdrawal and France complied. Though American forces did not cross the border, the threat of foreign military operations was clear and imminent. U. S., 580-581.

1865: Panama.
American forces from the U.S.S. St. Marys landed to protect American interests during a revolt. This was apparently implied by the Treaty of 1846. State, 22.

1866: China.
Various landings by over 100 marines and seamen were made in June and July at Newchwang to punish an assault on the American Consul and to guard diplomats. State, 22.

1867: Formosa.
On June 13, 181 Marines and seamen from the U.S.S. Hartford and U.S.S. Wyoming landed to punish natives who had murdered the crew of a wrecked American merchantman. Several huts were burned. USMC, I, 91.

1867: Nicaragua.
On September 6, Marines landed and occupied Managua and Leon. USMC, I, 92.

1868: Japan.
From February 1 until April 4, landings were made at Hiago, Nagasaki, and Yokohama to protect American lives and property during local hostilities. USMC, I, 92.

1868: Uruguay.
At the request of local Uruguayan authorities, several landings were made from five U. S. steamers at Montevideo during the month of February in order to protect American lives and property during an insurrection. State, 22.

1868: Colombia.
An American force landed at Aspinwall in April to protect the transit route during the absence of local police. This was impliedly permitted by the Treaty of 1846. State, 22.

1870: Mexico.
On June 17, the U.S.S. Mohican pursued a pirate ship up the Tecapen River near Mazatlan, landed a party of Marines and seamen, and destroyed it during a pitched battle. State, 22.
1871: Korea.
In June, American landing forces under Admiral Rodgers captured five Korean forts after a surveying party, granted permission to make certain surveys and soundings, had been attacked. No treaty or convention was in effect. State, 22.

1873: Colombia.
In May and September, nearly 200 American forces landed at the Bay of Panama to protect American lives and interests during local hostilities. The actions were impliedly allowed by the Treaty of 1846. State, 22.

1873-1882: Mexico.
U. S. troops repeatedly crossed the Mexican border to pursue cattle thieves. Mexico occasionally reciprocated. Such incursions were finally recognized as legitimate by an agreement in 1882. State, 23.

1874: Hawaii.
In February, a party of 150 men from two U. S. vessels landed to preserve order at the request of local authorities. State, 23.

1876: Mexico.
On May 16, at the request of the U. S. Consul at Matamoros, a small American force was landed to preserve order when the town was temporarily without a government. State, 23.

1882: Egypt.
On July 14, over 100 forces from the U.S.S. Lancaster, U.S.S. Quinnebaug, and U.S.S. Nipsic landed at Alexandria, when the city was being bombarded by the British navy, in order to protect American interests there, including the American consul. State, 23.

1885: Colombia (State of Panama).
On January 18, March 16, March 31, April 8, April 11, April 12, and April 25, American forces landed to protect American property and guard valuables in transit over the Isthmus during local revolutionary activity, an action authorized under the Treaty of 1846. USMC, I, 96.

1888: Korea.
On June 19, 25 men from the U.S.S. Essex landed at Chemulpo and marched to Seoul to protect American residents during unsettled political conditions. The action was requested by the American Minister. State, 23.

1888-1889: Samoan Islands.
In 1886, the German consul announced that the Sanwan group was henceforth a German protectorate, an action that brought the United States and Great Britain together in opposition. By 1889, Germany and the United States were close to a direct confrontation. The United States and Germany, together with Great Britain, shared certain treaty rights in Samoa for the maintenance of naval depots. In November 1888, U. S. Marines landed from the U.S.S. Nipsic to protect American interests after civil strife broke out ashore. In January, 1889, German forces landed, and, when those forces were attacked by the natives, German ships shelled the island. This action by Germany aroused the American public, and Congress appropriated $500,000 for the protection of American lives and property on the island and $100,000 for the development of Pago Pago harbor. The United States also ordered two more warships to the scene. All three powers had warships on the scene and an untoward event might have touched off war had not a hurricane in March, 1889, destroyed all the warships except one British vessel. Thereafter, the Germans invited the three powers to a conference, which was agreed to and held in Berlin. In April, 1889, they established a three-power protectorate there. In 1899 the Samoans were divided, the United States acquiring Tutuila. State, 23.
1888: Haiti.

In December, American warships made a display of force to obtain the release of an American merchant vessel captured by a Haitian warship. The Haitian Government surrendered the ship and paid an indemnity after Admiral Luce gave an ultimatum ordering its release before sunset. State, 24.

1889: Hawaii.

On July 30, at the request of the American Minister in Honolulu, the U.S.S. Adams sent a marine guard ashore to protect American lives and property during revolutionary disorder. State, 24.

1890: Argentina.

The U.S.S. Tallapoosa landed a party in July to protect the American Consulate and Legation in Buenos Aires during a revolt. State, 24.

1891: Navassa Island, Haiti.

American forces from the U.S.S. Kearsarge landed on June 2 to protect American lives and property during a period of unrest. The action was taken pursuant to Congressional action. State, 24.

1891: Bering Sea.

An American squadron operated from June to October, jointly with British naval vessels, seizing four schooners. Rogers, 109.

1891: Chile.

In August, 102 Americans of the South Pacific station landed at Valparaiso during a revolt in order to protect the American Consultate and American lives. State, 24.

1894: Brazil.

The U. S. Navy engaged in gunfire and a show of force in January to protect American shipping at Rio de Janeiro during a revolt of the Brazilian navy. President Cleveland stated our action "was clearly justified by public law." State, 24.

1894: Nicaragua.

In July, American forces landed at Bluefields to protect American interests during a revolt. State, 24.

1894-1896: Korea.

On July 24, at the request of the American Minister, a force of 21 Marines and 29 sailors landed at Chemulpo and marched to Seoul to protect American lives and property during the Sino-Japanese War. A Marine guard remained at the American Legation until 1896. State, 24.

1894-1895: China.

On December 6, 1894, Marines disembarked from the U.S.S. Baltimore at Taku and marched to Tientsin to protect American lives and property during the Sino-Japanese War. The landing party maintained order until May 16, 1895. USMC, I, 98.

1895: Colombia (State of Panama).

Marines from the U.S.S. Atlanta landed in March to protect American interests during a revolt. This appears to have been authorized by treaty. State, 24.

1895-1896: Korea.

During internal disorders from October 11, 1895; to April 3, 1896, the American Legation at Seoul was protected by Marines from various ships. Ellsworth, 60.
1896: Nicaragua.
On May 2, Marines were put ashore at Corinto by the U.S.S. Alert during revolutionary disorders to protect American interests. USMC, I, 99.

1898: Nicaragua.
On February 7, Marines landed at San Juan del Sur by the U.S.S. Alert to protect Americans against disorders. USMC, I, 99.

1898-1899: China.
American forces guarded the Legation at Peking and the Consulate at Tientsin from November, 1898, to March, 1899, during a period of unrest. State, 25.

1899: Nicaragua.
On February 24, in response to a petition from foreign merchants during an insurrection, Marines landed to protect life and property at San Juan del Norte and Bluefields. State, 25.

1899: Samoan Islands.
Sixty Americans landed on February 14 from the U.S.S. Philadelphia, and on April 1 joined a British force in efforts to disperse native rebels. This may have been under color of treaty or statute. State, 25.

