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Congress, Obama and the War Powers Debate

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Dedication

To My Mother

A strong and gentle soul who thought me to trust Allah, and believe in hard

Work

To My Father

For being my first teacher may God grant him long life

To my Brothers and Sisters

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Abstract

Different responsibilities given by the U.S. Constitution over military action perfectly reveal where one's war powers begin and where the other's ends. However repeated presidential decision to be involved in war in the absence of congressional official declaration to such use of force enriches the debate between scholars who still question who is supposed to control president or congress?

This dissertation tries to affirm the reality of this shift and to prove it through the war cases that presidents have been involved in. It also attempts to shed the light on how presidents disrespected war powers division made by the Founding Fathers relying on their role as commander on chief.

In the view of some experts, president have a broad right under the name granted to him which provide him with all the authority he needs to use war powers without seeking congressional authorization. By contrast others support congressional will and supremacy in using force abroad and reflect on presidential illegitimacy to act unilaterally.

What confirms presidential absolute power is congressional failure to challenge presidential power usurpation. And court inability to restore the balance of war powers and solve constitutional conflicts between the executive and legislative branches which contributed in large degree to the development of this situation

This study will investigate the main reasons that led to the shift in practice of war powers between President and Congress, and the incidents led the congress to check over presidential war practices in an attempt to maintain balance between both executive and legislative branches.

Résumé

Différentes responsabilités conférées par la Constitution des Etats-Unis sur l'action militaire révèlent parfaitement où ses pouvoirs de guerre commencent et où ils se terminent. Mais la décision présidentielle répétée d'être impliqués dans la guerre en l'absence de déclaration officielle du Congrès à une telle utilisation de la force enrichit le débat entre les chercheurs qui remettent en question encore qui sont censés contrôler le président ou le Congrès?

Cette thèse tente d'affirmer la réalité de ce changement et de le prouver à travers les cas de guerre que les présidents ont été impliqués dans, il tente également de mettre en lumière la façon dont les présidents ont déconsidéré la division des pouvoirs de guerre faite par les pères fondateurs comptent sur leur rôle en tant que commandant en chef.

De l'avis de certains experts, le président a un droit général sous le nom qui lui est accordé qui lui fournit toute l'autorité dont il a besoin d'utiliser les pouvoirs de guerre sans demander l'autorisation du Congrès. En revanche d'autres soutiennent le pouvoir du Congrès et de la suprématie à employer la force à l'étranger, et à réfléchir sur l'illégitimité présidentielle d'agir unilatéralement.

L'échec du Congrès pour contester le pouvoir présidentiel usurpation, et l'incapacité du tribunal de rétablir l'équilibre des pouvoirs de guerre et de résoudre les conflits constitutionnels entre l'exécutif et le législatif a contribué dans le développement de cette situation et confirme le pouvoir présidentiel absolu.

Cette étude étudiera les principales raisons qui ont conduit le changement dans la pratique des pouvoirs de guerre entre le président et le Congrès, et les incidents qui ont conduit le Congrès à vérifier sur les pratiques de guerre présidentielle dans une tentative de maintenir l'équilibre entre les deux branches exécutives et législatives.

ملخص

ان المسؤوليات المختلفة التي قدمها دستور الولايات المتحدة بشأن العمل العسكري تكشف تماما اين تبدأ قوى قادة الحرب واين تنتهى، ومع ذلك فان تنكرا القرار الرئاسي للمشاركة في الحرب بدون إعلان رسمي من الكونغرس يثير النقاش بين العلماء الذين لا يزالون يسألون من الذي يفترض أن يسيطر الرئيس أو الكونغرس.

تهدف هذه المذاكرة الى التأكيد على حقيقة انتهاك الرئيس للقوانين الدستورية واثبات ذلك من خلال حالات الحرب التي تورط فيها رؤساء الولايات المتحدة الامريكية من خلال الاعتماد على منصبهم كقادة للقوات المسلحة ، و تسعى أيضا إلى تسليط الضوء على عدم احترام الرؤساء لتقسيم الصلاحيات الحرب التي أدلى بها مؤسسو الدستور الامريكي.

يرى بعض الخبراء ان الرئيس له حق واسع تحت الاسم الممنوح له مما يوفر له كل السلطة التي يحتاج اليها لاستخدام صلاحيات الحرب دون الحصول على تفويض من الكونغرس. على النقيض من غيرهم يصار الكونغرس على عدم شرعية الرئيس التصرف من جانب واحد مؤكدا على السلطة المطلقة للكونغرس في استخدام القوة لشن الحرب.

ما يؤكد سلطة مطلقة الرئاسية هو فشل الكونغرس في السيطرة والتحكم في تصرفات الرئاسية المتمثلة في اغتصاب الرئيس لسلطة وعجز المحكمة لاستعادة التوازن بين قوى الحرب وحل النزاعات الدستورية بين السلطين التنفيذية والتشريعية والتي ساهمت في درجة كبيرة في تطوير هذا الوضع.

تهدف هذه الدراسة للتحقيق في الأسباب الرئيسية المؤدية الى التغيير في ممارسة صلاحيات الحرب بين الرئيس والكونغرس، والتي أدت الكونغرس للتحقق في ممارسات الحرب التي يخوضها الرئيس و مراقبة صلاحياته للحفاظ على التوازن بين كل من السلطين التنفيذية والتشريعية.

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List of Abbreviations and Acronyms

Acronym	Identification
CIA	Central Intelligence Agency
H. Res	House of Representatives
ISIL	Islamic State of Iraq and the Levant
NATO	North Atlantic Treaty Organization
NLF	National Liberation Front
OLC	Office of Legal Counsel
SEATO	The Southeast Asia Treaty Organization
UNSC	United Nation Security Council
USA	United States of America

Introduction

When talking about US Constitution it is generally agreed that the United States Constitution empowered the president to arrange wars as Commander in Chief, while Congress was given power to declare a war. However, the ongoing presidential war practices raised a long debate about who has the power to send troops into hostile situations abroad the President or the Congress.

The provisions of powers regarding the three branches require cooperation between the president and congress at many levels and particularly at military affairs. Nevertheless, many presidents have often engaged in military operations including the Korean War, the Vietnam War, Operation Desert Storm, the Afghanistan War, and the Iraq War without even express Congressional consent.

The presidential decision of war in the absence of congressional declaration and the questions of whether the president possesses this authority has proven to be a source of conflict and debate throughout the American history. While some scholars believe that the president as Commander-in-Chief is granted special powers, others argue that, if the president does have these powers, the Constitution does not provide how far the President may go. In doing so, presidents abandoned the constitutional principles and ignored the reality of their inability to anticipate or control their direction.

These scholars claim that the founders gave the president the title to preserve civilian supremacy over the military, not to provide additional powers outside of a congressional authorization or declaration of war. Furthermore, the framers of the Constitution intended that there would be a proper balance between the roles of the president and Congress in decisions to use force and in the conduct of foreign policy.

The decision to act unilaterally without seeking congressional authority eventually forced many to adopt the interpretations that the Congress gave up its war powers to the president. The main objective of this research is to confirm the reality of this shift and to prove it through war cases in which presidents have been involved in without seeking or obtaining authority from Congress. Furthermore, the work aims to shed the light on judicial branch passivity for not interfering in war powers controversies between the President and Congress since it has the authority to settle any controversy in all cases including the Constitutional conflicts.

What confirms congressional unwillingness in controlling presidential usage of military forces expanded after the Korean War. During the Vietnam War, Congress searched for a way to assert authority and decided when the United States should become involved in a war. Therefore, the War Powers Resolution was passed in 1973; the act was passed to build up systems for both President and Congress to partake in choices that may get the United States involved in a war. However, US involvement in war continued despite the fact of passing this act.

The aim of this research is to deal with the controversy over war powers and who is supposed to control. Congressional inability to perform its war powers raised Presidents' desire in ignoring Congress and gave him more power to maintain control and to act in freeway at the level of waging wars, claiming that they are righteous to wage wars without any Congressional authorization because they need to act quickly to save the national interests. They even consider that any attempt by the Congress to limit their war powers would be unconstitutional which means that the provisions of their honorable Constitution are no longer respected.

This work will also highlight the role of the Security Council of the United Nation and NATO in encouraging presidential unilateral decisions in war making regardless of congress refusal. It is also meant to shed the light on President Obama's intervention in Libya by comparing his actions to those of the presidents who preceded him to confirm whether presidential abuse to war powers ended up with the disastrous result of Bush's war in Iraq 2003 or it continued.

To better investigate the topic of Congress, Obama and War Powers Debate it is necessary to use many research methodologies and approaches. The historical analysis is very helpful to follow the development of events related to this topic. Discourse analysis is also very useful to analyze speeches of presidents and prominent political figures. The comparative approach is also necessary in dealing with this theme since it will be used to compare previous American presidents' practice to war powers to that of President Obama.

The U.S. Constitution gives Congress and the president different responsibilities over military action, but there have been long disputes about where one's war powers begin and where the other's ends. The Obama administration's decision to intervene in Libyan affair aroused a debate about the constitutional need for a President to request such approval. Many books, and articles have been written on this subject.

In his *Obama is defying the Constitution on War* published in September 17, 2014 George F. Will talks about Obama's complete disregard and ignorance of the constitution when attacking Libya. Will questioned president's ability to seek congressional authorization for the expended use of force against the Islamic State. Linking it the president George W. Bush when occupying Iraq and President Obama decision in Libya to the events of September 11, 2001 which has led to the spread of some of the concepts and effects that are still fixed on

the westerns towards the Muslim world of being a threat in order to prevent any future acts of international terrorism against the United States.

In his *The Law, Military Operations in Libya: No War? No Hostilities*, Louis Fisher seeks to know whether military operations in Libya were a war and if there were hostilities in Libya. Through his analysis Louis Fisher explains that the US military intervention aimed at avoiding civilian casualties rather than regime change. According to him, the United States has worked with international partners to mobilize a broader alliance and secure an international mandate to protect civilians and stop the army crawls forward referring to the "sacrifices" by the United States in the Iraq war, adding that the country cannot repeat scenario of Iraq in Libya.

In *Congressmen criticize Obama's stand on Libya*, David A. Fahrenthold and Felicia Sonmez dealt with a wave of criticism among the United States Congress for the administration of President Barack Obama on United States military operations in Libya.

A number of members of Congress expressed concern about the future of their country there, demanding the involvement of congress in decisions relating to the situation in Libya. As well as other issues surrounding the right of congress to demand explanations about his intervention in Libya, calling Obama's first to obtain the consent of Congress before the military operation.

Donald L. Westerfield provides a balanced and scholarly analysis of the war powers controversy in his *War Powers: The President, the Congress and the Question of War* which was published in 1996. In this work the author deals with the subject of war powers starting from the debates among the Founding Fathers to Congressional and United Nations resolutions, communications between the Executive and Congress, as well as other issues surrounding the use of military force in foreign conflicts. Westerfield draw the attention of the

reader that the change in warfare from conventional to electronic and from major ground force actions to swift air strikes and rapid response troop deployments have an impact on the war power controversy.

Constitutional Conflicts between Congress and the President by Louis Fisher dissects the crucial constitutional disputes between the executive and legislative branches of government from the Constitutional Convention through President Clinton's impeachment battles to the recent controversies over President Bush's conduct as commander in chief. He ventures beyond traditional discussions of Supreme Court decisions to examine the day-to-day working relationships between the president and Congress. By analyzing a mixture of judicial pronouncements, executive acts, and legislative debates, Fisher pinpoints the critical areas of legislative-executive tension: appointment powers, investigatory powers, legislative and executive vetoes, the budgetary process, and war powers. He then examines these areas of tension within a concrete political and historical context.

In this revealing book *Obama at War*, Ryan C. Hendrickson checks Obama's usage of power in his first term with four principle examinations. He shows that, Obama has secured the executive branch's right to command, as well as to decide when and where American forces are deployed. He also considers the voting records of Democrat John Kerry and Republican John McCain in the Senate, identifying how both men empowering the president on military choice making.

The debate between the executive and legislative branch is not new it dates back to the days of ratifying the constitution. Different books and articles have been written about this dilemma many scholars and authors have been discussing who decides to go to war the president or congress. In their book *Who Makes A War; the President versus Congress* Jacob K Javits and Don Kellermannreach claim that the constitution is the most powerful and

supreme law which means that it is the dynamo of American government, however, the violations made by the president in leading the nation into hostilities and armed forces make the constitution disrespected. When going back to the constitution and read its articles it is clear that war power resolution acts according the division between three branches, but the president violation of constitutional law is the most controversial debate in American politics.

Although the question of whether Congress has effectively limited the president's power to involve the United States in military actions has generally met with a resounding "no", William Howell and Jon Pevehouse in their *While Dangers Gather* of 2007 reach a very different conclusion. In this book the authors provide the most comprehensive and compelling evidence to date on Congress's influence on presidential war powers. Their findings have profound implications for contemporary debates about war, presidential power, and Congress's constitutional obligations.

The book analyzes the last half-century of U.S. military policy in addition to devoting special attention to the 2003 invasion of Iraq. Among the conclusions reached: Presidents are less likely to exercise military force when their partisan opponents retain control of Congress. In addition, congressional influence is not achieved through bold legislative action only, but it is achieved through public posturing by engaging the media, raising public concerns, and stirring domestic and international doubt about the United States' resolve to see a fight through to the end.

This research work is composed of three chapters. The first chapter entitled "The War Powers in Constitution". This chapter is mainly concerned with investigating the division of war powers between President and Congress as well as the Founding Fathers' intention when they made the allocation of war powers which requires an understanding of the constitution history debate before and after its ratification to discover the circumstances effect their

decision while placing war powers that would shape the new constitution. The chapter examines “separation of powers doctrine”, the “declare war” and the “commander-in-chief” clauses in order to understand on what basis the founding fathers rely when they placed the practice of war powers.

Chapter two discusses the war powers, and its practice by different presidents throughout the history of the United States, starting from the first elected president George Washington, till George Bush, each with his different strategies, and plans in leading the nation into abroad hostilities, the basis of this analysis, is to shed light on the importance of the American congress in such matters (declaring war), and the president’s role as well, the coexistence of both branches (the legislative and the executive bodies).

There was great attention and researches about the president’s decisions to go to war, without any prior congressional authorization, these researches were based on the supreme law of the land “the US Constitution”, different war experts, and politicians have dealt with issues concerning this hot debate, and mainly with the congress passivity towards these violations, that is considered as a disobedience for the American constitution.

Chapter three is an attempt to highlight recent American interventions in Libya and Syria under the umbrella of NATO to see whether these interventions were lawful according to American constitution or not. It also aims to examine how both President Obama and congress dealt with American participation in the campaign against Libya and Syria. Moreover, it seeks to check whether President Obama who advocates the constitutional law has respected the division of war powers and consulted with congress before deploying his army in the NATO battle or not. The work also tries to confirm whether American participation in the operation against Libya and Syria triggered the War Powers Resolution or no.

