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**The War Powers Act of 1973 and Its Impact on
the U.S. War Decision Making in Foreign policy**

**An extended essay submitted in partial fulfilment of the requirement
for a master's degree in Anglo-Saxon literature and civilization**

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Dedication

I dedicate my work to my beloved mother I am forever in your debt, your encouragement and prayers helped me to be who I am today. I am eternally thankful to you.

Abderrazek Abbaci

To my beloved parents, who provided me with their infinite support and love, all my family members, my friends...Thanks for being in my life.

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Abstract

The purpose behind this thesis is to examine whether or not the War Powers Resolution of 1973 achieved the desirable effects on the newly American foreign policy following the Second World War in general, and specifically on the process that the responsible branches of the American government follow when they deploy troops overseas in order to defend democracy and preserve peace whilst maintaining the American national interest on the globe or when they raise and support these deployed armed forces without the need to formally declare war. In addition this paper tackles a range of conflicts which the United States took part in; a few of them are prior to the passage of the War Powers Resolution of 1973 and contributed in creating it whereas the rest will be examples to decide on the success or the failure of the examined resolution of 1973.

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Acronyms

WPR: War Powers Resolution

USSR: Union of Soviet Socialist Republics

U.S.: The United States

CIA: Central Intelligence Agency

FBI: Federal Bureau of Investigation

NFL: National Liberation Front

NIE: National Intelligence Estimate

NSA: National Security Agency

General Introduction

As soon as the United States became a real superpower after the Second World War, the U.S. went for the role of the peacekeeper, a peace, which it was maintained by the United States through the diplomatic approach as well as through force when it was needed. Furthermore the 20th century also forged the United States foreign policy considering that the U.S. participated in various wars and conflicts during this period of time; some of these wars were enforced and on global scale whilst others took the American troops to the opposite side of the globe in small foreign lands for ambiguous reasons, proved to be costly, and above all achieved nothing but the public backlash and the political turmoil within the domestic sphere.

The wars and the conflicts that United States partakes were the catalyst on what is viewed as the tug of war between two of the three branches of the government i.e. the executive v. legislative, over their respective constitutional rights when it comes to war related matters such as whom between the Congress and the president can declare war and conduct military operations.

In the last third of 20th century, the persistent disagreement between these two branches resulted in the creation of the highly controversial War Powers Act of 1973. A resolution that was introduced by the Congress to fulfil the intent of the framers of the Constitution, as well as to restrain both the executive and legislative branches from shoving the United States in unnecessary and expensive wars.

This extended essay is supposed to answer the following questions:

- What is the main reason behind the creation of the War Powers Resolution of 1973? In addition, what are its definition and sections?

- How did the U.S. Constitution initially divide the war powers between the executive and the legislative branches?
- To what extent did the War Powers Resolution of 1973 succeeded or not to reform the presidential decision-making in war related matters.

Regarding the main motive behind this extended essay is to answer whether or not the War Powers Resolution had any impact on the U.S. government i.e. the legislative and the executive, when it comes to involving the military forces into foreign wars and crises and in order to answer this question we will use the descriptive approach which involves data collection: Books, Articles, and other reliable sources...

Furthermore, this dissertation is divided into two chapters; the first chapter revolves around the prominent American foreign policies after the Second World War until the creation of the War Powers Resolution of 1973, and besides from shedding lights on some major conflicts during this time period which correspondingly contributed in the creation of the War Powers Resolution thus a special emphasis was given to the Vietnam War. This chapter will provide the reader with a background about the U.S. involvement in the foreign affairs and the crises prior to the creation of the War Powers Resolution of 1973. While in the course of the second chapter, we will cover the controversies that surround this controversial resolution and examine its impact on the development of number of international conflicts and crises that the United States took part in later on.

**1. The American Foreign Interventions
from 1945 until 1973 and the Creation
of the War Powers Resolution**

1.1 Introduction

During the late 20th century, the United States reached the global hegemony; a status which was challenged earlier by the USSR following the Second World War, and resulted in these two superpowers to wrestle over the world domination throughout the second half of 20th century on a global scale to prove supremacy over the other camp. This chapter aims to shed light on the shift that happened during the second half of the 20th century on the American role on the foreign affairs and especially the crises that emerged internationally due to the pharaonic procedures that had been employed by the U.S. to prevent USSR expansion both as an ideology and its territory, which correspondingly developed later on to an internal clash between the U.S. government branches in 1973 and resulted in the creation of the War Powers Resolution. Furthermore, this chapter will provide a brief look on the development of the war powers throughout the American history, in addition a clear description of the provisions of the War Powers Resolution of 1973 were given in this research to explain the content of the resolution.

1.2 The U.S. Foreign Policy after World War II

After the Second World War concluded the United States chose not to revert to the “normalcy” policy (non-intervention) unlike the previous major war, the First World War, in which the country pursued a more ideal approach, as both presidents Warren G. Harding (1921-1923) back to “normalcy” (Harding, 1921) and especially the President Woodrow Wilson (1913-1921) ideas in the form of the Fourteen Points and the League of Nations failed in giving birth to the new world order or as Woodrow Wilson put it, “A peace without victory.” (Wilson, 1917) On the other hand, The United States went on for an atypical strategy to restrain the Soviet Union and its ideas after defeating Nazism, and declaring involvement in the world affairs; General George Marshall in 1945 stated, “We are now concerned with the peace of the entire world.”(Ronis, 2007, p. VII)

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The U.S. and the USSR emerged as Superpowers after the war, though the United States did not only come out victorious, but also richer the gross national product went from \$886 million in 1939 to \$135 billion in 1945 unlike the Soviet Union that has sustained 24 million casualties between militaries and civilians, 14 percent of its pre-war population, in addition, the exhausted and almost bankrupt pre-war leading nations such as Britain and France assisted in establishing the new bipolar system (George Herring, 2008, p. 595-597).

Furthermore, the destruction of Nazi Germany accelerates the termination in relation between the U.S. and the USSR which was initially based on the enemy of my enemy is my friend; making these two countries besides from having opposite ideologies, but also possessing Atomic bombs after the Second World War as serious contenders to launch a Third World War.

Stalin's ambitions and hopes for expanding the soviet empire and creating a sort of a shield by absorbing a number of Eastern European countries to its sphere, whom the Red Army (the Soviet Union Army) occupied gradually after defeating Nazi Germany during the war, and through establishing communist governments in: Albania, Bulgaria, Hungary, Czechoslovakia, Romania, Poland, Yugoslavia in order to defend his nation, the USSR, from any future or potential attacks from the West. In addition, Stalin considered the occupation as the USSR natural right or reward since his nation endured huge losses in the Second World War estimated 24 million casualties (LeBrun, 2013). This was a breach of what the Allies agreed on in the person of Winston Churchill, Joseph Stalin and Franklin D. Roosevelt in the second meeting of negotiating the terms of ending the Second World War at Yalta Conference 4-10 February 1945, and against the United States attempts to establish free election in the countries mentioned above. These first glimpses of the Soviet Union reluctance during the post-war era made the United States grow more and more suspicious of the Soviet Union intentions.

1.3 The United States Actions of interventionism and the Containment Policy

1.3.1. The Containment Policy

The Containment Policy materialised from the 8000 word telegram sent by George Kennan the American Chargé d'Affaires in Moscow in 1946 answering the United States Treasury Department on the reason behind USSR disapproval of the new World Bank founded in July 1945 and International Monetary Fund 27 December 1945 and was also ordered to give analysis about the Soviet Union attentions (History.com Staff, 2009).

George Kennan indicated his objective view and critics toward the communism and Stalin's totalitarian state,

At bottom of Kremlin's neurotic view of world affairs is traditional and instinctive Russian sense of insecurity ... they have always feared foreign penetration, feared direct contact between Western world and their own, feared what would happen if Russians learned truth about world without or if foreigners learned truth about world within. And they have learned to seek security only in patient but deadly struggle for total destruction of rival power, never in compacts and compromises with it (McCauley, 2015, p. 184).