1899-1901: Philippine Islands.
The United States employed 126,468 troops against the Philippine Insurrection without a declaration of war after the Treaty of Peace with Spain was concluded. Presumably the United States acted to suppress the rebellion under authority of the Treaty of Peace, which transferred to it the sovereignty possessed by Spain in the Philippine Islands. 40 Ct. of Claims 26-32.

1900-1901: "Boxer" Rebellion (Peking).
In 1900 President McKinley sent 5,000 troops to join the international military force organized for the relief of foreign legations besieged in Peking by Chinese "Boxers." Using troops already mobilized for the Spanish-American War and the Philippine Insurrection, McKinley did not seek authority from Congress. Peace terms were concluded at an international conference, and a peace Protocol was signed September 7, 1901. The Protocol was not submitted to Congress. Because of the obvious inability of Chinese authorities to control local disorders, the United States acquired the right to maintain a guard at Peking for defense of the American Legation and to station military forces at certain points in Chinese territory to keep open communications between Peking and the sea. (Earlier, in 1858, the United States had acquired the right by treaty to station naval vessels in Chinese waters.) State, 3-4.

1901: Colombia (State of Panama).
American forces went ashore in late November and stayed until December to protect American property and to keep transit lines open across the Isthmus during serious political disturbances. This apparently was authorized by the Treaty of 1846. State, 25.

1902: Colombia (State of Panama).
Marine guards landed in April to protect American lives and the railroad across the Isthmus during civil disorders. They continued to land at various times between April and November. This appears to have been authorized by the Treaty of 1846. State, 25.

1903: Honduras.
American forces disembarked at Puerto Cortez in March to protect the American Consulate and port facilities during a period of revolutionary activity. State, 25.
1903: Dominican Republic.

In April, 29 Marines landed at Santo Domingo, where they remained for three weeks to protect American interests during a period of political disturbances. State, 25.

1903-1904: Syria.

A Marine guard landed and remained for a few days at Beirut in April to protect the American Consulate during a Moslem uprising. Also our Mediterransan Squadron demonstrated at Beirut from September to January and at Smyrna the next August. State, 25.

1903: Panama.

A revolution leading to the independence of Panama from Colombia broke out in November. Marines landed from the U.S.S. Dixie to prevent Colombian troops from carrying out a threat to kill American citizens, after Commander Hubbard had refused to allow the Colombians to transport their troops across the Isthmus. Marine guards remained on the Isthmus from the date of Panamanian independence (November 4, 1903) until January, 1914, to protect American interests during the construction of the Canal. This was allowed under the Hay-Bunau-Varilla Treaty. State, 25-26.

1903-1904: Abyssinia.

Twenty-five American marines were sent to protect the U.S. Consul General from November 18, 1903, to January 15, 1904, while he was negotiating a treaty with the Emperor. USMC, I, 109.

1904: Dominican Republic.

On January 3, 7, and 17, and on February 11, over 300 Marines landed at Puerto Plata, Sosua, and Santo Domingo to protect American lives and property during a revolt. USMC, I, 108-109.

1904: Morocco.

A squadron demonstrated in Moroccan waters in June to force the release of a kidnapped American. A Marine contingent had landed on May 30 to protect the Consul General. State, 26.

1904: Panama.

American troops were used to protect American lives and property at Ancon in November when a revolt seemed imminent. This action seems to have been authorized by treaty. State, 26.

1904-1905: Korea.

In January, 1904, over 100 American troops were sent to guard the American Legation at Seoul because of the outbreak of the Russo-Japanese War. They remained until November 1905. In March, 1904, marines assisted in the evacuation of American nationals. USMC, I, 108.

1906-1909: Cuba.

An American squadron demonstrated off Havana, and, in September, marines landed to protect American interests during a revolution. In October, marine and army units landed and took up quarters in many Cuban towns in connection with the temporary occupation of the country under a provisional governor appointed by the United States. This occupation was within the scope of the provision of the 1903 Treaty of Relations between the two countries, which gave the United States the right to intervene to preserve order. The occupation lasted until January, 1909. State, 26.

1907: Honduras.

On March 18, during a war between Honduras and Nicaragua, the U.S.S. Mareetta disembarked 10 men to guard the American Consulate at Trujillo. The U.S.S. Paducah also landed forces at Laguna and Choloma on April 28. State, 26.
1910: Nicaragua.
In May, one hundred men from the *U.S.S. Paducah* landed at Greytown to protect American lives and property during a revolt. The *U.S.S. Dubuque* also engaged in shows of force. Joined combat was "hourly expected." State, 26.

1911: Honduras.
Sixty men from the *U.S.S. Tacoma* and *Marietta* went ashore at Puerto Cortez during a revolt to protect American interests. The American Commander threatened to use force if necessary. State, 26.

1911-1912: China.
American forces made six landings to protect American interests during the initial stages of a revolution. They were stationed at Foochow, Chinkiang, Peking, Hankow, Nanking, Shanghai, and Taku. This may have occurred pursuant to treaty rights acquired during the "Boxer" Rebellion. State, 27.

1912: Panama.
During June and July, at the request of local political groups, American troops supervised elections outside the Canal Zone. This was impliedly authorized by the Hay-Bunau-Varilla Treaty. State, 27.

1912: Cuba.
In May, American troops landed in eastern Cuba during a revolt and remained for three months to protect American interests. This appears to have been authorized by the treaty of 1903. State, 27.

1912: Turkey.
A troop detachment from the *U.S.S. Scorpion* assisted in the protection of the diplomatic corps at Istanbul during the Balkan War. State, 27.

1912: Nicaragua.
During a civil war, the President of Nicaragua asked the United States to protect its citizens resident there. Acting on a recommendation of the American Minister, President Taft ordered sizable landings of marines in August and September, 1912. Political stability returned to Nicaragua by January, 1913, but a detachment of marines was kept in Managua to guard the American Legation after the rest of the American troops withdrew. The Legation guard was reinforced in 1922 and remained until August 1, 1925. State, 27.

1913: China.
U. S. forces landed in July at Chapei and Shanghai to protect American interests. Rogers reports there were many demonstrations and landing parties by United States forces for protection in China continuously from 1912 to 1941. He writes: "In 1927, for example, this country had 5,670 troops ashore in China and 44 naval vessels in its waters. In 1933 we had 3,027 armed men ashore. All this protective action was in general terms based on treaties with China ranging from 1858 to 1901." Rogers, 117.

1913: Mexico.
In September a few Marines disembarked at Ciaris Estero, during a period of civil strife, to aid in the evacuation of American citizens. State, 27.

1914: Haiti.
Marines landed in January, February, and August to protect American citizens during a period of unrest. State, 27.

1914: Dominican Republic.
During a period of revolutionary activity, U. S. naval forces fired at revolutionaries who were bombarding Puerto Plata, in order to stop the
action. Also, by a threat of force, fighting in Santo Domingo was prevented. State, 28.

1914: Occupation of Vera Cruz, Mexico.