CHAPTER ONE

The War Powers in Constitution

The increasing number of American participation in military campaigns against many countries all over the globe without direct declaration of war or prior consent from congress raised a hot debate among scholars and politicians who questioned the legitimacy of such campaigns. Congress at many times had exercised its power of deciding when and where to involve the nation in a war ,however, the impression that presidents have more war powers in comparison to congress has been proved since congress has declared war only five times in history while hundreds of military campaigns were committed by presidents.

What is noticed in the last decades is that congress has abandoned its constitutional power of declaring war. Practice proved that this power has shifted to the president, or to other modern institutions.

Although president's ability to wage war is dependent upon the Congress, it was not the case with many Presidents who have promoted the idea that executive branch has the sole authority of making wars and affirms that Congress plays a secondary role in using force abroad. The executive branch has tried to establish an independent authority to bring the United States into war. Presidents have relied on imperial notions of the presidency, and especially on their role as commander in chief of the armed forces.

When reading the American constitution and mainly the division of war powers it is clear that the president acts as Chief Executive who makes sure that the federal laws are enforced. As a Chief Diplomat, the president is responsible for dealing with other countries. The president can also propose laws to congress since he is the Chief Legislator. Most

importantly, Article 2, section 2 of the constitution entitled the president as the Commander-in-Chief of the armed forces.

Article 1, Section 8 of Constitution gives Congress the power to “declare War”. The same article empowers Congress with the authority to “raise and support Armies” to “provide and maintain a Navy,” “make Rules for the Government and Regulation of the land and naval Forces”. Congress has the authority to “provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.” Clause 16 of the same article and section gives Congress the power to “provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States.”

The division of war powers between the President and Congress was put with care. After the end of the American Revolution the Founding Fathers gathered in order to allocate powers. Most of the attendants wished to divide powers according to their previous experiences and knowledge about other nation’s constitutions, mainly the English constitution.

A brief analysis to the English constitution division to war powers is therefore essential to understand the intention of the Founding Fathers when writing their first constitution. This analysis will help understand the points which the framers wished to keep, and the parts they aimed to avoid.

1. Historical background:

1.1 The Division of War Powers in English Constitution:

After the independence of United States, the Founding Fathers sought inspiration in forming a new government. The British governmental system was an important source of the

political ideas which influenced and guided the Framers of the United States Constitution. Important American political ideas were derived from eighteenth century British governmental practices.

The American colonists wanted to form new government far from effect of the British monarch who had extended his war powers during the colonial period. The king ruled oppressively and enjoyed all war powers thanks to the absence of opposition which was supposed to be practiced by the parliament (Clark 2).

The idea of executive authority that was taken by a single person (king) occupied the eighteenth-century English system in terms of foreign policy and war powers. The king “is with regard to foreign nations, the representative and the depositary of all the power and the collective majesty of the Nation: he fends and receives ambassadors, contacts alliance [...] he thinks proper” (qtd.in Lolme 72). This made it clear that the king had the authority to enforce laws, maintain power, declare a war, or make anything he believes appropriate.

The English Constitution also revealed the major roles of parliament that limited the king’s authority at that time. Even though the monarch could declare war, make peace and decide about different issues, these powers couldn’t be put in practice without parliament’s accord (Lolme 75). In this way the exercising of powers had to respect the lawful rights of Parliament.

The king had to be restricted with the fact that only Parliament could change or repeal laws, decide about treaties, and end wars the king had just started “Parliament could end wars by threatening to eliminate supplies for the army” (qtd.in Yoo 217). This important fact explains the limits on what the king can and cannot do. Thus king’s war powers were not totally in his hands since they were under Parliament monitoring.

The period of seventeenth century, however, was characterized by a series of conflicts between Kings and Parliament. In 1649, a Civil War broke out over who would rule England, Parliament or King Charles I. The belief of divine right to rule led the King to make decisions without referring to Parliament.¹ Consequently

struggles over war powers, military, and funding issues made both the king and Parliament at odds (Kingfisher).

War began with James I in the 1620s, continued into the Protectorate of Cromwell and the Restoration, and finally calmed down with the Glorious Revolution of 1688 (Yoo 209).² Over years Parliament gained more power and England changed from absolute monarchy under Charles I to “a stable constitutional system which gave the executive discretion in matters of war, with the legislature playing a significant role due to its control over appropriations”(qtd in. Yoo 209).

Shortly after the end of the civil war, many philosophers argued on different forms of democracy and began debating the question of who should govern the nation. Enlightenment philosophers like Thomas Hobbes,³ John Locke,⁴ and Charles Montesquieu all developed theories of government in an attempt to find solutions.⁵ The writing of these thinkers and war powers' divisions that they formed had a profound effect on Americans while forming their constitution.

Thomas Hobbes wrote an important book during the English Civil War, entitled *Leviathan*. The book demonstrated the necessity of a strong central authority to avoid discord and civil war. Thomas Hobbes argued that people were naturally evil and could not be trusted to govern. Therefore, Hobbes believed in the absolute rule of the king because he felt that the country need authority and direction ,so powerful government like monarchy would be the best for society (Gibney 126).

Hobbes proclaimed that “monarchy is the best because it offers the greatest consistency and lowest potential for conflict, limiting the decision-making body to one” (*qtd. in “Sparknotes”*). Placing absolute powers to the king was the appropriate form of governing to prevent people from revolting against him.

A prominent work that the framers were influenced with was *The Second Treatise of Civil Government* written by English philosopher John Locke. The work gives an explanation about Locke’s total rejection of absolute monarchy in which he opposed the divine right to rule and believed that human should protect their rights (Modern World History 18). According to Lock, people only need an executive power to protect and preserve their welfare (Feldman111). Locke's work enhances the idea that all men are born with natural rights to enjoy their properties in “peace and safety” (*qtd.in Locke 301*). The purpose of government, therefore, is to protect the rights of the individual.

Locke also believed that judicial, legislative, and executive powers should be separated. He describes the legislative branch as being the most important of the three, since it determines the laws that govern society “the first and the positive law of all commonwealths is establishing the legislative power: as the first fundamental natural law... ” (302).

Likewise Montesquieu offered similar reasons in his book *On the Spirit of Laws* in which he opposed the absolute monarchy system and preferred a government elected by the people. He thought that the best model of government is the one in which the legislative, executive, and judicial powers are separate and depended upon maintaining balanced system of power.

According to Montesquieu, each branch of government could restrict the power of the remaining branches. He advocated that uniting these powers, would lead to tyranny. Checking one another, therefore, would prevent any branch from becoming too powerful and no branch

of the government could threaten the freedom of the people .His ideas about separation of powers became the basis for the United States Constitution (Rosa).

Americans had significant experience before writing their Constitution; a deep understanding of how war powers were divided in the United States Constitution demands a further comprehension on the first American Constitution namely the Articles of Confederation.⁶ This experience shaped the political views of the framers who wrote the Constitution and led to the formation of their first government.

The inevitability of self-government required an action. “Delegates from each of the Thirteen Colonies met in Philadelphia in the summer of 1776 to decide the case for liberty”(qtd.in *“Drafting the Declaration of Independence”*).With a committee have been formed to draft up the Declaration of Independence, a group of colonists joined to provide national defense and to express unified desire to be self-governed.

One of the main delegates was Richard Henry Lee of Virginia who was presented in Second Continental Congress to propose a Resolution of Independence.⁷ A Committee of Five was appointed including John Adams of Massachusetts, Benjamin Franklin of Pennsylvania, Thomas Jefferson of Virginia, Robert R. Livingston of New York, and Roger Sherman of Connecticut, to draft the declaration, to prepare document, and to explain the reasons for independence (Stewart 25). The resolution was accepted on July 2, 1776 and approved on July 4 (Boller 25).

After finally winning their independence, the colonists did not want to repeat what happened before with the British oppressing them. “Americans didn’t want another government that would tax them, limit their movement into western lands, or make them practice a religion” (Belton 6). The States, therefore, changed Dickinson's proposed articles

which were based on strong central government and purposely created a weak central government because they were scared of any strong power ruling over them (Strausser 25).

The Articles of Confederations were the first constitution of the United States which were put into use right after the end of the American Revolution. “Under the Articles of Confederation, the thirteen original colonies, now states, established on March 1, 1781, a government of the states” (Bardes, Shelley, and Schmidt 38).

The Continental Congress had been careful to give the states as much independence as possible. Article 2 guarantees to each state “its sovereignty, freedom, and independence.” States were designed to have a weak central government and very strong state government meaning that the Articles of Confederation made the United States weak by giving too much power to the states and not enough power to the central government.

Article 9 gives Congress “the sole and exclusive right and power of determining on peace and war”, the sole right of “sending and receiving ambassadors, entering into treaties and alliances” allows Congress in “granting letters of marque” and “to make treaties- to make rules for land and naval force, to build and equip a navy...” Part six of article nine, however, clearly stated that “The United States in Congress assembled shall never engage in a war, nor grant letters of marque or reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor agree upon the number of vessels of war...” unless the nine States agree upon. It explained also that no “a question on any other point” shall be determined “unless by the votes of the majority of the United States in Congress assembled.”

Not only Congress was restricted with some power limitations, States also had little power concerning different issues that are fully explained in Article 6. It mentions that “No State shall engage in any war without the consent of the United States in Congress

assembled.” States could engage in wars without prior congressional consent only in the case of being “actually invaded by enemies”.

They were also prohibited from granting “commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States in Congress assembled, and then only against the Kingdom or State and the subjects, thereof, against which war has been so declared.” States could do so without congressional consent only when be infested by pirates.

Under the Articles of Confederation, congress was responsible for conducting foreign affairs, declaring war or peace, maintaining an army and navy and a variety of other functions however, it was denied the power to collect taxes, regulate interstate commerce and enforce laws (English 6), which proved to weaken the congress credibility as representative of government.

States under the Articles of Confederation were not united at all. Each State acted separately creating its own government and rules which rise both economic, financial problems and made Congress unable to pay national debts. Disagreement between the States and the federal government over taxation and trade led to economic disorganization and weakened further the legitimacy of the Articles of Confederation (Brackemyre).

Furthermore, there was no president or any other executive branch, nor a judicial branch. Congress was the only branch of US government. Beyond these difficulties the Founding Fathers realized that what they needed was a stronger central government in order to remain stable since it became obvious that the Articles of Confederation would not be sufficient enough to hold the nation together. Alexander Hamilton and his supporters soon gathered in order to revise the Articles of Confederation, in what is called the Constitutional Convention (*About America 6*).⁸

A series of meetings was held in Philadelphia from 25 May to 17 September 1787 to address the problems of the weak central government that existed under the Articles of Confederation (Schmidt, Shelley and Bardes 44). George Washington was elected the President of the convention by the delegates. All States but Rhode Island sent delegates in response to a call for the meeting in Philadelphia to amend the Articles of Confederation. Rhode Island refused to send a delegate, because it was afraid of losing its states' rights (Stange 3). The delegates worked for four months behind closed doors of the State House to draft a new document known later as the Constitution.

Besides the fact that the Framers had worked to insure rights of each State concerning trade, commerce, freedom, rights etc..., their main concern, however, was to divide war power among each branch they created (Lippman22). In the light of their past experience the delegates of the Constitutional Convention made the Constitution. They did not want the same form of government that the British had. They avoided authority under a king, and refused the system of monarchy (Hirsch7). The framers were trying to develop a government far from tyranny of a single dictator that they had seen throughout the European history.

The Framers of United States constitution decided to have a President in their new government. Yet the Founders' vision of British despotism made them extremely wary of the potential dangers when centering war powers in one single authority. Within this context they clearly understood that individual rights during the war pose severe threats to their liberties (Hornberger). James Madison, the father of the Constitution, supported this idea when he said: "Of all the enemies to public liberty war is, perhaps, the most to be dreaded, because it comprises and develops the germ of every other." War according to Madison is "the parent of armies;" Armies "proceed debts and taxes", explained Madison, and these two "are the known instruments for bringing the many under the domination of the few"(qtd.in Hornberger).

One of the major issues that were hotly debated at the Constitutional Convention was the power of waging war (Paul 86). Pierce Butler of South Carolina suggested that the President should have the power to make a war (Bookman 35); he thought that the President would never engage in war without popular support as he claimed the president “will have all the requisite qualities and will not make a war but when the Nation support it” (Genovese).

Many delegates rejected this idea they even were shocked with his suggestion. Elbridge Gerry, a prominent figure at the Constitutional Convention, said that he had “never expected to hear in a republic a motion to empower the Executive alone to declare war” (Healy 30). The delegates who refused this idea were not expecting the same British model of governing.

The framers when making a new form of government or what is known as republic they preferred to cut off relation with the “Royal Prerogative” (qtd.in Adler). As James Wilson of Pennsylvania explained, the “prerogatives of the Crown were ill-suited to a republic” (qtd.in Adler). He also considered the powers of the British king not “a proper guide in defining the executive powers. Some of these prerogatives were of a Legislative nature; among others that of war and peace” (qtd. Elliot 141). Edmund Randolph of Virginia as well expressed that all the delegates had “no motive to be governed by the British Government as our prototype” (qtd. in Woods).

Delegates’ reactions about Pierce Butler suggestion made him quickly look for one more solution. Finally he proposed to vest Congress with the authority to end war as well as to start it (Genovese).

The result of this discussion at the Constitutional Convention implemented that the framers arrived at the decision to divide the federal government into three branches: Executive, Legislative and Judicial. The Founders also decided to vest in Congress the

authority over matters of war and peace and to grant the President the title of Commander in Chief who has no authority to start a war or to initiate military hostilities (Adler).

In Federalist N° 69, Alexander Hamilton explained that the President's 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 clarified in the same Federalist Paper that Congress have the right to declare or otherwise authorize war, but president would be allowed also to start a war in case it begun by foreign invasion. President's powers as commander in chief as explained Hamilton was restricted to "repel the invasion" that may threaten American sovereignty.

The framers believed that the president needed to practice defensive war powers to respond against the nation attacks, yet it is Congress responsibility to take the country from a "state of peace to state of war" (qtd.in Bolt, Coletta and Shackelford 106). Roger Sherman, one founding father that signed and drafted the Declaration of Independence and signed the U.S. Constitution claimed that "the president should repeal not to commerce a war" (106).

George Mason from Virginia a member in Constitutional Convention agreed that "president was not safety to be trusted with the war powers" (qtd.in Conyers 310). Mason was in opposition of giving the executive branch the power of war, according to him, Congress was the reliable branch to be given such power, and he liked better to leave war power with it (Conyers 310). James Wilson shared the same opinion and argued that "giving Congress the authority to declare a war will not hurry us into war". Rather, argued Wilson, "it is calculated to guard against it. It will not be in the power of single man, or single body of men, to involve us in such distress for the important power of declaring war is vested in the legislature at large" (qtd. in Conyers 310).