Kennan forecasting made the foundation for the U.S. foreign policy, the containment Policy, towards the Soviet Union for the next decades, moreover it pushed the West generally and Great Britain especially to take precautions towards the Soviet Union. On 5 March 1946, Winston Churchill delivered his 'Sinews of Peace' speech in Westminster College in Fulton, Missouri emphasising on the danger of communism and division happening in Europe "From Stettin in the Baltic to Trieste in the Adriatic, an iron curtain has descended across the

continent." (History.com Staff, 2010). The speech was received positively in The United States, unlike the USSR that took it as a declaration of war thus, Stalin calling Churchill a warmonger and making a comparison between the Imperialists English speaking countries and Hitler Aryan race theory raising the mistrust and hindering the relationship between the U.S. and the Soviet Union, and sowing the seeds of what will be known as the Cold war.

On 12 March 1947, Truman delivered his speech to Congress requesting 400 million dollars to assist Greece and Turkey in addition to a military aid in order to prevent these two unstable countries from falling under Soviet regime. This was considered as the first move by the United States to materialise its containment policy toward the USSR expansionist plan, Truman declared, "Should we fail to aid Greece and Turkey in this fateful hour, the effect will be far reaching to the West as well as to the East." His request was accepted and referred to as Truman Doctrine he stated, "I believe it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures" (Office of the historian, n.d.). It was passed as an act on 22 May 1947 giving Greece and Turkey the much-needed money to repair their infrastructure besides the American military protection that will lead next to the creation of the NATO on 4 April 1949 that included the U.S., Canada and several western European nations forming a military alliance against mainly the Soviet Union.

1.3.2. Marshall Plan 1948

The United States plans to contain the Soviet Union ideology and territory did not stop at the Truman Doctrine by the same token the United States passed the Marshall Plan on 3 April 1948 also called the European Recovery Program it is named after the Secretary of State George C. Marshall who introduced the plan in his speech in Harvard University on 5 July 1947. The plan was in the form of 13 billion dollar approximately to go to assist economically

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Europe, mainly Western Europe (Office of the historian, 1948.), upon 4 years from 1948 to 1952 in order to help the region gets on its feet and boost the European economies which will eventually benefit the United States since these countries will trade and purchase the American made products, goods and embrace the American economic approach, free market, on one hand, and to stop the spread and the influence of communism from reaching Western Europe on the other hand.

To no one's surprise the Soviet Union refuses to take part on the plan and urged the Eastern countries that were under its influence, are called the satellite states, to decline the United states offer by the excuse that it is an American plot to dominate the European continent they claimed, "A plan for interference in the domestic affairs of other countries" (History.com Staff, 2009), and shortly they lunched their own program to help Eastern Europe countries in the form of the Molotov Plan 1947. Nonetheless, 16 countries accepted the U.S. recovery program and to its success the gross national product in Western Europe jumped by more than 32%, from \$120,000 million to \$159,000 million. The agricultural production raised 11 percent above the pre-war level, and the industrial production risen 40% above the pre-war level (Hogan, 1997).

1.3.3. The Berlin Blockade 1948

The tension between these two superpowers caused the first major crisis of the Cold War, The Berlin Blockade in 1948, during which the Soviet Union attempted to block not only the U.S., but France and Great Britain as well from reaching West Berlin. The city was located in the middle of the Soviet Union zone, still and all, divided into four sectors among the four war Allies: USSR, France, Great Britain and the United States according to Potsdam Agreement 1945 that divided Germany into 4 temporary sectors as well. The point behind the Soviet Union blocking the railroads and the highways to West Berlin is to bring the city under

their control through isolating it from the other nations and makes it dependent on the USSR supplies. However, the U.S. and its allies provided their detached sector of the city by all the food and other necessities through the air, this operation is known as the Berlin Airlift and lasted over a year long carrying 2.3 million tons of cargo to west Berlin. As a result to the Soviet Union failing plan they lifted the blockade but that did not stop the other three countries from joining their sectors in Germany into one that will develop into a nation Federal Republic of Germany or commonly known as West Germany on 23 May 1949 while the Soviet Union established its communist government in the east of Germany under the name the German Democratic Republic (East Germany) in October 1949 (History.com Staff, 2011).

Communism was viewed by the United States as a direct threat to the American democracy, and in their pursuit in containing the Soviet Union ideology and securing their international economic interest which was evident in the United States intervenes in different nations, whether financially e.g. The Marshall Plan or military during the cold war via the proxy wars which means according to the Oxford dictionary, “A war instigated by a major power which does not itself become involved.”

1.3.4. The Vietnam War (1940-1975)

1.3.4.1. Background

Vietnam was a French colony part of the Indochina colony from the mid 1800s until the Second World War, in which the Japanese occupied the country. The Vietnamese seized the opportunity to liberate their nation during the Second World War, led by Ho chi minh forces Viet Minh (league for independence of Vietnam found in 1941 in China) and supported by the United States intelligence agency the Office of Strategic Services (OSS) since the U.S. was in warfare against Japan following the attack on Pearl Harbour on 7 December 1941(The

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Editors of Encyclopaedia Britannica, 2017). Viet Minh redeemed many parts in the north of Vietnam from the Japanese control through guerrilla warfare the Oxford Dictionary defined it as, “Engagement in or the activities involved in a war fought by small groups of irregular soldiers against typically larger regular forces.”

Days after Japan lost the Second World War and surrendered unconditionally Ho Chi Minh declared the independence of the Vietnam under the name of Democratic Republic of Vietnam on 2nd September 1945, seized Saigon in the south of Vietnam and quoting the American Declaration of independence hoping that the United States will continue helping his nation in its pursuit of independent he even offered the United States a naval base at Cam Ranh Bay but Truman refused to recognize Ho Chi Minh government. This demonstrates clearly that Ho Chi Minh favoured diplomatic relations and flexibility over the military resolutions William Duiker wrote, “Ho Chi Minh was half Lenin and half Gandhi,” (Fitzgerald, 2000)

Furthermore, the Democratic Republic of Vietnam sovereignty will only last 20 days since in 23 September 1945 France reclaimed its colony and restored Cochin China, the south part of Vietnam, next France bombarded Haiphong a coastal Vietnamese city in the north through the sea using the cruiser Suffren and the result was devastating six thousand Vietnamese were killed (Olson & Roberts, 2014, p. 23). Shortly the war broke loose marking the start of the First Indochina War expanding the war to what is nowadays Laos and Cambodia between the Viet Minh army the People’s Army of Vietnam under the general Vo Nguyen Giap and France the latter will brought back later on Bao Dai in 1949 to be the head of a puppet state the Vietnam State, Bao Dai was the emperor and abdicated the throne in 1945, the Vietnam State did achieved recognition internationally and both from Great Britain and the United States. While The Democratic Republic of Vietnam efforts in slowing the superior French forces expansion in Vietnam through guerrilla groups and requesting the

United States to support Vietnam independent failed pushing Viet Minh forces to retreat to the mountains. But in 1949 China became communist, the People's Republic of China, resulting the Democratic Republic of Vietnam to gain recognition by not only the newly communist China on 18 January 1950 but also by the USSR two days after as well, China starts providing Viet Minh by military supplies and training as well.

The significant Chinese boost led Ho Chi Minh forces to win in what is called the Boarder Campaign from 30 September to 18 October 1950 killing about twenty three hundred French officers and imprisoning another twenty five hundred and above all recovering multiple provinces in the north all the way along the Chinese borders making the contact with China easier (Gaïduk, 2003, p. 7).

1.3.4.2. The United States Involvement

In December 1950 National Intelligence Estimate (NIE) stated,

Direct intervention by Chinese Communist troops may occur at any time... it is almost certain to occur in strength whenever there is danger either that the Viet Minh will fail to maintain its military objective of driving the French out of Indochina, or that the Boa Dai Government is succeeding in undermining the support of the Viet Minh (United States, 2011, p. I)

Taking into account that the American foreign policy altered after the Second World War as previously mentioned to primarily anti-communism, this will be on the long run a big blow to the Democratic Republic of Vietnam since the nationalist Ho Chi Minh was supported by the communist China. Moreover on 8 May 1950, Truman administration approved an initial 15 million dollar aid to France to maintain stability in the Vietnam which will become gradually a total of 3 billion dollar over the next 4 years (providing 80% of the French war supplies in 1954) (Solheim, 2008, p. xix).