On April 9, 1914, an American naval officer and 9 crewmen from the U.S.S. Dolphin anchored off the coast at Tampico, Mexico, were arrested and marched through the streets by local authorities. They were released and an apology was extended as soon as the local Mexican commander learned of the incident. Admiral Mayo, commander of the American squadron, also demanded a 21-gun salute to the American flag. The Mexicans refused and President Wilson promptly ordered the North Atlantic battleship fleet to Tampico. On April 20, he addressed Congress in a joint session and asked for authority to use the armed forces. While Congress debated, Wilson learned that a German steamer was headed toward Vera Cruz to unload munitions for Huerta, and he decided to direct the naval action against Vera Cruz instead of Tampico. American armed forces landed at Vera Cruz, and, after an armed engagement resulting in 400 casualties, the Americans occupied the city on April 22. The same day, apparently after the fighting began, Congress passed a joint resolution which declared that the President was "justified in the employment of the armed forces of the United States to enforce his demand for unequivocal amends for certain affronts and indignities committed against the United States," but that "the United States disclaimed any hostility to the Mexican people or any purpose to make war upon Mexico." By November, 1914, American troops had left Mexican soil. State, 4.

1915: Dominican Republic.

On August 15, the 5th Marine Regiment arrived at Puerto Plata to protect American lives and property during a revolutionary outbreak. Their protective mission lasted until October 12, 1915. USMC, I, 116.

1915-1934: Haiti.

In July, at the initiative of the Executive, the United States placed Haiti under the military and financial administration of the United States, in part to protect American lives and property and in part to forestall European intervention to collect debts. Marines were stationed in Haiti until 1934. The occupation was sanctioned by a treaty signed and ratified by the Senate in February, 1916, but the first months of the occupation were on executive authority alone. State, 28.

1916-1924: Dominican Republic.

President Wilson ordered the occupation of Santo Domingo in May, 1916, owing to local unrest. At one point, 3,000 marines were ashore. The United States placed a military governor in the Dominican Republic but turned political affairs over to the Dominicans in 1922. U. S. troops withdrew in 1924, and a general treaty signed that year formally sanctioned the previous occupation. State, 28.

1916: China.

American forces landed at Nanking to quell a riot taking place on American property. Apparently this was authorized by a treaty. State, 28.

1916-1917: Pershing Expedition into Mexico.

In October, 1915, the United States recognized the Carranza regime as the de facto government in Mexico. At the same time, Mexican rebel, Pancho Villa, directed a campaign against the United States. In January, 1916, Villa's followers massacred 18 American mining engineers in Santa Isabel, Mexico.

Then, on March 9, 1916, 400 of Villa's men raided Columbus, New Mexico, and killed 17 Americans. The American public was incensed, and Wilson delayed sending an expedition only until he could obtain Carranza's consent. On March 13, 1916, when Carranza's government acceded, Wilson
ordered General John J. Pershing to take U. S. Army units into Mexico. On March 16, Pershing crossed the border with 6,000 troops. On the following day, Congress adopted a joint resolution introduced by Senator Robert LaFollette sanctioning the use of the armed forces. Until then, Wilson had been relying on the Acts of 1795 and 1807 relative to employing the armed forces whenever there is 'imminent danger of invasion.'

Villa eluded Pershing, and the size of the U. S. expedition soon grew to such proportions (12,000 men) that Carranza protested and demanded its withdrawal, threatening war. Wilson on June 18 called out the National Guard and incorporated it into the Army; 150,000 militia were ordered to the Mexican border. But neither country really wanted war, and the crisis gradually subsided. Wilson decided to withdraw all American troops from Mexico in February, 1917. State, 5-6.

1917: Armed Atlantic Merchant Ships.

In February, President Wilson asked Congress for authority to arm U. S. merchant vessels with defensive guns, but Congress refused to pass such a law. Thereupon President Wilson acted, on his own authority, to equip American merchant vessels with guns and gunners assigned to them from the Navy. His action occurred prior to the declaration of war on Germany which did not take place until April 6, 1917. Willoughby, III, 1568.

1917: Cuba.

American troops landed in February at Manzanilla to protect American interests during a revolt. Various other landings were made, and, though the revolt ended in April, 1917, troops remained until 1922 because of continued unsettled political conditions. This was authorized by the Treaty of 1903. State, 28.

1918: China.

American troops landed at Chungking to protect American lives during a political crisis. Apparently this was done pursuant to a treaty. State, 28.

1918-1919: Mexico.

U. S. troops entered Mexico to pursue bandits three times in 1918 and six times in 1919. In August, 1918, there was a brief skirmish between American and Mexican troops at Nogales. State, 28.

1918-1920: Expeditions to Russia.

Following the Bolshevik revolution in Russia in 1917, Allied expeditions landed, in 1918, at Murmansk and then Archangel. American troops first landed in August, 1918, with most arriving in Archangel Harbor on September 4. Though Armistice Day came on November 11, 1918, the American forces remained until June 27, 1919. At Archangel, the U. S. contributed some 5,208 men and suffered some 549 casualties, including 244 deaths.

The Allies also landed units in Siberia in August and September of 1918 where Bolshevik troops were fighting a force of 65,000 Czech soldiers who were trying to fight their way eastward. The Japanese sent 74,000 soldiers; the Americans sent 8,388; and the British and French provided minor contingents. The American forces began embarking for home on January 17, 1920, and the last units left on April 1, 1920.

President Wilson, who acted without Congressional approval, agreed to participate in the Allied expeditions to aid the anti-Bolsheviks, to help several thousands of Czech troops get back to their homeland, and to forestall possible Japanese expansionist plans in Siberia. State, 6.

1919: Turkey.

On May 14, a Marine detachment from the U.S.S. Arizona landed to guard the U. S. Consulate at Constantinople during the Greek occupation of the city. USMC, I, 121.
1919: **Honduras.**
A small American force went ashore at Puerto Cortez to maintain order in a neutral zone during an attempted revolt. State, 29.

1918-1920: **Panama.**
American troops went outside the Canal Zone, on request of the Panamanian Government, to supervise elections. This apparently was authorized by treaty. LRS, 53.

1920: **China.**
American forces landed at Kiukang and Youchow to protect American lives and property. This may have been authorized by treaty. State, 29.

1920: **Guatemala.**
Forty men from the *U.S.S. Tacoma* and *Niagara* went inland to Guatemala City to protect the American Legation and other American interests during local fighting. State, 29.

1920-1922: **Siberia.**
The United States stationed a marine guard on Russian Island, Bay of Vladivostok, to protect United States radio facilities and other property. State, 29.

1921: **Panama-Costa Rica.**
American naval squadrons demonstrated for one day on both sides of the Isthmus to prevent war between the two countries over a boundary dispute. This was impliedly authorized by treaty. State, 29.

1922: **Turkey.**
In September forces from several American warships went ashore with the consent of both Greek and Turkish authorities to protect American interests when the Turkish forces were advancing on the city of Smyrna. State, 29.

1922-1923: **China.**
There were five landings by Marines from April, 1922, to November, 1923 (at Peking, Tientsin, Taku, Tungshan, and Masu Island) to protect Americans during periods of unrest. This may have been authorized by treaty. USMC, I, 122-123.

1924-1925: **Honduras.**
There were intermittent landings from February, 1924, to April, 1925, to protect American lives and property during local unrest. In March, 1924, the Denver put ashore 167 men and in September, the *U.S.S. Rochester* landed 111 additional forces. USMC, I, 123-124.