On August, 6th 1787, the Committee of Detail reported a draft constitution that granted Congress the power to "make" war.⁹ A debate between drafters was conducted when the war clause was considered on 17 August. Charles Pinckney of South Carolina objected to place the power in the legislature, arguing that "Its proceedings were too slow" and the House of Representatives would be too numerous for such deliberation" (qtd. in Westerfield 18). He instead preferred to invest such a power in the Senate, which he considered the best place "being more acquainted with foreign affairs, and most capable of proper resolutions" (qtd. in Westerfield 18).

The proposal of the Committee of Detail vested Congress with the power to "make" war which was not welcomed by James Madison and Elbridge Gerry who favored to substitute the word "declare" for "make". They were concerned that the word "make" would hinder the president from acting immediately in urgency situations, since the power to initiate war was granted to Congress. This change therefore, would guarantee no authorization need for the President to repel attacks against the United States (Vile 826).

Seven out of ten state delegations voted on Madison and Gerry motion, two were against the amendment while Massachusetts did not vote at all (Hendrickson 6). Rufus King of Massachusetts then clarified that "make" war might be understood to "conduct" which was an executive function. In this sense one of the main facts concerning Madison and Gerry motion was to avoid the confusion of "making" with "conducting" war which was the prerogative of the President (Rogers 1197). Ellsworth changed his vote, and finally "declare" was inserted in place of "make" ("The Dog of War as a Puppy" 365).

Various remarks of delegates ended the debate and they approved the war clause. The attendants confirmed Congress's total authority to commence and initiate war, while president war power scope was limited to repel sudden attacks.

1.2 The separation of war powers:

American past experience under the British king warned the framers when modeling their new government. The Founding Fathers felt that Americans had suffered an abuse of the broad power of the monarchy. With this in mind they applied the separation of power doctrine when shaping their new government. They divided the powers of their government between three main branches: the Executive, the Legislative and the Judicial with a view of granting each branch a specific power and not to allow any part to have too much authority or control over the other.

The framers of the U.S Constitution were strongly influenced by enlightenment philosophers' ideas that argued for separation of powers like John Locke, and Charles Montesquieu. The Founding Fathers adopted their ideas when drafting the US Constitution, because they believed that the separation of powers is the best way to avoid corruption and despotism (Northrup 44).

Unlike the British government in which no strict separation of powers did operate, the US Constitution distinctly separates the legislative, executive, and judicial branches of government. The first article of the Constitution says "All legislative powers...shall be vested in a Congress". The second article vests "the executive power...in a President". While the third article places the "judicial power of the United States in one Supreme Court".

The Founding Fathers knew that "danger of tyranny or injustice lurks in unchecked power"(qtd.in Bolt, Coletta and Shackelford 107). Under the concept of checks and balances they therefore assured free government far from powers' abuse and confirmed that no branch of government could be too powerful and become like another king (Van Dervort 48).

In Federalist N 51 Madison argued that “the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administrate the necessary constitutional means and personal motives to resist encroachment of the others”, he explained that being put in check by the others would guarantee that no branch would be able to get out of control which was the main aim of checks and balances system.

In his dissenting opinion in the 1926 case *Myers v. United States*, Louis D. Brandeis the of U.S. Supreme Court justice justified the separated and shared powers in the Constitution. He pointed out that:

The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy.

Brandies words indicated that this doctrine was adopted to prevent tyrannical use of power and emphasized that the framers’ intention was not to avoid contact between different branches of the government, but to protect people from dictatorship of single ruler.

Despite the fact that, Article two of the United States Constitution gives “the executive power” to the president, there is disagreement about the strength and scope of the president’s power. It can be said that some favor a strong executive branch, while others favor a weakly and limited executive branch. The Founding Fathers were very concerned about the powers of executive branch. Their belief of presidents’ grid and ambition toward “fame and glory” made them sure that war powers would inevitably lead them to be engaged into war (qtd.in Bolt, Coletta and Shackelford 106), that’s why Congress was granted with this war powers.

In Federalist N°4 John Jay published a warning in which he mentioned the major motifs leading presidents to war. “Absolute monarchs” explained Jay “will often make wars [...] for purposes and objectives merely personal, such as a thirst for military glory, revenge [...] lead him to engage into wars not sanctified by justice or the voice and interests of his people.”

Joseph Story, who served on the Supreme Court from, was against giving the representative branch the power to go to war and denied it to executive branch. He described war as something critical, calamitous, and always injurious since it tended to impose upon the people the most burthensome taxes, and personal sufferings. Story found war as sometimes fatal to public liberty itself wherever successful commander will lead (Fisher, “Domestic” 964).

In 1793 James Madison expressed the same interest when he called war as “the true nurse of executive aggrandizement” (qtd.in Fisher 5). Madison opposed the idea of empowering the executive with the capacity to initiate wars

In war the honours and emoluments of office are to be multiplied; and it is the executive patronage under which they are to be enjoyed. It is in war, finally, that laurels are to be gathered; and it is the executive brow they are to encircle. the strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honorable or venial love of fame, are all in conspiracy against the desire and duty of peace (qtd.in Fisher 5).

Because the framers were skeptical towards presidential role during wartime, they gave Congress the power to check and balance president’s war powers in case of unconsidered presidential launch of military campaigns. Article I Section 10 of the

Constitution clearly states that “No state shall, without the consent of Congress [...]engage in war”. Section 8 of the same Article gives Congress the authority “To raise and support armies”. This power can effectively force the president to bring his troops home by refusing to fund their continued deployment (*“Checks and balances”*).

The principle of checks and balances was established because the framers wanted to prevent one branch from being able to do too much, too easily. They tried to preserve civil liberty by vesting the power of declaring war in the hands of the legislative branch whose main function is people’s representation and to guarantee a stable political situation in the United States (*“checks and balances”*). The president under the new Constitution however, is entitled the Commander-in-Chief of the armed forces. This title raised hot debate among scholars to understand its meaning and to limit the scope of powers under this title. So what does this title mean, and why the president is granted such a prerogative?

1.3 Commander in Chief Clause:

The executive power was seen as natural enemy of liberty and responsible for tyranny under the Articles of Confederations. For that reason framers omitted the executive powers as they were afraid of centering enormous powers on single ruler and established a single legislative. After independence framers desired a President with enough power to execute their affaires and sought to amend the Articles of Confederations. Under the new Constitution, Article 2 Section 2 states that “the President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.”

The title of Commander in Chief was adopted from England where it was introduced first to the king Charles I in 1639.¹⁰ This title referred to the highest ranking officer in a particular chain of command or theater of action and subordinate to a political superior like a

king, Parliament, or a secretary of war. But this did not mean that commander in chief title gifted the President with an independent source of war making authority (Lobel 417).

In other words, the framers provided the president with the power to command the military forces; however this did not give him any power to start a war. In *The Federalist* N° 69, Hamilton claimed that “the president's role as commander in chief would amount to nothing more than the supreme command and direction of the military and naval forces. The real power, as he perceived it, belonged to Congress”. The president as commander in chief therefore, possesses the authority to repel sudden attacks against United States, and to conduct the war effort only when Congress authorizes military hostilities.

Again Hamilton explained in *Federalist* N° 74: “Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand”. Although president as Commander in Chief does not have the power to initiate a war but he has the authority to bring unity in military command.

Another quality of the president as Commander in Chief Clause is “preserving civilian supremacy over the military” (qtd. in Fisher, “Domestic” 969). In 1861; Attorney General Edward Bates explained that the president is Commander in Chief not because he is “skilled in the art of war and qualified to marshal a host in the field of battle” (qtd. in Fisher, “Domestic” 969). Another factor to consider is that he is Commander in Chief because when he conducts war against enemies and wins it “he is subject to the orders of the civil magistrate, and he and his army are always ‘subordinate to the civil power ’” (qtd. in Fisher, “Domestic” 969). Since the president commands and directs military officers, he is also subject to the directions and command of lawmakers to secure people’s supremacy.

Based on his previous military experience, George Washington was selected as Commander in Chief of the Continental Army on June 19, 1775. The Continental hoped that a leader from Virginia could help unite the colonies (*“George Washington's Commission”*).

Delegates from the United Colonies of New Hampshire, Massachusetts Bay, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, the Counties of New-Castle, Kent, and Sussex, on Delaware, Maryland, Virginia, North Carolina, and South Carolina wrote to ; George Washington the following:

We, reposing special trust and confidence in your patriotism, conduct, and fidelity, do, by this presents, constitute and appoint you to be general and commander in chief of the army of the United Colonies[...] and you barely vested with full power and authority to act as you shall think for the good and welfare of the services” (qtd.in Lossing and Griswold 540).

The delegates had conferred George Washington with special trust to conduct and unify the army, yet he was committed to work for the good of the United Colonies and practically to follow and respect instructions from Continental Congress;

And you are to regulate your conduct in every respect by the rules and discipline of war, (as herewith given you,) and punctually to observe and follow such orders and directions, from time to time, as you shall receive from this, or a future Congress of these United Colonies, or committee of Congress”(qtd.in Lossing and Griswold 540).

Though the Founding Fathers divided and grant each branch with powers and prerogatives in the Constitution, a debate is taking place between American Congress and President over these powers. When making a new constitution, the Founders purposely did

not give the president the sole authority to start a war and divide war powers between two branches. Based on the experience of the delegates of Constitutional Convention the Constitution was born.

The framers were trying to develop a government far from tyranny and abuse of single ruler, thus they gave Congress the power to declare and fund wars and required the president to justify US entry to war. They sought to base their own government on consent, that is to say that they intended collective agreement between the president and Congress when starting war anticipating that collective judgment would be superior to president's decision to go to war without a political agreement.

The decision to go to war proved to be one of the most serious dilemmas that American presidents faced. Theoretically, it might appear that the powers of Congress in respect to wars are more dominant, but the reality is that President's war powers have been more powerful because of Congressional inability to restrict these increasing and excessive presidential powers. Questions of considerable importance rise: Does the Constitution require the president to obtain specific authorization from Congress before initiating hostilities? Whether constitutional war provisions would be respected or they would just do what their ancestors feared and tried to avoid? Whether the nation would be involved in wars by an order from one person, the president? A deep examination of what is going on in the United States will be explained more in the next chapter which put constitutional war powers in practice to see how the Americans are going to perform and execute their Constitution.

Endnotes

¹ **Divine right:** the right of a sovereign to rule as set forth by the theory of government that holds that a monarch receives the right to rule directly from God and not from the people.

<<http://www.merriam-webster.com/dictionary/divine%20right>>.

² **The Glorious Revolution:** the events of 1688–89 in England that resulted in the ousting of James II and the establishment of William III and Mary II as joint monarchs. Also called: Bloodless Revolution. <<http://www.thefreedictionary.com/Glorious+Revolution>>.

³ **Thomas Hobbes:** English philosopher, scientist, and historian, best known for his political philosophy, especially as articulated in his masterpiece *Leviathan* (1651). Hobbes viewed government primarily as a device for ensuring collective security. Political authority is justified by a hypothetical social contract among the many that vests in a sovereign person or entity the responsibility for the safety and well-being of all. His enduring contribution is as a political philosopher who justified wide-ranging government powers on the basis of the self-interested consent of citizens. <<http://www.britannica.com/biography/Thomas-Hobbes>>.

⁴ **John Locke:** English philosopher whose works lie at the foundation of modern philosophical empiricism and political liberalism. He was an inspirer of both the European Enlightenment and the Constitution of the United States.. Much of what he advocated in the realm of politics was accepted in England after the Glorious Revolution of 1688–89 and in the United States after the country's declaration of independence in 1776.

<<http://www.britannica.com/biography/John-Locke>>.

⁵ **Charles Montesquieu:** Baron de Montesquieu, Charles-Louis de Secondat was one of the great political philosophers of the Enlightenment. He saw despotism, in particular, as a standing danger for any government not already despotic, and argued that it could best be prevented by a system in which different bodies exercised legislative, executive, and judicial power, and in which all those bodies were bound by the rule of law. This theory of the separation of powers had an enormous impact on liberal political theory, and on the framers of the constitution of the United States of America.

<<http://plato.stanford.edu/entries/montesquieu/>>.

⁶ **Articles of Confederation:** 1777–1781 served as the written document that established the functions of the national government of the United States after it declared independence from Great Britain. <<https://history.state.gov/milestones/1776-1783/articles>>.

⁷ **Continental Congress:** in the period of the American Revolution, the body of delegates who spoke and acted collectively for the people of the colony-states that later became the United States of America. The term most specifically refers to the bodies that met in 1774 and 1775–1781 respectively designated as the First Continental Congress and the Second Continental Congress. <<http://www.britannica.com/EBchecked/topic/134850/Continental-Congress>>.

⁸ **Constitutional Convention:** in Philadelphia met between May and September of 1787 to address the problems of the weak central government that existed under the Articles of Confederation.

<<https://history.state.gov/milestones/1784-1800/convention-and-ratification>>.

⁹ **Committee of Detail:** On July 24, 1787, the Federal Convention appointed a five-man Committee of Detail, chaired by John Rutledge of South Carolina, to prepare a draft constitution. <<https://www.loc.gov/exhibits/treasures/trt047.html>>.

¹⁰ **Commander in Chief:** the Commander in Chief clause, states that “he President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States.”

<https://www.law.cornell.edu/wex/commander_in_chief_powers>.

CHAPTER TWO

The War Powers in Constitution and Practice (1793-2003)

The United States of America has been intervening in military actions hundreds of times, when referring to war powers written in the constitution, the congress has the power to declare war, but in U.S. history, the congress had declared war only five times, all the rest of actions were initiated by the president. These acts raised the war powers debate, and highlighted the president position as the most powerful, authoritative, executive body over congress.

The U.S. constitution is a written document that proves the existing war powers that the Founding Fathers divided between of the three branches, these war powers were not put randomly, they were actually written by expert historians, lawyers, and politicians who met to ratify the constitutional convention, and who were affected with their own experiences during the colonial period, under the Articles of Confederation.

This chapter will analyze war powers in practice since the ratification of the constitution to Gulf War II, the purpose of this analysis is to confirm whether the division of war powers among the three branches is respected, or not, this chapter is an attempt as well to shed light on the connection and coexistence between congress and the president during war times, and to give a well understanding to presidents and their awareness of the constitutional limitations.

The chapter will discuss congress reactions, some of the cases, Supreme Court decisions concerning declaring war, and the public opinion as well. Furthermore the presidential versus congressional war powers and the hot debate of using armed forces

abroad; and it will provide the list of armed conflicts in which the United States of America was involved in since its foundation during the American Revolution (1775-1783).

1.1 Maintaining U.S. neutrality

The United States of America was a small nation at the very beginning, in the midst of fortifying its own economy, military, and government, many of President Washington's cabinet members argued that neutrality would be the best protection of America. On April 1793, President Washington issued the proclamation of neutrality declaring that the United States would better remain neutral during the conflict. This proclamation stated that the government would prosecute any American citizen who offered help to any nation at war; this proclamation had ultimately set precedent neutrality that would guide foreign relations policy for years to come (Cummings).