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Despite the generous American assistance France sat at the negotiation table at Geneva Conference 1954 due to the defeat in the Battle of Dien Bien Phu (13 March 1954 - 7 May 1954) this battle was the final nail in the French coffin compelling them at the Geneva Conference to withdraw from North Vietnam since the country will be divided at the 17 parallel temporary and within two years the elections to be held to re-unify the nation again. However, the elections never happened since South Vietnam refused by the excuse that free election cannot occur in the North and within a year the United States during President Eisenhower administration started backing the non-Communist south Vietnam, the Republic of Vietnam and its capital is Saigon, under the President Ngo Dinh Diem, an anti-Communist Catholic president, both military through sending military advisors to train the local army and financially therefore, marking the direct and the official U.S. involvement in the Vietnam alongside the distribution in creating the Southeast Asia Treaty Organization (SEATO) in order to prevent the domino effect; The President Eisenhower on 7th April 1954 during a press conference made an analogy between a row of dominos and bordering countries if the first domino fall the rest will fall as well meaning if a certain nation came under the control of the communist party the whole region surrounding that country will submit to the Soviet Union (U.S. National Park Service, n.d.) i.e. the whole Indochina becoming communist.

1.3.4.3. The Vietnam War (1955-1973)

As a result to the South Vietnam refusing to take part in the reunification elections that were promised in Geneva conference, the North starts implementing guerrilla warfare using not only the former Viet Minh fighters but also recruiting members from the south who opposed Ngo Dinh Diem government and they went by the name Viet Cong during the late 1950s and developed after in December 1960 to the National Liberation Front (NFL) in politics with the People's Liberation armed Forces of the South Vietnam as its army. Viet Cong led a series of assassination and bombing in the South Vietnam and to its success Ngo

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Dinh Diem who was backed by the United States now under the administration of John F. Kennedy initiate a program the Strategic Hamlet Plan 1962 (Operation Sunrise) to relocate civilians especially in the rural areas to more defensive places the aim from this was to isolate the Viet Cong from reaching the public but the operation concluded with massive failure due to the incompetent and corruption of Ngo Dinh Diem's government resulting the Viet Cong to gain even more members.

Moreover, The President Ngo Dinh Diem himself was losing popularity and as well as credibility due to his corruption and favouring the Catholics over the Buddhists in a nation that the majority of its people were Buddhist according to the Pentagon Papers 80% of the population were, indeed, Buddhist (United States, 2011, p. 4). As a result, the Buddhists began protesting against the Ngo Dinh Diem oppressing regime to the degree that many monks set themselves on fire (self-immolation) in 1963. John F. Kennedy voiced his disappointment from this incident resulting to block the American aid in October to Ngo Dinh Diem besides to the reason of his failing in containing the Viet Cong.

On 1 November 1963 a group of generals led by Duong Van Minh plotted a coup d'état which was successful and ended by the Ngo Dinh Diem assassination in the next day. Though the U.S. denied its involvement in this operation but the Pentagon Papers that were leaked in 1971 by Daniel Ellsberg a military analyst via the New York Times newspaper revealed that the Kennedy Administration knew beforehand and supported the plotters financially through the CIA, the Pentagon Papers points out, "As the nine-year rule of Diem came to a bloody end, our complicity in his overthrow heightened our responsibilities and our commitment in an essentially leaderless Vietnam." (United States, 2011, p. Viii)

During the same month the President John F. Kennedy was assassinated in Dallas, Texas, he was then succeeded by Lyndon B. Johnson in office on 22 November

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1963. Throughout 1964 American presidential elections Johnson despite his approach being similar to his predecessors as an anti-communist and Domino Theory advocator, he promised that the U.S. under his administration would not send the “American boys” to fight a war in place of the Vietnamese themselves. However, in reality according to the Pentagon Papers Johnson approved the Operation Plan 34A in which many South Vietnamese commandos were sent to raids in the north to conduct military and sabotage missions together with the surveillance of the U.S. Navy which led to what is known as the Gulf of Tonkin incident on 2nd August 1964 (The New York Times Archives, 1971).

The controversial incident involved the USS destroyer Maddox being attacked in the international water by three North Vietnamese Navy torpedo boats, according to David Karmes (2014) four USN F-8 Crusader jets were sent from the carrier Ticonderoga to the rescue and end up sinking one of the three torpedo boats and damaging the other two and in addition to that destroyer Turner Joy headed to the place after for reinforcement. Two days later, reports claimed that a multiple patrol torpedo boats attacked the two destroyers Maddox and Turner Joy and that the two destroyers fought alone this time since the weather was awful, this blocked USN F-8 Crusader aircraft from reaching the location until the next day. Nonetheless, Maddox and Turner Joy sunk two communist boats and damaged a couple of them (p.38).

However, many historians later on considered the second attack as controversial and they claimed that it did not occur at all, and was regarded by many as an excuse for the U.S. to intervene directly in the Indochina since the communist North Vietnam was defeating the South Vietnam. These claims and doubts were confirmed decades later through declassified NSA documents that were release to the public in 2005. Furthermore, Robert S. McNamara Secretary of Defence during the Vietnam War stated, “I think it's wrong to believe that

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Johnson wanted war but we thought we had evidence that North Vietnam was escalating.”
(Shane, 2005)

The Gulf of Tonkin incident made the President Johnson asks the Congress to approve the Gulf of Tonkin Resolution to allow the president to take “all necessary measures to repel any armed attack” and to maintain the security in the Southeast Asia region against North Vietnam such as to send troops to Vietnam without a declaration of war. The Congress passed the Gulf of Tonkin Resolution on 7 August 1964 the House passed the resolution, 416 to 0 while the Senate approved it, 88 to 2 (Kenworthy, 1964). Thereafter the total number of the American soldiers over the next four years reached 500,000 soldiers under the command of the General William Westmoreland (the Americanization of the war).

Furthermore, the Viet Cong army frequent attacks on both the South Vietnamese and the U.S. bases such as the attack on the U.S. camps at Pleiku 1965, which compelled the President Lyndon Johnson to approve the launch of the Operation Rolling Thunder; a bombing campaign against the North Vietnam using the Air Force and the Navy. The bombing included not only the Viet Cong hideouts within the South Vietnam borders but also both in North Vietnam, and secretly near the borders of Laos and Cambodia, the reason behind the Operation Rolling Thunder was firstly, to shrink the north Vietnamese military assets therefore it restrains them from waging a major war against South Vietnam. Second, is to cut off the northern Vietnamese supplies from reaching the Viet Cong in South Vietnam through what is called the Ho Chi Minh trail, which was basically a set of networks transportation that starts from the North Vietnam and goes all the way to the South Vietnam indirectly via the Laotian and Cambodian borders. Finally, by bombing North Vietnam the United States would compel them to sit at the negotiation table rather than pursuing their plan in supplying the Viet Cong (Flitton, Wignall, Tanner, & Black, 1999).

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The Operation Rolling Thunder lasted for over three years and the reports that were reaching the White House were overall positive excluding some reservations and uncertainties especially from the Secretary of Defence Robert S. McNamara who later on viewed the aircraft attacks ineffectual and it should be stopped, towards the end of the 1966 the cost of the Operation Rolling Thunder soared to 1 billion and 247 million U.S dollars (Flitton, Wignall, Tanner, & Black, 1999), but the President Lyndon Johnson did not share these doubts. Moreover despite the increasing number of casualties which were still less statistically in comparison to the enemy, the mission was deemed effective and that the United States forces were winning. The General William Westmoreland in 1967 told the media, “I am absolutely certain that whereas in 1965 the enemy was winning, today he is certainly losing.” (History.com Staff, 2009)

The Vietnam War is also called the first television war or the Living-room War as the American mass media covered the Vietnam War through television besides the traditional forms of media e.g. newspapers and the radio. The public who were supportive in the early phase of the war turned gradually to oppose the involvement of the U.S. in the Vietnam after first, since the media covered the war visually the public witnessed the military escalation in the Vietnam and the utilisation of the Napalm and Agent Orange; defined as “an herbicide widely used as a defoliant in the Vietnam War that is composed of 2,4-D and 2,4,5-T and contains dioxin as a contaminant” (Merriam-Webster.com, 2018) and not to mention the media networks breaking the covered up massacre committed by the United States army against the Village of My Lai in 1968 in which more than 500 civilian were cold-bloodedly killed including the children, women and the elderly (History.com Staff, 2009). Second, there was already a domestic unrest in the United States as the anti-war protests merged with Civil Right Movement in 1960s e.g. Muhammad Ali refusing to fight in the Vietnam War. Third,

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the Tet offensive January 1968, Tet means the new lunar year in Vietnamese, came as shock to the public considering the earlier claims that the United States was winning the war.