1924-1925: **China.**
From September, 1924, to December, 1924, over seven landings were made by the Marines at Shanghai to protect Americans during a period of unrest. This may have been authorized by treaty. USMC, I, 124-125.

1925: **Panama.**
As a result of strikes and rent riots, and at the request of Panamanian officials, 600 troops from the Canal Zone entered Panama City in October and remained for 11 days to maintain order. This conformed to American treaty rights. State, 29.

1926-1933: **Nicaragua.**
When local disturbances broke out in 1926, the Nicaraguan Government requested that American forces undertake to protect lives and property of Americans and other foreigners. In 1927, five thousand soldiers were put ashore.
Rebel political leader, Sandino, who received Communist propaganda and financial support, turned the situation into a real civil war. In January, 1928, Sandino was forced to flee to Mexico by Marine forces, but backed by Communist aid, he returned in 1930 and Nicaragua flared again. By 1933 an all-Nicaraguan Guardia Nacional became strong enough so that all U.S. Marines could leave. In all the marines had engaged in 150 clashes and lost 97 men, 32 in action. Rebel losses were approximately over a thousand.

The occupation was initiated entirely on the executive responsibility of President Coolidge. The Democrat minority bitterly criticized his policy as a "private war" and as "imperialism," but did not question the President's authority. State, 6-7; and Dupuy and Baumer, 168.

1926: China.
American forces landed at Hankow in August and September and at Chingwangtao in November to protect American interests. This may have been authorized by treaty. State, 29.

Anti-foreign incidents in China reached a climax in 1927.
In February, a U.S. expeditionary battalion landed at Shanghai, and in March, 1,228 Marine reinforcements landed there. By the end of 1927, the United States had 44 naval vessels in Chinese waters and 5,670 men ashore. In 1928, when the Nationalists had gained greater control over Chinese territory and purged themselves of Communist support, the United States reached a separate accord with the Nationalists, and, in July, signed a treaty which constituted United States recognition of the Nationalist Government. A gradual reduction of United States forces in China began in the same month. State, 7-8.

1932: China.
In February, American forces landed at Shanghai to protect American interests during the Japanese occupation of the city, apparently under treaty. State, 30.

1933: Cuba.
During a revolution, United States naval forces demonstrated offshore, but no forces landed. This was pursuant to the Treaty of 1903. State, 30.

1934: China.
In January, marines from the U.S.S. Tulsa landed at Foochow to protect the American Consulate, apparently pursuant to treaty rights. USMC, I, 129.

1936: Spain.
From July 27, through September 19, the Quincy, carrying a marine guard, served in the Spanish war zone. The vessel touched at several ports, sometimes evacuating American nationals. (Master rolls.)

1937-1938: China.
Beginning on August 12, 1937, several marine landings were made at Shanghai to protect American interests during Sino-Japanese hostilities. Marine strength in China, assigned under the International Defense Scheme, reached 2,536 men by September 19. USMC, II, 2-3.

1940: British possessions in Western Atlantic.
On September 3, President Roosevelt informed Congress that he had agreed to deliver a flotilla of destroyers to Great Britain in exchange for a series of military bases granted us on British soil along the Western Atlantic. American troops and ships occupied a number of these points in the following months. The President did not ask approval from Congress. State, 8-9.
1941: Greenland (Denmark).

In April, after the German invasion of Denmark, the U. S. Army occupied Greenland under agreement with the local authorities. Congress was not consulted, and the action appears to be contrary to an express Congressional limitation on using troops outside the Western Hemisphere. State, 8-9.

1941: Iceland.

By Presidential order, U. S. troops occupied Iceland on July 7, the same day Congress was notified. The President did not consult Congress in advance, and, in fact, the action clearly violated an express restriction that Congress had enacted a year before. Both the Reserves Act of 1940 and the Selective Service Act of 1940 provided that United States troops could not be used outside the Western Hemisphere. Iceland is generally placed with the section on Europe in each World Atlas and is some 2,300 miles away from the United States. State, 8-9.

1941: Dutch Guiana.

In November, the President ordered American troops to occupy Dutch Guiana by agreement with the Netherlands Government-in-exile. Again there was no Congressional authority for the military occupation. State, 8-9.

1941: Atlantic Convoys.

By July 7, President Roosevelt had ordered U. S. warships to convoy supplies sent to Europe to protect military aid to Britain and Russia. By September, our ships were attacking German submarines. There was no authorization from Congress. Corwin, 247.

1946: Turkey.

In April, during USSR-Iran hostilities and USSR-Turkey tensions, a U. S. carrier unit was deployed as an affirmation of U. S. intentions to shore up Turkey against Soviet imperialism. USN, 15712.

1946: Trieste.

In July, during the Trieste ownership dispute, U. S. Naval units were dispatched to the scene with open warfare imminent. USN, 15712.

1946: Greece.

During the political crisis in September, naval units were requested by the U. S. Ambassador. One carrier was on the scene. USN, 15712.

1948: Palestine.

On July 18, a Marine consular guard was detached from the U.S.S. Kearsarge and sent to Jerusalem to protect the U. S. Consular General there. One consular official was assassinated, and two Marines were wounded during the Arab-Israeli War. USMC, III, 7.

1948: Mediterranean.

On January 7, Fleet Admiral Nimitz implied Marine reinforcements sent from the U. S. to Mediterranean waters served as a warning to Yugoslavia that the 5,000 U. S. Army troops in Trieste were not to be molested. USMC, III, 5.

1948-1949: China.

A platoon of Marines was sent to Nanking in November, 1948, to protect the American Embassy when the fall of the city to Communist troops was imminent. The guard was withdrawn on April 21, 1949. In November and December, Marines were sent to Shanghai to aid in the evacuation of American Nationals and to protect the 2,500 Americans in the Communist encircled city. USMC, III, 8-9.

Communist armies of North Korea invaded South Korea on June 25, 1950. Later that day the United Nations Security Council denounced the aggression, called for an immediate cease-fire, and asked member nations "to render every assistance to the United Nations in the execution of this resolution." On June 27, President Truman announced that he had "ordered United States air and sea forces to give the Korean Government troops cover and support" and had ordered the Seventh Fleet to prevent any attack on Formosa and also to prevent the Chinese Government on Formosa from conducting any air and sea operations against the Communist mainland. The Security Council, on the same day, adopted a resolution "that the members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."

The Department of State prepared a memorandum, on July 3, 1950, which defended the authority of the President to take the necessary action to repel the attack on Korea, using the argument that the "President, as Commander in Chief of the Armed Forces of the United States, has full control over the use thereof."

Truce talks began in July, 1951, but it was not until July, 1953, that an armistice was signed. State, 9-11.

1954-1955: Tachen Islands (China).

From July, 1954, to February, 1955, U. S. Naval units were employed in evacuation of U. S. civilians and military personnel. Five carriers were on the scene. USN, 15712.

1956: Egypt.

On November 1 and 2, a Marine battalion evacuated over 1,500 persons, mostly U. S. nationals, from Alexandria, Egypt, during the Suez crisis. USMC, III, 34.

1957: Indonesia.