When war broke out between France and Britain in 1793, George Washington decided that the United States remains neutral in foreign affairs, even though France owed the USA assistance for its backing in the American Revolution, this issue of neutrality, or non-interventionism stated that the USA must maintain a sense of national identity, ¹and independent from any other country's influence. Several presidents followed Washington Neutral policy such as, James Monroe (Bank, Stark, and Thorndike 10).

The national political parties emerged as a result of Washington's foreign policies. George Washington and Alexander Hamilton were opposed to the segregation of the government that Political parties created. While Hamilton led the Federalist Party with John Adams to Support their policies, James Madison and Thomas Jefferson founded the Republican Party, which was later called the democratic Republican Party (Cummings).

The federalists advocated a strong central government and wanted to maintain close ties with Great Britain, while the republicans opposed the authority of a strong national

government that decreased The power of state and local government, republicans also wanted their old alliance with France, Washington favored the federalists ideals of government, but worked to sustain a balance between the two parties (Cummings).

1.2 John Adams and the Quasi Wars (1789_1800)

The Quasi war,² is known as the undeclared war with France, the pirate wars, and also the half war, it was an undeclared naval war between the United States and France, the conflict lasted between 1798 till 1800, although it occurred during John Adams presidency, it also involved president George Washington, it was during the Quasi War that the neutrality found itself under attack, once the conflict began, John Adams sought that George Washington 's military expertise reinstating him as commander in chief ("*Quasi War* ").

After the departure of George Washington, John Adams took office. During his presidency the United States of America had been involved in a naval conflict with France, because French privateers had attacked U.S merchant vessels in the West Indies in 1797 (Hickman). To establish a peace settlement with France, Adams sent three delegates to Paris, but when the United States delegates arrived, three French Officials demanded a bribe of 250.000 dollars to France ("*Quasi War*"). The neutral Policy of the former president George Washington did not keep the nation out of war, this Policy actually involved the United States in the first international conflict the Quasi War with France (Ogunbitan 19).

During the first serious American international war, several drafters of the constitution were congressmen, and John Adams was the president. The conflict was a good occasion to put war powers in practice. Analyzing this case is important because it will provide a reliable interpretation to war power clause, since it is its framers who would put it in practice.

The war was fought officially on 1798, and lasted till 1800. It dates back to the Jay Ray treaty formally titled "treaty of amity commerce and navigation between his Britannic

majesty and the United States of America” (qtd.in “Jay Ray Treaty”). It was ratified by president George Washington in august 1795 (“*Jay Ray Treaty*”). Between the United States and Great Britain in 1794, that eased growing tensions between the two adversaries, were embroiled in bitter territorial Disputes in North America, and, commercial conflicts (Ogunbitan 20).

In consideration for the aid that France was providing the colonies during the American Revolution, the United States entered into two treaties with France in 1778, after the French revolution began, France sought aid from the United States, pursuant to the treaty of 1778, torn between ties to Great Britain, and promises to France, President George Washington issued a Proclamation of neutrality in 1793, promising friendship to all belligerent powers (Combs 107-108).This neutrality became untenable when France began capturing American vessels in the course of waging war against other European countries (Combs 116).

France was seeing this treaty as violation to the 1778 treaty of the alliance with the American Colonists, and felt that the United States was favoring Britain, despite the non-interventionism that appeared when war began between France and Britain, John Adams attempted to negotiate the matter with France, but the French refused American commissionaires. The United States sent three Commissionaires, referred as X, Y and Z by the French (“*The X, Y, Z Affair...*”).

The X, Y, and Z affair was a diplomatic incident between the French and the United States diplomats that resulted in a limited undeclared war, known as the Quasi wars, and French negotiators restored peace with the convention of 1800, known as well the Treaty of Mortefontaine, incited the Federalists in congress to issue the Alien and Sedition Acts in

1798,³ to affirm their displeasure with France, congress persuaded Adams to sign these acts into law (Ogunbitan 21).

When American people heard of the X, Y, Z incident a demand for war aroused, Adams called for a constitutional session with congress to discuss the measures that should be followed concerning the war on France (*"The XYZ Affair"*). This consultation is a hint that the president is unable somehow to go to war without congressional approval.

Congress passed a series of procedures to approve the president's intervention into war, including the enlargement of the navy and revenue for defense. These measures, however, were not actually a full declared war, they were considered as congress trial to conduct the welfare of the nation (Calhoun 461).

The Quasi war was an explanation of the division of war powers between the three branches three branches. This case proved that the power of declaring war was reserved to congress; it also showed that even though congress refused to declare war, the president did not dare to take this serious step.

The Quasi war with France also triggered the Supreme Court to rule a serious case, *Bas vs. Tingy* of 1800 which was crucial to shed light on the congressional power to declare war. On April 21, 1799, Tingy the captain of the *Ganges* recaptured the *Eliza*, belonging to Bas, after the French had taken it three weeks before, Bas attempted to pay Tingy 1:8 value, pursuant to the 1798 law, while Tingy demanded 1:2 payment, in accordance with the 1799 law, after lower court ruled that Tingy was entitled to 1:2 value, the case was appealed to the United States supreme court (*"Bas v. Tingy"*).

The decision of the lower courts was affirmed, the 1799 act of congress governed the dispute, and captain Tingy was awarded 1:2 value of the *Eliza*, justice Washington writing to the court noting that the difference between the two laws, was that the 1798 dealt with ships

recaptured from the French, while the 1799 law dealt with ships recaptured from the enemy, which turned on the issue of “was France the enemy”, and the larger question “were we at war,” (*qtd.in “Bas v. Tingy”*).

Constitutional scholars cite three Supreme Court decisions from the undeclared Quasi War with France in 1799 to 1800 as support for the proposition that congress may authorize war of any Magnitude except in case of sudden attacks on the United States. This congressional authority displaces any right of the president to use military force without prior congressional authorization. *Talbot vs. Seeman* case showed that congress alone has the Power to declare war, through a formal declaration, the case also highlighted president’s ability to use military force in a manner short of full scale war (Cranch 281).

Charles Lofgren one of the scholars who subscribed in the interpretation of the Quasi War, he argued that “the framers grant the congress of the power to issue letters of marques and reprisal created a residual category of all forms of undeclared war” (*qtd.in Sidak*). The constitution in this view grants the congress alone the power to Commence war, formally, or by authorizing reprisals.

Justice Bush Rod Washington, noted the difference between the two laws was that the 1798 dealt with ships recaptured from the French, while the 1799 law dealt with ships recaptured from the enemy, this turned on the issue of “we were not at war” (*qtd.in Hallet 101*). Washington proceeded to recognize the difference between a perfect war, where congress declares war upon another country, and an imperfect war, where congress does not declare, but rather authorize hostilities. Congress in this case had raised the army and suspended commerce with France and dissolved a treaty, this also allowed them to defend themselves against French ships, and reclaim American ships as prize, and this was by all

accounts an imperfect war, qualifying France as an enemy under the law of 1799 applied (Loveman 20).

Justice Samuel Chase pointed out a second opinion in the unanimous court, congress is empowered to declare a general war, or congress may wage a limited war, limited in place, in objects, and in time. If a general war is declared, its extent and operations are only restricted and regulated by the jus belli, forming a part of the law of nations, but if a partial law is waged, its extent and operation depend on our municipal law (*“Bas v. Tingy”*).

Bas vs. Tingy, *Talbot vs. Seaman*, and *Little vs .Barreme*, were prize cases that arose during the Quasi War between France and Great Britain. These cases proved the real division of war powers between the three branches, and they were also a kind of implication of the constitution drafters that declaring war was a power reserved to congress, and that the president is just a commander under congress approval and the Supreme Court is always the reference in such matters.

The Quasi war was an indirect interpretation of the president’s war powers into practice, and the role of the Supreme Court’s important decisions, which clarified congress ability to limit, control, and even stop the president’s actions of leading the nation into hostilities.

1.3The War against Great Britain (1812_1815)

Another war fought by the United States of America against Great Britain, its oldest enemy, and the former mother country of the United States is going to be discussed in this chapter. It occurred during the presidency of James Madison, he wrote the first drafts of the constitution, and sponsored the bill of rights as well, the democratic republican party together with Thomas Jefferson, he became the American fourth president in 1808, Madison initiated the war of 1812(*“James Madison”*). This war’s importance lies in its context of receiving the

first congressional declaration. Unlike President George Washington who maintained neutrality and John Adams who preferred an intervention in an undeclared war the Quasi War, James Madison chose to use diplomacy and negotiations to keep the country out of war. His trial, however, seemed to be unsuccessful (*“James Madison”*).

This war was declared for the second time against the British for many pretexts, including trade restrictions brought about by the British war with France, and the seven impressments of 10.000 American merchant sailors into the royal navy. The British support for the Native American tribes fighting American settlers in the frontier, insults to national honor during Chesapeake- leopard affair, and the interest of Americans to annex British territory were all preliminary reasons for the war (Randomsky 6).

Americans were furious about these practices, and wanted them to stop, therefore a battle between American soldiers, and American Indians had driven the United States to be engaged into war with Great Britain. the battle of Tippecanoe 1811, was a conflict between the confederacy of native warriors led by Tecumseh, a Shawnee tribe member and the United States armed forces under the leader ship of general William Henry Harrison, it was fought primarily over white expansion into Indian territory, the battle of Tippecanoe was the primary factor of the 1812 between Britain and the United States (Randomsky 12).

A group of congressmen blamed Great Britain for the battle of Tippecanoe, believing that the British encouraged the Indians to attack the American soldiers. These congressmen were called, war hawks and they worked to convince President James Madison that war was the only solution for the so called British conflict (*“History of the Battle...”*).

President Madison listened to the war hawks, and presented a list of complaints against the British, Madison was very angry with these acts for impressing sailors and

interfering with trade, he also accused the British of ruining the United States relationships with American Indians (Wills 280).

On the 1st June 1812, James Madison sent a message to congress recounting the grievances against Great Britain (Lowell 17). After Madison's message, the House of Representatives deliberated for four days behind closed doors, and passed a bill declaring the war against Britain, by a vote of 79 to 49 ("*Special Message to Congress...*"). The Senate did the same on June 18th by a vote of 19 to 13 and Madison signed the bill (Buel 177). The conflict began officially on the 18th June, 1812, and it was the first time for the United States of America to declare war against another nation. Congressmen votes in this war proved to be the highest one to a formally declared war, but none of the 39 federalists voted in favor to war, some critics labeled it as "Mr. Madison's war"(qtd.in Radomski 14).

The constitutional war powers were respected in this war, Madison did not take any step without congressional authorization. His actions during this war were in compliance with his constitutional war powers mentioned in Article 2, Section 3. Congress as well executed its war powers by declaring war against Great Britain for the first time since the ratification of the constitution.

1.4 The Second World War (1943-1945)

After declaring war on Britain in 1812 in which congress practiced its own constitutional authority in declaring war for the fourth time in history. The United States of America fought other international wars, such as the war against Mexico in 1846 and the war against Spain in 1898 .The next declared war that will be discussed in this chapter, is the Second World War that proved to be the most devastating international conflict in history.

When the war broke out in Europe, American President Franklin Roosevelt knew the threat that surrounds the American security, and was trying to provide assistance to European

countries without a direct involvement in the war in the rise of 1940 (Gouge 173). The fall of France left Britain as the only democracy standing between Nazi Germany and America. In 1939, the Fourth Neutrality Act authorized the U.S to trade arms with belligerents provided that the countries paid in cash and collected them (Gal 236). In March 1941, Roosevelt moved towards making the American arsenal of democracy with the Lend –lease Act, which permitted the lending, leasing, the selling, or bartering of arms, ammunition and food to any country whose defense the president deems vital to the defense of the U.S (Genovese 312).

The U.S navy and air force began to escort British convoys which transported lend-lease material across the Atlantic, protecting them from German submarines. Roosevelt’s announcement of a “shoot on sight policy in September 1941, the navy claimed that Roosevelt was provoking skirmishes with the German in the same time, Winston Churchill kept trying to convince Roosevelt to enter the war, who have been always promoting the recognition of the right of all peoples to choose the government under which they live” (*qtd.in “Winston Churchill:Announces... ”*).

After the bombing of U.S fleet at Pearl Harbor by the Japanese in December 1941, ⁴ only one congressman opposed the declaration of war, the vote in the senate was unanimous (Pierce 36). Hitler’s declaration of war on the Americans was good for Roosevelt, it enabled him to legitimately pursue a Germany first strategy, in November 1942, operation torch, the invasion of north Africa, became the first U.S military offensive war in the west (Muller and Ueberschar 74).

Roosevelt’s speech concerning the Pearl Harbor incident, was a direct call to the

congress to formally declare war on the Japanese empire
yesterday, December 7, 1941-a date which will live in infamy
the United States of America was suddenly and deliberately attacked
by naval and air forces of the empire of Japan[...]I ask that the congress

declare that since the unprovoked and dastardly attack by Japan on Sunday, December 7, 1941, a state of war has existed between the United States and the Japanese empire” (qtd in. Roberts 17).

By the beginning of 1943, the opening of a second front was an urgent issue. Despite the necessity of both leaders to relieve pressure on Russia, and the eastern front, Churchill favored an attack through Italy, while Roosevelt continued through France (Costigliola, and Hogan 81). At the conference of Casablanca, Churchill won the argument, and it was decided that operations in the Mediterranean would continue once the victory was achieved in North Africa (Underhill 141).

The United States was a latecomer in the Second World War, the intervention began on December, 1941. Germany had occupied most of Europe, and Japan also was starting to attack countries in Asia (Bradford 153). The U.S decision to enter the world war meant that the entire country turned to devote all its human and material resources for defeating the axis countries, and it was also the period of the rise of presidential powers

American presidents and congresses from the ratification of the constitution, to the Second World War, gave importance and respect to war powers. The Japanese attack on Pearl Harbor, actually was a kind of security for Roosevelt from being accused of leading the nation to the Second World War, and the accusation that Roosevelt is getting the United States out of its non-interventionism. By encouraging congress to pass the lend lease act, Franklin Roosevelt did not violate the constitutional principles. He did not actually take the action of sending military troops towards the Second World War, he remained aware of the importance of congressional consultation.

Analyzing this case study showed that Franklin Roosevelt did not claim unilateral presidential war powers. Even though the United States soil was attacked, President Roosevelt

did not act alone to repel the sudden attack and he was not directly involved in the war until congress passed its declaration.

1.5 The Korean War (1950-1953)

The end of Second World War brought peace and prosperity to Americans. This prosperity, however, was accompanied with a harsh tension between the United States and the Soviet Union in what was known as the Cold War. Was a state of political and military tension after the Second World War, between powers in the western bloc the United States of America, and its NATO allies and others, with powers in the eastern bloc the Soviet Union, both superpowers wanted the spread of their own policies, capitalism for the Americans, and communism for the Russians (Malkasian 5).