The Tet offensive was a set of Viet Cong and the People's Army of Vietnam coordinating attacks on major cities, approximately 84,000 troops were utilised, in the south during the lunar year celebration that caught the South Vietnam as well as the United States by surprise resulting to a number of cities to fall under the control of the Viet Cong temporary. This orchestrated attack involved also shooting the U.S. Embassy in Saigon, though this attack was shortly counter-attacked by the United States and South Vietnamese Forces and contained as half of Northern Vietnamese troops were killed (Flitton, Wignall, Tanner, & Black, 1999), yet it was a big blow for the military morale and created what the American media called "the credibility gap" between Lyndon Johnson government and the public pushing the President Johnson to refuse seeking re-election for the second presidential term in 1968.

As Richard Nixon took office, he initially followed a policy of Vietnamization meaning to leave the South Vietnamese forces to lead the war against the communist North Vietnam and while keeping the American financial support going they will drop the American military involvement in the region by a gradual withdraw of the American troops from the Vietnam. However, Nixon kept the bombardment over Cambodia secretly under the name Operation Menu for more than a year until he declared it through television; the aim was as always to cut off the Northern Vietnamese supplies from reaching the Viet Cong. The bombing was kept behind closed doors to avoid the public protests and asking approval from Congress, which the moment the bombing became public, it did indeed fuel the Anti-war protests within the United States consequently the police to shoot four Kent State University students in a shady incident in 1970. On the Congress part, they repealed the more

controversial Gulf of Tonkin Resolution to restrain the President power over expending the Vietnam War to a war that involves the whole Southeast Asia.

In spite of Nixon decreasing the American military presence in the Vietnam, the war nonetheless continued, and in 1972 the North Vietnamese Army penetrated the demilitarise zone (at the 17 parallel) and attacked the South directly using numerous tanks they seized Quang Tri Province which pushed the United States to intervene once again, and since they already pulled out most of their troops they sent instead almost a thousand aircraft to bomb the North Vietnam army both within the North and the South Vietnam compelling the North Vietnamese forces to withdraw. Furthermore, in the earliest days of 1973, the two opposite campaigns signed a peace agreement in Paris bringing the involvement of the United States in the Vietnam to an end, in addition, the Congress decided to cut off the financial aid towards the South Vietnam significantly which definitely paved the way for the Communist North Vietnam to seize Saigon, the south Vietnamese capital, and reunite the whole Vietnam in 1975 under the name of the Socialist Republic of Vietnam. As the war closed its last chapter the casualties' numbers were massive, over a million and half Vietnamese fatality and another three millions wounded in addition to a 58,000 American soldiers died during the war (Solheim, 2008, p. 125-129). Ultimately, in the following June 1973 the Congress signed The Case-Church Amendment prohibiting any American military involvement in the Vietnam and Southeast Asia generally without the Congress permission and eventually the passage of the War Powers Resolution (WPR) of 1973 over the President Nixon's veto in November 1973.

1.4 An Overview about the War Powers in U.S.A

Throughout the American history, the Congress members and the Presidents had been perpetually caught up in disagreements about the nature of their powers. Therefore, they found themselves constantly coming back to the document that indicates their powers to them,

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the Constitution, which was created in 1787. Both the executive and the legislative branches have used the Constitution to advocate and defend why they have more powers over the other branch. Furthermore, since the second half of the twentieth century, no other power has been a subject to debate more than the war powers (Cable, 2009).

In the Constitution under Article I, Section 8, the Congress has all powers to formulate the declaration of wars, to raise and support armies, maintaining the navy, and to provide for organizing, arming, and disciplining the militia (U.S. Const. art. I, § 8).

The same thing for the executive branch, the Founding Fathers likewise gave the Presidents of the United States their own specific powers and roles. Listed under Article II, Section 2, the President is the Commander in Chief of the United States army and the navy. In addition, the President has the authority to make treaties and appoint ambassadors with the advice and the consent of the Senate (U.S. Const. art. II, § 2).

The Founding Fathers intention was to give legislative branch a particular war powers meaning the Congress has the constitutional right to declare war. While the role of the U.S. President according to Alexander Hamilton, a founding father, in *The Federalist Papers* No. 69 in 1789 assures that,

The President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces (Hamilton, Madison, & Shapiro, 2009).

In addition, during the state ratification process in 1787, James Wilson, another Founding Father, remarked,

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This system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large....”(Rudalevige, 2014).

However, Charles A. Lofgren in his book *Government from Reflection and Choice* stated that the first and major public dispute over the separation of war powers between the legislative branch and the executive branch goes back to the mid 1793 following President George Washington’s announcement of the American neutrality in the war that started between England and France (Lofgren as cited in Cable, 2009). This dispute or debate occurred just roughly couple of years after the creation of the Constitution and was between Alexander Hamilton pro-president and James Madison who was in favour of the Congress when it comes to war decision making, this debate over the nature of these two branches power and what procedures should be followed when going to war continued until this day (Cable, 2009, p 13-14).

In spite of the Executive Branch advantages which is stated by the United States Founding Fathers and the Constitution, this last assures that the Legislative Branch has possession of the final constitutional war decision-making powers i.e. declaring wars while the President was granted the exclusive control over the area of the foreign affairs as well as conducting the war after the Congress declares it.

The Constitution of the United States has divided the powers between the executive branch presented by the U.S. President, which is the Commander in Chief, and the legislative branch presented by the Congress. Yet in spite of this there was an ongoing debate about the war powers over two centuries later e.g. during the Vietnam War.

1.5 An Overview about the Earlier War Powers Acts

1.5.1 The War Powers Act of 1941

Subsequent to the Japanese attack on Pearl Harbour, during the WWII, the U.S. President Franklin Roosevelt signed The First War Powers Act which is also known as War Powers Act of 1941; it was an American emergency federal law that increased the presidential power during the World War II, actually through the War Powers Act of 1941 the president was given the complete authorities to execute the World War II. The War Powers Act of 1941 authorized the president to reorganize the army, the executive branch, and the government agencies. These powers lasted until six months after the military operations concluded in Japan (Karst, Winkler, & Levy, 2000, p. 2845).

Presidents of the United States of America used the War Powers Act of 1941 several times over the next two decades. For example, neither the Korean nor the Vietnam Wars were formally declared wars, but they were considered as military interventions since neither of them was passed as a declaration of war by the Congress (Stankiewicz, 2015). For the record, the last time that the Congress officially declared war on a nation was during the Second World War.

Moving on, The War Powers Act of 1941 expanded the president's power over the Congress by allowing him to decide on military operations without the need of the Congress approval, but there were limits. The War Powers Act of 1941 was designed to allow the president to send military forces without consultation if there was an attack on the American territories or its soil, other cases must be consulted with the Congress. The Act of 1941 also includes an important peculiarity, which is that the President of the United States had the absolute powers and authorities to censor mails and other types of communications between the United States and other countries (Karst, Winkler, & Levy, 2000, p. 2845).

1.5.2 The Second War Powers Act

In the following year, a Second War Powers Act was approved on March 27, 1942, three months after passing the first in which it gave the executive branch the authority to control exclusively the World War II operations (Stankiewicz, 2015). This act had allowed the U.S. president to acquire lands for military and naval purposes and “relaxed Naturalization standards for Aliens” within the U.S. armed forces (Karst, Winkler, & Levy, 2000, p. 2845).

The second War Powers Act repealed the confidentiality and protection of census data; permitting the Federal Bureau of Investigation to use this information to locate and assists in the round up of the Japanese Americans to be hold in internment camp in California and six other states during the Second World War (Minkel, 2007).

1.6 The War Powers Act of 1973

1.6.1 An overview about the WPR

The War Powers Resolution created in November 1973 over the veto of President Nixon and mainly because of the egregious presidential violations that took place in the Vietnam War; it was passed in order to set limits on the presidential mania of powers over the Congress since the World War II.

The legislators fought to pass the War Powers Resolution in 1973, despite a presidential veto against it. This act states that the president must notify Congress within 48 hours of committing armed forces to military action and disallowed these forces from remaining more than 60 days, with an additional 30 days for withdrawal, unless there was an authorization for the use of military force or a declaration of war.

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The War Powers Resolution was created out of what the 93rd Congress concluded was the Founding Fathers' true intent; to divide the war authorities on both the president and the Congressmen equally and complementary.