On February 14, the 3rd Marines took up station 550 miles northeast of Sumatra ready to intervene to protect U. S. nationals during the Indonesian revolt. USMC, III, 34.

1957: Taiwan.

During Communist shelling of Kinmen Island in July, naval units were dispatched to defend Taiwan. Four carriers were on the scene. USN, 15712.

1958: Venezuela.

In January, when mob violence erupted in Caracas, a company of Marines embarked on board the U.S.S. Des Moines and remained on station off Venezuela ready to protect American interests. USMC, III, 36.


In March, a Marine company, attack squadron, and helicopter squadron were deployed with elements of the Seventh Fleet off Indonesia prepared to protect U. S. citizens and interests. USMC, III, 36.

1958: Lebanon Operation.

A period of civil unrest began in Lebanon in May, 1958, led by Moslems who reportedly were aided by the United Arab Republic's President Nasser. When a pro-Nasser coup took place in Iraq July 14, President Chamoun of Lebanon appealed for assistance to President Eisenhower. On July 15, President Eisenhower sent 5,000 marines to Beirut to "protect American lives" and to "assist" Lebanon in preserving its political independence. The President publicly stressed the provocative Soviet as well as Cairo radio broadcasts. Eventually, 14,000 American soldiers and marines occupied strategic areas in Lebanon, but with orders not to shoot unless shot at.
On the day of the initial landings, the United States asked the United Nations Security Council to establish an international police force to preserve Lebanon's independence, but the Soviet delegate vetoed the American resolution. Further, the Soviet Union announced that it would hold military maneuvers near the Turkish and Iranian frontiers.

On August 21, the General Assembly passed a resolution calling on the member states to respect one another's territorial integrity and observe strict non-interference in one another's internal affairs. The resolution requested that practical arrangements be made leading to the withdrawal of troops from Lebanon. On September 26, the United States notified the Secretary-General of the United Nations that it had been possible to withdraw a portion of the American forces and to work out a schedule to withdraw the remainder by the end of October. State, 11-12.


On the period from November 20, 1959, to February 15, 1960, the 2d Marine Ground Task Force was deployed to protect U. S. nationals during the Cuban crisis. USMC, III, 42.

1961: Show of Naval Force in Dominican Waters.

On May 30, Dominican dictator Rafael Trujillo was assassinated. Political conditions in the Dominican Republic steadily deteriorated during the summer and early autumn. Then, on November 15, General Hector Trujillo and General Jose Trujillo, brothers of the slain dictator, returned to the island. Secretary Rusk stated three days later they appeared "to be planning an attempt to reassert the dictatorial domination of the political and economic life of the country . . ." He added: "the United States is considering the further measures that unpredictable events might warrant."

On November 19, U. S. Navy ships took up positions three miles off the Dominican coast, and Navy jet planes patrolled the shoreline. The show of force produced the desired result because the Trujillos and other members of the family departed for Miami before the day was over. According to one authority, "It later transpired that the Kennedy Administration was prepared to order U. S. Marines ashore if President Joaquin Balaguer had so requested or if the Trujilos had ousted Balaguer from the presidency."

1962: Thailand.

On May 17, the 3d Marine Expeditionary Unit landed in Thailand to support that country during the threat of Communist pressure from outside. On July 1, President Kennedy ordered 1,000 Marines in Thailand to return to their ships, and on July 30, the U. S. completed the withdrawal of the 5,000 Marines sent there. USMC, III, 56-57.

1962: Cuban Naval Quarantine.

On October 24, confronted with a build-up of Soviet surface-to-surface missile bases in Cuba, President Kennedy ordered a quarantine 500 miles wide in the waters around Cuba. The blockade was aimed both at preventing delivery of additional Russian missiles and obtaining the removal of those offensive Russian weapons already in Cuba.

The crisis appears to date from Tuesday, October 16, when the Government's inner circles first began to discuss the idea of a blockade. On October 20, the First Armored Division began to move out of Texas into Georgia, and five more divisions were placed on alert. The base at Guantanamo Bay was strengthened. The Navy deployed 180 ships into the Caribbean. The Strategic Air Command was dispersed to civilian airfields, and the B-52 bomber force was ordered into the air fully loaded with atomic bombs.

On October 22, President Kennedy went on television to explain before the nation the situation in Cuba and the reasons for the quarantine. The President first notified members of Congress that same day. On Tuesday, October 23, the Council of the Organization of American States formally
authorized by a unanimous vote "the use of armed forces" to carry out the quarantine of Cuba. Apparently, one day later the blockade went into effect.

Other notable dates include October 27, when the Defense Department announced that 24 troop-carrier squadrons of the Air Force Reserve were being recalled to active duty; October 28, when Premier Khrushchev in a message to President Kennedy, announced he had ordered the dismantling of Soviet missile bases in Cuba; November 11, when Deputy Secretary of Defense Gilpatric announced the United States had counted 42 medium-range missiles being removed from Cuba on Soviet ships; and November 20, when President Kennedy announced he had ordered the lifting of the naval blockade.

On December 6, U. S. Navy planes verified that 42 Soviet jet bombers were being transported home from Cuba. The United States apparently closed the book on the Cuban crisis about this date. LRS, I, 24-25; and LRS, II, 1-18.

1963: Haiti.

On May 4, a Marine battalion was positioned off the coast of Haiti for five days when trouble developed in that country. USMC, III, 61.

1964: Congo.

In August, the United States sent four C-130 transport planes with approximately 100 flight and maintenance crews and paratroopers to protect the aircraft while on the ground. The purpose was said to be to provide airlift for the regular Congolese troops to combat areas during a rebellion against the government of Premier Tshombé and President Kasavubu. Earlier, in July, the United States had sent 68 officers and men to Leopoldville to advise the Congolese army. Both actions followed the withdrawal on June 30 of the last of the 20,000-man force which the United Nations had placed in the Congo in order to keep the peace.

Subsequently, in November, rebels in the Stanleyville area held over a thousand foreign civilian hostages, including 60 Americans, who were subjected to many atrocities and whom the rebels threatened to kill. When negotiations between the rebels and the United States failed, the United States and Belgium arranged to land Belgian paratroopers to undertake a humanitarian rescue operation.

On November 24, the force was air-dropped by U. S. transport aircraft in the Stanleyville area and liberated most of the hostages. Belgian paratroopers undertook a second rescue operation on November 26, capturing the rebel town of Paulis. In all, about 2,000 foreigners were rescued. President Johnson assumed "full responsibility" for the United States role in the decision to transport the Belgian troops in American planes. Davids, 296-310.


At the request of the Laos Government, unarmed United States jet planes began flying reconnaissance missions over the Plain des Jarres in May, 1964, in order to gather information on rebellious forces headed by leftist Pathet Lao. After two jets were shot down on June 6 and 7, President Johnson decided to carry out a limited reprisal. On June 9, U. S. Navy jets attacked a Communist gun position in north central Laos, and this was followed by 36 "sorties" which knocked out a number of Communist posts. The United States has continued to play a role of air support in Laos to date. State, 30.


