

## Sec. 2—Powers, Duties of the President

## Cl. 1—Commander-In-Chiefship

nist aggression in North Viet Nam are necessary, he is constitutionally empowered to take those measures.”<sup>171</sup>

Opponents of such expanded presidential powers have contended, however, that the authority to initiate war was not divided between the Executive and Congress but was vested exclusively in Congress. The President had the duty and the power to repeal sudden attacks and act in other emergencies, and in his role as Commander in Chief he was empowered to direct the armed forces for any purpose specified by Congress.<sup>172</sup> Though Congress asserted itself in some respects, it never really managed to confront the President’s power with any sort of effective limitation, until recently.

***The Power of Congress to Control the President’s Discretion.***—Over the President’s veto, Congress enacted the War Powers Resolution,<sup>173</sup> designed to redistribute the war powers between the President and Congress. Although ambiguous in some respects, the Resolution appears to define restrictively the President’s powers, to require him to report fully to Congress upon the introduction of troops into foreign areas, to specify a maximum time limitation on the engagement of hostilities absent affirmative congressional action, and to provide a means for Congress to require cessation of hostilities in advance of the time set.

The Resolution states that the President’s power to commit United States troops into hostilities, or into situations of imminent involve-

<sup>171</sup> Meeker, *The Legality of United States Participation in the Defense of Viet Nam*, 54 DEPT. STATE BULL. 474, 484–485 (1966). See also Moore, *The National Executive and the Use of the Armed Forces Abroad*, 21 NAVAL WAR COLLEGE REV. 28 (1969); Wright, *The Power of the Executive to Use Military Forces Abroad*, 10 VA. J. INT. L. 43 (1969); *Documents Relating to the War Powers of Congress, The President’s Authority as Commander-in-Chief and the War in Indochina*, Senate Committee on Foreign Relations, 91st Congress, 2d sess. (Comm. Print) (1970), 1 (Under Secretary of State Katzenbach), 90 (J. Stevenson, Legal Adviser, Department of State), 120 (Professor Moore), 175 (Assistant Attorney General Rehnquist).

<sup>172</sup> E.g., F. WORMUTH & E. FIRMAGE, *TO CHAIN THE DOG OF WAR* (2d ed. 1989), F.; J. ELY, *WAR AND RESPONSIBILITY: CONSTITUTIONAL LESSONS OF VIETNAM AND ITS AFTERMATH* (1993); *U.S. Commitments to Foreign Powers: Hearings Before the Senate Committee on Foreign Relations*, 90th Congress, 1st sess. (1967), 9 (Professor Bartlett); *War Powers Legislation: Hearings Before the Senate Committee on Foreign Relations*, 92d Cong., 1st sess. (1971), 7 (Professor Commager), 75 (Professor Morris), 251 (Professor Mason).

<sup>173</sup> Pub. L. 93–148, 87 Stat. 555, 50 U.S.C. §§ 1541–1548. For the congressional intent and explanation, see H. REP. NO. 93–287, S. REP. NO. 93–220, and H. REP. NO. 93–547 (Conference Report), all 93d Congress, 1st sess. (1973). The President’s veto message is H. Doc. No. 93–171, 93d Congress, 1st Sess. (1973). All this material is collected in *The War Powers Resolution: Relevant Documents, Reports, Correspondence*, House Committee on Foreign Affairs, 103d Cong., 2d Sess. (Comm. Print) (GPO: 1994), 1–46. For a narrative account of passage and an assessment of the disputed compliance to date, from the congressional point of view, see *The War Powers Resolution*, A Special Study of the House Committee on Foreign Affairs, 102d Cong., 2d Sess. (Comm. Print) (GPO: 1982).