This Resolution has raised many questions about how the Congress and the President work together regarding the use of the armed forces. In other words, a Congress that had according to Melvin Small, "generally rubber-stamped presidential initiatives since the Second World War now sought a position of codetermination in foreign policy making by which it meant early and full consultation and even active participation in making decisions" (as cited in Herring, 2008).

Jacob K. Javits, a sponsor of the Resolution and a Congressman claimed that the U.S. Congress was too weak in the last 30 years and declared that,

The price we have paid is too high; the death and maiming of tens of thousands of our young in Vietnam, the Watergate scandals and the shadow of impeachment, which are expressions of an almost grotesque imbalance of power between Congress and the Presidency (Sheppard, 1974).

1.6.2 Main Provisions of the Act

After World War II, it was obvious that Presidents were acting independently and without consulting Congress prior to military engagements; these military operations were most of the time conducted in order to contain the USSR and costly, and this pushed the Congress to create the War Powers Resolution of 1973 to make sure that the next presidents will be obliged to come and consult the Congress before sending military forces into hostilities through the globe, as the Constitution demand (Day, 2014). The latter, a long time ago has stressed on the fair division of power between the executive and the legislative branches since the time of the Founding Fathers,

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The War Powers Resolution of 1973 contains three elements: consultation with Congressmen, the president reports to the Congress, and the congressional action and procedures that must be follow when it comes to using military forces (Burgin, 1992, p. 219).

The War Powers Resolution, formally known as Public Law 93-148, is composed of ten sections; some include more constitutional importance than others. The first section states that PL 93-148 may be cited as the War Powers Resolution (93rd Congress, 1973, § 1). The second section lays out the constitutional authority of the Congress under Article 1, Section 8, and that of the President; that he may only introduce the armed forces into hostilities pursuant to a declaration of war, or a national crisis created by direct attack upon the United States, its territories or properties, or its armed forces (93rd Congress, 1973, § 2).

Section 2 also contains the purpose behind the creation of the War Powers Resolution,

To fulfil the intent of the framers of the Constitution of the United States and insure that the collective judgment of both the Congress and the President will apply to the introduction of United States Armed Forces into hostilities, or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, and to the continued use of such forces in hostilities or in such situations. (93rd Congress, 1973, § 2)

Section Three of the War Powers Resolution points out the idea of consultation among the President and the Congress, "The President in every possible instance shall consult with Congress before introducing United States Armed Forces into hostilities" and stress on the regularity of reporting until the American military forces are under no danger or withdrawn totally (93rd Congress, 1973, § 3).

Section Four speaks about when a declaration of war is absent, yet the military forces are involved in hostile situation in foreign lands or potential hostilities, "the President shall

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submit within 48 hours to the Speaker of the House of Representatives and to the President pro tempore of the Senate a report” (Avalon Project, 2008), and citing in his report: the circumstances that required the introduction of United States Armed Forces, the constitutional and legislative authority that allowed the president to utilise the armed forces, and the estimated duration of the hostilities or the involvement. The reporting must be done regularly by the president unless there “is no event shall he report to the Congress less often than once every six months” (93rd Congress, 1973, § 4).

Section Five, about Congressional Action, goes more in details than the prior sections. This section holds that within sixty days after a report is submitted pursuant to Section Four, the President shall bring to an end all the U.S. military operations unless the Congress: has declared war or passed a specific authorization to use U.S. Armed Forces, or has extended the time period through law, or is physically incapable to meet as a consequence of an armed attack on the United States. The extended period over sixty days period is 30 days and only if the president wrote to Congress that an inevitable military necessity had emerged and it concerns the safety of military force (93rd Congress, 1973, § 5) Ultimately, the WPR emphasises that whenever the United States Armed Forces are deployed into hostilities outside the United States territory and without a declaration of war or specific legislative approval after 60 days, “such forces shall be removed by the President if the Congress so directs by concurrent resolution” (93rd Congress, 1973, § 5).

Section 6 under the name Congressional Priority Procedures for a Joint Resolution or Bill, it stated that if any joint resolution or bill introduced as an outcome to Section 5 shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate. It sets a time frame for the House and the Senate to vote on the joint resolution or bill and that must take place before the end of sixty day time limit in Section 5 (93rd Congress, 1973, § 6).

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Furthermore, if the two chambers of the Congress disagree, conferees shall be selected and the committee of conference shall make and file a report. The next section follows the exact same line of Section 6. Section 7 sets priority procedures for a concurrent resolution (93rd Congress, 1973, § 7).

Section Eight named the Interpretation of Joint Resolution, and gives further definition of the term “introduction of United States Armed Forces”, Section Eight emphasises that the joint resolution does not change the constitutional authority of the Congress or the President, or the provisions of existing treaties. The section continues to affirm that nothing in WPR, “shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces” (93rd Congress, 1973, § 8).

Section Nine, asserts that should any part of the WPR be determined invalid, “the remainder of the joint resolution and the application of such provision to any other person or circumstance shall not be affected there by” (93rd Congress, 1973, § 9), and the final section, Section Ten, holds that the joint resolution shall take effect on the date of its enactment (93rd Congress, 1973, § 10).

1.7 Conclusion

The United States foreign policy after Second World War involved around how to contain the USSR whilst defending the world peace and the rights of the nations to enjoy liberty and democracy but the American way was full of contradiction and a mixture of protecting its ideal principles and beliefs whilst using a pragmatic approach to shield its national interest. Usually these foreign policies were shaped mostly by the United States Presidents and proved to be costly and the result was a domestic turmoil and Congress disapproval within the United States, and the separation of multiple countries worldwide together with suffering numerous casualties and destruction to the divided nations. Moreover

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The United States employing the containment policy was due to the gap that the European colonial powers left after the Second World War, as well as the decolonization and nationalist movements that were most of the time supported by the USSR left the United States worried from the so called Domino Effect which pushed the United States to step in to fill the gap and to prevent these newly independent countries from choosing communism, and in counterattack the United States begins supporting and establishing regimes from within these countries which are to be considered American friendly nations. According to Chomsky,

...Vietnamese nationalists did not want to accept it, so they had to be smashed. The threat was not that they were going to conquer anyone, but that they might set a dangerous example of national independence that would inspire other nations in the region (Chomsky, Barsamian, & Naiman, 2011, p. 14).

Usually these foreign policies were shaped mostly by the United States Presidents and proved to be costly and the result was a the Congress disapproval within the United States thus the Congress creating the War Powers Resolution of 1973 over the President Nixon.

**2. The Impacts of the War Powers Act of
1973 on the War Decision Making in
Foreign Policy**

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2.1 Introduction

From the midst of the Cold War era to the latest joint military strike by the United States, United Kingdom and France in April 2018 in Syria against Bashar Al-Assad chemical weapons arsenal, the War Powers Act frequently comes to the surface. In view of the fact that over the past four decades whenever the American military forces are sent overseas to shut down an uprising enemy or into a hostile region the presidents, in many cases, neglected in a way or another to notify the Congress beforehand or within 48 hours from the moment of deploying armed forces overseas when there is no declaration of war.

However, according to the Constitution itself the decision to send troops overseas or declaring wars does not belong to the president in the first place. Yet as we saw following the Second World War, the U.S. Presidents kept overlooking the role of the Congress as the sole branch that can declare war or gives the green light to use military forces abroad generally e.g. the violations that took place in the undeclared Vietnam War. Furthermore, from the very beginning of the War Powers Resolution, the President Nixon vetoed stating that, “would give every future Congress the ability to handcuff every future President merely by doing nothing and sitting still.”(Madden, 1973) but the act was passed since the Congress members approved it by over two-thirds making the President Nixon veto ineffective due to the checks and balances system that was established by the Founding Fathers to prevent the power making from being exclusively under one man in other words it falls under the separation of powers between the executive, judiciary and legislative branches.

The War Powers Resolution of 1973 was seen as an attempt of regaining the Congress’ powers in response to the executive branch involvement in the area of world affairs. As Schlesinger put it, “The American presidency has come to see itself in messianic terms as the appointed saviour of a world whose unpredictable dangers call for rapid and

incessant deployment of decisions behind a wall of secrecy. It seems hard to reconcile with the Constitution” (Schlesinger, 2004, p.66)

This chapter will tackle the controversy about the War Powers Act of 1973 as well as the other reasons that led to the creation of WPR besides the Vietnam War. A special emphasis was given through this chapter to the conflicts between the successive doctrines and the legislative branch, in case of the war powers and the involvement into hostilities or international crises without the Congress approval. Whilst also shedding light on changes that took place in the United States foreign policy during the late decades of the 20th century and correspondingly to the creation of the War Powers Act of 1973.