Following the Geneva Accords of 1954 which provisionally divided Vietnam at approximately the 17th parallel, the Communists held control of the northern half of the country while anti-Communists maintained a precarious hold on the south. A U. S. Military Assistance Advisory Group, which assumed responsibility for the training of the South Vietnamese army after the French relinquished command, was steadily expanded as Communist
guerrilla activity supported and directed from the north intensified. By 1962, there were 12,000 U. S. advisors.

In August, 1964, at the request of President Johnson following an attack on American naval vessels in the Gulf of Tonkin, Congress passed the Gulf of Tonkin Resolution, unanimously in the House and by a vote of 88-2 in the Senate. The Resolution expressed approval and support of "the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression." Also it provided the United States is "prepared as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom." (South Vietnam is a protocol state of SEATO). The joint resolution was signed into law on August 10 as Public Law 88-408.

Both this resolution and the SEATO agreement itself have been claimed as authority for United States activities in Vietnam. In addition, several appropriations laws providing for support of the hostilities in Southeast Asia are purported to remove authority for our engagement there. The Tonkin Gulf Resolution was subsequently repealed by P. L. 91-672 (Jan. 12, 1971).

Since assuming office in January, 1969, President Nixon has ordered the withdrawal of 364,000 troops. The latest reduction will lower the total of American military forces in South Vietnam to 184,000 by December, 1971. State, 12-14.

1965: Dominican Republic.

A revolt broke out in the Dominican Republic on April 24, 1965, and on April 28 President Johnson announced that Dominican military authorities had requested assistance from the United States in protecting the lives of United States citizens living in that country. The President added that he had ordered the Secretary of Defense to put the necessary troops ashore to protect Americans, and that this assistance would be available to the nationals of other countries as well.

The first United States military contingent to the Dominican Republic consisted of 400 men. On May 2, the President announced that he was sending 200 more men immediately and that an additional 4,500 would go at the earliest possible moment. He cited the increasing Communist control of the revolutionaries, as well as the urgent need for food, medical supplies, and other humanitarian assistance to the Dominican people, as reasons for his decision. At their peak, 21,500 United States troops were in the Dominican Republic.

On May 5, a five-man OAS peace commission succeeded in achieving a cease-fire agreement among the contending forces, and on May 6, the OAS voted to create an Inter-American Peace Force to assist in restoring peace and order. The arrival on May 21 of the first contingent of a Brazilian force permitted the withdrawal of 1,700 United States troops, and as other foreign contingents arrived, additional United States troops were withdrawn. By the end of 1965, the Inter-American Peace Force totaled 9,400. In the meantime, a formula to restore constitutional government, worked out by an OAS Ad Hoc Commission, made considerable progress. The inauguration of a civilian, Hector Garcia Godoy, as provisional president on September 3, 1965, was a major step toward the restoration of stability. State, 14-15.

1967: Syrian Coast.

In June of 1967, during the Arab-Israeli War, President Johnson ordered the U. S. 6th Fleet to move to within 50 miles of the Syrian Coast as a sign to the Soviet Union it "would have to deal with us" if it entered the conflict. The action was taken as a counter-move against the Soviet Union after Premier Kosygin told President Johnson over the hotline that the Soviets "had reached a decision that they were prepared to do what was necessary, including using the military" to stop the advance of Israeli troops into Arab territory, and would give the Israelis just five hours to halt their operations. Star, D-4.
1967: Congo.
In July, Lt. General Mobutu, who had now become President of the Congo, was challenged by a revolt of about 170 white mercenaries and a few hundred Katangese troops. The Congolese army numbered around 32,000, but required outside logistical support in order to crush the revolt.

Responding to a direct appeal from President Mobutu, on July 8 the United States sent three C-130 military transport aircraft to the Congo, with their crews, to provide the Central Government with "long-range logistical support." Approximately 150 American military men arrived with the planes. The small American task force immediately began to drop several plane loads of paratroopers and their equipment and continued to fly troops until November. On July 15, the first aircraft was withdrawn; on August 4, the second; and on December, the last. LRS, III.

1970:3 Cambodia.

From April 30 to June 30, U. S. troops attacked Communist sanctuaries in order to ensure the success of the program of Vietnamization. LRS, IV, 57.

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Clark, James R., "Right to Protect Citizens in Foreign Countries by Landing Forces." Memorandum of the Solicitor for the Department of State, October 5, 1912. (3rd rev. ed. with suppl. appendix up to 1933) (Not cited, but used generally as cross-check.)

Corwin, President: Office and Powers (3d rev. ed. 1948). (Cited as Corwin.)

3Eight military engagements which were subsequently disavowed or repudiated have been omitted from the above list of precedents. These are:
1812: Amelia Island, Spanish territory. United States disavowed General Matthews' occupation of the area when he made himself the head of a revolutionary party. State, 16.

1824: Puerto Rico, Spanish territory. Commodore Porter was later court-martialed for exceeding his powers when he forced an apology from a group of pirates who had insulted American naval officers. State, 17.

1842: Mexico. Commodore T.A.C. Jones occupied Monterey in the mistaken belief that war had started between the United States and Mexico. He withdrew and saluted, thereby disavowing his action. State, 18.

1857: Nicaragua. An American naval commander compelled the leader of a rebel group who was trying to seize Nicaragua to leave the country. The American commander's action was tacitly disavowed by the Secretary of State and apparently repudiated by President Buchanan. State, 20.

1866: Mexico. After General Sedgwick obtained the surrender of the Mexican border town of Matamoros, he was ordered to withdraw and his act was repudiated by the President. State, 22.

Late 1880's: Bering Sea. The United States paid nearly $500,000 to Britain in damages resulting from the seizure of British sealers by United States patrol boats outside the three mile limit. U. S., 586.

1893: Hawaii. On January 16, Marines from the schooner U.S.S. Boston landed at Honolulu and were dispatched until April 1 to protect American lives and property, after the deposition of Queen Liliuokalani. The action was later disavowed by the United States. LRS, III, 53.

1912: Honduras. A small naval force landed at Puerto Cortez to protect an American-owned railroad there. Apparently Washington disapproved and the men were withdrawn in a day or two. State, 27.

4Only the primary source is cited, although in several instances the summary was prepared from a composite of information published in more than one of the sources referred to herein.
WAR POWERS LEGISLATION 111


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B. FIVE UNITED STATES MILITARY ACTIONS ABROAD UNDER A DECLARATION OF WAR

War of 1812. (1812-1815)

On June 18, Congress approved a declaration of war against England. The war was officially concluded by the Treaty of Chent, December 24, 1814, but the major battle of the war occurred with an American victory at New Orleans in January, 1815.

War Between the United States and Mexico. (1846-1848)

Congress declared war on May 11, 1846. The Treaty of Guadalupe Hidalgo ended the conflict on February 2, 1848.

Spanish-American War. (1898)

On April 25, 1898, the United States declared war against Spain. The peace treaty ending hostilities was signed in Paris on December 10, 1898.
World War I. (1917-1919)

The United States declared war on Germany on April 6, 1917, and against Austria on December 7, 1917. The Treaty of Versailles was signed on June 28, 1919. The treaty was never ratified by the United States.

World War II. (1941-1945)

The United States declared war on Japan December 8, 1941, and on Germany and Italy December 11, 1941. The war ended in Europe on May 8, 1945. Japan signed the formal surrender in Asia on September 2, 1945.

