

Sec. 2—Powers, Duties of the President

Cl. 1—Commander-In-Chiefship

pounded.¹⁶⁷ The great majority of the instances cited involved fights with pirates, landings of small naval contingents on barbarous or semibarbarous coasts to protect commerce, the dispatch of small bodies of troops to chase bandits across the Mexican border, and the like, and some incidents supposedly without authorization from Congress did in fact have underlying statutory or other legislative authorization. Some instances, *e.g.*, President Polk's use of troops to precipitate war with Mexico in 1846, President Grant's attempt to annex the Dominican Republic, President McKinley's dispatch of troops into China during the Boxer Rebellion, involved considerable exercises of presidential power, but in general purposes were limited and congressional authority was sought for the use of troops against a sovereign state or in such a way as to constitute war. The early years of this century saw the expansion in the Caribbean and Latin America both of the use of troops for the furthering of what was perceived to be our national interests and of the power of the President to deploy the military force of the United States without congressional authorization.¹⁶⁸

The pre-war actions of Presidents Wilson and Franklin Roosevelt advanced in substantial degrees the fact of presidential initiative, although the theory did not begin to catch up with the fact until the "Great Debate" over the commitment of troops by the United States to Europe under the Atlantic Pact. While congressional authorization was obtained, that debate, the debate over the United Nations charter, and the debate over Article 5 of the North Atlantic Treaty of 1949, declaring that "armed attack" against one signatory was to be considered as "an attack" against all signatories, provided the occasion for the formulation of a theory of independent presidential power to use the armed forces in the national interest

to send our forces into battle. The memorandum that we prepared listed eighty-seven instances in the past century in which his predecessors had done this. And thus yet another decision was made." D. ACHESON, *PRESENT AT THE CREATION* 414, 415 (1969).

¹⁶⁷ *War Powers Legislation: Hearings Before the Senate Foreign Relations Committee*, 92d Congress, 1st Sess. (1971), 347, 354–355, 359–379 (Senator Goldwater); Emerson, *War Powers Legislation*, 74 W. VA. L. REV. 53 (1972). The most complete list as of the time prepared is Collier, *Instances of Use of United States Armed Forces Abroad, 1798–1989*, CONG. RES. SERV. (1989), which was cited for its numerical total in *United States v. Verdugo-Urquidez*, 494 U.S. 259, 273 (1990). For an effort to reconstruct the development and continuation of the listings, see F. WORMUTH & E. FIRMAGE, *TO CHAIN THE DOG OF WAR* 142–145 (2d ed. 1989).

¹⁶⁸ Of course, considerable debate continues with respect to the meaning of the historical record. For reflections of the narrow reading, see NATIONAL COMMITMENTS RESOLUTION, Report of the Senate Committee on Foreign Relations, S. REP. NO. 91–129, 1st Sess. (1969); J. ELY, *WAR AND RESPONSIBILITY: CONSTITUTIONAL LESSONS OF VIETNAM AND ITS AFTERMATH* (1993). On the broader reading and finding great presidential power, see A. SOFAER, *WAR, FOREIGN AFFAIRS AND CONSTITUTIONAL POWER: THE ORIGINS* (1976); Emerson, *Making War Without a Declaration*, 17 J. LEGIS. 23 (1990).