Finally, through the last portion of this chapter we will look at number of different events and conflicts in which some U.S. Presidents chose to report under the War Powers Act whereas others chose simply to ignore the War Powers Act procedures or just update briefly the Congress.

2.2 The Other Reasons Leading to the Creation of the WPR of 1973

Although the Congress has the constitutional authority over introducing military forces overseas, numerous presidents abused their executive powers as Commander in Chief which is granted by the constitution, but this presidential status is conditional (Stankiewicz, 2015). This overtaking of powers led to the creation of the War Powers Resolution of 1973 as previously mentioned.

The War Powers Resolution was passed based on certain reasons including penetrating the constitutional authorities that were given to the Legislators to declare wars besides the modern Presidents acting without consulting the Congress beginning from the time when the U.S became a real superpower after World War II, and its involvement in committing the

armed troops to war/conflicts, starting with the President Harry Truman, when he supported the United Nation Security Council resolution, by sending troops to the war in the Korean peninsula without the approval of the Congress.

2.2.1 North Korea Invasion (1950-1953)

The Korean War (25 June 1950 - 27 July 1953) i.e. 'Police Action' as Truman dubbed it, hence the U.S. backing South Korea Through the U.N. forces, as matter of fact according to CNN Library 90% of the U.N. troops in Korea were Americans and The U.S. itself spent \$67 billion on the war (2018). Moreover, President Truman did not seek a congressional declaration of war nor did he ask for advice from any leaders of the Congress before sending the troops. As a result, first, since the U.S. did not came victorious, second, both financially and in casualties' numbers the Americans did not expected the Korean War outcome, therefore to them the sole responsible was President Truman because he acted without consulting Congress.

2.2.2 The Aftermath of the Second Indochina War

As we observe in the first chapter, the aftermath of the Vietnam War that lasted about two decades, the Americans, Congress, were all set to implement the necessary changes to how the United States entered wars and to the decision-making on them; the blame, appropriately or not, went all to the President Richard Nixon for choosing to carry on the War at time when most of the public and the Congress were against it. Although the war unquestionably began earlier under the Eisenhower and the Kennedy Administrations even had roots to the Truman Administration, and was eventually escalated under President Lyndon Johnson, President Nixon inherited and conducted secret military operations not only in the Vietnam but in the whole Indochina that went eventually public during his presidency (Cable, 2009, p.23), so the outcome of the Second Indochina War was considered as a

permanent scar on not only President Richard Nixon's record, but on the decision making in wars of the next Presidents as well (Cable, 2009, page 24).

As the war in Indochina (1955-1973) lasted longer and expensively higher than all the expectations made by both the American people and the government, the Legislators decided that it was the right time to introduce a contemporary and crucial change as well as to challenge the executives to prevent them from abusing their war-making powers (Paul as cited in Day, 2008, p. 9).

2.2.3 The Watergate Scandal

In 1973, a scandal broke out in the white house, the Watergate investigations started after a breaking-in to the Democratic National Committee headquarters by seven men for "burglary, conspiracy, and violation of federal wiretapping laws." President Richard Nixon tried to cover up the affair by belittling the incident through a span of the next couple of weeks after it broke out in order to keep the White House out of the affair, he limited the investigation to a simple burglary, in addition to paying money to help those arrested with their legal defences in order to silence them (Small as cited in Cable, 2009).

Unfortunately for the Richard Nixon, The FBI traced the money the burglars took and spoiled the cover-up, and in response to that, the Senate voted to establish a select committee of four Democrats and three Republicans to investigate Watergate (Cable, 2009).

Nixon knew that the Watergate investigation was inevitable, and approaching him and the White House so he started quickly to exculpate himself from this unpleasant incident, he denied having any prior knowledge about the burglary until of late, offering any involved individual "clemency", and cover-up money besides denying authorizing these criminal acts

on May 22, 1973, he declared, "I took no part in, nor was I aware of, any subsequent efforts that may have been made to cover up Watergate." (Cable, 2009)

Nixon and his advisors decided not to erase the collected tapes hoping the court would rule in his favour and the tapes would not be request to be released publicly, but instead the court ruled in favour of the elected Senate Committee, and the tapes revealed finally that President Nixon had committed indeed number of severe crimes (Cable, 2009). Therefore, in the fall of 1973, the Congress introduced the WPR as an effort to re-establish the constitutional equilibrium of power and to put limit on the presidential powers as well.

According to Victor Lasky there was other Presidents of the United States that participated in illegal activities, but none of them was involved in so many illegal acts from burglary to spying in the same time, as the one that took place in the Watergate scandal, and that what distinguish the Nixon Administration from the other presidents (as cited in Cable, 2009).

2.3 The Dispute over the War Powers Resolution

The poor drafting of the WPR given that the sections of the War Powers Resolution does not mention for example any procedures or what the Congress should do when the president choose not to comply with the resolution. In addition the Congress unwillingness to enforced it over the years made it unsuccessful to be fully functional, that is why the United States Presidents had exploited some faults in the War Powers Resolution of 1973 to undermine it, however the Congress, has the absolute powers to enforce it yet they did not, and so the WPR came through ups and downs due to its disadvantageous text and vagueness and resulted in ongoing tug of war in the Congress itself between the members of the House and the Senate (Teacher.Law,2013).

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If we look to the main function behind the passage of War Powers Resolution is that throughout the resolution the executive and the legislative branches were supposed to restore the constitutional equilibrium when it comes to war decision making via consulting with each other and making a collective verdict on whether or not to send armed forces to hostilities, but the presidents are perpetually avoiding to consult with the Congress, or they do so when the decision was already made, and the irony is even when they consult after they already made their decision is that they might just choose to consult only some Congress members and not the majority of the Congress, and since the word consult is not adequately/frequently used on the War Powers Resolution document the process becomes indefinite to follow (Teacher.Law, 2013). Nonetheless, it is evident in Section 3 of the WPR in which it is mentioned that the President shall in every possible occasion consult with the Congress before sending troops to hostile regions (93rd Cong, 1973, § 3).

Another slip that was made by the Congressmen themselves, and exploited by the U.S. Presidents, was through section 4(a) (1) of the WPR we witness that, the sixty-days limit is not obligatory for every submitted report under the War Powers Act. The sixty-days limit come to effect only when troops have been deployed in hostile areas or when hostilities are imminent (93rd Cong, 1973, § 4) i.e. just for the use of the ground forces in a hostile region. This loophole has been used by the presidents to their own benefit, since the 60-days limit is rarely triggered by any presidential report, moreover when the U.S. Presidents report under the War Powers Resolution they will not mention which section of 4(a) they are reporting under exactly. This in a way or another helped the President to act in accordance with the minimum terms of the War Powers Resolution while at the same time dodging the 60-day clock (Teacher.Law, 2013).

Presidents of the United States have mentioned the War Powers Resolution sections carefully and selectively when reporting to Congress; by referring to the sections that give them control over the Congress whilst avoiding citing the ones that limit their Presidential powers. As a result, it looks like the resolution is going against the original aim it was designed to serve. These loopholes can be fixed easily given that the Congress can adjust the War Powers Resolution to oblige the President to cite for example the 60-days limit for every report submitted to Congress to make the process of reporting more transparent and avoiding the president interpreting or referring to WPR sections, as he likes (Teacher.Law, 2013).

The current version of the War Powers Resolution left the door wide open for the presidents to claim that last minute notice is equivalent to the consultation, and the failure to summon the president to give explanation for his military actions were against the effectiveness of the resolution and are considered as the main hindrances to the implementation of the War Powers Resolution of 1973 allowing the U.S. Presidents to overcome consulting the Congress when it comes to sensitive/secret military operations (Teacher.Law, 2013).