C. FORTY-THREE MAJOR MILITARY ACTIONS
FOR BROAD STRATEGIC AIMS

1798-1800: Naval War with France. The U. S. fought primarily for the protection of its free commerce.

1801-1805: War with Tripoli. The U. S. upheld its right of free commerce.

1812:

1814-1825: Caribbean Area. The U. S. sunk or captured 65 vessels to protect American commerce.

1815:

Second Barbary War. The U. S. acted to provide effective protection to American commerce.

1844:

Mexico. President Tyler deployed our troops to protect Texas one year before annexation.

1846:

Mexico. President Polk ordered General Scott to occupy disputed territory between the Nueces and the Rio Grande.

1853-1854:


1864:

Japan. U. S. Naval units participated in a joint effort to force open the Straits of Shimonoseki for the free conduct of international commerce.

1865-1866:

Mexican border. General Sheridan and 50,000 U. S. troops backed up a demand from Secretary of State Seward that French forces withdraw from Mexico.

1888-1889:

Samoa Islands. Germany and the United States were close to warfare due to their rivalry over naval privileges in the Samoans.

1899-1901:

Philippine Islands. The United States used 126,468 troops against the Philippine Insurrection in order to preserve and foster any rights it had acquired from Spain.

1900-1901:

Boxer Rebellion (Peking). The U. S. sent 5000 troops and marines to relieve foreign legations in Peking and to keep open communication between Peking and the sea.

1903-1914:

Panama. Marine guards landed and remained on the Isthmus to protect construction of the Canal.

1906-1909:

Cuba. The U. S. temporarily occupied Cuba to preserve order.

1912:

Cuba. American troops remained three months to preserve order.

1915-1934:

Haiti. By force of arms U. S. troops took over Haiti in part to forestall European intervention.

1916-1924:

Dominican Republic. U. S. troops occupied Santo Domingo and supported a military governor in the Dominican Republic.

1917:

Armed Atlantic Merchant Ships. President Wilson armed American merchant vessels with guns and gunners assigned from the Navy.

1917:

Cuba. Several American landings were made to preserve order.

1918-1920:

Expeditions to Russia. The U. S. contributed some 14,000 men to aid the anti-Bolsheviks and to forestall Japanese expansionist plans in Siberia.
1926-1933: Nicaragua. The occupation of Nicaragua foiled the first attempt of Communism to infiltrate Latin America.


1937-1938: China. Some 2500 marines helped preserve order in Shanghai under the International Defense Scheme.

1940: British possessions in Western Atlantic. U. S. occupied military bases on British soil to protect long range national security interests.

1941: Greenland. The U. S. Army occupied Greenland for the same reason as above.

1941: Iceland. U. S. troops occupied Iceland for the same reason as above.

1941: Atlantic convoys. U. S. warships were used to convoy military supplies to Britain and Russia.

1941: Dutch Guiana. American troops occupied Dutch Guiana for same reason as above.

1946: Turkey. A U. S. carrier unit was deployed to affirm U. S. intentions to shore up Turkey against Soviet imperialism.

1950-1953: Korean War. U. S. forces acted to assist the Republic of Korea in order "to restore international peace and security in the area."

1957: Taiwan. U. S. naval units were dispatched to defend Taiwan.

1958: Lebanon. A primary purpose of using U. S. armed forces in Lebanon was to assist Lebanon in preserving its political independence.

1961: Dominican Waters, U. S. Navy ships took up positions three miles off the Dominican coast and Navy jet planes patrolled the shoreline to prevent a revolution in the Dominican Republic.

1962: Thailand. Some 5000 marines landed to support Thailand during a threat of external Communist aggression.

1962: Cuban Naval Quarantine. President Kennedy ordered a naval quarantine of Cuba to prevent delivery of additional Russian missiles and to obtain the removal of those already in Cuba.

1963: Haiti. A marine battalion was positioned off Haiti when trouble developed there.

1964: Congo. A task force of four U. S. C-130 transport planes with paratrooper guards was sent to the Congo to provide airlift for the regular Congolese troops against a Communist-assisted rebellion.


1964-1971: Laos. The United States has supported the free government of Laos, particularly with air missions.

1965: Dominican Republic. The threat of a Communist takeover and the need to provide humanitarian assistance to the Dominican people were major reasons for the American landings.

1967: Syrian Coast. During the Arab-Israeli war, the U. S. 6th Fleet moved to within 50 miles of the Syrian Coast as a sign to the Soviet Union it "would have to deal with us" if it entered the conflict.

1967: Congo. A task force of three U. S. C-130 transports and 150 men ferried Congolese paratroopers in order to crush a revolt against Mobutu's government.

1970: Cambodia. U. S. troops were ordered into Cambodia to assist the program of Vietnamization.
D. EIGHTY-ONE HOSTILITIES WITH ACTUAL COMBAT OR ULTIMATUMS

1798-1800: Quasi-war with France
1800: West Indies
1801-1805: War with Tripoli
1806: Mexico
1806-1810: Gulf of Mexico
1814-1825: Caribbean area
1815: Second Barbary War
1816-1818: Spanish Florida
1817: Amelia Island (Spanish Territory)
1820: West Africa
1820-1822: West Coast of South America
1822: Cuba
1823: Cuba
1825: Cuban Keys
1827: Greece
1828: West Indies
1830: Haiti
1831-1832: Falkland Islands (Argentina)
1832: Sumatra
1835: Samoan Islands
1837: Mexico
1840: Fiji Islands
1841: Drummond Islands (Pacific Ocean)
1841: Samoan Islands
1943: West Africa
1845: African coast
1846: Mexico
1850: African coast
1851: Turkey (Apparently no shots fired, but the force displayed amounted to a compulsory ultimatum)
1851: Johanna Island (East of Africa)
1853: China
1853: West Coast of Africa
1853-1854: Japan (Commodore Perry's expedition including 10 ships and 2000 men conveyed an imminent threat of force.)
1854: China
1854: Greytown, Nicaragua
1854: West Coast of Africa
1854: Okinawa
1855: China
1855: Fiji Islands
1855: Uruguay
1856: China
1858: Fiji Islands
1858: African coast
1859: African coast
1859: Paraguay (The Naval display of force amounted to compulsion.)
1863: Japan
1864: Japan
1865-1866: Mexico border (General Sheridan and 50,000 American troops backed up the demand of Secretary of State Seward that French forces leave Mexico.)
1867: Formosa
1867: Nicaragua
1870: Mexico
1871: Korea
1888: Haiti (American Commander issued an ultimatum threatening force if necessary.)
1888-1889: Samoan Islands (Three powers had warships on the scene during an intense rivalry over claims in the islands. War was close when a hurricane destroyed German and American vessels.)
1891: Bering Sea
1894: Brazil
1899: Samoan Islands
1900-1901: Boxer Rebellion (China)
1899-1901: Philippine Insurrection
1910: Nicaragua (Armed combat was "hourly expected.")
1911: Honduras (The American Commander expressly threatened to use force if necessary.)
1914: Dominican Republic
1914: Occupation of Vera Cruz, Mexico
1915: Haiti
1916: Dominican Republic
1916-1917: Pershing Expedition into Mexico
1917: Armed Atlantic merchant ships
1918-1919: Mexico
1918-1920: Expeditions to Russia
1926-1933: Nicaraguan occupation
1927-1928: Armed actions in China
1941: Atlantic convoys
1946: Trieste
1948: Palestine
1950-1953: Korean War
1962: Cuban naval quarantine
1964-1971: Armed actions in Laos
1965: Dominican Republic
1964-1971: Vietnam War
1967: Syrian coast
1970: Cambodia