To hamper the spread of communism by the Soviet Union, the United States adopted a new foreign policy known as containment.⁵ Despite the fact that the formulation of Truman to both the Marshall plan and the Berlin airlift meant to contain communism in Europe, this policy has extended to Asia as well. The latter proved to be the battlefield for the first major combat waged in the name of containment, the Korean War (Larson 278).

The Korean peninsula, was divided into the soviet-backed government in the North, and the American-backed in the South, this division led to the end of the Second World War, the Soviet Union invaded Korea in 1945 that was under Japan control since 1910 in order to contain communism, the United States quickly settled its troops in South Korea, if anybody wanted to know the real causes of the cold war, it was viewed as the American entry to world war 1, and the Russian revolution, both superpowers had their greedy domination of the world (Thompson 24).

The war broke out on the 38th parallel, on June 1950 when North Korean troops attacked strategic points along the parallel, and headed toward Seoul. The United Nation

Security Council, therefore, responded to the attack by adopting (9-0 vote) that condemned the invasion as a “breach of peace” (qtd.in Green 61). Reaction to the United Nation’s decision differed among the opponents.

While the Soviets protested against the United Nation’s decision that was taken absent Soviet or Chinese delegate, President Harry. Truman quickly committed American forces, to a combined United Nations military effort and named Douglas Macarthur commander of the U.N forces. Truman did not want a formal declaration of war from congress claiming that America’s presence in Korea in no more than a “police action”(qtd.in Sidak).

The intervention of the United States in Korea grew because of the tensions of the cold war politics and the many events that made Truman anxious. For example, the Soviet Union exploded an atomic bomb in 1949, ending the United States monopoly of weapons in Europe. (*qtd.in. “Statement on the Situation ... ”*). Truman administration was also a target to harsh criticism from republicans for the loss of China, and for the commitment to anticommunism at home (Philips 196) .All these factors influenced President Truman decision making during the Korean War.

President Truman’s greatest concern about the threat that communism encounters was obvious when he said: “communism has passed beyond the use of subversion, to conquer independent nations, and will now use armed invasion and war” (*qtd.in “Statement on the Situation ... ”*). This statement implies that the attack by North Korea was a plan by communist China. President Truman was convinced that the situation in Korea is the same of Greece 1947, the state which gave America an imperative to act “if we don’t put up a fight now” he addressed his staff, Truman’s fear from communism expansion, and the his concern as well over the future of anti-communist governments in Asia was so clear.

Truman's words reflected a new military order, the United States engagement in Korean War, was this time under the umbrella of other organization instead of American Congress. In one of his statements, Truman made it clear that his actions were done within the United Nations measures:

I know that all members of the United Nations will consider carefully the consequences of this latest aggression in Korea in defiance of the United Nations. A return to the rule of force in international affairs would have far-reaching effects. The United States will continue to uphold the rule of law" (qtd.in Kaufman 132).

Truman's actions in Korea created a hot debate among Congressmen and Senators from different political parties. For example, Republican Senator William Know land of California, was on Truman's side. He considered Truman's interventions in Korea a legal action permitted by the United Nations. Know land believed that as Commander in Chief of the American army, the president has the right to respond to sudden attack with no congressional authorization (Hendrickson 56-58). Senator Robert Taft, however, opposed Truman's actions in Korea. Taft went further and accused Truman of violating and misusing the constitutional provisions:

Truman's action unquestionably has brought about a de-facto war,with the government of Northern Korea. He has brought that war about without consulting congress and without congressional approval [...]seems to me[...]a complete usurpation by the president of authority to use the armed forces of this country. If the incident is permitted to go by without protest....(qtd.in Hess).

Taft was not opposing actually Truman's intervention, but he was against his unilateral decision, and the fact that he neglected the role of congress which is supposed to be

the initiator of wars “I may say that if a joint resolution were introduced asking for the approval of the use of our armed forces already sent to Korea, and full support of them in their venture, I would vote in favor of it” (qtd.in Taft, and Wunderkind 169).

Truman’s actions in Korea proved that the constitutional provisions were no longer respected. Analyzing this case showed a new phase of presidential war powers. It also showed that congressional authorization was substituted with the United Nations Security Council approval. Truman’s actions in Korea would for sure constitute a precedent that would justify further unilateral military involvement for the coming presidents.

1.6 The Vietnam War

The next war that is going to be discussed in this chapter is the Vietnam War, the most controversial war in American history. The war was fought from 1955 till 1975 between North Vietnam, supported by its communist allies, and South Vietnam backed by the United States. Northern Vietnamese were attempting to unify Vietnam under a single communist government. To continue its containment policy, the United States was again involved in this war by backing the anti-communist government of South Vietnam (Kaiser 150). The war occupied the terms of five different presidents, Eisenhower, Kennedy, Lyndon, Nixon, and Ford.

Ho chi Minh and his Viet defeated the French in the first Indochina war. In the second Indochina war, or the Vietnam War, he led North Vietnamese in order to expel U.S forces, he once stated,

if by final victory, you mean the departure of the Americans,
then we will fight to final victory, everything depends on the
Americans, if they want to make war for 20 years, then we shall
make war for 20 years, if they want to make peace, we shall

make peace and invite them to tea afterwards” (Ho Chi Minh).

Minh, however, died before the end of the war, precisely in 1969.

After the Geneva Accords were signed between the French and communist Viet Minh, leading to a partition of Vietnam, Eisenhower decided to create the South East Asia Treaty Organization (SEATO), with the purpose of stopping communist influence in South East Asia. SEATO was used by President Eisenhower to build a new nation in the south to fight communists in the north (Wiest 14).

On February, 1954, President Dwight Eisenhower did not want to commit American troops to the Franco Vietnamese war, he declared in a press “I cannot of a greater tragedy for America than to get heavily involved now in an all-now war in any of those regions” (qtd.in Frank 89). his administration dealt with the question of intervening in the Vietnam war, though he did not send military troops in the region, he authorized military aid to the French (Rotter 328). Even after the surrender of the French to the Viet Minh, Eisenhower administration continued to give assistance to anti-communist leader Ngo Dinh Diem to consolidate power in Saigon:

...I am glad that the United States is able to assist in this humanitarian Effort we have been exploring ways and means to permit our aid to Vietnam to be more effective and to make a greater contribution to the welfare and stability of the government of Vietnam, I am accordingly instructing the American ambassador to Vietnam to examine with you as your capacity as chief government , how an intelligent programme of American aid given directly toyour government can serve to assist Vietnam in its present hour trial [...] (qtd.in Willbanks).

The coming president was John Kennedy who was elected in 1960. Kennedy tripled the amount of American economic and military aid to the South Vietnamese, and increased the number of US Military advisors in Indochina. He also refused to withdraw from the escalating conflict in the Vietnam, in which he stated “ to withdraw from that effort, would mean a collapse not only of South Vietnam, but Southeast Asia, so we are going to stay there” (Peake 114).

In his first speeches, Kennedy made it clear that he would continue the policy of the former President, Dwight Eisenhower. He also advocated the “The Domino Theory”, which was used by successive united states administrations, during the Cold War, in order to justify the need for the American intervention around the world in the early 1950, it began to be used as a shorthand expression of the strategic importance of South Vietnam, to the United States of America, as well as the need to contain the spread of communism throughout the world (*“Domino Theory”*).

Despite the fact that Charles de Gaulle, a French military general, and statesman, the leader of free France as well (1940_44), and the head of the provisional government of the French republic (Mahoney 175), warned Kennedy, that Vietnam and warfare in Vietnam would trap America in “a bottomless military and political swamp” , Kennedy assured that America is ready to “pay any price, bear any burden, meet any hardship, support any friend, to assure the survival and success of liberty” (Langer 55). In fact, and in order to continue the Domino Theory, Kennedy agreed in the Geneva agreement to finance the size of the south Vietnamese army from 150.000 to 170.000,⁶ with 1000 us military advisors to Vietnam in order to help the south Vietnamese army (Reeves117).

Despite the support of Ngo Dinh Diem, the United States turned against him. Kennedy became more convinced that he would never unify South Vietnam against communism, and

he agreed also that CIA should initiate a programme to overthrow him. Accordingly, a CIA operative provided some South Vietnamese generals with 40.000 \$ to get rid of Diem, with the guarantee that US would not protect the South Vietnam leader. Diem was overthrown and killed in 1963 and Kennedy was assassinated three weeks later (Taylor 593).

Lyndon Johnson succeeded Kennedy as president, Lyndon as well supported the domino theory, and he was highly supporting south Vietnam against NLF guerrillas “if we quit Vietnam tomorrow, we will be fighting in Hawaii, and next week, we will be fighting in San Francisco”(qtd.in Zierler 48). Lyndon was encouraged by his advisors to approach toward the Vietnam conflict, and to send American troops to the South Vietnam army. The Vietnam new leader General Khanh clearly expressed to Johnson his doubt about the withstand of South Vietnamese army in front of NLF guerrillas.

Lyndon did not at first take the move of declaring war on Vietnam .He feared that he would not be popular politically, especially in his future elections of 1964, and by doing so his chances would be decreased (Lerner339). He nevertheless gave support to operation Plan 34b which involved Asian mercenaries to North Vietnam as part of reconnaissance programme. The USS Maddox was sent in to the Gulf of Tonkin to examine North Vietnamese naval defences, which led to the attack on the Maddox by three Vietnamese torpedo boats (Moise 99).

These attacks were highly criticized by many war experts and scholars. Lyndon at first acted without any congressional consultation .He considered this incident as a challenging act for the American security (Bessette, and Pitney 396).

On a national television, Johnson told the U.S public:

Renewed hostile actions against us ships on the high seas in the gulf of Tonkin, have today required me to order the military

forces of the United States to take action in reply, the initial attack on the destroyer Maddox On August 2 was repeated today by a number of hostile vessels attacking Two US destroyers with torpedoes, the destroyers and supporting aircraft acted at once on the orders I gave after the initial act of aggression, we believe at least two of the attacking boats were sunk, there were no US Losses (qtd.in Lyndon B 927).

The next president to be discussed is, Richard Nixon who was known with his vietnamization policy.⁷ This policy aimed at ending American involvement in the Vietnam war by transferring the military responsibilities to South Vietnam. Nixon believed that building up South Vietnam's military strength would facilitate a gradual withdrawal of US troops. This strategy would allow the South Vietnamese to defend themselves from the communist takeover, and would allow the US to leave the conflict with its honor (Mirza 228). Nixon admitted that while previous administration Americanized the war in Vietnam "in this administration we are vietnamizing the search for peace" (Harris, and Tichenor 325).

Richard Nixon ordered "Christmas bombing" in 1972, to keep North Vietnam at the negotiating table and to convince South Vietnam to sign the peace treaty. On January, 3, 1973 The Paris Peace Accords were signed ending the American direct involvement in Vietnam. Richard Nixon became the first president to resign after the Watergate Affair in 1974 (Menétrey-Monchau 128).

The Vietnam war ended officially during the presidency of President Gerald Ford who said "the Vietnam war is finished as far as America is concerned, today, Americans can regain the sense of pride, that existed before Vietnam, but it cannot be achieved by re-fighting a war" (Lawrence 167). The report was the saddest breaking news for the South Vietnamese

who wished America's backing, the same thing for the north Vietnamese who were promised by the Nixon administration, the congress forbade further us involvement in Vietnam (FrankumJr 127).

On June 1973, the congress of the United States led by senator, William Fulbright, passed the case church amendment, which forbade the American military involvement in Southeast Asia, which was later on passed with a veto-proof vote of 278 to 124 in the house, and 64 to 26 in the senate, making it impervious to a presidential veto. This amendment was directly contravened the American promises , and opened the way for the communists of north Vietnam to launch another invasion of the south, with no fear of any American intervention (Owens 195).

The previous analysis of the Korean and Vietnam wars showed that modern presidents have acquired new war powers which are beyond their constitutional war powers. Congressional powers as well decreased dramatically during these wars since presidents preferred to marginalize the legitimate war maker and to obey other new international institutions.

Despite the fact that presidential initiatives neglected the role of congress, the sole body to declare a war abroad, this latter showed no serious reaction to regain its lost constitutional war powers. Even courts, the third branch which is supposed to intervene in case of imbalance or usurpation of power did not dare to intervene. It was after the shameful Vietnam War that Congress reacted by issuing the War Powers Resolution of 1973 as a resort to oblige the president to involve congress in case of war or armed conflict.

1.7 The Iraq War

The war in Iraq, also known as the second Persian gulf war, it was consisted mainly with two phases, the first one was a conventionally fought war in march-April 2003, with

force troops from the United States and Great Britain, who invaded Iraq, and rapidly defeated Iraqi military and parliamentary forces, the second phase was the American occupation of Iraq, and after violence began to decline in 2007, the United States gradually reduced its military presence in Iraq (*"Iraq war 2003-2011"*).

In his State of the Union Address held on January 29, 2002, President George Bush stressed his attention publicly on Iraq. Bush classified Iraq among the axis of evil, allied with its terrorists and shaping a great threat on America, through the possession of weapons and mass destruction (Lind, and Tamas 146). On March, 2003, George Bush addressed the nation announcing the operation of Iraqi Freedom "the people of the United States, and our friends and allies will not live at the mercy of an outlaw regime that threatens the peace of weapons of mass murder" (qtd. in Tyner 31).

The roots of the Iraq war dated back to the first Gulf War when Iraq invaded neighboring Kuwait in 1990, America led coalition forces against Saddam Hussein's army in 1991 (Tarock 56). The U.N. resolution that ended the war prohibited Iraq from possessing or producing chemicals, or biological weapons. Saddam, however, refused to give UN weapons inspectors free access, that is why the entire world and America in particular feared the possibility that Saddam will develop and produce the weapons of mass destructions (Mockaitis 28).

President Bush insisted that Saddam was a threat to the security of America and to the Middle East also. In a televised address 2003, "leave Iraq for the American military, or the American military will attack Iraq and remove you" (qtd. in *"Bush: Leave Iraq within 48 hours"*). George Bush implied that Saddam possessed the weapons of mass destruction, and that Iraq helped al Qaeda terrorists. He also insisted that the U.S. had the right to defend itself by removing the menace, on March 2003 he said:

My fellow citizens, at this hour, American and coalition forces are in the early stages of military operations to disarm Iraq, and to free its people and to defend the world from grave danger, on my orders Coalition forces have begun striking elected targets of military importance to undermine Saddam Hussein's ability to wage war, these are opening stages of what will be abroad and concerted campaign (*qtd.in "George Bush's address..."*).