2.4 The Changes Taking Place in the U.S. Foreign Policy after WPR

In the twilight of the Cold War and subsequently to the creation of the War Powers Act of 1973, the U.S. foreign policy reverted to its early anti-Communism policy in full swing against the Soviet Union. The revert succeeded an episode of peace talks and treaties in the early 1970s that sought to absorb the tension and bridge the gap while putting limits on the two superpowers' nuclear weapons i.e. the Détente Policy e.g. SALT I. However, the Soviet Union invading Afghanistan in 1979 ended any peace talks between the two superpowers making the United States under Reagan Administration go a step further than his predecessors in office by establishing what is called a Rollback Policy, a policy that is more

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aggressive than the containment policy and differs than the latter policy as the United States tried this time to end the Cold War by confronting the “evil empire” as Reagan described it in 1983, through military force and not just by containing the USSR and preventing communism from expanding even further. The U.S. went to aid the anti-Communist resisting movements and rebels to overthrow communist governments around the world such as the military and financial support for Nicaraguans guerrilla Contras and the Operation Cyclone, in which the CIA armed and trained the Afghan rebels “Mujahedeen” during the Soviet occupation which developed later on partially to Al-Qaeda. The President Reagan (doctrine) sought “peace through strength” (Cannon, 1980) and made efforts also to renovate the U.S. military arsenal e.g. the controversial Strategic Defence Initiative also known as Star Wars.

The last quarter of 20th century brought several changes to the United States role in the world affairs due to the collapsing of the Soviet Union in 1991. The Soviet Union collapse was owing to various internal reasons: in one hand social, political, and economic reasons e.g. Gorbachev’s reforms, and in another hand due to an external reasons especially the U.S. Rollback Policy. Consequently, the United States become the solely leader of the new world order during George H.W. Bush presidency. Moreover, the United States did not halt its foreign policy agenda as the USSR collapsed but instead according to the leaked document by the New York Times in 1992 from the U.S. Defence Department stated that the U.S. foreign policy in the post-Cold War era is first, to prevent any new potential competitor from reaching a world dominance status and discourage other leading nations as well from challenging the United States. Second, “to address sources of regional conflict and instability in such a way as to promote increasing respect for international law, limit international violence, and encourage the spread of democratic forms of government and open economic systems” (The New York Times Archives, 1992)

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On Pax Americana, which Merriam-Webster defined as, “American peace; used for the period of relative tranquility from circa 1945 to the present day in regions to which U.S. power has extended”, Joshua Muravchik an American author wrote,

This Pax Americana will rest not on domination but on persuasion and example as well as power. It will consist not of empire but of having won over a large and growing part of the world not only to the joys of jeans and rock and Big Macs but also to our concept of how nations ought to be governed and to behave. (1991)

These changes in the U.S. foreign policy was accompanied by the American war on terror that skyrocketed after the events of 9/11 2001, besides from the United States targeting rogue states that terrorize the American vision of new world order and world peace e.g. Iraq, Libya, Afghanistan and North Korea.

2.5 The War Powers Resolution during Some Conflicts

The presidents from the two parties, Republicans or Democrats, found themselves compelled to inform the Congress during some crises, according to Richard F. Grimmett up until 2011 there were 130 reports submitted by the U.S. Presidents to Congress under the umbrella of the War Powers Resolution of 1973: “President Ford submitted 4, President Carter 1, President Reagan 14, President George H. W. Bush 7, President Clinton 60, President George W. Bush 39, and President Barack Obama 5” (Grimmett, 2011).

However, this does not mean that every U.S President has reported each military operation overseas, as we observed due to the loopholes and vagueness of WPR, which were exploited by number of U.S. Presidents when using the armed forces overseas. Through the next discussed conflicts, which are used as examples a conclusion will be made on whether

the WPR succeeded or not in putting limits on the presidential war decision making in foreign affairs.

2.5.1 The Mayaguez incident 1975

As of today, the Mayaguez incident is still the only incident reported by a U.S. President under the War Powers Resolution Section 4(a) (1), “into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances” (Grimmett, 2011). The Cambodian forces on 12 May 1975 seized the Mayaguez, an American cargo ship, and captive its 39 men crew. The President Ford condemned the incident and deemed it as an act of piracy demanding the Cambodian authorities to release the ship. However as the Cambodian reply did not occur during the next several hours the President Ford turned its sight towards the military solution hence, asking for the Congress approval under the War Powers Act section 4(a) (1) which activates the 60-days limitation period.

Though the U.S. forces successfully rescued both the ship and its crew the poor execution of the military operation resulted in the death of 41 in addition to another 49 wounded between marines and air force members besides the destruction of number of helicopters (Sconyers, 2015).

On the other hand, though the President’s report followed and respected the War Powers Act procedures, his last sentence in the report, “This operation was ordered and conducted pursuant to the President's constitutional Executive power and his authority as Commander-in-Chief of the United States Armed Forces.” (Ford, 1975) delivered to Congress indicates that the President Ford viewed the report as merely gesture of notification and not him sharing a war decision-making, a military force deployment, with the Congress.

2.5.2 Operation Eagle's Claw 1980

The President Jimmy Carter unlike his predecessor in office i.e. President Ford, ignored totally to consult with Congress, as matter of fact he never filled a, writing, report under the War Powers Act, accordingly when he exclusively authorized the military operation Eagle's Claw on 24 April 1980 without consulting with the Congress. The operation took place after all diplomatic solutions failed to rescue the 53 American hostages who were captive for over five months in Iran as 3,000 Iranian students broke to the American Embassy in Tehran. However, the Operation Eagle's Claw concluded with a failing in rescuing the hostages as well as the destruction of two aircraft during the rescue mission resulting in the death of five air forces personal and three marines (Lambert, 2015).

2.5.3 The Gulf Conflict 1990

The Gulf War was the first major crisis that the United States took part in since the Vietnam War. The crisis kicked in as Iraq under Saddam Hussein invaded Kuwait on 2nd August 1990 and moved near the borders of Saudi Arabia. However as an effort to aid Kuwait and Saudi Arabia, and protect the American national interest in the region, President George H. W. Bush on 9 August 1990 deployed military forces in the area, but without the intention of engaging military with the Iraqi forces, and reported afterwards to Congress "consistent with the War Powers Resolution", and by the end of that year a total of 350,000 American forces were on the region. In addition, the President George H. W. Bush obtained the Support of U.N. "to use all necessary means" while giving Iraq until 15 January 1991 as deadline to retreat from Kuwait (Elsea& Library of Congress, 2014, p. 12).

Furthermore, on 12 January 1991 the Congress on their part passed The Authorization for Use of Military Force against Iraq Resolution (P.L. 102-1). Though for the record 45 Democrats earlier in the previous November filled a lost suit in Washington to oblige the

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president to seek congressional approval before conducting any military operations in the gulf region due to the increasing American military forces in the area. Along with, on 17 January 1991 President George H. W. Bush once again reported to Congress “consistent with the War Powers Resolution” that he had initiated combat operations (Elsea& Library of Congress, 2014, p. 12-13) However during the signing of The Authorization for Use of Military Force against Iraq Resolution the President George H. W. Bush stated that,

As I made clear to congressional leaders at the outset, my request for congressional support did not, and my signing this resolution does not, constitute any change in the long-standing positions of the executive branch on either the President’s constitutional authority to use the Armed Forces to defend vital U.S. interests or the constitutionality of the War Powers Resolution. (Elsea& Library of Congress, 2014, p. 13)

The statement was a clear continuation to the 20-century tradition of the U.S. Presidents overlooking the role of the Congress in war relating matters, despite some of them reporting to the Congress, yet eventually they were willing to act regardless if they obtained the congressional approval or not.

According to James A. Nathan, “had it not been for the War Powers Act, President Bush might have disregarded Congress altogether in the Gulf War.” (1991, p 626, 627) However to George H. W. Bush’s credit according to The New York Times, “...but he did so under the Powell Doctrine, drawn from the Vietnam experience: get Congress to approve; use huge firepower; get in and out on a timetable of your choosing.” (Kalb, 2011)

2.5.4 September 11 attacks

The attacks of 9/11 2001 involved the al-Qaeda members hijacking four American commercial airliners, crushing two into the twin towers of the World Trade Center and another one into the Pentagon building in Arlington, Virginia, while the last airline crashed in Shanksville, Pennsylvania. The attacks resulted in the death of more than three thousand (Weed, 2017, p. 37-38).