E. NINETY-THREE MILITARY ACTIONS LASTING MORE THAN THIRTY DAYS

1798-1800: Quasi-War with France
1801-1805: War with Tripoli
1806-1810: Gulf of Mexico
1813-1814: Marquesas Islands (South Pacific)
1814-1825: Caribbean Area
1815: Second Barbary War
1816-1818: Spanish Florida
1820-1822: West Coast of South America
1823: Cuba
1827: Greece
1831-1832: Falkland Islands
1835-1836: Peru
1838-1839: Sumatra
1843: West Africa
1843: China
1844: Mexico
1846: Mexico
1852-1853: Argentina
1853-1854: Japan
1854: China
1854: Okinawa
1855: Fiji Islands
1855: Uruguay
1856: China

1858-1859: Paraguay
1858-1859: Turkey
1865-1866: Mexican border
1866: China
1868: Japan
1873: Colombia
1873-1882: Mexico
1885: Colombia
1888-1889: Samoan Islands
1891: Bering Sea
1894: Nicaragua
1898-1899: China
1899: Samoan Islands
1899-1901: Philippine Islands
1900-1901: "Boxer" Rebellion (Peking)
1901: State of Panama
1902: State of Panama
1903: Panama
1903-1904: Abyssinia
1903-1904: Syria
1904: Dominican Republic
1904-1905: Korea
1906-1909: Cuba
1907: Honduras
F. ONE HUNDRED MILITARY ACTIONS BY THE UNITED STATES OUTSIDE THE WESTERN HEMISPHERE

1801-1805: War with Tripoli
1813-1814: Marquesas Islands
(South Pacific)
1815: Second Barbary War
1820: West Africa
1827: Greece
1832: Sumatra
1835: Samoan Islands
1838-1839: Sumatra
1840: Fiji Islands
1841: Drummond Island
(Pacific Ocean)
1841: Samoan Islands
1843: West Africa
1843: China
1844: China
1845: African coast
1849: Smyrna (Now Izmir,
Turkey)
1850: African coast
1851: Turkey
1851: Johanna Island
(east of Africa)
1853: China
1853-1854: Japan
1854: African coast
1854: Okinawa
1854: China
1855: China
1855: Fiji Islands
1856: China
1927: China
1936: Spain
1937-1938: China
1940: Occupation of British possessions in Western Atlantic
1941: Occupation of Greeneland
1941: Occupation of Dutch Guiana
1941: Occupation of Iceland
1948: Mediterranean
1950-1953: Korean War
1954-1955: Tachen Islands (China)
1958: Lebanon
1959-1960: Cuba
1962: Thailand
1962: Cuban naval quarantine
1964-1971: Laos
1964-1971: Vietnam
1964: Congo
1965: Dominican Republic
1967: Congo
1970: Cambodia

1858: Fiji Islands
1858: African coast
1858-1859: Turkey
1859: African coast
1859: China
1860: Kissembo (West Africa)
1863: Japan
1864: Japan
1864: Japan
1866: China
1867: Formosa
1868: Japan
1871: Korea
1874: Hawaii
1882: Egypt
1888: Korea
1888-1889: Samoan Islands
1889: Hawaii
1894-1896: Korea
1894: China
1895-1896: Korea
1898-1899: China
1899-1901: Samoan Islands
1899-1901: Philippine Islands
1900-1901: “Boxer” Rebellion (Peking)
1903-1904: Syria
1903-1904: Abyssinia (Ethiopia)
1904: Morocco
1904: Korea
1911-1912: China
1912: Turkey
<table>
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<td>Second Barbary War</td>
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<td>1817</td>
<td>Amelia Island</td>
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<td>1820</td>
<td>West Africa</td>
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<td>Greece</td>
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</tr>
<tr>
<td>1832</td>
<td>Sumatra</td>
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</tr>
<tr>
<td>1835</td>
<td>Samoan Islands</td>
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<td>1839-1843</td>
<td>Sumatra</td>
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<td>Drummond Island</td>
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<td>1842</td>
<td>Samoan Islands</td>
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<tr>
<td>1843</td>
<td>West Africa</td>
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</tr>
<tr>
<td>1845</td>
<td>African coast</td>
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<td>1850</td>
<td>African coast</td>
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<td>1851</td>
<td>Johanna Island, east of Africa</td>
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<td>1853</td>
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<td>1854</td>
<td>African coast</td>
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<tr>
<td>1854</td>
<td>Okinawa</td>
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</table>

1 Indicates operation occurred under Act of 1819 or Treaty of August 9, 1842, with Great Britain, both relative to the suppression of slavery.

2 Indicates military activity may have occurred pursuant to broad interpretation of authority conferred by certain Acts of Congress against piracy. See Act of March 3, 1819 (3 Stat. 510), Act of January 14, 1823 (3 Stat. 720), and Act of August 5, 1861 (12 Stat. 314).
<table>
<thead>
<tr>
<th>Year</th>
<th>Military Operation</th>
<th>Legislation</th>
<th>Treaty</th>
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<tbody>
<tr>
<td>1855</td>
<td>China</td>
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<td>Panama</td>
<td>X</td>
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<tr>
<td>1858</td>
<td>African coast</td>
<td>X</td>
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<td>1859</td>
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<td>Paraguay</td>
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</tr>
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<td>Panama</td>
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<td>Japan</td>
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</tr>
<tr>
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<td>1873</td>
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<td>1888-1889</td>
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<td>1911-1912</td>
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<td>1916</td>
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<td>Pershing Expedition into Mexico</td>
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<td>China</td>
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<td>1937-1938</td>
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<tr>
<td>1950-1953</td>
<td>Korean War</td>
<td>X (U. N. Charter)</td>
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</tr>
<tr>
<td>1957</td>
<td>Taiwan</td>
<td>X X</td>
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</tr>
<tr>
<td>1958</td>
<td>Lebanon Operation</td>
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3 Though reliance was also placed on the U. N. Charter, the Truman Administration based its authority to commit troops squarely on the President's independent Constitutional authority. Rogers, discussion supra, note 55, at S7197.

4 In fact President Eisenhower sent troops into Lebanon without seeking specific Congressional approval and without specifically basing has authority on the 1957 Middle East Resolution. Id.
<table>
<thead>
<tr>
<th>Year</th>
<th>Military Operation</th>
<th>Legislation</th>
<th>Treaty</th>
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<tbody>
<tr>
<td>1962</td>
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<td>Thailand</td>
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<td>1964-1971</td>
<td>Vietnam</td>
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<td>1964-1971</td>
<td>Laos</td>
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<tr>
<td>1970</td>
<td>Cambodia</td>
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</table>

5 According to Secretary of State Rogers, "the Cuban Resolution, unlike the other area resolutions, contained no grant of authority to the President." Id.