Many legal scholars questioned President Bush's claim for unilateral power as commander in chief in the war on terror, and his aggressive approach against al Qaeda. Critics said that bush administration expansive vision of executive power, turned the constitution's mandated system of checks and balances. Others saw that it was just a move towards the imperial presidency posing a direct threat to the essence of American liberty (Burke 37).

Another constitutional scholar Michael Paulsen, one of the nation's most provocative and accomplished scholars of the constitution " the University of St. Thomas believed that "president bush clearly had constitutional authority to make the military counterterrorism decisions that he did" (*qtd.in Richey*). His vice president Dick Cheney and his administration advisors insisted that their actions had been fully consistent with the constitution (Donohue 82).

Professor Pfiffner, a university professor of public policy at George Mason University, had highlighted difference between power and authority. Though the president has the power to push the nuclear buttons, argued Pfiffner president Bush i doesn't have the constitutional authority to intervene in Iraq, except if the congress approves which will rests with congress.

Even though congress can delegate the power to the president to be prepared to respond immediately to sudden attacks, the president has not the approval to launch and fight a war without congress (Bowles, and McMahon 413).

Professor Paulsen said: “president bush’s terror policies were supported by congress, including via legislation, especially written to overturn Supreme Court decisions, and amend surveillance laws” (qtd.in Hartz 53). Paulsen implied that bush’s actions were supported by congress than president bill Clinton, who ordered offensive American military operations in Kosovo without any congressional authorization (Hartz 53).

One of the most important policy decisions a democratic government can make, is the choice to go to war. The decision involves placing the state’s armed forces in peril. Political scientists, legal analysts, and historians have devoted considerable research to the constitutional requirements despite the articles and the books published concerning this issue, the constitutional debate over war powers is as relevant today as it was 200 years ago at the constitutional convention.

Every president since George Washington has sworn the oath to preserve, protect, and defend the constitution of the United States, but presidents have interpreted that sacred pledge in different ways, some think that the president must always act within the strict letter and spirit of the law and constitution (Meyer 88).

The research above has provided the relationship between both branches, the legislative body (congress), and the executive body (the president), and their war power responsibilities. The wars discussed in this chapter, have different perspectives and insights from different scholars, of course when applying them to the constitution.

Depending on the American written constitution, the founding fathers, did not give any superior powers, they just gave more priorities. Declaring war was reserved to congress,

his writings that the president may intervene just in case of sudden attacks. His role as commander in chief of the armed forces permits him to defend the nation, but it seemed that presidents over time, exaggerated in using force abroad.

To conclude, the history of the United States with the use of force abroad, especially in the post Second World War proved that the constitutional provisions were not respected, court decisions, and the different cases that tackled the war power issues were all in favour of the executive branch. In addition to the incapability of the congress to challenge and to make end to these violations, and the question of who goes to war, the congress, or the president, is still raised, even scholars and war experts, could not find out the reasons behind this contradiction.

Endnotes

¹**Non-interventionism:** it is also called the neutral policy, a foreign policy that holds that political rulers should avoid alliances with other nations, but still retain diplomacy, and avoid all wars unless related to self-defence, the absence of interference by a state or states in external affairs of another state without its consent, or in its internal affairs with or without its consent. <<https://en.wikipedia.org/wiki/Non-interventionism>>.

²**The Quasi War:** it was fought entirely at sea between the United States and France from July,7; 1798, until the signing of the treaty of mortefontaine on September 30; 1800, the expression “quasi war” means that it had some resemblance to war, but it was unofficial and did not include military forces on land <<http://www.american-historama.org/1790-1800-new-nation/quasi-war.htm>>.

³**The Alien and Sedition Act:** A series of laws, passed during the presidency of John Adams at the end of the eighteenth century, that sought to restrict the public activities of political radicals who sympathized with the French Revolution and criticized Adams's Federalist policies. In response to the Alien and Sedition Acts, James Madison and Thomas Jefferson wrote the Virginia and Kentucky Resolutions, which asserted states' rights.

<<http://www.dictionary.com/browse/alien-and-sedition-acts>>.

⁴**Pearl Harbour:** an inlet of the pacific ocean on the southern coast of Oahu, Hawaii, west in Honolulu, it became the site of a naval base after the united states annexed in Hawaii in 1898, on Sunday, December, 7; 1941, Japanese planes attacked the base, and the united states entered world war 2 in the following day.

<<http://www.thefreedictionary.com/Pearl+Harbor>>.

⁵**Containment policy:** a united states foreign policy, adopted by the harry.s.truman administration in 1947, operating on the principle that communist governments will eventually fall apart as long as they are prevented from expanding their influence, this policy was used to justify American involvement in the Korean war, and the Vietnam war.

<<http://www.dictionary.com/browse/containment--policy-of>>.

⁶**The Geneva agreement:** or the Geneva accords, is a collection of documents relating to Indochina, and issuing from the Geneva conference of April 26, to July, 21; 1954; attended by representatives of Cambodia, the people’s republic of china, France, Laos, and the united kingdom, the united states, the soviet union, the Viet minh (north Vietnamese), and the state of Vietnam (the south Vietnamese).<<http://www.britannica.com/event/Geneva-Accords>>.

⁷**The vietnamization:** a policy of Richard Nixon administration, to end us involvement in the Vietnam war through a program to “expand, equip, and train south Vietnam’s forces, and assign to them an ever increasing combat role, at the same time, steadily reducing the number of us combat troops. <<http://www.thefreedictionary.com/Vietnamization>>.

CHAPTER THREE

Obama presidency: Continuation to Presidential Abuse, or a New Phase to War Powers?

The growth of presidential war powers had reached high proportions that political analysts and observers within and outside the United States started to ask about this sudden shift in war powers. Following the Second World War there was a noticeable transformation in the practice of war powers as a result of presidential marginalization of congress using their constitutionally granted powers as commander in chief. Almost all previous presidents claimed authorization from the Security Council to use military force without consulting Congress like: Truman in Korea, Bush I in Iraq, and Clinton in Haiti and Bosnia.

President Obama took office just after the imperial president George Bush and was supposed to use less power in comparison to President George W. Bush. However, President Obama also was among the US Presidents who claimed their right to exercise the war powers and announced American military involvement in Libya to support rebels in an attempt to overthrow and put an end to the Libyan dictator Muammar Gadhafi.

The U.S. Constitution gives Congress and the president different responsibilities over military action, but there have been long disputes about the presidential abuse of power. The Obama administration's decision to intervene in Libyan affair aroused a debate about the constitutional need for a president to request approval from congress.

1. Military Operations in Libya

Due to the rise of the Libyan conflict, President Obama decided to participate in a military campaign against Libya without getting mandate from congress. He instead claimed authority from UNSC,¹ and NATO justifying that he has to made an effort to protect people

being attacked by Libyan government and give the Libyan people a fair chance to decide about their own future.²According to President Obama, the United States of America has to make a step for the sake of global security and human freedom and act to solve the world challenges.

Under the United States Constitution neither UN Security Council (UNSC), nor North Atlantic Treaty Organization (NATO) can enable the president to start a war (Watson, Brattebo, and Covarrubias 309). Only congress is assigned with the right to declare war under Article I, Section 8. Presidents have the power to repel sudden attacks against United States without prior consult of congress in order to protect and secure American citizens (May, and Ides 323). President Obama argued that: “as a head of the state sworn to protect and defend my nation” (qtd.in Shifferd105). However, it was not the case when United States attacked Libya none was attacked or threatened by Libyan campaigns (Watson, Brattebo, and Covarrubias 309).

While an interview with Charlie Savage, a reporter from the Boston Globe, during Obama’s presidential campaign in 2007 Obama was asked “In what circumstances, if any, would the president have constitutional authority to bomb Iran without seeking a use-of-force authorization from Congress?” (qtd.in Jacobson). The journalist tried specifically to figure out through the question the strategic bombing of suspected nuclear sites in Iran “a situation that does not involve stopping an imminent threat” (qtd.in Jacobson).

Obama responded, “The president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation” (qtd.in Jacobson). He added,

As commander-in-chief, the president does have a duty
to protect and defend the United States. In instances of self-defense,

the president would be within his constitutional authority to act before advising Congress or seeking its consent. History has shown us time and again, however, that military action is most successful when it is authorized and supported by the legislative branch. It is always preferable to have the informed consent of Congress prior to any military action” (qtd.in Jacobson).

These were his words before being president, but only practice can confirm his ideologies.

Three years later particularly when accepting the Nobel Peace Prize on December 10, 2009, in Oslo, President Obama delivered speech talking about the concept of a “just war”.³ Obama considered war “as a last resort or in self-defense; if the force used is proportional; and if, whenever possible, civilians are spared from violence” (qtd.in Henderson 204). He also believed that “force can be justified on humanitarian grounds” (qtd.in Fisher 32 “The Law of the Executive Branch...”).

Obama pointed out that the concept of “just a war” was not a new one. It refers back to origins of Augustine’s writing, one of the ancient fathers of Catholic Church who wanted to preserve humanity from violence that might threaten them. Augustine explained that going to war against enemies is justified if it will bring peace. According to him one have to intervene whatever it needs to protect the victim, therefore war must be fought to promote good, avoid evil, and solve political problems (MacKinnon and Fiala 513).

Thomas Aquinas, an Italian Dominican theologian and one of the most influential medieval thinkers of Scholasticism and the father of the Thomistic school of theology , as well expanded more in developing the theory of “just a war” which was based upon “natural law”. For him a war to be just, there must meet set of conditions. One condition is that war must be done to defend common goods against enemies (“St. Thomas Aquinas...”). The theory of a just war has been developed further in modern age mainly in the works of the

Roman Catholic philosopher Francisco Vitoria, Francisco Suarez , a Spanish Jesuit priest philosopher and theologian, and Hugo Grotius who was interested in philosophy of war, international law, political philosophy, in which they were based on the right of the nation to be defended and protected (MacKinnon and Fiala 513).

The revolutions in Tunisia and Egypt which were launched in January and February 2011 against the corrupt regimes were accomplished without external intervention. In Libya, however, what began as an Arab Spring protests rapidly devolved into civil war,⁴ as a result of the brutal reaction of government which confirmed that protesters would not be able to topple their government by themselves (Payandeh 357).

Inspired by the revolutionary wave of demonstrations and protests going in many Arab countries, the first Libyan revolt started as peaceful protests in Benghazi on February 15th, 2011 (Cline 166). Later on protests met with violent responses from authorities, and clashes turned into an armed conflict which grew quickly between government and civilians (Grillot and Messitte 92).

In a widely broadcasted speech on February 22, 2011, Gaddafi “vowed to fight to the last drop of his blood and threatened to cleanse Libya house by house, killing the protesters like rats”(qtd.in Lindström and Zetterlund 14).Gaddafi showed no mercy, promising to fight till the end, compared protesters to rats, and threatened to go house by house to inflict punishment. Subsequently, Libyan revolutionists advanced toward the capital, therefore Gaddafi and his government depended on airstrikes to stop them (Bassiouni 150), the state which resulted thousands of casualties.

Extreme violence was used by Gadhafi’s security forces against riots in which he relied on fighter jets and helicopter gunships to attacked people who cannot defend themselves. Government reports stated that homes and hospitals were raided by government

agents to kill injured protestors. Gadhafi brutality expended even on the other cities applying all kinds of arbitrary killings, arrests, and torture on them (Steinberg). The state which caused a serious human rights violations.

On light of what was going in Libya, President Obama explained in speech that much of Libyans were at stake of Gadhafi, pledging to limit the spread of violence, and to protect the civilian populations from expected massacre,

In this particular country – Libya – at this particular moment, we were faced with the prospect of violence on a horrific scale. We had a unique ability to stop that violence: an international mandate for action, a broad coalition prepared to join us, the support of Arab countries, and a plea for help from the Libyan people themselves. We also had the ability to stop Qaddafi's forces in their tracks without putting American troops on the ground (qtd.in Coyne 12).

After the rise of violence and heavy civilian casualties in Libya the Security Council decided to pass Resolution 1973 on March 17, 2011,⁵ which planned to ban on "all flights in the airspace of the Libyan Arab Jamahiriya in order to help protect civilians" (qtd.in Genser 414). Yet, the ban was not imposed to all flights particularly those who aim to give the help and supplies the Libyan citizens, it covered only those by the Libyan government (Abeyratne 92).

The Resolution 1973 further authorized member states "to take all necessary measures to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi, while excluding a foreign occupation force of any form on any part of Libyan territory" (qtd.in Chinkin, Baeten, and Crawford 35). All necessary measures are code words that give full powers to the intervened countries and even the

exclusion of force does not prevent the intervened countries from using some ground forces (Chinkin, Baetens, and Crawford 35).

Passage of Resolution 1973 came only after the Arab League had agreed to support a no-fly zone over Libya (McCormick 203 “The Domestic Sources...”).⁶ Many countries, however, like Russia and China rejected the resolution because they were concerned that United States and NATO might get involved in costly, misguided war. So did Germany, India, and Brazil (McCormick 203 “The Domestic Sources...”). When military action had started, the Arab League “voiced concern about civilian deaths” (qtd. in Watson 298). Only when the destructive force of bombing intensified more that Amr Moussa, Secretary General of the 22member Arab League, complained, “What is happening in Libya differs from the aim of imposing a no-fly zone, and what we want is the protection of civilians and not the bombardment of more civilians” (Campbell 153).⁷

On March 19, 2011, President Obama without seeking congressional authorization opened a war against Libya (Watson 298). He announced Congress on March 21, 2011, two days earlier at 3 p.m. Eastern Daylight Time, about military operation start in Libya which was based on his direction in order to give an additional aid and support to the United Nations “to assist an international effort authorized by the United Nations (U.N.) Security Council” (Boon 144). The timing of the announcement confirms that Obama’s concern was to obey the orders of the Security Council.

Obama justified his actions saying: “We knew that if we waited one more day, Benghazi a city nearly the size of Charlotte could suffer a massacre that would have reverberated across the region and stained the conscience of the world” (qtd. in Kuperma). Under Resolution 1973 actions were launched through a series of strikes against Libya’s air

defense systems and military airfields “for the purposes of preparing a no-fly zone”(qtd.in Schneider and Koempel 398).

President Obama neglected the basis under which the constitution was built up and ignored the fact of President’s inability to achieve military actions against another nation by his own. He instead claimed that the United States intent was to defend Libyan people and called the military operation “a humanitarian intervention that serves the international interest” (qtd.in Waston 309). But even humanitarian intervention cannot give the president the power to neglect congress.

Obama’s decision to act unilaterally without going to congress for permission was justified by his administration claiming that, launching military operation against Libya was limited task which does not need approval from the United States Congress. Obama announced that the operation is limited in its “nature, duration, and scope” (qtd.in McCormick “Cengage Advantage...” 301). He further declared that “Unites States military are discrete and focused on employing unique U.S military capabilities to set the conditions for our European allies and Arab partners to carry out the measures authorized by the U.N. Security Council Resolution” (Boon 144). Obama’s words indicated that he gave more importance to external institutions and partners than the legitimate internal partner, namely Congress.