In the aftermath of the attack the U.S. President George W. Bush and the Congress leaders assembled and they agreed on forming a joint resolution that will be developed within the next few days into the Public Law 107-40; it was passed by both the Houses, Senate by a vote of 98-0 and the House of Representatives by a vote of 420-1 and it is was cited as “Authorization for Use of Military Force,” (Grimmett & Library of Congress, 2010)

Public Law 107-40 Section 2 (a) gave the president the authority to,

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

While section 2 (b) (1) of Public Law 107-40 assured that, “Consistent with section 8(a)(1) of the War Powers Resolution, the Congress declares that this section is intended to constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution.”(United States, 2001)

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On the President George W. Bush part he congratulated the Congress on their decisive act yet emphasised that the joint resolution bring out his constitutional role as Commander in Chief whilst stated that, “In signing this resolution, I maintain the longstanding position of the executive branch regarding the President’s constitutional authority to use force, including the Armed Forces of the United States and regarding the constitutionality of the War Powers Resolution.” (Grimmett & Library of Congress, 2010, p. 41)

It was the first time that the Congress employed the War Powers Resolution against an organisation and not against a nation i.e. al-Qaeda and it was still used even after the death of Osama bin Laden and until today, day this thesis was written, by the U.S. President Trump to justify his 14 April 2018 airstrikes in Syria against Bashar Al-Assad chemical weapons arsenal without seeking prior congressional authorisation as many claims voiced that Authorization for Use of Military Force of 2001 does not justify both President Trump as well Obama military actions in Syria.

The attacks of 9/11 2001 marked a new escalation for the executive branch role over the Congress authorities in not only initiating wars against other nations but also a new kind of war that included terrorist and rogue organisations around the world and the nations that nourish them, which were considered by the United States as an inevitable threat to its security as well as to put the American national interests worldwide into jeopardy. But the irony in this is that the Congressmen themselves surrendered their authorities to the president when they introduced the Public Law 107-40 overwhelmingly in a replication to what happened in the gulf of Tonkin incident 1964 which the Congress members repealed afterwards and passed the War Powers Resolution to prevent another similar incident, despite the fact that the attacks of 9/11 2001 were a direct attack on the American soil.

2.5.5 Libya 2011

On March 19, 2011, the president Barack Obama had ordered the U.S. forces to start operations to aid, “an international effort authorized by the U.N. Security Council and undertaken with the support of European allies and Arab partners, to prevent a humanitarian catastrophe and address the threat posed to international peace and security by the crisis in Libya.” These actions according to him were part of “the multilateral response authorized under U.N. Security Council Resolution 1973,” He also added that “these strikes will be limited in their nature, duration, and scope, their purpose is to support an international coalition as it takes all necessary measures to enforce the terms of U.N. Security Council Resolution 1973. These limited U.S. actions will set the stage for further action by other coalition partners.” (Grimmett, 2012)

President Barack Obama did not mention the word ‘war’ on his military operations in Libya since it does not involve ground military according to him, but rather it was called according to Jay Carney the White House Spokesman in 2011 as, “time-limited, scope-limited military action.” (James, 2011) In fact, Obama’s actions in Libya lacked the Congressional support.

President Obama thought that he would not need any kind of consultations by a way in which he believed that it would circumvent the necessity to seek Congressional Authorization for actions in Libya. The White House responded to the questions of Congress when asked why no authorization had been sought after the 60 day limit established by the 1973 War Powers Resolution he stated that United States Armed Forces are not participating in sustained hostilities against Gaddafi’s troops, but were instead acting in a supporting role for NATO forces (Grimmett, 2012).

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After the President Obama had used the U.S. military forces to support a “no-fly zone” in Libya, within the 60 days; given to him by the power of the WPR, He noted on the 60th day that the United States had, “transferred responsibility for the military operation in Libya to the North Atlantic Treaty Organization (NATO) and the U.S. involvement has assumed a supporting role in the coalition’s efforts.” Moreover, he indicated also that even though the fact that the United States was not leading the military operation in Libya, but the U.S. support for the NATO union forces remained. He also argues that, “Congressional action in support of the mission would underline the U.S. commitment to this remarkable international effort.” (Grimmett, 2012)

On June 3, 2011, the House by a vote of 148 to 245 defeated H.Con.Res.51 stating the section 5(c) of the WPR ordering to terminate all military operation on Libya and to retreat from the region within 15 days. Moreover, the House introduced the H.Res.292 by a vote of 268 to 145; it ordered first, the president not to get involve or deploy forces in the ground in Libya and to provide a report to the House that required an explanation for the president actions who did not seek an authorization by Congress for the use of military force in Libya in advance, second, in addition to stating the United States political and military objectives regarding Libya, the President within 14 days from the passage of the H.Res.292 should present a report to the Congress giving the results of the military operations in Libya, detailing the purposes about the national security, and the deployment of the Armed Forces in Libya since March 19, 2011. Third, that the Congress had all the Constitutional right to refuse funding any unauthorized military operation in Libya (Grimmett, 2012).

On June 24, 2011, the House of Representatives defeated H.J.Res.68 by a vote of 123 to 295, which would restrict the use of the U.S. troops to assist the NATO operation in Libya. Afterwards, the House of Representatives overcome H.R. 2278, by a vote of 180 to 238, and

as a result, it limited the use of funds appropriated to the Department of Defence for United States Armed Forces in support of NATO in Libya (Grimmett, 2012).

2.6 Conclusion

Through the examined conflicts in this final chapter, we witnessed clearly that the War Powers Resolution failed to attain the purpose from its passage since the War Powers Resolution did not point up plainly the respective roles of both the executive and legislative branches when it comes to wars related matters or the penalties for infringement the resolution. But as to its impact on the U.S. foreign policy we can consider the resolution as a compromise from both branches in order to prevent the U.S. from escalating hostilities or involving the U.S. military forces for long periods i.e. repeating another Vietnam War and the major case of improvement subsequent to the War Powers Resolution is the Gulf Conflict which share some parallels with Vietnam War. However, the U.S. Presidents from both parties neglected the resolution or used it when it is convenient for them while continued questioning its constitutionality throughout the years or simply dodging it through the use of the U.N and NATO cover, and when it comes to the third branch of the U.S government the Supreme Court it ruled out discussing the resolution by the excuse that it is a political debate.

General Conclusion

The 20th century brought radical changes to the United States foreign policy in general as the United States shifts from its early isolationism and aloofness to a leading superpower that concerns itself with the world affairs and maintaining world order, and more than ever in the late phase of 20th century these newly changes had their effect on the process of how/when to direct and deploy troops overseas without the need to declare war officially especially during the Cold War i.e. the passage of the War Powers Act of 1973. The controversial act is considered as a direct outcome to number of violations by a set of consecutive presidents during mostly the Vietnam War. These 20th century imperial presidents, as the historian Arthur M. Schlesinger, Jr. described them in 1973, neglected over and over again, post-World War II, the role of the Congress in war related matters which pushed the Congress to pass the War Powers Resolution of 1973 over a presidential veto in the person of Richard Nixon to assure that the president is working to achieve and protect the United States interest around the world, in view of the fact that the U.S during 20th century became a superpower as we mentioned earlier, whereas the Congress on his part through the War Powers Act of 1973 and its power of the purse, authority to cut funds, will keep the executive branch in check and minimize the casualties and the risks that can be took by the presidents in their pursuit for conducting their foreign policies authority, an authority which is not absolute yet granted by the Constitution. The presidents' foreign policy in the wake of the 20th century involved around gaining more economic benefits internationally while defending democracy and maintaining world peace e.g. defending human rights and people's right to choose, and above all to eradicate the anti-American regimes around the world as well as substituting them with pro-American ones especially during and after the bipolar world order i.e. the Cold War.

The War Powers Act of 1973 despite the fact that it had not fully achieved its purpose in making the president consults the Congress beforehand regarding any U.S. military

operations overseas, given that considerable number of presidents found loopholes to overcome consulting with the Congress in multiple occasions for a reason or another as we saw, according to Sarah Kreps “Every time the president circumvents the resolution, the more this ... becomes the norm,” (Cornwell, 2011) yet the Congress through the War Powers Act prevented the President from escalating some conflict for example the Persian Gulf War. In addition the Congress can still recover the upper hand if its members choose to, although that cannot be happening in the near future given that the Congressmen seem to avoid most of the time confronting the president when he overlooks consulting with them as most of them seem oddly satisfied with their current role in war decision-making in the time being. Furthermore, Noah Feldman, professor of international law at Harvard University, stated, “Everyone in Congress wants to protect Congress, but they also want to protect the president of their party” (Greenblatt, 2011) this led to the creation of the current situation in which in order for the Democrat/Republican Congressmen to protect the president of their party they found themselves endorsing his policies despite being on the expense of the Congress, this is undoubtedly not the only reason but it is indeed one of the major causes to the ineffectiveness of the War Powers Act of 1973.

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