Obama’s declarations led many members of congress to accuse the president of violating the Constitution. They did not agree with president actions in Libya claiming that congress wasn't properly consulted before the use of force in Libya (Waxman).President Obama in turn clarified that,

The United States has not deployed ground forces in Libya.

United States forces are conducting a limited and well-defined mission in support of international efforts to protect civilians and

prevent a humanitarian disaster (Boon and Lovelace 262).

He further emphasized that “US forces had targeted the Gadhafi regime’s air defense system command and control structure and other capabilities of Gadhafi’s armed forces used to attack civilians and civilian populated areas” (qtd. in Jackbson). President Obama concluded that United States will seek “a rapid but responsible, transition of operations to coalition, regional, or international organizations to realize the objectives of UN Security Council Resolutions” (qtd. in McCormick “Cengage Advantage...” 301).

On March 21, 2011 President Obama announced at a news conference: “It is U.S. policy that Qaddafi needs to go” (qtd. in McCormick “The Domestic Sources...” 203). Meaning that, the policy of no-fly zone which was expected at the beginning and supported by the Security Council rapidly shifted week by week to include the element of regime change (McCormick “The Domestic Sources...” 203). Secretary of State Hillary Clinton also claimed on May 5, 2011 that the Obama’s administration would ask Congress for legislative authority to shift some \$30 billion of the frozen assets to help the Libyan people, including the rebels (Thurber 240). It is only when it comes to money that the administration remembers to get back to Congress.

On 1 April 2011, the Office of Legal Counsel (OLC) submitted a memo which issued the use of military force in Libya.⁸ OLC claimed that the degree of military involvement in Libya did not constitute a war, since war requires “prolonged and substantial military engagement typically involving exposure of U.S. military personnel to significant risk over a significant period” (qtd. in Devins and Fisher 163). According to the OLC analysis if U.S. did not suffer significant casualties no matter of physical damages and loss of life of another nation, war would not exist within the context of constitution. In other words there would be

no war or hostilities if a weak state has been attacked by superior one (Devins and Fisher 163).

Sixty days after launching military actions against Libya, Obama faced criticism from congress about the finished deadline presence in Libya under the War Powers Act. President Obama asked congressional leaders for a resolution of support for continuing the military involvement in Libya (Pundit). In a letter to the Democratic and Republican leaders of the House and Senate President Obama spoke about the authorization by the United Nations Security Council he claimed that “Congressional action in support of the mission would underline the U.S. commitment to this remarkable international effort” (qtd.inPundit).

According to his view, “it is better to take military action, even in limited actions such as this, with congressional engagement, consultation and support” (qtd.in Kegley and Blanton 77). Furthermore, a resolution by Congress “is also important in the context of our constitutional framework, as it would demonstrate a unity of purpose among the political branches on this important national security matter” (qtd.in Fisher “Military Operations in Libya...” 179).

Another letter was sent on May 20, by President Obama to the congress seeking support for Libyan mission. He said that he acted in Libya “pursuant to a request from the Arab League and authorization by the United Nations Security Council” (qtd.in Fisher “Military Operations in Libya...” 185). However, he did not respect the norms of Security Council resolution when he tried to change Libyan regime and while giving direct aid to the rebels (Fisher “Military Operations in Libya...” 185).

Under the basis of War Power Resolution Act, congress necessitates the existence of unilateral presidential military commitment only “into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances” (qtd.in

Dellinger). Yet President's authority to act without specific congressional authorization requires the president to justify within 48 hours of inserting armed forces into hostilities and to be obliged to finish the use of U.S. armed forces within 60 days except if the congress allows the president to stay and give him additional time in the invaded country (Sarkar 31). This structure applied only in case president violated war powers principles and initiate hostilities without congressional approval in an attempt to adjust and put limits to president's actions (Dellinger).

By June 2011, U.S. military actions in Libya had exceeded the 60-day clock of the War Powers Resolution (Devins and Fisher 163) , therefore the president have to withdraw forces already committed without congressional authorization within the next 30 days.

As Obama failed to convince Congress of United States national security interests for current United States military activities regarding Libya, the House of Representatives passed a resolution (H.Res. 292) by a vote of 268 “yeas” to 145“ nays” and required the president Obama to give a report within 14 days presenting a full description and justification for using military force in Libya in the absence of Congressional authorization, by a vote of 268 to 145 (Devins and Fisher 163). The statistics of the vote indicated that the majority of congressmen were against Obama's actions in Libya.

In response to this resolution, the Obama administration on June 15 submitted a 32 page report to the Congress with a detailed description, attempting to explain the reasons behind the continued air strikes in Libya. The report contained a paragraph named “legal analysis” which outlines the administration opinion toward the move against Libya in addition to the president rational of not obtaining agreement from congress to do so. The opening sentence stated,

Given the important U.S. interests served by U.S. military

Operations in Libya and the limited nature, scope and duration of the anticipated actions, the President had constitutional authority, as Commander in Chief and Chief Executive and pursuant to his foreign affairs powers, to direct such limited military operations abroad (qtd.in Lovelace 242).

Obama's administration clarified by insisting on the independent role and authority of the president relying on the name granted to him as commander on chief to conduct military operations without receiving congressional authorization, as the operations were planned to provide protection and support to the Libyan civilians.

Accordingly, the president is of the view that the current U.S. military operations in Libya are consistent with the War Powers Resolution and do not under that law require further congressional authorization, because U.S. military operations are distinct from the kind of "hostilities" contemplated by the resolution's 60-day termination provision (qtd.in Lovelace 242). Moreover, the Obama's administration stated that further congressional authorization was needless and indicated that United States presence in Libya were not hostile. In other words the word "hostilities" in the War Powers Resolution interpreted to mean that there weren't enough participation in the conflict with the U.S. military effort in Libya and thus there was no need to activate the War Powers Resolution:

US forces are playing a constrained and supporting role in a multinational coalition, whose operations are both legitimated by and limited to the terms of a United Nations Security Council Resolution that authorizes the use of force solely to protect civilians and civilian populated areas under attack or threat of attack and to enforce a no-fly zone and an arms embargo. US operations do not involve sustained fighting or active exchanges

of fire with hostile forces, nor do they involve the presence of US ground troops, US casualties or a serious threat thereof, or any significant chance of escalation into a conflict characterized by those factors(qtd.in Lovelace 242).

When the administration submitted this report to Congress, it claimed that President Obama acted in Libya with a mandate from the United Nations. However, the Security Council cannot mandate, order, or command the United States, since congress is the only responsible of delivering mandates.

On June 15, 2011, President Obama again stated a report in regards to the possibility of receiving congressional support for continuing actions in Libya. In that report he expressed his support for the bipartisan resolution drafted by Senators Kerry, McCain, Levin, Feinstein, Graham, and Lieberman, which would confirm that Congress supports the U.S. mission in Libya and that both branches are united in their commitment to supporting the aspirations of the Libyan people for political reform and self-government (qtd.in Grimmatt 14).

On June 24, 2011, The House of Representatives defeated (H.J. Res. 68) resolution by a vote of 123 ‘yeas’ to 295 ‘nays’ which limited United States Armed Forces presence in Libya (Grimmett 14). Then on June 24, 2011, the House of Representatives once more defeated (H.R. 2278) resolution which would restrict the use of funds appropriated to the Department of Defense for United States Armed Forces in support of North Atlantic Treaty Organization Operation Unified Protector with respect to Libya, expect if authorized by law (Grimmett 14). The two votes confirmed congressional reluctance to support Obama’s participation in NATO’s operation in Libya.

In response to United Nations Security Council call, NATO allies intervened in Libya on 22 March 2011 as a support to United Nations Resolution 1973 in which they agreed to enforce no-fly zone into airspace to protect civilian from air attacks(“*NATO and*

Libya”). Secretary Clinton spoke of this transfer to NATO: “All 28 allies have also now authorized military authorities to develop an operations plan for NATO to take on the broader civilian protection mission under Resolution 1973” (qtd. in “NATO Agrees...”).

On March 28, President Obama announced that he would transfer responsibilities of military attacks on Libya to the North Atlantic Treaty Organization (NATO) allies (Brown 745). Thus on 31 March 2011, the European took the sole control and lead of military effort for Libya (*“NATO and Libya”*).

President Obama sent a letter to Congress on May, 2011, explaining that the United States will play a supporting role in the coalition’s efforts in Libya (Brown 745). However, it was just pretext used by U.S. to work under the umbrella of NATO and unreel that there were hostilities in Libya (Fisher “Military Operations in Libya...” 183).

On 31 October 2011 NATO successfully ended its seven-month military mission in Libya (Alston, and Goodman 9). Tripoli had been taken by rebels by August, 2011, subsequently the long-standing leader, Muammar Gaddafi was killed on October 20, 2011, which led to the escalation of the conflict in the country. Therefore the national transitional council declared the liberation of Libya and the war officially finished three days after (Mills 286).

President Obama violated as well the constitutional laws by participating in the NATO campaign against Gaddafi without prior approval from Congress. He justified the steps of American participation in the campaign against Libya as limited operation to save the lives of many civilians and to help a lot of people against one of the worst tyrants in the world who has denied his people freedom, exploited their wealth, and murdered innocent people. The constitutional laws were not respected also by President Obama, therefore presidents still

proving that they can work by they own and what confirms it is that Obama's action did not stopped in Libya involvement, but extended more to include Syria claiming different reasons.

2. The Obama's Doctrine in the Middle East "Syria"

The Obama doctrine in the Middle East is used to describe the American foreign policy. This doctrine is mainly describing Obama's style and strategies towards other nations, specifically the Middle East, which led different journalists and political commentators to question what are the real tenets of the Obama's doctrine? This policy has been welcomed by different parts, who thought that it would be different from that of George Bush's doctrine, but for some, it was just like the Bush administration the slight difference that characterized Obama's doctrine might be his reluctance.

In the post-cold war era, presidential doctrines encapsulated new strategies to meet the challenges of an unfamiliar, unipolar world, and have increasingly dealt with the greater Middle East as a strategic space (Vandal 13). President Obama depended on the doctrine of not responding directly, but he explained that the United States must act with other countries "an American leadership that recognizes the rise of the countries like China, India, and Brazil, it is a US leadership that recognizes our limits in terms of resources and capacity" (qtd.in Vaisse 246).

After the Bush administration, that left the United States on the verge of financial ruin, Barack Obama, has sought to chart a new course in American foreign policy, that would rely not on abstract moral values, or brutal military strength, but on real relationships and shared interests with other nation. He contrasted his foreign policy vision on realism, pragmatism, and restraints with that of George Bush (Danahar 8).

2.1 The Syrian crisis:

The Syrian civil war,⁹ also known as the Syrian uprising, a conflict between forces loyal to the Baath government, and those seeking to oust it. It began on the 15th march 2011, with popular demonstrations, which were part of the regional protest movement occurring in a number of Arab countries, referred to as the Arab spring,¹⁰ centered around the Syrian president Bashar Assad , who took power in 2000. Those protestors who demanded the resignation of the Syrian President Bashar al Assad in order to provide a more democratic government (*“Syria: The story of the conflict”*).

President Barrack Obama used a presidential speech,¹¹ to announce the war on Syria which was considered for him as a big threat for the United States of America:

My fellow Americans, tonight, I want to speak to you about what the United States of America will do with our friends, and allies to degrade and ultimately destroy the terrorist group known as ISIL,¹² as commander in chief ,my highestpriority is the security of the American people [...]first we will conduct a systematic campaign of air strikes against these terrorists[...] I will not hesitate to take action against ISIL in Syria, as well as Iraq, this is a core principle of my presidency, if you threaten America, you will find no safe heaven (qtd.in Whitney).

The use of chemical weapons was one the main reasons behind intervening in Syria at the beginning, which was later on inconsiderable. However, following Obama’s speeches about the Syrian crisis he was kind of taking new pretexts to do so. He took ISIL as a direct aim to overthrow “Basher Assad regime and replace it by a pro-US stooge regime in Damascus (Hendrickson 116).

2.2. Obama's intervention in Syria

Following the American government assessment of the Syrian government's use of chemical weapons (August 21st 2013), President Barack Obama announced a speech that he would seek a congressional authorization before sending American military forces to intervene in the Syrian civil war. He said "I was prepared to give that order" (*qtd.in "Statement by the President on Syria"*). Especially in the case of chemical weapons used by Syria, that put America's regional allies which share borders with Syria and the danger that it encounters (Jorum77).

Without congressional authorization, public debate, or any attempts to rally the American public's support, president Barack Obama "has ordered U.S ground troops to a war zone" (Klimas). The United States was set to deploy troops on the Syrian grounds, for the first time to advise and assist rebel forces combating ISIS (Starr, and Diamond). Obama made it clear in his speech as well "while I believe I have the authority to carry out this military action, without specific congressional authorization, I know the country will be stronger if we take this course, and our actions will be even more effective" (*qtd.in "Statement by the President on Syria"*). Obama's words confirmed that he believe that his military actions would be more effective if taken unilaterally.

President Barack Obama proved to have contradictory instructions concerning the constitution's principles and the safety of the nation from unnecessary wars that might be harmful. In one of his speeches he declared: "The president does not have the power under the constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual imminent threat to the nation" (*"Obama's victory speech"*).

By participating in military coalition in Syria, Obama was engaging in the actions, that he specifically declared illegal. Congress as well was abdicating its responsibility by neither

empowering him to wage war, nor reining him in. Congressional passivity was enabling Obama to exceed the limits of his power in a way that had in the past which led to catastrophic wars, such as the Vietnam War and the recent war in Libya (Hendrickson 30). This state proves that both congress and the president are practicing their war powers in a modern way, unlike that expected by the Founding Fathers.

By doing so, Obama marks a decisive break in the American constitutional tradition. As Yale law's Bruce Ackerman discussed long before the deployment of the troops, and beyond its legality, these impulsive actions weakens and makes the foreign policy less effective (Hendrickson 34). Ilea Somin, a law professor at George Mason University School of Law, explained in the Washington post:

One of the main justifications for the constitution's requirement that presidents can only initiate a war if they have congressional authorization, to assure that any such war is backed by a large political consensus, if we decide to fight a war at all it should only be in cases where there is widespread agreement that the war is justified, and that we will do what is necessary to prevail, at least so far, the president's war against ISIL, has been a lesson in the dangers of launching a military intervention, without that kind of political support.

Some congressmen, senators mainly Tim Kaine, Jeff Flake, and Rand Paul, have attempted to explain how the war powers must be used. Other members as well, are aware that the president is exceeding his constitutional authority, and that the congress passivity is urging him to exceed his limits (Young, and Kent 387). The United States is actually fighting two sides in the Syrian civil war, the Obama administration wants the Syrian leader Bashar al Assad to leave power, and to defeat the so called ISIL, the rebel group that is opposed to al Assad regime (*"Remarks by President Obama ..."*).

Russia and Iran as well are other parts in the world that want to destroy ISIL, without the resignation of al Assad (*"Iran and Russia"*). Obama argued that the Syria intervention was necessary for several reasons, including "the credibility of international community" (*"Text of Obama's Speech at the U.N"*). America and the congress's credibility is on the line, Secretary of State John Kerry argued before the house foreign affair committee that "extremist groups fighting against the Syrian government would become stronger, if the United States did not carry out a military strike" (Aaronson, Aslam, Dyson and Rauxloh 225-226). For Kerry, "if the United States does not punish Basher al Assad for using chemical weapons, other nations in the area will intervene, arming the extremist rebel groups that the United States has been pressuring them not to do"(qtd.in Broder).

2.3. Oppositions about the Syrian intervention

The Harvard University international relations professor, Stephen Walt wrote an open letter to his congressman, stressing the point to vote against the intervention in Syria. Walt's first arguments against this action, was that the United States of America lacks any vital strategic interests in Syria. Walt also pointed out that even though the brutality of Basher al Assad, it did not bother former American presidents; this intervention indeed, would make things more complex, and open dark doors that surely will harm the American national security (Turner and Kuhn 12). This impulsive military intervention for Walt would bring more enemies to the nation.

According to Walt, researches about civil wars, tend to increase civilian killing, and does not shorten wars. Walt suggested the help of refugees instead of taking military actions, and air strikes. He also gave a strong argument in which he made it clear that Obama was not doing the right thing "wise leaders do not go to wars without robust international and domestic support, which president Obama does not have"(qtd.in Turner and kuhn 14).

2.4. Russia and Syria

Russia was one of the international backer countries to the Syrian President Bashar Assad,¹³ it has blocked resolutions critical of President Assad at the UN Security Council and has continued to supply weapons to the Syrian military despite the international criticism. Moscow wanted to protect a key naval facility which opens to the Syrian port of Tartous, which serves as Russia's sole Mediterranean base for its black sea fleet, and has forces at an air base in Latakia. In September 2015, Russia, began launching strikes against rebels, in which the Islamic state and the terrorists were targets (Braun 123). The aim behind these attacks was to protect Bashar's government.

For Moscow, keeping al Assad in power would be more important than defeating the Islamic state of Syria and Iraq. Putin was more interested about his strategic aim in making Russia a global power, than letting the downing of a civilian airliner change his strategy in Syria, as the west was focusing his goals on ISIL, it was less focused on Russia's designs on eastern Europe, or Iran's nuclear program which will benefit Russia (Pierce 22-24).

The long term strategic goals of Russia and the west share the same common interests in Syria. Because Russia's priority is the survival of al Assad regime, and all of this had occurred because the oil revenues have collapsed, in addition to the international economic sanctions down fall (Allin and Simon 5-6).

Obama followed a policy of inaction. At first the administration appeared to be indecisive about the next step, the message of "Assad must go", was given to avoid missing the possible overthrow of the regime, and the name of being on the right side of history. Instead of a result of a policy planning process, an additional turning point took place. When President Obama made a statement in August 2012, in response to a question about the

rumors that the Assad's regime was moving chemical weapons, he stated that the American policy towards the conflict would be revised:

we have been very clear to the Assad regime, but also to other players on the ground that a red line for us, is when we start seeing a whole bunch of chemical weapons around or being utilized[...] that would change my calculus[...] that would change my equation[...] we are monitoring that situation very carefully, we have put together a range of contingency plans (Press 151).

The red line statement was interpreted again that America was prepared to take decisive actions to stop Assad regime from employing chemical weapons, many around the globe expected that Obama would intervene militarily, however, U.S actions following the statement were not sufficient to deter the Assad regime, Obama underlined that using force and military strikes would not be a solution to overthrow the Assad regime.

The American policy in Syria brings together the major turning points since the beginning of the Arab spring, and positions that different actors endorsed; it explained Obama's policies towards the Middle East and towards Syria in particular, how he attempted to restore the ties with the Syrian government after the 2008 presidential elections in order to solve the foreign fighters problem in Iraq (Al-Baidhani 98).

History tells again that President Obama like the previous presidents proved that he can take actions without referring to congress. Executing orders and shaping rules that suits his demands and meet his requirements. Obama's complete disregard and ignorance of the constitution when attacking Libya confirm that his actions would not stop and he would continue to act unilaterally whenever he gets a chance.

The chapter was an analysis to the Syrian crisis and its aftermath; it served to illuminate the U.S policy in Syria over the last four years. The Obama administration worked cohesively to try to reverse the Bush administration, in order to achieve its main goals in the Middle East, and it is obvious that Obama's intentions from the very beginning were capturing an intervention in Syria.

If any one takes a looks at the constitution's principles, he will notice that what is happening in reality is a huge contradiction, as long as the constitution is the supreme law of the land, why do presidents through history exceed and exaggerate in using their granted powers, and why is the congress too passive? There must be a hidden secret, either it is a game done on purpose, or that's how things work in the American government.

The United States constitution, had divided the war powers of the federal government between the executive and the legislative branches, however, over time questions have been raised about the extent of the president's authority to deploy the American armed forces into hostile situations, without a declaration of war or a congressional authorization.

The congress passivity all these years towards this issue, has led to the blame of many parts of the world, knowing that the congress is not that weak body to be too passive in this way. In the aftermath of the Vietnam War, the congress passed the War Power Resolution Act of 1973, as an attempt to emphasize the limitation of both bodies (the legislative, and the executive). The war power resolution act was a kind of a reminder of where the introduction of American armed forces may lead abroad, and to what extent may these interventions can harm the nation's security and safety.

American presidents have not taken the war power resolution act seriously, it was an unconstitutional act upon the executive branch, this huge contradiction is making the American constitution less effective, but it is obvious that presidents throughout the history,

have been repeating the same actions of leading the nation into war with no congressional consultation, the answer is widely clear now, but the solution is not found yet.

Endnotes:

¹**United Nation Security Council (UNSC):**an organization whose primary responsibility is the maintenance of international peace and security.

<<http://www.britannica.com/topic/United-Nations-Security-Council>>.

² **North Atlantic Treaty Organization (NATO):**an organization formed in Washington, D.C. (1949), comprising the 12 nations of the Atlantic Pact together with Greece, Turkey, and the Federal Republic of Germany, for the purpose of collective defense against aggression.

<<http://www.dictionary.com/browse/nato>>.

³ **Just war:**a military action that is justified as being permissible for legal or moral reasons; also called just war theory, just war tradition.

<<http://www.dictionary.com/browse/just-war>>.

⁴**Arab Spring:**was a revolutionary wave of demonstrations and protests (both non-violent and violent), riots, and civil wars in the Arab world that began on 18 December 2010 in Tunisia with the Tunisian Revolution, and spread throughout the countries of the Arab League and its surroundings.<https://en.wikipedia.org/wiki/Arab_Spring>.

⁵ **War Powers Resolution 1973:**is a federal law intended to check the president's power to commit the United States to an armed conflict without the consent of the U.S. Congress.

<https://en.wikipedia.org/wiki/War_Powers_Resolution>.

⁶**The Arab league:**An association of Arab states established in 1945 to promote cooperation among members regarding economic and social development and foreign policy.<<http://www.thefreedictionary.com/Arab+League>>.

⁷**A no-fly zone:**itis a territory or an area over which aircraft are not permitted to fly

<https://en.wikipedia.org/wiki/No-fly_zone>.

⁸ **Office of Legal Counsel:** is an office in the United States Department of Justice that assists the Attorney General's position as legal adviser to the President and all executive branch agencies.

<https://en.wikipedia.org/wiki/Office_of_Legal_Counsel>.

⁹**The Syrian civil war:** it is an ongoing multi-sided armed conflict with international intervention taking place in Syria; the unrest began in the early spring of 2011 within the context of the Arab spring protests, with nationwide protests against president basher Assad government whose forces responded with violent crackdowns.

<https://en.wikipedia.org/wiki/Syrian_Civil_War>.

¹⁰**The Arab spring:** was a series of anti-government protests apprising and armed rebellions that spread across the middle east, in early 2011 but their purpose relative success and outcome remain hotly disputed in Arab countries among foreign observes and between world

powers looking to cash on the changing map of the middle east.

<<http://middleeast.about.com/od/humanrightsdemocracy/a/Definition-Of-The-Arab-Spring.htm>>.

¹¹ **Barrack Obama:** he is the 44TH president of the United States. His story is the American story, values from the heartland, a middle class upbringing in a strong family, hard work and education as the means of getting ahead, and the conviction that a life so blessed should be lived in service to others. <<https://www.whitehouse.gov/administration/president-obama>>.

¹² **ISIL:** translates to “Islamic state of Iraq and the levant.the Levant is a geographical term that refers to the eastern shore of the Mediterranean, Syria, Lebanon, Palestine, Israel, and Jordan, it is the term the US government uses since the “Levant” is apparently a better translation for al-sham, the Arabic name for the region. <<http://www.ibtimes.com/isil-isis-islamic-state-daesh-whats-difference>>.

¹³ **Basher Assad:** (was born on September 11, 1965, Damascus, Syria) Syrian president from 2000, he succeeded his father, Hafiz al-Assad, who had ruled Syria since since 1971, in spite of early hopes that his presidency would usher in an area of democratic reform and economic revival, basher al Assad largely continued his father’s authoritarian methods, beginning in 2011, Assad , faced a major uprising in Syria that evolved into a civil war. <<http://www.britannica.com/biography/Bashar-al-Assad>>.

Conclusion:

Relying on the historical analysis which is an integral component in studying the American history and politics, this research work aims to shed the light on the continuous constitutional struggle between congress and the American president over constitutional prerogatives and mainly war powers. Constitution gives the Congress and the president different responsibilities over military action, but there has been long hot debate that raises the attention of many political leaders and scholars about where one's war powers begins and where the other's ends.

After a deep examination and understanding of the United States Constitution, it is clear that when writing the U.S. constitution, the delegates did not tend to model the American constitution like that of the British monarchy under which they suffered a lot, because they did not want to vest all the powers in the hands of one person who is usually the king, so they implemented an executive branch and granted the president the title of Commander in Chief, and chose to handle the legislative branch with the authority over matters of war and peace.

Federalists like John Adams, Alexander Hamilton, James Madison, John Jay are the best examples of political leaders who preferred to avoid authority under one hand. Studying the American history confirms that many presidents tended to rely on the name granted to them as Commander-in-Chief to expand their authority over foreign policy mainly the power to make war. However, the main reason behind designating the president with this title is to separate the powers and guarantee the unity of command under the leadership of a civilian.

The title of Commander in Chief amount to nothing more than the supreme command and direction of the military and naval forces and gives the president just the authority to respond to sudden attacks against US. Congress, however has been granted more power

compared to the executive branch in which it has the power to conduct a war while the president is deliberately and convincingly denied of such power.

Many presidents denied the constitutional role of Congress in declaring the war in the last decades. They have tried to establish an independent authority to bring the United States to war, and American troops have been sent by presidents for the very purpose of committing the United States into war in many parts of the world.

The balance of power between the President and Congress has moved backwards and forwards, since the writing of the Constitution. In early American history, the president was relatively powerless in comparison to Congress and accordingly the United States Congress declared war only five times: The Revolutionary War of 1812, the Mexican-American War of 1846, the Spanish-American War of 1898, the First World War and the Second World War. Executive branch powers increased, however during the Civil War and continued to change particularly after the World War two, marking by specific clashes and events between both legislative and executive branches.

In the aftermath of the Second World War presidents have tried to establish an independent authority to bring the United States to war relying on their role as commanders in chief to declare the war. American troops engaged in military companies against other nations such as Central America, the war in Vietnam, the Middle East, former Yugoslavia and the current conflicts in Afghanistan and Iraq without receiving Congressional approval in the majority of cases and without any congressional reaction to retain its powers.

Debates about the US president's use of force, congress behave during wartime, and the manner in which presidents justify how they exercised war powers were all neglected by the Supreme Court as a neutral branch which is supposed to play an important role in solving

constitutional conflicts between them. Court's unwillingness to be a part of war powers cases had increased presidents' use of war powers to a very great degree.

Aside from the fact that the executives have relied on imperial notions of the presidency, and especially on their role as commander in chief of the armed forces. U.S. membership in international organizations such as the Security Council of the United Nation and NATO also plays an effective role in hindering congressional participation in decisions regarding the use of force abroad. The presidents of United States substituted congressional consent with these organizations to justify their war practices.

Congress passivity has also contributed in a great deal to presidential betrayal of the Founders' allocation of war powers. Congress is no longer trying to impose its authority or to check presidential actions. Moreover, many of congressional powers have been violated by the executive branch without any trial by the Congress to retain its powers or restrict presidential excessive ones. Despite the fact that, many expressed their worries about congress passivity. Congress, however regularly appropriated funds to support the war. Investigation has shown that wars led Congress to take no legal or political responsibility feeling of a duty to fund and help American army far from home which opened the way and encouraged presidents to go too far in their actions regardless of any constitutional limitation.

To maintain its position against presidential usurpation, Congress relied on the War Powers Clause of the Constitution and on the 1973 War Powers Resolution in order to check and restrict presidential war powers also to give the impression that congress is superior in decisions making. Yet the act further validated the president's decision to deploy troops form sixty to ninety days. Throughout the reach results confirmed that the War Powers Resolution act proved to be unsuccessful since it did no limit presidential war power, it demonstrated

further that almost all presidents did not comply with the instructions of War Powers Resolution Act and consulted with congress before engaging into hostilities abroad.

Many research papers and studies, many war experts, and political historians have been talking this issue and they have defined such actions as extreme access and intrusion of the constitutional principles. As long as the constitution is the supreme law of the land it seems that neither the president nor congress have respected their roles.

Congressional passivity has contributed a lot in the president violations of the powers granted to both bodies. However both branches are excused of disrespecting the Founding Father constitutional principles concerning the war powers which proved the inefficiency of the War Power Resolution Act of 1793 which attempted to create a kind of balance between the legislative and executive body.

The study confirms that President Obama like nearly all American presidents waged wars without prior congressional consultation and violated as well the constitutional laws by participating in campaign against Libya without prior approval from congress, thus the constitutional laws are not respected.

The Obama's intervention in Libyan conflict was out of humanitarian reasons, it has nothing to do with helping people getting their democracy, it was all about waiting for the appropriate opportunity to inter into Arab countries and serve its services. Moreover what is going on between the President and Congress was just to give the President a chance to get benefits and act freely at the level of foreign affairs.

The work emphasizes on the truth that president Obama still the most powerful authority in the country when it comes to foreign intervention. Americans, promoters of democracy neither respected their constitution nor amended it.

Different literature have been consulted while dealing with this dissertation in an attempt to look for another conclusion through analyzing various situation in which war powers are embodied, also to give additional add for other researchers whose work based on the same area of study.

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